LEGISLATIVE COUNCIL

Wednesday 25 May 2005

The President (The Hon. Dr Meredith Burgmann) took the chair at 10.00 a.m.

The Clerk of the Parliaments offered the Prayers.

WORKPLACE SURVEILLANCE BILL

Bill received, read a first time and ordered to be printed.

Motion by the Hon. John Hatzistergos agreed to:

That standing and sessional 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 ordered to stand as an order of the day.

GENERAL PURPOSE STANDING COMMITTEE NO. 2

Appointment of Subcommittees

Motion by the Hon. Patricia Forsythe agreed to:

That, for the purpose of its current inquiry into changes to post school programs for young adults with a disability, General Purpose Standing Committee No. 2 have power to appoint subcommittees according to Standing Order No. 217.

STANDING COMMITTEE ON LAW AND JUSTICE

Extension of Reporting Date

Motion by the Hon. Christine Robertson agreed to:

That the reporting date for the reference to the Standing Committee on Law and Justice relating to back-end home detention be extended to Friday 15 July 2005.

PETITIONS

Freedom of Speech

Petitions opposing any legislation that would inhibit unencumbered discussion and freedom of speech regarding religion and introduce religious vilification in New South Wales, received from **the Hon. David Clarke** and **Reverend the Hon. Fred Nile**.

Camden Maternity Ward

Petition calling on the Premier to honour election campaign commitments by reopening the Camden Maternity Ward, received from **the Hon. Charlie Lynn**.

Anti-Discrimination (Religious Tolerance) Legislation

Petition opposing the proposed anti-discrimination (religious tolerance) legislation, received from **Reverend the Hon. Fred Nile**.

Unborn Child Protection

Petition requesting legislation to protect foetuses of 20 weeks gestation and to make resources available for post-abortion follow-up, received from **Reverend the Hon. Fred Nile**.

NOXIOUS WEEDS AMENDMENT BILL

CRIMINAL PROCEDURE FURTHER AMENDMENT (EVIDENCE) BILL

Messages received from the Legislative Assembly agreeing to the Legislative Council's amendments.

CRIMES AND FIREARMS LEGISLATION AMENDMENT (APPREHENDED VIOLENCE ORDERS) BILL

Second Reading

Debate resumed from 24 May 2005.

The Hon. JOHN TINGLE [10.11 a.m.], in reply: I suspect that this bill might be facing defeat but there are still some comments I would like to make about it before it disappears from human ken. I thank all those members who spoke in debate on this bill—Reverend the Hon. Fred Nile, the Hon. Jon Jenkins, Ms Lee Rhiannon, the Hon. David Oldfield, the Hon. Eric Roozendaal and the Leader of the Opposition. I wish to make a few comments on what has been said in the debate. I turn, first, to the comments and contribution of Ms Lee Rhiannon. She did as I expected she would do and opposed the bill. I have no problem with that but I have to say that a great deal of her contribution seemed to become an attack on whatever my real motives were and on firearms in general.

This bill is not about firearms; it is about trying to get apprehended violence orders [AVOs] back on track as a shield, not as a weapon. It certainly is about legally owned, legally used property being confiscated without a justifiable reason and then not being returned when that reason is exposed as fallacious. Ms Lee Rhiannon focused entirely on the firearms situation and did not address the core issue in the bill, which is to try to end the vindictive and abusive use of AVOs. She referred to some fairly strange statistics about killings but did not say how many of them involved firearms. She said that about 20 per cent of spouse homicides occurred in rural areas but again she did not say how many of those involved the use of firearms.

She also said I was wrong in claiming that AVOs were too easy to get. She spoke about how it is supposed to happen under the legislation, but it is quite obvious that the honourable member does not know what really happens and she does not understand the pressure a police officer is under to start the process of an interim AVO immediately he or she receives a complaint. The honourable member may not know, or does not want to know, that that process involves the immediate seizure of firearms whether or not it is supposed to happen. It happens in practice. The Hon. David Oldfield produced support for the bill and pointed out that, contrary to the claims by Ms Lee Rhiannon, murder with guns is rare.

He mentioned that knives, baseball bats and other weapons are used much more frequently than firearms. He might also have mentioned that statistically the most common weapon in assault is actually the human fist. It is used not only to assault but also to murder. The Hon. Eric Roozendaal responded for the Government. With all respect to the honourable member I think it reflects this Government's off-handed attitude to the questions raised by this bill that it was left to a Parliamentary Secretary to respond in this case. I am not surprised that the Government opposes the bill. It has given many examples of how little it understands of the way in which AVOs are being abused.

Most significantly, the Government's response failed to acknowledge the worrying number of cases in which AVOs have abjectly failed to protect the applicant, even leading in one tragic case to the deaths of the small children of an estranged couple. I cannot believe that the Government does not know of the problems unless it is also unaware of the disproportionate amount of court time taken up by AVOs. The Hon. Eric Roozendaal missed the claim in my second reading speech that some lawyers are routinely suggesting to a wife in a divorce case that she take out an AVO against her husband as an extra pressure that can be put on him in the divorce case. Members of the legal profession alerted me to that practice.

What they pointed out makes a nonsense of the Government's claim that solicitors who did this could be in serious trouble if they were reported to the Law Society. Who is going to report them? Would a lawyer not be able to claim client confidentiality and privilege? What woman would admit that she took out an AVO fallaciously just to get at her husband in a divorce case? The Government made great play of the fact that police attend about 100,000 domestic violence incidents a year. Is the Government suggesting that every one of them is life threatening, or are the majority of them merely loud domestic arguments reported by neighbours?

How is that statistic relevant unless the greatest number of those incidents also lead to AVOs being taken out? I am pleased that the Government has said it will consider two of the proposals in my bill but I am disappointed—not surprised, but disappointed—that it has taken a stand that suggests the problem does not exist. The problems are real, they are large and they are documented in the great amount of correspondence I received once it was known that this bill was on its way. I am grateful to the Leader of the Opposition for his intelligent and reasoned support of the bill. Unlike the Government, which saw the bill as retrograde to the modest changes I proposed, the Leader of the Opposition saw it as a step forward in bringing balance into the AVO procedure.

I am grateful for the Opposition's support for the bill, for its understanding of what it is about and how serious are the problems concerning AVO laws. From the massive amount of correspondence that I have received since the bill was first mooted I know that the Government is out of touch with a significant area of community concern about the way in which AVOs are being misused. I repeat that this bill is not just about guns. It does not seek to dismantle the AVO system or even to weaken it. It seeks to strengthen it by removing abuses, avoiding vexatious, frivolous or fallacious applications for AVOs. It seeks to restore the AVO to what its architect intended it to be, a shield for people—men, women or children—who are genuinely at risk instead of being used as a weapon in its own right by people taking unjustified action against someone else. By curbing this misuse the bill would make the AVO legislation more effective and credible. It would make it work as it was intended to work for the protection of the vulnerable, the weak and the threatened. I commend the bill to the House.

Motion negatived.

DISABILITY PROGRAMS FUNDING

Debate resumed from 24 May 2005.

The Hon. JOHN RYAN [10.18 a.m.]: In the time that is available to me I would like to comment on the current status of post-school programs for people with disabilities, as that is quite relevant to this motion. At the weekend the media reported that the Government was about to provide an extra $6 million for these programs so that people in community participation programs would have guaranteed three-day support each week. I was worried about that announcement particularly when I finally had an opportunity to read the Minister's press release, which I noticed had not, as has previously been the habit, been placed on the web site of the Department of Ageing, Disability and Home Care.

When a member of the community gave it to me I was worried about its lack of detail. As a result I asked the Minister for additional information about that program. As I understand it, that program is not as good as it originally looked. The extra $6 million probably includes some other money that the Government has already announced. I suspect it probably includes amounts of money that were originally set aside—an amount of $1.4 million—to assist high-support needs clients. I suspect it also includes capital grants that were announced in the estimates committees when we asked for some detail about whether money would be available for transition programs.

It would appear that the $6 million is not sufficient to ensure that all clients will be able to have restored all the services they had last year. I will give an illustration, as I attempted to do yesterday when I asked the Minister a question, by referring to a matter that received some media attention. Jim and Maree Murphy looked after their 24-year-old son, Daniel, and made a dreadful decision to relinquish him to full-time State care after their program—which was previously 10 days a fortnight, or 5 days a week—was reduced to 5 days a fortnight or 2½ days a week. Yesterday I asked the Minister whether his announcement would restore the whole of Daniel's program. The Minister dithered around and said there was a guarantee of three days a week.

The Hon. John Della Bosca: I never dither.

The Hon. JOHN RYAN: You certainly dithered around. The Minister said that arrangements were being made for Daniel to be considered for a group home vacancy. In other words, the Minister has thrown up his hands in defeat. He would rather pay $90,000 a year to put this young man in a group home—which his parents do not want—than provide him with sufficient funding to have five days a week in the ATLAS or Community Participation programs. His parents want this young man to be at home. But, rather than solve the problem and restore him to five days a week in his post-school program, the Minister would prefer to spend $90,000 to put him in a group home.

The best the Minister could offer at the weekend was that Daniel can hope to have from 2½ days a week to 18 hours a week distributed over three days. The promises the Minister made yesterday, and in the media on the weekend, are not nearly as impressive as they were intended to be. I understand that, far from restoring the services, those funds will only partially restore them. The Government will then launch a case on service providers. It began yesterday in question time when the Minister blamed a number of service providers for increasing their costs. He said, "When coupled with increases in costs levied by a number of post-school program service providers, many young people with a disability received fewer hours of support." An attack will be launched on service providers—

The Hon. John Della Bosca: Not by me.

The Hon. JOHN RYAN: You started it yesterday. The next thing the Minister wants to do is introduce the law of the jungle through a system of competitive tendering. The classic behaviour of the Carr Government is to introduce a cosmetic political fix and then blame everybody else. The bottom line is that everyone involved in the sector would say that this program is not sufficiently funded. The Government was delusional to think that $9,000 per client a year would be sufficient to fund basic programs, and it is unacceptable to think it would increase to $13,500. The figure of $6 million must include other costs because I do not understand how it would not allow every client to be restored to the services they previously enjoyed.

But yesterday we had a hint of something else. The Minister referred to it being a short-term solution until the Government was able to introduce competitive tendering. In other words, it is a one-off solution, and will not last any longer than this year. Next year the war will be on again. First, I ask my colleagues to pass this motion. The Premier's behaviour was outrageous and reprehensible. I do not believe for a minute that he did not recognise that the vast majority of people demonstrating in Wollongong were people with disabilities who were seeking to making a point—which the Government ultimately partially agreed with, at least to some extent, in that it backflipped two or three times since that protest.

Second, I ask the House to pass the motion because there is no way in which the ATLAS Program is being reformed. The changes are being driven by Treasury, and anyone who is honest enough to say so would confirm that. There are no plans as to what these programs will look like. It is perfectly obvious that the Government has no idea what would be included in them, or what level of staffing would be required. Yet, believe it or not, the Government commissioned a cost study to be carried out by the University of Wollongong. In recent days the Opposition has discovered that that cost study has barely commenced and this entire review of these programs and their level of funding, which is most relevant to a cost study—

The Hon. John Della Bosca: I am not to blame for that.

The Hon. JOHN RYAN: Why would the Minister fund a cost study if it were not to determine the cost of these programs? The final funding of these programs will have been determined long before that cost study even starts. There has been a pretty tawdry attempt to cost cut a program that was doing wonders in the community. It certainly needed some improvements. From my observation it seems that in this program people with very high support needs get very few hours by comparison with people with modest support needs. But that is not a problem that will be solved by cutting the guts out of the program and making families who care for people with disabilities bear the full burden of what the Government is not prepared to pay for.

When this program was commenced under a Coalition government it was funded a great deal more generously than it is under a Labor government. In 1995 when this Government came to office it cut the program to pieces, and it is now trying to cut it again. I ask the House to support this motion so that the Government will get the message that it is wrong to continue to cut this important program and that it will not be tolerated by honourable members of this House, who think, care and have compassion for people with disabilities.

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [10.26 a.m.]: I oppose the motion. I do not quibble with the general sentiment of the Hon. John Ryan, whose concern for people with disabilities is sincere. He has developed a knowledge of this portfolio area, and I respect him for that, although occasionally he does get under my ribs and I have expressed my annoyance to him once or twice. In this matter I am afraid the Hon. John Ryan is wrong, and I will take this opportunity to respond to his motion and explain some of the issues.

I also point out that the motion seeks to condemn the Premier for his alleged comments about demonstrators at a Cabinet meeting some months ago and infers that the Premier attacked parents of people with disabilities. I would have thought that having a 1960s mindset, under the Liberal Party, was a pretty good thing.

John Howard and others have made a great success of having a 1960s mindset, so I do not think it is necessarily a nasty thing to say about people. In relation to damaging the image of the Illawarra region, it has become a general sentiment of people in the Illawarra—

The Hon. Rick Colless: What about Kim? What area does he come from?

The Hon. JOHN DELLA BOSCA: Hear me out. A general concern about the wealth of the Illawarra is to find its place as a region capable of expressing a voice in other than traditional Laborist or trade union ways. The Premier was actually talking about a demonstration against me at the time. I know that because I had to walk through the demonstration.

The Hon. Melinda Pavey: He was defending you.

The Hon. JOHN DELLA BOSCA: Yes, he was defending me.

The Hon. John Ryan: This is explanation number two!

The Hon. JOHN DELLA BOSCA: No, this is not an explanation, it is a plain statement of the facts. The honourable member was very irritated at one stage in his remarks when he said I was launching an attack. I was not launching an attack and do not intend to launch an attack on anyone.

The Hon. John Ryan: Blaming service providers.

The Hon. JOHN DELLA BOSCA: Launching an attack is not the same as a plain statement of the facts, which is what I have given so far in regard to cost factors involved in the service provision relating to the Post School Options Program. Regardless of the comments and sentiments behind the honourable member's contribution in this debate, the fundamental assumption in his motion is incorrect. Whatever else the Premier said on those matters, he was not talking at that Cabinet meeting about parents representing the Post School Options protestors or people expressing concern about the ATLAS and Post School Options programs. He was talking about the demonstrators in support of the Government Cleaning Service who were organised by good friends of mine in the Miscellaneous Workers Union and other organisations who were very unhappy with me at the time. The Premier's comments had nothing to do with parents of people with a disability.

The Hon. John Ryan: It's funny that the Premier does not mention that in his letter to the *Illawarra Mercury*.

The Hon. JOHN DELLA BOSCA: The Premier does not write for the *Illawarra Mercury*; its journalists report his comments. As the honourable member said, I announced yesterday that the Disability budget will increase by almost 12 per cent in the 2005-06 financial year. The Government has increased the Disability budget by a massive 115 per cent, or $828 million, in the past nine years. Although the overall budget for post-school programs has increased by 19 per cent in the past two years, I acknowledge that the changes concerned many families. Consistent with the commitment made by the previous Minister for Disability Services, I undertook a review of the effects of the changes to post-school programs on families caring for a son or daughter with a disability. We found that, when coupled with increases in costs levied by a number of post-school program service providers—that is not an attack; it is a plain statement of the facts—many young people with a disability were receiving fewer hours of support, which put a great deal of pressure on their families and carers.

I congratulate the providers—and there are a number of them—who increased their hours of support this year. However, some providers levied what seemed on the surface to be unsustainable price increases. I will probe the matter in some detail. I am happy for that process to be transparent, so the Hon. John Ryan will be able to access the modelling and the figures that we have used over time. I suspect such increases were not only unsustainable but perhaps even unfair.

The Hon. John Ryan: But this is not an attack!

The Hon. JOHN DELLA BOSCA: No, it is a plain statement of the facts; it is not an attack. The Government has listened to families and increased the budget for post-school programs. This increased funding will ensure that young people with a disability who currently receive fewer than three days support in this program will have increased support. New participants in the program will receive the guaranteed three days

that has been spoken of and people who receive more than three days support will continue to receive additional support. While this injection of funding will help to alleviate pressure on families in the short term, the Government will also move to ensure that the arrangements with service providers are sustainable and provide the support that families need in the longer term.

To achieve this, a competitive tendering process for services will commence in 2006. A competitive tender will be designed to standardise costs. New program specifications will detail outcomes for clients, including quality outcomes, allowing for the particular needs of various clients. The Government has listened to and understood the concerns of parents and carers and additional hours will be available immediately, depending on each provider's capacity to deliver the services. These changes do not affect the Transition to Work Program—as I think the honourable member understands—and I am sure that parents and carers will welcome the new funding. I assure the Hon. John Ryan and the House that the $6 million figure that has been cited widely does not include previously announced capital funding or money that has been provided to the program already. It is new money and it will be applied, in its entirety, to reform the Post School Options Program and to provide the various guarantees that I announced yesterday.

One fact about the Post School Options Program controversy—if I may describe it that way—is that under the former program funding was linked to how long a person had been in the program and not to a person's needs. It seems to me that in any program—and the Post School Options Program is a classic example—the starting point for assessing the quality of the service, its utility and value is its effect on and operational benefits to the clients. In other words, programs must be client focused. I have asked the department to redesign the program so that it is linked to the needs of particular families and young people with disabilities. As part of this redesign, I have also asked the department to ensure the standardisation of costs and quality. The Hon. John Ryan is fairly experienced in public affairs so I am surprised that he has adopted the stance—which would be worthy of some of our other colleagues in this Chamber—of demonising the Treasury. He suggested that the Treasury is evil and that, if it is a Treasury idea, it must be the work of the devil. As the Hon. John Ryan and most other members in this place know, the job of the Treasury and its officials in government—

The Hon. Catherine Cusack: We have had three different land tax systems in three years.

The Hon. JOHN DELLA BOSCA: That is a very interesting remark that is nothing to do with the motion before the House. The job of the Treasury is simply to allocate funds, to do this efficiently and to test programs developed by other service agencies to ensure that taxpayers receive the best value for their dollar. That is not some crime against the people. If Treasury performs its role properly there will be better value and more funds to support people in those programs.

The Hon. Rick Colless: Surely you don't believe that!

The Hon. JOHN DELLA BOSCA: If those opposite do not believe that, they might as well not believe in the Westminster system of government either. Nonetheless, that is a basic mechanism of government. It is nonsense to say that if the Treasury thinks something is a good idea it must be evil—and I think, in his heart of hearts, the Hon. John Ryan knows that. The goal is to derive maximum value from the funds that the community makes available for programs for people with a disability. We must make sure that the system is client focused and addresses the needs of families and people with a disability. It is equally important—in fact, in some ways it is a greater part of a Minister's responsibility—to ensure that those systems give good value to families and people with a disability and to the taxpayers so that more funds can be set aside to assist program clients and deliver more complex services.

The appropriate reform of this program is essential not only because additional resources are scarce but because we need to apply existing resources more effectively. The fact is that some providers have increased their prices substantially in just 12 months. The Hon. John Ryan has made some interjections on this point and I have tried to respond to his concerns. This increase was a major factor in the reduction of hours for a number of families, including the Murphy family—whose particular circumstances the Hon. John Ryan is often given to quote. In fact, the Murphy case underlines the reasons why we need to move to a competitive tendering process.

We must remain focused on this issue. The Hon. John Ryan has followed events very closely. In the relatively short time that I have been the Minister for Disability Services I have honoured the commitment that the Hon. Carmel Tebbutt made on behalf of the Government to review this program. My assessment of that review was that the program was not meeting needs as people might validly expect it to and that it required substantial reform. The effect of the review is that we have allocated sufficient funds to commence the reforms

and make sustainable commitments to the families involved. I can add no more value than that. The Hon. John Ryan says that I am short on detail: He thinks my press release did not tell him enough about how the reforms will be delivered. That is simply and obviously because the review is a response to need.

The Hon. John Ryan said that $6 million must be enough. How does he know that? That is the dilemma we face, and that is why we need measurements, accountability, a competitive tendering process, transparency in the allocation of funds, better models and standardisation, and better gateways to the program. The simple fact is that $6 million is sufficient to do what we have said we want to do. I went through the preliminary exercise with the department and I believe $6 million will be sufficient to meet those commitments. However, I am committed to making this program work in the interests of families and to getting good value for people with a disability and for the taxpayers who fund the program.

The Hon. PATRICIA FORSYTHE [10.39 a.m.]: I support the motion moved by the Hon. John Ryan regarding the Adult Training Learning and Support [ATLAS] Program and the Post School Options Program. If we needed further evidence that this Government is tired and out of touch it is in the comments made by the Premier and the cuts in funding for the ATLAS and Post School Options programs. The Minister for Disability Services attempted to defend the Premier by saying that the Premier's comments did not relate to the disability sector protesters. Having spoken to people who were at the protest and seen media footage, one would have to agree with the clear conclusions drawn by the media that the Premier was indeed attacking people with a disability who were part of a large group who were protesting to air a range of concerns.

The Minister identified another group that had a grievance at the time. It would be all well and good to take the Minister's comments at face value, but he trivialised the remarks made by the Premier by making a jibe about the Liberal Party. Perhaps the Minister does not know the broad history of this matter, because the Premier does not come to this issue with clean hands. Prior to the 1999 State election a meeting of some key interest groups in the disability sector was being held in a hall in the Burwood-Strathfield area. I know because I was there presenting the case on behalf of the Coalition. As I recall, no-one from the Government attended. As it transpired, just around the corner an Australian Labor Party fundraising event was taking place. After the meeting, which had been organised by one of the peak advocacy groups, the people who attended, including many people in wheelchairs, decided to go round the corner and confront the Premier with their concerns about aspects of the Government's policy.

Remember, the disability sector meeting was not organised as a protest; it was to allow all parties to put forward their policies to the group. As history records, on that occasion, rather than engage in a discussion to put the Government's case, the Premier skulked out the kitchen door. It was that action that drew the attention of the media. The Premier, having been dismissive of people with a disability and referring to the demonstrators as a rabble, then said in effect, "I did not mean that group." I do not accept the word of the Premier regarding his actions and motives.

I do not believe that the Premier has a clue about the needs and the extent of the difficulties faced daily by many people with a disability, their families and service providers in trying to provide adequate care. If he did, the Government would have been generous in its response to those needs, as was the Coalition when it was in government. We recognised the need to provide day programs for people with a disability who no longer had the care and support provided by the education system, and would have somewhere to go when they left school. That is why the Coalition introduced the Post School Options Program. That has been a successful program. One could argue that in time it would need reviewing and refining.

I think it is accepted that there are in the disability sector two groups. In one group are those who, with skill training and support, will be able to move to employment at a number of levels, some to supported employment and some into the open work force. But in the other group of people with a disability are those who, despite all the goodwill in the world, the best training and world's best practice, will need to be sustained in some form of program. It is necessary to make that differentiation. That may well have been what would have flowed from the Post School Options Program, but it was the Coalition that recognised an enormous gap in the delivery of those services and acted accordingly.

Since this Labor Government came to office it has eroded the disability service delivery system, to the point that last year there were indeed demonstrations in Wollongong by people who were trying to make a clear case to the Premier and his Ministers that there should not be cuts to these programs. That is the crux of this issue. The comments made by the Minister in this debate are insightful about the direction that he wishes to go regarding disability services. His defence of Treasury worries me enormously. He said that Treasury is just there

to allocate the funds. Some of us have long memories of the process of government. I am the first to acknowledge that Treasury, under any government, Coalition included, might take a view that is broadly different to that which should be taken by the Minister for Disability Services. It is the role of Treasury to allocate funds, based on good advice, et cetera. The problem is that Treasury does not have a heart. It is about counting beans and considering numbers.

The general view of Treasury is that disability support is a bottomless pit, and no matter how much money is poured into it even more would be needed. That underpins Treasury's thinking. The job of the Minister for Disability Services is to prosecute the case for the provision of sufficient funds to provide for the care of people with a disability. I regard this Government as being out of touch because I have not seen any evidence that the Premier has taken the opportunity at any time in the past 10 years to go to see first hand the operations of some of the services that provide care to people with a disability to the extent that I know some of my colleagues and I have done over the years. No doubt some Labor members will have done so as well.

Let us be clear about the range of people with a disability that I am talking about. Earlier I spoke about those who, with skill training and support, will be able to move to some form of supported or open employment. The other significant group I talked about will not, despite world's best practice, be able to make that transition and will need to be provided with care and support. Some require such a level of care and support that they will need at least two people providing full-time care for all of their waking hours. They have no control over their behaviour and cannot learn it. Over the years I have seen people who have such high support needs that money amounts of $9,000, $13,000, $18,000 or $20,000, or whatever other level of funding, will not be sufficient to pay for the provision of a two-on-one ratio of care.

We need a flexible system that recognises individual needs because other people will not need anywhere near that amount of money, but, for a variety of reasons, they will need some form of day program. Some people who have no family may be in the care of the Department of Ageing, Disability and Home Care, they may be in a home that is under the care of the Department of Ageing, Disability and Home Care or they may be in a home run by a non-government provider. Unfortunately, the Government has lost sight of the fact that we are dealing with an extraordinary range of individual needs. Everything is being averaged, whether it is so many days care a week, or a block of funding here and there. The system has no capacity to provide a flexible range of services. The Post School Options Program, introduced by the Coalition Government, recognised individual needs and enabled us to broker services with service providers.

People with a disability are no different from other people in the community who have particular needs. Divorce is more prevalent among parents of a child with a disability than it is in the broader community. One of the problems in dealing with young people after a family break-up is the capacity to provide services to enable that young person to stay with one family member or another, to be in one part of the State one week and in another part of the State another week. Those problems are compounded when dealing with a person with a disability. We must have flexibility of services. Last September in Wollongong people with a disability, their families and carers tried to give these sorts of messages to the Government. But, no, they were dismissed as some form of rabble. Although the Premier said that it was not about people with disabilities, the words he used in his letter were "all about old-fashioned strife and conflict". The only way the Government will ever get the message is if these people speak up loudly in these types of demonstrations.

It has been extremely difficult to get the Government to understand that its policies have created enormous distress to many families on whom changes to the Post School Options Program and the ATLAS Program will impact. Yesterday in this debate the Hon. John Ryan gave examples of some of those changes. Regardless of whether it was about cuts to programs, inflexibility of the new program or the shift from individualised funding to so-called block funding, the Government needed to hear the message. Bit by bit the Government has started to deal with the problems in its policies. But the main problem is the cutback in funding. Young people who left school in 1994 will be on a different level of funding to young people who left school in 1998, and young people who left school in 2004 will be on another level of funding. From 2005-06 there may be yet another program and another level of funding. We must remember that we are dealing with individuals and their families who have significant individual needs.

The majority of the community watch their children grow up and progress to adulthood through school, employment, TAFE, university or travel, each time moving to a greater level of independence, to a point when, later in life than perhaps a generation ago, they can step away from the family home. They have achieved independence, they have money to sustain them and they have a home to call their own. But that is not the lot in life of so many people with a disability, nor is it the lot of their parents. We know that thousands of people in the

community in their sixties, seventies and eighties continue to provide care and support for young people with a disability. The Post School Options Program, which provided day support, recognised that the community had accepted the disability services legislation. The Coalition Government introduced standards that were signed off by Ministers across Australia and acknowledged people with a disability as individuals.

It is not about institutionalisation or congregate care that belonged in a past era, when people with a disability were taken from one group and placed in a sheltered workshop, or were locked up at home or in an institution in an out-of-sight-out-of mind mentality. As a community and a Parliament we must put in place programs that support people with a disability to allow them to reach their potential, whatever that may be. I have seen the training opportunities that they have been given and their capacity to move into the community. I have seen people with Down syndrome with a lower level of disability work in the community at a McDonald's restaurant cleaning tables. Last week I spoke to a young man who had been cleaning cars. When they are in their uniforms and they are making a meaningful contribution their self-esteem is enormous.

We must ensure that they have funding for one year, two years, three years or five years to get them to the next point. We are debating this important motion because people with a disability, their parents and carers want the Minister to understand that we are concerned that the cuts proposed by the Government, cuts that impose a two-year requirement on the Transition to Work Program, will be sufficient. We are not convinced that the Government's funding proposal will provide young people with a disability with the opportunity to reach their maximum potential in the community. Even those who will never achieve transition to work can have self-esteem and pride in their achievements. Many of them take great delight in little steps each day, such as being able to give a public speech to members of Parliament who visit them—whatever it takes.

But to reach that standard sometimes requires not one carer among five or six people, but one carer for one person or one carer between two people. Members of Parliament have to recognise that and also that the level of funding that has been provided may not be sufficient to allow the flexibility and support that are absolutely fundamental to ensure that disabled young people reach their potential. For those reasons this motion should be supported.

Ms SYLVIA HALE [10.59 a.m.]: The Greens support the motion. At the outset I make some observations on the nature of the Premier's comments. The Premier described the people who were gathered in Wollongong as a rabble. I find that offensive. It does not matter whether the people were cleaners, as suggested by the Minister for Disability Services, the Hon. John Della Bosca, whether they were environmentalists or whether they were disabled people and their families and their carers. On behalf of the Greens I certainly affirm that the right of protest is absolutely essential in our system of government. It is totally inappropriate for the Premier, from a position of arrogance and complete disdain, to dismiss people who choose to make their concerns felt by protesting. After all, this Government makes decisions that go to the heart of the lives of people, including school cleaners and people with disabilities, and that impact upon their ability to earn a living as well as the satisfaction or otherwise they will experience. Regardless of the groups who were protesting, the Premier's comments were totally inappropriate.

On 7 September 2004 a group consisting of disabled people, their carers, families and service providers assembled to bring home to the Cabinet the impact that cuts to the Adult Training, Learning and Support Program and Post School Options Program will have. On 22 September in Macquarie Street outside Parliament House a similar demonstration was attended by people from every part of the State, including Coffs Harbour, Armidale, Wollongong and areas farther south, and from Sydney. It was a very significant event. I suggest that both the Wollongong and Sydney protests are unique because they show the sense of desperation that people have been feeling about the prospect of cuts to important programs. The very fact that the Government has since attempted in some small measure to improve the situation by offering to increase funding from $9,000 to $13,500 indicates the protests and meetings that have been held across the State have to some extent been effective.

The other despicable feature of the activities of the Premier and his Cabinet was their lack of willingness to talk to people. The then Minister for Disability Services, the Hon. Carmel Tebbutt, chose to ignore the demonstrators completely and sneaked in a back door to avoid confrontation with disabled people, their families and service providers. That is a prime example of the real moral cowardice of members of this Government who on the one hand are prepared to quite blithely make changes that will have a devastating impact on people's lives and on the other hand are frightened, unwilling and unprepared to attempt to justify the changes they make. Similar callousness was demonstrated by the new Minister for Disability Services, the Hon. John Della Bosca, in a press release dated 22 May, which stated:

> Young people with a disability who now receive less than three days will have their support increased. New participants will receive at least three days and people currently receiving more than three days will continue to receive this additional support.

There is no question that statement was interpreted within the community to mean that people whose benefits had been affected by the cuts would have their benefits restored and that the cuts would not be persisted with: In other words, the Minister had listened and responded to the complaints he had received. Indeed, last week, in the aftermath of that statement, I received an email from one service provider who said, "At last we have a Minister who is prepared to listen." However, this morning I received another email from the same service provider, which states:

> Re: Minister John Della Bosca's announcements last weekend.
>
> The $6 M is to be applied only to people with very high support needs to allow them to receive three days ie 18 hours of support per week. This funding will only apply to a minority of young people. Therefore all those young people whose hours were cut in the Community Participation program from what they received last year, & who do not have very high support needs, will not have their previous funding levels restored if they are now receiving more than three days support. This is supported in the budget information for disabilities which I've seen this afternoon.
>
> It is also very clear that 2004 school leavers will only be funded to receive three days or 18 hours of support.
>
> This means that for many families the problems which they have identified eg reduction in capacity for employment still remain. Families and service providers who greeted the news that the Minister was listening have been misled by thinking that restoration had occurred across the board.
>
> The previous funding levels should be restored to pre July 04 amounts for all program participants. All people who have exceptional or very high support needs then have their needs assessed using appropriate assessment tools on an individual and case by case basis to ensure that each person is given the correct support level.

The service provider for whom the author of the email is working obviously feels that it has been completely misled by the supposed $6 million in additional funding. It points out that in fact people will not be funded for more than 18 hours of support. It points out that the funding levels will not be restored to the pre-July 2004 amounts, and that only people who have very exceptional or high support needs are likely to benefit from the funding. The vast majority of disabled clients who need additional funding will not receive it. Disabled people feel cheated and misled; in effect, they feel they have been lied to.

It is worthwhile examining the Minister's responses to questions asked yesterday by the Hon. John Ryan. A really disturbing feature of what is proposed is the emphasis that will be placed upon competitive tendering. Particularly in disability services, competitive tendering is aimed not at providing the best quality of service or at providing services to people in a form that they really need and can respond to. I am afraid competitive tendering in the context of disability services means purely that whoever can provide the cheapest level of service or possibly the lowest cost service at highest profit to the service provider will win the tenders, and everybody else can get lost.

Emphasis is on competitive tendering because the Government is interested in cutting its administration costs. If the Government can enter into tenders with large providers, matters would be administratively easier to handle and to deal with. Of course, that will mean that the smaller service providers will be eliminated in the process—that is, those who are innovative and adventurous, who show initiative and seek to provide one-on-one service to their clients. Part of that process will be to limit the number of organisations that provide such services. Organisations will then be so committed to the programs and keeping the Government on side that never in their wildest dreams would the larger providers contemplate publicly protesting, demonstrating or criticising the Government's actions.

In the interim, the larger providers will be much more acquiescent and inclined to go along with the Government's wishes. They will certainly be much more inclined to cut the quality of services they provide to their clients. The smaller providers will be squeezed out—those who offer the services that have been established as a result of activities by parents, families and carers. It is the smaller programs that rely heavily on volunteer assistance and that are often intimately connected with the communities, for example through the Intellectually Disabled Adults Further Education Group in Port Macquarie. The smaller programs will find themselves unable to compete with the larger service providers. As I said earlier, the real losers in this process will be the disabled community.

The Government's actions towards those with a disability—whether in the provision of physical aids or in providing adequate funding so that disabled people can be given the types of services that are most appropriate to their needs—are contemptible and despicable. It is not as though people are totally unaware of

this. An article by Adele Horin in this morning's edition of the *Sydney Morning Herald* highlights some problems in the budget in the provision of disability services.

Pursuant to sessional orders business interrupted.

TWEED SHIRE COUNCIL DISMISSAL

Ministerial Statement

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [11.15 a.m.]: Honourable members may be aware that earlier today I announced the dismissal of Tweed Shire Council. This is not a decision I exercised lightly. But having received the first report by the inquiry commissioner, Professor Maurice Daly, I believe it is clear that no other alternative was available to me. My paramount consideration is what is in the best interests of the residents and ratepayers of the Tweed shire. After reading this report, I am of the view that only one conclusion can be drawn: the people of Tweed were duped and deceived. In an extraordinary litany of political king-making, the group known as Tweed Directions, which is primarily made up of developers, sought to buy candidates for its own purpose. As Professor Daly states:

> Candidates, selected and supported by Tweed Directions, while presenting themselves as independents, were impostors, being puppets of Tweed Directions.

In fact I note that in one email sent between members of Tweed Directions, as described on page 90 of the report, concern was raised by the group that one candidate was trying to break out and become too independent. And what price did that candidate pay for that? She was to be given only limited financial support, or as the email states, "funds should be drip fed to her". Professor Daly stated further:

> Such was the candidates' tie to Tweed Directions, and to an implicit obligation to serve the developers who ultimately funded their campaign, that the integrity of the Tweed Directions councillors is so undermined that the public can no longer have confidence that they can, and will, carry out their duties and functions to the standards expected of them.

I note that Professor Daly has referred the following matters to the Independent Commission Against Corruption: concerns over electoral funding and irregularities in the electoral declaration of Tweed Directions and concerns that those arrangements may constitute a breach of the Act and the Electoral Funding Act; concerns that the actions of candidates when declaring themselves as independents may also constitute a breach of the Local Government (Elections) Regulation and the Parliamentary Elections Act; and concerns that actions of councillors may have involved serious breaches of the Environmental Planning and Assessment Act. Professor Daly has referred those matters also to the Minister for Infrastructure, Planning and Natural Resources.

The declaration made by Tweed Directions after the 2004 election stated that it received donations of $341,199. Professor Daly's report states that these sums are not reconciled in the detail of the Tweed Directions declaration. The declaration of Tweed Directions shows that $163,900 was allocated to nine groups of candidates in the election. This was the single largest donation to individual candidates made in the 2004 local government elections. Tweed Directions also ran a campaign of its own that was parallel to the campaigns of candidates it had funded. If all of its funds remaining after it had allocated money to the candidates were used on the parallel campaign, its cost would have amounted to $177,299.

There are irregularities in the declaration of Tweed Directions to the Electoral Funding Authority. The declaration suggests that the total expenditure of Tweed Directions and its candidates on the 2004 elections might have been anywhere between $467,238 and $632,970. Tweed Directions only recorded donations from other groups, primarily developers, of $341,119. Some $165,000 appears not to be accounted for. The sums mentioned represent the largest amount ever expended on a rural shire election, and certainly the largest ever expended by one group. Professor Daly pointed out:

> … despite protestations to the contrary, the large donations of the developers appear to have constituted a kind of insurance policy based on keeping a pro-development council in power.

The Daly report contains explosive emails that were subpoenaed to the inquiry by one of Tweed Directions major players, Bob Baudino. Referred to as the Baudino files, the emails relate a story of deception and deceit involving buying off candidates purporting to be independent. The Baudino files reveal a list that included 55 potential candidates, each of whom was assigned a liaison person drawn from Tweed Directions. When the

candidates nominated they were assigned to one of the nine groups supported by Tweed Directions funding. Effectively, Tweed Directions put together a single team through organisational structures, funding, strategies and practical support. Everything from the day-to-day running of the campaign, to when candidates announced their candidature, to the presentation of campaign material, and to expenditure needs, was organised through Tweed Directions. The critical feature of the Tweed Directions strategy was to have its nine groups present themselves to the community as independent of each other and of Tweed Directions. In that regard Professor Daly stated:

> This strategy essentially represented a fraud deliberately foisted on the community.

In other words it was an electoral fraud and a conspiracy to deceive the electorate. Professor Daly further stated:

> The nine groups that received Tweed Directions funds, and were linked by their campaign support, were willing participants in the fraud.

A major player involved was Paul Brinsmead, a local developer and son of, as of today, former councillor Bob Brinsmead. The report states that Paul Brinsmead had a lot to fight for; he was involved in two highly controversial developments, at Cabarita and at Kingscliff. Professor Daly noted:

> Paul Brinsmead's role as a central organiser of the Tweed Directions campaign began at a very early stage and ran through to the very end, the recount of votes after the election.

In fact, the Baudino files contain a 20-page document in the form of a letter from Paul Brinsmead to the mayor outlining the legal background to a recount and instructing the mayor on what processes and resources should be in place. The recount was critical for the Tweed Directions team. If it were to lose, the majority in the council would pass to the opposition. It is clear that in the series of emails leaders of each of the supposedly independent nine groups were expected to follow the guidelines given by the support group and, where necessary, transmit information to members of their groups. One email states:

> None of them are in any doubt of what is required of them.

The emails only confirm that the so-called independents were beholden to one group—Tweed Directions. As Professor Daly notes, the new local government changes in 2004 presented Tweed Directions with a challenge—how to maximise preferences and to get its candidates up. The Baudino files argue that at least seven groups were necessary to achieve the desired result. Eventually, nine groups received funds and direction from Tweed Directions. The Tweed Directions campaign was so sophisticated that it funded a parallel campaign.

One offered support to all Tweed Directions groups through something of a media blitz focused on the more expensive parts of the media. The other was a negative campaign attacking the perceived weaknesses and faults of their opponents. Third party groups with no apparent connection to Tweed Directions would also play a part. Negative campaigning has become a fact of life in elections at different levels of government and in many countries. However, as Professor Daly notes, the problem with the Tweed Directions campaign was that it had wilfully held back its own structure, funding and purpose from the community, and it had deceived the electorate by presenting the candidates it had fielded as genuine independents. Professor Daly states:

> Whilst running a campaign structure based on deception, it had compounded its mendacity through attacks on individuals with labels that were simply false in many instances.

It is clear that the councillors did not appreciate the gravity of the situation and the compromising position in which they had placed themselves. During his second appearance at the inquiry former Mayor Warren Polglase suggested that a new model code of conduct had made him more informed of a potential conflict of interest. But, as Professor Daly says, the notion that the new model code of conduct and a new Tweed Shire Council code of conduct absolved councillors from past conflicts is somewhat disingenuous. Professor Daly concludes:

> The evidence provided to the Inquiry demonstrated that the Councillors had a very poor understanding of what constituted a conflict of interest.
>
> By accepting funds garnered from developers, the Councillors placed themselves in a potential position of repeatedly having to face conflicts of interest.
>
> Since the developments that might cause a conflict of interest were likely to be large and contentious, this was a recipe for a dysfunctional council.

He goes on to state:

> By presenting themselves as Independents, the groups distorted the community's understanding of their real status and purpose. Effectively they lied to the community.
>
> Somewhat alarmingly, some members of the groups might have genuinely convinced themselves that they were independents. The successful candidates were elected under false pretences, based on a deliberate misrepresentation of the reality of their status.

The report also found that there is prima facie evidence that the council's decisions were marked by nepotism and favouritism. Professor Daly cites a number of examples, including Nor Nor East, Lorna Street Kingscliff, Kings Forest, Kings Beach, Expo Park and the Chiltern Hunt-Terranora subdivision. Professor Daly said that his second report would focus strongly on whether or not due process was followed in respect to development processes and related issues, citing prima facie evidence that due process was not allowed in many other developments that are outlined on pages 293 to 294 of his report.

I have appointed three administrators to the council—the Director-General of the Department of Local Government, Mr Garry Payne; former long-serving Tweed shire Councillor Max Boyd; and former City of Sydney Lord Mayor, Lucy Turnbull. They all have a wealth of skills, expertise and knowledge to bring back good governance to the Tweed and restore confidence in the administration until the next elections are held. Pursuant to section 740 of the Local Government Act 1993 I seek leave to table the first report of the Tweed Shire Council's public inquiry.

Leave granted.

Report tabled and ordered to be printed.

The Hon DUNCAN GAY (Deputy Leader of the Opposition) [11.25 a.m.]: I cannot comment on the report because the Minister did not see fit to give Opposition members a copy of it before it was tabled. However, Opposition members will carefully study the report and its recommendations. I wish to comment on a matter that does not relate to the report, and that is the appointment by the Minister of the three administrators. The Opposition has no objection to the appointment of Lucy Turnbull or Director-General Garry Payne, but I ask him to reconsider his confrontational appointment of Max Boyd. For a period of 20 years Max Boyd has been at war with members of the Coalition and with this council. He left the council without leaving much goodwill in the community. He certainly deserves some respect for the role he played as a former mayor, but I remind the Minister that his more recent role on the council was that of an independent candidate. If the Minister is true to his word when he says he is trying to bring this community together, he should ensure that is what all the administrators will do. I strongly urge him to review that part of his decision.

GAME AND FERAL ANIMAL CONTROL AMENDMENT BILL

Second Reading

Debate resumed from 24 May 2005.

The Hon. HENRY TSANG (Parliamentary Secretary) [11.28 a.m.], in reply: I thank all honourable members for their contributions to the debate on this bill, which I commend to the House.

Motion agreed to.

Bill read a second time.

In Committee

The CHAIR: Order! I inform the Committee that Greens amendments Nos 1 and 2 as circulated on sheet C-033B cannot be dealt with as they are outside the leave of the bill. They could have been considered only if an instruction had been made before the House resolved itself into the Committee of the Whole. As that did not happen, the two amendments cannot be dealt with

Clauses 1 to 3 agreed to.

Mr IAN COHEN [11.32 a.m.]: I move Greens amendment No. 3:

No. 3 Page 3, schedule 1. Insert before line 3:

[1] Section 8 Membership and procedure of Game Council

Omit "8" from section 8 (2) (a). Insert instead "5".

[2] Section 8 (2) (a1)

Insert after section 8 (2) (a):

(a1) 3 persons appointed on the nomination of conservation organisations prescribed by the regulations for the purposes of this paragraph, and

This amendment seeks to alter the constitution of membership of the Game Council of New South Wales. At present 8 of the 16 members of the council are licensed game hunters. The amendment alters this to 5 hunters and 3 persons nominated by conservation organisations. There is a conflict of interest in the council being dominated by representatives of hunting organisations as they have the roles of both hunter and regulator.

Amendment No. 1 sought to expand the objects of the Act to include the eradication of feral animals from New South Wales and to promote the principles of ecologically sustainable development in an attempt to achieve a greater balance between conservation and the control of feral animals and the hunting objectives of the Act. I accept that the amendments are outside the leave of the bill—I was caught out, despite the good advice that I received yesterday from the Clerk regarding both amendments. However, my attempt was legitimate. Amendment No. 2 sought to amend proposed section 3 (2) to support the objects of the Threatened Species Conservation Act 1995. I note for the record that I believe those aims are important. I commend Greens amendment No. 3 to the Committee.

The Hon. HENRY TSANG (Parliamentary Secretary) [11.34 a.m.]: Greens amendment No. 3 seeks fundamental changes in the membership of the Game Council of New South Wales that will see three members nominated by prescribed hunting organisations replaced by three members from prescribed conservation organisations. The Game Council is still in its establishment phase and is already working to match responsible hunting undertaken by properly trained and licensed hunters with areas where feral animals need to be controlled. This recognises that hunters represent a resource to deliver ecological and agricultural benefits at no cost to the community. Training, licensing and regulation of hunters, along with the process to match this with feral animal hot spots, are already occurring under the existing objects of the Act and are supported by the council with its existing representation.

The amendment fails to recognise that this Act is just one element in a suite of New South Wales legislation that operates collectively to improve environmental outcomes. Conservation interests are already well represented in the administration of other environmental legislation to which this Act is subservient. It is also important to recognise that the regulation of game hunters under the Game and Feral Animal Control Act must be practical and enforceable to be effective. This is one of the key measures that will help to lift the standard of game hunting in this State and it is critical that hunters are represented properly in this process. These issues were canvassed thoroughly when the Game and Feral Animal Control Bill was debated in this place. Any change to the current position must be considered in the broader legislative context and would be dealt with more appropriately when the Act is reviewed in the future. I have no doubt that there will be further opportunities to consider these issues legitimately at that time. Greens amendment No. 3 goes well beyond the ambit of the bill before the Committee and the Government does not support it.

The Hon. RICK COLLESS [11.36 a.m.]: The Opposition does not support Greens amendment No. 3.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [11.36 a.m.]: The Australian Democrats support Greens amendment No. 3. I echo the words of the Hon. Henry Tsang, who said that hunters are a resource. That is true in terms of controlling feral animals but, as I said in my speech during the second reading debate, hunters are not a resource that should bend priorities to their interests and control the entire process. This amendment attempts to return some balance to the system and the Government should support it.

Mr IAN COHEN [11.37 a.m.]: I also listened with interest to the contribution of the Hon. Henry Tsang on behalf of the Government. The honourable member said that the Game and Feral Animal Control Act must be "practical and enforceable to be effective". While it is probably unacceptable in the general climate in this House to do so, I observe that conservation organisations should be included in the process. These organisations treat very seriously the control of feral animals and problems with both the environment and the agricultural sector. The lead agency in this area, the National Parks and Wildlife Service, which suffers much criticism in this House, spends much time, energy and money on controlling feral animals. Despite the rantings of certain members in this place, it is clear that we have a major problem on our hands for which many different sections of the community share responsibility. The National Parks and Wildlife Service and the Department of Environment and Conservation are just two bodies that should play a role.

I believe the Game Council represents an opportunity for conservationists and hunting bodies to work together. Such co-operation would deliver enormous benefits in controlling feral animals effectively and perhaps ending much of the criticism from the conservation movement regarding the relationship between government and user groups on many environmentally sensitive issues. I press the point that this amendment is not outside the leave of the bill or the tenor of the debate that must take place on this matter. I believe that the control of feral animals by various means—and certainly hunting is one of them—is extremely important. It is therefore reasonable that conservation organisations be included in the process. The issue of conservation is often left behind in the pursuit of recreation.

The Hon. JON JENKINS [11.40 a.m.]: It is wrong to assert that only somebody from the Nature Conservation Council or the National Parks and Wildlife Service can be a conservationist. The concept that a person should be appointed to a particular committee because of their ideology is wrong. People should be appointed to committees and game councils because of their particular skills, not because of the ideology they bring. The first thing I looked for in the budget papers yesterday was how much the Government was going to spend on the control of feral animals and noxious weeds. The Government's budget has been increased to $503 million, of which only $1 million will be spent on controlling feral animals and noxious weeds.

But at the same time, it has offered to put tens of thousands of people into a volunteer program to help the National Parks and Wildlife Service. It is the green organisations such as the Nature Conservation Council and the National Parks and Wildlife Service that are pressuring the Government not to accept that offer. While ever the Greens say that only conservationists from those particular groups can act in conservation roles they will not get my support or co-operation, and we will not work together.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [11.42 a.m.]: I also oppose this amendment.

Mr Ian Cohen: That's okay, Duncan.

The Hon. DUNCAN GAY: I am pleased to have your support. The honourable member says this amendment will help the Game Council, but it does no more and no less than stop the Game Council's activities. The first thing he should do is support sporting shooters being able to remove feral animals from national parks under the supervision of the National Parks and Wildlife Service. The service should be in control because I, like many others, would be horrified if people wandered around national parks unsupervised. I am not a shooter. I get no enjoyment from shooting. In the past I have had to shoot to control rabbits and foxes on my farm but it has given me no pleasure: it was a task I had to do.

I cannot understand that people can get pleasure from target or game shooting, but many do. It is not my task to make a value judgment on their sport, particularly if we have an opportunity to channel it into something that is valuable to the community. The Hon. Jon Jenkins indicated that only $1 million had been allocated in the budget for the control of feral animals and noxious weeds. If he had read the section dealing with the Department of Primary Industries he would have found an allocation of approximately $17 million. Staff from the department are not indicating anything to me, one way or the other, but it is a miniscule amount.

Reverend the Hon. Fred Nile: Seventeen million dollars.

The Hon. DUNCAN GAY: Seventeen million dollars, when the Premier is claiming records in regard to national parks. This bill provides an opportunity for the Government to do something proactive without spending public money. This amendment would stop anything like that occurring in the future, and the Opposition will vote against it.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 4

Dr Chesterfield-Evans
Ms Rhiannon
Tellers,
Mr Cohen
Ms Hale

Noes, 25

Ms Burnswoods	Ms Griffin	Mr Roozendaal
Mr Catanzariti	Mr Jenkins	Mr Tingle
Mr Clarke	Mr Lynn	Mr Tsang
Mr Colless	Reverend Dr Moyes	Mr West
Mr Costa	Reverend Nile	Dr Wong
Ms Cusack	Mr Obeid	
Mr Donnelly	Mr Oldfield	*Tellers,*
Mrs Forsythe	Mrs Pavey	Mr Harwin
Mr Gay	Mr Pearce	Mr Primrose

Question resolved in the negative.

Amendment negatived.

Mr IAN COHEN [11.52 a.m.]: I move Greens amendment No. 4:

No. 4 Page 3, schedule 1. Insert after line 3:

Insert "and members of conservation organisations" after "licensed game hunters" in section 9 (1) (a).

[2] Section 9 (1) (f1) and (f2)

This amendment seeks to make a change to the functions of the Game Council. At present the Game Council has the function of representing the interests of licensed game hunters. With this amendment, members of conservation organisations will have their interests represented by the Game Council as well. Such a change would also help to achieve a greater balance between the hunting objectives and the aims of feral animal control and conservation. I commend Greens amendment No. 4.

The Hon. HENRY TSANG (Parliamentary Secretary) [11.53 a.m.]: This amendment aims to broaden the functions of the Game Council to represent conservation interests. Greens amendment No. 4 goes well beyond the ambit of the bill now under consideration. In addition, and as explained in response to some of the previous Greens amendments, conservation interests are already well represented in the administration of other New South Wales environmental legislation to which this Act is subservient. By delivering agricultural and environmental benefits for the community, the Act provides a service that can be used to support conservation objectives in any legislation. It is not necessary to detail specific conservation objectives in this Act. Any change to the current position needs to be considered in this broader context and would be more appropriately dealt with when the Act is reviewed in future. The Government does not support Greens amendment No. 4.

Amendment negatived.

Mr IAN COHEN [11.53 a.m.]: I move Greens amendment No. 5:

No. 5 Page 3, schedule 1, line 6. Insert "conservation goals, including the eradication of feral animals and the ecology of" after "regarding".

This amendment gives the Game Council the additional function of promoting, funding, developing or delivering educational courses regarding conservation goals, including the eradication of feral animals. I commend the amendment.

The Hon. HENRY TSANG (Parliamentary Secretary) [11.54 a.m.]: This amendment also seeks to broaden the functions of the Game Council to deliver education courses targeting conservation objectives without acknowledging that the council's primary capacity to deliver outcomes of this kind is through its role in training, licensing and managing hunters. Conservation and ecology are strongly linked to the high ethical standards set by the council, but the council is not in a position to extend training of this kind to the broader community. Again, any change to the current position needs broader consideration and would be more appropriately dealt with when the Act is reviewed in future. The Government does not support Greens amendment No. 5.

Amendment negatived.

Mr IAN COHEN [11.55 a.m.]: I move Greens amendment No. 6:

No. 6 Page 3, schedule 1, line 8. Insert "conservation goals, including the eradication of feral animals and the ecology of" after "regarding".

This amendment includes the promotion or funding of research into conservation goals, including the eradication of feral animals in the functions of the Game Council. I commend the amendment.

The Hon. HENRY TSANG (Parliamentary Secretary) [11.55 a.m.]: This amendment also seeks to expand the research function of the Game Council to include conservation goals. While the functions performed by the Game Council will inevitably deliver conservation dividends, this amendment goes beyond the intended function of the Game Council and outside the ambit of the current bill. The amendment is not necessary, and the Government does not support Greens amendment No. 6.

Amendment negatived.

Mr IAN COHEN [11.56 a.m.], by leave: I move Greens amendments Nos 7 and 8 in globo:

No. 7 Page 3, schedule 1, lines 10-16. Omit all words on those lines.

No. 8 Page 4, schedule 1, lines 1-11. Omit all words on those lines.

These amendments would remove the provisions for the payment of fines and penalties to the Game Council. The council is currently constituted in an unrepresentative manner, with 50 per cent of members being hunters. Without wider representation of membership on the Game Council and strong provisions for accountability in the spending of funds raised, I wish to place on record that the Greens cannot support the provision of funds to the council resulting from fines and penalties. I commend Greens amendments Nos 7 and 8.

The Hon. HENRY TSANG (Parliamentary Secretary) [11.57 a.m.]: These amendments seek to overturn one of the key purposes of the bill. They appear to be based on a misunderstanding of what the Game Council does. They also fail to recognise the capacity of the current makeup of the Game Council to deliver the objectives of the Act. I would remind honourable members that the provisions of the Game and Feral Animal Control Act require prudent and transparent management of the Game Council and its finances and set high standards for councillors.

I note that the Greens are happy to call for greater feral animal control and the environmental benefits that this would bring. I call on the Greens to acknowledge the important contribution being made by the Game Council. It is lifting hunting standards and practices, and developing programs to match responsible hunting with feral animal problems. In doing so, the community receives agricultural and environmental dividends for free. It would be more appropriate for the Greens to be supportive of the efforts being made by responsible hunters and the groups that represent them. These amendments are contrary to the intent of the bill. The Government does not support Greens amendments Nos 7 and 8.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [11.58 a.m.]: The Opposition opposes the amendments. They are outside the leave of the bill; they negative the intent of the bill. The member could vote against the bill to achieve the purpose he proposes in moving the amendments.

Amendments negatived.

Schedule 1 agreed to.

Bill reported from Committee without amendment and passed through remaining stages.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

AVOCA DRIVE AND THE ENTRANCE ROAD UPGRADE

The Hon. MICHAEL GALLACHER: I direct my question to the Minister for Roads. Why has he not allocated a single cent for the construction of Avoca Drive or The Entrance Road in the 2005 budget, particularly as the Labor candidate for Gosford and the Premier both promised during the 2003 State election that $13 million would be spent on upgrading Avoca Drive, and the Labor member for The Entrance, the

Minister for the Central Coast, promised $16 million to upgrade the part of The Entrance Road that is in his electorate? Will the Minister undertake to the House that both promises will be fulfilled by 2007, or are those promises of the same value as the $1.2 billion high-speed rail link promised to the Central Coast back in 1999?

The Hon. MICHAEL COSTA: The Government has made it very clear that it will meet its election commitments.

STATE EMERGENCY SERVICE BUDGET

The Hon. IAN WEST: My question is directed to the Minister for Emergency Services. Will the Minister advise the House what impact the State Emergency Service record budget will have on the New South Wales State Emergency Service?

The Hon. TONY KELLY: Yesterday my colleague the Treasurer handed down a budget that again delivers for the State Emergency Service. At $700 million it is an increase of $34 million over last year's funding and the Carr Government's eleventh record Emergency Services budget in a row. This budget continues our strong record of achievement in ensuring that our emergency services have the world-class equipment, resources and training they need for their challenging work to protect the people of this State in times of natural disaster and emergency. As honourable members would be aware, the State Emergency Service [SES] is this year marking its half century of dedicated service to the New South Wales community. Therefore, it is fitting that this year the budget has recognised the vital contribution of the services' volunteers over these 50 years with record funding for the SES of $40.6 million, an increase of $6.3 million or 18 per cent over last year, which takes the total SES funding provided by the Carr Government over 11 years to almost $273 million. It is also an increase of $26 million, or a whopping 182 per cent, over the former Coalition Government's paltry last budget.

The budget includes $300,000 to assist the anniversary celebrations and to ensure the community gets the chance to thank the SES volunteers for their hard work and commitment. One of the highlights of the coming year's SES budget is the establishment of a new 24-hour call centre at a cost of some $900,000. This new operations communications centre will be staffed around the clock to answer calls for help on the SES 132 500 hotline and deploy SES units to emergencies swiftly and effectively. Based at the Wollongong State headquarters, it will comprise a total of 21 call takers when fully operational. In major events, such as severe storms and floods, the call centre will also help to co-ordinate SES crews required to travel from other regions to help with local response operations. Another 20 jobs will be created in the Wollongong headquarters to boost the SES recognised flood and community safety planning activities and provide additional support services to the 10,000 volunteers now in the SES. This is a total of 41 new jobs, which is indeed good news for the Illawarra community and the economy, as well as for the SES.

Over the past 11 years the Government has worked closely with the SES to support its volunteers with improved resources, training and facilities. That work continues through the budget. One of the Government's greatest commitments to all our emergency services workers is to provide them with safe, modern and reliable vehicles. In the coming year we will provide an upgrade to the SES vehicle fleet, providing another $800,000 in subsidies to assist local councils to provide 39 emergency response vehicles for their units around the State—including places like Sutherland, Raymond Terrace, Hillston, Hay and Gunnedah—taking the total investment of SES vehicles to $6.8 million over the 11 years. Another 20 new flood boats will be provided in 2005-06 at a cost of some $400,000 to local SES units, which will include Moree, Banora, Kempsey, Boomi and Shoalhaven city. This year's budget takes the total amount we have invested in vital personal protective equipment for SES volunteers to $16 million, with another $13 million invested in a range of rescue equipment. This year another $4.7 million will be spent on upgrading computers and technology, taking the total spending to $22 million.

NATIONAL PARK ESTATE (RESERVATIONS) LEGISLATION

The Hon. DUNCAN GAY: I direct my question without notice to the Minister for Primary Industries. Is the Minister aware that notice has been given of a National Park Estate (Reservations) Bill in the other place? Is he aware that the bill will contain detailed areas to be locked away for national park in the Brigalow Belt South Bioregion? Is he aware that the timber industry tells me that it would take them more than two weeks to develop a proper business plan to establish whether their businesses could remain viable and the industry sustainable as a result of the bill? In light of the notice being given, why have these country employers not been given a copy of the maps of the affected areas, which is an important business tool for their future? The bill is in the House, and they need two weeks to develop their business plan, so can he explain why they have not been given a proper map?

The Hon. IAN MACDONALD: Could the honourable member read out the title of the bill again?

The Hon. Duncan Gay: National Park Estate (Reservations) Bill.

The Hon. IAN MACDONALD: I think the Deputy Leader of the Opposition is confused. If my memory serves me correctly, that bill refers to some smaller reservation areas that are part of the addition of around 6,000 hectares to the national and State system in the south of the State. It does not apply to the western region at all.

The Hon. Duncan Gay: What about the further question of the employers getting the maps?

The Hon. IAN MACDONALD: In due course everyone will be provided with the Government's decision.

The Hon. Duncan Gay: These employers have two weeks to make a decision based on these maps.

The Hon. IAN MACDONALD: It will be dealt with in due course.

The Hon. DUNCAN GAY: I ask a supplementary question. In light of the Minister's answer, will he detail to the businesses, whose employees are very keen to find out, when these maps will be available for them to do their forward planning?

The Hon. IAN MACDONALD: They will be dealt with in due course.

OVERSEAS-TRAINED DOCTORS QUALIFICATIONS

Reverend the Hon. Dr GORDON MOYES: I ask the Minister for Education and Training, representing the Minister for Health, a question without notice. Is the Minister aware of the circumstances leading to the "Dr Death" scandal in Queensland and that 67 Australian patients died, linked with this scandal? In particular, is the Minister aware of reports that Australian health officials failed to check the Indian-trained American Dr Jayant Patel's credentials with the United States of America authorities, and that Dr Patel was given a job in the Bundaberg Base Hospital despite negligence findings against him in the United States that resulted in restrictions being placed upon his licence to practise medicine? Given that overseas-trained doctors form an essential part of the Australian medical work force, will the Minister indicate what checks are in place in New South Wales to guarantee the veracity of qualifications of overseas-trained doctors? Are there any measures in place in New South Wales to identify whether overseas authorities have imposed restrictions on the practice of medicine? [*Time expired.*]

The Hon. CARMEL TEBBUTT: I thank Reverend the Hon. Dr Gordon Moyes for his question. I am aware of media reports with regard to the Bundaberg Base Hospital and some of the issues he has raised. I will refer the question to the Minister the Health and undertake to obtain a response as soon as possible.

DRUG REHABILITATION

The Hon. JAN BURNSWOODS: My question is addressed to the Special Minister of State. Can he update the House on any new developments in the treatment of drug dependence?

The Hon. JOHN DELLA BOSCA: Yes, I can, and I thank the Hon. Jan Burnswoods for her question. The Carr Government's aims are to ensure that drug-dependent people have as many drug treatment options as are possible and that doctors caring for them have a range of quality treatments available. The cost effectiveness of pharmacotherapy programs in terms of both health improvements and crime reduction is well documented. A 2004 report from the National Drug and Alcohol Research Centre [NDARC] has shown that methadone maintenance is the most cost-effective treatment that is currently available in Australia for the management of opioid dependence. Another recent report, this time from the Bureau of Crime Statistics and Research, also shows that dependent heroin users commit significantly less crime while undergoing opioid maintenance treatment than when they are not in treatment.

Currently pharmacotherapy drug treatments are routinely available in Australia to assist heroin dependent drug users—methadone, buprenorphine and naltrexone. Suboxone is a new treatment, which has been developed to assist in the treatment of opioid dependence and offers great hope not only to the individual client

but also for the community. Suboxone combines buprenorphine and naloxone. The rationale for adding naloxone to buprenorphine is to deter intravenous use and reduce the potential for its diversion to illicit use. If suboxone is misused, the naloxone produces intense withdrawal symptoms—something that would not happen if the treatment were taken as prescribed.

There is widespread clinical support for suboxone in treating opioid dependence, as it will improve the flexibility of treatment options for opioid dependent people. Suboxone will be particularly useful in geographically isolated areas where it is not feasible to provide daily supervised dispensing of other pharmacotherapy treatments. The use of suboxone could allow greater access to treatment in rural areas and reduce the potential for congestion around treatment dispensing sites in cities and suburbs. Clinical trials of suboxone in the United States of America have demonstrated that it has a low treatment drop-out rate. Suboxone was the first drug treatment approach that could be prescribed for drug users outside of specialist drug and alcohol treatment clinics. As a consequence, the prescription of suboxone has been closely monitored. Currently more than 100,000 patients in the United States are receiving treatment with either buprenorphine or suboxone, with the majority receiving suboxone.

Reports from the United States indicate that one of the benefits of suboxone is the clear-headed effect of the drug compared with the groggy effect that is often recorded by users of methadone. Despite the obvious benefits offered by this new drug for both clients and the community, the application to list suboxone with the Australian Register of Therapeutic Goods was rejected last December by the Commonwealth Government's Therapeutic Goods Administration. At the moment we do not know the reason for this mysterious rejection. The Food And Drug Administration approved suboxone for use in the United States of America in October 2002. It has been approved for use in jurisdictions such as Denmark, Finland, Sweden, Norway and Hong Kong and as recently as January this year was also registered for use in New Zealand.

Last week I attended the Ministerial Council on Drugs Strategy in Canberra and called on the Commonwealth Government to advise the New South Wales Government when suboxone will be registered with the Australian Register of Therapeutic Goods and placed on the pharmaceutical benefits schedule so that people who are trying to beat their heroin addiction may benefit from the use of that treatment. It is crucial for us to continue to expand drug treatment options to doctors and patients to ensure that they have access to scientific advances that will help to treat drug dependency.

STUDENTS SPECIAL TRANSPORT SCHEME REVIEW

The Hon. CATHERINE CUSACK: Will the Minister for Education and Training order a review into the Department of Education and Training's Students Special Transport Scheme in the light of parents having complained that children with developmental and intellectual disabilities are put at risk by being forced to travel in vehicles that are without seat belts, without proper supervision and with drivers who are unfamiliar with the needs of children with disabilities? Is the Minister aware that on one occasion a student wandered off a bus when it was left unattended by the driver and the student was found, after a two-hour police search, standing on a roundabout in the middle of a busy intersection?

The Hon. CARMEL TEBBUTT: I advise the House that the Department of Education and Training's Students Special Transport Scheme provides free transport from home to school and back for students with identified disabilities who meet the scheme's criteria. The Students Special Transport Scheme currently assists nearly 9,000 students at a cost of $45 million. I am aware of the case recently reported in the media involving a student who had absconded from the special transport vehicle on his way home. The incident occurred when the driver briefly left the vehicle to escort another student from the vehicle to that student's house. The driver immediately reported the incident to the department's special transport unit. The department's employee performance and conduct directorate was advised of the incident. On the basis of the available information, the incident was investigated. The parent of the child also submitted a written complaint to the department on 7 February 2005 regarding the incident.

A further investigation occurred and I am advised that on the basis of the information a determination was made that although an error of judgment had been made, the driver had not intentionally neglected the students in his care and was in fact assisting a child from the vehicle to the child's home when the other student left the vehicle. The driver was issued with a letter of warning. The parent was advised in writing of the outcome of the investigation. The driver was transferred by the operator to another special transport run. The Department of Education and Training and I take very seriously our responsibilities with regard to the Students Special Transport Scheme and recognise the needs of students who are transported through this scheme, as well as the fact that transporting students with special needs requires sensitivity, due diligence and care.

The standards of conduct and behaviour expected from special transport operators and drivers are the same as those applying to other employees of the department. Those expectations are included in the contracts between special transport operators, their drivers and the department. It is reinforced in letters that are issued to operators annually. I am advised that a further letter will be issued to all special transport operators providing comprehensive details of drivers' responsibilities and the department's expectations of their conduct and performance.

REDFERN MOBILE NEEDLE SYRINGE SERVICE

Reverend the Hon. FRED NILE: I ask the Minister for Education and Training, representing the Minister for Health, a question without notice. Is it a fact that the New South Wales Minister for Health plans to initially re-establish the heroin needle bus in the Aboriginal district known as the Block in Redfern? Does the Government plan to eventually replace the needle bus with a fully operating shooting gallery, which has been described by the Government as a medically supervised injecting room, in Redfern near the railway station? Is it a fact that Aboriginal leaders of the Aboriginal community have not been consulted and are totally opposed to the needle bus and injecting room because of the horrendous impact on Aboriginal youth? Will the Government cancel these plans and investigate the relationship between increased drug use and the increased supply of free needles? Will the Government ensure that it treats the Aboriginal people at Redfern with respect and will always consult with them before adopting any new policies that affect them?

The Hon. JOHN DELLA BOSCA: On 24 October 2004 the Premier announced the establishment of a new community health facility in Lawson Street, Redfern, in response to community concerns over the mobile needle syringe service and the need for enhanced health services in Redfern and Waterloo. On 29 April 2005, NSW Health lodged a development application for the Lawson Street community health facility with the Council of the City of Sydney and submissions closed on 16 May 2005. I am advised that on 12 May 2005, the Lord Mayor of Sydney requested that the development application be withdrawn pending further public consultation on the location of the health centre. The Minister has sought that the development application be deferred for consideration by Sydney city council until an appropriate community consultation process takes place, similar to that called for by Reverend the Hon. Fred Nile.

I am advised that this consultation will include residents, non-government organisations, government agencies and other key stakeholders. Any amendments that need to be made to the development application following this consultation process will be done. The community health facility is intended to assist the whole community with a focus on those who may not usually access mainstream health services. It will provide a range of health care services including those for HIV-AIDS, other infectious diseases, mental health, drug health, sexual health, women and babies and other community health services. The centre will represent a significant investment in the health of the Redfern-Waterloo community.

As the Premier announced last October, establishment costs will be approximately $1.5 million, with an annual commitment from the New South Wales Government of $550,000. Establishment of the centre will allow for the removal of the current mobile needle syringe service, consistent with recommendation 20 of the upper House Inquiry into Redfern and Waterloo. The reality of the situation is that the Redfern area remains at risk of the spread of infectious and blood-borne diseases. I am advised that the HIV rate in Redfern is twice the national average and Redfern also has the most hepatitis C notifications in the central Sydney area. While the number of needles distributed in the area has halved in the past 12 months, due in no small part to the good work of police, a large number of needles are still being distributed in Redfern.

NSW Health has a public health obligation to provide these services. Federal and State governments across Australia support the provision of needle and syringe programs, as do the chairpersons of the HIV and Hepatitis C Advisory Councils, Dr Roger Garcia and Professor Geoff McCaughan. Since 1986, needle syringe programs have prevented an epidemic of HIV among Australian drug users. In Australia less than 2 per cent of drug users are infected, compared with far higher rates—some as high as 30 or 40 per cent—in most other countries in Europe, Asia and America. At the same time, it has been shown that needle and syringe programs do not lead to higher rates of drug use, nor do they interfere with the work of police.

An independent report commissioned by the Australian Government found that between 1991 and 2000, Australian governments spent a total of $130 million, in year 2000 dollar value, on needle and syringe programs. It is estimated that by 2000 that investment had prevented 25,000 cases of HIV and 21,000 cases of hepatitis C. The report concluded that those programs would result in a long-term saving to the health system—due to avoided treatment costs—worth a total of $7.8 billion. I note that Reverend the Hon. Fred Nile, when

asking his question, described this as an expansion of shooting galleries. I have reminded him constantly that shooting galleries are illegal facilities, operated by criminals. The medically supervised injecting room trial is a one-off trial in Kings Cross.

INTERNATIONAL TRANSFER OF PRISONERS AGREEMENT

The Hon. GREG DONNELLY: My question without notice is directed to the Minister for Justice. What is the latest information on the International Transfer of Prisoners Agreement?

The Hon. JOHN HATZISTERGOS: I thank the Hon. Greg Donnelly for his interest in this very important, and topical, subject. Honourable members would recall that the genesis for the International Transfer of Prisoners Agreement had its origins in an initiative by the Minister for Justice in 1992, Terry Griffiths. Notwithstanding that the legislation was passed by this Government in 1997, it was opposed by the Coalition Opposition. Kerry Chikarovski, who was then the shadow Minister, said:

> If the consequences include terms of imprisonment in difficult conditions in such jurisdictions ... so be it. The Opposition is not prepared to support any softening of the attitude so that those people will get it easy.

At that time the Hon. Charlie Lynn, who is present in the Chamber, said:

> The Opposition believes that the legislation sends out the wrong messages. It sends out the message that the Government is soft on crime.

However, the Hon. Catherine Cusack had a different view. She wrote to me about two people she wanted to come to Australia. In a letter to me dated 26 August—

The Hon. John Ryan: What year?

The Hon. JOHN HATZISTERGOS: 2003. Her letter stated:

> My purpose in writing to you is to seek your assistance in ensuring the matter is processed as promptly as possible.

So there is a kaleidoscope of views by the Opposition on this issue. In fact, 58 States have ratified the convention of Europe, which allows the transfer of prisoners between jurisdictions that have ratified the agreement. However, Australia has only one agreement with a country outside the Council of Europe's convention. We have no other bilateral agreement for international prisoner transfers. The Department of Corrective Services estimates that some 900 foreign nationals are in New South Wales correctional centres and that over 100 Australian nationals are serving time in foreign correctional facilities. As at 27 April 2005, the Department of Corrective Services had received applications from 47 inmates applying to transfer to correctional facilities in other countries, and eight inmates imprisoned overseas who wish to transfer to New South Wales.

To date, two inmates have transferred to New South Wales and 10 have transferred from New South Wales; all are Federal offenders. However, 40 applications for international transfer have not been finalised; some transfers have taken up to two years to finalise. It may surprise many to know that, as at today, there are 264 New Zealand-born inmates and 15 Papua New Guinea-born inmates in custody in New South Wales. We have no agreement with those two jurisdictions, nor do we have agreements with close neighbours including Malaysia and Singapore. The prisoner transfer agreement between Australia and Indonesia that is currently being negotiated by the Federal Government is, of course, welcome. When finalised it will be only the second such agreement Australia has. In relation to this issue, earlier today the Federal Justice Minister said:

> But these things do take time ... of course, we have to pursue that agreement through its normal course.

Now he wants an interim agreement of sorts to be negotiated and fast-tracked to cover the circumstances of Schapelle Corby, should she be convicted. Of course, Minister Ellison prefaced his comments with, "We don't want to pre-empt in any way the decision of the Indonesian court this Friday". It is good to see the speed at which the Federal Government moves, not only in negotiating bilateral agreements but also in processing applications of inmates who are seeking to transfer, which are still on the desk.

The international prisoner transfer scheme has a positive focus on the rehabilitation of prisoners and on their families. The transfer of prisoners to their country of origin would not only promote contact with family and friends but also would dispel the potential trauma of exile and alienation that is associated with being disconnected from one's homeland. This is an important issue and it needs to be addressed urgently by the Federal authorities.

MR TOM BELL HOME CARE SERVICES

The Hon. JOHN RYAN: My question without notice is addressed to the Minister for Disability Services. Does the Minister stand by so-called off-the-record comments given to certain media outlets on behalf of the Government that discontinued home care client Mr Tom Bell, of Oatlands, was unable to receive services because he had a reputation for making unwelcome sexual gestures towards carers, and that he refused to accept Asian carers? Is the Minister aware that Mr Bell not only vigorously denies those claims but also says that he has never been told about them? Will the Minister investigate how those claims came to be made on behalf of the Government and ensure that those comments do not have an adverse impact on Mr Bell receiving appropriate home care services?

The Hon. Eric Roozendaal: You are a disgrace.

The Hon. JOHN RYAN: What was disgraceful was the making of those comments on behalf of the Government.

The Hon. JOHN DELLA BOSCA: I was having a conversation across the table about the earlier answer by the Minister for Justice. Apparently he mentioned some correspondence. I do not know the nature of that correspondence between himself and the Hon. Catherine Cusack. But I am surprised that the Hon. John Ryan talks about off-the-record comments. I do not know exactly what he is talking about. In fact, I have no idea what he is talking about. I have no knowledge about the matter referred to.

The Hon. Duncan Gay: He was quoting constituent correspondence in the House.

The Hon. JOHN DELLA BOSCA: What does that have to do with it?

The Hon. Michael Gallacher: He was quoting correspondence sent to a member of Parliament.

The Hon. JOHN DELLA BOSCA: He was making it up.

The Hon. Michael Gallacher: No, he was not. One of your people gave it to the media.

The Hon. JOHN DELLA BOSCA: It is unhelpful to have a discussion in this House about individual cases. I have reminded the Hon. John Ryan repeatedly that these are issues of privacy.

The Hon. Michael Gallacher: Do you stand by the comments?

The Hon. JOHN DELLA BOSCA: I do not know about any comments. I am not standing by any comments. As I said earlier, if the Hon. John Ryan has concerns it is unhelpful for him to cite individual cases. The Hon. Carmel Tebbutt made that point continuously when she was Minister for Community Services, and Minister for Disability Services.

I have said repeatedly to the honourable member that it is unhelpful to refer to individual cases in this Chamber. The honourable member canvassed a number of issues that I believe to be private matters relating to disabled clients. If the honourable member is concerned about an individual case, including his allegation about so-called off-the-record comments, I urge him to raise the matter in writing with me.

POLITICAL ACTIVISM IN SCHOOLS

The Hon. DAVID OLDFIELD: My question without notice is directed to the Minister for Education and Training. Is she aware of the increasing use of public schools to mount campaigns against the policy of the Federal Government on illegal immigrants? Is she aware of the many recent local newspaper articles conveying the unbalanced, ignorant and inflammatory views of public school principals? Is the Minister concerned about principals using not only their positions of responsibility but also students and teachers in pushing their personal political agendas? Has the department's code of conduct, which requires balance, been flagrantly breached by the Principal of Blacktown Girls High School, Edward Gavin, allowing students and teachers to be photographed in school grounds for the purpose of making ignorant, emotive and misleading political statements?

The Hon. CARMEL TEBBUTT: The Federal Government has more problems from its backbench members about its immigration policies than it has from principals in public schools in New South Wales. The

Hon. David Oldfield has been advised on a number of occasions that the Department of Education and Training has in place specific policies that clearly state that teachers or other school staff should not distribute information of a political nature to students during school hours. With regard to the Blacktown Girls High School matter to which the Hon. David Oldfield referred today and in an adjournment speech on 1 March 2005, it is my understanding that that incident, which occurred in 1999, was comprehensively addressed.

A teacher at the school, Ian Hale, made a complaint about the principal, Edward Gavin, to the Minister at the time, the Hon. John Aquilina. Mr Gavin was alleged to have criticised One Nation's policy on multiculturalism. Alan Lachlan, the then Deputy Director-General of Schools appointed an independent investigator as the issues were somewhat broader than those outlined in Mr Hale's complaint. The principal was counselled and Mr Hale was removed from the school due to a deep breakdown in personal relationships. I understand that Mr Hale now teaches at another high school.

The Hon. DAVID OLDFIELD: I ask a supplementary question. I can understand why the Minister would be confused about the activities of principal Edward Gavin as they are continuous in relation to this matter. The matter that I am raising in my question relates to the past two weeks. Articles appeared, in particular, in the Blacktown local newspaper. I again ask whether it is not a flagrant breach of the code of conduct of the department to use students and teachers in photographs in school grounds without balance? The Minister should remember that I am referring to an incident that occurred in the past two weeks, not in 1999.

The Hon. CARMEL TEBBUTT: I am not aware of the issue to which the Hon. David Oldfield referred that occurred in the past two weeks. I undertake to conduct further investigations and to get back to the honourable member. If he wants to raise such issues I would appreciate it if he provided me with more detail. I suggest that there are better ways of dealing with these issues rather than referring in question time to the names of individual principals in public schools in New South Wales. I am happy to follow up this issue but, as I do not have the detail, I ask the honourable member to provide it to me.

FISH MERCURY LEVELS

The Hon. TONY CATANZARITI: My question without notice is directed to the Minister for Primary Industries. Will the Minister update the House about the latest consumer education campaign being carried out by the New South Wales Food Authority?

The Hon. IAN MACDONALD: I think the Hon. Melinda Pavey would be interested in my answer to this question. In recent years there have been many media reports, both in Australia and overseas, about the levels of mercury found in some species of fish. Unfortunately, these reports, which were based on overseas experience, resulted in some consumers avoiding fish because of unwarranted fears that high mercury levels could pose a health threat. In reality, mercury levels in fish do not affect the general population. Furthermore, the vast majority of fish species in New South Wales have very low levels of mercury. Testing by the New South Wales Food Authority has shown no increase in mercury levels in fish in New South Wales over the past decade. However, certain people need to be aware of mercury, in particular, pregnant women, women who are breastfeeding and children under the age of six. Elevated mercury levels can affect the development of the central nervous system in foetuses and young children.

A recent survey carried out on this subject by the New South Wales Food Authority found that 44 per cent of women aged between 18 and 40 did not know what fish they should limit during pregnancy and breastfeeding. About 85,000 women give birth each year in New South Wales. The New South Wales Food Authority survey suggested that up to 15,000 women were either cutting out fish totally or dramatically reducing their fish consumption. As a result, many were depriving themselves of important nutrients found in fish, such as omega-3 fatty acids that are vital for the health of developing babies. In response, the New South Wales Food Authority embarked on a statewide education campaign that provides reliable information on safe levels of fish consumption. That campaign will see 500,000 handy wallet cards distributed throughout the State by doctors, midwives, dieticians, fish outlets, NSW Health and other participating community groups.

Coles supermarkets have already agreed to carry the cards at their seafood counters to help ensure that women receive the facts about fish. The 500,000 wallet cards feature those few species of fish that are most likely to contain elevated levels of mercury, including shark or flake fish; billfish such as broadbill, swordfish and marlin; orange roughy or deep sea perch; and catfish. Women who are pregnant or breastfeeding, women planning to become pregnant, and children six and under should limit their intake of these types of fish. All other fish species are safe to eat at the recommended levels of two to three times per week.

I launched this important new campaign at the Sydney Fish Markets on 11 May in an attempt to help women sort fact from fiction when it comes to fish. This campaign has the backing of the New South Wales branch of the Australian Medical Association. In fact, the President of the New South Wales branch, Dr John Gullota, also spoke at the launch. We have also received the support of a number of organisations—NSW Health, the New South Wales Midwives Association, Food Standards Australia New Zealand, the Dieticians Association, the Australian Consumers Association, the Australian Breastfeeding Association, the Sydney Fish Markets and the Master Fish Merchants Association of Australia. With this new campaign, women will now have access to clear and concise information on the fish they should limit and which species they can enjoy as usual. This is a fantastic example of a State Government working with industry, stakeholders, community and medical groups to deliver an important health message to the women of New South Wales. It is also an example of the important role that the New South Wales Food Authority plays in educating consumers about a number of food safety issues.

LICENSED VENUES TOBACCO SMOKE

Ms LEE RHIANNON: My question without notice is directed to the Minister for Industrial Relations. Is he aware of the latest research linking second-hand smoke to cancers, including cervical and breast cancer? What steps is he taking to ensure that workers are not exposed to second-hand smoke when they are working? What is this Government doing to ensure that no smoking is allowed in New South Wales licensed venues from July 2007 in situations that might carry any risk of cancer to workers or patrons?

The Hon. JOHN DELLA BOSCA: The question that the honourable member asked is almost identical in intent to a question asked yesterday by her colleague Ms Sylvia Hale. I could simply refer her to the answer that I gave Ms Sylvia Hale. The first issue to which she referred related to the Occupational Health and Safety Act. Appropriate regulations provide a detailed set of responsibilities for employers in relation to the provision of safe workplaces for employees. It has long been canvassed, and I think it is held as a truism, that passive smoking in a working environment can create the kinds of hazards described in the honourable member's question. I am sure the honourable member would be aware that WorkCover has a substantial and well-resourced workplace inspectorate that regularly carries out inspections on a random basis and as a result of complaints by employees, on rare occasions by employers, and by unions, other organisations and members of the public.

Some complaints would relate to concerns about passive smoking. Various actions have been taken in response to such concerns, some of which have been documented in this place previously. I think the honourable member is aware of quite a few of them. As I said yesterday in my answer to a question from Ms Sylvia Hale, it is clear that, regardless of the details in regulations about licensed premises or any other workplace, the employer obligation under the Occupational Health and Safety Act to provide a safe workplace clearly remains.

ALSTONVILLE BYPASS

The Hon. MELINDA PAVEY: My question is directed to the Minister for Roads. Why did the Minister fail to secure adequate funding for the Alstonville bypass in yesterday's State budget to fulfil the commitment given by the Premier prior to the 2003 State election that the bypass would be completed by the end of 2006? Why has the completion date blown out to 2008 and why has only $1.8 million of the $24 million in State funds needed been allocated in this year's budget? Given that the Federal Government has committed $12 million to the project, why does the Minister not do the right thing by the Alstonville community and fully fund this important road project?

The Hon. MICHAEL COSTA: We have increased the Roads budget this year by record amounts. Let it be known that we have increased the State budget by record amounts. I know it is difficult for Opposition members, when confronted with record expenditure, to accept the fact that we are seeing improvements across the board. I am glad that the Hon. Melinda Pavey has referred to roads as it gives me another opportunity to talk about road funding. This is an important issue, particularly in regional and rural New South Wales.

I put on record the fact that the Federal Government collects about $14 billion a year in fuel excise but returns less than $3 billion to transport—not just roads but transport generally. That is an absolute disgrace. The Federal Government has a lot of explaining to do to the New South Wales community about what it does with fuel excise collections. I recently had the opportunity to attend the opening of the McGrane Way, an important road project, and talk to local people about road funding. They are acutely aware of the disparity between the fuel excise collected by the Federal Government and the money that it returns in road funding. As for

Alstonville, the State Government is contributing the bulk of the expenditure on that project. Once again, the Federal Government is not contributing its share.

The PRESIDENT: Order! I call the Hon. Catherine Cusack to order for the first time. I call the Hon. Melinda Pavey to order for the first time.

The Hon. MICHAEL COSTA: The Federal Government is severely embarrassed by both its handling of AusLink and its road funding in general. The community is acutely aware of the disparity in taxes that are collected from road users and the funds that are returned to them in the form of increased road expenditure. It is an embarrassment for the Federal Government. The State Government has contributed $24 million to this $36 million project. The Federal Government is responsible for the national highway system but it is trying to walk away from that. The Federal Government has a responsibility to fund the national highway system and AusLink will not relieve it of that responsibility. The record is clear: The State Government is spending almost four times as much as the Federal Government on the Pacific Highway.

RURAL AND REGIONAL SCHOOLS CAPITAL WORKS

The Hon. HENRY TSANG: My question is addressed to the Minister for Education and Training. Will the Minister advise the House on education-related capital works initiatives in regional and rural New South Wales?

The Hon. CARMEL TEBBUTT: I am pleased to advise the House about what is occurring in regional and rural New South Wales with regard to school infrastructure and TAFE upgrades. Yesterday's budget announcement reflects the Government's commitment to supporting rural and regional New South Wales. Regional and rural schools and TAFEs will receive more than $4 billion in funding as part of the 2005-06 New South Wales Education and Training budget. Major capital works upgrades were announced at Dubbo College South Campus, Mullumbimby High School and Ulladulla High School. A new hall will also be built at Gunnedah South Public School. New capital works projects will be started at TAFEs across New South Wales, including at Newcastle, Cooma, Griffith, Maitland, Tamworth and Port Macquarie.

The 2005-06 budget includes $3.6 billion for country schools, including maintenance, school global funding and teachers' salaries; $300 million for TAFEs, including maintenance and teachers' salaries; and $187 million worth of capital works for new and ongoing projects in country schools and TAFEs. I draw the attention of the House to a couple of capital works initiatives. For example, funding has been provided for a new hall facility at Gunnedah South Public School. Tamworth TAFE is also receiving capital works funding for its light automotive electrical and electronics area. Mullumbimby High School has received approval for a stage 3 upgrade of its facilities. They are just some examples of the capital works upgrades—both new and existing projects—that were provided for in yesterday's budget.

It has certainly been my experience that local members of Parliament of all political persuasions usually warmly welcome capital upgrades and improvements to schools and TAFEs in their local areas. I am surprised that this is not the case with the honourable member for South Coast, Ms Shelley Hancock, who was reported in the *Milton-Ulladulla Times* as being "bitterly disappointed" with the Carr Government's budget, particularly as it contained no monetary commitment to Ulladulla High School. This surprises me because anyone can look at Budget Paper No. 4 and see the Ulladulla High School upgrade listed in black in white under the heading "Major new works". It is there in black and white.

The PRESIDENT: Order! I call the Hon. Don Harwin to order for the first time.

The Hon. CARMEL TEBBUTT: I know that it is difficult for Opposition members to understand budget papers. I know that it is difficult to go down the line and look at the footnote, but the footnote is there—

The PRESIDENT: Order! I call the Hon. Don Harwin to order for the second time.

The Hon. CARMEL TEBBUTT: The footnote is very clear: The estimated total cost in 2005-06 expenditure for these new works has not been included due to their commercially sensitive nature. It is there on page 67 and it is there on pages 68, 71, 72 and 73. I know it is very difficult for the Opposition. This is the second year that this has occurred in the Education and Training capital works budget so it is very hard for the Opposition to keep up. What is even more shameful is that the people of Ulladulla have been misled by the person whom they elected to represent them and their local community in State Parliament.

The PRESIDENT: Order! I call the Special Minister of State to order for the first time. Members wishing to chatter must leave the Chamber.

WATER-ACCESS-ONLY PROPERTY RENT INCREASES

The Hon. JOHN TINGLE: My question is addressed to the Minister for Lands. Has the Department of Lands begun court proceedings for the recovery of rent arrears from people in areas such as Berowra Waters, whose only access to their homes is by jetty? Does the Minister recall that I took a deputation of those people to meet him on 23 March to ask for reconsideration of rent increases of up to four times for their jetties? Since the Minister has not yet replied to the deputation, is their request still under consideration? If so, should recovery of rents be suspended, pending that decision? Will the Minister now give those people, whose only access is by water, a firm answer one way or the other? If not, will the Minister order suspension of the court actions to recover rent arrears until he answers their request?

The Hon. TONY KELLY: This Government makes no apologies for ensuring the people of New South Wales get a decent return on the private use of public land. The review of the Independent Pricing and Regulatory Tribunal [IPART] of domestic waterfront tenancies located on publicly owned Crown land confirmed this view. The IPART paid particular attention to the issues raised by residents who can access their properties only by water. The Government accepted the IPART's recommendation of a $250 rebate for eligible water access only residents, subject to the new minimum rent of $350. I will soon introduce a bill in this House—it was introduced in the lower House yesterday—that will enshrine this rebate in law. By linking rents to the adjacent land value, we have also locked in an automatic concession for this group of waterfront property owners, given that water access only land values are far lower than those with road access. I am advised that for many of those residents, rent impacts are negligible, and in fact, some have fallen. The first two years will see average water access only rents increase from $300 to $330 per annum, in other words 4¢ per day.

MEDOWIE EDUCATIONAL NEEDS AUDIT

The Hon. ROBYN PARKER: My question is directed to the Minister for Education and Training. What are the Government's plans for the 11-acre site purchased in the 1980s in Medowie, between Wirreanda Public School and the Medowie Squash Centre? Has that land been earmarked for a high school? Will the Government undertake an audit of the educational needs and student enrolment projections in that area of Port Stephens in view of the fact that the Department of Education and Training has so far been unable to answer community requests for those numbers, despite the assurance of Dr Refshauge last November that demographics and population growth will continue to be monitored and reviewed? Without an audit, how does the Government plan to effectively monitor and review this situation?

The Hon. CARMEL TEBBUTT: I understand that some members of the local community want a new high school at Medowie. To determine whether the area needs a new high school, the Department of Education and Training has carried out a detailed analysis. Secondary students are currently zoned to Irrawang and Raymond Terrace high schools, which cater to enrolments from the urban area and the surrounding wider rural areas, including Seaham, Karuah and Williamtown. The department has advised that enrolments at Irrawang High School, which serves the Medowie area, have fallen from 1,066 students in 1999 to 952 students in 2005, and its feeder primary school enrolments have also fallen in recent years.

Similar trends have been experienced in Raymond Terrace High School, which would also be affected by a new high school at Medowie. The department has concluded that development of a third high school would jeopardise the viability of one or both of those high schools and should not be established at this stage. However, I assure the Medowie community that the department will continue to monitor and review the situation in their area, and alternative strategies will be considered if there are significant changes in the population growth.

The Hon. Robyn Parker: Why don't you communicate that to the community?

The Hon. CARMEL TEBBUTT: I have. I have signed many letters.

CLASS SIZE REDUCTIONS

The Hon. KAYEE GRIFFIN: My question is addressed to the Minister for Education and Training. Will the Minister inform the House about the latest evaluation on the Government's Class Size Reduction Program?

The Hon. CARMEL TEBBUTT: When the Government introduced its Class Size Reduction Program it made very clear that it would carefully evaluate the initiative to ensure that it is achieving the outcomes that it

believed were possible through reducing average class sizes in the early years. The Government is committed to maximising educational opportunities for New South Wales students, and improving the quality of learning for our youngest students. Smaller class sizes in the early years of schooling helps maximise student growth and development in academic, social and emotional areas. I am pleased to advise the House that the Interim Report for the Class Size Reduction Evaluation has been finalised by Professor Bob Meyenn, Professor of Education and Dean of the Faculty of Education at Charles Sturt University.

This is the first of a series of evaluations that will be undertaken with regards to the program. It shows that the smaller kindergarten class sizes are proving a hit with principals, teachers and parents. Early results at 15 priority funded schools show that principals and teachers believe their students are making substantially more progress in both literacy and numeracy, thanks to smaller classes. The overwhelming majority of parents surveyed supported this view, with 90 per cent stating they are very satisfied or satisfied with their child's level of achievement. That is evidence that our Class Size Reduction Program is working. Teachers report spending more one-to-one time with students and parents say it is resulting in improvements in their child's reading, writing and mathematics.

The Interim Report on the Class Size Reduction Program is the first in a series of evaluations of the program. This report surveyed 54 principals and teachers and 73 parents. The report's findings include more attention is given to literacy and numeracy, more support and individual instruction is given to students who need assistance, students are more confident and better behaved in class, students handle the move to school better and try harder to please the teacher. The report also found a significant improvement in teacher morale and more effective assessment of students by teachers. Parents believe their children have made substantial progress and report being pleased with the faster, more immediate feedback given to their children. Teachers are finding they can be more innovative, can provide a wider variety of activities and can use the skills learned as part of their professional development.

In particular, principals and teachers identified an increase in the amount of small group work and in the effectiveness of those groups, more individual attention and instruction, more effective assessment, more discussions, the use of improved behaviour management strategies, more hands-on activities, and more innovation and experiment. Further benefits were identified in terms of non-academic outcomes. It is reported that teachers had more time for teaching and were able to do more effective teaching because students related better to each other, the transition to school was better and kindergarten students were more confident in participating in the class. Last week I visited a primary school in Marrickville and had the opportunity to see first-hand the impact of the Class Size Reduction Program on kindergarten students.

The Hon. Robyn Parker: Did you visit the toilets? Did you check out the maintenance? Did you see Andrew Refshauge?

The Hon. CARMEL TEBBUTT: I hear the interjections from the Opposition. I am amazed that the Opposition has not asked one question about school maintenance. Why does the Opposition not ask a question about school maintenance it if it is so concerned about it? It cannot be that interested in the issue if it has not asked one question. I have been asked questions about all sorts of things, but not one has been about school maintenance. Over four years the Government is committing $583 million towards the class size reduction plan, helping to provide 1,500 extra teaching positions and to build more classrooms.

MENTAL HEALTH SERVICES

The Hon. Dr PETER WONG: My question is directed to the Minister for Education and Training, representing the Minister for Health. Can the Minister account for how many mental health beds are currently accessible in New South Wales? How does that figure per capita compare to other States? Is the Minister aware of any mental health facilities that have been built and could be made available immediately, but are not? Is the Minister also aware that the degradation of mental health services since the Government came to office has resulted in increased numbers of people with mental illnesses ending up in gaol? Will the Minister explain what measures are being undertaken to help those people who have a dual diagnosis of mental health and drug and alcohol issues, or can we expect that our stretched NSW Police will continue to deal with mental health issues?

The Hon. CARMEL TEBBUTT: I will refer the question to the Minister for Health and undertake to obtain a response as soon as possible.

SCHOOL-BASED APPRENTICESHIP TRAINING

The Hon. CHARLIE LYNN: My question without notice is directed to the Special Minister of State, and Minister for Industrial Relations. Is the Minister aware that the Federal Government has promised to

provide $26 million over four years for additional school-based new apprenticeships in traditional trades? Is the Minister also aware that an estimated 5,000 secondary students in New South Wales are being denied an opportunity to start an apprenticeship while they are at school because the New South Wales Government does not have appropriate industrial awards? What action will the Minister take to introduce legislation necessary to allow students in New South Wales schools access to this outstanding opportunity, and when will the Minister take that action?

The Hon. CARMEL TEBBUTT: I think it more appropriate that I provide a response to the question asked by the Hon. Charlie Lynn as I have responsibility for schools. It is simply not correct to say that school-based apprenticeship training does not take place within New South Wales schools. We have a very strong vocational and education training program generally across New South Wales schools. It is well renowned and as good as any on offer across the whole of Australia. It is not correct to say that New South Wales industrial laws prevent school-based apprenticeships. In fact, almost 70,000 New South Wales school students are enrolled in high-quality vocational programs as part of their Higher School Certificate, and these courses provide credit towards an apprenticeship or traineeship. More than 1,100 Higher School Certificate students are in traineeships, and many of them are gaining full qualifications in trade-related occupations, such as in the automotive, hospitality and manufacturing industries. Those students can complete their apprenticeship full time once they leave school.

I have been very impressed with the vocational education and training facilities that I have seen are available in New South Wales government schools. Those who visit schools will see students engaged in a whole range of activities and learning in vocational education and training that is equipping students well for when they finish school. It is an integral part of the Higher School Certificate and, unlike in some other States, it is not an alternative pathway. We do not expect students at a fairly young age to have to make a choice about whether they want to pursue a career in a vocational education and training area—

The Hon. John Ryan: Some do.

The Hon. CARMEL TEBBUTT: Some do make that choice. But we do not force students to make that choice. We make both options available. They can do a veterinary course and incorporate that in their Higher School Certificate. It can also count towards their tertiary entrance score. So we are not actually excluding students from any particular pathway. This option provides maximum opportunities for students once they leave school. The Government is a strong supporter of the New South Wales model of vocational education and training. More than 19,000 employers are opening their workplaces to students to provide structured workplace training. The department is in discussion with New South Wales employers and unions to explore opportunities to broaden apprenticeship opportunities for school students.

The Hon. CHARLIE LYNN: I ask a supplementary question. I draw the Minister back to the subject matter of the question, and that is to industrial awards for part-time apprentices. In Queensland these account for nearly half of the 12,860 places available nationally each year, whereas in New South Wales none are available. The question referred to part-time, school-based new apprenticeships in traditional trades. I think the Minister's response related to a different system.

The Hon. CARMEL TEBBUTT: I have made it very clear that New South Wales industrial laws do not prevent school-based apprenticeships. But, with regard to part-time apprenticeships, I will refer that part of the question to my colleague the Minister for Industrial Relations and undertake to get further information for the honourable member. I was responding to the inference made by the Hon. Charlie Lynn that the Government did not have school-based apprenticeships and that these were not an available option. My response was clear: New South Wales industrial laws do not prevent school-based apprenticeships.

HOUSE FIRE DEATHS AND SMOKE DETECTORS

The Hon. TONY KELLY: I have further information for the House with regard to a question asked yesterday by the Hon. David Clarke about house fire deaths and smoke detectors. Suggestions that house fire deaths in New South Wales have doubled are misleading. Of course, any death in a fire is obviously a tragic occurrence for all involved. But it must be said that figures for fire deaths can fluctuate dramatically from year to year. Therefore, to compare two consecutive years is misleading. If the honourable member had read more closely the Productivity Commission report on government services—from where he has presumably drawn his question—he would have noted that it clearly illustrates this fluctuation over three years. It is simply not statistically valid to compare the figures for 2001 and 2002 in isolation. It is more relevant to present the State's

fire death rate, which the Productivity Commission calculates per million of population and averages over three years. This figure has risen only slightly from 6.1 to 6.3 deaths per million people in New South Wales between the most recent reporting periods. Therefore, to speak about a doubling of the figures is alarmist and misleading. And these figures cannot necessarily be directly linked to smoke alarms, as the figures reported include all fire deaths—such as in motor vehicle accidents—not just those in dwellings.

Suggestions that the percentage of functioning smoke alarms in homes is decreasing are also unfounded. The Productivity Commission report acknowledges that data showing a higher percentage for 2002-03 was based on a new survey with a smaller sample size than was used in later years. That is another valuable lesson to be learnt from reading the fine print. Therefore, based on the reliable date, the real trend is an increase over five years. New South Wales Fire Brigades continues to promote the installation and maintenance of smoke alarms as part of essential home fire safety measures. It is constantly working to encourage this basic level of protection in as many houses as possible through its regular fire safety campaigns and the SABRE program to help the elderly in our community install and maintain alarms. It would be more helpful to the community if those opposite took a more responsible approach to the emergency services rather than simply resorting to scaremongering.

Questions without notice concluded.

[*The President left the chair at 1.06 p.m. The House resumed at 2.30 p.m.*]

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 2, 3 and 4 postponed on motion by the Hon. John Hatzistergos.

DUST DISEASES TRIBUNAL AMENDMENT (CLAIMS RESOLUTION) BILL

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [2.31 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005 aims to significantly reduce legal and administrative costs associated with resolving dust diseases compensation claims.

The bill amends the Dust Diseases Tribunal Act 1989 to support the making of regulations to establish a new claims resolution process for asbestos related compensation claims. The bill also amends the Dust Diseases Tribunal Regulation to establish the new claims resolution process.

The new claims resolution process was described in detail in the report of the Review of Legal and Administrative Costs in Dust Diseases Compensation Claims.

The intent behind the new claims resolution process is to reduce the time that claims will take to settle, which will in turn reduce the costs incurred. The new process focuses on the early exchange of information and the compulsory mediation of claims.

The new claims resolution process will apply to asbestos related claims only. The Bill and Regulation will also make amendments relating to subpoena, offers of compromise and costs assessment and these amendments will apply to all matters in the Dust Diseases Tribunal.

Claims that proceed through the new process should be resolved more quickly and efficiently, which means that asbestos victims will receive their compensation faster.

The bill and regulation will not affect the right of claimants to commence proceedings in the Dust Diseases Tribunal. They will, however, provide parties with a framework in which information can be exchanged and settlement discussions can be pursued.

This bill is the result of much consideration and consultation.

It implements the recommendations of the Review of Legal and Administrative Costs, conducted by Mr Laurie Glanfield AM, Director-General of the Attorney General's Department, and Ms Leigh Sanderson, Deputy Director-General of The Cabinet Office.

The Review was established by the NSW Government after the issue of improving the efficiency with which dust diseases compensation claims are resolved was canvassed in negotiations with James Hardie Industries to secure funding to compensate the victims of its asbestos products.

Mr Greg Combet of the ACTU, Mr John Robertson of the NSW Labor Council and Mr Bernie Banton, representing asbestos victims, identified that any changes to the existing system would affect all claimants and defendants. Accordingly they recommended that the NSW Government initiate a review to identify cost-savings within the existing common law system without impacting adversely on claimants' compensation rights.

The NSW Government agreed to establish this review.

As the Government announced last December, implementation of the Review—through the passage of this bill—is a condition precedent to James Hardie Industries providing funding for asbestos compensation.

Stakeholders have been extensively consulted throughout the Review process including during the development of the amendments to the regulation.

The Review released an Issues Paper late last year and received 31 submissions from stakeholders to assist with the preparation of its report.

The report of the Review was released on 8 March 2005 and the Government adopted the recommendations of the report on the same day.

Following the release of the Review's report a draft Regulation to establish the new claims process was released for public consultation. Targeted consultation also occurred with defendants on a number of specific issues relevant to multiple defendant claims.

Numerous meetings were also held with key stakeholders in the preparation of the Review's report and the development of the Regulation.

I would like to acknowledge the assistance and advice the Review has received from the Dust Diseases Tribunal during the development of these reforms. The Dust Diseases Tribunal has been consulted over the course of the Review and I welcome the President of the Tribunal, Judge John O'Meally's commitment to making this new process work. I look to the Dust Diseases Tribunal to continue their commitment and support, to ensure that the changes introduced by this Bill and Regulation are effectively implemented, both administratively and judicially, in the Tribunal.

The changes implemented by this legislation are significant, and the new claims resolution process has a number of unique and innovative features. The Review recommended that a further Review of the reforms and the dust diseases compensation system more generally be conducted after data in relation to the reforms' first 12 months of operation are available.

This will provide an opportunity for further consultation to ensure that the new system is working as intended, and to fine tune the system as required.

Madam President, in introducing this bill, I would like to acknowledge the goodwill that stakeholders have overwhelmingly displayed during the Review process.

The Government has found that there has been a real willingness from all parties to target areas where costs savings could be made.

The goodwill of stakeholders is important, because the success of the reforms contained in this bill and regulation does depend, to a large degree, on the parties approaching the claims resolution process in good faith.

One of the key findings of the review was that a reduction in legal, administrative and other costs will only be realised fully if the parties ensure that they and their lawyers approach disputes with the intention of resolving those disputes fairly, efficiently and—in the case of defendants–commercially.

For the benefits of these reforms to be fully realised, the goodwill shown by stakeholders during the Review will need to continue.

I turn now to the bill itself.

Schedule 1 of the bill amends the Dust Diseases Tribunal Act 1989 to accommodate the new claims resolution process, which is set out in detail in the amendment to the Dust Diseases Tribunal Regulation 2001. The bill includes a new regulation making power that authorises the making of the regulatory amendments.

The amendments to establish the new claims resolution process are set out in Schedule 2 of the bill.

The proposed new claims resolution process addresses one of the key findings of the review – that is, that reforms to the existing common law system of determining dust diseases compensation will need to encourage early settlement.

The early exchange of information between the parties is the key to encouraging early settlement; and defendants need to be encouraged to resolve disputes as to contribution between defendants quickly and commercially and without delaying resolution of the claimant's claim.

Division 2 of Part 4 of the regulation describes the claims that will come under the new claims resolution process.

The new process will apply to asbestos related claims where the Statement of Claim is filed after 1 July 2005. It will also apply to other asbestos related claims where a hearing date has not been set before 1 July 2005, unless the parties agree that it should not apply.

Some concerns were raised in consultation on the draft regulation in relation to the proposal to apply the new claims resolution process to claims already lodged with the Tribunal. Those concerns highlighted that there was a risk that work might be duplicated if all of the steps of the new claims resolution are required to be completed.

The Government is confident that this need not be the case and that significant benefits could be realised from bringing such claims into the new process in an efficient manner. The transitional arrangements provide for the parties, on the initiative of the claimant, to negotiate on modifying the steps of the new claims resolution process to ensure that work which has already been completed is not duplicated.

If the parties cannot agree the Registrar will be able to make a decision on this matter.

One of the key findings of the Review was that maintaining access to the Tribunal will ensure that the reforms do not adversely affect claimants' compensation rights. Such access is particularly important for cases that are or become urgent.

As such, claims will continue to be commenced by lodging a Statement of Claim with the Tribunal. This will preserve the rights which claimants currently have, and will ensure that they are able to access the Tribunal quickly if their condition deteriorates.

Urgent claims will not proceed through the new claims resolution process and will be dealt with using the existing Tribunal litigation process.

After serving the Statement of Claim, the Tribunal may, on application by the claimant and on the basis of medical evidence, determine that a case is an urgent case.

Similarly, if a claim is being dealt with under the new claims resolution process and becomes urgent because the claimant's condition deteriorates, the claimant will be able to apply to the Tribunal to have the claim removed from the claims resolution process and dealt with by the Tribunal. To address concerns raised by some stakeholders during the consultation process, the provisions of the regulation have been clarified to make it clear that an application for urgency can be made, even though the Statement of Particulars required to be prepared by the claimant has not been completed and served.

It should be emphasised that the new claims resolution process will provide a quick and streamlined process for resolving claims. The Tribunal's powers in this area should only be exercised where it can clearly be established on the basis of medical evidence that the claimant's condition is so serious that the new process cannot be completed within such a timeframe as to enable the claimant's claim to be resolved while they are alive.

One of the key concerns of defendants has been that the filing of the Statement of Claim will be delayed by claimants' lawyers to such an extent that the Tribunal will have no option but to declare that all claims are urgent. The Government has to date rejected calls for a limitation period to be introduced which would require claims to be filed within a certain period of time from diagnosis or consultation with a lawyer.

Delays in filing claims would not appear to be in the interests of claimants, or defendants. Claimants should be afforded the advantages of the new claims resolution process so that they can receive their compensation while they are alive. This is, however, an issue that can be reconsidered if the information provided to the further review suggests that there is a problem.

Other claims will not proceed through the new claims resolution process if there is no real prospect of the claim being resolved through that process. This is most likely to occur in relation to test cases where novel issues are involved, for example, where a category of defendant may not previously have been found to be liable for a dust disease. In such cases, the cases can only be resolved by way of a determination by the Tribunal.

The parties will be required to engage in the information exchange process to ensure that the matter is genuinely a case which cannot be resolved through the new claims resolution process. This will also have the advantage of allowing the parties to narrow the issues in dispute and minimise the need for many of the Tribunal's procedural steps to be undertaken when the matter transfers back to the Tribunal for determination.

Parties are also able to apply to the Tribunal to have the claim removed from the new claims resolution process if another party has failed to comply with the new process.

While a claim is subject to the new claims resolution process it will not be subject to case management by the Tribunal. The power of the Tribunal to make certain orders has been preserved in a number of specific areas primarily to protect the interests of plaintiffs. For example, the plaintiff will be able to seek the Tribunal's assistance to amend his or her Statement of Claim to join a new defendant if the Tribunal is satisfied that it is necessary to do so to preserve the plaintiff's cause of action.

This power should only be used where it becomes clear that the wrong defendant has been sued, and unless the correct defendant is substituted, the plaintiff will be left with no action. The Tribunal's powers in other limited areas will also be preserved.

Division 3 of Part 4 of the regulation provides for the exchange of information.

The Review of Legal and Administrative Costs identified that the early exchange of information is the key to promoting early settlement and reducing legal, administrative and other costs. The new claims resolution process focuses on ensuring that information is exchanged in a timely manner.

The claimant is required to serve a Statement of Particulars when he or she serves the Statement of Claim on the defendants. The Statement of Claim will not be properly served until the claimant serves the Statement of Particulars.

The Statement of Particulars will contain the basic factual information required by defendants to evaluate the claim, presented in a standard format and verified by statutory declaration.

Importantly, it will not be necessary to—and the parties should not—obtain expensive, detailed expert reports, such as medical reports or reports of occupational hygienists or therapists, until it is clear that this material is actually needed.

Defendants will be required to join or cross-claim against any additional defendants within a fixed timeframe. The Review found that there are likely to be substantial benefits in having as many defendants as possible 'at the table' during the claims resolution process so that issues of contribution and apportionment can be sorted out quickly. For the claims resolution process to be effective, defendants need to be joined as early in the process as possible. Once the time limit has expired, however, if defendants want to pursue contribution against a party who has not been joined they will need to commence separate contribution proceedings after the claim is resolved.

The bill also amends the Act to clarify the extent of the jurisdiction of the Dust Diseases Tribunal by providing that the Tribunal's jurisdiction to determine claims extends to claims for contribution between liable tort-feasors which are brought separately from the claimant's claim.

In response to concerns raised during consultation that the time for lodging cross claims is too short, the regulation now provides for the period within which cross claims can be lodged to be extended by agreement of the claimant and the original defendants on whom the claim was served. The claimant must consent to such a request unless they can demonstrate that this would result in substantial prejudice.

Each defendant is required to provide a "Reply" to the claimant's claim, presented in a standard format. This is set out in Schedule 2 of the Regulation. If a defendant does not admit a matter, it must explain why and set out the reasons why it does not admit that matter, and in some cases provide any evidence to support its position. A defendant must indicate if it requires further information or an opportunity to inspect premises.

The intention of this process is for defendants to take a realistic approach to resolving claims. They should not unreasonably leave issues in dispute, for example, they should not be disputing that their products caused an asbestos related disease when this has been clearly established time and time again.

The parties should focus on those issues which are genuinely in dispute, and should only obtain additional reports and evidence where this is clearly necessary.

The obligation on parties to provide information is ongoing. Parties must provide information on the claim as and when it becomes available and should update their answers, and continue to narrow the issues which are in dispute.

While the parties should provide as much factual information as possible when they prepare their Statement of Particulars and Reply, they are only required to provide all information which is reasonably available to them.

The Review has concluded that there is significant capacity to use more widely processes outside of the formal litigation process, including alternative dispute resolution, for resolution of both the claimant's claim and contribution disputes.

Division 4 of Part 4 provides for compulsory mediation of the plaintiff's claim.

If the claim has not already been settled by informal means then the parties will be required to participate in mediation. The mediation will be conducted by a mediator agreed by the parties or selected by the Registrar of the Tribunal, from a list of mediators. The mediators on the list will be formally approved by the President of the Tribunal, after they have been jointly nominated by the Law Society of NSW and the NSW Bar Association.

Mediators will take an active role in seeking to resolve claims. They will assess the parties' positions and make recommendations to the parties on the settlement of claims.

Each party is required to be represented at the mediation by a representative who has authority to settle the matter. It is expected that those defendants who have raised concerns about costs in this area will assist in minimising costs associated with the mediation by ensuring that a person with authority to make decisions attends the mediation so that decisions can be made quickly and claims can be settled.

Importantly, if the mediator is unhappy with the conduct of a defendant's representative, they can order that the claims manager for the defendant attend the mediation to ensure that the defendant is taking a realistic approach to the mediation.

The claimant is also required to attend the mediation (either in person or by video-conferencing), unless he or she is too ill to attend.

If the mediation is unsuccessful, the mediator will require the parties to agree to a list of issues genuinely in dispute and a list of agreed facts relevant to those issues. It is only these issues that will proceed to be determined by litigation in the Tribunal.

If the parties are unable to agree to a list of issues and a list of agreed facts, each party will be required to lodge its own list of issues in dispute and facts relevant to those issues. Cost penalties will apply if parties unreasonably leave issues in dispute.

The mediation in the claims resolution process is not intended to be a formal legal proceeding and it is intended that the costs associated with the process will be minimised by the parties. In the interests of minimising unnecessary legal costs mediators may, under clause 30 of the Regulation, control who attends the mediation and may limit the number of representatives that a party has at a mediation session. This may be exercised by the mediator limiting representation by a barrister if they do not consider that representation by a barrister is warranted in the circumstances.

A key issue raised by plaintiff interests was the need to ensure that parties set out to resolve a claim through mediation in good faith. The draft regulation released for consultation has been varied to confer on the mediator the power to issue a certificate stating that in his or her opinion a party did not negotiate in good faith. The Tribunal then has the power to take this into account in awarding costs.

Madam President, the Review found that reforms to the existing common law system of determining dust diseases compensation will be most effective in reducing legal, administrative and other costs if they encourage defendants to resolve disputes as to contribution between defendants quickly and commercially and without delaying resolution of the claimant's claim.

Division 5 of the Regulation relates to apportionment of liability between defendants and is intended to encourage defendants to take a realistic approach to apportionment matters and seek to settle disputes about contribution quickly.

Under the Division, if defendants fail to agree on apportionment within the specified time the Registrar will refer the matter to a Contributions Assessor for determination. Contributions Assessors will then determine the contribution each defendant is liable to make to the plaintiff's damages.

This assessment will be binding for the purpose of resolving the claimant's claim, but can be challenged in subsequent proceedings before the Tribunal.

Contributions Assessors make their determination on the basis of the information provided by the parties during the early exchange of information stage and "standard presumptions" as to apportionment, which will be contained in an Order.

The Government adopted the Review's recommendation that the Attorney General's Department and The Cabinet Office convene a meeting of defendants and insurers to discuss contribution between defendants and the use of a single claims manager by all defendants to a particular claim. The defendants' meeting was held on 21 March 2005. The development of standard presumptions was discussed at this meeting.

Defendants were unable to agree on the standard presumptions which should be used to apportion liability among themselves. In the absence of agreement the Government has developed standard presumptions.

The standard presumptions were set out in the draft *Dust Diseases Tribunal (Standard Presumptions – Apportionment) Order* 2005, which was released for public consultation on 12 April 2005 with the draft Regulation. The Order is currently being finalised and should be available in the immediate future.

It is not intended that parties will need to prepare lengthy submissions on apportionment. The Contributions Assessor will apply the standard presumptions contained in the Order quickly, on the basis of the information available to them after the early information exchange.

The standard presumptions are flexible and the Contributions Assessor will be able to take into account new factual circumstances which arise and future decisions of the Tribunal.

The introduction of standard presumptions will reduce costs and result in faster settlements so that claimants get their compensation sooner. While the early exchange of information should put defendants in the position to assess the claims made against them, the prospect that a "standard presumption" will be used to apportion liability among defendants should also focus defendants on resolving apportionment issues in a commercial manner.

The decision of the Contributions Assessor cannot be challenged by the defendants until after the plaintiff's claim has been settled or determined. Defendants will be able to challenge the determination after the claimant's claim has been settled or determined, but the challenging defendant will be liable for indemnity costs for other parties if the challenging defendant does not materially improve its position. A defendant will only materially improve their position if they achieve a ten percent or $20 000 reduction in their apportioned share of liability, whichever is the greater.

A defendant that wishes to challenge a decision of the Contributions Assessor can, if the mediation is successful, require that the claimant give sworn evidence at the end of the mediation in respect of matters relevant to contribution.

The Government expects that Counsel may be required for the taking of the claimant's evidence after a successful mediation. The Government does not, however, expect that it will be necessary for Counsel to attend the mediation. Therefore mediators will make arrangements that will enable Counsel to be able to attend the taking of the claimant's evidence without needing to attend the mediation, again reducing costs.

At the meeting of defendants organised by the Attorney General's Department and The Cabinet Office, defendants and insurers were asked to consider the merits of using a single claims manager to manage claims on behalf of all defendants.

After considering those discussions, the Government considers that a sufficient case has been made to implement arrangements for the use of a single claims manager by legislation.

Accordingly, Division 6 of the Regulation requires single claims managers to be used in all multiple defendant claims, unless defendants agree not to use one.

I note that defendants have expressed differing views on the merits of a single claims manager. Insurers have in particular highlighted the success of these arrangements in other areas as a means of reducing unnecessary cost.

Madam President,

The Government considers that many of the concerns expressed about the potential for the single claims manager to result in conflicts of interest are overstated. This is because, as detailed in clause 47 of the Regulation, the single claims manager will have no role or function in the determination of apportionment between defendants. Also, apportionment issues between defendants will have already been resolved by the time the single claims manager is appointed.

Clause 45 of the Regulation outlines the process to be undertaken to select the single claims manager.

The single claims manager will manage, negotiate and seek to resolve the plaintiff's claim on behalf of all defendants. Single claims managers will be taken to have authority to settle the matter with the claimant. Defendants are able to impose a monetary limit on the authority of the single claims manager to settle the claim, but they must act reasonably in imposing that limit. The role and functions of the single claims manager are set out in clause 46 of the Regulation.

Both defendant and plaintiff interests expressed concern that a defendant could frustrate the process by setting an unreasonably low settlement limit on a single claims manager. This has been addressed in the Regulation by providing for the mediator in any subsequent mediation to issue a certificate to the effect that the defendant has not acted in good faith.

The role of the single claims manager does not, in any way, limit or interfere with the ability of each defendant to prepare and serve the defendant's reply to the plaintiff's Statement of Particulars. The use of a single claims manager does not affect each defendant's right to attend and be represented at, the mediation of the claim with the claimant. Each defendant will also be able to question the claimant on issues relating to contribution if the claimant gives evidence at the end of the mediation.

The costs of the single claims manager will be shared among the defendants. Clause 48 outlines the model for distributing the costs of the single claims manager between defendants. Clause 48 also provides that a scale of costs for use in determining the operational costs of the single claims manager may be introduced by Order.

The Government considers that there are likely to be significant cost savings by introducing single claims managers in multiple defendant claims. This will provide defendants with an opportunity to significantly reduce their costs and will streamline the resolution of the plaintiff's claim.

The bill also inserts new Parts 5 and 6, relating to subpoena and offers of compromise, into the regulation. These Parts will apply to all Dust Diseases Tribunal claims, not just asbestos related claims.

Part 5 introduces procedures for managing subpoena which are based largely on the innovative procedures that have been adopted in the District Court and which have substantially reduced the number of appearances required by the parties.

Part 6 strengthens the provisions in relation to offers of compromise to make them more effective. Under Part 6 parties will be able to make offers of compromise both before, during and after mediation. The time for which an offer of compromise must remain open will be changed, according to the stage of the claims resolution process that the claim has reached.

Part 6 also provides greater incentives to the parties to resolve claims. Any party who elects to reject an offer of compromise and proceed to the Tribunal and who does not improve its position will risk incurring a cost penalty. This will ensure parties take a more realistic approach to settlement. The Tribunal must impose the cost sanctions and will only have a limited discretion to decide not to impose the penalties.

Under the new claims process there will be a need to manage the risk that some parties will deliberately not participate in the new claims resolution process in good faith, or will otherwise fail to meet their obligations as part of the new claims resolution process.

One strategy for controlling this risk is for the claimant or defendant to serve an offer of compromise on the other party. This strategy is likely to be much more effective as a result of the strengthening of the offer of compromise rules.

The bill implements recommendations of the Review to improve processes so that they are effective. Parties should get the information which they need to assess their positions as early as possible. The parties are also provided with the tools to encourage the early settlement of claims, thus reducing legal costs.

Even with these reforms, however, it will still be up to the parties to obtain the benefits of the reforms by, for example, making offers of compromise which are realistic and which are intended to promote settlement. The parties will need to approach claims with the intention of resolving them quickly and efficiently.

This is particularly the case for defendants who will need to take a commercial approach to resolving claims. It will be essential that defendants weigh the potential costs of taking particular actions, such as ordering an additional medical report rather than relying on the claimant's report or in deciding to join or cross-claim against another defendant, against the benefits that such action might have in terms of the defendant's overall position on the claim.

One of the key recommendations of the Review was that there be a further review in 12 months time to assess how the scheme is performing.

To ensure that reliable data is available for the purposes of this review, the bill amends the Act to require legal practitioners to report information on claims.

The Review found that there was very little reliable data on claims and claim costs.

Clause 79 of the Regulation provides that from 1 July 2005 information on all claims settled or determined must be provided to the Registrar of the Tribunal.

This information will provide the Government with a reliable source of information to assist understanding of these claims and support future policy making. The information will be provided in a standard form and will include information on the claimant's injury, the amount of damages obtained and details about the party's legal costs and disbursements on a solicitor/client basis. The bill and regulation contain stringent confidentiality provisions to ensure that the privacy of parties is maintained.

The individual reports provided to the Registrar will not be subject to the Freedom of Information Act 1989. The Government will, however, be able to request the preparation of consolidated, de-identified reports of the information contained in the database. These data reports will be subject to applications under the Freedom of Information Act 1989.

The data collected as a result of these provisions will be a valuable source of information and will greatly assist future reviews of this area. More importantly, the availability of such data will inform the parties of areas of unnecessarily high costs so they can modify their behaviour if they wish to reduce costs.

A number of other changes are also made by the bill.

The bill also amends the Act to require a judgment of the Tribunal to identify issues of a general nature determined on the basis of their determination in earlier proceedings, which prevents issues being re-litigated or reargued.

The bill and regulation also make a number of amendments in light of the Tribunal's inclusion in the Civil Procedure Bill 2005 and the Uniform Civil Procedure Rules.

The Review recommended that the Tribunal be included in the Civil Procedure Bill when it was introduced into Parliament. The Civil Procedure Bill was introduced on 6 April 2005.

The Civil Procedure Bill and the Uniform Civil Procedure Rules will consolidate provisions about civil procedure that are currently found in a number of different Acts and rules into a single Act and set of rules.

Some aspects of the Civil Procedure Bill and Uniform Civil Procedure Rules need to be modified to apply to the Tribunal, to take account of the Tribunal's specialised jurisdiction and the new claims resolution process.

Amendments to the Civil Procedure Bill are contained in Schedule 3 of the bill. Schedule 4 of the bill contains an amendment to the Dust Diseases Tribunal Rules in light of the Civil Procedure Bill and Rules.

Schedule 4 of the bill also amends the Dust Diseases Tribunal Rules so that the number of interrogatories is limited to 30 as they are in the existing Supreme Court Rules 1970.

I would like to emphasise that it will now be up to the parties to ensure that they and their lawyers use the tools contained in the Bill and Regulation. Much of the success of these reforms depends on the parties and their legal representatives actively using the new procedures in good faith.

It should also be noted that there are a number of other changes currently impacting on the dust diseases jurisdiction. The recent decision of the High Court in *Schultz* has apparently reduced the scope for claims to be brought in the Tribunal, and some claims may be transferred to other jurisdictions. It needs to be recognised that this uncertainty might affect the operation of the system.

It also should be recognised that there is a risk that in the short term legal costs could in fact increase as parties 'test' the limits of the new system, particularly in relation to the proposed standard presumptions on apportionment.

The Review's report recommended that the new claim resolution process commence on 1 July 2005. The Government intends to progress the legislation through Parliament before the end of May. The support of all Members is sought for this to occur. This will give both plaintiff and defendant practitioners a full month to prepare before the new system commences on 1 July 2005.

I again emphasise that defendants in particular have a large role to play in reducing costs. They will need to take a commercial approach to resolving matters so that they can achieve the full of benefits of this new system. While it will take time to settle, longer term the prospects for real savings to be achieved are substantial.

I commend this bill to the House.

The Hon. GREG PEARCE [2.32 p.m.]: The Opposition supports the bill, which arises from a review established by the Government after the conclusion of negotiations with James Hardie Industries. The significant intention of the bill is to identify cost savings within the existing common law system without impacting adversely on the compensation rights of claimants. Last December the Government announced that the implementation of the review, which was conducted by officers of the Attorney General's Department and Cabinet, with the passage of the bill is condition precedent to the agreement by James Hardie Industries with regard to asbestos compensation. We understand the review process involved extensive consultations and that stakeholders generally are very supportive of the bill.

In summary the bill introduces a new process aimed at reducing the time taken to resolve claims, and reducing the legal and administrative costs of those claims. The new claims resolution process, which will be introduced under the regulations pursuant to the legislation, takes claims away from the tribunal while the claims resolution process is implemented. The bill provides for compulsory remediation and imposes cost sanctions for failing to participate in mediation in good faith and for unreasonably leaving issues in dispute following unsuccessful mediation. I am sure all honourable members support the bill, given the particularly difficult emotional and other issues involved in asbestos and dust diseases claims. The Opposition, together with the Government, supports the continued role of the Dust Diseases Tribunal, which is a unique institution in Australia with a reputation for dealing conscientiously with difficult claims and giving due respect and attention to the needs of applicants.

Both the Opposition and the Government acknowledge the work and the contribution of judges and other participants in the tribunal, including John O'Meally, the current president of the tribunal. The only significant concern is that the legislation provides for regulations that may override it—the Henry VIII clause argument. I will not go into that in detail, except to acknowledge the work of the Legislation Review Committee, which has considered the matter. On this occasion—although we hope it does not become a problem—the Opposition accepts the nature of the changes and will not object to that approach. The regulations provide court rules for the conduct of these claims that involve a great deal of difficulty, but they can be adapted and changed to reflect the process and procedures adopted. Accordingly, the Opposition supports the legislation.

Ms LEE RHIANNON [2.37 p.m.]: The Greens also support the bill, which will establish a new claims resolution process for asbestos-related compensation claims. I understand that the passage of the bill is condition precedent to James Hardie Industries providing funding for asbestos compensation. The conduct of James Hardie Industries will be remembered as one of the most shameful acts in Australia's corporate history. As we know, time is of the essence for those who face life-treating asbestos-related illnesses and for their families, who face an uncertain future. A process that reduces the time it takes to settle claims and costs is valuable. I understand that considerable negotiations were involved, and many issues had to be worked through, to produce the bill, and I congratulate the Government on its work in that regard.

The Greens have spoken to Bernie Banton, President of the Asbestos Diseases Foundation. Many members have met him and many others would know him from his television appearances. His work and that of his partner, together with the efforts of many other victims of asbestos-related diseases, has been truly amazing. I congratulate Bernie and his colleagues on their achievements. We spoke to Bernie to get his feedback on the bill, and I understand that he is very happy with it. He spoke about the hard work undertaken by victims, their representatives and the union movement to bring forward the legislation we are debating today. It has been a long slog for victims who are fighting to achieve justice as a result of James Hardie Industries skipping the country and leaving behind inadequate funds to pay for asbestos-related claims.

Everybody knows that a stage should not have been reached that required Government intervention. James Hardie knew about the damage that its products caused yet denied liability for many years. The company used various tricks that are frequently resorted to by the corporate world when profits are threatened. Sadly, at the instance of asbestos-related litigation, the company used evasion strategies that resulted in it fleeing Australia's jurisdiction in an effort to safeguard its profits. In spite of that, people such as Bernie Banton took the fight up to James Hardie. I do not believe that justice entirely has been done because people are still paying for the company's negligence with their poor health and very often with their lives, but at least justice has been done to a large extent.

Long-term compensation negotiations continue with James Hardie. The Government's three-year funding program of the new Asbestos Disease Research Institute at the Concord hospital is an initiative of the union movement and the Asbestos Diseases Foundation. Bernie Banton has provided feedback on the developments of the research institute. It is important to keep in mind future research needs that become so apparent when the impact of asbestos-related diseases becomes a reality. The research issue is important for Australia because this country leads the world in the incidence of asbestos-related diseases—a record that Australia would certainly prefer not to have. The number of people diagnosed with mesothelioma and other asbestos-related diseases increases every year.

The Australian Manufacturers Workers Union [AMWU] and the Construction, Forestry, Mining and Energy Union have conducted extensive research into asbestos-related disease. The AMWU has compiled some very alarming statistics indicating that approximately 18,000 workers will die from asbestosis and related lung cancer and mesothelioma over the next 10 years. I had hoped that the statistics were wrong, but currently there

is every indication that the number of victims of asbestosis and related diseases will steadily increase. As a society, Australia has to recognise its obligation to ensure that assistance is given to people who, through no fault of their own, are suffering and perhaps will face an early death. Everything possible must be done to discover how best to fight and treat this dreadful disease.

Breakthroughs in medical research are always possible, and that is why research is so important. I do not think anyone believes that there will be a quick fix to save lives, but greater medical research is nevertheless valuable in order to learn how asbestos-related diseases manifest themselves and to create ways of reducing some of the suffering that many people are experiencing today. While the Asbestos Disease Research Institute at Concord hospital has been funded by the New South Wales Government over three years, an additional two years of funding is necessary to attract the top-class experts that will be needed to lead the institute's research programs. Clearly, to even consider accepting such a position, top-class doctors and specialists in this field require some certainty of tenure and an assurance that their roles will continue for a reasonable period. I understand from those who work in the field that a three-year tenure is not sufficient to attract the calibre of specialists that the institute needs, and the foundation hopes it will get, to lead research projects.

The Asbestos Diseases Foundation is asking James Hardie, CSR and large drug companies to fund the two-year funding shortfall. I wish the foundation luck. It is important that companies reaping massive profits should continue to give something back to the community, but particularly when there is a specific need, such as the research identified by the foundation. The Greens are pleased to support the bill. We congratulate the Government on introducing the bill and thank everyone who contributed so much to bringing it before the Parliament, particularly the victims of asbestos-related diseases.

Reverend the Hon. FRED NILE [2.44 p.m.]: The Christian Democratic Party supports the Dust Diseases Tribunal Amendment (Claims Resolution) Bill, which will amend the Dust Diseases Tribunal Act and the Dust Diseases Tribunal Regulation to implement the recommendations of the Review of Legal and Administrative Costs in Dust Diseases Compensation Claims. As other members are pleased, Christian Democratic Party members are also pleased that this bill has been introduced, albeit after considerable negotiations and hard work. Hopefully the result will be the expedited resolution of claims and payments of compensation to victims. As other members have said, James Hardie tried to evade its responsibilities by shifting its corporate headquarters to Holland.

I am pleased that over a period of almost a year the company has been forced to negotiate a fair and just arrangement for victims of asbestosis who have made claims for compensation. At one time the company cried poor mouth and claimed that its profits were decreasing while its share value was dropping. However, I noticed during the past week there has been a remarkable turnaround in James Hardie profits. Hopefully the company will be generous in ensuring that those who have become fatally ill as a result of using their products are justly compensated. Victims of asbestosis experience a great deal of suffering.

I am sure all honourable members congratulate Bernie Banton on his outstanding leadership on behalf of the victims of asbestosis. He has shown all the hallmarks of a true soldier as he has battled for negotiation and compensation while suffering the effects of an asbestos-related disease. He carried out the responsibilities of that role in spite of the debilitating effects of his asbestosis, at a time when, quite justifiably, he could have decided to look after himself instead. He exhibits the true heart of a Christian by demonstrating compassion for all sufferers of asbestosis: He selflessly travelled the extra mile. I am very pleased to know him and to be a friend to him and his wife.

The bill provides for the establishment of a new claims resolution process that will focus on the early exchange of information and the compulsory mediation of claims. The new claims process will apply only to asbestos-related claims. The bill and regulation will not affect the right of claimants to commence proceedings in the Dust Diseases Tribunal. As I have said, a great deal of consultation preceded the presentation of this bill. That consultation was conducted by the Director of the Attorney General's Department, Mr Laurie Glanfield, and the Deputy Director General of the Cabinet Office, Ms Leigh Sanderson, in conjunction with Mr Greg Combet of the Australian Council of Trade Unions, Mr John Robertson of the New South Wales Labor Council and Mr Bernie Banton, who represented asbestosis victims. As a result of that consultation, a recommendation was made that the New South Wales Government initiate a review to identify cost savings within the existing common law system without impacting adversely on the compensation rights of claimants. I am pleased that the Government agreed to establish the review.

Implementation of the findings of the review is a precondition to James Hardie Industries providing funds for asbestosis compensation. As I noted earlier, stakeholders have been extensively consulted throughout

the review process and during development of amendments to the regulation. The review released an issues paper late last year and received 31 submissions from stakeholders, which assisted the preparation of the report on the review. The report was released on 8 March 2005, the same date on which the Government adopted recommendations of the report.

Following release of the report on the review, a draft regulation to establish the new claims process was released for public consultation. That consultation occurred with defendants on a number of specific issues relevant to multiple defendant claims. The numerous meetings were profitable and resulted in the introduction of this bill. The amended regulation will provide a new claims resolution process for claims involving asbestos-related conditions. The amended regulation will provide new procedures for the issue of subpoenas and the acceptance of offers of compromise and for requiring detailed information about the settlements or determination of claims to be provided to the registrar of the tribunal.

The bill amends the Act to provide an extensive regulation-making power that will authorise the making of the regulations. The amended Act will clarify the extent of the jurisdiction of the Dust Diseases Tribunal by providing that the tribunal's jurisdiction to determine claims for damages in respect of dust-related conditions extends to claims for contribution between tortfeasors liable in respect of any such damages. One of the bill's hidden intentions is to reduce the costs that are tied up in legal expenses; expenses that are sometimes diverted from the victims of asbestos to lawyers. It is hoped that the new regulations will ensure that the maximum amount of money goes to the victims and not into the pockets of lawyers. The new regulations will lead to a rapid conclusion to claims so that victims will not be left in limbo. The Christian Democratic Party is pleased to support the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.51 p.m.]: The Australian Democrats are pleased to support the Dust Diseases Tribunal Amendment (Claims Resolution) Bill. It is our understanding that there has been reasonable consultation and that the bill represents a reasonable compromise. I hope that that is the situation; with bills dealing with overseas corporate entities one can never be quite sure what is around the corner. In a way the medium is the message. The current Dust Diseases Act comprises 23 pages and this amending bill, which looks after the asbestos procedures, comprises 98 pages. There is a message in there somewhere! This bill is the result of a review of the legal and administrative costs in dust diseases compensation claims.

The Asbestos Diseases Foundation of Australia [ADFA] was instrumental and fully involved in the review. ADFA was founded to address the needs and interests of men and women affected by an asbestos-related disease. The foundation aims to provide the wider community with information about the hazards of asbestos exposure and by doing so hopes to reduce the number of future victims. ADFA comprises victims of asbestos diseases, their families, friends and supporters. Its web site states:

> The number of people diagnosed with asbestos-related diseases will not peak until 2020—by then there will be 13,000 cases of mesothelioma and up to 40,000 cases of asbestos-related lung cancer. That's 53,000 cases of incurable cancer caused by asbestos over the next 20 years! (Estimated by Prof Henderson of Flinders University).
>
> Asbestos is a mineral mined from earth. It is composed of strong fibres, which are long and silky in appearance. When it is processed, many very small fibres are created. It is these deadly, invisible particles that can kill.

Because of the length of the particles, they flow into the airways effectively like an arrow; they go down the line of the airway. When they reach the bottom of the airway they turn obliquely, so they cannot be coughed out; they become trapped. The particles are too long, too big, to be digested by macrophage clean-up cells. In addition, they cannot be digested because they are mineral. Effectively the particles stay in the lungs in the same dose as they enter: a very deadly situation. A large number of people were exposed because of the ubiquitousness of the particles. People were extremely slow to recognise the disease, and even when it was recognised the mining companies belittled the evidence. The companies continued to mine asbestos, with very lax supervision by the authorities, who should have been far more prescriptive.

Government regulation of those industries is a sad history, even to this day, given the number of workplace deaths in Australia compared to those in other developed countries. Many people are at risk of asbestosis. When I was a child my father built two fibro sheds in our backyard. He drew lines on the fibro and cut along the lines with a saw. He asked me to blow away as much dust as possible to keep that line visible. I was chastised for being slow at blowing; I did not like the smell of the dust. Wasn't I wise! As with many things, if one finds a smell unpleasant or a vibration sensation unpleasant, one is probably right to avoid it. My young sister did not like to use an electric drill, because it vibrated. She said, "I don't want any 'lectric in me." She was right, because vibration white finger, caused by poor circulation due to vibrating tools, is well known, particularly in cold climates.

There have been attempts not to recognise repetitive strain injury [RSI] as a disease, despite the fact that hundreds of years ago it was well known that scrivener's hand affected those who wrote all day long, and that with changing technology the continual use of a computer leads to a variety of muscle strain. I believe that RSI is an ischaemic disease. Last week I heard a crazy theory that RSI is psychological. The naming of that disease remains a shame on the medical profession. The history of action taken to prevent those types of diseases does not reflect credit on those who have power to do so. It took a long time for people to realise that coal workers' pneumoconiosis was due to silica in coal rather than the carbon in coal. The carbon was biodegradable.

With lead poisoning, it was more than 50 years from when the problem was described until legislation was introduced to prevent it. Some time passed from when enzymes were first used in washing powders, and workers claimed allergic responses, and for protection to be introduced for workers. Even after some struggle with the manufacturers, enzymes are not always mentioned on packets of washing powders. Except for those packs with the word "sensitive" on them all washing detergents contain enzymes. If one is allergic to enzymes, one must be careful not to come into contact with the 1 per cent of detergents that do not specify they contain enzymes.

The cavalier approach to diseases caused by pollutants is considerable. Diseases that are currently specified in the dust diseases schedule arise mainly from dust pollutants, either mineral dust or the allergenic dusts of various woods or plant products. Those pollutants are capable of producing an allergic reaction which, if untreated, leads to impairment of respiratory function. The asbestos industry has been negligent, although I consider the term "negligent" to be far too weak: I prefer the term "culpable". My view is that the managing directors of asbestos companies ought to be charged and gaoled for their complete disregard for the welfare of the public and of workers in continuing to produce an unsafe product long after they knew it was unsafe.

A shady deal was done by companies in transferring their assets to Holland, away from the plaintiffs. The weak entity created under the Asbestos Diseases Compensation Research Fund was funded, according to the Jackson report, to the minimum level to have any credibility at all relative to the number of people affected by diseases and those projected by reputable medical authorities to be affected. Indeed, the company had the gall to ask ADFA to attend the launch of its foundation. The company representatives said that the company had set up a foundation to look after the plaintiffs. But ADFA was not fooled; it was not sure about the facts, and did not attend the launch.

The financial groups were happy with that and they said in the financial press, "They have gone overseas. There is no reason stop this." Corporate regulators were more than happy to bid them farewell and to assume that the amount that had been set aside was adequate, although clearly it was not. The Asbestos Diseases Foundation of Australia, and Bernie Banton in particular, took a gutsy approach to this issue. I believe that the backing by the union movement has been critical in assisting the Government to conduct an investigation into James Hardie Industries and to introduce this bill.

Even the Howard Government is considering introducing reciprocal rights with Holland relating to the obligations of corporations in Holland and in Australia. However, I have not heard any more about that. That issue was dealt with when the difficulties of having a corporate entity overseas were being discussed in the media. The asbestos industry was only trying to do what the tobacco industry has already done; it wanted to split up its financial operation and to hive off as many bits as possible so there was less chance of it being sued. R. J. Reynolds, which at one time was the biggest tobacco company in the world, bought the National Biscuit Company of America, or Nabisco, one of the largest food companies in the world. RJR Nabisco was in existence for a while but it split and dropped the name R. J. Reynolds.

The tobacco industry was also split. Amatil was a combination of Coca-Cola and British American Tobacco in Australia. When Philip Morris was marketing aggressively, Coca-Cola, which did not want to be associated with tobacco products as it gave its junk food products a bad name, wanted to split. British American Tobacco wanted to be more aggressive to compete with the marketing strategies of Philip Morris. At that time Philip Morris, which was targeting young girls by promoting small packages with an alpine theme, trying to make it exciting for teenagers, sailed as close as it could to the laws banning advertising to children. There was an internal change in Amatil which then split into British American Tobacco and Amatil, and that is now a junk food company.

Amatil owned the printing company Leigh Marden, which printed the packaging for tobacco products and which at that stage split away from Amatil. It was a high-grade printer because tobacco companies needed

clear images and perfect printing on cigarette packages, even though people were not aware of how imperfect their contents were. Leigh Marden, an excellent printing company that went on to produce bank notes for many countries, split off from tobacco and made itself a smaller target. It defended itself by resisting individual litigants and using delaying tactics. The idea behind that was to make them spend all their money until they either died or could no longer afford to litigate. That was successful until group action in America led to document disclosures.

We are now able to make more authoritative statements about what the industry is doing—something that we in the anti-tobacco campaigns had observed over a period of years in pubs and clubs and had mentioned, and are still mentioning, to deaf members of the media and regulators. The upshot of that was that tobacco-caused disease should be treated as another dust disease. In a sense it is a disease that is created by a pollutant. The marketing and distribution of that pollutant are under the control of corporations. Those corporations, like the asbestos companies, should be brought under the aegis of this bill. I shudder to think what size bill we would then require to try to get those powerful corporate interests brought to justice.

This bill is an attempt to deal with the procedural objections that James Hardie had to the Dust Diseases Bill and its enthusiasm to spend no money on lawyers. That is all very well except it meant that, as often happens, when we do not involve lawyers who have some experience, we have ants negotiating with elephants, or plaintiffs negotiating with huge corporations and insurance companies that do that sort of thing for a living. Those naive persons, who have only one chance to try to save what money they can from their destroyed lives, are being crushed one at a time. That must not be allowed to happen. I am never 100 per cent confident in these matters, but I hope that the 96 pages of this bill—it is four times the length of the Act it is amending—address that issue.

We need this bill if we are to deliver justice for these people. This type of justice ought to be delivered more widely. I congratulate the people in the Asbestos Diseases Foundation of Australia and the Australian Council of Trade Unions for the part they played in the drafting of this bill. Greg Combet was prominent in those negotiations. I hope the Government has it right and that it looks after these people, many of whom were exposed to diseases long after government action should have mandated workplaces as being free of asbestos dust.

The Hon. ERIC ROOZENDAAL (Parliamentary Secretary) [3.06 p.m.], in reply: I thank all honourable members for their contributions to the debate on this bill and I commend it to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

APPROPRIATION (BUDGET VARIATIONS) BILL

Second Reading

The Hon. ERIC ROOZENDAAL (Parliamentary Secretary) [3.07 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Appropriation (Budget Variations) Bill 2005 is a key part of the annual budget process.

It ensures that all variations of expenditure from the annual Appropriation Act are reported and submitted for approval to the Parliament. Throughout the year, the Government is required to cater for unforeseen and urgent expenditures that were not forecast in the annual Appropriation Act that was finalised before the start of the financial year.

The Bill ensures that there is a transparent process for examining this expenditure.

And so, this practice of seeking approval for supplementary appropriations to cover payments not provided for in the annual Appropriation Act has now become an important part of the annual budget process.

This is a process that has been endorsed by the Auditor-General as well as the Legislative Council's General Purpose Standing Committee No 1 in its report on appropriation processes.

However, it is not always possible to seek Parliament's authority in advance for pressing expenditure needs and the Parliament has previously established procedures to provide for this eventuality.

To ensure the Government is able to meet unforeseen expenditure, each year the Parliament makes an advance available to the Treasurer, the Treasurer's Advance.

In addition, section 22 of the *Public Finance and Audit Act 1983* allows the Governor to approve expenditure for the exigencies of Government from the Consolidated Fund, in anticipation of appropriation by Parliament.

The Bill has four key features. It:

1. Firstly, provides an account to Parliament on how the Treasurer's Advance has been applied for recurrent and capital expenditure;

2. Secondly, seeks an adjustment of the Advance prior to the end of the current financial year;

3. Thirdly, seeks appropriations to cover expenditure approved by the Governor under section 22 of the *Public Finance and Audit Act 1983*; and

4. Finally, seeks additional appropriation for payments which are intended to be made in the current financial year where no provision was made in the annual Appropriation Bill.

Schedule 1 of the Bill covers appropriations for 2004-05, and schedule 2 covers payments made in 2003-04. The payments from 2003-04 have already been brought to account in the agencies' audited financial statements and have no impact on the published Budget result for that year.

This Government, in presenting further Appropriation Bills, has sought, as far as possible to ensure the Parliament has the opportunity to scrutinise anticipated additional funding requirements prior to expenditures being incurred.

The Appropriation (Budget Variations) Bill 2005, in respect of the 2004-2005 financial year seeks:

- appropriations of $214.059 million in adjustment of the Advance to the Treasurer;

- $152.907 million for recurrent and capital works and services approved by the Governor under Section 22 of the *Public Finance and Audit Act 1983*; and

- additional appropriations of $144 million.

Schedule 1 of the Bill has a full account of how the Treasurer's Advance has been applied this year.

The Treasurer's Advance payments in 2004-05 highlight the commitment the Carr Government has to ensuring appropriate services for the community, and includes:

- $34 million to the Department of Infrastructure, Planning and Natural Resources;

- $33.6 million for ageing, disability and home care services;

- $16.346 million to Police for Information Management and Technology Strategic Plan implementation;

- $12 million for metropolitan bus services reform;

- $8.494 million for the development of Parramatta Justice Precinct on the former Parramatta Hospital site;

- $8 million for public road upgrades; and

- $7.9 million additional funds for the Adult Training, Learning and Support program and Post School Options program.

The additional appropriations in the Bill under Section 22 of the *Public Finance and Audit Act 1983* for 2004-05 include:

- $74 million for the Port Macquarie Base Hospital purchase and buyout of the operating contract

- $39.2 million for the opening of 200 new hospital beds and an elective surgery waiting list reduction program; and

- $9 million for drought assistance loans, provided under the Special Conservation Scheme.

An additional appropriation of $144 million is sought towards an operating subsidy to Rail Corporation.

The Bill also seeks appropriations to adjust certain payments made during the 2003-2004 financial year either from that year's Advance to the Treasurer, or approved in that financial year by the Governor under Section 22 of the Public Finance and Audit Act.

Additional funding in 2003-2004 was provided for the retirement of debt, additional payment to the Liability Management Ministerial Corporation to reduce unfunded superannuation liabilities, Teachers 5.5% award increase and towards improved health, education and transport services.

Each of the payments made in 2003-04 have been included in the audited financial statements of the relevant agencies for that year.

The practice of introducing further Appropriation Bills has enhanced accountability for the expenditure of public moneys from the Consolidated Fund.

It is further evidence of the Government's commitment to transparent and full financial reporting to the Parliament and the community.

I commend the Bill to the House.

The Hon. GREG PEARCE [3.08 p.m.]: We are again dealing with an Appropriation (Budget Variations) Bill. I note that the newly appointed left-wing Treasurer stated in his speech in the other place that this is now part of the annual budgetary process. To an extent that is true. What is of concern to the Opposition is that the Government in this State has been crying poor and claiming that everybody other than the Treasurer and members of the Government are to blame for the problems in New South Wales, in particular for the running down of infrastructure in New South Wales. This bill is more clear evidence of the Government's inability to manage the New South Wales budget. It is falling into the trap of waste, mismanagement and largesse.

Last year's budget totalled approximately $38 billion so we must ask why the Government is now seeking approval for additional appropriation of almost $1.4 billion to cover overruns, unplanned expenses and budgetary changes. We contend that the Government should have done better: It should not need to ask Parliament for such a large approval. This Government is the highest-taxing government in New South Wales history. It is led by Premier Bob Carr, who never saw a tax he did not like or a tax he could not hike. We have new taxes all the time, notwithstanding the record GST revenues—to use the description adopted by various Ministers—flowing to the Government, which are well in excess of what was expected when the Premier signed the GST intergovernmental deal in 1999. In addition, in the past eight or nine years this Government has benefited from about $7.2 billion in extra, unbudgeted revenue, which it has squandered because it cannot manage the economy.

When the Treasurer introduced this bill in the other place he said that it provides an account to Parliament on how the Treasurer's Advance had been expended—that is laudable—seeks appropriation to cover expenditure approved by the Governor under section 22 of the Public Finance and Audit Act 1983, and seeks additional appropriation for payments that are intended to be made in the current financial year where no provision was made in the annual Appropriation Bill. The Treasurer went on to list a number of expenditures in relation to various departments, which are quite understandable on first reading and allow the Parliament to scrutinise the Government's expenditure.

However, when the shadow Treasurer, the honourable member for Southern Highlands, Peta Seaton, examined the bill in detail, she discovered the real story behind these budget overruns. The honourable member for Southern Highlands pointed out in her speech in the other place that the new Treasurer had been forced to raid the budget at the last minute in order to pay for $891 million in additional expenditure incurred by, to use her words, "indulgent Ministers and fat bureaucracies". That brings the total cash raided through appropriation variations bills to fund budget overruns—notwithstanding the extra $7.2 billion that the Government has received over the years through extra taxation revenue—to $8.68 billion, or almost $1 billion in every year since Bob Carr became Premier.

If we ignore the new left-wing Treasurer's speech and examine the bill, we find that some of the expenditure is quite outrageous. For example, brand-new office fit-outs for Frank Sartor's new bureaucracy cost $532,000. There was a brand-new office fit-out for the Minister for Western Sydney, Diane Beamer. She is no doubt luxuriating in her new office, which cost $575,000—the total is buried in this Appropriation (Budget Variations) Bill—while the poor 450 former Orange Grove employees and business owners are struggling to survive. But, it is no worries for Di Beamer.

The Hon. Duncan Gay: They can come in and share her office.

The Hon. GREG PEARCE: She has several offices, including the one in Western Sydney that cost $575,000. New offices and information technology for the Natural Resources Commission cost $450,000. Some $1.5 million was spent on improving Minister Della Bosca's organisational capacity in his bureaucracy. That is a beauty. The Minister certainly has plenty of bureaucracy! An extraordinary item was a $144 million subsidy to State Rail to make sure that the trains did not run on time. Combined with that $144 million to State Rail, which did not help at all—

The Hon. Duncan Gay: It was to change the on-time running so if you are 15 minutes late you are on time.

The Hon. GREG PEARCE: Yes, I think it must have been. The Government made sure that we knew about it because it also spent $700,000 on an information campaign about changes to public transport fares. That is another beauty: The Government wanted people to know that they would be paying more to catch a late train, if one arrived at all. All that information is in the detail of this bill. Of course, the Premier likes to dip in when there is some spare money, so he spent an extra $450,000 on a filing system. I can understand why he needed it because this year the Opposition embarrassed him by exposing the $3.2 million that he paid last year to Rehame to collate his newspaper clippings. The Premier was embarrassed when we told him repeatedly that he should try to read the newspapers himself instead of wasting $3.2 million of taxpayers' hard-earned money. When the Premier decided not to renew that contract he needed somewhere to keep the newspaper clippings and photographs of his face, so he spent $450,000 on a new filing system.

The Hon. Duncan Gay: He'd need that for his broken promises.

The Hon. Peter Primrose: Point of order: I know that The Nationals and the Liberal Party have their differences, but the Deputy Leader of the Opposition keeps interjecting on the Hon. Greg Pearce. I am finding the speech of the Hon. Greg Pearce most amusing. I am enjoying listening to his speech and I ask that he be allowed to deliver it in silence.

The Hon. GREG PEARCE: To the point of order: I appreciate the praise from the Government Whip—members in this place do not often acknowledge that they are enjoying the contributions of those on the other side. The Deputy Leader of the Opposition has much more experience in this place than I. His comments to me are inspirational and instrumental in my making the speech that the Government Whip so enjoys. I ask you to rule against the point of order, Madam Deputy-President.

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): Order! Long-serving members who are experienced in the standing rules and orders of this House should not need reminding that interjections are disorderly at all times.

The Hon. GREG PEARCE: Thank you, Madam Deputy-President. I believe a person should quit while he is ahead so I accept the fulsome praise from the Government Whip—which I will include in my next newsletter—and conclude my speech.

Reverend the Hon. FRED NILE [3.19 p.m.]: The Christian Democratic Party supports the Appropriation (Budget Variations) Bill. The introduction of such legislation is a regular practice: it occurs each year. This process ensures that all variations of expenditure from the annual Appropriation Act are reported and submitted for approval of the Parliament. Throughout the year the Government is required to cater for unforeseen and urgent expenditures that are not forecast in the annual Appropriation Act that was finalised before the start of the financial year. This procedure is necessary to allow for the efficient operation of government.

The four key features of the bill are: it provides an account to Parliament on how the Treasurer's Advance has been applied for recurrent and capital expenditure; it seeks an adjustment of the advance prior to the end of the current financial year; it seeks appropriations to cover expenditure approved by the Governor under section 22 of the Public Finance and Audit Act 1983; and it seeks additional appropriation for payments that are intended to be made in the current financial year where no provision was made in the annual Appropriation Act. Therefore, it covers a number of important funds allocations.

In relation to the current debate about disability, I note that $33.6 million has been appropriated for the Department of Ageing, Disability and Home Care Services. An amount of $16.3 million has been allocated to NSW Police for information management and technology strategic plan implementation. Recently there has been controversy about the operation of buses. I note that $12 million has been allocated for Sydney metropolitan bus services reform. I hope that will lead to greater co-operation with private bus companies and greater happiness than in the past 12 months in the industry. An allocation of $8.4 million has been made for the development of the Parramatta justice precinct on the former Parramatta hospital site. For those practical reasons, the Christian Democratic Party is pleased to support the bill.

Motion agreed to.

Bill read a second time and passed through remaining stages.

PREVENTION OF CRUELTY TO ANIMALS AMENDMENT BILL

Second Reading

Debate resumed from 6 May 2005.

The Hon. IAN MACDONALD (Minister for Primary Industries) [3.23 p.m.], in reply: I thank all honourable members who have contributed to the debate on the Prevention of Cruelty to Animals Amendment Bill. I take this opportunity to recognise all the people involved in the activities of animal welfare organisations. Their dedicated work is essential for the maintenance of high animal welfare standards in New South Wales. In particular, I recognise and thank those officers of the RSPCA and the Animal Welfare League who conduct the necessary enforcement activities under the Prevention of Cruelty to Animals Act. Officers of the NSW Police must also be recognised for their important contribution to the enforcement of the Act. The significant work of veterinary practitioners both in treating animals and maintaining high standards of animal care in this State must also be recognised.

The amendments in this bill will significantly enhance the Prevention of Cruelty to Animals Act. The bill has two main aspects: improving the compliance and enforcement power provisions, and enhancing the role for enforcement groups to educate people on the proper care of animals. The bill also makes a number of minor, but very practical, changes to improve the administration of the Act. I note the concern expressed by the Opposition regarding the issue of penalty notices, a commonly used enforcement tool. I am advised that penalty notices will not be issued unless it is clear that an offence has been committed, the facts are simple and the agency would be prepared to take the matter to court, if the alleged offender wishes to exercise this right. Penalty notices would be appropriately issued in situations where a person demonstrates carelessness or shows ignorance of the law, rather than commits a deliberate act.

There will be clear guidelines for officers issuing penalty notices. Clearly, they would not be used to deal with violent crimes against animals or repeat offenders. Nor would they be issued indiscriminately. The required level of training and competency and the carriage of supporting documentation, combined with the knowledge that all penalty notice offences may be taken to court, will ensure that notices are issued appropriately. This is not a simple revenue raising activity for the Government as the Opposition has alleged; it is an appropriate response to a serious issue. The bill also improves the powers of the courts to make orders against offenders, and streamlines some of the procedural aspects of bringing prosecutions. The other main area of change is improving provisions that allow for educational activities. A system of directions is being introduced. These will allow officers to issue instructions to people on caring for their animals or for their animals to receive veterinary attention. There will be no penalty associated with the directions. The intention is that directions would be used to help people care for their animals.

I note the Opposition's concerns that by gaining entry onto farms enforcement officers might unwittingly introduce or spread infectious disease agents. Let me assure honourable members that the enforcement officers for the Prevention of Cruelty to Animals Act 1979 are responsible people who are not in the habit of conducting clandestine raids on farms with scant regard to biosecurity or other sensitivities of the farmers involved. The RSPCA inspectorate in particular, which conducts most of the enforcement activities on farms, is well aware of the risks of spreading disease on and between farms. Officers receive training relating to infectious diseases and the prevention of disease spread. I am informed that no intensive farm managers or contracting companies have prevented entry of RSPCA officers to farm premises. Nor am I aware of any incident involving enforcement officers where farm biosecurity has been jeopardised. To ensure that no problems occur, the RSPCA and the Animal Welfare League have developed standard operating procedures in consultation with the New South Wales Farmers Association, the Animal Welfare Unit and other persons with expertise in this area within the Department of Primary Industries.

These procedures encompass the biosecurity issues associated with farm visits and include a number of requirements, such as: as far as reasonably possible, officers are to obtain consent of the owner, manager and/or contracting company before entering restricted areas; officers are to take care not to take potentially risky things such as equipment or vehicles onto restricted areas without taking proper precautions; any officer who has had contact with pigs or poultry must not visit another farm holding these animals within the next 72 hours; officers must not reuse gear between farms unless properly disinfected or laundered; and officers must follow any reasonable requirements laid down by the manager of the farm. These may include the use of disposable clothing, footbaths, signing declarations regarding recent contact with risky stock, and being accompanied on farm by an employee.

Those agreed operating procedures have been in place for some months and inspectors now carry a more comprehensive kit to ensure that entry to farms and movement between farms poses no undue risk of spreading infectious disease agents. A number of other issues were raised during the debate, some of which are outside the scope of the bill, and others which are the subject of amendments to be introduced by the Greens in the Committee stage. I will take the opportunity to address relevant matters in the Committee stage. Overall, the Prevention of Cruelty to Animals Amendment Bill is a sound piece of legislation. It brings numerous improvements to the Act. As events of earlier this year have shown, cruelty to animals is more common than anyone in the House would wish. Our laws protecting animals from cruelty need to contain the types of powers that this bill introduces. The Government will seek to amend the bill in the Committee stage. The purpose of the changes will be to further enhance the operation of the Act. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

Mr IAN COHEN [3.31 p.m.], by leave: I move Greens amendments Nos 1 to 4:

No. 1 Page 4, schedule 1 [8], lines 1-3. Omit all words on those lines.

No. 2 Page 4, schedule 1 [9], line 4. Omit "**and (4)**".

No. 3 Page 4, schedule 1 [9], lines 13-16. Omit all words on those lines.

No. 4 Page 4, schedule 1. Insert after line 34:

[13] Section 24 (2)

Insert "or 21" after "section 19A".

Amendments 1 to 4 remove provisions that allow for coursing where a dog is used to hunt another animal. Coursing has recently been banned in England and Wales, which have a long history of hunting. This was in response to evolving public opinion on the cruelty involved in this type of hunting. An amendment to provide exceptions from the prohibition on coursing is a regressive step. Hunting with dogs is not an exact science. It is very possible that the hunted animals will not be killed instantly but will be left to a slow and painful death after serious injury. Further, there is no guarantee that hunting dogs will not attack non-target species, including native animals that may inhabit the same environment as the targeted species. The requirement that hunting activities produce "unnecessary suffering" in order to constitute an offence is vague and prone to different interpretations.

The escape or loss of hunting dogs in the bush increases the feral dog population, which is perhaps one of the greatest feral problems and is of great concern to farmers. As long as coursing is permitted for vertebra pest control it will continue to be a sport, as has been seen recently in the media regarding fox hunts in the Hunter Valley. In relation to fox hunts, I refer to an article in the *Sydney Morning Herald* of 16 April 2005 by Jordan Baker entitled "Every dog has its day—but nine times in 10 they're outfoxed". The article describes the English style of hunt and says:

> Britain has banned fox-hunting but the sport is alive and well in Australia, where it is legal on private property and foxes are pests that cost the national economy $227 million a year. There are no terriers to chase the animals out of their holes—a wiley fox is allowed his victory—but the end game is the same: to set a pack of hounds on a fox and kill it. From April to September, more than 20 hunting clubs across the country meet regularly.

The article quotes Berris Russ, a farmer who in her fifties took up fox hunting and is now huntmaster of the Hunter Valley hunt. She says:

> Some people hunt for the enjoyment of being able to dress in traditional attire and ride over the country. Some people like it for the social side. Some hunters admire the skills of the fox—its agility and its cunning.

She also said some landowners are keen to have hunters use their properties in the hope that that will dent fox population. The example given is:

> Last Sunday the hunters gathered at a property near Scone. They prepared horses and hounds there quietly. Etiquette dictates chatter be limited to greeting senior hunters with a "good morning" and a tip of the hat.

They say that 9 times out of 10 the fox gets away, but this is hardly an effective manner to deal with a feral animal. It is also, arguably, quite a cruel practice. As a Green, I support the culling of foxes. I see them around my area. I have had discussions with the National Parks and Wildlife Service on how to best cull these animals. I quote an ABC article of 16 May 2005:

> As the annual fox hunt continues in New South Wales Hunter Valley, the RSPCA says the State should follow the United Kingdom and ban the activity. …
>
> The RSPCA's chief inspector, David O'Shannessey, says the organisation would support any changes to state legislation to "outlaw" the practice.

He is quoted as saying:

> Certainly, I mean any situation where an animal's chased for sport obviously the animal that is being chased will suffer distress at being pursued by a pack of dogs. So, if there were changes in the legislation that saw it made illegal, that would be an advancement for the welfare of the fox in that regard.

That does not in any way suggest that the fox should be protected, but it is reasonable to argue that fox hunting is not the way to go. It has been banned in Britain. The Greens support effective targeting of specific pests using an appropriate and humane way of ridding our environment of those pests, in this case, foxes. There are many effective ways of dealing with the problem, but hunting with hounds is not one of those. With those comments, I commend Greens amendments Nos 1 to 4.

The Hon. IAN MACDONALD (Minister for Primary Industries) [3.36 p.m.]: Hunting with dogs has a history almost as long as humankind's involvement with hunting itself. Humans have used and relied upon dogs for companionship, warmth and assistance with hunting for many thousands of years. There are a number of types of hunting that involve the use of dogs. Some of those, such as the use of retrievers, provide beneficial animal welfare outcomes. Retrievers will fetch shot birds that are inaccessible and have been wounded. These retrieved birds can then be quickly and humanely killed by the shooter upon the return of the dog.

Pointing dogs assist hunters by tracking, showing the hunter the locality of prey, and by retrieving shot animals. They are not usually involved in the pursuit of the prey. Some dogs that do not chase and catch animals, such as fox terriers in the pursuit of mice and rats, also inflict little or no suffering on the hunted animal. Once caught, the small prey are dispatched instantaneously. However, section 21 of the current Act is not about the use of dogs for hunting wild, free roaming animals. This section is headed "Coursing etc prohibited" and is only intended to ban sporting-type activities, especially the blooding of greyhounds, where a prey animal is kept or confined and then released for chasing, catching and confining by dogs. Any suggestion that hunting with dogs should be prohibited is not in line with the intent of this bill and the range of amendments it includes. Consequently, the Government does not support Greens amendment No. 1. I indicate the Government will be opposing Greens amendments Nos 2, 3 and 4.

Greens amendment No. 2 is consequential upon the carriage of Greens amendment No. 3, and simply amends a heading. As the Government is not supporting Greens amendment No. 3, it does not support this amendment. Greens amendment No. 3 removes proposed section 21 (4), confirming that hunting with dogs is allowed provided no unnecessary pain is inflicted on the animal. Section 24 (1) (b) (i) of the Act allows the hunting of animals, including the use of dogs, so long is it is conducted without inflicting unnecessary pain. This Greens amendment seeks to remove a provision in the bill that simply confirms that hunting with dogs is permitted provided no unnecessary pain is inflicted on the animal. The clarifying provisions in relation to coursing do not seek to alter any of the Act's provisions relating to hunting, nor any provisions relating to hunting in the Game and Feral Animal Control Act. Any amendment to prohibit the use of dogs in hunting is inconsistent with the intent of the bill.

Greens amendment No. 4 is designed to ensure that hunting with dogs is prohibited. As I said, section 24 (1) (b) (i) of the Act allows the hunting of animals, including the use of dogs, so long as it is conducted without inflicting unnecessary pain. Hunting with dogs is a legitimate activity. But Amendment No. 4 makes it an offence. Not only does this create an inconsistency with the legislation, it is simply unacceptable. Any amendment to prohibit the use of dogs in hunting is not in keeping with the purpose of the bill and is not supported.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [3.39 p.m.]: The Opposition opposes Greens amendments Nos 1 to 4. The rhetoric that went with the amendments belied the fact that they seek to

stop a particular area. Pompous gits riding around in their red jackets, sipping sherry, blowing horns and jumping fences is not what the honourable member is trying to remove from the bill.

Mr Ian Cohen: You called them that, I didn't.

The Hon. DUNCAN GAY: I did, yes. The Minister summed it up. This is about areas where hunting dogs are useful. As the Minister indicated, the bill insists that there be no unnecessary pain. It is about pointers, retrievers and terriers. In many instances these dogs have been of vital use in the control of feral animals. The honourable member should have lived on my farm in the early and mid 1950s during the worst of the rabbit plague. We had to control the rabbits to stop the erosion of our area. The only way we were able to do that was with our rabbit pack, which pursued them, sniffed them, dug them out and removed them. The rabbits are now under control. Had we not got them under control the soil erosion on this continent would have been even more horrific than it is today.

Mr Ian Cohen: Myxomatosis would have been good.

The Hon. DUNCAN GAY: It was a big help.

The Hon. JON JENKINS [3.41 p.m.]: We often get very emotional about hunting with animals. I do not like the idea of fox-hunting when a fox is hunted down, cornered by a pack of dogs and then thrown back to the dogs. I agree with new section 21, which prohibits coursing where animals are kept and/or released to be chased and caught or confined by dogs. However, animal hunting is a very natural and intimate part of living. Human beings are probably the kindest of all hunters. We do not eat our prey while it is still alive. We kill it quickly, we cook it and we eat it. We have all seen the process of animals eating other animals. On television we see lions and other predators chase down animals and eat them while they are a live. The animal kingdom is quite a nasty place.

The Hon. Duncan Gay: You haven't seen the New South Wales right.

The Hon. JON JENKINS: I was told the left were the bad ones. Animals hunting, killing and eating each other is a very natural part of the process of our world. It is hypocritical for the Greens to come in here to talk about natural processes, what is natural and what is not, and imply that dogs and other animals hunting their prey and eating it is not natural.

Mr IAN COHEN [3.43 p.m.]: I ask the Minister for Primary Industries and, potentially, the Deputy Leader of the Opposition—

The Hon. Duncan Gay: The next Minister.

Mr IAN COHEN: That will be a decision made after an inter-major party discussion; it has nothing to do with the Greens. I would have thought it was important to consider the loss of hunting dogs in the environment and the major problem with feral dogs in farming areas. Has that point been missed or am I being irrelevant? If it is not relevant at this point I will certainly acknowledge that.

The Hon. IAN MACDONALD (Minister for Primary Industries) [3.44 p.m.]: There is no question that feral dogs and cats are a concern to the Government. The game and feral animal control legislation together with a number of other programs across the State are in place to deal with that problem. But let me make it very clear: dog owners have rights but also responsibilities. They must look after their animals, maintain them, control them and prevent them from becoming feral.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [3.44 p.m.]: I do not know how appropriate it is to ask questions of the Opposition in Committee, but being ecumenical I will answer it. I do not believe the loss of dogs is a huge problem. As both the Minister and the honourable member indicated, it can happen and in that regard people should be more responsible. A slightly bigger problem is hunters who release wild pigs into areas that have no wild pigs so that they can hunt them. I would hate anyone to think that I am tarnishing all people involved in those types of sports, but that is a greater concern than the loss of hunting dogs. Most dogs in wild packs come from the suburban interface. The family labrador and bitzer are joining feral dog packs rather than hunting-type dogs.

The Hon. JON JENKINS [3.46 p.m.]: I concur with the Deputy Leader of the Opposition. Most feral dogs are not pure breeds. The types of dogs that are used for hunting, particularly pig hunting, do not resemble

wild dogs at all. They are a quite different breed. I cannot speak about feral cats in New South Wales, but I can speak about them in Queensland. Feral cats are an horrendous problem in western Queensland. Genetic evidence from cats that have been shot and killed in western Queensland—I have been present when literally hundreds of cats have been shot—indicates that they do not come from the domestic gene pool. There is some evidence that they came from Indonesia before white man came to Australia. Genetic evidence certainly indicates that domestic cats are not the primary source of feral cats.

Amendments negatived.

The Hon. IAN MACDONALD (Minister for Primary Industries) [3.47 p.m.], by leave: I move Government amendments Nos 1 to 5 in globo:

No. 1 Page 6, schedule 1 [14], proposed section 24C (1), lines 25–28. Omit all words on those lines. Insert instead "An officer is required, in relation to the exercise of a power conferred on the officer by this Part, to provide the person who is subject to the exercise of the power with the following:".

No. 2 Page 6, schedule 1 [14], proposed section 24C. Insert after line 34:

(2) An officer is to take the action required by subsection (1) before or at the time of exercising the power concerned or, if to take the action at that time is not reasonably practicable, as soon as is reasonably practicable after exercising the power.

No. 3 Page 7, schedule 1 [14], proposed section 24D (2), lines 8 and 9. Omit "an officer of the Department of Primary Industries authorised by the Minister". Insert instead "the Director-General or a Deputy Director-General of the Department of Primary Industries".

No. 4 Page 7, schedule 1 [14], proposed section 24E (2), lines 20–24. Omit all words on those lines. Insert instead:

(2) Despite subsection (1), an inspector may exercise a power under this Division to enter a dwelling only with the consent of the occupier of the dwelling, the authority of a search warrant or if the inspector believes on reasonable grounds that:

No. 5 Page 12, schedule 1. Insert after line 33:

[16] Section 28A

Insert after section 28:

28A Offence of impersonating an authorised officer

A person must not impersonate, or falsely represent that the person is, an officer.

Maximum penalty: 100 penalty units or imprisonment for 6 months, or both.

Amendments Nos 1 and 2 will ensure that officers exercising powers under the Act make people aware that they are using the powers. If it is not reasonably practical to do so before they use the powers they must do so as soon as possible afterwards. The effect of Government amendment No. 3 is to limit the power of appointment of authorised officers to the Director General or the Deputy Director General of the Department of Primary Industries. The effect of Government amendment No. 4 is to ensure that officers who are exercising powers under the Act will be able to continue to access and inspect backyards and non-dwelling structures. The effect of Government amendment No. 5 is to create an offence of impersonating an officer who is appointed under the Act. I commend these amendments to the Committee. They were developed in consultation with the New South Wales Farmers Association and the Opposition.

Mr IAN COHEN [3.50 p.m.]: The Greens support the five amendments moved by the Government because they appear to be quite reasonable. The first amendment relates to a requirement of clear proof of authority. The second amendment consolidates the procedures when under certain circumstances, such as when a dog is suffering after having been locked in a car, there is no opportunity to notify the owner of the animal that action will be taken. The third amendment relates to the power of appointment being exercised by a senior member of the Department of Primary Industries rather than a non-specified officer. The fourth amendment refers to entry to premises on reasonable grounds, and the Greens believe that is fair. In relation to Government amendment No. 5, the Greens agree that a clear penalty should be provided for people who impersonate an authorised officer. The Greens believe that the amendments are acceptable.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.51 p.m.]: The Australian Democrats support the Government's five amendments because they are quite sensible. For the same reason, we support the overall thrust of the bill.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [3.51 p.m.]: It is interesting to note that during the Minister's reply he indicated that the Opposition's concerns were quaint but really were not of great significance. However, to the great credit of the Minister and his department, I note that the amendments moved by the Minister address the bulk of the concerns raised by the New South Wales Farmers Association and the Opposition about this bill. As a result of consultation between the Opposition and the New South Wales Farmers Association subsequent to the second reading of the bill the Government has presented amendments that go a very long way toward addressing the issues that we raised.

Government amendment No. 1 clarifies that an enforcement officer must produce evidence that he or she is an officer, that is, appropriate identification, and clarification of the reason for the exercise of power under the Act before or at the time of exercising the power. The Opposition certainly supports that amendment because it requires officers to identify themselves. People engaged in intensive industries in particular are concerned about the possibility of the bogus exercise of powers under the Act and unauthorised entry. Biosecurity is emerging as an issue of increasing significance, as I indicated in my speech during the second reading stage.

Government amendment No. 2 provides for circumstances in which it is not reasonably practicable for an officer to produce evidence and appropriate identification before or after exercising powers under the Act and permits an officer to produce evidence and identification as soon as reasonably practicable after exercising those powers. The classic example is that of a dog locked in a car on a hot day when its owner is not present. In those circumstances, an enforcement officer will be able to rescue the dog, as they should and must, without waiting for the owner to appear and identify himself or herself.

Government amendment No. 3 provides that a person of seniority within the Department of Primary Industries, such as the Director General or the Deputy Director General, will be responsible for the appointment of enforcement officers under the Act. The amendment addresses concerns expressed by the Opposition over inappropriate people adopting an important role. The amendment addresses terrorism and biosecurity issues, so the Opposition naturally supports it. I congratulate the Government on that amendment.

Government amendment No. 4 clarifies the intent of the bill. Before an inspector enters a dwelling, they must have the authority of an owner of the dwelling and the authority of a search warrant if he or she believes, on reasonable grounds, that an animal has suffered significant physical injury, or that entry is necessary to exercise a power to prevent further injury.

Government amendment No. 5 creates a new offence under the Act to provide that a person must not impersonate an officer or falsely represent that he or she is an officer. I again congratulate the Government on its amendments, which have the support of the Opposition.

Reverend the Hon. FRED NILE [3.54 p.m.]: The Christian Democratic Party supports the Government's amendments to the Prevention of Cruelty to Animals Amendment Bill. They are positive amendments and will serve to clarify the role and powers of officers under the legislation. With other honourable members, we support the amendments.

Amendments agreed to.

Mr IAN COHEN [3.55 p.m.], by leave: I move Greens amendments Nos 5 and 6 in globo:

No. 5 Page 13, schedule 1 [20], lines 29-31. Omit all words on those lines. Insert instead:

(1A) A charitable organisation may sell or rehouse, either permanently or temporarily, an animal to which this section applies (other than an animal that was surrendered by its owner to the charitable organisation), or cause any such animal to be humanely killed and its body disposed of, if:

No. 6 Page 14, schedule 1 [20], lines 4-6. Omit all words on those lines. Insert instead:

(1B) A charitable organisation may at any time sell or rehouse, either permanently or temporarily, an animal to which this section applies that was surrendered by its owner to the charitable organisation, or cause any such animal to be humanely killed and its body disposed of.

The term "dispose of" has negative connotations and conveys the idea that animals are merely objects that can be destroyed at the convenience of humans. The alternative phrase proposed in these amendments should be used to specify that animals should be treated humanely when being euthanased or rehoused. I commend the amendments to the Committee.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.56 p.m.]: The Australian Democrats endorse these amendments because they represent sensible minor improvements to the text of the bill.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [3.56 p.m.]: The Opposition has no problem with the amendments. I think they are sensible.

The Hon. IAN MACDONALD (Minister for Primary Industries) [3.56 p.m.]: The Government supports both amendments moved by the Greens. In relation to amendment No. 5, the Greens suggest that the term "dispose of" when applied to the sale or disposal of animals by charitable organisations reinforces the notion that animals are property that can be easily discarded as opposed to being living creatures with feelings and to which we owe a duty of care. That proposition is reflected in Greens amendments Nos 5 and 6.

Amendment No. 5 makes no practical difference to the legislation. I am assured that officers always endeavour to find the most appropriate and humane method of dealing with animals that are taken into the care of charitable organisations. Although the amendment does not provide any additional measures or options for dealing with seized, stray or abandoned animals, its wording is more aligned to the sentiments of the community, particularly those who love animals. Therefore, the Government does not object to the amendment.

For the same reasons expressed in relation to Greens amendment No. 5, the Government does not object to Greens amendment No. 6, which also does not provide additional options or mechanisms for dealing with surrendered animals that have been taken into the care of the RSPCA or the New South Wales Animal Welfare League.

Amendments agreed to.

Mr IAN COHEN [3.58 p.m.]: I move Greens amendment No. 7:

No. 7 Page 15, schedule 1 [23], line 21. Omit "12 months". Insert instead "3 years".

This amendment will allow for the use of prosecution material to be extended for up to three years instead of expiring after 12 months. There have been instances of video and photographic evidence of animal cruelty being rendered useless because a year has passed. A more appropriate time limitation is three years, which is the period that applies in Victoria. I understand that the Government does not support the amendments, and that is a great shame. The arbitrary period of 12 months in circumstances in which evidence is discovered at a later stage has proved to be a significant limitation. The amendment represents a reasonable option because it extends from one year to three years the period within which action may be taken. I suggest that the Government consider a two-year limitation if it decides that three years is completely inappropriate. That time limit will not penalise anyone in any way, although I am open to discussion on the matter. The amendment seeks an extension of the validity of prosecution material, and I believe that is reasonable. I commend Greens amendment No. 7 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.00 p.m.]: The Government does not support the amendment. Its effect will be the extension of the period for bringing prosecutions from six months to three years. At present proceedings for an offence under the Act must be taken to a Local Court within six months of the date of offence. Currently and appropriately the bill extends that period to 12 months. The extension is required because in a number of cases there may be complex investigations and the matter may not have been drawn to the attention of the enforcement agency until some time after the alleged offence was committed. Also, in some matters video or digitally recorded evidence of an offence may become available many months after the event. However, delays in bringing prosecutions can be onerous on the defendant and delays may incur unnecessary additional expenses.

Courts also frown on delays in the laying of prosecutions, even when they are laid within the limitation period. Courts often want explanations for the delay and may decline to enter convictions if they consider that an injustice has been done through an unwarranted delay. In setting the limitation period, it is important to strike an appropriate balance between the expeditious prosecution of matters and an allowance for both late reporting of incidents and investigative delays or difficulties. The 12-month period provided in the bill strikes such a balance and therefore an extension of the period is not justified. Accordingly, the Government does not support the amendment.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [4.04 p.m.]: The Opposition does not support the amendment. I was interested to hear the comments of the Minister on this amendment because until I

did I had not firmly made up my mind about it. The Hon. Ian Cohen attempted to justify his amendment by saying that it will allow for evidence to be discovered at a later stage. The instant he said that I was against the amendment, because, frankly, if no evidence is available in the first place the case should not be prosecuted. The prosecution process should not allow further evidence to be gathered at a later stage, the effect of which would be to leave a person the subject of the prosecution in limbo for up to three years. I cannot understand why the Hon. Ian Cohen would want to subject anyone to such purgatory. If the evidence is not available in the first place, the matter should not go ahead. The Government's limit of 12 months is clearly the right way to go.

Amendment negatived.

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.05 p.m.], by leave: I move Government amendments Nos 6 and 7 in globo:

No. 6 Page 15, schedule 1 [24], proposed section 34A (1), lines 26 and 27. Omit "any document (however described)". Insert instead "a document in the nature of guidelines or a code of practice".

No. 7 Page 15, schedule 1 [24], proposed section 34A. Insert after line 37:

(4) A document adopted as referred to in subsection (1) may be adopted wholly or in part, with or without modification and as in force at a particular time or as in force from time to time.

The effect of these amendments is to ensure that only guidelines can be prescribed under the Act and that as such guidelines are updated the updated versions are automatically prescribed. Amendment No. 6 seeks to clarify that proposed section 34A refers to the adoption of guidelines or codes of practice only. The section allows also a streamlined adoption of new editions of such codes when they become available. Currently a number of codes of practice for care and welfare of animals are adopted by reference into the regulations as guidelines. That is based on the provision of section 34A of the Prevention of Cruelty to Animals Act 1979.

To enable documents not described as "guidelines" to be adopted in that manner, the Act is to be amended so that guidelines, codes of practice and the like, may be adopted by reference into the regulation. The bill currently proposes that the regulation may prescribe guidelines or may adopt any document however described as "guidelines" relating to the welfare of species of farm or companion animals. However, despite the fact that no change has been made to the process by which a document can be adopted, concern has been expressed, including during the debate on the bill, that the wording "any document however described" could somehow allow inappropriate guidelines to be adopted. This matter is easily rectified by a short amendment.

The amendment to proposed section 34A (1) clarifies that only proper documents in the nature of a code of practice or guidelines can be adopted. Additionally, as a safeguard against the adoption of inappropriate documents, currently there is an initiative procedure in place that must be followed. That procedure requires that all documents adopted in this way must first be provided to the Animal Welfare Advisory Council and any appropriate industry body for them to comment on the provisions of the code or guidelines. Those documents must be approved by the Minister before they are finally published in the regulations. That process ensures that only rigorously examined and appropriate documents are referred to or accepted as legitimate codes of practice.

It is also important that any reference to a code should be kept up to date with the latest recognised and approved edition of that code. For example, the model code of practice for the welfare of cattle has been revised recently and the second edition was published in 2004. To allow efficiency in the recognition of revised codes, the Government proposes an amendment that will allow a reference to be automatically updated. If such an amendment is not introduced, reference to such codes could not be updated without making a change to the regulation that lists the codes. In certain instances that could involve a significant delay. Importantly, there is no change to the current provisions regarding consultation with the industry or the Animal Welfare Advisory Council over the context of the revised codes and their acceptability to the community. I commend the amendments to the Committee.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [4.08 p.m.]: The Opposition supports the amendments. As the Minister acknowledged, they have been proposed partly because of concerns raised by the Opposition during the second reading debate. In fact, of greatest concern was the wording "any document". The Opposition, the New South Wales Farmers Association and other groups expressed concern that the words "any document" could have included documents issued by radical green groups, any number of which are circulating on the Internet at any time. When a document passes through three or four different hands its authorship and/or the veracity of its claims are difficult to judge. In the wrong hands, the documents could have

been considered for adoption. It pays to be vigilant in these cases. The Opposition thanks the Government for removing that concern.

Amendments agreed to.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

Title agreed to.

Bill reported from Committee with amendments and passed through remaining stages.

COAL ACQUISITION AMENDMENT (FAIR COMPENSATION) BILL

Second Reading

The Hon. IAN MACDONALD (Minister for Primary Industries) [4.10 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The object of this bill is to amend the *Coal Acquisition Act 1981* to make provision for the payment of fair and consistent compensation under that Act. The bill amends the Act to ensure fairness between all compensation claimants. It will mean that a small group of remaining claimants' compensation claims will be assessed under the same royalty regime as that used for those claimants whose claims have already been settled. *The Coal Acquisition Act 1981* was introduced on 1 January 1982 to effect the acquisition of privately owned coal rights by the State. A compensation scheme was instituted under the *Coal Acquisition (Compensation) Arrangements 1985*. The Coal Compensation Board determines and pays compensation to former private owners of coal that was acquired by the State in 1982.

Payment of compensation pursuant to the *Coal Acquisition (Compensation) Arrangements 1985* is known as the Compensation Scheme, which has four claims for loss of estate in coal remaining of a total of almost 28,000. The former Coalition Government introduced the *Coal Ownership (Restitution) Act 1990*, which allowed some owners to apply for the restitution of their coal rights in lieu of receiving compensation. Subsequent amendments to the Coal Acquisition Act made by this Government in 1997 re-acquired some previously restored coal titles that were valuable to the people of New South Wales, and required the compensation payable under the *Coal Acquisition (Re-acquisition) Arrangements Order 1997* to be just and equitable. The Re-acquisition Scheme was established in accordance with these amendments and it has 125 applications remaining from a total of 400.

Since the Coal Compensation Scheme began, compensation of more than $650 million has been paid to date to former owners of private coal. Following the Commonwealth Grants Commission recommendation the New South Wales Government moved to an ad valorem coal royalty regime in line with that of other States. At the time of this recommendation the Grants Commission indicated that New South Wales would be further penalised if it failed to implement this policy. The introduction of the ad valorem coal royalty regime on 1 July 2004 and recent litigation have increased the board's compensation liability by $116 million. Potential litigation from applications yet to be determined may further increase liability by more than $50 million.

The *Coal Acquisition Amendment (Fair Compensation) Bill 2005* makes four key changes to the Coal Acquisition Act 1981 and does not affect the established entitlements to compensation for the 129 claims and applications that remain to be settled as they existed prior to the introduction of the ad valorem royalty scheme. This legislation is required to implement consistency in all the claims and applications for compensation. They were received at the same time and should all be assessed under the same flat rate per tonne regime that has applied to the more than 28,000 claimants who have already settled their claims. The people with the remaining 129 claims for coal compensation should not have the advantage of an unexpected windfall gain, estimated at $116 million, which could be better spent on teachers, nurses and police.

The Government is unashamed in wanting to direct these savings to front-line services. This decision is in the interests of consistency for all claimants and for the benefit of the people of New South Wales. This bill will ensure that coal compensation is based on the longstanding royalty rate of $1.70 a tonne. It will do so by inserting a proposed section 6A (2) into the *Coal Acquisition Act 1981*. Firstly, the bill removes the windfall financial benefits that accrue to the two-thirds majority of affected claimants arising from the introduction of the ad valorem coal royalty regime on 1 July 2004. Secondly, the bill restores fair compensation to the approximately one-third of claimants who may potentially be disadvantaged by the introduction of the ad valorem royalty scheme.

For example, some claimants' compensation is based on coal mined from areas of low-value coal for domestic electricity generation markets, where the ad valorem royalty may be less than the traditional royalty rate of $1.70 a tonne. In this way the bill ensures that the method of calculating compensation for the remaining claims is consistent with that used for the claims already determined by the Coal Compensation Board. Thirdly, the bill clarifies the law in relation to super royalty. "Super

royalty" is the term commonly used to refer to additional payments of royalty that were provided for in certain circumstances under the former *Coal Mining Act 1973* and until 1 July 2004 under the Mining Act 1992. The provisions relating to super royalty under the *Mining Act 1992* were repealed on 1 July 2004. Super royalty was abolished by the repeal of the *Mining Regulation 2003*. Under subsections (3) and (4) of proposed section the calculation of super royalty may relate only to a period occurring before 1 July 2004.

Fourthly, the bill ensures that no compensation is payable from contracts negotiated in conjunction with tenders for coalmining leases for supply of coal at favourable prices by inserting proposed section 6A (5) into the *Coal Acquisition Act 1981*. A specific example is for the supply of coal for generating electricity. The Wran Government's acquisition of private coal rights in 1981 through the Coal Acquisition Act was a decisive and visionary act which provided that all the people of New South Wales should benefit from the resources of the State rather than a few who acquired private coal rights through a historical accident. Royalties that would otherwise have been diverted into the hands of the lucky few were instead channelled by the Government to benefit all the people of New South Wales regardless of land ownership or geology. The Government provided for compensation to be payable for eligible former private coal owners by enacting the *Coal Acquisition (Compensation) Arrangements 1985*.

The methodology for calculating that compensation recognised that coal in the ground is worth nothing—there is no market for private coal. It is not until the coal is mined and processed to generate electricity or make steel that the coal acquires value. The prospect or possibility that the coal might be mined gives that coal in the ground a potential value.

The companies that mine coal in New South Wales have to invest hundreds of millions of dollars in order to add value by extracting the coal in a manner that is safe and environmentally friendly and efficiently utilises the State's resources. The former private coal owners add nothing to the mining process. By a quirk of history they were the passive recipients of a proportion of the royalty for coal mined at a rate determined not by them but by the State. This bill will remove from the compensation formula the windfall which has not been available to all claimants and would otherwise flow to a select few. These windfall benefits would cost the State significant amounts of money which could be better used to benefit all the people of New South Wales in providing schools, hospitals, police services, transport and infrastructure.

The impacts of the bill are limited: No compensation claims in the compensation scheme or compensation applications in the Re-acquisition Scheme which have already been finally determined by the Coal Compensation Board are affected through proposed section 6A (7). However, the bill will affect claims that are the subject of an appeal, judicial review or redetermination as in proposed section 6A (6). The Nardell Colliery Pty Ltd test case litigation gave substantial compensation benefits to claims in the Re-acquisition Scheme. Recent litigation has flowed these benefits to the few remaining claims for loss of estate in coal outside a colliery holding, in the Compensation Scheme. The bill does not remove any of the benefits won by claimants in the Nardell Colliery test case.

The formula for compensation in line with the Nardell Case has been agreed and these entitlements are recognised by the Government. Nardell-dependent claimants will remain eligible to be compensated for a proportion of the payments made to the State by mining companies when a lease is granted, commonly called front-end payments. These claimants will also be entitled to the benefits of dividend imputation in the discount rate, and for super or additional royalty prior to 1 July 2004, when it was removed by the introduction of the ad valorem royalty regime. Coal compensation will continue to be just and equitable, but the provisions of this bill will prevail over the obligation for compensation to be just and equitable to the extent of any inconsistency by proposed section 6A (1).

It is worth noting that the change to an ad valorem system came about following years of sustained pressure from the Commonwealth and its agencies. In February 1999 the Public Inquiry into the Australian Black Coal Industry undertaken by the Productivity Commission recommended that the New South Wales Government should adopt an ad valorem royalty system.

The Federal Government supported the Productivity Commission's recommendations. Furthermore, in its review of States' capacities to raise mining revenue, the Commonwealth Grants Commission assessed that New South Wales's need for Commonwealth funding could be further reduced on the basis that prima facie it could raise $87.6 million per annum more in mining revenue than it had actually raised.

The vast majority of eligible persons have been paid compensation under the Compensation Scheme and the Reacquisition Scheme based on the coal royalty at $1.70 fixed at that rate since 1981. The compensation of the remaining claimants will be calculated in a similar way to the 99.5 per cent of people whose claims have already been determined. Similarly, the commencement of the ad valorem royalty terminated super royalty in addition to the fixed rate of royalty. The benefits of super royalty up to the introduction of ad valorem royalty on 1 July 2004 will be preserved by proposed section 6A (3). However, by proposed section 6A (4) this bill will ensure that compensation will not include super royalty after that date.

It is the practice of this Government to manage the State's resources carefully, particularly where it concerns our environment and the safety of our mineworkers. For example, when the Government tenders coalmining leases for areas suitable to supply coal for electricity generation, the Government on some occasions accepts the tender that will provide the lowest priced coal to the electricity generator. This means that the State of New South Wales obtains a benefit of affordable electricity for the people of New South Wales. The Government awarded the tender for the Mount Arthur Coal mining lease to the company that offered the lowest price coal to Macquarie Generation. Claims are now made for additional front-end payments, for a share of the value of this contract and on the basis that this decision has limited the royalty under the ad valorem scheme and hence their compensation payments.

A front-end payment is a payment under the *Mining Act 1992* made to the department in respect of the grant of some mining leases. These claims have the potential to increase the Government's liability under the Re-acquisition Scheme by a further $50 million. The bill ensures that compensation does not include windfall benefits or losses arising from arrangements requiring the holder of a mining lease to supply coal at a particular price. The benefit, which this Government has earned the people of New South Wales in obtaining affordable coal to fuel our power stations, was obtained through the Government's strong negotiation with the coalmining companies. The reduced price of coal is a commercial transaction between a coalmining company and an electricity generator and is in no way analogous to a front-end payment.

It is unfair to the wider community that compensation is now being sought for what was a mutually beneficial commercial arrangement. As such this is not a front-end payment for the purposes of the Mining Act and does not apply to any compensation determination. That is the reason this Government intends to clarify the law so that front-end payments, an entitlement that some claimants may be eligible for, are distinct from these types of commercial arrangements.

At the same time this bill will ensure that compensation is fair and consistent between the vast majority of claimants whose claims have already been finally determined and the less than 0.5 per cent of claimants still awaiting final determination by removing the market price for coal from the calculation of compensation. This bill will protect the public of New South Wales and secure the benefits won for them by this Government. The changes in this bill are sensible and practical responses to the problems I have described.

I commend the bill to the House.

The Hon DUNCAN GAY (Deputy Leader of the Opposition) [4.11 p.m.]: At this stage Opposition members do not oppose the Coal Acquisition Amendment (Fair Compensation) Bill. However, if the bill is not amended in Committee we will oppose it. The Government claims that this bill will ensure fairness for all coal compensation recipients, regardless of their settlement date. However, the Opposition believes that the bill represents a retrospective, panic move to reign in unfairly just and equitable compensation.

The objects of the bill are threefold. First, it seeks to amend the Coal Acquisition Act 1981 to ensure that in the determination of compensation for any claim that has not been finally determined under the principal Act coal royalties will be calculated on the same basis that other claims have been determined. That will be in accordance with a flat rate of $1.70 per tonne rather than in accordance with the new ad valorem royalty scheme that was introduced and commenced on 1 July 2004 under the Mining Act 1992. Under the ad valorem royalty scheme coal royalties are calculated as a percentage of the market price per tonne of coal.

The Government claimed that the Commonwealth Grants Commission recommended that New South Wales change its coal royalty scheme to an ad valorem coal royalty system. The New South Wales Government implied that the Federal Government required it to do so. What delicious irony! The State Government quietly said that the Federal Government forced it to change its coal royalty scheme to an ad valorem scheme, but it admitted that the ad valorem scheme would add about $40 million per annum to the coffers of the New South Wales Treasury.

The Hon. Don Harwin: It was dragged kicking and screaming by the Federal Government!

The Hon. DUNCAN GAY: Of course it was dragged kicking and screaming by the Federal Government. Not only did the Government neglect to tell anyone about this delicious little windfall but it also neglected to tell anyone that the windfall is more than $40 million per annum. At the moment record prices are being paid for coal in New South Wales because of record world prices, and the ad valorem price is probably five, six or more times that amount of $40 million. The Government is raking in between $200 million and $300 million at the moment through a scheme that it said the evil Federal Government forced it to implement. The Government has been pretty quiet about that.

The people from whom the Government stole these rights are entitled to get back some of their money. The compensation is currently negotiated at $2.20 but the Government is attempting, through this bill, to reduce that amount to $1.70. I digressed to talk about that delicious irony and about this mean Government, which claimed that the Federal Government forced it to adopt this ad valorem system. In reality, it was a recommendation of the Commonwealth Grants Commission. Given that the Government has introduced this bill it is clear that it did not know what it was getting itself into with respect to coal compensation arrangements.

The bill also stipulates that compensation for loss of super royalty can be paid in relation to appropriate claims, but only for periods occurring before the repeal of the provisions of the Mining Regulation 2003, which was implemented on 1 July 2004. The Opposition will move amendments to the bill to remove this unfair restriction. The bill restricts compensation payable to key litigants for front-end payments. By way of background, the Coal Compensation Board determines and pays compensation to former private owners of coal that was stolen by the Wran Labor Government in 1982 to be distributed among the broader community. That was good old Labor socialism at its best, or—as some would say—its worst.

Compensation is paid under the Coal (Compensation) Arrangements 1985, which is known as the compensation scheme. In 1990 the Greiner Coalition Government took steps to restore private rights and redress the former Labor Government's socialist nirvana policy platform, which sought to rape and pillage the State's natural resources boom. It did so by offering the restitution of coal rights for former private owners of coal in lieu of compensation. Labor took it away and the Coalition gave it back. That is the way it tends to be.

Unfortunately that initiative was short lived as the Carr Labor Government reacquired the coal rights—Labor took it away, the Coalition gave it back, and Labor took it away again—subject to just and fair compensation under the Coal Acquisition (Compensation) Order 1997. This was known as the reacquisition scheme.

During protracted debate in this House the Coalition and many other members vigorously opposed the scheme and moved meaningful amendments to it. The scheme has 125 "loss of estate in coal" claims remaining of a total of 400 claimants. The Government has argued that this bill will ensure compensation is fair and consistent between those claimants whose claims have already been determined and those who are still awaiting the final determination by removing the market price for coal from the calculation of compensation. The Opposition believes that this bill will not deliver fair and consistent outcomes in compensating the remaining 129 claimants.

We are concerned that the bill represents a revenue grab by the Government targeted at a small number of people with a clear deviation from the meaning that was established by this House in the past of "just and equitable compensation". While the term "just and equitable" is highly subjective, the New South Wales Freehold Rights Association and the Coal Compensation Board ran a test case to flesh out judiciously what was meant by "just and equitable compensation". That was done in three stages—through the Coal Compensation Review Tribunal, the Supreme Court of New South Wales and the New South Wales Court of Appeal using a claim by Nardell Colliery Pty Ltd as a test case.

Two key rulings came out of this process. First, the calculation of just and equitable compensation is to be based on the actual royalty received by the Government from year to year. In practice, this means that compensation is received for super royalty payments and ad valorem royalty. Secondly, compensation is to be received for the loss of front-end payment entitlements. But this bill removes from the compensation formula the perceived windfall benefits arising from the ad valorem coal royalty scheme and compensation for the loss of front-end payments—despite the fact that the case was tested and won in court.

The Government claims that the introduction of the ad valorem coal royalty in July 2004, together with recent litigation from the Nardell Colliery case, has increased the Coal Compensation Board's compensation liability by $116 million. However, we are hearing only one side of the story. As I said earlier, the Government has failed to tell the House and the people of New South Wales that it expects to take many times that amount in windfall gains in coal royalties. The compensation payments would not be made at the cost of hospitals, doctors and nurses; the Government could cover the liability from unexpected windfall gains. Such gains must be unexpected because the Government claims it is budgeting for only $40 million when it will receive between $200 million and $300 million—and we all know that the Government would never mislead us!

It is a bit rich that the Government's rationale for not determining the remaining 129 claims on the basis of just and equitable compensation is that the windfall of $116 million could be better spent on teachers, nurses and police. The fact is that the Government is likely to receive up to six times this amount in coal royalties from the introduction of the ad valorem royalty scheme this financial year. This unforeseen windfall should deliver revenue to the Government to fund these important front-line positions without having to scrimp on just and equitable compensation payouts to provide much-needed funds for hospitals, schools and transport infrastructure. On the one hand, the Government is receiving a huge, unprecedented windfall and, on the other hand, it is refusing to let any of it go. The Government wants to take money away but it does not want to give it back. The Opposition will watch closely to see how the revenue generated from the ad valorem coal royalty scheme is spent.

The Opposition opposes the Coal Acquisition Amendment (Fair Compensation) Bill in its current form on the basis that it cuts back the rightful entitlements of owners of coal more drastically than would have occurred had there been no change in government policy. The bill seeks to set compensation at the traditional standard rate of $1.70 per tonne for the remaining 129 claimants whose claims have not yet been finalised. The Government fails to mention that, while $1.70 is the traditional rate for coal per tonne, some finalised claims were calculated on a super royalty payment of $2.20 per tonne. As compensation for coal is calculated on the basis of projected future royalties from the coal, the claimants will continue to receive compensation based on the super royalty rate beyond 1 July 2004.

The introduction of the new ad valorem royalty scheme, which commenced on 1 July 2004 under the Mining Act 1992, abolished the super royalty scheme that was in place. It is unfair, unjust and inequitable that the remaining claimants should have their super royalty payments cut from $2.20 to $1.70 for payments after 1 July 2004 by virtue of a change in government policy designed simply to give the Government more money. If

the Government had not introduced the ad valorem royalty and subsequently introduced this bill, the remaining claimants would still be entitled to the coal super royalty rate of $2.20. As I foreshadowed earlier in my speech, the Opposition will move an amendment in Committee that will seek to remove the unfair restriction of abolishing super royalty payments after 1 July 2004. While this amendment does not deliver completely what has been determined to be fair and equitable compensation under the Coal Acquisition Act, it represents a middle ground that we hope will restore some of the parity that has been lost as a result of the bill.

George Souris, freehold rights groups and I appreciate that the Minister for Mineral Resources has indicated his willingness to accept the middle-of-the-road settlement of $2.20 when we move the amendment in Committee. Some people wanted more and the Minister originally wanted less, but we have moved to the middle option of $2.20. The Minister indicated to the Hon. George Souris in the lower House, to me at a mining conference in Leura and again this morning, and to the freehold mining rights groups that, provided compensation payments are not extended beyond the existing claimants, he is willing to accept our amendment. We certainly appreciate that assurance and, to that end, we will be looking to the Government to honour that private undertaking when we move the amendment in Committee.

Reverend the Hon. Fred Nile: Have you got that commitment from the Minister?

The Hon. DUNCAN GAY: I got that commitment from the Minister for Mineral Resources, who is responsible for the carriage of this bill. I can only take his word on it.

Reverend the Hon. Fred Nile: Get the word of the Minister for Primary Industries.

The Hon. DUNCAN GAY: I will have to wait until we consider the bill in Committee. I can inform the Minister for Primary Industries that, while the bill sought to reduce the rate to $1.70 a tonne and some people wanted to go to the ad valorem rate, the Minister for Mineral Resources has indicated, quite properly, that there is a middle road—provided it does not extend the compensation paid—at $2.20 and that he will support amendments that make that change.

The Hon. Ian Macdonald: He indicated that to you?

The Hon. DUNCAN GAY: Yes, and to George Souris and to representatives of the Freehold Rights Association. The bill before the House restricts the compensation payable to key litigants for front-end payments. A front-end payment is a payment under the Mining Act 1992 made to the Department of Mineral Resources in respect of the grant of some mining leases. The Minister argues in his second reading speech that claims for front-end payments have the potential to increase the Government's liability under the reacquisition scheme by a further $50 million. The Government has proposed amendments to ensure that compensation does not include windfall benefits or losses arising from arrangements requiring the holder of a mining lease to supply coal at a particular price. This is another clear deviation from what the Nardell case determined to be fair and equitable compensation.

The bill is an example of the Government's reneging on a very firm commitment by the Coal Compensation Board to provide just and equitable compensation to coal compensation claimants. Under the 1997 Coal Reacquisition Scheme, the Government accepted an amendment by the crossbench members of this House that required the reacquisition of coal rights to be subject to fair and equitable compensation. The Government needs to seriously consider the meaning of those words and the extent to which this legislation overturns the concept of just and equitable legislation.

Muswellbrook Shire Council has asked the Opposition to move certain amendments. Muswellbrook council is the last of the councils to have its outstanding coal compensation issues settled by the Government. I will not move my amendments in globo but will move them separately so that one is not dependent on the other. Muswellbrook council is still involved in court proceedings regarding its entitlements. The council's income did not come from the rights to coal but from rating those who had the rights.

The Minister has indicated that there may be a concern with part of the freehold rights amendment, so we will move the amendments in seriatim, and if there is a problem with an amendment it can be dealt with separately. Wherever possible the Opposition has tried to tread the middle road on this matter, to be fair and just. Frankly, this bill is a tad greedy. The Government has pulled in all this extra money but it does not want to pay out the money it agreed to pay. The Opposition believes that its amendments will restore the rights of the people concerned. We will not oppose the second reading of the bill but will move amendments in Committee, and the success of at least some of those amendments will dictate whether we will support the bill.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [4.33 p.m.]: The Australian Democrats cannot support this bill. It is simply moving the goal posts after the game has finished. On 21 May 1997 my predecessor, the Hon. Elisabeth Kirkby, spoke to the Coal Acquisition Amendment Bill and said:

> On behalf of the Australian Democrats I speak on the Coal Acquisition Amendment Bill. I am one of very few members of this House who were present in 1981 when the original legislation reflecting the problems of acquisition was debated. At that time Premier Wran sought to take away the rights of people who had coal under their properties and deny them any form of compensation. I spoke very strongly against Premier Wran's bill. I said:
>
> > The bills will create precedents that can only be damaging to all property owners in this State … The Coal Acquisition Bill and its cognate bill … unfairly penalise other citizens.

She went on to say:

> I did not believe that governments have the right to legislate on behalf of the people if that legislation, by its nature, unfairly penalised other citizens. When the rules changed, when the goalposts were moved in 1990 and compensation was introduced, obviously I was very happy. In 1990 I did not speak for or against the legislation but in the last few weeks of the sittings, when I became aware that another amendment bill was to be brought before the Parliament, I sought further information about it. Information was being brought to my attention by the Freehold Rights Association and the many people who lobbied me through faxes or letters.
>
> I also took the matter to the Minerals Council of Australia. It expressed surprise about the short notice given by the Government of the introduction of the legislation.

Once again in 1997 the Government quickly introduced legislation, and the Minerals Council had difficulty responding to it. At that time it was going to take the value of the coal and re-nationalise—I think that is the word one would use—the coal industry for those who had not previously given away their rights—those who formed the Freehold Rights Association. I obtained the history of the Coal Compensation Board from its web site, *www.ccb.nsw.gov.au/history/html*, which states:

> **1981**
>
> Increasing coal development in the Hunter Valley provided a substantial windfall for private coal owners. The Government searched for contributions to the State budget but was frustrated by constitutional limits on increasing the State share of taxes on coal. After examining various alternatives and royalty allocations the Wran Government introduced the Coal Acquisition Act 1981 which transferred all private coal ownership to the State.

That is nationalisation if ever I heard of it. It continues:

> **1982-85**
>
> Coal owners demanded compensation. Following a campaign spearheaded by the Freehold Rights Association, charities, churches and other dispossessed coal owners the Government commissioned the Coal Compensation Taskforce Report. The Coal Compensation Scheme was formulated in accordance with the broad thrust of the Report. The Coal Acquisition (Compensation) Arrangements 1985 was passed by Parliament to implement the Scheme.
>
> **1985**
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> The Coal Acquisition (Compensation) Arrangements 1985 took effect on 22 June 1985. The first Board was appointed 28 June 1985. Coal Compensation Review Tribunal members were also appointed. Harry Bowman was appointed Chairman and Chief Executive Officer. He began recruiting staffing and developing procedures. Tenders were prepared for the supply of computer programmes and equipment. At this stage an estimate was made of two years to finalise work.
>
> **1985-87**
>
> The Board was empowered to receive claims for coal compensation from former coal owners and others suffering loss as a result of the imposition of the Coal Acquisition Act 1981. 10,000 claims swamped the new Board. The newly recruited staff grappled with setting discount rates and developing new models to underpin calculation of compensation in accordance with the Arrangements and in a manner which commanded professional respect and acceptance by claimants. It was apparent that the Scheme could not be finalised in 2 years as estimated and interim payments were made to overcome hardship caused by the delay.

The remaining four pages of the history can be read on that web site. Suffice it to say that in the 1997 Act the Government tried to acquire the rights. The legislation was passed only because of a compromise with the crossbench so that just and equitable compensation would be paid. The Nardell test case has been bankrolled by the Government against the remaining coal owners in order to determine what just and equitable compensation is. It having been agreed in the Coal Acquisition Act 1997 that coal could be re-nationalised provided equitable compensation was paid, the court effectively decided what just and equitable compensation was. The Government funded and was a party to that litigation. Having gone to the game, and had the referee in the judicial system, the Government should not then override the decision of that judicial process. It is simply

changing the rules after the game has finished. The Government has argued that this is a windfall for some fairly rich people. That may be the case, but that is no reason to arbitrarily take assets from them. In a sense, that is what Stalin said of the Kulaks as he reformed agriculture. Middle-class farmers who stored their grain and waited for better prices or to sell on the black market because the price was regulated by the State were simply slaughtered and their grains were confiscated. No-one is suggesting we slaughter the Freehold Rights Association, but effectively that group of people have held out for their rights. It is said that they got a windfall because of the change to the ad valorem system of royalties.

Be that as it may, if I choose not to sell my house because I believe prices will increase, and then prices do go up, the Government cannot then pass a law that effectively takes my windfall in the difference between the price as it is and the price that the Government legislates it to be. That is a quite good analogy because the Government will take the difference between the ad valorem price of coal and the price that it sets. I believe the windfall for the Government will be in excess of $100 million, although I do not have exact figures for that. It might be noted that the royalty was set at $2.20 a tonne for surface-mined coal and $1.70 a tonne for underground coal because of greater extraction costs. But the rate of royalty has not increased for many years.

In fact, royalty has declined 65 per cent in real terms since those figures were set. That means that over time those receiving the royalty have had a cut of 65 per cent in their compensation. I asked the Government for information on the price of coal. People have said that the royalty rate should increase along with the consumer price index. If it had, it would have increased at a rate faster than that for the price of the coal won. It is worth noting that the price per tonne of metallurgical coal in 1973 was about $13, in 1983 around $39, in 1993 around $57, in 2003 about $49, and is now around $66, though it is even higher in spot prices. Those are long-term trends. I believe the price of coal at the moment is $90 a tonne, but that is a one-off price for certain reasons.

[*Interruption*]

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! The Hon. Dr Arthur Chesterfield-Evans has the call, and other members should desist from trying to give him pointers on his speech.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The price of a tonne of thermal export coal in 1973 was about $10, in 1983 around $45, in 1993 around $49, in 2003 around $43, and is now about $59. Those are the figures that the Government has given me. I understand those are export coal prices and that domestic coal prices have not risen by anything like those increases, so that has been a windfall that is somewhat inequitably distributed. The Government's formula is said to be more equitable. Be that as it may, anyone in business who has assets that change in value according to the market still retains the right to those assets. If the market value of the assets goes down, that is bad luck; and if it goes up, that is good luck. Either way, nothing entitles the Government to use a formula to deliver to it a windfall.

This legislation must be opposed, and I intend to oppose its second reading. I am disappointed that the Coalition has caved in on this issue. I understand that the Opposition's overarching position is that governments should be allowed to govern, and therefore government legislation should be allowed to pass. But the fact of the matter is that this is a House of review. It far better reflects the views of the people than does the lower House, which after all adopts a winner-takes-all rubber-stamping attitude, which is not of much use. If a bill is not supported by 50 per cent of the population it should not be passed, no matter whether the Government has 40 per cent of the vote in the upper House. We should not be shrinking violets on this question. The Opposition's position of opposing the bill but allowing it to pass is fundamentally flawed.

The amendments might help to address some of the concerns of the Freehold Rights Association. Obviously, that is better than nothing if the bill passes the vote at the second reading stage. Fundamentally, this bill is philosophically wrong. It mounts yet another attack on the concept of the separation of powers. This Government seems to have no understanding of that concept. If the courts do something that the Government does not like, the Government simply overrules them by rewriting the laws. If it suits the Government to adopt a certain position in regard to penalties for criminals, or on any other matter, it simply determines to override the courts.

In this case the courts were deciding the issue of fairness and equity in a case to which the Government was a party. Therefore it is quite wrong for the Government to bring in this bill. Basically, it ought to allow existing tribunals to determine fair and equitable compensation, and then pay according to what is decided. I do not have a mandate for any particular group in society, I do not have a mandate for coal owners, but I do not think assets should be taken from them merely because some of them are wealthy. That is an appalling display of inverted snobbery and authoritarianism and it is quite dangerous. The bill must be opposed.

The Hon. TONY CATANZARITI [4.46 p.m.]: I support the Coal Acquisition Amendment (Fair Compensation) Bill. The Coal Compensation Board has a history of about 20 years in New South Wales. Coal was acquired by the State of New South Wales under the Coal Acquisition Act 1981. In 1985 the Coal Compensation Board was created to determine and provide compensation to former private owners of coal. Compensation is provided to claimants pursuant to the provisions of the Coal Acquisition (Compensation) Arrangements 1985, which is known as the compensation scheme. Under the Coal Ownership (Restitution) Act 1990 some coal titles were revested in the former private owners of coal. This gave some claimants for loss of estate in coal under the compensation scheme the option of applying for restitution of their coal in lieu of compensation.

In 1997 Parliament passed the Coal Acquisition Amendment Act. This Act allowed the State to re-acquire the coal titles that had been restored to some former owners and to refuse restitution applications. The great majority of coal titles were restored to the former owners, but a few titles were re-acquired. In addition, a small number of restitution claims were refused because the collieries were too valuable to the State at that time. Compensation for the coal titles re-acquired or refused is calculated pursuant to the provisions of the Coal Acquisition (Re-acquisition Arrangements) Order 1997 and is known as the re-acquisition scheme. Compensation is calculated differently under the compensation scheme and the re-acquisition scheme. Compensation under both the compensation scheme and re-acquisition scheme is calculated based on capitalising a net present value at the date the compensation is paid of the expected future income stream from coal royalties.

The calculation of coal compensation under the compensation scheme and the reacquisition scheme is in accordance with the fixed base royalty of $1.70 per tonne. Coal royalty was calculated at this fixed rate from 1981—more than 23 years—except for a brief period during 1986-87 when the rate was reduced. Compensation payable under the compensation scheme and reacquisition scheme provides a substitute for the income stream from royalties, minus administration costs and tax. As stated in the second reading speech, the Coal Compensation Board has received around 28,000 claims to date and paid more than $650 million in compensation. All of these payments are calculated on the basis of a fixed base rate of $1.70 royalty.

In 1999 the Commonwealth Productivity Commission released its report on the Australian black coal industry. The report recommended the New South Wales royalty regime be changed to an ad valorem system. In 2004 the Commonwealth Grants Commission concluded that New South Wales could raise $87.6 million through an ad valorem royalties system for mining. The Commonwealth decided that funding to New South Wales would be cut by $87.6 million to reflect that. The New South Wales Government faced significant budgetary pressure to move to an ad valorem system for coal royalties. The new ad valorem royalty for coal commenced on 1 July 2004.

As an ad valorem scheme calculates coal royalty on the value of coal production it can deliver higher returns to the State when coal prices are high, and it can reduce the royalty burden on coalmine operators when coal prices are low. Since the ad valorem system came into operation export coal prices have been high, which means that the people of New South Wales can now share in the gains that coalmine owners have been enjoying. However, it also means that unless the legislation is changed a few former private coal owners will receive an unexpected and unintended windfall. The new royalty system and recent court decisions have increased the Coal Compensation Board's liability by $116 billion. The bill will ensure that those with outstanding claims for compensation are treated the same as those who have had their claims finalised—that is, that all compensation calculations are based on the same flat rate per tonne royalty regime.

Given that all claims were received at the same time it makes sense that the same royalty criteria must apply. Entitlements established by negotiation and court decisions prior to the introduction of the ad valorem royalty on 1 July 2004 are not affected by the provisions contained in the bill. Clearly, the bill is in the interests of fairness for claimants who already have settled their compensation claims. It also will ensure that the wider New South Wales community can benefit fully from the Government's decision on the coal royalty regime. As a member of the Government I strongly supported directing these savings toward community priorities such as police, nurses and teachers. The proposed amendments provide for fair and consistent compensation regardless of when claims are settled. I commend the bill to the House.

The Hon. GREG DONNELLY [4.53 p.m.]: I support the Coal Acquisition Amendment (Fair Compensation) Bill. The Government decided to move to an ad valorem coal royalty regime for the benefit of all people in New South Wales. It was either accept an ad valorem regime or lose $87.6 million through the Commonwealth Grants Commission. The ad valorem royalty means that the whole State will share in the high

returns from coal when prices are high. However, it also means that the royalty burden on mines is reduced when coal prices are low. The ad valorem royalty regime was introduced on 1 July 2004. It is likely to provide an extra $150 million next financial year in royalty collected by the State. This extra revenue will benefit all of New South Wales because it can be used to provide funding for schools, hospitals, transport, police and infrastructure projects.

If coal compensation were to be paid with reference to the ad valorem royalty an unfair windfall benefit would accrue to a few remaining claimants at the expense of the general community. There is also the potential that some claimants would receive less compensation. We have heard that only a few applications for compensation—129 out of 28,000—are still to be finalised. The 129 applications involve only 80 people, some of whom have multiple applications. Let us be clear: The Government is paying significant compensation. These 80 people will share in compensation totalling $330 million if the legislation is not passed. They will share in $214 million if the legislation is passed. Clearly, it is unfair that these few remaining claims should be treated differently to the 99.5 per cent of claims that have been finalised already.

The Government has helped to deliver lower priced coal for cheaper electricity for the people of New South Wales. In addition to the ad valorem royalty regime, which can encourage the development of lower value coal, the Government has provided electricity generators access to low cost coal through coal leases tendering arrangements. The bill will ensure that any Government agreement to secure affordable coal for power generation will benefit all the people of New South Wales by ensuring that compensation is not calculated by using these arrangements. The bill clarifies also the law in relation to super, or additional, royalty. Before the introduction of the new ad valorem royalty regime super, or additional, royalty was payable at the rate of 50¢ per tonne of coal mined from certain open cut collieries. As a result of the recent test case in the Court of Appeal just and equitable compensation was determined to include super royalty where applicable.

With the introduction of the ad valorem royalty regime on 1 July 2004 super, or additional, royalty was extinguished. The bill ensures that claimants for coal compensation cannot claim super royalty after 1 July 2004 because it had ceased to exist. However, all claimants for coal compensation under the Coal Acquisition (Reacquisition Arrangements) Order 1997 continue to be eligible for a super, or additional, royalty in respect of coalmines before 1 July 2004 if applicable. Compensation will still be fair. The bill will not impact on the gains won by applicants in recent test cases. Under the bill their compensation will be paid to the remaining applicants. They will not receive a windfall gain or have their compensation entitlement fall below what they would have reasonably expected before 1 July 2004. The bill will protect State finances for the benefit of all the people of New South Wales. I commend the bill to the House.

The Hon. PETER PRIMROSE [5.00 p.m.]: I speak on the Coal Acquisition Amendment (Fair Compensation) Bill.

The Hon. Melinda Pavey: Be brave! Throw away your notes!

The Hon. PETER PRIMROSE: I will, yes. I am actually very interested in this issue.

The Hon. Greg Pearce: You are just filling in time, aren't you?

The Hon. PETER PRIMROSE: No, I am very interested in coal compensation; it is an issue for me. I know the Hon. Greg Pearce will take an interest in this matter. He may recall the very famous early New South Wales case of *Attorney-General v Brown* in 1847. This case involved a Mr Brown who sought to take coal out of land that he owned in the Newcastle area. The then Attorney General of New South Wales indicated very clearly, on behalf of the New South Wales Colonial Government, that the Government believed that a feudal system of property, a system of tenures, still operated in New South Wales. Windeyer, the lawyer representing Mr Brown, argued that that system had been abolished in New South Wales and that we, in fact, had an allodial system. It was a key case, and a very important one, because the judge decided that a feudal system of tenures still operated. That decision was cited in the Mabo case, which overturned the decision in *Attorney-General v Brown*. I take a great interest in this and I am really concerned that honourable members opposite have asked me to throw away my speech. I believe what I have to say on this is eminently interesting, and I will now proceed.

This bill aims to do three simple things. Firstly, it will ensure parity between all claimants by using the same flat rate royalty system that has been used to calculate compensation for 20 years. Secondly, it will clarify the law in relation to front-end payments so that there is no entitlement to compensation for a share of the Government's commercial deals to supply cheap electricity for the people of New South Wales. Thirdly, it

clarifies the law in relation to super, or additional, royalty. Before the introduction of the new ad valorem royalty regime, super, or additional, royalty was payable by coal mining companies. The super royalty rate was 50¢ per tonne of coal mined from certain open cut collieries, on top of the $1.70 flat rate per tonne. It should be noted that in the 20-year history of the Coal Compensation Board no finalised coal compensation claims have ever been paid by reference to super, or additional, royalty.

The Hon. Duncan Gay: That is rubbish.

The Hon. PETER PRIMROSE: I look forward to the Deputy Leader of the Opposition's colleagues correcting my statement in their contributions to this debate. We will have an interesting discussion. The $1.70 base royalty is the highest royalty that any finally determined coal compensation claims have ever been paid. As a result of the recent test case in the Court of Appeal, brought by the Nardell Colliery Pty Ltd, the principle was established that just and equitable compensation includes super royalty, where applicable. The Mining Act 1992 provides for a base royalty and, if the regulations provide for it, an additional royalty. However, with the introduction of the ad valorem royalty regime on 1 July 2004, super, or additional, royalty effectively ceased to exist. The Mining Amendment (Royalties) Regulation 2004 amended the Mining Regulation 2003 on 1 July 2004 to introduce the ad valorem royalty and replace the existing fixed rate royalties. Clause 44 (2) of the Mining Regulation—the provision establishing the additional or super royalty at 50¢ per tonne—was repealed. Therefore, super royalty has not existed since 1 July 2004, nor has it been payable.

The Government's response to the Nardell test case in relation to super royalty and the calculation of compensation is not new. The Coal Acquisition Act requires that compensation arrangements are to be reviewed from time to time to ensure that compensation is just and equitable. In December 2004 the Coal Acquisition (Re-acquisition Arrangements) Order 1997 was amended to take account of the changes in relation to the coal royalty and the changes in rates of company taxation. Clause 2 (6) (b) of schedule 1 to the 1997 order requires that the Coal Compensation Board is to consider any additional royalty that would have been payable under section 283 (1) (b) of the Mining Act—that is, super royalty—but only prior to 1 July 2004.

Proposed sections 6A (3) and 6A (4) confirm those existing arrangements, and remove any doubt as to the Government's intentions. The few remaining claimants for coal compensation under the Coal Acquisition (Re-acquisition) Arrangements Order 1997 remain eligible for super, or additional, royalty in respect of coal mined before 1 July 2004, if applicable. It clearly does not remove the entitlement to super royalty. In fact, there is now still potential for some $9 million in compensation payments associated with super royalty to be shared amongst eligible claimants. Since the Coal Compensation Scheme began, compensation of more than $650 million has been paid to date to former owners of private coal. Following the Commonwealth Grants Commission recommendation the New South Wales Government moved to an ad valorem coal royalty regime in line with that of other States. At the time of this recommendation the Grants Commission indicated that New South Wales would be further penalised if it failed to implement this policy. The introduction of the ad valorem coal royalty regime on 1 July 2004 and recent litigation have increased the board's compensation liability by $116 million. Potential litigation from applications yet to be determined may further increase liability by more than $50 million.

The companies that mine coal in New South Wales have to invest hundreds of millions of dollars in order to add value by extracting the coal in a manner that is safe and environmentally friendly and efficiently utilises the State's resources. A number of these matters were addressed by the Minister in his second reading speech. The Minister indicated, for example, that the former private coal owners add nothing to the mining process. By a quirk of history they were the passive recipients of a proportion of the royalty for coal mined at a rate determined not by them but by the State. This bill will remove from the compensation formula the windfall that has not been available to all claimants and would otherwise flow to a select few. These windfall benefits would cost the State significant amounts of money which could be better used to benefit all the people of New South Wales in providing schools, hospitals, police services, transport and infrastructure.

The impacts of the bill are limited. No compensation claims in the compensation scheme or compensation applications in the re-acquisition scheme that have already been finally determined by the Coal Compensation Board are affected through proposed section 6A (7). However, the bill will affect claims that are the subject of an appeal, judicial review or redetermination, as in proposed section 6A (6). The Nardell Colliery Pty Ltd test case litigation gave substantial compensation benefits to claims in the re-acquisition scheme. Recent litigation has passed on these benefits to the few remaining claims for loss of estate in coal outside a colliery holding, in the compensation scheme. The bill does not remove any of the benefits won by claimants in the Nardell Colliery test case.

The formula for compensation in line with the Nardell case has been agreed and these entitlements are recognised by the Government. Nardell-dependent claimants will remain eligible to be compensated for a proportion of the payments made to the State by mining companies when a lease is granted, commonly called front-end payments. These claimants will also be entitled to the benefits of dividend imputation in the discount rate and for super, or additional, royalty prior to 1 July 2004, when it was removed by the introduction of the ad valorem royalty regime. Coal compensation will continue to be just and equitable, but the provisions of this bill will prevail over the obligation for compensation to be just and equitable to the extent of any inconsistency by proposed section 6A (1).

It is worthwhile noting that the change to an ad valorem system came about following years of sustained pressure from the Commonwealth Government and its agencies. In February 1999 the public inquiry into the Australian black coal industry, which was undertaken by the Productivity Commission, recommended that the New South Wales Government should adopt an ad valorem royalty scheme. The Federal Government supported the Productivity Commission's recommendations. Furthermore, in the Federal Government's review of States' capacities to raise mining revenue, the Commonwealth Grants Commission assessed that the need of New South Wales for Commonwealth funding would be further reduced on the basis that, prima facie, New South Wales could raise $87.6 million or more in mining revenue than it actually had raised.

The vast majority of eligible persons have been paid compensation under the compensation scheme and the reacquisition scheme based on coal royalty of $1.70—a rate that was fixed in 1981. The compensation of the remaining claimants will be calculated in a similar way to the method applied to 99.5 per cent of people whose claims have already been determined. The commencement of the ad valorem royalty terminated super royalty in addition to the fixed rate of royalty. The benefits of super royalty after the introduction of ad valorem royalty on 1 July 2004 will be preserved by proposed section 6A (3). However, proposed section 6A (4) will ensure that compensation will not include super royalty after that date. For all the reasons I have stated, I commend the bill to the House.

The Hon. JAN BURNSWOODS [5.11 p.m.]: Madam Deputy-President—

The Hon. Melinda Pavey: Oh, no!

The Hon. JAN BURNSWOODS: I feel the need to speak to the Coal Acquisition Amendment (Fair Compensation) Bill. I do not know why members of the Opposition are laughing so much but, in common with the Hon. Peter Primrose, I admit I will be interested to hear contributions from members of the Opposition. Thus far they have failed to contribute to debate on this bill. At the outset, I will deal with basic facts underlying the legislation. In the 25-year history of this legislation there have been approximately 28,000 applications for compensation. Currently there are 129 remaining applications. To put the matter into perspective, it is worth reiterating that currently there are only 129 applications for compensation out of approximately 28,000—only 129 applications will be affected by this amending bill.

The purpose of the bill is to ensure that all compensation claimants will be treated consistently and fairly under the same royalty system, no matter when their claims are determined. Given the extensive negotiation associated with compensation, I believe that is an important matter. Honourable members have been told that the bill will have no impact on any current entitlements to compensation, which means that it will have no impact on gains won by applicants in recent court decisions, such as the Nardell Colliery test case. I defer to the knowledge of coal court cases, particularly the test case, of my colleague the Hon. Peter Primrose. I only wish that the Hon. Peter Primrose had had more time to continue his legal studies so he could more frequently give the House the benefit of his legal knowledge and wisdom.

Coal compensation is calculated on the basis of future royalties from coal and has been based on a flat rate of royalty that has been in place since 1981. The Hon. Dr Arthur Chesterfield-Evans made a lengthy and quite impassioned speech. He referred not only to his views on this matter but also to the views expressed by his predecessor, the Hon. Elisabeth Kirkby, who represented the Australian Democrats in this House until he succeeded her in 1998. In his speeches, the Hon. Dr Arthur Chesterfield-Evans always includes almost everything that is relevant to a debate—sometimes even the kitchen sink. However, I admit that I was a little surprised to hear that a significant proportion of his speech seemed to be devoted to the glory days of Egan versus Rhiannon. He seemed to be kicking the communist can as he referred to Stalin and the Kulaks. In general the Hon. Dr Arthur Chesterfield-Evans provided a highly coloured account of his views—not, I hasten to add, of the legislation. Whatever the Hon. Dr Arthur Chesterfield-Evans was talking about in relation to Stalin, Russia and the communists had very little to do with the bill.

I will say a little more about the speech made by the Hon. Dr Arthur Chesterfield-Evans later. I too remember some of the previous heated debates over this legislation during the early days of the Wran Government, particularly some of the more extreme statements that were made by the then Opposition and others. I was bemused with the remarks by the Hon. Dr Arthur Chesterfield-Evans in relation to Stalin and the Kulaks. I suggested that since Michael Egan's resignation, we have not heard much of the kicking of the communist can. I invite the Hon. Dr Arthur Chesterfield-Evans to correct me if I am wrong because his speech today certainly surprised me and was not reflective of his usual style.

The Hon. Dr Arthur Chesterfield-Evans: I do not normally bring in my Russian history.

The Hon. JAN BURNSWOODS: I wonder whether he means his personal Russian history or his knowledge of Russian history. I am not sure that Michael Egan had much knowledge of Russian history either—but that did not ever stop him from talking about Stalin and others. Returning to my knowledge of history, one of the matters that particularly struck me during the heated debates that took place during the Wran Government was the way in which so many matters relating to the administration of the coal industry related to British law and British history. Similar battles have been fought in relation to the gold rushes in nineteenth century Australia because there was a definite class basis attached to much of the decision making of that era. For example, acceptance of the argument that a landholder owned the gold found under their land at a time when hundreds of thousands of people were rushing from Europe to Australia and California goldfields would have been tantamount to revolution.

This legislation is associated with a very interesting and long history involving determination of legal matters and the rights of landholders to various precious metals and minerals. That was a particularly interesting feature of previous debates. Coal compensation has been based on a flat rate of royalty that was established in 1981. The calculation also takes into account estimations of the extent of the coal resource and expectations of when the coal is likely to be mined. This bill clarifies that the flat rate of royalty will continue to be the basis for calculating compensation rather than the variable ad valorem rate that was put in place on 1 July 2004. This means that the bill will ensure that claimants do not receive unexpected windfall gains in compensation as a result of moving from the ad valorem regime.

The bill will also restore fair compensation to claimants who may be disadvantaged by the ad valorem royalty scheme, such as claimants whose compensation relates to low value coal that is used in domestic electricity generation. When discussing coal it is important to bear in mind that we cannot assume that all coal is of the same value. There is an enormous range in the value of different types of coal mined in New South Wales and in the value of coal mined in different ways. The Government acknowledges and accepts that the amount of coal royalty it may receive under the ad valorem scheme is potentially less than $1.70 per tonne for low value coal. While that may be good news for electricity generators and coal producers, it was not intended to impact on the compensation payable to remaining claimants.

The Government cannot accept that some compensation claimants may receive less compensation as a result of the ad valorem scheme. The compensation proposed by the bill will be fair, as it will be in accordance with all claimants' expectations and entitlements prior to 1 July 2004. The compensation will also conform with the 28,000 claims that have been finalised already. As I emphasised earlier, this is a very important point. There may be people who will never be happy with this settlement. In fairness, as 28,000 claims have been finalised the remaining 129 should be finalised on a reasonable basis. Another point I wish to stress is the commitment of the Government to work to reduce the cost of electricity for the people and businesses of New South Wales.

In 2002-03 the State's seven major coal-fired power stations used about 26 million tonnes of coal mined in New South Wales to produce 90 per cent of the State's electricity requirements. Over the past 10 years, the New South Wales coal-fired electricity generators have progressively modified their coal purchasing strategy. The growth of the export thermal coal industry has increased the price of coal across the board and this has reduced availability and increased the price of coal for domestic electricity production. The Government has done its part to keep domestic coal prices low by introducing the ad valorem royalty regime. As royalty is now calculated on the value of coal, lower quality coal naturally and correctly attracts a lower royalty burden.

Previously, the fixed royalty on low quality domestic coal could be up to three times as high as the royalty on high quality export coking coal as a proportion of the coal price. The introduction of the ad valorem royalty regime will contribute to greater coal resource utilisation and increase operational and marketing flexibility for coal suppliers.

Debate adjourned on motion by the Hon. Peter Primrose.

BUSINESS OF THE HOUSE

Bill: Suspension of Standing Orders

Motion, by leave, by the Hon. Ian Macdonald agreed to:

That standing orders be suspended to allow the introduction forthwith of the Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill.

POULTRY MEAT INDUSTRY AMENDMENT (PREVENTION OF NATIONAL COMPETITION POLICY PENALTIES) BILL

Bill introduced, read a first time and ordered to be printed.

Declaration of urgency agreed to.

Second Reading

The Hon. IAN MACDONALD (Minister for Primary Industries) [5.24 p.m.]: I move:

That this bill be now read a second time.

Before I deal with the content of the Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill, I will give honourable members an overview of the poultry meat industry, which in this State and nationally is thriving and expanding. Australians are eating more poultry meat, per capita, than at any other time in history. In fact the growth rate of this industry has been higher than that of any other meat industry in the past 40 years, and recently chicken meat has overtaken beef and veal as the most consumed meat in Australia.

This go-ahead industry makes a very valuable contribution to the Australian economy. For example, in 2001-02 the Australian chicken meat industry gross food revenue was measured at $3.2 billion, with a total of 415.6 million chickens grown. Exports of chicken meat that year added a further $26 million to the Australian economy. The industry in New South Wales accounts for approximately 35 per cent to 40 per cent of the industry nationally: the largest share of any State or Territory. The New South Wales chicken meat industry contributes more than $150 million every year to the State economy, and the industry underpins a $1.35 billion retail sales market. In New South Wales there are slightly more than 300 registered growers in the industry, with poultry farms supporting an estimated 3,000 on-farm jobs. A 2001 study estimated that a further 15,000 people are employed in poultry meat processing facilities and up to 26,000 in related services.

All up, this suggests that as many as 44,000 New South Wales jobs are directly or indirectly supported by the poultry meat industry. Participants in this industry may be involved in one or many of the various integrated enterprises, such as hatching chicks, growing those chicks into mature birds, basic processing of whole chickens and further value-added processing. The industry is vertically integrated and highly concentrated both industrially and geographically. In New South Wales there are just six main poultry meat processing companies. Those processors own and operate breeding farms, hatcheries, feed mills, processing plants and some growing farms. Other growing farms are independently owned. The New South Wales industry is characterised by having the majority of birds grown under contract on independent farms.

In contract situations, processors provide the birds—as day-old chicks—with feed, veterinary services, medication and animal husbandry advice, and undertake processing, marketing and distribution. The contract growers receive the day-old chicks and grow the birds to maturity, at which point the processor collects the birds and pays the farmer the agreed per bird grow-out fee. The growers provide animal management, capital inputs such as land, housing and equipment, meet some variable inputs such as bedding, gas and electricity, and are responsible for waste disposal. The relationship between processors and growers is one of strong mutual dependence in meeting the needs of the marketplace and balancing meat demand and bird supply. It is that relationship, particularly as expressed in the grow-out contract and the associated growing fee, that has been regulated in New South Wales since the mid-1970s, most recently under the Poultry Meat Industry Act 1986.

The problem addressed by this legislation and similar legislation in other States is the well-accepted fact that contract growers are in a weak position relative to the market power of processors and that statutory protection is required to prevent market power abuse. This issue was first addressed through the Chicken Meat

Industry Act 1977, the forerunner to the current Act. In both 1999 and 2001 reviews of the Poultry Meat Industry Act 1986 were undertaken to fulfil the New South Wales Government's commitments under the competition principles agreement.

The 2001 review found that certain relatively minor changes to the legislation should be adopted to protect jobs in the chicken meat industry. Amendments to the Act were subsequently made to implement these recommended changes. The regulatory arrangements, however, remained fundamentally the same. The New South Wales poultry meat industry has thus operated in a stable and consistent regulatory environment for almost 30 years and, as I have already indicated, has flourished. The evidence is that the legislation has been instrumental in protecting the interests of 300-odd growers, has provided regional employment opportunities, and has made a considerable contribution to the economy of New South Wales. Despite this, the Howard Coalition Government is forcing us to make changes.

I remind honourable members, particularly those opposite, that despite strong representations to the Australian Government defending the legislation, in 2003-04 the New South Wales Government was hit with a $12.86 million penalty for keeping the Poultry Meat Industry Act 1986. However, I subsequently met with the President of the National Competition Council and reached a breakthrough agreement under which the council agreed to certain concessions about penalties if a further independent review of the Act was undertaken. In return the council agreed to recommend the suspension of competition payments for 2004-05 rather than another permanent deduction.

Following a competitive tender process a consultant was appointed to conduct a review in 2004. During the course of the review consultations were held with growers, processors and other industry stakeholders, including the New South Wales Farmers Association, to ensure that the views of all sectors of the industry were represented. This review assessed whether the Act continues to provide net public benefits and whether the identified net public benefits could be achieved in alternative ways that minimise restrictions on competition. Consideration was also given to regulatory best practice issues. The bill I have presented to Parliament reflects the findings of the 2004 review and maps out what I believe to be a sustainable future for both the growing and processing sectors.

It is important to appreciate, however, that the Howard Government has an axe hanging over our heads on this matter. It has applied a further $13 million competition payment suspension to New South Wales this year, which will turn into another deduction if it does not agree with our response to the review. That means another $13 million next year, bringing the payment suspension to a total of $39 million. The Poultry Meat Industry Act 1986 currently requires that grow-out contracts and the price paid to growers for mature birds must be approved by the Poultry Meat Industry Committee established under the Act. Unfortunately, under the extreme interpretation of competition policy rules that the Australian Government has chosen to adopt the National Competition Council will not support retention of this degree of intervention in the New South Wales poultry meat industry.

The centralised price-setting function of the Poultry Meat Industry Committee and the fact that it allows not only growers but also processors to bargain collectively are key concerns of the council. A further concern of processors is that the committee price-setting process forces them to share commercially sensitive information. It is apparent that a regulatory system with these features will not pass council scrutiny. Critically, however, the 2004 review categorically concludes that there are strong grounds for continued intervention to protect growers through less-restrictive arrangements that provide oversight of collective bargaining between processors and growers.

As I will outline in a moment, the Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill seeks to retain as much in the way of grower protection as possible whilst also avoiding further financial penalties. The proposed amendments to the legislation are entirely consistent with the findings of the independent review. Let me again make it clear that this Government would prefer to retain the legislative arrangements as they currently stand, but regrettably the Australian Government is forcing us to change a proven success story for the New South Wales economy. The object of this bill is to amend the Poultry Meat Industry Act 1986 so as to replace the existing system with modified regulatory arrangements, which provide safeguards against anti-competitive behaviour by processors whilst avoiding the use of centralised, compulsory price-fixing and contract approval mechanisms.

At this point it should be noted that even processors have not sought the total removal of the New South Wales legislative arrangements but have supported change whereby the legislation facilitates individual

processors negotiating privately with their group of contract growers. A key feature of the new regulatory system is that it continues to provide statutory authority for collective bargaining by poultry growers in their negotiations with poultry processors. However, rather than being channelled and approved through the Poultry Meat Industry Committee, as is currently the case, collective bargaining will now happen at the level of individual processors and their respective cohort of contract growers. Importantly, growers will be able to choose whether they wish to participate in collective bargaining with their peers or whether they would prefer to negotiate privately with their processor.

To assist in ensuring that this process results in fair outcomes for all parties, the Poultry Meat Industry Committee will have four functions. First, it will identify issues that in the opinion of the committee it would be desirable for grow-out contracts to cover. It is anticipated that this would include much of the content of the current guidelines for agreements already approved by the existing Poultry Meat Industry Committee. A subsequent function of the committee is to identify a more limited set of issues that it is not only considered desirable that grow-out contracts cover, but it is recommended that there be a statutory requirement for contracts to cover. In this regard the committee will have the role of making recommendations on default contract provisions to be applied by regulation unless otherwise agreed by the contracting parties.

The committee will also have the task of developing, and promoting to the industry, a voluntary code of practice for contract negotiations. The intent of this is to promote co-operative and orderly negotiating procedures between growers and processors. Finally, the committee will have a role in relation to resolving contract-related disputes between growers and processors. The parties in dispute over the terms of a proposed or existing contract will be able to call upon members of the committee to act as mediators and, in certain circumstances, arbitrators. To assist and advise the committee in these tasks the bill provides for the constitution of an industry-based Poultry Meat Advisory Group. The bill also provides for processors to be required to notify the Department of Primary Industries within a month of entering into a contract with a grower.

This important provision is directly linked to disease control. Poultry in modern production facilities is highly susceptible to outbreaks of disease that can decimate flocks not only on individual farms but also across the industry if not controlled. Moreover, outbreaks of certain diseases, such as Newcastle disease, have trade implications. This provision will ensure that the Department of Primary Industries always has an up-to-date record of poultry farms and is thus well positioned to respond rapidly and effectively to disease incidents when they occur. I am confident that the Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill represents the most fair and balanced approach that can be achieved, given the constraints the Federal Government has placed on us. I commend the bill to the House.

Debate adjourned on motion by the Hon. Duncan Gay.

ADJOURNMENT

The Hon. IAN MACDONALD (Minister for Primary Industries) [5.38 p.m.]: I move:

That this House do now adjourn.

NORTH COAST POLICING RESOURCES

The Hon MICHAEL GALLACHER (Leader of the Opposition) [5.38 p.m.]: Last week I travelled to the North Coast following representations by the honourable member for Lismore, the honourable member for Ballina, the honourable member for Clarence and the honourable member for Oxley to visit their electorates and meet with local people concerned about policing resources in that region. I saw members of the police force trying to do their best to spread the thin blue line as far as possible whilst the Government and the senior echelons of the force continued to ignore their pleas for help.

As I toured the North Coast the first thing that struck me was the lack of a visible police presence along the Pacific Highway. During my entire trip, which totalled over 2,000 kilometres, I saw only two police vehicles patrolling the highway. I have no doubt that the rosters look good on paper but listening to police on the North Coast has taught me just how tough their job is. For most of us the North Coast is our holiday destination, but for police this region is anything but a holiday destination. Huge increases in population over the past 10 years, improvements to the Pacific Highway and advances in tourism have resulted in an explosion of their workload in this area. However, there has been no such explosion in policing resources.

In addition, in these areas substantial numbers of officers are on long term sick report, with no replacement personnel to fill the gap. As a result the remaining officers must carry an even greater workload. I have visited many of these police stations in the past 20 years. The Kempsey police station building, for

example, is riddled with cracks that one can literally put one's finger in and conditions are cramped. The future gaol is guaranteed to increase the stress on police, with no little talk of improvement in the near future.

At Macksville I attended a full meeting of the Nambucca Shire Council that had been called to discuss local policing problems. What I heard there was nothing short of a disgrace. Police are continually forced back to work on their days off because of the workload and lack of police. This has had a significant impact on both their personal and their professional lives. I heard also about police being directed to work in the Coffs Harbour court district instead of nearby Kempsey, resulting in officers constantly being stripped from the region and from their communities, and being forced to drive to Coffs Harbour and back when escorting prisoners to court. The local population has grown by more than 1,500 in recent years while police numbers have increased by two—and one of them is a part-time shared position. The area covers more than 1,400 square kilometres and a shocking stretch of the Pacific Highway runs through it but, surprisingly, neither Nambucca Heads nor Macksville have 24-hour police stations. Is it any wonder that 12 police in this area have gone on stress leave in the past 10 years?

But Kempsey station is not the only station that no longer meets the demands of the local community or the police. I was appalled to see the Casino police demountable building comprising the detectives' office and the station meal room—which doubles as a sauna for police in the summer months. I also met with Police Association representatives from the lower Clarence River area, including from Iluka, Yamba and Maclean. Everyone in this Chamber will be familiar with these areas and know of the growth that has occurred there in recent times. Twelve officers in that region are doing their best to provide a safe and secure community in which to live. Two of the officers are now on sick leave, and that makes the job much harder for those who remain. When we consider that nine ambulance officers serve Yamba and Maclean, we start to realise how outnumbered the police are on this part of the coast.

During my journey I spoke to many police—despite Government attempts to threaten officers and warn them against meeting me as to do so would contravene protocol. Many officers in this area have had enough. They are calling out for help, and no threats by staff of the Minister for Police, police headquarters or anybody else will deter them. These police do not want the world. All they are asking is that the promised staffing review be carried out as a matter of urgency and that local rank and file police be involved in the process. They believe such a review will substantiate, once and for all, their claims that they are totally overworked and understaffed.

I have been told that the file currently sits with the manager of workforce planning within NSW Police, who, for whatever reason, is yet to commence the inquiry. I foreshadow tonight that this might make a very interesting line of inquiry during the forthcoming round of estimates committee meetings. Of course, the opportunity to question the manager of workforce planning will give members a chance to examine police resources across the State. However, I am truly hopeful that the long-awaited review of North Coast electorates, which will include Kempsey, Coffs Harbour, Grafton, Ballina and Lismore, will commence before the estimates hearings begin. I intentionally did not mention Tweed Heads. I will return to that area in the future, and I look forward to raising more matters in regard to it.

I call on the Minister for Police—irrespective of whether he assumes the leadership of the Australian Labor Party during the forthcoming parliamentary recess—to visit police in the centres that I have mentioned. He should not listen to the yes-men who surround him but go and see for himself. There is a serious problem in this area that he must address now.

CALTEX OIL REFINERY, KURNELL, BUFFER ZONE

Ms SYLVIA HALE [5.43 p.m.]: The Caltex oil refinery is located on the Kurnell Peninsula in the Sutherland shire. The north-east corner of the refinery contains a number of tanks holding gasoline that are located within 80 to 100 metres of 15 homes in Cook, Reserve and Sharn streets. Occupants of these homes would clearly be exposed to unacceptable levels of risk if an industrial accident occurred. Sutherland Shire Council, the Department of Infrastructure, Planning and Natural Resources and Caltex have neglected their duty of care to these residents by failing to create or observe an adequate buffer zone.

When the refinery was established in the 1950s and 1960s Kurnell was a rural area. However, in 1968 the State Planning Authority approved rezoning of the land adjoining the refinery for residential purposes, although Sutherland Shire Council expressed misgivings at the time. In a letter to the State Planning Authority dated 3 October 1968, the council questioned the wisdom of residential zoning because of the "nature of the land and the proximity to the Oil Refinery". These misgivings were confirmed in a 1986 Department of Urban

Affairs and Planning risk assessment study that referred to heat flux levels of 4.7 kilowatts per square metre being generated up to approximately 80 to 100 metres beyond the site boundaries in the event of tank, pool or jet fires.

Heat radiation of this severity will cause pain within 15 to 20 seconds of exposure, and injury and second-degree burns after 30 seconds. The 1986 report noted that, in addition to the heat radiation risk, smoke from such fires would require evacuation of the area. The report stated that, if tank failure led to a major bund fire, the fire could spread easily to other tanks. Residents living within 100 metres of the refinery are clearly at risk—both local and State Government authorities knew that in 1986 and they know it now.

Despite the 1986 report and an updated report in 1989 that showed a clear risk to residents situated close to the refinery, Sutherland Shire Council continued to approve development applications in the affected area, without requiring a buffer zone to be left between gasoline tanks and houses. Sydney Regional Environment Plan No. 17 for Kurnell Peninsula does not contain any specific requirement for a setback or buffer zone, although clause 28 states that the council should consider relevant reports, including risk assessment reports, before approving further development. In 2004 the Holmes Fire and Safety report commissioned by the Sutherland Shire Council noted that heat radiation levels sufficient to cause injury could occur beyond the refinery site boundary. The report also noted that, should a fire break out, people could be evacuated from the area only via a single road: Captain Cook Drive.

There are 15 houses within 100 metres of storage tanks containing gasoline. One house is only 30 metres from the boundary of the refinery. If there were a fire, the residents of these houses could suffer second-degree burns within 30 seconds. Mr Hogarth, the Caltex refinery manager in 2001, wrote to the Sutherland Shire Council in the strictest confidence to advise that any further development within the buffer zone should not proceed. But it took until March this year for discussions to commence between the council and Caltex on this matter. In the meantime, residents have been kept largely in the dark about the buffer zone issue and its implications. When the *St George and Sutherland Shire Leader* contacted Caltex on 27 April this year, the newspaper reported that a spokesman denied the existence of a buffer zone and declined to comment on the report that Caltex had commissioned in 2001 from VRJ Risk Engineers.

Some of the affected residents want to sell their properties but cannot do so. They are trapped because no-one will buy land that intrudes on the buffer zone. Some have businesses that cannot continue to function because of the impact of the buffer zone on their operations. The Greens urge the Government to ensure that the residents of Kurnell are offered a fair deal—that means compensation for their properties at the market values that would have applied prior to the risk assessment reports declaring the need for a buffer zone about which residents were told nothing. Residents who want to leave should not be penalised by prior zoning decisions approved by the State Government and the development decisions made by the Sutherland Shire Council. The risk, however, is the result of Caltex's activities so Caltex should contribute to whatever compensation is offered to residents—after all, at a time of spiralling oil profits, that is the least we should ask of a huge multinational corporation.

POLISH EDUCATIONAL SOCIETY FIFTIETH ANNIVERSARY

The Hon. AMANDA FAZIO [5.48 p.m.]: On Saturday 7 May 2005 I had the pleasure of representing the Premier at the Polish Educational Society's fiftieth anniversary banquet at the Polish Club in Ashfield. Also present were Mr Henriyk Dobrorowski from the Polish Consulate; Mr Gregorz Jobkiewicz from the Polish Consulate; Mr George Krajewski, President of the Federation of Polish Organisations; Mrs Halina Szunejko, President of the Polish Organisation of Western Australia; Dr Bozena Szymanski, President of the Polish Education Commission of Australia; and Mrs Marysia Nowak, President of the Polish Educational Society. It was a great pleasure to represent the Premier and to join with members of the Polish community in celebrating the fiftieth anniversary of the Polish Educational Society in New South Wales. The Polish Educational Society was established in New South Wales in 1955 to help co-ordinate Polish language teaching and encourage the maintenance of the Polish language by future generations.

The society aims to instil a love of the Polish language and heritage in young people through cultural activities, holiday camps and lessons in the Polish language. The society became incorporated in 1996. It is a member of the New South Wales Federation of Community Language Schools and also works closely with the New South Wales Department of Education and Training and the Community Language Schools Program. Among those present at the banquet were the founders of the society, representatives of Polish community organisations, teachers and former students of Polish Saturday schools. The society operates Saturday schools in

the Sydney metropolitan area through the Community Language School Program. The schools are located at Ashfield, Bankstown, Marayong, North Ryde, Casula and Minto.

The Polish Education Society advised that in 2005 there are approximately 200 primary school students and 100 high school students learning Polish in New South Wales. Approximately 20 students are undertaking Polish language studies as part of their Higher School Certificate this year. Natural history studies, exploration and the gold rush were all factors in the establishment of early links between Poland and Australia. The first contact between Poles and Australia occurred in 1696, when 10 citizens of the Polish-Lithuanian Commonwealth were part of the crew of Captain Willem Vlamingh's Dutch expedition which explored the Western Australia's coast.

The first Polish arrivals to Australia were a natural scientist and his son—the Forsters—Reinhold and George, who were members of the scientific staff of Captain Cook's second expedition on HMAS *Resolution*. The Polish presence in Australia dates from very early in the period of European settlement, the first definite record being that of a convict transported to Port Phillip in 1803, who subsequently became a successful farmer in Tasmania. A number of early Polish settlers in Australia were aristocratic refugees from Tsarist oppression, whilst others, mainly from the part of Poland then under German rule, were of agricultural background and established themselves as small farmers. In South Australia two such groups, principally from Silesia, constituted a distinct Polish cultural enclave, maintaining its own language, schooling, cuisine, music and architecture. The larger of those settlements endured until after the First World War, but then became largely assimilated into mainstream society.

Later, in 1839, Polish nobleman Paul Edmund Strzelecki arrived in Sydney and went on to discover gold near Bathurst and in Tasmania. Another group of Polish political refugees who came to Australia during the gold rush years comprised some 50 former Polish Legionaries who had fought alongside the Hungarians in the anti-Hapsburg revolution of 1848. Those men were largely university educated and made a contribution to the developing Australian society out of proportion to their numbers. Significant Polish migration to Australia began in the postwar period. Between 1947 and 1954 the Polish-born population increased more than eight times to 56,594. That first wave of Polish migrants have made their mark on communities across Australia. Many were refugees and displaced persons, seeking safety and a place to start again.

During the 1980s many younger people from Poland came to Australia equipped with professional or trade qualifications. In fact, the tradesperson who painted my house last year was a young man from Poland. Today, we in New South Wales reap the benefits of their expertise in business, technology and academic life. The Polish community is a large and important one in the multicultural mosaic that is New South Wales. At present, according to the 2001 census, some 44,000 people in New South Wales were recorded as having Polish ancestry. The Polish community has from the very early days of settlement made a significant contribution to Australia's civic and economic development.

We can find people of Polish heritage playing prominent roles in politics, business, sports and the arts. For example, explorers Sir Paul Edmund Strezelecki, who named Mount Kosciuszko during an expedition to the Snowy Mountains in 1840, and Dr Ludwick Bernstein, who explored the Australian Alps and named the Snowy River. The first director of the prestigious Australian Film and Television School in Sydney was Professor Jerzey Toeplitz, who held this position from 1973 to 1979. The Polish surnames of Australian swimming champions and Olympic medallists Michael Klim and Daniel Kowalski are household names throughout Australia. In business, the co-founders of the successful franchise The Cheesecake Shop, Robert and Warick Knopacki, are of Polish origin. And, of course, there is Professor Jerzy Zubrzycki, who, along with the late Al Grassby, has been referred to as the architect of multiculturalism. There are, of course, many others of Polish heritage who have made a valuable contribution to the community.

The importance of cultural and linguistic maintenance cannot be understated, and I am well aware of the importance of the Polish language to the Polish community. I grew up in Cabramatta in the 1960s and 1970s and quite a few of my school friends were of Polish origin and went to Saturday school and learnt traditional dancing, and we all attended social functions at the White Eagle Hall. Learning a language and its culture assists family communication across the generations, and enables people of Polish background to maintain strong links with Polish speakers in Poland and other countries. This maintenance of Polish language and culture has broader implications for economic development and international trade in an increasingly globalised economy.

The valuable contribution of the Polish Priests of the Society of Christ needs to be mentioned as their pastoral role was of prime importance to the development of traditional Polish Catholicism among the younger generations. I want to take this opportunity to congratulate Mrs Marysia Nowak and all those who have put their time and effort into supporting the Polish Educational Society of New South Wales. [*Time expired*].

CHILD DEATH REVIEW TEAM DATA

The Hon. CATHERINE CUSACK [5.53 p.m.]: On 16 November 2004 I spoke in this House in relation to the 2003 annual report on child deaths. I thanked the Child Death Review Team for its important work and commented on the low death rate in the Richmond-Tweed area. Indeed, the Tweed statistical division had no infant deaths recorded at all during the three-year trend period—the only part of our State to have such a positive result. On 15 December, however, I emailed Gillian Calvert, the Children's Commissioner, who convenes that important committee, to express concern about the positive nature of those figures. I wrote:

> As you can imagine I was very pleased our region has such a low child death rate. However, it was so positive particularly in relation to Tweed that it worried me. It seems unrealistically low given what I know from the local media.
>
> More recently it has occurred to me that we have no access to NSW teaching Hospitals and seriously injured or ill residents are all transferred to Brisbane tertiary level hospitals. If your report does not include NSW child deaths where the young person has passed away either en route or in a Queensland hospital, then a very substantial number of child deaths for our region, including a large number of road accident fatalities are not being recorded.
>
> I have re-checked the methodology and it is clear that you only review deaths occurring in NSW and only consult NSW authorities.
>
> Can you advise me on this matter as these statistics are very significant and impact on our understanding of need, and planning for services in our area. I assure [you] I would have given a very different adjournment speech had I been aware such deaths are not being counted (note that there are no qualifications in the report particularly in relation to the Tweed infant death statistics).

On 24 December Ms Calvert replied:

> As indicated in the Teams Annual report (page 4), our principal source of data is Death Registration data for the state of New South Wales obtained from the NSW Registry of Births, Deaths and Marriages. We receive information on all child deaths registered. The Child Death Register, maintained by the Child Death Review Team, only includes deaths which are both registered and occur in NSW. Deaths of children who die outside of NSW are not included.

She continued:

> The Child Death Review Team in NSW is not able to access death registration data for deaths registered in other states, such as Queensland, nor access information from authorities outside NSW, even if the children were residents of NSW.

Ms Calvert's email suggested there would be a review of the text of the report with a view to clarifying this matter in the footnotes of the document. I was concerned, however, because I believe the issues are more substantial than simply clarifying the accuracy of the statements in the report.

The reasons for my concern are: research and data on infant and child mortality rates is the bases of resource allocation—especially health but also community services and programs for Aboriginal children, a substantial number of whom live in our region; the issue of recorded deaths from traffic accidents can give a false portrayal of mortality on roads such as the Pacific Highway in our region; and notification to the Ombudsman of deaths of children previously subject to Department of Community Services [DOCS] notifications. In other words, if a child has been notified to DOCS as being at risk and subsequently dies, the death is specially investigated by the Ombudsman. But it would appear that unless the death occurs in, or is pronounced a death in, New South Wales it may slip through the net and not be investigated.

I subsequently met Ms Calvert and put my concerns to her. I also pointed out that the problem for our region is a cross-border issue that would also apply in relation to child deaths in Broken Hill, Albury-Wodonga and possibly Monaro-South Coast and regions surrounding the Australian Capital Territory. I have subsequently received correspondence indicating that the team has done some further work which suggests that up to 40 per cent of child deaths in the Richmond-Tweed statistical area may be registered in Queensland but not recorded in New South Wales. That appears to be a figure that applies principally to local children. It appears that it is very rare for a New South Wales child who is not from our region to pass away in Queensland.

I believe we are talking about dozens of infants and child deaths over a sample period of approximately three years. I thank the Child Death Review Team for taking this issue seriously. I point out that it affects all cross-border regions in the State. It is my hope that the matter can be resolved so that these deaths are captured and properly recorded and reported upon. As an interim solution, I would suggest that the data should not be published at all. It is better to have no data than data that puts forward a false portrayal of a positive outcome in a region. I will continue to pursue this matter. I appreciate the support of the Child Death Review Team investigating this matter.

POLAR BEAR NUMBERS

The Hon. JON JENKINS [5.58 p.m.]: Polar bears are very cute—as long as one stays a reasonable distance from them. In a recent article in a leading Australian newspaper it was said that the bodies of polar bears are becoming thinner. However, it turned out that that was true only in one area of Canada during a particular year: the Hudson Bay region in 1999. A study found that the average weight of female polar bears was 80 per cent lower than was found in a previous survey. The research was conducted by Dr Ian Stirling, a researcher with the Canadian Wildlife Service. In the study Dr Stirling stated, "I am reluctant to speculate too widely", but then went on to speculate very widely that the causes may be anything from chemical composition of seals in the area to pollutants, hydroelectric developments and, of course, climate change.

However, at a conference of science journalists in Montreal in 2004, Dr Stirling advocated curbing carbon dioxide by 60 to 80 per cent to save the polar bears! The World Wildlife Fund [WWF] picked up and broadcast his statement predicting the extinction of polar bears if climate change continues. Such wild speculation is the fuel that drives the climate change industry: scientists carry out studies with speculative conclusions, which are then paraded as conclusive evidence of imminent doom by the extremist politicians. The real problem is that there is no evidence of Dr Stirling or any other scientist either standing up to set the record straight or of castigating groups like the WWF for misrepresenting scientific research, which, as any scientist will tell you, is considered the greatest of all scientific sins!

So are polar bears being endangered by an early melting of the Arctic ice, as was suggested by Dr Stirling and the WWF? Not according to the WWF's own study "Polar Bears at Risk". The report found that polar bear populations are stable and in many areas are actually increasing. In fact they were found to be in decline in only 2 of the 19 areas studied. True to form, the WWF press release only referred to areas that were in decline, and did not mention the 17 areas where polar bear numbers were actually increasing! This is typical of the lies and falsehoods propagated by some of these environmental groups.

More recent studies have found a 20 to 25 per cent increase in polar bear numbers across Canada. In some areas the numbers have increased to the point where the indigenous Inuit have increased the number of polar bears available for hunting. In a number of Arctic villages polar bears are so abundant there is a serious public safety issue. Canada's Department of Fisheries and Oceans, which monitors the relationship between shifting sea ice and global warming, has concluded that:

> The overall possible impact of global warming appears to play a minor role in changes to the Arctic sea ice.

Why do the scientists go along with these deliberate misrepresentations of their research by others when, if they misrepresented their own research in this way, they would be castigated and cast out of the scientific community? This question is particularly vexing in view of the fact that it is considered to be the ultimate scientific sin to misrepresent your research. So why then do so many of the scientists passively allow their own research to be misused? The first possible reason is fear of retribution. As a scientist myself, I have witnessed this unwritten code of silence within the medical fraternity. The old adage about doctors burying their mistakes arose because of the reticence of other practitioners to dob in their colleagues. There is absolutely no doubt that there is an element of this within the scientific community.

The second possible reason is related to government funding, which is of course intrinsically linked to political ends. The cycle is really quite simple. A scientist makes a speculation or ambiguous statements particularly directed at a non-scientific government official. These comments are picked up by the extreme green propagandists who use their—usually government funded—propaganda machines to influence public opinion, which in turn is perceived by the politicians as a desire to fund the necessary scientific research. Very quickly scientists learn that they can get cyclic funding by including alarmist scenarios in their research, with desired feedback into the public funding spectrum. The fact is it works! Somewhere in excess of US$4 billion is being allocated to climate change research in the United States alone. In Australia the figure is $100 million, a large amount of which goes to the Greenhouse Office, which does nothing but produce some media campaigns. So even the non-scientific groups are benefiting from the climate change industry.

The third reason is related to political influence. In many countries the extreme green element holds the balance of power between the two opposing parties in our political system. They use this balance of power as leverage to not only fund their green political arms while masquerading as environmental groups but also to place ideologically kindred spirits into the senior executive service. I am sure the Government sees this happening constantly. These people then propagate the extremist ideology from the inside as well. In many cases the senior executive positions are filled by, shall we say, left-leaning scientists.

The possible final reason is what I call the noble cause. This is where scientists or other government officials accept their misdeeds but placate their own consciences with the belief that what they are doing is for a noble cause. This noble cause is, of course, the saving of the planet from evil industrialists and capitalists of the world that are hell-bent on destruction of our natural environment at all costs. The problem is that the real loser in all of this is good, solid science. But all is not lost! The Oregon petition has been signed by 17,000 of America's leading scientists, and the Heidelberg appeal has been signed by 4,000 scientists, including 70 Nobel prize winners, who have decried this bad use of science.

FEDERAL GOVERNMENT INDUSTRIAL RELATIONS POLICY

The Hon. PETER PRIMROSE [6.03 p.m.]: In yesterday's State budget the portfolio of the Minister for Industrial Relations included a record allocation of funds aimed squarely at ensuring that workers in New South Wales will have their rights and entitlements protected. This funding stops problems before they occur. That is the way we do things in New South Wales. In about a month's time we will see the way they do things at a Federal level when it comes to industrial relations. As I have said before in this place about the Federal Government's industrial relations legislation, it is more like a drunk in a bar, swinging at everything in sight, than legislation designed to deal with the complexities of Australian workplaces.

Make no mistake: the legislation proposed by John Howard's Government has no other purpose than to crush the unions that represent Australian workers. While we are providing funding to ensure that New South Wales workers' wages, entitlements and working conditions are protected, the proposed Federal industrial relations legislation will impose penalties on workers who take action when they believe they are exposed to occupational health and safety risks in their workplaces. While this Government has announced new initiatives to increase the numbers of skilled apprentices, the Federal Government's new industrial relations laws leave union members open to heavy fines and other penalties if they organise on an industry-wide basis to increase training and apprentices, maintain industry working standards, or campaign for more jobs. In July 1998 Peter Reith, then Minister for Workplace Relations, told a Perth business lunch:

> Never forget the history of politics. And never forget which side we're on. We're on the side of making profits. We're on the side of people owning private capital.

Nothing has changed. In February this year the current Federal Minister for Workplace Relations, Kevin Andrews, said that the sentiments behind the "Big Business Blueprint" are a "good summary of the government's intentions", while just last month Australian Business leader, Michael Chaney, complained:

> A fundamental flaw is that people have tried to use industrial relations policy as a tool to achieve not only productivity and growth in the economy, but fairness. An emphasis on fairness only leads to inefficiency.

Unions like the Australian Manufacturing Workers Union recognise what they are dealing with in the proposed Federal industrial relations legislation. They know that it has absolutely nothing to do with fairness and everything to do with promoting the interests of big business. They know that under an industrial relations system dominated by this Federal Government, industrial rights have to be fought for and the only way that can be done effectively under the regime proposed by people like Peter Reith, Michael Chaney and Kevin Andrews is through a strong union.

If John Howard is able to introduce his new legislation, stripping away the most basic of workers' rights, then it will only be through strong on-the-job activity that workers will be able to maintain wages and conditions to support themselves and their families. Only by belonging to a union will workers be treated with respect. John Howard is determined to exploit his new parliamentary muscle to fulfil the wish list of big business leaders like Michael Chaney and to change the face of Australia forever by imposing an American-style industrial relations system.

While the Federal Government justifies these changes as based on the need for flexibility and efficiency, we know that this is legislation that will drive wages and conditions down for ordinary working people. Employers will have unrestricted rights to hire and fire their employees and will force as many workers as possible onto individual contracts, and we will see a focus on cost-cutting and sackings, instead of training and investment. This is legislation designed to promote a race to the bottom so that we are competing, not on skills, technology, training, innovation and investment, but on low wages, poor working conditions, and a lack of rights for Australia's working people. Unions have always been prepared to work co-operatively with employers who are prepared to recognise decent rights for workers and invest in training, technology and innovation.

Motion agreed to.

The House adjourned at 6.08 p.m. until Wednesday 26 May 2005 at 10.00 a.m.