LEGISLATIVE COUNCIL

Tuesday 17 June 2008

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The President (The Hon. Peter Thomas Primrose) took the chair at 2.30 p.m.

The President read the Prayers.

The PRESIDENT: I acknowledge the Gadigal clan of the Eora nation and its elders and thank them for their custodianship of this land.

ASSENT TO BILLS

Assent to the following bills reported:

Miscellaneous Acts Amendment (Same Sex Relationships) Bill 2008
Jury Amendment Bill 2008
Appropriation (Budget Variations) Bill 2008
Growth Centres (Development Corporations) Amendment Bill 2008
Medical Practice Amendment Bill 2008
Superannuation Administration Amendment Bill 2008
Marine Parks Amendment Bill 2008

MARINE PARKS AMENDMENT BILL 2008

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

DEATH OF THE HONOURABLE RICHARD KELYNACK EVANS, A FORMER MEMBER OF THE LEGISLATIVE COUNCIL

The PRESIDENT: I report the death on 5 June 2008 of the Hon. Richard Kelynack Evans, aged 86 years, a member of this House from 1969 to 1978. On behalf of the House I have extended to his family the deep sympathy of the Legislative Council in the loss sustained.

Members and officers of the House stood in their places.

MINISTRY

The Hon. TONY KELLY: I inform the House that following the Hon. John Della Bosca's standing aside from his ministerial duties Her Excellency the Governor, with the advice of the Executive Council, has authorised the following Ministers to act for and on behalf of the Hon. John Della Bosca in the following portfolios: the Hon. John Hatzistergos, MLC, will act as the Minister for Education and Training; the Hon. Eric Michael Roozendaal, MLC, will act as the Minister for Industrial Relations, and Minister Assisting the Minister for Finance; and the Hon. Tony Kelly will act as the Minister for the Central Coast.

REPRESENTATION OF MINISTERS IN THE LEGISLATIVE COUNCIL

The Hon. TONY KELLY: I inform the House that, following the Hon. John Della Bosca's standing aside from his ministerial duties, in the representation of Government responsibilities in this Chamber, I will represent the Hon. Kristina Keneally, MP, the Minister for Ageing, and Minister for Disability Services; my colleague the Hon. Michael Costa, MLC, will represent the Hon. Morris Iemma, MP, the Premier, and Minister for Citizenship; and my colleague the Hon. John Hatzistergos, MLC, will represent the Hon. Linda Burney, MP, the Minister for Fair Trading, Minister for Youth, and Minister for Volunteering.

TABLING OF PAPERS

The Hon. ERIC ROOZENDAAL tabled the following paper:

Annual Reports (Statutory Bodies) Act 1984—Report of the Tow Truck Authority of New South Wales for the period 1 July 2006 to 30 November 2007

Ordered to be printed on motion by the Hon. Eric Roozendaal.

AUDITOR-GENERAL'S REPORT

The Clerk announced the receipt, pursuant to the Public Finance and Audit Act 1983, of a performance audit report of the Auditor-General entitled "Recycling and Reuse of Waste by the NSW Public Sector—Department of Environment and Climate Change", dated June 2008, received out of session and authorised to be printed on 11 June 2008.

GENERAL PURPOSE STANDING COMMITTEE NO. 2

Government Response to Report

The Clerk announced the receipt, pursuant to standing orders, of the Government's response to report No. 25, entitled "Inquiry into the Operations of the Home Building Service", tabled on 14 December 2007, received out of session and authorised to be printed on 13 June 2008.

LEGISLATION REVIEW COMMITTEE

Report

The Clerk announced the receipt, pursuant to the Legislation Review Act 1987, of the report entitled "Legislation Review Digest No. 8 of 2008", received out of session and authorised to be printed on 16 June 2008.

BUSINESS OF THE HOUSE

Suspension of Standing Orders: Presentation of an Irregular Petition

Motion, by leave, by Reverend the Hon. Fred Nile agreed to:

That standing orders be suspended to allow the presentation of an irregular petition from 182 citizens concerning a development application to the Council of Camden.

IRREGULAR PETITION

Camden School Development Application

Petition requesting that an inquiry be held into the development application to Camden Council for a primary and secondary school and calling for suspension of the application until the identity, funding sources, capacity, ideology and competency of the landowner and prospective school proprietor are fully ascertained, received from **Reverend the Hon. Fred Nile**.

PETITIONS

Herons Creek Power Plant Proposal

Petition calling on the Minister for Planning to listen to community concerns and extend the public consultation process on the proposed Herons Creek Power Plant, received from **the Hon. Melinda Pavey**.

Northern Rivers Rail Expansion

Petition requesting that the Government introduce regular local passenger trains on the Casino to Murwillumbah rail line, develop an integrated and sustainable plan for meeting the current and future transport needs of the Northern Rivers region, commence planning for a rail link from Murwillumbah to the Gold Coast and promote the expansion of rail freight, received from **Ms Lee Rhiannon**.

Camden School Development Application

Petition requesting that an inquiry be held into the development application to Camden Council for a primary and secondary school and calling for suspension of the application until the identity, funding sources, capacity, ideology and competency of the landowner and prospective school proprietor are fully ascertained, received from **Reverend the Hon. Fred Nile**.

Environmental Planning Changes

Petition requesting that any reforms to the Environmental Planning and Assessment Act 1979 strengthen environmental and heritage protections and community input into decisions about development, remove conflicts of interest from the planning and development system and recognise the central role of the planning system in addressing greenhouse gas emissions and mitigating the effects of global warming, received from **Ms Sylvia Hale**.

DISTINGUISHED VISITORS

The PRESIDENT: I welcome to the President's gallery the Hon. Mutale Nalumango MP, Deputy Speaker of the National Assembly of Zambia, accompanied by Mrs Doris Mwinga, Clerk of the National Assembly of Zambia, who are here on a familiarisation visit to the New South Wales Parliament.

BUSINESS OF THE HOUSE

Withdrawal of Business

Private Members' Business items Nos 3, 41, 58, 95 and 112, outside the Order of Precedence withdrawn by Dr John Kaye.

THE HON. JOHN DELLA BOSCA MLC: IGUANAS WATERFRONT RESTAURANT INCIDENT

Personal Explanation

The Hon. JOHN DELLA BOSCA, by leave: I wish to make a personal explanation. Members will be aware of the controversy concerning events at the Iguana bistro early on the night of Friday 6 June. Last Monday I provided the Premier with a statement concerning these events, which the Premier subsequently authorised to be released publicly. I seek leave to table that statement.

Leave granted.

Members will also be aware that the matter is now the subject of a police investigation. I can assure members of the House that I will be cooperating with that investigation. I understand that the matter has been referred by the Leader of the Opposition in the other place to the Independent Commission Against Corruption. Part of my statement to the Premier concerned my answer to a question in this House on Tuesday 13 May when I indicated my intention not to drive. In my statement to the Premier I explained the circumstances that compelled me to drive on the night of 6 June. I believe every other member of this House would have done the same thing in the same circumstances. I can assure the House that the only drink I had that night was mineral water. With respect to other matters, I am sure members will agree that it would be entirely inappropriate for me to use parliamentary privilege to prejudice or influence any investigation that may be underway.

Today I advised my party caucus that I have stood aside as Leader of the Government in this place during the investigation. The Hon. Michael Costa will act in this capacity. In relation to portfolio responsibilities, as my colleague the Leader of the House has already reported, matters relating to education and training are being administered by the Hon. John Hatzistergos, matters relating to industrial relations and Minister assisting the Minister of Finance are being administered by the Hon. Eric Roozendaal, and matters relating to the Central Coast are being administered by the Hon. Tony Kelly.

SELECT COMMITTEE ESTABLISHMENT: NOTICE OF MOTION

The PRESIDENT: On Friday 13 June I received a letter from the Hon. Trevor Khan requesting the opportunity to make a further submission on the matter of a point of order taken on a notice of motion given by him concerning the establishment of a select committee. It is appropriate that any such submission should be subject to the normal process of debate in the House. Accordingly, the Hon. Trevor Khan may have the opportunity now to make a short verbal submission, after which I will invite other members to make a brief response. When that is done, the House will proceed to the next item of business.

The Hon. TREVOR KHAN: I thank you for the opportunity to make further brief submissions. Firstly, when the Hon. Amanda Fazio raised the issue of sub judice she did so during the debate to suspend standing and sessional orders, in other words, during the urgency debate. I submit that this was not the appropriate time to raise a point of order as to whether or not an issue of sub judice exists is a substantive point and not one to be dealt with during what is essentially a procedural motion. The question is whether the issue of sub judice goes to the constitution of the select committee—that is, if the issue is so fundamental to the constitution of the committee that it prohibits the formation, the taking of evidence and consideration of matters?

In essence, the point I make is that the question of sub judice is one for consideration by the Chair of the committee, who is capable of taking evidence and deciding whether there is an issue of substantial prejudice to the trial of the case. During the receipt of such evidence, a select committee is in the best position to know whether there are any proceedings before a court, the likes of which would rule that particular evidence to fall foul of the convention of sub judice. Even if legal proceedings are on foot, it does not in and of itself prevent a select committee from considering other matters that fall within its terms of reference.

Even if legal proceedings are on foot now, this does not mean that at the time of taking evidence those proceedings will still be on foot. It is for the Chair and the committee to determine issues of substantial prejudice to the trial of the case if and when they apply and not, with the greatest of respect, for you, Mr President, to determine at this time. I ask that you be guided by the ruling of President Johnston 16 May 1990, in which the following points were made:

> The convention is much stricter in relation to criminal matters—possibly having to be applied from the moment a charge is made—than in civil cases—possibly having to be applied from the time the case has been set down for trial or otherwise brought before the court. In recognition of the fact that some time they elapse before a civil matter comes before a court, the additional test of "real and substantial danger of prejudice to the trial of the case" may be used by the Chair …
>
> The Chair must take a realistic attitude towards sub judice by not automatically excluding discussions in the House on matters of public interest which are already freely ventilated in the media.
>
> The Chair should be guided in the first instance by a presumption for discussion rather than against it … Because a matter is before a court it does not follow that every aspect of it must be sub judice and beyond the limits of permissible debate—this would be too restrictive of the rights of members.
>
> If the Chair feels that the interests of individuals who are to appear before the court may be prejudiced, the Chair should intervene and warn the member speaking to temper his or her remarks.

And finally:

> The convention applies equally with regard to select committee proceedings.

I therefore suggest that it is clear the sub judice rule should not be applied in this circumstance, at this time or in this manner. If an issue of sub judice should arise in the future, at a point when the select committee is established and hearing evidence, the Chair of the committee, guided by President Johnston's ruling, will be in the best position to deal with it.

The Hon. AMANDA FAZIO: My original point of order to the notice of motion of the Hon. Trevor Khan was twofold. The second of the two points I raised related to sub judice. The Hon. Trevor Khan has addressed that point at length today, and I will not make any further comment on it because I believe that that is a matter for you to rule on, Mr President.

I note with interest, however, that Hon. Trevor Khan did not address the first point that I raised, which related to the relationship between the Legislative Council and the Legislative Assembly. I believed then, and still believe, that that is the most crucial point for determining that the motion is out of order and that the matter should not be dealt with by way of an inquiry by a select committee. It is inappropriate for this Chamber to conduct an investigation into the dealings of the Legislative Assembly, particularly in relation to industrial relations issues and the protections that the Assembly provides to its employees. In saying that I am by no means attempting to canvass your recent ruling on the original notice of motion of the Hon. Trevor Khan and the redrafted motion subsequently presented by him. The issue of comity between the two Chambers is crucial, and I urge you to give that matter due consideration when ruling on my points of order.

The PRESIDENT: There being no further speakers, the House will deal with the next item of business.

BUDGET ESTIMATES 2008-2009 TAKE-NOTE DEBATE: SESSIONAL ORDER

The Hon. DON HARWIN [2.52 p.m.]: I move:

That, during the present session and unless otherwise ordered:

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

(2) Debate on the motion to take note of the budget estimates for 2008-2009 is to take precedence after debate on committee reports on Wednesdays.

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

The tradition over the past couple of years has been that members do not speak at length to the second reading of the appropriation bills; they have reserved their remarks for the take-note debate on the budget. Consequently, each year the take-note debate on the budget has commenced as soon as possible after the Treasurer has delivered his Budget Speech. Some members opt to speak on the budget as soon as they are given the opportunity after the presentation of the budget, while others choose to make their remarks later in the year. The motion seeks to have the take-note debate on the budget start tomorrow in the hour following debate on committee reports. That is the position of the Opposition and, as I understand it, that of many members of the crossbench, who I am sure will speak for themselves on this motion.

I am advised that the Government will move an amendment to seek to have the take-note debate start in September. It is suggested that the reason for doing so is to maintain maximum flexibility on days that are reserved for Government business so that the large workload before the House can be dealt with. In that respect I make two comments. First, every member of the House is well aware of how often the House has not sat after dinner on days when we have dealt with Government business simply because so little Government business has been brought before the House. The idea that we should not start the take-note debate until September or October, merely because the Government cannot get its act together to deal with the flow of legislation, is, in my view, ridiculous.

I apologise to the Leader of the House for anticipating the Government's proposed amendment, of which he was kind enough to show. I thank him for that courtesy; it will make my reply speech much shorter. However, if he proceeds with the amendment and is able to secure the support of the crossbench for it—which will result in it being agreed to—he will succeed only in causing those who would otherwise speak briefly in the take-note debate on the budget, contributing tomorrow to debate on the appropriation bills with no time limit. I suggest that he reconsider his rather ill-considered amendment. I think if he reflects upon the matter for just a moment, he will realise that commencing the take-note debate on the budget within the limits set out in my motion is a course that will use the time of the House more economically than that which he proposes should be adopted. I commend the motion to the House.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [2.57 p.m.]: I support the matters set out in the motion of the Hon. Don Harwin with one exception—to which he has alluded. I move:

That the motion be amended by omitting the words " during the present session" and inserting instead "from the first sitting day of September and for the remainder of the present session".

As the Hon. Don Harwin said, over the next two weeks the Government has an enormous amount of legislation to present and the House will be pushed for time to have it dealt with. An additional two hours will not make a great deal of difference to the members speaking, but the addition of even one hour to what are likely to be very long sittings will have an enormous impact on others in the House. I say that not just for the information of members, but also to advise the parliamentary staff who will have to endure it.

Ms LEE RHIANNON [2.58 p.m.]: The Greens support the motion. We are concerned that the take-note debate on the budget is often pushed back. It is an important debate that gives members an opportunity to discuss the budget in detail. As the Hon. Don Harwin noted, so far this session the Government has delayed and great deal of business that should have been dealt with. We should not sacrifice the opportunity to debate the budget now. Otherwise we could have a repeat of the ridiculous situation of a couple of years ago when the budget was debated a year after it was delivered. The Greens supports the motion moved by the Hon. Don Harwin.

Reverend the Hon. FRED NILE [2.59 p.m.]: The Hon. Don Harwin spoke to me recently about this motion. Because of time pressures I thought a solution would be to replace the hour set aside for debating committee reports on Wednesdays with time to conduct a take-note debate on the budget. I am happy to move amendment to that effect if the Clerk would care to draft it.

The Hon. Don Harwin: We will not support it. My instruction is to stick with what we have moved.

Reverend the Hon. FRED NILE: In that event, I support the Government's amendment.

The PRESIDENT: Does Reverend the Hon. Fred Nile wish to move an amendment?

Reverend the Hon. FRED NILE: No, I thought it might be helpful, but I will not move it.

Dr JOHN KAYE [2.59 p.m.]: The Government is displaying a certain air of contempt for the House in this matter. The budget is an important document and we have a right to debate it in a timely fashion. Putting off debate for two and a half months takes all the timeliness out of the document and the debate. It seems to me the Government is displaying a certain fear of the scrutiny to which it would be exposed in the upper House. As my colleague said, we support the motion by the Hon. Don Harwin.

The Hon. DON HARWIN [3.00 p.m.], in reply: In response to Reverend the Hon. Fred Nile, there was a bit of noise in the Chamber and I might not have entirely understood the amendment he foreshadowed but did not move. As I heard it, it was to dispose with debate on committee reports until the take-note debate had concluded.

Reverend the Hon. Fred Nile: No, I said because of the time pressure in the next two weeks, we could replace the hour set aside for committee reports on Wednesdays with take-note debates on the budget.

The Hon. DON HARWIN: There is no reason that this sessional order could not be put in place and by agreement the House might adopt that position. The Opposition will maintain the motion it has moved. It listens to any suggestion the Government makes about how it would like to deal with Government business. If this motion is adopted and the Leader of the House comes to us with a proposal tomorrow we will consider it. If a case is made, we will support it. There is no reason that the concern raised by Reverend the Hon. Fred Nile could not still be addressed even if this particular sessional order is adopted. I encourage the House to support it.

Question—That the amendment of the Hon. Tony Kelly be agreed to—put.

The House divided.

Ayes, 19

Mr Catanzariti	Mr Macdonald	Ms Voltz
Mr Costa	Reverend Dr Moyes	Mr West
Mr Della Bosca	Reverend Nile	Ms Westwood
Ms Fazio	Ms Robertson	
Ms Griffin	Mr Roozendaal	*Tellers,*
Mr Hatzistergos	Ms Sharpe	Mr Donnelly
Mr Kelly	Mr Tsang	Mr Veitch

Noes, 20

Mr Ajaka	Miss Gardiner	Mrs Pavey
Mr Brown	Mr Gay	Mr Pearce
Mr Clarke	Ms Hale	Ms Rhiannon
Mr Cohen	Dr Kaye	Mr Smith
Ms Cusack	Mr Khan	*Tellers,*
Ms Ficarra	Mr Lynn	Mr Colless
Mr Gallacher	Mr Mason-Cox	Mr Harwin

Pair

Mr Obeid	Ms Parker

Question resolved in the negative.

Amendment negatived.

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

Motion agreed to.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Notice of Motion No. 1 postponed on motion by the Hon. Tony Kelly.

PRIVILEGES COMMITTEE

Referral

Motion by the Hon. Tony Kelly agreed to:

That, under section 14A of the Constitution Act 1902, the further draft Constitution (Disclosures by Members) Amendment Regulation 2008 be referred to the Privileges Committee for inquiry and report by Thursday 26 June 2008.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Notice of Motion No. 3 postponed on motion by the Hon. Tony Kelly.

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL 2008

BUILDING PROFESSIONALS AMENDMENT BILL 2008

STRATA MANAGEMENT LEGISLATION AMENDMENT BILL 2008

Second Reading

Debate resumed from 4 June 2008.

Reverend the Hon. FRED NILE [3.12 p.m.]: I wish to give my reasons for supporting the important planning legislation before the House—the Environmental Planning and Assessment Amendment Bill 2008, the Building Professional Amendment Bill 2008 and the Strata Management Legislation Amendment Bill 2008. It is important that we examine the facts concerning this legislation rather than listen to the rhetoric we have been hearing in many places, which I believe has caused unnecessary fear and concern in the community regarding this legislation. However, concerns have been expressed about some aspects of the legislation and I have been doing all I can to have discussions with the Minister to see whether it is possible to amend the legislation to address some of those concerns. I believe that the amendments I will foreshadow in a moment will help address some of the concerns expressed.

I understand that the Opposition parties—the Liberals and The Nationals—have said that they will vote against the bills, that they support an inquiry into them, and that they will not vote for any amendments to the bills, regardless of their merit. I hope the Opposition parties will reconsider their position with regard to the amendments I will move, as I believe they address some of the Opposition's concerns about the legislation. In the background of debate on this legislation is the extensive publicity about the corruption that occurred in Wollongong City Council and the involvement of council staff in dealing with applications for major developments in that area. I believe this has added to the community's concerns—for example, whether the legislation gives more power to the Minister, whether it makes the system more liable to corruption, and so on. I do not believe the community's fears in that regard are in any way justified. However, the major question is: Will the legislation reduce or increase corruption? The answer is clear: it will remove Ministers and politicians from the approval process. I believe the legislation is about decentralising power; in other words, devolving power to sensible levels.

The new, independent Planning Assessment Commission will now take 80 per cent of all development decisions from the political process—from the Minister, currently Mr Sartor—but it will also apply to all future governments and Ministers. Councils will still be responsible for 98 per cent of the approvals that they currently decide. In other words, councils will lose responsibility for only 2 per cent of their decisions to the regional panels and planning arbitrators. Some councils have criticised the Joint Regional Planning Panels. However, I do not believe that the panels will take away the power of local government councillors to consider every application. I note that during the past financial year, on average, councils considered only 4 per cent of development applications. In 55 councils, more than 98 per cent of determinations were made under delegations by professional planning staff. The intention is that professional, qualified planning staff on the Joint Regional Planning Panels will make those decisions, so it will be the same process. The Joint Regional Planning Panels will consider only a minority of applications; that is, councils will still consider about 98 per cent of all development applications.

Some councils have questioned the membership of the Planning Assessment Commission and the Joint Regional Planning Panels. Because of my submissions, the Minister has agreed to outline the process for the appointment of staff to those organisations. The Minister has said that the successful candidates will be those who meet the skills base for appointment—not political party hacks. Councils will now carry out the environmental assessment of development applications for these panels and will collect the development application fees.

Planning arbitrators, who will be appointed by the Department of Planning, will deal with neighbourhood challenges to development decisions, rather than lawyers, who will be the only beneficienaries of the expensive, drawn-out court cases that sometimes cost $20,000 or $30,000. I wonder whether this is why some lawyers oppose the legislation. Arbitrators will also be required to give reasons for their decisions, in the same way that councils do when determining a development application. If necessary, regulations can be made to require more detailed reasons to be given. Some members, both in the other place and in this House, have criticised the Planning Assessment Commission, yet they have praised the same model operating in the City of Sydney—the Central Sydney Planning Committee. Indeed, we do not hear much criticism about that committee because of the professional manner in which it carries out its duties. In fact, one of the noisiest critics of the Planning Assessment Commission, the member for Bligh in the other place and the Lord Mayor of Sydney, is on record as saying:

> The Central Sydney Planning Committee is working exceptionally well. It depoliticises big city projects such as the Westfield shopping centres to ensure that development approvals and planning controls are in the public interest.

I am sure, because of the integrity of the nominating and selection process for the Planning Assessment Commission, that it will receive the same fulsome praise in due course, even from members of the Opposition, particularly for its successful handling of the majority of section 3A projects. The Independent Commission Against Corruption and the Ombudsman will oversee the operations of the Planning Assessment Commission and the Joint Regional Planning Panels. I am sure that would be a major deterrent to any member of those bodies in any way being involved in bribery or corruption.

Much concern was expressed about the provision in the draft bill relating to powers for the acquisition of land with regard to private property. I am pleased that because of my submissions and those of other members, that provision has now been removed from the legislation. As well, I received submissions from councils concerning section 94 funds for the Sydney growth centres, which cover Liverpool, Camden, Campbelltown, Blacktown, Baulkham Hills and Hawkesbury. Councils' concerns related to whether this was another backdoor way to transfer the money, via the Government, into other areas; that is, away from where it is required to benefit the people living in the Sydney growth centres. I therefore proposed an amendment, which the Minister has accepted, to establish a community infrastructure trust fund for contributions collected in the north-west and south-west growth centres. This will ensure that the provision of local and State infrastructure for these new suburbs can be synchronised for the benefit of all concerned.

This trust will also provide for and strengthen accountability and transparency. I have suggested the membership of that trust, which the Minister has accepted. Funds from the Community Infrastructure Trust Fund will be released by the trust to six councils to conduct works in a timely and efficient manner. I foreshadow that I will be moving an amendment in Committee to establish the trust by appointing six trustees—two from local government, two from the Growth Centres Commission and two from Treasury. Local government will have an oversight role of the use of the fund.

Some councils oppose private certifiers on principle and are fixed in that opposition. I understand that concern. I believe that councils should always have the ability to monitor the actions of private certifiers in

council areas. The Government must support councils if they believe that private certifiers are acting inefficiently or corruptly. Private certifiers should forgo their right to act in that role if corruption is established. Their activities should be reported to the police, and appropriate action should be taken. It is important for private certifiers, who are a fixed part of the system, to maintain high standards.

This legislation focuses not so much on individual private certifiers but on the staff of companies that act as private certifiers. The legislation will give greater incentives to companies to ensure that all private certifiers do a first-class job, thus ensuring self-regulation within the certifying process. If companies do not comply with the legislation, they will suffer. Certifiers will be monitored by the Building Professionals Board, which will have increased powers. Those powers will include increasing fines to a maximum of $110,000 and providing councils with more powers to take action over unauthorised works. Complying development certificates will now have to be either fully complying or non-complying. As a result of my submissions, the Minister agreed to remove the need for State agency concurrences to be obtained by councils when processing applications, which will greatly assist them in improving such processing. However, special concurrences will be retained in relation to threatened species.

I refer, next, to regional environmental plans. A key aspect of the reforms is to streamline the planning system so that it is easier for ordinary applicants to navigate. The Minister confirmed that goal through the inclusion of certain provisions in this bill. Regional environmental plans will be removed and existing regional environmental plans will be deemed to be State environmental planning policies, or SEPPs. State environmental planning policies will be able to be made for matters of regional and State environmental planning significance. The Minister assured me that the drinking water catchment regional environmental plan will be specifically preserved, and that the existing special protection for the Sydney drinking water catchment, which is currently in the Sydney Water Catchment Management Act, will be retained but as proposed section 34B of the Environmental Protection and Assessment Act.

Under the new joint regional planning panels [JRPPs], councils will carry out the environmental assessment of development applications for the panels and will collect the development application fees. Nevertheless, the Minister gave councils an undertaking that if they incur additional net costs due to planning arbitrators or the joint regional planning panels, he will approve an adjustment in development application fees to compensate them—a matter of major concern for the Local Government and Shires Associations. Today, when I met with the heads of those two bodies, they repeated their concerns. They see the legislation as a cost-shifting exercise to local government. I hope the Minister's announcement has reassured them.

The reforms are also intended to reduce escalating legal costs throughout the system, including council costs, but particularly costs for mum and dad applicants who cannot foot legal bills of up to $20,000 to challenge deemed refusals. I am concerned about another area highlighted in debate and in the Hon. Don Harwin's amendment, that is, to refer this matter to an inquiry. Can we address some of those concerns in another way? I put a proposal to the Minister, which he accepted, relating to the formation of an implementation advisory group through the restoration of section 22. I will move that amendment in the Committee stage.

I received a letter from the Minister in which he said that he would support the constitution of that group under the provisions of the Environmental Planning and Assessment Act. I will move an amendment to the bill that will preserve existing section 22 committee powers. I had discussions with the Minister about who should be on that implementation advisory group. In a letter to me the Minister listed the names of various organisations that would be included: the Planning Institute of Australia, the Royal Institute of Architects, the Local Government and Shires Associations, the Local Government General Managers Association, the Total Environment Centre, the Nature Conservation Council, the Law Society, the Property Council of Australia, the Urban Development Institute of Australia, the Housing Industry Association, the Real Estate Institute of New South Wales, the New South Wales Urban Task Force, the Building Designers Association of New South Wales, the New South Wales Business Chamber, the Association of Accredited Certifiers, and the Australian Institute of Building Surveyors (New South Wales).

I am sure all members would agree that the majority of those organisations should be included. However, some members might be surprised about the inclusion of the Total Environment Centre and the Nature Conservation Council, but I believe that their inclusion will balance the advisory group and ensure that it represents the whole community, and not just one section of it. I believe that the advisory group will prove to be a valuable asset. I foreshadow another amendment that will enable independent hearing and assessment panels—which exist in some councils—to assess any aspect of a development application or any planning matter referred to those panels by a council. My amendment would ensure that councils appointed members of the panels who were able to demonstrate relevant qualifications and expertise. It would also require councils to report on the operations of independent hearing and assessment panels in their areas.

I acknowledge the concerns expressed by the Local Government and Shires Associations and by members of the public who have emailed me or written to me. I hope that those proposed amendments would allay their concerns. Current planning laws need urgent updating and streamlining. To do nothing would be a failure by this Government and to delay with a vague committee inquiry would mean further confusion and delay. I refer, next, to development contributions. As a result of my submissions, the Minister has revised the draft regulation to include a broad range of community infrastructure as key community infrastructure. It is anticipated that all existing council contribution plans will cover the legitimate local infrastructure needs of the vast majority of councils. However, it will be possible for a council to request approval to levy for additional infrastructure, provided it does not make new investments unaffordable.

I proposed a levy limit to protect young first homebuyers, but it has been difficult to establish what that levy limit should be. At one stage, I suggested $20,000, but some councils have a levy below $20,000. If that provision were included in the legislation, those councils might be tempted to increase their levies to $20,000, and we would not achieve the benefit that we were hoping to achieve through my amendment.

As a result of my submission the Minister has agreed that the new codes will be conservative and designed deliberately to better protect neighbours than many current council codes do. He has agreed also to include country councils among the 10 councils participating in trialling the new codes. I have personally arranged for representatives of country councils, particularly from the Euralla-Armidale and Shoalhaven areas, to meet with the Minister to discuss that particular proposal. Those councils felt that discussions and planning were focused more on metropolitan councils and did not take into account some of the special needs of country councils. The country councils that now will participate in the trial of the new codes are Armidale Dumaresq, Orange, Tweed Heads and Shoalhaven together with Randwick, Penrith, Blacktown, Canada Bay, Pittwater and Sutherland metropolitan councils.

These councils will have a major role in trialling those codes and making recommendations for changes where necessary. Some councils, such as the Shoalhaven council, have expressed concern over the future of existing development plans under the new planning laws. I had foreshadowed an amendment to section 130 (2) to add paragraph (e) "constructed and the cost is being recouped," but in discussions with the Minister it was considered unnecessary as this particular issue has been covered adequately by the proposed savings clause. Therefore, I will accept the Minister's assurance that those concerns are covered by the legislation; the matters the Shoalhaven council was concerned about will not eventuate and it will consider all current projects as they will not be affected by the legislation. Armidale council made the following point in its submission to me:

> In this context, while reforms can certainly be supported, we consider it is unfortunate that the Department is only intending to make further adjustments to the EP & A Act, as has occurred sequentially since it was initially enacted. In the longer term, in common with Planning Institute of Australia (NSW), we would advocate a complete re-write of the current legislation, with the central aim of improving the quality of the physical and natural environment. Moreover, this process should ideally embrace a reform agenda within a national legislative framework for environmental planning.

As a result, I discussed with the Minister whether there could be parliamentary oversight of the legislation, particularly with a view to embrace a reform agenda within a national legislative framework for environmental planning. The Hon. Frank Sartor wrote to me as follows:

> **Inquiry into a New Planning Framework for NSW consistent with national Reforms**
>
> As you are aware, there have been calls for either a new Planning Act or an upper house inquiry into the proposed reforms. I believe a preferable approach is to support a long term review in the context of the national reform agenda.
>
> Accordingly I am intending that the State Development Committee of the Legislative Council undertake a broader review of the NSW planning system, to take into consideration other aspects of the COAG Reform agenda in the context of benchmarking the NSW planning system against other states and international best practice. The inquiry would also address the relationship between planning laws and national competition laws.
>
> It is intended that the Standing Committee on State Development would report on their findings by December 2009, including whether there is justification for the development of new planning legislation over the next 5 years.
>
> I have attached draft Terms of Reference for your information.

I imagine discussions are being held between the Government and the Chairman of the Standing Committee on State Development, but the Minister has listed the terms of reference as follows:

> 1. That Standing Committee on State Development inquire into and report on the national and international trends in planning, and report whether the development of new planning legislation over the next five years would be justified, and if so, the principles that should guide such legislation.

2. In particular, the Standing Committee on State Development is to inquire into:

   a. The implications for NSW planning of the Council of Australian Governments reform agenda

   b. Duplication of processes under the Commonwealth Environment Protection and Biodiversity Act 1999 and NSW planning, environmental and heritage legislation

   c. Consideration of climate change and natural resource issues in planning and development controls

   d. Appropriateness of considering competition policy issues in land use planning and development approval processes in NSW

   e. Regulation of land use on or adjacent to airports

   f. Inter-relationship of planning and building controls

   g. Implications of the planning system on housing affordability.

3. That the Standing Committee on State Development will

   a. Undertake a review of national and international best practice

   b. Hold hearings in early 2009

   c. Report by 14 December 2009

   d. Review progress subsequent to its final report.

I believe that is a better alternative than to refer the bill to an upper House committee. Those terms of reference will achieve the necessary objectives of the Parliament and the Government. A number of members have quoted the Legislation Review Committee's report, which was quite critical of the bill in many areas. The report raises the question of whether the committee or its secretariat had the expertise to fully understand the implications of the legislation. Nevertheless, I asked the Minister for his response to the Legislation Review Committee's report. He replied on 12 June as follows:

> I am writing with regard to the Legislation Review Committee's report on the *Environmental Planning and Assessment Amendment Bill 2008* … and the *Building Professionals Amendment bill 2008*, in the Legislation Review Digest No 7 - 2 June 2008.
>
> Whilst I appreciate the valuable contribution the [Legislation Review Committee] makes to the legislative process, I believe that [its] report on the Bills includes a number of misconceptions about the purpose of specific provisions and does not have regard to the overall benefits of reforms to the planning system that would result from the Bills' introduction.
>
> The aim [of the] *Environmental Planning and Assessment Act 1979* is to ensure that appropriate balance is brought to the competing interests in the development process. I believe, having regard to the provisions of the Bills as a whole, that the proposed reforms strike the correct balance in this regard.
>
> I have attached a copy of my formal response to the Committee for your information.
>
> I would welcome the opportunity to discuss this matter further with you.
>
> Yours sincerely
>
> **Frank Sartor**

I have been forwarded a detailed response and I trust that by now all upper House members have a copy. If not, I am sure they will be able to obtain one from Mr Sartor's office. I have been very impressed by correspondence I received from many organisations to which I have already referred and whose members will become members of the legislative reform advisory committee, assuming my proposed amendment is passed. Those strongly in favour of the establishment of the legislation reform advisory committee include the majority of people whose names I have listed and who would be members of the committee. I do not know about the Total Environment Centre and others that may not have been consulted at this stage, but I assume that such organisations would jump at the opportunity to be part of that process. There has been some concern expressed about how legislation affects heritage matters, and there seems to be some confusion. I received a response from the Society of Heritage Owners indicating its strong support for the legislation.

Dr John Kaye: I wonder who they are. They are the heritage destroyers association.

Reverend the Hon. FRED NILE: The letter from the Society of Heritage Owners states:

> SoHONSW has become aware that you and your office have been targeted by radical pro-heritage and anti-high density living organisations for an email campaign aimed at persuading you not to support the Iemma government's planning law reforms. We are also aware that a lot of misinformation is being peddled about this issue in an attempt to get your vote. SoHONSW is most concerned to ensure you know the individuals and organisations managing this bombardment exercise are well known to us and our members …

The society set out a number of illustrations of behaviour:

> North Sydney Council … have recently been found to have engaged in a series of shocking, unlawful practices when attempting to widen heritage zonings and down-zone high-density areas in their CBD.

The society referred to Justice Lloyd's decision in the New South Wales Land and Environment Court in a 2008 case. In response to Dr John Kaye, I do not know how reputable the organisation is. I simply indicate that I received that submission. I have foreshadowed amendments that I will move at the Committee stage. Unusually, I feel it would be a good process, particularly from the point of view of members who have expressed reservations about the bill, to allow the bill to be passed at the second reading stage and proceed to the Committee stage. I am aware that the Greens have produced approximately 90 amendments. At the Committee stage we could discuss those amendments plus approximately nine amendments that I have foreshadowed and we could amend the bill. Members who still seriously believe that the bill is not adequate after that would be able to vote against the bill at the third reading stage. I am pleading for the opportunity to allow debate to proceed to the Committee stage on very complex legislation.

The Hon. MATTHEW MASON-COX [3.42 p.m.]: My comments on the Environmental Planning and Assessment Amendment Bill 2008 will be brief. I note the broad comments from Reverend the Hon. Fred Nile in relation to that bill and the comments made by many other members. The bill purports to make multiple amendments to the Environmental Planning and Assessment Act 1979 and to effect minor amendments to the Heritage Act and other miscellaneous Acts. As honourable members would be aware, the Coalition opposes the bill and will seek to refer it to a Legislative Council committee inquiry for a full examination.

The Coalition shares the view of the business community that the Environmental Planning and Assessment Act needs a major overhaul, but regards this legislation as a tack-on to the current Act that will add to the complexity of the scheme administering planning laws in this State. The amended Act will become the preamble to a great deal of additional detail contained in regulations, codes and guidelines—none of which will be debated in this place in the same way as legislation is debated, nor will they be available for public scrutiny. This approach stems from unsuccessful amendments moved by Labor in 1997 that led to a doubling of development applications. Development applications soared from 60,000 to 120,000, with a concomitant increase in complexity.

The last major reform of the Act took place in 2005 when the Minister for Planning, Frank Sartor, introduced amendments to include part 3A in the Environment Planning and Assessment Act. On the way through, he inherited a vast fortune through donations from property developers who, unfortunately, felt bound to donate to the Labor Party to ensure that their applications were dealt with under part 3A. I know that much more needs to be said on that front at an inquiry into matters of that nature. It seems to me that the Environmental Planning and Assessment Amendment Bill 2008 is the plaything of the Minister for Planning, Frank Sartor. As other honourable members have said, he would prefer to be known as the Lord Mayor of New South Wales rather than just the Minister for Planning, and he would like to have the power to make any decision he deems fit applying to planning laws and major developments in the State. Unfortunately, that has bred a culture of businesses going cap in hand to the Minister for Planning seeking to have their developments dealt with under part 3A and that in turn has led to a culture of donations resulting in the whole planning scheme of the State being called into question.

The Environmental Planning and Assessment Amendment Bill 2008 does nothing to correct current problems and perceptions. What has been exposed recently about corruption in Wollongong and other places throughout the State is likely to continue after the bill is passed. The bill introduces an independent assessment panel whose role will be non-compulsory and advisory. Although that provision may be of some benefit, the same results can be achieved under current legislation and those practices have been implemented already by some councils. The bill will allow professional planners and architects to conduct hearings and will provide for the public to have their say. The matter will be referred to the relevant council for final consideration. Because similar processes already exist, there is no dire need for such a provision to be included in the bill.

Development applications up to $1 million will be determined by arbitrators who will consider whether or not a development fits within the new range of complying developments—the details of which will be provided at some time in the future in regulations, codes or guidelines. The real problem with the regime proposed by the Minister will be the missing details and that owners of neighbouring properties will receive notification of developments only after approval has been given. The bill attacks the fundamental rights of property owners. The Local Government Association and many community groups have made the point that there will be limited appeal rights under the bill. Only an applicant will be entitled to appeal to the Land and

Environment Court or the joint regional planning panel [JRPP]. In relation to residential development applications worth between $1 million and $50 million, commercial developments worth up to $20 million and Crown developments up to $5 million, the bill provides for no major changes.

However, for developments above those amounts, there will be referral to the joint regional planning panel which will be constituted primarily by appointees selected by the Minister and a couple of representatives from council areas to which the development application applies and which form part of the joint regional planning panel's geographical area. I note comments made by Reverend the Hon. Fred Nile that appointees to the panel will be people who have appropriate qualifications and that he has been given appropriate assurances by the Government. But, then again, the Government always gives those types of assurances. Past conduct is the best guide to future performance. I note that the Hon. Michael Veitch is shaking his head in a bemused manner, but the appointment of Labor mates to committees throughout the State is legendary—almost as much as is part 3A applications being dealt with by the would-be Lord Mayor of New South Wales, Frank Sartor, legendary. That is Labor conduct that is repeated time and time again.

The Parliament should not place much weight on the assurances given by the Minister relative to the bill because, as I said, past conduct really is the best indicator of future performance. Major developments may be referred by the Minister to a new planning panel that will be known as the Planning Assessment Commission [PAC]. To this body also the Minister will make appointments and he will therefore have direct control in addition to being able to determine which developments are to be considered to be major developments. This suggests to me that the part 3A mode is being repackaged but with the same outcome—the Minister for Planning being in control of decision making and the panel being appointed by the Minister. We have more of the same ahead of us in that regard.

I point out that there are no guidelines on how the Planning Assessment Commission will operate. We do not have any guidelines in relation to matters of procedural fairness or due process. We do not understand what will amount to a hearing. That is important because if the Planning Assessment Commission has a hearing there will be no appeal rights to the Land and Environment Court. The bill provides for the Minister to determine what is critical infrastructure. Under the bill, the Minister reserves the right as to how he determines those issues. In relation to decisions about what amounts to critical infrastructure, there is no guarantee that the Minister will exclude himself if the applicant has paid big money to Labor in donations.

Last September the Independent Commission Against Corruption recommended that such developments be considered as designated developments and be considered at arm's length from the Minister. That recommendation is not being implemented in this bill. The culture of donations for favours and the perception that that is the way to do business in New South Wales continues unabated. This bill does nothing to correct the problems and the perceptions that exist around the planning system in New South Wales. In essence, that is why the Opposition is of the view that this is a tack-on to an already poorly working system, and that in order to ensure that we have a planning system for this century and beyond we need a complete rework from the ground up.

Today's *Sydney Morning Herald* has an article about the expanded role of private certifiers under the bill. The article states that the bill will enable people to appoint certifiers, which will make it even more attractive to developers when the scope of complying development is expanded under the bill to cover 50 per cent of all development under planning changes before State Parliament. The trouble is that private certifiers can approve complying development without application to council, and that will be dramatically increased under this bill without any reference to those affected by the approvals being certified privately. Indeed, if any wrongly certified work is discovered, the council or neighbours must go to the Land and Environment Court to have it rectified, at very high cost and with little chance of success. The article states:

> Most of the complaints made to the Building Professionals Board, which supervises private certifiers, are made by councils that have uncovered a complying development certificate issued by a private certifier for illegal building work.
>
> But most non-complying is never discovered, say planners. As councils no longer inspect buildings where the owner or developer has used a private certifier, they rely on neighbours to report any problems.

The article then quotes the Secretary of the Development and Environmental Professionals Association, Mr Ian Robertson, who said:

> Developers understand the value of getting a development certified in a form different from what was approved by the development consent, as they are then legally protected by the certificate from prosecution under section 109P of the Environmental Planning and Assessment Act …

> The central complaint of local government is that private certifiers will yield to the wishes of those paying for their approvals. In plain English applicants would, in the free market way, buy their approvals from the private certifier.

That is an omission relating to this bill and a problem relating to the certification of future works. Mr Robertson further said:

> Developers cannot be prosecuted if they obtain certificates by providing false and misleading information to certifiers.

As a result of employing a certifier to certify the development, what would then happen is that that would be perfected by way of the certifier completing their work and any redress would be by way of an application to the Administrative Decisions Tribunal, which generally results in a fine but does not undo the certification of the works the developers sought in the first place. This problem will become even more prevalent under this bill, given the wide range and increase of matters that will be allowed to be dealt with by private certifiers. Mr Robertson further said:

> The reality is that any resources saved by councils by increased complying development are likely to be diverted to enforcing compliance with development consents and in taking legal proceedings because the Building Professionals Board does not have the power to void a certificate issued by a private certifier … All privatisation has achieved is to cause cost-shifting with no broader public benefit.

This problem was referred to in the Legislation Review Committee report, which a number of members have mentioned. The report is worthy of significant detailed consideration. Other members have referred to the report in detail so I will not do so during my contribution. However, it is worth noting that in the report the Legislation Review Committee mentions 20 times that the bill unduly trespasses on individual rights, and the committee referred the bill to Parliament for consideration. That is rather instructive when one wades through the problems identified by the committee and understands the implications that will flow from that if this bill is passed. I note the comments of Reverend the Hon. Fred Nile, who said that the Minister's response was effectively that the committee was misconceived in relation to the concerns raised by this bill. That was a fairly arrogant response from the Minister when one considers that his colleague the member for Londonderry chairs the Legislation Review Committee and his colleague the member for Coogee is the deputy chair of the committee.

The Hon. Amanda Fazio is also a member of the Legislation Review Committee. I wonder what she thinks about the Minister calling her comments misconceived. I hope she addresses that matter when she has an opportunity to contribute to this debate. I am sure she will enjoy making a few comments in that regard. I turn now to one aspect of the bill which the Opposition supports but which it will not be able to support in the context of the overall bill, which we oppose and would refer to a parliamentary inquiry in this House—that is, the place of public entertainment provisions in the Environmental Planning and Assessment Bill 2008 or, as they are commonly referred to, the POPE provisions. On behalf of the Opposition, and with the concurrence of the shadow Minister for Planning, Brad Hazzard, and the leadership of the Coalition, I note that unfortunately due to the broad-ranging planning issues covered in this bill, which have been covered by my colleagues both in this House and in the other place, there is one part of the bill which, in any situation other than being part of this bill, would have attracted the strong support of the Liberals and The Nationals.

Anyone who has visited other capitals of the world knows that in some places there are thriving opportunities for artists to perform in a range of live entertainment facilities. These facilities may include small bars, coffee houses and, indeed, any facility that has appropriate space and potential for an audience. Cities such as Chicago have opportunities for live entertainers to perform in almost every small nook and cranny of the city, and it brings great vibrancy and life to the city. No doubt members, in their youth, attended many clubs and pubs throughout New South Wales, and indeed across this great nation, to listen to live music, including great Australian bands such as Cold Chisel, Midnight Oil, and Hunters and Collectors. I can imagine the Minister for Roads, and Minister for Commerce up there with the old Hunters and Collectors tunes. Many of these bands got their start in live entertainment venues. During my time at university I spent many enjoyable hours listening to young bands and young artists thrashing out their latest creations.

I do not know where the Minister for Roads was. He was probably doing the numbers somewhere or putting someone in a branch in Wollongong; maybe scratching around, sharpening his weapons for his next verbal attack on the left wing of his beloved party. In my time musicians honed their craft and eked out a living in the pubs and clubs of New South Wales. They did not live on the public purse, like the front bench of the Australian Labor Party. Pubs and clubs provided a rite of passage for any band that wanted to make it in the big time in a very competitive industry. I imagine that the Minister for Roads is a fan of the Cockroaches, who became the Wiggles—

Pursuant to sessional orders business interrupted and set down as an order of the day for a later hour.

QUESTIONS WITHOUT NOTICE

INDUSTRIAL RELATIONS

The Hon. MICHAEL GALLACHER: My question is directed to the Treasurer. Does the Treasurer recall telling Parliament in 2006 that the Government was one "that preserves our fair and efficient State-based system of industrial relations", and further, "has taken strong action to protect workers and their families by … strengthening the powers of the New South Wales Industrial Relations Commission"? Does the Treasurer recall the Deputy Leader of the Government telling the New South Wales Police Association before the last State election, "The Government remains strongly committed to the retention of a State-based industrial relations system for all New South Wales public sector workers," and further, "This includes a commitment to … an independent umpire in the New South Wales Industrial Relations Commission"—a commission that in 1998 the Treasurer said was a workable system for industrial justice? Given that Treasury wrote a confidential briefing note to the Treasurer and the Premier stating that the Government could save upwards of $20 million a year by cutting the role of the Industrial Relations Commission and the Office of Industrial Relations, is the Treasurer now planning to do what the Treasurer opposed when he was Secretary of the Labor Council? [*Time expired.*]

The Hon. MICHAEL COSTA: I do not recall any of those statements, but they were in the context of the then Federal Government's WorkChoices arrangements. Clearly with regard to WorkChoices our Government's valid position, which was supported by all members on this side of the House, was that it would have an independent New South Wales commission. At the moment, as the Leader of the Opposition ought to know, we are in discussions with the Federal Labor Minister for Industrial Relations, who has a commitment to a fair system of industrial relations in the integration of State and Federal systems.

The Hon. Ian Macdonald: Where's the Opposition?

The Hon. MICHAEL COSTA: I do not know. Where have they all gone? There must be a challenge on.

The Hon. Michael Gallacher: I would be worried about Eddie, if I were you.

The Hon. MICHAEL COSTA: I am not worried about Eddie. There is no inconsistency with the Government reviewing the likely impacts of a potential integration of the State system with the Federal system. I do not think it requires any justification in view of the past. It is completely consistent because we now have a Federal Labor Government that is committed to wage justice and a fair system of industrial relations. We will continue our negotiations with the Federal Minister through the Council of Australian Governments process to ensure that it has a system at the national level that reflects what this Government believes workers ought to have, as opposed to the very unfair system that ended up costing the Coalition Government.

The Hon. MICHAEL GALLACHER: I ask a supplementary question. Given the Treasurer's answer, will he now provide certainty to working families by tabling his confidential report?

The Hon. MICHAEL COSTA: The State Government and I provided certainty to working families by getting rid of the Howard-Costello Government, which made a monumental step progressing workers' rights—

The Hon. Michael Gallacher: Point of order: It is a very clear question. Will the Treasurer table the report?

The PRESIDENT: Order! The Minister will be generally relevant.

The Hon. MICHAEL COSTA: I refer to my previous answer.

STATE INFRASTRUCTURE STRATEGY

The Hon. PENNY SHARPE: My question is addressed to the Minister for Regional Development. Will the Minister outline the State Infrastructure Strategy that the Government has put in place for regional New South Wales? Are there any alternatives?

The Hon. TONY KELLY: While The Nationals chattered and sipped champagne at the Kirribilli Club last weekend debating whether to amalgamate with the Liberal Party or wait for the Deputy Leader of the

Opposition to switch to the lower House so he can run for the new Liberals- Nationals conservative party, we in Country Labor were getting on with the job of delivering results for country people. We were getting on with the State Infrastructure Strategy, which maps the State into six regions, with a detailed analysis of the infrastructure drivers in those areas. We all know that The Nationals get their instructions from the North Shore, but to physically go there for their annual conference is beyond belief.

Last week I spent a lot of time in rural and regional New South Wales, and everywhere I went people from the media said to me "Why have The Nationals got their conference in Kirribilli? They should have held it in Crescent Head, Port Macquarie or Griffith." They wanted to know why Adrian Piccoli was on the north shore of Sydney Harbour instead of bringing The Nationals to Griffith. All those dollars spent on champagne and nibbles could have been spent in regional New South Wales. But no, they chose to meet at the new heartland of The Nationals—the Kirribilli Club.

Meanwhile across New South Wales the State Infrastructure Strategy identified capital works projects on more than 20 hospitals and the refurbishment of a number of schools and TAFE colleges. The capital expenditure planned for the region over the next 10 years includes: $450 million for the southern Hume duplication between the Sturt Highway and Albury; $43 million to continue the duplication of Sheahans Bridge at Gundagai; $22.4 million for network maintenance on roads such as the Mitchell Highway, Amaroo Road and Banjo Patterson Way; $1.5 million for reconstruction of the Newell Highway, north of Gilgandra; almost $12 million for improved health services in Coonamble, Narrabri, Dunedoo, Nyngan and Tottenham, which includes $5.6 million in funding for the $41.6 million redevelopment of Narrabri Hospital; and $175,000 towards the $2.99 million upgrade of Bloomfield Hospital's Mental Health Unit, in the Orange area.

On education, $3.5 million will be spent on the construction of the new tourism and hospitality facility at Mudgee TAFE and upgrades to Bletchington Public School, Orange. For the Government's frontline police and emergency services, more than $1.1 million will be provided for equipment and communications upgrades for Fire Brigade facilities in Barwon; $859,000 to upgrade Orange Police Station; and $781,000 for new road safety initiatives throughout Albury. In relation to capital works dam upgrades: $3.6 million will be allocated for the Keepit Dam safety upgrade; $397,000 for Burrendong Dam, which is near my home; $571,000 for Chaffey Dam, near Tamworth; $643,000 for Copeton Dam, near Inverell; and $501,000 for Wyangala Dam, south of Cowra.

So what did they do at the Kirribilli conference, other than support the sale of the electricity industry? The lack of issues discussed showed a party out of touch. Take renewable fuels for example. Where there any motions at The Nationals conference about ethanol? No. Were there any motions about biodiesel? No. Instead we have motions supporting the development of a nuclear power industry. And where do The Nationals believe the nuclear waste should be dumped from these power stations? Kirribilli? Vaucluse? No. They suggest that the nuclear waste should be dumped somewhere in regional Australia. While The Nationals were enjoying their canapés at Lavender Bay, I was in Griffith with the Hon. Tony Catanzariti meeting with local business people seeing what needs to be done to secure jobs and investment.

ELECTRICITY INDUSTRY PRIVATISATION

The Hon. DUNCAN GAY: My question is directed to the Acting Leader of the Government in this House, the Treasurer. Is it correct that yesterday the Government said that it intended to bring on enabling legislation today to sell our State's electricity assets? What happened in the intervening period to change the mind of the Acting Leader? Is it a clear indication that the Acting Leader still does not have the necessary support of his party? What made the Acting Leader think that he had the numbers at any stage?

[*Interruption*]

The Hon. MICHAEL COSTA: Relax, relax. "Benevolent despot"—I like that. I do not know what the honourable member is referring to. The Government has enabling legislation before the House. As the honourable member ought to know, I have been having discussions with his leader in the other House and the Leader of the Opposition—

[*Interruption*]

Do not talk to me about grovelling. Here is a mob that is so bereft of policies that when you click on their website—

The Hon. Duncan Gay: Point of order: My point of order relates to relevancy.

The PRESIDENT: Order! I ask the Minister to be generally relevant.

The Hon. MICHAEL COSTA: As I was saying: if you go to their website looking for policies, what do you find? An apology. They do not have any policies. If you click on any item, you find an apology for the fact they do not have any policies.

The Hon. Duncan Gay: Point of order: Relevancy again, Mr President. He has completely ignored your ruling.

The PRESIDENT: Order! I ask the Minister to be generally relevant to the question asked by the Deputy Leader of the Opposition.

The Hon. MICHAEL COSTA: This question was answered by the Premier in the other House and I refer members to his answer.

KILLALEA STATE PARK DEVELOPMENT

Ms SYLVIA HALE: I address my question to the Minister for Lands. Is he aware of recent media reports about the deteriorating financial position of the proponents of the resort development in the Killalea State Park? Should the proponents fail to put forward a development application for the site, at what point will the agreement to lease lapse?

The Hon. TONY KELLY: The state of the stock market is irrelevant to Killalea State Park. The Government is not making assumptions. The member will just have to wait and see what happens.

Ms SYLVIA HALE: I have a supplementary question. My question was at what point the agreement to lease would lapse if there was a failure to put forward a development application for the site.

The Hon. Greg Donnelly: Point of order: The member is simply repeating the question. It is not a supplementary question.

The Hon. TONY KELLY: A further point of order: The question is out of order because it is hypothetical.

The PRESIDENT: Order! I uphold both points of order. The question is out of order.

DROUGHT

The Hon. TONY CATANZARITI: My question is addressed to the Minister for Primary Industries. Will the Minister please update the House on the drought situation facing farmers in New South Wales?

The Hon. IAN MACDONALD: Despite the recent rains in coastal areas, including in Sydney, there is no doubt the long dry continues to wreak havoc across the rest of New South Wales. From the Queensland border to the Murray River this drought is biting hard; people are hurting and many livelihoods are on the line. The situation on the other side of the mountains is worsening as each day goes by without rain. Our farmers and businesses in rural and regional New South Wales are reeling. Without decent rain soon the winter crop will be a failure and water and food supplies for livestock will be scarce. On Sunday I had to report yet again a 14 per cent increase in the parts of New South Wales affected by drought. A total of 62.7 per cent of New South Wales is in drought and another 23.7 per cent of the State is experiencing marginal conditions. Just 13.6 per cent of the State is classified as satisfactory. This fortunate area comprises Kempsey, Grafton, Moss Vale, Casino, the Tweed, Brewarrina and part of the Burke Rural Lands Protection Board. The north west of the State from Broken Hill to Tibooburra received no rain in May. The rest of the western half of the State and the southern part of New South Wales received very little. Areas that have slipped back into drought include all or parts of Milparinka, Cobar, Dubbo, Molong, Central Tablelands, Mudgee, Coonabarabran, Tamworth, Northern Slopes, Bombala, Cooma and Braidwood rural lands protection boards. This is not a sight we want to see as we head into the cooler winter months.

While some areas have experienced rain in recent days our farmers and their families are becoming increasingly anxious about the future of this year's winter crop. The overall winter crop estimates currently stand

around 5.25 million hectares for New South Wales, and this, while slightly above recent years, is dependent on more rain. As each dry day passes the ability of our farmers to sow a crop this size is reduced. There are two significant implications for our farming communities. The first is that the low rainfall has potentially dire consequences for our winter cropping belt, with rain now desperately needed to enable the completion of sowing and the growth of those crops in the ground. The second implication is that some families in the areas affected by these worsening figures are now facing their sixth, seventh or even eighth year of tough drought conditions. They are looking down the barrel of their sixth or seventh consecutive failed crop. That is why it is essential the Government, and indeed the broader community, continues to throw its support behind our farming sector.

The Government has now committed in excess of $390 million towards drought assistance in New South Wales. The assistance measures we have in place have been recently boosted by the injection of an additional $6 million in drought funding for the continuation of essential support services. This latest funding includes the continuation of the popular transport subsidy scheme until at least August, and then we will review it.

The Hon. Duncan Gay: August?

The Hon. IAN MACDONALD: At least the end of August.

The Hon. Duncan Gay: It needs to go until the end of August next year.

The Hon. IAN MACDONALD: The Deputy Leader of the Opposition has been making this bleating comment over and over for the past six years.

The Hon. Duncan Gay: What about the drought support workers?

The Hon. IAN MACDONALD: They are funded to the end of the year.

[*Interruption*]

The PRESIDENT: Order! I call the Deputy Leader of the Opposition and the Leader of the Government to order.

The Hon. IAN MACDONALD: The point is that over the past six years, on each and every occasion that the figures have come in demonstrating drought in New South Wales, the Government has re-funded every program. That has been going on year in, year out, and this bleating repetitious comment by this former agriculture spokesman, is defeated by the fact that every time this Government— [*Time expired.*]

The Hon. TONY CATANZARITI: I ask a supplementary question. Will the Minister please elucidate his answer?

The Hon. IAN MACDONALD: And we have continued that funding—nearly $400 million.

The Hon. Duncan Gay: What about the drought support workers?

The Hon. IAN MACDONALD: The drought support workers are funded to the end of the year.

The Hon. Duncan Gay: Only until the end of the year?

The Hon. IAN MACDONALD: Every year for the past six years! The latest funding includes the continuation of the popular transport subsidy scheme until at least August. This scheme helps fund the essential transport of livestock to and from agistment, to sale or slaughter, and the transportation of fodder and water supplies. The State Government is not the only one recognising the tough situation in the bush. I recently acknowledged the efforts of the Sydney Rainy Day drought fundraising group. Through its efforts and the support of Sydney residents more than $90,000 has been raised. This figure continues to grow and funds are being distributed to drought-affected families across the State in lots of $500 for critical support. I acknowledge and applaud their initiative and passion for helping rural and regional New South Wales. My wish for our farming sector, like those of the Rainy Day committee and the people of rural New South Wales, is rain, and plenty of it. Let us hope that next month's drought figures tell a brighter story.

TRANSGRID POWERLINE KEMPSEY TO PORT MACQUARIE

Dr JOHN KAYE: My question is directed to the Minister for Energy. Is the Minister aware that TransGrid has received regulatory approval for and has called for tenders to build a double circuit 132-kilovolt line from Kempsey to Port Macquarie, thus approximately doubling the amount of power that can be delivered into the Port Macquarie and Camden Haven area? If so, why did the Minister mislead the House in response to my questions of 4 and 5 June when he persisted with the myth that a diesel-fired peak power station at Herons Creek was needed to address local peak power needs?

The Hon. IAN MACDONALD: Dr Kaye knows how to drag everything together and confuse everyone. He probably confuses himself. The point about the proposed diesel-fired generator was that it had met every environmental standard. The whole deal was on the world wide web; he could have checked himself but never did, of course. It is assessed as having a need in the area. I think International Power Pty Ltd is the proponent of that proposal. It is a famous and well-known company in the region and it can make its decisions in relation to this.

Dr John Kaye: Point of order: It relates to relevancy. My question related to the 132 kilovolt strengthening between Kempsey and Port Macquarie. The Minister has consistently failed to address that.

The PRESIDENT: Order! There is no point of order. The Minister is being generally relevant.

The Hon. Melinda Pavey: Just to help the Minister, the distributor is selling the land to the company.

The Hon. IAN MACDONALD: It does not matter; members should not worry about it. I am addressing Dr John Kaye's question concerning the national grid. If a need is assessed, we pursue that need; we do not ignore it just because Dr John Kaye says it is not the right thing to do. Dr John Kaye wants windmills everywhere. He probably wants us to spend $1.7 billion—nearly $2 billion—for transmission into the grid by Epuron at Broken Hill. He would rather have us spend $1.7 billion, but the point is that we do not intervene when it is not necessary. TransGrid, International Power and others in the power industry can make their own decisions about these issues.

ELECTRICITY INDUSTRY PRIVATISATION

The Hon. CATHERINE CUSACK: My question is directed to the Treasurer. When did Treasury first advise the Treasurer that he could accommodate the Coalition's demand for a complete review by the Auditor-General prior to the passing of enabling legislation for the sale of our State's electricity assets? When did Treasury first advise the Treasurer that that would be accommodated?

The Hon. MICHAEL COSTA: Opposition members obviously do not know how Treasury and the Treasurer interact.

The Hon. Catherine Cusack: They give you advice.

The Hon. MICHAEL COSTA: Only when I ask for it. I do not always take Treasury's advice; sometimes I use my own judgement. And I am able to do that because I have judgement, unlike members of the Opposition, who seem to be led by the nose. The Hon. Catherine Cusack asked me a ridiculous question. I had some discussions with the Leader of the Opposition and I sought to accommodate the Opposition. Opposition members should be thankful that I sought to accommodate them.

VICTIMS OF CRIME

The Hon. HELEN WESTWOOD: My question is addressed to the Attorney General. Could he inform the House of the latest information on government initiatives to give victims of crime a greater say in the criminal justice system?

The Hon. JOHN HATZISTERGOS: Being a victim of crime is a terrible ordeal. It is an experience that can leave not only physical scars but also a feeling of loss of power, control and even dignity. The Government is determined, wherever possible, to force criminal offenders to make amends to victims. That is why the Government committed $1.9 million in this year's budget to expand the innovative new forum sentencing program to a further three local courts in Fairfield, Burwood and Campbelltown. Under this

pioneering new program offenders are confronted by their victims and can be ordered to apologise, pay compensation, or perform community work as part of an intervention plan approved by a court in sentencing. It forces offenders to listen to what their victims have to say and then to correct their wrongs.

Forum sentencing operates as a pre-sentence intervention program under the Criminal Procedure Act. That means that if eligible defendants are found guilty of an offence in the Local Court the magistrate may refer them to a forum sentencing conference prior to sentencing. Serious offenders, such as those guilty of serious personal violence and sexual offences, are specifically excluded. Following a rigorous suitability assessment, eligible offenders are then required to sit down with their victims, a facilitator and police to discuss the impact of their crime and agree to an intervention plan. As well as forcing offenders to make an apology or pay compensation, an intervention plan can require offenders to participate in other programs that might help to address the causes of their offending behaviour, such as drug and alcohol treatment. The magistrate can then sentence offenders, taking the intervention plan into account.

If offenders fail to complete the plan satisfactorily, they are returned to court to be dealt with, in many instances risking a term of imprisonment. The expansion of forum sentencing follows a successful two-year trial of the program at Liverpool Local Court and Tweed Heads Local Court. An evaluation undertaken by the New South Wales Bureau of Crime Statistics and Research found high levels of support for the program amongst participants, in particular, victims. For example, the evaluation of the Bureau of Crime Statistics and Research found that between 61 per cent and 76 per cent of conference participants believed that the conference was very fair to the victim. At least 91 per cent of conference participants were satisfied with the conference intervention plan. Two in five offenders stated that, during the conference, they were overwhelmed by their understanding of what it felt like for those who had been affected by their actions. Almost all offenders agreed that what happened in the conference would encourage them to obey the law in future.

During the trial period the program was restricted to offenders aged 18 to 25. However, given the success of the trial and the enthusiastic support it has received from victims of crime, the Government has decided to expand the eligibility criteria to include offenders of all ages. The Government has also chosen to exclude certain traffic offences in relation to which there are rarely victims, including regulatory infringements such as driving without a licence, and has tightened the eligibility criteria to exclude hardened offenders who have previously served a term of imprisonment. The program continues to operate at Tweed Heads Local Court and Liverpool Local Court and, in addition, will be expanded to Fairfield, Burwood and Liverpool local courts in the next financial year.

Forum sentencing provides magistrates with an important new sentencing option. It gives victims of crime an even stronger voice in the criminal justice system, and it forces offenders to make reparation. By expanding forum sentencing the Government is demonstrating its strong commitment to supporting victims of crime and its determination to make offenders pay for their actions.

DRUG DRIVING

Reverend the Hon. Dr GORDON MOYES: My question is directed to the Minister for Roads. Is the Minister aware that in recent years there has been increasing concern about the prevalence of drug driving in Australia, and that many drug users appear unconcerned about driving following the use of drugs other than alcohol and their possible detection by police? I ask the Minister whether he is aware of a recent finding by the Australian Institute of Criminology that states:

> One in every four Australians (aged 14 years of age and over) had driven a motor vehicle after they had used illicit drugs, and that over half the detainees who had driven a car or other vehicle in the past 12 months reported driving after they had used drugs other than alcohol.

Given that there has been an increase in Sydney in both the availability and the usage of the illicit drugs ice, cannabis, cocaine and ecstasy, can the Minister inform the House what educational campaigns and programs will be established to monitor and reduce the trend of drug driving on the State's roads?

The Hon. ERIC ROOZENDAAL: Drug driving is a matter of major concern and it is a significant road safety issue for the Iemma Labor Government. Members would be aware that in December 2006 laws came into effect to enable the New South Wales Police Force to conduct random roadside drug tests—an important step forward in changing cultural attitudes to drug driving on our roads and enforcing road safety. In January 2007 police began conducting random roadside drug tests and they can detect substances such as speed, ice, cannabis and ecstasy. A highway patrol officer will be able to tell within minutes whether a driver has taken any of those detectable substances. When and where that testing takes place is an operational decision and a matter for the New South Wales police.

The latest information I have relating to this issue reveals that police have conducted about 6,500 random roadside drug tests in 53 roadside drug-testing operations, with more equipment and targeted operations planned this year. Advice that I have at the moment reveals that about one in 38 drivers tested has returned a positive reading. Obviously, a lot of police intelligence goes into targeting areas of drug use and combining police intelligence and information relating to road accidents to ensure that we deploy drug detection processes in appropriate places to maximise benefit. I state clearly to all members that there is no doubt that drug driving is a problem on our roads. This Government is continuing to roll out its random drug-testing program to discourage that sort of dangerous behaviour.

Reverend the Hon. Dr GORDON MOYES: I ask a supplementary question. Will the Minister inform the House about the educational campaigns and programs that will be established to reduce the trend in drug driving?

The Hon. ERIC ROOZENDAAL: Clearly, the education department runs a number of programs in schools relating to the use of drugs not only by people driving but also generally by teenagers and children—a matter of major concern to the community. A number of programs are in place.

ELECTRICITY INDUSTRY PRIVATISATION

The Hon. DON HARWIN: My question is directed to the Treasurer. What impact will the delay of enabling legislation for the sale of electricity assets in New South Wales have on this Government's infrastructure strategy?

The Hon. MICHAEL COSTA: None.

ROAD SAFETY TECHNOLOGY

The Hon. LYNDA VOLTZ: My question is addressed to the Minister for Roads. Could the Minister update the House on any new technology that is making our roads safer?

The Hon. Michael Gallacher: Stick to the script.

The Hon. ERIC ROOZENDAAL: I was just in a conversation with the Clerks, if you do not mind. I thank the honourable member for her interest in this important matter. Road safety is a key priority for the Iemma Government. That is why this year we are spending $124 million on road safety, which will increase to $141 million in 2008-2009 under the Iemma Government's record $4 billion roads budget. I am pleased to inform the House that one of the most sophisticated evaluation systems in Australia is being installed at a major Western Sydney intersection to help improve road safety. Eight state-of-the-art "CrashCam" cameras will monitor the busy intersection of the M4 and The Northern Road at Penrith, which is used by more than 40,000 vehicles a day. CrashCam will be used to examine crashes and near misses at this important intersection and determine the best way to improve safety. CrashCam technology has helped cut crashes at a number of intersections around New South Wales. The system is being installed at the interchange of The Northern Road and the M4 off ramps and on ramps where the existing intersections are controlled by signal lights.

From 2002 to 2006 there were 158 crashes at this location, resulting in 77 people being injured. Two CrashCam systems with four cameras each are needed due to the size of the interchange; the system is worth more than $100,000. CrashCam technology helps the New South Wales Centre for Road Safety monitor locations with bad crash histories and determines what is causing collisions. The CrashCam system continually monitors an intersection and records crashes and near misses. It provides data in a matter of months that might otherwise have taken years to collate from traditional analysis of crash statistics. By using this system, the New South Wales Centre for Road Safety can analyse the location, gain invaluable insight into the crash problem and then consider the appropriate safety improvements.

I am deeply shocked by the lack of interest from the Coalition in these important initiatives to help reduce accidents on our roads and improve road safety. Road safety is not a joking matter. We have had the lowest road toll since World War II yet literally hundreds of lives are still lost on our roads. It is inappropriate for the Coalition to catcall in such a juvenile manner on such an important issue. CrashCam has a proud history and I commend those involved in its work, and the efforts of Roads and Traffic Authority Senior Project Officer Dylan Connell and his team. CrashCam has been installed at 11 locations around New South Wales, including the intersection of the M4 and The Northern Road at Penrith. I look forward to keeping the House informed of this new technology and how it is making our roads safer.

DRUG EDUCATION BOOKLET

Reverend the Hon. FRED NILE: I address my question to the Acting Minister for Education and Training. Is the Minister familiar with the *Choosing to use … but wanna keep your head together?* drug education booklet for high school students, which was produced by the South West Area Health Service? How much of this material has been produced and at what cost? Where has it been distributed? Is the Government aware of the significant parental concerns that the booklet sends the wrong message to their vulnerable teenagers that some drugs are okay some of the time? Is the Government aware that the chairman of the Australian National Council on Drugs has equated the message of the "Choosing to use" booklet to that of choosing to play Russian roulette? Will the Government consult with community agencies like the Australian National Council on Drugs and groups like We Help Ourselves, ex-drug users, to formulate appropriate material that encourages vulnerable teenagers to abstain from illegal drug use?

The Hon. JOHN HATZISTERGOS: I can advise the House that this brochure is not widely distributed in New South Wales schools. I do not believe that the material is appropriate for distribution. The brochure was produced by the area health service and I support the decision of the Minister for Health to withdraw the brochure from any schools to which it may have been distributed. I understand that the Minister for Health has also ordered a review of other drug education material produced for young people by the health service; I refer the House to her statement. The Department of Education and Training has a range of programs in place that aim to educate students about the problems of drug misuse, and to assist students and their families where drug use has been identified.

Students from kindergarten to year 10 learn about the effects and harm of drugs in the personal development, health and physical education curriculum, which deals with a wide range of important health-related issues, including drug and alcohol use. Students are also provided with opportunities to learn and practice communication, problem solving and refusal skills, and to develop attitudes and values that promote a healthy lifestyle to help them make informed decisions about their lives, including drug use. The Crossroads course for students in years 11 and/or 12 focuses on drugs and relationships. The content of the course is currently being revised to ensure that it addresses issues relevant to this group of young people. Between 2000 and 2007, the Government provided resources to teach students about the dangers of drugs, including $1.5 million on a targeted cannabis education program in our schools.

The department has policies and procedures to manage incidents of drug use by students. Students will be suspended immediately if they are found to be using or in possession of a suspected illegal substance or having supplied a restricted substance. The policy on drugs and procedures for managing drug-related incidents in schools is currently being reviewed in consultation with the Parents and Citizens Association and principals groups. School counsellors have been provided with additional training to help young people with alcohol and other drug problems, and are available to students who seek help. The Government also has allocated $1.2 million funding over four years to develop early-intervention initiatives for students with drug-use problems. We also are supporting students who have drug-use problems with $1.259 million being provided over four years for the continuation of the Ted Noffs Foundation Drug Counselling in Schools Program.

IGUANAS WATERFRONT BAR CROWN LAND LEASE

The Hon. JOHN AJAKA: My question is directed to the Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, and Acting Minister for the Central Coast. Is the Minister aware that Iguanas waterfront bar is situated on Crown land? Is the Minister aware also of public speculation that another State Government Minister, other than the Hon. John Della Bosca, recently made contact with persons connected with that venue? Has the Minister or his staff in the past two weeks had any contact with any person connected with his venue?

The Hon. Michael Gallacher: A one-word answer, I suspect.

The Hon. TONY KELLY: No, it will not be a one-word answer. It will be that, no, I have not had any connection with them. I put on record that the Iguanas waterfront restaurant site at Gosford is located on Crown land under licence and lease for a restaurant and car park. The current lessees have held the current lease and licence for the site since 2005, having purchased the lease-licence from the administrators of the previous tenure holders. The lease will terminate in 2023 while the licence will terminate in April 2027. The lessee pays market rent for the site.

TRADE EXPOSED EMISSIONS INTENSIVE INDUSTRIES SUMMIT

The Hon. HENRY TSANG: My question is addressed to the Minister for State Development. Could the Minister inform the House about the outcomes of today's exposed trade industries summit?

The Hon. IAN MACDONALD: Today the New South Wales Government hosted a major industries summit to discuss the Commonwealth's introduction of an Australian emissions trading scheme in 2010. The summit brought together around 150 representatives from industry and government to discuss some of the potential impacts of an emissions trading scheme as well as similar international schemes and strategies to best deal with them. A national emissions trading scheme will, for the first time, place a national cost on greenhouse gas emissions to help fight global warming. The New South Wales Government is working with industry to meet this challenge. That is why today's summit was crucial in addressing the issues and developing an ongoing dialogue between industry and government.

New South Wales has been a pioneer in addressing the impact of rising greenhouse gas emissions and the effect of climate change. The Government's Greenhouse Gas Abatement Scheme [GGAS] is one example of the leading role it has taken in addressing climate change. Established in 2003 the Greenhouse Gas Abatement Scheme was the world's first mandatory carbon emissions trading scheme for the electricity sector. To date, there have been almost 70 million tonnes of abatement registered under this world-leading greenhouse emissions trading scheme.

The Government's Greenhouse Gas Abatement Scheme was a vital forerunner to a National Emissions Trading Scheme [NETS]. Our trade exposed emissions intensive industries, many of whose representatives attended today's summit, employ thousands of people. They provide more than $5 billion in export revenue to the State. For example, the Australian agricultural sector is significantly trade exposed, with about two-thirds of agricultural output destined for overseas markets. Some commodities are more trade exposed than others, such as wheat, cotton and beef. The New South Wales Government supports the Commonwealth's plans for an Australian emissions trading scheme, but recognises the need to ensure that Australian export industries are not unfairly exposed to international competitors.

With the major focus on the National Emissions Trading Scheme, it is vital that we do not overlook the impact of a mandatory renewable energy target [MRET] when discussing a national emissions trading scheme. The two schemes must operate together, side by side. Therefore, we must take into account the added costs for industry in complying with both schemes. It is also important that the national renewable target should include exemptions for large trade exposed industries, as were allowed for under the proposed New South Wales renewable target. Trade exposed industries in particular could face unfair competition in exports and imports from countries that do not place similar costs and restrictions on greenhouse emissions.

An Australian emissions trading scheme could result in increases in prices for raw materials, distribution, fuel and electricity. Industries may not be able to pass on these costs to customers when competing internationally. This could not only hurt industries but result in their investing offshore, or leaving Australia altogether, with no net reduction in global emissions. Regions such as the Illawarra and the Hunter could be particularly exposed as the coal, steel and aluminium smelting industries and their supporting infrastructure are significant contributors to regional economies.

Today's summit was timely. The information shared at the summit helped to generate new ideas and strategies and provided a platform for a continuation of necessary dialogue between industry and government. The summit included a discussion on how the emissions trading scheme may affect New South Wales and business, what strategic options are available in the face of those risks, what the New South Wales Government can, and should, do to help New South Wales industry in the transition phase to the new regulatory environment, and what insights can be gained from overseas experience from similar schemes, such as those applying to the European Union Emissions Trading Scheme, or even insights that may be gained from our own Greenhouse Gas Abatement Scheme.

We look forward to working with the Commonwealth Government to make the National Emissions Trading Scheme and the mandatory renewable energy target as fair as is possible for Australian industry, to ensuring that they minimise impact on economic growth while encouraging investment in innovation as well as in new environmental technologies.

WORLD YOUTH DAY 2008

Ms LEE RHIANNON: I direct my question to the Treasurer about the Australian and State governments' commitment to World Youth Day. With approximately 225,000 pilgrims expected, the cost to date is currently $129 million. The Federal Government committed $20.5 million and the State Government contributed approximately $108 million. Whereas for the 2005 World Youth Day in Cologne—which attracted 1.2 million pilgrims—the German level of government equivalent to our State Government, the North Rhine-Westphalia Government, contributed approximately $A4.85 million; the German Federal Government contributed $12.1 million; the European Union contributed $1.9 million; and the city of Cologne contributed $4.85 million for infrastructure works. Can the Treasurer justify why New South Wales is contributing approximately $108 million for World Youth Day while the equivalent state government in Germany contributed $A4.85 million?

The Hon. MICHAEL COSTA: The Treasurer can justify it, and has justified it on a number of occasions.

STATE TAXES: INDEPENDENT PRICING AND REGULATORY TRIBUNAL REPORT

The Hon. GREG PEARCE: I direct my question to the Treasurer. Is he aware that the Independent Pricing and Regulatory Tribunal's draft report on State taxes nominated a number of measures that will increase State tax revenues, including the abolition of the payroll tax exemption for local government and broadening the payroll tax base by reducing the threshold to $500,000? Will he rule out these proposals as future tax grabs?

The Hon. MICHAEL COSTA: I was about to answer what I thought was a sensible question, until the Hon. Greg Pearce added the last component. Perhaps he has not read the budget in detail. If he had, he would realise that the State is facing a revenue problem based on a number of factors, the primary one being the ageing of the population. We have not tried to hide that.

All current State tax bases face real pressures, and that is precisely why we have been talking to the Federal Government about reforms to the special purpose payment [SPP] arrangements and general tax reforms. Unfortunately, the Independent Pricing and Regulatory Tribunal proposal was overtaken by the Rudd Government's commitment to a root and branch tax reform program. The Federal Government has referred a number of the proposal's measures for examination. Clearly, our tax system must be made efficient at all levels, and that can be done only with the cooperation of the Commonwealth.

Under the previous Howard-Costello Government, which continually shifted costs onto the State Government in a range of areas, we never had any cooperation. The Attorney General, and Minister for Justice, who is a former Minister for Health, could tell the shadow Treasurer what the health care agreement was like and, as the Acting Minister for Education and Training, he would be able to say what the current education agreement is like. Those agreements have never reflected the real demand and do not reflect wage cost imposts for those areas of growth.

It will be noted from the recent State budget that allocations have been significantly increased for matters such as ageing, disabilities and community care. Those allocations are increasing precisely because of the factors I have already mentioned—the ageing of the population, a population that is living longer and increasing costs of medical technology. That is why States are facing revenue difficulty. If we do not resolve the problem through a sensible arrangement being applied to the taxation system throughout all tiers, we will find ourselves in difficulty.

I am surprised the shadow Treasurer asked the question. He has asked me on several occasions about the State's fiscal targets and has not been reticent in pointing out that we have not met a number of them. It is precisely because of the problems to which I have referred that we have had difficulties. One of the matters reported in the budget was that the prospect of achieving the long-term fiscal target—which I believe is key to understanding the State's ability to close the gap between revenue and expenses—is deteriorating, albeit at a slow rate but at a rate that is causing great alarm. We do not resile from acknowledging that if the issues are not addressed through taxation reform, we will find ourselves in major difficulty.

ST HELIERS CORRECTIONAL CENTRE EDUCATION AND REHABILITATION PROGRAMS

The Hon. CHRISTINE ROBERTSON: I address my question to the Minister for Justice. What is the latest information on St Heliers Correctional Centre training, employment and rehabilitation?

The Hon. JOHN HATZISTERGOS: Last Friday I visited St Heliers Correctional Centre, which is located in Muswellbrook and accommodates 286 minimum-security inmates. St Heliers is renowned for the large amount of work that inmates complete while serving their sentences. As part of their employment in the correctional centre, 75 inmates are refurbishing school furniture, manufacturing whiteboards and undertaking metal fabrication. Thirty-five inmates are employed working on a farm in the correctional centre and undertake duties such as hay production, cattle management, vegetable production and maintenance of the Clydesdale horse team.

Inmates grow vegetables and they purchase livestock and meat products, and all of those are used for the manufacture of inmates' meals. The vegetable processing unit, which I opened, employs approximately 40 inmates and supplies 32,000 kilograms of processed vegetables a month. The unit meets 85 per cent of the need of the Department of Corrective Services for such products, and it has commenced supplying the private sector. At the correctional centre, inmates undertake a range of other employment activities. For example, 40 inmates are employed to maintain between 10 and 12 hectares of lawns and gardens in and around the compound and the administration building, and 19 inmates are employed to do general maintenance of the centre, including painting and concreting.

In addition, 14 inmates conduct work in the community as part of the Mobile Outreach Program, which on a weekly basis allows certain inmates to work and live on a camp that is away from the centre. Those inmates conduct work under supervision, such as helping to clean up after storm damage and floods. They also mend fences and are involved in fighting bushfires. Inmates from the St Heliers Mobile Outreach Program have participated actively in the restoration of the convict trail on the Old North Road. A select group of C3 inmates, who are from the lowest minimum-security inmate classification, is employed on community projects, such as maintaining the local cemetery, the memorial drive and other appropriate council projects. Upcoming projects include tree planting, the Aberdeen Highland Games, the Scone Memorial Swimming Pool, the Muscle Creek Landcare Group and work for various schools.

St Heliers commenced its work release program with Primo Meats at Scone approximately 18 months ago. Participants are carefully selected for the positions, through interviews. To date approximately 30 inmates have completed the Prepare for Work course. Six former inmates from the St Heliers Correctional Centre have found employment at Primo. We know that when prisoners become involved in work experience before release, the likelihood of their reoffending reduces. The program is beneficial to the individuals concerned and is a contributing factor to a better and safer community as a whole.

I take this opportunity to compliment Primo Smallgoods for working with the Department of Corrective Services to provide training. This cooperation has enabled the inmates to secure employment, which we know is a strong contributing factor to inmates changing their ways and becoming productive, law-abiding citizens. In addition to those who have found work at Primo Smallgoods, I understand that a small number of former St Heliers inmates have found work in the region. This is particularly significant because of the remote location and associated difficulties employers have in recruiting workers. I understand that further work release opportunities are being investigated with other potential employers in the Hunter, and I look forward to updating the House on such developments in the future.

TRAVELLING STOCK ROUTE RESERVES

Mr IAN COHEN: My question is addressed to the Minister for Primary Industries. Will the Minister indicate whether the announcement expected tomorrow at the Rural Lands Protection Board's State Council meeting in Coffs Harbour will outline a program to protect the long-term future of the droving industry, jobs in rural communities and significant biodiversity values in travelling stock reserves? Will the Minister give an assurance that significant biodiversity values will not be compromised with the management of travelling stock reserves ceded back to the Department of Lands, and will he prevent the sale of this asset?

The Hon. IAN MACDONALD: I am speaking at the Rural Lands Protection Board's State Council annual conference tomorrow in response to the report produced for the State Council on the structure of rural lands protection boards. The report is a comprehensive document that recommends a reduction in the number of boards from 47 currently down to 14 and many streamlining measures that will improve the operation of the boards. In relation to the travelling stock reserves, I am aware a number of groups have asked for an assurance that they will not be sold. Currently, about 600,000 hectares are involved in these travelling stock reserves. They are Crown lands; they have been established under the Crown Lands Act 1989. Rural lands protection boards actively manage travelling stock reserves for a range of purposes, and especially to provide grazing opportunities in times of drought.

An independent review of the board system was completed recently. Among other things, the report recommends that travelling stock reserves and their ongoing management be ceded back to the New South Wales Department of Lands, except where the new boards establish a clear business case for their retention. I can advise that the Government is considering the recommendations contained in the report. Travelling stock reserves are placed under the care, control and management of rural lands protection boards by the Minister for Lands under the Rural Lands Protection Act 1998. As such, questions relating to the possible future sale of any Crown land should be directed to the Minister for Lands.

CLASSROOM DEMOUNTABLES REPLACEMENT PROGRAM

The Hon. MELINDA PAVEY: My question is directed to the Acting Minister for Education and Training. Given that the Department of Education and Training has admitted that it does not even know the age of more than one-third of all the demountable classrooms in New South Wales government schools, how can the Minister ensure that demountable classrooms, such as the 28 located at Sydney's Chester Hill High School, the 14 at Port Macquarie-Hastings Tacking Point Public School and the five at Camden Haven Public School, will be effectively replaced and upgraded under the Government's Demountable Replacement Program?

The Hon. JOHN HATZISTERGOS: Demountable buildings are an integral part of the accommodation strategy of the Department of Education and Training. The department uses demountable buildings to help manage constantly changing patterns of enrolment for emergency accommodation. Demountables are also a valuable resource in meeting accommodation needs arising from capital works and maintenance projects in schools. The department continues to maintain its refurbished demountables in schools on a regular program basis—I might add, with the assistance of Corrective Services. Do members know that Corrective Services help at Goulburn and Cessnock?

Indeed, I recall the Hon. Melinda Pavey, in one of her light-headed moments one year, asking me a question about people stealing demountable classrooms from the correctional centre at 2 o'clock in the morning. She asked me whether I had undertaken a stocktake to see that no-one had broken into a correctional centre to knock off the demountables. Demountables are pretty big things to remove from a correctional centre without detection, but the sleuthful activities of the Hon. Melinda Pavey warrant some investigation. From the investigations I undertook, I was able to reassure the honourable member that those demountable classrooms were properly accounted for. That was a great relief to the honourable member.

The Hon. Melinda Pavey: Why don't you just take all the ministries?

The Hon. JOHN HATZISTERGOS: I am waiting for the day that members opposite do the decent thing and give the Hon. Melinda Pavey a shadow ministry. She has been continually passed over in reshuffle after reshuffle after reshuffle. The poor member just sits there—look at all the talent oozing out of her. No-one has bothered to recognise it, except me.

WORKCOVER PREMIUMS

The Hon. GREG DONNELLY: My question is addressed to the Acting Minister for Industrial Relations, and Minister Assisting the Minister for Finance. Will the Minister update the House on the latest WorkCover premium rates?

The Hon. ERIC ROOZENDAAL: I thank the honourable member for his question on this important matter. The new WorkCover premiums order was gazetted earlier this month. It confirms that New South Wales workers compensation premiums remain at their lowest rate level in more than a decade. The Iemma Government has reduced WorkCover premium rates by an average of 30 per cent over the past two years. This is a $785 million annual saving to New South Wales businesses, with the most recent cut delivered in December last year. The new Insurance Premiums Order 2008-09 has, for the first time, given employers both the initial and hindsight claims cost rates simultaneously. This gives larger, experience-rated employers greater certainty, and allows these businesses to budget more effectively.

The Insurance Premiums Order sets the rates for each industry based on that industry's recent claims performance. No industry rate increased this year. However, some industries with improved performance in their claims history will see lower overall premium rates. The Insurance Premiums Order 2008-09 applies to policies that start or renew on or after 30 June 2008. The target collection rate has reduced to 1.72 per cent of wages—down from 1.77 per cent. Businesses in New South Wales pay the third lowest rate of the States and

Territories, while injured workers have access to the nation's most comprehensive suite of benefits. This Government rescued the New South Wales workers compensation scheme with no assistance from the Coalition. Errors made by the previous Liberal-Nationals Government saw the scheme build a $3.2 billion deficit.

[*Interruption*]

Members opposite laugh at a $3.2 billion deficit! That was their contribution to the people of New South Wales. I can report that the scheme is now back in the black. Premiums have been reduced and benefits have been increased. As part of the scheme's continued improvement, WorkCover will adopt the revised national standard for industry classifications when determining workers compensation premiums from 2010. In recognition of the changing industrial landscape, New South Wales will use the new Australian and New Zealand Standard Industry Classification [ANZIC] 2006 as the basis for its classification system. ANZIC 2006 has an additional 41 classifications, and will more accurately reflect modern industry trends. It provides a more effective framework for classifying businesses as they recognise changing industries and technological advances.

Additional industry classifications will provide greater overall alignment between an industry's level of risk and an employer's premium rate. The Insurance Premiums Order 2008-09 and more information on the WorkCover industry classification system is available from the website, *www.workcover.nsw.gov.au*, or by calling 131050. The Iemma Government will continue to work hard to deliver real improvements to the workers compensation system to make it easier to conduct business in New South Wales and to benefit the whole community.

KILLALEA STATE PARK LEASE

Ms SYLVIA HALE: I address my question to the Minister for Lands. Under the Killalea agreement to lease, is there provision for compensation to be paid to the proposed lessee should the Government terminate the agreement to lease?

The Hon. Michael Costa: How much money have you got so far?

The Hon. TONY KELLY: Fifty-three per cent of the State? Yes. I understand the details of that contract are available on the website, which the member can look at.

PRINCES HIGHWAY

The Hon. MARIE FICARRA: My question is directed to the Minister for Roads. Is the Minister aware that there have been 19 deaths on the Princes Highway in four years to 2007? Is the Minister also aware that the Coroner's report states that sections of the highway are unacceptable and in many areas the traffic lanes are too narrow by modern standards, with little or no paved shoulder? The report also states that "the consequences of simple driver error in such an environment may be catastrophic". Given the number of people who have already died on that highway, when will the Government act and provide much-needed funding to upgrade the highway?

The Hon. ERIC ROOZENDAAL: I have received the recommendations of the Deputy State Coroner and I have asked the Roads and Traffic Authority [RTA] to review the report. Improving the Princes Highway is the Government's highest road priority for the Illawarra and South Coast regions. The Iemma Government is investing $144 million on continuing the upgrade of the Princes Highway. The 2008-09 budget includes $500,000 towards the realignment of the Princes Highway at Victoria Creek. I am advised that the RTA is currently conducting environmental and geotechnical studies to determine the preferred route. The RTA is also developing a proposal for the realignment of the Princes Highway at Dignams Creek and $200,000 has been allocated in the 2008-09 budget for planning the project. I understand that the RTA upgraded the "curve warning" sign along the Princes Highway at Dignams Creek in February. In addition, the Iemma Government has allocated a record $141 million in the 2008-09 State budget for road safety campaigns and education.

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

CHILD AND YOUTH MENTAL HEALTH PROBLEMS

The Hon. TONY KELLY: On 15 May 2008 Reverend the Hon. Dr Gordon Moyes asked me, representing the Minister Assisting the Minister for Health (Mental Health), a question concerning child and youth mental health problems. I have been provided with the following response:

> All the advice in this area around outcomes from significant international research indicates that the majority of adults with mental disorders have also met diagnostic criteria for disorders by adolescence. Research also shows that earlier access to good quality mental health care for young people helps to decrease the severity of the disorders and to lead to better long-term outcomes.
>
> In recognition of this, the New South Wales Government has committed $16 million to the Brain & Mind Research Institute to fund the construction of a new Youth Mental Health Clinical Research Facility in Camperdown. The new facility will provide comprehensive clinical services and research during the early phases of mental illness, including psychotic disorder, depression and bipolar disorder. It will provide the opportunity to intervene early with young people who are developing these illnesses. At the same time, it will significantly contribute to high-level research into the complexities of the development of mental illness and point to new evidence for effective prevention.
>
> From 2007/08, funds of $27.2 million have also been allocated to Area Health Services to develop Youth Mental Health Services Models to strengthen service access and delivery for young people with mental health problems. A pilot study to develop a prototype model commenced in the Central Coast during 2006107. The pilot study has identified key principles and core components to guide other Area Health Services in developing and implementing their youth mental health services models from 2008/09.
>
> I am also advised that New South Wales Health is finalising a comprehensive planning framework for child and adolescent mental health services Building a Secure Base for the Future: New South Wales Mental Health Service Plan for Children, Adolescents and the People Who Care for Them.
>
> This document outlines the principles for comprehensive services to improve the mental health and well being of children and young people in New South Wales. It provides a base for Child and Adolescent Mental Health Services planning over the next 10 years and policy development in priority areas to address population requirements. The plan acknowledges the growing prevalence and complexity of mental health problems in children and adolescents; the earlier age of onset of disorders; and opportunities to minimise multi-risk trajectories and outcomes.

DEFERRED ANSWERS

The following answers to questions without notice were received by the Clerk during the adjournment of the House:

ROZELLE HOSPITAL VETERANS

On 6 May 2008 Ms Sylvia Hale asked the Attorney General, representing the Minister for Health, a question without notice regarding Rozelle Hospital veterans. The Minister for Health has provided the following response:

> The health care able to be provided at Rozelle Hospital was no longer the most suitable for the needs of the veterans concerned. The veterans required ongoing nursing home care for their age-related conditions, rather than ongoing psychiatric rehabilitation.
>
> Rozelle Hospital, in conjunction with involved relatives, the Returned Services League, and the Department of Veterans Affairs, worked closely to plan the relocation of the veterans to accommodation facilities better able to provide the specialist care they required.

COLES EXPRESS PETROL PRICES

On 8 May 2008 Reverend the Hon. Fred Nile asked the Minister for Education and Training, representing the Minister for Fair Trading, a question without notice regarding Coles Express petrol prices. The Minister for Fair Trading has provided the following response:

> The New South Wales and Federal Governments are committed to dealing with petrol issues with primary responsibility sitting with the Federal Government due to the national nature of the petrol market.
>
> Since 17 December 2007, when it was directed to do so by the Assistant Treasurer and Minister for Competition and Consumer Affairs, the Australian Competition and Consumer Commission has been formally monitoring prices, costs and profits relating to the supply of unleaded petroleum products in the petroleum industry.
>
> The Commission has contacted oil company executives seeking an explanation of the recent significant divergence of the price of unleaded petrol in Australia relative to international price movements and has also notified oil companies that it will be seeking detailed information from them as to their costs, prices and profits at all levels of the supply chain. The formal monitoring of petrol is now overseen by the Petrol Commissioner, Mr Patrick Walker.
>
> On 7 May, Mr Walker advised consumers to carefully check price boards to evaluate the competition in their area and to not automatically rely on petrol discount vouchers to deliver the lowest price before filling up their petrol tanks.

New South Wales legislation requires all petrol stations to clearly display the price of unleaded petrol on price boards to promote price transparency and price competition. This regulation helps consumers shop around for the best petrol prices. In addition, the Office of Fair Trading has recently conducted examinations of the petrol market in New South Wales and passed the information on to Mr Walker at the ACCC to aid his wider investigation of the national petrol market.

HOSPITAL STAFF SURVEY

On 13 May 2008 the Attorney General, representing the Minister for Health, was asked a question without notice by Reverend the Hon. Dr Gordon Moyes concerning a hospital staff survey. The Minister for Health has provided the following response:

NSW Health is making a significant investment in health workforce initiatives focused on increasing workforce numbers and improving distribution of health professions particularly in outer metropolitan, regional and rural New South Wales.

Despite an international workforce shortage, significant investments by New South Wales in attraction and retention strategies have met with substantial success.

Medical Workforce

Between June 2003 and June 2007 the number of salaried medical staff working in the public hospital system has increased by 19.7% with the number of Staff Specialists increasing by 22.2% and junior doctors increasing by 26.3%.

Over the past two years New South Wales Health has invested $28.7 million in post-graduate medical training. This investment continues over the next four years with a total package of $60 million allocated.

In 2007/08 New South Wales Health committed $15 million in recurrent funding for programs aimed at strengthening post-graduate medical education and training.

Nursing Workforce

The Government's support for nurses and midwives is well documented and is producing results. The results of a range of initiatives already in place show that the total number of permanent nurses and midwives in employment in the New South Wales public health system has been steadily increasing over the last four years.

In January 2002 there were 34,004 permanently employed nurses—both full and part-time. In March 2008, there were 42,829 nurses employed. This is a net increase of 8,825 (26%) from January 2002. This increase in nurse numbers is due to the Government's commitment to improved wages and conditions, and our investment in targeted recruitment and retention strategies.

NSW nurses and midwives receive the highest basic pay rate in Australia. Over the term of the Carr and Iemma Labor Governments the weekly award wage of a Year 8 Registered Nurse/Midwife has increased from $689.80 per week (1 January 1995) to $1,232.60 per week (or $64,315 per annum) today. This is an increase of 78.7%. By July 2007 nurses' wages had increased by 47% since December 1999.

There is a range of initiatives to retain our nurses including the provision of scholarships. Over $3.4 million was awarded in 2006/07 in education scholarships and grants for nurses and midwives.

Nurses are also provided with paid study leave, $21 million was allocated over 4 years for nurses' study leave. This funding allowed nurses to be "backfilled" while they were on study leave. Nurses value this opportunity. In addition, the government provides a significant number of nurses with the opportunity to undertake post graduate courses in clinical nursing at the College of Nursing, at no cost to themselves.

In order to support bedside nurses, $14 million has been committed over the next four years for an additional 80 clinical nurse educator positions to increase nursing workforce skills and enhance patient safety.

DENTAL SERVICES

On the 14 May 2008 the Attorney General, representing the Minister for Health, was asked a three-part question without notice by Reverend the Hon. Dr Gordon Moyes concerning dental services. The Minister for Health has provided the following response:

The NSW Chief Dental Officer advises that the information that the Member quotes was published in a 2003 report by the Australian Institute of Health and Welfare [AIHW], and relates to the situation in 2000.

Shortages of health professionals in rural areas, including dentists, are a national issue and are being addressed in rural and regional New South Wales. Initiatives include:

- The NSW initiative of an International Dental Graduate Program has provided up to 10 new placements to rural and regional areas.

- Recruitment and retention of dentists and dental therapists has been significantly advanced in the public sector with the new Oral Health Workers Award which gives dentists a 15% pay rise and provides for the new classes of oral health practitioners. New career structures have been created for dental staff that will encourage them to remain in clinical practice.

- There is a state-wide schedule for the upgrade of rural dental clinics and links of regional and rural clinical schools are being strengthened.

In addition, a new dental school has been created at Charles Sturt University. Clinical teaching and service clinics at Albury-Wodonga, Bathurst, Dubbo and Orange are either currently under construction or in advanced planning stages.

The Chief Dental Officer has further advised that New South Wales provides access to free public dental care for all New South Wales children from 0 to 18 years of age through a Child and Adult Oral Health Service integrated with community health and outpatient care in each Area Health Service. New South Wales does not operate a School Dental Service along the same lines as other jurisdictions where children are enrolled in a comprehensive assessment and treatment program based on dental clinics (fixed or mobile) in school grounds. There is strong evidence that this mode of operation is no longer an effective and efficient means of targeting dental prevention and services to children and adolescents in greatest need.

Questions without notice concluded.

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL 2008

BUILDING PROFESSIONALS AMENDMENT BILL 2008

STRATA MANAGEMENT LEGISLATION AMENDMENT BILL 2008

Second Reading

Debate resumed from an earlier hour.

The Hon. MATTHEW MASON-COX [5.02 p.m.]: Before debate was interrupted for questions without notice, I was referring to the importance of the place of public entertainment [POPE] provisions under the Environmental Planning and Assessment Amendment Bill, provisions the Opposition would support if they were not part of a bill that we cannot support at this point. I referred to the proclivities of Government members and their interest in a range of Australian musical talent in their younger days. I think the Minister for Roads reflected on the Cockroaches and a few other bands. Casting my eye over the people in this Chamber, I think the Hon. Ian West would be a closet AC/DC fan. At that time a number of bands got their start in the pub and club circuit. Their appearance in such environments was seen as a rite of passage in a very competitive industry. The provisions in the bill certainly have that in mind.

I note that the Labor Government made changes to the planning laws more than 10 years ago that effectively destroyed the opportunities for artists to perform in those venues, which was a great shame. Whilst the provisions of the bill seek to repair the damage caused by the Labor Government on this issue, for the reasons I mentioned earlier and for a wide range of other reasons the Opposition cannot support it. Unfortunately, the move by this Labor Government to amend the POPE provisions are about 10 years too late and at a great cost to the vibrancy of our State and the potential careers of many bands, soloists or acts that have previously relied on such venues for their livelihood.

The Coalition recognises the need for the POPE provisions to be changed so that owners of facilities that can offer opportunities to these artists are not dissuaded from providing live entertainment. The Coalition regrets that support for the POPE provisions was not specifically stated in the lower House when members were stating their overall concerns about the broad planning issues in the bill. However, I have the approval of the shadow Minister to confirm the Opposition's commitment to address the failings of the Labor Party's previous planning changes. In the event that this bill is defeated in the Legislative Council, the Opposition makes it clear that it will work with representatives of the arts community, particularly those whose livelihoods have been destroyed by the Labor Party planning red tape, to bring about the necessary changes through a bill to be introduced by the Liberals-Nationals.

I place on record also the Liberals-Nationals thanks to people who have spoken up on behalf of performers. A number of people have written to the shadow Minister, including Paul Joseph, Craig Scott, Andrew Brown and John Wardle. Indeed, I note that Paul Joseph is meeting with the shadow Minister tomorrow to discuss this important issue. However, it is unfortunate that Mr Wardell apparently misunderstands why the Opposition has to oppose the overall bill. However, it is extremely supportive of the central concerns to ensure a rejuvenation of opportunities for artists to perform in New South Wales.

I refer to the reaction of country areas to this bill. I note that on Wednesday 4 June 2008 more than 320 country mayors, deputy mayors and councillors unanimously joined the call for an upper House inquiry into

the State Government's planning laws. Indeed, most members have received thousands of emails and rallies have been held against the passage of this bill. The outrage that has been expressed has been quite significant. The reaction on talk-back radio has been very strong. However, this Government fails to get the message. I note what Councillor Bruce Miller, the President of the Shires Association, said in relation to this bill:

> We are now in the hands of the Upper House members to fulfil their responsibility to NSW communities and support an inquiry … These laws will have significant impacts for NSW communities and require proper scrutiny.
>
> The Government has arrogantly ignored the concerns of residents, industry, government, environmental groups and business …
>
> Local Government agrees planning requires improvement and has put forward alternative suggestions, as have other groups, which would make the system more efficient, fairer and simpler.
>
> We just want these suggestions, and the concerns of residents, to be considered in an open and transparent inquiry.

There it is in a nutshell. I call on the Government to heed those words and to refer the bills to an upper House inquiry forthwith.

Mr IAN COHEN [5.08 p.m.]: I support the comments of my colleague Ms Sylvia Hale in relation to the Environmental Planning and Assessment Amendment Bill 2008 and cognate bills and her call for the bills to be sent to an upper House inquiry. There are some who will ingenuously suggest the referral of the bills to General Purpose Standing Committee No. 4 is an attempt to exile an unpopular bill and stall the vision of the Minister for Planning for reform. Such a suggestion is a cheap political debasement of the real concerns expressed by local communities throughout New South Wales, concerns that have been muzzled and silenced. The Environmental Planning and Assessment Amendment Bill will herald sweeping changes. It is no mean feat to predict, anticipate and manage the magnitude of change and reform.

At the recent Shires Association of New South Wales annual conference, Minister Sartor dribbled an exceptionally arrogant and snide comment about the Local Government Association not understanding "the hundreds of protections for local government in the new bill" and "leadership being either too dumb to understand them, or not wanting to be honest about them". If the Local Government Association is so perplexingly ignorant and incompetent as to lack any basic capacity to comprehend the effect of the bills, how are local communities, the mum and dad renovators bound and gagged by red tape that pulls so heavily at the heartstrings of the Minister, meant to understand planning reform? Planning in New South Wales should facilitate community engagement and participation from all levels of society, not centralise an insidious ideological incest in the hands of a planning and development elite. The letter that the Hon. Frank Sartor sent to the Hon. Robert Brown stated:

> I believe the LRC report on the Bills includes a number of misconceptions about the purpose of specific provisions and does not have regard to the overall benefits of the reforms …

Here Minister Sartor is basically saying, as someone mentioned before, that the membership of the Legislation Review Committee, including Amanda Fazio and members of his own party in the lower House, have somehow missed the point. Once again it is abject arrogance on the part of the Minister, who cannot seem to understand why people oppose such legislation. The most worrying thing for me is that it is not just a cynical exercise on his part, but having heard the briefing he gave the crossbenches, it is clear he actually believes his own rhetoric. That is extremely worrying. The veneer of the planning Minister's rhetoric is laced with all the hallmarks of a measured and mature approach to managing development and growth in the State. In his agreement in principle speech he used the word "accountability" 11 times; the word "consultation" 20 times; and the word "transparency" four times. These three words are fundamental to effective and equitable planning laws, yet I am confused as to their meaning in the context of a Minister who refuses to publish the 538 public submissions on the draft bill.

This is a Minister from whom we cannot extract a rational elucidation as to why releasing public submissions will trigger such an unforgiving cataclysm. I am extremely disappointed, and I am certain the rest of New South Wales joins me in my disappointment, that the Minister has not made available the submissions received in response to the exposure draft of the current bill. The way to appease and reassure community concerns about a government process is not to tighten the reins on transparency. There is no other way to characterise the refusal to release the submissions than as a dramatic affront to democracy and good governance. The despotic monopoly exercised by the Minister over the submissions, which were made in good faith to the Government by citizens and interest groups, is appalling. Hoarding information and silencing citizen and interest group participation in the political process needs to end now. Might I say that it is parallel with the impact that the bill will have on the general community.

Unfortunately, the recriminations echoing across the broad spectrum of society about the Minister's attitude to community participation are symptomatic of a much deeper illness that has infected the Minister's approach to planning and continues to ferment in the depths of the planning department. Community participation in planning and development should be the cornerstone of any planning system, yet the preordained trajectory of the bill has rendered consultation somewhat meaningless. Minister Sartor stated in his agreement in principle speech:

> When we started the reform process we engaged with communities and stakeholders. These bills have been developed following almost a year of consultation.

Engagement with community denotes more than a one-dimensional, hypodermic needle form of communication. Engagement is an exchange and a discussion. Revealing the submissions would highlight that consultation under Sartor is a process devoid of proper community involvement. It is imperative that all members, regardless of their opinion on the bills, reflect upon whether they can condone such a failure of governance. The objects of this bill being thrown around by its enthusiasts are grandparenthood statements that would make any citizen, developer, politician or local council feel warm and fuzzy inside. For example:

> Land use planning provides the guiding framework for balancing economic development and investment and infrastructure to meet State, regional and local needs as well as protecting sensitive environmental areas.

Of course we all agree with the need to balance sustainable development and environmental needs. We acknowledged in 1979 that development and environment were not contradictory, polarised concepts. Dysfunctional markets and inadequate infrastructure can pose one of the greatest threats to the environment. The problem is that the current Environmental Planning and Assessment Act is not calibrated to achieve a balance between development and environmental objectives. The bill in no way ameliorates this imbalance and we are well and truly at the end of the line in terms of adherence to the concept of sustainable development. In this sense the claims of balance mask the underlying disjuncture in reconciling development and environment. The words purporting equitable balances become a rabble of vacuous dogma and unfulfilled promises.

My colleague Sylvia Hale raised the issue of private certifiers. Minister Sartor has stated that he looks forward to the growth of a private certification industry that embodies a high degree of professionalism similar to accountancy or law firms. This bill does nothing to offset the potential for corruption and conflicts of interest. Having private certifiers evaluating development on unpublished codes highlights the challenge to probity and is aptly illuminated in the following quote:

> The fear is that because we're not out there inspecting buildings as the concrete is poured, there are private certifiers doing that, that some private certifiers might be … like the pink slips you used to get from your motor vehicle if you had an old rust bucket. You'd go round until you found one that actually gave you a pink slip. And there is a danger that some property owners, some developers, would cut corners.

These insightful words of wisdom were uttered by none other than the Lord Mayor of Sydney, Frank Sartor, in a *Sydney Morning Herald* article published on 1 November 1997. How the omnipotence of near-to-absolute power contained in part 3A changes one's perspective. Other members of this House—namely the Hon. Marie Ficarra and Reverend the Hon. Dr Gordon Moyes—questioned the role of natural justice under the new planning regime. The transition away from the adversarial Land and Environment Court to the various planning panel arbitrators is justified on the grounds that it will streamline the development process. The people of New South Wales will not accept a streamlining of the development approval process that in any way compromises their fundamental rights. The broadsheets are bulging with examples of corruption, and the right to a hearing, the right to be given reasons and freedom from bias are desperately needed to counter the propensity for corruption. We need a planning bill that dynamically addresses the need for efficiency and equity, not an unbalanced or tempered incursion on individual rights and liberties, as the Legislation Review Committee highlighted.

The small positives of this bill, which include the removal of arcane barriers for live entertainment in venues across New South Wales and enhance the State's cultural identity, will most likely be endorsed by any inquiry that may review the bill. This bill fails to instil legislative scope for harmonising development and environment. The parochial ideology embodying the bill does not make the commitment to the people of New South Wales that development and environment will be equitably reconciled. Development and environment are not contradictory, polarised concepts. Observers of this House would be led to believe otherwise. Spurious allegations are continually levelled at the Greens members of this House that we reside in caves and want to irrevocably dismantle the New South Wales economy and replace it with some sort of socialist, Green fundamentalist utopia. These childish caricatures demean and cheapen the urgent need to harmonise development and environment through a sensible, mature and transparent planning system. This State deserves better than cheap rhetoric from the real fundamentalists—the developers that do not appreciate environmental constraints or principles of corporate social responsibility.

It is interesting for me, having participated in the first debate in 1997 under Minister Craig Knowles, when Richard Jones and I moved some 150 amendments between us and the debate went right through the night. I remember seeing the dawn through the windows in the morning and I remember going to my room with a sense of despair and recognition that this Government was well and truly in the pockets of the developers. Even worse, I saw the passing of the part 3A so-called reforms in recent times and now we see this Sartor-driven further regulation of the planning laws. Attempts to slow it down seem to be fraught with difficulties. Perhaps most disappointing for me is that in 1997 I was devastated and disappointed when I went back to my room at about six o'clock in the morning and not quite comprehending the realities of government, I suppose. Now it is something I have come to expect, and that is a grave disappointment.

One can expect no more from this Government than this type of planning legislation that has a massive impact on the rights of individuals in the community, the rights of neighbours and the rights of people to be able to voice their opposition to development. It is a sad state of affairs. This type of legislation makes it impossible for me to support a future Labor Government. I am sure that if the Deputy Leader of the Opposition were in the Chamber he would say, "Well, you haven't done it so far."

The Hon. ROBERT BROWN [5.20 p.m.]: On behalf of the Shooters Party I support the Environmental Planning and Assessment Amendment Bill 2008, the Building Professionals Amendment Bill 2008 and the Strata Management Legislation Amendment Bill 2008. The three cognate bills, if passed by this House, will deliver the broadest range of reforms to the Environmental Planning and Assessment Act since 1979. The expressed intent of the bills is to improve the New South Wales planning system by making the system more efficient and cost-effective for a vast majority of development proposals currently assessed under our planning system. The key words here are "vast majority". There are approximately 2.5 million homeowners in this State.

We are told that the reforms will deliver and better equip us to meet the many challenges ahead, by removing a great deal of red tape and simplifying the planning regime. The proposed changes have caused a great deal of concern, stirred immense emotion, and led to fierce lobbying by individuals and groups on both sides of the debate. Neither side denies, however, that the current planning regime is in need of change. Simply put, the current planning regime in New South Wales is in a crisis. For the average homeowner seeking simple renovations, the current planning regime is impractical and is immersed in bureaucratic red tape. I speak from personal experience. Even those who are most opposed to these planning changes agree that they are not all bad. We have heard reference to the place of public entertainment provisions in the bill. I note that Mr John Wardle was in the public gallery tonight.

My contribution to this debate and the Shooters Party position on this issue followed extensive lobbying and meeting face to face and on the telephone with key stakeholders and, indeed, interested individuals who all want to have their voices heard. There is no doubt that this legislation is controversial. The Shooters Party is well aware of the hindrance that excess red tape can be, having first-hand experience of this in the unnecessary regulations applying to firearms owners—over 20 years of regulatory humbug! So our constituents are well used to regulatory humbug.

Inasmuch as the proposed changes will reduce the amount of red tape for the average homeowner renovations, one of the key issues to be considered in this entire debate is the fate of, in particular, those who are not already in the Sydney housing market. Later in my contribution I will speak about the difficulty this State will have down the track with regard to that issue. Housing affordability is, even now, almost out of the reach of the first homebuyer—which, in turn, leads to economic stagnation in New South Wales. I heard statistics quoted on the radio just last week in which it was claimed that whilst construction costs for a basic house had escalated only about 7 or 8 per cent in real terms over 30 years—which is astounding, given the increased cost of materials over that period—land in Sydney's developing areas is now 1,000 times more expensive than 30 years ago. Therefore, the land is an important component, and the planning and development of that land comes into the equation.

Planning and approval processes—and, as a land developer I have to say, government greed—has a lot to do with this. I refer to the greed of governments—plural—because it has been going on for 30 years. We need to move now to change this situation. The question before us is: How do we move? Do we send the legislation to an upper House committee, do we vote it down or do we adjourn debate on it and kick it into touch until September? All these issues have been put to us and discussed. However, the Shooters Party and I are convinced that these changes will benefit the majority of young people wanting to enter the housing market by making it easier, more cost effective and less burdensome. Moreover, I am convinced that these changes will benefit the

2.5 million homeowners in New South Wales by reducing delays and costs now encountered in even the most modest alterations. I speak from personal experience once again. I have discussed the proposed planning changes with the Minister and his staff on numerous occasions. Indeed, I would say that Reverend the Hon. Fred Nile and—

Ms Lee Rhiannon: What else did you discuss, Robert?

The Hon. ROBERT BROWN: Just those issues. I also note some of the claims the Greens have made in the press, but they are grasping. You are sounding desperate, Lee!

Ms Lee Rhiannon: Who have you discussed it with?

The Hon. ROBERT BROWN: I have discussed the proposed planning changes with the Minister and his staff on numerous occasions. In fact, as I was about to say earlier, Reverend the Hon. Fred Nile and I, along with representations from constituents, were probably key in having the Minister get rid of the ridiculous compulsory acquisition provisions. Likewise, on a number of occasions I have met with representatives from the Local Government and Shires Associations of New South Wales—I note Ms Lee Rhiannon makes no comment about that—and other stakeholders opposing these reforms.

On the one hand, we have the New South Wales Coalition for Planning Reform—comprising organisations that represent individuals, professionals and businesses, and key stakeholders in the New South Wales development assessment system and the State's long-term, sustainable growth strategy—urging members to support the proposed changes. The joint communiqué issued by the Coalition for Planning Reform argues that these reforms are more than just improving the processing times. The communiqué says they are "about increased certainty and consistency … about improved business activity and economic growth … about better design and community input into strategic planning … about a strong and more strategic local government … and importantly … about long-term solutions and sustainable development".

In an emotional plea on the other side of the debate, we have utopian concerns about how these changes might cause serious unintended consequences. I note the contribution by Mr Ian Cohen, in which he used terms such as "ideological incest". Ideology cuts all ways. The Local Government and Shires Associations, for example, have campaigned widely—and fairly effectively—against the proposed changes. They are imploring us to delay the final passage of the proposed changes to the Environmental Planning and Assessment Act so as to allow for a parliamentary inquiry into the planning reforms and to reflect on the possible consequences of these changes.

I do not regard the Local Government and Shires Associations as necessarily representing consumers. Rather, as I pointed out to them, I see the associations as simply another vested interest in this debate. I do not mean to belittle the amount of effort councillors put into local government—which is a very important institution—but the associations do not necessarily represent 2.5 million consumers, as they claim. As legislators we have a duty to ensure that an appropriate balance is reached between competing interests, for the benefit of the citizens of this State. In effect, what we are being asked to consider is whether the proposed planning reforms strike the right balance in this regard. The Shooters Party does not favour sending this legislation to an inquiry. The reason we do not favour that option is the time lag involved in holding an inquiry, and then perhaps having to come back to the House with legislation, and then having it passed before it can take effect. It could well be more than a year, and we simply do not have that time for urgently needed reform.

The main argument for such an inquiry appears to centre on the lack of detail pertaining to subordinate rules and guidelines. That is a fair comment. The proposed legislation provides the enabling platform from which the new system will be launched. That is the view of the Minister and of the Government. As members would be well aware, it is common practice for enabling legislation to be developed, with the more detailed elements such as regulations, guidelines and codes to be developed shortly after. To this end, the Government has always said that it will work with stakeholders to finalise the subordinate components of the legislation—a message that has been strongly conveyed to me in the several meetings I have had with the Minister on this issue. In an effort to allay concern about these proposed changes, the Government provided and tabled a substantial amount of information relating to subordinate arrangements, including statements concerning the planning bodies and planning arbitrators, development assessments, third party reviews, certification and contributions.

Five policy statements were placed on the table in the other place to provide additional information on complying development concurrences, arbitrators, joint regional planning panels, and certification. In addition,

the first part of the complying codes was released for public comment, with the remaining codes to be made available for comment as they are rolled out. Last, but not least, is the Minister's assurance on the continuation of the complying development expert panel and the certification liaison committee after the legislation is introduced, and the establishment of the implementation advisory committee after the legislation is passed. Reverend the Hon. Fred Nile's proposed amendment, which I think is excellent, would strengthen that proposition.

We have been told that the implementation advisory committee would be a forum for discussion and would provide advice to the Minister with respect to matters relating to the implementation of the planning reforms in this bill. The committee would also provide advice to the Minister on key aspects of subordinate regulation and on any guidelines or codes arising from the reforms. It is expected that the committee would operate until such time as the reforms have been implemented or it is otherwise varied. All members agree that the New South Wales planning regime is in desperate need of reform. The whole Act could be rewritten if a new committee were constituted as a result of Reverend the Hon. Fred Nile's proposed amendment. However, we cannot wait another five years or so for that to happen—we have already waited long enough. The 2.5 million ordinary homeowners in this State have waited far too long.

If this legislation is passed and the implementation advisory committee is constituted—to which the Minister has publicly committed himself—I would have thought this group of stakeholder representatives would be ideally placed to act as a reliable and representative advisory forum for implementing and rewriting the new Act for this State. I have received many emails opposing the planning changes, which overwhelmingly were sent through the Keep it Local campaign—monotony ad nauseum—and I have also received from certain individuals much correspondence in support of the planning reforms. However, those people did not use the same form of letter, and that therefore means that they had to sit down and think about what they were going to write rather than send off a prepared script.

Last week I received a letter from Chris Hayward, President of the Society of Heritage Owners of New South Wales. Reverend the Hon. Fred Nile, who received a similar letter, has already mentioned the key issues referred to in it, and I will not repeat them. Mr Hayward claimed to represent more than 30,000 owners in New South Wales with heritage-listed properties. Following fierce lobbying by individual groups on both sides of the debate, five key issues have been raised relating to complying development, arbitrators, certifiers, the Planning and Assessment Commission, and the joint regional planning panels. I will deal with each of those issues. I refer, first, to complying development and state that several claims have been made that I know to be untrue. The first of these claims is that planning changes are to be introduced to increase complying development. In effect, that might make it cheaper and easier for homeowners to get development approvals, but the Minister said that this legislation was not designed specifically to do just that.

The existing Act enables the Minister to make State environmental planning policies without debating the matter in Parliament. State environmental planning policy 60 currently provides for exempt and complying development. It has been claimed that there will be a one-size-fits-all code that will remove neighbourhood character, which is simply untrue. The Government has said repeatedly that there will be a series of codes, not a single code, to deal with different types of development, and that that code will maintain local character and, at the same time, give average homeowners quick decisions. Referring to the comments I made earlier about the implementation panel, planning experts and local government will have ample opportunity to make an input into those codes. We have been told that the code has been designed to protect the neighbour, maintain and enhance local character and protect privacy, while giving ordinary families quick decisions for reasonable development. The key words are, "while giving ordinary families quick decisions for reasonable development".

If we assume there are 2.5 million homeowners in New South Wales, there could well be 2.5 million neighbours who object to a development. However, I believe that the rights of homeowners would sway that argument in favour of the legislation. Some of the draft codes have been released for discussion and are yet to be finalised, but many people have contacted me and expressed concern about the housing draft code. Some support it, some oppose it, and others say that it is too conservative. However, most people say that it is too complicated for the average person to read and understand. It should be borne in mind that complying codes are designed for the average person to be able to understand and to know what limitations would be placed on them if they wished to go through with a complying development.

I concur with the concerns that have been expressed and I hope that the Minister takes on board those valid though minor criticisms. Perhaps the draft code should be given to a year 6 schoolteacher to make it understandable. At the moment it appeals to professionals rather than to those to whom it is meant to appeal.

Currently, only about 11 per cent of developments across the State are processed as complying developments. An increase in complying developments will mean faster and more straightforward approvals for simple extensions to family homes and many more minor developments, such as barbeques, making the currently daunting process much less daunting. If members asked a dozen people in the community whether or not they had had a problem with a small development, I guarantee that at least half of them would say they had.

Councils are great at collecting garbage and carrying out other work but they should not stick their noses into the business of homeowners. All that homeowners want is a fair go. At present, small-scale residential development applications across the State are taking 57 days on average to process, while a new single dwelling is taking 78 days on average to process. Some councils are doing a marvellous job but others are a disgrace having regard to their inability to get it right. Under the proposed changes, that time would be reduced to 10 days if an applicant met all the relevant design codes. Anyone looking at the draft complying codes would find that they were pretty strict: they do not allow applicants to do too much. However, if an applicant wanted to do something out of the ordinary that did not comply with the relevant code, he or she would have to go through the normal development application process.

I think that councils would be better off if council officers spent their time dealing with non-complying and larger developments rather than wasting their time dealing with complying developments. Let me give members a case in point. Recently a development application was put in for a change of commercial use in commercial premises in Wollongong. Council officers recommended to council that the application complied and that there was nothing wrong with it. In fact, they said that if council knocked it back, it would end up in the Land and Environment Court. For political reasons Wollongong council knocked it back and the application is no longer in existence. The use to which the site was to be put was as a firearms retail store. In many cases politics gets in the way of common sense.

As I said earlier, under the proposed changes, that time would be reduced to 10 days if an applicant met all the relevant design codes. In my opinion the draft codes for single-storey dwellings are fairly prescriptive and do not provide many options for cheating. A number of New South Wales councils have development figures of over 50 per cent as complying development, and that is to be applauded. On average, Victoria achieves over 65 per cent of development as complying development and it is looking at ways of achieving further efficiency and cost gains in that regard. South Australia recently announced that it would be expanding exempt and complying development.

The second point I would like to discuss relates to a matter raised by the Local Government and Shires Associations relating to arbitrators. The association suggested that the Land and Environment Court should appoint arbitrators rather than what is proposed in the bill. However, it did not tell me that in its submission in June 2004 for a national draft model for assessment it did not have such a high opinion of the Land and Environment Court. It stated:

> Associations and councils have long been concerned about the decisions the court makes which override local planning policies, the adversarial nature of proceedings, the length of time appeals take and the costs which are involved.

At first glance I was somewhat attracted to the idea, but on reflection I believe that the Minister may have it right. Arbitrators are a key part of the reform to tackle the problems for the small, normal person application—not big developers. Further advice I have received on this issue is that councils already conduct section 82A reviews of determinations. Consequently, arbitrators would merely be replacing those reviews with a genuinely independent overview: I refer yet again to the Wollongong City Council example. A court administering the process would seriously risk turning the process into a more costly and bureaucratic, legally driven exercise, which is currently the case with court actions.

The intended purpose of the Land and Environment Court when established in 1979 was to reduce cost and complexity. Today a typical appeal to the court could easily cost in the order of $20,000, including legal costs, whereas the cost of an arbitrator hearing the matter would be around $500. This would mean that people most likely would not use the court system. Hurrah! Arbitrators will determine small development applications—for example, a single-storey house on a single block—and other matters will go to court. Importantly, if an applicant is not satisfied with the arbitrator's decision, new section 97 (6) specifically allows an applicant dissatisfied with the determination in a planning arbitrator matter to appeal to the court within three months—a safety net.

Under the proposed changes, arbitrators will provide the average person with a quick and cost-effective way to have a decision reviewed independently. It could be contrary to the objectives of the bill if this regime

were placed under the control of the Land and Environment Court, as the court is bound by judicial process. Experience has shown time and again that court processes, even with the best of intentions, become legalistic, adversarial and expensive. The Land and Environment Court today is a far cry from what it was designed to be when it was established in 1979. Even the Local Government and Shires Association of New South Wales reflected that view. In its submission entitled "National Draft Model for Development Assessment in 2004" the association stated:

> Associations and councils have long been concerned about the decisions the court makes which override local planning policies, the adversarial nature of proceedings, the length of time appeals take and the costs which are involved.

I have cited that view twice now. No longer is this approach acceptable for the minor applications we are talking about. The issue regarding certifiers has caused considerable debate. The bill introduces tougher sanctions and greater oversight for certifiers that which will apply to both private and council certifiers—one in, all in. Certifiers hold the liability, so it is only fair that they take responsibility for ensuring compliance. Existing provisions provide that wherever the Building Professionals Board makes a finding of misconduct against a certifier it may impose a maximum penalty of only $11,000 and cannot suspend or cancel a certificate of accreditation without going to the Administrative Decisions Tribunal.

Under the proposed reforms the Building Professionals Board will be able to take immediate action after making a finding of misconduct to impose a maximum fine of $110,000 and to suspend or cancel a certificate of accreditation. That is a fairly powerful incentive for accredited certifiers to be honest and play the game properly. The Building Professionals Board also will be able to take this action against accredited building professionals and council certifiers. The Building Professionals Amendment Bill 2008 introduces accreditation of council certifiers and will include new categories of accreditation that apply only to those people carrying out certification work on behalf of a council. Under the proposed changes council certifiers will be held to the same standards as private accredited certifiers, and will be subject to the same disciplinary provisions when they are found by the Building Professionals Board or the Administrative Decisions Tribunal to have engaged in unsatisfactory professional conduct or professional misconduct.

Currently, accredited certifiers can carry out any certification work that their accreditation authorises them to undertake. Under the proposed changes accredited certifiers will not be able to earn more than 20 per cent of their income from certification work for the same developer, and will have to report to the Building Professionals Board on the builders and developers for whom they are carrying out certification work. Whilst I tend to support the Minister's objectives in trying to take away the opportunity for certifiers to be certifying for their major clients, I have received representations from private certifiers, particularly in country areas, who suggest they may be adversely caught by that impediment. I ask the Minister to carefully reconsider that provision; we do not want to be putting people out of work, particularly in rural and regional Australia, just because someone, somewhere, got a percentage figure wrong. Accredited certifiers will not, without the prior approval of the Building Professionals Board, be permitted to work on complex developments on which the builder or developer has a history of non-compliance.

The final issue I address, which was raised with me by the Local Government and Shires Association of New South Wales on a number of occasions, relates to the appointment of members to the Planning Assessment Commission and the joint regional planning panels. The Local Government and Shires Association expressed concern about these appointments, questioning the degree of independence the members will have, and raised issues of conflicts and pecuniary interest. After further consultation, I was informed in a letter from the Minister that pecuniary interest provisions applying to members of the Planning Assessment Commission and the joint regional planning panels are modelled on provisions applying to persons appointed to government boards. This is entirely appropriate, given that those appointed to the Planning Assessment Commission or to a joint regional planning panel will be members of a statutory body representing the Crown.

Councillors nominated by a council to be members of a joint regional planning panel would be acting in a personal capacity and not as a councillor. Item [56] of schedule 2 will insert new provisions relating to the disclosure of pecuniary interests. They will require members to disclose any interest they may have that appears to raise a conflict with the proper performance of their duties and to remove themselves from the decision-making process. These requirements appropriately extend not only to interests held by members, but also to interests of "associates"—for example, spouse, de facto, relative, partner or employer. The model code of conduct for councillors includes express requirements related to non-pecuniary interests and not Local Government Act provisions per se. The bill includes provisions that allow regulations to be made to address the proper management of non-pecuniary interests of members of the Planning Assessment Commission and joint regional planning panels when they are making decisions.

As with other matters the subject of regulation, I am informed that further consultation will be undertaken with the Implementation Advisory Committee and other relevant stakeholders before these regulations are finalised. Proposed section 23L includes regulation-making powers to specify matters related to the conduct of planning arbitrators, including conflict-of-interest requirements. In addition, proposed section 96L includes specific improper influence provisions for arbitrators. Mr John Wardle, who is in the public gallery, wrote to the Hon. Roy Smith and me in the following terms:

> Included in the Environmental Planning and Assessment Amendment Bill 2008 currently before the Parliament are important changes to the regulation of entertainment in NSW.
>
> The NSW Place of Public Entertainment (PoPE) regulation as it stands is a duplication of existing processes, is very expensive, difficult and complex, and highly anti-competitive.
>
> The removal of both definitions of [PoPE] under Schedule 5 on page 139 of the Bill will finally bring some common sense to the regulation of entertainment in NSW.

I note the comments of the Hon. Matthew Mason-Cox that this is an important but small part of the bill, but it goes to the heart of the legislation. When we consider these things, should we throw out the baby with the bathwater, or is it better to give the Government its due, let it run the legislative process, let the legislation proceed through both Houses and then see if the Minister stands by the assurances he gave in the other place and in letters he wrote to me and others that the details will be worked out with full consultation? We should not vote against a bill simply because people are frightened of things that may or may not happen, especially as it appears to me that the Government is prepared to take into consideration the matters we have raised.

As I stated at the outset, if the planning changes provided in the bills are passed by the House, they will deliver the broadest range of reforms to environmental planning and assessment since the 1979 Act. Neither side of the debate denies that the current planning regime is in desperate need of change. I would go so far as to say that a planning regime that cannot withstand a period of non action associated with an inquiry or some other delay is in a dire predicament. Sydney is bursting at the seams. Average homeowners who wish to undertake renovations or young couples who are seeking to enter the basic housing market for the first time are encountering impediments and costs that make homeownership impractical, and the system is burdened by red tape. Subject to the amendments foreshadowed by Reverend the Hon. Fred Nile, the Shooters Party commends the bills to the House.

Ms LEE RHIANNON [5.50 p.m.]: The Greens do not support the Environmental Planning and Assessment Amendment Bill 2008. There are major problems with its content and the process leading to its introduction. The bill constitutes another enormous black mark against the Iemma Government. The Minister for Planning, Mr Frank Sartor, has gutted what was once fine legislation. The Environmental Planning and Assessment Act was groundbreaking legislation when it was formulated. Unfortunately, over the past decade, the New South Wales Government, usually with the support of the Coalition, has dismantled that fine planning legislation. I am pleased that the Coalition does not support the Minister for Planning in relation to this bill.

In the world of the Minister for Planning, Frank Sartor, only developers are given a seat at the planning table, and that approach is set to take over New South Wales. We should remember the introduction of the original Environmental Planning and Assessment Act. Former Premier Neville Wran introduced it to Parliament in 1979. That legislation came off the back of an incredibly turbulent decade characterised by green bans, resident action groups and many other democratic people's movements. Out of that turbulent period came an understanding that planning laws needed to be changed. People had witnessed incredible corruption under a previous Liberal regime that was led by former Premier Askin. There was considerable corruption, and developers had open slather when it came to Sydney.

In that era, people took a stand. All would agree that Woolloomooloo and The Rocks would look fundamentally different if green bans had not been applied. Green bans brought together local residents, students and activists who took a stand for the benefit of their community and to retain an urban landscape befitting the local community, local businesses and future generations. The Environmental Planning and Assessment Act was a model for other jurisdictions throughout the world because its foundation was consultation. Our forebears in this Parliament grappled with a very difficult concept—ways in which to involve the community in determining planning. In the context of this legislation, this is a most significant factor, considering the setbacks with latest amendments to the Environmental Planning and Assessment Act that have blocked out the community.

I acknowledge the work of former Premier Neville Wran for his courage in producing reform despite extreme difficulties. I imagine that at that time the Labor Government was under enormous pressure from

developers who were responsible for some pretty ugly deeds, such as the disappearance of Juanita Nielsen, and was pressured not to introduce that important legislation. However, unlike the current Premier, Mr Wran had the courage and decency to bring forward that important legislative reform and acknowledge the role of the community in the formulation of planning legislation. Jack Mundy told me that on a number of occasions former Premier Wran acknowledged the key role played by green bans in the preparation of the 1979 legislation. These are all important factors to recall and contemplate as debate on this bill begins to wind down.

We can see that the current Government, by whatever means—and one day the deals it has been doing will come to light—has been able to secure the numbers it needs for this legislation to be passed. Twenty-nine years after the introduction of the original legislation we are about to lose the last vestiges of decency provided by the Environmental Planning and Assessment Act. Before I deal in detail with the serious problems of the bills before the House I will mention a positive feature of the legislation. Changes provided by the bill will make place of public entertainment [POPE] regulations apply only to larger theatres and public halls for which they were designed—not the local bar, pub, restaurant or café—provided that key conditions are met. Current New South Wales place of public entertainment provisions in the planning system have virtually killed off the cultural landscape in New South Wales by requiring extensive and costly building compliance by bars and small-scale cultural activities while ignoring large screens and gambling. I congratulate many people who lobbied for changes, particularly John Wardle of the Media Entertainment and Arts Alliance. It is worth citing his comments relating to this legislation because enormous lobbying efforts have been made. In the instance to which Mr Wardle refers, the Government has done the right thing. He stated:

> TV screens and pokies were never subject to PoPE requirements but as soon as you wanted to put a jazz pianist in the corner, you had to isolate your power supply, which can cost $40,000, put in sprinklers, new exits and complete a range of fire safety controls that were way too strict.

He went on to state:

> Councils made it really hard for clubs and hotels to put on entertainment. Now PoPE has been killed stone dead.

By opposing the bill, I and my Greens colleagues will not be able to support the provision to which Mr Wardle refers. I turn now to deal with some of the serious problems associated with the legislation. A common complaint received by the Greens in the time in which this legislation has been considered has come from community groups and councils about the lack of consultation on the bill and the process established by the bill. As we know, there has been minimal consultation by the Minister with community groups in bringing forward the legislation. Consultation on the discussion paper "Improving the NSW Planning System" was conducted over the holiday break at the end of the year and the period for public comment on the draft exposure bill was limited to approximately three weeks. Such a consultation process was totally insufficient for complex legislation.

I again state for the record that the Government regularly uses the holiday period at the end of the year to push through unsuitable legislation, circulate discussion papers and promulgate other planning instruments. It is a very dirty tactic that is used regularly. The bill represents another instance in which the Government has used such a tactic so that the Government can tell everybody that it has consulted and that plenty of time has been allowed for consultation. But everybody knows what the holiday break at the end of the year in Australia is like. On top of that, more than 30 regulations will apply after the bill is passed. The details of the regulations have not been made public, and there has been no debate or consultation in relation to them. That is yet a further example of the concerns that the Greens and many councillors have with this bill.

Many councils agree that planning legislation reforms are necessary. However, as pointed out by the Mayor of Ashfield council, Mr Ted Cassidy, reforms must be developed on a cooperative basis with local government and the community, and his view is the thread running through so much of the correspondence received by the Greens concerning this legislation. What the Minister has done in this bill stands in sharp contrast with what has occurred in the other States. The Minister often uses the situation in other States to attempt to justify what he is doing here. However, the local councils in South Australia and Victoria were consulted about the legislation before it was introduced. The legislation was developed over a couple of years, not in the way this Minister has introduced this bill. Another issue is that of private certifiers. The proposed changes to the rules governing private certifiers are inadequate to achieve the stated objective of ensuring the independence of private certifiers. The proposed limit of 20 per cent of income from any one client is insufficient to ensure the independence of private certifiers. One would have to say that 20 per cent represents a significant level of income for any business and will not ease pressure on certifiers to give favourable determinations to major clients.

The whole issue of private certifiers is one of the most corrupting aspects of this legislation, and it is one that is sure to bring many more problems as the years roll by, with this legislation determining all planning matters in this State. One example was brought to my attention only today. Some people in Leichhardt bought a building with several different levels. When they bought the building they were told that they would be able to live in the rooms on the top level; now they have been informed that that is wrong and that the consent conditions for the building require that the upper levels be used only for storage. These people bought the building thinking that they could live in it and entertain there, but now they have been told that it is for storage only. The local council and the consumers are in great difficulty with that mess. I am sure there will be more examples as time rolls by.

It is worth noting that councils have been complaining about private certifiers since the previous planning Minister, Mr Knowles, introduced the provisions for private certifiers, and we are concerned about the hardship that will be caused to many people who are simply not expecting it. Another serious problem with the bill is the role given to arbitrators. I received a letter that I want to share with members. On 17 April this year Mr Gary Green, a partner with Pike Pike and Fenwick, wrote a letter to the Attorney General in which he raised a number of concerns about the appointment of arbitrators to handle disputes for small developments. As we know, the class of development that arbitrators will cover is yet to be prescribed, but it is anticipated that the developments will have a value of less than $1 million. In his letter Mr Green stated:

> It is proposed that the Minister appoint, hire and fire such arbitrators, the council pay for the work carried out on any application and that the applicant be the only person afforded with any right of review from any decision that they make. I cannot submit more strenuously the potential negative outcomes as a result of such a process in its current form. Why, one would rhetorically ask, could such a process not be set up through the mechanisms currently in force in the Land and Environment Court, which would be much fairer, cheaper and have all the hallmarks of natural justice, which this process does not?
>
> Giving only one party a right to review an arbitrator's decision will appear on its face to be lacking fairness. Most importantly, however, after the system has been in force for any period of time, an arbitrator, knowing that there is only one right of a review against him or her by one party, will be much more inclined to lean towards handing down its decision in favour of that party in order to avoid a review and appeal. This is particularly so when that person has no legal qualification.
>
> The process is inherently unfair to one party and will be perceived as biased from the outset, thereby undermining confidence in the planning system. There will also be a lack of transparency in the decision making that currently exists.
>
> If the planning Minister is determined to proceed with this arbitration system, I strongly urge you to provide a mechanism for review by both parties to the Land and Environment Court. In all likelihood the number of reviews from such an arbitration system will be small, say 5 per cent, thereby resulting in time and cost savings for almost all arbitrated decisions, thereby achieving the stated objectives of the proposed changes. To not provide a review by both parties leaves one side feeling cheated at the outset, even before the arbitrator has made a decision.

Mr Green argues that if such arbitrators are to be appointed through the Land and Environment Court system, they would appear substantially more independent and the cost savings could still apply. If necessary, council would still pay the associated costs, as is currently proposed. Mr Green is a former president of the Environmental Planning Law Association. One other complaint we have received from a number of councils and from the Local Government and Shires Association relates to the costs involved in these measures. When one looks at the totality of this bill, it is essentially a massive exercise in cost shifting. In his letter Mr Green outlined the costs associated with the arbitration system, and that is something that flows on with so many of the changes that this bill brings forward.

In trying to defend this bill and win support for it, the planning Minister has worked overtime to demonstrate that a range of peak organisations supports his cause. It is worthwhile checking out how representative these bodies are. For instance, the Planning Institute of Australia has given strong backing to Mr Sartor, but many local planners are furious that they are misrepresented by these peak bodies. A common complaint I have heard from other people who work in local government and planning is that they have felt that they had been bullied into supporting this bill. If this bill makes it to the Committee stage, my colleague Ms Sylvia Hale has rightly raised the need for us to closely scrutinise every aspect of the bill to ensure that property developers are not gaining undue advantage in the planning process to the detriment of community, loss of public spaces and damage to the natural environment.

Some current Sydney developments illustrate how little protection the current Environmental Planning and Assessment Act provides to local communities. These examples are a clear reminder of the need for us to strengthen the Environmental Planning and Assessment Act, not weaken it. I shall give one example that illustrates the problems we already have with the legislation and how a weaker bill will result in more communities being locked out of planning decisions and more environmental damage. Recently I visited Berowra Waters to meet with community members who are concerned about a proposal by the local marina

operator to build a car park at Berowra Waters in the Dust Hole Bay car park situated on community land on the western side of the river. The community informed me that the marina developer, Cameron Bray, has operated the marina there for many years and never complies with his conditions of consent.

The developer now seeks to build a new car park on community land in order to comply with the condition of consent regarding car parking spaces so that he can gain approval for a development application to expand the marina. This is a common tale of the local community frustrated with the planning process about a development in an environmentally sensitive area at the bottom of a long, narrow winding road through the bushland gorge of the Berowra Valley Regional Park on the banks of the Hawkesbury River. The foreshore is already at capacity, and for the development to expand is inappropriate. The developer wants to expand his operations. Back in the 1970s Dust Hole Bay was filled in and turned into a community reserve and car park to give families who lived in the Hills district and Western Sydney a place to park their boat trailers and put their family runabouts onto the Hawkesbury River.

The land was given to Hawkesbury shire council for that purpose. The council granted consent for a marina to be built in 1982. Between 1999 and 2001, the Department of Planning and the council adopted a plan of management for Berowra Waters. Consultants from PricewaterhouseCoopers advised that Berowra Waters was full—there are already three marinas operated by Cameron Brae Pty Ltd on both side of Berowra Waters—the developer lodged a development application in late 2007 to expand the marina. It should be now surprise to learn that Cameron Brae donated to both the Labor and Liberal parties. The first gave a small $1,500 donation to the New South Wales Liberal Party that had a majority on Hornsby council in 1999-2000, around the time the Berowra Waters plan of management was being formed. Since then it has given $3,000 to Labor members and $2,000 to Liberal Party members of Parliament at election fundraisers. An amount of $6,000 in donations since 1999 may not be a large sum of money but it raises serious concerns in the minds in the community about the influence that those donations are having on the planning process. Let us remember I am talking about local government where $6,000 can go a long way.

The Hon. Lynda Voltz: So you don't like local government.

Ms LEE RHIANNON: I acknowledge that crazy interjection. I have no trouble with local government obviously. The developer, David Hazlett, has bought the opportunity to sit with members of Parliament at election fundraising events and raise his issues about his development, yet the community feels frustrated that it cannot get adequate access to the planning process; that the public good is being overlooked in this proposed marina expansion; that the river's health will be compromised; and that their concerns are not being heard. Since the 1999 New South Wales election, property developers have donated more than $13,243,470 to major parties, members of Parliament and candidates during election campaigns alone.

The $13 million was collected from 1,800 discreet developer donations to both Liberal and Labor candidates as disclosed to the Election Funding Authority [EFA]. The big names and big money I am talking about are: 17 donations from Australand at $200,000; 26 donations from Babcock and Brown of more than $300,000; 51 donations from Bradcorp Holdings Pty Ltd of $280,000; 31 donations from Buildev Development Pty Ltd of $300,000; 49 donations from Johnson Property Group of nearly $400,000; 58 donations from Leighton Holdings of $370,000; 20 donations from Meriton Apartments of just over $400,000; 29 donations from Multiplex of $260,000; 32 donations from the Property Council of a little more than $160,000; and 30 donations from Westfield coming at a record $355,850.

Those hundreds of greedy property tycoons each pay for dozens of opportunities to sit with politicians at swanky dinners, and air their issues and concerns. Earlier an interjection asked how do I know what is talked about at these events. I do not know what is talked about at those events but I know from comments of many property developers they regularly raise their issues with politicians and Ministers when they meet with them. Fat-cat developers buy influence with politicians doing business New South Wales-style is very much linked with this bill. New South Wales party election candidates since the 1999 election have accepted $8,471,031 raised from 1,142 discreet developer donations, offerings to the planning empire of the Labor Government built by Frank Sartor.

It will not be recorded in *Hansard* but now the grumblings from the Government benches are getting loud. I acknowledge the comments and I hope Hansard recorded them. It is not just the Labor Party that has to kick a dirty donations habit. As I have said, it is good to see that the Liberals-Nationals members of Parliament are opposing this bill. The Liberals-Nationals have accepted 659 separate developer donations totalling more than $400,000 since the 1999 election. I would argue that those donations have also had a corrupting influence

on the planning system because we must not forget the dark days of 2005 when the Environmental Planning and Assessment Act was again before this Parliament for amendment. What did the Opposition and the Government vote to do? To bring in part 3A.

The Hon. Don Harwin: We tried to amend it and you did not support us.

Ms LEE RHIANNON: Part 3A was a total write off and the Hon. Don Harwin knows that and supported it, and that is why it is in the legislation today. The Opposition had the opportunity to vote against it and it did not. It is worth examining why developers still donate so many millions to the Liberal Party when it has been in Opposition since 1995. For the big developers, donating to the Liberal Party maintains their relationship with their natural allies. Those developers certainly got a big bang for their buck when the Liberals and The Nationals joined forces with the Government on the part 3A amendments to which I just referred that vested so much power in the Minister for Planning, Frank Sartor. We should also remember that if the Coalition is in Government at the next election its Minister for Planning will have the same power. The Opposition has not put on record that it will get rid of part 3A.

Part 3A was groundbreaking legislation in that for the first time since the Environmental Planning and Assessment Act was enacted in 1979 almost unfettered planning discretion was handed to the Minister for Planning for all major projects in New South Wales. It removed from our planning laws the need for the Minister to take notice of environmental and heritage laws, removed for the Minister to take notice of his own staff. The Minister does not have to take advice from his own director general. It removed the need for a thorough environmental impact assessment of large projects that threatened coastal lands, rivers and biodiversity, and introduced private certification for developers, which furthered the private certification process that has wreaked so much havoc on local councils and communities.

The Liberal Party has recognised that it made a big strategic blunder in 2005 when it voted with the Labor Government and has now decided to oppose the latest grab for planning power. Both major parties have some cleaning up to do on the donations front. Labor still smells pretty bad after the Wollongong development and donations scandal, and Premier Morris Iemma cannot afford to get complacent about the strong community expectation for him to deliver on his commitment to make strong reforms to the donations system. It could be expected that some Liberals have had unsavoury dealings with developers, but it is much harder to scrutinise Liberal donations because of the secretive way in which the Liberals manage their donations affairs at the electorate level. I want to put that on the record because obviously the Greens have given a serve to Labor and I will explain why it cannot be done with the Liberals.

In the lead-up to each State election all Liberal Party candidates get their developer mates, and their corporate colleagues for that matter, to funnel their donations through the head office accounts. We know that property developers are donating to local campaigns of the Liberals, as sometimes the donors mention particular members of Parliament in their donor return forms for the Election Funding Authority [EFA], but not one of the Liberal candidates in the past two elections in their EFA disclosure returns shows a single direct campaign donation from a developer. But the money still came in and was spent by Liberal candidates. An amount of $4,673,305 in developer donations came through Liberal head office account but not one developer donation can be linked with a specific Liberal candidates.

During this debate we have heard some members criticise developer donations. This policy of no disclosure allows Liberal members of Parliament to tell their communities that they did not accept developer donations. What they have done is not illegal; it is a loophole in our election funding laws, one that I hope will be removed when the New South Wales political donation laws are reformed. We do not know which developers teamed up with which Liberal candidates, so it is useful to document developer donations to the Liberal Party's head office. These donations are pretty weighty. I have here a printout from the Greens' Democracy4sale site, which as I have said before takes a direct feed from the Election Funding Authority and the Australian Electoral Commission. Big money came in. These are all developers: Asia Pacific Space Centre gave just over $100,000; Australand Holdings, $113,000; Babcock & Brown, $64,000; Baulderstone Hornibrook Pty Ltd, $120,000; Bradcorp Holdings, $28,000; Buildev, $112,000; Leighton Holdings, $295,000—big money; Memo Corporation Australia topped that with $317,000; and a couple of old favourites were very generous: Meriton Premier Apartments, $403,000; Multiplex Constructions Pty Ltd, $454,000. The Property Council was in there as well and gave $130,000. The donations were not completely in Labor's league but it was incredibly significant money. Sitting here listening to Liberal members of the House speak in the debate about the Labor Party's developer mates really convinced us that we had to put that on the record.

Before I return to Berowra Waters and my tale of a developer who wields undue influence on the planning process, I would like to reiterate the need for this bill to be sent to a committee. It is vital that we halt the Government's planning power juggernaut that is eroding the voice of the community in planning decisions and bringing so much harm to the environment. The objective of the Environmental Planning and Assessment Act was to protect the natural environment, heritage values and communities from inappropriate or harmful development and make sure that the built environment is in balance with the natural environment. The influence of developers has devastated the integrity of this Act. Previously I stated that $13 million in developer donations had been made to election candidates in New South Wales since 1999. But the true extent of developer donations is even higher when we examine donation data lodged with the Australian Electoral Commission. The total amount of all developer donations given to the New South Wales branches of the major parties—Labor, Liberal and Nationals—as declared by those parties to the Australian Electoral Commission, comes in at $22,725,662. It is a staggering amount of money to flow from one industry, the property industry, into the major parties' election war chests.

It is absolutely shameful and it has so much to do with the fact that the wonderful piece of legislation brought forward by a Labor Government in 1979 is now in tatters. I am able to quote those figures thanks to the years of work by the Democracy4sale team. I would like to give special thanks to Dr Norman Thompson and his team for the investigation they have conducted over the years. I hope that the recent development scandals in New South Wales public life have been provocative enough to persuade other members of this House to halt the erosion of our planning system and vote to send this planning bill to a committee. It does not have to be a major development or a big donor for the planning system to falter. There are hundreds of developers both large and small who give money to politicians. Few people doubt that this money is given without an expectation of receiving something in return. Donations can have an unacceptable impact if the needs of the developer are met and the needs of the community and the environment are silenced. There cannot be a balance in planning as long as developers make donations to politicians. It is as simple as that. These donations are having an enormous corrupting influence. It is not like the bad old days with former Premier Askin and the deals that he did with developers. It is not as though people are standing on the front veranda of the New South Wales Parliament taking money in paper bags, but it is having a deeply corrupting influence right through the planning laws in this State.

In the case of the Berowra Waters marina development we do not know if those donations have bought the developer some influence with a decision maker. We do know that there is very little public benefit in his proposal, that all the benefits are flowing his way and that the public is being alienated in the planning process. The proposal for a new car park behind the marina so that the marina can meet its consent conditions will usurp much of the existing car parking capacity at Berowra Waters for boat trailers. The existing car park is built on public land and the developer is seeking to take away nearly half of that car park and a children's playground to build a multilevel car park, lease back the bottom level for his own private business customers and let the public use the top level. I understand that the car park lands at Dust Hole Bay are within the boundaries of Furber Park, which was deeded to the community and so should not be developed for commercial use. It is a ludicrous suggestion to build car parks on community lands and give developers the bottom levels while giving the top level to the community. It is just ridiculous to suggest that boat trailers will be able to get up a ramp to park on the top level of this parking station.

The proposal is for 86 marina car parking spaces and the marina already needs 62 spaces for its current business. The developer also plans to build a pump-out station for his customers on the public reserve. There are 82 existing boat trailer spaces at Berowra Waters and 20 of these will be taken away for the marina car park. The community needs more boat trailer parking, not less. I am told that on sunny weekends and holidays the car trailers are jammed in long lines for hundreds of metres up the side of the narrow Bay Road that leads away from the river. People drive up to the water's edge, slip their boat into the water, put their family on board and then drive off to park the car and trailer. If they cannot find a spot in the car park they end up parking illegally on the road. The public interest will not be served by building this multi-storey car park. It serves only the business interests of the marina operator and the select few that moor their boats at the marina. The whole area is already full and commonsense alone should see this development proposal rejected and a sensible management plan drawn up to ensure the area is not overused and exploited.

The proposal's traffic study says that the marina car park will have no impact on local traffic. The study is out of date and the community challenges it, but people cannot get their voices heard on the matter. This proposal will reduce public car parking and increase traffic. Locals who are concerned about this development both on planning grounds and because of the impact that increased development will have on the already degraded Hawkesbury River spent one weekend collecting signatures from 280 local families who use the

Berowra Waters boat ramp and who oppose the marina's proposal to reduce parking spots for trailers. It is a growing trend in New South Wales that development that is strongly opposed by the community gets approved. People in New South Wales want more involvement in the planning process and they want greater access to decision making that affects their community. This bill delivers the opposite. It is the latest stroke in the death by a thousand cuts of the Environmental Planning and Assessment Act.

I urge Labor members to consider when they are voting for these latest amendments to the Act later this evening what their forebears in this place did in the 1970s. They brought forward a great piece of legislation, which has been picked up by other jurisdictions around the world because its very foundation was the involvement of the community. A previous Labor Premier had the courage to bring forward legislation not because members in this place at the time had a brilliant thought but because they recognised the community concern in this area. They responded to the actions that came out of the green ban movement and the resident action groups that were so prolific at the time. They had courage and decency and we got fine legislation. What is happening tonight just guts that completely.

The Hon. AMANDA FAZIO [6.29 p.m.]: I support the Environmental Planning and Assessment Amendment Bill 2008, the Building Professionals Amendment Bill 2008 and the Strata Management Legislation Amendment Bill 2008. I advise the House that, despite the comments of members earlier in the debate, I wholeheartedly support this legislation. I am a member of the Legislation Review Committee. However, I was not present at the meeting during which the legislation was considered by the committee and for that reason I deny all ownership of the comments made by the committee in its report.

Members who are on the Legislation Review Committee would be well aware that of all the committee members I am probably the one who raises the most amendments to legislation, amendments that often do not get through. I admit to being a person who frequently dissents from the majority view put forward by the Legislation Review Committee. Indeed, I advise the House that I intend to continue to dissent from the committee's recommendations if I do not genuinely believe in them. I urge members to ignore comments made by others, to take the views of the Legislation Review Committee with a grain of salt, and to support this legislation.

[*The President left the chair at 6.31 p.m. The House resumed at 7.30 p.m.*]

Dr JOHN KAYE [7.30 p.m.]: Planning is more than just an academic interest in handsome buildings and preserving items of heritage as though they are exhibits in a museum. Good planning is about creating buildings and places where people, households and communities can thrive. Ultimately, planning is about people and how they live their lives. Most people love their homes—from Vaucluse mansions to modest flats, from owners to renters, from farmhouses to units in high-rise buildings—because of what their homes represent: not just where they live but where their life happens, where their children grow up, where they invest both financially and emotionally in creating secure and peaceful environment. People treasure their home's favourite features: a view, a sunny garden, a beautiful streetscape, a friendly neighbourhood. Good planning laws can result in better lives. Good planning laws should help people create and nurture that secure and peaceful home environment that is essential to a decent life.

Good planning laws, however, are about more than just individual households. They are the linchpin to stronger, more vibrant, more engaged communities that create opportunities for involvement and inclusion. Communities are entitled to have a say about developments that affect their homes and their lives. And when they do, the outcome is always much better. Heritage is about living with our history in continuity with the future. Heritage elevates the community and informs a future about the best features of the past. When that continuity is severed, our future is cast adrift by the loss of a key part of our culture. This is the Greens' vision for the New South Wales planning system—laws that protect the things that people love about their homes, laws that protect their emotional and financial investment in their homes, laws that help communities gel and thrive.

The Environmental Planning and Assessment Amendment Bill 2008 is the exact opposite of the Greens' vision. The bill reduces the power of ordinary people to have a say about developments that affect their homes, handing that power over to bureaucrats and the Minister; weakens controls to protect heritage and the environment; exacerbates the perverse incentives for private certifiers; and betrays the vision that lay behind the original 1979 Act, a vision that was groundbreaking and served this State well.

Having said that, I wish to echo the remarks of my colleagues concerning the places of public entertainment changes, which are exempt from my previous comments. The question that must be asked is: Why

is the Government doing this? Why is the Government going against the vast majority of community sentiment about a planning system that respects the community's rights? Clearly, the answer is the massive profit that developers make at the expense of the community. The gain that developers make is all too often the community's loss. Regardless of whether it is a parcel of irreplaceable wetland drained for a supermarket, a heritage building bulldozed for a block of flats, or a park overshadowed by a high-rise tower, it is today's community and future generations that are poorer and the developers who are richer.

This legislation is a developer's wish list, weakening the community's ability to resist the developers who paid for the legislation with more than $6 million—and possibly much more—in donations to the Australian Labor Party. It has been described as State-run distortion, whereby property developers are allowed to tear apart neighbourhoods and the natural environment. This is the $6 million bill, paid for by donations from developers. It is a rip-off on a giant scale. As surely as if a developer breaks into your living room and steals your DVD player and your family photo album, you will be poorer and the developer will be wealthier, if this legislation goes through, the people of this State will be poorer. The bill jemmies open the door and lets the developers steal from communities. The impacts of years of developer donations are writ large in the dramatic degradation of the 1979 Act, in a series of about 20 attacks on the original legislation. They are writ large in the concrete, bricks and tiles in the poor-quality, badly designed, overdeveloped and inappropriately sited buildings that have been approved by that Act. If this legislation passes through Parliament, there will be much more to come; it will leave an appalling legacy for future generations.

The legislation is supported by an organisation called the Coalition for Planning Reform. Something must be said about that organisation. The best one can say about it is that the name sounds better than Developers Inc, or the Bulldozer Club. These bills are so bad, the Coalition for Planning Reform says it got 95 per cent of what it wanted on its wish list. All I can say is thank goodness it did not get 100 per cent. The only point of common agreement between the Coalition for Planning Reform on one side and the Greens and the community on the other is that there is a need for planning reform. But what the Coalition for Planning Reform wants is self-interest masquerading as reform. The Coalition's reform will take away what little say ordinary people have left with so-called independent assessment panels. It will increase the power of private certifiers, fast-track so-called complying development, undermine local government and the community, centralise planning powers with the State Government, and homogenise the State with a one-size-fits-all approach.

Planning Minister Frank Sartor and the developer lobby argue that changes are needed to increase efficiency. However, efficiency in this context simply means lowering the developer's cost by doing away with important rights and protections for the community. Development decisions can last for centuries. It is therefore worth spending time to get those decisions right; we should not rush to make such decisions. Decisions made in haste tend to be poor decisions. In this case, speed kills. The issues of speed and delays in development have been used as an excuse by developers and their mates in the Iemma Government in order to ride roughshod over the rights of communities.

My colleagues Ms Sylvia Hale, Mr Ian Cohen and Ms Lee Rhiannon have outlined the ways in which the bills inflict this outrage. They have also pointed out ways in which some of the bills' provisions are somewhat positive. I concur with their sentiments and wish to draw attention to some additional issues. The Environmental Defender's Office prepared a detailed submission on the legislation, which has been a useful guide in unpacking the damage being done by it. One of the most obnoxious features of the proposed legislation is that it leaves too much important detail to regulations and codes that are not yet available for public comment. Voting on this legislation is voting in the dark; it is voting for an outcome that is uncertain; it is voting for an outcome that resides in the hands of planning Minister Frank Sartor; it is voting for an outcome that is entirely unpredictable and could inflict devastating impacts beyond those we can foretell from the legislation.

Many of these important details are left to the codes and to the regulations, in particular, complying development codes in environmentally sensitive areas and the community consultation guide, to name just a few. I cannot help thinking: In putting so much into the regulations is the Department of Planning deliberately seeking to avoid parliamentary scrutiny, both now and in the future? The hallmark of the current planning Minister is to put as much as possible into regulations and codes that are beyond the reach of the Parliament. It is highly undemocratic and it is also highly damaging to the urban and built environment, and the natural environment.

The plan-making proposals in the bill are deeply flawed. The removal of the community's right to be consulted on the final local environmental plan is completely unacceptable. Community consultation at an early stage is a good idea, but it is no substitute for the real thing—an opportunity for the community to comment on

the final version of the local environmental plan. Similarly, I find outrageous the provision in this bill that will enable the Minister to decide that no consultation is required on minor plans. This discretionary power will remove from the community any right to have a say on plans that, although supposedly are relatively minor, might still affect households in a major way.

This sort of discretionary power is wide open to corruption, and abuse and should be removed from the bill. Further, the generic nature of many of the plans is a one-size-fits-all approach that inevitably will lead to a loss of local character. Diversity in the existing character of built form, diversity in open space and diversity in a natural environment are valuable assets to this State, as are diversity in the culture and demography of various communities that come together and comprise the people of New South Wales. While developers seek an easy ride to vanilla homogeneity, communities have a right to be supported in their struggle to maintain their neighbourhood integrity.

Planning to specifics is difficult, and development assessment that takes account of the local character might take a little longer, but communities and households deserve the respect, the time and the effort that has to be put into this legislation to ensure that their future is not compromised. The proposals for planning panels are outrageous. Planning panels will have only a Clayton's independence, given the way in which the Minister will appoint them. If we must have these panels—the Greens do not accept that they are required—at least there should be an arm's-length appointment process. It is a basic truism of politics that we can determine in advance a decision that a committee will make if we make the appointments.

Further, there is a total lack of clarity about how these committees will be appointed and how they will operate. We do not know what role they will play, but we know that councils will have to pay for their existence. This bill does outrageous things to the Land and Environment Court appeals process. Effectively, the bill makes the terrible mistake of encouraging forum shopping. In some cases developers will be able to choose to go either to the court or to panel. Of course, developers will go to whichever body is the more favourable. As a result, planning decisions will be inconsistent and potentially politicised. There is a reason to think that developers will ignore the court and prefer the panels.

For example, there is provision in the Land and Environment Court for the joinder of a person in the public interest. Moreover, court processes are comparatively open and transparent. It is still very unclear just how these panels would work in practice. What is clear is that they will not have the transparency that an open court hearing will provide. Equally concerning in the bill is a provision that will allow developers to go straight to an arbitrator when a council rules that insufficient information has been provided. Clearly, that will create an incentive for developers to provide a scarcity of information to councils so they can go off and find a sympathetic arbitrator to rule in their favour. One of the most appalling features in this bill is that it gives even greater powers to private certifiers.

As has been stated before, there is already a major problem with private certifiers. It is not entirely the fault of individual private certifiers as they operate under perverse incentives to deliver for those who pay for them, with appalling outcomes for communities, neighbourhoods and building purchasers. This afternoon crossbench members of Parliament were given an example of a building that did not come within a local environmental plan that had been certified as acceptable by a private certifier. Effectively, the purchasers of the building were unable to use the roof level of their dwelling as a habitable space. Effectively, they were ripped off by the connivance of a private certifier.

This problem arose because commercial pressure to attract clients conflicted with and contradicted professional judgement and impartiality. There is no question that a private certifier would go out of his or her way to find in favour of clients when the clients choose developers and the applicants choose private certifiers. No private certifier could survive commercially if he or she developed a reputation for being scrupulous, for paying attention to detail, for enforcing development approvals, and for enforcing council environmental planning instruments. Major complaints about existing planning laws leading to councils and communities losing control of developments are well known. However, this legislation magnifies problems relating to private certifiers.

This legislation will give private certifiers even more power and it will place them in the role of a consent authority. So-called complying developments are to be fast-tracked. In reality, it is a fast track to a neighbourhood version of hell; it is a fast track to a guaranteed conflict between neighbours. Neighbours will have no recourse against intrinsic buyers. They will not even have an opportunity to make a submission in respect of a development application. In fact, neighbours will not even know that there has been a development application until the bulldozers move in and start demolishing a property next door. This is a case of approvals for sale—a massive increase in the opportunities for private certifiers to engage in adverse behaviour.

The Local Government Association and the Shires Association refer to the market advantage to certifiers who behave improperly. This bill is an invitation for even greater corruption in the planning process at the neighbourhood level. It will create excessive discretionary judgement for certifiers and provide no way to police the exercise of that judgement. In effect, planning approval for complying development will be for sale. Certifiers will amplify their current behaviour of building up a reputation for being an easy mark and we will see a rapid decline to a corrupt planning system. This bill rips off councils. It not only strips councils of many of their regulatory powers and roles; it also takes away from them complete control of section 94 contributions that pay for the impacts of planning decisions.

This is another example of councils paying but not being given any control. To add insult to injury, councils will be forced to pay the costs of panels and arbitrators without any control over their appointments or functions. This is a developer's dream. It will impoverish councils and reduce their ability to regulate development. This is a massive example of cost shifting onto local government and power shifting out of local government. Earlier Reverend the Hon. Fred Nile said that he had received a letter from planning Minister Sartor who said, "Don't you worry about that. Everything will be okay." It is all very well for him to have a letter from the planning Minister. I congratulate conservative members on the crossbenches in this place on their rather spectacular collection of letters from the Minister. I hope that they hang on to those letters. I hope that, as Reverend the Hon. Fred Nile is made into a complete patsy by Frank Sartor—

The PRESIDENT: Order! I ask the member to address the Chair.

Dr JOHN KAYE: I hope that Reverend the Hon. Fred Nile keeps his letters. As he is turned into a patsy by planning Minister Frank Sartor and his successors I hope he realises the gravity of the error he has made—an error that will enshrine in legislation an opportunity to rip local government of its power and its money on the promise that it would be all right as he has a piece of paper from the planning Minister that makes that promise.

Reverend the Hon. Fred Nile: In his speech in reply.

Dr JOHN KAYE: And in his reply to the second reading debate.

Reverend the Hon. Fred Nile: Be patient.

Dr JOHN KAYE: Reverend the Hon. Fred Nile can be patient too. No doubt all sorts of nice words are said in the second reading speech, but those speeches are just words and intentions on paper. Once legislation is enacted, it is the force of law. Once these changes come under the force of law there is no question that local government is vulnerable to a State Government—not just this State Government but the many State Governments before it that sought to undermine and destroy the powers of local government. New South Wales is on the verge of a planning revolt. It is a complete understatement to say there is widespread community opposition to these proposed laws.

It is remarkable that of the 42 members in this Chamber it appears that half of them have beans in their ears and are not listening to what is happening in the community. Everywhere I travel in rural areas, urban areas, the inner city, whenever I mention the planning laws there is uniform fear and revulsion at the idea that the planning Minister will acquire so much more power and that so much more power will be handed over to the dreaded system of private providers. Not just the Local Government Association, the Shires Association, the National Trust, the Total Environment Centre, the Nature Conservation Council and the Environmental Defender's Office oppose this legislation. When I accessed my email inbox at 5.00 p.m. this evening I had more than 2,621 emails from individuals.

The Hon. Amanda Fazio: I am glad that you are so popular.

Dr JOHN KAYE: No, I am not popular.

The Hon. Amanda Fazio: I know you are not popular.

Dr JOHN KAYE: It just proves that we are not popular.

Reverend the Hon. Fred Nile: We all got them.

Dr JOHN KAYE: I acknowledge that we all got them, but some of us take our democratic duties more seriously than others and some of us recognise the importance of the right of people to protest.

Reverend the Hon. Fred Nile: Did you organise them?

Dr JOHN KAYE: I most certainly did not organise them, but I rejoice in the right of people to use technology to make their opinions known. Without question this bill more than any other bill in the 18 months I have been in this Chamber has the community in a state of outrage—that is a tiny tip on a tiny tip of an iceberg. Members should go out into the community and talk to neighbourhood people, people engaged in battles against developers, talk to the community and hear what they say; they make it very clear how they feel. I congratulate the Keep It Local campaign because it has galvanised community anger: it has turned community anger into writing. That positive approach gave us the opportunity to hear from the community. I shall not read all 2,621 emails into *Hansard*—I have been invited to do so by the Hon. Charlie Lynn, but I decline his kind invitation. I shall read one email sent to my colleague Ms Sylvia Hale from Polly Seidler. Polly is the daughter of well-known architect Harry Seidler. I put on record that I am not a fan of the late Harry Seidler's work and certainly am not a fan of some of the buildings he imposed on the city of Sydney. If the Hon. Amanda Fazio could take the advice of Reverend the Hon. Fred Nile, which I know she does regularly, and have a bit of patience, she will find this interesting. The email states:

> Dear Ms Hale
>
> I urge you NOT to support the current planning laws as proposed by Frank Sartor and approved by Lower House of Parliament early this morning. The proposed laws allow automatic demolition of houses and buildings, with no "demolition notice" being erected to notify the community thereby giving them a chance to assess whether they are worthy of heritage protection. This will allow developers to be recklessly indifferent to our community's heritage, and bulldoze their plans through, and do irreversible damage to our built environment.
>
> I note that without a demolition notice out the front, my late architect father (Harry Seidler's) 1953 Williamson ("Igloo") house of Parriwi, Road Mosman would have been demolished. If it was not for the fact that my friend saw the demolition notice and told me and then I was able to tell my parents who then alerted the NSW Heritage Council which then eventually led to an interim and eventual permanent heritage order by the NSW State Government. Under the proposed changes, the house (which many consider to be of architectural merit, though it has been modified) would have automatically been demolished. It is now being slowly restored to its original architecturally worthy condition because of our current demolition notification system—which the current Lower House of Parliament wish to undo.
>
> Please be the responsible elected member of the community and act to ensure our heritage (which may not yet be heritage listed) has an opportunity to be assessed to be preserved.
>
> Sincerely,
>
> Polly Seidler

She provided her address. It is not just Polly Seidler, it is not just the Local Government Association and the Shires Association, the National Trust, the Nature Conservation Council, the Environmental Defender's Office and 2,621 emails; it is also the Legislation Review Committee of our Parliament. Much has been said about the Legislation Review Committee, and I note Reverend the Hon. Fred Nile launched a rather unusual attack on the competence of that committee. In his attack Reverend the Hon. Fred Nile quoted a letter from the Minister for Planning, Frank Sartor. It is naive in the extreme to give any value to a response from the key proponent of the bill. I would have some concerns about the quality of the findings of the Legislation Review Committee if an independent had criticised the committee, but it is a zero-information statement when the planning Minister says the committee is wrong. I shall refer to just three of the many passages in the committee's report that I intended to read. The first is on page 30 and states:

> The Committee has concerns about procedural fairness and the right to review with respect to the proposed section 79C (1A) … by legislating away the need to give notice and the right of review, and considers individual rights and liberties may be unduly trespassed.

The next passage I refer to is on page 33 and states:

> … the circumstances of where there is no requirement for consultation with other Ministers and public authorities (other than the Director-General of National Parks and Wildlife) in the drafting and preparing of the SEPPs, along with a wide power of the Minister to determine any matter that is, in the opinion of the Minister, of State or regional environmental planning significance, may make personal rights and liberties unduly dependent on an unfettered discretion on the making of SEPPs and an insufficiently defined administrative power.

The third and final passage I quote is on page 35 and states:

> The Committee is of the view that the proposed section 118AG is very broad. It has the potential to deny a person natural justice by removing the opportunity to even review any question of compliance or non-compliance by the Minister or the Minister's delegate to any function conferred or imposed on the Minister or a delegate of the Minister.

The Legislation Review Committee's report goes on and on in the same vein. One can extract dozens of quotes that make it very clear this report will have an adverse consequence on the rights of the individual and the community of New South Wales.

The bill has been resoundingly criticised by every sector of society, except by those who stand to directly benefit from its being passed—developers and hired guns in the development industry. If for no other reasons than overwhelming community opposition and quality expert advice the Greens have received indicating that we should oppose the bill, members should vote against it. It has been suggested during the debate and on a number of other occasions that we should pass the Environmental Planning and Assessment Amendment Bill in response to the need for change in planning laws, and then hold an inquiry in the hope that it will produce the great gem of a redrafted Environmental Planning and Assessment Act and a new planning system. That concept is flawed not only at its inception but also throughout its entirety.

An inquiry will be a distraction. Passing this bill into law will leave us with this legislation being in place for approximately five years or perhaps longer. It will take at least five years to redraft appropriate legislation, during which time considerable irreversible damage will be done to homes, neighbourhoods and communities. How much devastation will be wrought upon our built environment? Even so there will be no guarantee that a review will fix the problems, or even provide marginally better protection. A review certainly will do none of those things if we do not first cure the planning system of its problem of developer donations. It is a little like suggesting that the *Titanic* should be allowed to sail with an inadequate number of lifeboats because someone somewhere will carry out an investigation into a safer design for transatlantic ships! The proposition simply makes no sense.

The Greens support the motion moved by the Hon. Don Harwin to refer the legislation to a parliamentary committee for inquiry. Certainly more time is needed to consider radical changes provided by the bill and the huge currently unforeseeable consequences that implementation of the bill will wreak on the built environment and communities. The changes effected by the bill are presently unforeseeable because we have not yet seen the codes and we do not yet know how the panels will work. We also have not seen the regulations and we do not know the manner in which panels will be appointed. I must say that the preferred solution of the Greens is to reject the Environmental Planning and Assessment Amendment Bill outright because it is close to being irredeemable, but the Committee stage is the best option on the block. We urge members, given the range and depth of community opposition to the bill, to support the motion moved by the Hon. Don Harwin and create an opportunity for an upper House committee to check the legislation by thorough examination prior to its being reintroduced in September.

Could much more damage be done in a few months by a system that has been in place more or less unaltered for years while we wait for a committee to take a thorough look at this legislation, particularly in the light of opposition that has been expressed by communities and councils? If this bill is passed we, as legislators, will set in stone laws providing for dramatic changes. There is a desperate need for the community to be assured that a responsible body will closely examine the bill. The Environmental Planning and Assessment Amendment Bill is an appalling example of the type of legislation that can be purchased by massive campaign donations and an appalling example of what happens when communities and local government are shut out of the decision-making process. This bill is a disaster in the making. I urge the House to reject it.

The Hon. CHARLIE LYNN [8.03 p.m.]: It was not my intention to speak in this debate; the Opposition's position was put clearly in the contribution of the Hon. Don Harwin. I commend Dr John Kaye for his contribution to the debate. I have been in constant contact recently with the Mayor of Camden Council, Chris Patterson. As members are aware, the Camden-Wollondilly area is a significant heritage district of New South Wales. Many of the area's heritage buildings have not yet been classified and may be exposed to a developer's whim. That matter is causing significant concern in the community. I congratulate Councillor Patterson on his outstanding leadership in protests against the bill. That the *Macarthur Chronicle* is in touch with the Camden-Macarthur community is reflected in its editorial today. The Editor-in-chief, Bob Osburn, encapsulates the arguments against the bill in the following terms:

> Every Sydneysider should be extremely fearful of Planning Minister Frank Sartor's new planning laws.
>
> The laws have the potential to have a direct impact on every street in every suburb of Sydney. Premier Morris Iemma and his minister are choosing to ignore deafening protests from the community and from within their own government.
>
> Can every council and shire across NSW be wrong?
>
> Can the National Trust, community historians and leading architects be wrong?

> Can Labor-friendly urban planners and ex-union chiefs be wrong? Can the bipartisan Parliamentary Legislation Review Committee be wrong?
>
> Can the local government committee of the NSW Labor Party be wrong? Can eight peak environmental groups be wrong?
>
> All of these people and groups have raised serious objections to the proposed changes.
>
> Even Mr Sartor, after ramming the legislation through the Lower House, has confessed he's only got it 90 per cent right. A 10 per cent fail is every reason to halt this process and refer the legislation for an Upper House review.

A review was recommended by Hon. Don Harwin during his contribution to the debate. The editorial goes on to state:

> The face of our neighbourhoods and your street is about to radically change.
>
> Mr Sartor's changes will allow:
>
> - The erection of a single storey home without council or neighbourhood consultation or approval, or the right to object. (Private certifiers, hired by the developer, sign off the job.)
> - Neighbours to set up a bed-and-breakfast in up to three rooms without council approval.
> - Backyard swimming pools to be built without council or neighbour scrutiny.
> - Unfettered internal alterations to two-storey houses, as long as the facade is not altered.
> - No requirement to notify neighbours of the demolition of a home and construction of a new one until work begins. No right to object.
> - Carports, garden sheds, pergolas, gazebos up to 20sq m, 40sq m shade sails, outdoor airconditioner units and swimming pool construction without neighbour consultation. No right to object.
> - Decks and patios up to 15 per cent of the ground floor area to be built without council scrutiny or neighbour consultation. No right to object
>
> The new design codes are open for public comment until July 4.
>
> The National Trust is right to fear our history and oldest streetscapes are in real jeopardy.
>
> The State Government has a backlog of more than 10,000 properties to list. The alarming reality is: if it's not listed, it can be demolished.
>
> National Trust conservation director Graham Quint says the reforms are "developer-driven" and a severe threat to the protection of our heritage.
>
> "We are concerned about erosion of local government and the fact that residents will lose the right to comment on developments in their own neighbourhoods," he said.
>
> The Local Government and Shires Association has strongly opposed the removal of consultation and approval powers from neighbours and councils, and handing it over to private certifiers and planning panels set up by the government.
>
> The changes also create new building codes. Critics have derided Mr Sartor's codes as a "one-size-fits-all" approach to building which will diminish the individual character of neighbourhoods, and leave neighbours and elected councillors powerless.
>
> The government is right to streamline the planning process and strive to shorten timelines, but not at the expense of our city's character or at the exclusion of local councils and neighbours.
>
> We believe Mr Sartor should think again.

That outstanding editorial is probably indicative of editorials being published around the State. I ask Reverend the Hon. Fred Nile to take note of that editorial and to support the motion moved on behalf of the Opposition by the Hon. Don Harwin for the establishment of an inquiry, thereby giving people more time in which to understand the likely impacts of the legislation on their lifestyle. As the Mayor of Camden Council, Chris Patterson, said, the changes provided by this legislation could impact on communities for generations.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [8.09 p.m.], in reply: I thank honourable members for their valuable contributions to this debate. The Minister for Planning is putting forward a measured and moderate package of reforms that will respond to real problems in our planning system. It is worth pointing out who are the main users of the system and who will benefit most from

the package of reforms. In 2006-07, 67 per cent of all development applications had a capital value of less than $100,000. This is not the big end of town. It is not the developers; these are working families, mums and dads, who are currently often forced to endure a lengthy, costly and uncertain process for minor works.

Just the other day on radio 2GB Alan Jones read out a letter from one of his listeners whose plans for a home renovation had been repeatedly thwarted by a single objector. Despite the council planners recommending the plans for approval, the councillors rejected the application due to the effective lobbying of just one objector. The homeowners had the option of going to the Land and Environment Court, but this was too costly so they took the option to significantly alter their plans. They said:

> We now live in a home substantially altered from our desired form, at great additional cost, and all at the whim of one objector.

The letter concludes by saying that they are looking forward to this bill passing through Parliament and Alan Jones says he has a stack of letters just like this. Average homeowners are asking for our assistance, not just more political posturing and delays that serve no purpose. The Minister is proposing a comprehensive package of sensible reforms that are designed to fix problems in the system. I will first outline a couple of key themes of the issues raised and then respond to some of the statements put forward by members.

In relation to the national reform agenda, there is a national mood for reform. Just last week the South Australian Government announced that it has its own reform plans. Those plans include 10-day planning approvals for home alterations and additions and new dwellings. No doubt that sounds familiar. Victoria is also moving to reform its planning system, with plans for new joint State and local government panels announced last month. This mood for reform is not limited to our shores. The Hon. Don Harwin regaled the House with stories of a recent trip to Great Britain. While he was there it may have been worth his while to look at the Barker report, which talks about clearing small applications out of the system and taking a more strategic approach to major projects. This package of reforms aims to do both of those things.

Many speakers touched on complying development, which it should be noted is already widely used in Victoria and Western Australia, and which South Australia is proposing to expand significantly. An increase in complying development is a significant part of the reform package. It will give homeowners certainty, that in many cases they currently do not have, about the rules that apply to their property and their neighbour's property. Quite a lot of information has been bandied around about this aspect of the reforms. One of them is that we need new legislation to introduce complying development codes. We do not. The codes, which are not one-size-fits-all, are currently being developed in partnership with local government practitioners. These codes are deliberately conservative to ensure that they protect the neighbour. Of course, it is vital that these codes are developed with input from the community. That is why we have set up a grassroots process involving direct community feedback, and why 11 councils across the State are currently trialling the codes.

As for centralisation of decision making and probity of the panels, I again respond to the Hon. Don Harwin and others who alleged that the bill is further centralising decision making in planning. The bill does nothing of the sort. The introduction of panels will mean that the great bulk of planning decisions currently made by the Minister will be made by an independent panel. Communities will be represented by their councils on joint regional planning panels, and communities will have increased opportunities for appeal. A new type of third-party objector review and neighbourhood reviews will be introduced for people directly affected by certain types of development, for example, where the proposed development would exceed development standards by more than 25 per cent. So the argument that communities are being disempowered through this legislation is absolutely incorrect.

Many participants in the debate have also chosen to try to score cheap political points by running the same old lines in relation to donations. Unfortunately Ms Sylvia Hale, on behalf of the Greens, refused to acknowledge many of the substantive issues in the bill, preferring to rerun the myths. The introduction of independent planning panels will distance elected officials from the decision-making process. The legislation also clearly stipulates that the panels will not be subject to the direction or control of the Minister in exercising their functions. The legislation has been drafted to ensure that suitably qualified persons will be appointed to the panels. As for the joint regional planning panels, the Government will call for expressions of interest for appointment to the panels. Nominations will also be invited from relevant professional bodies such as the Planning Institute of Australia, the Royal Australian Institute of Architects, the Local Government and Shires Association and individual councils.

The Government will establish a review group of senior practitioners to review the expressions of interest and nominations to prepare a short list for the Minister. The Government is firmly committed to

ensuring that transparent processes are put in place for the appointment of these types of panels. The bill also includes appropriate accountability provisions, such as requirements for the disclosure of pecuniary interests, and panel members will be subject to the Independent Commission Against Corruption Act 1988 and the Ombudsman Act 1974. During the debate concerns were raised about the independence of Planning Assessment Commission members. I emphasise that the commission will act independently of the Minister. The bill also requires that its members have relevant expertise.

I shall respond to the Hon. Matthew Mason-Cox's concerns about part 3A. The Opposition's position on part 3A is perplexing, given that it supported the significant change to the Act when the former Minister for Planning introduced it. For the record, it was introduced by Minister Knowles, not Minister Sartor. The Hon. Marie Ficarra requested clarification on the private certification system. This gives me an opportunity to address one of the biggest myths perpetrated by the Local Government and Shires Association, which is that the bill seeks to expand private certification. The legislation before the House does not do this at all. Indeed, it does the complete opposite; it strengthens and tightens up provisions and penalties relating to private certification. For instance, the bill contains much tougher rules and penalties for certifiers, including restricting them from earning more than 20 per cent of their income from one person or company.

In addition, the bill gives the Building Professionals Board the power to cancel a certifier's certificate of accreditation. I refer the Hon. Marie Ficarra to the bill and the Minister's second reading speech, which outlined in detail how the legislation will improve the current certification system. The Hon. Marie Ficarra should have read the housing code, which is currently on exhibit, before making her speech because she made another erroneous statement on heritage items being dealt with by private certification. I am happy to provide the clarification that the Hon. Marie Ficarra so obviously needs. Heritage items and heritage conservation zones have been excluded from the codes. That means that those applications will continue to go through the same council processes that they do now. Wrecking balls will not swing.

As for the potential for increased costs to local government, which was raised by Reverend the Hon. Fred Nile and others, I can advise that the Minister for Planning has on numerous occasions said that if a reasonable case is presented by local government that there is a net increase in costs, the New South Wales Government will look at appropriate ways to recompense councils. In this context it is important to point out that the removal of many of the smaller-scale applications from the system should free up council resources to deal with more substantial applications and policy matters. It is widely noted that smaller applications, which attract minimal fees, are the least efficient in terms of cost recovery for local government. Nonetheless the Minister for Planning is willing to consider what options are available for local government if there is a valid argument.

I note that there have been calls for a parliamentary inquiry into the reforms. That would be just another time-wasting political stunt designed to stop this important legislation, which will provide immediate benefits to hardworking families. Many of those who have called for an inquiry have suggested there are not enough details about how the reforms will operate in practice. This is not correct. The bills contain six regulations setting out the procedures for planning bodies, development assessment, third party reviews certification and developer contributions. Other regulations to support the reforms will be made following further consultation with stakeholders and review by the proposed Implementation Advisory Committee.

The Minister for Planning has made public a series of policy statements that set out further details such as the process to be followed in appointing Planning Assessment Commission and Joint Regional Planning Commission members. Some have said that there was insufficient consultation on these bills. Again this is not so. The consultation process has been underway for almost a year and has involved extensive opportunities for all stakeholders to express their views. This included public workshops, extended consultation on the discussion paper, forums on the complying development codes and other initiatives. In addition, there will be three implementation committees: the Complying Development Expert Panel, which will be continuing; the Certification Liaison Committee, which will be continuing; and the Implementation Advisory Committee, which will be established when the legislation is passed.

Peak industry representative groups such as the Planning Institute of Australia, the Royal Australian Institute of Architects, the Local Government and Shires Associations of New South Wales—a very good organisation—and the Local Government Managers Australia amongst others will be included on this advisory committee. The House should pass these bills now to meet the immediate needs of users of the planning system. There has also been discussion about a subsequent and more systematic review of the planning system as a

whole in the context of emerging State and Federal issues. In this regard I am aware that the Minister for Planning has proposed to request the Standing Committee on State Development to inquire into and report on the New South Wales planning system as a whole, taking account of national and international trends in planning. I understand the Minister proposes to request the committee inquire into whether the development of new planning legislation during the next five years would be justified and, if so, what principles should guide this legislation. I note that the Minister for Planning proposes that the committee undertake this inquiry and report on its findings in 2009. This would be appropriate given the size of the task. It would also mean that reforms contained in the current bills, which aim to address a number of failings in the current system, can be progressed.

Let me be absolutely clear: The reforms in the bills must proceed. They include important measures that will solve a number of the problems that are currently frustrating the existing system. We cannot afford to wait for such reforms as the creation of the Planning Assessment Commission, new third party review rights, a more efficient plan making process and strengthened enforcement powers for councils. The suggestion that these reforms are pro-developer is an absolute furphy. The significant changes are designed to help the average homeowner, not developers. They include allowing more neighbourhood challenges to development decisions such as third party reviews, handing the determination of significant proposals to independent panels to depoliticise the system, reducing developer controls over strata committees in new buildings, and creating much stronger limits on private certifiers. The Government is developing uniform codes to make it easier for the homeowner to undertake minor works. These measures are designed to benefit homeowners, home buyers and small business.

In addition to all of the benefits raised, there are further practical measures to address real problems in the system, and they will benefit councils, the music industry and other important community stakeholders. They include removing place of public entertainment licences to make the lives of the hardworking music and entertainment industry much easier—many members have spoken about the great benefits of that and I concur with them; providing clearer rules for the benefits of both certifiers and councils; standardising development application forms and submission requirements; providing mandatory requirements for statements of environmental effects; tightening up the lapsing of consent provisions so that they cannot be abused—a significant win which local government should support; making applicants pay for costs if they amend their proposal before the court—another win for local government; introducing reviewable conditions of consent for extended hours of operation, which will result in less red tape for councils; removing unnecessary and redundant concurrences; increasing development application assessment times; removing stop-the-clock provisions; and introducing a more transparent, accountable and affordable development contributions system.

The results of a survey involving 1,000 New South Wales residents undertaken by the Property Council were compelling. They clearly illustrated the support for our reforms, and I urge the Opposition to take the community's views in this regard seriously. The survey found that almost half those surveyed think the current planning process is poor or very poor; 88 per cent support changes that will make it quicker and easier for people to improve their property; 80 per cent support changes that will make it quicker and easier for neighbours to improve their properties; 87 per cent support the idea of set building codes; 82 per cent support private certifiers signing off on such projects, subject to tough standards and penalties; 82 per cent agree with a 10-day turnaround period and a courtesy notice to neighbours; 73 per cent support planning arbitrators; and 72 per cent agree with independent planning experts assessing large projects instead of State or local politicians. Just a fraction of those surveyed oppose the changes.

There are significant changes in this legislation that are designed to help the average homeowner, not developers. They include allowing more neighbourhood challenges to development decisions such as third party reviews, reducing developer controls of strata committees in new buildings and creating much stronger limits on private certifiers, and developing uniform codes to make it easier for the homeowner to undertake minor works. I thank honourable members for their contributions to the debate and their support for these sensible reforms, which will improve the planning system for the benefit of mums and dads, councils and the economy. The Minister for Planning asked me to thank the members of the public who have constructively contributed to the reform process. I commend the bill to the House.

Question—That the amendment of the Hon. Don Harwin be agreed to—put.

The House divided.

Ayes, 18

Mr Ajaka	Dr Kaye	Mr Pearce
Mr Clarke	Mr Khan	Ms Rhiannon
Mr Cohen	Mr Lynn	
Ms Cusack	Mr Mason-Cox	
Ms Ficarra	Reverend Dr Moyes	*Tellers,*
Miss Gardiner	Ms Parker	Mr Colless
Ms Hale	Mrs Pavey	Mr Harwin

Noes, 19

Mr Brown	Mr Kelly	Ms Voltz
Mr Catanzariti	Mr Macdonald	Mr West
Mr Costa	Reverend Nile	Ms Westwood
Mr Della Bosca	Ms Robertson	
Ms Fazio	Mr Roozendaal	*Tellers,*
Ms Griffin	Mr Smith	Mr Donnelly
Mr Hatzistergos	Mr Tsang	Mr Veitch

Pairs

Mr Gallacher	Mr Obeid
Mr Gay	Ms Sharpe

Question resolved in the negative.

Amendment negatived.

Question—That the bills be now read a second time—put.

Division called for and Standing Order 114 (4) applied, by leave.

The House divided.

Ayes, 19

Mr Brown	Mr Kelly	Ms Voltz
Mr Catanzariti	Mr Macdonald	Mr West
Mr Costa	Reverend Nile	Ms Westwood
Mr Della Bosca	Ms Robertson	
Ms Fazio	Mr Roozendaal	*Tellers,*
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Ms Ficarra	Reverend Dr Moyes	*Tellers,*
Miss Gardiner	Ms Parker	Mr Colless
Ms Hale	Mrs Pavey	Mr Harwin

Pairs

Mr Obeid	Mr Gallacher
Ms Sharpe	Mr Gay

Question resolved in the affirmative.

Motion agreed to.

Bills read a second time.

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

FILMING RELATED LEGISLATION AMENDMENT BILL 2008

MARINE SAFETY AMENDMENT BILL 2008

SHOP TRADING BILL 2008

Bills received from the Legislative Assembly.

Leave granted for procedural matters to be dealt with on one motion without formality.

Motion by the Hon. Tony Kelly agreed to:

That the bills be read a first time and printed, standing orders be suspended on contingent notice for remaining stages and the second readings of the bills be set down as orders of the day for a later hour of the sitting.

Bills read a first time and ordered to be printed.

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

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 2 to 16 postponed on motion by the Hon. Tony Kelly.

EXOTIC DISEASES OF ANIMALS AMENDMENT BILL 2008

Second Reading

Debate resumed from 4 June 2008.

The Hon. RICK COLLESS [8.40 p.m.]: I lead for the Opposition in debate on the Exotic Diseases of Animals Amendment Bill 2008. The purpose of this bill is to enhance the measures to be taken under the Exotic Diseases Animals Act 1991 to control, prevent and eradicate the spread of animal diseases. The name of the parent bill will be changed to the Animal Diseases Emergency Outbreaks Act 1991, and the term "exotic diseases" will be changed to "emergency diseases" throughout the Act. Why is this change in nomenclature required, as the diseases that are to be managed by this Act fit the definition of exotic? The Oxford dictionary defines exotic as "introduced from a foreign country".

Referring to the exotic diseases that are addressed by the parent Act, I know of not one exotic disease that is native to Australia. Parliamentary Secretary the Hon. Henry Tsang, when capably presenting the Minister's second reading speech, noted that exotic diseases are introduced or foreign diseases. Some of these diseases are endemic to Australia—and by endemic I mean that they are widespread and out of control, even though they are still exotic diseases. Why has the Government made such a point of changing the term "exotic diseases" to "endemic diseases"? The Parliamentary Secretary, in the speech that he delivered on behalf of the Minister, said that the term "exotic diseases" did not fit under the proposed national cost-sharing deed, so therein lies the reason for this legislation.

This legislation is not about disease management aspects; it is all about how funding arrangements will be transferred from the Government to those who will be affected by it. I picked up one thing in the Minister's speech. The cost-sharing deed, and aligning the Act more closely with the cost-sharing deed in respect of emergency animal disease responses, is all about shifting the cost from the Government of New South Wales to

the industry—one of the great concerns we have about this bill. The Minister said that veterinary practitioners have duty to report diseases that they suspect are new or emerging in New South Wales. I do not know whether the Parliamentary Secretary or the Minister understand, but veterinary officers have always had a responsibility to do just that. It does not matter whether they are departmental veterinarians, private veterinarians, or rural lands protection board veterinarians; if they inspect a diseased animal and they cannot identify the disease they are required to report that fact as soon as they can.

I reiterate that this legislation is more about shifting the cost back onto industry rather than the Government accepting responsibility for it. This bill represents some significant deviations from current policy as a result of the equine influenza crisis in 2007. The Minister or the Parliamentary Secretary should not to try to shift the blame for the equine influenza outbreak back onto the Federal Government of the day.

The Hon. Michael Veitch: That has already been done for you.

The Hon. RICK COLLESS: The Hon. Michael Veitch said that that has already been done, but that is beside the point. Once there is disease outbreak it is the responsibility of the New South Wales Government to control it, and that did not happen in this instance. It does not matter how equine influenza came to be in Australia. Let us face the facts: nobody wanted it in Australia. Equine influenza is an airborne disease. I am sure that nobody in this Chamber would suggest that keeping an airborne disease such as equine influenza in Eastern Creek would control the disease. The Japanese horse breeders who brought the stallion to Australia had the responsibility of ensuring that their stallion was free of equine influenza before it was imported into Australia.

The Japanese horse breeders did not do that and equine influenza, an airborne disease, spread throughout Australia. When the truck transported the stallion from Sydney airport to Eastern Creek the only way the breeders could have controlled the disease would have been to put an airproof bag over the horse's head to prevent the disease from escaping. Obviously they could not do that. This highly airborne and highly mobile disease was always going to be transmitted to other horses once it arrived on our shores. Responsibility for the spread of that disease rests with the New South Wales Government because it did not take strong enough and fast enough action to contain it, which was amply exhibited at a number of horse events that occurred during the weekend when the disease was spread. Department of Primary Industry inspectors looked at a number of horses, said that they were all right to go home, and the disease spread from region to region and from State to State—something that should never have happened.

Anna Bligh, the Premier of Queensland, who had been in the job for only one week, declared a state of emergency in Queensland, shut down the racing industry, and contained the disease in Queensland much more quickly than it was contained in New South Wales. Hopefully the emergency powers in this bill will be strengthened to prevent and manage outbreaks such as the equine influenza outbreak that occurred. We are lucky that the equine influenza outbreak that occurred in Australia was not something as bad as foot-and-mouth disease. Many members do not understand the ramifications or the seriousness of a disease such as foot-and-mouth disease. Friends of ours who lived in England at a time when there were foot-and-mouth disease outbreaks, said that every animal within a 15-mile or 20-mile radius of the outbreak was destroyed—something that we in Australia could not comprehend and would never be able to do.

In agricultural areas there are wild pigs and other feral animals. Pigs are the most aggressive vectors of foot-and-mouth disease. If there were wild pigs in an area—and pigs can travel 20, 30 and 40 kilometres a night—and they contracted foot-and-mouth disease it would be all over Australia in a matter of days. That is a scary scenario if we think about how dangerous foot-and-mouth disease is and how devastating it would be to our agricultural industries. Under this new legislation the identification of diseases and veterinary reporting requirements will be more strictly enforced and veterinarians will have a duty to report suspicious symptoms of new and emerging diseases, as I believe they always have. The Minister will now have the power to make control orders rather than direct an inspector to make control orders, thus removing some of the administrative delays.

Animals will be destroyed if they are at risk of contracting and spreading the disease—this is important particularly in relation to things like foot-and-mouth disease—in order to establish a buffer zone between the infected areas and non-infected areas. Obviously, the type of disease will depend on the width of the buffer zones. Under the provisions of the bill this will be the last resort if disease-control mechanisms are not affected. Individuals will be required to disinfect themselves when they leave any properties or vehicles to prevent the spread of the disease. This important procedure did not happen with the equine influenza outbreak.

I received many reports, for example, of native vegetation inspectors, who had received reports of native vegetation breaches during the outbreak, entering properties that had an equine influenza order— in the purple zone I believe— and walking all over those horse properties, then getting in their vehicles and driving away. That simply is not good enough. The department did not have a coordinated approach to the whole process. It needed to make sure that any government agency official, advisory officer, consultant or anybody entering those restricted zones in an official or non-official capacity did not leave without being disinfected. That did not happen. One wonders how much that lack of procedure contributed to the spread of the equine influenza disease.

The movement of machinery, soil and similar items also can easily impact on disease movement when contract harvesters and farming operators take machinery from one property to another. There were no control mechanisms to make sure that machinery was disinfected. Another matter referred to in some detail in the Parliamentary Secretary's second reading speech was the financial implications of this bill on compensation and penalty notices. Currently, the Act provides for compensation to the owner of animals that have died from an exotic disease; the owner of the animals destroyed is the recipient of that compensation. However, the new cost-sharing deed pays compensation only for animals that have died of an emergency disease if the animal would have been destroyed anyway, or if they had died as a result of the disease.

The bill establishes two eligibility categories for the payment of compensation. The first category is existing eligibility under the Act; the second category is consistent with the criteria as described in the national cost-sharing deed. I am concerned about the concept of on-the-spot fines or penalty notices, as the Minister described in his speech, to be introduced for minor offences. The bill extends the current six-month period to commence proceedings for an offence under the Act to two years. If an offence is committed, two years down the track a penalty notice may be issued for that offence. It is a little aggressive that people advised of an offence having been committed can wait for two years without knowing what is actually going to happen.

The sting in the tail, of course, is that one of the major proposals in the bill relates to cost recovery. The department will shift the cost from the New South Wales Government back to the industry. The bill introduces a regulation to make it a power to impose fees and charges on the industry. Similar amendments will be made to the biosecurity legislation. Additional costs also will be imposed on the industry; we do not really know how much it will end up costing the industry at the end of the day. In the second reading speech the Minister talks about further consultation to be carried out with industry groups regarding the setting of fees and charges. Of course, that means there will be no consultation; industry groups will be told how much they going to pay.

The Hon. Marie Ficarra: So much for consultation.

The Hon. RICK COLLESS: So much for consultation. It is not consultation; it is simply a way of telling the industry, "This is what is going to cost the Government, therefore, you are going to pay for it." That will be the end of the matter as far as they are concerned. New South Wales farmers have expressed much industry concern about this bill, especially by New South Wales farmers. I wonder how much consultation occurred with New South Wales farmers. The reason the farmers oppose the bill is that a list of class A and class B compensable diseases needs to be made public; at this point in time no list is available. The criteria for each class also needs to be provided publicly; at this point in time that is not available. Proposed compensation arrangements for each class needs to be exposed and clarification regarding the waiver of fees in certain circumstances needs to be specified. The bill raises concerns, and for that reason the Opposition will oppose the Exotic Diseases of Animals Amended Bill 2008.

Mr IAN COHEN [8.56 p.m.]: The Greens do not oppose the Exotic Diseases of Animals Amendment Bill 2008. It was interesting to hear the Opposition comments on the bill, but we do not hold the same concerns. Certainly, I recognise that this is a very serious issue. We listened with interest to the explanation of criteria between an exotic disease and an endemic disease. I was told at a government briefing that, for example, anthrax is an endemic disease even though from my perspective it was something imported originally from Europe.

The Hon. Greg Pearce: It is still exotic.

Mr IAN COHEN: It is my understanding that it is considered endemic because it has been in the human population for generations, and has been dealt with by authorities for generations. It is considered endemic, but I do not believe that makes any real deference. It is an interesting concept to consider. On the other hand, as the Hon. Rick Colless mentioned, foot-and-mouth disease is an exotic disease and would have a massive impact on the agricultural sector and the environment in general if it found its way into Australia.

I recognise such a concern, particularly with feral pigs as they are very aggressive vectors of that type of disease. The Greens take very seriously the impact of exotic diseases. Tonight *ABC Television* aired a program not exactly about a disease but certainly about something that is causing major problems: the deadly bee mite known as the Varroa destructor. This mite is having a massive impact overseas and is contributing to the colony collapse disorder across North America.

Australian bees, including the export of queen bees and such like things to Canada, the United States and Japan are becoming a very important and lucrative business for Australia. This particular deadly bee mite is not known in Australia and, therefore, our exports are highly sought in other areas. My interest was aroused because of the massive problem with the bee colony collapse. I have been told that at one stage it was considered there might have been a connection with the colony collapse and genetically engineered crops in places like the United States and Canada—but that has not been proven. It is highly likely that this particular Varroa destructor mite is causing the bee colony collapse and also has invaded New Zealand and New Guinea. It is important for the authorities to keep this mite out of Australia.

One of the drivers for this legislation is that equine influenza is a respiratory disease endemic to horses. On 25 August 2007 equine influenza was detected in New South Wales. Biosecurity measures implemented by the Australian Quarantine Inspection Service to manage the importation of horses have recently come up against significant scrutiny. Under the microscope of former High Court judge, the Hon. Ian Callinan, last year's equine influenza outbreak clearly demonstrated a litany of regulatory failures in biosecurity and quarantine at the Federal level. It is an interesting, expensive, and in some ways tragic, example of something that has broken through the biosecurity barriers in Australia. Hopefully, the authorities can learn from it because, although equine influenza was a major problem, many other diseases would have far greater devastation and impact on the Australian environment and various elements of the animal husbandry industry.

The cost of animal diseases to industry is significant. Andrew Harding of the Australian Racing Board recently stated that preliminary estimations of compensation potentially recoverable would be in excess of $1 billion. The discussion of how the State effectively manages emergency animal disease outbreaks is pertinent considering the recommendations of the "Equine Influenza; The August 2007 outbreak in Australia—Report of the Equine Influenza Inquiry" report, which has revealed an absence of fundamental biosecurity measures. The Callinan inquiry report traces the equine influenza outbreak in New South Wales to a number of potential sources, most generally associated with the Eastern Creek Quarantine Station. The scenarios considered by the inquiry highlight lax and deficient management of biosecurity risks, and make it evident that adequate powers are required to effectively contain all forms of contamination.

The bill's stated aim is to improve the way emergency animal disease outbreaks are managed in New South Wales. The amendments reinforce existing ministerial powers and arm government departments with the means to respond efficiently and effectively to animal disease outbreaks. The Hon. Henry Tsang stated in his second reading speech that harmonisation and alignment of the Act more closely with the National Government and Livestock Industry Cost Sharing Deed in Respect of Emergency Animal Disease Responses, or the cost-sharing deed, will also enhance management of animal disease outbreaks in New South Wales.

One of the key amendments provides for the concept of exotic disease to be replaced with the term "emergency animal disease" and the insertion of new section 6A outlines what constitutes an "emergency animal disease". New section 6A (1) (d) gives the Minister the power to declare other animal diseases, which may threaten animal and human health in New South Wales. The power of the Minister closely replicates the existing power in section 6A of the Act and is more a change in terminology than a reconfiguration of authority. In that respect I do not agree with the Opposition's concerns, which may be reasonable, that it is an example of real significance or reason to oppose the bill. The duty of veterinary practitioners to report suspicions of animals or animal product that may be infected with a disease is expanded under the bill by requiring not only the reporting of emergency animal diseases but also new and emerging diseases, diseases not endemic to the State and diseases not endemic to a particular species.

Scope for the issuing of destruction orders is also increased. The bill inserts section 32 (1) (c), which allows the Minister to issue a destruction order requiring the destruction of any domestic animal that is in a declared area if the Minister is satisfied that it is reasonably necessary to do so in order to stop the spread of an emergency animal disease. New subsection (3) of section 32 makes it clear that a destruction order can be issued regardless of whether a domestic animal is infected with an emergency animal disease. The Hon. Henry Tsang stated in his second reading speech that this power will be used only as a last resort and that any invocation of this power will be done with the agreement of industry. I certainly hope an inclusive and consultative approach

in exercising this power would be adopted. Finally, I wish to deal with compensation. Currently, there are differing compensation eligibility criteria under the Act and the national cost-sharing deed. The effect is that the sharing of compensation burden cannot always be shared between State and Commonwealth agencies. The inclusion of the cost sharing deed compensation eligibility criteria will help resolve this issue. Therefore, the Greens support the bill.

Reverend the Hon. FRED NILE [9.05 p.m.]: The Christian Democratic Party supports the Exotic Diseases of Animals Amendment Bill 2008. The bill provides for the detection, containment and eradication of certain diseases affecting livestock and other animals in New South Wales. As members are aware, during the recent successful equine influenza control and eradication program, a number of areas were identified where amendments to the Act would enable a faster and more effective response to certain animal disease outbreaks in the future. It is important that this bill be passed because it includes a section giving new powers to prevent the spread of equine influenza or any future disease in New South Wales. These powers include an order for the destruction of animals that do not yet show signs of infection in certain declared areas to create a buffer zone between an infected area and a non-infected area. This power may be used only if it is considered necessary to prevent the spread of an emergency animal disease. It also empowers the Minister to direct all persons in an area declared to be a restricted area to take certain disease control measures. At present such a direction may be given only to owners and persons in charge of animals in such a restricted area.

The entire horse industry—not merely the racing industry but horses for recreational and other purposes—has suffered a severe blow as a result of the equine influenza outbreak. The Standing Committee on State Development inspected the equine influenza control centre near Tamworth and I was very impressed with that centre. It was almost like visiting a military command headquarters. The staff worked actively with maps and plans to identify which areas should be restricted and which were free. It was a very impressive operation. Unfortunately, the disease was allowed to spread because of the laxity of the Federal Government's quarantine centre.

The judicial inquiry that has just handed down its report, found that the Australian Quarantine Inspection Service was the source of the problem and was operating in an inefficient manner. Media reports show that staff regularly visited the nearby town for lunch and drank at the local hotel. Indications were that they did not follow the requisite contamination procedures—they probably thought it was it too much to do every day. They took risks, which enabled the disease to spread from the quarantine centre. Federal Minister Tony Burke said that people would have just cause to seek compensation because of the lax practices at the centre. Indeed, I understand that recently the manager of the centre resigned. The bill deals with a new situation in the State and it is essential for it to be passed, even if the Opposition has some reservations about some of its detail.

It is essential for the most important parts of the bill to be passed by the House. The changes are not restricted to horses only and will ensure that an outbreak of an animal disease, which has been declared under the Act to be an emergency animal disease, will be able to be dealt with in a manner consistent with the National Government and Livestock Industry Cost Sharing Deed in Respect of Emergency Animal Disease Responses, including compensation for an animal that has died of a declared emergency animal disease. For those practical reasons, the Christian Democratic Party supports the bill.

The Hon. HENRY TSANG (Parliamentary Secretary) [9.09 p.m.], in reply: I thank the Hon. Rick Colless, Mr Ian Cohen, and Reverend the Hon. Fred Nile for their contributions to the debate. The Exotic Diseases of Animals Amendment Bill 2008 amends the Exotic Diseases of Animals Act 1991, which is the main instrument for dealing with exotic disease outbreaks in animals in New South Wales. The Act provides for the detection, containment and eradication of certain serious diseases affecting livestock and other animals. The amendments will improve the operation of the Act and will enable faster and more effective responses to emergency disease outbreaks, such as equine influenza, foot-and-mouth disease and avian influenza. The changes provided by the bill will minimise the impacts on industry and the community of any future disease outbreaks. In response to concerns raised by the Hon. Rick Colless, I suggest that the name of the Act is being changed to reflect the broader focus of the Act. The Act will be known as the Animal Diseases (Emergency Outbreaks) Act 1991 and the Act's new name better aligns it with the national cost-sharing deed covering emergency endemic, as well as exotic animal diseases.

The Hon. Rick Colless: It is not just the money. What about the diseases?

The Hon. HENRY TSANG: The cost-sharing deed has been signed by the Government and industry groups. It is an agreed framework for sharing costs and certainly has nothing to do with cost shifting.

[*Interruption*]

If the Hon. Rick Colless really wants to know more, I can tell him that the bill extends the reporting requirements for veterinary practitioners who will have a duty to report diseases that they suspect are new or emerging diseases, that are not endemic to New South Wales, or that do not usually occur in the species of animal or animal product that the practitioner is examining. Certainly the Act requires a veterinary practitioner only to report a suspicion that an animal is infected with an animal disease that has been declared to be an emergency animal disease. The amendment will strengthen controls over a possible or actual emergency disease outbreak. The amendment recognises that some of the key biosecurity threats to New South Wales from new and emerging diseases may not have been recorded previously. The Hon. Rick Colless will want to know what I am about to say.

The Hon. Rick Colless: I am listening.

The Hon. HENRY TSANG: The Australian Veterinary Association has been consulted on the amendments and has not raised any objections.

The Hon. Rick Colless: What about the farmers?

The Hon. HENRY TSANG: For compensation to be payable under the Exotic Diseases of Animals Act 1991, agencies must be declared to be an emergency animal disease to which the compensation provisions of the Act apply. The bill amends the Exotic Diseases of Animals Act 1991 to establish two categories of eligibility for compensation. The first category retains the existing eligibility criteria under the Exotic Diseases of Animals Act 1991 with compensation payable, firstly, for animals and equipment that have been destroyed for the purpose of controlling the disease and, secondly, for animals that have died of an emergency animal disease.

The second category of eligibility under the amended Act will be consistent with the eligibility criteria under the national cost-sharing deed with compensation payable, firstly, for animals and equipment that have been destroyed for the purposes of controlling the disease and, secondly, for animals that have died of an emergency animal disease, but only if it is certified that the animal would have been destroyed compulsorily under the Act had the animal not died. I draw to the attention of the Hon. Rick Colless that penalty notices are for on-the-spot fines, and are imposed at the time an offence is committed. The bill extends the period in which the Government may commence prosecutions in court for more serious offences. Now, is the Hon. Rick Colless happy? He has all the answers. If he is not happy I will give him some more.

The national cost-sharing deed details the mechanisms by which livestock industries contribute to their share of the emergency response costs. Industries may raise funds from their members voluntarily or through a levy established under Commonwealth legislation. The bill does not impose levies on livestock producers. Only the Commonwealth is empowered to do that under the Australian Constitution. I am sure that the Hon. Rick Colless is very happy with that response. Amendments to the Act will allow fees to be charged to individual landholders or livestock owners for services that they may choose for their own benefit, such as vaccination or obtaining a movement permit. The fees will be set out in the regulations under the Act. Industry stakeholders will be consulted during the development of the regulations. Fees will be imposed on a cost-recovery basis only. I also advise the House that the New South Wales Farmers Association wrote to the Minister for Primary Industries in support of the intention of the bill. The legislation will provide farmers and rural communities with more security and certainty in times of animal disease outbreaks. These are sensible and timely amendments. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Henry Tsang agreed to:

That this bill be now read a third time.

Bill read a third time and transmitted to the Legislative Assembly with a message seeking its concurrence in the bill.

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL 2008

BUILDING PROFESSIONALS AMENDMENT BILL 2008

STRATA MANAGEMENT LEGISLATION AMENDMENT BILL 2008

In Committee

The CHAIR (The Hon. Amanda Fazio): Order! The Committee will deal first with the Environmental Planning and Assessment Amendment Bill.

Clauses 1 to 5 agreed to.

Ms SYLVIA HALE [9.20 p.m.], by leave: I move Greens amendments Nos 1, 2, 4 to 11, 14 to 16, 20, 21, 24 to 26, 28 to 30, 36 to 48, 50 to 51, 53 to 55, 57 to 60, 62, 63 and 66 to 69 in globo:

No. 1 Page 7, schedule 1.1 [11], proposed section 54 (2) (c), lines 34 and 35. Omit "or a joint regional planning panel".

No. 2 Page 10, schedule 1.1 [11], proposed section 56 (5), line 18. Omit "or a joint regional planning panel".

No. 4 Page 22, schedule 2.1 [2], lines 13 and 14. Omit ", a joint regional planning panel or". Insert instead "or a".

No. 5 Page 22, schedule 2.1 [2], line 16. Omit ", panel".

No. 6 Page 22, schedule 2.1 [3], lines 22 and 23. Omit all words on those lines.

No. 7 Page 23, schedule 2.1 [8], line 5. Omit ", or".

No. 8 Page 23, schedule 2.1 [8], line 6. Omit all words on the line.

No. 9 Page 23, schedule 2.1 [9], lines 13–17. Omit all words on those lines.

No. 10 Page 23, schedule 2.1 [10], line 20. Omit ", Commission or panel". Insert instead "or Commission".

No. 11 Page 24, schedule 2.1 [13], proposed section 23A, line 8. Omit all words on the line.

No. 14 Page 25, schedule 2.1 [13], proposed section 23D (1) (c), line 18. Omit "a regional panel,".

No. 15 Page 25, schedule 2.1 [13], proposed section 23D (1) (d), lines 21–25. Omit all words on those lines.

No. 16 Page 25, schedule 2.1 [13], proposed section 23D (2), line 26. Omit "and (d)".

No. 20 Page 27, schedule 2.1 [13], proposed Division 3, lines 1–36. Omit all words on those lines.

No. 21 Page 28, schedule 2.1 [13], proposed section 23I (1), lines 5 and 6. Omit "(other than a matter subject to a determination or review by a regional panel)".

No. 24 Page 30, schedule 2.1 [13], proposed section 23N (1), line 16. Omit ", a regional panel".

No. 25 Page 30, schedule 2.1 [13], proposed section 23N (1) (a), line 20. Omit ", panel's".

No. 26 Page 30, schedule 2.1 [13], proposed section 23N (1) (b), line 22. Omit ", panel's".

No. 28 Page 30, schedule 2.1 [13], proposed section 23N (3), lines 31 and 32. Omit ", a regional panel".

No. 29 Page 30, schedule 2.1 [13], proposed section 23N (3), line 33. Omit "or a panel".

No. 30 Page 30, schedule 2.1 [13], proposed section 23N (3), lines 33 and 34. Omit ", panel's".

No. 36 Page 34, schedule 2.1 [27], proposed section 88 (1), lines 18–20. Omit all words on those lines. Insert instead:

Commission means the Planning Assessment Commission.

No. 37 Page 34, schedule 2.1 [27], proposed section 88 (1), line 23. Omit all words on the line.

No. 38 Page 35, schedule 2.1 [27], proposed section 89 (2), line 12. Omit "applicable regional panel". Insert instead "Commission".

No. 39 Page 35, schedule 2.1 [27], proposed section 89 (3), lines 14 and 15. Omit "An applicable regional panel to which a Crown development application is referred". Insert instead "The Commission".

No. 40 Page 35, schedule 2.1 [27], proposed section 89 (4), line 18. Omit "a regional panel". Insert instead "the Commission".

No. 41 Page 35, schedule 2.1 [27], proposed section 89 (5), line 21. Omit "an applicable regional panel". Insert instead "the Commission".

No. 42 Page 35, schedule 2.1 [27], proposed section 89 (5), line 23. Omit "panel". Insert instead "Commission".

No. 43 Page 35, schedule 2.1 [27], proposed section 89 (7), lines 27 and 28. Omit "an applicable regional panel or". Insert instead "the Commission".

No. 44 Page 35, schedule 2.1 [27], proposed section 89 (7), line 29. Omit "the panel or".

No. 45 Page 35, schedule 2.1 [27], proposed section 89A (1), lines 36 and 37. Omit "an applicable regional panel". Insert instead "the Commission".

No. 46 Page 38, schedule 2.1 [36], proposed section 96B, lines 20–22. Omit all words on those lines.

No. 47 Page 39, schedule 2.1 [36], proposed section 96B, line 3. Omit all words on the line.

No. 48 Page 39, schedule 2.1 [36], proposed section 96B, line 22. Omit ", a regional panel".

No. 50 Page 41, schedule 2.1 [36], proposed section 96E (4), line 8. Omit "applicable regional panel". Insert instead "Commission".

No. 51 Page 41, schedule 2.1 [36], proposed section 96E (5), lines 9-12. Omit all words on those lines.

No. 53 Page 41, schedule 2.1 [36], proposed section 96F (1), line 31. Omit ", a regional panel".

No. 54 Page 42, schedule 2.1 [36], proposed section 96G (6), lines 26 and 27. Omit "regional panel reviewing the application under section 96E". Insert instead "Commission".

No. 55 Page 48, schedule 2.1 [39], lines 13-17. Omit all words on those lines.

No. 57 Page 48, schedule 2.1 [40], lines 18 and 19. Omit all words on those lines.

No. 58 Pages 48 and 49, schedule 2.1 [42]-[47], line 22 on page 48 to line 18 on page 49. Omit all words on those lines.

No. 59 Page 49, schedule 2.1 [50], lines 26-29. Omit all words on those lines.

No. 60 Page 50, schedule 2.1 [51], line 9. Omit ", a joint regional planning panel".

No. 62 Page 51, schedule 2.1 [54], lines 26 and 27. Omit ", a joint regional planning panel".

No. 63 Pages 57-62, schedule 2.1 [56], proposed schedule 4, line 1 on page 57 to line 30 on page 62. Omit all words on those lines.

No. 66 Page 70, schedule 2.2 [59] and [60], lines 1-6. Omit all words on those lines.

No. 67 Pages 70 and 71, schedule 2.2 [62]–[68], line 13 on page 70 to line 6 on page 71. Omit all words on those lines.

No. 68 Page 74, schedule 2.4, line 13. Omit "or of a joint regional planning panel".

No. 69 Page 79, schedule 2.10 [12], proposed clause 268C, lines 33 and 34. Omit ", a joint regional planning panel".

The Greens have 94 amendments altogether, all of which refer to the joint regional planning panels. The number of amendments we have been required to move indicates the extent of opposition to the provisions of the bill and the need for it to be properly exposed to public discussion. However, members of the public have expressed extensive concerns and, as my colleague Dr John Kaye referred to earlier, he, I and other members of the House have received in excess of 2,000 emails. The joint regional planning panels are an example of unnecessary duplication of existing government and judicial bodies; certainly the panels will add costs and time to the development approval process.

It is relevant that I quote some of the remarks made by the member for Pittwater in the other place. He summarised concisely what is happening to the planning system. The Government's amendment bill is supposed to be in favour of reducing red tape and increasing efficiency. The planning panels should be put in context with the entire planning system. The member for Pittwater said:

> Before Labor came to power, the planning system was reasonably straightforward, and provided for four clear categories of development: advertised development, designated development, Crown development and prohibited development. Yet, in a somewhat ironic effort to reduce red tape, Labor has since added the categories of exempt development, complying development, local development, integrated development, staged development, major projects and critical infrastructure.

> Through the passage of the bill, Labor proposes to introduce the following new layers of bureaucracy into the planning system: a Planning Assessment Commission, joint regional planning panels, independent hearing assessment panels, a planning assessment panel review panel, joint regional planning panel review panel and planning arbitrator review panel.

Obviously this is an extraordinarily complex system, even for professionals who have to deal with the planning system on a day-to-day basis. To suggest that somehow that system will make things easier for the mums and dads of this State is a complete load of nonsense. For example, the planning panels remove many of the functions currently undertaken by councils and add another new layer of bureaucracy to the planning system. Unlike local councils, which are accountable directly to their constituents, the majority of members of the planning panels are appointed by the Minister and are accountable, solely, to the Minister. We know that the planning panels will comprise five members, three members to be appointed by the Minister and two members to be appointed by local councils. However, at least one of those appointed will have to have planning qualifications.

There is absolutely no provision for community representatives. The community is being left out in the cold. Having three of the five members on planning panels appointed by the Minister, and accountable, essentially, to the Minister, means that the Minister will remove the input of the communities from the democratically elected councils and usurp that to himself via his appointees. By requiring council nominees to have expertise in particular fields, the joint regional planning panels effectively shut out the community and prevent them from being represented. The panels will work in direct contravention to object 5 (b) of the Environmental Planning and Assessment Act, which is:

> to promote the sharing of the responsibility for environmental planning between the different levels of government in the State.

Establishing those panels is not about sharing responsibility between the different levels; it is about the Government ripping off planning responsibility, taking it from local government, and handing it to panels dominated by the Minister's handpicked appointees. For example, the panels will deal with developments up to $3 million for retail commercial development and $50 million for residential development—they will go to the proposed regional planning panels. Of course, they will be approved in the absence of local input. Already there are provisions in the bill to allow councils to establish independent hearing and assessment panels. If a council is to establish an independent hearing and assessment panel to advise it on particular developments, surely that is the appropriate way to go, rather than for the matter to be referred to an unelected, unaccountable committee.

The panels will be stacked with development professionals whose future livelihoods will depend upon the relations they have with industry and the Minister. Local councils and residents expect transparency and accountability within the process, but that is certainly not what is expected. Neither the Planning Assessment Commission nor the panels will be required to hold meetings in public. Basically they will report only to the Minister, the Minister who is responsible for their employment. What hope would any community have of having a say in how it is to be developed? Of course, councils will assess the development applications and provide those assessments to council staff. Usually the process in a council is for fairly junior members of staff to write a report, for the director to review the report and modify it, and for the report to then go to councillors who will debate it and assess it openly.

Now what level of report will go to the commission? Certainly in councils there will be a whole series of payments and penalties. If councils do not assist the panels, the general manager or a staff member may be liable to penalties exceeding $1,000, or liable to criminal sanctions for failing to comply with directions from the panels. It is unclear what will happen, but it is clear that it imposes a significant cost upon councils. They will get all the costs, none of the responsibility, and will be deprived of the ability to supply the input into those planning panel decisions. We should remember—and it is perfectly clear from what happened in Wollongong—that there are many assumptions about how corrupt elected councillors are. We know that corrupt councillors will be exposed by the ICAC or the Minister can dismiss them. We know that in Wollongong and in many other cases a lot of the corruption emanated from full-time council employees such as the general manager or the director of planning.

There is no suggestion that this bill will in any way remedy the situation, because there is an inherent assumption in this bill that, because a planning decision is moved from one body to another, that new body will automatically be more honest, more efficient and less corrupt than the existing body. Given that we know that the Minister will have a substantial involvement in the appointment of members of the planning panels, how can we assume they will be more efficient when, after all, they will be dependent on council to provide them with the reports, which presumably will be influential in their decision? To assume that for some reason the panels will be more efficient and honest—certainly, the evidence is as clear as the nose on one's face that they will not be any more accountable—is, I believe, inherently wrong. As was pointed out in the debate in the lower House,

when meetings of a small group of unaccountable, unelected officials take place behind closed doors the potential for corruption is infinitely greater when compared at least to the council process, where at least the debate about major developments—we are talking about larger developments—occurs in public.

Reverend the Hon. Fred Nile: Like Wollongong.

Ms SYLVIA HALE: In Wollongong much of the corruption came from Joe Scimone and the general manager. In some ways it could be argued that some Labor councillors were mere dummies who were victims of the caucusing within the council, but certainly there is a long history of corrupt and improper influence by the former General Manager of Wollongong City Council, Rod Oxley, and Joe Scimone. The assumption that somehow things will be made more efficient, red tape will be eliminated and there will be more honesty is not the reality in the case of the panels.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [9.33 p.m.]: The Government opposes all the amendments moved by Ms Sylvia Hale on behalf of the Greens. These amendments will remove the joint regional planning panels from the bill and transfer their functions to the Planning Assessment Commission. The establishment of the joint regional planning panels is an essential plank of the planning reforms. By establishing panels, the Government is seeking to depoliticise the decision-making process and ensure that bodies with both State and local representation determine regionally significant development. Determination of regionally significant development should be a partnership between State and local government.

Panels will provide local councils with an opportunity to be involved in decisions about development important to their region, both through council staff preparing assessment reports and making recommendations, and through the council nominees of the panel being involved in the final decision. Appropriately, it is proposed that certain types of development that are currently determined by the Minister—for example, coastal subdivisions—will be determined by joint regional planning panels, thereby decentralising decision making and giving councils a greater say. The amendments would see all Crown development referred to the Planning Assessment Commission instead of the joint regional planning panels.

The amendments would abolish the ability to create joint regional planning panels and have all regionally significant matters dealt with solely by the Planning Assessment Commission, on which there is no local government representation. The Greens' proposal is overcentralisation of the worst kind. It removes the assessment of all regional projects from local councils. It is an abuse of State power. It also shows how measured and responsible the Government's proposals are. The Greens' proposal would also remove the ability of planning panels to deal effectively with issues arising from the classification and reclassification of public land. These matters are intrinsically linked to the process of making local environmental plans.

It is appropriate that these functions can, where needed, be given to panels as a sanction against councils that fail to comply with their obligations under planning legislation, demonstrate unsatisfactory performance or have been involved in corrupt conduct. The amendments would also remove any legislative requirement to give a council the opportunity to put its case before the Minister decides to appoint a panel or an administrator. These are necessary and essential procedural fairness requirements, and councils should be provided with the opportunity to make their case. For those reasons the Government opposes the amendments.

The Hon. DON HARWIN [9.36 p.m.]: During my contribution to the second reading debate I made a number of remarks about what the Opposition's attitude would be in the Committee stage. Referring to Ms Sylvia Hale's remarks on the joint regional planning panels, I would not necessarily disagree with anything she said. Indeed, she quoted at length from the contribution of the member for Pittwater in another place, which is a quote I used in my contribution to the second reading debate, and it is very apposite. I made it clear on behalf of the Opposition what our position would be: We said we would support this bill going to General Purpose Standing Committee No. 4 for further review through an inquiry process. We moved that as an amendment to the second reading. The record will show that we were unsuccessful by one vote, after the Shooters Party members and Reverend the Hon. Fred Nile voted with the Government.

Failing an inquiry, we then said that we would oppose the second reading of the bill. Again by the same margin and with the same members voting with the Government we were unsuccessful, by one vote, in stopping the bill. Earlier I indicated that in the event that we were unsuccessful our position would be based on this fundamental view about the bill: We believe that no amount of amendment will fix the bill, and regardless of the merits of individual amendments moved by Ms Sylvia Hale we will not be a position to support any of them. Indeed, there is considerable merit to this tranche of amendments, but the reality is that we have made our

position clear. The Government wants this bill. The Government got it second read and we will let the Government rise or fall on the strength of what it has put up. I understand that Reverend the Hon. Fred Nile has circulated amendments and I will have some comments to make about them. However, the Opposition will not support any of the Greens amendments.

Ms SYLVIA HALE [9.38 p.m.]: It is clear from the vote earlier this evening that none of these amendments are likely to be agreed to. I do not think the same can be said for the amendments of the Christian Democratic Party because its members have clearly done a deal with the Government. Similarly, I believe Shooters Party members have also made a pact with the devil. For the Opposition not to support these amendments is really inappropriate because billions of dollars worth of developments are at stake. Cynicism about the whole parliamentary process, in light of the public opposition to this bill, will multiply if the bill goes through unamended. I have no doubt that the Opposition expects that, come 2011, the Treasury benches will fall into its lap, and I suspect that is also the view of the Government given the consistent series of disasters that have befallen it. No doubt the Opposition is looking forward to being in a position in which it, too, can go some favours for its mates, as the Government is presently doing for its mates. It is a complete abrogation of the Opposition's responsibility not to support any of these amendments.

The Hon. DON HARWIN [9.40 p.m.]: I had anticipated that Ms Sylvia Hale would make some of the remarks that she has. I am disappointed by some of her concluding remarks, which were totally inappropriate. I remind members that when the part 3A reforms went through, the tenure of the remarks made by a number of members of the Greens in the second reading debate suggested that it was an even more serious attack on the planning system than the legislation we have currently before the House. When the part 3A reforms were considered in Committee the Greens did not support any of the Opposition's attempts to mollify the part 3A reforms. It is extraordinary for Ms Sylvia Hale to now come into this House and make the remarks that she made about the Opposition. When my former colleague the Hon. Patricia Forsythe tried to do exactly what Ms Sylvia Hale is doing now, Ms Sylvia Hale said she would not support her. Ms Sylvia Hale and the Greens thought the part 3A reforms were inappropriate and with the Government they voted them all down. It is inappropriate for Ms Sylvia Hale, with a degree of unctuous hypocrisy, to now give the Opposition a spray. The Opposition is now seeking to do exactly what the Greens did with regard to the part 3A reforms.

The Hon. ROBERT BROWN [9.42 p.m.]: To be fair to the House I should make the position of the Shooters Party as clear as the Hon. Don Harwin made the Opposition's position. The Shooters Party does not want to sit and vote on the amendments as they dribble out. I take issue with the comments by Ms Sylvia Hale about doing deals with the devil—although the Greens would know all about that. I draw attention to the 12 million acres of useless national parks that burn every four or five years. When one examines the useless lines on maps that represent marine park protected areas, one gets to know all about deals with the devil. I find it irritating that the Greens come into the House with such benign intentions about their own so-called perfect determinations.

The Hon. Don Harwin: Hypocrisy.

The Hon. ROBERT BROWN: Hypocrisy is a very mild word and I rebuke the Hon. Don Harwin for being so mild. I could have put it far more clearly.

The Hon. Don Harwin: Well do it.

The Hon. ROBERT BROWN: At least the Hon. Don Harwin put his case clearly. The amendments of the Greens, either individually or as a whole, are nothing more than an effort to defeat the bill.

Mr Ian Cohen: Shame on us.

The Hon. ROBERT BROWN: Yes, shame on you. At least I am prepared to say what I do. Deals with the devil? Well you should know!

Mr IAN COHEN [9.44 p.m.]: From discussions I have had with Ms Sylvia Hale as to our position in the debate on part 3A of the Environmental Planning and Assessment Act, I acknowledge that the Hon. Don Harwin has made a fair call. It is reasonable to say that we made a tactical error in that regard. Perhaps that was due to the enthusiasm of Ms Sylvia Hale at the time in an attempt to put an end to what was a very arduous situation. With the wisdom of hindsight, we agree that perhaps we should have supported the Opposition on that occasion. I concede that the Greens do make mistakes sometimes but with the best of intentions we move in a certain way. Now that the position is reversed, and given the wisdom that the Hon. Don Harwin obviously possesses, surely he should support the amendments of Ms Sylvia Hale.

Reverend the Hon. FRED NILE [9.45 p.m.]: I do not support the amendments moved by the Greens to abolish the joint regional planning panels.

[*Interruption*]

I take umbrage at the insulting remarks by Ms Sylvia Hale that the Government will vote for my amendments because I have done a deal. In what way have I done a deal? I agree with the bill in principle. A number of organisations have asked me to move amendments—included among them is the Coalition for New South Wales Planning Reform, which also presented its case to members on the crossbenches. At a crossbench meeting I asked for, and was supplied with, the amendments that have been drafted. The amendments I am moving are not really my amendments, nor are they the result of a deal with the Government. I am moving amendments on behalf of community groups in this State, not for any personal benefit. I object to any implication about a deal to get my amendments passed by this House.

Ms SYLVIA HALE [9.47 p.m.]: In relation to the debate on the part 3A reforms, my predominant recollection is of the Hon. Patricia Forsythe bemoaning the fact that she supported the amendments to the bill but decried the fact that the Government was taking over Opposition policy. She expressed great disappointment because the Government had taken so long to adopt the Opposition's views on planning laws. In relation to the remarks by Reverend the Hon. Fred Nile, it is my understanding that there has been a discussion with the Minister for Planning about the amendments.

Reverend the Hon. Fred Nile: Yes, as I stated that in my second reading speech. And it was transparent and honest.

Ms SYLVIA HALE: And no doubt the Government will support the amendments of Reverend the Hon. Fred Nile when they are moved. It would strike most people as tantamount to Reverend the Hon. Fred Nile having done a deal with the Government to support his amendments in return for his support of the bills being read a second time rather than being sent to a committee for inquiry and report.

[*Interruption*]

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! Mr Ian Cohen and Reverend the Hon. Fred Nile will cease interjecting. The Chair is about to put a question to the Committee.

Question—That Greens amendments Nos 1, 2, 4 to 11, 14 to 16, 20, 21, 24 to 26, 28 to 30, 36 to 48, 50, 51, 53 to 55, 57 to 60, 62, 63 and 66 to 69 be agreed to—put.

The Committee divided.

Ayes, 4

Ms Hale
Ms Rhiannon
Tellers,
Mr Cohen
Dr Kaye

Noes, 28

Mr Ajaka	Mr Khan	Ms Voltz
Mr Brown	Mr Lynn	Mr Smith
Mr Catanzariti	Mr Mason-Cox	Mr Tsang
Mr Clarke	Reverend Dr Moyes	Mr Veitch
Mr Colless	Reverend Nile	Mr West
Ms Ficarra	Ms Parker	Ms Westwood
Miss Gardiner	Mrs Pavey	
Mr Gay	Mr Pearce	*Tellers,*
Ms Griffin	Mr Primrose	Mr Donnelly
Mr Kelly	Ms Robertson	Mr Harwin

Question resolved in the negative.

Greens amendments Nos 1, 2, 4 to 11, 14 to 16, 20, 21, 24 to 26, 28 to 30, 36 to 48, 50, 51, 53 to 55, 57 to 60, 62, 63 and 66 to 69 negatived.

Ms SYLVIA HALE [9.58 p.m.]: I move Greens amendment No. 3:

No. 3 Page 20, schedule 1.4, lines 2 and 3. Omit all words on those lines. Insert instead:

[1] Section 80

Omit the section. Insert instead:

80 Definitions

In this Part:

environmental planning instrument has the same meaning as it has in the *Environmental Planning and Assessment Act 1979*.

planning proposal has the same meaning as it has in section 55 of the *Environmental Planning and Assessment Act 1979*.

[2] Section 82 Heritage Council may request preparation of planning proposal

Omit "draft environmental planning instrument" wherever occurring in section 82 (1), (3) and (4).

Insert instead "planning proposal".

[3] Section 82 (5) and (6)

Omit the subsections. Insert instead:

(5) A planning proposal referred to in this section may be dealt with in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* as if it were a planning proposal prepared under that Act.

[4] Section 83 Heritage Council to be consulted in preparation of certain environmental planning instruments

Omit "draft environmental planning instrument" from section 83 (1).

Insert instead "planning proposal".

[5] Section 83 (3)

Insert "arising from a planning proposal" after "instrument".

[6] Section 84 Guidelines for preparation of EPIs

Omit "local environmental plan" from section 84 (1).

Insert instead "planning proposal".

[7] **Section 84 (1)**. Omit "plan (or some other local environmental plan being amended by the plan)".

Insert instead "proposal".

[8] **Section 84 (2)**. Omit "local environmental plans". Insert instead "planning proposals".

[9] **Section 84 (2)**. Omit "those instruments".

Insert instead "environmental planning instruments arising from those proposals".

[10] **Section 84 (3)**. Omit "for the purposes of subsection (1)".

Insert instead "arising from a planning proposal referred to in subsection (1)".

The amendment will ensure that the role of the Heritage Council is maintained and not undermined by the bill. The amendment has the effect of maintaining the existing arrangements whereby the Heritage Council may request that a planning proposal be prepared, and the council must be consulted in the preparation of certain environmental instruments. This will ensure that the role of the Heritage Council in promoting the protection of

heritage buildings and precincts is maintained. I am sure all members will be very conscious of the attention that has been paid in local newspapers to the potential threat of the provisions of the bill to heritage. The Minister has been quite open in his dislike of heritage considerations, and has certainly indicated that there will be a distinct unwillingness to list further items.

The many members who have had considerable involvement with local government would be aware of the difficulty in persuading councils to draw up a list of heritage items and to keep the list up to date. My local council of Marrickville prepared a register of local heritage items in the mid- to late-1970s. The council consulted widely on the list. About 20 years later, in the late-1990s, the register needed to be updated. In a place such as Marrickville debate about items that should be included in such a list is interesting and complicated. It includes the impact on local development from traditional Anglo views as to what constitutes good architecture and historic merit and the influence on the built environment of various groups, such as the Thai, Greek, Portuguese and Italian communities. Inevitably, a great range of opinions was put as to the items that should be included on the heritage list. One issue that brought home to me the importance of keeping the list up to date related to a property known as Prospect Villa in Croydon Street, Petersham. Prospect Villa was perhaps the last remaining farmhouse dating from the 1840s that survived in inner Sydney. Tours of the district's heritage sites, following maps provided by the local heritage society, and guided tours in Heritage Week, always started at Prospect Villa. It was a site of importance to the community.

Unfortunately, due to an oversight, Prospect Villa had not been included on the original heritage register. Following a new owner acquiring the property, council officers gave permission for Prospect Villa to be demolished. The matter did not come before council despite the fact that the property was located in a heritage precinct. The demolition of the building caused considerable outrage in the community. Members will remember that in the mid-1970s the Marrickville municipality witnessed the demolition of Rose's Emporium, which was instrumental in giving rise to the green bans movement and the heritage protections that were enshrined in the 1978 Environmental Planning and Assessment Act. Communities are genuinely concerned, particularly in relation to the complying development codes, that unless a residence, house or building is currently listed on a heritage register and therefore given some form of protection, it will be legal for a private certifier to agree to the demolition of items that should be preserved for the cultural history of our State.

The Minister has said that currently listed heritage buildings will not be affected, but a code that is being prepared will determine how listed heritage buildings will be treated. This is one of the many codes that has not seen the light of day. We have not even seen a draft version of it. Unfortunately, as with so many aspects of the bill fundamentally important considerations, which people feel strongly about, have the potential to be overridden and dismissed because of the power that will be delivered into the hands of unelected and unaccountable planning arbitrators and panels proposed by the Government. The amendment will make sure that the Heritage Council is maintained and not undermined by the bill. We know that the Heritage Council has been emasculated and encompassed within the Department of Planning. It is subordinate to the Department of Planning. We know that its chair, Gabriel Kibble, has been the administrator of Liverpool City Council and now the administrator of Wollongong City Council. It is extraordinary how little respect is paid by the Minister for Planning to the genuine consideration of heritage issues. That is more than exemplified by the Government's determination to trash places such as Catherine Hill Bay and ignore community sentiments at places such as Sandon Point. The amendment seeks to ensure that the Heritage Council is maintained as an effective body and advocate on heritage issues.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [10.06 p.m.]: The Government opposes Greens amendment No. 3. The amendment would reinstate the partly unworkable and partly redundant consultation provisions that the bill removes. For example, section 82 of the Heritage Act, which the bill seeks to restore, has not been used in 30 years because its provisions are unworkable, while section 84 of the Heritage Act duplicates the existing provisions of section 117 of the Environmental Planning and Assessment Act. The bill establishes the new comprehensive gateway process for planning proposals. This is where heritage concerns will be raised and addressed. The gateway to determination will set the requirements for consultation with the Heritage Council and for appropriate heritage studies. The amendment is simply process for the sake of process. It is unnecessary.

Question—That Greens amendment No. 3 be agreed to—put.

The Committee divided.

Ayes, 4

Dr Kaye
Ms Rhiannon
Tellers,
Mr Cohen
Ms Hale

Noes, 27

Mr Ajaka	Mr Lynn	Mr Tsang
Mr Brown	Mr Mason-Cox	Mr Veitch
Mr Catanzariti	Reverend Dr Moyes	Ms Voltz
Mr Clarke	Reverend Nile	Mr West
Mr Colless	Ms Parker	Ms Westwood
Ms Ficarra	Mrs Pavey	
Miss Gardiner	Mr Pearce	
Ms Griffin	Mr Primrose	*Tellers,*
Mr Kelly	Ms Robertson	Mr Donnelly
Mr Khan	Mr Smith	Mr Harwin

Question resolved in the negative.

Greens amendment No. 3 negatived.

Reverend the Hon. FRED NILE [10.15 p.m.], by leave: I move Christian Democratic Party amendments Nos 1, 4, 5, 6, 7, 8 and 9 in globo:

No. 1 Page 22, schedule 2.1 [5], lines 31 and 32. Omit all words on those lines. Insert instead:

[5] Section 22 Establishment of other committees

Omit section 22 (4). Insert instead:

(4) The regulations may make provision for or with respect to the following matters:

(a) the procedures of committees in exercising their functions,

(b) the remuneration payable to committee members and alternate members,

(c) the appointment of alternate members for committee members and the functions of alternate members,

(d) the appointment and procedures of subcommittees in exercising their functions.

No. 4 Page 72, schedule 2.2 [75], proposed clause 125 (1), line 14. Omit ", or a committee established under section 22,".

No. 5 Page 79, schedule 2.10 [12], proposed clause 268C. Insert after line 32:

committee means a committee established under section 22.

No. 6 Page 79, schedule 2.10 [12], proposed clause 268C, line 34. Omit "or a planning assessment panel". Insert instead ", a planning assessment panel or a committee".

No. 7 Page 80, schedule 2.10 [12], proposed clause 268G. Insert after line 22:

(2) This clause does not apply to a committee appointed to act as an advisory body.

No. 8 Page 80, schedule 2.10 [12], proposed clause 268H, line 24. Insert "(other than a committee)" after "planning body".

No. 9 Page 81, schedule 2.10 [12]. Insert after line 33:

268L Remuneration of committee members

A committee member is entitled to be paid such remuneration (including travelling and subsistence allowances) as is specified in the member's instrument of appointment.

268M Alternate members for committees

(1) The Minister or Director-General may, from time to time, appoint a person to be the alternate of a committee member, and may revoke any such appointment.

(2) In the absence of a committee member, the member's alternate may, if available, act in the place of the member.

(3) While acting in the place of a committee member, a person has all the functions of the member and is taken to be a committee member.

(4) A person while acting in the place of a committee member is entitled to be paid such remuneration (including traveling and subsistence allowances) as the Minister may from time to time determine in respect of the person.

(5) A person may be appointed as the alternate of 2 or more committee members, but may represent only one of those members at any meeting of the committee.

(6) This clause does not operate to confer on the alternate of a member who is the Chairperson of a committee the member's functions as Chairperson.

268N Minutes of committee meetings

(1) The Chairperson must cause minutes to be kept of the proceedings of each meeting of a committee.

(2) The Director-General must cause the minutes of meetings of committees to be published on the website of the Department within 3 months of the meetings concerned.

I hope Sylvia Hale will listen and then apologise for her earlier remarks about my making a deal with the Government.

Mr Ian Cohen: Ha!

Reverend the Hon. FRED NILE: Listen to the letter I will read. If Mr Cohen has any decency he will listen. This letter from the Coalition for New South Wales Planning Reform dated 12 June 2008 says:

Dear Reverend Nile,

Re: Implementation of advisory committee

In keeping with our recent presentation to the Cross Bench Briefing,

at which Mr Cohen was present—

the Coalition for NSW Planning Reform has subsequently held discussions with the Minister for Planning regarding the proposed Implementation Advisory Committee, its constitution under the EP&A Act and terms of reference.

The Committee should be a forum for discussion and to provide advice to the Minister for Planning on the planning reforms. We welcome your intention to reinstate Section 22 of the Act and to constitute the Committee under its provisions.

Such an amendment would be a significant improvement to the legislation and necessary mechanism to ensure an effective implementation and consultation process going forward.

Please find attached the terms of reference we have discussed between our Coalition members and the Minister's office.

That refers to the Coalition for New South Wales Planning Reform, not the Opposition in this House. The letter continues:

These terms are acceptable to our group of concerned stakeholders.

Kind regards,
Deborah Dearing
The Royal Australian Institute of Architects
on behalf of the Coalition for NSW Planning Reform

So much for Fred Nile doing a deal. The member was present at the crossbench meeting when they made the presentation. I am simply moving the amendment that this organisation has had the Minister agree to. The amendment is an important one because the Government's bill seeks to omit section 22, which deals with the establishment of other committees. My amendment will reinstitute section 22 so that this implementation advisory committee can be formed, which the Minister has agreed to support in his discussions with the Coalition for New South Wales Planning Reform. As a result of my offer to help, the coalition gave me the proposal and I had to get it drafted by Parliamentary Counsel in the form of an amendment.

We know that is essential in presenting amendments in the Committee stage. The Minister has agreed to the proposals for the role of the Implementation Advisory Committee, its administration and its membership,

and that it will include representatives of the Nature Conservation Council and the Total Environment Centre, which should make the Greens very happy. I question whether it is necessary to have those two organisations represented, but I understand the Minister is so fair-minded that he insisted they should be on the committee. The committee representatives are from Planning Institute of Australia, the Royal Australian Institute of Architects, the Local Government and Shires Association, the Local Government General Managers Association, the Law Society, the Property Council of Australia, the Urban Development Institute of Australia, the Housing Industry Association, the Real Estate Institute of New South Wales, the New South Wales Urban Task Force, the Building Designers Association of New South Wales, the New South Wales Business Chamber, the Association for Credited Certifiers and the Australian Institute of Building Surveyors (NSW Chapter).

I do not believe you can get a more broadly based representative committee than that and I am sure it will be very effective in overseeing the implementation of this legislation. That is why I felt it was not necessary to refer it to a committee but to have this advisory committee supervise it and later not to have an amendment but the Government's assurance that it will establish a reference to the State Development Committee to also have an overseeing role of the committee over a 12-month period and report in December next year. I have much pleasure in moving my amendments Nos 1, 4, 5, 6, 7, 8 and 9.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [10.21 p.m.]: The Government supports proposed amendments Nos 1 and 4 to 9 inclusive. The bill includes a provision that would have the effect of removing section 22 committees from the Act. This was proposed on the basis that the provision has been rarely used. In recent times the department has used other non-statutory mechanisms for consulting and engaging with stakeholders. However, having considered the proposed amendment, the Government does not oppose the retention of section 22 of the Act.

The Government is committed to establishing an implementation advisory group to oversee and advise on the implementation of the planning reforms. The Minister for Planning made this commitment clear in his agreement in principle speech in the other place. The retention of section 22 will enable this Implementation Advisory Committee to be established on a statutory basis, signifying the importance the Government places on the role of this committee in the planning reform process. Indeed, I understand the Minister for Planning has already taken steps to consult about membership of the committee and to develop terms of reference.

The proposed membership of the Implementation Advisory Committee, as mentioned by Reverend the Hon. Fred Nile, includes the Planning Institute of Australia, the Royal Australian Institute of Architects, the Local Government and Shires Association, the Local Government General Managers Association, the Total Environment Centre, the Nature Conservation Council, the Law Society, the Property Council of Australia, the Urban Development Institute of Australia, the Housing Industry Association and the Real Estate Institute of New South Wales.

The Minister for Planning has advised me that the proposed terms of reference for the Implementation Advisory Committee are to provide advice on prospective matters related to the implementation of the planning reforms; to provide advice to the Minister on the development and delivery of an implementation and educational strategy for the planning reforms; to provide advice to the Minister on key aspects of subordinate regulations and any guidelines or codes arising from the reforms; and to otherwise provide advice, recommendations and assistance as requested. The committee will meet regularly and minutes of meetings will be made publicly available on the Department of Planning website.

As honourable members can see, there is a genuine commitment by the Government to ensure that these planning reforms are effectively implemented in full consultation with stakeholders. The retention of section 22 of the Environmental Planning and Assessment Act will ensure that the Implementation Advisory Committee is established on a statutory basis. For those reasons the Government supports these amendments.

The Hon. DON HARWIN [10.24 p.m.]: I listened closely to the Minister and from his remarks, and those of Reverend the Hon. Fred Nile when he moved these amendments, it is fairly clear that the proposals encapsulated in this amendment have now become part of the Government's package. Minister Sartor certainly gave the undertaking in the other House, as Reverend the Hon. Fred Nile mentioned, so it is effectively part of the Government's proposal.

In my contribution to the second reading debate I made it quite clear what our attitude would be on this sort of section 22 committee, which is focused on implementation. Some major stakeholders who have

reservations still want to give this bill a go and do what they can to make it work. Good luck to them. We think it is a flawed bill and, as I said earlier, the Government will rise or fall on this proposal. While we do not support any substantive amendments we think this proposal is now, essentially, part of the Government's proposal, so the Opposition will not oppose the amendments moved by Reverend the Hon. Fred Nile.

Ms SYLVIA HALE [10.26 p.m.]: The Greens do not oppose these amendments. Reverend the Hon. Fred Nile said this proposal was put before the crossbench several weeks ago, and I remember that meeting very well. I remember that among the attendees were representatives of the Property Council, the Planning Institute of Australia and the Royal Australian Institute of Architects. We have always known that the Property Council has represented the very largest developers in this State, and no-one was under any misapprehension as to who they were.

Dr Debra Dearing, representing the Royal Australian Institute of Architects, singularly failed to mention that she was the chief of strategic planning for Stockland. She failed to mention that at a function in February the Minister approached her and asked her how things were going down at Sandon Point. She said they were running into troubles down there, and it was as a result of that that the council was subsequently strong-armed by the Minister to forego millions of dollars in compensation for the loss of land that was being handed over to Stockland. In her article in the *Sydney Morning Herald* last Wednesday, Elizabeth Farrelly described Julie Bindon from the Planning Institute of Australia as similarly having connections with and doing work for very significant and major developers in this State.

The amendment is about the committee being advisory—and that is all it can do: advise. There is no obligation on the Minister to take one iota of notice of anything the committee may have to say—and it is also about implementation. That presumably works on the assumption that all the provisions of this Act should be implemented, and I think there are very many people in the community who would not be of that view. But insofar as it provides for some measure of input, I am not sure that I would place much faith in the input of the Chamber of Commerce, the Urban Task Force, the Housing Industry Association or the Property Council of New South Wales. I have very great reservations as to the worth of any input from those organisations. I am certain the committee will be extraordinarily self-interested and not act in the interests of the people of New South Wales.

The Hon. ROBERT BROWN [10.30 p.m.]: I commend Reverend the Hon. Fred Nile for moving the amendments on behalf of the Coalition for Planning Reform. The only thing I need to say about Ms Sylvia Hale's contribution to this debate is that I do not think she should get herself too worked up about quoting Ms Farrelly as an expert on who does deals with whom and on how things work. On the day following Ms Farrelly's column the *Sydney Morning Herald* published an apology because Ms Farrelly had commented that she was sure which way Mr Tingle was going to vote. So much for Ms Farrelly.

Question—That Christian Democratic Party amendments Nos 1 and 4 to 9 be agreed to—put and resolved in the affirmative.

Christian Democratic Party amendments Nos 1 and 4 to 9 agreed to.

Ms SYLVIA HALE [10.31 p.m.], by leave: I move Greens amendments Nos 12, 13 and 19 in globo:

No. 12 Page 24, schedule 2.1 [13], proposed section 23D (1) (a), lines 32 and 33. Omit ", if those matters are delegated to it by the Minister".

No. 13 Page 25, schedule 2.1 [13], proposed section 23D (1) (b), lines 1–17. Omit all words on those lines. Insert instead:

(b) advise the Minister as to planning or development matters, environmental planning instruments or the administration or implementation of the provisions of this Act, or any related matter,

(c) review any aspect of a project, or a concept plan, under Part 3A,

(d) review all or any of the environmental aspects of proposed development the subject of a development application (whether or not it is designated development), or a part of any such proposed development,

(e) review all or any of the environmental aspects of an activity referred to in section 112 (1), or of a part of any such activity,

(f) review a proposal to constitute, alter or abolish a development area under section 132 or 133,

No. 19 Page 26, schedule 2.1 [13]. Insert after line 37:

23G Constitution of Joint Committee

As soon as practicable after the commencement of this Division and the commencement of the first session of each Parliament, a joint committee of members of Parliament, to be known as the Committee on the Planning Assessment Commission (the ***Joint Committee***), must be appointed.

23H Functions of Joint Committee

(1) The functions of the Joint Committee are as follows:

(a) monitor and to review the exercise by the Commission of the Commission's functions,

(b) report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed,

(c) examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report,

(d) examine trends and changes in planning assessment, and practices and methods relating to planning assessment, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission,

(e) inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.

(2) Nothing in this Part authorises the Joint Committee to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular planning matter.

23I Power to veto proposed appointment to Commission

(1) The Minister is to refer a proposal to appoint a person as a member of the Commission to the Joint Committee and the Committee is empowered to veto the proposed appointment as provided by this section. The Minister may withdraw a referral at any time.

(2) The Joint Committee has 14 days after the proposed appointment is referred to it to veto the proposal and has a further 30 days (after the initial 14 days) to veto the proposal if it notifies the Minister within that 14 days that it requires more time to consider the matter.

(3) The Joint Committee is to notify the Minister, within the time that it has to veto a proposed appointment, whether or not it vetoes it.

(4) A referral or notification under this section is to be in writing.

23J Membership of Joint Committee

(1) The Joint Committee is to consist of 11 members, of whom:

(a) 3 are to be members of, and appointed by, the Legislative Council, and

(b) 8 are to be members of, and appointed by, the Legislative Assembly.

(2) The appointment of members of the Joint Committee is, as far as practicable, to be in accordance with the practice of Parliament with reference to the appointment of members to serve on joint committees of both Houses of Parliament.

(3) A person is not eligible for appointment as a member of the Joint Committee if the person is a Minister of the Crown or a Parliamentary Secretary.

23K Vacancies

(1) A member of the Joint Committee ceases to hold office:

(a) when the Legislative Assembly is dissolved or expires by the effluxion of time, or

(b) if the member becomes a Minister of the Crown or a Parliamentary Secretary, or

(c) if the member ceases to be a member of the Legislative Council or Legislative Assembly, or

(d) if, being a member of the Legislative Council, the member resigns the office by instrument in writing addressed to the President of the Legislative Council, or

(e) if, being a member of the Legislative Assembly, the member resigns the office by instrument in writing addressed to the Speaker of the Legislative Assembly, or

(f) if the member is discharged from office by the House of Parliament to which the member belongs.

(2) Either House of Parliament may appoint one of its members to fill a vacancy among the members of the Joint Committee appointed by that House.

23L Chair and Deputy Chair of Joint Committee

(1) There is to be a Chair and a Deputy Chair of the Joint Committee, who are to be elected by and from the members of the Joint Committee.

(2) A member of the Joint Committee ceases to hold office as Chair or Deputy Chair of the Joint Committee if:

(a) the member ceases to be a member of the Committee, or

(b) the member resigns the office by instrument in writing presented to a meeting of the Committee, or

(c) the member is discharged from office by the Committee.

(3) At any time when the Chair is absent from New South Wales or is, for any reason, unable to perform the duties of Chair or there is a vacancy in that office, the Deputy Chair may exercise the functions of the Chair under this Act or under the *Parliamentary Evidence Act 1901*.

23M Procedure of Joint Committee

(1) The procedure for the calling of meetings of the Joint Committee and for the conduct of business at those meetings are, subject to this Part, to be as determined by the Committee.

(2) The Clerk of the Legislative Assembly must call the first meeting of the Joint Committee in each Parliament in such manner as the Clerk thinks fit.

(3) At a meeting of the Joint Committee, 4 members constitute a quorum.

(4) The Chair or, in the absence of the Chair, the Deputy Chair or, in the absence of both the Chair and Deputy Chair, a member of the Joint Committee elected to chair the meeting by the members present is to preside at a meeting of the Committee.

(5) The Deputy Chair or other member presiding at a meeting of the Joint Committee has, in relation to the meeting, all the functions and powers of the Chair.

(6) The Chair, Deputy Chair or other member presiding at a meeting of the Joint Committee is to have a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(7) A question arising at a meeting of the Joint Committee is to be determined by a majority of the votes of the members present and voting.

(8) The Joint Committee may sit and transact business despite any prorogation or adjournment of the Legislative Assembly.

(9) The Joint Committee may sit and transact business on a sitting day of the Legislative Assembly during the time of the sitting.

23N Evidence

(1) Subject to this section, the Joint Committee must take all evidence in public.

(2) Where, in the opinion of the Joint Committee, any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Committee relates to a secret or confidential matter, the Committee may, and at the request of the witness giving the evidence or producing the document must:

(a) take the evidence in private, or

(b) direct that the document, or the part of the document, be treated as confidential.

(3) If any evidence proposed to be given before, or the whole or a part of a document produced or proposed to be produced in evidence to, the Joint Committee relates to the proposed appointment of a person as a member of the Commission, the Committee must (despite any other provision of this section):

(a) take the evidence in private, or

(b) direct that the document, or the part of the document, be treated as confidential.

(4) Despite any other provision of this section except subsection (9), the Joint Committee must not, and a person (including a member of the Committee) must not, disclose any evidence or the contents of a document or that part of a document to which subsection (3) applies.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

(5) Despite any other provision of this section except subsection (10), the Joint Committee (including a member of the Committee) must not, and any person assisting the Committee or present during the deliberations of the Committee must not, except in accordance with section 23I (3), disclose whether or not the Committee or any member of the Committee has vetoed, or proposes to veto, the proposed appointment of a person as Auditor-General.

Maximum penalty: 20 penalty units or imprisonment for 3 months, or both.

(6) Where a direction under subsection (2) is applicable in respect of a document, or a part of a document, produced in evidence to the Joint Committee, the contents of the document or part are, for the purposes of this section, taken to be evidence given by the person producing the document and taken by the Committee in private.

(7) Where, at the request of a witness, evidence is taken by the Joint Committee in private:

(a) the Committee must not, without the consent in writing of the witness, and

(b) a person (including a member of the Committee) must not, without the consent in writing of the witness and the authority of the Committee under subsection (9), disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for a term not exceeding 3 months, or both.

(8) Where evidence is taken by the Joint Committee in private otherwise than at the request of a witness, a person (including a member of the Committee) must not, without the authority of the Committee under subsection (9), disclose or publish the whole or a part of that evidence.

Maximum penalty: 20 penalty units or imprisonment for a term not exceeding 3 months, or both.

(9) The Joint Committee may, in its discretion, disclose or publish or, by writing under the hand of the Chair, authorise the disclosure or publication of evidence taken in private by the Committee, but this subsection does not operate so as to affect the necessity for the consent of a witness under subsection (7).

(10) Nothing in this section prohibits:

(a) the disclosure or publication of evidence that has already been lawfully published, or

(b) the disclosure or publication by a person of a matter of which the person has become aware otherwise than by reason, directly or indirectly, of the giving of evidence before the Committee.

(11) This section has effect despite section 4 of the *Parliamentary Papers (Supplementary Provisions) Act 1975*.

(12) If evidence taken by the Joint Committee in private is disclosed or published in accordance with this section, sections 5 and 6 of the *Parliamentary Papers (Supplementary Provisions) Act 1975* apply to and in relation to the disclosure or publication as if it were a publication of that evidence under the authority of section 4 of that Act.

Note. The *Defamation Act 2005* makes provision for 2 defences in respect of the publication of defamatory matter that is contained in evidence taken by, or documents produced to, the Committee in private, but only if the evidence or documents have been disclosed or published in accordance with this section. 28 of the *Defamation Act 2005* (when read with clause 8 of schedule 2 to that Act) ensures that such documents attract the defence relating to public documents in defamation proceedings. 29 of the *Defamation Act 2005* (when read with clause 17 of schedule 3 to that Act) ensures that proceedings in which such evidence is taken or documents produced attract the defences relating to fair reports of proceedings of public concern in defamation proceedings.

(13) Where the Joint Committee as constituted at any time has taken evidence in relation to a matter but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as constituted at any subsequent time, whether during the same or another Parliament, may consider that evidence as if it had taken that evidence.

(14) The production of documents to the Joint Committee is to be in accordance with the practice of the Legislative Assembly with respect to the production of documents to select committees of the Legislative Assembly.

Greens amendment No. 12 is the first in a series of amendments that address the role of the Planning Assessment Commission. The Greens are not opposed to the creation of a Planning Assessment Commission. In fact, we support such a commission but only if it is genuinely independent from the Minister's interference and takes over the Minister's role in determining major project applications. We do not support a Planning Assessment Commission that is nothing more than window-dressing and allows the continuation of the conflict of interest that the Minister has in dealing with major projects put forward by companies that are simultaneously making large—and at times undisclosed—payments to the Minister's party.

The amendment would remove from the Minister the discretion to keep some or all part 3A applications to himself, rather than having them determined by the Planning Assessment Commission. The words we seek to remove by way of the amendment—"if those matters are delegated to it by the Minister"—show that the Planning Assessment Commission is merely a piece of window-dressing from a Minister who does not have the public's trust.

The Minister has made great play of claiming that the Planning Assessment Commission will depoliticise decision making about major projects. In the form outlined in the bill, it will do no such thing because too much discretion as to who is on the Planning Assessment Commission and what the commission does rests with the Minister. To genuinely depoliticise the Planning Assessment Commission, this and other foreshadowed Greens amendments will go some way towards ensuring that the commission is genuinely free of political interference. Greens amendment No. 13 is similar to the previous amendment in that it removes the Minister's control over what functions the Planning Assessment Commission can and cannot undertake.

Greens amendment No. 19 continues the theme of ensuring political independence for the Planning Assessment Commission. It creates a parliamentary oversight committee for the Planning Assessment Commission, similar to those that exist for organisations such as the Independent Commission Against Corruption, the Ombudsman's Office and the Police Integrity Commission. Indeed, I believe the Government is now about to introduce legislation that would move the Crime Commission into a position whereby it would be oversighted by the committee that oversights the Ombudsman's Office and the Police Integrity Commission. Greens amendment No. 19 would also give the parliamentary committee a right of veto over ministerial appointments to the Planning Assessment Commission. This is an essential safeguard in removing the commission from the influence of the Minister. It is particularly important when the Minister's party continues to accept large donations from developers at the same time as those developers have major project applications on the table for consideration.

The Planning Assessment Commission will comprise a chairperson and up to eight part-time commissioners. What concerns me, however, is that all those people will be ministerial appointees, even though they will have to demonstrate experience in planning matters. Pecuniary interests will be disclosed at private meetings of the commission, and presumably the public will only become appraised of them if they get access to a register in which the disclosed pecuniary interests are listed. However, access to that register will only be possible after the payment of a fee that is yet to be determined.

Of course, the Minister has the power to override any of the Planning Assessment Commission's decisions if he so wishes. The Greens believe that this gives the Minister unprecedented discretionary power—not only the current Minister but also future Ministers, regardless of their political hue. The Minister already has the power to create planning controls without undertaking any public consultation whatsoever, controls that are not necessarily disallowable by the Parliament—for example, State environmental planning policies. Once again it demonstrates the Minister's obsession with having absolute control of the significant planning decisions in this State. The Minister has a reputation of wanting to have a finger in every possible pie. I am sure that when part 3A was introduced he envisaged that he would familiarise himself with every application, and I understand that that is what he attempted to do. Significantly, however, I think the job has gotten too much for him.

As has been pointed out, part 3A applications that are either accompanied by or preceded by significant donations to the Labor Party have a tendency to be approved, while part 3A applications that are not accompanied by similar donations are almost overwhelmingly refused. One would hope that by removing decisions to the Planning Assessment Commission the fortunes of the companies that fail to donate to the Labor Party may improve, but of course there is no guarantee of that. Given the Minister's right to appoint or dismiss members of the commission at will, a tendency to independence of thought or action on the part of the commission will be considerably curbed.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [10.38 p.m.]:

The Government opposes Greens amendments Nos 12, 13 and 19. The amendments would make the Planning Assessment Commission the sole approval authority for projects under part 3A of the Act and would appoint a joint parliamentary committee to oversee the commission. Under the bill's provisions, the Planning Assessment Commission will be delegated the approval role for most part 3A projects, with the exception of critical infrastructure projects that under the current system must be determined by the Minister. This ensures that the Minister can be held accountable, whilst at the same time depoliticising the bulk of the part 3A approval process.

However, the Minister should retain the approval role for critical infrastructure projects because these are essential to the State for economic, social and environmental reasons and because of the serious restrictions on legal challenges that apply to such projects as a result of their categorisation as critical. Statutory bodies such as the Planning Assessment Commission exercise their functions at the request of the responsible Minister. This ensures that the bodies remain accountable to the Minister, who is in turn accountable to the Parliament.

The bill already provides that in making a determination or report or providing planning advice the Planning Assessment Commission is not subject to ministerial direction or control. The Government's proposal ensures that where the Planning Assessment Commission is carrying out an advisory or review role it does so at the request of the Minister, thus ensuring efficient use of resources and that the commission's functions are carried out in a coordinated and effective manner. These amendments would give a joint parliamentary committee an oversight role. For the Planning Assessment Commission such a move would not be appropriate because it would be unprecedented for such an administrative body to be subject to the oversight of a joint statutory parliamentary committee.

There are only five joint statutory parliamentary committees. With the exception of the Legislation Review Committee, these committees exercise an oversight role in relation to the various commissions and other statutory bodies with the extension of potentially oppressive investigative powers. The Committee on Children and Young People was established as part of the Government's response to the Wood royal commission on paedophilia consistent with the recommendations in the commission's report. The committee oversees the Commission on Children and Young People, which has wide-ranging powers to compel the production of information by government departments, including medical and child protection records.

The other three committees—the Committee on the Independent Commission Against Corruption, the Committee on the Health Care Complaints Commission and the Committee on the Office of the Ombudsman and the Police Integrity Commission—have an oversight role in relation to various commissions and other statutory bodies. The establishment of oversight committees in relation to these bodies is appropriate given that they have extensive and potentially oppressive investigative powers that could infringe upon an individual's civil liberties or are charged with protecting public health or safety. However, it is not appropriate for an administrative decision-making body such as a planning assessment commission.

In addition, the bill already contains a broad and appropriate range of accountability provisions for the Planning Assessment Commission. These provisions will ensure public confidence in the proposed commission and that its operations are independent, accountable and transparent. The bill already provides that the Independent Commission Against Corruption will be able to investigate any allegations or complaints of corrupt conduct made against members of the Planning Assessment Commission. The New South Wales Ombudsman will be able to investigate the conduct of the commission and consider any complaints made by members of the public. The New South Wales Auditor-General will also be able to conduct an audit of the activities of the Planning Assessment Commission to determine whether it is carrying out its functions economically and efficiently.

The Environmental Planning and Assessment Act sets out what the commission will be required to consider in making decisions. Any breach of these statutory requirements will be open to legal challenge on administrative law grounds. A joint statutory committee could be supported only where the legislation confers royal commission-type powers like those given to the Independent Commission Against Corruption, the Police Integrity Commission and the Ombudsman or where a body is charged with protecting public health and safety. It would be unprecedented for a body undertaking essentially administrative functions to be subject to this form of oversight. It would also essentially transfer the administration of the planning system from the Government to members of the committee. It would strike at the heart of the separation of powers doctrine that underpins the system of government in New South Wales. For those reasons, the Government opposes the amendments.

Question—That Greens amendments Nos 12, 13 and 19 be agreed to—put and resolved in the negative.

Greens amendments Nos 12, 13 and 19 negatived.

Ms SYLVIA HALE [10.45 p.m.], by leave: I move Greens amendments Nos. 17, 18 and 22 in globo:

No. 17 Page 26, schedule 2.1 [13], proposed section 23E (c), lines 9–12. Omit all words on those lines.

No. 18 Page 26, schedule 2.1 [13], proposed section 23F, lines 27–37. Omit all words on those lines.

No. 22 Page 29, schedule 2.1 [13], proposed section 23L (c), lines 27–29. Omit all words on those lines.

One of the fundamental problems with recent amendments to the Act is that they have delivered a great deal of unfettered discretionary power into the hands of decision makers. It is an important principle of public policy and corruption prevention that the greater the power the greater the need for checks and balances. One of the most important checks that can be placed on discretionary power is a rigorous, open and independent appeal or review process. An important element of any such process is the right to legal representation.

These amendments remove limits to appeal rights and restore the right to legal representation. They seek to address some of the serious concerns about these issues raised in the Legislation Review Committee report on the bill. Amendment No. 17 deals with legal representations before the Planning Assessment Commission. The commission will have enormous power to determine billions of dollars of worth of developments, assuming the Minister refers those developments to the commission. Of course, he is under no obligation to do so. The Greens contend that that represents a serious corruption risk. The commission's decisions and processes must be open to the greatest level of scrutiny and review.

Denying legal representation before the commission will work against individuals. Development companies and significant developers will routinely employ in-house legally qualified staff to argue the company's case before the commission, whereas that expertise will be denied individuals unless they have legal qualifications. The Greens believe that that is a very unfair and imbalanced approach, and certainly one that should not be supported. The same considerations apply when individuals appear before planning arbitrators. Planning arbitrators are a means of outsourcing part of the role of the Land and Environment Court to the private sector. They will have significant power to determine millions of dollars worth of developments. As I said in relation to the commission, that represents a serious corruption risk. The decisions of planning arbitrators and the processes they follow must also be open to the greatest level of scrutiny.

Appeals to the Land and Environment Court relating to planning arbitrator matters will be restricted unless a planning arbitrator has reviewed them or the local council has consented to the appeal being lodged. The period for lodging an appeal with the Land and Environment Court regarding a development assessment matter will generally be reduced from 12 months to three months. Of course, the significant issue is how susceptible planning arbitrators will be to ministerial interference. The arbitrators will be appointed for one year and can be removed for no reason by the Minister. Presumably they will be development professionals. It is worth contrasting the employment arrangements of planning arbitrators with the employment arrangements of Land and Environment Court commissioners. Commissioners work full-time and have a fixed seven-year term. They also receive a salary regardless of whether their determinations support or oppose developments. Of course, the court's hearings are held in public.

Clearly, in the case of the Land and Environment Court, there is a genuine separation of powers and the court is independent of executive government—something that we have seen in a number of decisions made by the court in recent years. Under this legislation councils will not even be able to appeal to the Land and Environment Court to oppose arbitrator reviews, even though they are in the best position to understand the impact of a development and the compliance or otherwise of that development with local codes and instruments. The Local Government Association and community groups are concerned about their limited appeal rights. I believe it is important to re-establish the right to legal representation in the case of any appeal.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [10.51 p.m.]: The Government opposes Greens amendments Nos 17, 18 and 22, which would have the effect of increasing the costs of seeking a review of a planning decision. The Government's bill seeks to increase access and equity and to ensure that everybody has the ability to seek an independent review of decisions, irrespective of their ability to pay lawyers.

The provisions in the bill will not necessarily prevent people from being represented by a lawyer or other advocate; rather the regulations will set out the circumstances in which leave will be granted to allow

representations. This will protect those who effectively are not able to represent themselves. These provisions are not dissimilar from provisions applying to other review bodies such as the Consumer, Trading and Tenancy Tribunal. The Government opposes amendment No. 18, as it would allow appeals from Planning Assessment Commission decisions where there has already been a public hearing. A decision made by the Planning Assessment Commission after lengthy hearings and public involvement would be bogged down in an appeal about issues that have already been subject to substantial public scrutiny.

Since 1979 the Environmental Planning and Assessment Act has made appeal rights subject to a public hearing. The Government's proposal reflects the tried and true provisions of the Act. The Greens amendments treat public involvement and the public hearing system like trash. There is simply no justification for having an appeal right on top of a public hearing. Again, it is simply another process that will make no real difference to environmental standards or the quality of the lives of members of the community. However, it will send this message to investors: Get out of New South Wales. For those reasons the Government opposes Greens amendments Nos 17, 18 and 22.

Question—That Greens amendments Nos 17, 18 and 22 be agreed to—put and resolved in the negative.

Greens amendments Nos 17, 18 and 22 negatived.

Reverend the Hon. FRED NILE [10.53 p.m.], by leave: I move Christian Democratic Party amendments Nos 2 and 3 in globo:

No. 2 Page 28, schedule 2.1 [13], proposed section 23I (3), lines 11–13. Omit all words on those lines. Insert instead:

(3) The members of a panel of experts are to consist of persons having expertise in at least 1 of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.

No. 3 Page 28, schedule 2.1 [13], proposed section 23J. Insert after line 34:

(c) the provision of information or reports by councils with respect to the exercise of functions by independent hearing and assessment panels and any actions taken or not taken by councils in response to panel assessments.

A number of local councils requested amendment No. 2 because the provision in the bill that this amendment will omit states:

Division 4 Independent hearing and assessment panels

231 Independent hearing and assessment panels

(3) The members of a panel of experts are to be selected from a list of persons approved for the time being by the Director-General for the purposes of this section.

That means that the director general would have control over the members of this panel, even though they are a panel of experts. My amendment will delete that proposed section and replace it with the words in amendment No. 3, which states:

(3) The members of a panel of experts are to consist of persons having expertise in at least 1 of planning, architecture, heritage, the environment, urban design, land economics, traffic and transport, law, engineering, tourism or government and public administration.

Local councils will select a panel of experts, bearing in mind that it should contain at least one person with those qualifications or expertise. That will provide greater transparency and accountability. To achieve such accountability amendment No. 3 will provide:

(c) the provision of information or reports by councils with respect to the exercise of functions by independent hearing and assessment panels and any actions taken or not taken by councils in response to panel assessments.

These independent hearing and assessment panels must provide information or reports by the council to the community so that their whole area of operation is transparent and accountable.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [10.55 p.m.]: The Government supports Christian Democratic Party amendments Nos 2 and 3. The bill contains provisions for councils to establish independent hearing and assessment panels to assess any aspect of a development application or any planning matter referred to it by council. A number of councils have successfully used independent hearing and assessment panels to provide independent advice on development applications. However, a number of panel models have emerged across the State. For greater consistency and transparency the bill introduces standard provisions for the establishment of such panels.

The amendments will ensure that councils select members of a panel who are able to demonstrate relevant expertise. The Government recognises that it is appropriate for councils to appoint panel members, given that councils are best informed about the role that a specific panel will be required to play in that instance. The proposed amendments will achieve consistency across the State by specifying the relevant expertise requirements. The amendments also require reporting by councils on the operation of independent hearing and assessment panels, or IHAPs, in their area, including reporting on actions taken or not taken by councils in response to a panel's assessment. Reporting is an appropriate accountability measure that will strengthen the role of the independent hearing and assessment panels in the planning system. The Government therefore supports these amendments.

Question—That Christian Democratic Party amendment Nos 2 and 3 be agreed to—put and resolved in the affirmative.

Christian Democratic Party amendments Nos 2 and 3 agreed to.

Ms SYLVIA HALE [10.57 p.m.], by leave: I move Greens amendments Nos 23, 31 and 32 in globo:

No. 23 Page 30, schedule 2.1 [13], proposed section 23M, lines 12 and 13. Omit "until after it has consulted with the council". Insert instead ", except with the agreement of the council".

No. 31 Pages 30 and 31, schedule 2.1 [13], proposed section 23O, line 37 on page 30 to line 12 on page 31. Omit all words on those lines.

No. 32 Page 31, schedule 2.1 [13], proposed section 23O (4) and (5), lines 16–24. Omit all words on those lines.

These three amendments deal with cost shifting onto councils. We all know that the Government is determined to make life as difficult as possible for councils. It imposes rate caps and it consistently passes legislation such as this which imposes further—

The Hon. Duncan Gay: Unfunded mandates.

Ms SYLVIA HALE: I agree with the Deputy Leader of the Opposition. That is a perfect description of these provisions. The Government imposes more responsibilities on councils, yet it does not in any way provide them with the means to pay for responsibilities that are forced upon them. Amendment No. 23 is aimed at ensuring the fundamental principle of not imposing costs on another individual or organisation without that individual's agreement or consent. Many aspects of this bill are about loading up costs onto local government. It looks suspiciously like the Government is intent on driving as many councils as possible into financial trouble in order to force amalgamations or dismissals. Local government is held responsible for its financial arrangement and, therefore, is entitled not to have a non-elected body impose major financial burdens on councils without them agreeing to accept that burden.

Amendment No. 31 deals with recovery of costs from councils. Again, the bill has the effect of removing many planning responsibilities from councils while requiring councils to pay the bulk of the costs of the new system. The Green's amendments remove the requirements for councils to pay for the work of organisations over which they have no control or even any say in how they are to be constituted or what work they do. To that extent the financial risk from a complex and cumbersome new set of planning procedures rests entirely with local councils, even though it is the State Government that is introducing the new system. Amendment No. 32 similarly requires the State Government to take financial responsibility for the new bodies it is creating in this bill. Here I think it is worth quoting a few remarks from the member for Murray-Darling in the lower House. He said:

There are practical difficulties associated with the legislation.

The Hon. Tony Kelly: He does not quote you very often.

Ms SYLVIA HALE: I am sure he does not, but I am prepared to acknowledge that when people have reasonable things to say and make reasonable points it is worth quoting them.

The Hon. Duncan Gay: He is the new sober one.

Ms SYLVIA HALE: Yes, he is more upright, shall we say, than the previous member. He said:

> There are practical difficulties associated with the legislation. For example, how will the Hay Shire Council be able to convene a planning panel? Where will the Hay Shire Council obtain appropriately qualified people to appoint to a planning panel? Who will remunerate members of the panel? The costs of the planning panel will fall onto the shoulders of the ratepayers of the Hay shire, but the reality is that the resources for a planning panel simply do not exist in the shires of my electorate. I challenge the Minister to outline how he will support the implementation of this legislation in the real world of remote western areas of New South Wales.

The Hon. Duncan Gay: A fair point. I do not think the Property Council thinks that far.

Ms SYLVIA HALE: Possibly not. I am sure the Property Council's interests do not extend beyond the boundaries of Sydney, Newcastle or Wollongong. There is great concern that councils are being called upon to give indemnities for planning arbitrators. Planning arbitrators may, because of the pressure under which they will be making decisions—I think they have to make a decision within 10 days—make a decision that is wrong in law, and then there is always the possibility of an appeal to legal proceedings on the grounds of denial of procedural fairness or some sort of administrative error. If the planning arbitrator makes a decision that the council fundamentally disagrees with and there is an appeal against that decision and the decision is upheld, again the council will have to pick up the cost. This is totally unacceptable. I think most people realise how inherently unfair that is. Why should local ratepayers—and this is what it comes down to, it does not come down to the council playing for it—be liable for legal costs incurred by an inept or dodgy planning administrator who was ultimately selected and appointed by the Minister?

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Minister for the Central Coast, and Vice-President of the Executive Council) [11.03 p.m.]: The Government opposes Greens amendments Nos 23, 31 and 32 because, with respect to decisions that have a financial impact on a council, the factors that must be taken into account by the Planning Assessment Commission or a joint regional panel in making a decision are already set out in the Act. The commission or panel would be prevented from determining development applications or project applications, or making other decisions on their merits, if they had to act only in agreement with council. It is not appropriate for the possible financial impact of a decision on a council to be a determining factor in the commission's or a panel's decision making. The bill includes a consultation requirement using similar statutory provisions applying to the Central Sydney Planning Committee. This is appropriate and measured. The Greens amendment is not.

The cost recovery provisions apply only to circumstances where the Planning Assessment Commission, joint regional planning panels or arbitrators are undertaking functions that would otherwise be undertaken by a council. Similar provisions already apply under the Environmental Planning and Assessment Act with respect to planning assessment panels. Councils will continue to collect development application and review fees. It is appropriate that these fees be applied to fund the cost of the commission, joint regional planning panels and arbitrators. The Government has given an undertaking to review the fee provisions in the Environmental Planning and Assessment Regulation to ensure these measures are cost neutral to councils. The Government opposes the amendments.

Question—That Greens amendments Nos 23, 31 and 32 be agreed to—put.

The Committee divided.

Ayes, 4

Mr Cohen
Ms Hale

Tellers,
Dr Kaye
Ms Rhiannon

Noes, 28

Mr Ajaka	Mr Kelly	Mr Smith
Mr Brown	Mr Khan	Mr Tsang
Mr Catanzariti	Mr Lynn	Mr Veitch
Mr Clarke	Mr Mason-Cox	Ms Voltz
Mr Colless	Reverend Dr Moyes	Mr West
Mr Costa	Reverend Nile	Ms Westwood
Ms Ficarra	Ms Parker	
Miss Gardiner	Mrs Pavey	*Tellers,*
Mr Gay	Mr Primrose	Mr Donnelly
Ms Griffin	Ms Robertson	Mr Harwin

Question resolved in the negative.

Greens amendments Nos 23, 31 and 32 negatived.

Ms SYLVIA HALE [11.12 p.m.]: I move Greens amendment No. 27:

No. 27 Page 30, schedule 2.1 [13], proposed section 23N (2), lines 24–29. Omit all words on those lines.

The purpose of this amendment is to remove the penalties for general managers who do not follow reasonable directions from the Planning Assessment Commission or a planning arbitrator. The Greens believe proposed section 23N (2) is a harsh and unnecessary imposition on general managers of councils, particularly given that the commission and arbitrator are not elected and are not directly accountable to the council or another Crown authority. It is unconscionable to put an individual in the position of being threatened with a penalty for not doing the bidding of an external body or individual that does not employ them. General managers are answerable to council and, presumably, should council instruct a general manager not to act in a certain way, or not to cooperate with a commission or the demands of an arbitrator, for example, he or she will be put in an invidious position.

Yet, if the general manager is so instructed and follows the instruction of his employers, he or she is then exposed to criminal penalties or a fine of up to $1,000. It is not an appropriate provision. One assumes that this provision is included in the bill because the Minister is aware of council opposition to the bill and of the decision of a meeting of mayors in January this year that threatened to withhold section 94 levies from the Minister. Obviously, this provision applies not so much to the withholding of funds or levies but certainly is a direction to general managers. Again, this provision seeks to usurp and overturn the authority of councils in relation to a significant employee.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [11.15 p.m.]: The Government opposes Greens amendment No. 27. Proposed section 23N (2) is a necessary protection to ensure that the Planning Assessment Commission regional panels and planning arbitrators are not frustrated in carrying out their statutory functions by the wilful obstruction of general managers or council staff. It provides appropriate safeguards for what is assumed to be a rare occurrence. Appropriate controls and limitations apply in relation to such directions—for example, the directions must be reasonable and must relate to the proper exercise of statutory functions by the commission, panel or arbitrator. It is necessary to include this provision to assist general managers and council staff in resolving difficulties that may arise when they received conflicting instructions from the council and the commission, panel or planning arbitrator. This provision ensures that the general manager's and staff obligations are clear. The Government opposes the amendment.

Question—That Greens amendment No. 27 be agreed to—put and resolved in the negative.

Greens amendment No. 27 negatived.

Mr IAN COHEN [11.17 p.m.]: I move Greens amendment No. 33:

No. 33 Page 31, schedule 2.1. Insert after line 29:

[14] Section 75F Environmental assessment requirements for approval

Omit "may" from section 75F (1). Insert instead "must".

This amendment requires the Minister for Planning to consult with the Minister for the Environment and publish guidelines in the *Government Gazette* with respect to environmental assessment. This is not negotiable. There is simply no justification for discretion in the context of part 3A where the utmost stringent requirements are demanded to counterbalance or offset the concentration of power. I anticipate the Government will say the Minister is answerable to the Parliament and that will provide adequate inducement for the Minister to comply with the discretionary processes outlined in the section. Considering the tardiness of certain Ministers to comply with statutory deadlines, I suggest that the answerability to Parliament provides no such inducement. One of the great paradoxes of any debate over part 3A and any amendments to the section is the dual call for ministerial discretion and certainty for business.

In the same convoluted and contradictory breath Labor will talk about the need for ministerial discretion in the part 3A approval process while concurrently spruiking the need for business certainty. Taking a trip back in time to the Environmental Planning and Assessment Amendment (Infrastructure and Other Planning Reform) Bill, I recall then Minister Craig Knowles critiquing the member for Bligh, Clover Moore, lamenting the discretionary language littered throughout part 3A. The Hon. Craig Knowles said of the member for Bligh's contribution:

> The honourable member for Bligh read onto the record, I think without necessarily understanding it, her great anxiety about the use of the word "may" as opposed to the word "shall" as if it were some sort of titanic shift in the principles underpinning the Environmental Planning and Assessment Act. The word "may" has been incorporated in the planning Act since 1979. The use of the word "may", the discretionary power, as opposed to the word "shall", the obligatory power, has always been reflected in the Act, and there is no change. Indeed, it is a direct carryover. I implore those who read the second reading debate to view some of the contributions as little more than ideology and dogma and not based on fact or the content of the bill.

If Labor were so preoccupied with ensuring business certainty and certainty in development approval process, why is part 3A littered with discretionary non-committal language? If business and developers require economic environmental certainty, would not the best way to achieve certainty be to remove the maze? The reality is that the discretionary language is used whenever environmental constraints or checks and balances are involved. There is one rule for the environment and another for development. There is no synergy between development and environmental objectives and the bill reinforces the hierarchy, with environment at the bottom of the pile. There is no argument for ministerial flexibility in this case. I commend Greens amendment No. 33 to the Committee.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [11.20 p.m.]: The Government opposes Greens amendment No. 33 because it is appropriate for guidelines under part 3A to be developed following consultation with agencies. This process is ongoing and will be informed by the current practices of the Department of Planning in assessing part 3A projects. Guidelines should only be published when they are necessary and assist, not merely for their own sake. For these reasons the Government opposes the amendment.

Question—That Greens amendment No. 33 be agreed to—put and resolved in the negative.

Greens amendment No. 33 negatived.

Mr IAN COHEN [11.21 p.m.]: I move Greens amendment No. 34:

No. 34 Page 31, schedule 2.1. Insert after line 33:

[15] Section 75F (5)

Omit "may". Insert instead "must".

[16] Section 75H Environmental assessment and public consultation

Omit "provide copies of submissions received by the Director-General or a report of the issues raised in those submissions" from section 75H (5).

Insert instead "publish copies of submissions received by the Director-General on a website maintained by the Department within one week of receiving those submissions and provide a copy of those submissions".

[17] Section 75H (5A)

Insert after section 75H (5):

(5A) Before providing a copy of, or publishing, a submission, the Director-General may remove any material from the submission that, in the opinion of the Director-General:

(a) identifies the person who made the submission, or

(b) is of a defamatory or offensive nature, or the disclosure of which would contravene any law.

[18] Section 75I Director-General's environmental assessment report

Insert ", any submission received from any person about the assessment under section 75H" after "environmental assessment" in section 75I (2) (a).

[19] Section75J Giving of approval by Minister to carry out project

Insert after section 75J (5):

(6) **Environmental effects**

Despite any other provision of this Act, the Minister must not grant approval for a project if an environmental assessment prepared for the purposes of this Part demonstrates that the project will have a significant adverse effect on threatened species, populations or ecological communities or on the environment.

[20] Section 75T, 75U and 75V

Omit the sections.

This amendment principally deals with public consultation in the part 3A process and the ability of the community to seek review of development approvals. I have dealt with ministerial discretion and will not repeat that for the purpose of justifying item [15]. Item [16] is essential for establishing a forum in the public sphere for community members and stakeholders to debate and discuss proposals. Website publication of submissions will stop Ministers from exercising ad hoc powers to block the release of submissions, similar to those we have witnessed. This amendment is essential to the concept of transparency about which the Minister has spoken at length. Item [17] is important to ensure that submissions are not judged or evaluated on the basis of which individual made the submission and this amendment gives the director general the discretion to keep hidden the identity of people making submissions.

In relation to item [18], public submissions must be included in the director general's report to the Minister to ensure that the Minister is fully cognisant of a broad spectrum of positions and opinions. New section 19 creates a fundamental synergy between the Environmental Planning and Assessment Act and legislation protecting threatened species, populations or ecological communities. It ensures that if an environmental assessment reveals significant adverse effects on threatened species, populations or endangered ecological communities the Minister cannot grant approval to the project.

Item [20] removes the provision that blocks community and third party appeals to critical infrastructure projects. The amendment also removes a planning process whereby the interface with other legislative frameworks is ignored. It smashes the iron fist of the Minister's centralised power over critical infrastructure approvals, an iron fist that ignores any other legislative framework. It is imperative that we pursue the restoration of community confidence by opening avenues for reviews. I commend Greens amendment No. 34.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [11.33 p.m.]: The Government opposes Greens amendment No. 34 because it seeks to make a number of changes to part 3A of the Environmental Planning and Assessment Act, which has been operating successfully for three years. A flexible system under part 3A enables the level of environmental assessment to be tailored to the particular project and its potential environmental impact. In practice, all projects approved under part 3A undergo a rigorous environmental assessment before being determined. An amendment to make environmental assessment under part 3A mandatory is unnecessary.

The amendment seeks to require the Department of Planning to publish all submissions received in relation to an environmental assessment on its website and to require all submissions to be included in the director general's report, which is also published on the website. These proposals are unworkable and would

create a major resource issue for the Department of Planning. It places an unreasonable burden on the department in requiring it to remove identifying material and vouch that none of the material is defamatory or breaches the privacy of individuals. Should an error be made, the department and the taxpayer would be exposed to risk of expensive legal action. The current method of dealing with submissions by way of publishing a summary report of submissions is appropriate and will be maintained.

The Greens amendment requiring a proposal to be automatically refused if any report submitted by the proponent finds that there would be a significant adverse impact on a threatened species or the environment does not allow scope to consider offset proposals or other compelling public interest reasons, which may be in favour of project approval. The Greens amendment may also encourage proponents to shop around for consultants' reports that downplay any impact on threatened species. The amendment would allow appeals against critical infrastructure projects. This would mean that projects that are essential to the State for economic, social and environmental reasons would be delayed with costly appeals, which is not appropriate. The Greens amendment also seeks to delete section 75U and section 75V from the Act. These are important provisions that have cut red tape and promoted a whole-of-government approach to the assessment of major projects. For these reasons the Government opposes the amendment.

Question—That Greens amendment No. 34 be agreed to—put.

The Committee divided.

Ayes, 4

Ms Hale
Dr Kaye

Tellers,
Mr Cohen
Ms Rhiannon

Noes, 27

Mr Ajaka	Mr Lynn	Mr Tsang
Mr Brown	Mr Mason-Cox	Mr Veitch
Mr Catanzariti	Reverend Dr Moyes	Ms Voltz
Mr Clarke	Reverend Nile	Mr West
Ms Ficarra	Ms Parker	Ms Westwood
Miss Gardiner	Mrs Pavey	
Mr Gay	Mr Pearce	
Ms Griffin	Mr Primrose	*Tellers,*
Mr Kelly	Ms Robertson	Mr Donnelly
Mr Khan	Mr Smith	Mr Harwin

Question resolved in the negative.

Greens amendment No. 34 negatived.

Mr IAN COHEN [11.33 p.m.]: I move Greens amendment No. 35:

No. 35 Page 32, schedule 2.1. Insert after line 32:

[20] Section 80 Determination

Insert after section 80 (12):

(13) **Environmental effects**

Despite any other provision of this Act, a consent authority must not grant development consent for development if an environmental impact statement, species impact statement or statement of environmental effects accompanying the development application demonstrates that the development will have a significant adverse effect on threatened species, populations or ecological communities or on the environment.

This amendment merely repeats Greens amendment No. 34, which sought to insert environmental control into section 75J. I commend Greens amendment No. 35 to the Committee.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [11.33 p.m.]: The Government opposes Greens amendment No. 35 because it will require a proposal to be automatically refused if any report submitted by a proponent finds that the proposal would have a significant adverse impact on a threatened species or the environment, regardless of whether there are any appropriate offset or mitigation measures proposed or compelling public interest reasons for approval.

The amendment effectively will mean that most developments requiring an environmental impact statement or a species impact statement will be refused. The amendment will also create a situation in which proponents are encouraged to shop around for consultants' reports that downplay any impact on threatened species. For those reasons the Government opposes the amendment.

Question—That Greens amendment No. 35 be agreed to—put and resolved in the negative.

Greens amendment No. 35 negatived.

Ms SYLVIA HALE [11.34 p.m.], by leave: I move Greens amendment Nos 49, 52, 64 and 65 in globo:

No. 49 Page 40, schedule 2.1 [36], proposed section 96E (1) and (2), lines 28–33. Omit all words on those lines.

No. 52 Page 41, Schedule 2.1 [36], proposed section 96E (9) and (10), lines 20–29. Omit all words on those lines.

No. 64 Page 62, schedule 2.2. Insert after line 34:

[2] Section 75C Critical infrastructure projects

Omit ", 75L" from paragraph (a) of the note.

No. 65 Page 63, schedule 2.2 [6], lines 13–16. Omit all words on those lines. Insert instead:

[6] Section 75L Appeals by an objector

Omit section 75L (1).

The object of these amendments is to remove restrictions that the bill will place on the rights of objectors to have a decision reviewed. One of the fundamental problems with the recent changes to the Act is that they delivered a great deal of unfettered discretionary power into the hands of decision makers. As I have said before, it is an important principle of public policy and corruption prevention that the greater the power, the greater is the need for checks and balances. Amendment No. 49 seeks to determine who is eligible to apply for a review. New section 96E in schedule 2 states in item [36]:

96E Applications for review—objectors

(1) This section applies to development applications of a class prescribed by the regulations for the purposes of this section.

The new section also states in subsection (3) that an objector may make an application for a review, provided that the objector is not the applicant, which is reasonable, provided that the person has made a submission objecting to the development in accordance with regulations made under section 79AA, and provided that the person owns land within one kilometre of any point on the boundary of the land that is the subject of the development application. It is up to the Minister to set the regulations that state, in effect, that only people who have submitted objections and who live within an incredibly narrow area, which is one kilometre from any point of the boundary of the land that is the subject of a development application, may apply for a review. One assumes the provision means that to be able to object to a development, an applicant must live in the immediate vicinity or very close to a development.

Lots of objections are lodged because of the broad impact of a development upon a community. Objections are not lodged solely on the basis that someone will lose privacy, a dwelling will be overshadowed, or noise will emanate from the development. Objections can be for a whole range of reasons, yet clearly the provision will prevent people who have broader community concerns—such as a consequent loss of open space,

a development not being provided with appropriate infrastructure and public transport, or heritage protection—from lodging an objection simply because they do not live within one kilometre of the development.

Similarly, amendment Nos 64 and 65 deal with eligibility to appeal in relation to critical infrastructure projects. Critical infrastructure projects are solely within the decision of the Minister. Those projects will not be referred to the Planning and Assessment Commission but, rather, will remain in house and will be determined by the Minister. There will no right to an appeal against such projects. The Legislation Review Committee, whose report I will address later, clearly had deep reservations about the failure to allow adequate appeal rights, which it contends is fundamentally opposed to appropriate rights of the individual. The Greens support the amendments and urge other members to do so also.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [11.41 p.m.]: The Government opposes Greens amendments Nos 49, 52, 64 and 65 because the provisions included in the bill introducing third party reviews are consistent with the recommendations of the Independent Commission Against Corruption and are designed to make councils more accountable when making decisions that would breach controls. The proposed amendments would mean that any person living within one kilometre of a development would have a right of review to the Planning Assessment Commission, regardless of the size or nature of the development.

A neighbour would be able to seek a review by the Planning Assessment Commission even if the development complies with all the relevant development controls. That would add additional expense and time delays and cause the planning system to become bogged down with reviews and appeals. It would be totally unworkable. The third party reviews in the bill specifically target developments that would exceed development standards for controls such as height and floor space ratios by significant margins. With respect to the Greens proposed amendments to part 3A, the existing provisions in part 3A of the Environmental Planning and Assessment Act allow for third party appeals in certain circumstances. The bill does not alter those appeal provisions. The removal of any restriction on objector merit appeals against part 3A project approvals would result in projects being delayed by costly appeals when the issues raised have been thoroughly considered and addressed by a public hearing before a panel. For those reasons the Government opposes the amendments.

Question—That Greens amendments Nos 49, 52, 64 and 65 be agreed to—put.

The Committee divided.

Ayes, 4

Ms Hale
Dr Kaye

Tellers,
Mr Cohen
Ms Rhiannon

Noes, 27

Mr Ajaka	Mr Khan	Mr Tsang
Mr Brown	Mr Lynn	Mr Veitch
Mr Catanzariti	Mr Mason-Cox	Ms Voltz
Mr Clarke	Reverend Dr Moyes	Mr West
Ms Ficarra	Reverend Nile	Ms Westwood
Miss Gardiner	Ms Parker	
Mr Gay	Mr Pearce	
Ms Griffin	Mr Primrose	*Tellers,*
Mr Harwin	Ms Robertson	Mr Donnelly
Mr Kelly	Mr Smith	Mrs Pavey

Question resolved in the negative.

Greens amendments Nos 49, 52, 64 and 65 negatived.

Ms SYLVIA HALE [11.49 p.m.]: I move Greens amendment No. 56:

No. 56 Page 48, schedule 2.1. Insert after line 17:

[40] Section 118 (1) (b)

Omit the paragraph. Insert instead:

(b) the Minister is satisfied that the performance of a council in dealing with planning and development matters (or any particular class of such matters) is unsatisfactory because of the manner in which the council has dealt with those matters or the time taken, or

This amendment provides that the Minister must satisfy himself of unsatisfactory conduct before removing a council's planning powers. He does not have to merely form an opinion that the planning powers should be removed; he must satisfy himself of that. The implication is that the Minister will be obliged to have reasonable grounds to be satisfied, and therefore he will be obliged, presumably, to substantiate his decision. The Greens believe that it is not sufficient that the Minister merely be of the opinion that a council's planning powers should be removed.

The complete removal of a council's planning powers—although many council planning powers are being removed tonight—is a drastic step. Such a decision is often met with great community outrage, regardless of the wrongs or rights of the matter. Certainly, the people of Ku-ring-gai are upset that their council's planning powers have been removed. This amendment would at least require the Minister to provide substantive and justifiable reasons for reaching such a decision.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [11.51 p.m.]: The Government opposes Greens amendment No. 56. The proposal seeks to amend section 188 of the Act to restrict the matters that could constitute unsatisfactory council performance. The way in which a council handles applications and the time taken to determine applications are not the only factors that may be relevant to the decision to appoint a planning administrator or a panel to carry out certain functions of the council. As required by the Act, the Minister for Planning has already gazetted an order setting out heads of consideration to be taken into account when determining whether to appoint a planning administrator or a panel to exercise functions of a council. That order sets out other relevant heads of consideration that may warrant the appointment of a panel, including the proper management of developer contributions and conflicts of interest. Appropriate procedural fairness obligations apply to the Minister when appointing a panel. For those reasons the Government opposes the narrowing of the scope of the planning assessment panel provisions already contained in the Act.

Question—That Greens amendment No. 56 be agreed to—put and resolved in the negative.

Greens amendment No. 56 negatived.

Ms SYLVIA HALE [11.52 p.m.]: I move Greens amendment No. 61:

No. 61 Pages 50 and 51, schedule 2.1 [53], proposed section 118AG, line 18 on page 50 to line 23 on page 51. Omit all words on those lines.

This amendment deals with the exercise of certain functions by the Minister. The provisions of this proposed section are extraordinarily wide. I invite members to read it. Earlier the Minister said that the Minister for Planning would follow the rules of procedural fairness when appointing individuals. Proposed section 118AG provides:

(1) This section applies to any function (a ***protected function***) conferred or imposed on the Minister (including a delegate of the Minister) relating to the appointment of a planning administrator or planning assessment panel, or the conferral of functions on a regional panel, under this Division.

(2) The exercise by the Minister of any protected function may not be:

(a) challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings, or
(b) restrained, removed or otherwise affected by any proceedings.

(3) Without limiting subsection (2), that subsection applies whether or not the proceedings relate to any question involving compliance or non-compliance, by the Minister (including a delegate of the Minister), with the provisions of this Division or the rules of natural justice (procedural fairness).

This will prevent any court of law or administrative review body having the power or jurisdiction to consider any question involving issues of compliance or non-compliance by the Minister in relation to the appointment of individuals. The powers given to the Minister are extraordinary. In the context of infringing on personal liberties and the removal of many powers that are often taken for granted in the judicial system, it is worth considering Legislation Review Digest No. 7, paragraph 77, which states:

> The Committee notes that a consent authority cannot, without the approval of the Minister, refuse a Crown development application or impose a condition on its consent to a Crown development application … The Committee considers these official powers appear to unduly trespass on individual rights to have their views heard and represented by making the consent authority unable to refuse or impose conditions on a Crown development application without the prior approval of the Minister.

Paragraph 81 states:

> The Committee has concerns about procedural fairness and the right to review with respect to the proposed section 79C (1A), to be inserted in Schedule 2.1 [19], by legislating away the need to give notice and to the right of review, and considers individual rights and liberties may be unduly trespassed …

Paragraph 83 states:

> The Committee will always be concerned about legislation or regulations that authorise administrative decision-making without providing for the right of those affected to be represented where there is a right to be heard, especially if there are to be no appeals from determinations of the Planning Assessment Commission after a public hearing, and persons qualified to apply for reviews for certain classes of development or determinations may be limited by regulations.

Paragraph 103 of the report states:

> The Committee notes that the scope for policies that may be made "with respect to any matter that is, in the opinion of the Minister, of State or regional environmental planning significance", appears to be extremely wide.

Paragraph 104 states:

> The Committee also considers that in the circumstances of where there is no requirement for consultation with other Ministers and public authorities (other than the Director-General of National Parks and Wildlife) in the drafting and preparing of the SEPPs, along with the wide power of the Minister to determine any matter that is, in the opinion of the Minister, of State or regional environmental planning significance, may make personal rights and liberties unduly dependent on an unfettered discretion on the making of SEPPs and an insufficiently defined administrative power. Accordingly, the Committee refers this to Parliament.

Paragraph 107 states:

> The Committee notes that the scope for the Minister's determination with regard to gateway determination as set out in the above proposed section is very wide, including the extent for community consultation requirements and other consultation …

Paragraph 108 states:

> The Committee considers that this may make individual rights and liberties unduly dependent on an insufficiently defined administrative power …

And so on. It is breathtaking that the powers the Minister has aggregated to himself will be unfettered and unchecked. It is extraordinary that we could pass a bill that will prevent any appeals, regardless of the rules of natural justice or procedural fairness. It is extraordinary that the exercise of a protected function by the Minister may not be challenged, reviewed, quashed or called into question before a court of law. I fail to understand how the Committee can casually accept such provisions.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [11.59 p.m.]: The Government opposes Greens amendment No. 61 because the appointment of an administrator or planning assessment panel is a sanction against councils failing to comply with obligations under the planning legislation in unsatisfactory performance or corrupt conduct on the part of the council. The provisions of the bill are designed to protect the community and the individual ratepayers who might otherwise be disadvantaged or affected by the actions of a council in failing to meet its obligations under the planning laws. Where such action is necessary and warranted, ratepayers should not be subject to further costs and delays arising from drawn out court proceedings challenging the validity of an order. The bill includes appropriate procedural fairness provisions to ensure councils have been given the opportunity to make their case before any decision is made to appoint a panel or administrator. For these reasons the Government opposes the amendment.

Question—That Greens amendment No. 61 be agreed to—put.

The Committee divided.

Ayes, 4

Ms Hale
Dr Kaye

Tellers,
Mr Cohen
Ms Rhiannon

Noes, 26

Mr Ajaka	Mr Khan	Mr Smith
Mr Brown	Mr Lynn	Mr Tsang
Mr Catanzariti	Mr Mason-Cox	Mr Veitch
Mr Clarke	Reverend Dr Moyes	Ms Voltz
Ms Ficarra	Reverend Nile	Mr West
Miss Gardiner	Ms Parker	Ms Westwood
Mr Gay	Mrs Pavey	*Tellers,*
Ms Griffin	Mr Primrose	Mr Donnelly
Mr Kelly	Ms Robertson	Mr Harwin

Question resolved in the negative.

Greens amendment No. 61 negatived.

Ms SYLVIA HALE [12.07 p.m.]: I move Greens amendment No. 70:

No. 70 Page 81, schedule 2.10 [12], proposed clause 268K (3), line 31. Omit "and for no reason". Insert instead "for misconduct".

The purport of this amendment is to remove the ability of the Minister to remove a planning arbitrator at any time and for no reason. It provides that the Minister should at least have a reason—misconduct—to dismiss a planning arbitrator. This is a mechanism for protecting arbitrators from political interference by the Minister.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [12.08 p.m.]: The Government opposes Greens amendment No. 70. It would unnecessarily interfere with the Minister's ability to ensure that only appropriate and qualified people are listed on the planning arbitrator register. The Minister should be able to take into consideration more than demonstrated misconduct in determining whether a person is suitably qualified to continue to act as a planning arbitrator. For example, there will be a requirement for arbitrators to be subject to a code of conduct. In addition, a complaints system will operate with respect to arbitrators. It is appropriate that regard be had to breaches of the code, or the nature and extent of complaints made against an arbitrator, in deciding whether they should continue to be on the register. For these reasons the Government opposes the proposed amendment.

Question—That Greens amendment No. 70 be agreed to—put and resolved in the negative.

Greens amendment No. 70 negatived.

Ms SYLVIA HALE [12.10 a.m.], by leave: I move Greens amendments Nos 71, 73, 74, 77 and 78 in globo:

No. 71 Page 85, schedule 3.1 [6], proposed section 116D (b), lines 31–33. Omit all words on those lines.

No. 73 Pages 88–92, schedule 3.1 [6], proposed sections 116I–116L, line 30 on page 88 to line 2 on page 92. Omit all words on those lines.

No. 74 Page 95, schedule 3.1 [6], proposed section 116V, lines 1–32. Omit all words on those lines.

No. 77 Page 102, schedule 3.1 [7], proposed clause 7, lines 8–25. Omit all words on those lines.

No. 78 Pages 119 and 120, schedule 3.3 [4], proposed clauses 31A and 31B, line 6 on page 119 to line 12 on page 120. Omit all words on those lines.

The purpose of these amendments is to assist councils to require affordable housing levies from developers. The effect of Greens amendment No. 71 would be to remove from section 116D, which deals with key considerations for development contributions, the words "What will be the impact of the proposed development contribution on the affordability of the proposed development?" The reason for this amendment is that section 94 contributions are not the key driver of declining affordability. Where a council wishes to impose a contribution requirement, including an affordable housing levy, it will need to consider this matter. If a levy for affordable housing could create a negative impact on affordability of a development then the subsection, as it stands, on housing developments could undermine the imposition of contributions.

Greens amendment No. 73 would remove most of the sections of the bill that changes arrangements for the collection and expenditure of infrastructure levies. The Government has not demonstrated that the current arrangements require overhaul, particularly when the proposed overhaul appears to shift power and revenue towards the Minister and costs towards council. Certainly the Local Government and Shires Associations believe very strongly that council should retain responsibility for the collection and holding of local development contributions in growth centres. Of course, another concern is the ability of the Minister not only to determine what the levy will be spent on but actually how much will be collected in levies. The legislation enshrines a new form of State taxation, state infrastructure contributions, with no appeal rights, and minimal provisions with respect to accountability and transparency.

Greens amendment No. 74 would delete the words "Council planning agreements limited to key community infrastructure". The Greens say that the status quo of what comprises infrastructure should not be too tightly prescribed. This bill limits key community infrastructure in the regulations. On top of that, the Minister can say what is or is not allowable. Being excluded from key community infrastructure definitions will block affordable housing levies. Amendment No. 74 would simply delete the entire section and empower councils to decide what levies they should impose, and for what public purpose, without being limited by overly prescriptive regulations and by the Minister's say so. Greens amendment No. 77 would remove the power of the Minister to direct councils as to how they are to spend levies. Greens amendment No. 78 would remove the restrictive definitions of "community infrastructure".

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [12.13 a.m.]: The Government opposes Greens amendments Nos 71, 73, 74, 77 and 78. The bill contains a number of new accountability requirements for contribution plans, including measures to ensure that contributions are delivered in a reasonable time and will not adversely impact on housing affordability. The Greens amendment would remove any requirement to consider the impact of a contribution on affordability of development, which could lead to council levies making construction of new housing uneconomical. The requirement to consider the impact of the proposed contributions is a key housing affordability issue. The amendment would also remove measures designed to ensure councils can be held accountable and that infrastructure for which money has been collected will be delivered in a timely manner to meet local needs.

The amendment would also give councils carte blanche to raise development contributions unaffected by the accountability measures included in the bill or even the protections of existing legislation. It would give free reign to councils to raise what amounts to an uncapped backdoor tax on homebuyers. The amendment would remove the distinction between key and additional community infrastructure that allows the Minister an approval role if councils seek to levy for additional community infrastructure. Under the Greens amendment councils would not have to justify any levy for additional community infrastructure. The Greens amendment would remove the existing requirement that there be some nexus between the contribution and development proposal. Housing affordability would suffer as a result. It will be mums and dads who would pay. The amendment also would remove the existing directions powers that have been used to prevent councils from milking homebuyers with inappropriate levies. Thanks to the Greens, if this amendment were passed, there would be no means to control this backdoor tax.

The bill contains new accountability requirements for contribution plans, including measures to ensure that contributions are delivered in a reasonable time, will not adversely impact on housing affordability and, importantly, will only be spent on infrastructure that should appropriately be funded by developer contributions. A directions power is necessary to ensure, amongst other things, that councils use unspent contributions to

provide new infrastructure to new and existing communities within reasonable time frames. The bill's provisions essentially replicate the existing directions powers that have been in the Act for some time. For those reasons the Government opposes the proposed amendments.

Question—That Greens amendments Nos 71, 73, 74, 77 and 78 be agreed to—put and resolved in the negative.

Greens amendments Nos 71, 73, 74, 77 and 78 negatived.

Ms SYLVIA HALE [12.16 a.m.]: I move Greens amendment No. 72:

No. 72 Page 86, schedule 3.1 [6], proposed section 116E. Insert after line 32:

(4) The requirements prescribed under this section must, as far as practicable, be the same for all planning authorities.

This amendment would ensure that the accountability mechanisms that are introduced for councils and other local planning authorities are, as far as is practicable, the same as those applied to State-level planning authorities.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [12.16 a.m.]: The Government opposes Greens amendment No. 72 because the provision is unnecessary. The relevant provision in the bill makes clear that the requirement to be contained in the regulations requiring the collection and publication of information about the determination, collection and use of contributions can apply to all planning authorities. The bill allows appropriate regulations to be prescribed for all planning authorities. For those reasons the Government opposes the proposed amendment.

Question—That Greens amendment No. 72 be agreed to—put and resolved in the negative.

Greens amendment No. 72 negatived.

Ms SYLVIA HALE [12.17 a.m.], by leave: I move Greens amendments Nos 75 and 76 in globo:

No. 75 Page 96, schedule 3.1 [6], proposed section 116Y (1), lines 23 and 24. Omit all words on those lines. Insert instead:

(1) This section applies if a local environmental plan identifies that there is a need for affordable housing within an area to which the plan applies.

No. 76 Page 97, schedule 3.1 [6], proposed section 116Y (4) and (5), lines 8–18. Omit all words on those lines. Insert instead:

(4) A condition may be imposed under this section only if the condition is authorised to be imposed by a local environmental plan and is in accordance with a scheme for dedications or contributions set out in or adopted by the plan.

These amendments deal with the ability to levy for affordable housing. Amendment No. 75 refers to section 116Y, conditions requiring land or contributions for affordable housing. The amendment would remove subsection (1) which requires that a State environmental planning policy [SEPP] may identify that there is a need for affordable housing within an area. The current SEPP 70 does identify a handful of sites but the Greens believe that local councils, which have considerable local knowledge, should be the ones to define where affordable housing is needed, rather than having to rely upon an area being listed in a SEPP. Of course, the Minister has sole control over what goes into that SEPP. Certainly in the past councils have tried to have an area or areas listed in SEPP 70. For example, Parramatta council made quite valiant endeavours in that regard, but the response has consistently been one of silence.

Therefore, rather than the requirement that a State environmental planning policy is needed in order to identify an affordable housing problem in an area, the Greens contend that a local environmental plan can and should deal with the issue and the decision as to whether provisions for affordable housing are required should be left with the council. Undoubtedly, the Government will claim, as it has claimed for many years, that it is about to release a new affordable housing State environmental planning policy plan. Those in the sector say that they have been hearing about this elusive new State environmental planning policy plan for the past 10 years. We need to forget about the State environmental planning policy plan, abandon the wait, and let councils get on with the job where they identify the need for affordable housing. Sydney as a global city and the State's regions

cannot institute inclusionary rezoning, yet countries such as Canada and cities such as London and New York and hundreds of American cities do. This amendment will bring the decision concerning affordable housing back to the council level.

Greens amendment No. 76 amends section 116Y (4) and (5) by removing reference to a State environmental planning policy plan. Therefore, if the local environmental plan allows for a condition relating to affordable housing, it can impose such a condition without having any reference to a State environmental planning policy plan. Councils would have the power to levy for affordable housing. This would remove the ban on levying for affordable housing contributions in State contribution areas. I do not believe that this ban is in place. The growth centres—north-west and south-west Sydney and areas such as Wollongong—need affordable housing included in new housing developments. People are struggling with private rental and mortgages in these areas. Clearly, many are not coping. Those currently suffering housing stress on low to moderate incomes would be the beneficiaries of new affordable housing supply in growth areas. Landcom and developers could provide a percentage of new dwellings for affordable purchase or rental based on applications for means tests. This amendment removes section 116Y (5), which states that a condition is not to be imposed in State contribution areas. The Greens argue it is often the case where that condition needs to be applied.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [12.22 a.m.]: The Government opposes Greens amendment Nos 75 and 76 because the Act currently requires a State environmental planning policy to establish a clear and accountable scheme for the provision of affordable housing. The provisions in the bill are essentially a restatement of those requirements. State environmental planning policy plan No. 70 provides the machinery to implement affordable housing schemes and has been in place since 2002. The State environmental planning policy plan promotes a consistent approach to affordable housing across metropolitan Sydney. The amendment would allow such a scheme to be created in any local environmental plan and would result in a proliferation of potentially different affordable housing models across the State. It is more appropriate that consistent affordability housing provisions are contained in a State policy. For these reasons, the Government opposes the proposed amendments.

Question—That Greens amendments Nos 75 and 76 be agreed to—put and resolved in the negative.

Greens amendments Nos 75 and 76 negatived.

Reverend the Hon. FRED NILE [12.23 a.m.], by leave: I move Christian Democratic Party amendments Nos 10 and 11 in globo:

No. 10 Page 114, schedule 3.2 [1], line 9. Insert "and the trustees appointed under subsection (9)" after "Director-General".

No. 11 Page 115, schedule 3.2 [1]. Insert after line 10:

(9) The Minister is to appoint an independent board of 6 trustees for the purposes of this section, comprising 2 representatives of local government, 2 representatives of the Department of Planning, and 2 representatives of the Treasury nominated by the Treasurer.

The purpose of the amendments follows the creation of the Community Infrastructure Trust Fund. After reading pages 114 and 115 of the bill, I have proposed an amendment to address the way in which the fund is administered. Some councils have expressed concerns to me, which may be unjustified, that if the Government needed additional funds, the Treasurer may transfer this large amount of money in the trust fund—possibly $70 million or $80 million—into Government funds as consolidated revenue. I do not know whether that would be legal, but they have expressed that fear. I considered the best way to address the problem is to appoint trustees. After much consideration, I propose amendment No. 10 which inserts the words "and the trustees appointed under subsection (9)" after the words "Director-General". Amendment No. 11 amends schedule 3.2 [1] on page 115 by inserting after line 10:

(9) The Minister is to appoint an independent board of 6 trustees for the purposes of this section, comprising 2 representatives of local government, 2 representatives of the Department of Planning, and 2 representatives of the Treasury nominated by the Treasurer.

The earlier draft does not contain the words "nominated by the Treasurer". Those words clarify the way in which representatives are appointed. This amendment makes it clear that they are not appointed by the Minister for Planning. That would mean crossing over into another Minister's portfolio. Although I had assumed that the two representatives would be nominated by the Treasurer, I have made it clear in the amendment. The two

representatives of the Department of Planning will be appointed by the Minister for Planning and the two representatives of local government will come from the councils in the growth centre. The councils would hold a regional meeting to elect two representatives. I have not laid down the procedure by which that would happen. This amendment provides additional accountability and transparency to a very important aspect of the legislation. I move these amendments and trust that the House will support them.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [12.27 a.m.]: The Government supports the proposed amendments. The bill establishes the Community Infrastructure Trust Fund for contributions collected in the north-west and south-west growth centres of Sydney. Special arrangements are required for contributions collected in those areas because the Government has committed to providing $7.9 billion in infrastructure, of which $2 billion will be funded by New South Wales taxpayers. The amendments establish an independent board of trustees to be consulted in relation to the administration of the fund. The board will comprise six trustees—two from local government, two from the Department of Planning and two from Treasury, nominated by the Treasurer. Whilst the Environmental Planning and Assessment Act will set out the basis on which funds held in the Community Infrastructure Trust Fund may be expended, the Government supports the proposed amendments as a way of increasing transparency and accountability in the administration of the fund. In particular, the establishment of the board of trustees will ensure that local government has an oversight role in relation to the administration of the fund. The Government supports these amendments because they will strengthen accountability and transparency in the administration of the Community Infrastructure Trust Fund and will ensure that there is an appropriate partnership between State and local government in the delivery of infrastructure in the growth centres.

Question—That Christian Democratic Party amendments Nos 10 and 11 be agreed to—put and resolved in the affirmative.

Christian Democratic Party amendments Nos 10 and 11 agreed to.

Ms SYLVIA HALE [12.28 a.m.], by leave: I move Greens amendments Nos 79 to 81 in globo:

No. 79 Page 122, schedule 4.1. Insert after line 36:

[8] 85A Process for obtaining complying development certificates

Insert after section 85A (1):

(1A) **Allocation of certifiers by council or Department**

Despite any other provision of this Act, an accredited certifier must not issue a complying development certificate unless the certifier:

(a) has been allocated as the certifier for that development by the council of the area in which the development is located or by the Director-General, or

(b) is issuing the certificate on behalf of a council.

(1B) A fee may be charged for the allocation of an accredited certifier under subsection (1A).

No. 80 Page 123, schedule 4.1 [8], lines 1–3. Omit all words on those lines.

No. 81 Pages 123 and 124, schedule 4.1 [13] and [14], line 25 on page 123 to line 4 on page 124. Omit all words on those lines.

These amendments deal with private certifiers. Amendment No. 79 would require that certifiers be allocated by a council or department, which would be able to charge a fee for so doing. Amendment No. 80 removes from private certifiers the capacity to assess complying developments and amendment No. 81 deals with the appointment of principal certifying authorities.

Clearly there is widespread dissatisfaction in the community with private certifiers. There is an inherent conflict of interest in the position. They are independent operators, they are not elected and they are accountable to no-one. Ultimately their bills are paid by those who are seeking approvals. The Government maintains that it is a myth that we are giving more power to private certifiers but if we look at this in the context of the stated expectation by the Minister that the number of complying development approvals will go from 11 per cent of all approvals to 50 per cent of all approvals, clearly it suggests there will be a massive expansion of the amount of work undertaken by private certifiers. We say that at the very least rather than an individual being able to handpick his certifier, who will be paid by the person seeking approval of the complying development, the

council should allocate a certifier. Presumably a council would invite people who were acting as private certifiers to register with it. They could be allocated by lot, random selection, alphabetical order, or however. It would certainly eliminate a major source of disquiet about the activities of certifiers. One has only to look at the report of the Campbell committee of inquiry and even the inquiry into Home Building Service to get example after example of shonky work that has been approved by private certifiers. Under this bill it will be left to councils to clean up the mess so I think that in all fairness councils should at least have some role in determining which certifiers are able to certify complying developments.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [12.32 a.m.]: The Government opposes Green's amendments Nos 79, 80 and 81 because this proposal to have a council sign off on a complying development certificate issued by a certifier would create an additional regulatory step and impose additional costs on applicants. The Building Professionals Board is better qualified than councils to assess skills, expertise and competence of accredited certifiers to carry out work. The board does this when it grants accreditation to a certifier. This proposal would not work as councils are direct competitors of private certifiers and it would lead to conflicts of interest and possible corruption risks for councils.

The bill's provisions tighten certifiers' and councils' obligation to make sure the service levy has been paid before issuing a complying development certificate. The Greens' amendment would retain the existing subjective test that is too flexible and gives certifying authorities too much discretion. The Greens' amendment would also effectively stifle private certification in this State. It would limit the choice of qualified certifying authorities to certify building work. This is because where a development involves both building and subdivision work, in general only a council would be able to act as the principal certifying authority. The Government's amendment gives consumers a greater but appropriate choice of qualified certifying authorities to certify their building where the development also involves subdivision work. For these reasons the Government opposes the proposed amendments.

Question—That Greens amendments Nos 79 to 81 be agreed to—put and resolved in the negative.

Greens amendments Nos 79 to 81 negatived.

Ms SYLVIA HALE [12.32 a.m.]: I move Greens amendment No. 82:

No. 82 Page 126, schedule 4.1 [19], proposed section 109PA (3), line 22. Insert "not" after "is".

The bill as it stands presumes there is consistency with development consent. If a private certifier seeks advice from a council before issuing a construction certificate for building work and the council does not express its dissatisfaction with the work or in fact remains silent and does not make a specific decision, rather than being deemed to refuse, which was the normal procedure until now, the council's silence will be taken to be deemed approval. I believe this is quite a disturbing amendment because a certifier may seek the advice and the paperwork may be lost, the questions raised may be so significant they cannot be dealt with in 21 days or advice may be sought over a period such as the Christmas vacation and the council may lack both time and resources. Rather than the certificate being deemed to be refused, this provision allows deemed approval to be given. I believe this is another opportunity for corruption. If there is some sort of connivance with a council official and the request for advice is lost, there is a deemed approval.

Regardless of the circumstances in which the council fails to give the advice, section 109PA(4) says that if a consent authority is given advice under this section that the design and construction of a building, part of a building or work is consistent with the relevant development consent or compliance development certificate, a construction certificate or final occupation certificate issued in reliance on that advice may not be challenged, reviewed, quashed or called into question before any court of law or administrative review body in any proceedings. That says in effect it does not matter if a construction certificate or a final occupation certificate is issued on the basis of the provision of misleading information or as a result of corrupt activity, there is no way it can be called into question. The people who are then left to bear the brunt of that are the unfortunate persons whose house may be the subject of the issue of a shonky or unreliable certificate. The Greens have very serious concerns about this provision.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [12.38 a.m.]: The Government opposes Greens amendment No. 82 because it would lead to delays in the system. It would

mean that councils had no incentive to deal with advice applications in a timely manner. This would lead to delays and costs for home renovators. When councils collect a fee for giving advice on a construction certificate they should be obliged to provide that advice within the 21-day statutory time period. For those reasons the Government opposed the proposed amendment.

Question—That Greens amendment No. 82 be agreed to—put and resolved in the negative.

Greens amendments No. 82 negatived.

Ms SYLVIA HALE [12.39 a.m.], by leave: I move Greens amendments Nos 83, 88, 89 and 90:

No. 83 Page 126, schedule 4.1 [19], proposed section 109PA (4), lines 25–35. Omit all words on those lines.

No. 88 Page 135, schedule 4.2 [6], proposed clause 154D (1), lines 21–27. Omit all words on those lines.

No. 89 Page 135, schedule 4.2 [6], proposed clause 154D (2), line 28. Omit "a final". Insert instead "an".

No. 90 Page 135, schedule 4.2 [6], proposed clause 154D. Insert after line 32:

(3) This clause does not prevent a certifying authority from issuing an interim occupation certificate merely because the development has not been completed.

The intention of Greens amendment No. 83 is to allow greater scope for councils to issue orders that work be completed satisfactorily not only when council is aware that unauthorised work is taking place or work is being undertaken in contravention of the Act, and it is not only to allow a stop work order to be issued, but also to direct that additional work be undertaken. Amendment No. 90 would not prevent a certifying authority from issuing an interim occupation certificate merely because a development has not been completed. Occasionally it is not possible to issue a final occupation certificate but the failure to comply may be of a relatively minor nature. Greens amendment No. 90 would allow that when the failure to fully complete is of only a minor nature there would be the possibility of issuing an interim occupation certificate.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [12.43 a.m.]: The Government opposes Greens amendments Nos 83, 88, 89 and 90 because they would render the advice-giving mechanism introduced by the bill meaningless if certifiers could not rely on advice given by council as being advice that council was required to continue to support. If council gives due consideration to advice it provides to accredited certifiers then the council should be bound to stand by that advice and not change its mind or take enforcement action against an accredited certifier who has acted in reliance of council's previous representations.

The inclusion in the bill of the provisions allowing certifiers to seek advice from councils is an additional safeguard for consumers that is not included in the current certification regime. The introduction of the requirement for a final occupation certificate to be consistent with the consent is a new safeguard and protection for the current occupiers and future purchasers of a property. The proposed amendment may prevent mum and dad homeowners from occupying their houses where they have not completed landscaping or some other part of the development that is not required for safe occupation of a building.

The Government's regulation enables greater flexibility but at the same time provides a safeguard to require certifying authorities to check consistency with the development consent and list inconsistencies on the interim occupation certificate. The amendment providing that an interim occupation certificate can be issued when development is not complete is unnecessary as the Environmental Planning and Assessment Act already makes this clear. For those reasons the Government opposes the proposed amendments.

Ms SYLVIA HALE [12.44 a.m.]: Previously I was not clear in my remarks, largely because I had lost my notes. In relation to Greens amendments Nos 88, 89 and 90, compliance with development consent is required before an occupation certificate can be issued. According to the Local Government and Shires Association, these provisions relate to one of the most important issues for councils and the community. It is a basic and fundamental expectation that the completed development comply with the development consent. If there are no checks and balances, why bother with the certification system and why bother having a principal certifying authority and an occupation certificate if a developer or a builder is able to ignore the development application, the certifying certificate or the complying development certificate and make whatever changes he or she wants, knowing that he or she can simply lodge an application for a section 96 amendment after the event?

While the retrospective section 96 provides a practical path to address genuine minor amendments, which in some cases may be well justified, the process is undoubtedly being used by many developers and builders and assisted by some certifiers. If anyone can make deliberate changes to a development and obtain a retrospective section 96 amendment after completing the work, it will totally undermine the integrity of the planning process and cause significant distress to the local community. Contrary to what most people think, the current legislation does not require a completed building to comply with the development consent other than with limited preconditions. It does not even require compliance with the Building Code of Australia prior to the issuing of an occupation certificate, other than being satisfied that the building is suitable for occupation having regard to the Building Code of Australia classification.

This is a major issue for the community and future building owners and it results in numerous complaints to the Building Professional Board. In addition, the current legislation does not contain any requirements to obtain a final occupation certificate. Therefore, many certifiers are simply issuing an interim occupation certificate and the development is never actually finalised. In many cases there are significant outstanding matters or non-compliances with the consent, which the council may or may not know about unless it receives a complaint. This is an ideal time to remedy this significant deficiency in the legislation and introduce reasonable levels of integrity and accountability into the certification process.

Question—That Greens amendments Nos 83 and 88 to 90 be agreed to—put and resolved in the negative.

Greens amendments Nos 83 and 88 to 90 negatived.

Ms SYLVIA HALE [12.48 a.m.], by leave: I move Greens amendments Nos 84 to 87 in globo:

No. 84 Page 132, schedule 4.1 [27], line 3. Omit "To cease carrying out specified building work or subdivision work". Insert instead "To cease carrying out specified building work or subdivision work or to do such other things that are specified in the order to provide adequate support for adjoining premises".

No. 85 Page 132, schedule 4.1 [28], proposed section 121CA (1), line 8. Insert ", or a certifying authority (also a ***relevant authority***), other than an accredited certifier, that issues a direction to a person under section 109EB," after "person".

No. 86 Page 132, schedule 4.1 [28], proposed section 121CA (1) (a), line 12. Insert "or direction" after "order".

No. 87 Page 132, schedule 4.1 [28], proposed section 121CA (1) (b), line 13. Insert "or direction" after "order".

Amendment No. 84 is in relation to section 121B (1). I refer to page 132, order No. 19, column 1. After the words "subdivision work" add the words "or to do such things that are specified in the order to provide adequate support of land or adjoining premises." This amendment is intended to allow a council to give an order directing a person to carry out specified works to support an excavation or adjoining premises—for example, to provide temporary or permanent shoring up or retaining walls or to backfill an excavation. Amendment No. 85 is to enable a council to recover costs associated with all unauthorised work, including that which encompasses significant resources to investigate and resolve prior to, or without the need to, issue an order. Basically, it extends the orders that a council can make and allows councils to make directions also.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [12.49 a.m.]: The Government opposes Greens amendments Nos 84, 85, 86 and 87. The Government is currently considering a proposed mandatory condition for complying development certificates and development consents for development where excavation work is proposed, to require that the consent holder must ensure that the support of adjoining premises is not compromised. If this is a condition of consent, an order may be issued where work has compromised the support of adjoining premises.

The amendments proposed in relation to the new section 121B order will be addressed through the development of this standard condition and therefore are not necessary. The amendments to enable a compliance cost notice to be issued where a section 109EB direction is given would create an impost on home renovators, who should only have to bear costs where there is a demonstrated breach and actual enforcement action is taken. Section 109EB directions will generally be issued by principal certifying authorities who have a responsibility to monitor work on the site and ensure compliance. The cost of issuing these directions will more than likely be covered by the fee charged by the principal certifying authority. For these reasons the Government opposes the Greens amendments.

Question—That Greens amendments Nos 84 to 87 be agreed to—put and resolved in the negative.

Greens amendments Nos 84 to 87 negatived.

Ms SYLVIA HALE [12.51 a.m.]: I move Greens amendment No. 91:

No. 91 Page 140, schedule 5.1. Insert after line 7:

[2] Section 5 Objects

Insert after section 5 (a) (viii):

(ix) the reduction of greenhouse gas emissions and mitigation of the effects of climate change, and

(x) the protection and enhancement of the health and wellbeing of the community, and

The purpose of the amendment is to insert new objects into the Act. The existing objectives of the Act include encouraging the proper management of natural and artificial resources, the orderly and economic use and development of land, the provision and coordination of community and utility services, the provision of land for public purposes, the provision and coordination of community services and facilities, the protection of the environment, and the provision and maintenance of affordable housing. It is important that the Act recognise that these existing objectives need to be balanced with what should be the fundamental public interest objective of the planning system, to protect and enhance the health and wellbeing of the population.

Major planning decisions should consider questions relating to overall community health objectives with regard to, for example, promoting physical activity, reducing obesity or improving air quality. Most parties now recognise that a multifaceted response to climate change is required. The climate change amendment to the objective recognises the central role the planning system must play in that response. Greenhouse gas emissions and mitigation of the effects of climate change are central to planning questions relating to housing and building design, the location of farming, residential and employment lands, and the nature and location of transport corridors. By placing this issue within the objects of the Act, planners, developers, councils and community representatives will be encouraged to take these issues into account when considering key planning issues.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [12.52 a.m.]: The Government opposes Greens amendment No. 91. The inclusion of additional objects in the Environmental Planning and Assessment Act is unnecessary. The existing objects of the Act already include encouraging ecologically sustainable development, and promoting the social and economic welfare of the community and a better environment. For this reason the Government opposes the amendment.

Question—That Greens amendment No. 91 be agreed to—put and resolved in the negative.

Greens amendment No. 91 negatived.

Ms SYLVIA HALE [12.53 a.m.]: I move Greens amendment No. 92:

No. 92 Page 141, schedule 5.1. Insert after line 11:

[7] Section 148A

Insert after section 148:

148A Donations by property developers and others

(1) A property developer who:

(a) makes, or offers to make, a donation to a politician, political party or party official, or

(b) solicits another person to make, or to offer to make, a donation to a politician, political party or party official on the property developer's behalf, is guilty of an offence.

(2) A politician, political party or party official who accepts or solicits a donation from a property developer is guilty of an offence.

(3) A person (whether or not a property developer) who makes a development application or submits an expression of interest to the Minister, or to a consent authority, within 1 year after making a donation to a politician, political party or party official, is guilty of an offence.

(4) A person (whether or not a property developer) who makes a donation to a politician, political party or party official within 1 year after a development application made by the person is determined under this Act, is guilty of an offence.

(5) For the purposes of this section, a ***property developer*** means a person or body that, at the time of making, offering, soliciting another person to make or being solicited to make a donation:

(a) is involved in property development, or

(b) is associated with property development (because the person or body provides financial, legal, construction or other related services to a person or body involved in property development), or

(c) has made a development application to the Minister or to a consent authority that has not been determined, but does not include a home renovator.

(6) This section applies irrespective of the purpose of the donation.

(7) In this section:

development application includes an application for approval of a project under Part 3A, but does not include an application made by a home renovator in connection with renovations or extensions to his or her place of residence.

donation includes money, property or any other benefit.

expression of interest means an expression of interest in carrying out a development.

home renovator means an individual whose sole involvement with property development is the undertaking of renovations or extensions to the individual's place of residence.

party official means a person who holds an office in a political party.

political party means a party that is officially registered for the purposes of elections to a Parliament or a local council.

politician means:

(a) a member of Parliament, or

(b) an elected member of a local council, or

(c) a candidate for election to Parliament or a local council.

Greens amendment No. 92 seeks to restore a measure of community and council control over decision making, increase accountability, and remove conflicts of interest by banning donations from property developers to political parties, officials and candidates. The bill makes it an offence for a political party or candidate to accept a donation from a property developer. It also makes it an offence for anyone involved in property development to make a donation to a political party or candidate. Further, it makes it an offence for any person who has made a donation to a political party or candidate to put forward a development application, tender, or expression of interest in development work for 12 months after making the donation, and it will be an offence to make a donation for 12 months after a development application process is complete.

The purpose of these amendments is, in one simple step, to remove the vast majority of conflicts of interest that have brought the State's planning system into such disrepute. The New South Wales Greens have been campaigning on the issue of political donations by the property development industry and the corrupting effect of these donations on the State's planning system for more than a decade. Since before being elected to this Parliament I have argued that developer donations take away the rights of the community, by elevating the interests of the donor over the interests of the community, thereby reducing community and council control over development decisions. There is no doubt that developer donations have this effect. Independent Commission Against Corruption inquiries into the Tweed, Liverpool, Rockdale, Strathfield and, most recently, Wollongong councils have provided incontrovertible evidence that political donations have affected decisions relating to developments.

In 2003 my colleague Ms Lee Rhiannon introduced in this House a similar private member's bill to ban developer donations. On that occasion members from Labor and the Coalition parties voted against the bill. The Greens, the Christian Democratic Party members, and the rest of the then crossbench voted in favour of it. I ask members: Five years later, are the citizens of New South Wales better or worse off as a result of the 2003 bill

being defeated? It is absolutely clear that there is enormous cynicism about the impact of political donations. I believe this was summarised by Malcolm Knox in the *Sydney Morning Herald* of 1 March 2008 as follows:

> The link between money and potential for corrupt conduct is apparent in the tabulation of donations to councils. Of the top 15 council recipients of donations at the 2004 council elections, Wollongong (fourth), Tweed (sixth), Rockdale (ninth), Canada Bay (12th), and Strathfield (13th) have been either sacked or investigated over allegations of corrupt conduct. Lake Macquarie (fifth) and Newcastle (seventh) have either investigated allegations of corruption against councillors internally or faced down allegations in meetings.

I will not continue at any length, although one obviously could. I believe it is perfectly clear that donations are the undoing of any system that purports to plan appropriately and properly for this State.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [12.56 a.m.]: The Government opposes Greens amendment No. 92. The Premier has made clear commitments to introducing holistic reforms to campaign donation laws in New South Wales. These amendments were previously proposed by the Greens in their Environmental Planning and Assessment Amendment (Restoration of Community Participation) Bill 2008, which has been referred to an inquiry. Greens amendment No. 92 proposes changes that would make it an offence for a property developer to make or offer a donation to an elected official or political party. The definition of "property developer" is very wide and would include mums and dads who want to renovate their holiday home. It also extends to people associated with property developers, including lawyers, accountants, contractors and financial firms who do work for so-called property developers.

The Greens amendment would create an oppressive system that would make it a criminal offence for any person, including a home renovator, to lodge a development application within one year of making a donation, or for any person to make a donation within one year of a development application being determined. The Greens' proposed rule does not distinguish between the size of donations. So, potentially, a person who makes a $10 donation and who also has been involved in lodging a development application within 12 months could be subject to a $1.1 million fine under the Act. The Government has made a firm commitment to introducing donations reforms which will provide strong controls. The Government opposes these unworkable and inequitable amendments moved by the Greens.

Question—That Greens amendment No. 92 be agreed to—put and resolved in the negative.

Greens amendment No. 92 negatived.

Mr IAN COHEN [12.58 a.m.], by leave: I move Greens amendments Nos 93 and 94 in globo:

No. 93 Page 151, schedule 5.2, lines 14–28. Omit all words on those lines.

No. 94 Page 152, schedule 5.3, lines 8–19. Omit all words on those lines.

Greens amendment No. 93 seeks to remove the provision in the bill that cancels the need for the relevant Minister administering the Coastal Protection Act 1979 to concur with any proposed development under the Environmental Planning and Assessment Act. This is an unnecessary decentralisation of power to the planning Minister, who may not have the capacity or environmental credentials to properly evaluate coastal zone impacts and would benefit from the expertise of the officers of the environment Minister. Greens amendment No. 94 seeks to remove the provision in the bill that cancels the need for the relevant Minister administering the Coastal Protection Regulation 2004. Again, it is an unnecessary centralisation of ministerial power. I commend Greens amendments Nos 93 and 94 to the Committee.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [1.00 a.m.]: The Government opposes Greens amendments Nos 93 and 94 because it has already indicated the importance of removing statutory concurrence roles where they are no longer required. The bill removes the concurrence role where development will have a minimal environmental impact, where the development has been assessed under part 4 of the Act or where the development is carried out in accordance with a coastal zone management plan under the Coastal Protection Act. The Government believes the provisions in the bill will ensure the continued protection of the coastal environment of the State for the benefit of both present and future generations.

It is necessary to set the record straight regarding comments Ms Sylvia Hale made earlier. She referred to an article by Elizabeth Farrelly in which she noted that Julie Bindon, the head of the Planning Institute of

Australia and highly respected planning professional, worked for Stockland on Sandon Point. Ms Hale failed to point out that Julie Bindon clarified that this comment was untrue, unfair and misleading in her letter to the editor on Saturday, 14 June. The letter states:

> I write in response to Elizabeth Farrelly's opinion piece on reforms to the NSW planning legislation.
>
> The Planning Institute of Australia has been critical of the system. Its members have rated NSW as the worst performing state in two national surveys.
>
> The planning system is complex, often inefficient and too costly for users. At the moment it is straining under the weight of assessing large numbers of mostly minor applications. It poorly serves the interests of the community and the planners working for it. The institute is committed to good planning and advocates change to achieve that end.
>
> As a result of submissions from the institute and other stakeholders (including the Local Government and Shires Associations, which engaged the lawyer and urban planner John Mant to prepare its submissions), the Planning Minister, Frank Sartor, has committed to a number of changes to the original proposals.
>
> Significantly, this includes the establishment of an Implementation Advisory Group comprising key stakeholders. While the reforms do not completely satisfy the institute, they do offer some advantages and considerably more promise than the current system.
>
> Finally, I feel obliged to correct a couple of points. The Herald is correct in saying that I wear more than one hat. I am a partner at the planning firm JBA, and volunteer time to the planning institute.
>
> In my role as NSW president of the institute I am the spokeswoman for more than 1200 planners in NSW, representing local government, State Government and the private sector. I represent the views of our members and not myself, my company or its clients.
>
> For the record, JBA has never been engaged by Stockland on its Sandon Point project. The company does act for the Anglican Retirement Villages on the adjoining land. I have never done any work at Sandon Point.
>
> Julie Bindon NSW President, Planning Institute of Australia

The comments made by Ms Hale are an atrocious abuse of her parliamentary privilege. She blatantly smeared a highly professional and well-respected planning professional's reputation. She should get her facts straight and apologise on the record. Similar sentiments are expressed about Deborah Dearing, who serves as President of the New South Wales chapter of the Royal Australian Institute of Architects and who is also the head of Strategic Urban Planning at Stockland. It is simply offensive for Ms Hale to suggest that Dr Dearing cannot separate her roles and serve the interests of the peak professional body that she leads.

Ms SYLVIA HALE [1.06 a.m.]: I believe it is the Minister who should set the record straight. At no stage did I say that Julie Bindon worked for Stockland. I did suggest that she undertook work for a major developer. I spoke specifically about Dr Deborah Dearing and Sandon Point. I referred to the meeting between her and the Minister for Planning and the deal that Minister Sartor forced on Wollongong City Council, which cost the residents of Wollongong dearly. However, it did save Stockland a substantial amount of money. I did identify Dr Dearing as the manager of strategic planning at Stockland. At no stage—and I invite the Minister to check the record tomorrow in *Hansard*—did I say that Julie Bindon worked for Stockland.

Question—That Greens amendments Nos 93 and 94 be agreed to—put and resolved in the negative.

Greens amendments Nos 93 and 94 negatived.

Schedules 1 to 5 agreed to.

Title agreed to.

The CHAIR (The Hon. Amanda Fazio): Order! The Committee will deal next with the Building Professionals Amendment Bill 2008. I propose to deal with the bill as a whole.

Question—That the bill be adopted as read—put and resolved in the affirmative.

The CHAIR (The Hon. Amanda Fazio): Order! The Committee will deal next with the Strata Management Legislation Amendment Bill 2008.

Clauses 1 to 5 agreed to.

Ms SYLVIA HALE [10.45 p.m.], by leave: I move Greens amendments Nos 1 and 2 in globo:

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

[1] Section 27 How is a strata managing agent appointed?

Insert after section 27 (1):

(1A) Unless it expires or otherwise ceases to have effect earlier, the instrument of appointment of a strata managing agent (including any additional term under any option to renew it) expires:

(a) in the case of an instrument (other than an instrument referred to in paragraph (b)) in respect of a strata scheme that was established after the commencement of this subsection—2 years after the establishment of that scheme, or

(b) in the case of an instrument that was executed by the original owner—at the conclusion of the first annual general meeting of the owners corporation, or

(c) in any other case—one year after the instrument commenced to authorise the strata managing agent to act under it.

(1B) Subsection (1A) does not prevent an owners corporation from taking any of the following actions if authorised to take that action by a resolution at a general meeting of the owners corporation:

(a) renewing an instrument of appointment of a strata managing agent that is due to expire by operation of subsection (1A),

(b) executing a new instrument of appointment in respect of the same person who was the strata managing agent under an instrument that has expired by the operation of subsection (1A).

However, any such renewed instrument or new instrument expires in accordance with subsection (1A).

No. 2 Page 3, schedule 1. Insert before line 4:

[2] Section 27 How is a strata managing agent appointed?

Omit section 27 (3). Insert instead:

(3) The functions of a strata managing agent of a strata scheme may be transferred to another person by the strata managing agent, but only with the approval of the owners corporation for the strata scheme. A person to whom those functions are transferred is taken to be appointed as a strata managing agent of the strata scheme concerned under the same instrument of appointment that appointed the strata managing agent from whom those functions are transferred.

(4) The approval of an owners corporation to the transfer of functions of a strata managing agent may not be given more than 3 months before the proposed transfer of functions is to take effect.

(5) A term of a contract or an agreement is of no effect to the extent that it purports to remove or limit the power of an owners corporation to approve of the person to whom the functions of strata managing agent are transferred.

Amendment No. 1 inserts new section 27 (1A), which is designed to ensure that strata managing agents' contracts are for a maximum of two years for a new strata scheme or one year thereafter. Notwithstanding this, a decision of an annual general meeting can renew a contract. At present, building management contracts are for a maximum of 10 years with a 10-year option to renew. Often these contracts are signed within the first few months of a building's life when the majority of units may not have been sold and a huge proportion of new owners have no idea what they should and could be doing. Yet, they and all subsequent owners are tied to 10-year contracts that are rarely good for the building or good value for the owners.

There is absolutely no justification for 10-year contracts for either building managers or strata managers. In fact, it is so counterproductive that it beggars belief that it is allowed at all. This amendment, if passed, will mean that all contracts are for a maximum of two years for a new strata scheme, and then one year—as is the case in the United States of America—with an option to renew. Good managers will always be rewarded with new contracts. Given that the object of this bill is to improve the situation for owners and strata schemes, the Greens amendments will add to the positive aspects of the bill in respect of owners' control.

Greens amendment No. 2 deals with the transfer of a strata management contract. Previous changes to the strata laws were based on the sale of strata management contracts without owners corporation approval. Strata managers have exploited a loophole whereby each contract carries a clause giving prior permission for such a sale to take place at some point in the future. Greens amendment No. 2 proposes that contracts may not

be sold to other parties without owners corporation approval at the time of sale or, as we put it in this amendment, not more than three months before the proposed sale. Any clause in a contract that pre-empts approval such as those that exist in the current Institute of Strata Titles Managers basic contract would be invalid.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [1.10 a.m.]: The Government opposes Greens amendments Nos 1 and 2. Honourable members have already heard that the changes proposed in the Strata Management Legislation Amendment Bill 2008 have been subject to a thorough and transparent review process involving extensive consultation. Of the many submissions received from interested parties, only one made any reference to possible limits to the duration of strata agents' agreements, or to further limiting the maximum term of caretaker agreements.

Under the existing provisions of the Strata Schemes Management Act owners corporations can appoint strata management agents for whatever period they consider appropriate. Furthermore, the owners corporations can terminate any such appointments subject to whatever contractual obligations exist. Owners corporations already have a significant level of control and flexibility regarding the terms of agreements for strata managing agents. The amendments to the bill proposed by the Greens to introduce restrictions on agency agreements serve no clear purpose and are totally unnecessary.

The proposed changes would limit the autonomy of owners corporations and reduce the flexibility of existing provisions for the appointment of strata managers. The changes also could add an additional red tape burden that would be a distinct disadvantage to the operation of owners corporations. Under the current legislation there is nothing to prevent owners corporations from choosing to limit strata managing agents' contracts to three years, two years or even one year's duration. Furthermore, I understand that the standard contract term chosen by owners corporations for strata managing agencies generally is three years.

My colleague the member for Canterbury and Minister for Fair Trading advised me that this is not an issue about which the Office of Fair Trading receives complaints. It is not the practice for industry to enter into long-term strata agency agreements. The terms of strata agency agreements are already totally regulated under the Property, Stock and Business Agents Act 2002. Legislative requirements apply to agreements for all categories of property agent. There is no justification for singling out strata agents for different treatment, especially given the lack of consumer complaints.

The amendments are also inconsistent with the requirements of the Property, Stock and Business Agents Act. With conflicting requirements this can only make compliance more difficult for industry and cause confusion for consumers. The amendments relating to the transfer of an agent's appointment to another agent are of particular concern, as they would place in doubt the legal right of agents to be paid for the work and be reimbursed for expenses that they incurred on behalf of their owners. I add that the issue has not been raised by the current review of the Property, Stock and Business Agents Act. Only one of the more than 400 submissions to the planning reform discussion paper suggested limits on agency agreements.

Question—That Greens amendments Nos 1 and 2 be agreed to—put and resolved in the negative.

Greens amendments Nos 1 and 2 negatived.

Ms SYLVIA HALE [1.12 a.m.]: I move Greens amendment No. 3:

No. 3 Page 3, schedule 1. Insert after line 10:

[2] Section 40B How is a caretaker appointed?

Omit section 40B (2). Insert instead:

(2) Unless it expires or otherwise ceases to have effect earlier, a caretaker agreement (including any additional term under any option to renew it) expires:

(a) in the case of an agreement (other than an agreement referred to in paragraph (b)) in respect of a strata scheme that was established after the substitution of this subsection by the *Strata Management Legislation Amendment Act 2008*—2 years after the establishment of that scheme, or

(b) in the case of an agreement that was executed by the original owner—at the conclusion of the first annual general meeting of the owners corporation, or

(c) in any other case—one year after the agreement commenced to authorise the caretaker to act under it.

(2A) Subsection (2) does not prevent an owners corporation from taking any of the following actions if authorised to take that action by a resolution at a general meeting of the owners corporation:

(a) renewing a caretaker agreement that is due to expire by operation of subsection (2),

(b) entering into a new caretaker agreement with the same person who was a party to a caretaker agreement that has expired by the operation of subsection (2).

However, any such renewed caretaker agreement or new caretaker agreement expires in accordance with subsection (2).

Greens amendment No. 3 replaces current section 40B (2) to ensure that, as in Greens amendment No. 1, the same provisions apply to the longevity of caretaker agreements as apply to strata management agreements. It specifies that caretaker contracts will be for a maximum of two years for a new strata scheme and one year thereafter. Notwithstanding that, an annual general meeting can renew a contract. Again, there is no reason for caretakers to lock agents into 10-year contracts.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [1.14 a.m.]: The current Act limits caretaker agreements to a maximum of 10 years duration. This limit was introduced in 2003 after an extensive review and consultation. It reflects a carefully negotiated and balanced position that takes the needs of both parties to the contract into account. The 2003 amendments also gave owners the right to apply to the Consumer, Trader and Tenancy Tribunal about unsatisfactory performance, unfair charges or harsh, oppressive or unconscionable or unreasonable contract terms.

The tribunal can terminate a contract, order payment of compensation, or vary or declare void any terms of the contract. Owners are already well protected by the current legislation. Any further amendment should be made only following proper review and consultation. Again, only one of the 400 submissions to the discussion paper suggested limits on caretaker agreements. The amendment is simply not justified. The amendment also will impose significant additional costs on owners corporations by limiting them to approving the transfer of a caretaker agreement no more than three months before transfer is to occur.

Instead of being able to consider the matter at an annual general meeting if it is more than three months before the transfer is to occur, the owners will have to call for an extraordinary general meeting closer to the date of the transfer. Calling a general meeting can cost many thousands of dollars, especially in larger schemes. The amendment seeks to reduce owners autonomy and to oppose unnecessary costs. The amendment is opposed.

Question—That Greens amendment No. 3 be agreed to—put and resolved in the negative.

Greens amendment No. 3 negatived.

Ms SYLVIA HALE [1.15 a.m.]: I move Greens amendment No. 4:

No. 4 Page 3, schedule 1. Insert before line 11:

[2] Section 40B How is a caretaker appointed?

Insert after section 40B (4):

(5) The approval of an owners corporation to the transfer of functions of a caretaker may not be given more than 3 months before the proposed transfer of functions is to take effect.

(6) A term of a contract or an agreement is of no effect to the extent that it purports to remove or limit the power of an owners corporation to approve of the person to whom the functions of caretaker are transferred.

To some extent Greens amendment No. 4 mirrors amendment No. 2 and deals with the transfer of a contract, in this case, to a caretaker's agreement. The Greens amendment proposes that caretaker contracts may not be sold to other parties without owners corporation approval at the time of sale or, as we said earlier, not more than three months before the proposed sale. Any clause in a contract that pre-empts approval would be invalid.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [1.16 a.m.]: The Government opposes Greens amendment No. 4 for the reasons already outlined.

Question—That Greens amendment No. 4 be agreed to—put and resolved in the negative.

Greens amendment No. 4 negatived.

Ms SYLVIA HALE [1.17 a.m.]: I move Greens amendment No. 5:

No. 5 Page 3, schedule 1 [3]. Insert after line 27:

(7AD) An instrument appointing a proxy to exercise an owner's voting rights in respect of a lot is ineffective if it is executed within the period of one month after the title to the lot is transferred to the owner.

Basically, amendment No. 5 is a cooling off clause so that a new owner may not give away his or her vote to anyone else within the first month of becoming an owner in a strata scheme. At the height of the apartment sales boom, potential customers were being railroaded into signing contracts to buy off the plan, often with as little as 20 minutes allowed to peruse the contracts. Although there is little likelihood of that happening again at present, the market could go crazy at any time in the future and there is no place for these hard-sell tactics when we are dealing with people's homes and life savings.

The amendment therefore proposes that there be a mandatory one-month cooling off period after the title of the lot is transferred to a new owner, meaning that potential purchasers or new owners cannot sign away this right even if they wish to do so. After a month they can fill in the necessary paperwork on reflection if they wish to give their proxy vote to someone else. Notwithstanding the Government's changes to proxy voting, the cooling off period strengthens the Government's proposed amendments just in case a developer should put pressure on a new owner, but not necessarily by using a contract to do so.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [1.17 a.m.]: This amendment proposes to prevent a person who buys a unit in a strata scheme from being able to appoint someone as a proxy to represent him or her in owners corporation meetings for a period of one month after the purchase. This is an outrageous attempt to curtail new strata owners rights and their ability to participate in the management of their scheme if they are not able to attend meetings in person.

The Greens' reason for this anti-consumer provision is unfathomable. Many owners are investors who do not live near their strata scheme. The only way that they can participate in the management of their scheme is by appointing a proxy to vote on their behalf. Currently, the Act contains significant protection for owners in relation to proxies. It limits their length, allows an owner to cancel a proxy appointment at any time, and the owner can override a proxy by attending a meeting and voting in person. The bill further protects owners to prevent the misuse of proxies. The Greens amendment is simply not needed.

Question—That Greens amendment No. 5 be agreed to—put and resolved in the negative.

Greens amendment No. 5 negatived.

Ms SYLVIA HALE [1.19 a.m.], by leave: I move Greens amendments Nos 6 to 10 in globo:

No. 6 Page 5, schedule 1 [7]. Insert after line 24:

25 Limitations on appointments of existing strata managing agents

(1) Section 27 (1A) (as inserted by the amending Act) extends to an instrument of appointment of a strata managing agent executed before the commencement of that subsection and still in force at that commencement.

(2) In applying section 27 (1A) to instruments of appointment referred to in subclause (1), a reference in section 27 (1A) (c) to one year after the agreement commenced to authorise the strata managing agent to act under it is to be read as a reference to one year after the insertion of section 27 (1A) by the amending Act.

No. 7 Page 5, schedule 1 [7]. Insert before line 25:

25 Transfer of functions under existing strata managing agent agreements

Section 27 (5) (as inserted by the amending Act) extends to a contract or an agreement entered into before the commencement of that subsection and in force at that commencement, but does not affect any transfer of functions of a strata managing agent that took place pursuant to that contract or agreement before that commencement.

No. 8 Page 5, schedule 1 [7], proposed clause 25. Insert after line 25:

(1) Clause 11 (7AD) of schedule 2 (as inserted by the amending Act) does not apply to any proxy given before the commencement of that subclause or to the renewal or extension of the term of any such proxy. This subclause has effect despite subclauses (2) and (3).

No. 9 Page 5, schedule 1 [7]. Insert after line 34:

26 Limitations on existing caretaker agreements

(1) Section 40B (2) extends to a caretaker agreement entered into before the substitution and still in force at the substitution.

(2) In applying section 40B (2) as substituted to caretaker agreements referred to in subclause (1), a reference in section 40B (2) (c) to one year after the agreement commenced to authorise the caretaker to act under it is to be read as a reference to 1 year after the substitution.

(3) In this clause, ***substitution*** means the substitution of section 40B (2) by the amending Act.

No. 10 Page 6, schedule 1 [7]. Insert before line 1:

26 Transfer of functions under existing caretaker agreements

Section 40B (6) (as inserted by the amending Act) extends to a contract or an agreement entered into before the commencement of that subsection and in force at that commencement, but does not affect any transfer of functions of a caretaker that took place pursuant to that contract or agreement before that commencement.

Amendment No. 6 creates retrospectivity to the appointment of strata managements where they were appointed for a specified term prior to the enactment of this provision. So, even if a strata manager had a 10-year contract, the contract would come up for review one year after the insertion of proposed section 27 (1A). Amendment No. 7 provides that "Section 27 (5) (as inserted by the amending Act) extends to a contract or an agreement entered into before the commencement of that subsection and in force at that commencement, but does not affect any transfer of functions of a strata managing agent that took place pursuant to that contract or agreement before that commencement." So, it will apply to transfers in the future, not in the past.

Amendment No. 8 relates to a cooling off period for the giving of proxies. The arrangement proposed by the Greens for a cooling-off period "does not apply to any proxy given before the commencement of that subclause or to the renewal or extension of the term of any such proxy. This subclause has effect despite subclauses (2) and (3)." So the cooling-off period would apply to new strata scheme owners only. In a similar manner to amendment No. 6, amendment No. 9 provides that "Section 40B (2) extends to a caretaker agreement entered into before the substitution and still in force at the substitution." So, even if a caretaker has a 10-year contract, that contract will be up for review one year after commencement.

Finally, in a similar manner to amendment No. 7, amendment No. 10 provides that section 40B (6), which deals with the transfer of functions of a caretaker, "extends to a contract or an agreement entered into before the commencement of that subsection and in force at that commencement, but does not affect any transfer of functions of a caretaker that took place pursuant to that contract or agreement before that commencement." So, it will apply to future transfers, not to the past.

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [1.21 a.m.]: Greens amendments Nos 6, 7, 8, 9 and 10 are all transitional provisions related to previous amendments that have been defeated. They are opposed for the same reasons I advanced in the consideration of earlier amendments.

Question—That Greens amendments Nos 6 to 10 be agreed to—put and resolved in the negative.

Greens amendments Nos 6 to 10 negatived.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

Environmental Planning and Assessment Amendment Bill reported from Committee with amendments, and cognate bills reported without amendment.

Adoption of Report

Motion by the Hon. Tony Kelly agreed to:

That the report be adopted.

Report adopted.

Third Reading

The Hon. TONY KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [1.23 a.m.]: I move:

That these bills be now read a third time.

Dr JOHN KAYE: I ask, in accordance with Standing Order 139 (2), that questions on the third reading of the bills be put separately.

Question—That the Environmental Planning and Assessment Amendment Bill be now read a third time—put.

The House divided.

Ayes, 18

Mr Brown	Mr Kelly	Mr West
Mr Catanzariti	Reverend Nile	Ms Westwood
Mr Costa	Ms Robertson	
Mr Della Bosca	Mr Roozendaal	
Ms Fazio	Mr Smith	*Tellers,*
Ms Griffin	Mr Tsang	Mr Donnelly
Mr Hatzistergos	Ms Voltz	Mr Veitch

Noes, 17

Mr Ajaka	Ms Hale	Ms Parker
Mr Clarke	Dr Kaye	Mr Pearce
Mr Cohen	Mr Khan	Ms Rhiannon
Ms Ficarra	Mr Lynn	*Tellers,*
Miss Gardiner	Mr Mason-Cox	Mr Harwin
Mr Gay	Reverend Dr Moyes	Mrs Pavey

Pairs

Mr Macdonald	Mr Colless
Mr Obeid	Ms Cusack
Ms Sharpe	Mr Gallacher

Question resolved in the affirmative.

Motion agreed to.

Question—That the Building Professionals Amendment Bill 2008 be now read a third time—put.

Division called for and Standing Order 114 (4) applied.

The House divided.

Ayes, 22

Mr Brown	Mr Hatzistergos	Mr Tsang
Mr Catanzariti	Dr Kaye	Ms Voltz
Mr Cohen	Mr Kelly	Mr West
Mr Costa	Reverend Nile	Ms Westwood
Mr Della Bosca	Ms Rhiannon	
Ms Fazio	Ms Robertson	*Tellers,*
Ms Griffin	Mr Roozendaal	Mr Donnelly
Ms Hale	Mr Smith	Mr Veitch

Noes, 13

Mr Ajaka	Mr Khan	Mr Pearce
Mr Clarke	Mr Lynn	
Ms Ficarra	Mr Mason-Cox	*Tellers,*
Miss Gardiner	Reverend Dr Moyes	Mr Harwin
Mr Gay	Ms Parker	Mrs Pavey

Pairs

Mr Macdonald	Mr Colless
Mr Obeid	Ms Cusack
Ms Sharpe	Mr Gallacher

Question resolved in the affirmative.

Motion agreed to.

Question—That the Strata Management Legislation Amendment Bill 2008 be now read a third time—put.

Division called for and Standing Order 114 (4) applied.

The House divided.

Ayes, 22

Mr Brown	Mr Hatzistergos	Mr Tsang
Mr Catanzariti	Dr Kaye	Ms Voltz
Mr Cohen	Mr Kelly	Mr West
Mr Costa	Reverend Nile	Ms Westwood
Mr Della Bosca	Ms Rhiannon	
Ms Fazio	Ms Robertson	*Tellers,*
Ms Griffin	Mr Roozendaal	Mr Donnelly
Ms Hale	Mr Smith	Mr Veitch

Noes, 13

Mr Ajaka	Mr Khan	Mr Pearce
Mr Clarke	Mr Lynn	
Ms Ficarra	Mr Mason-Cox	*Tellers,*
Miss Gardiner	Reverend Dr Moyes	Mr Harwin
Mr Gay	Ms Parker	Mrs Pavey

Pairs

Mr Macdonald	Mr Colless
Mr Obeid	Ms Cusack
Ms Sharpe	Mr Gallacher

Question resolved in the affirmative.

Motion agreed to.

Bills read a third time.

The Environmental Planning and Assessment Amendment Bill 2008 was returned to the Legislative Assembly with amendments, and the cognate bills were returned to the Legislative Assembly without amendment.

WORKERS COMPENSATION LEGISLATION AMENDMENT (FINANCIAL PROVISIONS) BILL 2008

Bill received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. Tony Kelly, on behalf of the Hon. Eric Roozendaal.

Motion by the Hon. Tony Kelly agreed to:

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

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

ADJOURNMENT

The Hon. Tony KELLY (Minister for Lands, Minister for Rural Affairs, Minister for Regional Development, Acting Minister for the Central Coast, and Vice-President of the Executive Council) [1.42 a.m.]: I move:

That this House do now adjourn.

STATE PLAN

The Hon. MELINDA PAVEY [1.42 a.m.]: Premier Morris Iemma's State Plan is increasingly looking more like a State sham. Premier Iemma mounted the success of his leadership on this plan for a plan, heralding it as "A New Direction for New South Wales about shaping the State's future", yet to date, nearly two years on, we are left wondering whether it has achieved anything at all. In an attempt to find out more about the State Plan and the so called "performance indicators" and "measuring milestones" the Opposition lodged a number of freedom of information applications to all of the primary departments.

The Department of Aboriginal Affairs uncovered some extremely interesting information that details Cabinet in-confidence documents revealing how the New South Wales Labor Government has denied publication of data in the State Plan progress update reporting on the high level of gastroenteritis among indigenous Australians in New South Wales. In the update the Government was required to report on the progress of Aboriginal environmental health measures, including acute respiratory infections, skin infections and gastroenteritis levels. However, the Government completely excluded the gastroenteritis data from the State Plan progress report—publicly available information.

The Cabinet in-confidence documents revealed that the Health Department stated in a draft report that over the last 12 years hospital admission rates for gastroenteritis have experienced an overall increase of 218 per cent for Aboriginal children—92 per cent more than that experienced among non-Aboriginal children. This information, however, was completely doctored out of the public report. Additionally, the Government completely failed to report on the progress of the measures of the number of Aboriginal communities with clean water and functioning sewerage systems, the proportion of Aboriginal community housing providers meeting standards, and the proportion of householders with overcrowding in Aboriginal Housing Office dwellings. These indicators were created so that the progress of the State Plan can be monitored and made transparent. However, the Government has also doctored this data out of the report—information made available to the public.

Furthermore, minutes from a Cabinet meeting in March 2008 also reveal that there is currently a fight for funding between the Department of Aboriginal Affairs, the Department of Health and the Department of

Water and Energy, the latter two of which refuse to provide further funding for the execution of the State Plan's targets. Essentially, that has led to the Government's failure to successfully report on their progress. The Cabinet minutes quote the Director General of New South Wales Health saying, in relation to the State Plan reaching its F1 target to Strengthen Aboriginal Communities, that "it is neither possible nor appropriate to reprioritise Health funds to support water and sewerage infrastructure".

The minutes also reveal that Mr Rees, the Minister for Emergency Services, and Minister for Water, said that his department "should not contribute the amount requested for the water and sewerage project". This is evidence of the simple fact that more than a year after the "Breaking the Silence" report was published government departments still are not prepared to support indigenous affairs. The Department of Aboriginal Affairs clearly is experiencing serious difficulties in securing funding for the implementation of the State Plan's targets. That is further supported by the fact that the minutes also state:

> Various other CEOs expressed a preference to provide in-kind assistance rather than funding. The DG of the DAA subsequently wrote to all CEOs asking for confirmation of their willingness to commit funding. To date only three agencies (Health, DET and DPI) have replied.

One can assume only that there is a severe shortage of funding for the implementation of State Plan targets. The question must be asked: Where did the $30 million that was allocated by the Government to enforce the New South Wales Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities go? Clearly there exists a gap between what is actually happening within the Government ranks and what the Labor politicians are telling the people of New South Wales. Premier Iemma's rhetoric regarding the State Plan proclaims:

> [It] is the foundation document for my commitment to delivering better services. It is the first step in changing the culture of government in New South Wales.

That is clearly far from the truth. From additional freedom of information requests it is clear that departments simply are trying to cover up real performance indicator results to avoid scrutiny and transparency—an approach that has become standard procedure for the Government. Freedom of information requests have been lodged with a number of departments as an attempt to retrieve the State Plan progress reporting updates with a list of each of the headlines and supporting measures for the relevant priorities of the State Plan.

While we await a final response from a number of departments, the Government has requested thousands of dollars to be paid for information, which disregards notions of accountability and transparency. Some departmental requests have resulted in bills of between $2,000 and $3,000—amounts that are manifestly excessive and founded upon undemocratic principles. It is utterly reprehensible that democratic processes are being dodged and viewed as a threat. [*Time expired.*]

PREMIER'S CHINA TRADE MISSION

The Hon. HENRY TSANG (Parliamentary Secretary) [1.47 a.m.]: I inform the House of the success of the Premier's mission to China last month. From 16 to 23 May the Premier visited the cities of Hong Kong, Shenzhen, Guangzhou, Shanghai, Changchun and Beijing. The Premier was accompanied by the Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development, Ian Macdonald, a high-level delegation from the business, tourism and education sectors, and me. The delegation included representatives of 34 New South Wales businesses, nine universities and major business associations, such as the New South Wales Business Chamber and the Australia China Business Council.

In Hong Kong the Premier inspected and rode the Metro from Admiralty Station to Central Station. The Premier promoted New South Wales tourism and viewed the billboard provided by Asiaray Advertising Media with the message, "Sydney wishes great success for the Beijing 2008 Olympic Games." The Premier also attended a Sydney-Hong Kong lunch to promote business, trade and investment opportunities. The Premier met the acting chief executive of Hong Kong Special Administrative Region, Mr Henry Tang, and they discussed cooperation and investment opportunities, including Sydney's North West Metro.

In Shenzhen the Premier met with the Mayor of Shenzhen, Mr Xu Zongheng. The Premier witnessed the announcement of Huawei's major research and development partnership with Optus and supported the establishment of a mobile innovation centre in Sydney. In Guangzhou the Premier met with the Governor of Guangdong, Mr Huang Huahua, and reaffirmed the strong sister-state relationship between the State of New South Wales and Guangdong Province. The delegation built business and university links at the Twenty-second Joint Economic Meeting, which is a biennial event. In 2009, New South Wales will host the next Joint

Economic Meeting a year early to mark the thirtieth anniversary of the sister-state relationship established in 1979. The Premier also witnessed the signing of the memorandum of understanding on Asian Games Cooperation with the Vice-Mayor of Guangzhou, Mr Xu Rui Sheng. The memorandum of understanding enables New South Wales companies to make major contributions to preparations for Guangzhou's 2010 Asian Games.

In Shanghai the Premier met with the Mayor of Shanghai, Mr Han Zheng, and signed a Friendship Cooperation Agreement that will strengthen ties between New South Wales and China's most populous city. This new agreement will provide the structure for building government-to-government relationships, bringing closer cooperation in trade and investment, tourism, education and research, and cultural activities. The Premier formally opened the Better City, Better Life sustainability seminar, which I chaired, and the Premier encouraged Chinese delegates to attend the 9th World Congress of Metropolis in Sydney in October 2008, when 1,000 delegates from 100 cities will converge to discuss challenges facing global cities.

The Premier also announced that TAFE New South Wales had signed a contract to develop training plans for the workforce of Shanghai World Expo 2010, in which TAFE New South Wales will write the blueprint for training the expo's workforce. The Premier witnessed the signing of agreements between New South Wales universities and leading Chinese institutions, including Shanghai Jiao Tong University, Fudan University and the East China University of Science and Technology, in areas including clean coal technology and the establishment of two Confucius Centres in Sydney for the study of Chinese language and culture. In Changchun the Premier met the Governor of Jilin Province, Mr Han Changfu. The Premier visited the Changchun rail plant where Sydney's $3.6 billion next generation trains will be partially built, before the final build, assembly, testing and commissioning of the carriages at Downer EDI Rail's facility at Cardiff in Newcastle.

In Beijing the Premier met the Vice Premier of China, Mr Wang Qishan, and formally expressed his condolences over the devastating earthquake that hit Sichuan Province on 12 May 2008. The earthquake, which measured 8.0 on the Richter scale, has killed 69,000 people and injured 374,000 people. The Premier's sympathy was well received by the Vice Premier. New South Wales is providing $500,000 in aid to China for quake relief and on 26 June 2008 the Premier will host a charity dinner for the victims of that tragedy. The Premier met also Mr Wan Gang, the Minister for Science and Technology, confirming the Chinese Government's commitment to cooperation in not only Traditional Chinese Medicine, but extended to include cancer research and clean-coal technology.

In Beijing the Premier met Mayor Mr Guo Jinlong and witnessed the signing of a memorandum of understanding between Star City and Poly Agency in cultural exchange and tourism promotion. The Premier supported New South Wales tourism by launching the electronic light-emitting diode billboard in the Poly Plaza district provided by the Poly Artist Management Company. Beijing, Shanghai and Hong Kong hosted a total of six billboards promoting Sydney, which would not be possible without the sponsorship of the Australian Chinese business community members, such as Mr Vincent Lam. I congratulate the Premier on his successful mission to China and for letting the world know that New South Wales is open and ready for business.

PROGRAM OF APPLIANCES FOR DISABLED PEOPLE

Mr IAN COHEN [1.52 a.m.]: We have heard the weary adage that it is impossible for able-bodied people to imagine life where simple, everyday tasks transform into daily battles. With the Program of Appliances for Disabled People [PADP] budget allocation remaining stagnant under the Treasurer, the Hon. Michael Costa, it has never been so urgent that we start using our imagination, using it to empathise with the human rights implications of disability, and invigorate our commitment to prioritise social and physical mobility of people with disabilities. Recently the State and Territory disability Ministers signalled a desire to end years of disability management that is "hamstrung by buck-passing and a culture of reactive crisis management, to the detriment of those it is meant to support".

Unfortunately, New South Wales clients of the Program of Appliances for Disabled People—who fall under the Health portfolio of Reba Meagher—will not benefit from this new resolve for adequate disability funding. Without adequate and timely provision of wheelchairs and mobility aids, people with disabilities will continue to descend into a desperate cycle of social isolation. All we need is $13.5 million to quell the silent and debilitating atrocities perpetrated upon people with disabilities in New South Wales. That should be compared to the more than $100 million given by the Government to World Youth Day—$13.5 million is all that is needed to get those people out of their terrible state of neglect.

Neglect of the program has undeniably transformed into one of the State's most significant human rights issue. Systemic departmental and ministerial inertia of the $5 million to $6 million PADP waiting list backlog is leaving people with disabilities marooned, severed from social inclusion and acquiring further mobility-related health issues. Some of the cases include client A, who was virtually housebound for a whole year while he waited for PADP funding required to purchase a new wheelchair. The Program of Appliances for Disabled People provided only partial funding after a waiting period of one year. Client B's current wheelchair is falling apart, her feet do not fit on the footplates, and she slides out of her seating. The current chair is causing significant pain and has the potential to cause pressure sores. Her application for a new power-drive wheelchair and seating was submitted in July 2007, classified as urgent, and she is still awaiting her new wheelchair.

Client C is a 15-year-old girl with cerebral palsy and an undiagnosed movement disorder. She currently communicates by using a combination of facial expressions, gestures and a voice output communication device. Without a computer assistive technology communication device, client C finds it extremely difficult to communicate with teachers, friends and family. Client A's family, through the beneficence of the Variety organisation, secured a significant portion of the funds required to purchase a communication device and applied to the Program of Appliances for Disabled People to help with the difference required.

Five months later no word or response from the Program of Appliances for Disabled People was given. Client D required custom-made shoes to alleviate the considerable pain associated with the simple task of walking. In September 2007 client D made an application to the PADP for custom footwear, which was classified as urgent. Client D has still not received the funding, and has already endured nine months of extreme discomfort.

Client E requires urgent maintenance to his power-drive wheelchair and seating. A request was made in September 2007 for the maintenance works, and, due to the delay, client E has developed a pressure area that may develop into a more serious pressure sore. Client F faces a dire situation. An urgent application was made in January 2008 for a hoist and sling. Without a hoist and sling he is unable to receive a service home care to assist him with personal care and transfers. Client F has been prioritised by PADP as urgent but there is no funding available for even the urgent priorities. Last month the New South Wales upper House passed an unopposed motion that acknowledged the extreme hardship suffered by PADP clients. In light of this hardship, the upper House called on the Government to clear PADP waiting lists and to provide an immediate injection in funds.

In April the Treasurer said that he was happy to look at the program and discuss the matter with the health Minister. We can only assume that a zero funding increase means that the human rights of such a vulnerable sector of society are not a State policy and the Iemma mantra of getting things done does not apply to PADP clients. In the face of criticism, the department line draws attention to the administrative reform undertaken to make the program more efficient. While streamlining administrative processes is an integral part of delivering a more accessible service, without a funding injection to meet growing disability needs the system merely becomes more efficient in delivering apology letters to PADP clients. The Department of Health must draw to a close an era of PADP management riddled with habitual procrastination and inaction, and implement the funding recommendations of the PricewaterhouseCoopers' report immediately.

I have constantly had interaction with disabled people in our society. It is an indictment on this Government that it has failed to deliver the lousy $13.5 million that is required to draw these people out of a state of, in many cases, incredible pain and discomfort. The Treasurer has been told time and time again. I have raised the issue with him in the House and personally, but he still refuses to accept it. One must wonder whether he gets a degree of satisfaction out of ignoring such a vulnerable section of the community. [*Time expired.*]

ILLAWARRA YOUTH UNEMPLOYMENT

The Hon. GREG PEARCE [1.57 a.m.]: Last Wednesday, I attended a forum in Wollongong to receive the report on youth unemployment in the Illawarra, which was prepared by the Illawarra Regional Information Service [IRIS]. The report is comprehensive, and is in the form of an investigation into the problems facing young job seekers in the Illawarra region. The report flowed from a meeting organised in April 2007 by the then lord mayor of Illawarra, Alex Darling, because the Illawarra region has experienced high unemployment relative to most other regions throughout Australia for several decades. The former mayor brought together the region's key stakeholders and community members to take part in an unemployment forum to discuss the issue.

The report discloses that one key concern in relation to youth unemployment in the Illawarra is that in the 15 to 24-year age group there is a disproportionately high unemployment rate. According to the figures used, which were the Australian Bureau of Statistics figures for December 2007, while the overall unemployment rate in the Wollongong statistical region was 6.8 per cent, the youth unemployment rate was 21.6 per cent. The report states:

> This was primarily fuelled by the 15 to 19 years age group, with an unemployment rate of 28% … the Illawarra consistently has a young unemployment rate amongst the highest of any region in the state.

The report was done with the financial assistance of IRIS, the University of Wollongong and Blue Scope Steel. There were some quite telling outcomes contained in the report, which took the form of an investigation of these issues and relied a great deal on case studies. The key outcome was the connection between the lack of education and the failure to complete year 10 in particular, and the relationship that has to further problems in obtaining employment. Also highlighted were transport issues, such as a problem I had seen before in different circumstances of youngsters travelling on trains without tickets accumulating fines and those youngsters being ineligible for a driver's licence because of the way in which the State collects on those fines.

There was a great deal of discussion about housing difficulties, the impacts of drugs and alcohol, the difficulty of access to and the complexity of Centrelink. An example was given of a boy who lost his apprenticeship and it took six months to receive support because he did not possess a birth certificate. One of the unfortunate aspects of the meeting was Minister Campbell's response that the good news was that youth unemployment was at 22 per cent in the region! The Minister was wrong in his numbers, but if he thought that was good news I am afraid he is unfit to be the Minister for the Illawarra. The work done in this report by the community and stakeholders in the region is to be commended. Whilst the report did not include a series of recommendations, it did offer commentary on key directions for the future. I recommend that all members look at the key directions contained in the report. I suggest that the Government should make a greater contribution in the Illawarra.

HOUSE OF WELCOME

The Hon. CHRISTINE ROBERTSON [2.02 a.m.]: Last month it gave me great pleasure to host the House of Welcome cocktail party in the Strangers Dining Room of Parliament House, with the aim of raising some much-needed funds for this not-for-profit organisation. The House of Welcome is a project of the New South Wales Ecumenical Council and has operated since 2002, helping asylum seekers such as temporary protection visa [TPV] holders, bridging visa E holders and others who, under court orders, are essentially stateless and have no rights to claim government assistance. These people have required the support of organisations such as the House of Welcome for survival, as well as with their transition into the community. The work done by the House of Welcome, the volunteers committed to the work, and the refugees themselves are highly commendable.

Temporary protection visas have been a concern for many, so it is important for everybody to know about projects such as the House of Welcome, which ensure there has been assistance for these people in their times of often acute difficulty. It was welcome news from Senator Chris Evans, Minister for Immigration and Citizenship, that as part of the Rudd Labor Government's first budget temporary protection visas would be abolished. In a media release on 15 May 2008 the Minister said:

> Under the unjust regime set up by the previous government, unauthorised arrivals who were owed protection under Australia's international obligations were only eligible for TPVs in the first instance.
>
> It meant that refugees had no travel rights, reduced access to refugee settlement services such as English language programs, employment and income assistance, and could not be reunited with other family members.
>
> From early 2008-09, refugees on TPVs who are currently in Australia will receive a permanent visa, regardless of their mode of arrival. Provided they meet security and character requirements, they will be granted permanent residency in Australia and will not need to have their protection claims reassessed.

I am very proud to be part of the Australian Labor Party that has had the decency and humanity to make this alteration to our refugee processing. While the abolition of temporary protection visas is welcome news, asylum seekers and refugees will still need many support services. It is particularly important that support continues for new community members to be happy, connected and fairly treated. That is where the House of Welcome has a role now and into the future.

The House of Welcome currently works to provide seven key support programs, which are: finding emergency accommodation, a process involving registering with Centrelink and Medicare, opening a bank

account, procuring a tax file number, enrolling in English classes or finding employment; a shop-front resource/referral centre at Carramar, where refugees can drop in for a friendly chat or seek assistance with settlement difficulties; English classes, run by trained volunteer teachers; computer classes; employment assistance; medical and legal support services; and holidays that are organised for asylum seekers and refugees in conjunction with refugee support groups in rural areas.

Another project that the House of Welcome is working on is a Learn to Swim Program for young Afghan refugees. Many of these young people had never seen the sea before they came to Australia, and so learning to swim would be a vital part of integrating into and enjoying Australian community life. New South Wales Department of Sport and Recreation runs a comprehensive SwimSafe Program to teach children and adults to swim, and it works very well. The House of Welcome was extremely pleased to learn at the fundraising function that the Minister for Sport, Graham West, has provided a grant of $1,000 towards the Australian Afghan Hassanian Youth Association Incorporated swimming program.

The House of Welcome is a successful organisation because it is part of the Ecumenical Council, which commits its member churches to social justice and the assistance of refugees, among many things. I am so encouraged by the work that the Ecumenical Council can do to work positively as a cross-denominational group towards worthwhile projects, which is such a contrast to the times in this place when often vitriolic speeches try to establish how one religion is better than another. I refer to the quote from the Ecumenical Council website, which I find inspiring:

> As churches together we are committed to a journey of peace and reconciliation for ourselves and our world, rediscovering our unity in the love of Christ in order that God's love and healing may be known to all.

I thank everyone involved in the House of Welcome, staff, volunteers and refugees, and, in particular, Father Jim Carty who coordinates the House of Welcome. My special personal thanks go to my good friend Carol Coney, who is a volunteer at the House of Welcome and introduced me to its excellent work.

TRAVELLING STOCK ROUTE RESERVES

Ms SYLVIA HALE [2.07 a.m.]: The Greens are concerned about the fate of travelling stock reserves in New South Wales. The Rural Lands Protection Boards manage them on behalf of the community. A recent report, however, recommends that the responsibility for the stock reserves be given over to the Department of Lands. The Minister for Lands, however, does not have a good record. He has become ever more keen to offload via lease or sale various portions of Crown land. If the stock reserves are handed over to the Department of Lands it is imperative that the handover be accompanied by a guarantee that the reserves will be managed appropriately and preserved in public ownership. If the Government cannot commit to do that then it should fund the Rural Lands Protection Boards adequately so they may do so.

Travelling stock routes provide a safeguard against future contingencies, such as drought and the rising cost of oil. Stock routes have evolved from the 1830s onwards. Some are not used as often for droving as they were in the past because truck transport provides an alternative, but there is every possibility we may need the routes again given the very real possibility of global warming prolonging drought. As the Minister for Primary Industries said in this place in May 2003:

> There has been a significant increase in the numbers of stock using travelling stock reserves and public roads since the onset of the drought. This has focused attention on this valuable Crown land and its importance for emergency grazing and movement of stock in times of drought and other natural disaster.

Another reason to preserve these reserves is rising oil prices. Any interruption to truck transport will affect farmers. In fact, we are facing a truck industry strike in July. We have, however, lost travelling stock route reserves over time. The reserves have dropped from two million hectares in 1975 to about 600,000 hectares today. The Greens note that the Queensland Government has decided to protect and retain travelling stock routes. I also note that Queensland has set up a Peak Oil Taskforce. Queensland is ahead of New South Wales in its ability to think seriously and plan for future contingencies, unlike its New South Wales counterpart. To say that some stock routes should be sold because they are not paying their way is to miss the point. Government subsidises all sorts of goods and services that are in the public interest, such as public transport, national parks and public schools that do not pay their way.

Stock routes are important too. They not only allow farmers to move their stock but also are used for recreation and beekeeping, and they provide a sanctuary for animals and plants of the region. Travelling stock

routes contain threatened species and their associated habitats and remnant areas of once common regional vegetation types. My Greens colleague Mr Ian Cohen has highlighted ecological aspects of travelling stock routes on many occasions in this place. Sometimes the reserves are the only place where remnant bushland still exists between grazing and agriculture. Birdwatchers, beekeepers and others want to preserve these stock routes, which provide an oasis for many species. Rural lands board rangers and farmers are managing stock reserves with a view to keeping feral animals and weeds under control. A letter in today's *Sydney Morning Herald* from Vivien Clark-Ferraino of Duckmaloi states:

> Not only was the board paid considerable droving fees—more than $20,000 last year—but the cattle cleaned up their overgrown roadsides and stock reserves which, left ungrazed, could develop into fire hazards and havens for vermin. We drovers also repaired boundary fences between farms and reserves, and left those reserves and roadsides littered by the public much cleaner than we found them. We observed with delight remnants of native grasses and flora regenerating in unexpected places and inhabited by native fauna. In addition, our bovine, canine and equine companions intrigued passers-by and tourists with that quintessential Aussie heritage: droving the long paddock.

A communiqué from the Stock Routes Coalition emphasises the role that stock routes play in allowing species to move and their potential to assist in preventing dieback or extinction. The coalition states:

> While rivers and forested mountain ranges provide corridors for some species, the stock routes provide a vast network across both NSW and Queensland. They also have the advantage of lying along environmental gradients in all directions. The stock routes provide a fortuitous opportunity to assist endemic species in the eastern states to adapt to climate change.

The Greens want an unequivocal assurance from the Minister that the travelling stock reserves will continue to be managed and preserved in New South Wales by and for the public.

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

Motion agreed to.

The House adjourned at 2.12 a.m. Wednesday 18 June 2008 until 11.00 a.m. on the same day.