

LEGISLATIVE COUNCIL

Tuesday 24 June 2008

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:

Summary Offences and Law Enforcement Legislation Amendment (Laser Pointers) Bill 2008
National Gas (New South Wales) Bill 2008
Auditor-General (Supplementary Powers) Bill 2008

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL 2008

Protest against the Passing of the Bill

The PRESIDENT: I report the receipt of the following communication from the Official Secretary to the Governor:

OFFICE OF THE GOVERNOR
SYDNEY 2000

19 June 2008

Ms Lynn Lovelock
Clerk of the Parliaments
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Ms Lovelock

On behalf of Her Excellency the Governor, I acknowledge receipt of your letter dated 18 June 2008, enclosing from the President, in accordance with Standing Order 161 of the Legislative Council, a copy of the Protest made by certain members of the Legislative Council against the Environmental Planning and Assessment Amendment Bill 2008, as entered in the Minutes of Proceedings of the House on 18 June 2008.

Yours sincerely

Brian L Davies LVO
Official Secretary

THOROUGHBRED RACING AMENDMENT BILL 2008

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

Motion by the Hon. Ian Macdonald 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.

WESTERN AND CROWN LANDS AMENDMENT (SPECIAL PURPOSE LEASES) BILL 2008

Message received from the Legislative Assembly returning the bill without amendment.

NEW SOUTH WALES LEGISLATIVE COUNCIL PRACTICE

The President tabled the *New South Wales Legislative Council Practice*, written by the Clerk of the Parliaments, Lynn Lovelock, and the former Clerk of the Parliament, John Evans.

Ordered to be printed on motion by the Hon. Tony Kelly.

The PRESIDENT: I remind members that the book will be launched in the Jubilee Room at 6.30 p.m. this evening. A copy of the book will be distributed to each member's office this afternoon.

PRIVILEGES COMMITTEE

The Hon. Kayee Griffin, as Chair, tabled the following reports:

- (1) Report No. 42, entitled "Citizen's Right of Reply (Prof Bob Walker and Ms Betty Con Walker)", dated June 2008.
- (2) Report No. 43, entitled "Citizen's Right of Reply (Mr R Bailey)", dated June 2008.
- (3) Report No. 44, entitled "Citizen's Right of Reply (Mr D Kennedy)", dated June 2008.

Ordered to be printed on motion by the Hon. Kayee Griffin.

COMMITTEE ON CHILDREN AND YOUNG PEOPLE

Report: Review of the 2006-2007 Annual Report of the Commission for Children and Young People

The Hon. Kayee Griffin, tabled report No. 2/54, entitled "Review of the 2006-2007 Annual Report of the Commission for Children and Young People: Transcript of Proceedings, Written Responses to Questions and Minutes", dated June 2008.

Ordered to be printed on motion by the Hon. Kayee Griffin.

The Hon. KAYEE GRIFFIN [2.35 p.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by the Hon. Kayee Griffin and set down as an order of the day for a future day.

COMMITTEE ON THE HEALTH CARE COMPLAINTS COMMISSION

Report: Review of the 2006-2007 Annual Report of the Health Care Complaints Commission

The Hon. Helen Westwood tabled report No. 2/54, entitled "Review of the 2006-2007 Annual Report of the Health Care Complaints Commission: Transcript of Proceedings, Written Responses to Questions and Minutes", dated June 2008.

Ordered to be printed on motion by the Hon. Helen Westwood.

The Hon. HELEN WESTWOOD [2.36 p.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by the Hon. Helen Westwood and set down as an order of the day for a future day.

LEGISLATION REVIEW COMMITTEE**Report**

The Hon. Amanda Fazio tabled report No. 2, entitled "Annual Review: July 2006-June 2007", dated 24 June 2008.

Ordered to be printed on motion by the Hon. Amanda Fazio.

The Hon. AMANDA FAZIO [2.37 p.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by the Hon. Amanda Fazio and set down as an order of the day for a future day.

LEGISLATION REVIEW COMMITTEE

Report

The Hon. Amanda Fazio tabled the report No. 9, entitled "Legislation Review Digest No. 9 of 2008", dated 24 June 2008.

Ordered to be printed on motion by the Hon. Amanda Fazio.

PETITIONS

Hérons Creek Power Plant Proposal

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

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Notice of Motion No. 1 and Government Business Orders of the Day Nos 1 to 13 postponed on motion by the Hon. Tony Kelly.

PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT ACT: PUBLIC SECTOR EMPLOYMENT AND MANAGEMENT (GENERAL) AMENDMENT (SELECTION COMMITTEES) REGULATION 2008

The PRESIDENT: Pursuant to standing orders the question is: That the motion proceed as business of the House.

Question resolved in the affirmative.

Motion by Ms Lee Rhiannon agreed to:

That the matter proceed forthwith.

Ms LEE RHIANNON [2.48 p.m.]: I move:

That, under section 41 (1) of the Interpretation Act 1987, this House disallows the Public Sector Employment and Management (General) Amendment (Selection Committees) Regulation 2008, published in Government Gazette No. 56, dated 23 May 2008, page 3961, and tabled on 3 June 2008.

A key concern with this regulation is that it will allow two-person selection committees. Prior to this regulation selection committees comprised a minimum of three people. We need to improve the separation between the public sector and the Government, not decrease checks and balances, and that clearly would happen if this regulation were to stand. The regulation is another example of the creeping politicisation of the public sector under this Government, and it would undermine its independence and integrity. For a government that is so swamped with crises and that has alienated many public sector workers because of the Treasurer's obsession with effectively imposing a pay cut on them, this regulation is most unwise.

The promotion of public sector staff is a key part of government activity in ensuring that a well-functioning public service is equipped to provide the best possible service to the public. The selection

process to determine promotions is obviously integral to achieving that. As we all know, selection committees have a challenging job to ensure the best person is selected for the position. The judgement of three people is more likely to produce a better result than the judgement of two, simply because the prospect of bias and undue influence over a panel member will be reduced. The crucial process of appointment, which is finding the best possible person for the job—clearly the building block of a well-functioning public service—is unnecessarily compromised by this change.

I understand that the Government argues that streamlining in this way has some administrative advantages. It believes that this change will produce efficiencies. However, we must ask at what risk of losing sight of getting the best person for the job. The Greens certainly believe that the Government has it out of balance with regard to ensuring that the system is efficient while at the same time providing the best process for selection committees.

The regulation reduces the prospect of good decision making and creates an instant stalemate if there is a disagreement. If a person on the committee is in a lower-graded position, he or she could feel obliged to agree with the more senior person. A third person on the committee could help remove or reduce any coercion—real or perceived. There is a big difference between having a two-person selection committee and a three-person selection committee. Two-person committees would reduce rigorous consideration of applicants and opportunities for alternative perspectives. Recent controversy with regard to public appointments highlights the need for the selection process to be improved to ensure decisions are fair and balanced. Weakening the selection process by allowing committees to sit with as few as two members is a backward step.

It is impossible to see how reducing the required selection panel numbers would strengthen the merit process that is supposed to govern staff selections. Reducing the number of people on selection committees will only reduce healthy debate and discussion and add to the politicisation of the public sector. We know that when there are good outcomes in staff appointments public servants will obviously be more successful in the delivery of a whole range of services for the public of New South Wales. So, while the Government may argue that this is just a small change and an efficiency measure, the outcome in a cohesive public sector that is able to deliver effectively for the public of New South Wales will be compromised.

The Greens argue that reducing the numbers would reduce healthy debate and discussion in the ever-challenging job of finding the best person for a position. This will be another step closer to allowing management to appoint on a whim, and I would argue that that would increase the potential for nepotism. Furthermore, a fundamental change such as this should not be slipped in via a regulation but rather should have formed part of a bill. It makes a mockery of the consultative and legislative process to sneak in significant changes such as this as if it were a fait accompli. The Government should have had the courage, if it wants to argue that this change will be a benefit to the public sector and the public of New South Wales, to debate the measure before Parliament. That is what we are here for. The Greens remain concerned about how much is being done by regulation in this State. We also argue that at a time when the Government is offering the public sector a miserable pay rise of 2.5 per cent, this measure will effectively undermine its operation. I commend the motion to the House and encourage members to support the disallowance.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [2.55 p.m.]: The Opposition supports this disallowance motion. The Government has not put forward a public case for changing the current selection panel criteria. There have been many instances in the past—too many to recount—when concerns have been raised about the Government's selection process. That shows that the current process, if used appropriately, is not without some vulnerabilities. Be that as it may, reducing the membership of selection panels from three to two will increase the potential for manipulation of the process and the concerns of rank-and-file members of the Public Service Association about nepotism. That would, in turn, have an effect on the successful applicant; who may have to fight an ongoing battle to prove that, despite a weakened selection process—because of a reduction of members on the panel—he or she is the legitimate and worthy winner of the position.

It is extremely important that the Government maintain at all times the highest level of confidence in the process of selection of people for the public sector, whether it relates to people seeking to enter the public sector for the first time, or to current public servants applying for other positions or seeking promotion in the public sector. For that reason I am particularly concerned about reports from my contacts within the Public Service Association that this matter has not been before its central council. One would think that if the Government wanted to change something as significant as the selection criteria by reducing the membership of selection panels—and given that it would want to be transparent and honest with those most affected by it, members of the public service—it would have brought the proposal before the central council of the Public

Service Association to allow its members an opportunity to consider the merits or otherwise of the change. No such proposal was presented. No case has been made by the Government to support any change to make-up of selection panels.

I note that the new regulation is cunningly worded to state that panels will consist of at least two persons. No doubt a case will be put by the Government that most of the selection panels will continue to comprise three members; that the membership will include an independent person; that the change will apply only to a very small number of positions in the public sector in relation to which the Government can say that having two people rather than three make a selection decision will result in a saving for the people of New South Wales; that the Government is making only a very minor change. If those arguments are valid or credible, why did the Government not take its position to the central council of the Public Service Association for consideration? There was no such openness or transparency, and the Government has tried to sneak this change through in the form of a regulation.

I have been in the public sector and I know how the system works. I have spoken to countless people who say they have been let down by a promotion system in which nepotism is alive and well, despite all the rhetoric. This proposal, which will allow one person from within a department and one person external to the department to be involved in a selection process, will not restore confidence to those who work in the public sector, whether in the police force or anywhere else, that there is a degree of transparency in the selection process that will ensure the best person, based on merit, gets the job.

The Government's proposal is a retrograde step. If it involves just a minor change that will relate to only a small number of positions, and if most applications will be still processed by three or more people, I challenge the Government to explain why it did not take the proposal to the central council of the Public Service Association, and why it did not bring a bill before Parliament to effect the change rather than try to sneak it through by way of regulation? The Opposition supports the disallowance.

The Hon. MICHAEL COSTA (Treasurer, Minister for Infrastructure, and Minister for the Hunter) [2.59 p.m.]: The Government opposes the disallowance motion. I note that the Opposition has placed great reliance on the Central Council of the Public Service Association [PSA]. I hope—depending on the policy position—that this is not a new policy of the Opposition to run everything through the Central Council of the Public Service Association. Although I have some interesting colleagues in that association and I support many of its issues, it is the responsibility of government to govern based on policies that make sense for the taxpayer as well as employees within the public sector. To use an argument that the Central Council of the Public Service Association did not sign off on it is not sensible.

The Hon. Michael Gallacher: It was not even a sign-off. You did not even tell them.

The Hon. MICHAEL COSTA: Let me come to that point. I am advised that this regulation is the result of a review of all the employment processes within the Public Sector Employment and Management Act conducted by the Council on the Cost and Quality of Government. The aim of the review was to streamline the processes to ensure that they were modern and more contemporary in their undertaking of employment activity within the public sector to bring it in line with other jurisdictions. In fact, the Public Sector Employment and Management Amendment Bill came before Parliament and was assented to on Friday 16 May 2008. This regulation should be seen in the context of that broader review of the Public Sector Employment and Management Amendment Bill.

I remind the House that the Public Sector Employment and Management Amendment Bill dealt with recommendations from the Council on the Cost and Quality of Government. It made changes to online advertising and appointment processes where merit selection had occurred. Also, it provided for a 12-month eligibility list to enable people to move along the selection process. It provided for changes in transition from temporary to permanent employment, additional secondments, filling positions and other areas. It is within this context that the regulation was put into play and it makes a lot of sense. It does not seek to reduce independence; in fact, under the Act the panel may comprise an independent person and somebody from the public sector, and that person can come from the same department as the applicant. That is not possible at the moment. One of the people on the panel must be an independent person.

The regulation is part of a broader set of recruitment reforms designed to make recruitment processes more contemporary and efficient. Under the regulation a two-person panel is now the new minimum, not the maximum—there can be three or four if that is required—for agencies to make appointment at all levels in the

public sector, not just to senior positions. That must be understood. Some junior positions may require only two people. Certainly, one would expect that the appropriate number of people would make up the panel for more senior positions. However, it is not the number of people that is important, it is the qualifications that the people bring to the panel.

The Hon. Greg Pearce: Sister or brother of a Minister or a partner of a Minister.

The Hon. MICHAEL COSTA: These changes were made under the Greiner Government. The honourable member should remember that when the fundamental changes were made to the Public Sector Management Act to allow for these very processes, they were made under the Greiner Government. I remember the debates and disputes at the time.

The Hon. Michael Gallacher: And what was your position then?

The Hon. MICHAEL COSTA: I probably thought it was good.

The Hon. Michael Gallacher: Have you checked your records?

The Hon. MICHAEL COSTA: No. These provisions were made. As everyone would remember, merit promotion was one of the initiatives of the Greiner Government. There were debates about it at the time.

The Hon. Matthew Mason-Cox: It was a very good initiative.

The Hon. MICHAEL COSTA: So he supports that, does he? There were changes to seniority and these panels were introduced. Following the review by the Council on the Cost and Quality of Government we have sought to introduce further changes that make sense. This is in the context of an Act of Parliament that went through in May. It is a change to the regulations consistent with streamlining to ensure that we have proper integrity and expertise. It involves a minimum number of people. It is up to those at whatever level who are seeking the new selection process to select people for the panel who have the appropriate expertise.

I advise the House that the Department of Premier and Cabinet will soon issue guidelines for agencies to follow to determine the size and composition of their panels to ensure fair and transparent processes. Different requirements will be used for different levels within the public service. Such consideration will also include the need for gender balance on the panel and the need for an independent person from another part of the agency or an external person. Panel members are still required to undertake merit selection training and must have at least one panel member who is thoroughly familiar with the position.

When one looks at the matter in the context of all the appointments that occur in the public sector, these are reasonable amendments. They follow a review process. Opposition members are being misled by the Greens. They ought to follow the Greiner tradition of contemporary and appropriate changes to selection processes. It is ironic that in recent times I have had to argue support for some of the more positive measures of the Greiner Government while the Opposition has buried its head in an historical hole. It has gone back to seniority: the old bureaucratic traditions that did not work. It has abandoned any notion of efficiency. It makes sense to get the right people to do the job and any person who is hiring a staff member will want a panel that is appropriate to ensure the right outcome. It is unnecessary, bureaucratic and cumbersome to have a rigid structure in place so that even junior positions require a large number of people on the panel.

Protections will be in place, as there are in the broader Public Sector Employment and Management Act. Given what I have outlined today, the disallowance motion should be rejected. It is a political stunt by the Greens and it is a sad departure from the great traditions of this House that the Opposition has chosen to not do the appropriate homework and has been suckered in by the Greens by another pathetic attempt to try to link a sensible reform with broader political considerations that, in their minds, allow them to score cheap political points.

The Opposition should return to the good traditions of the Greiner period. I must admit that not all of them were good. There were a lot of bad traditions during the Greiner period. Opposition members talk about problems with selection. We all remember how the Metherell selection was undertaken, "You vote for me and I'll give you a job." It is nonsense for Opposition members to pretend that they are concerned about political appointments. They are masters of political appointments. The former Howard-Costello Government stacked the ABC board and numerous other boards. The Opposition has no moral standing on this issue. The regulation is a

sensible change to ensure efficiency in the public sector. It has all the requisite protections and should not be disallowed. I am saddened that the Opposition has been suckered in by the Greens once again. The old traditions of thinking through the issues, looking at the underlying principles and then voting have been completely abandoned by the Opposition in the interests of an unholy alliance with the Greens over political stunts that have not achieved anything and will not achieve anything. The reality is that the Opposition has abandoned—

The Hon. Michael Gallacher: Remember the workers, Michael.

The Hon. MICHAEL COSTA: Those opposite are now going to run their policy through the central council of the PSA. That is what he said—that this should be opposed because it has not gone through the central council of the PSA.

The Hon. Michael Gallacher: Have the courtesy to ask their views, Michael.

The Hon. MICHAEL COSTA: What we do is consult with the PSA and consult with unions. But, ultimately, as the Government we have to make a decision about these things.

The Hon. Michael Gallacher: Who did you consult with—the PSA?

The Hon. MICHAEL COSTA: Yes, there were consultations with the PSA about the reforms to the Public Sector Employment and Management Act. The regulation is sensible. We ought to oppose this disallowance motion and move forward with sensible public sector reform, in the interests of getting the right people in the right jobs, and avoid the politicisation of the public sector that occurred under the Howard-Costello Government. I urge the House to oppose the disallowance motion.

Dr JOHN KAYE [3.12 p.m.]: It is totally appropriate that the Treasurer is giving advice on tactics to the Coalition, because what he has been proving over the last 12 months is that he is probably one of the best Treasurers the Coalition has ever produced. He would fit in just fine with the Greiner Government—and he has admitted that again today. When the Treasurer said he consulted with the Public Service Association, he was right except for one syllable: he did not "consult" with the PSA but, rather, he "insulted" it. That is what the Treasurer does best: he hurls insults at people.

An independent and quality public service sits at the heart of a successful democracy. To undermine the independence and quality of the public sector is a very dangerous step indeed. That is precisely what we have on the table before us. The consultation process that the Treasurer has spoken about was consultation on changes to the Public Sector Employment and Management Amendment Bill, which did not mention changes to the number of people on selection committees. If the Government were serious about consultation, and about maintaining the quality of the public sector, at the time it engaged in consultation on the Public Sector Employment and Management Amendment Bill it would have engaged in consultation on this matter. But, instead, the Government had to sneak the legislation in through a regulation because it knew that the Public Service Association would recognise it for what it is. The regulation is a cheap attempt to cut costs in the short term that will have long-term adverse impacts. Seeking to cut costs on promotions and appointments is the worst thing a government can do—

The Hon. Michael Costa: Is it worse than theft or embezzlement?

Dr JOHN KAYE: It is theft, Treasurer. It is theft from the future to take away the ability of the public sector to ensure that it has quality employees. As with so many other measures the Government has introduced, the regulation is simply an attempt to ensure the short-term minimisation of costs, without looking at the long-term implications for the independence and quality of the public sector and the impacts on the entire operation of the State. We support the disallowance motion and hope that the Government will go back and negotiate with the public sector and find out why two-person selection committees are totally inadequate.

Ms LEE RHIANNON [3.13 p.m.], in reply: It is important that the regulation be disallowed. The Leader of the Opposition and Dr John Kaye have outlined a clear case as to why this should happen. I would argue that the Treasurer has also outlined a clear case as to why the regulation should be disallowed. Again, he has blundered for the Government and caused it more embarrassment. The Treasurer spoke about the regulation and referred to the cost of government.

The Hon. Michael Costa: What a blunder!

Ms LEE RHIANNON: Yes. Just last month the Public Sector Employment and Management Amendment Bill passed through the Houses. Yet the Government failed to bring forward this measure so we would have an opportunity to debate it, as is our responsibility. What do we get from the Treasurer? The best he can argue is that the regulation is within this context. Over and over again the Treasurer says, "It is within this context that this regulation is brought forward." The Treasurer was clearly caught off guard when he then tried to justify the situation by saying, "Oh well, it can actually be three or four." He was starting to get close to acknowledging—

The Hon. Michael Costa: No, that is what "minimum" means.

Ms LEE RHIANNON: I acknowledge that the Treasurer is now trying to further explain the mistakes he made earlier. We have a clear problem here. If the regulation is allowed, it will be a setback for the delivery of public services in this State and a cohesive public service. Other members spoke about the problems of nepotism that can arise from having small selection panels. Again I emphasise the need for three-person selection committees to be retained. I was disappointed to hear the Treasurer resort to making insulting comments about the old bureaucratic traditions. Having three members on a selection panel is not bureaucratic; it is good process. It means there are fairer, more informed outcomes, and the best person is selected for the job.

The Hon. Amanda Fazio: That's rubbish.

Ms LEE RHIANNON: I acknowledge the Hon. Amanda Fazio's interjection. It is not rubbish at all. There are many examples. I note the earlier interjections on the Treasurer about the Scimone appointment. His appointment is an absolute embarrassment to the Government. It is an example of the sort of thing that could be repeated time and again if the Treasurer is allowed to get away with making this change. I commend the motion to the House.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 19

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| Mr Ajaka | Mr Gay | Mrs Pavey |
| Mr Clarke | Ms Hale | Mr Pearce |
| Mr Cohen | Dr Kaye | Ms Rhiannon |
| Ms Cusack | Mr Khan | |
| Ms Ficarra | Mr Lynn | <i>Tellers,</i> |
| Mr Gallacher | Mr Mason-Cox | Mr Colless |
| Miss Gardiner | Ms Parker | Mr Harwin |

Noes, 22

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| Mr Brown | Mr Macdonald | Mr Tsang |
| Mr Catanzariti | Reverend Dr Moyes | Ms Voltz |
| Mr Costa | Reverend Nile | Mr West |
| Mr Della Bosca | Mr Obeid | Ms Westwood |
| Ms Fazio | Ms Robertson | |
| Ms Griffin | Mr Roozendaal | <i>Tellers,</i> |
| Mr Hatzistergos | Ms Sharpe | Mr Donnelly |
| Mr Kelly | Mr Smith | Mr Veitch |

Question resolved in the negative.

Motion negatived.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

The Hon. MATTHEW MASON-COX [3.23 p.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 122 outside the Order of Precedence, relating to an order for papers regarding the Australian Capital Territory-New South Wales cross-border health agreement, be called on forthwith.

The motion is urgent because the documents sought will shed light on the services to be provided at the redeveloped Queanbeyan hospital, which was due to open in May this year but has again been delayed until September. Indeed, the September date may lapse and it may not open until January 2009. It is urgent because the people of Queanbeyan and the surrounding region want to know what services will be provided at the redeveloped hospital and that those services will meet their needs. It is urgent because residents of the Queanbeyan region want to know whether paediatric services will be provided at the new hospital, as currently no admissions for children are permitted despite the demands for this important service. Many families in the region rely on paediatric services, as the admission statistics of the Canberra Hospital will show.

The motion is urgent because children are at risk, which has been evidenced by a number of recent cases in which children who have presented at the Queanbeyan hospital, particularly in the dead of night, have not been admitted, but rather put under observation and then sent home. In one case a child who was sent home passed away in the care of her parents before being brought back to the hospital. That particular incident is the subject of a coronial inquiry. A number of other serious incidents have occurred. The motion is urgent because the nurses and doctors of Queanbeyan hospital are being placed under unnecessary stress as a result of the uncertainty of the services to be offered in the redeveloped hospital. It is time that the people of Queanbeyan and the staff of Queanbeyan hospital had clarity in respect of the services to be offered.

The motion is urgent because it is time that the Greater Southern Area Health Service was made accountable for the delivery of local services. It is time to break the culture of secrecy that permeates the management of the organisation and the wider health department. It is urgent because the public interest should be served by the release of this important information immediately instead of more delays and misinformation—that was the tenure of the submissions to the Garling inquiry held in Queanbeyan recently. I commend the motion to the House.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 23

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|---------------|-------------------|-----------------|
| Mr Ajaka | Mr Gay | Ms Parker |
| Mr Brown | Ms Hale | Mrs Pavey |
| Mr Clarke | Dr Kaye | Mr Pearce |
| Mr Cohen | Mr Khan | Ms Rhiannon |
| Ms Cusack | Mr Lynn | Mr Smith |
| Ms Ficarra | Mr Mason-Cox | <i>Tellers,</i> |
| Mr Gallacher | Reverend Dr Moyes | Mr Colless |
| Miss Gardiner | Reverend Nile | Mr Harwin |

Noes, 18

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|-----------------|---------------|----------------|
| Mr Catanzariti | Mr Macdonald | Mr West |
| Mr Costa | Mr Obeid | Ms Westwood |
| Mr Della Bosca | Ms Robertson | |
| Ms Fazio | Mr Roozendaal | |
| Ms Griffin | Ms Sharpe | <i>Tellers</i> |
| Mr Hatzistergos | Mr Tsang | Mr Donnelly |
| Mr Kelly | Ms Voltz | Mr Veitch |

Question resolved in the affirmative.

Motion agreed to.

Order of Business

Motion by the Hon. Matthew Mason-Cox agreed to:

That Private Members' Business item No. 122 outside the Order of Precedence be called on forthwith.

CROSS-BORDER HEALTH AGREEMENT**Production of Documents: Order**

The Hon. MATTHEW MASON-COX [3.34 p.m.]: I move:

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution the following documents created since January 2004, in the possession, custody or control of the Minister for Health, the Department of Health, or the Greater Southern Area Health Service (GSAHS), relating to Australian Capital Territory/New South Wales cross-border health agreement:

- (a) the 2003-2008 ACT/NSW cross-border health agreement,
- (b) the 2008-2013 ACT/NSW cross-border health agreement and any document relating to the 2008-2013 agreement,
- (c) the clinical services plan for the redeveloped Queanbeyan Hospital,
- (d) the paediatric admission guidelines used at Queanbeyan Hospital,
- (e) the Queanbeyan Hospital site master plan or any draft master plan,
- (f) any meeting papers of the ACT/GSAHS Joint Service Planning Committee and any document relating to the terms of reference of the committee,
- (g) any meeting papers of the ACT/GSAHS Clinical Council and any document relating to the terms of reference of the Council,
- (h) any meeting papers of the ACT/GSAHS Joint Executive Meeting and any document relating to the terms of reference of the Joint Executive Meeting, and
- (i) any document which records or refers to the production of documents as a result of this order of the House.

I refer honourable members to the comments I made during the debate on the motion to suspend standing and sessional orders. I commend the motion to the House.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [3.35 p.m.]: The Government opposes the motion. It is surprising that a member who apparently lives in the region and no doubt played a role in the preparation of this motion is not across the basic facts. First, there is no signed 2003-08 New South Wales-Australian Capital Territory cross-border health agreement. The honourable member would know that the delay in achieving a formal agreement has arisen in the context of extended negotiations between the New South Wales and Australian Capital Territory governments about the level of funding that should be provided to the Australian Capital Territory for hospital services to New South Wales residents. Formal mediation and arbitration processes have been used in these negotiations in an effort to resolve key differences between the parties. Following outstanding issues being resolved, it is expected that agreement will be finalised in the near future.

Secondly, another basic fact the honourable member does not seem to be across is that the Australian Capital Territory and New South Wales governments have agreed to extend cross-border funding for a further year until June 2009 to align with the extended period of the Australian Health Care Agreement. Consequently, there is no 2008-2013 New South Wales-Australian Capital Territory cross-border health agreement and no documents relating to such an agreement. So as to paragraph (b), the honourable member's motion falls. As to the remaining paragraphs of the motion, particularly paragraphs (c) to (h), honourable members should be aware that a number of the documents—indeed, just about all the documents—have not formed part of any negotiation for current cross-border funding agreements with the Australian Capital Territory regarding hospital services for New South Wales residents. The Australian Capital Territory Government has not consented to the release of any of these documents, to which it is a party. In those circumstances, it is inappropriate for those documents to be released until such concurrence has been obtained.

I want to make two further points on this issue, which are important for the House to be aware of. First, it is interesting that a Liberal Party member has moved this motion because at the last election The Nationals candidate for the seat of Monaro attacked the Government for constructing a hospital at Monaro and providing services for the people of Monaro at Queanbeyan Hospital. According to The Nationals candidate, the people of Monaro could obtain better services just over the border at Canberra in the Australian Capital Territory. The

Nationals' position was not to bother about Queanbeyan Hospital and to put all our efforts into providing services for the people of Queanbeyan and surrounding regions through the Canberra Hospital. The Opposition members who are so concerned about the quality of health services in Queanbeyan would be aware that the Greiner-Fahey Government sold a large portion of the land. So much was their interest in a redeveloped Queanbeyan Hospital that they sold a large portion of the land. That is indicative of their commitment. The Liberal Party-led Government sold a large portion of the Queanbeyan Hospital land and at the last election The Nationals candidate for the seat of Monaro said, "Do not bother, go to Canberra, there are better services there."

The Hon. MATTHEW MASON-COX [3.39 p.m.], in reply: It was very interesting to hear the Minister's response to this motion. I will address his response to each paragraph in a little detail. In relation to paragraph (a), the Minister suggests that the 2003-2008 Australian Capital Territory-New South Wales cross-border health agreement does not exist. It is an absolutely appalling situation: an agreement has been negotiated for the past five years but no such agreement exists. We are now moving into another phase of the Commonwealth health agreements and still we do not have an agreement relating to 2003-2008. If there is no document that is the 2003-2008 agreement, then no document should be provided.

In relation to paragraph (b), we are looking for any document that relates to the 2008-2013 Australian Capital Territory-New South Wales cross-border health agreement as well as the agreement itself. But, of course, the agreement does not exist. How could it exist when the 2003-2008 agreement does not exist? We are looking for any documents that relate to the negotiation of that agreement and, clearly, that means documents relating to how that agreement was to be negotiated. In relation to paragraphs (c) through to (h), the idea that the consent of the Australian Capital Territory Government is necessary to provide minutes of meetings attended by New South Wales' health officials is just arrant nonsense. I will not dignify the comments of the Minister any more in regard to that matter.

In regard to the Minister's comments about The Nationals' candidate for Monaro at the last election, again that is arrant nonsense. The Nationals' candidate did not make the comments the Minister refers to. In fact, the Minister is verballing him and continues to verbal The Nationals in that regard. The Nationals and the Liberal Party are very clear and at one on this issue: we need to ensure that as much as possible proper services are provided to the people of Queanbeyan in Queanbeyan. We have heard this arrant nonsense also from the member for Monaro, who suggests—

The Hon. Michael Veitch: A very good member he is too.

The Hon. MATTHEW MASON-COX: Are we talking about the same guy? The member for Monaro suggests that the Liberal-Nationals Coalition wants patients to go to Sydney or Canberra for all sorts of surgical procedures. That is just arrant nonsense. The people of Queanbeyan want an appropriate medical facility in Queanbeyan to service the people of Queanbeyan, and that includes basic services such as paediatric admissions and routine surgery. We are not talking about brain surgery here—although maybe the member for Monaro needs some—we are talking about fundamentally simple surgery, not complex procedures, which, of course, would be provided by tertiary hospitals in Canberra or Sydney. We are talking about simple procedures and simple services for the people of Queanbeyan. That is what this motion is about. It is not about verballing any candidates from the past; it is about ensuring that the people of Queanbeyan have a future.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 23

Mr Ajaka
Mr Brown
Mr Clarke
Mr Cohen
Ms Cusack
Ms Ficarra
Mr Gallacher
Miss Gardiner

Mr Gay
Ms Hale
Dr Kaye
Mr Khan
Mr Lynn
Mr Mason-Cox
Reverend Dr Moyes
Reverend Nile

Ms Parker
Mrs Pavey
Mr Pearce
Ms Rhiannon
Mr Smith
Tellers,
Mr Colless
Mr Harwin

Noes, 18

| | | |
|-----------------|---------------|-----------------|
| Mr Catanzariti | Mr Macdonald | Mr West |
| Mr Costa | Mr Obeid | Ms Westwood |
| Mr Della Bosca | Ms Robertson | |
| Ms Fazio | Mr Roozendaal | |
| Ms Griffin | Ms Sharpe | <i>Tellers,</i> |
| Mr Hatzistergos | Mr Tsang | Mr Donnelly |
| Mr Kelly | Ms Voltz | Mr Veitch |

Question resolved in the affirmative.

Motion agreed to.

COURTS AND CRIMES LEGISLATION AMENDMENT BILL 2008

CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT BILL 2008

CHILDREN (DETENTION CENTRES) AMENDMENT BILL 2008

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [3.50 p.m.]: I move:

That these bills be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Children (Detention Centres) Bill 2008. We have a long history of maintaining a safe and secure juvenile justice system while making juvenile offenders the focus of intensive rehabilitation efforts. The bill seeks to amend the Children's (Detention Centres) Act 1987 to streamline arrangements for the transfer of adult detainees out of the juvenile justice system in certain circumstances, as well as to extend and codify the existing powers of the director general to maintain the good order and secure management of detainees. The recommended changes will modify a transfer process that has been in place for a number of years and is in no way a departure from existing government policy.

The proposed changes will allow for greater certainty in the transfer of detainees into adult facilities and the granting of additional powers that will allow the director general to maintain good order in juvenile facilities across New South Wales with particular regard to segregation, and the separation of detainees in particular circumstances where the security of staff, visitors or other detainees might otherwise be placed at risk. The changes come against the backdrop of concerted efforts by the Iemma Government to refocus rehabilitation efforts on juvenile offenders. The Children (Detention Centres) Act 1987 will amend the provisions of that Act with respect to the transfer of detainees from detention centres to correctional centres and to clarify its provisions with respect to the separate detention of different classes of detainees.

I refer now to the details of the bill. The bill inserts provisions into section 16 of the Act to empower the Director General of the Department of Juvenile Justice to direct that different detainees or groups of detainees be separately accommodated, and ensure that their separate accommodation is not prevented by any section of the Anti-Discrimination Act 1977. This bill amends section 16 of the Act to provide the director general with the power to enable the segregation of a particular detainee, or group of detainees, from another detainee or group of detainees for the reasons of good order, discipline and/or security of the detention centre, and that the period of segregation be able to continue until the risk to good order, discipline and/or security has dissipated, in the opinion of the director general.

Currently, the department is only able to hold a detainee separate from the general centre population under its section 16 segregation powers, or if a form of victimisation or threat has already occurred. The bill will seek to extend this legislation to allow centre staff to make an informed assessment of the detainee and separate the individual if they believe that it is reasonable that they may come to harm. The new provisions will allow the department to protect the safety of such individuals prior to such a threat existing. Through new provisions in section 32A, the bill provides for a regulation-making power with respect to the review of directions given by the director general relating to the power to separate detainees.

The regulations will be amended so that individuals held separately for a period of 24 hours are to be reported to the New South Wales Ombudsman, as per the current provisions in the regulation in relation to the segregation provisions of section 19 of the same Act. The regulation will state that if an individual detainee is separated under section 16 for more than 24 hours the centre manager must ensure that the Ombudsman is notified. The bill inserts provisions into section 19 of the Act to clarify the circumstances under which the director general may order that detainees be secured in their rooms in the event of a significant risk to the safety of staff, visitors or other detainees. The bill provides that the director general be able to order that detainees be locked in their rooms to prevent or contain a riot, serious disturbance or other dangerous situation occurring in a detention centre, and that the general containment can continue until the safety of staff and detainees can be assured.

Presently, the director general's power to effect the general containment of a centre is not clearly provided for in section 14 of the Act. It is proposed that these provisions will mirror the section 19 provisions regarding segregation. This will enable the process to be managed efficiently to ensure the health and safety of staff and detainees. In relation to the transfer of detainees, this bill clarifies and streamlines a number of existing arrangements. The amendment to section 28 (1A) is one such amendment. The bill amends section 28 (1A) to specify that if a young offender is sentenced after a section 28 order has been effected a further section 28 order may be made without the young offender returning to a juvenile detention centre, and that the new sentence be served in an adult correctional centre. The new provisions clarify that a transfer order under section 28 can be made regardless of whether or where the detainee is currently in custody.

This bill amends section 28 (2A) of the Act to provide a wider set of circumstances for making a transfer order with respect to a detainee who is between 18 and 21 years of age. One of those grounds is that the detainee has been at the detention centre for at least 6 months and the director general is satisfied that it would be more appropriate for the detainee to be at a correctional centre. The other ground is that the detainee is, or has previously been, at a correctional centre, other than a juvenile correctional centre, for more than four weeks. Young adult detainees 18 years and over currently make up about one-quarter of detainees in the juvenile justice system. The legislation does not currently provide for the assessment of a detainee over the age of 17 as to where they would be best detained.

The changes proposed in this bill recognise the differing maturity levels and developmental stages of young people, especially where issues of disability and mental health are involved. While taking into account the recommendations of the court in assessing a young person 18 years or over, the director general would be advised by expert staff of the Department of Juvenile Justice with direct and ongoing experience of young offenders' behaviour and demeanour while in detention. Factors that are considered in making the decision to transfer a young person to adult custody are: the offence for which they have been sentenced; the duration of that sentence; their maturity level, psychological assessment, intellectual functioning, mental health, and educational vocational needs; their behaviour and demeanour whilst in custody; the wishes of the young person; and any other factor deemed pertinent.

This bill also provides that a person over 18 years can be transferred to an adult correctional centre where the detainee is, or has previously been, detained as an inmate in an adult correctional centre for a period of, or periods totalling, more than four weeks. This bill proposes amendments to section 9A of the Act to provide that persons who are 21 or over are not to be detained in a detention centre if they are subject to an arrest warrant of any kind, and that persons who are between 18 and 21 are not to be detained in a detention centre if they are subject to an arrest warrant issued in relation to an alleged breach of a good behaviour bond, probation or community service order, or an alleged escape from custody.

Currently, young offenders are admitted to detention centres on outstanding juvenile matters pending transfer to an adult correctional centre. This bill aims to clarify that older offenders who have breached bond, community service orders, suspended sentence parole or who have escaped from a detention centre do not need to be admitted to a detention centre in order to be transferred to a correctional centre. Also, those over 18 serving juvenile community sentences, if they commit fresh offences, will come before an adult court where they will be sentenced under the adult Crimes (Administration of Sentence) Act 1999. The fact that they are guilty of fresh adult matters automatically will mean that they have breached their juvenile orders and these breaches, as with breaches of non-compliance, would be dealt with as if they are still juveniles.

The provisions proposed in section 9A (2) (e) will mean that this category of young offender will be transferred to an adult correctional facility. This means that an offender who has previously served a period of custody in an adult correctional facility cannot be returned directly to a juvenile detention centre to serve a further period of custody. This bill also amends section 7 (1) of the Act so that each detention centre need be inspected only at least once every 12 months, rather than every 3 months. Current inspection guidelines require a full and comprehensive inspection of each centre every three months. The department recently drafted a quality assurance policy that, should this amendment be passed, will allow a nominated inspector to undertake a comprehensive inspection of each centre on an annual basis, with follow-up inspections on a three-monthly basis.

The proposed policy seeks to ensure the accountability and continuous improvement of programs and services, and implements a framework which will grade inspection indicators. These indicators will identify the necessity of further inspection throughout the year. If the inspector is satisfied that the centre is consistently meeting approved benchmarks for performance on an indicator that particular item will not be assessed for a period of 12 months. But, where improvements, however slight, are required, the centre's continuous improvement team will be responsible for implementing measures to address the identified issue. These indicators will be assessed on a three-monthly basis.

The bill amends section 21 (1) (b) of the Act to enable detainees who are being punished for misbehaviour to be restricted from participation in sport or leisure activities for a period greater than four days, as is currently the case. The proposals provide that any such restriction cannot be for more than seven days at a time except with the prior approval of the director general. The opportunity to engage in sport and leisure activities provides a strong motivation for detainees to maintain good order within a centre. Having more flexibility in determining the length of restrictions provides centre staff with a useful tool to assist in motivating detainees' good behaviour. Experience indicates that the restriction of four days currently imposed does not provide enough flexibility for centre managers to negotiate appropriate behaviours using the incentive of recreational rewards.

Importantly, the bill does not affect the provisions of section 10 of the Children (Detention Centres) Act 1987 whereby any person deemed vulnerable in an adult correctional centre can be transferred to a juvenile facility with the consent of the commissioner and the director general. The new provisions under section 33 (1) (g) provide that an offender who is under 21 years of age will continue to be committed to the control of the Minister for Juvenile Justice, while an offender who is of or above that age will be committed to the control of the Minister for Justice, and therefore will be accommodated in a correctional centre rather than a children's detention centre. The principle of separation of juvenile and adult offenders has long been enshrined in legal doctrine at domestic and international levels. Article 37 (c) of the United Nations Convention on the Rights of the Child, which has been ratified by the Commonwealth, State and Territory governments, clearly states that:

... every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so.

This principle recognises that young people have a decreased responsibility for their offending behaviour compared with adults and are vulnerable within an adult system. The article seeks to prevent contamination by older offenders. It should also be noted that New South Wales has the oldest prescribed age limit in Australia when it comes to transfers to adult custody.

This is a sound bill and it is consistent with interstate jurisdictions and current Government policy. These provisions simply allow more flexibility for detainees who have been assessed as suitable for transfer to be moved to an adult facility with minimal administrative disruption. While I will discuss the amendments to provisions dealing with offenders aged over 18 entering juvenile detention later, it is proposed that such a transfer be made by order in writing by the director general, with the consent of the Commissioner of Corrective Services, for those detainees deemed suitable on a case-by-case basis. It is anticipated that an order made under this provision will apply only to those detainees over the age of 18 who demonstrate maturity and are assessed as suitable for adult custody.

There will always be detainees who, even though they are legal adults, are so mentally, emotionally or physically vulnerable to intimidation or criminal influence that the director general cannot be satisfied that a transfer will serve their rehabilitation prospects or, indeed, their immediate safety. The department will not shirk its responsibility of care to these detainees and, unlike more draconian proposals that have been suggested in the past, take a one-size-fits-all approach and move every adult detainee regardless of what is good for them or the greater society which they must eventually rejoin. I commend this bill to the House.

I now turn to the details of the Children (Criminal Proceedings) Amendment Bill 2008. The Children (Criminal Proceedings) Act 1987 governs the jurisdiction of the Children's Court in criminal matters, and sets out the main provisions relating to criminal proceedings against children. The Act is based on several guiding principles, including the principle that children have rights and freedoms before the law equal to those enjoyed by adults. However, with rights and freedoms come obligations. Therefore, the Act also provides that children who commit offences must bear responsibility for their actions. A working party has reviewed the operation of the Act.

The working party consisted of representatives from the Commission for Children and Young People, the Department of Aboriginal Affairs, the Department of Community Services, the Department of Juvenile Justice, the Law Society of New South Wales, Legal Aid, the Ministry for Police and New South Wales Police Force, the Director of Public Prosecutions, the Children's Court and the New South Wales Attorney General's Department. The working party made a number of recommendations about the way in which the Act might be improved. Those recommendations form the basis of the amendments in this bill. The bill also implements certain recommendations of the New South Wales Law Reform Commission's report No. 104, "Young Offenders", and the New South Wales Ombudsman's "Review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act".

I now turn to the key provisions of the bill. The bill omits the current definition of "parent" in the Act and inserts new definitions of "parental responsibility" and "person responsible" to provide consistency with corresponding definitions in the Children and Young Persons (Care and Protection) Act 1998. Section 6 of the Act, which sets out the guiding principles relating to the exercise of criminal jurisdiction in cases involving children, will be amended to include the following new principles: that it is desirable that children who commit offences be assisted with their reintegration into the community so as to sustain family and community ties; that it is desirable that children who commit offences accept responsibility for their actions and, wherever possible, make reparation for their actions; and that consideration should be given to the effect of any crime on the victim. These amendments recognise that the effect of a juvenile offender's crime on his or her victim should be taken into account, and so should the child's capacity to make reparation.

Section 6 will also be amended so that all persons and bodies exercising functions under the Act, not just the courts, must apply the guiding principles. Section 12 of the Act will be amended so that if criminal proceedings are brought against a child the court hearing those proceedings must take such measures as are reasonably practicable to ensure that the child understands the proceedings. Based on advice from children's legal practitioners, section 13 of the Act will be amended to allow children over the age of 14 to select a responsible adult to be present when being interviewed by police. At present only young persons 16 years or older may choose an adult to fulfil the role of the responsible person. This amendment mirrors a similar provision in the Young Offenders Act 1997.

The next set of amendments deals with the circumstances in which the courts can direct that young persons under the age of 21 serve their sentence in a juvenile detention centre for an offence committed as a child. At present, a court can direct that a young person under the age of 21 serve all or any part of a custodial sentence imposed in relation to an indictable offence in a juvenile detention centre rather than a correctional centre. The courts may also order that a young person under the age of 21 who is found guilty of a serious children's indictable offence serve all or any part of a custodial sentence imposed in relation to an indictable offence in a juvenile detention centre if the court makes a finding of "special circumstances" under section 19 of the Act. The bill amends section 19 to provide that such a direction may not be made in respect of a person who is of or above the age of 18 years if that person is serving, or has previously served, a term of imprisonment in a correctional centre, unless it is satisfied that there are "special circumstances" to justify such a direction.

This bill also makes it clear that "special circumstances" can be found on only one or more of three grounds. These are: that the offender is vulnerable on account of illness or disability; that the only available educational or vocational training or therapeutic programs that are suitable to the person's needs are those available in detention centres; or that there would be an unacceptable risk of the person suffering physical or psychological harm, whether due to the nature of the person's offence, any assistance given by the person in the prosecution of other persons or otherwise. The bill clarifies that a finding of "special circumstances" may not be made simply because of the person's youth or simply because the non-parole period of the person's sentence will expire while the person is still eligible to serve the sentence as a juvenile offender. The bill also requires a sentencing court to record the detailed reasons for its decision to make a finding of "special circumstances".

These reforms are being introduced to clarify the Government's current policy in relation to the detention of young adults in the juvenile system. They are intended to create a more transparent and accountable scheme for the making of orders under section 19 of the Act. Young adults in the 18 to 21 age bracket have significantly different developmental needs from the needs of younger detainees in juvenile detention. The presence of these young adults can have a disruptive influence on the rehabilitation of younger detainees. It is only when there are compelling and exceptional circumstances affecting an individual young person that the courts should direct that the young person be admitted to a juvenile detention centre. This was the intention when the "special circumstances" requirement was inserted into section 19 of the Act.

However, the New South Wales Ombudsman, in his report entitled "Review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act", found that during the review period the "overwhelming majority" of matters in which orders could be made under section 19 resulted in findings of "special circumstances". The Ombudsman found that, contrary to expectations, the requirement for the courts to make findings of "special circumstances" under the Act actually led to an increase in the number of young adults being held in juvenile detention rather than a reduction. Given the concerns raised by the Ombudsman in relation to the administration of the "special circumstances" regime, the bill will amend section 19 to give greater legislative guidance on what constitutes "special circumstances" under that section. However, section 19, as amended, will continue to play an important role in assisting those young adults who have specific needs or disadvantages in addition to their age to receive adequate support towards their rehabilitation.

I now turn to those provisions of the bill dealing with the penalties that the Children's Court may impose under the Act. The changes that this bill will make to section 33 will provide the Children's Court with more flexibility in formulating appropriate penalties for individual young people, and will also allow the court to ensure that a child is supervised properly after their matter has been dealt with by the court. The amendments will mean that the penalties that can be imposed in relation to children are more consistent with the sentencing options for adult offenders under sections 9, 10 and 12 of the Crimes (Sentencing Procedure) Act 1999. It is a guiding principle of the Act that the penalty imposed on a child for an offence should be no greater than that imposed on an adult who commits an offence of the same kind. Under sections 9, 10 and 12 of the Crimes (Sentencing Procedure) Act 1999 a good behaviour bond may be imposed on a person when a charge is dismissed following a guilty finding. Currently the courts do not have the power to dismiss a charge but nevertheless require a child to enter into a good behaviour bond. This amendment provides greater scope for the courts and the Department of Juvenile Justice to monitor a child's behaviour after he or she has had a charge dismissed.

Section 33 will also be amended to allow the Children's Court to impose a fine on a child in addition to making an order releasing the child on probation—at present these are alternative penalties. In a further amendment to section 33 the courts will be able to release a young person on probation and impose a community service order as a condition of probation. This is another innovation, which ensures that, even after a child completes a period of community service work, he or she will continue to be supervised in the community. In a complementary amendment this bill amends the Children (Community Service Orders) Act 1987 to allow the courts to require a young person to participate in a vocational, educational or personal development program as a condition of a community service work order. This amendment implements the Government's election commitment. Finally, the Children's Court will be given the same power as other courts to impose a licence disqualification on a person whom it has found guilty of an offence, even if a conviction has not been recorded. This will bring the children's and adult jurisdictions into line with each other.

I now turn to those parts of the bill dealing with the important issue of compensation to victims. At present the Act allows the Children's Court to direct an offender to pay compensation to a victim of crime up to a maximum amount of \$1,000. This bill increases the maximum to 10 penalty units, currently \$1,100, in the case of an offender who is under the age of 16 years at the time the compensation is ordered, or 20 penalty units, currently \$2,200, in any other case. This doubles the compensation that may be ordered against a person over the age of 16 years and acknowledges that many young people over this age have the financial capacity to pay higher amounts of compensation due to part-time work. In another important win for victims, the bill also amends the Act to make it clear that the provisions of the Crimes (Sentencing Procedure) Act 1999 relating to the use of victim impact statements apply to the Children's Court in the same way as they apply to similar offences when dealt with by the Local Court. This amendment puts beyond doubt the fact that victims can, and should, have a say in the sentencing of young offenders.

The final key amendment to the Act contained in this bill is an amendment to section 33 (1B) which will remove the requirement that the Children's Court set a non-parole period at the time of imposing a control order if the control order is suspended on condition the person enter into a good behaviour bond. Instead, the Children's Court will be required to set a non-parole period if the person later contravenes the good behaviour bond and the court decides to revoke the good behaviour bond. These changes are consistent with changes made to the Crimes (Sentencing Procedure) Act 1999 by the Crimes and Courts Legislation Amendment Act 2006. They ensure that the court is able to fix a non-parole period which is commensurate with the young person's behaviour whilst they were released on a bond. The Government believes that young people have an obligation to respect our laws and fellow citizens and do their bit to contribute to a safe and just society. This bill will ensure that those who engage in unlawful activity are dealt with appropriately. Young offenders will be forced to face the consequences of their actions and the impact of their offending behaviour on their victims.

I now turn to the Courts and Crimes Legislation Amendment Bill 2008, which provides for miscellaneous amendments to courts and crimes-related legislation and is part of the Government's regular legislative review and monitoring program. The bill will amend a number of Acts in order to improve the efficiency and operation of the courts. The bill will also make several amendments to criminal law and procedure in order to improve the administration of the criminal justice system. Schedule 17 to the bill will amend section 148 of the Medical Practice Act 1992 to provide that judges of Supreme Court status may be appointed to sit on the Medical Tribunal. Currently only judges of the District Court are eligible to be appointed to the Medical Tribunal. The amendments will broaden the pool of judges available to the tribunal.

Schedules 10 and 19 to the bill amend the Supreme Court Act 1970 and the Criminal Appeal Act 1912 to provide that the Chief Judge of the District Court and the Chief Judge of the Land and Environment Court may act as additional judges of the Court of Appeal and Court of Criminal Appeal. The amendments will allow for the appointment of the Chief Judges to the Court of Appeal and the Court of Criminal Appeal as needed, without having to obtain a commission through the Governor on each occasion. Schedule 2 to the Civil Procedure Act 2005 governs the constitution and procedure of the Uniform Rules Committee. Clause 3A of the schedule provides that where a power exists to nominate or appoint a member of the committee, a power also exists to appoint a deputy for that member. This is so that a deputy can attend meetings of the committee where the member is unavailable. Named office holders who are not nominated or appointed in this way currently have no equivalent power to appoint a deputy. Schedule 3 to the bill will amend the Act to clarify that named office holders are able to appoint their own deputies, who will be able to stand in for the office holders when they are not available.

The Supreme Court generally deals with disputes involving large amounts of money or proceedings involving difficult and important questions of law. The District Court generally deals with less complex disputes and proceedings involving smaller amounts of money. In a number of classes of cases currently going to the Supreme Court, the District Court has been identified as a more suitable venue for the cases to be held. These classes of cases involve small claims or proceedings, the subject matter of which is of very limited monetary value. Transferring such cases will free up sitting time for the Supreme Court and will encourage the use of a more appropriate and less expensive forum for resolving smaller matters. Schedules 4, 5, 14, 15, 16 and 18 to the bill will amend, respectively, the Community Land Management Act 1989, the Consumer, Trader and Tenancy Tribunal Act 2001, the Legal Profession Act 2004, the Local Court Act 2007, the Local Courts Act 1982, and the Strata Schemes Management Act 1996, in order to provide that certain minor appeals governed by these Acts are to be held in the District Court.

The Director of Public Prosecutions [DPP] appears in applications and appeals to the District Court and Supreme Court, against convictions and sentences in the Local Court under parts 3 and 5 of the Crimes (Appeal and Review) Act 2001. After taking over an application or appeal from the police, pursuant to section 9 of the Director of Public Prosecutions Act 1986, these matters should be able to be returned to the police where an appeal is upheld and it is remitted to the Local Court. While this is currently the case for matters remitted by the District Court, the DPP currently retains conduct of matters remitted to the Local Court from the Supreme Court. This is on the basis of the reasoning in the New South Wales Court of Appeal in *Price v Ferris* (1994) 34 New South Wales LR 704, where the majority held that once the DPP takes over a matter under section 9 of the Director of Public Prosecutions Act, the original prosecutor ceases to be a party to the proceedings.

Schedule 11 to the bill will amend the Director of Public Prosecutions Act to clarify that where the DPP has taken over a matter for an application or appeal in the Supreme or District Court, the DPP is able to return the matter to the original prosecutor, typically the New South Wales Police, for prosecution where the matter has been remitted to the Local Court. Section 92 of the Crimes (Domestic and Personal Violence) Act 2007 currently provides that the District Court has original jurisdiction to issue an apprehended violence order [AVO] following dismissal of an application by the Local Court or Children's Court. It is not clear whether this requires a full hearing of the matter, rather than a normal appeal or review process. Schedule 8 to the bill provides that a magistrate's dismissal of an application will be reviewable on appeal in the way that magistrate's orders are reviewed elsewhere.

The Supreme Court Act 1970 provides for an appeal to the Court of Appeal in a jury trial when there is an application for the setting aside of a judgement or verdict, a new trial, or the alteration of a verdict by increasing or decreasing any amount of debt, damages or other money. The District Court Act 1973 does not currently make similar provision for an appeal from the District Court to the Court of Appeal in a jury trial. The Court of Appeal recently found in *Keramianakis & Anor v Regional Publishers Pty Ltd* (2008) NSWCA 3, that a right of appeal has never been available in relation to a jury verdict in the District Court. That distinction between the courts creates an anomaly in the treatment of jury trials, and creates the possibility of forum shopping. To rectify that anomaly, schedule 12 to the bill will amend the District Court Act 1973 to ensure that there is an appeal right from jury trials in the District Court, equivalent to the right provided in the Supreme Court.

Schedule 13 to the bill makes a number of amendments to the Land and Environment Court Act 1979 to improve the organisation and procedures of the court. Section 35 (1A) of the Supreme Court Act 1970 provides that the President of the Court of Appeal will be Acting Chief Justice when the Chief Justice is absent from duty. This amendment streamlines the appointment process, reducing the need for an Acting Chief Justice to be appointed by commission under the public seal every time the Chief Justice is absent. The bill amends the Land and Environment Court Act in a similar way to provide that when the Chief Judge is absent from Australia, and no Acting Chief Judge has been appointed, the most senior judge present in Australia will be taken to be the Acting Chief Judge.

The bill amends the Land and Environment Court Act to enhance the prospects of a successful outcome at conciliation conferences. The amendments require that proceedings at a conciliation conference are consistent with the good faith requirements relating to mediations in part 4, section 27 of the Civil Procedure Act 2005. The bill amends the Land and Environment Court Act to improve flexibility in on-site conferences and allows for the specialist expertise of other commissioners to be utilised where appropriate. The amendments permit more than one commissioner to preside over an on-site conference where appropriate; for example, by having a part-time commissioner with expertise in arboriculture assist a permanent commissioner in disputes under the Trees (Disputes Between Neighbours) Act 2006. This amendment makes on-site conferences consistent with section 36 (1) (a) of the Land and Environment Court Act, which provides that the Chief Judge may, on the Chief Judge's own motion or at the request of a party, direct that proceedings be heard and disposed of by one or more commissioners.

The bill amends the Land and Environment Court Act to give the Land and Environment Court power to dispense with an on-site inspection where appropriate. This amendment will facilitate the just, quick and cheap resolution of the real issues in the proceedings, by giving the court the ability to dispense with an inspection where it considers that a matter can be properly determined without an inspection. Currently applications for an easement over land can be made where the court has made a determination to grant development consent on an appeal under section 97 of the Act. The bill amends the Land and Environment Court Act to provide that applications for an easement over land may also be made when an appeal under section 97 is pending before the court. This amendment will provide more flexibility in procedure, and will allow that applications for an easement relevant to the grant of development consent can be made at the same time as the appeal seeking the grant of development consent.

Section 10A (2) of the Local Courts Act 1982 provides that "a person appointed as deputy registrar has, under the registrar, all the functions of the registrar and may exercise those functions". This provision permits deputy registrars, particularly chamber registrars, to do registrar work, both when registrars are on duty and when registrars are absent from duty. Schedule 15 to the bill inserts this provision into the new Local Court Act 2007. This means that it is consistent with the former legislation and clarifies that when the new Act commences deputy registrars will be able to continue to exercise the functions of registrars.

The Births, Deaths and Marriages Registration Act 1995 currently provides for the issue of new birth certificates for people born in New South Wales who have undergone surgery to change their sex. However, there is no means for transgender people who were born overseas to have their change of sex legally recognised in New South Wales. Similar legislation in Western Australia,

the Gender Reassignment Act 2000, provides this legal recognition for people who were born overseas. Schedules 1 and 22 to the bill will amend the Births, Deaths and Marriages Registration Act and regulation to provide that New South Wales residents regardless of where they were born will be able to apply for legal recognition of their change of sex. Applicants who are born overseas will need to satisfy certain requirements in order to obtain a certificate recognising the change of sex.

In order to apply for a certificate recognising their change of sex, applicants will be required to satisfy similar criteria to people born in New South Wales. Applicants must be unmarried and have undergone surgery for the purpose of assisting them to be considered to be a member of the opposite sex. In addition, applicants born overseas will need to show that they are an Australian citizen or permanent resident of Australia and that they live, and have lived, in New South Wales for at least one year. The Births, Deaths and Marriages Registration Act currently provides for legal recognition of a change of sex on the basis that a person has undergone sexual reassignment surgery. The bill amends the Births, Deaths and Marriages Registration Act, adopting the phrase "sex affirmation procedure", in line with updated terminology. That term was recently introduced in Victorian legislation. The bill updates the Births, Deaths and Marriages Registration Act also by removing certain redundant offences and bringing the New South Wales legislation into closer alignment with other jurisdictions.

Schedule 9 to the bill amends the Crimes (Serious Sex Offenders) Act 2006 to extend the application of the Act to offenders who have committed certain offences, and with respect to other matters relating to pre-trial proceedings under the Act. The amendments reflect the Government's ongoing commitment to protect the community from serious recidivist sex offenders. The bill amends the section 5 definition of "serious sex offence" to enable the extended supervision and continuing detention of a person who is convicted of an offence under section 61K, assault with intent to have sexual intercourse, or section 66EA, persistent sexual abuse of a child, of the Crimes Act 1900. The effect of this change will extend to offences committed before the commencement of the amendment.

The amendments will enable the Supreme Court to appoint the following to conduct examinations of offenders during pre-trial procedures as an alternative to two qualified psychiatrists: two registered psychologists; or one registered psychologist and one qualified psychiatrist; or two registered psychologists and two qualified psychiatrists. This amendment affords the court greater flexibility in being able to appoint the type and/or combination of experts that will provide the most relevant and complete information for each specific offender.

Schedule 20 to the bill amends the Surveillance Devices Act 2007, and Schedule 2 amends the Children and Young Persons (Care and Protection) Act 1998, to provide exemptions for the use of optical surveillance devices in specified law enforcement operations. The relevant law enforcement operations are the execution of search and crime scene warrants under the Law Enforcement (Powers and Responsibilities) Act 2002 and certain other Acts; and the execution of a search warrant, entry to and inspection of premises, and the removal of a child from a place or premises, in accordance with the Children and Young Persons (Care and Protection) Act 1998. The amendments are necessary because law enforcement agencies routinely use optical surveillance devices, generally video recordings, during these operations in order to preserve the continuity of evidence. The agency will have already obtained a warrant for the search, and so it is unnecessary to require it to seek an additional warrant for the use of equipment such as a video camera, which is only used incidentally to record the search.

The offence of membership of a terrorist organisation is found under section 310J in part 6B of the Crimes Act 1900. The Crimes Act contains a sunset clause of two years for that offence. The sunset clause is due to come into effect on 13 September 2008. The sunset clause was designed to allow the Commonwealth Government enough time to develop a national covert search warrant scheme pursuant to the Commonwealth Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill 2007. That scheme was to replace the State scheme. The change in government federally late last year meant that the bill was never debated. The new Commonwealth Government needs time to enact its own delayed notification search warrant scheme. The introduction of such a scheme will ensure consistency between all jurisdictions as to who should investigate terrorism offences and who should prosecute them. It will also provide for the economical use of resources. Schedule 6 to the bill will extend the sunset clause for another two years from 13 September 2008 and will provide ample time for the Commonwealth to pass the necessary legislation.

Schedule 7 to the bill amends the Crimes (Administration of Sentences) Act 1999 to update provisions regarding the conveyance and detention of offenders received from the Australian Capital Territory as a consequence of the replacement of the Removal of Prisoners Act 1968 of the Australian Capital Territory by the Crimes (Sentence Administration) Act 2005. The bill also enables disclosure of information in connection with the administration or execution of interstate laws in their application to inmates who have been transferred interstate.

This bill addresses a number of issues to do with the smooth and effective running of courts in New South Wales, as well as ensuring greater legislative consistency between New South Wales and other Australian jurisdictions. The bill also contains a number of changes necessary for the continuing development of an efficient and equitable criminal justice system. The amendments contained in this bill will improve the operation of the criminal justice system and the courts in New South Wales. I commend the bills to the House.

The Hon. JOHN AJAKA [3.51 p.m.]: I lead for the Opposition on the Courts and Crimes Legislation Amendment Bill 2008, the Children (Criminal Proceedings) Amendment Bill 2008 and the Children (Detention Centres) Amendment Bill 2008. I will attempt to speak on the three bills in a cognate manner. However, it would be more appropriate for each of the three bills and the amendments to be moved separately. At the outset I will briefly indicate to the House the Opposition's position in respect of each of the three bills. The Opposition does not oppose the Courts and Crimes Legislation Amendment Bill 2008 and it does not propose any amendments. I note that the Government and the Greens will be moving amendments to the bill.

In respect of the Children (Criminal Proceedings) Act 1987, the Opposition had intended to seek to amend the bill by inserting the definition of "correction centre", being amendment No. 1 on sheet C2008-065A. The Opposition will also seek to amend section 19, but will not otherwise oppose the bill. I note the Government

and the Greens will be moving amendments. In respect of the Children (Detention Centres) Amendment Bill 2008, the Opposition will seek to amend the bill by deleting proposed section 9A (2). If that amendment is rejected, the Opposition will oppose the bill. Again, the Greens will also be moving amendments. It is for these reasons that I believe the bills should be dealt with separately.

I will now turn to the substantive details of each of the bills. First, the Courts and Crimes Legislation Amendment Bill makes certain changes to several Acts. The bill amends the Births, Deaths and Marriages Registration Act 1995 to provide for the legal recognition of persons who have undergone sex affirmation procedures and whose birth is not registered in New South Wales, and makes subsequent amendments to that Act. This is a position reflective of the current law on the matter for people who are born in New South Wales and extends this provision for those born in other jurisdictions and especially overseas.

Changes are also made to the Children and Young Persons (Care and Protection) Act 1998 to override section 8 (1) of the Surveillance Devices Act 2007 to allow for the use of optical surveillance in connection with the removal of a child or the execution of a search warrant. The Surveillance Devices Act 2007 is amended accordingly. Amendments are made to the Civil Procedure Act 2005 to allow deputies to be appointed by ex-officio members of the Uniform Rules Committee. Amendments are made to ensure that appeals are made to the District Court rather than the Supreme Court for certain cases under the Community Land Management Act 1989, the Consumer, Trader and Tenancy Tribunal Act 2001, the Legal Profession Act 2004, the Local Courts Act 1982, the Local Court Act 2007 and the Strata Schemes Management Act 1996. Membership of a terrorist organisation is extended to remain an offence until 13 September 2010 under the Crimes Act 1900 and the Terrorism (Police Powers) Act 2002.

Amendments are made to the Crimes (Administration of Sentences) Act 1999 with respect to the conveyance and detention of Australian Capital Territory offenders as a consequence of the introduction of the Australian Capital Territory's Crimes (Sentence Administration) Act 2005 and to enable disclosure of information in connection with the administration of interstate laws with respect to prisoners transferred interstate. Rights of appeal are introduced for the dismissal of apprehended violence order applications at the Local Court or Children's Court under amendments to the Crimes (Domestic and Personal Violence) Act 2007.

The definition of a "serious sex offence" in the Crimes (Serious Sex Offenders) Act 2006 is extended to include an offence of assault with intent to have sexual intercourse, section 61K, and persistent sexual abuse of a child, section 66EA, of the Crimes Act 1900. The court will also be able to appoint psychologists to conduct examinations of offenders during pre-trial procedures. The Chief Justice of the Land and Environment Court and the Chief Justice of the District Court are able to act as judges of the Court of Criminal Appeal under amendments made to the Criminal Appeal Act 1912. Similar provisions are also enacted in the Supreme Court Act 1970.

Changes are also made so that matters taken over by the Director of Public Prosecutions can be handed back to the original prosecutor if remitted to the Local Court under changes to the Director of Public Prosecutions Act 1986. The District Court Act 1973 is also amended to provide that an appeal from a jury trial in the District Court lies as of right in the Supreme Court. The bill will also amend the Land and Environment Court Act 1979 so that parties are compelled to participate in conciliation. In addition, there are more provisions for on-site hearings and the court is conferred with Supreme Court powers in some cases to grant easements. The final significant change introduced by the bill is that judges of the Supreme Court or equivalent can be appointed as chairpersons or deputy chairpersons of the Medical Tribunal under amendments to the Medical Practice Act 1992.

This bill is part of the Attorney General's regular legislative review monitoring program. However, it is still troubling to the Opposition that such legislation was brought in cognate with other substantive legislation and is a worrying trend for such legislative review. Having said that, I concur with the sentiment of the shadow Attorney General that the Coalition is supportive of legislative changes that seek to improve the administration of the New South Wales justice system while maintaining appropriate checks and balances. As I indicated earlier, the Opposition does not oppose this bill. However, there are a number of Government and Greens amendments, which I will deal with during the Committee stage.

A term of imprisonment is not defined in the Children (Criminal Proceedings) Act 1987 or the Crimes (Administration of Sentence) Act 1999, nor is detention defined to exclude a term of imprisonment. However, a detention order is defined in the Children (Detention Centres) Act 1987 to include an order under section 19 of the Children (Criminal Proceedings) Act. Accordingly, it is arguable that any juvenile at present in detention or imprisonment or previously in detention would fall within the ambit of this section. As such, the Opposition will amend section 19 to maintain the discretion of the court in such matters.

I turn now to the rest of the bill, which also makes it clear that special circumstances can be found in only one or more of these three grounds. They are, one, vulnerable on the ground of illness or disability; two, the only available educational, vocational training programs that are suitable to the person's needs are those available in detention centres; or, three, that there would be an unacceptable risk of the person suffering physical or psychological harm whether due to the person's offence or any assistance given by the person to the prosecution of any other persons or otherwise. A finding of special circumstances may not be made simply because of the person's youth or simply because the non-parole period of the person's sentence will expire while the person is still eligible to serve the sentence as a juvenile offender.

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

QUESTIONS WITHOUT NOTICE

NATIONAL OCCUPATIONAL HEALTH AND SAFETY REVIEW

The Hon. MICHAEL GALLACHER: I direct my question to the Minister for Roads, and Acting Minister for Industrial Relations. Is the Minister aware of statements made by the previous Minister for Industrial Relations in this House about the national harmonisation of occupational health and safety, in particular that, "... New South Wales has the best occupational health and safety framework in Australia, if not the best in the world and we will not go backwards," and, further, that the Government's objective is to, "harmonise those areas that are of most importance to national employers"? In light of these comments, is the Minister aware that at the Labor Council meeting on 12 June, the deputy assistant secretary reported on negotiations regarding a national occupational health and safety system, saying that many New South Wales protective features are not on the agenda at the Federal level and that unions needed to be ready to gear up for a campaign against any changes in standards? What action is the Government taking to ensure that New South Wales workplaces are not hit by a series of industrial actions over this matter?

The Hon. ERIC ROOZENDAAL: The New South Wales Government is committed to achieving a nationally consistent approach to workplace safety. We welcome the Commonwealth's national review that is currently underway into the model occupational health and safety laws. As honourable members may be aware, the advisory panel conducting the national review has released its issues paper and we will consider the paper in detail. The review undertaken by the Hon. Paul Stein into the New South Wales Occupational Health and Safety Act 2000 is also being considered in the context of the national review's issues paper. Meanwhile, the Government wants to be sure that any changes to workplace safety laws strengthen New South Wales' record. Changes to the laws introduced by the Government in 2001 have led directly, according to the best economic modelling available, to a vastly improved record on workplace health and safety performance. The commitment of the New South Wales Government to working with the Commonwealth and other jurisdictions to harmonise workplace safety laws has been proven time and again.

At the recent workplace relations ministerial council meeting on 23 May 2008, there was in-principle agreement for an intergovernmental agreement to implement the Council of Australian Governments' commitment to deliver national harmonised legislation. This agreement is expected to be finalised prior to the next meeting of COAG on 3 July 2008. The Iemma Government is committed to cross-border harmonisation and cutting red tape, saving the State's businesses time and money and delivering real benefits to everyone in the workplace.

TRAFFIC CONGESTION TAX

The Hon. LYNDA VOLTZ: My question is addressed to the Minister for Roads. Will the Minister update the House on the issue of congestion pricing on New South Wales roads?

The Hon. ERIC ROOZENDAAL: I have stated to this House many times that congestion is the number one challenge we face on Sydney roads. It is a challenge the Iemma Government is tackling head on.

The PRESIDENT: Order! The Hon. Catherine Cusack will cease interjecting.

The Hon. ERIC ROOZENDAAL: The Government is always looking at sensible ways of improving traffic, and I am always happy to hear sensible ideas, but what we need are common-sense solutions. I recognise

the challenge Sydney faces: the peak time is getting longer and people are commuting further. I understand the frustration of motorists. Sydney is a big city and Australia's only global city. But I can rule out here and now the idea of a congestion tax for Sydney. This Government does not support taxing free roads. At a time of high interest rates and high petrol prices the last thing hardworking families need is a tax on roads, which are free, roads for which the community has already paid. A clear line is now drawn in the sand. The Government has ruled out a congestion tax but the Coalition supports a congestion tax for Sydney.

The Hon. Duncan Gay: Point of order: The Minister is clearly misleading the House. In every statement I have made I have ruled out a congestion tax. He is the Minister for congestion taxes.

The PRESIDENT: Order! The Deputy Leader of the Opposition will resume his seat.

The Hon. ERIC ROOZENDAAL: I will tell the House what the Deputy Leader of the Opposition said on radio only this weekend. He said on 2GB news, the 10.00 a.m. bulletin, in relation to a congestion tax:

I think it's something that's certainly worth looking at.

Does that sound like he is ruling it out? I do not think so. Then he said on 2SM news on the same day:

I think it's something that certainly should be examined.

So, on which roads will the Deputy Leader of the Opposition and the Coalition start putting taxes? Will it be Parramatta Road? Will the honourable member want to put a congestion tax on Victoria Road? Perhaps the Princes Highway, the Great Western Highway, Cowpasture Road, Narellan Road, Windsor Road, or is it the F3? The cat is out of the bag. The Deputy Leader of the Opposition has made it clear that he will support a congestion tax. I want to know on which road the Opposition will start slugging the families of Sydney.

[Interruption]

The Hon. Duncan Gay is known as the king of smear, and I do not wish to take that title from him. There are one million more vehicles on our roads and 600,000 more drivers than we had in 1996. That is a 16 per cent increase in the number of drivers in the past 10 years and a 26 per cent increase in the number of cars. The Iemma Government has just announced a record roads budget of \$4 billion and we are spending around \$5.9 billion on public transport as well. We are getting on with the job of addressing these serious issues in an integrated manner. The Iemma Government is investing \$660 million in easing traffic congestion and increasing public transport through the urban transport statement, and that includes \$100 million to accelerate bus priority works on major bus corridors. We are also targeting hot spots through the \$100 million pinch point program, identifying spots on the network where traffic chokes, and rectifying those matters. This is the way forward, a comprehensive strategy to improve both the road network and public transport—not the Coalition's plan to introduce a congestion tax to hit the hardworking motorists of Sydney.

MOTOR-ASSISTED PEDAL CYCLES

The Hon. DUNCAN GAY: I direct my question without notice to the Minister for Roads, and the Minister for misleading the House. Is the Minister aware that around 10,000 motorised scooters, known as e-bikes, have been sold in New South Wales after the Roads and Traffic Authority advised they did not require registration? Did the Minister know that e-bike riders are now being fined hundreds of dollars for riding unregistered vehicles? Is the Minister aware that a court ruling has found e-bikes now cannot be legally used on New South Wales roads? Will the Minister explain how the Roads and Traffic Authority is going to clear up this confusion or potentially face refunding the \$1,400 cost of the bike to each owner?

The Hon. ERIC ROOZENDAAL: I assume the Deputy Leader of the Opposition wants me to charge them a congestion tax, because that is clearly his plan for Sydney traffic. I am advised that the Roads and Traffic Authority and the New South Wales Police Force have recently issued media releases and have updated their websites to clarify the issues surrounding the registration of motorised devices, in particular bipeds and motorised bikes such as e-bikes. For the benefit of members of the House let me summarise the information. Under current road transport legislation, if a bicycle is designed to be propelled by human power but has an ancillary propulsion motor that has a maximum output power of not more than 200 watts, it is considered a motor-assisted pedal cycle. The Road Transport Vehicle Registration Regulation 2007 exempts motor-assisted pedal cycles from the need to be registered.

Since the 1970s these vehicles have been ridden on roads, without registration, as long as the rider obeys the road rules relating to bicycles and wears an approved bicycle helmet. As the vehicle does not require registration, the rider is exempt from the requirement to hold a licence. However, I am advised there are now several new models of pedal cycles propelled by human and electric power in combination, and of small electric powered motorbikes. A class of vehicles also resembles motor scooters or small motor cycles which can travel at significant speed, may have running boards, screens and small wheels, and do not look like what would commonly be considered a bicycle, even though they may be able to be propelled by human power.

In some cases, these vehicles have been modified by the removal of the pedals, or removal of the chain, and operate on motor power alone. Furthermore, some models are advertised as meeting criteria for registration exemption, but may not in fact be pedal cycles or may have motors more powerful than 200 watts. This creates problems for compliance and road safety. The New South Wales Police Force is responsible for the enforcement of road transport laws. If vehicles do not meet the criteria for registration exemption, drivers may be charged with driving unregistered and uninsured, which are offences that carry penalties. Purchasers of such vehicles should be aware that they might need to demonstrate to police or the courts that their vehicle is designed to be propelled by pedals alone, and that their auxiliary motor has a maximum output of 200 watts.

The Roads and Traffic Authority has been working with the New South Wales Police Force and the Office of Fair Trading to consider better regulation of motor-assisted pedal cycles and similar motorised vehicles. As part of this process, a paper was developed to identify the current issues and some possible solutions. This paper was circulated to other State and Territory vehicle registration authorities, and local government and peak stakeholder groups for distribution and comment. I am advised that a wide range of comments were received. All comments will be considered as part of a submission to me concerning the future registration and licensing arrangements for motor-assisted pedal cycles. I am advised that the Roads and Traffic Authority is also pursuing national agreement to review vehicle standards for these vehicles. In the interim, the information available on the Roads and Traffic Authority website has been amended to provide a better explanation of which vehicles meet the current requirements for exemption from registration.

ILLAWARRA REGION UNEMPLOYMENT

Reverend the Hon. Dr GORDON MOYES: My question is directed to the Minister for Roads, representing the Minister for the Illawarra. Is the Minister aware that the Illawarra region consistently suffers an unemployment rate that is significantly higher than most other regions not only in New South Wales but also throughout the nation? In particular, is the Minister aware that youth unemployment is one of the most significant economic and social issues facing the Illawarra region and recent figures from the Australian Bureau of Statistics found that "While the overall unemployment rate in the Wollongong Statistical Region was 6.8 percent, the youth unemployment rate was 21.6 percent? Moreover, the Illawarra consistently has a youth unemployment rate amongst the highest of any region in the State". Can the Minister inform the House what policy and program initiatives will be established to reduce the high levels of both adult and youth unemployment to avoid a cycle of poverty and welfare dependency in the Illawarra region?

The Hon. ERIC ROOZENDAAL: I thank the member for his question. I will refer it to the appropriate Minister for a response.

WESTERN LANDS ACT REVIEW

The Hon. TONY CATANZARITI: My question is addressed to the Minister for Lands. Can the Minister provide details of the Government's plan to change the Western Lands Act to benefit the people of the Western Division?

The Hon. TONY KELLY: I thank the member for his question and his continued interest in western lands. Last week I tabled the review of the Western Lands Act 1901. The five-year review of the Act follows the extensive reforms undertaken as a result of the Kerin report in 2002. The good news is that the review found that the Western Land Act is working well and is still relevant to the needs and circumstances of the Western Division. The Western Division covers a vast area of New South Wales—some 32.5 million hectares or over 40 per cent of the State. It lies generally west of a line from the Queensland border at Mungindi, to Balranald near the Victorian border. Some 9.4 million hectares of that, or 11 per cent of the State, is unincorporated, meaning it has no direct local government. The majority of the land is held as Crown leasehold lands and, by and large, is administered under the Western Lands Act.

The Hon. Duncan Gay: We just had a bill through Parliament where everyone has made contributions to the second reading speech.

The Hon. TONY KELLY: The Deputy Leader of the Opposition should have listened to the first bit rather than talk about that. Public consultation has been an important aspect of this review.

The Hon. Duncan Gay: You are just wasting time.

The Hon. TONY KELLY: I am just wasting time? I will tell the Western Lands people that. The Western Lands Advisory Council was initially invited to identify issues and help frame the discussion paper, and I thank all those who took time to make a submission to the review. While the review found that the Western Lands Act, by and large, worked for the Western Division, it did pick up a number of issues that need to be addressed. Just last week Parliament passed an important reform to the Western Lands Act, allowing parallel leases to operate over the same parcel of land in the Western Division. The reforms help facilitate developments such as the Silverton wind farm proposal and will better allow us to respond to changing needs and circumstances in the Far West. The review also sought a number of changes to the Act to ensure it continues to meet the needs of leaseholders and their far western communities.

One of the most important and practical changes will be to strengthen boundary fencing provisions within the Western Division to ensure all stock are contained within a property, something that obviously The Nationals are not interested in. The need for stronger enforcement powers arises in part from the introduction of exotic sheep breeds, such as the Dorper, the White Dorper, the Damara, and the Van Rooy breeds—and my sheep adviser has not even heard of some of those—not to mention other stock animals that need appropriate fencing, like goats and cattle.

The Government will bring forward amendments to allow local land boards to hear fencing dispute matters, as well as provide the Western Lands Commissioner with greater powers to enforce the ruling of a land board. Other important changes to the Western Lands Act as a result of the review will include creating an easement along the 600-kilometre long dog proof fence for the access and maintenance works to the fence; establishing a legal road network across all types of land in the Western Division; introducing more flexible arrangements around appointments to the Western Lands Advisory Council, as well as adding a mining interest on the council; and clarifying that objects of the Act with reference to both indigenous and non-indigenous cultural heritage.

The review of the Western Lands Act also recommends that improved planning and development controls should be introduced in the unincorporated area of New South Wales to bring them into line with other parts of the State. These proposals will be the subject of further consultation with the Western Lands Advisory Council and other relevant stakeholders. The Government looks forward to bringing before the House further amendments to the Western Lands Act to ensure it continues to meet the needs of the people of Western Division.

LOCAL COUNCIL FEES

Reverend the Hon. FRED NILE: I ask the Treasurer a question without notice concerning local government charges. Is it a fact that local councils are proposing a massive increase in child-care fees, an increase of up to a 30 per cent, such as Parramatta City Council, from \$56 to \$75 per day? Is it a fact that local councils are using parking fees as an indirect form of taxation as a major source of revenue, which has doubled in metropolitan regions? What action is the Treasurer taking to protect New South Wales working families, who are already suffering under higher petrol costs, from these exorbitant charges by local councils?

The Hon. MICHAEL COSTA: The member highlights a very important issue. I do not want to go into the specifics of Parramatta council or any specific council charges. All those matters were looked at in the Independent Pricing and Regulatory Tribunal report, including the different levels of government and problems with revenue to meet increasing service demands. A representative from local government is on the Council of Australian Governments. As part of the Federal Government's process of looking at tax reform, local government needs to be looked at. Our taxation system at the national and other two tiers is in need of reform. Service demands are increasing. If we do not get the fundamentals right with respect to core funding for essential services and more generalised services, there will always be an opportunity for people who do not understand the connection between service charges and service delivery to utilise informal or other means to raise revenue.

Part of the reason we looked at section 94 charges was a belief that some councils were using section 94 levies as a substitute for general revenue. I do not criticise the councils for doing that, but I think it was a mistake as it was counterproductive. It does, however, highlight the need for proper taxation reform. The Government moved to address the section 94 charges but the councils made the valid point that they are feeling pressure and require a funding solution for both essential and more generalised community services. I look forward to the taxation review of the Federal Government as a way of highlighting the issues and hopefully finding some long-term solutions. The question of individual charges is really a matter for individual councils. If Reverend the Hon. Fred Nile has specific examples he would like referred to the Minister for Local Government, I am happy to do that for him.

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

The Hon. CATHERINE CUSACK: My question is directed to the Attorney General, Minister for Justice, and Acting Minister for Education and Training. Has the Hon. John Della Bosca, or any other person associated with Iguanagate, made submissions for assistance with legal representation? Are the taxpayers of New South Wales contributing towards the expenses for legal representation in this case? If so, on what basis and what is the cost?

The Hon. JOHN HATZISTERGOS: I am not aware of any application but should an application be made it will be dealt with in accordance with normal protocols.

MOBILITY PARKING SCHEME

The Hon. HENRY TSANG: My question is addressed to the Minister for Roads. Can the Minister update the House about further reforms to the Government's mobility parking scheme?

The Hon. ERIC ROOZENDAAL: I thank the honourable member for his question and his interest in this important matter. The mobility parking scheme [MPS] is there to make life easier for people with disabilities, not for parking cheats who defraud the system and do not have a conscience. That is why the Iemma Government has introduced tougher penalties for people who abuse the scheme. Parking cheats need to get the message that we will not tolerate the abuse of a legitimate and important scheme for helping people with disabilities.

Under reforms to the mobility parking scheme, council rangers will be given on-the-spot powers to confiscate mobility parking scheme cards which are being misused by parking cheats; a three-strikes-and-you're-out policy will be introduced for people caught misusing the scheme; and the mobility parking scheme card application form will be improved to remind doctors of their obligations under the scheme and to emphasise the importance of the scheme's integrity. The Roads and Traffic Authority [RTA] will also link card applications to an applicant's medical fitness to drive, if the applicant also holds a drivers licence. This has a clear road safety benefit and it will also help deter those people who apply for cards based on false information about a disability. We made these reforms after a joint operation of the Roads and Traffic Authority, the New South Wales Police Force and the City of Sydney, North Sydney and Parramatta councils uncovered more than 300 people abusing the mobility parking scheme cards.

The Iemma Government has made major changes to the scheme over the past two years to make life easier for people with a disability. Previous improvements include: increasing the penalties to \$477 for various offences involving mobility parking scheme cards, which is the highest such penalty in Australia; increasing on-road enforcement operations by councils in partnership with the RTA and the New South Wales Police Force. The RTA also developed enforcement guidelines to help councils, and the introduction of a hotline to receive reports about alleged misuse of the mobility parking scheme.

The Chair of the Disability Council of New South Wales, Mr Andrew Buchanan, welcomed the reforms and was with me when I announced them last Sunday. He spoke about his frustration at regularly seeing fit, able young people sprinting out of cars marked with a mobility parking scheme permit. He was clear in his message that people cheating the system were disadvantaging many genuine permit holders every day. He was eloquent and passionate and let down by the Leader of the Opposition, who dismissed the issue out of hand with no vision on how to solve it—

The Hon. Charlie Lynn: Describe eloquent?

The Hon. ERIC ROOZENDAAL: What you aren't, Charlie, is how I would describe it. No vision on how to solve it, no policy ideas on how to improve quality of life of the genuine permit holders. Thank goodness the Iemma Government is listening to the community and is doing something about the issue. These new reforms will be implemented from November this year and the Government will continue to work with the various peak disability and community groups, including the Disability Council of New South Wales, on further reforms to improve life for people with a disability.

PASHA BULKER SALVAGE

Ms LEE RHIANNON: My question is directed to the Treasurer, Minister for Infrastructure, and Minister for the Hunter. As the Treasurer is one of the two shareholders of the Newcastle Port Corporation, what measures has the Minister taken to recover the \$2 million that Fukujin Kisen owes the corporation for the management of the rescue of the *Pasha Bulker*? Considering the claim for this money owed for helicopter support, damage to the beach, and work to stop oil leaks, was lodged on 31 October last year, will the Minister consider taking legal action to recover this money as other groups that have suffered financial losses from the grounding of the *Pasha Bulker* have done?

The Hon. MICHAEL COSTA: The Minister for Ports and Waterways, Joe Tripodi, has been talking about this issue in the press and has been doing a terrific job.

The Hon. Duncan Gay: He was harder to get out of Newcastle than the *Pasha Bulker*!

The Hon. MICHAEL COSTA: Joe Tripodi has certainly provided great support to the team up there and is well respected in Newcastle. Where is Joe?

The Hon. Duncan Gay: Every takeaway shop in town is saying, "Where is Joe?"

The Hon. MICHAEL COSTA: They like Joe in Newcastle. In fact I suggested to him at the time that if he moved to the Hunter, he could become the Minister for the Hunter. What I find extraordinary about the question of Ms Lee Rhiannon is only last week I pointed out that there was a group endeavouring to shut down the port of Newcastle and cause problems for the people who use the port, particularly the coal ships that come in and out. Do members remember that? Do members remember I got into a shouting match with the only Green that is really a Green—and he has left the Chamber—Mr Ian Cohen about the matter? I pointed out that he would have more credibility talking about Government funding if he was not about to waste Government funds on stunts like the protest the Greens are going to pull in the middle of July.

It is extraordinary that Ms Lee Rhiannon would ask me this question. As I pointed out last week, there is a competition going on for a theme song for the protest. Some of the songs being suggested were songs by the Spice Girls and other inappropriate songs. I was going to suggest that *The Fool on the Hill* would be more appropriate. Now that Mr Cohen is back in the Chamber I am sure he would fit the bill for the song *Send in the Clowns* or, given the member who asked the question, the song *The Joker* would be appropriate as well.

I can advise the House that the protest is getting even more absurd—and it also shows the absurdity of the question in relation to costs—because the Greens are organising, what is referred to in its program, a jail solidarity. The Greens will be chilling outside the cop shop placing a bit of pressure for releasing people who were arrested during the day's action. Ms Lee Rhiannon is complaining about the costs of the rescue of the *Pasha Bulker*, a legitimate rescue operation that occurred because of an unusual storm associated with floods in the area. The Minister for Ports and Waterways is pursuing the costs, and he has made that absolutely clear, yet the Greens are planning an action that is going to increase the costs on the port of Newcastle and disrupt economic activity. The Greens have gone so far as to premeditate roles for likely arrest with protests in front of the jail to release people who have engaged in illegal activity. Who is going to pay for that? Ms Lee Rhiannon sits there with a silly smile but the reality is it is hypocritical to ask any question about costs to the Government whilst the Greens support actions such as the protest about to be undertaken in Newcastle in July.

Ms LEE RHIANNON: I ask a supplementary question. Could the Treasurer elucidate his answer in the context of the cost of climate change and the minimal costs that will be borne in the area? Is the Treasurer a climate change denier in the context of the huge burden the salvage of the *Pasha Bulker* is bringing to our State and country?

The Hon. Greg Donnelly: Point of order: The supplementary question contained argument and should be ruled out of order.

Ms Lee Rhiannon: To the point of order: Clearly, the Treasurer wants to answer the question. His wish should be granted.

The PRESIDENT: Order! It is always the wish of the Chair that the House is adequately informed by Ministers' answers. However, it is clear that the question not only contained argument but also could be said to be an entirely new question. Therefore, I rule it out of order.

THE HON. JOHN DELLA BOSCA: IGUANAS WATERFRONT RESTAURANT INCIDENT

The Hon. GREG PEARCE: My question without notice is directed to the Treasurer, and Acting Leader of the Government. As Leader of the Government can the Treasurer advise the House exactly what status the Hon. John Della Bosca holds in the House? In particular, is he still a Minister drawing a ministerial salary and allowances? What is the basis upon which he is failing to perform his ministerial duties while police continue their investigations into the Iguanagate affair? If he is receiving his ministerial salary, is he still accountable to the community by answering questions in this Chamber?

The Hon. MICHAEL COSTA: As the Hon. Greg Pearce is very well aware, this matter has been addressed by the Premier, as it was by the Hon. John Della Bosca when he made his statement to the House.

VICTIMS OF CRIME

The Hon. PENNY SHARPE: My question without notice is addressed to the Attorney General. What is the latest information on the role of victims of crime in the juvenile justice system?

The Hon. JOHN HATZISTERGOS: One of the Government's key strategies for tackling juvenile crime is to involve victims of crime in the punishment of young offenders. We believe that, wherever possible, juvenile offenders should be made to confront their victims and face up to their behaviour. That is why the Government continues to support police officers who use their discretionary powers to refer certain young offenders to youth justice conferencing. Conferencing provides victims of crime with an opportunity to describe to the offender how they have been traumatised, helping to heal the wounds left behind by crime. It also requires offenders to make amends through the development of an outcome plan, which can include a formal apology, the payment of compensation or the performance of community service work, such as cleaning up graffiti. Given the success of youth justice conferencing, I was very surprised recently to read in the Newcastle *Herald* a letter to the editor penned by the shadow police Minister, the Hon. Michael Gallacher. In his letter, which appeared on 15 May 2008, the honourable member was quite critical of the Government's strategy to make young offenders confront their victims. He wrote:

Having to face your victim and apologise no longer holds much weight for either the apprentice criminal or the victim.

It is interesting to note the views of crime representatives Ken Marslew from Enough is Enough and Howard Brown from the Victims of Crime Assistance League, who are strong supporters of youth justice conferencing. On 20 February 2008, Ken Marslew said to the Law and Justice Committee:

With conferencing there is a high level of justice for both victims and offenders. They appear to get more out of the process.

Also on 28 February, Howard Brown said to the Law and Justice Committee:

This is one of the great things about juvenile conferencing. If we can get these unfortunates early enough and divert them, they do not become serious offenders.

In this context, it is worth noting that the Leader of the Opposition also wrote in his letter to the editor of the Newcastle *Herald*:

For far too long the "hand holders" have dominated debate on juvenile offenders.

I was also interested to read that the Leader of the Opposition said:

The Canadians, I think, have some interesting ideas.

As I am always open to new ideas I took up the member's suggestion and did some research on Canadian initiatives to deal with juvenile crime. I note that the Federal Canadian Minister for Justice, the Hon. Rob Nicholson, a Minister in the conservative Harper Government, is currently seeking nominations for the 2008

Minister of Justice National Youth Justice Policing Award. According to the Canadian Department of Justice's website, the award recognises the efforts of police officers who "look beyond the formal court system in dealing with young persons who come into conflict with the law". The website also states that one of the factors that is taken into account in determining award eligibility is "the use of conferencing as a means of providing advice to decision makers through the youth justice process".

What is more, last year the Minister presented the Youth Justice Policing Award to Constable Dwayne Cebryk for his work in "using the tools that the Youth Criminal Justice Act provides, such as extra-judicial measures and conferences". This is the Canadian system that the Leader of the Opposition held was such a good system. Clearly, it is the Leader of the Opposition and the Opposition, not the Government, who need to look to Canada for inspiration and new ideas. In doing so, they should follow the lead of their cousins in the Canadian conservative party and get behind police officers who refer young offenders to conferencing to face their victims.

OCEAN TRAP AND LINE FISHERY WILDLIFE TRADE OPERATION DECLARATION

Mr IAN COHEN: My question without notice is directed to the Minister for Primary Industries. On 30 June 2008 the current wildlife trade operation declaration for the New South Wales Ocean Trap and Line Fishery will expire. Has the Minister satisfied the conditions placed on the current licence by requiring new restrictions on the Solitary Islands and Green Island-Fish Rock sites? Has the Federal Minister for the Environment sighted a compliance by the New South Wales Ocean Trap and Line Fishery? Is the Minister aware that the Federal Minister for the Environment revoked the wildlife trade operation declaration for the Western Australian North Coast Shark Fishery on 16 April 2008? Is the Minister concerned that the wildlife trade operation declaration for the New South Wales Ocean Trap and Line Fishery will not be renewed?

The Hon. IAN MACDONALD: At this time the Federal Government has taken no such action in relation to the particular fishery. I understand that the modifications proposed for the Solitary Islands and Montague Island, I think it is, were relatively secure and acceptable. I have heard nothing further to indicate that is not the case. However, I will look into the particular issue and get back to the member.

Mr IAN COHEN: I ask a supplementary question. Can the Minister describe to the House the actual modifications?

The Hon. IAN MACDONALD: I now have some notes. The Fisheries Scientific Committee recently made a final determination to upgrade the status of the grey nurse shark. The New South Wales Government was the first in the world to protect the grey nurse shark. I have a deal of information, but as my time for responding is limited I will deal with the key point. In consultation with the commercial fishing industry, new restrictions have been introduced to medium- and high-risk commercial fishing methods in the Ocean Trap and Line Fishery and the Green Island-Fish Rock grey nurse shark aggregation site near South West Rocks and the Magic Point aggregation site near Maroubra. Additional closures to the same commercial fishing method are proposed at north and south Solitary Islands. This should help alleviate any concerns that either the Opposition or environmental groups have about the level of protection being given to the shark by the New South Wales Government.

MURWILLUMBAH PROBATION AND PAROLE OFFICE CLOSURE

The Hon. JENNIFER GARDINER: My question without notice is directed to the Attorney General, and Minister for Justice. Given that the Minister is closing the probation and parole office in Murwillumbah, which services 190 clients, and moving the operation to Lismore, can he assure the House that he and his department have not made and are not intending to make any moves to suspend what are deemed as low-risk parolees from having to duly report? Can he also inform the House about any implications from dealing with interstate parolees from, for example, the Burleigh Heads and Southport areas?

The Hon. JOHN HATZISTERGOS: I answered a similar question asked by the Hon. David Clarke last week. Three reporting centres currently operate in the area at Byron Bay, Mullumbimby and Tweed Heads. They will continue to operate once the Lismore office assumes responsibility for the area. In addition, the commissioner has advised that the Lismore district office will assume responsibility for the area concerned. Staff of the Murwillumbah office will be transferred to the Lismore office. A reporting facility also will be available in Murwillumbah. Reporting facilities exist not only at Department of Corrective Services offices that have probation and parole services; they also operate in outreach centres, such as the reporting centres I have

referred to. In addition, the Hon. Jennifer Gardiner should be aware—as I indicated in response to a similar question asked by the Hon. David Clarke—that we provide outreach services and, when appropriate, arrange home visits for offenders who are unable to attend a reporting centre.

WESTERN REGION CYPRESS TIMBER INDUSTRY

The Hon. CHRISTINE ROBERTSON: My question is directed to the Minister for Primary Industries. Will the Minister advise on developments in the western region cypress timber industry, including the outcomes of any Government assistance?

The Hon. IAN MACDONALD: As members will be aware, the Western Region Assessment was concluded in the Brigalow belt south bioregion in 2005. It saw considerable adjustments and investments in the cypress timber industry in the Pilliga State Forests and elsewhere in the west of the State. Community conservation areas were created covering the Pilliga forests, located north of Coonabarabran, and centred on the cypress timber industry town of Baradine. The Western Region Assessment included a commitment from the New South Wales Government to ensure the future supply of cypress timber and to provide funding for industry development.

The Government has, to date, approved \$7.9 million to assist industry development in the Brigalow. This has added value to the resource and local communities through the new wood supply agreements that the Government has signed with companies that chose to stay on and build their businesses. The House will be interested to hear that the New South Wales Forest Products Association has recently secured accreditation for use of cypress timber in housing construction from the Japanese Government. The natural termite resistance and durability of cypress is highly sought after for use as floor sills. The Japanese refer to it by the term "dodai" in Japan's building industry.

In January 2006 the New South Wales Forest Products Association conducted strength testing of cypress with the CSIRO to provide data to satisfy the rigorous procedures of the Japanese Ministry of Agriculture, Fisheries and Forestry. Austrade in Nagoya facilitated representation to the Japanese Government with assistance from the Australian Embassy in Tokyo. I was present recently at an event with the Forest Products Association, Austrade officials from New South Wales and Nagoya and representatives of the cypress industry to officially acknowledge a significant further achievement in export approvals.

With the assistance of the CSIRO, the Forest Products Association has obtained accreditation for the use of Australian white cypress for laminated timber products in the Japanese building industry. Cypress members of the Forest Products Association will now be able to increase export markets for this valuable timber. I am told that this laminates accreditation may generate more than \$5 million a year in sales to the Japanese market. The accreditation is now available to members of the Forest Products Association. I look forward to this Japanese approval of cypress laminate being used to promote cypress products in other potential export markets.

Japan is a fantastic market to get into, and if cypress products can receive recognition and gain a niche in that market, the future of the industry, particularly in high-value-added products, will be very bright. It is investments such as this new wood lamination technology that will grow the cypress industry market into the future. The accreditation of Australian cypress laminate is a big boost for our local industry and it shows farsightedness, innovation and a willingness to invest in a valuable industry. I congratulate the Forest Products Association, and in particular its dedicated executive director Mr Russ Ainley, on achieving the accreditation that will greatly enhance the position of Australian cypress products in the Japanese market. This demonstrates the progress that can and has been made in value adding, with government assistance, in the cypress industry.

Specific recognition is due to the Grants of Condobolin and Narrandera. They have invested more than \$2 million in the past two years and have been the driving force of processing technology, especially for small logs and market development in Japan and China. It is great to see that they are now able to achieve increased returns and high value products from the resource. These are the sorts of positive outcomes that we promised would happen when we announced the Government's Brigalow decision back in 2005, with around \$15 million worth of government assistance.

LONG BAY CORRECTIONAL COMPLEX HOSPITAL PATIENTS LOCK-IN

Ms SYLVIA HALE: I address my question to the Minister for Justice. How has the Minister responded to a letter from David Crosby, chief executive officer of the Mental Health Council of Australia,

expressing concerns about the new regime at Long Bay Prison Hospital whereby patients with a mental illness are locked in their cells from 4 p.m. rather than from 9 p.m.? What has the Minister said to Mr Crosby in relation to his concerns that the regime constitutes grossly suboptimal care, creates long periods of isolation, is in direct conflict with good practice, raises serious human rights issues, increases the likelihood of avoidable expensive acute care, and is the enemy of good mental health?

The Hon. JOHN HATZISTERGOS: It appears that a copy of the letter, which I have only just received, has made its way to the Greens' office.

The Hon. Michael Costa: It was probably written in the Greens' office, wasn't it?

The Hon. JOHN HATZISTERGOS: I am not going to go that far—I will give Mr Crosby a bit more credit for it than that. Since I last updated the House on the operational routine at Long Bay Hospital, the Department of Corrective Services has conducted an evaluation of the new routine. In addition, several inspections of the evening routine have been jointly conducted by the Department of Corrective Services, Justice Health and representatives of the New South Wales Nurses Association. During those inspections staff views were canvassed regarding any issues or problems in providing medical access to inmates who were locked in cells.

Early in the trial a number of issues was raised and subsequently addressed by the general manager of Long Bay Hospital through changes in operational procedures or improvements in communication. I am advised that the general manager has reported that during recent inspections there was generally no issues regarding medical access to inmates locked in their cells. The six-week evaluation found that during the period of the trial the number of reportable incidents reported by the Department of Corrective Services in Long Bay Hospital significantly decreased when compared with the same six-week period in 2007. I am advised that none of the predictions of increased serious incidents and mental health issues by those opposed to the trials has occurred during this trial. In fact, the opposite has occurred, as was the case in pods 19 and 20 of the Mental Health Screening Unit at the Metropolitan Remand Reception Centre when a similar routine was introduced in December 2006.

Those opposed to the new operational routines draw comparisons with inmates being kept in isolation or segregated custody. However, that is a totally different part of custodial management. Similarly, seclusion in a mental health facility is a much harsher regime and not comparable with the new operational routine in Long Bay Hospital. Segregated custody in a correctional centre or seclusion in a mental health facility isolates inmates from all contact with others and is often a harsh and stark environment. The routine in the new Long Bay Hospital allows inmates to interact with their peers and staff between the hours of 8.00 a.m. and 4.00 p.m. The inmates are then secured in cells with large windows, good lighting, beds, television, some personal possessions, reading material and an ensuite that includes a shower, hand basin and toilet. Most importantly, each cell has an intercom that allows inmates to contact staff should the need arise. During the periods inmates are locked in their cells, both medical and custodial staff will access the inmates, as required. I am advised that the operational trial of the new routine in the existing Long Bay Hospital is proving to be successful. The Department of Corrective Services will continue to closely monitor the new routine until the completion and occupation of the new facility.

THE HON. JOHN DELLA BOSCA: IGUANAS WATERFRONT RESTAURANT INCIDENT

The Hon. GREG PEARCE: My question is directed to the Treasurer, and Acting Leader of the House. Pursuant to Standing Order 64 I wish to ask a question of the Hon. John Della Bosca, a Minister, in relation to public affairs with which the Minister is officially concerned. Is the Minister absent on official business or on leave, and if so, what is he doing? If he is not absent on official business or leave, will the Treasurer ensure members are able to ask questions of this Minister?

The Hon. MICHAEL COSTA: I refer to my previous answer on this. The honourable member can rephrase his question as much as he likes; the answer will not change.

ETHANOL-BASED FUEL SUPPLIES

The Hon. EDDIE OBEID: My question is directed to the Minister for Regional Development. Will the Minister update the House on moves to increase the availability of ethanol-based fuels in New South Wales?

The Hon. TONY KELLY: I thank the Hon. Eddie Obeid for his interest in this important issue. Yesterday I had the pleasure of launching Caltex's first ethanol storage and blending facility in Sydney at the company's Banksmeadow terminal. This new facility will mean more Caltex service stations in Sydney and regional New South Wales will now be able to offer E10 fuel: unleaded petrol blended with 10 per cent ethanol. As a side issue, perhaps now Woolworths will be able to start offering E10 fuel also and not have an excuse not to. This means it will be easier for more people to access this cleaner, greener and cheaper fuel. I congratulate Caltex on the completion of this very important infrastructure project.

I now look forward to rapid increases in Caltex's E10 sales to meet the 2 per cent mandate, and to its continued co-operation in developing a sustainable biofuels industry in New South Wales. The Iemma Government is committed to supporting biofuels and we are leading Australia in mandating the use of ethanol in petrol. We are seeing some very positive action by the major petrol companies to meet the requirements of the mandate. We will continue to work with them to ensure more ethanol-blended petrol is available at more New South Wales petrol pumps.

As the world grapples with the spiralling cost of oil it is incumbent upon governments to ensure greater diversity in the mix of our transport fuels. Importantly, new transport fuels must also be capable of making a significant contribution to reducing greenhouse gas emissions, and they must not lead to unintended consequences, such as increasing the price of food. The New South Wales ethanol mandate gets this balance right. I have made it clear that New South Wales wants a sustainable biofuels industry that is at the cutting edge of technological developments.

Hundreds of millions of dollars are being invested in developing second-generation biofuel technologies around the world. Numerous projects are looking to ensure that ethanol produces food as well as fuel. I am aware of projects that are looking to capture carbon emitted from coal-fired power stations and to create biodiesel using algae. These are technologies that exist today and that are looking to be commercialised over the next few years. To realise the benefits of the technological advances that they can bring we must take action now. If we wait, others will seize these opportunities and New South Wales will lose those jobs and the investment that these advances will bring.

The biofuel industry can make a real contribution to what will be a difficult transition away from oil and transport fuel. I urge all members who have taken an interest in this important policy to understand the complexities and challenges that confront this emerging industry. The reality is that in 20 years our cars and trucks will all be running on some form of biofuel and some of our vehicles will be hybrids. The Iemma Government is committed to ensuring that when it comes to biofuels we get the balance right in New South Wales—unlike the Coalition, which did absolutely nothing when it was in government federally.

ALCOPOP LABELLING

Dr JOHN KAYE: My question is directed to the Minister for Primary Industries, in his capacity as the Minister responsible for the NSW Food Authority and also as the New South Wales representative on the Australia and New Zealand Food Regulation Ministerial Council. Is the Minister aware of recent American research showing that the consumption of pre-mixed alcoholic drinks containing high levels of caffeine and other stimulants can double the risk of harm to the drinker and other persons when compared to consuming equivalent quantities of other types of alcoholic drinks? What steps is the Minister taking to ensure that mandatory labelling or other measures warn consumers of the high risks associated with the consumption of high-energy alcopops?

The Hon. IAN MACDONALD: I am aware that the member has been calling on the Government to introduce mandatory health warnings on the labels of so-called alcopops. As with other food-related issues, a nationally coordinated response is the most effective approach. The Greens may be aware that the Commonwealth Government is still considering Family First's Alcohol Toll Reduction Bill 2007, which proposes that labels containing health information be placed on alcohol products. The Prime Minister has also asked the Council of Australian Governments to work on the problem of binge drinking through the Australia and New Zealand Food Regulation Ministerial Council and Food Standards Australia New Zealand, which is the national regulator. The national arena is the proper forum for consideration of this issue to ensure a coordinated and effective response across Australia. I will raise this question at the next meeting of the ministerial council.

TAMWORTH HOSPITAL

The Hon. TREVOR KHAN: My question is directed to the Treasurer. Given that the Tamworth Base Hospital redevelopment was announced in the 2006 State Infrastructure Strategy, why is it listed in the new

2008-2018 strategy document as "Not yet approved but forms part of the \$140-billion State Infrastructure Strategy to 2017-18"? Why is the redevelopment not yet approved two years after the announcement? Why is it listed as being in the planning stage for the next four years? Why was no funding for the planning stage allocated in the 2008-09 budget? Is funding for the Tamworth Base Hospital redevelopment conditional upon the privatisation of the State's electricity assets? What steps will the Treasurer now take to expedite the process, secure the funding and push through the necessary approvals?

The Hon. MICHAEL COSTA: Do I get three minutes to answer each of those questions? No? If the member had listened the last time I was asked about the infrastructure strategy—obviously he did not listen—he would understand that many items must go to the budget committee for final approval. That does not mean that any program with the notation "subject to final approval" is not part of the program. This redevelopment is certainly part of the program, but the final amounts will have to be approved by the budget committee.

The Hon. Duncan Gay: So you can't believe anything in it. It is a farce.

The Hon. MICHAEL COSTA: No, because they have not finalised the planning.

The Hon. Duncan Gay: That is what you said.

The Hon. MICHAEL COSTA: No, I did not. Listen to what I am saying. The final amounts are approved by the budget committee. If it is in the infrastructure program, it is certainly part of the Government's strategy over the next 10 years.

The Hon. Duncan Gay: What if it falls out?

The Hon. MICHAEL COSTA: It will not fall out unless there is a change of policy, and if that happens it will be announced. I reiterate the point that I made the last time I was asked about this issue: No items in the infrastructure strategy are dependent upon the Government's electricity plans. I have already announced that none of the items in Budget Paper No. 4 is contingent upon the sales strategy or the broader strategy itself. The reality is that these matters are very transparent. Because the Opposition has run out of questions to ask, its members will continue this process of misleading both the community and themselves about the infrastructure strategy.

MR ROB VICKERY, FORMER PRESIDENT, ROYAL AGRICULTURE SOCIETY

The Hon. DUNCAN GAY: My question is directed to the Minister for Primary Industries. Is the Minister aware that the Opposition and many people in regional New South Wales are shocked at the unexpected resignation of Mr Rob Vickery from the position of president of the Royal Agriculture Society? Given the valuable and extensive contribution Mr Vickery has made to farming and rural communities in New South Wales, what is the Government's response to his unexpected departure?

The Hon. IAN MACDONALD: I am aware that Mr Rob Vickery resigned from his position as president of the Royal Agricultural Society in late May 2008. I note that Mr John Fairfax AM has been elected as acting president of the society, pending the election of a new president. Mr Vickery held the position since being elected in 2004. The position of president of the Royal Agriculture Society is a voluntary, unpaid role. Mr Vickery and his wife, Tina, have volunteered immense personal time and resources in fulfilling the role over the past four years.

The Hon. Duncan Gay: With a great deal of style.

The Hon. IAN MACDONALD: Yes, immense style. Mr Vickery and Tina continued to work tirelessly over the entire 16 days of each of the past four Royal Easter Shows. Mr Vickery has impressive agricultural credentials. He runs a large-scale cattle feedlot and grain operation in north-western New South Wales. He has also held the position of treasurer in the Australian Lot Feeders Association for some 30 years. This is a monumental effort, as anyone who has served on an association committee would know. Mr Vickery currently serves on the management committee of the new Equine Centre at Tamworth, which is a great achievement and asset for the Tamworth region.

Through his vast experience in a wide range of agricultural and export enterprises, Mr Vickery has gained a thorough understanding of Australian agriculture and trade and the importance of these for the

prosperity of rural New South Wales. During his time as president of the Royal Agriculture Society, Mr Vickery passionately promoted strong agricultural industry alliances and numerous projects in rural New South Wales. For example, the Royal Agriculture Society, in conjunction with Woolworths and the University of Western Sydney, helped establish the Woolworths Agricultural Business Scholarships, which are awarded annually to 20 young Australians looking to develop their career in the agriculture sector. The program covers a variety of subjects such as business strategy and planning, the agricultural value chain, successful business leadership and finance, logistics and supply chain management, doing business with retailers, sustainability and environmental issues.

Mr Vickery also played a critical role in forming the Royal Agriculture Society Foundation for Rural and Regional New South Wales. The foundation's objective is to support individual and community endeavours of excellence within rural New South Wales through a series of funding grants. Under Mr Vickery's leadership the Royal Agricultural Society supported the Sydney Symphony Orchestral Regional Touring Program for drought relief. This has been an extremely successful program. Mr Vickery has a particular interest in promoting agricultural products directly to consumers. This interest and passion led to the introduction of the RAS President's Medal, a prestigious award that recognises excellence in Australia's primary industries and rewards innovation, quality and passion. This is a unique award. It is the only competition of its kind in Australia, judging products alongside each other on a multifaceted basis. Established in 2006, the awarding of the medal recognises producers who develop products using sustainable practices and raises consumer awareness. The RAS President's Medal honours the very best of the best in agricultural production and comes with the highest distinction.

During his presidency Mr Vickery developed a strong and meaningful working relationship between the Royal Agricultural Society and the Government. During this time he demonstrated his willingness to work cooperatively with the government of the day to ensure good outcomes are achieved for agriculture in New South Wales. His efforts during the recent equine influenza outbreak and the program to eradicate it have been excellent. His contribution to this area allowed the Sydney Royal Easter Show to host the first ever Royal Sydney Horse Classic, part of the highly successful Return of the Horse program held in New South Wales earlier this year. He demonstrated genuine concern about the future of rural communities and has used every opportunity with the RAS to fortify and promote the culture of working and living on the land. I thank the honourable member for his question. I look forward, and I expect the Opposition also looks forward, to the day Mr Vickery seeks and once again contributes to the Royal Agricultural Society as its president. We hope it is soon.

DEFERRED ANSWERS

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

POLICE MEDICAL DISCHARGE PAYMENTS

On 15 May 2008 the Hon. Michael Gallacher asked the Minister for Industrial Relations a question without notice regarding police medical discharge payments. The Acting Minister for Industrial Relations provided the following response:

I am advised that the NSW Police Force has previously experienced delays in processing some medical discharge payments. This was identified and a number of strategies implemented to streamline the medical discharge process.

All officers continue to receive relevant weekly payments until the final medical discharge is completed. All medically discharged officers are notified of their final date of service in writing and relevant payment is made upon their termination.

FIREARMS LICENCE RENEWAL NOTICES

On 15 May 2008 the Hon. Roy Smith asked the Minister for Roads, representing the Minister for Police, a question without notice regarding firearms licence renewal notices. The Minister for Police provided the following response:

The honourable member's questions are based on a false premise. The Firearms Registry has no intention of ceasing its longstanding practice of sending renewal notices to firearms licence holders. On the contrary, the period of advance notice of impending licence expiry was increased in March 2008 from 56 days to 90 days, in order to further assist firearms licence holders.

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

POLICE INTEGRITY COMMISSION AMENDMENT (CRIME COMMISSION) BILL 2008

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

Motion by the Hon. Eric Roozendaal 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.**COURTS AND CRIMES LEGISLATION AMENDMENT BILL 2008****CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT BILL 2008****CHILDREN (DETENTION CENTRES) AMENDMENT BILL 2008****Second Reading****Debate resumed from an earlier hour.**

The Hon. JOHN AJAKA [5.02 p.m.]: I will continue my remarks from the point they were interrupted prior to the commencement of question time. Defining what are special circumstances is unusual but may be reasonable. However, it is arguably too restrictive and is further evidence of why the discretionary power of a court to base its finding on a person's youth should be retained. Amendments to section 33 provide that the penalties imposed on children are more consistent with the sentencing options for adult offenders under sections 9, 10 and 12 of the Crimes (Sentencing Procedure) Act 1999. Under sections 9, 10 and 12 of the Crimes (Sentencing Procedure) Act 1999 a good behaviour bond may be imposed on a person when a charge is dismissed following a guilty finding. Section 33 will also be amended to allow the Children's Court to impose a fine on a child in addition to making an order releasing the child on probation. At present these are alternative penalties.

A further amendment to section 33 provides that the courts will be able to release a young person on probation and impose a community service order as a condition of probation. This is another innovation, which ensures that, even after a child completes a period of community service work, the child will continue to be supervised in the community. In a complementary amendment, the bill amends the Children (Community Service Orders) Act 1987 to enable the courts to require a young person to participate in a vocational, educational or personal development program as a condition of a community service work order. This amendment implements the Government's election commitment. Finally, the Children's Court will be given the same power as other courts to impose a licence disqualification on a person whom it has found guilty of an offence, even if a conviction has not been recorded. This will bring the children's and adult jurisdictions into line with each other.

The bill doubles from 10 to 20 penalty units, currently \$1,100 to \$2,200, the maximum compensation payable to victims in the case of an offender who is under the age of 16 years at the time the compensation is ordered on the basis that many young people over this age have the financial capacity to pay higher amounts of compensation due to part-time work. The bill also amends the Act to make it clear that the provisions of the Crimes (Sentencing Procedure) Act 1999 relating to the use of victim impact statements apply to offences dealt with by the Children's Court in the same way as they apply to similar offences dealt with by the Local Court. This amendment is welcome and accords with the Opposition's recognition of the rights of victims. The legislation amends section 33 (1B) to remove the requirement that the Children's Court set a non-parole period at the time of imposing a control order, if the control order is suspended on condition the person enter into a good behaviour bond. Instead, the Children's Court will be required to set a non-parole period if the person contravenes the good behaviour bond and the court decides to revoke the good behaviour bond.

These changes are consistent with changes made to the Crimes (Sentencing Procedure) Act 1999 by the Crimes and Courts Legislation Amendment Act 2006. They ensure that the court is able to fix a non-parole period, which is commensurate with the young person's behaviour whilst the young person was released on a bond. Young people have an obligation to respect our laws and fellow citizens, and do their bit to contribute to a safe and just society. These changes will ensure that those who engage in unlawful activity are dealt with

appropriately. Young offenders will be forced to face the consequences of their actions and the impact of their offending behaviour on their victims. The Opposition will move amendment No. 2 during the Committee stage. I note that the Government, through its amendment No. 2, also is seeking to amend proposed section 33 (6) in schedule 1 [29] to the bill. The amendment stems from what I believe to be submissions from the Law Society. The Opposition does not oppose the amendment. These amendments are part of the reasons the legislation should never be rushed.

I refer to the third bill, the Children (Detention Centres) Amendment Bill, which my colleague the member for Lane Cove and shadow Minister for Juvenile Justice spoke extensively on in the other place. The Children (Detention Centres) Amendment Bill 2008 amends the Children (Detention Centres) Act 1987. The stated object of the bill is to amend the Children (Detention Centres) Act 1987 so as, first, to ensure that certain persons who are the subject of arrest warrants are not to be detained in detention centres; second, to clarify the provisions of that Act with respect to the separate detention of different classes of detainees; third, to clarify the provisions of that Act with respect to the transfer of detainees from detention centres to correctional centres; and, finally, to make other minor, consequential and ancillary amendments. The Government claims that the recommended changes will modify a transfer process that has been in place for a number of years and is in no way a departure from existing Government policy.

The bill inserts provisions into section 16 of the Act to empower the Director General of the Department of Juvenile Justice to direct that different detainees or groups of detainees be separately accommodated, and ensure that their separate accommodation is not prevented by any section of the Anti-Discrimination Act 1977. The regulations will be amended to provide that individuals held separately for a period of 24 hours are to be reported to the New South Wales Ombudsman.

The bill gives the director general the ability to order that detainees be locked in their rooms to prevent or contain a riot, serious disturbance or other dangerous situation occurring in a detention centre, and that the general containment continue until the safety of staff and detainees can be assured. The bill amends section 28 (1A) to specify that if a young offender is sentenced after a section 28 order has been effected, a further section 28 order may be made without the young offender returning to a juvenile detention centre, and that the new sentence be served in an adult correctional centre. The bill amends section 28 (2A) of the Act to provide a wider set of circumstances for making a transfer order for a detainee who is between 18 and 21 years of age.

The bill also provides that a person over 18 years can be transferred to an adult correctional centre when the detainee is, or has previously been, detained in an adult correctional centre for a period of, or periods totalling, more than four weeks. The bill proposes amendments to section 9A of the Act to provide that persons who are 21 or over are not to be detained in a detention centre if they are subject to an arrest warrant of any kind. Section 9A (2) provides that persons who are between the ages of 18 and 21 are not to be detained in a detention centre if they are subject to an arrest warrant issued in relation to an alleged breach of a good behaviour bond, probation or community service order, or an alleged escape from custody.

The serious concern for the Opposition is that a mere allegation should not be sufficient cause to preclude admission to a detention centre. Furthermore, the overall effect of the amendments may well create a potential to usurp the judgement of the trial judge. The director general, on recommendation of his expert staff to transfer a young person to adult custody, could overrule recommendations of a trial judge.

It has been noted that young adult detainees 18 years and over currently make up about one-quarter of detainees in the juvenile justice system. Accordingly, this legislation has the capacity to adversely influence a significant proportion of detainees in the juvenile justice system. Surely the more appropriate response would be to put more resources into the juvenile justice system in a greater effort to rehabilitate rather than punish. As indicated earlier, the Opposition will move an amendment to section 9A to delete proposed section 9A (2) because we believe that it puts juveniles into an adult remand centre only when they have been accused of an offence; it has not been proven. This is in line with the presumption of natural justice that a person is innocent until proven guilty.

This bill also amends section 7 (1) of the Act to provide that each detention centre be inspected at least once every 12 months, rather than once every three months. The bill amends section 21 (1) (b) of the Act to provide that detainees who are being punished for misbehaviour be restricted from participation in sport or leisure activities for a period of time greater than four days, as is currently the case. It is important to note that the bill does not affect the provisions of section 10 of the Children (Detention Centre) Act 1987 whereby any person deemed vulnerable in an adult correctional centre can be transferred to a juvenile facility with the consent of the commissioner and the director general.

Ms SYLVIA HALE [5.12 p.m.]: I speak on the Courts and Crimes Legislation Amendment Bill 2008, the Children (Criminal Proceedings) Amendment Bill 2008 and the Children (Detention Centres) Amendment Bill 2008 on behalf of the Greens. I echo the concerns raised by the Hon. John Ajaka about the bills being treated as cognate bills and foreshadow that I will request that they be put separately. The Greens support many of the elements contained in the bills but there are sections that we do not support and will seek to remove in Committee.

In examining the bills I am conscious of the context we now face in relation to incarceration and recidivism rates in New South Wales. According to the Australian Bureau of Statistics, between 2000 and 2007 the number of people incarcerated in this State increased from 8,545 to 10,335, an increase of more than 20 per cent. During the same period the proportion of indigenous inmates increased from 14.6 per cent to 20 per cent. Much of that increase has been driven by the Government's obsession with being seen to be tough on law and order, regardless of the cost to some of the State's most vulnerable and disadvantaged citizens.

It appears that this Labor Government locks up more of its citizens, and particularly more of its indigenous citizens, than any other New South Wales Government since we were a colony. I am sure some members of the Government will find this a great source of pride. Others, no doubt, will view these statistics as shameful. The other important context when examining these bills is the overcrowding in the juvenile justice system. The Law Society of New South Wales raised this issue, and in a letter dated 16 June 2008 the President of the Law Society, Mr Hugh Macken, asserted:

The Bill has been introduced to address the problem of overcrowding in juvenile detention centres. There has been a significant increase in the number of children held on remand since the commencement of the highly problematic s22A of the Bail Act 1978 in December 2007.

To refresh the memories of members, section 22A (1) states:

- (1) A court is to refuse to entertain an application for bail by a person accused of an offence if an application by the person in relation to that bail has already been made and dealt with by a court unless ...
 - (a) the person was not legally represented ... or
 - (b) the court is satisfied that new facts or circumstances have arisen ...

We are seeing the end result of draconian legislation that has resulted in more and more people being refused bail. It is important to understand this context when we examine these bills. We support the Courts and Crimes Legislation Amendment Bill 2008, with the exception of the section that extends the sunset clause on the offence of membership of a terrorist organisation. The Greens support the sections of the bill dealing with legal recognition of persons who have undergone sex affirmation procedures, improving the procedures of the Land and Environment Court and other courts, the extension of the definition of serious sex offenders, and arrangements for the appointment of the chairperson of the Medical Tribunal.

We also support the section of the bill that will allow certain appeals to be made to the District Court rather than to the Supreme Court. The filming of the execution of a search warrant and authorised entry to and search of premises or the removal of a child or young person is an important step to improve the accountability of government agencies and to protect the rights of young people. This provision is supported by the Greens. However, the Greens do not support schedules 6 and 21 dealing with the extension of the sunset period for the offence of being a member of a terrorist organisation. The Parliament put a sunset clause on this provision such that it will lapse in September this year. The Minister now argues that the election of a new Commonwealth Government justifies an extension of this provision for another two years so that covert search warrants can continue to be granted until a national scheme is adopted, presumably some time between now and September 2010.

The Greens have always been concerned about the broad definition of this defence and its potential misuse under both State and Federal law. In their rabid rush to remove civil liberties in response to the criminal attacks of September 11 and the bombings in Bali, the Liberal and Labor parties have colluded to grant extraordinary powers to Australia's police and security organisations without adequate oversight and protections to ensure individuals do not have their civil rights trampled by unaccountable security agencies or their operatives. This extension merely allows that lax oversight and potential abuse to continue until such time as the Commonwealth Government gets around to considering what it might do. There has been a sorry history of misuse of such laws by the Commonwealth, such as in the Haneef case, where the powers enshrined in those laws were abused by the authorities. The Minister is unable to identify any firm proposal or time line from the Commonwealth. That is a poor way to construct such grave laws and, accordingly, the Greens do not support extension of these provisions beyond the initial sunset date set by the Parliament.

I turn now to the Children (Criminal Proceedings) Amendment Bill 2008 and the Children (Detention Centres) Bill 2008. There are elements of these bills that the Greens support, but others we will seek to remove. The provisions that allow greater flexibility in sentencing are supported because they offer judges a greater range of non-custodial options. The provisions that encourage participation in educational or personal development programs are also supported because they offer improved prospects of rehabilitation. The Greens do not support—and I foreshadow that in Committee we will seek to remove—the provisions that seek to restrain the discretion of a judge in relation to where a person aged between 18 and 21 should serve his or her sentence and those who seek to grant almost complete discretion to the director general to decide where a person aged between 18 and 21 should serve his or her sentence.

Despite the Minister's references in her agreement in principle speech to both the Ombudsman's report and the United Nations Convention on the Rights of the Child, neither of those documents provides justification for the measures contained in the bill. While the Ombudsman's report identifies that there has been no reduction—indeed, a small increase—in the number of people between the ages of 18 and 21 in juvenile detention, the report does not find that this is having a detrimental effect on the juvenile justice centres concerned or on those detained in them. Similarly, the Law Society accuses the Minister of "a cynical and selective application of the Convention on the Rights of the Child" with regard to the bill. The Law Society states that "this bill indicates that the government is calling it quits on rehabilitation of young offenders".

The Government should be honest about the motivation behind the bill. The Government is locking up more and more of the citizens of this State, including a greater number of the State's children. The juvenile justice centres are overcrowded and it is cheaper to send young offenders to adult prisons than it is to build new juvenile centres. Instead of examining whether this is a positive outcome of the changes to the Bail Act and whether that Act should be re-examined, the Government is simply going to send more vulnerable young people to adult jails, to survive as best they can in the adult prison system. These sections of the bill have nothing to do with the welfare of anyone inside a juvenile detention centre. It is purely a cost-cutting exercise. It is a cheap way to deal with the overcrowding crisis the Government has created in the State's detention centres with its punitive law and order agenda.

The Greens do not support Labor's obsession with locking up young people from working- and welfare-class backgrounds, which is overwhelmingly where those in juvenile centres come from. The overwhelming majority of those in juvenile detention, whether under or over 18, are from deprived and abusive backgrounds. Rather than put the resources into overcoming this deprivation and abuse, the Government prefers to lock them up and punish them. Punishment brings me to the provisions that will allow the director general to breach the Anti-Discrimination Act in segregating detainees, allow unlimited time for segregation, and increase penalties for misbehaviour.

There is no doubt that a system of reward, punishment and separation must be available to maintain order and protect detainees in juvenile justice centres. However, any such system must be constructed within acceptable parameters. The Greens do not support exemptions from the Anti-Discrimination Act. Separation on the basis of race or cultural background, for example, is not an acceptable basis for this particular method of discipline or protection. Separation can be a legitimate disciplinary tool for use in a detention centre, or a legitimate and necessary means to protect a detainee, but the separation must be based on the specific behaviour or vulnerability of the individual being separated, rather than on his or her ethnic, racial, gender or cultural background. This is a fundamental breach of the principles of anti-discrimination and the Greens will not support it.

Similarly, indefinite segregation or separation is not acceptable. Beyond a certain period segregation becomes cruel and unusual punishment, and a threat to the ongoing mental health of the detainee. In certain circumstances, such as long-term solitary confinement, separation could constitute torture. This goes against the Government's professed commitment to rehabilitation as the prime objective for juvenile detainees. It seems that the Government's prime objective with these provisions is punishment, and the Greens will seek to remove the provisions from the bills.

Reverend the Hon. FRED NILE [5.24 p.m.]: The Christian Democratic Party supports the Courts and Crimes Legislation Amendment Bill 2008, the Children (Criminal Proceedings) Amendment Bill 2008, and the Children (Detention Centres) Amendment Bill 2008. The most important of the three bills, the Children (Detention Centres) Amendment Bill, provides juvenile justice centres with enhanced disciplinary powers to manage detainee misbehaviour; modifies the considerations a court must take into account when sentencing offenders over 18 years of age to juvenile detention; prevents detainees over 21 years of age from being admitted into juvenile detention centres; streamlines the transfer process of adult detainees to the corrective services system; and addresses a number of other administrative matters.

The age at which persons are allowed to remain in juvenile justice centres seems to be causing some controversy. As honourable members would be aware, juvenile justice centres were established for young offenders up to the age of 18 years. However, by court order and at the time of sentencing some adult offenders may be permitted to remain in such centres until the age of 21 years. I have visited a number of juvenile detention centres and have been very impressed with their emphasis on rehabilitation, and the wide range of educational, training, counselling and other programs that are targeted at juvenile detainees. A problem I have observed—and I know that it occurs—is that when older persons are in juvenile detention centres in some cases they create problems within the centre. During my inspections in recent years I have observed that the older detainees abuse the younger detainees. Of course, such behaviour must be stopped at every opportunity. In other cases the adult detainee who has developed his or her skills in crime becomes a role model for the younger detainees. This has a very bad influence on the juveniles that the centre is seeking to rehabilitate. For this reason I support what the Government is seeking to do through this legislation. The emphasis must be on juveniles, rather than adults, being held in juvenile detention centres.

The Children (Criminal Proceedings) Amendment Bill 2008 amends the Children (Criminal Proceedings) Act 1987 to incorporate additional guiding principles, and provide for the use of victim impact statements in the Children's Court. We have all been pleased with the success of victim impact statements in adult courts, and I am pleased that that measure is now being extended to the Children's Court. The bill doubles the amount of compensation that the Children's Court can order an offender to pay the victim. I believe that is a positive provision as well. The bill also clarifies the circumstances and manner under which a court can make findings that there are special circumstances that require offenders aged 18 to 21 to serve sentences in juvenile detention—in other words, to make it an exception rather than the rule.

The Courts and Crimes Legislation Amendment Bill 2008 makes various amendments to different courts legislation, which I will not go through in detail. The bill amends the Births, Deaths and Marriages Registration Act 1995 to update terminology and provide for the legal recognition of post-operative transgender people born overseas.

I note that the Minister gave further background to this provision in her agreement in principle speech in the other place. Legislation has been passed in the House that deals with persons who have undergone surgery to change their sex in this State and new birth certificates are issued in those circumstances. This bill deals with persons who were born overseas. Applicants born overseas will need to satisfy certain requirements in order to obtain a certificate recognising their change of sex. The Minister said:

In order to apply for a certificate recognising their change of sex, applicants will be required to satisfy similar criteria to people born in New South Wales. Applicants must be unmarried and have undergone surgery for the purpose of assisting them to be considered to be a member of the opposite sex. In addition, applicants born overseas will need to show that they are an Australian citizen or permanent resident of Australia and that they live, and have lived, in New South Wales for at least one year.

People who are born overseas are issued with certificates from their country of birth. In my view, if they undergo surgery to change their sex they should apply to their country of birth for a new birth certificate. They were not born in Australia, yet they will be issued with a new Australian birth certificate. To me that is further confusion not only about the change of sex but also about the change of country of birth. I do not understand why such people should not be required to apply to their country of birth for a new birth certificate if there are legal opportunities to do so. I am not very happy with that provision.

Reverend the Hon. Dr GORDON MOYES [5.31 p.m.]: I speak on the Children (Detention Centres) Amendment Bill 2008. The stated objective of the bill is to amend the Children (Detention Centres Act) 1987, first, to ensure that certain persons who are the subject of arrest warrant are not to be detained in detention centres; secondly, to clarify the provisions of that Act with respect to the separate detention of different classes of detainees; thirdly, to clarify the provisions of that Act with respect to the transfer of detainees from detention centres to correctional centres; and, finally, to make other minor, consequential and ancillary amendments.

My colleague Reverend the Hon. Fred Nile has just spoken to the Courts and Crimes Legislation Amendment Bill 2008, the Children (Criminal Proceedings) Amendment Bill 2008 and the Children (Detention Centres) Amendment Bill 2008. I do not seek to go over the same areas covered by him. In general, I support what the Minister for Juvenile Justice and the department are doing, but I wish to raise a couple of issues in passing. According to the agreement in principle speech, the Minister proposed changes which will allow for greater certainty in the transfer of detainees into adult facilities and the granting of additional powers that will allow the director general to maintain good order in juvenile facilities across New South Wales, with particular regard to segregation and the separation of detainees in circumstances where the security of staff, visitors or other detainees might otherwise be placed at risk.

The bill inserts provisions into section 16 of the Act to empower the Director General of the Department of Juvenile Justice to direct that different detainees or groups of detainees be separately accommodated and to ensure that their separate accommodation is not prevented by any section of the Anti-Discrimination Act 1977. Along with various members of Parliament, I have visited many Department of Juvenile Justice detention centres and I realise the significance of the provision to empower the director general to direct that different detainees or groups of detainees be separately accommodated. I mention that because I have noticed that groups of people from different ethnic, cultural and religious backgrounds form strong pressure groups within the detention centres. The department faces very real problems in managing facilities in light of some of the activities of the groups.

Moreover, the bill amends section 16 of the Act to provide the director general with the power to enable the segregation of a particular detainee or group of detainees from another detainee or group of detainees for the reasons of good order, discipline and/or security of the detention centre. Sometimes in juvenile detention centres there are gangs of youths who in open society have been viciously attacking each other. If they are all contained within the pressure cooker environment of a detention centre, the Government and the director general must have the power to enable the segregation of different groups of detainees for the good order of the institution.

The changes proposed in the bill recognise the differing maturity levels and developmental stages of young people, especially where issues of disability and mental health are involved. While taking into account the recommendations of the court in assessing a young person over 18 years or over, the director general would be advised by expert staff of the Department of Juvenile Justice with direct and ongoing experience of young offenders' behaviour and demeanour while in detention. The bill also provides that a person over 18 years can be transferred to an adult correctional centre where the detainee is, or has previously been, detained as an inmate in an adult correctional centre for a period of, or periods totalling, no more than four weeks. Many people in the community would be upset with this proposal but they do not realise that there are special facilities within adult correctional centres for the provision of younger detainees that have within them job and vocational training programs and specialised programs to help the needs that brought the detainees to detention.

The bill proposes amendments to section 9A of the Act to provide that persons who are 21 years or over are not to be detained in a detention centre if they are subject to an arrest warrant of any kind, and that persons who are between 18 and 21 years are not to be detained in a detention centre if they are subject to an arrest warrant issued in relation to an alleged breach of a good behaviour bond, probation or community service order, or an alleged escape from custody. From my visits to the juvenile detention centres, I am aware that sometimes when the detainee's release is imminent it is better to retain a juvenile in that area, even beyond the age of 21 years, rather than to shift the detainee to an adult correctional facility where the detainee may be exposed to other situations when positive progress may have been made at the juvenile detention centre. Currently young offenders are admitted to detention centres on outstanding juvenile matters, pending transfer to an adult correctional centre.

The bill aims to clarify that older offenders who have breached bond, community service orders or suspended sentence parole, or who have escaped from a detention centre do not need to be admitted to a detention centre in order to be transferred to a correctional centre. We do not need to upset ourselves about this because largely it is a process of administration that enables the smoother transition of older offenders who do not have to enter a juvenile centre being transferred to a correctional centre. The provisions proposed in section 9A (2) (e) in the bill would mean that this category of young offender would be transferred to an adult correctional facility without delay. This means that an offender who has previously served a period of custody in an adult correctional facility cannot be returned directly to a juvenile detention centre to serve a further period of custody.

The bill also amends section 21 (1) (b) of the Act to enable detainees who are being punished for misbehaviour to be restricted from participation in sport or leisure activities for a period of time greater than four days, as is currently the case. I do not consider that is an unacceptable punishment. There must be some form of discipline for those who abuse privileges. The removal of privileges will impose discipline within the correctional centre. The bill provides that any such restriction cannot be for more than seven days at a time, except with the prior approval of the director general. Small children who misbehave—for example, by kicking other young soccer players from another team—may have privileges suspended by their parents to improve their behaviour. We are talking here about a correctional facility, which needs some form of discipline. To remove a privilege, such as sport, is a good disciplinary measure. Accordingly, this legislation has the capacity to

adversely influence a significant proportion of detainees in the juvenile justice system. However, I place on record the response of the Law Society of New South Wales to the Children (Detention Centres) Amendment Bill 2008. In part, the Law Society stated:

The Law Society's Criminal Law and Juvenile Justice Committees are opposed to the proposed amendments which provide a wider set of circumstances for making a transfer order with respect to a detainee who is between 18 and 21 years old.

The bill has been introduced to address the problem of overcrowding in juvenile detention centres. There has been a significant increase in the number of children held on remand since the commencement of the highly problematic s22A of the Bail Act 1978 in December 2007.

The Committees are disappointed that the Government's solution to overcrowding is to make it easier to transfer young detainees into adult correctional centres. This approach completely ignores the need to promote rehabilitation and reintegration of juveniles back into society.

The comments by the Minister for Juvenile Justice in the Agreement in Principle speech are an implicit acknowledgement that the adult correctional custodial system does not deliver the type of rehabilitation services that the juvenile justice system provides. Young detainees are vulnerable within adult correctional centres and they are likely to be contaminated by older offenders.

The Committees agree with the Shadow Attorney General's comments that the introduction of this bill indicates that the Government is "calling it quits" on the rehabilitation of young offenders.

While I note the Law Society's comments, I also note the Minister's response in a memorandum that was circulated among crossbench members. The Government relies on Article 37 (c) of the United Nations Convention on the Rights of the Child—that children in custody should be separated from adults—to justify the transfer of young people from juvenile detention centres to adult correctional centres. This is a cynical and selective application of the Convention on the Rights of the Child. The full text of Article 37 (c) provides:

- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

Article 40 has been completely ignored. Article 40.1 provides:

- 1. States Parties recognise the right of every child alleged as, accused of, or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of child's sense of dignity and worth, which reinforces the child's respect for the human right and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

Article 40.4 provides:

- 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation, foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well being and proportionate both to their circumstances and the offence.

This is a motherhood statement, and we agree with it entirely. It is very difficult, however, to provide such services in a situation where there is a seeming lack of resources. In every election the leaders of political parties seek general public support by declaring that if elected to government they will get tough on crime. This is always popular because most people can give instances of judges delivering lenient sentences, prisoners continuing to commit crimes upon release, and threats to our security and safety. Consequently, we put more and more people in prison. The number of prisons in New South Wales is increasing. We have 29 correctional centres and one privately operated jail at Junee. Currently 10,000 prisoners are behind bars in New South Wales. Two out of three have been in prison previously; they have reoffended and been sentenced again to prison. The total annual cost of adult inmates is \$91 million in capital expenditure and \$726 million in recurrent expenditure—a total of \$817 million per year. Each prisoner costs the State close to \$190 every day of incarceration.

In 2002-03 New South Wales recorded the highest rate of offenders returning to prison of all the prisons throughout Australia. Prison overcrowding also remains a critical issue in the New South Wales prison utilisation rate. In 2002-03 prisoner-on-prisoner assault rates in New South Wales were the highest of any jurisdiction in Australia and 59 per cent above the Australian average. That is particularly concerning if juvenile offenders are to be placed in adult prisons. Levels of overcrowding and the prevalence of sexual assault and other forms of abuse within the adult prison system are matters of serious concern. Overwhelming evidence shows that sending young offenders to adult jails—except special adult jails with rehabilitation and vocational

training programs in place—is jeopardising their rehabilitation. In 2004 about 300 adult prisoners between 18 and 25 years of age were interviewed in a study that showed that 25 per cent had been sexually assaulted and 50 per cent had been physically assaulted while imprisoned in an adult correctional centre.

As honourable members would know, I worked for years as a probation and parole officer. Every year I have been in and out of most of Her Majesty's prisons. I have established pre-release work training programs in our major prisons and post-release programs to get inmates jobs after they have been released. As well, I have set up programs to provide support for wives and families as a priority. My concerns go back a long way. I was first appointed a parole officer when I was 21 years of age and I have been involved ever since in this area. This bill by no means presents a good picture of what the prison system can do for young people who are too old for the juvenile justice system and too violent. The provisions in this bill are not the way to penalise and rehabilitate young offenders. We have other options.

There is overwhelming evidence to show that sending young offenders to adult jails is jeopardising their rehabilitation across the board. Sending juvenile offenders into adult prisons where they will be raped and continually sexually abused by older inmates will traumatise them for life. They will continue the cycle of offending, imprisonment and release. Exposing young offenders to hardened criminals will result in them being physically harmed and prevent them from becoming good, law-abiding citizens. In some sense, that is a utopian view but I continue to work towards that end. Having said that, with all the budgetary limitations and physical constraints, the Children (Detention Centres) Amendment Bill has some excellent points. However, I will support the Opposition's amendments to certain sections of the bill, and I will speak to those amendments at the Committee stage.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [5.48 p.m.], in reply: I thank honourable members for their contributions to the debate. I will deal with a number of issues, particularly the issue of persons 18 to 21 years of age, at the Committee stage. Given the large number of amendments that have been circulated, I will argue those issues at the Committee stage rather than take up the time of the House now. However, I will address a matter raised by Reverend the Hon. Fred Nile about the amendments to the Births, Deaths and Marriages Act 1995, which is not the subject of a circulated amendment. Reverend the Hon. Fred Nile indicated some displeasure in relation to the proposal for persons to have legal recognition in New South Wales of a change of sex when in fact they were born overseas. Reverend the Hon. Fred Nile questioned whether it might be more appropriate for such a measure to be taken in the country of that person's birth.

This issue is canvassed in the amendment bill's explanatory note, where it makes it quite clear that proposed section 32DA provides that certain persons, or parents and guardians of certain children, whose birth is not registered in New South Wales may apply to have their change of sex registered. Proposed section 32DB prescribes the documents that must accompany an application to register the change of sex. Proposed section 32DC outlines how the registrar is to determine an application to register a change of sex. Proposed section 32DD provides that where the registrar registers a person's change of sex, the registrar must, on application, issue a recognised details certificate certifying the details contained in the register.

In other words, the bill provides a facility for persons who were born overseas and who have had a change of sex but are resident in New South Wales to be able to have that change of sex recognised in New South Wales with a certificate of recognised details. Similar legislation exists in other jurisdictions such as Western Australia where the Gender Reassignment Act provides for this legal recognition for people who were born overseas. That is the intention of these amendments. It does not go beyond providing a facility for the registration details to be recorded and for a certificate of those details to be provided to the individual concerned. I commend the bills to the House.

The PRESIDENT: Order! The Hon. John Ajaka has requested that, in accordance with Standing Order 139, the questions on the second reading of the bills be put separately. I propose to proceed accordingly.

Question—That the Courts and Crimes Legislation Amendment Bill 2008 be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Question—That the Children (Criminal Proceedings) Amendment Bill 2008 be now read a second time—put and resolved in the affirmative.

Motion agreed to.

Question—That the Children (Detention Centres) Amendment Bill 2008 be now read a second time—put.

The House divided.

Ayes, 29

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|----------------|-------------------|-----------------|
| Mr Ajaka | Ms Griffin | Ms Sharpe |
| Mr Brown | Mr Hatzistergos | Mr Smith |
| Mr Catanzariti | Mr Khan | Mr Tsang |
| Mr Clarke | Mr Lynn | Mr Veitch |
| Ms Cusack | Mr Mason-Cox | Ms Voltz |
| Ms Fazio | Reverend Dr Moyes | Mr West |
| Ms Ficarra | Reverend Nile | Ms Westwood |
| Mr Gallacher | Ms Parker | <i>Tellers,</i> |
| Miss Gardiner | Mrs Pavey | Mr Colless |
| Mr Gay | Ms Robertson | Mr Donnelly |

Noes, 4

Dr Kaye
Ms Rhiannon
Tellers,
Mr Cohen
Ms Hale

Question resolved in the affirmative.

Motion agreed to.

Bills read a second time.

In Committee

The CHAIR (The Hon. Amanda Fazio): The Committee will deal first with the Courts and Crimes Legislation Amendment Bill 2008.

Clause 1 agreed to.

Ms SYLVIA HALE [6.00 p.m.]: I move:

No. 1 Page 2, clause 2, line 14. Omit all words on the line.

The Greens do not support schedules 6 and 21, which deal with the extension of the sunset clause for the offence of being a member of a terrorist organisation. Parliament inserted a sunset clause stating that the provisions will lapse in September this year. The Attorney General now argues that the election of the new Commonwealth Government justifies the extension of these provisions for a further two years so that warrants for covert searches can continue to be granted until a national scheme is adopted, presumably some time between now and September 2010.

The Greens have had concerns all along about how broadly the offence is defined and the potential misuse of warrants under both the State and Federal laws. The legislation was conceived in the hysteria that followed the events of 2001 and the Bali bombings. With the passage of time it is appropriate for more sober consideration to be given to this issue. In view of the fact that the Attorney is unable to identify any firm proposal or timeline from the Commonwealth for the introduction of the relevant legislation, the Greens believe it is time for this provision to lapse and that new legislation should be introduced when the Commonwealth has determined its position. It is certainly a poor way to dispose of a sunset provision. This clause will allow for the

continuation of the provisions dealing with warrants for covert searches when there is no definite time line for Commonwealth legislation. The Greens do not support their extension beyond the initial sunset date set by Parliament; that is, beyond September this year.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [6.02 p.m.]: Warrants for covert searches are a vital tool in the fight against terrorism in this State. They allow the police to search locations used by suspected terrorists without alerting suspects. The warrants are particularly important because they allow police officers to mount a raid at the right moment; for example, to stop bomb making before explosive devices are assembled.

The New South Wales covert search warrant scheme was introduced in advance of the Commonwealth legislation being enacted. These provisions were originally due to lapse in September this year because it was expected that the Commonwealth Government would have enacted a national covert search warrant legislation by that time and the State system would not be needed. The Commonwealth Government introduced the Crimes Legislation Amendment (National Investigative Powers and Witness Protection) Bill in late 2006, but it was not passed before the election. This amendment is necessary to allow the new Commonwealth Government time to consider the legislation it wants while still protecting New South Wales's counterterrorism capacity.

Once a national scheme has been developed, covert search warrants will be available to police in all Australian jurisdictions for use in preventing and responding to terrorist activities. Such a scheme would enhance the national approach to counterterrorism that has been developed. If the Commonwealth Government creates a national scheme, New South Wales will consider repealing its legislation to avoid institutional and operational inconsistencies. The Greens amendment would severely restrict the counterterrorism capabilities of the New South Wales Police Force, and they should be opposed.

The Hon. JOHN AJAKA [6.05 p.m.]: The Opposition opposes Greens amendment No. 1.

Reverend the Hon. FRED NILE [6.06 p.m.]: The Christian Democratic Party also opposes the amendment. In moving the amendment, Ms Sylvia Hale said that we are past the hysteria that followed the Bali terrorist attack. A 12-member terrorist group is on trial in Melbourne, and in the Crown's closing address to the jury, the prosecutor said that that group believes Australia is a land at war and that killing Australians is clearly aimed at intimidating the public. The 12 accused obviously all pleaded not guilty to a range of charges, including belonging to a terrorist organisation. The prosecutor referred to the group's intentions and pointed out that the leader of the group waxed lyrical about an instruction manual he had obtained on how to wage violent jihad. We are not dealing with something that happened in the distant past; we are dealing with a court case being heard in Melbourne and another being heard at Penrith, here in New South Wales. As I said, the Christian Democrats do not support this amendment.

Ms SYLVIA HALE [6.08 p.m.]: I find it extraordinary that Reverend the Hon. Fred Nile should trot out the prosecution's arguments in support of his contention that the Greens amendment should not be supported. What else would one expect the prosecution to say in that case? The arguments advanced in the case of Dr Haneef demonstrated that prosecutors are quite prepared to make totally unsubstantiated accusations, all in the name of supposedly defending the national interest. However, when the true facts come to light, we find that the prosecutors have dissembled and misled the courts and have produced accusations that are totally insupportable. I have no idea what the jury in the Melbourne case will decide, and I am perfectly happy to wait upon its decision. I am certainly not happy to give any credence to what the prosecution is saying at the moment.

Question—That the amendment be agreed to—put.

The Committee divided.

Ayes, 4

Mr Cohen
Ms Hale

Tellers,
Dr Kaye
Ms Rhiannon

Noes, 29

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|----------------|-------------------|-----------------|
| Mr Ajaka | Mr Hatzistergos | Ms Sharpe |
| Mr Brown | Mr Khan | Mr Smith |
| Mr Catanzariti | Mr Lynn | Mr Tsang |
| Mr Clarke | Mr Mason-Cox | Mr Veitch |
| Ms Cusack | Reverend Dr Moyes | Ms Voltz |
| Ms Ficarra | Reverend Nile | Mr West |
| Mr Gallacher | Ms Parker | Ms Westwood |
| Miss Gardiner | Mrs Pavey | <i>Tellers,</i> |
| Mr Gay | Mr Primrose | Mr Colless |
| Ms Griffin | Ms Robertson | Mr Donnelly |

Question resolved in the negative.

Amendment negatived.

Clause 2 agreed to.

Clauses 3 to 6 agreed to.

Schedules 1 to 7 agreed to.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [6.18 p.m.]: by leave, I seek to move Government amendments Nos 1 and 2 in globo. A question has been raised about whether a person for whose protection an order is being sought can appeal to the District Court if the original applicant was a police officer. This amendment makes it clear that the person for whose protection an apprehended violence order is sought can appeal against the dismissal of the application even if the original application was made by a police officer.

Ms Sylvia Hale: Point of order: I do not think the Attorney has moved the amendments.

The Hon. JOHN HATZISTERGOS: I thought I had, and I will do so again. I move:

No. 1 Page 14, schedule 8, line 11. Insert "(or, if the applicant was a police officer, either the applicant or the person for whose protection the order would have been made)" after "apprehended violence order".

No. 2 Page 14, schedule 8. Insert after line 13:

[4] Section 84 (5A)

Insert after section 84 (5):

(5A) Part 6 (Interim court orders) applies to proceedings with respect to an appeal to the District Court under subsection (2) in the same way as it applies to an application to a Local Court or the Children's Court under Part 4 or 5.

Amendment No. 2 makes it clear that when an applicant appeals against the dismissal of an AVO application the District Court can issue an interim apprehended violence order, in the same way it currently is able to.

The Hon. JOHN AJAKA [6.20 p.m.]: The Opposition does not oppose Government amendments Nos 1 and 2.

Question—That Government amendments Nos 1 and 2 be agreed to—put and resolved in the affirmative.

Government amendments Nos 1 and 2 agreed to.

Schedule 8 as amended agreed to.

Schedules 9 to 22 agreed to.

Title agreed to.

The CHAIR (The Hon. Amanda Fazio): The Committee will now deal with Children (Criminal Proceedings) Amendment Bill 2008.

Clauses 1 to 7 agreed to.

Ms SYLVIA HALE [6.22 p.m.], by leave: I move Greens amendment Nos 1 and 2 in globo:

- No. 1 Page 3, schedule 1 [1], line 6. Omit "on the date that section 9 (2) is repealed by". Insert instead "on the date of commencement of schedule 1 [1] to".
- No. 2 Page 4, schedule 1 [9], lines 17 and 18. Omit all words on those lines.

These amendments deal with the proposed abolition of section 9.2 of the Act, which provides that:

- (1) a child who is not released on bail under the *Bail Act 1978* shall, for the purpose of making a further determination of bail, be brought before an authorised justice:
- (a) no later than the next day, or
- (b) if the next day is a Saturday, Sunday or public holiday—no later than the next day that is not a Saturday, Sunday or public holiday.

The Government proposes to delete that provision with a requirement that the child be brought before an authorised justice as soon as is practicable. I understand that this provision of the Act has not yet commenced and is considered to be impractical. However, it raises a very serious question—that a child in custody cannot be guaranteed to be brought before an authorised justice within 24 hours. This is not something that the Government should just throw into the too-hard basket. The right to apply for bail is a legal principle of enormous importance; it is one of the foundations of our legal system. It should not be thrown away lightly, and we do not support replacing it with the virtually meaningless words that the Government now wishes to place in the Act. This is particularly important in relation to young children and juveniles. Being held in detention can be quite a horrifying experience—it can be very traumatic for a child, who has as yet to be found guilty of an offence. They will be held almost at the Government's pleasure because it will be for the Government to determine when it is practicable to produce the child for a bail hearing. The Government's proposal is fundamentally unsound and should not be supported.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [6.24 p.m.]: Section 9 (1) of the Act provides:

If criminal proceedings are to be commenced against a child otherwise than by way of a court attendance notice, and the child is not released on bail under the *Bail Act*, the child is to be brought before the Children's Court as soon as practicable.

Section 9 (2) provides that without limiting the generality of section 9 (1) this shall occur not later than the next day. Section 9 of the Act has not commenced because concern has been expressed that section 9 (2) may be difficult to comply with. Section 239 of the Criminal Procedure Act currently applies to children who have been issued with a court attendance notice and not released to bail, requiring those children to be brought before a magistrate or an authorised officer as soon as is practicable. This is consistent with the provisions of section 9 (1) of the Act and avoids the technical issues associated with the drafting of section 9 (2). Therefore, on the advice of the working party that recommended this amendment, this bill seeks to commence section 9 (1) of the Act and repeal section 9 (2).

The Hon. JOHN AJAKA [6.25 p.m.]: The Opposition supports Greens amendments Nos 1 and 2 moved in globo.

Question—That Greens amendments Nos 1 and 2 be agreed to—put.

The Committee divided.

Ayes, 4

Mr Cohen
Ms Hale

Tellers,
Dr Kaye
Ms Rhiannon

Noes, 29

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|----------------|-------------------|-----------------|
| Mr Ajaka | Mr Hatzistergos | Ms Sharpe |
| Mr Brown | Mr Khan | Mr Smith |
| Mr Catanzariti | Mr Lynn | Mr Tsang |
| Mr Clarke | Mr Mason-Cox | Mr Veitch |
| Ms Cusack | Reverend Dr Moyes | Ms Voltz |
| Ms Ficarra | Reverend Nile | Mr West |
| Mr Gallacher | Ms Parker | Ms Westwood |
| Miss Gardiner | Mrs Pavey | <i>Tellers,</i> |
| Mr Gay | Mr Primrose | Mr Colless |
| Ms Griffin | Ms Robertson | Mr Donnelly |

Question resolved in the negative.

Greens amendments Nos 1 and 2 negated.

[The Chair(The Hon. Amanda Fazio) left the chair at 6.34 p.m. The Committee resumed at 7.30 p.m.]

The Hon. JOHN AJAKA [7.30 p.m.]: I will not move Opposition amendment No. 1 as circulated: I understand that the Government will proceed with its foreshadowed amendment No. 1, which is in similar terms.

Ms SYLVIA HALE [7.30 p.m.]: I move Greens amendment No. 3:

No. 3 Page 4, schedule 1. Insert after line 34:

[13] Section 13 (1) (a) (iii)

Omit "who was present with the consent of the child".

Insert instead "of the child's own choosing".

The Greens have moved the amendment at the suggestion of the Law Society. I will read the society's reasons for suggesting the amendment and why all members of the House, including Government members, should support it. The Law Society wrote:

Choice of adult at police interviews

The Bill seeks to amend s 13 so that a child aged 14 or over may now decide who will accompany them at a police interview.

The reduction of the age from 16 to 14 appears to be motivated by difficulties faced by police when attempting to contact children's parents and to seek their consent for the presence of other adults.

This amendment was provisionally supported by the Law Society during the working party's review of the Act, but only on the condition that the child had a real choice over who the adult would be and was not simply asked to consent to an adult chosen by the police.

The wording of s 13 remains problematic and the Committees suggest that s 13 (1) (a) (iii) be amended to provide for an adult "chosen by the child" rather than "present with the consent of the child". This would provide for genuine consent rather than passive acquiescence.

The Greens endorse the Law Society's proposal. I note that it is also consistent with the recommendations of the Standing Committee on Law and Justice when it considered the prohibition on the publication of names of children involved in criminal proceedings. The committee's recommendation 6 is as follows:

That the New South Wales Government amend section 11 of the *Children (Criminal Proceedings) Act 1987* (NSW) to include the requirement that 16 to 18 year olds involved in criminal proceedings who wish to give permission for their name to be published can only give that permission in the presence of an adult, other than a member of the police force, who is present with consent of the child, or an Australian legal practitioner of the child's choosing.

Clearly, the law and justice committee—specifically in relation to the publication of names of children but generally, I would think, in regard to the principle as a whole—believes that there should be genuine consent that the adult who is present is there by the willing choice of the child. As I said, the Greens endorse the Law Society's proposal. In recent weeks there has been quite a bit of discussion about whether teenagers can give genuine consent to, for example, having their photograph taken. Indeed, I am rather surprised that the Government has presented this proposal.

I am particularly concerned about the ability of a 14-year-old, sitting in an interview room at a police station, to give genuine consent if told by a police officer who has arrested the child, "This is who will accompany you in this interview." I believe there is no justification for the Government's proposal, and I urge members to support the Greens amendment. I trust that the Opposition will see the wisdom of the amendment.

The Hon. JOHN AJAKA [7.36 p.m.]: The Opposition supports Greens amendment No. 3.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [7.36 p.m.]: The Government cannot support the Greens amendment. Currently section 13 (1) of the Children (Criminal Proceedings) Act provides that any statement or admission made to police by a child generally cannot be admitted into evidence unless made in the presence of a responsible person. Currently, a child who is 16 years of age or older can choose an adult, other than a member of the Police Force, to fulfil the role of a responsible person, or he or she can consent to an independent adult suggested by police who is not a police officer fulfilling that role. In other words, the independent adult that may be suggested by police cannot be a police officer.

That is done pursuant to section 13 (1) (c), which provides that a statement or admission generally cannot be admitted into evidence unless made "in the case of a child who is of or above the age of 16 years—an adult (other than a member of the police force) who was present with the consent of the child". At present, if a parent or other person not responsible for the child is not available to attend the interview, the police can normally ask the child whether he or she would like to nominate another adult. In the event that the child is unable to suggest a suitable person, the police may suggest a member of the Salvation Army, or a similar community service, or a youth worker at a nearby youth refuge, to attend the station to observe the interview.

The wording that has been included in the bill follows a recommendation made by the working group that developed most of the legislation. The working group was one of many organisations on this multidisciplinary body, which also included the Police Force, the Department of Juvenile Justice, the Commission for Children and Young People, the Department of Community Services, and the Director of Public Prosecutions. On issues such as this the Government has to consider a wide range of views, not just those of the Law Society, as valued as the society's input is for the Government. For those reasons we cannot support Greens amendment No. 3.

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

The Committee divided.

Ayes, 19

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|---------------|--------------|-----------------|
| Mr Ajaka | Mr Gay | Mrs Pavey |
| Mr Clarke | Ms Hale | Mr Pearce |
| Mr Cohen | Dr Kaye | Ms Rhiannon |
| Ms Cusack | Mr Khan | |
| Ms Ficarra | Mr Lynn | <i>Tellers,</i> |
| Mr Gallacher | Mr Mason-Cox | Mr Colless |
| Miss Gardiner | Ms Parker | Mr Harwin |

Noes, 22

| | | |
|-----------------|-------------------|-----------------|
| Mr Brown | Reverend Dr Moyes | Mr Tsang |
| Mr Catanzariti | Reverend Nile | Ms Voltz |
| Mr Costa | Mr Obeid | Mr West |
| Mr Della Bosca | Mr Primrose | Ms Westwood |
| Ms Griffin | Ms Robertson | |
| Mr Hatzistergos | Mr Roozendaal | <i>Tellers,</i> |
| Mr Kelly | Ms Sharpe | Mr Donnelly |
| Mr Macdonald | Mr Smith | Mr Veitch |

Question resolved in the negative.

Greens amendment No. 3 negatived.

The Hon. JOHN AJAKA [7.45 p.m.]: I move Opposition amendment No. 2:

No. 2 Pages 5 and 6, Schedule 1 [16]. Line 27 on page 5 to line 6 on page 6. Omit all words on those lines. Insert instead:

- (4) In determining whether there are special circumstances for the purposes of subsection (1A) or (3), the court may have regard to the following matters:
 - (a) that the person is vulnerable on account of illness or disability (within the meaning of the *Anti-Discrimination Act 1977*),
 - (b) that the only available educational, vocational training or therapeutic programs that are suitable to the person's needs are those available in detention centres,
 - (c) that, if the person were committed to a correctional centre, there would be an unacceptable risk of the person suffering physical or psychological harm, whether due to the nature of the person's offence, any assistance given by the person in the prosecution of other persons or otherwise, and
 - (d) any other matter that the court thinks fit.

The Opposition believes that paragraph (c) should be retained. It is important that the courts have discretion because the circumstances of each person are different, for example, the availability of appropriate services or programs at the place the person will serve his or her sentence of imprisonment. It is well known that it takes months, if not years, in adult prisons for prisoners to enter rehabilitation programs. In fact, prisoners go to the bottom of the queue and get no assistance at all whilst they are waiting for the hearing of their matters. Some prisoners are on remand for years before the commencement of their trials and they receive very little rehabilitation assistance.

To expose 18 to 21 year olds to an adult prison is traumatic, given the predatory nature and influence of older prisoners on young prisoners who hero-worship them. The Department of Juvenile Justice has been very successful in rehabilitating young offenders compared with the adult prison system. Sadly, New South Wales has the highest rate of adult repeat offenders in Australia, but the Government continues to cut back programs regularly. The shadow Minister for Juvenile Justice and member for Lane Cove, Mr Anthony Roberts, correctly informed the other place:

This bill was introduced as a result of a court challenge by 12 youths against their transfer from juvenile correctional centres into adult jails. As I said earlier, for some time the director general of the department has had the power to move detainees to jail once they turned 18, irrespective of a judge's order. Up until this year the power was used only if people were disruptive or a danger to young detainees, and it has never been legally challenged. It is obvious that severe overcrowding in juvenile correctional centres has prompted the new use of the transfer power—an issue that will be dealt with in the Legislative Council. I also said earlier that this overcrowding is as a result of an early toughening of the Bail Act.

...

The member for Epping said earlier that when young people have strayed in life and are being rehabilitated and turned into good law-abiding citizens through the wonderful work of the Department of Juvenile Justice, its counsellors and employees, they deserve better rather than being forced to move into adult jails where they will be further corrupted just because there is overcrowding.

The Minister for Juvenile Justice, Mrs Barbara Perry, agreed with these views when she stated:

My view, and that of the New South Wales Government, is that rehabilitation is the fundamental purpose of juvenile detention, and it also ensures ongoing community safety. The Government and the Department of Juvenile Justice devotes tens of millions of dollars to rehabilitation each year through education, through developing living skills and through correcting unsatisfactory behaviour.

In contrast, the Government wants to take discretion away from judges, most of whom it appointed. What a vote of no confidence in the judiciary. The Government wants to throw many of the older juveniles into adult prisons. Currently, these detainees are serving their terms in either juvenile detention centres or the juvenile correctional centre at Kariong. These centres are overcrowded. Rather than dealing with the overcrowding by opening more facilities for juvenile offenders, the Government wants to throw them into adult prisons, thus greatly lessening the prospects of their rehabilitation. This may save money in the short term, but it will inflict more hardened criminals on the community in the long term.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [7.49 p.m.]: As a number of amendments traverse the same issues, I will make one set of comments and save myself having to respond to a similar set of arguments. The bill amends section 19 to

give greater legislative guidance as to what constitutes special circumstances to promote decisions that are consistent with the policy intentions underlying section 19. Section 19 and the special circumstances considerations were incorporated into the Children (Criminal Proceedings) Act by amendments passed by the Parliament in 2001. The objects of those amendments were to limit the age to which adults can remain in juvenile detention. While a very small number of people over the age of 21 years are in juvenile detention, the number of persons over the age of 18 years in juvenile detention has not declined since the commencement of the amendments in 2001. To the contrary, the number has significantly increased. Therefore, the 2001 amendments do not appear to be achieving their objectives of separating young adults from younger children. These amendments seek to address this issue.

During debate it was suggested that the proposed amendments to section 19 will wholly remove the discretion of the courts under section 19 (4) (c) of the Act to determine whether special circumstances apply based on "any other matter that the court thinks fit". This is clearly not the case. These amendments do not seek to provide a comprehensive and definitive list of circumstances in which special circumstances can be found. The third limb of the new test provides the court with discretion by stating that special circumstances can be found where there would be an unacceptable risk of the person suffering physical or psychological harm whether due to the nature of the person's offence or any assistance given by that person in the prosecution of other persons or otherwise. Clearly, this contemplates that situations other than those described will give the young adult specific circumstances where the young person would be placed at unacceptable risk of suffering physical or psychological harm. In his recent report entitled "Review of Children (Criminal Proceedings) Amendment (Adult Detainees) Act", the Ombudsman found that during the review period the overwhelming majority of matters resulted in findings of special circumstances. These amendments are sensible and appropriate.

The amendments create a more transparent and accountable scheme for making orders under section 19 of the Act. They recognise that young adults in the 18 to 21-year-old bracket have significantly different developmental needs to the needs of young detainees in juvenile detention. They emphasise that the presence of these young adults can have a disruptive influence on the rehabilitation of younger offenders and ask the court to consider carefully whether special reasons justify that the young adult be placed in a juvenile justice environment. However, these amendments also recognise that some young adults have genuine needs or disadvantages that can be addressed only in the juvenile system to receive adequate support towards their rehabilitation. In those cases, adequate leeway is built into these measures to ensure that those needs are met. For all these reasons, the amendments are not acceptable. Furthermore, I make the following points. On 16 September 2004 the then Opposition spokesperson on juvenile justice, the Hon. Catherine Cusack, who is in the Chamber, had this to say about moving juvenile detainees into adult prisons:

The solution lies ... in moving the 28 per cent of [juvenile] detainees who are adults into the adult system. The proposition is simple: adult criminals in adult prisons, and child detainees in the juvenile detention centre system.

The Hon. Catherine Cusack smiles and acknowledges those words. Last year the Opposition went to the election with a brochure, no doubt written by the Hon. Catherine Cusack, called "Reforming the Juvenile Justice System". Section (3) of the document, headed "Housing older offenders separately", states:

The juvenile justice system is not designed to manage adults ... Older detainees are often identified as a source of much of the discipline problems within the Juvenile Justice Centres.

She went on to say in the brochure:

Separating the older detainees from the younger detainees is critical for maintaining discipline.

They are the words on which the Opposition went to the election and they were the sentiments of the Hon. Catherine Cusack when she addressed the House on 16 September 2004. On 7 November 2008 the Opposition spokesperson on juvenile justice, the member for Epping, Greg Smith—who stood for election based on that platform, as did the Opposition generally—had this to say about the Government's proposal in this bill:

It is an absolute disgrace that juvenile offenders in this State are being put into adult prisons ...

Any consistency on the part of the Opposition from a policy perspective is completely absent. The previous spokesperson said adults in adult prisons, juveniles in juvenile facilities. She developed the brochure and had every Opposition candidate, including the Hon. John Ajaka, the member for Epping and her, stand beside it. Now, when this bill is before the House in response to the Ombudsman's report, which found that 90 per cent of

persons aged 18 to 21 years who went before juvenile courts were determined to have special circumstances, all of a sudden the Opposition does a tremendous U-turn. The Hon. John Ajaka said it is all about the Government not having the facilities in which to put these offenders. The Hon. John Ajaka, who is only a new member, should be aware of the fact that significantly more people aged 18 to 21 are currently in the correctional system than in the juvenile system.

The Hon. John Ajaka also should acquaint himself with the fact that Corrections has a dedicated young offenders program, which operates out of John Moroney Correctional Centre at Oberon. I am very proud of that program, although I did not initiate it. It was initiated by one of my predecessors, the Hon. John Hannaford, the Minister for Justice many years ago in the previous Coalition Government, developed that highly successful program. I object to the obscure comments that have been bandied about that the correctional system demonises and gives up on people who are 18 to 21 years of age. The young offenders program is one of the most successful programs that Corrections runs in New South Wales. It is testimony to its success that it has survived the previous Liberal-National Government and this Labor Government largely unchanged. Indeed, we now have extended it to include young females. The only proposal that has come from the Opposition as to the placement of these 18 to 21-year-olds is reflected in the comments of the member for Epping on 8 April, when he said:

There's old schools around the countryside that are no longer being used as well. I mean there's one over there at Ryde somewhere that's been closed for a couple of years ... they could reuse those.

We can do better. The correctional system does provide a better facility. For those reasons, honourable members should oppose these amendments.

Ms SYLVIA HALE [7.57 p.m.]: I will not move Greens amendments Nos 4 and 5 as circulated because the Opposition has moved an amendment which I believe is more far reaching than our amendments and adequately covers the position. The Attorney General may deplore the fact that political parties change their position. If they did not, we would still be endorsing wage slavery for children or other forms of slavery. It is appropriate that the Opposition has altered its perspective on the incarceration of young adults in adult jails. If that is a result of the member for Epping's experience in the court system, then it is a reasonable basis on which the Opposition changes its view. The Greens are concerned that this proposed section of the bill aims to remove the discretion of a judge to determine the most appropriate setting for an 18 to 21 year old.

Part of this Government's agenda across many portfolios has been to reduce or remove judicial discretion while massively increasing ministerial and bureaucratic discretion. I believe that a judge is best placed to determine where a young person aged 18 to 21 should serve a sentence. The Greens believe that the decision should be made on the best available evidence relating to the particular young person and his or her circumstances at the time. The judge should not be constrained by cost-cutting measures pursued by this Government. If the Government amendment is carried the only considerations the judge will be required to take into account are the mental or physical capacity of the young adult and the availability of programs. However, an extraordinarily important factor that would not be taken into consideration is the proximity of the offender's family to the detention centre. I believe that would be a critical consideration for young indigenous offenders, who are particularly vulnerable, and who often have very strong family ties. The maturity of the offender and the role he or she played in the crime are not taken into account.

The Minister made much of the fact that in 90 per cent of cases the judge found there were special circumstances to justify a young adult being held in a juvenile detention centre. However, I believe the Minister has distorted the Ombudsman's report. The executive summary of the review of the Children (Criminal Proceedings) Amendment (Adult Detainees) Act states that the Act commenced on 25 January 2002 and that the objective of the Act was to limit the age for young people to remain in juvenile custody. The Act provides that a juvenile offender convicted of a serious children's indictable offence must not remain in juvenile custody beyond the age of 18 unless the court finds special circumstances to justify otherwise. The Act says that the New South Wales Ombudsman is charged with monitoring the operation and effect of the Act for a period of three years from its commencement. The Ombudsman analysed the significant findings and the application of the Act. He analysed the cases of 147 juvenile offenders and broke them down into varying categories. He said:

Apart from those cases in which orders were made "unnecessarily", the effect of which is negligible, we are satisfied that the legislation was properly applied during the review period.

The Ombudsman was satisfied that there were special circumstances. If it meant that 90 per cent of young adults remained in juvenile detention centres, then the court must have found special reasons to justify them staying in juvenile custody. If that is so, that is an argument for saying that children are different and they need special

consideration. We have heard considerable evidence—it has come before the Law and Justice Committee—about the rate at which adolescents' brains mature, how they are given to impulsive action and that it is not until they reach the age of 25 that they act potentially in a more rational manner.

The Hon. Marie Ficarra: Some even later!

Ms SYLVIA HALE: Some even later. There is ample evidence that children deserve special consideration, but the Government is attempting to straitjacket the judiciary. It is attempting to remove the options available to a judge and giving enormous discretion to, for example, the Director General of the Department of Juvenile Justice to move a juvenile from a juvenile centre to an adult centre. The director general does not have to provide reasons; there is no appeal against his decision; he can act on the grounds of administrative convenience alone. I believe it is inherently wrong to deprive the judiciary—who, presumably, when it is determining both the sentence and where it is to be served is cognizant of the full facts of the case—of the leeway to take into account the particular and special circumstances of the offender and to give that power to transfer a young person to an adult prison to an official whose actions are not appellable, and who is not accountable to anyone other than the Minister, without supplying reasons. I believe it is a totally wrong approach to the way in which matters should be conducted.

The Hon. JOHN AJAKA [8.05 p.m.]: I comment on two matters raised by the Attorney General. First, I refer to the brochure that the Attorney General was happy to quote. It should be made clear that in its 2007 election policy the Coalition emphasised support for separate detention arrangements for older juvenile offenders; it did not propose to place older offenders in adult prisons but to place them in juvenile correctional centres, such as Frank Baxter. In the perfect world, if the appropriate resources were utilised, the Government would look at having people detained in juvenile centres up to 18 years and then move them to another centre between the ages of 18 and 21, not simply throw them into adult prison facilities. That is inappropriate. The Opposition has made it clear that it does not oppose this bill. We do not oppose it is because it is in line with what was raised in the 2007 election and the brochure. We are saying that we want to preserve a judicial discretion in special circumstances. This is where the problem is and this is why the Opposition has moved the amendments. The bill states:

A finding of special circumstances for the purpose of subsection 1 (a) or 3 may be made on one or more of the following grounds and not otherwise.

In other words, it specifically limits it to the three grounds in (a), (b) or (c). We have no problem with that; we have agreed with that. What we say is that it is too limited. We say yes, include the three grounds but we say, very simply, that those three grounds include a fourth, "any other matter that the court thinks fit". We are not trying to water down the bill; we agree with the proposed amendments. All we are saying is why would you take away a judge's discretion in being able to not only take into account the three matters being raised but any other matter the court thinks fit? We are not saying that we are not going to be hard, that we have gone soft and that we have suddenly changed election commitments. With all due respect to the Attorney General, that is misleading. That is not the case. We agree with what is being proposed. In fact, the only two amendments the Opposition has sought, apart from this one, were the earlier amendments in relation to the definition of "correctional centre", which we withdrew when the Attorney General came up with exactly the same amendment.

The Hon. CATHERINE CUSACK [8.08 p.m.]: I thank my colleague the Hon. John Ajaka for his comments. I must respond to some of the incredibly misleading remarks made by the Attorney General—it is not the first occasion that he has grossly misrepresented my position on the matter, albeit he did it through the member for Newcastle in another place—in relation to the issue of consent.

[Interruption]

The CHAIR (The Hon. Amanda Fazio): Order! I remind members that interjections are disorderly at all times. Members will direct their comments through the Chair.

The Hon. CATHERINE CUSACK: One is always unhappy to be misrepresented in this way. Mention was made of hypocrisy. I remind the Government of the context of the comments, particularly those about the Kariong Juvenile Correctional Centre, which the Opposition argued repeatedly was out of control. Ultimately, the Government—which had denied there were any problems—created a new system of juvenile correctional centres in response to the concerns raised by the Opposition. The Government saw the problems and responded. The policy the Opposition took to the last election was based on expanding that model of juvenile correctional centres, and that approach has been long supported in the juvenile justice system.

The Hon. John Hatzistergos: Not by you.

The Hon. CATHERINE CUSACK: I wrote a paper on the matter nearly 20 years ago. I have long been a supporter of a third layer between the juvenile and the adult correctional systems. I remind the Attorney General of the numerous occasions on which I have raised in the House the Opposition's concerns about young adults in the correctional centre system and the need for special consideration. I also remind him of the case of a man who was sentenced as an adult to serve time in the juvenile system. He spent some time in the Kariong Juvenile Correctional Centre and some at the Frank Baxter Juvenile Justice Centre. I remember the Minister repeatedly accusing me of hypocrisy for not opposing that young man's placement in the system.

The Hon. John Hatzistergos: Not me.

The Hon. CATHERINE CUSACK: Yes, it was the Attorney General. I have always stated that my primary concern is for the welfare of young people. The Attorney General misrepresented my comments by not referring to the Opposition's holistic policy of catering for people under the age 25 and over the age of 18—that is, those who are too mature for the juvenile justice system and too immature for the adult justice system. The Opposition's holistic policy responded to that problem. The Attorney General referred to one aspect of that policy to misrepresent our position. The Government talks about hypocrisy, but it has ultimately adopted most of the solutions the Opposition has proposed for four years.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [8.13 p.m.]: I will remind the Hon. Catherine Cusack of a few basic facts that seem to have escaped her. I spoke in favour of the legislation that enabled the special correctional centre to be established at Kariong. Who fought that legislation tooth and nail? It was the Hon. Catherine Cusack. Not only did she oppose the establishment of that centre, she even moved an amendment that would have effectively constrained any future government from establishing a similar centre. She then stated in the election campaign that a Coalition government would establish a second juvenile correctional centre. She had learnt from her mistake on that occasion. I note that the member has not said anything in response to my quote. She said:

The solution lies not in reshuffling high-risk offenders across the system but, rather, in moving the 28 per cent of detainees who are adults into the adult system. The proposition is simple: adult criminals in adult prisons, and child detainees in the juvenile detention centre system.

We have seen the Hon. Catherine Cusack's crocodile tears about rehabilitation. I remind her that the Opposition said during the last election campaign that if it won government it would close the legal loopholes that prevent early intervention by lowering the age of criminal responsibility from 14 years of age to 12 years of age for serious offences and from 14 years of age to 10 years of age for minor offences. It would also lower the age of eligibility to be dealt with in the juvenile justice system to 17 years of age. So much for the rehabilitation the Hon. Catherine Cusack was talking about. She wanted more people thrown into the correctional system than is proposed in this legislation. She wanted everyone over the age of 17 to be dealt with in the adult system.

Ms Sylvia Hale quoted the Ombudsman's report. She should remember that "special circumstances" are not defined and have never been defined until now. The suggestion that the courts must have got it right because they found special circumstances obscures the fact that those circumstances were never articulated. No-one had to explain them; in fact, they did not even have to give reasons until last year. All they had to do was to find special circumstances for an offender to be placed in a juvenile detention facility until he or she turns 21 years of age. The Government enacted legislation last year requiring reasons for such a determination and this legislation provides a structure for that. It is incredibly unusual that special circumstances are determined in 90 per cent of cases. They do not appear to be particularly special. What seems to be special is the 10 per cent of cases that are not deemed special.

Question—That Opposition amendment No. 2 be agreed to—put.

The Committee divided.

Ayes, 19

Mr Ajaka
Mr Clarke
Mr Cohen
Ms Cusack
Ms Ficarra
Mr Gallacher
Miss Gardiner

Mr Gay
Ms Hale
Dr Kaye
Mr Khan
Mr Lynn
Mr Mason-Cox
Ms Parker

Mrs Pavey
Mr Pearce
Ms Rhiannon
Tellers,
Mr Colless
Mr Harwin

Noes, 22

| | | |
|-----------------|-------------------|-----------------|
| Mr Brown | Reverend Dr Moyes | Mr Tsang |
| Mr Catanzariti | Reverend Nile | Ms Voltz |
| Mr Costa | Mr Obeid | Mr West |
| Mr Della Bosca | Mr Primrose | Ms Westwood |
| Ms Griffin | Ms Robertson | |
| Mr Hatzistergos | Mr Roozendaal | <i>Tellers,</i> |
| Mr Kelly | Ms Sharpe | Mr Donnelly |
| Mr Macdonald | Mr Smith | Mr Veitch |

Question resolved in the negative.

Opposition amendment No. 2 negatived.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [8.22 p.m.], by leave: I move Government amendments Nos 1 and 2 in globo:

No. 1 Page 6, schedule 1. Insert after line 9:

[17] Section 19 (8)

Insert after section 19 (7):

(8) In this section:

correctional centre has the same meaning as it has in the *Crimes (Administration of Sentences) Act 1999*.

No. 2 Page 8, schedule 1 [29], lines 11 and 12. Omit all words on those lines. Insert instead "Accordingly, following a finding of guilt, the Children's Court may exercise any power it could exercise under that legislation if the person had been convicted of the offence, unless the Court makes an order in respect of the person under section 33 (1) (a).".

Amendment No. 1 seeks to amend item [17] of schedule 1 to the bill to insert a definition of "correctional centre" into section 19. This definition simply refers to the definition of "correctional centre" in the Crimes (Administration of Sentences) Act 1999. While it is unlikely that any court would infer a new or novel meaning to the term "correctional centre" as it is used in this context, this amendment is being made for the avoidance of doubt. Amendment No. 2 amends item [29] of schedule 1 to the bill to clarify that a disqualification under the road transport legislation cannot be imposed where the matter has been dismissed under section 33 (1) (a). It has been suggested that proposed section 33 (6) of the bill implies that such a penalty could be imposed by the Children's Court and that this gives rise to questions about whether a child might receive a penalty harsher than an adult can receive for a similar offence.

Proposed section 33 (6) is intended to give the Children's Court greater flexibility in sentencing options by clarifying that disqualification can be imposed in the same circumstances as in the adult jurisdiction. The section is not intended to create a two-tiered regime that disadvantages children against adults. Currently the courts have no power to disqualify an adult who was dealt with under section 10 of the Crimes (Sentencing Procedure) Act 1999 by way of dismissal. This amendment will put to end arguments that children can receive disqualifications under road transport legislation in circumstances where adults cannot.

The Hon. JOHN AJAKA [8.24 p.m.]: The Opposition does not oppose Government amendments Nos 1 and 2. In relation to amendment No. 1, I thank the Government for seeing the inadequacy of the legislation, which, I respectfully submit, was rushed through. It did not take into account the definition of "correctional centre", which was raised by the Opposition. It is interesting that, although we withdrew our amendment, the Attorney General's correctional centre amendment seems to specifically apply to section 19, whereas the Opposition's amendment sought to apply the definition to the entire Act. I will be interested to hear the Attorney General's explanation in relation to that. As indicated, we do not oppose Government amendments Nos 1 and 2.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [8.26 p.m.]: I would like to correct something I said earlier about special circumstances. At present, the courts are not required to give any reasons for special circumstances. This legislation will require them to give those reasons.

Question—That Government amendments Nos 1 and 2 be agreed to—put and resolved in the affirmative.

Government amendments Nos 1 and 2 agreed to.

Schedule 1 as amended agreed to.

Schedules 2 and 3 agreed to.

Title agreed to.

The CHAIR (The Hon Amanda Fazio): The Committee will now deal with the Children (Detention Centres) Amendment Bill 2008.

Clauses 1 to 4 agreed to.

Ms SYLVIA HALE [8.26 p.m.]: I move Greens amendment No. 1:

No. 1 Page 3, schedule 1, lines 6-8. Omit all words on those lines.

The Government seeks to change inspections of detention centres to every 12 months rather than every three months, as is now the case. This is simply a cost-saving measure and it puts the interests, health and safety of detainees a long way behind the desire to cut costs and avoid scrutiny. It is particularly concerning that the bill should seek to reduce the inspection regime while it also seeks special exemption from the Anti-Discrimination Act and increases punitive powers for detention centre authorities. When children are detained there must be a rigorous, regular and frequent inspection regime to ensure the rights of the child are not being abused. The Greens urge the Committee to support the amendment, which would retain the present situation where inspections occur every three months, and not to support the Government's intention that they occur only once every 12 months.

The Hon. JOHN AJAKA [8.28 p.m.]: The Opposition supports Greens amendment No. 1. I was quite surprised to hear that the Government is moving for inspections to take place every 12 months instead of every three months. It is basically dividing them by four. One looks at the welfare of children as paramount; the welfare of children in detention centres is still paramount. I would like to hear the Attorney General's reasons, other than cost saving reasons, as to why he would change inspections from every three months to as long apart as 12 months.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [8.29 p.m.]: The Government opposes Greens amendment No. 1. I make the point that independent oversight will continue with the legislation. Detention centres will remain subject to independent inspection by the Ombudsman. Official visitors, who report directly to the Minister, as well as chaplains, who report to the Civil Chaplains Advisory Board, the New South Wales Department of Education and Training and Justice Health also operate in juvenile justice centres independently of the department. Together, these make juvenile justice centres some of the most scrutinised facilities in New South Wales.

It is notable that the Department of Juvenile Justice has invested heavily in a new quality improvement framework that provides for an oversight of juvenile justice facilities superior to the existing regime outlined in section 7. The Department of Juvenile Justice's new quality review framework imposes new survey inspection requirements that will free up staff to work on detainee programs. This regime involves accreditation against national standards by assessors independent of the centre. The current model of inspection involves a substantial diversion of resources away from critical juvenile justice activities. Three monthly inspections require the ongoing engagement of three to four full-time staff travelling statewide preparing reports on the state and the condition of services to young offenders in physical facilities. The Government's view is that these resources should be used in program activities. Instead, updating information is unlikely to change in any meaningful way every 12 weeks.

Question—That Greens amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 19

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|---------------|--------------|-----------------|
| Mr Ajaka | Mr Gay | Mrs Pavey |
| Mr Clarke | Ms Hale | Mr Pearce |
| Mr Cohen | Dr Kaye | Ms Rhiannon |
| Ms Cusack | Mr Khan | |
| Ms Ficarra | Mr Lynn | <i>Tellers,</i> |
| Mr Gallacher | Mr Mason-Cox | Mr Colless |
| Miss Gardiner | Ms Parker | Mr Harwin |

Noes, 22

| | | |
|-----------------|-------------------|-----------------|
| Mr Brown | Reverend Dr Moyes | Mr Tsang |
| Mr Catanzariti | Reverend Nile | Ms Voltz |
| Mr Costa | Mr Obeid | Mr West |
| Mr Della Bosca | Mr Primrose | Ms Westwood |
| Ms Griffin | Ms Robertson | |
| Mr Hatzistergos | Mr Roozendaal | <i>Tellers,</i> |
| Mr Kelly | Ms Sharpe | Mr Donnelly |
| Mr Macdonald | Mr Smith | Mr Veitch |

Question resolved in the negative.

Greens amendment No. 1 negatived.

The Hon. JOHN AJAKA [8.37 p.m.]: I move Opposition amendment No. 1:

Page 3, schedule 1, lines 15-33. Omit all words on those lines.

The effect of this amendment is to seek to delete proposed section 9A (2). It is imperative that I read the section to members. Proposed section 9A (2) states:

- (2) A person who is of or above the age of 18 years, but under the age of 21 years, is not to be detained in a detention centre if he or she is the subject of an arrest warrant of any of the following kinds:
- (a) a warrant issued under section 41 of the *Children (Criminal Proceedings) Act 1987* in relation to an alleged breach of a good behaviour bond or an alleged breach of probation, or
 - (b) a warrant issued under section 23 of the *Children (Community Service Orders) Act 1987* in relation to an alleged breach of a children's community service order, or
 - (c) a warrant issued under section 98 of the *Crimes (Sentencing Procedure) Act 1999* in relation to an alleged breach of a condition of a good behaviour bond, or
 - (d) his or her arrest under section 39 of the *Crimes (Administration of Sentences) Act 1999* in relation to an alleged escape from custody, or
 - (e) a warrant issued under section 116 of the *Crimes (Administration of Sentences) Act 1999* in relation to an alleged breach of a community service order.

The operative word in all of this is "alleged". The Opposition moves this amendment because it is extraordinary that an 18 to 21 year old will not be detained in a juvenile detention centre simply because of an alleged breach. Kids on remand will be placed into adult prisons before their matters have been dealt with based on an alleged breach of one of the factors mentioned in the subsections.

The New South Wales justice system is based on the fundamental principle of innocent until proven guilty. Are we seriously saying that 18 to 21 year olds who have allegedly breached a bond are going to be refused the right to be detained in a juvenile centre based on an alleged breach? What happens if they are housed in an adult prison, having to deal with all aspects of adult prison life, on an alleged breach of a bond and sometime later when they appear before a magistrate or judge no alleged breach is proven? What do we do when there is no conviction for an alleged breach? It is a bit late to say sorry then. That is why the Opposition is concerned. The Opposition urge crossbenches and Government members to seriously consider what is being put. I do not believe that the State of New South Wales should reach a situation where we are going to jail 18 to 21 years of age for alleged breaches.

The Hon. Rick Colless: You have me in tears and emotional!

The Hon. JOHN AJAKA: I want to thank my colleague for the interjection.

Ms SYLVIA HALE [8.42 p.m.]: The Greens support Opposition amendment No. 1 moved by the Hon. John Ajaka. The Greens have grave reservations about imprisoning people on the basis of an allegation. We believe the rights to seek bail have been watered down and the proposed detention in an adult correctional facility merely because there is an allegation that a wrongdoing has been committed is inherently wrong.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [8.43 p.m.]: The simple answer is that a warrant has to be issued before any incarceration takes place. The court ultimately makes the decision. Presently when an adult is alleged to have breached a community-based order, the court can either issue a summons, which does not require that person to be brought into custody or, alternatively, the court can issue a warrant for arrest, which does require that person to be placed into custody.

The court will decide whether it wishes to proceed by way of summons or arrest warrant if a person is over the age of 18 years. If the court decides to proceed by arrest warrant then that person should go where adults go—that is a simple philosophy. Such persons should not be going to juvenile justice centres and the courts know that. A summons will be issued if the court does not consider that a person should be placed in custody but if that person does not attend in answer to the summons an arrest warrant will be issued. I do not understand why the Opposition is getting so excited about this issue.

The Hon. JOHN The Hon. JOHN AJAKA [8.44 p.m.]: I have known of many situations, including the time when I worked for the old Clerk of the Peace and I had a responsibility in relation to the issuing of warrants, where an allegation of a breach of a community service order or alleged breach of a bond was made against a young person between the ages of 18 to 21 years, a warrant was issued, and then a magistrate or judge found no breach. I am sorry but it does concern me enormously that a young person may find themselves in jail with adult prisoners waiting for a hearing and no conviction results for the alleged breach. The Opposition is excited about this issue because we do not think it is appropriate.

Question—That Opposition amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 19

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|---------------|--------------|-----------------|
| Mr Ajaka | Mr Gay | Mrs Pavey |
| Mr Clarke | Ms Hale | Mr Pearce |
| Mr Cohen | Dr Kaye | Ms Rhiannon |
| Ms Cusack | Mr Khan | |
| Ms Ficarra | Mr Lynn | <i>Tellers,</i> |
| Mr Gallacher | Mr Mason-Cox | Mr Colless |
| Miss Gardiner | Ms Parker | Mr Harwin |

Noes, 22

| | | |
|-----------------|-------------------|-----------------|
| Mr Brown | Reverend Dr Moyes | Mr Tsang |
| Mr Catanzariti | Reverend Nile | Ms Voltz |
| Mr Costa | Mr Obeid | Mr West |
| Mr Della Bosca | Mr Primrose | Ms Westwood |
| Ms Griffin | Ms Robertson | |
| Mr Hatzistergos | Mr Roozendaal | <i>Tellers,</i> |
| Mr Kelly | Ms Sharpe | Mr Donnelly |
| Mr Macdonald | Mr Smith | Mr Veitch |

Question resolved in the negative.

Opposition amendment No. 1 negatived.

Ms SYLVIA HALE [8.52 p.m.], by leave: I move Greens amendments Nos 2, 3 and 4 in globo:

No. 2 Page 4, schedule 1, lines 11-13. Omit all words on those lines.

No. 3 Page 4, schedule 1, lines 23-25. Omit "except with the prior approval of the Director-General, whether given generally or in relation to a particular detainee".

No. 4 Page 4, schedule 1, line 26 to page 6, schedule 1, line 7. Omit all words on those lines.

These amendments deal with aspects of the bill that the Greens find especially repugnant. For example, amendment No. 2 deals with the bill seeking a special exemption from the Anti-Discrimination Act in relation to the separation of detainees. I am most concerned about this aspect of the bill. Given the concerns expressed by the Labor Party as to exemptions from the Anti-Discrimination Act contained in the Northern Territory intervention legislation, I am surprised about the Government's proposal. The Greens do not support exemptions from the Anti-Discrimination Act. Separation on the basis of race or cultural background, for example, is not an acceptable basis for this method of discipline or protection. Separation can be a legitimate disciplinary tool for use in a detention centre or a legitimate and necessary means to protect a detainee. But the separation must be based on a specific behaviour or vulnerability of the individual being separated, not on a person's ethnic, racial, gender or cultural background. This is a fundamental breach of the principles of antidiscrimination, and the Greens will not support it.

Members may have seen the *ABC Compass* program on Sunday night about torture. It was apparent from the program that once people backtrack from a fundamental position on principles, such as the outlawing of torture under any circumstances, they begin to weaken the principles as they apply more generally. It became clear from the program that there was a tendency for procedures that were rigidly confined to the torture of enemy detainees to gradually pervade the society as a whole. The example given was in Abu Ghraib where many of those accused of torture had been trained within the prison system. The essential problem with this provision of the bill is that it suspends the Anti-Discrimination Act precisely at the time when it is important to sustain it and insist upon the provisions of the Act being observed. These Acts should apply all the time, without exception. But it is when we deal with the hard cases that the Acts are most important. The Greens strongly oppose this aspect of the bill.

Amendment No. 3 seeks to restrain the indefinite nature of punitive action against detainees. Short-term loss of access to sport or leisure activities is an acceptable disciplinary tool. Indefinite loss of access is open to serious abuse. This amendment will have the effect of increasing the allowable period for removal of access to sport and leisure activities from the current four days to seven days, but it will not allow the indefinite removal of access. The Greens are concerned that the Government, in seeking to give detention centre workers more power to maintain control, is opening up the possibility of a significant abuse of human rights. Greens amendment No. 4 removes those sections of the bill that increase the discretion of the director general to transfer detainees from a juvenile justice centre to an adult corrections centre. As I indicated earlier, I believe a judge is in the best position to make this decision based on the full facts of the case and the circumstances of the offender, rather than the decision being made by an unaccountable worker within a detention centre. It is not appropriate to transfer this discretion from a judge to a public servant who can be placed under extraordinary pressure to meet budgets and avoid overcrowding. In particular, I note that the reasons the director general can use to decide to transfer a young person of 18 years of age to an adult prison include that:

... the detainee has been detained in a detention centre for at least six months and the director general has assessed that, having regard to all of the circumstances, it would be preferable for the detainee to be detained in a correctional centre.

The question is: It would be preferable for whom—the detainee or the director general? The circumstances that make it preferable could include the need to meet a budget or to deal with overcrowding. Clearly, the rehabilitation of young offenders is no longer the primary consideration. Once again, members have referred to representations by the Law Society. It is worth reiterating what the Law Society said about this amendment bill. The Law Society's letter of 16 June states:

The Law Society's Criminal Law and Juvenile Justice Committees (Committees) have reviewed the *Children (Detention Centres) Amendment Bill 2008*.

The Law Society was not consulted about the proposed amendments and received no notice that the Bill would be introduced.

The Committees are opposed to the proposed amendments which provide a wider set of circumstances for making a transfer order with respect to a detainee who is between 18 and 21 years old.

The Bill has been introduced to address the problem of overcrowding in juvenile detention centres. There has been a significant increase in the number of children held on remand since the commencement of the highly problematic s 22A of the *Bail Act 1978* in December 2007.

The Committees are disappointed that the Government's solution to overcrowding is to make it easier to transfer young detainees into adult correctional centres. This approach completely ignores the need to promote rehabilitation and reintegration of juveniles back into society. The comments by the Minister for Juvenile Justice in the Agreement in Principle speech are an implicit acknowledgment that the adult correctional custodial system does not deliver the type of rehabilitation services that the juvenile justice system provides. Young detainees are vulnerable within adult correctional centres and they are likely to be contaminated by older offenders.

The Government is relying on Article 37 (c) of the United Nations Convention on the Rights of the Child (that children in custody should be separated from adults) to justify the transfer of young people from juvenile detention centres to adult correctional centres. This is a cynical and selective application of CROC.

The letter goes on to outline the full text of the relevant articles. Clearly, the Law Society is deeply concerned about this legislation, and I believe this House should be equally concerned. It is quite appalling that the director general should have the right to transfer people merely because he or she considers it would be "preferable". It is appalling that it is possible under this legislation to order the indefinite removal of access to sport and leisure activities. And to cap it off, there is the suspension of the Anti-Discrimination Act. Of course, this legislation is in keeping with much of the Government's legislation; it shows scant regard for the fundamental principles of human rights and an appropriately functioning judicial system. The Government is clearly indifferent and prefers to pursue a draconian policy of punishment rather than rehabilitation. We are seeing the results of that with extreme overcrowding in both juvenile and adult centres.

The Hon. JOHN AJAKA [9.02 p.m.]: The Opposition opposes Greens amendments Nos 2, 3 and 4.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [9.02 p.m.]: The Government also opposes Greens amendments Nos 2, 3 and 4. In relation to Greens amendment No. 2, the power provided in proposed section 16 (5) is protective not punitive power, and is designed to give the department an unambiguous power to hold separately vulnerable young women from young men and young detainees from the old. Young women may be kept temporarily in a centre before transfer to Juniperina Juvenile Justice Centre, the all-girls centre at Lidcombe. The department must be able to meet effectively the requirements of its duty of care to young women and all detainees by providing them with the protection of separation from time to time.

Greens amendment No. 3 seeks to delete proposed section 21 (1) (a). Restrictions on privileges are an important behaviour management tool that is used by front-line staff in juvenile justice centres. Detainees who continue to abuse certain privileges should not simply be allowed to continue to have access to those privileges, such as watching their favourite television program. Under the current regime the department is restricted to a four-day period. The proposed power is not time limited, but will be able to be approved only by senior-level officers. The department's independent oversight bodies regularly review all punishments. The department is dealing with some of the most difficult and disturbed young people in New South Wales. Allowing this amendment would severely limit the department's ability to provide effective management of these young offenders. With regard to Greens amendment No. 4 I will not repeat the arguments that I canvassed during consideration of an earlier bill. I urge the Committee to vote down Greens amendments Nos 2, 3 and 4.

Question—That Greens amendments Nos 2 to 4 be agreed to—put.

The Committee divided.

Ayes, 4

Dr Kaye
Ms Hale

Tellers,
Mr Cohen
Ms Rhiannon

Noes, 30

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|-----------------|-------------------|-----------------|
| Mr Ajaka | Mr Lynn | Mr Smith |
| Mr Brown | Mr Macdonald | Mr Tsang |
| Mr Catanzariti | Mr Mason-Cox | Mr Veitch |
| Mr Clarke | Reverend Dr Moyes | Ms Voltz |
| Mr Colless | Reverend Nile | Mr West |
| Ms Cusack | Ms Parker | Ms Westwood |
| Ms Ficarra | Mrs Pavey | |
| Ms Griffin | Mr Pearce | |
| Mr Hatzistergos | Mr Primrose | <i>Tellers,</i> |
| Mr Kelly | Ms Robertson | Mr Donnelly |
| Mr Khan | Ms Sharpe | Mr Harwin |

Question resolved in the negative.

Greens amendments Nos 2 to 4 negatived.

Schedule 1 agreed to.

Title agreed.

Courts and Crimes Legislation Amendment Bill and Children (Criminal Proceedings) Amendment Bill reported from Committee with amendments, and Children (Detention Centres) Amendment Bill reported without amendment.

Adoption of Report

Motion by the Hon. John Hatzistergos agreed to:

That the report be adopted.

Report adopted.

Third Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [9.14 p.m.]: I move:

That these bills be now read a third time.

The PRESIDENT: Order! There having been a request that the Chair put questions on each bill separately, pursuant to Standing Order 139 I shall proceed accordingly.

Question—That the Courts and Crimes Legislation Amendment Bill be now read a third time—put and resolved in the affirmative.

Motion agreed to.

Bill read a third time and returned to the Legislative Assembly with amendments.

Question—That the Children (Criminal Proceedings) Amendment Bill be now read a third time—put and resolved in the affirmative.

Motion agreed to.

Bill read a third time and returned to the Legislative Assembly with amendments.

Question—That the Children (Detention Centres) Amendment Bill be now read a third time—put.

The House divided.**Ayes, 22**

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|-----------------|-------------------|-----------------|
| Mr Brown | Mr Macdonald | Mr Tsang |
| Mr Catanzariti | Reverend Dr Moyes | Ms Voltz |
| Mr Costa | Reverend Nile | Mr West |
| Mr Della Bosca | Mr Obeid | Ms Westwood |
| Ms Fazio | Ms Robertson | |
| Ms Griffin | Mr Roozendaal | <i>Tellers,</i> |
| Mr Hatzistergos | Ms Sharpe | Mr Donnelly |
| Mr Kelly | Mr Smith | Mr Veitch |

Noes, 19

| | | |
|---------------|--------------|-----------------|
| Mr Ajaka | Mr Gay | Mrs Pavey |
| Mr Clarke | Ms Hale | Mr Pearce |
| Mr Cohen | Dr Kaye | Ms Rhiannon |
| Ms Cusack | Mr Khan | |
| Ms Ficarra | Mr Lynn | <i>Tellers,</i> |
| Mr Gallacher | Mr Mason-Cox | Mr Colless |
| Miss Gardiner | Ms Parker | Mr Harwin |

Question resolved in the affirmative.**Motion agreed to.****Bill read a third time and returned to the Legislative Assembly without amendment.****DISTINGUISHED VISITOR**

The PRESIDENT: I draw the attention of members to the presence in my gallery of the former Clerk of the Parliaments and well-known author, Mr John Evans.

CLEAN COAL ADMINISTRATION BILL 2008**Second Reading**

The Hon. IAN MACDONALD (Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development) [9.23 p.m.]: I move:

That this bill be now read a second time.

The Clean Coal Administration Bill 2008 puts in place a key strategy to substantially reduce New South Wales's greenhouse gas emissions. In doing so, it will help secure our future energy needs, our economy and our environment. The New South Wales Government has demonstrated a longstanding commitment to reducing greenhouse gas emissions. The Clean Coal Administration Bill builds on that commitment. The bill establishes a fund for research into, and development of, clean coal technologies, including demonstration projects. The fund will also be able to be used to increase public awareness of clean coal technologies, and for the commercialisation of clean coal technologies. The Government will contribute substantially to the fund. In addition, there is provision for voluntary contributions to the fund. This means that the coal and electricity industries or other non-government organisations can contribute to reducing greenhouse emissions through development of clean coal technologies.

The bill will establish the Clean Coal Council, which will make recommendations to the Minister for Mineral Resources on the funding of projects. The council can also make recommendations on policies to encourage the development and implementation of clean coal technologies. The Minister will report to Parliament annually detailing allocations of funds for specific projects and other activities. Members of the council will be drawn in equal numbers from the Government and from the coal industry. This is important as the mining industry has made a major financial commitment to the development of clean coal technology. The industry has committed \$1 billion over 10 years through the COAL21 fund. Of this amount, \$400 million will go towards projects in New South Wales. Industry will work with government to allocate the funds from both sectors. By working together, industry and government will be able to achieve much more than each sector working alone. While I am talking about funding, I advise that the Commonwealth has put up substantial funds for the purposes of clean coal technology.

The Clean Coal Administration Bill will ensure that funds are available and allocated for the best research into these important technologies. When established, these technologies will significantly reduce greenhouse gas emissions from the generation of electricity. We are all aware of the pressing need to reduce the production of greenhouse gases by modern societies. The 2006 Stern report on the economics of climate change has highlighted to the world the need to reduce global emissions. The report also talks of the necessity of taking action now to protect national economies in the future. The report of the International Panel of the United Nations is also clear that a country's capacity to mitigate greenhouse gases is tied closely to its social and economic development.

Turning to the situation in New South Wales, it is well known that more than 90 per cent of this State's energy needs are generated from coal. Coal provides us with an abundant source of very cheap energy. The downside is that in 2004 New South Wales produced approximately 10 per cent of all Australian greenhouse gas emissions from its coal-generated energy production. The challenge for New South Wales is the issue highlighted in the report of the Intergovernmental Panel on Climate Change—that is, to mitigate greenhouse gases in ways that avoid conflict, to the greatest possible extent, with sustainable development.

The Government has already set a target of cutting greenhouse gas emissions by 60 per cent by 2050 and returning to year 2000 levels by 2025. As an important step towards these targets, we need to find effective ways of reducing emissions from coal-fired power stations. We need to develop clean coal technologies. It is evident that coal is not the only means of producing energy. Other sources of energy do not have the same greenhouse gas emissions as those that are associated with coal-based energy. However, we cannot suddenly stop producing energy from coal. It will take time to implement other energy sources on a scale that can sustain a large, industrial economy such as that of New South Wales.

We cannot go back to the Dark Ages while other energy sources are established. Approaching the problem this way could lead to economic and social disaster. Therefore, the Government is taking steps to ensure continuity of energy supply in the most environmentally and economically responsible way. We are supporting and exploring a range of means of producing renewable energy. For example, hydro, biomass, landfill methane, wind and solar energies are all being developed and used. Significantly, the Government has set mandatory targets that require an increase in the amount of energy from renewable sources. Currently, about 6 per cent of the State's total energy usage is provided from renewable energy sources. The Government has set mandatory levels for renewable energy of 10 per cent of the State's energy usage by 2010, and 15 per cent by 2020. The Commonwealth Government has since introduced a target of 20 per cent. These targets will help reduce greenhouse gas emissions and boost the renewable energy sector.

The Government is supporting renewable sources of energy by providing funds for research into renewable energy technologies. This is entirely appropriate in our efforts to reduce our vulnerability to climate variability. It is important to make the point that however hard the Government works, and whatever the funds that might be committed, it cannot provide New South Wales baseload energy needs from renewable sources only within a foreseeable time frame. It will take a significant effort to meet the new mandatory renewable energy levels alone. It is virtually impossible for renewable energy to replace coal-based energy in the foreseeable future.

At the same time, the Owen inquiry has estimated that electricity demand in New South Wales will increase by 1.8 per cent each year over the next 10 years. Alternative energy sources and clean coal technologies together are expected to play an important role in satisfying the need for clean power in the medium to long term. However, clean coal technologies provide the best option for significantly reducing emissions while still providing stable, reliable baseload power. From this perspective, New South Wales needs the best technologies available to reduce greenhouse gases as soon as possible. At the same time, it is imperative to plan to grow our economy while we do this.

If we consider the State's economy, it is clear that coal and coalmining have played a significant role in New South Wales for a very long time. Further, coal currently supplies about 90 per cent of the State's energy needs. But its significance to the economy in other ways is as great as its critical role of supplying energy to New South Wales. The coalmining industry provides significant revenues for Australia through exports, and to New South Wales through the royalties it pays. The value of New South Wales coal production in 2006-07 was \$8.1 billion, and the industry paid royalties of \$412 million. From anyone's perspective, this is a major contribution to both the national and State economies. It is predicted to go up significantly in the next financial year.

At the same time, the industry plays a significant role in regional economies where coal is mined. It does this through job creation, investment and regional development. The mining industry employs about 47,000 people in regional New South Wales and a further 200,000 people are employed indirectly. It also makes

substantial contributions to local infrastructure and local communities. All of these factors—national, State and regional—show clearly the important role this industry plays in the economy of New South Wales. Thus, while action must be taken to mitigate greenhouse gases, the approaches we follow must be sensitive to economic and social impacts, and ensure ongoing sustainable economic development.

One of the internationally recognised opportunities for adaptation in the energy sector is to provide stimulus to develop new technologies. This also means developing ways of adapting present energy technologies to use into the future while reducing greenhouse gas emissions substantially. Professor Garnaut made some very relevant comments on this point. In his recently released interim report on climate change, he noted that just putting a price on emissions will not generate optimal levels of investment in technological change. He said that the development of low-emissions technology for the energy sector is of particular importance to assist "Australia's transition to an emission-constrained future".

Clean coal technologies are already being researched and developed, both within Australia and internationally. These include combustion technologies, and capture and storage technologies. Capture and storage of carbon dioxide, or geosequestration, is already being used successfully in other industry applications. Well-known examples include Sleipner off the Norwegian coast, Salah in Algeria, and Weyburn in Canada. In Australia, clean coal technologies are at various stages of development. Some of the technologies have been developed at a research or pilot project level. For example, a pilot carbon capture plant is expected to be operational very shortly at Munmorah on the New South Wales Central Coast.

The plant will capture greenhouse gas emissions from the Munmorah power station using ammonia absorption technology. It is planned that the project will move to the demonstration phase by 2013. Another clean coal technology, carbon geosequestration, has been set up as a demonstration project off the coast of Victoria. Other worthwhile technologies are being researched and developed. They all need to be considered for funding to help in their development to commercial scale operations.

This is where the Clean Coal Fund, which is proposed in the bill, becomes critical. It can help the developing technology become a reality. If the funds are made available to encourage research, the implementation of clean coal technologies will happen sooner and more effectively. The proposed Clean Coal Council will assess projects and recommend priorities for the distribution of the funding to provide the maximum benefit to New South Wales. This legislation is an important means of ensuring continued energy supply for New South Wales in an economically and environmentally responsible way. I commend the bill to the House.

The Hon. RICK COLLESS [9.33 p.m.]: The Opposition will not oppose the Clean Coal Administration Bill 2008. The legislation proposes a framework to make a significant contribution to the reduction in greenhouse gas emissions through our State's electricity generation industry. The establishment of a Clean Coal Council, consisting of industry representatives and government appointees drawn from relevant government agencies, will supposedly help to drive the research and development of clean coal technologies, as well as their promotion and marketing to see whether they are taken up by the industry. Representatives of the clean coal industry rightly should have a say in the way these funds are distributed, and how the development and promotion of clean coal technologies are conducted. As it stands, the funds contributed by the coal industry will be used in these endeavours.

However, a more prescriptive approach should be taken in deciding the make-up of the council, with independent scientific appointees to be included. I add some criticisms about the process of clean coal technology. I refer to how we manage the carbon in our atmosphere. The carbon cycle tells us that carbon is a precursor to all life. In fact, the carbon cycle is known as the cycle of life. Carbon is involved in every facet of life on this planet. It is an important element in the cycle of life. If there were no carbon on this planet, there would not be any life on this planet. It is imperative that we have carbon and carbon dioxide in our atmosphere to maintain the very life that we all enjoy.

In other words, carbon is an organic compound; it is produced by an organic process. Why on earth would we try to control an organic process by implementing some sort of misguided engineering process? Why would we use a process that will emit more carbon and more carbon dioxide, develop technology and use the energy to capture and compress carbon dioxide, then pump it deep underground, which is what the clean coal philosophy is based on? Why would we try to solve a biological problem with an engineering process? The Government's approach is fundamentally flawed. It is the wrong model. We should not try to control an organic process with some sort of heavy-handed, arrogant engineering process. We should implement an organic solution to the process. I notice members opposite are having a little giggle at me, but there is an easy way to do this.

The Hon. Ian Macdonald: This does not exclude any type of technology.

The Hon. RICK COLLESS: I acknowledge the Minister's comment that it does not exclude any technology. I have heard the Minister speak on numerous occasions about clean coal technology and carbon capture from the stacks of coal-fired power stations and so on. The majority of the money allocated to this process will be spent on that process. The Government should consider carbon sequestration, not through engineering but through biological means. I am talking about sequestering carbon back into the soil profile. I will give the House a few facts.

The Hon. Ian Macdonald: We are looking at carbonation.

The Hon. RICK COLLESS: The Minister talks about carbonation. He does not know what he is talking about.

The Hon. Ian Macdonald: I do know.

The Hon. RICK COLLESS: No, he does not know.

Dr John Kaye: He generally doesn't.

The Hon. RICK COLLESS: Dr John Kaye is right; he does not know what he is talking about. I do not agree very often with Dr John Kaye, but when he says that the Minister generally does not know what he is talking about, he is right. I will inform the House of the potential to store carbon in the soil. If we take the agricultural soils in Australia down to a depth of 150 millimetres on a per hectare basis, over one hectare—a hectare is 10,000 square metres by 0.15 of a metre—we have something like 1,500 tonnes of soil in the top 15 centimetres of the soil in every hectare. If we have 1 per cent soil carbon in that soil—1 per cent of that 1,500—that means we have 15 tonnes of carbon per hectare stored in the soil. Carbon dioxide is 3.7 times the carbon, so the carbon dioxide equivalent is 3.7 times the amount of carbon in the soil. If you multiply that 15 tonnes by 3.7, that means you have 55.5 tonnes of carbon dioxide equivalent stored in the soil for every 1 per cent soil carbon level in the soil.

In Australia, excluding the deserts and national parks, there are 430 million hectares of agricultural land—that is, land on which productive agriculture is carried out. If you multiply 15 tonnes per hectare by 430 million, that is a huge amount of carbon that is stored in the soil. If you multiply that to get the carbon dioxide equivalent, it means that something like 2.3 billion tonnes of carbon dioxide equivalent is stored in the soil. Australia's carbon dioxide emissions are about 500 or 600 million tonnes annually. I ask the Minister whether that is correct.

The Hon. Ian Macdonald: Yes, 564 million.

The Hon. RICK COLLESS: If we are able to increase the soil carbon content by 0.1 of 1 per cent, that is about 250 million tonnes of carbon dioxide that we can store in the soil. I ask members to think about this. We need only about a 0.15 or 0.2 per cent increase in soil carbon levels to cancel out completely Australia's carbon emissions.

Dr John Kaye: Each year.

The Hon. RICK COLLESS: Each year. When I was in my agricultural consulting business—

The Hon. Ian Macdonald: No wonder you came here.

The Hon. RICK COLLESS: You don't know what you are talking about; that is the problem. When I had my agricultural consulting business and I was working with farmers, I was able to increase their soil carbon levels from 0.5 of 1 per cent to 5 per cent in a period of 10 years. That is a lot more than we need. We could virtually annihilate all of Australia's carbon emissions for the next 50, 60, 70 or 100 years if we could get our farmers to adopt those sorts of agricultural practices, which would result in their storing that much carbon—and farmers have stored that much carbon in their soil. This is a very important point.

I do not know how much money will be allocated to the Clean Coal Council, but I can assure honourable members it will be millions of dollars. We would be much better off if we put that money into changing agricultural practices; indeed, a lot less money would be need to be spent on that. Farmers would want to do it because getting carbon into their soil also makes it more productive. It is the glue that holds the soil together; it is the sponge that holds moisture in the soil, which increases its drought tolerance. All those sorts of things are good, so why would we not do it? But, instead, the Minister is going down the line of the Clean Coal Administration Bill and pumping money into all these other processes, such as sequestering carbon out of stacks on power stations, when we should be approaching it from a biological point of view.

We have no reason to doubt the expertise of any of the industry people who will be working on this—and I have the greatest respect for them, because they are all concerned about it. But we must have some policy direction from the Government to ensure that we are heading down the right road. I acknowledge what the Minister said a few minutes ago when he interjected to say that all these other things would be on the table. The ball is now in the Minister's court. If he has any understanding of what I have been talking about, he will ensure that his department pursues this sort of stuff. The answer lies not with the huge engineering-type process of putting some sort of collectors on the stacks of power stations—

The Hon. Ian Macdonald: They capture it before the stacks.

The Hon. RICK COLLESS: Wherever it is captured, it is captured and pumped underground somewhere. That is a complete waste of a nutrient that is in demand in the atmosphere. I could go on about this for hours. I conclude by saying that the Opposition will not oppose the bill, but I ask the Minister to give serious consideration to where the Government is going with this legislation.

I ask the Minister to take into account the need for agriculture to play a major role in this. When the emissions trading scheme comes into being, one group of people should benefit from this, and that is the people in Australia's agricultural industry who hold the key to controlling the amount of carbon that accumulates in the atmosphere. We have only to make a very small increase in the amount of carbon that is held in our soils for it to completely cancel out the amount of carbon emissions we have at the moment.

Ms LEE RHIANNON [9.46 p.m.]: The Clean Coal Administration Bill is dangerous legislation. It is dangerous because it demonstrates that the New South Wales Labor Government is not serious about dealing with runaway climate change, the most urgent issue of our time.

The Hon. Rick Colless: Nonsense.

Ms LEE RHIANNON: I note the interjection. The bill is a delaying tactic designed to forestall any real action that the Government should be taking to reduce greenhouse gas emissions. With the burning and mining of coal contributing about 40 per cent of this nation's emissions, it is clear that this is where change must occur. A responsible government, serious about meeting the climate change challenge, would be stepping up support for the renewable energy industry and energy efficiency technology as the key stages in the transition to a low-carbon economy.

The legislation demonstrates the efforts the conservative parties will take to protect the coal industry. The bill is not about reducing greenhouse gas emissions through some sophisticated technology; it is designed to buy time for the big coal companies that are coming under increasing pressure as the public's desire for meaningful action on climate change grows. As long as China and India and the other major coal importing nations continue to extend their reliance on energy sourced from coal, the coal industry will crank up its clean coal public relations efforts to justify its operations. The bill is just one cog in this deception designed to make out that dangerous emissions can be significantly reduced. The real agenda is to misuse the clean coal research to justify maximising coal sales to these countries and to pick up billions of dollars in profits.

The Greens utterly oppose the Government's Clean Coal Administration Bill. There is nothing good in it. This bill will harm the environment, the economy, the community, and future generations of Australians. New South Wales may not be able to recover from the setback this bill will foist upon us once the legislation is enacted. The behaviour of the big polluting coal companies and this complicit Labor Government—delaying tactics, climate change denial, runaway coal industry expansion, public relations smoke screens, contempt for communities—will become further entrenched at the very time we most need change.

The bill is dangerous because it robs the public purse of money that should be spent on the research and development of renewables, and energy efficiency measures. The Clean Coal Fund that this bill establishes will result in a serious misuse of \$100 million of public money allocated to the fund. Understandably, people would expect that such an enormous amount of public spending was going towards research and development of technologies that can urgently reduce carbon emissions. However, not only are drastic emissions cuts from clean coal both hypothetical and far off in the future, if at all, but also a sizeable part of the \$100 million Clean Coal Fund is for public relations—what the Government calls "increasing public awareness of clean coal technologies".

The Hon. Rick Colless: Spin.

Ms LEE RHIANNON: Spin, thank you. We agree on something. That is very good, Mr Colless. It is not just the Greens saying that the Clean Coal Administration Bill is an exercise in media management of the public's climate change concerns. This is how the Government defines the fund in its own legislation. This is an insidious scheme designed to lull people into believing that the Government is looking after their interests. Make no mistake: this legislation, backed by Labor and the Coalition, is robbing taxpayers to do the coal industries bidding.

The Hon. Ian Macdonald: They are paying \$900 million in royalties. What are you talking about?

Ms LEE RHIANNON: I acknowledge the interjection about the \$900 million paid in royalties. The Minister supports an industry that is pumping out excessive amounts of greenhouse gas emissions, and the State and Federal governments will not be able to meet targets to reduce those emissions as long as the Government continues to back the coal industry, as this bill clearly does.

The Hon. Ian Macdonald: The coal industry is a great industry.

Ms LEE RHIANNON: Here we go again. Mr Macdonald is saying the coal industry is a great industry. He is a Minister who fails to question and goes along with what is dished up time and time again. How this industry has captured the conservative parties in this country is a most disturbing story, and we see that in stark reality in the bill. The decision of the New South Wales Labor Government to use so-called clean coal technology to cover up its policy of business as usual for the coal industry is a repeat of the actions taken by the Federal Labor Government. The Federal budget brought down early last month was generous to clean coal technology compared with the renewables. Some \$35 million has been granted to the industry for this year and \$250 million for the term of the Government. Yet the vast array of renewable energy projects set to take off will receive no Federal funding this year. Some \$125 million will be provided for renewable research and development during the life of the Federal Government. It is morally reprehensible that renewable energy is getting only half the public money going to clean coal. On top of this we have the extraordinary Federal policy to means test rebates for solar power panels. In a debate on clean coal this issue has to be mentioned. Green's senator Christine Milne has described this policy as:

Putting in train the collapse of the photovoltaic supply industry as it currently stands in Australia.

It is hard to believe that the Federal Labor Government gives less to the renewable energy industry than occurred under the former Howard Government. In addition to that disappointment, we have the New South Wales Labor Government spinning the line that backing clean coal research will secure the State's electricity supplies by taking additional steps to ensure cleaner and greener energy. You could not get anything further from the truth.

When the Premier foreshadowed the \$100 million Government Clean Coal Fund in question time last month, he also promised a \$100 million fund to support renewable energy research. Clean coal research should not be receiving one cent of taxpayer money. The Iemma Government should scrap its clean coal fund and commit the \$200 million to the renewable energy fund. The term "clean coal" is a masterpiece of spin to counter raised public awareness about climate change. They will teach it in media and public relations courses for years to come, along with the tactics of tobacco lobbyists and the asbestos industry.

It is worth remembering that although carbon capture and storage technology, or geosequestration, has been around for a while, it has been constrained by its obvious limitations. Even if underground storage of carbon dioxide could be proved to work, no sites near power stations in New South Wales would be suitable. No coal-fired power plants in commercial production capture all carbon dioxide emissions; so clean coal technology is still at the experimental stage. David Brockway, chief of the Energy Technology Division of the CSIRO, estimates that it will be 2020 to 2025 before carbon capture and sequestration can be applied on a commercial scale to power stations. This time line fails to deal with runaway climate change. We must have viable, proven plans to reduce greenhouse gas emissions now—not in 15 to 20 years time.

The other major drawback for carbon capture storage is the safety factor. If sequestration technology is to work, it will have to deal with very large quantities of carbon dioxide. An accidental release of carbon dioxide can be lethal to humans and other animals, as it would replace the oxygen in the atmosphere that is essential for life. Burying large quantities of carbon dioxide could lead to unexpected geological instability or contaminate

groundwater supplies. Dan Becker, Director of the Sierra Club's Global Warming and Energy Program, the highly respected United States environment organisation, has clearly summed up how misleading the term "clean coal" is. He said:

There is no such thing as "clean coal" and there never will be. It's an oxymoron.

The Greens are not saying that research on clean coal should stop, but we strongly dispute public money—

The Hon. Greg Donnelly: How much research should there be? You tell us how much research, if you do not accept it.

Ms LEE RHIANNON: Okay. I accept the interjection from Mr Donnelly. The point I am about to make is that we should not be putting public money into it. Why does the Government not get behind the suggestion of Tony Maher from the Construction, Forestry, Mining and Energy Union [CFMEU] that the coal industry should pay for the research rather than a Labor Government put in public money?

The Hon. Ian Macdonald: He has called on the Federal Government to invest in it.

Ms LEE RHIANNON: He was running a campaign and the member knows that. I acknowledge the interjection. I will come to Tony Maher's quote and how that campaign—

The Hon. Ian Macdonald: There are lots of quotes from Tony Maher.

Ms LEE RHIANNON: Yes, and he was very clear about that at one stage, but unfortunately it shifted.

The Hon. Ian Macdonald: I rest my case, your Honour.

Ms LEE RHIANNON: A failed case at that it is. Money for this research should come from the coal industry not the public purse. While the Minister's second reading speech makes out this legislation is to further develop clean coal technology, an examination of the commitments given by industry and governments to this research suggests that the Clean Coal Fund we are now debating is purely a public relations exercise. In May last year the Australian black coal mining industry announced what it called the world's largest whole-of-industry funding commitment for research, development and demonstration of clean coal technologies aimed at combating climate change.

This was to be achieved through an expansion of the \$300 million COAL21 Fund announced in 2006 with the industry predicting that \$1 billion would be raised over the coming decade, and stating with more fanfare that the Australian black coal industry was prepared to set the benchmark for other industries to follow. Now COAL21 participants include the Federal, Queensland, New South Wales and Victorian governments, the power generation and coal industries—including New Zealand—private and public sector research organisations, and the industry union, the CFMEU. We know from statements made by CFMEU Mining Division Secretary Tony Maher that he strongly backs the coal industry paying for clean coal research, not the Government. Mr Maher has written to the chief executive officers of BHP Billiton and Rio Tinto. In February last year he stated:

If they [mining companies] levy themselves a dollar a tonne—bearing in mind that they get over \$100 a tonne for some of the coal—then they would raise \$2 billion.

This was the CFMEU Mining Division's plan to increase research funding from what he calls a paltry \$300 million over five years to the billion dollar level. The Australian Coal Alliance established the COAL21 Fund and plans to collect a voluntary levy from its members to raise \$1 billion over 10 years. A voluntary levy, that is all that has come of all this talk. Tony Maher's campaign for coal companies to put in \$1 a tonne has failed. Despite huge increases in the price of coal the industry is not prepared to invest more money in its Clean Coal Fund. So why should the Government? That is the question that the Minister should answer in his speech in reply, if he does not wish to interject now. The Minister is failing to deal with a company that has run away from this because it knows it can con the Government and the Opposition into giving it a huge public relations boost with a clean coal fund, which is about public relations. The Australian Coal Association executive director, Ralph Hillman, was quoted on page 11 in the *Australian Financial Review* of 16 April 2008 as saying:

The fund I think is regarded as a great contribution for the industry and adequate for the purpose.

This comment suggests that the fund was set up to let the coal industry continue to expand despite the global demand to cut greenhouse gas emissions. The scenario is that as long as the Government keeps talking about clean coal the industry can continue to build new coalmines and, due to the skyrocketing price of coal, expand or reopen mines that were deemed uncommercial only a few years ago. Currently seven new coalmines are awaiting approval in the Hunter Valley, and dozens more have been approved in the Hunter alone since the COAL21 Fund was dreamt up by the Australian Coal Association two years ago. In peddling the clean coal message, the Government is disregarding the advice of international expert scientists, economists and business leaders. Clean coal is the key that allows the Government to give assurances to the coal industry that it is business as usual, while at the same time spruiking a commitment to deal with climate change to the general public. Solar, wind, geothermal, biomass and tidal energy have all taken a back seat to clean coal technologies. It is no surprise that the Clean Coal Fund got pole position over the Renewable Energy Fund. Minister Macdonald's rhetoric in this House last month spelt it out. In answer to a question from Mr Eddie Obeid the Minister said:

[The Govt is] committed to forging real partnerships with science and industry to fight climate change Clean coal technologies save jobs and save the environment.

Once again the Minister gives a highly unoriginal answer. He reads his notes and gives a soft response. He does not deal with the energy industry at all. He is seen as a total pushover.

The Hon. Ian Macdonald: I don't read my notes when I answer questions.

Ms LEE RHIANNON: You are a total pushover. The coal industry sees him coming. Give him a cooked lunch, a few trips to China and he's your man. He is on board. Who does the Minister for Mineral Resources think he is kidding? Certainly he fools himself, but hopefully not many others. The coal industry has caused climate change. It is not fighting against climate change; it has been causing climate change for the past 100 years or more. Minister Macdonald needs to take off his blinkers. Clean energy technologies already exist, they work and they are industrially and commercially viable. They are not hypothetical pipedreams, like clean coal, which simply has not measured up after years of effort and trials. Technologies such as energy efficiency, solar energy and thermal and wind energy are ready to roll out. The only thing stopping the expansion of the renewable energy industry is the Government's intransigence on coal. If the Government would wind back part of its massive subsidy of the coal industry and transfer those billions of dollars into the renewable energy market, then renewable energy and energy efficiency measures could cut our emissions so deeply that the quest for clean coal technologies would become obsolete. In concluding his answer to Mr Eddie Obeid's question about the Government's action on clean coal, the Minister said:

If we are to slash the 60 million tonnes of carbon dioxide emitted by New South Wales power stations every year, we need concrete action, not pie-in-the-sky promises.

It is the Minister who is offering pie-in-the-sky promises. Greenpeace has launched a comprehensive report, based on peer reviewed scientific data, which reveals the pitfalls of clean coal: Carbon capture and storage [CCS] cannot deliver in time to avoid dangerous climate change; and the earliest possibility for deployment of CCS at utility scale is not expected before 2030. To avoid the worst impacts of climate change, global greenhouse gas emissions have to start falling after 2015, just seven years away. Carbon capture and storage wastes energy, and the technology uses between 10 per cent and 40 per cent of the energy produced by a power station. Wide-scale adoption of CCS is expected to erase the efficiency gains of the last 50 years and increase resource consumption by one third. Storing carbon underground is risky; safe and permanent storage of CO₂ cannot be guaranteed. Even very low leakage rates could undermine any climate mitigation efforts. Carbon capture and storage is expensive. It could lead to a doubling of plant costs and an electricity price increase of 21 per cent to 91 per cent. Money spent on CCS will divert investments away from sustainable solutions to climate change. Carbon capture and storage carries significant liability risks; it poses a threat to health, ecosystems and the climate; and it is unclear how severe these risks will be.

Greenpeace's arguments against clean coal are strong. If we are to achieve the drastic cuts in greenhouse emissions required to halt global warming we must act immediately to see emission levels start falling by 2015. Clean coal, if it does work, will not be viable until at least until 2030, and it may prove so costly that it never becomes commercially viable. The bill sets up another major public subsidy of the coal industry. If this financial support and the other coal subsidises were to be redirected into more viable, proven low-emission technologies, such as solar and wind and thermal energy, we would be in a position to make real inroads into reducing greenhouse gas emissions—the essential step to deal with climate change. Over recent decades coal industry subsidies have run into billions of dollars. For example, in the 2003-04 financial year the public subsidised the entire mining industry's diesel fuel bill by \$1.1 billion, according to Federal budget papers.

The Hon. Ian Macdonald: Federally.

Ms LEE RHIANNON: I said federally.

The Hon. Ian Macdonald: How much did it bring in royalties and taxes?

Ms LEE RHIANNON: I acknowledge the Minister's interjection, but the coal industry is also killing the planet. The Government needs to plan for a sustainable industry that thrives, produces jobs and does not produce greenhouse gas emissions. The Minister fails to get his head around that. In the five years before 2003-04, \$4.86 billion of fuel subsidies went to the mining sector. In the Hunter Valley alone in 2005-06, 22 open-cut coalmines received about \$300 million in Federal fuel subsidies, despite earning record industry profits. But that is just the tip of the iceberg.

The Hon. Greg Donnelly: Of course!

Ms LEE RHIANNON: Of course! Thank you, Mr Greg Donnelly. A draft report from the University of Newcastle shows that direct subsidies from the New South Wales Government to projects and programs for the New South Wales coal industry during the past 10 years totalled more than \$150 million, administration and information networks funded by the New South Wales Government that directly support the coal industry totalled \$123 million, and subsidies to infrastructure used by the coal industry totalled \$393 million. Indirect subsidies to the electricity generation industry and subsidies that encouraged the use of coal-fired electricity reached over \$4.4 billion. In total, the New South Wales Government's direct and indirect subsidies for the coal industry over the past 10 years reached more than \$5 billion. If New South Wales were slowly weaned off coal-fired power and those subsidies were directed into renewable energy, every household could generate low-emission energy and we could export our know-how to the rest of the world.

The Hon. Ian Macdonald: Do you have the sources for those figures?

Ms LEE RHIANNON: Most definitely; they are the budget papers.

The Hon. Ian Macdonald: It is \$5 billion over 10 years?

Ms LEE RHIANNON: Direct and indirect subsidies. I would be happy to sit down with the Minister and go through them with him, and I would be interested in his feedback.

Dr John Kaye: I don't know why.

Ms LEE RHIANNON: I acknowledge the interjection from Dr John Kaye. We never know when we will catch the Minister out because he stumbles so often. One of the unspoken dangers associated with carbon capture and storage is the issue of liability. The risks of long-term storage of CO₂ are so great that no company will take on the liability and many are seeking to limit their legal liability to a mere 10 years. Senator Milne stated:

Aside from the tremendous remaining questions about whether the technology will even work, the liability issue may ensure that so-called "clean coal" projects never get off the ground. Coal corporations will not commit to storing tens of millions of tonnes of CO₂ unless they are guaranteed that the governments will carry their liability in perpetuity, and no one government can bind future governments to ensure that will be the case.

You would have thought that, after Ok Tedi and so many other examples in recent years, no government would readily facilitate companies walking away from their long-term pollution liabilities. But this draft legislation, released deliberately on a Saturday to avoid scrutiny, appears to do exactly that by passing perpetual liability for carbon leakage into public hands if the Minister issues a site closing certificate.

It is wrong to transfer the risk of worse climate change from carbon leakage onto taxpayers and future generations. Working families care about the world their children inherit and the costs that are imposed upon them.

Senator Milne went on to say:

The liability issues clearly demonstrate the folly of further developing an industry, which generates an enormous and highly dangerous waste stream. Rather than spending billions on working out how to store the waste and billions more on perpetual monitoring, surely it would be better not to generate the waste at all and move to truly clean alternatives.

I urge the Minister in his speech in reply to deal with the issue of liability. It is a major hole in his argument and it is an issue that Government representatives regularly refuse to engage with. They need to front up to this issue, otherwise clean coal technology will not get off the drawing board. As New South Wales and other governments push ahead with clean coal technology it is becoming increasingly clear that it will be the public who will ultimately pick up the tab for the real risks associated with this technology. The risks are becoming very apparent. Some high-profile clean coal projects have collapsed recently. In the United States of America, FutureGen, which President Bush announced in 2003, using government subsidies, was to test the most advanced techniques for converting coal to a gas, capturing pollutants and burning the gas for power. The carbon dioxide was to be compressed and pumped underground into deep soil layers, with monitoring devices in place to test if any was escaping to the atmosphere.

An amount of \$50 million has been spent on FutureGen—about \$40 million in Federal money and \$10 million in private money—to draw up preliminary designs; to find a site that had coal, electric transmission and suitable geology; and to complete an environmental impact statement. But in January this year this flagship clean coal project collapsed on cost grounds, despite receiving more than \$US1 billion in public funds and receiving protection from financial and legal liability in the event of accidental releases of carbon dioxide.

The Hon. Ian Macdonald: An amazing distortion of the facts. I will deal with that in my reply.

Ms LEE RHIANNON: I look forward to the Minister dealing with that. Again, I hope he has the courage to deal with the liability issue in full. Collapse of clean coal projects is not confined to the United States of America. Earlier this year the Western Australian joint venture between BP and Rio Tinto, announced to great fanfare last year, was pulled when it was discovered that the storage site proposed was geologically unstable. That leaves ZeroGen in Queensland and the New South Wales clean coal project. Minister Macdonald will forge ahead with this Clean Coal Fund—hanging out with coal companies, making trips overseas and abusing anyone who dares to disagree with him.

The Hon. Ian Macdonald: I don't abuse anyone!

Ms LEE RHIANNON: Failing to answer questions—I think we need to add that to the long list of how he conducts himself as Minister.

The Hon. Ian Macdonald: You are the only one who does the abusing.

Ms LEE RHIANNON: That is totally not true. That is an insult and the Minister should withdraw it. That is totally insulting. The Minister needs to watch his step on this issue, and those statements. He is headed, again, for a tumble. Even the Bush Administration is treading carefully with the clean coal technology. Clarence Albright, the Under Secretary of the United States Energy Department, in discussing the collapse of the FutureGen project, stated that the Government had to change its approach to "limit taxpayer exposure to the escalating cost". I will be interested to see if the Minister is willing to take on Clarence Albright when he informs us of his analysis of FutureGen. The *New York Times* has stated that despite bipartisan efforts to save FutureGen "the project is on life support". Also, a *New York Times* article written by Matthew Wald and published on 30 May stated:

... only a handful of small projects survive, and the recent cancellations mean that most of this work has come to a halt, raising doubts that the technique can be ready at any time in the next few decades.

Nikki Williams of the NSW Minerals Council and all the coal companies ready to open up more coalmines across New South Wales will appreciate Minister Macdonald and his Labor and Coalition clean coal backers. This is the justification that they need to keep mining and burning coal. But, as we know, clean coal is a con—a dangerous con because it delays Australia's transition to a new low-carbon economy. Members should not be conned by this legislation but, sadly, we know that the conservative parties that dominate this House will shortly vote to make this bill legislation.

We need a new dialogue on renewable energy technologies and energy efficiency measures to reduce Australia's dependence on fossil fuels, to build new jobs and to create export markets that will last and not disappear when this industry is condemned for the danger it brings to the world, as we already know. This is a way we can ensure a more certain future for the next generation. Last month the Premier said New South Wales is a leader when it comes to reducing greenhouse gas emissions and tackling climate change. It sounded promising enough, but scratch the surface and you expose the rot: the Clean Coal Fund is a delaying tactic designed to forestall any real action on climate change.

Reverend the Hon. FRED NILE [10.14 p.m.]: On behalf of the Christian Democratic Party I speak in support of the Clean Coal Administration Bill 2008. This bill will establish mechanisms for the New South Wales Government to fund research into clean coal technologies. It has two main aspects. One aspect of the bill is to establish a Clean Coal Fund, which will fund research, demonstration and commercialisation of clean coal technologies and increase public awareness and acceptance of the importance of reducing greenhouse gas emissions from clean coal technology. The Minister for Mineral Resources will be responsible for administering the fund and the Government will make contributions to the fund. Could the Minister give us some guidance as to what that means in regard to budget allocations? I note that page 3 of the bill, under the heading "Payments into Fund", states:

- (1) There is payable into the Fund:
 - (a) all money advanced by the Treasurer for the Fund.

How much will be advanced by the Treasurer? It continues:

- (b) all money appropriated by Parliament for the purposes of the Fund.

Page 4 of the bill, under the heading "Investment of Money in Fund", states:

The Minister may invest money in the Fund.

One clause of the bill states that the Treasurer will put money into the fund and another clause states that the Minister will put money into it. Can the Minister give us some guidance, in round figures, as to what that would amount to in one year or over 10 years? I note also that there will be voluntary contributions. In the agreement in principle speech the Minister in another place stated that the mining industry has committed \$1 billion over 10 years through the COAL21 Fund. Of this, \$400 million will go towards projects in New South Wales and industry will work together with Government to allocate funds from both sectors. So there are mining industry donations—obviously voluntary—and then some contributions from the Government. We are told the Minister will report annually to Parliament on fund allocations for research projects and expenditure.

The second aspect of the bill is to establish a Clean Coal Council, which will receive applications for the funding of clean coal technology projects and make recommendations to the Minister on priorities for funding and applications for funding. It will also advise on policies to encourage the development and implementation of clean coal technologies and make recommendations concerning opportunities for New South Wales to be involved in interstate, national and international research projects. There has been some criticism of the coal industry, but I note that in his agreement in principle speech the Minister reminded us that the value of New South Wales coal production in 2006-07 was \$8.1 billion and that the industry paid royalties of \$412 million. That is a major contribution to both the national and State economy, leaving aside the fact that the coal mining industry employs about 10,000 people in regional New South Wales and a further 30,000 people are employed indirectly. It is a major industry in this State.

The Clean Coal Council will consist of five New South Wales government agency members and five members jointly nominated by the Australian Coal Association and the NSW Minerals Council. The Minister may also make other appointments to the council from time to time. Following debate in New Zealand, which has gone in a very radical direction on the issue of climate change, the Government should monitor very carefully what New Zealand is doing because it has apparently blown its budget out of the water and the New Zealand climate change policies are adding billions of dollars to its budgeted expenditure.

It is reported that the Government's climate change policies will result in every family having to make a contribution. We must ensure that that money does not end up in a hole in the ground. It should not be spent on paper programs. If the Government follows the path that New Zealand has taken it will face some serious problems. I understand that Australia produces only 1.5 per cent of the world's greenhouse gases. Therefore, we should not overreact because we are not responsible for what is happening to planet Earth.

Dr John Kaye: What about the percentage of our population?

Reverend the Hon. FRED NILE: It has nothing to do with the size of the population. It is about Australia's contribution. The major producers of greenhouse gases are India, China and the United States. They should be taking strong action to reduce greenhouse gas emissions. Australia should not have a guilt complex on this issue.

The PRESIDENT: Order! Before I give the call to the next speaker I take the opportunity to remind members that interjections are disorderly at all times. However, by tradition of the House the Chair tolerates interjections that are not disruptive, particularly those that facilitate the exchange of views and argument. I do not intend to continually call members to order. Those who persist with such behaviour will be prevented from participating further in the debate. Given the divergence of views on this bill, members should respect the traditions of the House and allow the debate to proceed in an orderly manner.

The Hon. Charlie Lynn: We need an attitude change before we can get climate change.

The PRESIDENT: Order! The Hon. Charlie Lynn should reflect upon my recent comments.

Dr JOHN KAYE [10.20 p.m.]: I will start by asking members to imagine a heavy smoker who has been unwell for some time, who has been coughing and who decides to visit a doctor. However, the smoker draws the short straw in his choice of doctor. He accidentally chooses a doctor who does not believe that smoking causes lung cancer.

The Hon. Charlie Lynn: Point of order: Is the member speaking about marijuana or tobacco?

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

Dr JOHN KAYE: In fact, the doctor does not believe in cancer at all and spends much of the consultation abusing in lurid terms scientists and public health advocates who have presented the evidence linking smoking with the epidemic of cancer. Based on this ignorant, self-serving and counter-scientific view of the world, the doctor tells the smoker, "Look, you should smoke more. It will be good for your anxiety. Better still, it will create more jobs in the tobacco industry." Despite his cancer scepticism, to alleviate the patient's concerns about health impacts—ill founded though he believes them to be—and to address the mounting alarm amongst other doctors in the same medical practice, the doctor tells the patient that he should keep smoking because tobacco companies are working on a new type of safer cigarette. They call the contents "clean tobacco". The doctor goes on to say that the scientists working on the new type of cigarette have no real proof that they can get it to work, and even the most optimistic believe it will be 15 years before it is available.

When and if it does work, the best that can be hoped for is a lower rate at which smokers of clean cigarettes will contract cancer. So, the doctor tells the smoker to keep at it because one day, if he lives long enough, he might be able to smoke without doing further damage to his health. Such advice would never be acceptable from a doctor. Not only is it based on a scientific canard—smoking does cause cancer, perhaps not in everyone, but statistically it does—but it contains a logical fallacy from central casting. How will the possible advent of a clean cigarette in the future—which may never happen—help with cancer that is being contracted now? No-one in their right mind would accept that advice from a doctor. Why then should we accept the equivalent of that advice from a government? That is exactly what the Lemna Government is trying to pull off with this legislation and with the entire clean coal myth.

Coal-fired electricity generation produces 57 million tonnes carbon dioxide each year in New South Wales. That is 37 per cent of the State's greenhouse gas emissions. That has a massive impact on the climate and the amount is increasing each year. Even more emissions are produced by the combustion of export coal. It is a massive contribution to the unspeakable damage that is being inflicted on the social, environmental and economic future of this planet. However, the best this Government can do is work flat out to increase the number of mines and push for a new coal fired power station and cover for the damage it is doing with a bipartisan agreement on more money for spin and obfuscation. It beggars belief that the Government bases its expansion of coal production on the promise that one day it might be clean. Emissions will continue to rise until the technology is available, and it might never be available. In that case, this State and the planet will have walked down a blind alley. We will have increased the damage we have done to the climate and increased our dependence on coal. One day we will hit a brick wall and will be able to go no further.

The term "clean coal" is a giveaway. "Clean" is a marketing term, not a term of science or engineering. This Parliament is on the verge of passing a term from marketing into law. It is an old term that has taken on the meaning of the day, depending on which environmental concern was being airbrushed out of existence. It was first used when ash deposits near power stations caused concern. It was then used in reference to oxides of nitrogen and oxides of sulfur causing acid rain. It is now being used in the debate on greenhouse gas emissions. It is now all about reducing carbon dioxide outputs. The bill defines "clean coal" as technologies for facilitating the reduction of greenhouse gas emissions from the use of coal. That is broad to the point of being ridiculous. It

could mean anything; it could mean any increase in combustion efficiency, although most of the efficiencies are already gained for cost-effectiveness reasons. It could be the supposed novel combustion technologies. Some of these verge on the absurd.

The most laughable is the idea of pulverising coal and feeding it into a gas turbine. That technology is doomed to fail. Anyone who has worked with a gas turbine knows that carbon particles hitting the blades of a fast-rotating turbine will inevitably cause a metallurgical disaster. Probably the most risible of all the proposals is the burial of carbon dioxide—the so-called carbon capture and storage. I refer to the energy used in capture—that is, the separation—transport, pressurisation, storage, and pumping it underground. There will be technological barriers and extraordinarily stringent material requirements involved in transporting carbon dioxide. Capture and storage faces the inevitable risk of leakage. Of course, that would lead to associated insurance and liability problems.

It is interesting that the Australian Coal Association does not agree with the definition. It states that clean coal technologies are a family of new technological innovations that are environmentally superior to the technologies in common use today. That is an entirely different definition—in fact, it is much broader—because it can include new combustion processes such as fluidised bed combustion and low-oxide nitrogen burners that remove pollutants or prevent them from forming while the coal burns. There seems to be substantial disagreement between the Government and the Australian Coal Association about the meaning of "clean coal". Perhaps we should get the spin doctors together for a conference so that at least they can agree on what they mean by "clean coal". It could be the "Future of Clean Coal Propaganda Conference", with sessions entitled "What sells and what doesn't" and "New labels for old myths". The closing session might be "Clean is beautiful—How we won the PR war and lost the planet". The point is there is no definition, other than a wing and a prayer promise that perhaps one day they can control pollution. It is all about public relations and very little about the substantive engineering issues that urgently need addressing.

The other give-away clue to this bill is who gets to call the shots on directing where the funds are spent. It will not be the Electricity Supply Association of Australia, it is not the National Generators Forum, it is not the people who work with power stations, know combustion technology, know what the problems are and what a farce the idea of capturing and burying carbon dioxide is. It will be the Australian Coal Association and the New South Wales Minerals Council who get to call the shots on a clean coal fund. It is very clear from that fact alone that this bill is not about greenhouse or energy generation, it is about the politics of cover-up for the coalmining multinationals; it is about creating the public myth that coal can be a clean fuel to justify obscene profits; and it is about governments that roll over every time to mining corporations because governments lack the courage to stand up to them and lack the imagination to define and pursue an alternative vision that shakes free the shackles of mining corporations.

We can see why those with real experience in generation technology have been excluded, because initially they were very excited about the idea of clean coal, carbon capture and storage. Now, with the reality of emissions trading looming, the National Generators Forum and the Electricity Supply Association of Australia are having their bluff called on the inflated boosting of the clean coal pacifier and they are much less enthusiastic.

Reporter Matt Peacock succeeded in getting John Boshier, the chief executive officer of the National Generators Forum, to make two statements on ABC television's *7.30 Report* on 7 April 2008. John Boshier, the chief representative and spokesperson for the power generation industry in New South Wales, had this to say:

I think we all felt a few years ago that clean coal was doable and was a great option for Australia. We've got a lot of coal in Australia. We're now worried about how long it will take and how much it's going to cost on the scale that we're talking about.

When the whole idea of emissions trading was off in the future, it was a damned good public relations exercise, but now the reality is here and suddenly the generators who have to influence this nonsense know full-well it cannot be achieved and know full-well it is no solution to the problems they face with emissions trading and reducing emissions. Mr Boshier went on to say:

It would be quite risky to assume that you can have carbon storage at the moment without having the experience of Otway Basin under our belt. That's why we're waiting with bated breath to see how it's going to go in the next five to ten years.

This was said by John Boshier, the man who originally was the key proponent of clean coal in Australia. He is now saying, "Hey, wait a minute, now that my members—the generators, publicly and privately owned, around New South Wales—have to reduce their output, we can't do this for five or ten years. Back off everybody and be

calm." Well, it is not surprising that Mr Boshier says these things because the experiments that have been conducted in clean coal around the world fall into two distinct categories—the farces and the disasters, and there is nothing in between.

Let us examine one of the disasters to which my colleague Ms Lee Rhiannon referred. It is interesting that the Bush administration in the United States of America—the most pro-coal, pro-fossil fuels government anywhere in the world possibly outside the Soviet Union and the OPEC nations; an administration that would even make the Hon. Ian Macdonald feel somewhat embarrassed by their enthusiastic promotion of fossil fuels—felt the necessity to withdraw funding from the FutureGen project in Illinois. Originally it was to be a \$2 billion project. However, because of cost overruns and what was regarded as the inevitable failure of the project, the United States Government withdrew its \$2 billion and left the project languishing, dying a very slow death, with consequences for clean coal proponents around the world and, I must say, with consequences also for Treasurer Michael Costa's electricity privatisation deal. After all, the Owen inquiry states that one of the key justifications for electricity privatisation is to get money in to clean up the emissions of the electricity industry in New South Wales. If the emissions cannot be cleaned up, if projects like FutureGen fail, there is not much argument for privatisation. The problem that FutureGen faced was massive cost overruns. Similarly, the Queensland ZeroGen project is running massively behind schedule. Those are the disasters.

Let me now talk about the farces. Probably the worst of all is the Munmorah power station's so-called pilot plant for carbon capture and storage. Actually it is not carbon capture and storage, it is carbon capture and release. It is a bit like going fishing with a Green, who always wants to throw the fish back. Here we are in New South Wales, they cannot stand the idea of keeping the carbon—

The Hon. Ian Macdonald: It is not noted as carbon capture and storage.

Dr JOHN KAYE: No, we should call it carbon capture and release. But even then it is less than 1.5 per cent of carbon dioxide emissions, and that is returned to the atmosphere anyway. The Treasurer needs to be reminded that the plant is not at Vales Point, as he told the media in December last year when he was trying to explain the sudden appearance of a number of Chinese engineers at Vales Point power station. It is actually at Munmorah power station. It was such a farce that even the Treasurer did not know where it was. It is no wonder that the former Labor environment Minister Phil Koperberg called clean coal an oxymoron, because the reality is that coal is carbon. The energy value within coal is carbon. When carbon is burnt, carbon dioxide is produced. Of course, after Mr Koperberg dared to speak the truth, the spin doctors got him to recant—well, it was sort of a recant. On 27 September last year ABC radio reported:

But Mr Koperberg has sought to explain the difference between the term "clean coal" and developing clean coal technology.

"We've got to keep this in context, I never said that clean coal technology was an oxymoron, I said that coal – clean coal, coal it emits – and that's why the whole world and New South Wales leaders in many of those areas is encouraging technology which will make coal cleaner", he said.

"That is the objective, it has got nothing to do with breaking ranks."

If members are no clearer on what he was saying, neither am I, and neither were the people of New South Wales. The reality is that he was unable to explain why the day before he spoke the truth, when he said that clean coal is an oxymoron.

Proposed section 5(c) of the bill is the other great clue as to the real purpose of this legislation. It states that the real purpose is to increase public awareness and acceptance of the importance of reducing greenhouse gas emissions through the use of clean coal technologies. So far as this Government is concerned the importance of reducing greenhouse gas emissions only exists in as much as it further promotes the use of coal. What we have here is publicly funded propaganda for the coal industry. My colleague Ms Lee Rhiannon said it very clearly: This is about sustaining obscene profits for the coal industry. The coal industry should be paying for clean coal research, not the people of New South Wales and Australia. We certainly should not be taking funds away from the technologies that are almost ready and that are guaranteed a future in our energy mix—the sustainable clean, green, energy efficient, renewable energy technologies.

On two occasions I have said that profits to the coal companies are obscene, and I am disappointed that on neither occasion did any of the coal proponents in this Chamber challenge me. Despite the absence of any challenge, I will explain why I think the profits are obscene. Each tonne of coal when it is burnt emits about 2.65 tonnes of carbon dioxide. Sir Nicholas Stern tells us that when each tonne of carbon dioxide is burnt it causes about \$103 of damage to the climate. That is real damage to the climate, measurable damage to the

climate, damage that we, our children and their children will end up paying for in terms of increased insurance costs, food costs and housing costs, a diminished standard of living and reduced longevity. That means that for every tonne of coal that is burnt more than \$270 worth of damage is done. Coal corporations are stealing from the future; they are stealing from us and from future generations by not paying \$270 for each tonne of burnt coal, and we are making it worse by passing this legislation, which will create the smokescreen behind which the coal corporations can continue to rip us off to the tune of \$270 for every tonne of coal they take out of the ground and are allowed to burn.

It is interesting to contrast this legislation to the stillborn legislation that was going to introduce a New South Wales mandatory renewable energy target. Members will recall that it was introduced into the lower House on 27 June 2007 and it has been stalled ever since. In three days it will have its first birthday sitting on the *Notice Paper* of the lower House. I do not know how old it will be when it falls off that *Notice Paper*, but there is no doubting that will happen sooner or later; it will never become reality. It is sitting there languishing, waiting for the Federal Government to introduce legislation to increase its mandatory renewable energy target—legislation that has not yet been introduced. And while it sits there it is being shot at by the fossil fuel lobby. There is still no sign of any renewable energy target for New South Wales or federally—all we have are cuts to subsidies for rooftop solar photovoltaics.

The Greens oppose the legislation because it is a sham that distracts the State from the essential course of reducing greenhouse gas emissions using technologies that are already working or that are showing promise of working in the immediate near future. The Government is running cover for industry that makes profits at the expense of the future. The bill is its way of pushing clean coal propaganda to prop up the clean coal myth. The Greens urge the House to reject this bill.

The Hon. Greg Donnelly: Can you tell us about New Zealand?

Dr JOHN KAYE: I have just been asked to talk about New Zealand. New Zealand is a wonderful country but making comparisons between New South Wales, where about 90 per cent of electricity comes from the combustion of fossil fuels, and New Zealand, where the overwhelming majority of energy is hydro generated, makes very little sense. I am happy to make the comparison, but I do not see the relevance. I am not advocating the New Zealand solution. Making a comparison between the two is not an intellectually profitable exercise.

The Hon. IAN MACDONALD (Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development) [10.42 p.m.], in reply: I thank honourable members for their contributions to this debate. Given the lateness of the hour I will not attempt to tackle all the matters raised, suffice it to say this bill looks forward to the future. That we disagree totally with the Greens on this issue is clear and has been for some time, and that has nothing to do with pandering to mining companies or anything of that nature. The fact is that 92 per cent of our State's energy is coal generated. That figure will not change dramatically over the next decade. We have to get on with the job of trying to sequester as much carbon that is created from coal-fired power as possible.

I have emphasised sequestration in safe, structures below 800 metres underground. Such structures overseas have proved to be very safe. The Sleipner development in Norway about which I have spoken previously in this House sequesters one million tonnes of carbon per annum, and has done since 1996. Not one problem has been identified with that sequestration. I acknowledge the points made by the Hon. Rick Colless about other strategies to sequester carbon. He is quite right; much research is being done by the Department of Primary Industries on precisely this type of work, and we will be seeking further funding and partnerships with a number of other agencies to develop that research at our greenhouse gas centre at Tamworth. That is very much on the agenda.

Also on the agenda are techniques surrounding the use of carbon from power stations to create algae, which can then be used for bio diesel. That research is being carried out by the CSIRO. The Government is working with the CSIRO on that, just as we are working with it on the Munmorah development, which is essentially a carbon capture process using chilled ammonia to strip the carbon dioxide from the emissions. That is a very important step forward to sequestration, regardless of what technology will be used for that purpose—whether it be carbonation or combining it with fly ash to make rock. That technology is being researched by the University of Newcastle. The rock could then be stored in former mine sites—underground, very safe and secure—or sequestered in deep underground structures. All that research is a response to the need to find technologies to reduce the carbon footprint of the coal industry.

No matter what Dr Kaye or Ms Lee Rhiannon say in this place or when they are leading demonstrations in the Hunter in the coming weeks, China, India and the United States will continue to use substantial amounts of coal. A number of European countries are now talking about regenerating their coal-fired power stations. The United Kingdom and Germany are considering it at this very point. Despite all the work going on in other technologies—work that I support—the viable nature of coal means that it will be used for power generation for many decades to come. That is acknowledged by the Integrated Pollution Prevention and Control, it was acknowledged in the Stern report and it was acknowledged recently by Tim Flannery.

The Hon. Rick Colless: And by Ross Garnaut.

The Hon. IAN MACDONALD: Yes, by Ross Garnaut and many others. I prefer to believe them than some report produced by Greenpeace, which has a history of exaggeration and alarmism on many of these issues. I draw the attention of members to an absolutely brilliant book written by Aynsley Kellow from the University of Tasmania entitled *Science and Public Policy: The Virtuous Corruption of Virtual Environmental Science*. It destroys many of the myths associated with hockey sticks, the bore hole analysis and tree rings—just about every claim that has been advanced on the so-called runaway climate change as distinct from variations in climate that have occurred over many centuries: the mediaeval warming, the middle ice age, et cetera. All those events took place, they are real, but there are cycles out there that we do not really understand. There are many ways of looking at this science. I suggest that members read this book. It does a demolition job on the alarmist's views on climate change. It is a fantastic book and I highly recommend it to members.

The decision by the Bush administration in the United States of America was politically based given that FutureGen decided to locate the project in Mattoon, Illinois, which just happened to be the home state of the Democrat presidential candidate. It was a clear-cut political decision after FutureGen rejected two sites in the state of Texas. It was quite clear from all the decent media reports at the time that as soon as the company made a decision to locate the site in Illinois the project was bombed and funding was withdrawn. However, \$US687 million was kept in the fund for clean coal research.

Clean coal technology will be a concentration of scientific endeavour in this country for the next couple of decades. The issues will not be resolved overnight, but in many ways they will be incremental: 2 per cent and 3 per cent of changes and reductions will be very important to this process. Even if we move to the modern generation of turbines, which now have an efficiency capability of between 47 per cent to 51 per cent, we then will be driving our ability to sequester because savings through that efficiency are profound enough to be able to virtually fund most of the work in sequestering carbon in one form or another.

Biodiesel will go a long way to pay for algae solutions. By doing this important work, we are not criticising the other work being carried out. Another \$100 million is available for renewables in one form or another. There is a vast array of different ways of going about this process, including demand management. Every one of these policies will come into play, but continuing to knock clean coal and the coal industry that denies any scientific endeavour to find a solution to carbon is destructive and will take this country and this State down a path to economic ruin. Sometimes after listening to the Greens I believe that that is precisely what they have in mind. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

In Committee

Clause 1 to 4 agreed to.

Ms LEE RHIANNON [10.52 p.m.], by leave: I move Greens amendments Nos 1 to 5 in globo:

No. 1 Page 3, clause 5 (c), lines 11–13. Omit all words on those lines.

No. 2 Page 4, clause 7. Insert after line 5:

- (3) The total amount paid from the Fund must never exceed twice the amount previously paid into the Fund by way of voluntary contributions of the kind referred to in section 6 (1) (e).

No. 3 Page 4, clause 8 (b), line 20. Omit "approved by the Treasurer". Insert instead "prescribed by the regulations".

No. 4 Page 5, clause 10 (1). Insert after line 11:

- (c) one person appointed to represent environmental interests, being a person whom the Minister is satisfied:
 - (i) has qualifications and expertise in nature conservation, and
 - (ii) is independent of Government and the mining industry,

No. 5 Page 6, clause 13 (2), line 24. Insert "(being a member of the kind referred to in section 10 (1) (a))" after "Council".

Greens amendment No. 1 removes clause 5 (c) of the bill. Dr John Kaye and I have outlined in detail how this paragraph clearly illustrates the true intent of this legislation. This bill is about conning the public by presenting a public relations exercise. Clause 5 (c) states:

- (c) to provide funding to increase public awareness and acceptance of the importance of reducing greenhouse emissions through the use of clean coal technologies.

By deleting this clause, we are not saying that the work on clean coal stops, even though once again the Minister has attempted to misrepresent the Greens. All we are saying is do the job on clean coal technology research, not this con job of misusing this money to run a public relations exercise, which is just a sell job for the coal industry. Let the Australian Coal Association pay for its own spin doctors, websites, glossy pamphlets, and television and radio advertisements to feed the white elephant that is clean coal. The public should not be forced to foot the bill for what amounts to an assault on future generations. It is utterly inappropriate and I believe probably unprecedented that the Government intends to spend a sizeable portion of the \$100 million Clean Coal Fund on a public relations campaign.

The Minister in his second reading speech promised to explain how our argument was flawed, but he failed to deal with the public relations nature of the bill. Some of the clean coal technologies to which the fund refers are completely spurious greenhouse gas abatement measures. The New South Wales Government is failing miserably to meet its greenhouse gas emission targets and the Clean Coal Fund will make the situation worse because we are wasting public money rather than putting it into the many available clean energy measures.

Greens amendment No. 2 inserts clause 7 (3) into the bill to address the use of money from the fund. As I stated in my contribution to the second reading debate, public money should not be paid into this fund. The technology will benefit the coal industry and the Minister has acknowledged time and again that the coal industry is incredibly wealthy. Clearly, the industry should pay for the technology. Time and again the Minister has spoken about the importance of the work of the mining division of the Construction, Forestry, Mining, and Energy Union. Again I remind the Minister that the president of the mining division, Mr Maher, developed a clearly defined campaign requiring that the money for clean coal come from the industry and not from government. The Greens had talks with Mr Maher on this issue.

The Hon. Duncan Gay: Is this the Committee stage or still the second reading?

Ms LEE RHIANNON: I am not speaking in the second reading debate. I am definitely speaking about the Greens amendments. I am emphasising where the money comes from. I have outlined the relevance of the change we propose. This amendment will prevent the Government from spending public money invested in the fund unless or until the industry has at least matched the amount of money being spent from the fund. For example, if the industry has contributed \$20,000 to the fund, then \$20,000 of public contributions can also be spent. If no industry contributions remain in the fund, then public money would sit idle until a further industry contribution was received. The Minister has told me that he will not support any of the Greens amendments. This is a reasonable amendment that would require sensible use of public money and put more responsibility on the industry to come forth with money. Again, the Minister's failure to support this amendment illustrates the point I made in my contribution to the second reading debate: he is there to do the industry's bidding and not to look after the public's interest.

Greens amendment No. 3 relates to removing the power of the Minister to invest money in a fund approved by the Treasurer. If the Minister wishes to put money into the Clean Coal Fund in a manner other than authorised under the Public Authorities Financial Arrangements Act, the matter should be dealt with by regulation. This would afford greater transparency to the Parliament and to the public regarding any additional

funds being invested in the Clean Coal Fund. This amendment removes the words "approved by the Treasurer" and inserts "prescribed by the regulations". Again, this is a more responsible measure that the Minister, if he had any decency and commitment to transparency and proper process, would easily support without jeopardising his beloved Clean Coal Fund.

Greens amendments Nos 4 and 5 deal with the appointment of an environmental representative to the Clean Coal Council. This bill establishes a Clean Coal Council of at least 10 members—five from government and five from the coal industry—to oversee the Clean Coal Fund. It allows the Minister also to make other appointments to the council. The Greens request that the Minister also appoint to the council at least one person with appropriate credentials to represent environmental concerns.

This is a minimal measure; it is certainly a measure that is regularly adopted in other areas. The person would be required to be independent from the Government or the mining industry, and have appropriate knowledge and experience in conservation. The purpose of our proposal is to balance the Government and industry representation and provide a community-based, environmental voice on the council. Given that the council will address matters with serious environmental consequences, it would clearly benefit from such expertise. As I said, it is a minimal measure; it will not undermine the Clean Coal Fund. I hope the Minister, when he comments on these amendments, has the courage to say what he is worried about. Having on the council just one independent voice with such a level of expertise would clearly benefit the work of the council. I commend Greens amendments Nos 1 to 5 to the Committee.

The Hon. IAN MACDONALD (Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development) [11.01 p.m.]: The Government opposes Greens amendments Nos 1 to 5. Greens amendment No. 1 attempts to remove a critical purpose of the Clean Coal Fund, which is to provide funding to increase public awareness and acceptance of the importance of reducing greenhouse gas emissions through the use of clean coal technologies. People need to be informed about programs in this area, and the Government's proposal is a method of doing so. I would anticipate that any expenditure in this area would be a small percentage of the funds allocated, rather than the grandiose sums suggested by Ms Lee Rhiannon.

Greens amendment No. 2 seeks to unreasonably constrain the way in which payments are made from the Clean Coal Fund. The Clean Coal Administration Bill establishes a fund to enable Government and the coal industry in New South Wales to work together to develop clean coal technologies, and for other purposes. The amendment has the potential to limit the contributions the New South Wales Government could make to sensible, ground-breaking projects if they are partly funded by industry or any other person or body. The amendment would impose an unreasonable constraint on the New South Wales Government and industry in working together through the Clean Coal Council to provide funding for clean coal technologies.

With regard to Greens amendment No. 3, it is appropriate that the Treasurer approve the investment of money in the fund, for which the Minister for Primary Industries does not have responsibility under the Public Authorities (Financial Arrangements) Act 1987. This is appropriate given that the Treasurer administers the Public Authorities (Financial Arrangements) Act 1987. I make it clear that the Treasurer acts within a regulatory framework. Greens amendment No. 4 proposes that a person be appointed to the Clean Coal Council to represent environmental interests. The membership of the Clean Coal Council is designed to ensure that people with high-level expertise in clean coal technologies from the industry sector and the New South Wales Government are able to work together. It is unclear how a person with qualifications as described by the Greens could contribute to this primary function.

The effect of Greens amendment No. 5 is that there must be a Government member of the council on any committee appointed under clause 13 of the bill. The council will determine on a case-by-case basis which member of the council should be appointed to any committees it establishes. This is an appropriate and flexible approach. For those reasons the Government does not support Greens amendments Nos 1 to 5.

The Hon. RICK COLLESS [11.03 p.m.]: Given the lateness of the hour and the Minister's explanation, all I need say is that the Coalition will not support any of the Greens amendments.

Question—That Greens amendments Nos 1 to 5 be agreed to—put.

The Committee divided.

Ayes, 4

Mr Cohen
Ms Hale

Tellers,
Dr Kaye
Ms Rhiannon

Noes, 28

Mr Ajaka
Mr Brown
Mr Catanzariti
Mr Clarke
Mr Colless
Mr Costa
Ms Ficarra
Miss Gardiner
Mr Gay
Ms Griffin

Mr Khan
Mr Lynn
Mr Macdonald
Mr Mason-Cox
Reverend Nile
Ms Parker
Mrs Pavey
Mr Pearce
Mr Primrose
Ms Robertson

Ms Sharpe
Mr Smith
Mr Tsang
Mr Veitch
Ms Voltz
Mr West

Tellers,
Mr Donnelly
Mr Harwin

Question resolved in the negative.

Greens amendments Nos 1 to 5 negatived.

Clauses 5 to 16 agreed to.

Schedule 1 agreed to.

Title agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. Ian Macdonald agreed to:

That the report be adopted.

Report adopted.

Third Reading

The Hon. IAN MACDONALD (Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development) [11.12 p.m.]: I move:

That this bill be now read a third time.

Question—put.

The House divided.

Ayes, 29

Mr Ajaka
Mr Brown
Mr Catanzariti
Mr Clarke
Mr Colless
Mr Costa
Ms Fazio
Ms Ficarra
Miss Gardiner
Mr Gay

Ms Griffin
Mr Hatzistergos
Mr Khan
Mr Lynn
Mr Macdonald
Mr Mason-Cox
Reverend Nile
Ms Parker
Mrs Pavey
Mr Pearce

Ms Robertson
Ms Sharpe
Mr Smith
Mr Tsang
Mr Veitch
Ms Voltz
Mr West
Tellers,
Mr Donnelly
Mr Harwin

Noes, 4

Mr Cohen
Ms Hale
Tellers,
Dr Kaye
Ms Rhiannon

Question resolved in the affirmative.

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

ELECTION FUNDING AMENDMENT (POLITICAL DONATIONS AND EXPENDITURE) BILL 2008**LOCAL GOVERNMENT AND PLANNING LEGISLATION AMENDMENT (POLITICAL DONATIONS) BILL 2008****Second Reading**

Debate resumed from 18 June 2008.

The Hon. DON HARWIN [11.20 p.m.]: In an answer to a question in the other place on 28 February 2008 the Premier said, "We will ensure ... that there is reform, not just change" to the State's laws on electoral and political party funding and expenditure. After reading the provisions of the bill, it is difficult to avoid the conclusion that the Premier has not passed his own test. The bill has a number of piecemeal changes but no meaningful reform. These changes, foreshadowed in the Premier's answer to a question on 28 February 2008, cannot be divorced from the context in which they were made.

In February Wollongong City Council became the subject of inquiry by the Independent Commission Against Corruption. The inquiry heard evidence that a council planner had been sexually involved with three developers while assessing their developments. There also was evidence presented of an impersonation of Independent Commission Against Corruption officers and plans of intimidation—activities that were instigated and funded by Joe Scimone, who is a former Wollongong City Council officer and New South Wales Labor official who has close personal connections to the Minister for Ports and Waterways, the person who had appointed Mr Scimone to a position in New South Wales Maritime.

Mr Scimone also had business links with several Labor members of Wollongong City Council, and several Labor members of Parliament had received donations from companies linked to the developers at the centre of the scandal. The Premier told the other place that he would make a submission to the Select Committee on Electoral and Political Party Funding, and that was duly received on 3 April 2008. In that submission the Director General of the Department of Premier and Cabinet summarised the proposed changes as follows: first, increasing the amount of information that must be disclosed; second, improving the quality of disclosure; third, preventing the improper use of donations; fourth, reducing the risk of undue influence and corruption; and fifth, improving transparency in New South Wales planning and approval processes.

By April, however, events in Wollongong had caused the Iemma Government's spin doctors to move on. On 4 March 2008, following recommendations made by Commissioner Jerrold Cripps, QC, the Minister for Local Government approached the Governor of New South Wales to formally sack the council and install a panel of administrators for a period of four years, citing clear evidence of systemic corruption in the council. At the same time attention focused on the member for Wollongong. During the Independent Commission Against Corruption investigation it had been revealed that the member for Wollongong had failed to declare \$65,000 in political donations, including free office space provided by property developer Frank Vellar who had been named at the Wollongong City Council corruption investigation. It was only after the Independent Commission Against Corruption had interviewed the member for Wollongong that the member altered her declaration.

From a telephone tap submitted at the Independent Commission Against Corruption inquiry it was revealed that the member for Wollongong had agreed to lobby Wollongong councillors on behalf of Mr Vellar. Later that month it was revealed that the member for Wollongong also owed a substantial debt to another of Wollongong's biggest property developers, Ken Tugrul. The Minister for Planning was accused of asking a

development company to book a table at a fundraiser he had organised. Mr Sartor stated that he could not recall the conversation and after examining the matter the Independent Commission Against Corruption decided not to investigate. The story only fed into the growing public perception that political influence in New South Wales could be bought. Continuing negative media resulting from these revelations and allegations forced the Government to try to defuse the crisis. At a press conference on 21 March 2008, Easter Saturday, the Premier had his conversion on the road to Wollongong—as my Leader refers to it—and stated:

My view is that the time has come for us to now seriously consider moving away from donations and having a fully public funded system. It has now got to the point that the mere fact of giving a donation creates the perception that something has been done wrong. The time has come to test the viability of a full public system.

The Premier foreshadowed that the Assistant General Secretary of the New South Wales branch of the Australian Labor Party, Mr Karl Bitar, would send a supplementary submission to the select committee. An innocent bystander might have thought that the Iemma Government had actually decided to get serious and meet community expectations for fundamental reform. Those who served on the select committee waited with trepidation for Mr Bitar's submission, which arrived on 25 March 2008. I think that many of the members of the committee were, to say the least, underwhelmed. The submission contained six lines that contained any detail, and they were:

This supplementary submission by New South Wales Labor advocates a ban on all private donations to political parties in favour of a system of full public funding. This overhaul of the existing system of funding and disclosure would help restore the public's faith in political decision making. The Premier has asked me to initiate discussions with other parties to arrest this.

That was literally the only detail provided in a four-page document—just six lines. The rest of the so-called supplementary submission was just historic and contextual observations. Mr Bitar had nothing to add when he appeared before the select committee as a witness on 4 April 2008. My colleague the Hon. Jennifer Gardiner and I asked him about the freedom of parties to add to public funding, revenue from affiliation fees, membership fees, investment property rents and so forth, intra-party transfer of funds from other State branches and the Federal office and how they should be regarded, how to establish an in-kind donation ban that prevents, for example, affiliated trade unions providing paid union workers to marginal seat campaign for long periods, how to address third party campaigns, how arrangements would apply to local government elections, how limiting the organisation receipt handling and administration of donations to central party offices would impact upon State electoral councils as they are referred to by Labor, or conferences as they are called in my party, and the scope and duration of the consultation period with other political parties. Mr Bitar could not provide any guidance on any of these matters.

For the record, there is nothing in the bill that in any way delivers on the Premier's seemingly dramatic announcement of a new direction on 21 March 2008, and the supplementary submission of Mr Bitar that followed soon after. This should come as no surprise to anyone who has followed the progress of these inter-party talks. Mr Bitar and the Iemma Government had taken only perfunctory steps to address the Premier's stated preference for a complete ban on private donations as demonstrated by the fact that there has been just one brief meeting between Mr Bitar and the State directors of the Liberal Party and one with the Director of The Nationals. There has been no follow-up. Also, for the record, the meeting with the Liberal Party's interim State director took place on 8 April, and we have heard nothing since then. It is clear that the Premier's donation ban proposal of 21 March was nothing but a device to buy him time and get him through a number of very awkward news cycles at the height of the Wollongong crisis. It has been stated repeatedly that the purpose of the reforms is to end the perception that money buys political favours. The Premier and the Government are interested in fixing the headline, not the broken system. They are running away from their proposal as fast as they can.

That is very clear from the Minister's second reading speech. The Premier's donation ban is now just one option that will be examined as part of the green paper process being coordinated by the Federal Government. As part of that green paper process yet another paper has been commissioned from a well-credentialed and worthy academic, but the only promise we have had from the Minister is that the paper will "inform further debate within government and the community". That is it. So we are left with the five changes flagged by the Department of Premier and Cabinet in April. The bill delivers on most, but not all, of the expectations that arose out of that paper. For example, the submission stated that the legislation would "ensure that loans and other credit facilities provided to parties, MPs, councillors and candidates" would be disclosed. Yet new section 96G in schedule 1 to the bill exempts all loans from financial institutions. Even if they are loans at rates other than normal market rates of interest with lengthy or even unlimited borrowing periods, there is no obligation to disclose. This is a dangerous area for parties, as the recent cash for peerages scandal in the United Kingdom demonstrated.

There are also some areas where the bill has clearly not gone as far as the Premier envisaged. In this respect the select committee has played an important role, as the Minister conceded, in canvassing the opinions of some key stakeholders. In particular, wide concerns were expressed about the impracticality of forcing Independents to use the Election Funding Authority or another independent body to organise, receive, handle and administer donations on their behalf. There was also evidence to the select committee from councillors representing shires in rural New South Wales who questioned the need for elaborate structures and a heavy compliance regime when at local government elections they receive few, if any, donations and their electoral expenditure is counted in the hundreds of dollars, not the thousands or indeed millions of dollars we see at the Federal and State levels. The solutions adopted in the bill relating to official agents and the exemptions for campaigns with less than \$1,000 worth of donations and expenditure are sensible. So, on the whole, the very modest ambitions outlined by the Premier on 28 February and by the director general on 3 April have been met.

The bill makes eight principal changes to the Election Funding Act. They are: requiring the biannual disclosure of political donations and electoral expenditure; extending reporting obligations to members of Parliament and candidates; establishing a new disclosure limit of \$1,000 for political donations to candidates, groups and parties; requiring the disclosure of membership or affiliation fees of more than \$1,000 payable to a party by individuals, industrial organisations or other entities; preventing elected members, councillors and/or candidates from having personal campaign accounts or having direct involvement with the receipt and handling of political donations; requiring entities to include their Australian business number [ABN] when making donations; prohibiting entities from making certain indirect campaign contributions, which are commonly referred to as in-kind or value-in-kind donations; and increasing penalties and introducing new offences for accepting donations or loans without recording relevant details, failing to keep prescribed records, accepting donations of more than \$1,000 from entities without an ABN and making or accepting in-kind donations.

The Opposition does not oppose any of these changes so far as they go. I welcome the requirement to disclose membership fees. Parties should not be able to have a membership fee that is more than the \$1,000 limit, which might be a loophole to avoid disclosure. I am not aware of any allegations that the loophole has been exploited, but I am glad the matter has been dealt with. Equally, the requirement that trade union affiliation fees be disclosed goes hand in hand with closing this potential loophole. However, I have some concerns about how the provisions relating to in-kind donations will work in practice. In particular, I remain very sceptical about the exemptions for volunteers. On the one hand they are absolutely necessary—everyone concedes that—but on the other hand there is a great deal of concern that those exemptions may permit the continuation of the very substantial in-kind donations made, for example, by the trade union movement that are a massive supplement to New South Wales Labor's already gargantuan campaign resources.

The stories are legendary. We know of Labor's practice of assigning a trade union to each marginal seat. How many times during the 2007 election campaign did I see vehicles festooned with trade union insignia adjacent to campaign offices, street stalls or other campaigning activities? I have lost count. Then there are the union organisers who are not on leave but on full pay who work in campaign offices with their union-funded laptops and BlackBerries. Will New South Wales Labor and the trade union movement observe the in-kind donation provisions or will the letter of the law in new section 96E be so flexible that those sorts of contributions will continue? I await an assurance from the Minister on this point—but I will not hold my breath.

The Opposition is concerned about the operation of new section 86, subsections (3) and (4), which are new and have no equivalents in current State or Federal legislation. The provision has retrospective operation insofar as it will create a definition of "associated parties" based on whether parties contested the 2007 periodic council election on a joint ticket. In my view the provision is lacking in clarity. I was advised earlier in the day by staff from the Premier's department that this provision, which requires that donations to different but associated parties be aggregated, applies only to entities or persons making potentially reportable political donations. The advice we received is that the final sentence of new section 86 (3) means that the associated parties will not have to liaise prior to lodging six monthly disclosures and aggregate the disclosures therein.

The fact is that parties may be associated but still separate and distinct—they may even fall out. The Opposition has asked for an assurance on the record when the Minister replies to the debate to confirm the advice received from Ms Whelan of the Premier's office and Mr Lang of the Department of Premier and Cabinet to this effect earlier in the day. There is of course no better example of associated parties than the Liberal-Nationals Coalition, and this matter is important to us. As I said, we await the Minister's response and, failing that, I foreshadow that I will move an amendment in Committee to deal with the matter—I have already lodged it just in case.

There are also three changes in the cognate Local Government and Planning Legislation Amendment (Political Donations) Bill 2008 to deal with the serious problems that are obvious in relation to planning approvals and the impact of political donations. Together with the change already announced to the model code of conduct for councillors, the changes are welcome and somewhat more substantial and overdue. They include: requiring the general manager of each council to record the voting histories of councillors, giving the Pecuniary Interest and Disciplinary Tribunal jurisdiction over matters to do with political donations at a local government level, and requiring applicants and objectors to disclose political donations and gifts made in the two years prior to submitting a development application.

The Government also asserts that last week's changes to the Environmental Planning and Assessment Act implementing Minister Sartor's planning reform agenda are also relevant. That view, to say the least, is contestable. I refer honourable members to several contributions that were made last week, including my own. It is important to record that this bill places obligations on local councillors and provides transparency in relation to their voting history on development approvals that are not in place at a State level, but should be with the continuing and very substantial involvement that the Minister for Planning retains, despite last week's bill. The Opposition will pursue this matter with an amendment in Committee. Our proposed amendment requires that the Director General of the Department of Planning be required to keep a specific register which records the way the Minister for Planning has ruled on applications he is directly in charge of where the applicant was a donor to either his party or his personal campaign fund.

This amendment seeks to replicate the requirement that general managers of local councils keep registers of the way in which individual councillors vote on planning applications where the applicant was a donor. This amendment will bring greater transparency to the Minister's role in development approvals. I also note that by giving jurisdiction over matters relating to political donations to the Pecuniary Interest and Disciplinary Tribunal the bill gives the Department of Local Government a substantial new responsibility. The Minister's second reading speech was silent on the issue of whether the department's budget will receive supplementation so that it will be able to effectively fulfil its compliance and disciplinary role. Nothing will undermine confidence in the new approach more quickly than an unresponsive Department of Local Government without the resources to administer this new regulatory regime. We also would not want to see any of the department's other important functions compromised by this new unfunded mandate. I ask the Minister to give us some assurance in his reply speech.

The Select Committee on Electoral and Political Party Funding, which was established by my resolution almost exactly a year ago and on which I served as deputy chair, reported last week. The breadth of the report and its recommendations are impressive. After receiving 189 submissions, holding 5 public hearings with 32 witnesses and convening a community forum, we produced a 260-page report with 47 substantial recommendations. That report underlines the limitations of the bill before the House. The scope of the bill's changes are narrow, but the report reminds us that significant reform is required. Reverend the Hon. Fred Nile's chairman's foreword to the report notes:

The time for change is now.

Our key recommendations are: political donations from corporations and other organisations to be banned; political donations from individuals to be capped at \$1,000; caps on election spending by parties, groups and candidates; caps on election spending by third parties; public funding increased for State government elections; public funding investigated for local government elections; a party administration fund created to subsidise administration costs of parties represented in the New South Wales Parliament as a result of caps on donations; party administration costs to be subsidised by exempting certain sources of income from the ban on political donations; the Political Education Fund to be retained and administered by the New South Wales Electoral Commission; disclosure every six months of donations and spending over \$500; and compulsory online lodgement of disclosure returns. That is a most important recommendation.

Further key recommendations are: individual donations to be linked to the New South Wales electoral roll; clear identification of donations made through fundraising events; a review of the Election Funding Authority's powers to identify suspected breaches, with suspected breaches to be investigated by a designated external body; tougher penalties for breaches of the scheme; increased funding and staff for the Election Funding Authority; the authority to report annually to the Parliament on the effectiveness of the electoral funding and disclosure scheme; the Joint Standing Committee on Electoral Matters to be reconstituted as a statutory committee with oversight responsibility for election funding reform; electoral funding reform to be added to the Council of Australian Governments agenda; the provision of clear instructions to councillors on the

circumstances in which political donations give rise to non-pecuniary conflicts of interest; councillors required to refrain from discussion and voting on matters involving campaign donors for political donations over \$1,000; failure to declare a non-pecuniary interest relating to a political donation to be a matter falling within the jurisdiction of the Pecuniary Interest and Disciplinary Tribunal; include in the list of designated developments all development applications to the Minister for Planning in respect of which a declaration as to the making of a donation has been made; persons lodging and objecting to development applicants, as well as property developers to declare political donations over \$1,000; and individual councillors' voting histories to be recorded and published.

Many of those key recommendations are in the bill. I am sure every member of the committee is pleased about that. It is still a substantially unfinished agenda that we pass on to the Government. The committee's recommendations build upon the pioneering 1981 reforms, but there is much more to be done. In the course of the committee's deliberations I had the privilege of closely examining the electoral and political party funding regimes in Canada and Britain courtesy of the Commonwealth Parliamentary Association, New South Wales branch. I had the opportunity to meet some of the foremost experts in the world to discuss the reform of our system, including in Canada Emeritus Professor Fred Fletcher of York University in Toronto, Dr Anthony Sayers and Dr Lisa Young, both associate professors of political science at the University of Calgary, representatives of Elections Canada, Elections Ontario, Elections Quebec, Elections Nova Scotia and the Auditor General of Ontario. In Britain I met with Professor Keith Ewing of King's College, London, and Mr Jack Rowbottom of King's College, Cambridge, Dr Joo-Cheong Tham who is a University of Melbourne academic but is currently at Oxford, Lisa Klein of the recently established Electoral Commission in Britain and the Hansard Society. Most importantly, I met Sir Hayden Phillips, a former Permanent Secretary of the Lord Chancellor's Department, now called the Department of Constitutional Affairs, who chaired for the Blair Government the talks between the political parties on more reform in Britain.

A consensus of views amongst all the people I met was clear to me: overwhelmingly the preference was for the Canadian model, which had its origins at the provincial level of Quebec. I am delighted that our recommendations have reflected this best practice model. No system is perfect. We need to be vigilant about dealing with those who will seek to find loopholes. This House will have to close any loopholes. The tighter the regulatory regime, the more frequently it needs to be revisited and refined. In this respect, I am pleased that the report recommends an upgraded role of the Joint Standing Committee on Electoral Matters as an oversight committee with a statutory mandate to monitor problems. I hope that the Government accepts this recommendation. I stated at the outset that the bill involves limited piecemeal change and not real reform. It delivers token and perfunctory initiatives to deal with the election funding crisis we have prior to the local government election. We should not be dealing with these changes in such a rushed fashion at this time of the evening. There has been far too little consultation of the political parties on the specific provisions in the bill.

This bill is very much what New South Wales Labor head office wants. The select committee report has been available for five days. The Opposition does not believe that this bill is necessarily the vehicle for implementing the report in full, and that will be an important view that it will take at the Committee stage. However, the Government needs to move quickly to respond to the select committee report. We need to see a major reform bill in the very near future.

Reverend the Hon. FRED NILE [11.50 p.m.]: The Christian Democratic Party is pleased to support the Election Funding Amendment (Political Donations and Expenditure) Bill 2008 and the Local Government and Planning Legislation Amendment (Political Donations) Bill 2008. As members know, in February the Premier announced wide-ranging reforms to laws governing the management and disclosure of political donations and expenditure. In the following weeks the Premier made further announcements. This legislation gives effect to the Premier's initial announcements but they do not relate to a ban on political donations. As members know, the Parliament also established a select committee, which I chaired, to investigate the issue of electoral funding donations. This bill is an interim measure in electoral reform: it is not the end result but it is the beginning. The Government in its briefing announced that it had commissioned Associate Professor Anne Twomey, a leading expert in constitutional electoral law, to prepare a paper outlining the key issues that needed to be addressed in the next stage of donations reform.

The committee indicated that there may be constitutional questions in relation to a total ban on donations, a cap on expenditure and so on. We know that previous matters have been taken to the High Court and we know that any reforms in legislation that we adopt must be able to stand up to scrutiny if appealed in the High Court. This bill is an interim stage in electoral reform. The committee made 47 recommendations and covered a very detailed and extensive range of issues. I look forward, perhaps in October, to see the second

stage of reform that will deal with the more controversial issue of a total ban on donations, or a restriction, as the committee recommended, of donations up to \$1,000 from individuals to remove any threat of donations influencing the political agenda at either the State or local government level.

This bill is needed now because the House rises this week and will not resume until after the local government elections in September. This bill is necessary if the Government wants to remove the potential danger of donations influencing council decisions and the election in September. I understand the Government's strategy to introduce this first stage in electoral reform and, of necessity, a second stage. A number of important provisions are contained in this legislation to tighten up areas of disclosure, particularly the universal disclosure limit of \$1,000 for parties, groups, elected members, including members of Parliament and councillors, candidates and donors, consistent with the Commonwealth Government's proposed legislation. The Rudd Government has initiated its own reform, as was announced prior to the last Federal election. Senator Faulkner has led to establish a lower limit for disclosure than previously put in place by the Howard Government and has introduced other proposals that allow for greater disclosure and represent the wider views of the community.

The bill also requires disclosure of donations received in the period since the last election to 30 June 2008 by 25 August 2008, before the local government elections. Local government candidates have already begun campaigning and receiving donations but this requirement will only take effect from 25 August. There will also be biannual disclosure of political donations and expenditure for parties, groups, elected members, candidates and donors. Declarations will be required to be lodged within eight weeks of the end of the relevant disclosure period, consistent with the Commonwealth Government's proposed legislation. There are new rules for the management of campaign finances which will: prevent members, groups and candidates from handling donations, with all donations to be received and administered by an official agent who will be appointed by the party or Independent candidates. It will not take away their authority but someone other than the candidate will handle donations and expenditure. If the official agent is not an accountant, he or she will be trained by the Election Funding Authority. I believe those practical provisions are very important.

Some of the recommendations contained in the committee report have been included in this initial reform bill, for example, a ban on certain in-kind donations valued at \$1,000 or more, including the provision of offices, cars and other equipment for little or no consideration; volunteer labour and the incidental use of equipment which belongs to volunteers is excluded from the ban; and provisions which make it unlawful to accept a reportable political donation that exceeds the \$1,000 threshold unless it is made by an entity that has an Australia business number or by an individual. The bill will also tighten up the provisions relating to loans and provides increased maximum penalties for a range of offences, which I also support. As an interim first-stage reform this bill goes a long way to meeting the concerns of the Christian Democratic Party and the community. I look forward to the second stage reforms later in the year, perhaps in October, which will deal with the more controversial area of a ban on donations.

Ms LEE RHIANNON [11.58 p.m.]: This bill has been brought forward in response to the crisis in electoral funding, and the disclosure system, in Australia. Earlier this year almost daily media stories were about vast amounts of money being donated to the major political parties from the property and hotel industries. As the stories made headlines, the public became increasingly concerned about the impact of corporate donations on the democratic process. Donations from developers have proved to be particularly controversial and I think many would agree that the resulting scandals played a crucial role in pushing the major parties to change their position on donations.

I pay tribute to the many community groups that have worked tirelessly over the years to expose the link between developer donations in appropriate development. I am proud that the Greens have been part of it. One of our early campaign slogans in the 1990s was "community need, not developer greed". Often the Greens have been ridiculed for stating what is now obvious: political donations damage the democratic process and corrupt the planning process as well. There have been times when members of the Greens and others concerned about donations, not just from developers but from all corporations, have been dismissed as slurring politicians and their corporate backers. I acknowledge that a few individuals of the Labor and Liberal parties over the years have also spoken about the need for far-reaching reforms of political donations. Former Australian Labor Party President Carmen Lawrence stated:

It disturbs me, as it should all citizens, that there are some who are more equal than others. Corporations do not make large donations out of a charitable impulse or a commitment to civic duty. We do not know how much is being spent to inform, persuade and cajole our decision-makers. It is time we subjected the process to scrutiny, and judged the decisions of our governments knowing who has been in their ears.

In 2004 former New South Wales Labor Party Secretary Mr Mark Arbib said:

With elections becoming much more expensive, political parties are more and more reliant on corporate donations. It's time for the party to develop new policies to counter this reliance and ensure the integrity of Australia's political system is maintained.

The former Prime Minister Mr Paul Keating has stated:

I think we would be better off if developers were forbidden from donating election funds to municipal candidates and to political parties.

Upper House members Mr Don Harwin and Mr Eric Roozendaal have also spoken of the need for reform in this area, long before their respective leaders came on board with a new understanding of the importance of banning political donations. But for years calls for reforms were ignored. The Wollongong scandal in February this year involving donations from property companies and corrupt planning processes brought the issue to a head and within a few weeks, on Easter Saturday, 22 March, the Premier made his statement that the New South Wales Government would quickly move to reform political donations. Within a few hours of the Premier announcing his changed position, Liberal leader, Mr Barry O'Farrell, also came on board to support a ban on political donations, and a few days later The Nationals leader, Mr Andrew Stoner, also backed the ban.

I believe this has happened only because these leaders have come to realise a high level of community concern about the corrupting impact of political donations. This was a major policy reversal and I congratulate the Premier on having the courage to give leadership on this issue. Now he must follow through. Prior to this, the Premier had followed the lead of former Premier Bob Carr in arguing that it was not possible to take action only in New South Wales as uniform national laws on donations was the only way to successfully change the political funding system. Clearly, that would be the preferred option, but in Australia today someone needs to take the lead and the Premier's policy reversal is welcome and most significant.

The Federal Labor Government has initiated a green paper process to reassess political funding. This is important, considering the setbacks that occurred under the former Coalition Government with regard to donations. In 2006 the Coalition parties, using the control of the Senate, pushed through laws that raised the threshold for disclosure of contributions to political parties in December 2005 from \$1,500 to more than \$10,000. Since the new threshold is linked to the consumer price index, it rose each July and was up to \$10,500 when the Coalition was voted out of office. The new threshold for disclosure allowed parties to secretly receive millions of dollars. When the law was changed, key Liberal members of Parliament stated that the new \$10,000 disclosure threshold would make little difference to public scrutiny.

Senator Eric Abetz stated that 88 per cent of the dollar amount donated would still be available for public scrutiny. Similarly, the Federal director of the Liberal Party, Brian Loughnane, stated in a parliamentary inquiry into the 2004 Federal election that almost 90 per cent of donations received in 2003-04 would be disclosed if the threshold were raised to \$10,000. That statement was wrong, and I believe those leading Liberals would have known that to be the case as the Liberal donation data at the time revealed the large number of donations that would escape scrutiny under the new \$10,000 disclosure rule. Senator Minchin argued that raising the disclosure threshold was a move to protect the privacy of the donors. Anna Johnston, Chair of the Australian Privacy Foundation, saw it quite differently. In a letter to the *Australian Financial Review* about the Liberal Party's proposal she stated:

This is secrecy, not privacy. One hides corruption, the other exposes it.

The Greens Democracy4Sale research project examined the 2004-05 donations to the New South Wales Liberals and found that only 58 per cent—\$3.2 million—of the money donated in that year would have been identified if the current 2006-07 disclosure threshold had then applied. Approximately \$2.3 million would have escaped scrutiny by the press and the public and 81 per cent of contributors to the New South Wales Liberals would never have been known. This included most donations from hotels, clubs, small property companies, law firms, health care companies and even major lobby groups.

The claims made by Senator Abetz and Brian Loughnane that close to 90 per cent of the dollar amount of contributions would be identified was clearly wrong. The move to change the disclosure threshold was opposed by Labor, the Greens and the Australian Democrats. As expected, the Liberals Coalition partner, The Nationals, supported the change. The fact that we have this legislation before us shows how far we have come since that most regressive legislation was passed in the Federal Parliament. I congratulate the Federal Labor Government on its decision to wind back the threshold of \$10,500 to \$1,000.

Sweeping reform is needed to clean up the stench that has permeated New South Wales politics since the eruption of Wollongong's donations scandal. One aspect of the affair that has been particularly on the nose for voters is the escalating culture of political fundraising in New South Wales. A handful of Labor lower House members of Parliament have been highly successful fundraisers in their party. As with many political fundraising activities, that is not illegal. Individual Labor candidates have pulled in big money. In the lead up to the last State election the member for Blacktown, Paul Gibson, raised \$336,355; the Minister for Tourism, Matt Brown, raised \$96,289; the member for Riverstone, John Aquilina, raised \$108,960; the member for Wollongong, Noreen Hay, raised \$81,254; and the Minister for Police, David Campbell, raised \$35,057.

But when all these donations are not spent on Labor's election campaigns what happens to the money? An examination of the activities of the member for Wollongong, Noreen Hay, shows that that is not always clear. Ms Hay told the ABC *Four Corners* program on political funding, aired earlier this year:

You know having dinners and raising funds, that's the system that exists and I work within the system that exists.

Ms Hay raised almost double the amount she declared for the 2007 election campaign, taking her total from \$120,000 to \$230,000. She has admitted to receiving a donation of office space from a developer, Frank Vellar. Ms Hay initially failed to disclose that donation and other donations totalling \$65,000. All up, the Independent Commission Against Corruption inquiry found that Ms Hay had received \$181,000 more in donations than she declared. That is a lot of money. I think it is important that Ms Hay discloses full details of these donations, as she is obliged to do under the current election funding law. Ms Hay should reveal to her constituents and the Election Funding Authority how much was spent on the renovation of her house by developer Ken Tugrul. The locals have a right to see the receipts for this work. This would be one of the quickest ways Ms Hay could clear her name.

Ms Hay has had some interesting adventures with developers, and it appears that in some cases the full story is yet to be revealed. It has been reported that Ms Hay lobbied to have a publicly owned car park rezoned in an area that benefited the developer Jempak, who purchased this land very cheaply and in murky circumstances involving the former corrupt Wollongong City Council. Indeed, the developer's representatives publicly thanked Ms Hay for her assistance in securing the rezoning. Jempak is the same corporate outfit that constructed a massive, non-conforming residential development, the Landmark Executive Apartments, across the road from the rezoned car park. According to official records, Ms Hay is listed as an owner of a unit in this development, which she has listed as purchasing for \$340,000. Several similar units purchased that year were resold within months, and some within weeks, for \$490,000.

If Ms Hay did purchase a unit at a rate below market value, the people of Wollongong need to know how this came about and be absolutely sure that her decision to invest in this developer's project had nothing to do with the assistance she apparently provided to the same developer in his other controversial projects. Developers and their donations are doing enormous damage to the planning and democratic processes in this State. Another problem with the fundraising efforts of lower House candidates is that many do not spend all their money on the election campaign for which the moneys are raised, and there is a large question mark over what happens to this money. The member for Wollongong, Noreen Hay, and the member for Kiama, Matt Brown, have more than \$280,000 in unspent election funds sitting in their campaign accounts.

Election Funding Authority records reveal that after the 2007 State election both Noreen Hay and Matt Brown had funds left over. Mr Brown raised \$209,000 in his campaign but spent only \$113,000, while Ms Hay raised \$230,000 and spent only \$39,000. Both used personal bank accounts for the campaign funds, which are not audited by Labor Party headquarters. I understand that both these members of Parliament have stated that surplus funds are retained in their accounts for later campaigns. Ms Hay has also used some of her leftover money to assist other Labor candidates, but these donations have been small. Ms Hay made a \$2,000 donation to Tweed Labor candidate Neville Newell and one of \$240 to Paul McLeay's Heathcote campaign. Ms Hay's donation chest has also received contributions from Wollongong and Shellharbour councils. Wollongong City Council reportedly paid \$2,250 for nine councillors to attend a Noreen Hay fundraiser at the Lagoon Restaurant in 2005. Ms Hay ended up paying for these tickets as there was so much criticism of Wollongong ratepayers being hit up for this donation.

The Hon. John Hatzistergos: Point of order: Mr Deputy-President, I draw your attention to Standing Order 91 (3), which says that a member may not use offensive words against either House of the Legislature or any member of the House and all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly. I ask you to bring the member to order and to ask her to refrain from making these personal reflections or imputations of improper motives.

Ms LEE RHIANNON: To the point of order: I have not been making reflections or imputations. I have been sharing with the House information collected from the Election Funding Authority website and from other reports about Ms Hay and activities of some other members of Parliament. Most of this information is on the record. Largely what I am doing is collating it.

The Hon. John Hatzistergos: To the point of order: Ms Lee Rhiannon has been going beyond just simply stating facts. She has been making a whole series of imputations against members of the other House, including the member for Kiama, the Minister for Housing, Mr Brown, and the member for Wollongong, Ms Hay. This included issues about buildings and what funds were used where and asking Ms Hay to prove certain things, and then going on to talk about dinners and lunches in restaurants and who paid for what. If the member wants to do that there is a process by which she can do it, but the rules of debate do not allow her in the context of the discussion about a bill before the House to make imputations of improper motives and personal reflections on members. That is what she is doing in her contribution and I ask you to draw her attention to the standing order and to comply with it.

Ms Sylvia Hale: To the point of order: Ms Lee Rhiannon was clearly bringing together the information that is on the public record. She was not drawing any conclusions; she was merely stating that so much money had been raised and so much money was disbursed from an account, and that funds were held in personal accounts that could not be audited. She has not drawn any conclusions from that; she has merely stated facts that are on the public record. The conclusions that might be drawn are left to individual members. Clearly, Ms Hay thinks there is nothing untoward about this because she has declared all this information. If she has declared it and she is happy for it to be on the public record, then I think it is perfectly appropriate and fitting in the context of this debate that members' attention be drawn to that information.

The Hon. Duncan Gay: To the point of order: I was listening to the debate and the member, as indicated, put a series of facts before the House. The only conclusion that has been drawn is that drawn by the Attorney General that there appears to be some behaviour that is inappropriate. If the Attorney General wants to draw the conclusion that is up to him, but the member who was putting the facts before the House did not draw any conclusions.

DEPUTY-PRESIDENT (Reverend the Hon. Fred Nile): Order! At one point the matters referred to were linked to private renovations or buildings that were not part of any declaration. The Minister drew attention to Standing Order 91 (3), which provides that all imputations of improper motives and all personal reflections on either House are disorderly. I remind members that the matter complained of may be merely an imputation or reflection and not a clear-cut allegation. I uphold the point of order and caution members against contravening that standing order.

Ms LEE RHIANNON: Election Funding Authority records show that Shellharbour council donated \$1,250 to Ms Hay's campaign in December 2004. Mayor David Hamilton has stated that there was only a \$500 cost to ratepayers after councillors paid their own way. Shellharbour councillors also attended one of Ms Hay's fundraisers on the evening of Friday 23 November last year, the eve of the Federal election. This is an interesting event. Some of the invited guests saw it as a fundraiser; others saw it as a briefing from key Labor Ministers. There were plenty of Ministers on hand. At this event Ms Hay had the support of Treasurer Michael Costa, health Minister Reba Meagher and ports Minister Joe Tripodi. Dress was business attire for a \$200 a head dinner at the Lagoon seafood restaurant, a venue favoured by Ms Hay for many of her fundraisers. The event was not advertised as a fundraiser and attendees were asked to make cheques payable to the Noreen Hay campaign account. The invitation was sent out under the crest of the New South Wales Parliament. So, what was this event—a fundraiser or a briefing from leading Government Ministers?

At the public inquiry into Shellharbour council, Councillor Helen Gillett in sworn evidence denied she knew that the 23 November event was a fundraiser. She stated she was under the impression it was a meet the Ministers dinner. She said she tried to have the councillors' money refunded by Ms Hay but when this did not happen she personally paid the money back to the council. The story got even better when the Australian Labor Party Mayor of Shellharbour, Mr David Hamilton, took the stand at the Shellharbour inquiry and said in his evidence that he did not know the business briefing dinner he attended was a political fundraiser for Noreen Hay until after he arrived and found his ticket had been paid. Why would he? Nowhere on the invitation does it say or suggest that this event was a political fundraiser. On the contrary, the New South Wales parliamentary crest, the official titles of the Ministers and the member for Wollongong, and the title of the event, "Annual business briefing", are clearly designed to convey the impression that this was official Government business. The question on everyone's lips in Wollongong is: How can a member of the Government use her official position

and that of other Ministers of the Crown to pocket thousands of dollars of funds from her constituents? Is this not a question of obtaining personal benefit from public office? Does this not constitute corrupt behaviour?

The Hon. John Hatzistergos: Point of order: Again I draw your attention to Standing Order 91 (3) and ask you to direct the member to refrain from making imputations and personal reflections against members.

Ms LEE RHIANNON: I was not making imputations. I had shared the information with the House and then I posed questions. The culture of the House is one where we can explore issues extensively. I think it would be unfortunate if the gag were put on this issue, considering that it is most topical and relevant to the bills before the House.

The Hon. John Hatzistergos: To the point of order: Ms Lee Rhiannon clearly does not understand what she has been saying. She is saying that the member for Wollongong used her publicly paid position in order to obtain a personal benefit. That is what the speech she was reading out clearly stated. That is making a personal reflection and an imputation on the member for Wollongong. Mr Deputy-President, you should direct her to withdraw those remarks and to confine herself to debate within the standing orders.

Ms LEE RHIANNON: To the point of order: The Attorney General has been inaccurate. I did not say it was for a personal benefit. I posed the question: Is this not a question of obtaining personal benefit from public office? That is a question. Again, if the Attorney General interprets it in that way, it is informative to the debate. That was not the point I made.

The Hon. Greg Donnelly: To the point of order: The Attorney General is right to direct our attention to the standing order. I cannot see how the reputation of the member for Wollongong is not being impugned by Ms Lee Rhiannon's suggestions. It is clearly an imputation. The member is making explicit inferences. Her contribution cannot be interpreted in any other way. What she is trying to do is very clear.

Ms Sylvia Hale: To the point of order: This entire bill and the debate about political donations has been prompted by the very real perception in the community that the making of donations results in favourable decisions being made, particularly in the planning sphere. It is absurd that those perceptions—particularly as they may relate to members of Parliament—cannot be mentioned while we debate this legislation. We are pretending that the discussion going on outside this Parliament does not exist and that we should be somehow assessing the merits of this bill in a way that is not informed by the current coinage in the community. To suggest that Ms Lee Rhiannon cannot even pose questions because somehow by doing so she is making adverse imputations is to ignore the purpose of the legislation and the reason we are engaged in this debate.

DEPUTY-PRESIDENT (Reverend the Hon. Fred Nile): Order! President Willis ruled on 20 September 1995:

There is a difference between a member relating a statement of fact and a member reflecting upon or imputing improper motives to a member of either this House or the other place. I entreat the member, therefore, to simply state the facts without opinion or reflection on those actions, otherwise the member will be out of order.

That was the substance of the Attorney General's point of order. The question was rhetorical and the answer was obvious. The member stated the case and then asked the question, to which the answer was obvious. The result was a personal reflection on a member of the other House, and that is out of order. I rule accordingly.

The Hon. John Hatzistergos: Does that take slabs out of your speech?

Ms LEE RHIANNON: No, I am just pulling it together so that the Attorney General will be more informed.

The Hon. John Hatzistergos: Is it full of imputations?

Ms LEE RHIANNON: No, not at all. The Attorney General's comments have been revealing. They were most useful. The money collected for Ms Hay's event was paid into her personal account and, according to documents lodged with the Election Funding Authority, not all of it has been spent on election work. As I stated, the invitation for this event asked for cheques to be made payable to the Noreen Hay campaign account. It is not clear whether the money is still in Ms Hay's personal account or whether it has been used to pay any personal or unrelated expenses. After the Independent Commission Against Corruption Wollongong inquiry found that Ms Hay had received \$110,181 more in donations than she declared, she said that she would "return or donate to

charity donations from donors involved in the Independent Commission Against Corruption inquiry". That is a lot of money. Having made that commitment, it is important that Ms Hay disclose whether she has returned the money to the developers or donated any or all of it to charities and, if so, which charities. Ms Hay would do a great deal for her own credibility and that of her party if she were to provide that information.

The *Illawarra Mercury* recently reported that Ms Hay, accompanied by a Minister, wrote a personal cheque for \$1,000 for a charity run by the Uniting Church in Wollongong. I understand that a member of the church told Ms Hay that he would not accept the donation given that other community services had been given proper grants of hundreds of thousands of dollars earlier that day. Maybe Ms Hay had more success with other charities. I again urge her to make that information public. Not surprisingly, the Leader of the Opposition, Mr Barry O'Farrell, has attacked Ms Hay's delay in declaring donations. That is hypocritical because Liberal lower House candidates did not disclose any donations for the 2003 and 2007 elections. We know that Ms Hay and other Labor candidates failed to disclose their donations fully, but at least we obtained some information. The Liberal Party has channelled all donations for the past two New South Wales elections through its head office. The effect of that has been to bring the shutters down on the public finding out who donated what to their local candidates.

Increasing cynicism is developing in the wider community about politicians and the electoral process. Since the Wollongong scandal broke, individuals and organisations have contacted my office expressing concerns about similar events in other areas. The large number of complaints and the diverse nature of the distortion and rorting of the donation process underlines the need for a ban on donations from corporations and other organisations. Such a ban should be in place before the 13 September local government elections. The Premier made strong statements about cleaning up the donations process in the wake of the Wollongong scandal and the public had an expectation that this bill would deliver tough changes and would be the antidote to corruption and developer bias. The Premier has fudged his commitment to introduce a tough disclosure regime in time for the September local government elections. With three months still to go until those elections, the Premier clearly has time to crack down on donations disclosure and to put in place his promised ban on donations.

The Election Funding Amendment (Political Donations Expenditure) Bill 2008 stops short of winding back the corrupting influence of donations. The Greens will move amendments to ban corporate donations and to introduce a cap on election expenditure before the local government elections. The amendments provide that only people residing in Australia can donate to a political party and that the donation of moneys from other than a natural person is an offence punishable by a maximum penalty of 200 penalty units or about \$22,000. The amendments cap individual lower House candidate expenditure at \$30,000 and political party expenditure where the party is running a statewide campaign at \$1 million. Caps would also apply to local government election expenditure.

The recommendations in the New South Wales upper House inquiry report released last week support the need for bans on donations and caps on election expenditure. The Greens were very pleased with the report and I take this opportunity to commend the committee members who faithfully represented the views expressed by so many members of the public who lodged submissions and gave their time to attend the committee's public forums. The report should have made it easier for the Government to clean up the corrupting political donation process. It delivered a comprehensive road map for how to go about that process. It suggested that New South Wales follow the path taken by Canada, which has implemented a successful model of electoral funding reform. A ban on donations and electoral expenditure caps are key elements of that reform.

Another shortcoming of the bill is the 10-week disclosure gap that it opens up in the lead-up to local government elections. Under this legislation, candidates are not required to disclose until after the election any donations they have received after 30 June 2008. As a result, voters will not know until after they have cast their vote what money has changed hands after 30 June. Donations received by first-time candidates will also escape any scrutiny. We need a level playing field. All candidates—whether sitting councillors or first-timers—should reveal their monetary supporters before the election.

The Government failed to adopt a donation ban and we understand that it will not support the Greens amendment imposing a ban and a cap on election expenditure. The Greens will also move an amendment to establish a system of continuous disclosure of all donations received in the two months prior to the election. If the amendment is supported, all candidates and parties will be required to release information publicly on the source and amount of their donations in the lead-up to this election. The Greens will also move an amendment to ensure that the disclosure threshold of \$1,000 in any one year is cumulative for donations received both by a political party and its elected representatives and candidates.

We want to ensure that a local councillor will be exempted from voting when one of their donors has a matter before council, irrespective of whether the candidate or his or her party head office has accepted the donation. As it stands, the Local Government and Planning Legislation Amendment (Political Donations) Bill 2008 does not tie a councillor or a candidate to the donations of their party. The Election Funding Amendment (Political Donations and Expenditure) Bill fudges the issue by only keeping track of a cumulative total of donations made to a party head office and not for elected councillors. My colleague Ms Sylvia Hale will expand on the local government aspects of this when she speaks.

Also, for example, if a big property developer has given \$500,000 to the Labor Party but has not given any money directly to a Labor councillor then the councillor could still vote on a development application from the developer. It is vital that any party-affiliated councillors be held to account for the influence of the donations that their party has accepted from developers, corporations and organisations. Again the Greens amendments would create a level playing field for councillors who belong to major political parties, Greens councillors who do not accept corporate donations, and genuine independents.

The Greens will also move an amendment to support independent councillors to enable the Election Funding Authority to grant two genuine independent candidates an exemption so that they do not have to appoint an official agent to handle their funding returns. Independent candidates would be able to handle their own funding returns rather than appoint an official agent where they can demonstrate that dealing with an agent is a burden on their resources. The candidate would have to be a genuine independent and not a member of or affiliated with any political party. In doing so, the Greens want to make sure that the rights of all minor parties and genuine independents are fairly dealt with in the Government's donations reforms.

I have been contacted by several councillors who are extremely concerned about the level of red tape that this bill introduces because they do not have the resources of a party head office behind them. If given more time to respond to this bill, the Greens would have worked on other concerns raised by independent councillors. We are not talking about the many so-called independent councillors who are actually paid-up members of the Liberal Party but choose not to declare their party affiliation on their voting ticket. We are not talking about councillors who get voted in as independents and then vote in a block with a major party for the next four years. The Greens amendments are striving to make sure that, wherever possible, this bill does not unfairly impose upon, genuinely independent, community-based candidates. I will share the concerns of one independent councillor who has contacted me over the past two days. He said in a letter that he has sent to the *Sydney Morning Herald*:

My name is Norman Jew, I am a Councillor on Wollondilly Shire Council. At the last Council Election 9 independent Councillors were elected to Wollondilly Council.

Last night, at a routine Workshop, our General Manager distributed to us, a copy of the Second Reading of the Election Funding Amendment (Political Donations and Expenditure) Bill 2008. On the "surface" this Bill reads as a good move to reduce the opportunities for corruption. However when it is read carefully, and the recent changes to the Labor Party Donation Rules are taken into account, it becomes obvious that this really is not the purpose of the Bill.

The Major Parties have "sterilized" their donations by having them directed straight to the Party and not to the candidates. No Party candidates receive Donations. The candidate's expenses are then paid by the Party.

Another consequence of the Bill is that if a Councillor receives a donation of \$1,000.00 or more and a matter arises in Council involving the person making that donation, then the Councillor must declare a Conflict of Interest and leave the Chamber. All very right and all very proper. However, a Labor or Liberal Councillor would not be in the same position. He or she could very well be instructed by the Party to vote in a certain way on a motion pertaining to a matter involving someone who has made a donation of more than \$1,000.00. There is no way that this would be "traceable". Party Councillors would not be required to leave the Chamber as would an Independent Councillor.

Also there is a subtle difference here that has ramifications. The current situation is that if a Councillor has a Conflict of Interest, that Councillor has the option to determine that it will not affect his vote, and can partake in the discussion and voting. This is under the proposed Bill not an option, the Councillor must leave the Chamber, unless of course he/she is a Party member.

This is far from a transparent system. It is wide open to abuse and is blatantly discrimination.

The Candidates that this Bill is targeted at are the independents. It is also worth noting that the vast majority of corruption exposed recently involves Labor Party Councillors or Party Members.

That is part of a letter from Mr Norman Jew, a Wollondilly councillor. The new role of the official agent seems to be a significant part of the bill. I do not think it will make any difference in the public's mind whether candidates use an official agent or not. The big measures that the public is looking for are significant steps away from the way political donations have been handled in New South Wales in recent years. A ban on developer donations, an end to corporate dinners and fundraisers where donors can buy influence with the major parties, a

limit to the amount of money that gets spent on election advertising campaigns to stop the kind of excesses we have seen in recent elections are the meaningful changes people want to see. Ms Sylvia Hale will cover changes in the local government and planning amendment legislation, as I mentioned earlier.

The bill, as it stands, is inadequate. It is a disappointment that the Premier has not given leadership to consolidate in law the cross-party support that we now have for a ban on corporate and group donations and a cap on election expenditure. The time for half measures is over. Unfortunately, that is what this bill is—a series of useful but insufficient measures to clean up the corrupting influence of political donations. The Greens do support the bill, but let us finish the job. We will move amendments in Committee to carry through on the commitments Premier Morris Iemma gave on 22 March.

The Hon. JENNIFER GARDINER [12.35 a.m.]: At 12.35 in the morning I have pleasure in speaking on the Election Funding Amendment (Political Donations and Expenditure) Bill and the Local Government and Planning Legislation Amendment (Political Donations) Bill 2008. The passage of these bills at this time, prior to the House adjourning for the winter recess, is designed to get the Premier, Mr Iemma, out of a hole that he and the New South Wales Labor Party have dug for themselves. The Premier, in the wake of the sensational and sometimes bizarre revelations at ICAC hearings inquiring into what has been going on with respect to political donations and links with planning decisions at the Wollongong council, made pronouncements at Easter about the election funding law reform needed in New South Wales and he presaged a fully publicly-funded campaign finance system. It is a radical overhaul of the New South Wales election funding laws that he was talking about.

The events at Wollongong, which included eventually the sacking of the Wollongong council because of systemic corruption and other revelations potentially implicating the Minister for Planning and other members of Parliament who had received donations from some of those mentioned in ICAC's dispatches, gave even greater force to the long-running advocacy by many people for reform of donations laws in this State. Arising out of the work of the Legislative Council Select Committee on Electoral and Political Party Funding, the Premier was then forced to declare that campaign funding law reform would be in place so as to take effect in time for the 2008 local government elections. So it is that these bills had to be through the Parliament this week, the last week of the sittings before those local government elections, and that is why we are sitting here at this hour of the day, because of that hole that the Premier has dug for himself.

The bills do not address the broad sweep of election campaign finance law reform that the public requires and which has broad support across the political spectrum. That broad support is evidenced by the recommendations of the Select Committee on Electoral and Political Party Funding in New South Wales tabled in this House last Thursday. For the record, I can confirm what the Hon. Don Harwin said earlier in this debate with respect to that wider reform agenda: The ALP General Secretary, Mr Bitar, has had only one preliminary discussion with The Nationals on those topics. It seems that zeal for wide-ranging reform has gone off the boil since Easter.

The select committee's recommendations, in summary, envisage the adoption by New South Wales of a local version of campaign finance law that applies in the Federal jurisdiction in Canada. Those recommendations have received cross-party consensus from members right across the six registered parties with members in this Parliament—something that is probably quite unusual with a select committee report, particularly one that was dealing with such a controversial topic as campaign finance law reform.

The Government must take serious cognisance of the 47 recommendations of the select committee. During the forthcoming weeks, when New South Parliament will not be sitting, the Government will have adequate opportunity to examine the recommendations and should provide its response to them when the sittings resume for the spring, preferably after serious consultation with the registered parties and others. An overhaul of the New South Wales election funding laws is required and should not be unduly delayed. As it is, the bills are significant reforms to which each of the registered parties and others will need to adapt. I turn now to the provisions of those bills.

The Election Funding Amendment (Political Donations and Expenditure) Bill will provide for biannual instead of four-yearly disclosures of donations made or received and all electoral expenditure incurred. That will be in line with proposed amendments to the Commonwealth Electoral Act. The reporting dates will be 30 June and 31 December each year. The Nationals welcome the move to harmonise the reporting periods as between State and Federal laws because the different reporting dates have caused confusion, particularly for example—and it has been recently exposed—for many donors who had not disclosed their donations to the Election Funding Authority simply because they did not realise they needed to disclose them to both the Australian

Electoral Commission and the Election Funding Authority. Some of those matters are now subject to prosecution. The lack of consistency between the two pieces of legislation has also meant double counting of many donations that had been referred to, for example, in the media. That is not very surprising, because it is difficult to work out who has given what to whom. That reform is welcome.

The Federal Government, Mr Rudd's Government, has also been embarrassed by the New South Wales Labor Party's involvement in the Wollongong donations and planning scandals. Up until those revelations the Rudd Government's intentions for amending the Commonwealth Electoral Act were very modest, namely, rolling back the donations disclosure threshold from Mr Howard's increase to that threshold recently, and ending tax deductibility for political contributions. That was about the extent of them. I remember Mr Rudd specifically saying that he was not envisaging any further reform.

The Hon. John Hatzistergos: At the ministerial council?

The Hon. JENNIFER GARDINER: No, before the ministerial council; that is what he said.

The Hon. John Hatzistergos: And also the Pauline Hanson rort.

The Hon. JENNIFER GARDINER: Yes, that is true, and certainly The Nationals support the ending of the Pauline Hanson rort. Because of the ALP scandals in New South Wales and Queensland, and the never-ending scandals affecting the Labor Government in Western Australia, Mr Rudd and Senator Faulkner have been forced to widen the review of the election finances and financial disclosures provisions of the Commonwealth Electoral Act and have commissioned a green paper on those matters. That process may well be lengthened because some of those matters have been referred to a Federal parliamentary committee. It is our contention that New South Wales, as the select committee said, should not delay its reform process simply because the Commonwealth might fall behind schedule.

The principal bill, for the first time, extends disclosure provisions to members of Parliament as well as parties, groups, candidates, councillors and donors, and the disclosure period starts from the time of acceptance of a donation even if a candidate has not yet registered or been nominated. The Election Funding Authority will publish the information that is lodged without verification, and responsibility for the accuracy of the information lodged will rest with those who are making the disclosures. Under this legislation, the Election Funding Authority will have enforcement powers. For example, it will be able to conduct random audits to monitor compliance. We note that the Australian Electoral Commission has long had such powers to undertake random audits. The donation disclosure threshold is reduced from \$1,500 to \$1,000, which will be in line with the proposed Federal threshold, and the \$1,000 threshold across the board for parties, groups, candidates and donors is a welcome change, because the common threshold will help to reduce confusion on the part of donors, parties and candidates.

Membership or affiliation fees of or above \$1,000 paid to a party by individuals, industrial organisations or other entities will need to be disclosed, and membership and affiliation data—for example, the number of members paying a particular subscription rate—will need to be provided to the Election Funding Authority. The constitution and rules of The Nationals New South Wales provide for various categories of membership subscriptions, and the party's reporting procedures will need to be adapted to that clause in the bill. Of course, other political parties will have to make similar changes where they apply.

Disclosure of income from fundraising ventures and functions shall include either the net or gross proceeds and a description of the event. The Nationals trust that the guidelines that will accompany some of these provisions will clearly set out the rules so that those office bearers in branches, for example, who are volunteer office bearers, will clearly understand their obligations. Our party is a proudly decentralised party, relying on volunteers in large part, the salt of the earth people who will be duly mindful of their obligations at law but who will not want to be strapped up by confusing red tape. We would appreciate it if the Minister in his reply to this debate can outline any implications for local branch office-bearers for whom fundraising is quite often an important part of their role in their local community on behalf of their party or candidate. They are distinct from, say, State Electorate Council office-bearers in the overall scheme of things.

The bill requires that loans of \$1,000 or more be disclosed in the six-monthly disclosures, other than loans from a recognised financial institution. There will be a ban on personal campaign accounts for candidates, parliamentarians and councillors. In The Nationals it has been long practice that donations and expenditures for a candidate's campaign must be deposited and extracted from a State Electorate Council account with duly authorised office-bearers. Apparently personal accounts still apply inside the ALP, and I guess this provision is a further attempt by the Labor Party to clean up its own backyard, which is a good thing.

The bill will limit the involvement of candidates, parliamentarians and councillors in fundraising by ensuring that all donations are organised, received, handled and administered by the central party office. That will prevent elected members and candidates from having direct involvement with the receipt of or handling of political donations. Over the years in The Nationals it has become the norm for State election candidates to be at arms-length when it comes to campaign finances. Of course, that protects them from any perception that they may be subjected to undue influence from any person who financially supports them or their party.

Official agents will be compulsory for all groups, candidates, parliamentarians and councils, and they will control the campaign account on behalf of each group, candidate, parliamentarian or councillor. That will require significant administrative changes for all the political parties, but certainly for The Nationals. In my opinion, all those administrative changes are doable, but members might need some time to adapt to the new provisions. Funds remaining in a campaign account when the parliamentarian, group, or candidate ceases to be a parliamentarian, group or a candidate, have to be paid to that person's party. The Nationals certainly welcome that provision.

For political parties, their State election candidates and their parliamentarians, the party agent, who is normally the party's registered officer, will be designated as the official agent. Again, as a result of these changes we will have more consistency. That will centralise responsibility for donations and disclosure with the central party office and, consequently, increase the level of responsibility on the shoulders of such officers, regardless of their party. Each candidate, group, parliamentarian and councillor will be required to open a separate account with a bank, credit union, or building society, and that will have to be controlled by the official agent. The official agent may, by authorisation in writing, appoint other persons—except for the parliamentarian, candidate or councillor—to assist with the handling of donations.

Election funding will be paid into the campaign account. I repeat, though, that the new scheme envisaged in this bill does not extend to the question of fully publicly funded election campaigns. That remains to be debated in another piece of legislation provided this bill is passed relatively unamended. Political donations will need to be made to the official agent and deposited by the official agent into the campaign account. All electoral expenditure will be required to come out of the campaign account and any payments from the campaign account must be used to incur the electoral expenditure of the candidate or his or her party, or for other permitted purposes.

The Election Funding Authority [EFA] will issue guidelines that may exclude minor payments from the campaign account rules. Again, we hope that the Government will be able to give us some indication as to when those guidelines will be issued because it is important that all those concerned get off on the right foot from the beginning with a minimum of confusion as to what are their obligations. Candidates, parliamentarians and councillors will be entitled to pay their own funds into their campaign accounts, and they are entitled to be reimbursed from the campaign account if the funds in the account remain unspent when the account is no longer required and the terms on which a person's own funds are paid into the account have to be disclosed.

The bill requires that all donations must be spent on election campaigns and none on personal benefit, so funds from the campaign account can be used only for prescribed purposes. The same will apply to parties, and that is as it should be. Independent candidates, groups and councillors at local government elections must also have an official agent to administer their campaign finances. I think that is a fair compromise to what was suggested by some witnesses to the select committee. Official agents must be enrolled in New South Wales and have completed Election Funding Authority training. There will be a provision for accountants and others with the relevant professional qualifications to be exempted from the training. Again, we look forward to receiving information about the training timetable and to participating in such training, where necessary.

A candidate, group, parliamentarian or councillor need not comply with the campaign account requirements if he or she does not accept \$1,000 or more in donations, or spend that amount in electoral expenditure, so the smaller groups will not be subjected to the more onerous provisions in this legislation. The start date for the new rules for managing campaign finances—1 August 2008—gives a very short timeframe within which to adapt to financial reporting formats. I note that there will be transitional provisions and that the Election Funding Authority will have the discretion to waive compliance when it is satisfied that there is good cause to do so, but that the gross period expires 30 days after the forthcoming local government elections.

The Nationals do not plan to endorse any candidates for the local government elections, as is our usual custom. Whilst my party is keen to make the necessary internal changes as required, I think that one month is not a reasonable period within which to change all financial reporting procedures. No doubt everyone in the

party will do their best to make those changes. We will see how it goes, and we look forward to working with the Election Funding Authority to achieve the required outcome. The acceptance or making of some in-kind donations to parties, groups, candidates, parliamentarians and councillors will be banned if they are valued at \$1,000 or more. That is designed to stop third parties from providing offices, vehicles, computers and other equipment valued at more than \$1,000 to political entities for little or no consideration, and it will stop third parties from paying for the electoral expenditure of a party, group or candidate, including advertising costs.

Existing provisions require the disclosure of in-kind contributions to campaigns, but these new provisions are aimed at making the requirement clearer to all concerned. Volunteer labour and the incidental use of vehicles and equipment that belong to volunteers are not prohibited by this new legislation. Again, the Election Funding Authority will have to issue guidelines on that matter. Obviously, volunteerism is at the core of the way in which The Nationals and other parties operate. Volunteers are used as booth workers, for making letterbox drops, for driving candidates around an electorate, and so on. It is important that they continue to be uninhibited in volunteering their services for such tasks.

The provisions in the bill respect the fact that in Australia the role of volunteers in the election process is extremely valuable. It is one of the links between communities and the parties that seek to represent them in parliaments and in local councils, and it is a way of engaging communities. Such engagement should not be diminished in the process of reforming our election funding laws. In many respects the penalties in the legislation are substantially increased and in some cases there are serious penalties. The role of the Election Funding Authority with respect to training and the clarity of the material that is issued by the authority are important. Some new offences are also created. The Election Funding Authority will have new enforcement powers, for example, to conduct compliance audits and to request any person to provide it with relevant information.

The cognate bill, the Local Government and Planning Legislation Amendment Bill 2008, does not envisage public funding of local government campaigns—that will be a matter for debate later this year—but it makes a number of changes that go back to some of the issues that were raised at the Independent Commission Against Corruption's Wollongong inquiry and other inquiries by that body and other bodies. Due to the lateness of the hour I will not go through those provisions, but I wish to underscore a matter referred to earlier this evening by the Hon. Don Harwin relating to the reference in the bill to associated parties. I am aware that the Leader of The Nationals, Mr Andrew Stoner, has requested a written assurance from the Premier that parties that filled a joint ticket in a periodic Legislative Council election will not be required to act—quite wrongly in our view—where both The Nationals and the Liberal Party would have to compare political donor lists before lodging their disclosures at the required time. Of course, the two parties are completely separate entities.

The Hon. John Hatzistergos: They are not.

The Hon. JENNIFER GARDINER: They are.

The Hon. John Hatzistergos: Why don't you write a separate ticket? That would solve the problem.

The Hon. JENNIFER GARDINER: If you are not prepared to give us an assurance, we cannot support this part of the bill.

The Hon. John Hatzistergos: The donors will have to disclose. If a donor gives a donation, half to The Nationals and half to the Liberals, they will have to disclose that donation. The parties themselves will not have to disclose it.

The Hon. JENNIFER GARDINER: They will have to disclose the aggregate?

The Hon. John Hatzistergos: No.

The Hon. JENNIFER GARDINER: But individually they will?

The Hon. John Hatzistergos: The donors will have to disclose it.

The Hon. JENNIFER GARDINER: And if it breaches an aggregate sum across the two parties?

The Hon. John Hatzistergos: The donors then will have to disclose but the party will not. The party will only have to disclose if it is above \$1,000.

The Hon. JENNIFER GARDINER: Together with my colleague the Hon. Don Harwin and other Opposition members, I look forward to monitoring the implementation of these two bills. I especially look forward to a timely and constructive response by the Government to the select committee's recommendations for wider election for campaign finance reform—reform that is much needed and highly desired.

Ms SYLVIA HALE [1.01 a.m.]: I address my remarks on behalf of the Greens to the Local Government and Planning Legislation Amendment (Political Donations) Bill 2008. The Greens welcome the bill. For many years we have campaigned to try to clean up systemic corruption of the planning system at both local and State level caused by the malign influence of political donations by property developers. The bill is a step towards that goal. However, it does not come anywhere near to achieving that goal. That bill focuses predominantly on tightening disclosure regulations in the Local Government Act and the Environmental Planning and Assessment Act.

Stricter disclosure regulations are welcome. The property development industry in this State has been notorious for backroom deals, political favours and outright corruption since the days of colonial rule. The planning system in this State is held in widespread disrepute. Under this Government it has become a system based on vested interests, political favours, and millions of dollars in payments to the ruling party. It is a system dominated and perverted by conflicts of interest, and the more light that can be shone on how property decisions are made the better for all the State's residents.

The bill requires the general manager of a council to record which local councillors voted for, and which local councillors voted against, each planning decision of the council and to make that record publicly available. The bill enables matters relating to political donations in connection with local councillors to be referred to the Pecuniary Interest and Disciplinary Tribunal. The bill requires that when any relevant planning application is made to the Minister for Planning, the Department of Planning or local council, the applicant, or any person making a public submission opposing or supporting the application, is to disclose political donations and gifts made within two years before the application or submission is made.

All these provisions are a step forward and are welcome. However, there is a significant loophole in the bill and the Greens will move amendments in Committee to close that loophole. The major area of concern is the differentiation contained both in this bill and in the new code of conduct for councillors released yesterday morning by the Minister for Local Government between donations made directly to councillors' campaign funds and those made to the central campaign funds of the parties. It is the view of the Greens that the new code of conduct for councillors and this bill will not remove the problem of political donations from developers influencing planning decisions unless they cover donations made to the political parties as well as to individual councillor's campaigns.

Everyone would agree that if a councillor has taken a donation of \$1,000 or more from a developer, the councillor should not vote on an application from that developer. The same should apply if the developer has made a donation to the councillor's party. Councillors rely on party support for their preselection and election campaigns and this raises the possibility of them being pressured by party figures to vote in a certain way. Wollongong City Council is a salutary example of how this happens. It has been alleged in relation to that council—and this is supported by taped telephone conversations—that the local member of Parliament, Noreen Hay, was asked by a developer who had made significant donations to her campaign and to the Australian Labor Party to influence the way Labor councillors on Wollongong City Council would vote when that developer's application came before council.

The bill and the new code will do nothing to stop such a situation because the developer will not have to disclose the donations he or she had made to the party, and the councillors will not have to absent themselves from any vote on an application by that developer. The sort of corruption and influence-peddling we have seen at Wollongong will be allowed to continue. Under this bill and the Government's new code, only independent councillors will be excluded from voting because parties will simply launder all donations through their head offices. Premier Iemma has already said that Labor will move to centralise all donations. The bill, unless amended in the way the Greens propose, could have the perverse effect of making political donations and their influence on development decisions less transparent by allowing political parties to centralise all donations and thus avoid the reporting requirements contained in the bill.

It is ridiculous to create a situation in which an independent councillor who has received a donation of \$1,100 from a developer cannot vote on an application by that developer but a Labor or Liberal councillor whose party has taken hundreds of thousands of dollars from the same developer can. Donations should not be

allowed to influence decisions, whether they are made to individual candidates or to parties. In recent years we have seen significant corruption at local council level involving both independent councillors and those elected to represent parties. Both groups are equally susceptible to improper external influences and both groups should be subject to the same disclosure requirements. In treating donations to parties differently, the bill and the Government's code of conduct become self-serving and do nothing to stop Wollongong-style corruption being repeated and entrenched across the State. Therefore, the Greens will move amendments to the bill to ensure that donations to parties are treated in the same manner as donations to individual councillor's campaign funds.

The Hon. MARIE FICARRA [1.07 a.m.]: The Election Funding Amendment (Political Donations and Expenditure) Bill 2008 and the Local Government and Planning Legislation Amendment (Political Donations) Bill 2008 have been long awaited, since the Premier's rhetoric following the infamous Labor Party scandal involving Wollongong City Council earlier this year. Indeed, it took the Coalition-initiated Committee on Electoral and Political Party Funding to push the Labor Government into actually doing something. For over a year now the Leader of the Opposition, Barry O'Farrell, has been pressing for political donation reform. These proposed reforms will help reduce the stench of corruption around government in New South Wales. After 13 years of Labor in this State and Labor's political fundraising methods, public confidence in government is at an all-time low. Significantly reducing spending limits is the only way to reduce money laundering around politics in New South Wales. If one cannot spend it, one does not need to raise it. If limits are imposed on amounts that can be donated, one does not end up being beholden to vested interests. Typically, however, this legislation fails to ban all political donations, as the Premier sprouted to the press and all who would listen Easter Saturday last.

These bills also fail to impose restraint on union support and other third-party donors for the Labor Party. Access to decision makers is a fundamental part of democracy. However, when certain people, groups or corporations are facilitated greater access to decision makers due to political donations and those donations facilitate favourable decisions, society should be very worried: this is nothing but corruption and a perversion of democracy. Decisions for sale should be condemned and those peddling in it should be penalised severely for their crime. As most members in this House are aware, there is great unrest in the community after seeing the goings on involving Labor Party members and the direct links between donations and planning decisions. Indeed, as the Leader of the Opposition, Barry O'Farrell, stated in the other place:

The New South Wales Labor Party raised \$24 million during its last term of office and, as recent scandals have highlighted, the community is appalled at the links between donations and Lemma Government decisions.

One has only to look at the recent controversy surrounding donations and Labor figures in Wollongong City Council to see how bad our system of democracy has deteriorated into downright corruption. The community was flabbergasted also when the infamous Oasis scandal involving the Labor Party and Liverpool City Council was blazoned across their local newspapers and television sets. The actions of Labor's administrator Dick Persson at Warringah Council in forcing on to that community a height increase to 18 storeys to facilitate towers for Multiplex is yet another example of where the big end of town has prevailed over massive community opposition. It will be interesting to see whether Multiplex's donations to the Labor Party will ensure that Minister Sartor approves the Dick Persson Dee Why Town Centre local environmental plan [LEP], which is overwhelmingly opposed by the Warringah community. The Brookfield Multiplex Group website states that it donated \$125,610 to the Australian Labor Party in 2007. I note also the comments of the Coalition's knowledgeable academic and member for Pittwater, Rob Stokes, who has extensive experience in planning and environmental law. He said:

The New South Wales planning system has been subverted and undermined, particularly over the past decade, because developer's interests have exerted a dominant influence on the shape of the planning system. By simply reacting to pressure exerted by certain vested interests, the Labor Government has introduced serious distortions in planning.

It is clear that the issue of political donations to candidates for public office and those already in public office continues to plague the planning process as well as the decision-making process on a range of other issues. I support the provision of the Election Funding Amendment (Political Donations and Expenditure) Bill that introduces a system of biannual disclosure. However, I do not believe the bill goes far enough. Time and time again communities have called for true pecuniary interests of candidates for local government, for example, to be publicised. It has been proposed that candidates for office should have to disclose their pecuniary interests and sources of campaign funding prior to an election, and that such disclosures be published in voting booths on election day to provide transparency. This will provide the community with information about those who aspire to public office. Keeping such a register up to date on a monthly basis is submitted as imperative. Would this type of provision have prevented the farce witnessed at Wollongong? I believe it would have had a massive

impact. Another worrying aspect of the effectiveness of the bill is whether union affiliation fees donated to the Labor Party are subject to the provisions of the bill. Will they be documented in electoral returns? It appears this bill is a backdoor way to facilitate donations to the Labor Party.

A consistent approach needs to be adopted regarding the law on disclosure limits as to the amounts of donations. Currently, different disclosure limits apply to parties, groups, candidates and donors while disclosure limits differ between jurisdictions. I support the bill's provision that provides for a uniformed disclosure limit of \$1,000 for all donations. I note the provision that involves the mandatory disclosure of loans and the Attorney General's statement that the details of any loan of \$1,000 or more, other than a loan from a recognised financial institution, must be recorded by the person receiving the loan and disclosed to the authority as part of the six monthly declaration. Is this provision to be extended only to loans related to political campaigns?

During the Wollongong council scandal I recall it was revealed that the Labor member for Wollongong, Noreen Hay, owed more than \$20,000 to one of Wollongong's largest developers for renovations on her home. A couple of years later Ms Hay made representations to Minister Sartor about plans from the same developer, Ken Tugrul. This year Ms Hay made representations on behalf of Mr Tugrul's company, Huntley Heritage, to Minister Sartor about approving plans to develop a 400-hectare site, once part of the Huntley coalmine west of Dapto, into an 18-hole golf course with up to 1,000 square metres of retail space and a funicular railway.

Mr Tugrul's business partner, Robert Renshall, successfully bid \$12,000 at a fundraising function for the pair to have dinner with the Premier, Morris Iemma, and Ms Hay last November. Ms Hay has stated that the renovations were declared on her parliamentary pecuniary interests register. The 2004-05 parliamentary pecuniary interests register shows a debt to TDK Constructions. I seek the Attorney General's assurance that under this proposed legislation the type of loan Ms Hay received will have to be disclosed.

I support the provisions of the bill concerning managing campaign finance. However, I have some reservations as to how local government independents and small local government parties will be able to manage these requirements. I sincerely hope the authority will try to educate candidates and official agents about their responsibilities under the new legislation. I note that official agents are required to complete training by the authority. Has the authority set dates for such training courses? I also note the transitional provisions in this regard and that the authority has a discretion to waive compliance with the new requirements when it is satisfied that there is good cause to do so. This grace period will apply until 30 days after the September local government elections. I seek clarification from the Attorney General on whether some type of publicly available register documenting such waivers will be maintained by the authority for public view. Another criticism of this legislation is the creation of a 10-week gap in the lead-up to the September local government elections when candidates do not have to disclose any donations they receive. Currently, candidates must disclose donations received for the last council elections by 25 August 2008, but will need to disclose only donations received prior to 30 June 2008, leaving a 10-week disclosure gap. I ask the Attorney General to address this omission in his reply.

The Coalition supports the provision banning in-kind donations. Again, this issue was highlighted during the Wollongong council scandal with the provision of a campaign office on an in-kind basis by developer Frank Vellar to Labor's Ms Noreen Hay. Members will be aware that the Independent Commission Against Corruption [ICAC] last month found that Mr Vellar and former Wollongong City Council planner, Beth Morgan, engaged in serious corrupt conduct. The Independent Commission Against Corruption determined that Ms Morgan engaged in official misconduct when she approved Mr Vellar's \$100 million Quattro development in the city centre. It is of concern also that Ms Hay accepted the in-kind donation from Mr Vellar while he was trying to curry favour with the Labor-dominated council. The new offences and investigation powers for the authority is a positive step in ensuring compliance with the law. However, a paltry \$22,000 fine for non-compliance is not compelling enough for some rogues to stop their nefarious deeds. Hopefully, the threat of a jail term, provided for in the bill, will address this concern.

The Local Government and Planning Legislation Amendment (Political Donations) Bill 2008 has adopted many of the recommendations in the Independent Commission Against Corruption's report entitled "Corruption risks in New South Wales development approval processes", which was released in December 2005. After 2½ years of dithering, why has the Government not adopted all of the recommendations? For that matter, I note that many of the numerous recommendations of commissioners following section 740 public inquiries into councils that have been dismissed over the last five years have not been taken up. Last year I asked several questions on notice of the Minister for Local Government regarding the outcome of the various inquiries into particular councils that were dismissed. It is disappointing to note that the Government has not

properly addressed the recommendations of the inquiries. This shows how disingenuous the Government is about fixing the problems identified in local government and its failure to put mechanisms in place to prevent further problems occurring in the future.

Purportedly the Local Government and Planning Legislation Amendment (Political Donations) Bill 2008 contains measures that are specifically designed to make the planning and development approval process more transparent, both at the State and local levels. I do not believe the provisions are rigorous enough to prevent corruption. The bill requiring the general manager of every local council to record councillors vote for and against each planning decision of the council, and to make this information publicly available, is not a massive step towards corruption prevention and transparency. Indeed, many councils that have been the subject of serious complaints of corruption have adopted this practice for many years, and yet the alleged corruption continues.

Analysis of legislation across Australia governing local government pecuniary interests and conflict of interest disclosure provisions shows just how poor New South Wales legislation is in dealing with those in local government who seek to gain financially from their public office. In New South Wales, should a councillor not disclose a pecuniary interest and vote on any matter in which they receive a benefit, the penalty, if imposed, is a mere suspension or expulsion from office for five years. Should a councillor in Western Australia abuse their position of power and vote on a matter in which they have an interest, the maximum penalty, if convicted, is a jail term. The Western Australian provisions are certainly a greater deterrent for the few rogue self-interested councillors who seek to benefit financially from their office. Similar provisions should have been included in the Local Government and Planning Legislation Amendment (Political Donations) Bill 2008 to ensure that councillors voting in the interests of donors and associates are appropriately penalised.

I note the Attorney General's comments that, under the bill, when a general manager reasonably suspects that a councillor has failed to comply with his or her obligation to disclose and manage a conflict arising from a political donation, the general manager must refer the matter to the Director General of the Department of Local Government. The director general may then refer the matter directly to the Pecuniary Interest and Disciplinary Tribunal. I ask: Why can a member of the public not refer such concerns to the director general directly? We have already seen the holes in the referral process of complaints to general managers under the provisions of the Local Government Act 1993 highlighted by the conduct of Warringah Council's general manager, Rik Hart, in relation to complaints about the conduct of the Labor administrator, Dick Persson.

Residents were informed that they should direct complaints about this Labor-appointed administrator to the general manager of Warringah Council, Mr Hart. Mr Hart immediately dismissed the complaints, stating that he had talked to Mr Persson. When residents inquired about what investigations were actually undertaken, Mr Hart referred the letter to Mr Persson—the very person the residents were complaining about—to answer the residents directly. Mr Persson advised that complaints about him can be referred to the Minister for Local Government, who has previously demonstrated his unwillingness to act on his Labor factional colleagues' alleged misconduct. What a fob-off! It is a perfect example of just how bad and ineffective the local government complaints handling system is under the Local Government Act. Clearly the systems in place are a sham masquerading as accountability.

And yet the same ineffective process is proposed to be adopted under this bill. It is interesting to again note that, of the 773 complaints received by the New South Wales Department of Local Government between 1999 and the present regarding alleged breaches of pecuniary and conflict of interest disclosure provisions, only 15 were prosecuted in the Pecuniary Interest and Disciplinary Tribunal, which was formerly the Pecuniary Interest Tribunal. The ineffectiveness of the New South Wales Labor Government in ensuring compliance highlights what a sorry State New South Wales is in, and demonstrates that referral of electoral and disclosure breaches to the Department of Local Government under this bill is useless and will not result in compliance and prosecution of offenders.

Despite Premier Iemma's Easter Saturday proclamations of a road to Wollongong conversion on donations reform, his promise of a ban on all donations has failed to materialise. The Premier's failure to back up his talk with action is just another example of his pathetic dithering. The Opposition is concerned about the Government's failure to impose restraint on union support for the Labor Party. The bills fail to address third party donations and merely facilitate Labor's increasing reliance on unions to finance their campaigns and cover up such backdoor contributions. I whole-heartedly support the submission made by the Leader of the Opposition, Barry O'Farrell, who said:

A fair system must not allow special treatment for a particular interest group. It must at all times be focussed on the public interest. Who you know or how much you donate should not dictate policy in New South Wales.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [1.25 a.m.], in reply: I thank all honourable members who contributed to debate on the Election Funding Amendment (Political Donations and Expenditure) Bill 2008 and the Local Government and Planning Legislation Amendment (Political Donations) Bill 2008. My reply will not be lengthy but my dealing with one issue relating to section 86 (3), which was raised by the Hon. Don Harwin and the Hon. Jennifer Gardiner, may avoid a debate in Committee. The Government believes that the legislation is quite clear. The aggregation of donations made to associated parties is necessary as an anti-avoidance provision. It will ensure that major donors will not evade disclosure requirements by splitting a donation between two or more parties running a joint ticket and therefore sharing the benefit of the donations. The bill makes it clear that the aggregation provision does not apply to disclosures made by the parties. In other words, separate donations of less than \$1,000 which are made to associated parties are required to be aggregated only for the purpose of a disclosure made by a political donor.

In relation to other issues that were raised in the context of banning donations and caps on donations, I point out that I indicated in my second reading speech, and reiterate now, that the Government has commissioned Associate Professor Anne Twomey to prepare a paper on constitutional and policy issues. They will need to be resolved before we can move to the next stage of donations reform. We are also contributing to discussions that are taking place at the Commonwealth level with State and Territory Ministers and Senator Faulkner relating to the preparation of a green paper. We anticipate that further proposals related to reform may eventuate from that process.

A number of quite sanctimonious statements have been made by Opposition members when espousing their views on donations reform and the alleged conversion on the road to Wollongong. It is interesting to note history which demonstrates that every time the Coalition has been in government its actions in relation to donations reform have taken us backwards, not forwards. In respect of disclosure requirements of public funding for whatever proposal is made relating to transparency and accountability, the Liberal Party and The Nationals have been the hallmark of obfuscation. It is interesting that not one member of the Opposition defended the Howard Government's actions immediately prior to being voted out of office when it significantly increased thresholds of obfuscation in relation to disclosure requirements. I hope that the Opposition, in the context of this debate, is being genuine and not merely sanctimonious.

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

Motion agreed to.

Bills read a second time.

In Committee

The CHAIR (The Hon. Amanda Fazio): The Committee will deal first with the Election Funding Amendment (Political Donations and Expenditure) Bill 2008.

Clauses 1 to 5 agreed to.

Ms LEE RHIANNON [1.30 a.m.], by leave: I move Greens amendments Nos 1 to 3 in globo:

No. 1 Page 4, Schedule 1 [3] (proposed definition of *official agent*), line 18. After "means" insert "(subject to subsection (1A))".

No. 2 Page 5, schedule 1. Insert after line 14:

[6] Section 4 (1A)

Insert after section 4 (1):

(1A) In the definition of *official agent* in subsection (1), a reference to a party agent in relation to a person who is a candidate (whether or not also an elected member) is a reference to the official agent of the person if such an agent is appointed under this Act by the person.

No. 3 Page 8, Schedule 1 [21]. Omit lines 9-12. Insert instead:

(1A)

This section applies only to candidates, or all candidates in a group:

(a) who are authorised under section 96A to accept political donations and incur electoral expenditure without a campaign account, or

- (b) who are independent candidates who satisfy the Authority that they are able to comply with this Act without the need for the appointment of a separate agent.

The Greens believe the provision to require all candidates to have an official party agent would be a burden on independents who share the concerns of independent councillors who have contacted my office about the bill forcing candidates to have an agent. Therefore, we are seeking to amend the bill so that independent candidates for local government elections who have no party membership or affiliation can apply to the Commissioner of the Election Funding Authority for an exemption from appointing an official agent, provided they can demonstrate that the requirement will be too onerous.

The Greens also seek to amend the bill so that elected members, in particular State elected candidates, can appoint an official agent. As the bill stands, the party agent would be the agent for every one of the party's lower House candidates, which could mean it is the agent for 93 local electorate campaigns. This would be a huge workload and demand to place on the party agent who will always know little about the finances of each of those local campaigns and will not take an active role in administering those finances.

The party agent would rely on locals to do the work and sign election returns based entirely on the financial work carried out by others at the local level, such as branch treasurers or someone on the local campaign committee responsible for finances. The party agent will have a mountain of work to do, being the agent for the party on the statewide campaign for the upper House. Lower House candidates should be able to appoint their own agent, preferably a local working on their campaign, and the requirement that the party agent be the local candidate's agent should be removed. The provisions of the definition of "official agent" as they stand are impractical and need amendment.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [1.33 a.m.]: The Government does not support the amendment of the Greens regarding the definition of "official agent". The bill provides that the official agent is automatically deemed to be the party agent of the party for State elected members and candidates. This provides for a centralised administration of donations and expenditure through the central party office, which will improve compliance with disclosure obligations. The amendment is unnecessary as there already is provision in section 96A (4) of the bill, which enables official agents to appoint other persons except the party group elected member or candidate to assist with the collection and management of donations and expenditure. This will alleviate any perceived burden on party agents who are deemed to be the official agent of their party's State members and candidates.

The Government opposes Greens amendment No. 3. The requirement that there be an independent agent should apply to all candidates regardless of whether they are independents or members of a party. The amendment is silent as to how an independent candidate would satisfy the authority that he or she is able to comply with the Act without the need for the appointment of an official agent. This amendment would give the authority an extremely broad discretion to exempt independents from the requirement to have an official agent. There is no reason why independents should receive the benefit of such discretion to the exclusion of other candidates. It is a limited and piecemeal amendment that the Government will not support.

The Hon. DON HARWIN [1.34 a.m.]: The Opposition does not support Greens amendments Nos 1, 2 and 3. We agree with the Minister about the watering down aspect of the amendments as they relate to official agents for independent candidates. The Opposition does not consider that to be a good move. We are happy with the bill as drafted and accept the Minister's assurances that other provisions in the bill adequately deal with the matter.

Question—That Greens amendments Nos 1 to 3 be agreed to—put.

The Committee divided.

Ayes, 4

Ms Hale
Dr Kaye

Tellers,
Mr Cohen
Ms Rhiannon

Noes, 30

| | | |
|----------------|-----------------|-----------------|
| Mr Ajaka | Mr Hatzistergos | Ms Sharpe |
| Mr Brown | Mr Khan | Mr Smith |
| Mr Catanzariti | Mr Lynn | Mr Tsang |
| Mr Clarke | Mr Mason-Cox | Mr Veitch |
| Mr Colless | Reverend Nile | Ms Voltz |
| Mr Costa | Mr Obeid | Mr West |
| Ms Ficarra | Ms Parker | |
| Mr Gallacher | Mrs Pavey | |
| Miss Gardiner | Mr Pearce | <i>Tellers,</i> |
| Mr Gay | Mr Primrose | Mr Donnelly |
| Ms Griffin | Ms Robertson | Mr Harwin |

Question resolved in the negative.

Greens amendments Nos 1 to 3 negatived.

Ms LEE RHIANNON [1.42 a.m.]: I move Greens amendment No. 4:

No. 4 Page 13, schedule 1 [34] (proposed section 86). Insert after line 35:

- (5) A political donation of less than an amount specified in subsection (1) made by an entity or other person to a party is to be treated as a reportable political donation if that and other separate political donations made by that entity or other person to elected members, candidates or other persons who are members of that party within the same financial year (ending 30 June) would, if aggregated, constitute a reportable political donation under subsection (1).

Greens amendment No. 4 proposes to change the meaning of a donation to ensure that the cumulative total of donations includes donations accepted both by parties and by party candidates. This amendment is clearly necessary to ensure that councillors who belong to a party are also held accountable for donations accepted by their party. The bill dodges this level of accountability. If this amendment is not passed it will result in a very uneven playing field. The amendment is necessary because councillors who are members of a party must be linked to the donations that particular donors make to that party, otherwise it will be particularly unfair for independents.

[Interruption]

I acknowledge the interjection. Independent councillors will be dogged by the provision in the bill but those councillors who are members of a political party will appear to be cleanskins when their party is clearly being influenced by donations from different quarters.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [1.44 a.m.]: The Government cannot support Greens amendment No. 4. Requiring donations to candidates to be aggregated with donations made to the party of which they are a member is unnecessary and would be completely unworkable in practice. The purpose of the aggregation provisions is to ensure that donors cannot avoid disclosure by splitting one large donation into a number of smaller donations for the benefit of a particular party or candidate. The Greens amendment will do nothing to address this problem. It will simply result in a situation where a donation made to a State branch of a political party must be linked for disclosure purposes with a donation made to a local candidate even when the local candidate does not know about or receive the benefit of the first-mentioned donation. This would be particularly onerous for candidates and elected members, who would be required to consult their political parties to determine whether each person who has made a donation to them has also made a donation to the party. I remind honourable members that there are more than 5,000 candidates in local government elections alone. The amendment would be totally unworkable in practice. The \$1,000 disclosure threshold coupled with the existing aggregation provisions in the bill will ensure that donors are not able to avoid the disclosure of multiple donations made to the same party or related parties, groups, elected members or candidates in the same financial year.

The Hon. DON HARWIN [1.45 a.m.]: The Attorney General is correct: to do as Ms Lee Rhiannon proposes in Greens amendment No. 4 is completely unworkable. That is not to say that she is not accurate when she says that a totally different obligation is placed on independent councillors from that placed on councillors who are members of a political party. I am prepared to concede that point. But this is one of a number of

amendments through which the Greens are trying to fix a bill that has very modest ambitions. It is a small step forward. Other honourable members have categorised it as step one—and not a particularly satisfactory step one. Nevertheless, it is a first step. This sort of matter will need to be addressed in a major reform bill by the cap on donations of \$1,000 limited just to individuals, as proposed by the select committee. Doing as Ms Lee Rhiannon proposes in this amendment is simply not good enough—worse than that, it is completely unworkable.

Question—That Greens amendment No. 4 be agreed to—put and resolved in the negative.

Greens amendment No. 4 negatived.

Ms LEE RHIANNON [1.47 a.m.]: I move Greens amendment No. 5:

No. 5 Page 17, schedule 1 [34] (proposed section 91). Insert after line 10:

- (7) During the period of 2 months preceding polling day for any general election, the disclosure of political donations required to be made in relation to a party, group or candidate is to be made within 3 days after each donation is made and is to be made under subsection (3) on a website maintained by the Authority, despite anything to the contrary in this section.

This amendment is about continuous disclosure. It obviously would be preferable to place a total ban on donations from corporations and other organisations. But until such time as that is achieved, the Greens believe candidates should be required to disclose all donations they or their parties receive in the lead-up to an election. We have nominated a two-month period preceding polling day for a general election during which these disclosures must be made. This is not an onerous task; the information can be set out quite clearly on websites and spreadsheets. The majority of people already enter such information electronically, and it could be uploaded readily and easily. The Greens believe the declaration should be available on a public website so that people can see who is donating to candidates in the week before the election. It is important that people have that knowledge before they vote. The bill creates a window of 10 critical weeks when donations made in the lead-up to polling day on 13 September will not be disclosed until after the election. It also excludes disclosure before the election for any candidates who did not contest the previous election.

The amendment will go some way to addressing this matter. The disclosure that is set out in this legislation, which in many ways is one of the best things going for the bill, is still extremely limited. Continuous disclosure would push us into the twenty-first century and provide important information on a regular basis to voters. The major parties, which I am sure do not have anything to hide, could readily agree to this amendment.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [1.49 a.m.]: The Government will not support this amendment. Under the bill parties, groups, elected members and candidates must disclose all donations of expenditure for each six-month period on 30 June and 31 December. Declarations must be lodged with the authority within eight weeks of the due date for making disclosures. As an alternative to six-monthly disclosures, the bill makes provision for electronic disclosure of individual donations on a website that is maintained by the authority before the due date. The website will specify the classes of donations that may be disclosed in this manner—for example, donations made by major donors. Disclosure before the due date will be optimal. Disclosures are to be published by the authority on its website twice a year as soon as practicable after the due date for the making of disclosures.

The Government does not believe that a move from four yearly to real-time disclosures is realistic or appropriate at this time. Firstly, it would take a considerable amount of time for the authority to develop a technological and organisational capacity to support real-time disclosure. Secondly, the immediate move from four yearly to real-time disclosures would be onerous for parties, groups and candidates. It might also discourage candidates from standing at the next local government elections, which would be a surprising move for the Greens to support. It is unrealistic to expect that parties, groups and candidates could comply with an immediate transition to real-time disclosure. An immediate move to real-time disclosure would be particularly onerous for major donors. Educating a large class of persons about their real-time disclosure obligations and enforcing compliance with such obligations would be a costly and time-consuming exercise.

Biannual disclosure is the better option at this time. The biannual system proposed by the Government has a number of advantages over real-time disclosure in terms of accuracy and transparency. Parties, groups and candidates must ensure that their accounts are independently audited before declarations are lodged and published by the authority every six months. This kind of audit requirement would not be practical in a real-time

system. Real-time disclosure also increases the risk of false and vexatious disclosures being made public. It is important to note that in addition to six monthly declarations published by the authority, donations made by persons lodging certain planning applications or making submissions will be disclosed and made public at the time those applications and submissions are lodged. Disclosure of donations at the time planning applications and submissions are lodged is practical, it is targeted at an identifiable group of persons, and it can be easily integrated into the existing regulatory requirements for planning applications. The reform of our electoral system must be undertaken in a careful and measured way. The Government believes that publication of properly audited donation information every six months strikes the right balance between transparency and efficiency.

The Hon. DON HARWIN [1.52 a.m.]: I do not have much to add to the Minister's comments. He put it very well. I will note two matters. I believe the only jurisdiction that has real-time disclosure at present is Ontario, where there are no caps on donations, unlike the situation at a federal level in Canada. From memory, disclosure is after 10 days, not 3 days, which is a far more realistic proposal if we were minded to go to real-time disclosure. The select committee recommended a different model, that is, the Canadian federal model. The Canadian model does not have these sorts of provisions at all. I reiterate what I said earlier, which was amply elaborated by the Minister: this is not the way to go about bringing in real-time disclosure.

Question—That Greens amendment No. 5 be agreed to—put.

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

The Committee divided.

Ayes, 4

Ms Hale
Ms Rhiannon
Tellers,
Mr Cohen
Dr Kaye

Noes, 30

| | | |
|-----------------|---------------|-----------------|
| Mr Ajaka | Mr Kelly | Ms Sharpe |
| Mr Brown | Mr Khan | Mr Smith |
| Mr Catanzariti | Mr Lynn | Mr Tsang |
| Mr Clarke | Mr Mason-Cox | Mr Veitch |
| Mr Colless | Reverend Nile | Ms Voltz |
| Mr Costa | Mr Obeid | Mr West |
| Mr Della Bosca | Ms Parker | |
| Ms Ficarra | Mrs Pavey | |
| Miss Gardiner | Mr Pearce | <i>Tellers,</i> |
| Ms Griffin | Mr Primrose | Mr Donnelly |
| Mr Hatzistergos | Ms Robertson | Mr Harwin |

Question resolved in the negative.

Greens amendment No. 5 negatived.

Ms LEE RHIANNON [1.57 a.m.], by leave: I move Greens amendments Nos 6 and 7 in globo:

No. 6 Page 17, schedule 1 [34] (proposed section 92 (2) (d) - (f)), lines 28-33. Omit all words on those lines. Insert instead:

- (d) the residential address in Australia of the donor,
- (e) the amount of the donation.

No. 7 Page 23, schedule 1 [34] (proposed section 96D), lines 29-34. Omit all words on those lines. Insert instead:

96D Prohibition on donations except from individuals living in Australia

It is unlawful for a person to accept a political donation unless it is made by an individual who is ordinarily resident in Australia.

These Greens amendments will effectively ban donations by corporations and other organisations to political parties by permitting only natural persons who ordinarily reside in Australia to donate to a political party or candidates. Any donations from a corporation or organisation would attract a penalty of approximately \$22,000. I know that we have cross-party support for a ban, so it is most disappointing that the Government did not bring forward the measures in the legislation. The Attorney General has now indicated that the Government will not support any of the Greens amendments, so we are left wondering when these measures will materialise. To clean up the political system and improve our democracy we need this ban in place.

The ban has worked in Canada and is widely supported by the people of New South Wales, as shown by the upper House inquiry into political donations. If corporate donations were banned it would clearly remove a massive conflict of interest that governments create when they accept such donations, some of which are huge and undermine the democratic process. The same will apply to councils, and the Greens have moved these amendments so that they are in place before the 13 September elections. The saga of Wollongong has been evoked many times. It is a real problem that could easily occur again. It is a reminder that this House has a responsibility to pass these amendments that ban donations from corporations and other organisations. I commend the amendments to the Committee.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [2.00 a.m.]: The Government strongly objects to the proposals contained in Greens amendments Nos 6 and 7. Any kind of ban on donations, whether applied globally or from particular persons or groups, raises complex legal and policy issues. As I have indicated, the Government has commissioned Professor Anne Twomey to examine some of these issues and to feed the outcomes of Professor Twomey's work into the green paper. It should also be pointed out that the proposed amendment makes no attempt to deal with significant compliance issues that would arise if a prohibition on corporation donations were implemented. There would be nothing to stop individual directors of a corporation from making a donation to a party, group or candidate. There would be nothing to prevent the emergence of third-party organisations, such as political action committees that exist in the United States which are formed for the sole purpose of raising private money and running advertising campaigns to support the candidate or the party of their choice.

The proposed amendments also fail to deal with jurisdictional issues that would arise from the New South Wales only ban on corporate donations. Corporations could easily circumvent the ban by making donations to other State branches of political parties that could then be channelled back into New South Wales. These are complex legal and policy issues. Any attempt to impose bans on donations at this early stage of the Federal Government's green paper process would be premature and imprudent. The proposed amendments would also unfairly stop individuals who may not have a residential address in Australia but are still entitled to vote from making a political donation over \$1,000.

The Hon. DON HARWIN [2.02 a.m.]: The Opposition supports all of the valid points raised by the Attorney General. The Greens suggest that people who are not on the electoral roll and are not Australian citizens should still be able to make donations, but that is not what the select committee said. The select committee was quite clear in limiting the provision to enrolled Australian citizens. The Minister has indicated that Anne Twomey—someone whom I greatly respect and whose book on the New South Wales Constitution is almost the last word on that subject—needs to look at those issues, as the select committee also noted in its recommendations. Therefore, these amendments should not proceed.

Question—That Greens amendments Nos 6 and 7 be agreed to—put.

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

The Committee divided.

Ayes, 4

Mr Cohen
Ms Rhiannon
Tellers,
Ms Hale
Dr Kaye

Noes, 28

| | | |
|-----------------|---------------|-----------------|
| Mr Ajaka | Mr Khan | Ms Sharpe |
| Mr Brown | Mr Lynn | Mr Smith |
| Mr Catanzariti | Mr Mason-Cox | Mr Tsang |
| Mr Clarke | Reverend Nile | Mr Veitch |
| Mr Colless | Mr Obeid | Ms Voltz |
| Mr Costa | Ms Parker | Mr West |
| Ms Ficarra | Mrs Pavey | |
| Miss Gardiner | Mr Pearce | <i>Tellers,</i> |
| Ms Griffin | Mr Primrose | Mr Donnelly |
| Mr Hatzistergos | Ms Robertson | Mr Harwin |

Question resolved in the negative.

Greens amendments Nos 6 and 7 negatived.

Ms LEE RHIANNON [2.06 a.m.], by leave: I move Greens amendments Nos 8 and 9 in globo:

No. 8 Page 25, schedule 1 [34]. Insert after line 30:

Division 5 Prohibition of electoral expenditure exceeding cap

96H Relevant electoral expenditure cap

For the purposes of this Division, the *relevant electoral expenditure cap* is as follows:

- (a) in the case of a party that incurs electoral expenditure on a State-wide campaign for a State general election (not including expenditure by a candidate for the purposes of an election to the Legislative Assembly)—\$1 million,
- (c) in the case of a candidate or group that incurs electoral expenditure on a campaign for a State election—\$30,000,
- (d) in the case of a party that incurs electoral expenditure on a State-wide campaign for a local government election (not including expenditure by a candidate or group for the purposes of a local government election in an area)—\$500,000,
- (f) in the case of a candidate or group that incurs electoral expenditure on a campaign for a local government election in a whole area or in a ward of an area—whichever is the greater of the following amounts:
 - (i) 50 cents per voter on the electoral roll for the whole area or for the ward (as the case requires),
 - (ii) \$10,000.

96I Prohibition on exceeding cap on electoral expenditure

- (1) It is unlawful for a party, group or candidate (or any person acting on behalf of a party, group or candidate) to incur electoral expenditure in any campaign for an election that would exceed the relevant electoral expenditure cap for the party, group or candidate in relation to that election.
- (3) For the purposes of this section, **incurring electoral expenditure** means incurring any electoral expenditure that is required to be disclosed under this Part.

No. 9 Page 26, schedule 1 [34] (proposed section 96I) line 18. Omit "Division 3 or 4". Insert instead "Division 3, 4 or 5".

These amendments cover the issue of election expenditure caps. The two key requirements to clean up political funding in this State are the ban on donations and election expenditure caps. The Greens suggest that the expenditure cap on statewide party election campaigns for State elections should be \$1 million, and State election candidate campaigns for the Legislative Assembly should be capped at \$30,000. Caps on parties for local government election campaigns should be \$500,000 and expenditure should be capped at \$10,000 or 50¢ per voter in the ward or council area if there are no wards, whichever amount is higher. Limiting expenditure in State and local government elections will remove the incentive for parties and candidates to compromise themselves by seeking and accepting corporate donations.

Having a cap on election expenditure clearly has positive impacts. Parties and candidates will no longer have to raise massive election war chests in order to be competitive in an election. It will remove the pressure from parties to fundraise so extensively and bow to big business demands, and clearly it would improve our democratic process. We could get back to debating issues on their merit and discussing and debating policy issues and move away from the influence of powerful sectional interests that have come to dominate election funding in recent times.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [2.08 a.m.]: The Government does not support the proposed amendment that attempts to impose arbitrary expenditure on parties, groups and candidates. In the United States expenditure caps have been struck down as unconstitutional on the basis that they restrict the ability of candidates to communicate their policies, and that the legitimate aim of preventing undue influence and corruption can be achieved through other means, such as disclosure requirements. Whilst the constitutional validity of expenditure caps has not yet been tested in this country, the Government has some reservations about the legality of the proposed amendments. Those issues will be further examined by Professor Twomey in the work that has been commissioned.

The caps proposed by the Greens may well breach the implied freedom of political communications by limiting the quality and diversity of such communication, and by restricting the ability of candidates to convey their policies to their electorates. The risk to constitutional challenge has also increased because the expenditure limits are set well below the amounts currently spent by major parties in conducting election campaigns.

The proposed limit of \$1 million is not even close to the amount that is spent by the major parties in New South Wales who realistically have a hope of forming government. Not surprisingly, the proposed cap is well above the current level of expenditure included by the Greens and bears no relationship to the actual costs associated with running a proper and effective election campaign. In addition, the amendments make no effort to address the significant compliance issues that would arise from the proposed expenditure caps, and some measures to control spending in campaigning by third-party organisations, such as corporations' and unions' expenditure caps, would be pointless.

Again, the constitutional validity of limits on third-party activity is a complex issue. Clearly, this is the kind of reform that cannot be done on the back of an envelope. The amendment proposed by the Greens would create many more problems than it resolves. The Government, of course, is committed to working towards the Federal Government's green paper process. As I have indicated, the New South Wales Government has commissioned Associate Professor Twomey to prepare a paper on constitutional and policy issues that will need to be addressed at the next stage of donation reforms, including issues associated with expenditure caps.

The Hon. DON HARWIN [2.10 a.m.]: I am glad the Attorney General raised the issue of the appropriateness of the size of the limits and campaign spending. As he says, they do not even resemble current levels of spending; they would not even have been above the level of New South Wales Labor's spending in 1995—several elections ago. Since then there has been a 467 per cent increase in Labor's campaign spending, including a 746 per cent increase on television advertising alone, showing that we well and truly need to address the campaign spending arms race, as the Greens amendment suggests. I recognise the actual caps, at least insofar as they apply to State elections, as being very similar but still below the caps that apply in New Zealand.

The Attorney General also raised the issue of the possible unconstitutionality of spending caps, and he flags that Professor Anne Twomey will look at those issues. I am sure she will consider the case law in Canada that is relevant. Of course, Canada has a Charter of Rights and Freedoms—which we do not—and yet spending limits have not been struck down in Canada at all as being unconstitutional. It was certainly the opinion of all the people who appeared before the select committee that it was very, very unlikely that spending caps would be struck down by the High Court of Australia and, having read the political advertising case and other relevant cases, I think it is very likely that spending caps will be found to be constitutional. That is not the issue, but that is certainly something we have to bear in mind when listening to arguments that we hear from the Attorney General and from the general secretary of the Labor Party at the select committee hearing about why we cannot have spending caps. I am extremely sceptical about claims that they are unconstitutional.

In regard to these amendments, I draw the attention of the House to the fact that two amendments have been moved to put a prohibition on electoral expenditure exceeding a cap. The amendments say what those caps are, but where is the amendment to say what the penalty is for a breach of those caps? This just shows that this is gesture politics by the Greens; it is not a serious attempt to reform this bill at all. It shows the Greens'

approach to this bill in the Committee stage for what it is and it shows why the Opposition is entirely justified in taking the view that all the Greens' amendments should be opposed pending—and we stress "pending"—a major reform bill. During the second reading debate a number of Opposition members and Reverend the Hon. Fred Nile emphasised that a reform bill should be brought forward. We hope that one will be brought forward before the end of this year.

Ms LEE RHIANNON [2.15 a.m.]: I am disappointed Mr Harwin has been critical that no penalty information has been included. The Coalition has had problems also with the rushed way this legislation has been brought forward to be able to get all our amendments fully finalised. I appreciate the assistance from Parliamentary Counsel, but that was one matter that we were not able to finalise—certainly not for want of trying. I think that is a poor way to debate the matter—probably understandable considering the lateness of the hour, but certainly not justified.

The Hon. DON HARWIN [2.15 a.m.]: I will accept the chastisement. However, I will not accept—but I will inevitably see over the next couple of weeks—ream after ream of press releases and other material coming from the Greens saying that the Opposition, the Government, whoever, did not support spending caps in committees. We did not do it tonight—even though the Opposition is clearly on the record as supporting spending caps—because the amendments that have been moved tonight are not a holistic solution to spending caps. Everything that Ms Lee Rhiannon says about the limited time and the fact that we are debating this issue at 2.17 a.m. is valid. As I said, I will accept her chastisement but, please, let us not have the Greens going around in the next few weeks saying that the Opposition would not support spending caps.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [2.16 a.m.]: Further to the matters raised by the Hon. Don Harwin, the Greens also have to rework these amendments. In fact, they will leave the bill with two division 5s and a subsequent provision referring to division 5—you will have a choice as to which division 5 you apply!

Ms LEE RHIANNON [2.17 a.m.]: I refer to Mr Harwin's comments. He does seem to be a little bit precious in relation to the comments about election expenditure caps. In relation to the ban on corporate donations, I heard a number of members—and Mr Harwin before his leader came on board on this matter—express a commitment to that position. Now we know the parties that are on board. But tonight, even with the penalty provisions as part of the amendments, they have not supported the amendments when we could have voted together on this bill. It has been disappointing. Clearly, people have a right to know.

The Hon. DON HARWIN [2.17 a.m.]: I am glad Ms Lee Rhiannon again raises the donation caps issue. When we were discussing that amendment the Attorney General clearly pointed out why it was not possible to proceed in that respect. Yes, there may have been a penalty there, but there was nothing about intra-party transfers and there was nothing there about third-party donation caps. So it is exactly the same situation, with great respect.

Ms LEE RHIANNON [2.18 a.m.]: We have moved the amendments. It does not mean that the whole thing is solved. Other people could have come forward, like the Liberals, and put forward the requirements that Mr Harwin has identified.

Question—That Greens amendments Nos 8 and 9 be agreed to—put.

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

The Committee divided.

Ayes, 4

Mr Cohen
Ms Hale
Tellers,
Dr Kaye
Ms Rhiannon

Noes, 26

| | | |
|----------------|-----------------|-----------------|
| Mr Ajaka | Ms Griffin | Ms Sharpe |
| Mr Brown | Mr Hatzistergos | Mr Smith |
| Mr Catanzariti | Mr Khan | Mr Tsang |
| Mr Clarke | Mr Mason-Cox | Mr Veitch |
| Mr Colless | Reverend Nile | Ms Voltz |
| Mr Costa | Mr Obeid | Mr West |
| Ms Ficarra | Ms Parker | <i>Tellers,</i> |
| Miss Gardiner | Mr Primrose | Mr Donnelly |
| Mr Gay | Ms Robertson | Mr Harwin |

Question resolved in the negative.

Greens amendments Nos 8 and 9 negatived.

Schedule 1 agreed to.

Title agreed to.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! The Committee will now consider the Local Government and Planning Legislation Amendment (Political Donations) Bill 2008.

Clauses 1 to 5 agreed to.

Ms SYLVIA HALE [2.23 a.m.], by leave: I move eight Greens amendments in globo:

Page 3, schedule 1 [2] (proposed section 328A (1)), line 21. Insert "or by or on behalf of parties of which those councillors are members or were members at any time within the period of 6 months before they were last elected" after "councillors)".

Page 3, schedule 1 [2]. Insert after line 31:

328B Exclusion of councillors from planning decisions where political donations made

- (1) For the purposes of Chapter 14, a councillor is taken to have a pecuniary interest in relation to a relevant planning application made to the council if a disclosure of a political donation or gift is made under section 147 of the *Environmental Planning and Assessment Act 1979* in relation to the application (being a disclosure that relates to the councillor) or would be required to be made if that section extended to political donations or gifts made to any party of which the councillor is a member.
- (2) In this section, a **relevant planning application** means a relevant planning application within the meaning of section 147 of the *Environmental Planning and Assessment Act 1979*.

Page 4, schedule 1 [3] (proposed section 375A (2)), line 26. Insert after "decision" the following:

In addition, the general manager is to record in the register the names of any councillors who were excluded from voting in relation to the decision because of a pecuniary interest in the matter.

Page 4, schedule 1. Insert after line 34:

[4] Section 458 Powers of Minister in relation to meetings

Omit the section.

Page 7, schedule 2, line 11, (proposed section 147). Insert "or any political party or candidate" after "council".

Page 7, schedule 2, line 13 (proposed section 147). Insert "or any political party or candidate" after "council".

Page 7, schedule 2, line 26 (proposed section 147). Insert "or any political party or candidate" after "council".

Page 7, schedule 2, line 28 (proposed section 147). Insert "or any political party or candidate" after "council".

A week ago we were in this Chamber debating the planning bills at an equally early hour of the morning, but at least on that occasion we were dealing with a very complex bill for which we had had three weeks to prepare amendments. This bill is an equally critical piece of legislation but it is only four days since the bill was introduced. Obviously it has been impossible not only for the Greens but for other members to prepare amendments to deal with it adequately.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! The Chair should not have to remind members that silly comments made by way of interjections tend to lengthen debates, rather than shorten them.

Ms SYLVIA HALE: I moved the amendments in globo because they need to be viewed holistically. They all hang together and each impacts on the other. The package of amendments seeks to treat party political donations from developers and others as donations whose purpose is to influence councillors and the decisions those councillors make. The Greens amendments also seek to make the process of declaring a pecuniary interest fairer from the perspective of independent councillors when the obligations placed on them are compared with those placed on a councillor who is a member of a political party.

Greens amendment No. 1 provides that a general manager of a council must keep a register not only of declarations of disclosures of political donations lodged by or on behalf of a councillor but also a register of disclosure declarations lodged by political parties of which a councillor was a member within the six months before the councillor was elected. The Greens believe the purpose of political donations is to influence the outcome of planning decisions being made by elected councillors. This includes a donation to a political party of which a councillor is a member. The purpose of the amendment is twofold: one purpose is to expand the concept of what constitutes a pecuniary interest. If a developer makes a significant donation to a political party, then it is more likely than not that directly or indirectly pressure will be applied to councillors who are members of that party to vote in such a way to ensure the donations continue to roll in. Funnelling money to the head offices of political parties will not eliminate this pressure; it will only increase it. Under the bill as it stands the level of opacity will also increase while the level of transparency will decline.

If the legislation goes through unamended, the outcome is as clear as day. Labor and Liberal councillors will never be obliged to declare receipt of a donation because those donations will not go to them but to their head offices. Independent councillors who do not have access to a party apparatus will be obliged to declare everything they receive and to refrain from voting on relevant matters. Labor and Liberal councillors will be free from any such restraint. The Government knows full well that many Labor and Liberal councillors will have nothing to disclose because all the donations will come through head office.

The second purpose underlying the Greens amendments is to eliminate the discrimination independent councillors will face. The Greens want a genuinely level playing field, not one that favours members of the major parties. If an independent receives a donation from Joe Bloggs, a local grocery shop owner, and he subsequently submits a development application to expand his shop, then clearly the independent councillor should declare an interest and not vote on that application. By the same token, if Stockland donates \$1 million to the Australian Labor Party or the Liberal Party and then submits an application to build a block of units, then Labor and Liberal councillors whose parties have received donations from Stockland should declare a pecuniary interest and also be prevented from voting. The bill as it stands is not fair to independents. Independent candidates finance their campaigns through fundraising and donations to their personal campaigns.

Labor candidates will be getting their cheques from Sussex Street. Greens amendment No. 1 ensures that any candidate or councillor—whether Independent, Liberal or Labor—who receives a donation or gift from a person or organisation with a development application before a council must declare that donation or gift and should not vote on the relevant development application. Receiving a donation or gift from a development application proponent should be classed as a pecuniary interest. It is as simple as that. The amendment provides a further safeguard to ensure transparency. It is possible that a newly elected councillor may seek to avoid the requirement to declare a pecuniary interest by renouncing his or her party membership immediately after being elected. The amendment would thwart that stratagem because it would apply to the period six months prior to the election.

Greens amendment No. 2 once again presumes that a councillor has a pecuniary interest if the party of which he or she is a member benefits from donations and a development application comes before council where the proponent is a developer that has donated to the party. The Greens' unequivocal position is that developer and corporate donations to political parties should be banned. The Greens have a slogan: "Community need, not developer greed." We stand by that slogan, to which many of the members of the community respond warmly. All too often in New South Wales we have seen the outcome of money talking, most recently in Wollongong. Time and again, members of Parliament such as Noreen Hay, Frank Sartor and others have intervened in council issues after being approached by a developer and have talked to Labor councillors to try to achieve a desired outcome or to expedite a decision.

Gifts such as kitchen renovations have been given to Labor members of Parliament. Only an extremely naive person would argue that simply because a councillor has not received a direct donation from a developer he or she would not be influenced by a donation. Only an extremely naive person could fail to see what these Government amendments are all about; that is, to allow the funnelling of donations through party offices and thereby freeing up councillors to keep voting for development applications lodged by their developer mates. Party members are clearly influenced because their party and, therefore, they—to the extent that their party bankrolls their campaign—have a pecuniary interest. The Greens are simply saying that political donations to a candidate or the party of which they are members should be treated the same way as other pecuniary interests.

Greens amendment No. 3 amends the provision relating to the recording of votes so that if councillors do not vote because they or their party have received a donation, and therefore they are obliged to refrain from voting on a substantive planning decision because of a pecuniary interest, the general manager must record that fact. Greens amendment No. 4 deletes a proposed section in the bill that allows councillors to vote even if they have a pecuniary interest if the Minister so chooses. This gives too much power to the Minister because he could simply decide that it is in the interests of electors to allow councillors to vote despite their having a pecuniary interest. If many councillors have a pecuniary interest, the council can refer the entire matter to the newly established joint regional planning panels. Greens amendments Nos 5 to 8 amend section 147 of the Environmental Planning and Assessment Act to require full disclosure of all political donations at the time of making a relevant planning application or public submission. For example, proposed section 147 (4) provides:

A person who makes a relevant planning application to a council is required to disclose the following reportable political donations and gifts (if any) made by any person with a financial interest in the application within the period commencing 2 years before the application is made and ending when the application is determined:

- (a) all reportable political donations made to any local councillor of that council,
- (b) all gifts made to any local councillor or employee of that council.

The Greens wish to add "or any political party". That means that if the applicant is obliged to disclose that they have made a donation to a political party there can be absolutely no excuse for a councillor who is a member of that party not to recognise that. It is fair and obvious that once that disclosure has been made, any councillor who is a member of a political party to which the donation has been made will be aware of the potential conflict of interest and should be obliged to declare that conflict of interest immediately and to refrain from voting. If that is to be expected of Independent councillors, it is surely reasonable to expect the same of councillors who are members of political parties. The argument about one council not being aware of a donation being made in another part of the State is completely blown out of the water by the requirement that when the donor makes an application he has also to make a disclosure declaration about contributions in the two previous years. These amendments give substance to any endeavour to prevent political donations influencing the outcomes of planning decisions.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [2.35 a.m.]: The Government does not support these amendments. It does not support amendment No. 1 on the basis that it is unworkable in practice and could in fact increase corruption risks and fuel the public perception that donations influence planning decisions. The proposed amendment would require general managers to obtain copies of declarations lodged by the political parties of which councillors are members. It is important to note that donations made to political parties will be available to the public via the Authority, which is the appropriate body for this purpose. It will keep centralised records of all declarations—both original and amended—that are lodged by parties, groups, candidates, elected members and donors.

Amendments Nos 2 and 3 are completely unnecessary in light of recent changes to the model code of conduct for local councils in New South Wales. Under the model code, councillors are required to disclose and manage all conflicts of interest, including those that arise from a political donation. The Government believes that the model code is by far the most appropriate mechanism for dealing with non-pecuniary conflicts of interest arising from donations. These matters are not always straightforward. The model code and guidelines provide a workable balance between certainty and flexibility. The amendments to the model code recently announced by the Minister for Local Government are also consistent with the recommendations of the Independent Commission Against Corruption in its recent position paper entitled "Corruption Risks in New South Wales Development Approval Processes".

The Government does not support proposed amendment No. 4, which seeks to repeal section 458 of the Local Government Act. The Minister must retain the discretion to allow a councillor who has a pecuniary

interest in a matter to vote on the matter if the Minister determines that it is in the interests of the electors for the area to do so. Obviously, this discretion would only be exercised in the most exceptional circumstances. To remove this discretion would place local councils and their constituents in an unacceptable position of uncertainty. It would also leave the system open to abuse, for example, where a donor deliberately makes donations to all councillors so as to block council business in relation to a particular matter. There must be a mechanism that allows important decisions to be made in the unlikely event that a majority of councillors have a conflict of interest.

The Government does not support the other proposed amendments, which would require persons lodging certain planning applications with local councils to disclose donations made to political parties as well as donations made to councillors themselves. Mandatory reporting of all donations by development applicants could have an unintended consequence for the probity of local council decision making. At present, unless the donation is made directly to a councillor, the councillor may not know that a donation has been made. Mandatory reporting requirements for development applicants could effectively force the decision-maker to become aware of any donations made, thereby increasing the public perception that political donations influence the decision-making process. In light of this, the reporting requirements have been drafted so that only donations made to individual councillors, rather than donations made to political parties, are required to be disclosed at the time a relevant planning application is lodged with a local council. The Government is consulting with the Independent Commission Against Corruption further, as is indicated in the response to the standing committee in relation to some of the other issues raised by Ms Sylvia Hale.

The Hon. DON HARWIN [2.39 a.m.]: The Opposition supports the Minister's comments, in particular his comments on the model code as it relates to amendment No. 2, and the very pertinent comments that he made in relation to amendment No. 4 and the effect that that might have on the capacity of the council to be quorate and able to operate. In relation to the four amendments on the additional sheet I would indicate that comments I made earlier on amendments to the Election Funding Amendment (Political Donations and Expenditure) Bill are equally applicable to those four amendments.

Question—That the Greens amendments be agreed to—put.

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

The Committee divided.

Ayes, 4

Mr Cohen
Dr Kaye

Tellers,
Ms Hale
Ms Rhiannon

Noes, 27

Mr Ajaka
Mr Brown
Mr Catanzariti
Mr Clarke
Mr Colless
Mr Costa
Ms Ficarra
Miss Gardiner
Mr Gay
Ms Griffin

Mr Hatzistergos
Mr Khan
Mr Lynn
Mr Mason-Cox
Reverend Nile
Mr Obeid
Ms Parker
Mr Primrose
Ms Robertson
Ms Sharpe

Mr Smith
Mr Tsang
Mr Veitch
Ms Voltz
Mr West

Tellers,
Mr Donnelly
Mr Harwin

Greens amendments negatived.

Schedule 1 agreed to.

The Hon. DON HARWIN [2.45 a.m.]: I move Opposition amendment No. 1:

No. 1 Page 9, schedule 2 (proposed section 147). Insert after line 37:

- (13) A disclosure of a reportable political donation required to be made available under subsection (12) (a) is to be shown separately if it discloses a donation to the Minister or to the party of which the Minister is a member. A record of the way in which the relevant planning application was determined is to be included with the disclosure.

Our Select Committee report says at paragraph 10.93:

In relation to applications to the Minister for Planning involving campaign donors, the ICAC found that it would be impractical for the Minister to remove himself from such decisions, and recommended that there be some independent assessment of the application, as well as that objectors be given further appeal rights. The Committee agrees with this recommendation.

It then goes on to make an important recommendation, which is the genesis of this amendment. Recommendation 35 states:

That the Premier implement the ICAC's recommendation, that the Minister for Planning include in the list of designated developments, development in respect of which a declaration as to the making of a donation has been made.

This afternoon with parliamentary counsel we explored implementing the recommendation in full. There were some difficulties and, because of the amount of time available, an attempt to implement the full effect of that recommendation was not able to be made, but we have come up with amendment No. 1, which seeks to do a similar thing. The amendment is that the Director General of the Department of Planning be required to keep a specific register, which records the way the Minister for Planning has ruled on applications he is directly in charge of where the applicant was a donor to either his party or his personal campaign fund. This amendment seeks to replicate the requirement that general managers of local councils keep registers of the way in which individual councillors vote on planning applications where the applicant is a donor. This amendment will bring greater transparency to the Minister's role in development approvals.

Madam Chair, you will recall one of the most frequent comments of councillors was, when they came before the select committee in public hearings, that they felt that it was important that they be treated at local government level in a similar way to the way we are treated at State Government level. This bill has placed all sorts of obligations on councillors, but the Minister for Planning, despite the changes last week, still has a substantial area where he has consent over the development approval process. We think that this is an appropriate amendment, to apply the same scrutiny and transparency to the Minister for Planning that the Government's bill does on local councillors.

Ms SYLVIA HALE [2.48 a.m.]: The Greens support this amendment. We believe that unfortunately it applies only to those applications where the Minister will be making the decision. It would, it seems to the Greens, be preferable if that register was also maintained in relation to matters that refer to the Planning Assessment Commission because, after all, the members of that commission will be appointed solely by the Minister and there will be no possibility of appeal against any aspect of those appointments, so it would be appropriate that the conflicts of interest that are potentially made by the Minister's political appointees should also be subject to a register of disclosure.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [2.49 a.m.]: The Government opposes this amendment. I am a bit confused because the proposed amendment has two sentences that do not seem to follow each other. The proposal is to amend section 147, but section 147 does not deal with planning disclosures, it deals with the disclosure of political donations and gifts. Why the Opposition has chosen to move such a dysfunctional amendment in one paragraph is beyond me. In any event, the first part of the amendment is unnecessary. Proposed subsections (9) and (10) of section 147 provide that the disclosure of donations and gifts is to include the disclosure of the following details of each donation or gift—I emphasise the word "each"—the name of the party or person whose benefit the donation or gift was given, the date on which the donation or gift was made, the name of the donor or the person who made the gift, the residential or registered address of the donor or the person who made the gift, the amount or value of the donation or gift, and; in the case of a donor who is not an individual, the ABN of the donor. All these details must be made available to the public. There is no scope under the bill for the Department of Planning or for local councils to aggregate information disclosed in conjunction with the relevant planning application. Therefore, the amendment really adds no value at all.

The second part of the amendment requires that a record be kept of the way in which the relevant planning application was determined is to be included with the disclosure. I do not know how that fits in with

the rest of the paragraph, let alone with section 147. In any event, it does not even relate to a planning application by the Minister. In fact, the legislation—and this was referred to by Hon. Don Harwin—already provides for disclosures in relation to planning applications by local councils. For those reasons the Government opposes the amendment.

Question—That Opposition amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 18

| | | |
|---------------|--------------|-----------------|
| Mr Ajaka | Ms Hale | Mr Pearce |
| Mr Clarke | Dr Kaye | Ms Rhiannon |
| Mr Cohen | Mr Khan | |
| Ms Ficarra | Mr Lynn | |
| Mr Gallacher | Mr Mason-Cox | <i>Tellers,</i> |
| Miss Gardiner | Ms Parker | Mr Colless |
| Mr Gay | Mrs Pavey | Mr Harwin |

Noes, 20

| | | |
|-----------------|---------------|-----------------|
| Mr Brown | Mr Macdonald | Mr Smith |
| Mr Catanzariti | Reverend Nile | Mr Tsang |
| Mr Costa | Mr Obeid | Ms Voltz |
| Mr Della Bosca | Mr Primrose | Mr West |
| Ms Griffin | Ms Robertson | <i>Tellers,</i> |
| Mr Hatzistergos | Mr Roozendaal | Mr Donnelly |
| Mr Kelly | Ms Sharpe | Mr Veitch |

Pair

| | |
|-----------|-------------|
| Ms Cusack | Ms Westwood |
|-----------|-------------|

Question resolved in the negative.

Opposition amendment No. 1 negatived.

Schedule 2 agreed to.

Title agreed to.

Bills reported from Committee without amendment.

Adoption of Report

Motion by the Hon. John Hatzistergos agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. John Hatzistergos agreed to:

That these bills be now read a third time.

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

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) [3.00 a.m.]: I move:

That this House do now adjourn.

MR FILIPPO CASELLA AND CASELLA WINES

The Hon. TONY CATANZARITI [3.00 a.m.]: Tonight I wish to talk about Mr Filippo Casella—a remarkable man from the Riverina. I am sure many members would be familiar with the name Casella and that they would be aware that Casella Wines is the home of the famous Yellowtail wine, which is crushed at the facility in Yenda and which accounts for a staggering 10 per cent of the entire Australian annual vintage crush. The wine is then exported across the globe. Members would also be aware that Casella Wines employs 500 permanent employees, has 600 contract grape growers, and Yellowtail is the number one exported wine in the United States of America and Canada. However, many members will not know of Filippo Casella, who started this great Australian agricultural success. Tonight I wish to rectify that oversight.

Filippo Casella was born in Sicily on 24 October 1920, educated through the public system to grade 5, and privately educated from grade 6 to grade 10. At the age of 15 Filippo worked in vineyards throughout Sicily for four years. In 1939, sensing that war was imminent, 19-year-old Filippo volunteered to go to Africa and he served as a radio operator with the Bersiglieri—the elite motorised force. Radio operators were not issued with a rifle, and with only a pistol Filippo was ordered to advance on a tank that swept through a local village, gunning the houses one by one.

During an attack in 1941 Filippo was captured and placed in a prisoner of war camp in India and he was under British control for the next five years. There he was fortunate to be surrounded by academics and, under their guidance, he studied French and English, astronomy and mathematics and, under Professor Pietro Voluti of Dugesia, he studied world and Italian politics. As well as mastering English he was able to speak the local Indian dialect, which was useful when trading for blankets, food and cigarettes. After the war Filippo married Maria in 1947 in Sicily and he migrated to Australia in 1951, with Maria joining him in 1957.

Filippo and Maria have four children—Rosa, Joe, John and Marcello. Filippo worked hard as a cane cutter and fruit picker, moved between Queensland and Griffith, and finally settled in the Griffith area in 1962. He began share farming in Yenda, bought the Casella site in 1965, and started making wine in 1969. Filippo was finally recognised for his war efforts and the National Association Combatance presented him with the War Merit Cross along with medal decorations for the 1940 to 1943 campaign of Libya and the 1943 to 1945 liberation of Italy.

I was honoured to be present and to share a great moment when the New South Wales Italian Consul General, Benedetto Latteri, presented those medals to Filippo and spoke of the significance that surrounded them. Filippo's son John acknowledged and thanked the Consul General on Filippo's behalf. The medals took many years to find their way to Filippo, and local consul representatives worked hard with Italian authorities to make the day happen.

Winemaking had been passed through the generations to both Filippo and Maria and it was only natural that this progression continued. The Casella family started producing wine on their property on farm 1471 Yenda in 1969. Filippo would take family members with him on his biannual trip to Queensland, being away for months at a time selling their wines to family and friends with whom he had built strong bonds from his time as an itinerant worker cutting cane and picking fruit. He made this trip right up until 1990. Filippo has continued his winemaking heritage and in Australia has built an empire that continues his family heritage. I congratulate Filippo on his remarkable life and achievements.

STATE INFRASTRUCTURE STRATEGY

The Hon. MATTHEW MASON-COX [3.05 a.m.]: Members may recall the Government's 2008-09 budget, which disappeared a couple of weeks ago without a trace. They might also recall the Government's next party trick, the so-called State Infrastructure Strategy, which was released in the week following the budget. If not, let me remind the House insofar as that document relates to the hardworking residents of Monaro. The State

Infrastructure Strategy pretends to set out the Government's infrastructure investment over the next 10 years—another clutch of impressive promises, with impressive price tags, that the Government has no real means of achieving and perhaps no real intention of achieving. The promises amount to a mere \$140 billion. In essence, they were just more smoke and mirrors and again no-one was listening—of course, we have heard it all before.

I note that the State Infrastructure Strategy lumps the electorate of Monaro and the wider Australian Capital Region in with Wollongong in what is termed the Illawarra South East Region. I am at a loss to understand the rationale for this decision, given that there is very little community of interest between Wollongong and towns like Queanbeyan and Cooma, but that does not seem to matter to the Government. Perhaps it makes the proposed infrastructure investment figures look bigger because of the large slabs of investment in Wollongong, the State's third largest city, thereby making it harder for anyone to suggest that the Government is neglecting the residents of Monaro. However, I contend that this is exactly what is happening.

Three planning strategies apply within this State infrastructure region—the Illawarra Regional Strategy, the South Coast Regional Strategy and the draft Sydney Canberra Corridor Regional Strategy. As the title suggests, the last strategy applies to the Australian Capital Region, yet it is still only a draft. This draft was 10 years in the making and was finally released in October 2007—some eight months ago. The draft Sydney Canberra Corridor Regional Strategy provides the framework for any new residential development, as council local environmental plans must comply with it. The strategy is also acknowledged in the Australian Capital Territory-New South Wales cross-border region settlement agreement as the key planning document governing development on the New South Wales side of the border. Yet we are still waiting for this critical strategy to be finalised. How much longer will this take? Why does the Government continue to hold back Queanbeyan's growth by this failure to act?

I call on the New South Wales Government to finalise its consultations and release the final Sydney Canberra Corridor Regional Strategy forthwith. The Government's failure on this front is sadly matched by its failure to stand up for the residents of Queanbeyan and Jerrabomberra in respect of cross-border land development dealings with the Australian Capital Territory. Those dealings, consummated on 8 March 2006 by the signing of the cross-border agreements on water and regional settlement, granted the Australian Capital Territory the right to deny water to any new land development in the Queanbeyan-Jerrabomberra region. Little wonder there is development gridlock in Queanbeyan! Nothing has changed. The New South Wales Government is still promising to act and Queanbeyan is still waiting for water security and development certainty.

I turn now to consider a few key infrastructure projects in the Queanbeyan area that demonstrate the Government's continuing incompetence and neglect. The long-awaited redevelopment of the Queanbeyan Hospital is \$2 million over budget, one year overdue and still has no clinical services plan detailing what services will be provided at the hospital. Will there be paediatric admissions? Will there be a CT scanner? What routine surgery will be conducted at the hospital? It all remains a mystery. I note that earlier today this House passed a motion requiring the Government to release the hospital clinical services plan and related documents within 14 days. The Government resisted this request to the bitter end, such is its distaste for transparency and accountability.

The Lanyon Drive duplication is another project that has been delayed by the Government. The New South Wales, the Australian Capital Territory and the Commonwealth governments committed to act cooperatively to start construction of this key cross-border project in November 2007. However, each of these governments failed to allocate any funds for actual construction in 2008-09, meaning absolutely nothing will happen until July 2009 at the earliest. The victims of this inaction are the residents of Queanbeyan and Jerrabomberra, who spend hours each week locked in traffic rather than at home with their families. This is typical of the New South Wales Government—long on promises, but short on action.

Another example is the provision of disability services in Queanbeyan. The Minister for Disability Services belatedly opened a group house in White Avenue last month, despite it being left empty for the last two years—an insult to those on the long waiting list for supported accommodation in the region. Waiting lists for disability services like speech pathology and occupational therapy are also commonplace.

Children with special needs still have problems being properly assessed, thereby facing delays in accessing services and support. Notwithstanding this litany of delays and broken promises, one promise the Queanbeyan people dearly wish this Government would make and keep is to help fund Home in Queanbeyan—a community initiative that provides supported accommodation for homeless people with a mental illness. The

Commonwealth has committed to provide \$2 million towards this important facility, with a further \$500,000-plus from the community. To date the New South Wales Government has refused to provide any funding support as Home in Queanbeyan does not meet its preferred model for service delivery in this critically underfunded area. It is time this Government listened to the community and acted to meet the needs of the people it is elected to represent.

PUBLIC SCHOOL FUNDING

Dr JOHN KAYE [3.10 a.m.]: The publication last week of the report entitled "Rebuilding Public Schools 2020" by education consultant Adam Rorris opened a new and important chapter in the debate about the future of education funding in this country. The report, commissioned by the Australian Education Union, surveyed the literature on international experience to conclusively demonstrate the importance of good-quality buildings, classrooms and facilities to educational outcomes. The report exposed also the appalling spending capital gap between public and non-government schools, leading to a widening gulf between the sectors, with public education consistently missing out on funding for quality buildings, learning spaces, music, art and sports facilities, and financial support to maintain the highest standards.

Mr Rorris rigorously analysed capital works expenditure in public and non-government schools using publicly available data from State budgets and the National Report on Schooling in Australia by the Ministerial Council on Education, Employment, Training and Youth Affairs. His findings should put all governments, State and Federal, to shame for allowing the development of such a massive capital spending injustice. His findings also highlight the dedication and professionalism of public sector teachers who, despite the handicap imposed on their schools by chronic and spectacular capital underfunding, continue to deliver extraordinary outcomes. It is unfair and unsustainable to continue to rely on the self-sacrifice of public sector teachers to compensate for tight-fisted and biased school funding.

Mr Rorris's figures show that annual funding on capital works in public schools across Australia needs to be boosted by \$1.9 billion to match expenditure in private schools on a comparative per-student basis. Over the 2002-2005 period the average public school was \$1.2 million worse off than the average private and Catholic school on a per-student basis. The report conservatively estimates that an additional \$22 billion needs to be spent on public schools capital works over the next 12 years to give every child access to equivalent quality school buildings and facilities. In New South Wales the annual outspend by private schools requires an additional \$700 million of capital works expenditure to restore per-student parity—more than double the current capital works expenditure. Over the next 12 years State funding needs to increase by a total of \$8.3 billion to close the gap.

The story told by the figures is borne out by the experience of public school teachers, principals and parents whose impatience with substandard facilities is rapidly transforming into anger as they watch private schools engage in orgies of luxury building programs. Allowing a gap of this size to widen between school sectors not only forces teachers in public schools to work with one hand tied behind their backs, but also risks opening up divisions in Australian society that will inflict long-term damage on social cohesion. The paucity of funding for capital works in public schools not only is threatening the quality of education delivery; it is also restricting the future vision for schools developing as the centre of a community integrating adult and childhood learning, health services, family support services, arts, sports and culture. This is the future that is being built in countries that seriously invest in their public education facilities.

Adam Rorris's report challenges State and Federal governments to turn the tide on the growing gap of unfairness in capital facilities between public and private education. The Howard Government opened the floodgates of massive increases in per capita funding of private schools, exacerbating capital inequalities and kick-starting massive growth in private schools. Neither the State Government nor the Federal Government that replaced the Howard Government has had the courage to stem the flow. The Rudd Government not only failed to stop the growth of Federal funding to non-government schools; it is rapidly deserting the public system. Federal education Minister Julia Gillard in her speech to the Annual General Meeting of the Association of Independent Schools on 21 May 2008 put on display her disdain for the system that educates almost 70 per cent of Australians. She said:

I believe it's time we got beyond the public versus private divide that has blighted our education debates for so long and replaced it with a debate about the quality of education ...

Whenever politicians talk about moving beyond the public versus private debate, make no mistake—they are really saying that they are deserting the funding needs of the public system for the politically more powerful

private sector. This is the direction in which the Rudd Government is heading. It is time New South Wales and Australia had governments that responded to Mr Rorris's report and started investing in public schools to allow every child to have the right to education with quality facilities.

MISS TALIA ROTUMAH

BEIJING PARALYMPICS TEAM FUNDRAISING

The Hon. LYNDIA VOLTZ [3.14 a.m.]: Tahlia Rotumah is a young Aboriginal woman of the Minjungbal nation who lives in Tweed Heads south on the New South Wales North Coast. Tahlia has been selected by Athletics Australia as a member of the 2008 Australian Paralympics team for Beijing. She follows in the footsteps of the first trailblazing Aboriginal member of the Paralympics, Keith Coombs, who was selected for the wheelchair team at the 1960 Stoke Mandeville Games in Rome. The 1960 Rome Paralympics—the Ninth Annual International Stoke Mandeville Games, was the first time that the Paralympics event was held at the same venue as the Olympics.

Tahlia will be the first Aboriginal woman to represent our country at the Paralympics. To achieve that at the age of 16 years and 4 months is surely an achievement of which she and her loving family can be proud. At the Far East and South Pacific Games held in Kuala Lumpur in 2006, Tahlia represented Australia in both the 100 metre and 200 metre sprints, bringing home silver in both events. A fine achievement for one so young! Aside from her athletic prowess, Tahlia also has received praise from her teachers for her academic endeavours. Tahlia is a bright student in year 11 at Tweed River High School. She is also a leading hand in the Naval Cadets and would like to pursue a career in the Navy.

Tahlia is lucky to have been supported by a close circle of strong female relatives, in particular her grandmother, Desrae, and her Aunty Nic. Her selection in the 2008 Beijing Paralympics team has required many sacrifices from her mother, Natalie, and her sisters Annika, Madison and Rhiannon. The expense of travelling to competitions has meant that her sisters cannot accompany her as frequently as they desire—a problem that all parents of talented children face. Like many other elite female athletes, Tahlia's exceptional performances require exceptional dedication in the absence of funding, sponsorship or media attention.

Added to this are the stresses of being an athlete with a disability, cerebral palsy—a condition that is poorly understood by the wider community. Tahlia does not see her condition as a disadvantage but, rather, as a part of her life. Cerebral palsy is the name given to a group of disorders that affect body posture and movement. People with cerebral palsy have damage to the part of the brain that controls muscle tone, disrupting the brain's ability to control movement and posture. At present there is no cure for cerebral palsy although, with proper management, those with cerebral palsy continue their valued and active participation.

Unlike the able-bodied Olympic team, our Paralympics team are in desperate need of more sponsorship to cover their costs of competing. Despite raising more than \$3.25 million from sponsorship and fundraising, our team requires a further \$250,000 to get to Beijing. Twenty per cent of the Australian population has a disability that impedes their everyday life. But at the Sydney Paralympics our team won 63 gold medals—our highest ever gold medal tally at a Paralympic Games, which placed Australia at the top of the medal tally. Australia aims to win its 1,000th Paralympics medal at the Beijing Paralympics.

Our Paralympics team includes some of the finest athletes in the country. Tahlia's achievement thus far is inspirational. I am sure that other members of the House will find inspiration in not just her achievements but also in those of the entire team. We wish the entire Paralympics team well in their quest to represent our country with grace, humility and pride. We look forward to their result, which has consistently placed them in the top 10 countries.

CORRUPTION INVESTIGATION CENTRALISATION AND REFORM

The Hon. MARIE FICARRA [3.18 a.m.]: I draw to the attention of the House the need for reform of investigatory bodies in New South Wales. The recent controversy surrounding the New South Wales Crime Commission, as well as concerns raised about the effectiveness of other organisations that are charged with ensuring transparency and accountability of public officials in New South Wales, have led me to believe that we need major reform, rationalisation and better accountability of such organisations.

I am constantly talking with people in despair over the failure of public officials to act honestly, impartially and in the public interest, and for relevant agencies to properly investigate any concerns about such

conduct. The ineffectiveness of the current Labor Government to ensure high ethical standards, as well as the inability of the New South Wales Crime Commission, the Ombudsman, the Independent Commission Against Corruption, and departmental investigatory units to investigate allegations of corruption and maladministration is a very serious matter.

I have studied models such as that of Hong Kong's Independent Commission Against Corruption and I am impressed with how it has proactively introduced strategies and mechanisms for preventing, detecting and acting on corruption of public officials. I am also impressed with the number of complaints the commission investigates. I have asked many questions on notice to the Premier and his Ministers regarding the effectiveness of the New South Wales Ombudsman, Independent Commission Against Corruption and departmental investigation units, to investigate allegations of corruption, maladministration and the law governing their respective portfolios. This has mainly been prompted by the failure of such agencies to investigate community concern over various matters.

I am also alarmed to hear that a former Independent Commission Against Corruption officer, Jane Coulter, told a public meeting recently that the Independent Commission Against Corruption only investigates approximately 1 per cent of allegations received and a great number are referred to the actual offending agency, the department or councils to internally investigate themselves. I also have seen letters to constituents from the New South Wales Ombudsman concerning Warringah Council's handling of the Dee Why town centre's local environment plan, advising that it will not investigate the matter as the Ombudsman sees no utility in doing so because the respective decision on the matter ultimately rests with the Minister for Planning. The alleged misconduct of those public officials leading up to the final decision is ignored—that is outrageous!

Other letters from the Office of the New South Wales Ombudsman make it clear that the Ombudsman's office more or less dismisses any complaint and refuses to investigate if an agency or department has obtained a probity plan or advice from a corporation. I can certainly understand why the people of New South Wales are in so much despair when their supposed citizens' defender dismisses their legitimate concerns and fails to investigate matters. What is the point of having such agencies if they are not properly accountable and able to investigate complaints and ensure compliance with the law, codes of conduct and administrative law principles? It seems there are a lot of agencies and internal investigatory units in government departments and local government, at huge taxpayer expense, charged with investigating allegations, and yet not much investigation is actually going on.

These issues compel me to ask whether there are too many agencies charged with similar roles and whether it would be better to have one central agency, properly resourced to investigate such matters. As legislators we need to consider legislative reform to ensure duplication of roles and that wastage of taxpayers' money on agencies not adequately fulfilling their roles is eradicated.

FEDERAL GOVERNMENT INTERVENTION IN INDIGENOUS COMMUNITIES

Ms SYLVIA HALE [3.32 a.m.]: Last week marked the first year since the commencement of the so-called Federal intervention into Aboriginal communities in the northern territory. The Greens welcome the Rudd Government fulfilling its election commitment to review the intervention. We also welcome the Federal Government's promise to pursue evidence-based policy.

The Northern Territory intervention is racially discriminatory. We know this because the legislation establishing the intervention had to specifically exempt it from the Racial Discrimination Act. It is discriminatory because it takes away Aboriginal land, quarantines peoples money without cause, and hands out ration cards. The quarantining of income support is particularly contentious and should be reviewed very closely. While some Aboriginal people have been reported as welcoming it, and there have been some reports of an increase in the purchase and consumption of fresh food, other Aboriginal people speak of their deep shame of having this system inflicted on them, and how this feels like a return to the ration days when their parents and grandparents got their rations in sugar bags.

Of particular concern is that this policy is indiscriminate. It applies to everyone living in a prescribed community—irrespective of whether they have kids, or how well they manage their money. People travelling from remote communities to attend the Centrelink office in Alice Springs, Darwin or Katherine have reportedly been forced to queue all day. To add insult to injury many of those quarantined have complained of being offered no financial support, advice or counselling.

The other issue that needs to be examined is whether the quarantining of income support produces the best possible return for the money that is required to run the program. Recent reports have indicated that the cost of income management is currently running as high as \$3,000 per person per annum, to manage average welfare payments of around \$10,000 per recipient. The \$72 million spent on the poorly targeted quarantining of welfare payments compares with only \$7 million that has been spent on families and \$14.9 million on child health. In a submission made last week to the Federal Senate Select Committee on Regional and Remote Indigenous Communities, the Darwin Aboriginal Rights Coalition outlined the findings of its research into attitudes towards, and experiences under, the intervention with a focus on income management—the compulsory welfare quarantining of Aboriginal people in prescribed communities.

Key findings of the research include: 85 per cent of respondents do not like the intervention and see the overall changes as negative; 90 per cent of respondents experience serious problems with income management; and the changes have caused problems within families for 74 per cent and made no change for 23 per cent of respondents. The Alice Springs-based Intervention Roll-Back Action Group has conducted similar research, taking surveys of 64 people from "prescribed areas". Ninety per cent of respondents expressed opposition to the income management scheme and said that it had caused them problems. This illustrates that, although the resources put into the Northern Territory intervention have the potential to turn around lives in remote communities, more needs to be done to ensure money is spent wisely on the things that actually make a difference. To date, far more money has been spent on implementing the questionable welfare quarantining system than has been put into the priority areas of child protection, health and education.

The impact of the intervention on unemployment in Aboriginal communities must also be subject to rigorous examination. It has been reported that of the more than 1,700 people who have been "transitioned" off community development employment projects, only 667 were able to be re-employed in jobs funded by the Australian and Territory governments. The other 1,000-odd people and their dependents have been moved onto welfare payments. One year on there are vastly differing views about the achievements and failures of the intervention. Therefore, the review must be rigorous and exhaustive. The review needs to focus on ensuring that more of the additional resources are concentrated on the delivery of basic health and education services, protecting children at risk, fixing existing houses and building safe new homes for the future. It must concentrate also on ensuring that Aboriginal people have a genuine role in determining what is needed in their communities and their families. Without their active involvement and support any intervention is likely to be deeply flawed and unsustainable over time.

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

Motion agreed to.

The House adjourned at 3.27 a.m. Wednesday 25 June 2008 until 11.00 a.m. on the same day.
