LEGISLATIVE COUNCIL

Wednesday 29 October 2008

The President (The Hon. Peter Thomas Primrose) took the chair at 11.00 a.m.

The President read the Prayers.

POLICE INTEGRITY COMMISSION

Report

The President tabled, pursuant to the Police Integrity Act 1996, the annual report for the year ended 30 June 2008, authorised to be made public this day.

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

PRIVILEGES COMMITTEE

Report

The Hon. Kayee Griffin, as Chair, tabled report No. 46, entitled "Citizen's Right of Reply (Mr M. Tebbutt)", dated October 2008.

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

STANDING COMMITTEE ON STATE DEVELOPMENT

Report: Nanotechnology in New South Wales

The Hon. Tony Catanzariti, as Chair, tabled report No. 33, entitled "Nanotechnology in New South Wales", dated October 2008, together with transcripts of evidence, tabled documents, submissions, correspondence and answers to questions taken on notice.

Report ordered to be printed on motion by the Hon. Tony Catanzariti.

The Hon. TONY CATANZARITI [11.04 a.m.]: I move:

That the House take note of the report.

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

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 1 to 13 postponed on motion by the Hon. John Della Bosca.

ADMISSION OF THE TREASURER INTO THE LEGISLATIVE ASSEMBLY

Motion by the Hon. John Della Bosca agreed to:

That this House agrees to the request of the Legislative Assembly in its message dated 28 October 2008 for the Hon. Eric Roozendaal MLC, Treasurer, to attend the Legislative Assembly on Tuesday 11 November 2008 at 12 noon.

Message forwarded to the Legislative Assembly advising it of the resolution.

CHILDREN (CRIMINAL PROCEEDINGS) AMENDMENT (YOUTH CONDUCT ORDERS) BILL 2008

Second Reading

Debate resumed from 23 October 2008.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.08 a.m.], in reply: I thank honourable members for their contributions to the debate. I provide the following additional information. The independent evaluation of the innovative pilot program will be rigorous and thorough and include both qualitative and quantitative methodologies so that it can determine the effectiveness of the pilot with respect to the impact on offending behaviour and whether it is unduly impacting on the rights and liberties of young people. An independent evaluator, who will be appointed after an open tender process, will conduct the evaluation.

The areas of operation of the scheme will be limited, at least initially, to the Campbelltown, Mount Druitt and New England local area commands of the New South Wales Police Force. The Government has chosen those areas as areas that will best allow for young people who are most at risk of entering the criminal justice system to be diverted and assisted by early intervention and intensive case management. The chosen communities represent areas where we think the scheme will make a significant difference to young people who are at risk and to their families. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

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

LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT (DETAINED PERSON'S PROPERTY) BILL 2008

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.10 a.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

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

Leave granted.

The Premier's Delivery Unit's (PDU) mandate is to work with Government agencies to meet improved service delivery targets in key areas and to deliver the targets set in the New South Wales State Plan. Recently, PDU has been working to reduce police paper work and improve police efficiencies. For example, one project, which was completed at the end of 2007, culminated in significant reforms to the service of briefs of evidence.

In October 2007, the New South Wales Police Force requested that the PDU assist in streamlining the charging process by undertaking a review in an attempt to identify potential time saving and red tape reduction opportunities.

It was made clear that any proposed opportunities would need to maintain the current objectives of the charge process, including:

- Quality of evidence for court;
- Rights and safety of a person in custody, including vulnerable people;

- Efficient use of Police resources; and
- Corruption resistance.

With this in mind, PDU undertook their next project which focused on the charging process. PDU produced a report recommending the immediate implementation of 13 "quick win" charge streamlining proposals, which they estimated would save the New South Wales Police Force time and allow Police to get away from paper work and back to front line policing. Eleven of these proposals were approved by the Government.

Only one of the recommendations required legislative amendment and that is the recommendation that relates to a detained person's personal property.

Currently, under section 131 (2)(d) of the Law Enforcement (Powers and Responsibilities) Act, the custody manager must record the details of any property taken from the detained person in the custody record. The word "details" has caused difficulties as it has been interpreted to mean that each and every item needs to be itemised and described in detail. This process has become time consuming and unwieldy.

This bill will amend s131 (2) (d) to allow for the use of clear tamper proof bags in which the property will be placed. Accountability will be maintained by a requirement for the bag to be physically signed and dated by the detained person. The placing of the property into the bag would also be done under camera surveillance where possible to do so. This is a small but important change that will save valuable police time.

I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.10 a.m.]: I lead for the Opposition on the Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Bill 2008. The Opposition will not oppose this bill, but intends to move an amendment to the wording based on discussions with front-line police and the Police Association. Although the Government is aware of the Opposition's amendment, I have not had any indication of whether the Government will agree to the change in wording. I acknowledge that the Parliamentary Secretary is indicating affirmatively that the Government will support the amendment. The Law Enforcement (Powers and Responsibilities) Act—often referred to as LEPRA within the public domain—takes us back some years to when Attorney General Bob Debus took control of this legislation.

It is evident that in many instances he did not consult with front-line police regarding operational aspects of their role. The Law Enforcement (Powers and Responsibilities) Act was put forward as a new age in modernisation of legislation to assist police. The trusting public believed the Government that the intention was good and the legislation somehow would streamline and rectify the way police conducted their work. It had become apparent over the years that legislative reform was needed to assist police in preparing evidence—their search powers, the use of videos and the like. However, the biggest difficulty was that Bob Debus showed no propensity to support operational police while he was Attorney General. He took control of the Law Enforcement (Powers and Responsibilities) Act and, with his boffin supporters, set about wrapping up police in red tape. They set themselves on a path designed to place more hurdles in the road of operational police to conduct their work.

On one hand the Government was talking constantly about streamlining and cutting red tape, thereby making it easier for police to do their job, but behind the scenes the red tape was not unravelling: the New South Wales Police Force was being buried in more of it as a result of the provisions of the Law Enforcement (Powers and Responsibilities) Act. I would often refer to the legislation as "leprosy" because in many instances it made it more difficult or convoluted for police to do their job. The Government says that it is trying to remove the red tape and make it easier for police to do their jobs. I had a good look at the bill, and if this is the best the Government can come up with to streamline the process for police, then God help the New South Wales Police Force. After taking into account the concerns raised by the association—the rank and file—this much-heralded reform does not even address the red tape. It is not a question of the operations of front-line personnel being a priority or even being near the surface for consideration; red tape does not rate a mention at all.

Each member of this House benefits from the support of the New South Wales Police Association by receiving a copy of *Police News*. Honourable members who take the time to read this publication will see it contains a number of reflections and contributions of members on the red tape issue. Since the last State election it is particularly worthwhile looking at some of the issues police have put forward regarding red tape. Clearly, from the matters raised in this bill relating directly to police retaining property from charged persons, the red tape problems faced by front-line police do not rate a mention.

The Opposition does not oppose the bill. However, I place on record my concerns that at some future time this will lead to police officers being the subject of some complaint about the retention and placement of

property. We have all heard about allegations made against police. From time to time we become aware of vexatious complaints or those without any factual basis. I am concerned that this bill will give people the opportunity to say that the property placed in the bag, which has not been written down, was not property they had in their possession when they came into the police station, and that on being returned to them at the appropriate time some things were missing.

Of course, the Government will say that everything that happens in the charge room is subject to video surveillance. The reality is that the closed-circuit television surveillance in a police charge room is not of such a high quality to be able to identify specifically each piece of property laid out on the charge room table before it is placed into a security bag. Time and again people say, "The police officers stole my money" or "The police officer put something into my possession", or the police officer did something else that inevitably becomes a major point in mounting a defence before the court at some later stage. This is a weakness in the bill, although the well-meaning attempt of the legislation is to at least start unravelling the red tape that Bob Debus and his supporters so skilfully wrapped around police with the Law Enforcement (Powers and Responsibilities) Act.

I hope that the Government will not have to revisit the legislation at some future time to make amendments to the bill dealing with the retention of a detained person's property because of the fundamental flaws that I see today. No doubt at some stage during the Government's reply to this debate mention will be made of support letters from various people, including the Police Association. However, it is worth referring to some of the red-tape matters that have arisen since December 2007 which, in many instances, have not been properly addressed by the Government.

If the Government is serious about the whole issue of red tape, quite simply it needs to start to deal with some of the more serious matters—ones that it continuously ignores. Of particular importance to the New South Wales Opposition is the subject of a significant policy announcement, the three-tier personal search. That is all part of the Law Enforcement (Powers and Responsibilities) Act. A former Attorney General, Bob Debus, and all his lawyer friends wanted to wrap the hands of police by introducing more red tape and convoluted processes to conduct a three-tier personal search of persons. Perhaps they did not contemplate a situation in which, on the side of a road, police form a belief that there could be something sinister suggested by an apprehended person's conduct warranting a more detailed search because, at that stage, police have to go undertake convoluted processes.

That will not mean much to many honourable members, but when front-line police have to make a split-second decision with regard either to evidence or to their own safety, the extended processes get in their way. Quiet often that could result in those police officers being the subject of an internal investigation at a later stage when the beauty of hindsight obliges them to explain why they followed a quick fix or expedient approach which, although required in the circumstances of the case, did not quite fit the model that Bob Debus and his friends put together when they introduced the Law Enforcement (Powers and Responsibilities) Act. The December 2007 edition of the Police Association *Police News*, under the heading of "Fight to Reduce Red Tape", publishes interesting paragraphs on the service of briefs of evidence, criminal infringement notices that the Opposition believes is a complete capitulation of the Government's softly, softly approach to crime, traffic infringement notices, and mental health that continue to be real issues for police.

In the January 2006 edition, red tape again features along with operational issues, apprehended domestic violence orders, and notices to produce in relation to financial institutions. These matters may not mean a lot to members, but they mean a lot to police who are involved in fraud investigations, in particular, which necessitate police seeking information from financial institutions with respect to people's bank accounts. Forensic procedures and all the other examples I have mentioned are indicative of the slow and sure way in which the Government continues to place barriers in the path of police. Crime scene warrants, search warrants, detention warrants and search powers are set out in part 9 of the Law Enforcement (Powers and Responsibilities) Act, and they are also featured. In May this year the Police Association identified the Law Enforcement (Powers and Responsibilities) Act as continuing to be a millstone around the necks of police officers.

The Police Association has also drawn attention to personal search provisions, especially the three-tier personal search model that the Opposition has objected to. The Opposition continues to support front-line police who struggle to deal with the whole convoluted process relating to strip searches, notices to produce to financial institutions, which were identified in January this year as a problem and again were identified in May 2008, and crime scene warrants, which were mentioned in January 2008 and again in May 2008. The fact is that the Government is great on spin. No doubt in the paraphernalia that is distributed to front-line police in the lead-up

to the next election, there will be that big tick to indicate that the Government is re-forming or rewording the Law Enforcement (Powers and Responsibilities) Act to assist front-line police. The Law Enforcement (Powers and Responsibilities) Act will have a big tick next to it, but the Government is not seriously proposing to change it. Front-line police will also see the big tick when the Government says it is issuing front-line police with Tasers, when in fact that is not the case. It is all about doing little bits to simply get the big tick. It is all about putting on the spin.

The Hon. Marie Ficarra: Officers should put a stroke over the tick to turn it into a cross.

The Hon. MICHAEL GALLACHER: The police will know what the Government is up to. The Government is like a train at a railway station with its wheels spinning—it is not going anywhere—but the problem is that the people of New South Wales are on the train and they want to move forward. In this instance, the police want to move forward and get on with the job. They call on the Government time in and time out through the Police Association and in the *Police News* to make changes that are needed by front-line police. No doubt the Parliamentary Secretary in her reply will put forward all the wonderful things on which the Police Association has congratulated the Government. Sure, the Police Association will congratulate the Government on the amending bill, but this legislation is such a small adjustment. It is as insignificant as a tiny speck in tonnes of beach sand. There are innumerable issues that must be addressed. No-one will take the Government seriously unless it begins to address some of the real issues.

The Hon. Penny Sharpe: I hope you are going to ride those lines yourselves.

The Hon. MICHAEL GALLACHER: The Parliamentary Secretary obviously is referring to when the Opposition takes government and I become the Minister for Police in 2011. The difference between the Opposition and the Government is that the Opposition is not prepared to wait until 2011 to push issues such as the use of Tasers and other reforms. Of course we could be just like the Government, sit on the fence and wait until 2011 and say, "This is what we will do after we win the election", but I encourage the Government in the two years that remain before the next election to start to rectify some of the issues now because they are issues that front-line police and communities must have fixed now. They need the Government's commitment to do that. If the Government does not do that, the Opposition will do that when it wins government. Let us not get into political speeches. Let us move the debate to a place where we can fix things for front-line police who for so long have been calling for help from the Government. I look forward to working with the Government to fix things for the police—given that the Government made a mess of things in the first place.

Reverend the Hon. Dr GORDON MOYES [11.25 a.m.]: On behalf of the Christian Democratic Party, I join in debate on the Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Bill 2008. The object of the bill is to amend the Law Enforcement (Powers and Responsibilities) Act 2002 to make further provisions with respect to custody of a detained person's property and to make related amendments. On the surface, the bill looks very simple, but I will canvass some issues that I hope the Parliamentary Secretary will address during her reply. Under current section 131 (2) (d) of the Law Enforcement (Powers and Responsibilities) Act 2002, the custody manager must record in the custody record the details of any property taken from a detained person. The bill will amend section 131 (2) (d) to allow for the use of clear tamper-proof bags, in which the property will be placed, and then the bag will be sealed.

The tamper-proof seal, as well as the requirement for the bag to be physically signed and dated by the detained person to verify that all the property has been placed in the bag, will maintain accountability. I listened to the Minister's advisers as they explained that position. The placing of the property into the bag will be done under camera surveillance, whenever possible. At the outset I mention that tamper-proof seals sound all right, but I guarantee the House that I can open tamper-proof seals with the aid of a needle. What is the prospect of people much smarter than I am being able to open tamper-proof seals? The closed-circuit television footage will not protect the police in charge, and that concerns me. For example, if a police officer in charge, for example, a policewoman, removes a diamond ring that has been confiscated from a drunk woman, the closed-circuit television footage will not reveal any sleight of hand if, for example, the policewoman is a corrupt person.

I can confuse my grandchildren by putting a couple of rings in my hand, putting one into a clear bag and taking away the more valuable of the two. It does not take a magician to be able to do that. It seems to me that this procedure opens the possibility of police being the subject of complaint later. It is possible also for a person, who has taken from her hand a ring that is later placed in a bag under the guidance of police, to later complain that the ring returned to her was not the one that was taken from her finger, but rather is an inferior one of lesser value. It is quite possible for an exchange of rings to take place unnoticed. In October 2007 the

New South Wales Police Force requested the Premier's Delivery Unit to assist in streamlining the charging process by undertaking a review in an attempt to identify potential time saving and reducing red tape, while still maintaining the current objectives of the charge process including the quality of evidence for court, the rights and safety of a person in custody, including vulnerable people, the efficient use of police resources and corruption resistance.

The report recommended the implementation of many charge streamlining proposals, which are estimated to save considerable New South Wales Police Force time, allow police to get away from paperwork and enable them to get back to front-line policing. Only one of the recommendations required legislative amendment and that is the recommendation relating to a defendant's personal property. Currently under section 131 (2) (d) of the Law Enforcement (Powers and Responsibilities) Act, the custody manager must record in the custody record the details of any property taken from a detained person. The word "details" has caused difficulties because it often has been interpreted to mean that each and every item needs to be individually itemised and described in detail. The process has become time consuming and unwieldy.

The bill proposes to omit section 132 (2) (d), and under clause 17A the custody manager will follow new regulations. Clause 17A includes provisions relating to the procedure for placing the detainee's property in a tamper-proof bag approved by the Commissioner of Corrective Services. The property must be placed in the bag under camera surveillance. The custody manager must ask the detained person to verify that all the property taken from the person has been placed in the bag by signing and dating the bag in the manner approved by the commissioner for the purposes of clause 17A. For example, if my wallet is placed in a tamper-proof bag, what about the different credit cards that are in the wallet? I can imagine the money would be counted but there are other valuable things apart from money in the wallet. If all the details of the property collected are to be itemised does that include not only the money but also the credit cards in a wallet?

I can imagine complaints being made to the police that the police have stolen certain things that may have even been lost by the detained person. I ask the Parliamentary Secretary, in her speech in reply, to comment on the following issues. How is it proposed to obtain a detained person's property if they refuse to cooperate? I have had experience of working in or running a homeless persons hostel at night. The tradition is to put all the person's personal property into a plastic bag, seal it and sign it. However, a person who is intoxicated or under the influence of drugs does not know how much is put into the bag, whether it is their property or whether they have got it from someone else. How will the custody manager obtain the property of a detained person if the arrested person is drunk or refuses to cooperate? When a policeman is trying to take personal property the first thing a drunk does is resist the policeman. How does the policeman get the property of a person who is intoxicated or, even worse, suffering from mental illness?

Who decides whether a detained person is intoxicated or mentally psychotic? Will the police bring in other people to say, "Yes, go ahead, take it off them", regardless? The Law Society felt that there was a lack of protection for intoxicated people and people with mental health issues, for whom it is impossible to check the contents of the bag. A person who is mentally disturbed or psychotic will be troubled by the fact that the fire protection unit with the blinking red light is an alien from outer space and they are not in a position to willingly give up property because aliens might get it. How do we protect the custody officer who has this responsibility of collecting the detained person's property?

The Law Society's criminal law committee is of the view that in those circumstances the police should be required to complete an itemised list of the detained person's property. Again I ask: What is the definition of "itemised list"? I believe this bill in general will enable the New South Wales Police Force to save some time and allow police to get away from some paperwork and back to front-line policing. That is a step in the right direction to reduce red tape in the State's Police Force. However, it is only a very small step; it is unlikely to save much time at all. I am sure that reducing red tape within the police force requires a larger pair of scissors than this bill. But it is a step in the right direction, albeit a small one. I commend the bill to the House.

Ms LEE RHIANNON [11.33 a.m.]: The Greens do not support the Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Bill 2008. The Government has explained the bill's aims as streamlining police paperwork and freeing up officers for front-line policing rather than clerical duties. It aims to eliminate the need to take an inventory of prisoners' belongings by getting them to witness the collection of their things into a tamper-proof bag and signing off on the bag's content as it is sealed. The Greens recognise that it is important for the police to work in the community rather than do excessive amounts of clerical work, but this must not be done at the expense of those in custody and good administrative practice. We cannot have good policing if we do not have good administrative practice.

With this bill there is a basic assumption that persons in custody are coherent enough to keep track of what possessions they have and that these have all been correctly put in the tamper-proof bags. However, as we know, many persons in custody are not in complete control of their faculties for various reasons, ranging from being intoxicated to being mentally disorganised, and they may find it hard to keep track of their belongings. There are many arrest charges that imply that the person in custody was not compos mentis and competent to oversee the bagging of their belongings.

For example, in the year ended June 2008, 26,323 people were taken into custody for drug offences and 17,986 for liquor offences. It is more than likely that the majority of those people were intoxicated to some extent when arrested and they may not have been able to follow what exactly was being bagged. That is more than 40,000 potential occasions when this new system could have failed. It is estimated that more than 50 per cent of the prison population have mental health problems, and keeping track of their possessions is not easy.

Since the closing of psychiatric hospitals under the Richmond report more and more people with mental health issues are finding themselves in police custody. These people are often unable to keep track of their possessions in the best of circumstances, so they may be even more disadvantaged under the new system. Itemising a person's belongings at least gave them time to focus on what they had in their possession and then keep track of those items for later collection. Under the new system, if the charging officer or custody manager is busy or dealing with difficult offenders there is a great risk that the detainee's belongings will be tipped willy-nilly into a bag without any list of what has been collected.

If police need to streamline this process because they are needed on the street, it is obvious that police are overwhelmed by the number of people they have to process and the calls they have to attend. Surely it would be better to increase the number of active police or use more ancillary officers or station staff than to cut back on the proper handling of people and their possessions. The work of handling people and their possessions should be seen as part of the justice process rather than something that can be eliminated for a law and order agenda or a money-saving exercise being run by the Government.

A no itemisation of possessions policy could lead to challenges to the honesty of police officers by those in custody if they cannot find items they believe were in their possession when they were taken into custody. There would be no way of proving what had been collected beyond what may end up in the bags. What will happen to people who are resisting arrest, not cooperating with police or too out of it to know what is going on? Will their belongings simply be dumped into a sealed bag without the oversight of the accused? Will a note on the bag that the detainee refused to sign be adequate to ensure that the contents are correct? Similarly, what protections will there be for police officers when prisoners, upon release, claim that some of their goods are missing or not in order?

Can current camera surveillance actually follow the bagging of small items? What will happen at stations that have no cameras installed? The Greens recognise that most police officers are honest, but this system could make it easy for a thieving officer to steal someone's possessions while they are in custody. Without itemisation of possessions, if someone stole one item, for example, an expensive watch, the prisoner would have no recourse, as it was never individually noted as an item being held by police. The Greens cannot support this bill while there are so many problems regarding the oversight of the actual bagging, the lack of itemisation and the disadvantage that this will cause many police.

Misunderstandings will arise and will increase accusations of dishonesty from detainees. It is important to note some of the comments from the Opposition. The wanna-be police Minister, the Leader of the Opposition, gave an insight into police policy under a Coalition government. What we would clearly see is an across-the-board weakening of standards. Let us remember why we have the standards that are about to be wiped out by the Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Bill.

A whole range of standards have been put in place with regard to police activity to minimise corruption in the Police Force. Let us remember that the New South Wales Police Force has a long history of corruption. The Leader of the Opposition conjured up the dark era of the Askin Government when anything went with the police—if it wanted to weaken standards, it weakened standards. Every time the Leader of the Opposition speaks in this place he essentially says ad nauseam that one would not want to do anything that made life more difficult for the police. While the Greens certainly disagree with this bill, it should be noted that once again, as so often happens with these law and order options between Labor and the Coalition, it goes one step further, and that is a dangerous step.

Reverend the Hon. FRED NILE [11.42 a.m.]: The Christian Democratic Party supports the Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Bill 2008, which is a simple bill that will reduce the time taken by police when they are charging a detainee. The police will now be allowed to place the property of a detained person in a clear tamper-proof bag instead of itemising each piece of personal property, which has been a very time-consuming process for police. The meaning of "itemising" has been debated. In order to protect themselves the police took some time describing each item. It was not just a matter of simply listing the item as, for example, a ring but describing it in detail in the hope of preventing any criticism. That process took up a lot of valuable police time. Items to be used as evidence later in a court case are not included in this category of items. The bill provides safeguards by giving a full explanation of what will be required. New section 17A states:

> (1) The custody manager for a detained person must ascertain what property the person has with the person when he or she comes into the police station or other place of detention concerned, or had taken from him or her on arrest, and must arrange for safekeeping of the property if it remains at the police station or other place of detention.
>
> (2) The custody manager must ensure that all property taken from the detained person is placed in a clear tamper-proof bag of a kind approved by the Commissioner for the purposes of this clause.

I assume it is a heavy, clear plastic bag—

> (3) The property must be placed in the bag under camera surveillance insofar as it is practicable to do so.

The Opposition has foreshadowed an amendment to new paragraph (4), which we support, to omit "impossible" and insert instead "impracticable" in the following paragraph:

> (4) Unless the detained person is intoxicated or there are other circumstances that make it impossible to do so, the custody manager must ask the detained person to verify that all property taken from the person has been placed in the bag by signing and dating the bag in the manner approved by the Commissioner for the purposes of this clause.

Will the Hon. Penny Sharpe, the Parliamentary Secretary, explain what will then happen? As the bill presently reads, a person who is intoxicated or mentally ill is not asked to verify the property. Will nothing happen or does another provision apply, or perhaps another person acts as a witness on behalf of the detained person who is intoxicated? That is my only question on the legislation. I am in favour wherever possible of reducing red tape and paperwork that keeps police officers tied up and away from their primary role, which is to protect the people of New South Wales to the best of their ability. The Christian Democratic Party supports the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.45 a.m.], in reply: I thank the members for their contributions to debate on the Law Enforcement (Powers and Responsibilities) Amendment (Detained Person's Property) Bill 2008. This amending bill will ensure that New South Wales Police Force officers will not be caught up wasting their time in noting every single item of property that comes in the door on someone who has been charged. Rather, we hope they will now be able to more quickly move back to their frontline policing duties. It is important to note that this amendment has been made in consultation with and the support of the Police Ministry and the New South Wales Police Force.

The New South Wales Police Force currently uses tamper-proof bags extensively in their duties. They are most often used in the conveyance of drug exhibits. The bags used currently have been refined over the years to ensure that they cannot just be opened by an item such as a needle, a matter that was raised by Reverend the Hon. Dr Gordon Moyes. They have much more sophisticated seals, which prevents such an opening. The bags are clear so that a person can see whether their property has been placed in the bag. There is the opportunity, when it is not, that the person can object at that point about what is actually in the bag.

Members have raised the important issue of intoxication. The reality is that a custody manager will remove property from an intoxicated or mentally ill person in the same way as they do now. There is nothing new in this bill. The reality, as we all know, is that custody managers deal with people who are intoxicated or who have a mental illness and they currently have to deal with this material, so there are no changes there. It is the role of the custody manager to identify people with such issues that might make them vulnerable and they are trained and do this every day. The custody managers do a very good job in trying to sort them out.

The issue of whether detainees are able to sign off on the bags raises a couple of concerns. The custody manager can make an itemised list where practical when there may be concern or debate about what is actually in the bag. I suggest that those officers do that automatically when they think there may be a problem. In relation to the issue of a detained person refusing to sign, the material will still be taken: it will be noted in the custody record, along with the reasons, if any, as to why the person has refused to sign off on the bag. Under the

current system the detained person may also refuse to sign to verify the details of his or her property. The new procedure again raises no new issues for police in this regard. The refusal, however, will be more likely to be videorecorded. Again, it is always open to the custody manager to take an itemised list.

This bill is just one small part of the reforms flowing from the review by the Premier's Delivery Unit. It is, however, completely incorrect to suggest that the Government is doing nothing else in this regard to support front-line police and that it is not genuinely trying to work through the issues that will reduce red tape and at the same time balance the needs of individuals who find themselves in custody. The vast majority of the reforms to cut police red tape will be done through changes to the police standard operating procedures, which will not require legislation. Members will not see them immediately through this Chamber. Freeing up police time and cutting red tape, but at the same time protecting the rights of individuals, is an ongoing process. The Attorney General's Department continues to work with police on this important area, and it is something to which the Government is fully committed. The Government will not oppose the foreshadowed amendments of the Liberal Party. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 5 agreed to.

Schedule 1 agreed to.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [11.51 a.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

No. 1 Page 4, schedule 2 [1], proposed clause 17A (4), line 20. Omit "impossible". Insert instead "impractical".

No. 2 Page 5, schedule 2 [2], proposed clause 21 (1) (l), line 1. Omit "impossible". Insert instead "impractical".

The Government has indicated that it supports the wording change, omitting the word "impossible" and inserting instead the word "impractical". I think members would understand the implications for police in that word change: it will give police a degree of certainty in relation to how they conduct themselves with respect to the detained person's property bill.

Ms LEE RHIANNON [11.52 a.m.]: The Greens remain concerned about the bill, as I outlined, and the amendment to change the wording in two cases from "impossible" to "impractical" further weakens the bill. It is of considerable concern how quickly the Government has rolled over for the Opposition on this. It is not surprising that the amendments come from Mr Gallacher, who is desperate to flex his muscles as a potential police Minister and willing to water down standards at every opportunity. Why we have standards needs stating. The original Act was in the form it was because of the critical need to wind back the opportunities for corruption in the New South Wales Police Force. The bill, which was weak, at least set out that police had to make every effort to ensure they correctly conducted the holding of people's property, but "impractical" is a much weaker word than "impossible". Who is to judge what is impractical?

An extreme position has been taken in watering down the standards, in giving a little protection to detained people whose possessions will be placed in bags, et cetera. The amendments involve a serious weakening of what is already bad legislation. The Government has so readily—without any explanation of how it has assessed changing "impossible" to "impractical"—gone along with the Opposition. It is a reminder of the law and order debates where they try to outdo each other and in the end they just go for the worst common denominator, which means that we have a weakened justice system with people's rights being further eroded. This is a serious development and it is a further weakening of what is already bad legislation.

Reverend the Hon. FRED NILE [11.54 a.m.]: I indicated support for the amendments when I was speaking in the second reading debate. We support the amendments.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.55 a.m.]: The Government will not oppose the amendments. There are important safeguards in the bill regarding the property of people in custody. I have already outlined the opportunities and options for custody managers to deal with the levels of complexity.

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

The Committee divided.

Ayes, 36

Mr Ajaka	Mr Kelly	Mr Roozendaal
Mr Brown	Mr Khan	Ms Sharpe
Mr Catanzariti	Mr Lynn	Mr Smith
Mr Colless	Mr Macdonald	Mr Tsang
Ms Cusack	Mr Mason-Cox	Mr Veitch
Mr Della Bosca	Reverend Dr Moyes	Ms Voltz
Ms Fazio	Reverend Nile	Mr West
Ms Ficarra	Mr Obeid	Ms Westwood
Mr Gallacher	Ms Parker	
Miss Gardiner	Mrs Pavey	
Mr Gay	Mr Pearce	*Tellers,*
Ms Griffin	Mr Primrose	Mr Donnelly
Mr Hatzistergos	Mr Robertson	Mr Harwin

Noes, 4

Mr Cohen
Ms Hale
Tellers,
Dr Kaye
Ms Rhiannon

Question resolved in the affirmative.

Opposition amendments Nos 1 and 2 agreed to.

Schedule 2 as amended agreed to.

Title agreed to.

Bill reported from Committee with amendments.

Adoption of Report

Motion by the Hon. John Della Bosca agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. John Della Bosca agreed to:

That this bill be now read a third time.

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

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

POLICE TASER USE

The Hon. MICHAEL GALLACHER: I direct my question to the Minister for Police. Is the Minister aware of the death of Michael Capel at a Belmont caravan park on 10 October? Without canvassing matters that

are subject to an internal police investigation and no doubt will be the subject of a future coronial inquiry, will the Minister agree that his Government's policy of limiting distribution and use of Tasers to duty officers and supervisors severely limits the opportunity for Tasers to be readily available to front-line police when, in a split second, they determine the need for such a device to be deployed? Will the Minister now also agree with both the Labor member for Swansea and me that all police need to be properly equipped with Tasers and that the shooting of Mr Capel has now brought this issue to a head?

The Hon. TONY KELLY: Police need to be able to curb violent situations quickly and effectively. Tasers have been used successfully in negotiating violent and precarious situations. That is why the Government has rolled out over 200 additional Tasers to duty officers and supervising sergeants across the State after appropriate and rigorous training for use in extreme situations. This training consists of eight hours of initial instruction, including the firing of three cartridges, passing a written test with a minimum score of 80 per cent, and an annual recertification thereafter. My understanding is that over 400 officers have already been trained and some 1,500 are likely to be trained over the next 12 months. The commissioner has advised of the need to have a steady rollout across the State so they can ensure that officers are properly trained before issuing further Tasers. He intends to have this trial rollout of the 200 Tasers and at the end of the 12 months and the training period, he will make an assessment whether any further Tasers are necessary in the State.

The Hon. MICHAEL GALLACHER: I ask a supplementary question. Given the time between the call for police assistance and the police being able to attend the scene, surely that must be an indication that the Government's policy has failed front-line police?

The PRESIDENT: Order! That is not a supplementary question.

POLICE FORCE OPERATION AVERT 2

The Hon. MICHAEL VEITCH: I ask a question of the Minister for Police. Can the Minister update the House on outcomes of recent police activities such as Operation Avert 2?

The Hon. TONY KELLY: I am sure all members will join me in congratulating the New South Wales Police Force on the recent statewide operational blitz on crime, which has had exceptional results. Operation Avert 2, which followed on from Operation Avert 1, ran from 6.00 a.m. last Friday through to 6.00 a.m. Monday. It targeted offenders wanted on outstanding warrants, as well as those in breach of their bail and parole conditions. More than 800 offenders across the State were arrested over the weekend and have been charged with over 1,200 offences so far.

Frontline police check for outstanding warrants and violations of bail conditions on a routine basis, but this targeted blitz sends a clear message that the New South Wales Police Force is committed to bringing crooks to justice. Commissioner Andrew Scipione's teams are to be commended for the even more successful version of the similar operation carried out earlier this year, to which I adverted earlier. Operation Avert 2 saw arrests being made not only in metropolitan areas but also right across regional New South Wales. The coordinated effort across the State led to the arrest of people who, until now, have been able to evade police by moving around the State and through other means. For those who think that they can flout the law by moving their address, this operation shows that there is nowhere to hide.

Operation Avert 2 also resulted in more than 1,400 bail compliance checks. Of those, 76 people were arrested for breaching their bail. A further 84 arrests and 111 charges were made based on DNA and fingerprint evidence. Operations like these not only address and resolve criminal matters and keep criminals in check but also serve to assist in many policing areas. For example, one arrest included a 39-year-old man, for revocation of parole, during a random breath test in Marrickville. However, also in the car with him was a 14-year-old girl who had been reported missing to police from the State's south. Successes like this are not just about numbers; they are about people's lives.

Let me outline some of the details. As this was a statewide operation, data is collected on a New South Wales Police Force regional level. The southern region—which include areas such as Harden, in the area of the Hon. Mick Veitch, and Crookwell, in the area of the Hon. Duncan Gay—on one day, for example 25 October, made 95 arrest warrant inquiries resulting in 8 arrests and 18 charges. The Operation Commander, Assistant Commissioner Frank Mennilli, praised all officers involved in Avert 2 for achieving such good results. Assistant Commissioner Mennilli has advised me that further Operation Averts would be planned for the future. This sort of proactive policing operation shows the New South Wales Police Force is committed to pursuing those who break the law and bringing them to justice.

MINISTER FOR POLICE TWEED HEADS VISIT

The Hon. DUNCAN GAY: My question is directed to the Minister for Police. Does the Minister recall his recent visit to Tweed Heads and concern expressed during the visit about his tight diary? Can the Minister advise why it was that he only made time for a lightning visit to local police and Police Association representatives, yet found time to hold a long meeting on the Draft Plan of Management for Crown Lands, which was organised by local Australian Labor Party branches?

The Hon. TONY KELLY: I thank the Deputy Leader of the Opposition for his question, and remind him of the answer I gave to a similar question, I think by another member, in the past few days. On that trip I covered a lot of area. In most areas, obviously I attempt to go to the commander in charge of the police station as well as meet as many other police as I can. That is exactly what I did at the Tweed. I spent in excess of 45 minutes there. I spent similar time at Ballina police station, and similar time at Coffs Harbour police station. On all occasions I have tried to meet as many police officers as I could, including the officer in charge. In every instance I met with the Police Association representative. At the Tweed I also met with a whole group of community people—

The Hon. Matthew Mason-Cox: ALP branch members.

The Hon. TONY KELLY: No. I do not know their exact party affiliations, but I think there were a number of Greens at the meeting, and I think there were a number of environmental people and a number of business people at the meeting. It was a meeting again of similar duration. Because the local member could not organise a meeting with me, the local branch organised this meeting so that community people could give me their concerns on a particular issue.

CREDIT RATING AGENCIES

Dr JOHN KAYE: I direct my question to the Treasurer. Is he aware of evidence presented to the United States Congressional Oversight Committee's inquiry into credit rating agencies and the financial crisis that led the committee chairman, Henry Waxman, to say, "The story of the credit rating agencies is a story of colossal failure"? Does the evidence of misleading advice and mismanagement cast doubt on the Government's strategy of unquestioning acceptance of the ratings determined by Standards and Poor's and Moody's?

The Hon. ERIC ROOZENDAAL: There seems to be an ongoing theme from the honourable member that—

The Hon. Michael Gallacher: Is that another new suit?

The Hon. ERIC ROOZENDAAL: No. I have worn this before.

Dr John Kaye: Point of order: The Minister is debating the question, rather than answering it.

The PRESIDENT: Order! The Minister will answer the question.

The Hon. ERIC ROOZENDAAL: The honourable member has an obsession about conspiracies involving rating agencies. If he is suggesting that we should not take note of the fact that we are on negative outlook, and that we should not do everything possible to protect the State's triple-A rating, he is clearly out of touch. I would have thought that anyone who has even a rudimentary understanding of the financial sector, and has observed what is happening right around the world, would know that institution after institution that survived the Great Depression is collapsing as a result of this major global financial crises. Institutions are refusing to lend to each other because they are suspicious about underlying debt. This is because there is major concern about the credit worthiness of institutions right around the world. We should be, and are, acting to protect our triple-A credit rating through the mini-budget process. The suggestion put by the honourable member that this is somehow a conspiracy by the rating agencies and that we should ignore the rating agencies would lead us—

Dr John Kaye: Point of order: The Minister is flouting your ruling that he should not debate the question. Yet again he has returned to debating the question, rather than answering it.

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

[*Interruption*]

The PRESIDENT: Order! I call the Deputy Leader of the Opposition to order for the first time.

The Hon. ERIC ROOZENDAAL: Dr John Kaye fails to understand that if we do not take action to protect our triple-A rating, we then get onto the slippery slope of credit rating downgrades. He fails to understand that you get downgraded because you have failed to act, and that if you do not act at the first threat from the agencies they then continue to downgrade you until you address the structural issues that face this Government. The agencies have made it clear that we need to re-prioritise our capital expenditure program. They have made it clear we need to look at our recurrent expenses, and they have made it clear we need to look at assets. We are doing all of those things, because we do not want to make the mistakes made in the past by other State governments, such as the Victorian Government, which took a decade, once it started on the slippery slide of downgrades, before it could be rescued.

JUROR UNDERSTANDING OF JUDICIAL INSTRUCTIONS

The Hon. AMANDA FAZIO: I address my question to the Attorney General. What is the latest information on juror understanding of judicial instructions in criminal trials?

The Hon. JOHN HATZISTERGOS: The Government is strongly committed to the improvement and maintenance of the New South Wales jury system. This commitment has been evidenced by a number of key reforms pursued by the Government in recent years. These reforms include legislation to allow for the empanelling of up to three additional jurors in lengthy criminal trials. This new provision is currently being utilised in the Baladjam trial at Parramatta. The reforms also include the introduction of majority verdicts in criminal trials involving New South Wales law, and giving judges the power to discharge individual jurors and continue with the trial, lessening the danger that long and complex trials will be aborted.

Further evidence of this commitment was available today with the release of the Bureau of Crime Statistics and Research [BOCSAR] report, entitled "Juror understanding of judicial instructions in criminal trials." The report contains the findings of a survey of 1,225 jurors conducted during between July 2007 and February 2008. The survey asked jurors to comment on their understanding of judicial instructions, judicial summing-up of trial evidence and other aspects of the trial process. I am pleased to report to the House that the results of the survey generally are pleasing. Some particularly encouraging results from the survey are that 97.1 per cent of jurors said that the judges who presided over the trial were easy to understand when summing-up; 94.9 per cent of jurors said that they understood all or most of the judge's instructions on the law; 85.3 per cent said that they understood nearly everything the judge said during the summing-up of trial evidence; and 81.7 per cent of jurors surveyed commented that summing-up of evidence by judges was about the right length.

These results are reassuring and reaffirm the central role played by juries in our criminal justice system. This central role guards against arguments that the courts are ivory towers disconnected from contemporary social values, and provides the community with an ongoing opportunity to participate in the criminal justice system. The report also highlights a divergence of opinion amongst the surveyed jurors about the meaning of the phrase "beyond reasonable doubt". When asked about the meaning, 55.4 per cent of jurors surveyed believed that the phrase meant they were sure that the person was guilty; 22.9 per cent believed that the phrase meant they were almost sure the person was guilty; 11.6 per cent believed that it meant it was very likely the person was guilty, and 10.1 per cent believed that it meant it was pretty likely that the person was guilty.

In response to the findings of the Bureau of Crime Statistics and Research report, I will be writing to the Law Reform Commission and key stakeholders to pursue a number of the issues raised. These issues include standardising the practice of providing jurors with transcripts of the trial judge's summing-up of evidence, and consideration of whether changes are necessary to the time at which judges provide directions on law during the trial. It must be remembered that the Bureau of Crime Statistics and Research conducted the survey as part of a broader reference given by the Government to the New South Wales Law Reform Commission relating to jury directions and warnings. The results of this survey will now inform the commission's final report on this issue, which is due mid next year. The Law Reform Commission reference relating to jury directions is just one of a number of references relating to juries that the Government has given to the commission in recent times, proof of the Government's ongoing commitment to an informed and robust reform of the New South Wales jury system.

MINI-BUDGET

The Hon. GREG PEARCE: I direct my question to the Treasurer. Can the Treasurer explain to the House what abilities were brought to bear in deciding on a mini-budget on 11 November 2008, given that the Government will have financial results only for the first three months of the financial year; new Commonwealth funding arrangements in areas such as health, education and disabilities will not be agreed before the Council of Australian Governments [COAG] meeting scheduled for 17 November 2008; Treasury has not issued revised estimates of GST revenues; Treasury has not issued revised mid-year economic forecasts, which would include growth and assessment of the recent Commonwealth Government stimulus package, and the Commonwealth will not determine approved infrastructure projects for funding until at least the end of 2008? What assurance can the Treasurer give to the House that the mini-budget will have a longer shelf life than the failed 2008-09 budget?

The Hon. ERIC ROOZENDAAL: I can certainly assure the House that we take the mini-budget process very seriously. We should remember that the honourable member's first contribution on the financial crisis was, of course, his trillion-dollar suggestion that he made in our very first interchange in the House after I became Treasurer, when he earned the nickname the Trillion Dollar Man.

The Hon. Matthew Mason-Cox: He will be Treasurer.

The Hon. ERIC ROOZENDAAL: However, I digress. We all know that in front of him in the queue is Michael Baird and Peter Debnam—come on! The suggestion of "doing nothing" comes from an Opposition that is bereft of any policy. In view of the global financial crisis, major downturns in revenues from land transfers and the revised result of last year's budget, it is vital that we bring forward the mini-budget. I remind the House that the Hon. Greg Pearce arranged an inquiry into the mini-budget, yet he still asks questions after wasting the time and resources of the House with that inquiry. Of course it is important to deliver the mini-budget. It will be delivered on 11 November and it is designed to defend the triple-A credit rating and to ensure that this economy and this State remain strong.

RURAL AND REGIONAL GENERAL PRACTITIONER INITIATIVES

The Hon. KAYEE GRIFFIN: I address my question to the Minister for Health. Can the Minister update the House on workforce initiatives that encourage doctors to work in rural and regional New South Wales?

The Hon. JOHN DELLA BOSCA: Workforce shortages are some of the biggest challenges facing our health system, not just in New South Wales but throughout Australia and internationally. The Government recognises that recruitment is difficult in our capital cities, but it can be even harder to attract medical professionals to rural and regional New South Wales.

[*Interruption*]

This side of the Chamber takes these matters seriously, unlike members opposite who continue to make banal interjections. We are committed to doing everything we possibly can to address this important issue.

The PRESIDENT: Order! The Deputy Leader of the Opposition will cease interjecting and allow the Minister to answer the question.

The Hon. JOHN DELLA BOSCA: While the international shortage presents challenges, we are determined to continue to deliver high-quality health services to all regions of New South Wales. We have created the Rural Preferential Program, a new initiative that enables doctors with an interest in rural practice to undertake more of their postgraduate training at a rural facility. New South Wales Health through the New South Wales Institute of Medical Education and Training introduced the program in 2007. The program started with 15 newly graduated doctors placed in 4 rural facilities, which increased to 35 doctors across 10 facilities in 2008. So far, the uptake for 2009 is 52 doctors across 9 facilities, an increase of nearly 50 per cent on last year. This program enables doctors to complete more of their prevocational training at their rural home hospital, including all five terms at some hospitals. In 2009 the participating hospitals that we on this side of the Chamber care about and The Nationals do not are Dubbo, Port Macquarie, Lismore, Wagga Wagga, Tamworth, Coffs Harbour, Orange, Tweed Heads and Maitland.

As well as encouraging our medical postgraduate students to work in rural New South Wales, we need to support general practitioners. With recurrent funding of $3.5 million, the New South Wales General Practice Procedural Training Program provides incentives for general practitioners to practice in rural areas. Through this program new positions for general practitioners and general practitioner registrars have been established for up to 35 procedural training posts in rural New South Wales in five specialties: anaesthetics, obstetrics, emergency medicine, surgery and mental health. Since the program's inception, 186 full-time, part-time and flexible positions have been filled across these five specialties, including 35 new starters this year.

The New South Wales Government established also the New South Wales Institute of Rural Clinical Services and Teaching and has provided it with an annual budget of $2 million to support rural clinicians and develop improved service delivery models for rural New South Wales. The institute has a number of programs that benefit rural clinicians, including the Rural Research Capacity Building Program, which aims to increase the number of rural and remote health workers who have knowledge and skills as well as evaluation and research methods.

Participants in the program receive funding for backfill while they undertake their research, and also have been provided with a mentor. The institute will also convene an all-rural New South Wales rural and remote health conference later in 2008. In 2008-09 the New South Wales Government is continuing its support of the New South Wales Rural Doctors Network, providing more than $1.2 million in funding for a range of programs to support rural training and rural practitioners. The Rees Government is committed to continuing its efforts to implement initiatives that will recruit and retrain rural health professionals.

FOX STUDIOS HAZARDOUS CHEMICALS USE

Reverend the Hon. Dr GORDON MOYES: My question is directed to the Attorney General, representing the Minister for Climate Change and the Environment. Is the Minister aware that the Environmental Protection Authority is responsible for monitoring the use of only two of a dozen hazardous chemicals at Fox Studios, including some styrene-based resin and certain clothes dyes? Is the Minister aware that currently there are no legislative or regulatory controls on the use of more than a dozen other chemicals at the Fox Studios site? Is the Minister aware that the hazardous chemicals for which there are currently no legislative or regulatory controls are extensively documented carcinogens? Is the Minister prepared to undertake an assessment of operations at Fox Studios regarding the use of currently monitored hazardous chemicals and their impacts upon Centennial Park and the surrounding residences, particularly in relation to airborne documented carcinogens?

The Hon. JOHN HATZISTERGOS: I will refer the question to the Minister and obtain a response.

GRAFTON BASE HOSPITAL AND HEALTH SERVICE REDEVELOPMENT

The Hon. JENNIFER GARDINER: My question is directed to the Minister for Health. No doubt he is aware that his predecessors, including the Hon. Craig Knowles in 2003, made promises to address Grafton hospital's longstanding need for a new and expanded emergency department and new operating theatres, but is he aware that, even with the Federal Government's contribution of $18 million, there is still, according to his department, a $7 million shortfall to ensure that the operating theatres and the emergency department are redeveloped in accordance with the hospital's master plan? Given that the $7 million promised by the Hon. Craig Knowles five years ago seems to have disappeared, what is he doing to ensure that the State Government honours its $7 million commitment when the much anticipated mini-budget is presented? When may the people of the Clarence Valley expect this overdue redevelopment to be fully funded and completed?

The Hon. JOHN DELLA BOSCA: Obviously the member is acquainted with the history of health services on the North Coast—as she may well be, since she played a big role in all the problems that were associated with the Port Macquarie exercise and lives with that heritage even now.

The Hon. Duncan Gay: Whom are you blaming today, Della?

The Hon. JOHN DELLA BOSCA: Let me say to the Deputy Leader of the Opposition that I do not blame anyone. I am very clear about what the member has asked. What I have to say about that is that we are squarely facing the change ahead of us to strengthen the New South Wales budget. I have not made any political pronouncements about the Grafton hospital but, as the Premier has quite clearly said, at this stage the Government has not ruled any particular initiative in or out. Everything will be considered. The Premier wants maximum flexibility as we strengthen the New South Wales economy.

I have asked New South Wales Health to examine capital works options with a view to determining the best way to continue to deliver first-class medical services right across New South Wales, which of course includes all areas of the State. The department is reviewing its capital works planning as well as budgets and procurement strategies to ensure value for money, and is continuing to consult with community members, clinicians and other stakeholders to ensure that services that are provided meet local requirements. The Government is committed to state-of-the-art medical facilities across the State being delivered in a responsible and effective way. Obviously, more information will be available about all these matters as part of the mini-budget.

SOLAR SAILOR RENEWABLE ENERGY SHIPPING DESIGNS

The Hon. TONY CATANZARITI: My question is addressed to the Minister for State Development. Will he inform the House about how a Sydney renewable energy company is playing an innovative role in the future of international shipping design?

The Hon. IAN MACDONALD: I thank the honourable member for his question and interest in renewable energy. I congratulate the Sydney renewable energy company Solar Sailor, which has secured an agreement with China Ocean Shipping Company, or COSCO, one of the world's largest shipping companies. That agreement is to develop its innovative wind and solar energy marine technology for giant tanker and bulker ships.

Solar Sailor has been a prominent local technology company since the Sydney Olympics. Many members have no doubt seen its solar- and wind-powered vessel, which currently operates on Sydney Harbour. Solar Sailor is an alumni member of the New South Wales Government's Australian Technology Showcase Program, which promotes leading technology companies and their products to national and international markets.

The Department of State and Regional Development, which administers the program, has been a long-time supporter of Solar Sailor and its patented technology. This technology consists of solar panels shaped like wings that are fitted to marine vessels to generate solar energy as well as capture wind power. This helps to supplement the use of marine fuel, thereby cutting operating costs and providing benefits for the environment as well as passenger comfort. Up until now this technology has been used only on smaller vessels, but Solar Sailor recently struck an agreement with China's largest shipping company, the China Ocean Shipping Company, to convert the technology for use on tanker and bulker ships. That will allow the China Ocean Shipping Company to supplement the use of ship fuel with renewable energy to cut costs and environmental emissions.

A former Prime Minister, Mr Bob Hawke, who is the chairman of Solar Sailor, has negotiated the agreement with the China Ocean Shipping Company. This will result in Solar Sailor being given access to two ships—a tanker and a bulker—to design, engineer and retrofit technology in a pilot test project over the next 16 months. A series of giant wings that are as big as the wings of a Boeing 747 or an A380 will be installed on the ships and will be covered in solar panels to capture the sun's energy while also harnessing ocean winds. In a sense, this will be a case of going back to the future—back to the days of sailing ships, but to the future in terms of using high technology solar and wind sails operated by computer, rather than sailcloth and rigging, which formerly was manned by a crew.

Solar Sailor says its technology has the potential to provide up to a 20 per cent reduction in fuel costs from solar and a further 20 per cent to 40 per cent from wind power in ideal conditions. If the pilot project proves to be successful, it is expected that the Solar Sailor technology will be commercialised and become a benchmark renewable option for the shipping industry. It could literally be built into the design of future ships. This is a breakthrough opportunity for a New South Wales technology company to play a leading role in the future of international shipping design—and it comes during a period when rising fuel costs and environmental concerns have taken centre stage. I congratulate Solar Sailor and its chief executive officer, Robert Dane. I look forward to watching the company's international progress in the future. The New South Wales Government will continue to support local companies such as Solar Sailor.

MORTGAGE FUNDS WITHDRAWAL SUSPENSION

Reverend the Hon. FRED NILE: I ask the Treasurer: Has the Federal Government given guarantees for deposits in regulated banks? Has that discriminated against investors, particularly self-funded retirees whose managed investment funds have now been frozen and cannot be withdrawn, and caused hardship? As the

majority of managed trust fund investors are New South Wales residents, what is he doing to provide assistance to people suffering hardship who are not eligible for unemployment benefits? What are the discussions he is having or the advice he is giving to the Federal Treasurer, Mr Swan, to assist in resolving the situation by giving guarantees to managed funds that agree to be regulated in a manner similar to the way in which banks are regulated?

The Hon. ERIC ROOZENDAAL: Reverend the Hon. Fred Nile has asked a very good question. There are a number of media reports that a number of cash management trusts and mortgage funds have been compelled to suspend withdrawals. Of particular concern are reports that one of the nation's largest fund managers, Colonial First State, will suspend $3.3 billion in funds, which I understand represents an investment by more than 60,000 investors.

Obviously the Government sympathises with investors who have been unable to obtain access to those funds. I am advised that while self-funded retirees who invest in such funds have been denied immediate access to their capital, this has not resulted in termination or delay of income streams from the funds. Nevertheless, the Opposition should be aware that the liquidity of these financial institutions is the responsibility of the Federal Government and federal agencies, such as the Australian Prudential Regulation Authority, the Australian Securities and Investment Commission and the Reserve Bank of Australia.

The Hon. Duncan Gay: The question came from Reverend the Hon. Fred Nile, not from us.

The Hon. ERIC ROOZENDAAL: Okay, but I knew you would be the ones to heckle me. I can always rely on Opposition members to heckle.

STATE COLONIAL RECORDS: OLD REGISTER

The Hon. HENRY TSANG: My question is addressed to the Minister for Lands. Will the Minister provide details of how the Rees Government is ensuring that some historical records of the colony of New South Wales are being made available to the public?

The Hon. TONY KELLY: The Department of Lands is one government agency that can trace its origins back to a time before the colony of New South Wales was established. That is because the Surveyor General was appointed before the First Fleet sailed from England in 1787. As a result, the Department of Lands is the custodian of a significant number of records of the history of the colony and the establishment of the State of New South Wales. These records and other cultural heritage items represent a unique and priceless collection. It is appropriate that these important documents are made available to the general public, but their age and fragile state have made that much more difficult to achieve. However, I am pleased to inform the House that many of these significant records are now accessible to the wider community as part of the Rees Government's commitment to make historical records available to the public.

In a joint project between the Department of Lands and New South Wales State Records, documents known as the Old Register have been transferred to DVD. The launch of the DVD was held in Parliament House last week, which the Hon. Don Harwin attended. The Old Register is a collection of nine individual registers that are officially known as the Register of Assignments and Other Legal Instruments. The first land grant in the colony of New South Wales was made to James Ruse in 1792. Following that grant, it was clear that there was nowhere for the people of New South Wales to officially record their land and other transactions. Indeed, some of those transactions were recorded on the back of the original document.

Without an official record of transactions, disputes about land ownership would arise, so the need for an official register was obvious. It was Governor Philip King who decided that an official register should be established. In 1800 and again in 1802 Governor King ordered that property transactions be registered, and that if they were not registered, the transaction would not be recognised by the courts. So in 1804—I do not know why it took four years—the first of the nine old registers was created. The Old Register provides a vital insight into the early days of the colony of New South Wales and the history of Australia, recording not only land transactions but also legal matters dating back to 1794.

The register also tells an important part of the story of the social fabric of the colony's early development. Information and items held by the Department of Lands include original land grants signed by early governors, numerous photographs, war memorials in the Queens Square building, statues of surveyors at the old Lands Department building in Bridge Street, and even a strange ball-shaped object held at Dubbo that

was used to allocate soldier settlement parcels of Crown land after the First World War. In addition to the DVD release recently, the paper records held by the Department of Lands are being electronically scanned and progressively made available from the Lands website. This will allow Lands to exploit the latest Internet technology to provide the public with easy access to these records, at the same time allowing the original paper records to be preserved for future generations. I congratulate the Department of Lands on its efforts to conserve these unique historical documents and make them available to the public. It is an effort we should all support.

JUST ENOUGH FAITH FOUNDATION FUNDRAISING

Ms LEE RHIANNON: I direct my question to the Minister for Police. Given that at the budget estimates hearings the Minister for Gaming and Racing said that an investigation by his office had identified at least 10 unlawful fundraising appeals by the homeless charity Just Enough Faith Foundation [JEFF], and given that the Minister said he had referred the results of the investigation to the Commissioner of Police to find whether offences under the Crimes Act and the Charitable Fundraising Act had been committed, will the Minister inform the House whether the final results of the police investigation will be made public to help ensure that this kind of conduct does not compromise public confidence in the charitable sector? Was one of the unlawful fundraising events the September 2005 world premiere of the Hollywood movie *Cinderella Man* at the Fox entertainment precinct, where more than $1 million was raised for the charity JEFF?

The Hon. TONY KELLY: I will undertake to get an answer to the member's detailed question.

SURGERY WAITING LISTS

The Hon. JOHN AJAKA: My question without notice is addressed to the Minister for Health. Does the Minister recall saying yesterday, in answer to my question, that the figures for the surgical waiting lists at Bulli, Shellharbour and Wollongong were "a product of some strange fantasy" on my part? How does the Minister explain the information printed on the department's website today which identifies 58,173 people on the waiting list, including 924 people at Bulli Hospital who have been on the waiting list for an average of 4.87 months, 331 people at Shellharbour Hospital with an average time of 2.73 months and 1,172 people at Wollongong Hospital with a time frame of 2.52 months? Does the Minister disagree with his own department's website?

The Hon. JOHN DELLA BOSCA: I repeat what I said yesterday and make the point that a few years ago 10,000 people were waiting longer than a year for elective surgery. The number is now down to fewer than 250 people statewide as at September, and I said that it was around about 50 the month before.

NON-GOVERNMENT HEALTH SECTOR

The Hon. PENNY SHARPE: My question is addressed to the Minister for Health. Will the Minister advise the House what the State Government is doing to support the work of non-government organisations in the health sector?

The Hon. JOHN DELLA BOSCA: I thank the honourable member for her ongoing interest in health issues. Delivering high-quality health services and helping New South Wales families to stay well requires a focus not only on hospitals but also on the support we provide in local communities. One way we achieve this is through partnerships with non-government organisations. Not-for-profit non-government organisations provide an effective and complementary range of health services to the community at a local level. This financial year the Government is committing hundreds of grants to non-government organisations across the State to help provide health services to local communities.

The New South Wales Health Non-Government Organisation Grants Program supports these organisations in establishing communication and care networks, support models and self-help initiatives at a community level. Approval for grants is based on the recommendations of the New South Wales Department of Health and health services. This financial year the grants will focus on programs in the following areas: Aboriginal health, HIV and AIDS, alternative birthing services, carers, community services, drug and alcohol, health promotion and education, health and transport—

The Hon. Michael Gallacher: On the side of the road.

The Hon. JOHN DELLA BOSCA: As a former serving policeman the Leader of the Opposition should not continue to trivialise the important role of our excellent emergency staff.

The Hon. Michael Gallacher: You did not answer that question properly at all.

The Hon. JOHN DELLA BOSCA: I always answer the Leader of the Opposition's questions properly. The grants will also focus on innovative services for homeless youth, mental health, victims of crime support and services for older people and people with a disability. One organisation to benefit from funding this financial year is the New South Wales branch of the Australian Breastfeeding Association. I am pleased to inform the House that the funding is being increased by 200 per cent, or nearly $60,000, from just over $28,000 to $88,000 per annum for the next three years. The Australian Breastfeeding Association provides mothers-to-be and new mothers with invaluable support and advice about how to best care for their new baby, and this extra funding will help them to expand this good work.

Research has proven that breastfeeding babies gives them the best possible start to life, and this increase in funding will help with that continued education. Some of the services that the breastfeeding association provides include a 24 hours a day, seven days a week telephone helpline for breastfeeding mothers in New South Wales, antenatal breastfeeding and parenting classes, community education classes, some home visiting programs to help nursing mothers and services for special needs mothers. The breastfeeding association gave key advice in the implementation of the New South Wales Health breastfeeding policy. It is vital that expectant and new mothers are given all the support they need during what can be an emotionally challenging time.

According to the latest medical research, breastfeeding protects babies from illness and infection, provides the correct food for growing babies, and aids in the development of eyesight, speech and intelligence. Other organisations to benefit from grants this financial year include the Leichhardt Women's Health Centre, the Royal Far West Children's Health Scheme, the Sydney Women's Counselling Centre and the Motor Neurone Disease Association. The Government is committed to providing high-quality health services not only in our hospitals but also across whole communities, and the non-government organisation grants program is helping us to achieve this goal.

TRAVELLING STOCK ROUTES

Mr IAN COHEN: My question is directed to the Minister for Lands. Last week the Minister informed the House of the $260,000 pilot study on two travelling stock routes in the Hunter region that had been handed back to the Department of Lands. What management principles and models will be transferable from a travelling stock routes pilot study in an urbanised and industrialised region such as the Hunter to the management of extremely important landscape values in the Central Division and Western Division? Given that the majority of travelling stock routes are in the Central Division and Western Division would it not be commonsense to undertake pilot studies in those divisions in order to develop a model that can be transplanted to the maximum number of travelling stock routes?

The Hon. TONY KELLY: Another day, another Greens scare campaign! Travelling stock routes [TSRs] have always been Crown land. The long established practice is that when rural lands protection boards no longer use TSRs they are handed back to the Department of Lands for management. One of the reasons that the Hunter was picked was that quite a number of the travelling stock routes, particularly in the Maitland area—where there is a good cross-section and some of which have particular environmental importance—are being handed back to the Department of Lands. That is why in conjunction with the Catchment Management Authority we provided funding of $260,000 to use on a trial basis. The Greens got it wrong when they talked about the Western Division because travelling stock routes in that area are not included. Western Division travelling stock routes are the responsibility of the Western Lands Commission, and that is the difference between the 2 million—

The Hon. Duncan Gay: The Hon. Ian Macdonald was going to give them to National Parks.

The Hon. TONY KELLY: No, he would never have done that, no way in the world.

[*Interruption*]

I acknowledge the interjection of the Minister for Primary Industries. There is no way in the world he would have agreed to do that.

TAMWORTH HOSPITAL REDEVELOPMENT

The Hon. TREVOR KHAN: My question is directed to the Minister for Health. Is the Minister aware that more than 2,500 signatories are on the online and written petition that calls on the Government to honour its

commitment to redevelop Tamworth hospital? Has the Minister lobbied his colleague, the Treasurer, to ensure that in the forthcoming mini-budget the redevelopment of Tamworth hospital is funded? Will the Minister now commit to the people of New England and the north-west that the Tamworth hospital redevelopment will commence on time and as promised 602 days ago?

The Hon. JOHN DELLA BOSCA: Tamworth hospital is of great interest to my colleagues in the Opposition. I understand that their candidate in the last State election actually publicly stated that the Tamworth hospital redevelopment should not take place and was a waste of money, and that is something we should always remember when we hear the Opposition's claim that it is on the ball on these matters.

The Hon. Michael Gallacher: Don't take advice from the Hon. John Hatzistergos.

The Hon. JOHN DELLA BOSCA: I always take advice from the Hon. John Hatzistergos, and my colleague, the Treasurer, often takes advice from me. Of course I have been discussing a range of matters, including health issues, with him and with all of my colleagues. Members of the Opposition should not think that they will cause me to make pronouncements outside of the formal resolutions of Cabinet about the mini-budget. Members of the Opposition know the mini-budget is being prepared and they know the date it will be handed down. Today the House resolved that the Treasurer will go to the lower House on 11 November to deliver the mini-budget, and at that time all members will know the answers to these matters. We will be able to discuss and explain how these issues fit into our very excellent plans for the future of New South Wales in what are difficult times.

I note that the member for Tamworth—not The Nationals candidate for the seat of Tamworth at the last election—is an outstanding member of the Legislative Assembly. He has been a strong advocate, unlike his opponent in the previous election, for the redevelopment of Tamworth hospital. As the Premier made clear, the Government is examining all areas in the lead-up to the mini-budget and nothing is being ruled in or out at this stage. I would add, however, that delivering high-quality health services remains a top priority of the Rees Government.

RECREATIONAL FISHING

The Hon. LYNDA VOLTZ: My question is addressed to the Minister for Primary Industries. Will the Minister inform the House of what the Government is doing to support recreational fishing in New South Wales?

The Hon. IAN MACDONALD: Approximately one million people go fishing for recreation in New South Wales every year, making it one of the State's most popular outdoor activities. Recreational fishing makes a significant contribution to the State's economy, estimated to be approximately half a billion dollars each year. The New South Wales Government is a strong supporter of the State's recreational fishing sector. The Government is working to ensure our valuable fisheries resources are shared fairly between the recreational sector, the commercial sector, indigenous fishers and conservation interests. Funds raised from the recreational fishing fee are placed into two trusts, one for saltwater and the other freshwater, and can only be spent on projects to improve recreational fishing in New South Wales.

In partnership with the New South Wales Recreational Fishing Trusts, the Government is spending $12 million this year on important initiatives across the State including: fish aggregating devices, which are installed along the coastline and attract fast-growing pelagic fish species, including dolphin fish, wahoo and marlin; stocking of freshwater native fish and trout, mulloway and prawns in estuaries; research on key fish species and fishing methods; specialised courses, such as the recent Fish Biology Workshop, which was held at Bondi last month; the provision of fish care volunteers—we currently have 350 volunteers who are teaching primary school students to fish as part of the New South Wales school curriculum; fishing clinics; fishing platforms; and artificial reefs.

As I announced earlier this month, the Government is looking to expand its artificial reefs program in Lake Macquarie, following the success of the reefs that were placed in the lake three years ago. Lake Macquarie was the first recreational fishing haven in New South Wales to trial artificial reefs, with 180 reef balls installed in 2005. Artificial reefs are made of moulded concrete balls, which can be easily moved, or completely removed if necessary. Reef balls are made using a special mix of concrete that allows algae to grow quickly, creating ideal marine habitat for fish and invertebrates. The reefs attract popular recreational fishing species, such as yellowfin bream, snapper, whiting, flathead, yellowtail kingfish and amberjack. Two years of scientific

monitoring of the artificial reefs in Lake Macquarie have shown that they have created valuable fish habitat, with more than 40 species of fish found living on the reefs. Recreational fishing groups have been so impressed with the reefs in the lake that they have been calling to expand the project.

The Hon. Duncan Gay: He is giving control to National Parks.

The Hon. IAN MACDONALD: In Lake Macquarie? Come off it! The Department of Primary Industries is preparing to deploy an additional 420 reef balls, and that will bring the total up to 600. An environmental report on the proposed expansion has been prepared and a development application will need to be approved by Lake Macquarie City Council. The construction of the reefs was strongly supported by Lake Macquarie City Council, recreational fishers and fishing clubs. The artificial reefs program is funded by the Recreational Fishing Trust, and is another great example of recreational fishing licence fees being put back into the water for the benefit of the entire community. Artificial reefs are also in operation in Botany Bay and St Georges Basin and have proved equally popular.

New artificial reefs are also currently under construction by the Department of Primary Industries in Lake Conjola, near Ulladulla, which consists of 400 reef balls. There are also plans for an artificial reef at Merimbula Lake. The Recreational Fishing Trust is funding those reefs. These are just some of the important projects underway in New South Wales to enhance our valuable recreational fishing sector and make sure this popular activity is enjoyed by future generations. As for the nonsense of the Deputy Leader of the Opposition, years ago the Opposition did nothing about recreational fishing trusts and did not put anything in place. The Deputy Leader of the Opposition went around opposing recreational fishing. He should get the record straight. [*Time expired.*]

WELLINGTON CORRECTIONAL CENTRE

Ms SYLVIA HALE: My question is directed to the Minister for Justice. According to the New South Wales Ombudsman's annual report of 2007-08 cells in the Wellington Correctional Centre are overcrowded. Will the Minister advise why he sought an exemption to clause 22 of the Public Health (General) Regulation 2002 to facilitate that overcrowding?

The Hon. JOHN HATZISTERGOS: The member's question is based on a false premise. I note from the Ombudsman's report that he is looking into the issue. As the report noted, the Department of Corrective Services sought and was granted an amended development application from Wellington council and an exemption under the provisions of clause 22 of the Public Health (General) Regulation 2002 regarding the floor area ratio per person. The exempted cells in Wellington Correctional Centre have potential to accommodate two inmates rather than one. The Wellington council was particularly supportive of the application. I am also advised in respect of the Wellington Correctional Centre that it complies with the Building Code of Australia with respect to natural ventilation and air changes that are achieved by mechanical means. This means that even if two inmates are living in one of those cells, they will have access to adequate fresh air.

PREVOCATIONAL GENERAL PRACTICE TRAINING

The Hon. MARIE FICARRA: My question without notice is directed to the Minister for Health. When will the Minister implement prevocational general practice training as requested by both the Federal Australian Medical Association president and the New South Wales Australian Medical Association president? Why is it that following Commonwealth funding for this program allowing junior doctors to experience general practice before deciding on which specialty to follow only one out of the 40 available sites is situated in New South Wales? What is the Minister's response to the concerns expressed by Dr Brian Morton, the New South Wales Australian Medical Association president, that this low take-up is due to the New South Wales Government being the only State government refusing to cover interns for indemnity and workers' compensation while working outside hospitals in general practice?

The Hon. JOHN DELLA BOSCA: New South Wales has guaranteed clinical placements for all Australian Government supported graduates in medicine. The Institute of Medical Education and Training [IMET] is responsible for the placement and training of interns. I recently met with the director of the institute, Professor Mark Brown. The Institute of Medical Education and Training has established a steering committee for managing the increase in medical graduate numbers. This group is developing strategies to support health services to train and supervise these new doctors in their intern year and then accommodate the next step in their career, thus ensuring New South Wales has a sustainable medical workforce into the future.

In 2008 the Institute of Medical Education and Training allocated 589 first-year doctors and 74 Australian Medical Council graduates to positions in New South Wales and Australian Capital Territory hospitals. In 2009, 647 first-year doctors have already accepted the offer of a placement. To increase our supply of health professionals, New South Wales was successful in lobbying for an additional 110 places to commence in 2007 as well as 80 new places for the rural medical program being established jointly by the universities of New England and Newcastle to commence in 2008. We have invested an extra $28.7 million over the past two years on postgraduate medical training. The Government will invest a minimum of $66 million on postgraduate medical education and training over the next four years with a further $5.4 million over four years to better support and strengthen the emergency workforce. This commitment includes recurrent funding of $3.8 million for the Institute of Medical Education and Training and recurrent funding of $700,000 for directors of clinical training who support the training of newly qualified doctors in their two postgraduate years.

The funding has meant that over 1,030 trainee specialist positions in psychiatry, surgery and medicine have improved access to training and built networks in rural and regional hospitals. While training and support of general practitioners is a Commonwealth responsibility, the New South Wales Government, in recognition of the important role of general practitioners, has a number of strategies to support general practitioners, including the general practitioner procedural training program. More than 181 general practitioners in this program in full-time, part-time and flexible positions in rural areas have received skills training in emergency, obstetrics, anaesthetics, surgery and mental health to enhance health care provision to local communities. The Government is working hard to build a strong and stable health workforce, and is working hard with general practitioners.

EMPLOYMENT MARKET

The Hon. EDDIE OBEID: Can the Treasurer inform the House about the state of the New South Wales employment market?

The Hon. ERIC ROOZENDAAL: I thank the honourable member for his question and interest in this important matter. The New South Wales jobs market is showing signs of slowing under the weight of the international economic slowdown and the credit crisis. Nevertheless, the total number of people employed is near record highs while the unemployment rate is still at a generational low. The New South Wales unemployment rate for September 2008 is 4.8 per cent. During September 2008 employment in New South Wales rose by 9,166 to 3,404,900, and that is 31,740 higher than in September last year. The New South Wales labour market also performed well in terms of the proportion of full-time workers.

The Hon. Michael Gallacher: I hope you are going to get a haircut before you go the Legislative Assembly. You are starting to look like Ringo with your long hair.

The Hon. ERIC ROOZENDAAL: Of those employees, over 2,472,000 people were in full-time employment, which is 72.6 per cent of the employed workforce. This compares with 71.4 per cent in the rest of Australia.

The Hon. Charlie Lynn: Ringo Roozendaal.

The Hon. John Della Bosca: Charlie is putting the band back together.

The Hon. ERIC ROOZENDAAL: My wife likes my hair the way it is, thank you very much, and I don't ever want to be part of your fantasy, let me tell you! From March 1995 until September 2008 employment in New South Wales has risen by 688,219. The vast bulk of this employment has been generated in the last decade with 493,559 of that rise occurring since March 1999, 255,087 since March 2003 and 91,586 since March 2007. The macroeconomic levers that drive economic cycles and credit growth are beyond the control of State governments. However, we can influence the microeconomic issues associated with service delivery and regulation.

The Government is supporting business to stimulate the labour market through payroll tax cuts that are scheduled to commence from 1 January next year. In total these tax cuts are the equivalent of injecting $1.9 billion into New South Wales businesses over the next four years to protect New South Wales jobs as much as possible during these very difficult and uncertain times. This initiative has been warmly greeted by the business community as an important step needed to underpin business confidence.

The employment market in New South Wales does not enjoy the benefits of the mining boom to the same extent as other States do. We have a mature economy largely built around service industries that are

suffering at the moment with the impact of the global economic crisis. This is why the Government will continue to look for other opportunities in the mini-budget to stimulate parts of the local economy. In these tough economic times, the message the Government has for New South Wales businesses is that it understands the situation they face and will work with them to deal with the crisis and come out the other side. The Government understands that working with business is the best way to protect New South Wales jobs.

The Hon. JOHN DELLA BOSCA: If members have further questions, I suggest that they put them on notice.

Questions without notice concluded.

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

TABLING OF PAPERS

The Hon. Henry Tsang tabled the following paper:

Annual Reports (Departments) Act 1985—Report of the Department of Juvenile Justice for the year ended 30 June 2008

Ordered to be printed on motion by the Hon. Henry Tsang.

SELECT COMMITTEE ON ELECTORAL AND POLITICAL PARTY FUNDING

Report: Electoral and Political Party Funding in New South Wales

Debate resumed from 22 October 2008.

The Hon. DON HARWIN [2.32 p.m.]: The Select Committee on Electoral and Political Party Funding, which was established by my motion, tabled its report in June. An old proverb states that while defeat is an orphan, victory has a thousand fathers. It has indeed been very interesting to watch people scrambling to take credit for this report. I can understand up to a point Ms Lee Rhiannon's positioning on the report given her non-membership of the committee. However, I am sure Reverend the Hon. Fred Nile must have been misquoted in the *Sydney Morning Herald* of 23 August as saying that "he was not sure the other committee members initially shared his strong desire for reform".

The report endorses many aspects of the Canadian system of election funding. I have been a proponent of election finance reform throughout my time in this place and have advocated the Canadian system as a possible model for our own arrangements both in the House for many years and, more recently, in the committee. As early as February 2004 I was drawing the attention of this House to the reforms in Canada and last year I took an opportunity provided to me by virtue of Commonwealth Parliamentary Association New South Wales branch overseas study grants to travel there to enhance my understanding of the Canadian system. Earlier this year I also had the chance to discuss the system with Sir Hayden Phillips, a former permanent secretary of the Lord Chancellor's Department and the chair of the Blair Government's inter-party talks involving the three major political parties in Britain.

My discussion with Sir Hayden and with many of the pre-eminent academics in the field of election finance reform made it clear to me that the Canadian model is widely regarded as the world's best practice. I am delighted that the report embraces the model as the way forward for change in New South Wales. Change is most desperately and urgently needed. The key concerns that precipitated the establishment of the committee were the escalating costs of election campaigns; the imbalance in resources available to the parties, particularly to the party of government; the perception that the huge funding advantage achieved by the party of government resulted from donations from corporations in industry sectors subject to close regulation by the State Government, including property, liquor and gaming; and specific grievances held by minor parties with aspects of the electoral funding regime.

New South Wales Labor has been able to increase its campaign expenditure at each subsequent general election since taking office in 1995. There has been an incredible 467 per cent increase in Labor's campaign expenditure between the March 1995 election and the March 2007 election. The Coalition has been able to increase its expenditure by only 72 percent over the same period. This escalating imbalance is not in the public interest nor is the skyrocketing level of spending. It is worth noting that the consumer price index during the same period rose by only 36.7 per cent.

The select committee had five of the six parties represented in Parliament included in the membership. The Greens failed to gain a position because the Labor and conservative crossbench members combined to block their selection. Reverend the Hon. Fred Nile was elected as chair and I was elected as deputy chair. The committee received 189 submissions. The most significant, apart from those from the political parties, were submissions from the Urban Task Force, the Property Council of Australia, Action on Smoking and Health Australia, otherwise known as ASH, the Cancer Council, the Public Interest Advocacy Centre, Democratic Audit of Australia, and Dr Joo-Cheong Tham of the University of Melbourne.

The committee held five public hearings and heard from 32 witnesses, and a public forum was also held. Half of the submissions received by the committee advocated either a complete ban on political donations or a partial ban on donations from certain sources. Two-thirds of submissions argued for tighter rules on disclosure. The report includes 47 substantive recommendations that are designed to apply to both State and local government in New South Wales. I emphasise that only two of these recommendations were the subject of a division. The Government adopted several reforms recommended by the committee before this report was tabled. These reforms were legislated so they could be in place for the local government elections that occurred in September. They included a reduction in the disclosure limit to $1,000 and the implementation of six-monthly disclosures of donations and electoral expenditure. These are seen as interim steps while the green paper process initiated by the Federal Special Minister of State, the Hon. John Faulkner, proceeds.

Unfortunately, the Government is now dragging its feet as to the remainder of the reforms recommended in the report. One reason cited for inaction is the delay with the Commonwealth Government's green paper, originally due in July but still not released. There are reports that the paper has encountered opposition among Federal Labor MPs concerned about proposals to tighten controls over disclosure, funding and expenditure. This Government is still awaiting the paper on constitutional and policy issues that it commissioned Associate Professor Anne Twomey to prepare. Without her paper, the Government has said, further donations reform cannot be undertaken.

It is now six months since former Premier Iemma had his conversion on the road to Wollongong, as Barry O'Farrell refers to it, and dramatically declared on Easter Saturday that, "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 … the time has come to test the viability of a full public system." In the intervening six months the Government's progress on the subject has been disappointing and half-hearted. Despite avowing a commitment to meaningful reform, and despite having a comprehensive raft of recommendations from the select committee, the Government dismisses further action, pleading the need to wait for the Commonwealth Government to deliver its overdue green paper. It is certainly true that a key feature of the committee's recommendations is a preference for harmonisation between State and Federal jurisdictions as far as possible. The Committee has recommended "going it alone", however, if the discussions around the green paper process do not lead to major systemic reforms.

The Federal complexion of our major political parties, in which political parties at a State level operate as branches or divisions of national party organisations, makes unilateral supply-side restrictions somewhat problematic. However, it is quite feasible for an individual State to legislate for expenditure caps. Restricting the amount that candidates and parties can spend during an election campaign will address community concern about the link between donations and decisions by the current Labor Government. Campaign spending limits would also change the election financing landscape because if you cannot spend the money there is no need to raise it. This is an area in which New South Wales could make progress immediately, without the need to wait for the release of the green paper. At the recent Sackville Hotel debate Premier Rees shook hands with Barry O'Farrell on reform and said it would happen. We are waiting to see whether he delivers.

Further, one of the committee's key recommendations is that the Auditor-General be granted oversight responsibility for government advertising. Self-evidently, caps on campaign expenditure by political parties and candidates would be meaningless without complementary legislation to stop the misuse of government advertising budgets. The committee suggests that the Auditor-General's powers be modelled on those of the Auditor-General in Ontario, Canada. Once again, this recommendation concurs with the position that the Coalition has been advocating for quite some time. In May 2007 the Leader of the Opposition, Mr Barry O'Farrell. MP, introduced the Government Publicity Control Bill, which provided for the granting of such powers to the Auditor-General. Regrettably, it was defeated in the other place by Government members last October.

I advocated the benefits of the Ontario oversight scheme in a speech in this Chamber that same month. The Government need not wait for the release of the green paper before granting such powers to the

Auditor-General. I have now given notice of a bill for an Act to provide for the scrutiny of, and guidelines for, government publicity which has or is likely to have the capacity to influence public support for a political party or for candidates for election to, or members of, Parliament, and for other purposes. Reverend the Hon. Fred Nile's chairman's foreword to the report notes:

> The time for change is now.

Premier Rees should move swiftly to implement the recommendations of this report. It is more than six months since the Government committed itself to substantive reform, and there is no reason for Premier Rees to continue to await the Commonwealth Government's overdue green paper. Finally, I acknowledge the tremendous contribution that the committee staff made towards the production of this impressive report and the exhaustive inquiry process that is behind it. Rachel Simpson, Madeleine Foley and their team are to be congratulated on their work.

The Hon. AMANDA FAZIO [2.43 p.m.]: I am pleased to support the report of the Select Committee on Electoral and Political Party Funding in New South Wales. New South Wales has the good fortune to again be at the forefront of reforms in electoral and political party funding. With the Federal Government also undertaking a major review of the Federal laws relating to electoral and political party funding, the opportunity exists to develop a system where the requirements of Federal and State laws can dovetail together and result in a uniform and streamlined system that enhances accountability and transparency and makes compliance easier for candidates, donors and party organisations. Most importantly, any loopholes that have been exploited in the past could be closed.

The New South Wales Election Funding Act 1981 was a pioneering piece of legislation that led to the first comprehensive election finance scheme in Australia. The Act introduced public funding of State elections to New South Wales, and made disclosure of donations compulsory. The Act aimed to level the playing field by reducing the disparity of financial resources available to parties and candidates, and to prevent undue influence by requiring donations to be disclosed. The Election Funding Authority was established to oversee the new scheme. In 1983 the Federal Government followed suit and introduced its own public funding and disclosure scheme.

Following the election of the new Federal Labor Government in November 2007 Senator the Hon. John Faulkner, Special Minister of State, announced that the Government would make several modifications to strengthen the electoral regime. They included changes to some of the controversial amendments passed by the previous government in 2006, particularly reversing the disclosure limit for donations. Minister Faulkner also announced that the Government would release an electoral reform green paper. The first part, which was released in July 2008, examined disclosure, expenditure and funding issues. The second part, to be released in October 2008, will be directed at identifying other areas of electoral law that need strengthening. The Prime Minister has indicated that he will seek the cooperation of the States and Territories in producing the green paper and in advocating nationwide electoral reform.

I greatly regret that, while it is evident that there is support across the political spectrum for reform of the electoral funding system, there are differing opinions as to the nature of that reform. I also find it very regrettable that the Rudd Government's plan to inject greater integrity in our electoral laws has been stalled because the Federal Opposition sent the urgent Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 to the Joint Standing Committee on Electoral Matters with a reporting date of 30 June 2009. No genuine review or consultation on the bill could possibly require a full year or more. The members of the Commonwealth Joint Standing Committee on Electoral Matters agreed, and their report was released on 23 October. The main recommendations are that the Senate should support the proposals in the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008. Hopefully, the Senate will now act in a responsible manner and pass this legislation. I now return to the issue of why we urgently need reform of political donations in New South Wales. My colleague the Hon. Eric Roozendaal in his inaugural speech in October 2004 stated:

> There is no doubt the Australian public are uncomfortable with the interaction of donations and politics. They have every right to be. It is my strong belief that all political parties need to work together to change the funding of the political process. It is unreasonable to believe that the unilateral regulation of fundraising by any one party could ever be effective; it would place that party at a serious competitive disadvantage. A national, bipartisan approach is required, and caps need to be placed on campaign spending. The fundraising process must become completely transparent, and all donations must be traced to their true sources.
>
> There is no doubt that such reforms need to be accompanied by a major increase in public funding. But surely that is a small price to pay for a fairer, cleaner democratic system in a country that can otherwise boast the most transparent electoral laws in the world. Unlike some, I do not argue this perspective for political advantage, but rather for the purpose of achieving a fairer political process.

I believe that the recommendations contained in the committee's report cover all of the aspects of electoral and political party funding that need to be reformed. We should not be afraid of once again being at the forefront of reform. I am confident that a system can be devised that will effectively and efficiently introduce the reforms that the committee is recommending and that will work effectively with the reforms being proposed by the Commonwealth. As the Hon. Mick Veitch noted, the Government members did lodge a short dissenting report that covered only two issues. Otherwise there was genuine enthusiasm for reform among the committee members. I turn to the matter of some of the witnesses that appeared before the inquiry and the double standards and hypocrisy that they displayed. First I will start with Clover Moore, MP, who stated at the outset:

> I represent an inner-city sophisticated electorate.

Ms Moore spouted her usual holier -than -thou attitude, particularly in relation to property developers, but was very light on detail when asked about inconsistencies in relation to her campaigns. In response to a question asked of her about only declaring $950 as being the value of an in-kind donation of six weeks free rent of a two-storey commercial terrace in Ultimo, she responded:

> The use of the Harris Street Campaign Office was arranged by Mr Barry Goldman of Portfolio Realty ... the declared value is based on advice received at the time ...

I still think $950 for six weeks rent of a commercial terrace in Ultimo has got to be the bargain of the century. Ms Moore was asked:

> You clearly stated that you do not accept developer donations. When this issue was raised with you by the *Sydney Morning Herald* you said that the $30,000 did not come from developer donations. Is it not true that there is no way that you could know where that money came from or who were the original donors?

Ms Moore responded:

> There is no way that I am compromised by that donation because I do not know where that money came from other than that it came to me from Living Sydney.

I did not know that using the ostrich defence was still current, but perhaps it is in an inner-city sophisticated electorate. The Greens also had a unique take on the inquiry. Through their Democracy for Sale website they had tracked the source of donations to all of the major parties and claimed that they all had corrupting influences. However, they will not support a ban on individual donations. This is perhaps because they received rather large donations from wealthy individuals. Claiming "we don't take corporate donations" is meaningless when there is no transparency in terms of the means by which their individual donors came to have such large sums of money. I checked their last returns, which showed donations from individuals to the extent of $55,000, $30,000, $61,000 and $60,000. There were too many $5,000 and $10,000 donations for me to add up. During the inquiry then Premier Iemma announced a raft of changes that have subsequently come into effect.

These were to implement six-monthly disclosures in June and December each year; commit to lowering the disclosure limit, if the Federal Government did so; require developers to declare donations when lodging development applications; formulate clearer guidelines for councillors voting on decisions involving donors; require all councils to record the voting history of councillors on development matters; require donations to be made to and administered by party headquarters rather than individual candidates, and to consider how to apply this to independent candidates; and to implement online disclosure of donations.

On 22 March the media reported the then Premier as advocating a ban on all donations. A few days later, in a supplementary submission to the committee, the General Secretary of the New South Wales Australia Labor Party, Karl Bitar, confirmed that the Premier had tasked him with initiating discussions with other parties to build bipartisan support for a ban on donations. Mr Bitar, in his evidence to the committee, stated empathically that spending caps were not the way to go as they were impossible to enforce: he quoted a number of instances in overseas jurisdictions to verify this. I strongly support his call for a ban on all donations and full public funding. I draw to members' attention the statement by Premier Rees on 10 October 2008 that political donations should become a thing of the past with taxpayer-funded elections being the only way to ensure that the political system is squeaky -clean.

In recent times more than enough has been said about corruption and donations to Wollongong City Council, but we should remember that this council is just one of a string of councils sacked for similar conduct—let us not forget Tweed Heads and Coffs Harbour many years ago. This problem rears its ugly head from time to time and councils of all political persuasions have been involved. The betrayal of public trust by

elected public officials and council officers from senior to junior is unacceptable. Only through sweeping reform of election and political party funding will we be able to bring about the change that is needed, restore public faith and make sure that such corruption scandals are a thing of the past.

I look forward to the committee's recommendations being implemented, with the minor changes suggested by the Government members, so that New South Wales once again can be at the forefront of reform in this regard. The two issues on which the committee's Government members dissented were recommendation five, regarding oversight by the Auditor-General. Our reason was that the Auditor-General recently found that the New South Wales Government had introduced greater vigour into the process for approving government advertising. The Auditor-General stated:

> The Government has improved guidance for agencies and introduced a more robust framework for approving advertising campaigns. Greater rigour has been introduced into the process by requiring campaigns to be peer reviewed and approved by Cabinet.

I thank all committee members for their contributions to the inquiry, and for their commitment and bipartisan approach to the committee's work. I thank also the Electoral Commissioner and his staff for their cooperation throughout the review. As well, I thank those who provided submissions and gave evidence during the inquiry, as their input was valuable. The committee was ably supported in its work by the staff of the secretariat and I thank them as well.

The Hon. JENNIFER GARDINER [2.52 p.m.]: I thank the House for the opportunity to serve on the Select Committee on Electoral and Political Party Funding. As others have said, it was quite a remarkable committee in the consensus that was achieved. The committee was given the brief to examine the question of election funding and disclosure, including the advantages and disadvantages of banning all donations from corporations, unions and organisations to parties and candidates; the advantages and disadvantages of introducing limits on expenditure in election campaigns; and the impact of political donations on the democratic process. I also thank all the committee staff for their assistance throughout the inquiry, which was delayed deliberately until after the Federal election. Some of us had other duties to perform, so we waited until the decks were cleared, so to speak, to enable the committee to look at the issue with fresh eyes after the Federal election.

As other speakers have mentioned, there is a need for consistent election funding rules across Australia. There is no reason for New South Wales to continue to drag its feet just because the Federal Government is now running behind with its supposed reform agenda. We are still awaiting the Rudd Government's substantial response to the public debate in Australia about political donations that has raged not only in New South Wales but also in Queensland and Western Australia. The committee examined the election funding regimes in other States and countries. In essence, the committee recommended the adoption of a version of the Canadian model of campaign funding and donations, which is contained in one particular recommendation that all but small political donations by individuals be kept at $1,000 per political party per year and $1,000 per independent candidate per electoral cycle.

The committee recommended also that the Premier should investigate all relevant legal and constitutional issues arising from such a ban and liaise with the Federal Government to ensure national consistency on electoral donation and disclosure laws. During the budget estimates hearings it was ascertained from the Premier that he had received advice from Professor Anne Twomey on whether any legal and constitutional issues arise from a total ban—promoted at Easter by former Premier Mr Iemma—on political donations or on the limited donations that we as a committee had recommended to this Parliament.

Unfortunately, we do not know how much of the report the Premier has read. Obviously, he has many other issues on his mind and on his plate, which seem to be gathering pace as each day goes by. However, election funding is an important issue. People expect legislative reform on this issue well before the next general election. This debate cannot tick away month after month or year after year. I suggest that legislation should be introduced to this House before Christmas or, at the latest, in the autumn of 2009. This will ensure that these broad-ranging reforms are on the statute book for the benefit of all political parties and candidates contesting the 2011 election.

The committee recommended across-the-board six -monthly disclosures of donations. It is appreciated that this imposes an onerous burden on some political parties, particularly smaller parties. Perhaps with online electronic reporting the burden will be lessened for those political parties that not necessarily are interested in hiding their donations but have fewer resources to allocate to complete endless forms every six months. Many Australian parliamentarians and commentators, including some members in this House, from both political

persuasions, have said that the current political funding system is unsustainable. The current election funding system in New South Wales is out of whack and has brought our democracy into disrepute; sometimes even the perception of corruption can be corrosive to our democracy. Of course, the committee examined the public perception that the former Minister for Planning, Mr Sartor, who had a great deal of power under the Environmental Planning and Assessment Act, perhaps was influenced by the level of donations that were flooding into the Australian Labor Party coffers. It is noteworthy that Mr Sartor is no longer the Minister for Planning. I believe he has stated on the public record that he feels that the perception I have described was one of the factors in his not being selected for the Rees Government's Ministry.

The committee made some important recommendations, such as the one pointing out the great deal of concern in New South Wales about the extent of government taxpayer-funded advertising. The committee unanimously recommended that the Premier entrust the Auditor-General with oversight responsibility for government advertising. As my colleague the Hon. Don Harwin has mentioned, there is a model up and running in Ontario that would could be implemented in New South Wales with relative ease.

The Nationals in many respects shared many of the views expressed across the table by all political parties. Major political parties are still constituted mainly by volunteers. I know that the Hon. Don Harwin, the Hon. Michael Veitch and I were concerned to guard against any new legislation acting as a disincentive to people who want to do voluntary work in the cause for their political party and in support of candidates who support the beliefs and values of their political party. That matter was greeted with consensus, which ensures that that aspect of political party operations will remain very important in Australia, both now and in the future.

From my point of view, in any model that the Parliament adopts it is very important that bipartisan and tripartite support of legislative reform is achieved across the board for a model that in the end is fair and is not lopsided or favouring one side of politics. Many supporters of The Nationals are concerned about what will happen to the unions and the flow of funds to the Australian Labor Party under any model that is eventually adopted. We will keep a very close eye on that development.

The committee has recommended that further resources be allocated to the Electoral Commission. I thank the Electoral Commissioner and his staff for their assistance with this inquiry, which at times has been quite extensive. The committee supports additional resources for the commission because of the additional workload that has already been imposed, and will continue to be imposed as more substantial reforms, hopefully, are rolled out. I look forward to the next stage of this debate. I hope that it will be sooner rather than later.

Ms LEE RHIANNON [3.02 p.m.]: I join in thanking the committee staff because, as is the case with so many committee inquiries, the thoroughness that they bring to a project really enhances the final outcome. That was certainly the case with this report. I thank also the staff of the Election Funding Authority. Although I was not a member of the committee that conducted the inquiry, I know about the extensive assistance the staff provided through our Democracy for Sale project with the Election Funding Authority. When the next chapter of history is written on the history of election funding reform in New South Wales the report before the House and the inquiry leading to that report will be regarded as most important.

It is also worth remembering the close involvement of many community groups that have been advocating for many years the need for extensive reform. We should always remember that it is not inquiries in isolation that effect change but, rather, the agitation and hard work contributed over many years by people in the community who advocate for change and, in this case, for democracy to be returned to an even keel. We witnessed the impact of the damaging Wollongong revelations played out in the early part of this year when the former Premier, Mr Iemma, on 22 March had his famous headline on the front page of the *Sydney Morning Herald*, "Iemma backs political donation reform". It was published on Easter Saturday, and I must admit I was not expecting to read such a headline on that day, or even so soon. However, the pressure was on, and the Labor Party needed a circuit-breaker. The former Premier's comment was welcome.

Subsequently the Greens met Mr Karl Bitar, who at that time was the secretary of the New South Wales Labor Party. I understand that he met with representatives of other political parties as well, and he said that his role was to take forward Mr Iemma's commitment to banning donations. I mention that because we are now under the new leadership of Premier Rees. On 9 September Mr Rees said on the *702 Morning* show that he was committed to funding reform: he said, "We will be shortly announcing a major political funding reform package." Now, at the end of October, we still have not seen that package.

I am aware from discussions between the Greens and Mr Rees that the matters are extremely complex. The Greens agreed with that, but during those discussions I urged Mr Rees to follow through on the commitment. Labor gave the commitment, and clear recommendations have been made in the report being discussed in the House. The Government must dither no longer. The Government should come forward with a plan. It may be that the Government is revising its plans in the context of what Federal Labor is doing, but the Greens certainly believe that considerable changes can be made at a State level.

Some of the key changes that can be made by the State relate to tightening up who gives donations. The position of the Greens, as stated on the record over many years, is that there should be a ban on donations from corporations and other organisations as well as a strict limit on donations from individuals. If Mr Rees is saying that that is too harsh, let us remember that sectional interests of corporations have been banned from giving donations in other contexts, such as the tobacco industry and the asbestos industry. The political process should shift away from donations from developers and hotels. The Greens recognise the complexity resulting from donations emanating from other States, but New South Wales should lead. Premier Rees would be very foolish to abandon plans for political donations reform, particularly as he has given a personal commitment, not just a commitment on behalf of his colleagues, to follow through. The banning of political donations is a reform that should be implemented.

It is also important to remember that the reforms that came through in June this year were presented by the Government as measures to clean up the political funding regime before local government elections were held. The reforms were so minimal that they could hardly be placed in the category of political funding reform. While an important reform was that the period of disclosure was reduced from four years to every six months, which will give the public a greater opportunity to be aware of the donations that have been made, that level of reform merely nibbles at the edges of the problem. We should establish a regime that is similar to the one operating in Canada whereby donations are banned and there is a cap on election expenditure. They are the two parallel reforms that should be implemented.

I must say I was disappointed in the contribution of the Hon. Amanda Fazio. It was an exposition of the old Labor style that never changes—kick the protagonists, and kick them hard—instead of recognising that the Labor Party, let alone the whole democratic process, is bleeding because of the damage done by political donations. We should remember that political donations damage all politicians, not just political parties. The Greens have been advocating for a long time the type of reform recommended by the report. Having attended many of these meetings, I know that people are cynical about engaging with the political process. Reform in this area is long overdue.

It is worth remembering the fairly tortured history of political funding reform in New South Wales. The first round of reform occurred in 1981. Interestingly, when reform was introduced by a Labor Government the Liberals and The Nationals opposed it. When Labor picked up an extra six seats and the Liberals were hit with a $2 million debt at the 1981 State election, the Liberals decided to apply for political funding although they had been opposed to it. The National Country Party, as it was called at the time, was unwilling to engage in such a quick policy reversal; it chose to wait until the next State election to pick up public funding. But that was after it had waged a ferocious campaign in opposition to public funding. It is important to acknowledge how far we have come. On 22 March, within a few hours of Premier Iemma making his important statement, the Leader of the Liberal Party, Mr Barry O'Farrell, had also changed his position. He held a press conference at lunchtime that day saying that he supported the call for a ban on political donations.

The Hon. Don Harwin: But the size of his change wasn't quite so big.

Ms LEE RHIANNON: I acknowledge that Mr O'Farrell had previously supported a cap on election expenditure. I acknowledge that a number of individuals from across the political parties have supported political funding reform for many years. Carmen Lawrence has been a clear spokesperson; she identified the urgent need for changes. The Treasurer, Mr Roozendaal, in his first speech in this House, spoke about reform. Mr Harwin from the Coalition was an early advocate for political funding reform. So with this report we have cross-party support. The recommendations in the report are similar to the model in Canada, where the system has been tested. In some cases it has even gone to the High Court and survived challenges. Again, there is no excuse for the Labor Government to go so soft on the need for change. Mr Rees would be wise to be an articulate advocate of the urgent need for political funding reform to restore faith in democracy in this State. It would be one of the biggest contributions he could make in his time as leader.

Debate adjourned on motion by the Hon. Greg Donnelly 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

Debate resumed from 24 June 2008.

The Hon. HELEN WESTWOOD [3.13 p.m.]: It is with pleasure that I speak to the report of the Committee on the Health Care Complaints Commission on its review of the commission's 2006-07 annual report. This report fulfils the committee's responsibilities under the Health Care Complaints Act 1993 to examine all reports produced by the commission. This is the committee's second such report in the Fifty-fourth Parliament, and I acknowledge at the outset the hard work of my colleagues on the committee, both in this Chamber and in the other place, and their commitment to ensuring that this report was made public in the first parliamentary session of 2008.

I specifically mention Dr Andrew McDonald. Unfortunately he is no longer the deputy chair of the committee; he resigned as deputy chair when he was appointed as a Parliamentary Secretary. However, the committee was fortunate to have his expertise and experience during its work, especially with this report and another report the House will take note of shortly. I place on the record my thanks to Dr McDonald for his contribution to the committee's work. I also thank the hardworking committee staff. That group of professional people assisted us in getting these reports to the Parliament in a timely manner.

The review was conducted in exceptional circumstances when considered in the context of the wider health system. As members are aware, in 2008 the Government set in train major processes of inquiry and reform in the operation of the New South Wales health system. Public misgivings have been expressed regarding the effectiveness of the commission's complaints handling methods in fully exploring each and every complaint brought to its attention. The committee acknowledges that the commission's complaints handling work is high volume and stressful as complainants have often suffered catastrophic losses in their lives and experienced the death of loved ones. When misfortune occurs with the delivery of health services people rely on the commission to find out what went wrong.

Having regard to the surrounding circumstances, the committee was, in this review, particularly concerned to ensure that the commission's investigations of individual complaints are as responsive, thorough and transparent as possible, and that the commission does its utmost for complainants who may have suffered traumatic experiences as a result of their interactions with the New South Wales health system. Under section 3 of the Health Care Complaints Act, the commission's fundamental responsibilities are to receive and assess complaints relating to health service providers in New South Wales, resolve or assist in the resolution of complaints, investigate serious complaints that raise questions of public health and safety, and prosecute serious complaints.

I note that in exercising these functions the commission is to have as its primary object the protection of the health and safety of the public. For its part the committee's oversight responsibilities under section 5 of the Health Care Complaints Act are largely exercised by the review of the commission's annual reports. With respect to the 2006-07 report, the committee forwarded written questions to the commissioner based on the contents of the report and examined under oath the commissioner, Mr Kieran Pehm, the commission's director of proceedings, Ms Karen Mobbs, and its director of investigations, Mr Bret Coman, at a public hearing held in Parliament House. The committee then provided the commissioner with further written questions to take on notice and forward his responses to the committee.

I turn now to some of the important details of the commission's 2006-07 report. During the review the commission had a strong focus on complaints handling. Improved procedures facilitate the making of recommendations to other relevant organisations to improve the New South Wales health system. The commission saw an increase in the number of inquiries, partly due to the first full operational year of its centralised restructured inquiry service. The annual report noted that the commission received 2,722 written complaints during the year and that 2,710 assessments were finalised. Importantly, I inform the House that 3.7 per cent of complaints were assessed in the statutory time frame of 60 days and that the average time for assessment fell from 61 days to 39 days. This is a significant improvement on the past performance of the commission.

In 2006-07 there was an average of 227 complaints per month about health service providers and 508 complaints about public hospitals. The commission is currently reviewing its complaints classification system to

make it more specific so that it can better communicate the information obtained from these complaints in dialogues with health practitioners about how complaints can be better managed. The new categories will also assist the commission to better identify complaint trends in relation to individual practitioners and health organisations. Information sharing relationships between key organisations in the health care system are, in the committee's view, crucial to ensuring an even greater measure of effectiveness in preventing failures in the delivery of health services in New South Wales. I am therefore pleased to note that the commission is exploring improved data analysis methodologies with the Director General of the Department of Health and the chief executive officers of area health services across the State. This is due to the fact that whereas the Department of Health receives a very broad range of complaints, the commission's complaint samples are often too small to identify trends. The commissioner has also advised the committee that he will liaise with the New South Wales Clinical Excellence Commission to establish whether data can be shared between the Clinical Excellence Commission and the commission.

I am pleased to note that the commission is also taking the proactive step of approaching the various practitioner colleges to discuss complaint handling and outcomes in respect of the various areas of medical practice, and commission staff are also going out to area health services and speaking with clinicians directly. The commission has striven to professionalise its investigations area, with an improved investigations procedures manual introduced under the new Director of Investigations, Mr Bret Coman. Investigations procedures are now multilateral, unlike the previous linear, paper-based approach. The commission also uses an electronic case management system, enabling more active monitoring of cases by management. The commissioner has also advised the committee that powers to compel production of information, introduced in March 2005, will be used more frequently.

In 2006-07, 307 complaints were referred for investigation, and 381 investigations were completed. The average time for an investigation fell from 353 days to 318 days, and nearly 70 per cent of investigations were completed within a 12-month period. The commission also has in place improved procedures for monitoring implementation of recommendations to other organisations. With respect to the 70 per cent strike rate of the commission's investigation process, I note that the commissioner admits that assessments cannot be done within the required 60 days for complex matters; for example, hospital care complaints that may involve a considerable number of medical practitioners and nursing staff over an extended period of time. Moreover, despite the commission's aim of persuading as many complainants as possible, there is not a significant take-up of the offer of conciliation. I assure the House that the committee will continue to monitor these important areas of the commission's operations.

The commission's legal division has been restructured into two teams under team managers reporting to the commission's Director of Proceedings, Ms Karen Mobbs, with the division finalising 97 matters. During this time, the commissioner referred 112 complaints about individual health practitioners to the Director of Proceedings. I am pleased to note that the record-keeping capabilities of the division were greatly enhanced by the adoption of the casemate system to support legal processes. On the legislative front, the Health Legislation Amendment (Unregistered Health Practitioners) Act 2006, which amended the Health Care Complaints Act and other Acts, came into operation on 4 December 2006. This increased the commission's powers over unregistered health service providers, and enabled it to prevent practitioners deregistered in one area of practice from setting up elsewhere.

The ability of all potential complainants to access the commission's services, regardless of background, language skills, disability, et cetera, has been a recurrent matter of concern to the committee. Accordingly, I am particularly pleased to note that during 2006-07 the commission has been actively engaged in raising the awareness of its role in the community generally, and specifically in those groups that may have faced additional access difficulties. The commission is targeting disadvantaged complainants through its Consumer Consultative Committee, and taking steps to ensure that this committee includes as broad a representation as possible. The commission has also appointed an Aboriginal designated officer to provide information to Aboriginal communities. Stationed in Dubbo, the officer will work specifically on the project of delivering commission information to Aboriginal communities in New South Wales.

The commission now undertakes public presentations and talks, and addresses various public interest and practitioner groups, with resolution officers conducting six to eight community presentations per year. The commission has also reviewed all its publications and there will be a specific multilingual distribution to culturally and linguistically diverse communities. The commission planned to have a new process in place from 1 July 2008 to analyse the demographics of complaints received to determine what groups are under- or over-represented in those attempting to access its health care complaints services. I suggest to honourable

members that this has the potential to be an important means of focussing on promoting the role of the commission, particularly given the evidence from the 2007 inquiry into the Royal North Shore Hospital, chaired by Reverend the Hon. Fred Nile, that many complaints go under the radar, unless there has been publicity to bring the services of the commission to public attention. The committee looks forward to being advised by the commission of the outcomes of this demographic analysis.

Importantly, the commission now has in place a customer survey process, and sends out survey forms to all complainants and service providers. The commissioner has assured the committee that in respect of all complaints against a health practitioner that are investigated but not referred to prosecution, a complainant will receive a detailed final letter advising of the outcome, specifically the context of the complaint, the conduct of the investigation, the evidence gathered, any expert opinion on the practitioner's conduct, and the reasons for the commission's decision. Investigations officers also maintain regular monthly phone contact with complainants during the course of an investigation. The committee considers that these changes are positive steps towards more fully integrating complainants into the commission's assessment and investigation process, and to making the process as a whole more user friendly.

In March 2008 the commission issued a draft code of practice, which has now been finalised. I acknowledge the thoroughness of the commission's consultation process, and recommend the code as a good practical step to informing potential complainants about the vital issues of what exactly it is the commission does, and how they can expect the commission to go about doing it. Another recurring cause for concern for the committee has been the high staff turnover at the commission. I am therefore pleased to note that staff attrition in the assessment, resolutions and investigation divisions is down on the 2005-06 levels. The commission has adopted exit interviews as recommended by the committee in its 2005-06 review, and consultants have been engaged to conduct a climate survey by the end of June 2008.

As I noted earlier, in exercising its functions under the Act, the commission is required to have as its primary object the protection of the health and safety of the public. This year, the commission was the subject of criticism in relation to the de-registered medical practitioner, Graeme Reeves. As members are aware, the committee in the last session of Parliament tabled its report on the investigation by the Health Care Complaints Commission into the complaints made against Dr Reeves. This report addressed the role of the Health Care Complaints Commission in relation to this matter. The committee considers that, on the evidence before it, in 2006-07 the commission has undergone a process of considerable improvement in the manner in which it exercises its functions under the Act, and particularly how it engages with both health care complainants and others involved in the provision of health care in New South Wales. The committee is not suggesting that there is not room for improvement, but it does acknowledge the efforts of the commission to address operational areas that the committee has previously noted to be deficient.

In the foreword to the committee's review of the commission's 2005-06 annual report, I noted that there were a number of areas in which the commission had real need for performance improvement, both in terms of change and in the pace of that change. I inform honourable members that the committee as a whole considers that in 2006-07 the commission has genuinely picked up that pace in the important areas of its internal operations and its external outreach to raise public awareness of its services. The committee looks forward to working with the commission to ensure that the pace and process of positive change is maintained.

Reverend the Hon. FRED NILE [3.27 p.m.]: I refer to report No. 2/54 entitled "Review of the 2006-2007 Annual Report of the Health Care Complaints Commission". I support the remarks of the Chair of that committee, the Hon. Helen Westwood, who gives efficient leadership to that joint committee of the Parliament. As all honourable members know, widespread concern has been expressed not only in New South Wales but also in Queensland and Tasmania about the failure in the health care system to act on receipt of multiple complaints to suspend a doctor immediately the first complaint about him or her is verified so that he or she cannot continue the malpractice as occurred with Dr Graeme Reeves, who moved from State to State. There certainly needs to be a tightening of this area and greater efficiency shown by the Health Care Complaints Commission.

I believe there have been some significant improvements in the operation of the Health Care Complaints Commission and improved focus by commission staff in more clearly understanding the role of the commission and carrying out that role in a more rigorous way. In 2006 there was an average of 227 complaints per month about health service providers, which amounted to 2,722 during that year. There were 500 complaints about public hospitals, that is, 18.7 per cent of the total number of complaints lodged. It is very important to have a Health Care Complaints Commission that is organised and staffed, and has the budget to carry out

investigations of all complaints and bring about satisfactory results. I am pleased that the commission has been reviewing its complaints classification system to make it more specific, so that it can also better understand the range of complaints and how the complaints are being dealt with. The new classification was introduced on 1 July 2008 and these categories will also assist to better identify complaints trends in relation to individual practitioners and health organisations.

The greatest need is to make certain that the public understands how the system operates and that the Health Care Complaints Commission is there to help and assist them. We must ensure that every person involved in our health system knows who to go to, where to go, and how to contact the Health Care Complaints Commission and get an urgent response. During the inquiry into the Royal North Shore Hospital I noted that it was critical that the complaints of a number of witnesses had not been responded to. There were others who were not sure who they could complain to, other than the hospital. They were unaware of the Health Care Complaints Commission. There were some staff who wished to complain but were fearful of doing so in case they were discriminated against for doing that. We need an open system in which no-one is fearful of complaining and in which everyone knows how to process their complaints. It is important that we maintain the Health Care Complaints Commission, which plays a major role in the process. Of the 2,722 written complaints received in the year, 2,710 were finalised assessments.

Pursuant to standing orders business interrupted and set down as an order of the day for a future day.

BUDGET ESTIMATES AND RELATED PAPERS

Financial Year 2007-2008

Debate resumed from 22 October 2008.

The Hon. CATHERINE CUSACK [3.32 p.m.]: When I was a child, fairytales were a lot more grisly than the watered-down versions that children get today. For example, in the story *Little Red Riding Hood* the big bad wolf ate Red Riding Hood's grandmother, but the modern day version sees granny locked in a cupboard and rescued at the end. In my version of *Hansel and Gretel*, Hansel did not survive, but in the modern version he is found safe and well. The same was true of the *Three Little Pigs*. Many years ago two were eaten by the big wolf, but apparently no more. These days they rush to the safety of the third brother pig's brick house.

I am afraid that this trend of telling watered-down fairytales has become increasingly prevalent in the State's budget papers. For 13 years we have heard about the so-called prudent financial management of the Carr and Iemma governments; we have put up with front page cartoons of Bob the Builder, only now to discover that the house that Bob built was not made of brick but straw, to be blown to bits by the very breezes of economic change experienced in the economy during the 2007-08 year. Bob Carr and Morris Iemma have not stayed to be held accountable for their pitiful budget efforts, but have fled like the two little pigs to the warmth and safety of the parliamentary superannuation scheme, leaving their colleagues and more than 370,000 New South Wales public servants, upon whom we rely to keep this State functioning, demoralised and with their future under a cloud.

The essential point I make to the House is that 13 years of the Government spinning budget fairytales has not only led us to the current point of State budget crisis, but it has undermined the economic resilience of the entire State and jeopardised the wellbeing of business, taxpayers and indeed the very employees that Labor claims to have protected and supported. The vandalism of the wellbeing of New South Wales did not occur overnight. Before Michael Costa left the Cabinet and slammed the door very loudly as he walked out, he called a press conference revealing something of the truth about what has been going on in 13 years of Labor Government. Perhaps, to be more accurate, he spoke about what has not been going on. Policy has either been going in circles, as we see with the corporatisation and then de-corporatisation of RailCorp, or it has been frozen altogether. Michael Costa squarely blamed today's problems on 13 years of no reform—and "no reform" are his words, not my words.

I will go through the flash of budget honesty from the Labor Party and explain how weak, lazy and neglectful of their duty these people have been. In February 2006 Michael Costa released his Audit of Expenditure and Assets Report, which revealed that in each of the past nine years actual expenses have exceeded budgeted expenses by at least $1 billion. There was an astonishing graph accompanying the audit. I seek leave to have this Treasury graph, chart 3 in the 2006 audit document, incorporated in *Hansard*.

Leave not granted.

The Government objects to a Treasury graph being incorporated. The graph is directly lifted from the report and it dramatically shows the extent to which the Government has overspent its budget for each of nine years. The overspending in 1999 blew out to more than $2.5 billion, and I am talking about spending over and above what the Government had budgeted to spend. These are astronomical sums and show just how undisciplined Labor spending has been. But for the record revenues that the State Labor Government enjoyed as a result of GST and the long Howard economic boom, our State would have been bankrupt with these astonishing overruns. The Government's own audit report says:

> The need for a more rigorous approach to budget setting and expenses control is illustrated in Chart 3.

Chart 3 is the chart that the Government Whip does not wish to have incorporated in *Hansard*. The report continues:

> In each of the past nine years, actual expenses have exceeded budgeted expenses by at least $1 billion. The difference resulted from government decisions to expand services after original budgets were set, from wage increases as well as difficulties in realising savings provided for in agency budgets.

In other words, government departments expanded services beyond what they knew their funding would be and they failed to achieve their savings strategies and were supplemented anyway in their budgets. But the most devastating of all was the failure to fulfil the budget strategy for wage increases. This strategy has been based on the longstanding policy of setting a cap on wage rises and then permitting further increases to be funded by productivity savings. The productivity savings were never achieved by this Government and yet the wage rises were agreed to anyway. In other words, our industrial relations negotiations have failed to achieve greater value for spending by reforming services or improving workplace productivity. When people ask, "Where did the money go", this is where the money has gone. It is a devastating loss of productivity due to the inability of Labor politicians to negotiate progressive workplace agreements with their Labour movement masters. The audit report continues:

> To deliver the most effective outcomes for the community, New South Wales needs a Budget and management environment where government priorities determine service delivery and accompanying budget allocations, and where the chosen services and activities give value for money. All parties must also commit to operating within budget allocations.

That did not happen and it is still not happening. As noted in this year's budget papers, 49.5 per cent of all budget outlays are expended on staff salaries and staff-related costs. The cost to taxpayers is in the order of $23 billion this financial year. The key to maintaining control of the budget is sticking to the planned level of expenditure on staffing. The Budget Statement 2008-09, page 2-11, deals with real wages growth, which is the increase in wages over and above inflation. It says:

> Over the last decade NSW public sector employees have experienced wage increases well in excess of both inflation and those of employees in the NSW private sector and the public sector in the rest of Australia.

I have here a Treasury graph published in the Budget Statement 2008-09 on page 2-11. I seek leave of the House to have it incorporated in *Hansard*.

Leave not granted.

This is a New South Wales Treasury graph with the top line showing real wages growth over the past 10 years. It shows that wages in the New South Wales public sector have increased 17 per cent over and above inflation. The middle line shows that the public sector for the rest of Australia had wages growth of about 11 per cent. The bottom line shows that private sector wages in New South Wales have increased by about 8 per cent. In other words, public servants have had wage increases double those of our citizens in the private sector and 50 per cent better growth than that of other public servants around Australia. I estimate that every 1 per cent of salary costs taxpayers at least $250 million. We can hypothesise that had public sector salary growth been kept in line with private sector salary growth—a fairly modest expectation, I would have thought—our budget bottom line would be $1.5 billion better off today and we would not be experiencing the current meltdown.

I emphasise that the salary increases are by themselves not necessarily a bad thing. Some are justified and have strong community support, particularly for front-line workers such as police, nurses and teachers. Very high wages growth can be sustained if the budget is properly geared to fund extra salary costs through

productivity gains. This has always been the Government's intention but the problem is that it has never fulfilled it. Herein lie the reasons that wages growth in New South Wales has become so unsustainable. First and most importantly, the Government has failed to genuinely improve productivity to pay for wages. In health for example, the Government has not funded the wage rises, instead placing our front-line nurses under unacceptable pressures in the workplace, which is causing them to want to leave by the thousands. This is triggering other problems, all of which make life unpleasant in health, cost more money, and are at the expense of service delivery.

Secondly, every year there is a wages blow-out it feeds into the budget bottom line. By that I mean we have to pay for the cost of a wages blow-out forever. There is no undoing that type of error. It means that every year the budget becomes harder to manage. In the case of the current year, the Treasury estimates that every 1 per cent increase over the current budgeted amount of 2.5 per cent will increase costs by $219 million in the current year, with full year costs being felt next year and costs increasing to $471 million. By 2012 the cost of the 1 per cent increase will be $1 billion. I believe the 371,000 public servants are being treated very unfairly by the Government's mismanagement of the budget. That is the key point. The Government lets down its own people and it lets everybody down. By not managing properly the Government is placing unacceptable pressures on its own workforce. I regret the Government's unwillingness to have its own graphs incorporated in *Hansard*, but its embarrassment comes as no surprise after 13 years of such mismanagement. [*Time expired.*]

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

CRIMES (SENTENCING PROCEDURE) AMENDMENT (VICTIM IMPACT STATEMENTS) BILL 2008

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [3.44 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

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

Leave not granted.

The Government has a proud record of supporting the needs of victims of crime and of ensuring that victims have a voice and are able to participate in the criminal justice process where appropriate. This is why the Government introduced legislation in 1997 providing for victim impact statements. The provisions governing victim impact statements are found in division 2 of part 3 of the Crimes (Sentencing Procedure) Act 1999. Victim impact statements enable victims of crime and their families to convey to the courts the harm they have suffered as a result of an act of violence. Such statements are submitted to the court after an offender has been convicted and before an offender is sentenced. The Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Bill 2008 seeks to refine and strengthen the system for victim impact statements by providing further rights and protections to the victims. I will outline the key amendments contained in the bill. The bill amends the definition of persons harmed in section 26 of the Crimes (Sentencing Procedure) Act by replacing the term "mental illness or nervous shock" with the term "psychological or psychiatric harm". I seek leave to have the remainder of the second reading speech incorporated in *Hansard*.

Leave granted.

The effect of this change will be:

- firstly, to update the terminology used in the Act. The term "nervous shock" is outdated and does not reflect common, modern legal terms;

- secondly, to broaden the nature of the harm suffered by a victim or their family that may be documented in a victim impact statement. The current wording of the Act operates to prevent a victim impact statement documenting harm that is an exacerbation of an existing psychological condition or harm that does not reach the threshold of a diagnosed mental illness or psychiatric disorder; and

- thirdly, to make the terminology in the Crimes (Sentencing Procedure) Act consistent with that in the Victims Rights Act 1996 and the Victims Support and Rehabilitation Act 1996, which were both amended in 2006 to include the more modern terminology.

Witness to an act of sexual assault

The bill will amend sections 26 and 27 of the Crimes (Sentencing Procedure) Act to enable a witness to a sexual offence to provide a victim impact statement.

Currently, a witness to other offences covered by Division 2 of Part 3 of the Act may provide a victim impact statement, and it is anomalous that a witness to an act of sexual assault cannot provide a victim impact statement. This bill will fix that anomaly.

"Prescribed sexual offence"

The bill will amend section 27 of the Crimes (Sentencing Procedure) Act to replace the term "sexual assault" with "prescribed sexual offence". The term "prescribed sexual offence" will have the same meaning it has in the Criminal Procedure Act 1986.

This amendment will clarify that a victim impact statement is not limited to the offence of "sexual assault" in section 611 of the Crimes Act 1900, but may be provided in relation to other offences of a sexual nature, including indecent assault, persistent sexual abuse of a child, child prostitution and pornography, and kidnapping and child abduction offences.

Photographs and drawings

The bill will amend section 30 of the Crimes (Sentencing Procedure) Act to make it clear that a victim impact statement may include photographs, drawings and other images.

Photographs and drawings may potentially be a better and more effective way for some victims and their families to convey the harm they have suffered as a result of a crime.

For instance, a young child from a deceased victim's family may express their grief in drawings, or the victim of an assault may wish to submit photographs of themselves before and after the assault.

Photographs and drawings may also complement words contained in a written statement.

Incapacity

The bill will insert a more detailed section 30A(2) in the Crimes (Sentencing Procedure) Act.

The new section 30A(2) will provide that if a primary victim is incapable of providing information for a victim impact statement, by reason of their age, impairment or other incapacity, then a representative of the victim, such as a family member or a person with parental responsibility for the victim, may act on their behalf.

The new section makes it clear that children are covered by the provision.

CCTV

The bill will insert new sections 30A(3) and (4) into the Crimes (Sentencing Procedure) Act to give victims an entitlement to read out their victim impact statement via closed circuit television (CCTV) if they were entitled to give evidence via CCTV during the trial.

Victims are currently entitled to give evidence by CCTV in relation to prescribed sexual offences. Vulnerable persons, such as a child or an intellectually impaired person, may also give evidence by CCTV.

If a person is entitled to give evidence by CCTV, there is no reason why they should not be entitled to read out their victim impact statement via CCTV.

Victims of crime should not be exposed to additional trauma or difficulty by having to read out their victim impact statement in a courtroom in front of the offender.

This bill has the support of the courts, the Office of the Director of Public Prosecutions, the Law Society of New South Wales, and the New South Wales Bar Association.

Importantly, the bill has the strong support of groups representing victims of crime, including the Victims of Crime Assistance League, Enough is Enough, and the Homicide Victims Support Group.

I commend the bill to the House.

The Hon. JOHN AJAKA [3.47 p.m.]: The Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Bill 2008 seeks to amend the Crimes (Sentencing Procedure) Act 1999 so as to extend the circumstances in which a court may receive a victim impact statement; allow a victim to read out his or her victim impact statement to the court by means of closed circuit television arrangements or other special arrangements in appropriate cases; provide for photographs, drawings and other images to be included in a victim impact statement; clarify that a victim impact statement may be prepared on behalf of a child by a parent or other person having parental responsibility for the child; and make other minor and consequential changes to the Act. The Opposition does not oppose the bill.

It has been just over a decade since the Victims Rights Act was enacted to establish a statutory charter of rights for the victims of crime and some eight years since the Crimes (Sentencing Procedure) Act came into

force, providing for victim impact statements to be received by the courts. The object of the proposed amendments is to clarify and expand the system of victim impact statements, thereby strengthening the mechanisms currently in place for the protection, recognition and promotion of the rights of victims of crime. This is to be achieved through effecting six primary changes to the current legislation.

The bill will update the definition of "personal harm" in a manner consistent with the Victims Rights Act 1996 and the Victims Support and Rehabilitation Act 1996, so that it includes "psychological or psychiatric harm" rather than "mental illness or nervous shock". As the shadow Attorney General observed in the other place, "It is probably appropriate in this type of legislation that a broader terminology is used because people can suffer psychologically without having a mental illness or satisfying the usual meaning of "nervous shock" as, for instance, it is used in the context of the law of tort. The exact scope of the existing section 26 definition of "personal harm" is unclear. It is yet to be seen in the application of the definitions as amended whether they will in fact broaden the nature of the harm suffered by a victim or his or her family that may be documented in a victim impact statement.

Second, the bill will extend the availability of victim impact statements to any case involving a "prescribed sexual offence", as defined in the Criminal Procedure Act 1986. Under the existing provisions of the Crimes (Sentencing Procedure) Act, a court may receive and consider a victim impact statement in proceedings for certain serious offences, including, inter alia, sexual assault. The amendment will expand the current section 27 to encompass not only the offence of sexual assault but also indecent assault, persistent sexual abuse of a child, sexual servitude, child prostitution and pornography, and child abduction offences. There is no sound policy rationale for excluding the victims of sexual offences that fall outside the ambit of the section 61 (i) Crimes Act 1900 sexual assault offence. The expansion of existing provisions will make the system of victim impact statements more inclusive, by extending the opportunity for direct involvement in the criminal justice process to victims of other offences of a sexual nature.

Third, the bill will amend the definition of "primary victim" in existing section 26, to provide that a person who witnesses a sexual offence and suffers personal harm as a direct result of the offence will be treated as a victim of the offence for the purposes of the provisions. This broadens the recognition of the rights of persons who are affected by crime, without having been actually subjected to the offence themselves. Moreover, the amendment will correct an anomaly in the law in the sense that, at present, it has been said that a witness to other offences falling within division 2 of part 3 of the Act may provide a victim impact statement, whilst a witness to a sexual assault cannot.

Fourth, under the proposed amendments to the requirements governing the content of victim impact statements, a victim impact statement may include photographs, drawings and other images, subject to any requirements imposed by the regulations. This broadens the possible means of expression by which victims, particularly vulnerable victims such as children, may better convey to the court the extent of the harm that they suffered.

Fifth, the bill insets a new section 30A (2) into the Crimes (Sentencing Procedure) Act to make it clear that the provisions of the existing section 30 are to apply to children. Under the amended section, any victim who is incapable of preparing a statement—by reason of age, impairment or otherwise—may have a statement prepared on his or her behalf. Moreover, a person who has parental responsibility for a victim—who may not necessarily be a member of the victim's immediate family—may also prepare a statement on behalf of a victim. Section 30A is also amended to provide that a victim impact statement may be read by a person who has parental responsibility for the victim. These changes clarify the scope of the class of persons to whom these provisions apply.

Finally, the amendments will enable particularly vulnerable victims to read a victim impact statement to the court via closed-circuit television, provided that they were entitled to give evidence through those means during the trial. This brings the procedural rules governing the receipt of the victim impact statement by the court into line with current legislation that permits certain persons—such as complainants in sexual assault cases, children and intellectually impaired persons—to give evidence in criminal proceedings by means of closed-circuit television or other special arrangements.

These changes will go some way towards ameliorating the trauma that victims may potentially suffer in having to read out their most personal thoughts on a troubling and damaging experience whilst the offender is present in the courtroom. Furthermore, the presence of the offender aside, many children and adults find the atmosphere of the court quite intimidating and may consequently have trouble expressing themselves clearly.

Giving persons the opportunity to read their victim impact statements in a less confronting environment may enable them to better convey to the court the full extent of the personal harm they have suffered as a result of the crime. The proposed amendments will clarify and broaden the legislation governing the preparation of victim impact statements and the receipt of these statements by the courts. The Opposition supports the strengthening of criminal justice frameworks in place for the protection and recognition of the rights of victims of crime.

The Opposition has consulted with the Law Society of New South Wales, the New South Wales Bar Association, the Office of the Director of Public Prosecutions and the Legal Aid Commission, and is further advised that the bill has the support of the courts and groups representing victims of crime, including Enough is Enough, the Homicide Victims Support Group and the Victims of Crime Assistance League. Accordingly, the Opposition does not oppose the bill.

I would, however, on a final note, add that my colleague the shadow Attorney General, when leading for the Opposition on this bill in the other place, called on the Government to consider future amendments that would allow the courts to take into account the harm done to relatives of the victims of homicide. As the courts have continually indicated an unwillingness to interpret the provisions of the Crimes (Sentencing Procedure) Act as embracing such considerations, and in light of tragic cases such as *R v. JD and FD*, to which the Hon. Roy Smith has previously referred, I would ask that the Attorney General give due consideration to this suggestion.

Ms LEE RHIANNON [3.55 p.m.]: The Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Bill 2008 amends the Crimes (Sentencing Procedure) Act to clarify the use of victim impact statements. We note that this bill does not greatly expand the use of victim impact statements in court proceedings. The most significant changes introduced by the bill are focused on making the existing system of victim impact statements more user friendly and accessible for some categories of vulnerable people. The Greens do not oppose the bill.

In particular, the Greens support proposed amendments to section 30 of the Crimes (Sentencing Procedure) Act to make it clear that a victim impact statement may include photographs and drawings. We support the new proposed section 30A (2), which provides that if a primary victim is incapable of providing information for a victim impact statement by reason of age, impairment or other incapacity, then a representative of the victim may act on the victim's behalf. And we support proposed new sections 30A (3) and 30A (4), which give vulnerable victims such as children and sex offence victims an entitlement to read out their victim impact statements via closed-circuit television. I understand that the New South Wales Law Society, the New South Wales Bar Association and the New South Wales Legal Aid Commission do not oppose the bill.

The Greens acknowledge the trauma that victims of crime face, and we acknowledge that subsequent court cases more often than not invoke further stress and difficulty. We recognise that many victims feel that they are silenced in the courtroom, and that they have no voice in the judicial process. Victim impact statements allow victims of crime and their families to convey to the court the harm that they have suffered as a result of an act of violence. The Greens are concerned, however, about the creeping use of victim impact statements in New South Wales. The Labor Government has, since victim impact statements were introduced in 1997, had a clear agenda to increase the role of victim impact statements in the New South Wales court system. This increase is occurring despite any evidence that victim impact statements have any impact on sentencing, crime rates or indeed the wellbeing of victims.

To really deliver for victims, the Government may do better to put less time into spreading the web of victim impact statements and pursuing tabloid headlines with a hysterical law and order agenda, and put more time into delivering programs to alleviate the causes of crime such as unemployment, poverty, child abuse, lack of education and training, and drug and alcohol abuse. Clearly, the intention should be to reduce the number of victims, and that is the best way to support people who come up against the criminal system.

Reverend the Hon. FRED NILE [3.58 p.m.]: The Christian Democratic Party supports the Crimes (Sentencing Procedure) Amendment (Victim Impact Statements) Bill 2008 and congratulates the Government on bringing it forward to further extend the rights of victims and, particularly by this measure, the rights of witnesses to a sexual offence. The extension of the rights of victims and those associated with victims is a positive move. The bill contains a number of amendments. One redefines "personal harm" in section 26 of the Crimes (Sentencing Procedure) Act by replacing the term "mental illness or nervous shock" with the term "psychological or psychiatric harm".

The effects of this change will be to update the terminology used in the Act. The term "nervous shock" is no longer used in courtrooms. The second effect of the change will be to broaden the nature of the harm suffered by a victim or his or her family that may be documented in a victim impact statement. The current wording of the Act operates to prevent a victim impact statement documenting harm that is an exacerbation of an existing psychological condition or harm that does not reach the threshold of a diagnosed mental illness or psychiatric disorder. The third effect of the change is to make the terminology in the Crimes (Sentencing Procedure) Act consistent with that in the Victims Rights Act 1996 and the Victims Support and Rehabilitation Act 1996.

The bill also will amend sections 26 and 27 of the Crimes (Sentencing Procedure) Act to enable a witness to a sexual offence to provide a victim impact statement. The bill further amends section 27 of the Crimes (Sentencing Procedure) Act to replace the term "sexual assault" with the words "prescribed sexual offence". This will have the same meaning as it has in the Criminal Procedure Act 1986. Over recent years changes have been made to definitions and descriptions of sexual assaults, particularly assaults against women. When I first came to this Parliament we debated legislation about the offence of rape. Since then the law has been modified and the word "rape" has disappeared. I still believe that was a negative result and I support the restoration, if you like, of the term "rape" where applicable when such an assault occurs.

We now have the confused situation where the term "rape" is not used by police and other professionals for sexual assaults committed against women, even though the details suggest otherwise and are reported by the media as rape. In the interests of victims and the community the media should report factually that the police clearly believe from the evidence obtained from the victim that the assault was a rape and should use that terminology. I believe that the term "rape" conveys the horror of the assault whereas using the term "prescribed sexual offence" does not convey exactly what happened. I believe this watering down of terminology has belittled the crime of rape. I appreciate that some people regard this as being progressive, but I do not believe it is progressive in the right direction.

The bill also will amend section 30 of the Crimes (Sentencing Procedure) Act to make it clear that a victim impact statement may include photographs, drawings and other images. I believe that is a positive outcome and will help to convey the harm that victims and their families have suffered as a result of the crime. Victims will be provided with the opportunity, if they wish, to read out their impact statements via closed-circuit television. Vulnerable victims such as children or the intellectually impaired may prefer to give evidence in this manner. These are positive developments in the bill. We fully support the bill.

The Hon. HENRY TSANG (Parliamentary Secretary) [4.04 p.m.], in reply: I thank honourable members for their contributions to the debate. The bill contains a variety of amendments relating to the use of victim impact statements. The amendments will refine and strengthen the system for victim impact statements by providing further rights and protections to victims. It will extend the circumstances in which a court may receive a victim impact statement; allow a victim to read out his or her victim impact statement to the court by means of closed-circuit television arrangements or other special arrangements in appropriate cases; provide that photographs, drawings and other images may be included in a victim impact statement; and make it clear that a victim impact statement may be prepared on behalf of a child by a parent or other person having parental responsibility for the child. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Henry Tsang agreed to:

That this bill be now read a third time.

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

TOW TRUCK INDUSTRY AMENDMENT BILL 2008

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [4.06 p.m.], ion behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

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

Leave granted.

The key objectives of the bill are to further improve the regulation of the tow truck industry, reduce red tape, protect customers, and better protect the safety of drivers at accident scenes. This bill will amend the Tow Truck Industry Act in several key areas. The Act will be changed to allow operators and drivers with proven track records to apply for three-year licences and certificates at a discounted rate, provided that they meet certain eligibility requirements. There are amendments to cap charges relating or ancillary to towing work to prevent unscrupulous operators charging unjustified and excessive fees for relatively minor towing-related services. These changes will increase driver safety and improve driver conduct at accident scenes by preventing the practice of drivers carrying hawkers with them who harass consumers into signing towing agreements. Various miscellaneous amendments will clarify provisions to assist with the interpretation of the Act and strengthen the regulatory framework.

In 2007, the Government introduced broad reforms to improve the administration of the tow truck industry. The former Tow Truck Authority was dissolved and the Roads and Traffic Authority [RTA] was established as the industry regulator on 1 December 2007. This has enabled a streamlining of the functions that were previously shared between the Tow Truck Authority and the RTA, and better use of the capacity of the RTA, particularly in regard to compliance and enforcement. It has enabled us to capitalise on the strong relationship that the RTA has with the New South Wales Police Force, for example, in conducting joint compliance operations in tow truck hot spot areas. It has provided a statewide network via the RTA's motor registries to deliver better services to industry and better educate consumers of tow truck services.

This bill builds on these recent reforms and demonstrates the Government's strong commitment to reducing red tape and enhancing consumer protection. The amendments in the bill today have the support of the New South Wales Police Force and other key industry stakeholders, such as the Insurance Council of Australia, the Waste Contractors and Recyclers Association, and reputable operators within the industry. Many of the amendments have been developed as a result of representations made by both industry and stakeholders. Disreputable industry operatives may object to several of the proposed reforms as they are designed to improve compliance with the intent of the legislation and will therefore enhance the RTA's ability to take disciplinary action. However, the Government makes no apologies to this minority, who seek to undermine other reputable operators.

One key amendment in the bill will extend the maximum period for which tow truck operators licences and drivers certificates may be granted from 12 to 36 months. Currently, all tow truck operators and drivers are required to hold an operators licence and drivers certificate respectively. These licences and certificates are only issued for a maximum period of 12 months. This means that industry is required to submit numerous documents each year, which is time consuming and costly. These arrangements are particularly burdensome for operators and drivers who have a good disciplinary record and who have maintained the same business structure and operations since entering the industry. To reduce this burden, the amendments will extend the maximum period for which a licence or certificate can be issued from 12 months to three years.

The new three-year licences and certificates will be offered at a discounted rate to the single year renewal fee. This is a win-win scenario for drivers and operators, who will have less paperwork and reduced costs. However, the new three-year licences and certificates will only be available to drivers with a proven track record and who have a good disciplinary record. For operators to be eligible, they must have been operating under the same operators licence in continuum for three years preceding the lodgement of an application.

In the case of a driver, he must have held a continuous drivers certificate for five years preceding the lodgement of the application for the new certificate or licence. Further, to be eligible, the driver, licensee or any close associates of the licensee must not be under investigation by the RTA in relation to a breach of their licence or certificate, or any other contravention of the Act or regulations, and must not have committed actions in the five years preceding the lodgement of the application which would warrant the suspension, revocation or cancellation of a licence. As per the existing arrangements, operators will still be required to provide a certificate of currency to confirm that all insurance requirements have been fulfilled.

Criminal name checks, driver licence checks and vehicle registration checks will continue to be undertaken by the RTA. Additionally, if a new three-year licence or certificate is revoked or cancelled the driver or licensee will be ineligible to make an application for a new extended licence or certificate until they again satisfy the relevant criteria. In the event of a suspension, the operator or driver will not be entitled to resume the three-year licence or certificate but will automatically be placed on a licence or certificate not exceeding 12 months.

Another key feature of the bill is the amendment to provide for the capping of charges relating to procedures and tasks that are related or ancillary to towing. Currently, the Government may set maximum prices that operators and drivers may charge for the towing, salvage, or storage of motor vehicles. This is to prevent disreputable industry operatives from taking advantage of motorists at accident scenes when they are vulnerable and/or in a state of stress and confusion, and from charging exorbitant fees to tow and store their motor vehicles. Although maximum charges are prescribed, there are unscrupulous operators and drivers who impose unnecessary and inflated charges associated with tasks ancillary or related to towing, that is, charges that are not strictly captured under towing, salvage or storage but which are nevertheless strongly associated with towing.

Let me outline some examples of ridiculous charges that have been imposed on motorists: the cleaning of small quantities of oil and fluids from the tray of a tow truck, which have attracted charges of anywhere between $60 to $150; the issue of an invoice or the sending of a facsimile, which can cost the consumer up to $50; and the payment of a fee to release a motor vehicle or personal items in the vehicle, such as a baby capsule, from the holding yard, which can cost up to $50. Unbelievably, one tow truck driver prosecuted by the former Tow Truck Authority had imposed additional charges of up to $314 and claimed these charges were for providing services such as a drink of water to the motorist and dropping the motorist home in the course of towing the vehicle.

These charges typically disguise what are known as drop fees, which are commissions paid by smash repairers to tow truck drivers for the delivery of accident-damaged motor vehicles. Drop fees can range from $150 to several thousands of dollars. The bottom line is that these charges are unacceptable and will no longer be tolerated. The bill will therefore allow the RTA to determine the maximum charges that may be charged by operators and drivers for ancillary components of a tow.

Another key amendment to the Act relates to the carrying of unauthorised passengers in tow trucks. Under section 67 of the Act, a person must not travel as a passenger in a tow truck that is travelling to or from the scene of a motor vehicle accident unless they are a passenger or driver of the motor vehicle involved in the accident, or they hold a tow truck driver certificate. The intent of this section is to prevent tow truck drivers arriving at accident scenes with passengers who, upon arrival at the scene, engage tow truck drivers from competing companies in arguments or violence in order to distract, intimidate and delay them in their efforts to legally obtain a towing authorisation. This tactic allows the tow truck driver who carries such a passenger to obtain a towing authorisation at the expense of other competing drivers.

It is not uncommon for the offending passenger to leave the scene of the accident once police arrive or once directed to leave by police. However, often by this stage the tow truck driver who has brought the passenger has already obtained a towing authorisation. The current penalty for breaching this section of the Act is imposed against the person who travels as the passenger. However, it is extremely difficult to obtain credible proof of identity and residential details of the passenger so that a penalty can be imposed. The amendment outlined in the bill will mean that the tow truck driver who drove the passenger to the accident scene will also be penalised. The addition of such a penalty will be an effective measure in deterring tow truck drivers from participating in this type of activity.

Another important amendment outlined in the bill relates to the compliance of drivers at accident scenes. Currently under section 66 of the Act, a driver of a tow truck at an accident scene must comply with any reasonable direction given by an authorised officer, police officer or emergency services officer. However, some tow truck businesses have sent two certified drivers in one tow truck to an accident scene to get around these directions. For example, when instructed to leave an accident scene by a police officer, one of the drivers will hand the towing authorisation booklet to the other driver, who then persists in soliciting the tow. The police can issue an infringement notice to both drivers for failing to comply with their direction.

However, as the provision specifies compliance with directions from authorised officers by the driver of the truck, the police are required to prove which individual was in fact the driver of the tow truck. As this cannot often be proven, charges can be dismissed when the matter comes before a court. Accordingly, it is proposed to amend the Act to replace references to "the driver of the truck" with "a certified driver". This amendment will eliminate ambiguities in relation to driver conduct at accident scenes. The bill also introduces an amendment to specify that the Act does not apply to the towing, salvage and storage of some vehicles such as forklift trucks, golf buggies and ride-on mowers. These types of vehicles were never meant to be captured by the legislation and the amendment clarifies this situation.

In conclusion, the bill will build on the success of the wide-ranging reforms recently implemented by the New South Wales Government. The amendments in the bill will further improve the regulation of the tow truck industry. They will reduce red tape and costs to industry, and they will better protect motorists who rely on tow truck services. I commend the bill to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [4.06 p.m.]: As indicated in the other place, the Opposition does not oppose the Tow Truck Industry Amendment Bill 2008: it has some good points. As with the previous legislation dealing with the tow truck industry, the Government has taken problems in the city and applied the solution to the whole State. Problems that sometimes apply to a metropolitan industry are not necessarily the same problems that apply in a rural environment. I was hoping that the Minister or one of his advisers would be in the Chamber for this debate to address our concerns. That is one of the reasons we allow parliamentary secretaries to introduce bills. The Parliamentary Secretary, although he is a nice bloke, probably does not know the answers to my questions.

The Hon. Henry Tsang: Just ask them and we will try to get an answer for you.

The Hon. DUNCAN GAY: I will move on to other matters until some of the Minister's staff attend the Chamber. The Coalition commends one of the main amendments of this bill, extending the maximum duration of a tow truck operators licence or a drivers certificate from one year to three years if the applicant requests a three-year licence or certificate and satisfies probity requirements. This aspect has been well received by the industry as it cuts time and costs involved with filling out new application forms each year. We agree with three-year licences being available to drivers with a proven track record and a work record that shows discipline. It is important to minimise paperwork—an issue that I will address in greater detail later—and administration fees, particularly for small businesses that are struggling in regional areas. Small business owners often have to drive long distances to a major centre to renew their licences.

The Hon. Lynda Voltz: I am listening to you, Duncan. Don't worry.

The Hon. DUNCAN GAY: I know the Hon. Lynda Voltz is listening to me because she is in the Chamber. Another key feature of the bill is the amendment to provide for the capping of charges. Should I adjourn debate on the bill?

The Hon. Lynda Voltz: No.

The Hon. DUNCAN GAY: Can a ministerial adviser be brought to the lobby, please?

The Hon. Greg Donnelly: They are on their way.

The Hon. DUNCAN GAY: Another key feature of the bill is the amendment to provide for the capping of charges for towing, storage and salvage of a vehicle. It is suggested that that provision will prevent disreputable operators from taking advantage of motorists at accident scenes. While that might help in relation to accidents that occur in metropolitan areas, industry representatives in regional areas tell me they are appalled and offended by the assumption being foisted onto regional tow truck drivers.

My colleague in the other place, Andrew Fraser, discussed the concern I share about the restriction on the number of people in a tow truck who are able to attend the scene of an accident. The Government rightly wanted to prevent numbers of people travelling in the cabin of tow trucks to metropolitan accidents because the presence of a number of people at the scene of an accident creates a melee. The bill originally prohibited people other than those who needed to be at the scene from travelling in tow trucks.

The Coalition's concern was that in country areas people whose vehicle had been damaged had no way of returning to a local district centre, to help, or to their homes. In those circumstances they need to travel in a tow truck. To the great credit of the new Minister in the lower House, the legislation has been amended and the Minister has clarified the bill to satisfy the Coalition's concerns. As a result, people who are involved in car accidents in country areas are able to travel in tow trucks and to be driven back to their home or to a town centre. Is someone coming?

The Hon. Lynda Voltz: Yes. They are coming.

The Hon. Henry Tsang: We are helping you out.

The Hon. DUNCAN GAY: Thank you. I am merely asking whether someone from the Minister's office will be attending. That is the question I asked. The Coalition has been made aware of other concerns felt by people who live in regional areas. One of the first concerns was expressed during discussions I had with Mr Terry Green. He is a major tow truck operator and is a member of the country panel of the NRMA. He operates five sites and employs approximately 54 personnel, including a couple of full-time administration staff. One of the concerns he has is expressed in an email he sent me, which states:

> I wish to again mention the issue of young drivers being allowed to operate a tow truck when they already hold civil licenses by the RTA to drive such vehicles. I find it very restrictive on available staff to secure suitably qualified Tow Truck drivers. When the apprentices finish their time and become of age, they invariably leave to either start their own operations or seek employment within the Mining Industry.

As many people who live in country areas know, that is a real problem. His email goes on to state:

> As I indicated in earlier communication, the original "P" plate exclusion was intended for holders of red "P"s and when the 3 year program came into effect, this imposed condition carried over.

The Coalition agrees with his comments. We thought that people who had a red P-plate should not be a tow truck driver, but when we went to the three-year green P-plate the provision applying to red P-plate drivers applied also to green P-plate drivers. The Coalition called on the Minister to re-examine the issue and give an undertaking that we would revert to the restriction applying only to red P-plates, which was the original intention. Young people who hold red P-plate licences have finished their apprenticeships and they have been working in the business. Many of them begin their apprenticeships during their school years. After having done a year on their red P-plates they should be able to operate a tow truck. The Coalition believes that it was a simple oversight. Given that the Minister in the lower House was understanding in his approach to the number of passengers that a tow truck driver could transport in country areas, I ask him to reconsider this issue also.

Another problem has arisen in relation to the carting by tow trucks of multiple vehicles. As the legislation presently stands, tow trucks will be limited to towing one vehicle only, irrespective of the truck's

capacity. In a broad metropolitan context, the Coalition does not disagree with that provision and recognises it as a great solution to some problems. But some of the bigger and better operators in regional areas of New South Wales operate trucks that are equipped to take away two vehicles. The Minister should bear in mind that regional tow truck operators may have to travel 50, 70 or 100 kilometres to an accident scene. By being limited to removing one vehicle at a time, they have to return to their depot and drive the very same truck, which is equipped to tow two vehicles, back to the scene of the accident to retrieve the second vehicle. To my mind, that is not sensible. I ask the Minister to reconsider that provision as well.

When the previous legislation was introduced I highlighted concerns relating to costs. This morning when I spoke to Mr Green he reminded me that, while there are many good provisions in the new bill with which he agrees, one thing that the Government has not missed is the opportunity to claw back a few dollars for itself. I remember being told by another tow truck operator that it was once possible to buy a tow truck book with 100 pages for $25, which amounts to 25¢ a sheet. Now tow truck operators pay $400 for a book of 20 sheets. Because of the number of trucks Mr Green has, he has $1,600 worth of tow truck books in his truck at any one time. We know how tough it is to put $100 on an E-tag up-front, but tow truck operators have $1,600 worth of books in a truck for which the Government receives $20 a sheet instead of 25¢ a sheet. It is fair enough to point this out to the House. I made a similar comment when the previous legislation was introduced but the problem was not addressed.

Mr Green not only runs tow trucks to retrieve vehicles from accidents but also operates an NRMA recovery centre and an NRMA roadside H-E-L-P service, of which the NRMA continually reminds us. The problem he faces in respect of the NRMA roadside assistance service is that he has to fill out the full catastrophe that is similar to the paperwork details for a roadside accident. Whereas previously if he was sent out to a call for NRMA HELP or for retrieval of a motor vehicle he just filled out the NRMA book. But now he has to obtain a job number from the NRMA, fill out the manual road service docket for the NRMA, fill out another docket for the tow, and on top of that he has to do the driver's log and the user's log, noting the vehicle's colour, registration number, the name of the authority, and the destination of the vehicle. When he returns to his depot after hours he then has to fill out a yard register. He might be the Holden dealer, so the next day the vehicle will go across to the local Ford dealer, and he will have to sign it out again and then take it across to the Ford dealer.

One habit that creeps in is that little notice is given to enable people to express their concerns. Mr Green, who runs a professional organisation, found out what the ramifications would be only three days before the closing date for submissions. He made a submission, supported by the NRMA, asking the Roads and Traffic Authority [RTA] to accept the NRMA computer dispatch system as the complete article for people providing roadside assistance and roadside retrieval from mechanical breakdown. That would mean that tow truck operators would not have to go through the huge amount of extra paperwork on top of what they were doing before.

It is a real concern. Given that the Minister took on board our concern about picking up country people, I ask him to look at this matter. We are concerned about two matters: firstly, P-plate drivers and, secondly, excess paperwork. In terms of the excess paperwork, we would like an undertaking that the RTA will accept the NRMA computer dispatch system, which was submitted by the NRMA in the first place, so that tow truck operators who are not retrieving cars from accidents are not faced with this abundance of paperwork. These people are running businesses in tough times, and it will get tougher in the motor industry over the next few years. People like Mr Green wonder what we politicians are thinking when we do not listen to their concerns or fail to understand the real problems they face daily. I hope that the Parliamentary Secretary in his reply on behalf of the Minister will address these genuine concerns.

Reverend the Hon. FRED NILE [4.22 p.m.]: The Christian Democratic Party supports the Tow Truck Industry Amendment Bill 2008, a straightforward bill that further regulates the tow truck industry and towing operations. The bill will amend the principal Act in a number of ways. It will allow compliant operators and drivers with proven track records to apply for a three-year licence and driver certificate, as opposed to the current one-year licence and driver's certificate, at a discounted rate. We thank the Government for providing a discount.

The bill will also allow charges for tasks related or ancillary to towing work to be capped to prevent unscrupulous operators from charging high fees for relatively minor towing-related services. It will increase driver safety and improve driver conduct at accident scenes by preventing the practice of drivers carrying a person with them, often regarded as a hawker, who will jump out of the vehicle and harass people at the scene of an accident who are often distressed because of the accident. A hawker will get the person to sign a towing

agreement while the driver is parking his vehicle. This activity will now be stopped, as tow truck drivers will be prohibited from carrying such a person to the scene of an accident. The New South Wales Police Force and other stakeholders such as the Insurance Council of Australia support these reforms. We are pleased to support the bill.

Dr JOHN KAYE [4.24 p.m.]: One behalf of the Greens I support the Tow Truck Industry Amendment Bill 2008, which builds on regulations of the industry over the past decade, including the 2007 amendments that transferred the operations of the Tow Truck Authority to the Roads and Traffic Authority. This bill is another part of an ongoing attempt to stamp out entrenched corruption, violence, intimidation and adverse behaviour within the tow truck industry, and as such it is worth supporting. It is worthwhile having a quick look at the history of corruption and bad behaviour in the tow truck industry. Prior to 1998 there were many decades of denial by governments of what was going on within the industry that interfaced in such an unpleasant way with a number of people at a time when they were least able to cope—after they had a motor car accident.

By 1998 aggression within the tow truck industry had erupted into outright turf wars that culminated in the fire bombing of a number of trucks. Later in 1998 Mr Albert Bricker was gunned down and murdered as he was locking up his truck one evening. This forced the then Government to respond, and it established the Tow Truck Authority to regulate the industry. Prior to that the industry had been more or less self-regulated. The establishment of the Tow Truck Authority was an admission that open competition in a free and unregulated market had simply failed to produce outcomes that were in the public interest. The problem was that a totally open and competitive model created opportunities for dodgy operators to advance their cause while disadvantaging those who would do the right thing. Effectively, open competition was handing the industry over to violence and intimidation at the expense of those who sought to provide a reasonable service at a reasonable fare.

By 2003 the tow truck industry was still experiencing major problems and experiments were conducted with the job allocation system. Three separate trials were undertaken in early 2003, and at a cost of $880,000 it was decided that all three trials had indeed failed. By March 2004 the report identified problems with each of the separate trials of different job allocations, and it was accepted that none of them had worked. From 2004 to the present the tow truck industry has been regulated by a series of crackdowns and tightening up on bad behaviour. Most of the crackdowns have been based on putting pressure on the worst excesses of the industry. It is clear that, despite the effort and money being put into regulating the industry in this fashion, there are still problems.

In September 2007 Detective Inspector Scott White, who was head of the gang squad of the New South Wales Police Force, said that there was still talk of bikie gangs having influence in the tow truck industry—and, I might add, drug running and other illegal activities. The Minister in his second reading speech admitted that there was still systematic overcharging and charging substantial amounts for trivial ancillary work. Another key concern in the industry is the ongoing application of drop fees, where a tow truck driver is paid a side payment by a smash repairer for delivering a damaged vehicle to that smash repairer's yard. By January 2007 the Tow Truck Authority had hit severe financial problems and was at the point that it would no longer be able to function. Its responsibilities were transferred to, and the authority was incorporated into, the Roads and Traffic Authority.

There is little argument that, while many operators play by the rules and seek to deliver a reasonable service, the industry is still plagued by cowboy operators with appalling and unacceptable tactics such as swamping an accident scene with agents of one operator or driver who starts arguments with other drivers so that the original driver can conclude a towing contract with the owner of the damaged vehicle. One can extrapolate that the risk of an outbreak of the sort of turf wars that we saw eight to ten years ago still exists. As long as we have an at-the-accident-site competition for contracts there will always be opportunities for bad behaviour. Given the chaos that prevails at an accident site, and the nature of the work and the sort of people who are generally attracted to that kind of work, it is always going to be a major regulatory task to drive violence and corruption out of the tow truck industry.

That is not to say that there is not a large number of extremely decent tow truck operators who seek to do the right thing and who fulfil an extremely important social function. It is precisely for those people that quality regulation is required within the tow truck industry. However, it is important to have regulations that focus on taking away the advantage of those who do the wrong thing while not disadvantaging those who do the right thing. We need to create an environment in which law-abiding and honest operators flourish and those who do the wrong thing suffer financially. As long as we apply a first-come-first-in approach to allocating jobs we will need regulations and regulators to ensure that the outcomes are not determined by intimidation and violence.

I now turn to the bill. The bill contains a number of positive measures, that is, at least in the absence of any attempt to allocate jobs off-accident site. The first of them is the carrot-and-stick approach of offering three-year licences to reward good behaviour for those who have had a continuous period of appropriate behaviour and have not had their licence cancelled. This, of course, works well because it will advantage those who are doing the right thing and financially disadvantage those who are doing the wrong thing, and the Greens welcome it. The second major set of provisions in the bill will cap all fees and charges associated with towing, storage and salvaging. This is an excellent provision that reduces the opportunity for dodgy operators to overcharge those vulnerable victims of accidents who are, in many cases, in no condition to negotiate a towing fee let alone storage or salvage fees. It reflects on the power of tow truck drivers by virtue of their presence at an accident that such regulations are needed to ensure that contracts that are signed disadvantage to the least extent those who are having their vehicles towed.

I note that in his second reading speech the Minister said that these caps on all fees and charges will be determined by the Roads and Traffic Authority. However, schedule 1 [14] states that the regulations will determine the caps on fees and charges, not the Roads and Traffic Authority. The Minister may have inadvertently misled the House about which instrumentality will be used to impose caps on all fees and charges. I invite the Parliamentary Secretary in his reply to clarify whether the Minister was incorrect and to correct the misleading impression he gave in his second reading speech when he said:

> The bill will therefore allow the RTA to determine the maximum charges that may be charged by operators and drivers for ancillary components of a tow.

The third component of the bill is the extension on the prohibition on touting and soliciting to ensure that all negotiation ends after an agreement has been reached on towing. That appropriate outcome will stop dodgy tow truck drivers trying to steal work from others. The bill also imposes limitations on tow truck drivers carrying anyone other than a passenger of the vehicle or another qualified tow truck driver. That provision already exists and is now strengthened by making it an offence for a driver himself or herself—and I note that in debate the masculine pronoun has been used but I presume there are some female tow truck drivers although I have never seen one—to carry somebody other than another qualified tow truck driver or a passenger of the vehicle being towed from the accident. This will make it much easier to enforce those provisions.

The bill contains a number of positive steps that will help clean up the tow truck industry but we have to be honest—it is not a panacea. No doubt on many future occasions in this Chamber we will have to strengthen the bill even further. It is a feature of the tow truck industry that whenever a new piece of legislation or regulation is introduced dodgy tow truck drivers will probe about until they find loopholes and seek to go through them. It is our task to continue to close those loopholes. The Greens support the bill.

The Hon. HENRY TSANG (Parliamentary Secretary) [4.36 p.m.], in reply: I thank all members for their contributions to this debate. The bill amends the Tow Truck Industry Act to further improve the regulation of the tow truck industry, to reduce red tape, protect customers and to better protect the safety of drivers at accident scenes. As stated, the Act will allow operators and drivers with proven track records to apply for a three-year licence or certificate at a discounted rate, provided that they meet certain eligibility requirements. Currently only one-year licences and driver certificates are available. The new discounted three-year licences and certificates are a win-win scenario for drivers and operators who will have less paperwork and enjoy reduced costs.

Tow truck operators and drivers who have been operating under the same operator's licence or driver's certificate for a continuous period of three years for operators and five years for drivers will be eligible for the discounted rate. Additional eligibility requirements include the Roads and Traffic Authority conducting criminal name checks, driver licence checks and vehicle registration checks, as well as ensuring that the driver licensee or any close associates of the licensees are not under investigation by the Roads and Traffic Authority. The bill also aims to cap charges that relate or are ancillary to towing work to prevent dishonest operators charging disproportionate fees for relatively minor towing-related services. This protects vulnerable motorists at accident scenes from being taken advantage of by disreputable operators. The bottom line is that exorbitant and unjustifiable charges typically disguised as drop fees are unacceptable and will no longer be tolerated.

Another key amendment to the Act relates to the carrying of unauthorised passengers in tow trucks. The legislation will increase driver safety and improve driver conduct at accident scenes by preventing drivers carrying hawkers with them who harass consumers into signing towing agreements. The amendments outlined in the bill will mean that tow truck drivers who drive the passengers to the accident scene will also be penalised. Introducing this penalty will be an effective measure to deter tow truck drivers from participating in those types

of activities. Various miscellaneous amendments will clarify provisions to assist with interpreting the Act and citing the regulatory framework. The bill is a tow truck reform and demonstrates the Government's commitment to reducing red tape and enhancing consumer protection.

The proposed reforms are designed to improve compliance and enhance the Roads and Traffic Authority's ability to take disciplinary action when required. The Government makes no apology to the minority of operators who seek to undermine consumers and industry. Many of the amendments have been developed as a result of representation by both industry and stakeholders and they will better protect motorists who rely on tow truck services. I note the Hon. Duncan Gay is anxiously seeking some answers—and the Government always tries to please him, and always will because he does a good job for the tow truck industry—about why red P-plate drivers are restricted from driving tow trucks. Red P-plate drivers are restricted from driving tow trucks for a number of reasons, firstly, essentially because of the level of inexperience of P-plate drivers.

The Hon. Duncan Gay: I asked whether they could not be restricted.

The Hon. HENRY TSANG: I am explaining why they are restricted. The Government will continue to restrict P-plate drivers, firstly, because of the level of inexperience of a P-plate driver and, secondly, because of the complexity of the task of towing another vehicle. Accidents often occur late at night and with additional passengers in the vehicles. There are a number of restrictions on P-plate drivers, and they would apply if they were tow truck drivers. There is also a public passenger requirement and, therefore, they must have a full driver's licence.

In relation to questions on the towing of two vehicles from accident scenes in country areas, currently only a tow truck driver can tow only one vehicle from the scene of an accident. However, police at the scene have the authority to direct tow truck drivers to tow two vehicles. There are other reasons for restrictions on P-plate drivers. Some insurance companies impose penalties on P-plate drivers who are under 25 years of age, so there is complexity involved with insurance.

The Hon. Duncan Gay: If these people want to use them; they would be making that decision.

The Hon. HENRY TSANG: But the Government, in consideration of the complexity of insurance—

The Hon. Duncan Gay: The Government does not pay that insurance.

The Hon. HENRY TSANG: You asked a question and the Government is now giving you the answer.

The Hon. Duncan Gay: It is not the right answer, but it is an answer.

The Hon. HENRY TSANG: You want an answer and I am giving you an answer. The Hon. Duncan Gay asked also about the NRMA. Next week the Roads and Traffic Authority will meet with the NRMA to discuss precisely those concerns. The Government will obviously monitor the results of that meeting.

The Hon. Duncan Gay: If my concerns are genuine, will they address them?

The Hon. HENRY TSANG: The Roads and Traffic Authority is meeting with the NRMA and the Government will monitor the results of those discussions.

The Hon. Duncan Gay: But if my concerns are genuine, will they address them?

The Hon. HENRY TSANG: The Government is addressing the matter at this moment. A meeting will be conducted and we should permit them to have a constructive discussion, to which the Government will give due consideration. In response to questions of storage fees in country and metropolitan areas, the Roads and Traffic Authority prescribes a schedule of maximum towing fees and charges, including storage only for towing of accident damaged vehicles and the recovery of stolen vehicles. These types of towing services total some 70,000 towing movements annually, which is only 10 per cent to 15 per cent of all estimated towing movements.

The market determines towing fees and charges for all other types of towing movements. There are many types of storage facilities, from a fenced parcel of rural land to a fully secure brick building. Also there are many methods by which towing operators utilise storage facilities. They may be leased, shared between operators, or be part of other businesses that the towing operator has, such as a smash repair or mechanical workshop.

Storage fees were reviewed in 2002-03 by an independent party in consultation with the industry and again by the former Tow Truck Authority in 2007. In the course of these reviews a variety of factors were considered, including commercial property rents, charges imposed by commercial storage businesses and maximum storage charges imposed in other jurisdictions. Since maximum storage fees were established in the early 1990s the same single maximum storage fee has been used for both country and metropolitan locations. The schedule of maximum towing fees and charges was increased on 1 July 2008 in line with consumer price index movements over the previous 12 months. The maximum storage fee was also increased on 1 July 2008.

In response to the concerns expressed by the Hon. Duncan Gay about excess paperwork, I advise that the amendments to the Act afford segments of the industry the opportunity to reduce the current level of red tape. The introduction of a three-year licence or drivers certificate will lessen the need for applicants to submit an application and much of the associated documentation annually. The Tow Truck Industry Regulation 2008 did impose some requirements for the industry to maintain additional records. However, many of the records prescribed within the regulations are already required to be maintained for tax purposes under other legislation or are considered basic record-keeping requirements generally maintained by professional businesses. The Roads and Traffic Authority has found that the records maintained by industry greatly assist in the investigation of complaints and the resolution of disputes between consumers, insurers and industry operators. Like the current bill, the Tow Truck Industry Regulation 2008 also reduced the level of red tape and bureaucracy for certain segments of the industry, including the need for some industry operatives to maintain a holding yard and a holding yard register and hold on-hook insurance. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Henry Tsang agreed to:

That this bill be now read a third time.

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

ROAD TRANSPORT (DRIVER LICENSING) AMENDMENT (DEMERIT POINTS SYSTEM) BILL 2008

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [4.47 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

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

Leave granted.

The primary purpose of the bill before the House is to introduce a demerit point scheme for learner licence holders.

The measures within the bill will encourage compliance with the driving laws from the very first stage of the licensing system.

They will ensure the timely application of licence sanctions for irresponsible driving behaviour and poor driving practices.

And they will also ensure New South Wales is aligned with other Australian jurisdictions who have already adopted demerit point schemes for their learner drivers.

And most importantly, the changes will build on this Government's initiatives to help to further reduce the road toll. and better equip young and novice drivers on our roads.

The provisions within the bill have undergone extensive community consultation.

In November 2004, the New South Wales Government released the discussion paper Improving Safety for Young Drivers in an effort to identify workable solutions to the overrepresentation of young people in road fatalities.

The paper detailed 11 road safety initiatives which included an initiative to modify the demerit point structure of the New South Wales Graduated Licensing Scheme to further encourage safer driving by young people.

The consultation process identified community support for tougher penalties on novice drivers who do not comply with their licence conditions and the road rules. The demerit point scheme for learners outlined in the bill today meets these community expectations.

Demerit points have proven to be an effective contributor to road safety outcomes in New South Wales. The demerit point scheme involves the allocation of penalty points for certain driving offences. When the allowable number of points have been reached or exceeded, the driver's licence is suspended.

Licence suspension has a dual effect in that it removes irresponsible and potentially dangerous drivers from our roads while also creating the incentive for drivers to comply with the road rules to avoid the loss of a licence.

Drivers are currently introduced to the demerit point scheme when they are issued a provisional licence. Drivers then progress through the licensing system knowing that unacceptable driving habits and repeat offences will result in the accumulation of demerit points and licence suspension.

Unlike Provisional drivers, New South Wales learner licence holders are currently managed under a discretionary enforcement scheme. This involves the RTA monitoring the number of offences committed by each individual learner and cancelling the learner's licence if 4 or more offences are committed within a 12-month period.

There are limitations with the current administrative arrangements for learner licence holders.

For instance, the current process tends to lack immediacy. There may be some time between the date the first offence is committed and the date cancellation action is applied.

There is also concern that some drivers who have committed less than 4 offences but otherwise dangerous offences are not being deterred from reoffending and possibly continuing this poor driving behaviour into the provisional licence stage.

Introducing a demerit point scheme for learners will go a long way in addressing these issues.

The clear benefit that a demerit point scheme will provide for learners is that it will encourage compliance with the driving laws from the very first stage of the licensing system.

It ensures the timely application of licence sanctions for irresponsible driving behaviour and poor driving practices, which, if left unchecked, can often lead to tragic road fatalities and injuries.

The bill before the House will introduce a demerit point scheme for learners that is similar to that currently applied to New South Wales provisional P1 licence holders. It will introduce the following main provisions:

- A learner licence will be suspended for a period of 3 months if 4 or more demerit points are incurred by the holder of that licence. The 3 month suspension is considered to be an appropriate period of time because it allows the novice driver to re-enter the licensing system quickly so that their driving skills can be maintained. It is consistent with the period of time provided to P-platers who are suspended.

- The bill also includes the introduction of a power to refuse to renew a learner or provisional licence if the holder has reached or exceeded his or her demerit point threshold and action has not been taken to suspend the licence. This provision IS currently applied to unrestricted licence holders

- Learner licence holders just like provisional licence holders '" will have the right of appeal if they are suspended or refused for demerit points.

The 4 demerit point threshold for learner· drivers strikes a balance between ensuring the appropriate leniency is extended to learners while still requiring a high standard of driver competency. To a large degree, the way in which demerit points are currently allocated to offences supports a 4 demerit point threshold.

The majority of fundamental driving offences carry from 1 to 3 demerit points. This means that a minor transgression of the law may not automatically lead to suspension.

Of course, serious offences committed by learners will lead to licence suspension, such as speeding, certain safety related offences committed in operating school zones, and double demerit point periods. The offences which will carry 4 or more demerit points are any speeding offences committed by learner driver, driving with 1 or more unrestrained passengers, or riding a motorbike with a power/capacity in excess of the allowed limit.

The Government makes no apologies to learners who commit these serious offences.

There can be little argument put forward by a learner driver that committing these types of offences was an unintended mistake. This is the rationale currently applying to provisional licence holders.

It is only fair that learners receive· demerit points for offences that they have committed from the commencement of this legislation and therefore demerit points will not be retrospectively applied to learners.

The scheme outlined today ensures a greater consistency of practices and principles across all New South Wales licence types. It also ensures New South Wales is aligned with other Australian jurisdictions who have already adopted demerit point schemes for their respective learner drivers.

Honourable members will recall the measures introduced by this Government in July last year to address the sudden increase in road deaths of young drivers.

One of those measures was the zero tolerance to speed whereby a provisional P1 driver will lose their licence for at least three months for any speeding offence.

Evidence based on crash data for 2007 has shown that the initiative is already delivering road safety benefits. Advice from the RTA is that preliminary data of fatal crash involvements of P1 drivers in 2007 has declined by 35 percent compared to 2006.

The bill before the House builds on those earlier initiatives. The bill will see the zero tolerance to speed initiative currently applying to provisional P1 drivers being extended to include learner drivers through the adoption of the learner demerit point scheme.

The bill also includes additional amendments to road transport law to provide greater clarity in applying licence sanctions when the licence holder holds different licence classes.

For example, a driver who holds a licence to drive a car which is subject to a pending suspension action should not be afforded the opportunity to obtain a learner rider licence.

The law currently allows for licences to be held in any combination of an unrestricted, provisional or learner type, depending on the individuals progression though the licensing processes.

In these circumstances, the current provisions are unclear as to whether there is a requirement to apply a licence suspension under different sections of the Road Transport (Driver Licensing) Act.

In order to give clarity, the bill introduces the new concept of primary and subordinate classes for the purposes of demerit point suspensions.

The practical effect of the proposed measures is that where a person holds both an unrestricted and provisional class and reaches or exceeds 12 or more demerit points the law will clarify that both classes can be suspended under the demerit point scheme that applies to the unrestricted or primary class.

The same concept will apply where a provisional class is held in combination with a learner class. In this case, both licences classes will be suspended when the demerit point (2- threshold is reached or exceeded for the provisional class being the primary class in this case.

The bill also clarifies that the subordinate class can be suspended only if the demerit point threshold is reached or exceeded on that licence class only.

This practice has sound road safety principles in that a person who exceeds their demerit point limit on the most superior licence type held does not have the opportunity to avoid a demerit point licence sanction by continuing to drive or ride on the subordinate licence type.

Alternatively, reaching or exceeding the demerit point threshold on the subordinate licence type does not necessarily deny the licence holder the opportunity to continue to drive on the superior licence type.

The measures I have detailed today are sensible policies that will help to further reduce the road toll and better equip young and novice drivers on our roads. This Government is committed to young driver safety and this bill continues this commitment.

The arrangements proposed in this bill will not impact in any way on law abiding citizens and will allow for efficiencies in enforcing the principles of the current legislation.

I trust Honourable Members will lend their unreserved support to the Government's proposal.

I commend the bill to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [4.48 p.m.]: The Opposition has fewer concerns with this bill than it had with the Tow Turck Industry Amendment Bill. The Road Transport (Driver Licensing) Amendment (Demerit Points System) Bill 2008 is certainly heading in the right direction and, as my colleagues in the other House said, the Coalition will not be opposing it as it seeks to align New South Wales legislation with that of the other States and Territories. Having said that, however, I cannot but wonder why this has taken so long.

The concern is that the bill has been a long time coming. I quite often see motorbike riders on the road and the vast majority of them are excellent citizens who do the right thing. Over the years I have noticed, as I am sure other honourable members have, a large number of L-plate motorbike riders who were having no trouble learning how to ride. They seemed to have mastered the art, and they were off like the clappers. Learners driving a motor vehicle or riding a motorbike at speed is certainly a problem and this bill will address that. If

people with L-plates are doing the wrong thing—driving too fast and deliberately breaking the law—this bill is a huge step in the right direction and should be applauded. A note of caution: I said the L-plate rider of the motorbike had mastered his art—it may have been her art—and the same may apply to an L-plate driver of motor vehicle, but many people are not naturally as good as others.

Some drivers and riders go through a timid period, a period of uncertainty, and I would be concerned if, because double demerit points applied, one of these young drivers inadvertently broke the rules and lost his or her licence. When legislating for anything we try to do the right thing. I accept that this legislation is genuinely heading in the right direction. I do not know if I can get the reassurance I am looking for: it is probably a concern that we have to live with. I hope that law enforcement officers and the Roads and Traffic Authority will be flexible when enforcing this legislation. I will not delay the House any longer. I have always felt we would be better educating our young people rather than penalising them. I have always felt that improved driver education might be better for everyone rather than penalising parents, young people and other motorists who have to travel our single-lane highways in holiday periods. However, it is not my portfolio and I am probably dreaming. The Opposition supports the bill.

Reverend the Hon. FRED NILE [4.52 p.m.]: The Christian Democratic Party supports the Road Transport (Driver Licensing) Amendment (Demerit Points System) Bill 2008, which is a very practical bill. In November 2004 the New South Wales Cabinet released a discussion paper on young drivers. One of the initiatives was the introduction of a demerit points scheme for learner drivers to further encourage safer driving by young people. The community has supported tougher penalties for novice drivers who do not comply with their licence conditions and road rules. I am pleased the Government has introduced this legislation. We must do something to encourage youthful drivers to exercise more care on the road. A demerit points scheme would encourage greater care and responsibility among drivers who have just received a learner's permit and also encourage them to continue that pattern of behaviour as they move up to P-plates and a full licence, by which time they will have learned positive driving habits.

When I drive from Gerroa to Parliament House, which takes two hours, I drive through many sections of road with differing speed limits. In one area the speed limit is 100 kilometres an hour, but it is reduced to 60 kilometres an hour in places where there are roadworks. Nearly every time somebody speeds past me the car has a P-plate on the back of it. The speed limit may be 80 kilometres an hour, but it is reduced to 40 kilometres an hour because of roadworks or other matters. Again, the drivers that seem to ignore these reduced speed limits in areas where roadworks are being carried out have P-plates on the back of their cars. Obviously some drivers have acquired very bad habits during the learner stage and those habits continue through to their P-plate stage, when they will probably have an accident. If they do not, they will have an accident when they get their full licence.

The bill is a positive move if its main purpose is to educate learner drivers to be more responsible, with the threat implied in the bill that the RTA may suspend or cancel a New South Wales learner's permit if the permit holder incurs four or more demerit points. The four demerit point threshold is aligned with that which currently applies to P1 licence holders. The bill also introduces a provision that the RTA may refuse to issue and make ineligible to be issued with a learner, P1 or P2 licence, or the renewal of any such licence, a person who has incurred four or more demerit points. It better reflects in the Act the sanctions applied to combined licence classes, for example a person who holds or attempts to hold a rider and driver licence simultaneously where suspension action has been commenced. We all know that driving habits change once drivers realise they are getting close to accumulating 12 demerit points and could lose their licence. We hope that L-plate drivers will have the same response when they know they are near four demerit points and will be in big trouble. This may bring about a change of attitude and behaviour, and lead them to adopt a far more responsible attitude towards the privilege of driving on New South Wales roads.

Dr JOHN KAYE [4.57 p.m.]: On behalf of the Greens I support the Road Transport (Driver Licensing) Amendment (Demerit Points System) Bill 2008. As a measure that will contribute to a reduction in motor car accidents and in deaths and injuries from motor car accidents it is certainly worthy of our support. It will do so, one would anticipate, in two ways. First, it will reduce deaths and injuries amongst young drivers by making them more aware of the road rules and applying those rules more consistently. Secondly, it will encourage better driving practices among people once they have advanced beyond their L- and P-plate years. That being said, I preface my remarks by saying we should avoid the temptation to demonise young drivers. Both of the previous speakers cited anecdotal experience of P-plate and L-plate drivers breaking the law. It needs to be said that many young people understand the responsibility they have when they sit behind a wheel and they understand all too well the dangers to themselves and to other people. Many young people behave quite sensibly behind the wheel. It is also true that there are some who do not.

The key provisions in this bill are a system of demerit points for L-plate drivers and the provision that the RTA can suspend or cancel a learner's permit after four or more demerit points have been recorded against that licence. Further, the RTA can refuse to licence, or make ineligible to hold a licence, a P1 or P2 licence holder who has accumulated four or more demerit points. The logic behind that is quite understandable. First, the threat of losing a licence is likely to concentrate the minds of young drivers and make them more likely to obey the road rules. But, secondly, a set of rules that are consistently applied during the learning years is likely to generate some good habits in later years as well as an awareness of the need for compliance with driving laws.

The Greens have two concerns with the bill. One is that, while there are reasons to believe the legislation will be effective, these measures will increase costs and possibly will have adverse impacts. That suggests it is important that the Government monitor the application of the provisions of the bill to ensure that they are evidence based and that this direction in road traffic enforcement is cost effective and does indeed lead to the saving of lives. The Government may already have such plans. I would be interested to hear from the Parliamentary Secretary what those plans are, or, if they are not any plans, why there are no plans.

These matters are to be balanced against the saving of lives, but the Greens have concerns that in some instances the cancellation of L-plate driver permits could increase the likelihood of a young person considering driving unlicensed. We know that unlicensed drivers tend to be involved in accidents far more frequently than are licensed drivers. There is therefore a risk that tightening up on the behaviour of L-plate and P-plate drivers could have the perverse result of an increased number of unlicensed drivers and hence an increased number of motor accidents. It is therefore important to monitor the application of the provisions of the bill to ensure other savings expected to be achieved by the bill will outweigh these effects. We ask the Minister to give consideration to a formal monitoring provision within the legislation.

The second issue is that a demerit system inevitably will result in some young people losing their ability to drive a private vehicle. That will have impacts on their lives, as well as impacts on their ability to attend work, to engage in a healthy social life, to visit their families, or to move from one place to another to gain employment. Yet again, this puts pressure back on government to invest in a public transport system, so that, in particular, young people are not in this way disadvantaged. That having been said, the Greens support this legislation, and congratulate the Government on these further measures to reduce the appalling road toll amongst young people.

The Hon. MARIE FICARRA [5.02 p.m.]: The purpose of the Road Transport (Driver Licensing) Amendment (Demerit Points System) Bill 2008 is to strengthen our demerit point system to include learner drivers on New South Wales roads. While there have been big improvements in road safety over the past 20 years, young people continue to be over-represented in road crashes. Young people are more mobile than at any time in the past. More young people now own and/or drive motor vehicles than ever before. This has brought opportunities and increased freedom, but also risks. The good thing is that the reduction in road deaths has occurred despite significant growth in population, cars and other vehicles on the road and kilometres travelled.

Initiatives such as random breath testing, safer vehicles, better roads, ongoing community education about road safety and compulsory seatbelts have been significant reforms that have resulted in major decreases in road deaths and injuries. Under this bill, learner-rivers would be suspended for three months for incurring four or more demerit points, similar to the scheme that already applies to P1 drivers. Currently, L-plate drivers caught for low-level speeding can be fined but do not necessarily lose their learner's permit. Much discretionary power currently exists. This bill gives immediacy and decisive corrective action against novice offenders. Getting a licence is a significant event in the life of a young person. A licence represents freedom and status. But with this freedom must come a mature approach to responsible driving. Poor driving habits in the learner phase most definitely carry over to the provisional phase and beyond. We need to break this cycle as early as we can.

It is important for us to send a strong message to young drivers that they should take great care when driving. It is part of being young that from time to time a maturing person may act in a reckless way. Unfortunately, that foolish behaviour can lead to terrible ramifications for drivers and passengers. Statistics show young drivers have a greater risk of involvement in a fatal crash if they have two or more passengers in their vehicle. International and national studies, along with an analysis of New South Wales crash data, have confirmed the increased risk for young drivers at night and in the early morning hours. The over-involvement of young drivers in crashes is highest on Friday and Saturday nights. However, young drivers are also overrepresented on other nights of the week.

All members of this place are committed to making our roads as safe as possible, and demerit points have proven successful in helping keep irresponsible and potentially dangerous drivers off New South Wales roads. L-platers have the right of appeal if they are suspended from driving. The bill will stop suspended drivers from gaining a bike-riding licence. It is important that we do all we can to reduce the road toll, especially amongst our youth, many of who are inexperienced and overly confident, or falsely confident drivers.

It remains a mystery to me why it has taken four years to implement the recommendations resulting from a Government discussion paper released in November 2004 called "Improving Safety for Young Drivers". Can some Government member or perhaps the Parliamentary Secretary explain to the New South Wales public why this has taken four years? The discussion paper detailed 11 road safety initiatives, including modification of the New South Wales licensing demerit point structure that is before the House today. The consultative process indicated strong community support for harsher penalties for leaner drivers who do not adhere to their permit provisions and the road rules.

Indeed tougher restrictions for P1 drivers were introduced in July last year, when zero tolerance for speeding was introduced and offending P1 drivers automatically lost their licence for three months. This measure is producing the desired, positive road safety effect, with fatal crashes involving such drivers declining by 35 per cent in 2007 compared with the previous year. This zero tolerance approach will be extended to learner drivers under this bill.

It is pleasing that the bill will give greater clarity and consistency of practices across all licence types and classes, aligning New South Wales with other Australian States especially with regard to demerit points and suspension of licences. This legislation will encourage compliance with our driving laws from the very first stages of our licensing system. Timely sanctions for poor learner driver behaviour will be enforced, as is the case in other States. The majority in our community are supportive of learners' permits being suspended for three months if the driver incurred four or more demerit points. This suspension should be seen as a remedial opportunity for these offenders to re-enter the licensing system rapidly if they have the right attitude, so that their driving learning skills can be continued. It is also consistent with P-plater suspensions.

The bill will allow refusal of licence renewal requests when maximum demerit points have been reached or exceeded but action has not yet been taken to suspend the license. This provision is identical to all other licence holders and, naturally, rights of appeal exist in such cases. The offences carrying four or more demerit points are reasonable: speeding for learner drivers, driving with one or more unrestrained passengers, and riding a motorbike that exceeds permissible power or capacity limits. In order to prevent more young deaths on our roads, particularly among males, we need to increase driver education in high schools, subsidise defensive driver courses for young drivers and implement more graphic road safety advertising after 8.30 p.m. in order to properly educate young people of the real dangers of driving.

The increase in the requirement for learner drivers to log 120 hours of driving, including 20 hours of night-time driving, certainly is an improvement on the 50 hours requirement of the past. The current graduated licensing scheme, which requires novice drivers to pass four tests and go through three licensing stages before obtaining an unrestricted driver's licence, is a long way from the licensing system that I experienced many years ago. We must continue to stress the danger of the power behind the steering wheel, behind the often powerful engines and the hot-blooded testosterone-charged group mentality that exists amongst our young drivers and their often immature passengers. Indeed, it would be pleasing to see more of an uptake of the Roads and Traffic Authority's free parent workshops held across the State to help parents who act as supervising drivers to encourage learner drivers to become safer drivers. Road safety education in our schools is a vital program that should be maintained as part of a mandatory curriculum and expanded in its scope.

In the past decade New South Wales has made great progress in reducing the road toll since records commenced in 1949. However, road safety statistics consistently reveal that as a group, young drivers are at greatest risk of death or injury. Drivers aged 17 to 25 years are involved in more than 30 per cent of all fatal and serious injury road crashes in New South Wales. Those figures are particularly disturbing when one considers that this age group represents only 17 per cent of licence holders. Proportionally, drivers aged 17 to 25 years are the group second most likely to be involved in fatal accidents—second only to those over 85 years of age. Males make up 79 per cent of drivers aged under 26 years involved in fatal crashes. All road deaths are a preventable tragedy associated with social and economic consequences. The loss of a young life is a monumental waste. The general agreement among road safety and driver licensing authorities and the broader community, including young people, is that more needs to be done to reduce injuries and loss of life among young people on our roads. This bill will assist in that process. The Coalition does not oppose the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.11 p.m.], in reply: I thank all honourable members for their contributions to this debate. I am pleased that the bill has broad support. It is pleasing that the Opposition supports this legislation, but I must place on record that the Government is disappointed that the Opposition tried to unsuccessfully claim that the Government has been slow to act on improving the safety of young and novice drivers. If Opposition members had been paying attention, they would have noticed significant road safety reforms introduced by this Government over the past three years, they would have noticed that the road toll is at its lowest since World War II, and that fatal crashes for P1 drivers in 2007 declined by 35 per cent compared with 2006—a fantastic outcome by anyone's measurement.

The Opposition should look at the facts. This bill builds on the successful novice driver reforms introduced by this Government, some of which include zero tolerance for speeding; the banning of all mobile phone use; passenger restrictions; 120 hours of supervised driving; and a new tougher, longer driving test for learners. In addition, since 1 September 2008 learner and provisional riders and drivers who speed more than 30 kilometres per hour over the speed limit face immediate licence suspension and confiscation of their licences. These reforms have proven to be sensible, practical and enforceable, and are keeping novice drivers safe on our roads. This bill seeks to improve the safety of young drivers by introducing a demerit point scheme for learner-driver licence holders.

The community said it wanted tougher penalties for novice drivers who refuse to follow the road rules. These new laws will deliver them. Under the proposed demerit point scheme learner drivers will have their licence suspended for three months if they incur four or more demerit points. The Government is cognisant of the issues raised by Dr John Kaye. The demerit point scheme is intended to be balanced: a three-month suspension period is not considered too long and was chosen deliberately to ensure that learner drivers keep their driving skills and re-enter the driver licensing system without having lost driving knowledge. The concern raised by Dr John Kaye about people continuing to drive while unlicensed obviously is real cause for concern, but harsh penalties apply for people who drive unlicensed, which is an important additional deterrence.

In response to the Deputy Leader of the Opposition's query regarding the right of appeal, I can advise that a learner driver has a right of appeal if he or she is suspended or refused a licence because he or she has accumulated four or more demerit points. The bill provides for the Roads and Traffic Authority to refuse to renew a learner's permit or provisional licence if the holder has reached or exceeded his or her demerit point threshold and action has not been taken to suspend a licence. This provision is currently applied to unrestricted licence holders. As I have said previously, a three-month suspension period also will apply.

The new laws will also clarify the way in which a suspension will apply to persons who hold a rider and driver licence at the same time. If a person has his or her driver's licence suspended, he or she cannot then get a motorcycle licence in its place. Suspended drivers should not be afforded this option, because they have already demonstrated unacceptable driving behaviour. The zero tolerance speeding initiative that applies to red P-platers also will be extended to learner drivers under the scheme. This will ensure that learner drivers, like P1 drivers, are suspended from driving for any speeding offence.

The bill continues to build on the success of the comprehensive reforms already implemented by this Government. A demerit points scheme for learner drivers also will bring New South Wales into line with other Australian jurisdictions that have already introduced similar schemes for their novice drivers. This bill will teach young and novice drivers that they must obey the law from their first day of driving. The Government makes no apologies to learners who commit repeated and serious offences. By encouraging good driving habits the bill will help save the lives of young drivers who are overrepresented in the road toll. The clear benefit of these new laws is that they ensure the timely application of licence sanctions for irresponsible driving behaviour and poor driving practices, which, if left unchecked, often can lead to tragic road fatalities and injuries.

This bill sends a clear message to young drivers that they are not above the law. In response to community concerns about the overrepresentation of young people in road fatalities, the bill is an encouragement to all adult drivers to consider how they drive in front of their children because they shape their future driving behaviour. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

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

LOCAL GOVERNMENT AMENDMENT (LEGAL STATUS) BILL 2008

Bill received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. Penny Sharpe, on behalf of the Hon. Tony Kelly.

Motion by the Hon. Penny Sharpe 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.

HOME BUILDING AMENDMENT BILL 2008

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.18 p.m.], on behalf of the Hon. Ian Macdonald: I move:

That this bill be now read a second time.

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

Leave not granted.

I am pleased to introduce the Home Building Amendment Bill 2008, which includes a number of important enhancements to the home warranty insurance scheme under the Home Building Act 1989. As members know, residential building is one of the most expensive purchases consumers undertake. The Home Building Act requires that builders contracting residential building work worth more than $12,500 must take out home warranty insurance. Home warranty insurance indemnifies a homeowner against loss and damage arising from insolvency, disappearance or death of a contractor. Insurance cover is provided for non-completion of work and for breach of statutory warranty. This form of insurance often is referred to as last-resort cover and acts as a safety net in the event of the most dire of circumstances where there is no longer a contractor in place to build, complete or repair the contracted work.

A homeowner who has a problem with their home can currently access a comprehensive dispute resolution process involving inspections and mediation by Fair Trading or, if mediation fails, they can lodge a claim with the Consumer, Trader and Tenancy Tribunal. Claims also can be lodged directly with a court. The tribunal can order the contractor to undertake work or pay compensation, which is known as a money order. If the contractor fails to comply with a money order the homeowner must take legal action to enforce the order or have the contractor made insolvent.

Fair Trading's research has indicated that a significant number of consumers who have orders made in their favour are not having them enforced. In the five years to 2007 there were 564 money orders issued by the tribunal that were complied with by the required date. Some 160 of those orders related to contracts with 132 contractors and were of sufficient value that a home warranty insurance contract was required. Thus they are not able to receive the relief that has been provided by the tribunal or lodge a home warranty insurance claim. An insurance claim cannot be paid until the contractor is declared insolvent or extensive inquiries show the contractor has disappeared or has died. The proposal will provide consumers with the remedies to which they are entitled.

Currently a licence cannot be issued or renewed if the applicant has not satisfied any order of the Consumer Trader and Tenancy Tribunal within the period specified by the tribunal. However, licences under the Home Building Act can be issued for up to a period of three years. Taking of disciplinary action could be a

lengthy process and covers only non-compliance with a tribunal's order. Non-compliance with a court order is not grounds for disciplinary action. There needs to be a faster process to provide consumers with the remedies to which they are entitled.

The proposed legislation, under proposed section 42A, will suspend a home building licence 28 days after the date on which the amount of money was due to be paid under the tribunal's order. I note that while tribunal orders tend to include a time frame for performance, court orders for money generally become payable once they are made. Regarding orders to do things, the District Court does not generally have the power to make such orders; but when the Supreme Court makes orders there is no general practice as to whether time limits are imposed. Accordingly, it is proposed that the director general will determine a reasonable period for payment in published guidelines if no period is specified in the order. This is necessary to make the principle applying to tribunal orders equally applicable to court orders.

If an order is obtained staying the operation of the decision pending an appeal against the decision the suspension would take effect when the decision of the court or the tribunal is confirmed on appeal, and the contractor will not be able to continue in business until they comply with the order. Fair Trading will have the capacity to defer operation of this suspension if necessary—for example, if agreed arrangements are in place for payment. Publicly available guidelines will be developed to ensure that this discretion is used appropriately. Under existing section 48S of the Home Building Act 1989 the Consumer, Trader and Tenancy Tribunal must currently inform the director general of any order it makes when determining a building claim. This information must be provided as soon as is practicable after making the order, and must include information about the time limit for compliance.

Currently no mechanism exists for Fair Trading to be informed of court orders involving building claims. The bill therefore proposes that a licence holder must notify the director general in writing within seven days of the amount of money to be paid and the name of the person to whom the money is to be paid. There is a penalty of 40 penalty units for a corporation, and 20 penalty units in any other case, for failing to notify the director general. A party to the proceedings may also choose to notify the director general of the making of the order and the terms of the order, thereby providing an extra means of notification. In addition, the loophole whereby disciplinary action cannot currently be taken against a licensee for failure to comply with a court order is being closed by the bill.

The legislation will also reduce the time involved in determining a home warranty insurance claim. The legislation will provide consumers with the ability to make a home warranty insurance claim as soon as a contractor has their home building licence suspended for non-compliance with a money order. On suspension of a licence for non-compliance with an order, insurers will be required to provide an insurance contract that allows a claim to be made by a person on whose behalf the work is being done and that person's successors in title as though the contractor has died, disappeared or become insolvent. However, the insurer is not liable to pay the amount that is the subject of the order of the tribunal or a court.

I should point out that the risk being insured does not change from the current situation. In other words, it is the risk of loss from non-completion of the work and from not being able to recover compensation for breach of statutory warranty or not being able to have the breaches rectified. The suspension of the licence of a builder for failure to comply with an order gives relief to the claimant only and not every other client of the builder. Under the proposed section 99 (4) the insurer is required to accept liability for the claim only where the tribunal or a court has ordered the contractor to pay the beneficiary an amount of money, and the contractor has failed to comply with the order. Should the builder have other work in progress, those consumers would have to have a money order made in their favour by the tribunal or a court, and the builder would have to fail to comply with that order before the insurer is required to accept liability for a claim.

Existing section 47A of the Home Building Act provides that the director general may appoint a person to coordinate or supervise work when the licence of a builder is suspended or cancelled. If the insurer pays the claim the insurer can recover money from the contractor in a court in the amount paid by the insurer under the claim. If the contractor complies with the tribunal or court order or completes the residential building work after the claim has been paid the insurer will be able to recover from the beneficiary the amount paid to the beneficiary under the order. This will exclude any amount paid under the order that does not relate to a matter for which the insurer is liable under the contract of insurance.

Taken as a whole, the proposed provisions will facilitate more timely access to home warranty insurance and will create an incentive for building contractors to act appropriately when ordered to pay

compensation to homeowners. I note that the Government's bill is consistent with recommendation 18 of the inquiry into the operation of the Home Building Service, which was conducted by the Legislative Council's General Purpose Standing Committee No. 2 in 2007. The recommendation was as follows:

> That the New South Wales Government adopt the recommendation of the Home Warranty Insurance Scheme Board to introduce an additional trigger to enable consumers to access insurance without having to pursue a builder's bankruptcy or insolvency.

Apart from the proposals relating to an additional trigger for making a claim on a home warranty insurance policy, the bill includes a provision which clarifies an amendment included under the Home Building Amendment (Statutory Warranties) Act 2006. On 2 August 2006 the Court of Appeal made a ruling in the case *Honeywood as executrix of the estate of the late Neville Honeywood v. Munnings & Anor [2006] New South Wales CA 215* which affected statutory warranties under the Home Building Act 1989. The decision held that the statutory warranty provides only one opportunity for action. A party is barred from bringing a second action for different losses arising from the same breach of contract even when the party was unaware of the losses when the original proceedings were bought.

This Court of Appeal ruling had the potential to prevent homeowners from taking action for structural defects that arise after the completion of legal proceedings for less serious matters than may have been addressed at an earlier date. The ruling also had the potential to prevent insurers from obtaining recovery from builders. The Home Building Amendment (Statutory Warranties) Act 2006 was passed by Parliament and commenced operating in November 2006 to address the Court of Appeal ruling and to confirm that the statutory warranties are not extinguished by prior legal proceedings. The amendment Act inserted provisions in part 2C of the Home Building Act 1989 to the effect that enforcing a statutory warranty in proceedings does not prevent the person enforcing the same warranty in relation to other deficiencies that the person did not know about, and could not reasonably be expected to have known about, at the conclusion of the earlier proceedings. The amendments were applied retrospectively to ensure that no person was prevented from taking action in the period between the Court of Appeal ruling and the passage of the legislation.

An issue that subsequently has arisen is whether the amendments were limited to legal proceedings and would not overcome the Court of Appeal ruling in circumstances in which statutory warranties had been enforced by means of an out-of-court settlement. At present there is a possibility that a court could interpret the 2006 amendments in section 18 (2), which refer to enforcement in proceedings, as not applying to enforcement by accord and satisfaction—for example, out-of-court settlements. Minor amendments therefore are being made to clarify the legislation so that it is clear that a homeowner is able to pursue proceedings for a breach of the same statutory warranty in relation to a different deficiency, even if they resolved a previous breach of statutory warranty through legal proceedings or by accord and satisfaction. The proposed amendments also will flow through to private insurers and the Building Insurers' Guarantee Corporation in recovery proceedings to enforce statutory warranties of persons insured by them. I commend the bill to the House.

The Hon. CATHERINE CUSACK [5.29 p.m.]: The Opposition does not oppose the Home Building Amendment Bill 2008. The purpose of the bill is to provide for the automatic suspension of a home building contractor licence or building consultancy licence if the licence holder fails to comply with an order of the Consumer, Trader and Tenancy Tribunal [CTTT] or a court to pay an amount of money in respect of a building claim, to require contracts of insurance for residential building work to include a provision that enables the person on whose behalf the work is being done to make an insurance claim if the contractor's licence is suspended because of the contractor's failure to pay the person an amount of money ordered by the tribunal or a court in respect of a building claim, and to enable disciplinary action to be taken under the Act against a licence holder if the licence holder fails to comply with an order of a court in respect of a building claim.

Other measures proposed in the bill, which have been outlined by the Parliamentary Secretary, include clarifying that a consumer has the right to lodge a further claim if they have already lodged one claim for a different matter. This has been a contentious aspect of the legislation. As members are aware, the Opposition is concerned about the veracity with which insurance companies take on and fight consumers in order to avoid meeting their liabilities and compensating consumers under the home warranty scheme. I refer to the famous Onorati case. Basically, the case involved a person trying to make a second claim for a matter under the same insurance policy and being told by the insurance company, "No, you can't. You can only claim once. Even thought this is a different matter, under the law you are not allowed to go again." The Onorati case was fought all the way to the High Court for a straightforward and simple matter of justice.

All those who are familiar with that case are horrified by the insurance company's attitude towards the consumer. The same attitude has been exhibited in many other cases. This bill clarifies the number of claims

that can be made, and that is welcomed. At the same time the Opposition is of the view that this bill is extremely minor legislation. The bill, which has only seven pages, does not tackle the fundamental problems in the home warranty scheme, although several amendments give effect to the recommendation made by the Legislation Council committee in its report on the 2007 inquiry. The Opposition supported the recommendation for additional triggers to be provided, and we will not oppose those measures going through today. But I emphasise that this minor bill does not tackle the fundamental flaws in the scheme. We are bewildered by the whole treatment of this legislation by the Government. On the day the House was recalled to discuss electricity privatisation—there was not much discussion about electricity privatisation on that day—the then Minister for Fair Trading, Linda Burney, without warning, introduced these changes and started to ram them through the lower House.

The Hon. Trevor Khan: They had nothing else to do.

The Hon. CATHERINE CUSACK: Yes. It is as if the Government sliced off one small part of the problem while other matters that are equally urgent and important are still the subject of review. The Home Building Act is being reviewed at the moment. I understand that the review has been underway for about a year but it has been put on hold because the Council of Australian Governments [COAG] is in the middle of trying to achieve licensing reform. That licensing reform goes back to the early 1990s. We are trying to get mutual recognition of people's licences across a range of industries. For example, there has been a form of mutual recognition in the plumbing industry. However, I understand that about 80 or 90 categories of licences need to be recognised; no-one is recognising anyone's licence at present. Classes of licence are simply being added to a national scheme.

The scheme is incredibly confusing, although people are able to work. People no longer understand what a licence means. COAG is trying to work through the issues, particularly in the building industry. That seems to be the latest excuse to put the review of the Home Building Act on hold. The review has been progressing at a snail's pace. I imagine a snail being derailed. That applies not only to this legislation but to all fair trading legislation that is simply not progressing. I understand the review might be completed, with recommendations turned into legislation and presented to the House, perhaps during the second parliamentary session next year, but that remains to be seen. In the meantime we will continue to highlight the key areas of the Home Building Act that we believe need to be reformed.

The areas of high public interest, on which the Government has been flayed in the Parliament and in the media, that still need reform include the Government's failure to curb the insurance companies reaping super profits from builders and consumers under the scheme. The Government still has no answer to the problem of insurers refusing to pay more than two-thirds of claims. I understand the legislation will assist in speeding up the claims lodgement process, but lodgement of a claim does not mean the claim will be paid. People need to realise that they are fighting a fierce and determined opponent in the insurer, whose entire existence seems to be predicated on resisting claims.

I raise again the case of Charlie Tran, who eventually made a claim with his insurer and has since been taken in circles in the courts by the insurer. Although Mr Tran continues to win every case, the insurer continues to appeal to the Supreme Court. Mr Tran is currently engaged in a case in which the insurer made an offer of settlement, but Mr Tran refused to accept it. His lawyer appears to have made a positive sign that the offer will be accepted, but Mr Tran did not accept it. The insurance company, Vero, has taken Mr Tran to court to try to force him to accept the offer. Mr Tran will not accept the offer because it is inadequate, and he does not wish to be among the overwhelming majority of clients of this company who are being forced to accept inadequate settlements.

Mr Tran is now in court fighting for his right to refuse to accept an inadequate settlement. He won the case in the Supreme Court, but Vero has appealed the matter yet again. Mr Tran is completely out of money. He has been relying on charity and help from people to have the legal resources to continue to fight the insurance company. Recently my colleague the Hon. Charlie Lynn and I visited Mr Tran. Mr Tran, his house and his family are in a bad way. Introducing a trigger to make it easier for people to lodge claims is only incremental progress because until the insurance companies accept these claims and meet their responsibilities we have cut only a little bit of red tape from the process; we are not dealing with the core problem.

Insurance companies display the most outrageous and unconscionable conduct towards their clients. Frankly, the Government must be embarrassed by this type of behaviour and its inability to curb it. Nothing in the bill deals with that important issue. It does not deal with consumers who are forced to accept inadequate

settlements and sign away their rights to make future claims against the insurer, although it clarifies that a consumer has a right to make a further claim against an insurer. For example, a consumer may successfully claim that there is a defect in a wall. The ultimate result is that the insurer must pay for the wall to be replaced. Yet later it becomes apparent that there is a defect in the roof, which is equally important.

Insurers have declined to accept a claim for the roof, saying, "You should have known about that at the time that we dealt with the wall matter." These provisions in the bill will assist consumers so that technically they have a right to make a second claim. However, they will not assist consumers who have settled a claim on the first matter and whose insurer has forced them to sign away any future rights to claim against the same policy.

People who have been fighting for years call my office in tears and say, "I have been given a form. It is my last day. I am being told I have to sign it. It is an inadequate settlement. I have to sign away all of my rights. If I don't sign it then I am going to be in court and they are going to bleed me to death through the legal system. I feel like I have got a gun against my head. What do I do?" I have to say to them, "I can't give you legal advice. I have met people who have fought this system and I cannot in all conscience tell you to continue to fight this company because I have seen people absolutely ruined. If you sign, maybe write on the form that you are signing under duress."

I have no idea whether that has any effect but these people are under enormous duress. I cannot see how that measure in the bill will overcome the problem of the bullying behaviour by insurers. The bill does not deal with the problem that good builders are being refused insurance cover because they cannot afford to underwrite their own policies—a very sore point between the building industry and insurers. The bill does not deal with the last-resort nature of this scheme that requires inexperienced consumers to fund and navigate an expensive, complex legal maze without any help whatsoever from Fair Trading. It is not just the inability of people to finance lawyers, barristers and expert advice once they find themselves in the Consumer, Trader and Tenancy Tribunal; it is also just understanding the system.

We need to understand that the people who are most vulnerable have probably never had a day in court in their life. Suddenly when they have a dreadful problem with their house they go to the CTTT, where they naively think that is where they will get justice and the matter will be sorted out. It is only when they arrive at the CTTT that all the problems begin. Many of these people risk making a mistake. I keep referring to the Charlie Tran case because he has not made a mistake. Even people who make a minor error in their cases at an early stage should not be unable to overcome that error, or to rectify that error, and should not be completely punished for years through the legal system, with other people hanging onto the excuse that an error was made very early in the process.

These inexperienced people lack assistance in dealing with an insurance company with barristers who are well known to the members of the CTTT—they can be seen chatting and laughing at one another's jokes, from what I can gather, such is their familiarity. The client knows nothing about tribunals and is literally in a David and Goliath situation. That problem also is not addressed by the bill. Those people carry around their files on trollies—they are as familiar as family members—and they keep saying "I've got my documents; I've got this" and they can answer every question. They have experienced years and years of system abuse and they hang on completely to the idea that they know they are in the right, if only someone will listen to them and they can prove their case.

The bill does not deal with the problem of the numerous errors that are being made by CTTT members, whose mistakes on home building matters can be corrected only if a Supreme Court appeal is successful. But the grounds for appeal are extremely narrow. Again, I come back to the Siebert case: an inexperienced, unqualified tribunal member on the far North Coast ruled that the process of protecting a house against termites had been done properly when it clearly had not. Mr Siebert was condemned to four years of going around in circles and running up ruinous legal bills trying to undo a mistake that is generally regarded by everybody as an error by the CTTT member. That matter is also not dealt with in this legislation. The bill reveals the overall failure of Fair Trading to supervise insurance premium claims and performance data.

The legislation proposes to make it easier to cancel the licences of builders who refuse to comply with court orders. It enables a consumer who has reached this stage to lodge a claim. However, as I have said, the insurer is still not required to accept liability, and the consumer in many cases will probably find themselves in court fighting the insurer, while the insurer is in court fighting the builder. A builder whose licence is cancelled will have other clients who are left in the lurch. Incredibly, these clients will have no right to claim under

insurance and will each have to lodge their own proceedings against the builder. Can the Government not see that this is a problem? Why do we force so many people into the court system? Why can basic processes not take their course?

It is envisaged by the Government that when the builder's licence is suspended and he cannot continue to work on other sites he will basically abandon those sites and it will be a straightforward matter for people to get orders against the builder in the tribunal. Nevertheless, I maintain that Fair Trading should be taking a more proactive role rather than asking individual consumers, many of who are inexperienced in these processes, to do all the work. The agreement in principle speech referred to about 564 orders not being complied with by these businesses. Unfortunately, many of these dodgy businesses are not new to the game; they are very experienced and good at dudding consumers. Phoenix companies operate in the construction industry. Indeed, a classic example is the collapse of Excellence Developments in the Hunter Valley earlier in the year, leaving a large number of people in the lurch. Before Excellence collapsed it wrote to all its clients recommending that they transfer their business to another builder. Of course, the other builder turned out to be the owner of Excellence, which he was in the process of collapsing.

The home warranty scheme then has to step in and resolve the debacle caused by the Excellence collapse. Meanwhile, the owner is so greedy he hopes to hang onto the work and, hey, divert it to another building company that he started prior to collapsing the first building company. That is how phoenix companies operate over and over again. People who dodge their responsibilities have multiple licences in the building industry that pre-date the collapse or the event at which this point in this legislation is triggered. I have sought clarification of how the Government can make sure that cancelling one licence does not mean the builder can take refuge in all his other licences. I would appreciate more information about that. I appreciate the briefings I have had from the department but I see that as the mother of all loopholes: these unsavoury characters who are very practised at studying the legislation and working out how they can run rings around consumers and Fair Trading simply find another way. The risk is that the legislation will not be effective against them.

The worst thing about this bill is that the Government has still failed to provide a solution for hundreds of cold cases involving people who have been stranded in the courts for years, having spent hundreds of thousands of dollars trying to get the insurer to pay their claims. Many of them have lost their jobs and families and are in the process of losing their house that they cannot live in and that is full of defects that they cannot repair. Those people are trapped in their nightmares because the legislation has changed. This bill will apply to future cases but we are not looking to assist the people who are in this trap to the point where the legislation is proclaimed. Those people need a special solution.

The Government has admitted it is "saddened" by these past cases. I have heard Minister after Minister say they are sympathetic and it is a tragedy, but they do not help. The people concerned do not want sympathy from the Government; they need assistance to get out of their nightmare and they need legal support or some form of settlement. The Government has conceded all these flaws in the law, and every time a bill such as this is passed a new category of cold cases is created. The Government has conceded that there is an error in the law, multiple changes have been made, and loopholes are closed but people are being left out because the changes do not help those fighting under the old system.

I cannot see how the insurer is liable, given that they are fighting their cases based on old rules that have not changed. In our opinion the only solution to the problems of the several hundred people—it is a finite number of cases—caught up is for the Government to appoint a special commissioner to individually review the cases and recommend compensation that will liberate these families from the home warranty nightmare that has broken so many of them emotionally and financially.

I note that the Government will move an amendment in Committee. I will make some further comments on the amendment when the time comes, but I indicate at this stage that the Opposition will not be opposing it. Basically, we believe that the bill is woefully thin and inadequate. We will not be at all obstructionist in terms of allowing this legislation to pass, but we will continue to press the Government to bring forward better reforms to bring some justice to this unjust scheme. And I implore the Government not to leave the cold cases behind.

Ms SYLVIA HALE [5.51 p.m.]: The Home Building Amendment Bill 2008 contains some minor positive measures that will give an increased incentive for builders to comply with orders, and for that reason the Greens will support it. In doing so, however, we recognise that the measures in the bill are grossly inadequate when it comes to addressing the fundamental flaws in the current Home Warranty Insurance Scheme. I foreshadow that I will be moving a number of amendments in Committee in an attempt to strengthen these inadequate reforms.

In December 2007 I provided a dissenting statement to the report of the inquiry into the operations of the Home Building Service undertaken by General Purpose Standing Committee No. 2. In that dissenting statement I noted that privatised home warranty insurance is a failure, as is clear from the numerous inquiries into its operation in this and other States and from the disturbing evidence provided to the inquiry. It not only fails to offer timely, appropriate or adequate protection to consumers but also is a source of profound dissatisfaction within the building industry itself. As the Master Builders Association commented:

> The privatisation of consumer protection insurance in New South Wales has had a devastating impact on the New South Wales residential building industry …
>
> Other than for insurers, it is difficult to identify who has benefited from the introduction of a privatised insurance scheme in New South Wales.

It is an insurance scheme that is fundamentally flawed because its design ensures that few claims can be made against it. A consumer seeking rectification or compensation for unsatisfactory work cannot claim against an insurer unless the builder is dead, has disappeared or is insolvent—and even bankruptcy does not always meet the last criterion. The bill extends this provision to allow a claim where a builder's licence has been suspended for failing to meet a court or tribunal money order. That is a small but positive step, but it does not address the fundamental flaw in the scheme's design.

The scheme is one of last resort and the onus falls on the consumer, who may already have suffered ruinous financial losses, to exhaust all other avenues of redress, including expensive and time-consuming litigation, which few are able to afford, before lodging a claim. Even then, as evidence to the inquiry indicated, there is a marked resistance on the part of insurers to settle. A stark illustration of this was provided by a witness who told the inquiry that he had been left with "a house I cannot live in, cannot have fixed or get fixed through Home Owners Warranty Insurance, nor can I sell it because it does not comply with the conditions of development consent". His legal, rental and rectification costs were then $290,000, yet his insurer Vero has said it will pay only $50,000. In contrast to the New South Wales privatised profit-driven scheme of last resort is the Queensland scheme, which the Builders Collective of Australia commended in the following terms:

> There are no profit driven brokers, Trade Associations or insurers that can exploit any systemic weakness in the Queensland system whatsoever. It is fully transparent, accountable and audited by the Auditor General on an annual basis. It is the only system in Australia that delivers genuine first resort protection ... a consumer can make a claim against the warranty policy without the last resort triggers of death, disappearance and insolvency.
>
> Fundamentally, if the builder will not fix the adjudicated defect then the accreditation arm of the Queensland Building Services Authority can and does take action against that builder and will inevitably lead to suspension and/or deregistration. All this occurs while the defect or incomplete work is fixed and the home-owner gets on with their life.

Some contend that insurance premiums in Queensland are higher than those in New South Wales, although others dispute this claim. The critical issue is, however, not so much the size of the premium as the protection it offers. Any premium, however cheap, that does not provide adequate protection is too expensive. Consumer satisfaction with the public Queensland scheme appears to be high. The consumer rate of approval for the Queensland Building Services Authority [BSA], as measured by a McNair Anderson survey done for the Queensland Government in 2004, rated the scheme at 96 per cent approval. In contrast, the view of the Australian Consumers Association about such schemes as the New South Wales scheme is scathing. It stated:

> Basically our view is that home warranty insurance makes a mockery of consumer protection. It's not worth the paper that it's written on. It's completely useless and particularly the last resort clause makes it a junk insurance.

Professional builders have additional concerns. In its submission to the inquiry the Master Builders Association raised doubts about whether the entry of more insurers into the home warranty market had increased competition or reduced premiums, and it had this to say:

> The question remains whether in reality there is true competition. Builders being blocked from registering with all insurers in the market is not consistent with 'free movement' in this specific market. This barrier prevents builders from capitalising on any competition in premiums offered by the seven insurers, effectively denying the client or consumer the benefits of competitive premiums.
>
> Indeed, a builder is required to cancel their eligibility with the current insurer, should they wish to gain eligibility with a new insurer. Not only does this cause difficulties and increase administration for the builder, it also denies the builder a contingency should an insurer choose to withdraw from the scheme.

Mr Russell Joseph of the Builders Collective commented that insurance cover is "sold by the private insurance company but claims may be recovered from the builder under the deeds of indemnity and/or bank guarantees

held by the insurer". In effect the burden of underwriting insurance is transferred from the insurer to the builder. Mr Joseph also noted that, unlike Queensland where they are not required, indemnities and bank guarantees are a huge problem for builders in New South Wales.

Mr Ray Brown, past president of the Building Designer Association, spoke of the difficulties some of his members experienced "because of caps and the inability of those builders to attain warranty insurance. Many such as myself and others still have indemnities in place and are unable to have them released." The power to refuse insurance, which builders must obtain if they are to comply with the law, affords the insurer an opportunity to exert significant influence over the builder's business.

Because of its profit-driven, last-resort nature, no amount of tinkering will result in any fundamental improvement to the New South Wales scheme. It should be abandoned and a scheme modelled on the first-resort, not-for-profit, publicly administered Queensland scheme adopted. As Mr William Meredith of the Master Builders Association commented, "When you look at the Queensland scheme, which is a scheme of first resort, I guess a scheme of first resort can work and, indeed, it is working up there."

The bill is little more than a band-aid for a scheme that is terminally dysfunctional. The whole scheme needs to be thrown out and replaced by a scheme that works. Why has the Government not sought to do so? Who supports the current New South Wales scheme? The Housing Industry Association is an advocate for the present scheme and appears to be a supporter of the bill currently before the House. The Housing Industry Association is a significant beneficiary of rebates and commissions that insurance companies pay when home warranty insurance is taken out. However, in Queensland, where the government-run scheme precludes commissions, the association is a major loser.

Andris Blums of the Builders Collective of Australia believes that the privatised schemes operating in all States other than Queensland have resulted in up to 60 per cent of premiums being rebated to insurance brokers and other interested parties, such as the Housing Industry Association and the Master Builders Association. It is no wonder that the Australian Consumers Association recommends unequivocally that schemes modelled on the State-run, first-resort Queensland scheme should be implemented nationwide.

Since privatisation, the New South Wales scheme has been a failure because it is fundamentally flawed. The Government's bill does nothing to address that fatal flaw. Last-resort schemes do not work for this sort of insurance, and the evidence given to the parliamentary inquiry demonstrated that homeowners have almost no prospect of getting quick and effective access to compensation to remediate shoddy work.

Queensland has a government-run, first-resort scheme. If a consumer's complaint to the Queensland Building Services Authority is upheld, that authority arranges for the rectification and completion of building works for homeowners. It, and not the consumer, then pursues the shonky builder. The Queensland Building Services Authority also administers builders licences, giving recalcitrant builders a very strong incentive to comply with Queensland Building Services Authority orders or face cancellation of their licence. The current New South Wales scheme serves the interests of neither homeowners nor builders and should be replaced with one that does. The only supporters of New South Wales' privatised home warranty insurance scheme are the insurers, commission agents and the State Government.

The Greens will nevertheless support this bill despite its obvious inadequacies but we say to the Government that the bill does not go far enough. It does nothing for those who have already suffered enormous financial and emotional damage as a result of the inadequacies of the current scheme, nor does it fix the fundamental problem with the scheme. We say to the Government it is time to scrap a scheme that obviously does not work and adopt a model that we all know will work.

I have amendments to the bill and I will discuss those in Committee. Once people become aware of the problems with this scheme they cannot fail to be profoundly affected by just how destructive it is to people's lives. People are ruined financially and, for many, their marriages break down and they endure enormous hardship. I know that Catherine Cusack in particular is aware of this. But anyone who talks to consumers who are affected by this scheme cannot fail but to be appalled by the consequences of a scheme that has such ruinous impacts upon people's lives.

Debate adjourned on motion by the Hon. Greg Donnelly and set down as an order of the day for a later hour.

ADJOURNMENT

The Hon. TONY KELLY (Minister for Police, Minister for Lands, and Minister for Emergency Services) [6.01 p.m.]: I move:

That this House do now adjourn.

TALL POPPY SCIENCE AWARDS

The Hon. ROBYN PARKER [6.01 p.m.]: As a board member of the Australian Institute of Policy and Science I would like to congratulate all winners of the New South Wales and Australian Capital Territory Young Tall Poppy Science Awards, which were presented at a ceremony here in Parliament House last Thursday night. Thirteen young scientists were selected for their passion and excellence in research achievements and communicating science. They are in the early stages of their careers and are already making discoveries. They represent the future of great science in Australia. They are inspiring others to take up a career in science. Indeed, that is what the Tall Poppy Awards are for. It is not a monetary award; it is an award that recognises achievements but encourages participants to go out into schools and the public arena to promote science as a valid and exciting career option and encourage young people to keep participating in science at school. We have noticed a great drop in those numbers in recent years.

This is the eleventh year of the Tall Poppy campaign and previous winners have gone on to win more senior science awards such as the Eureka Prize, the Prime Minister's Prize for Science and the *Cosmos* magazine Bright Sparks Awards. Tall Poppy Awards have been presented to more than 150 researchers and scientists in New South Wales, Victoria, South Australia, Queensland and the Australian Capital Territory in such fields as medical research, health care, basic sciences, engineering, information technology, veterinary science and environmental studies.

The winners come from broad and diverse fields. The 2008 winners were: Associate Professor Ian Anderson from the University of Western Sydney, who is studying the influence of carbon dioxide levels on the abundance of fungi and their capacity to enhance carbon sequestration in Australian forests; Dr Kathy Belov from the University of Sydney, who studies immunity, health and disease in our native wildlife; Dr Culum Brown from Macquarie University, whose research aims to understand the evolution and development of fish behaviour and apply this to conservation and fisheries; Professor Bryan Gaensler from the University of Sydney, who studies the static and crackle of radio waves produced by stars and galaxies to study magnetic fields in the universe; Associate Professor Rebecca Ivers from the George Institute for International Health, who is conducting studies to measure injury in motor vehicle accidents and contributing to effective injury prevention programs; Dr Malcolm McLeod from the Australian National University, who is conducting research into the synthesis of organic molecules to solve real-world problems such as treating drug resistant superbugs and catching sports drug cheats; Dr Ben McNeil from the University of New South Wales, whose research focuses on oceanic carbon dioxide uptake and developing better greenhouse gas emission and energy policies; Dr Angela Moles from the University of New South Wales, whose research aims to understand the different ecological strategies that plants use when they grow in different environments—she featured on the *Catalyst* program that same evening; Dr Ajay Narendra from the Australian National University, whose research aims to understand the mechanisms that aid decision making in the day-to-day life of animals; Dr Peter Rutledge from the University of Sydney, whose research crosses many areas of chemistry including developing new antibiotics; Dr Pall Thordarson from the University of New South Wales, whose research interests are in developing new molecular devices and materials for applications in fields such as biosensing and tissue engineering; and Dr David Wilson from the University of New South Wales, who works on developing models to describe and forecast HIV-AIDS.

It was a fantastic night. As I said, one of the award winners featured on ABC television programs *Catalyst* and *The Science Show*. I congratulate all winners. Not only are they an inspiration to high school students seeking a career in science; they are also enriching our nation and our knowledge through their work. New South Wales's first Chief Scientist and Scientific Engineer, Mary O'Kane, was present in the audience on the night. She is a previous recipient of a Tall Poppy Award and has gone on to a great career in science. It was encouraging to see her there supporting young scientists. We look forward to watching her career and the contribution she will continue to make to science in New South Wales. [*Time expired.*]

LORI SHORT

WOLLONGONG HARBOUR REDEVELOPMENT

Ms SYLVIA HALE [6.06 p.m.]: This morning I attended the funeral of Lori Short, an extraordinary community activist whom the *Inner West Courier* dubbed the "Queen of Tempe". That so many residents of Tempe and its surrounding suburbs were present this morning indicates how well she deserved that title. Lori was passionate about her community. She cherished its people and their needs and did not hesitate to speak out about the ills being inflicted on them. She was coordinator of the St Peters Sydenham Tempe Neighbourhood Centre and, assisted by Edie Murphy, established the Tempe Community Centre, where she worked tirelessly and at great personal and financial cost to provide social gatherings and excursions for elderly residents. But as her son, Rob Short, said today:

> Young people were her passion. The one thing she regularly told me about and that others have brought up this past week is the youth basketball team that she championed. The amazing thing is that we never saw our mother participate in a single sporting activity in her whole life—but when she is 60 she runs a basketball team.

I well remember her ceaseless attempts to raise money so that she could provide her team of youngsters from disadvantaged backgrounds with competition fees and uniforms. She rallied the community against the proposed use of the former Tempe tip site as a waste transfer station. She was outraged that residents, who for so long had endured the stench, pollution and vermin emanating from the tip should once again be subject to such ills. She wanted the site to provide parklands for the community.

She was passionately opposed to the construction of the third runway at Sydney Airport. When it went ahead, which led to the demolition of homes and the displacement from Sydenham of people who had lived there for more than 40 years, she was outspoken in her condemnation of the Labor Party, which had connived with the Liberal Party in the airport's expansion and subsequent sale. Television footage of the demonstrations, sit-downs and protests at this unconscionable deal always showed Lori at the head. The Labor Party, of course, did not take kindly to this. The then Labor-controlled Marrickville Council removed rental assistance for the community centre and closed the neighbourhood centre. Lori refused to give up and at great cost to herself kept the community centre open and operating for many years thereafter.

Lori kept on fighting. She fought to retain the museum and Anzac Memorial at the former Tempe tram and bus depot, where her father had worked. And she initiated the Anzac Dawn Ceremony five years ago. Lori embodied all that the Australian Labor Party once stood for. She was born in Tempe, raised six children in a two-bedroom fibro house in Padstow, and worked as a Christmas casual at the GPO in the month or so leading up to Christmas so that the family had a great Christmas, even if they went without for most of the year. To look after her elderly parents she returned to the house in Tempe where she had been born, and remained there until a few days before her death. Lori was not only a fighter; she was a kind, compassionate, caring person who was a genuine friend to so many who knew her.

Last Monday I attended a meeting of well over 150 residents of Wollongong to discuss the Government's proposals for the redevelopment of Wollongong Harbour. The meeting was organised by the Reclaim the City community group, and every member of this Parliament was invited to attend. I must say that I was surprised that I was the only member to do so. I would have thought that, at the very least, the local Labor members would have attended, even if only to hear what their constituents had to say. The Government's proposal to redevelop Wollongong Harbour should not be seen in isolation. It is part of a broader push by the Minister for Lands to cut costs and generate revenue from Crown lands.

There has been an explosion of marina development proposals since the appointment of Joe Tripodi as Minister for Ports and Waterways. It is the era of the yachting fraternity whereby all of our harbours and many of our estuaries are becoming parking areas for yachts so that a desperate State Government can turn a quid by essentially privatising what used to be public lands and waterways. The proposed development of Wollongong Harbour has caused widespread public unease and outright opposition from the Wollongong community. In particular, the community is concerned that the Department of Lands will collude with the Wollongong council administrators to pursue the commercial redevelopment of Wollongong Harbour, with the consequent loss of public open space and public waterways.

The people of Wollongong are standing up and saying, loudly and clearly, to the Government: Our harbour belongs to us. If the Government wants to redeem itself in the Illawarra, it must start by being a lot

more transparent and a lot more willing to be open and engaged with what is a very traumatised and angry local community. Community secrecy and an ongoing lack of consultation just make Wollongong residents very suspicious of what the Government is cooking up for their harbour.

INTERNET CENSORSHIP

The Hon. AMANDA FAZIO [6.11 p.m.]: Tonight I raise a very serious issue that would impact on the rights of all Australians to read, hear and see what they wish in public and in private. I quote from the Australian Labor Party's National Platform:

> Labor believes that adults should be entitled to read, hear and see what they wish in private and in public, subject to adequate protections against persons being exposed to unsolicited material offensive to them and preventing conduct exploiting, or detrimental to the rights of others, particularly women and children.
>
> Labor supports a requirement for Internet service providers to offer a filtered, clean feed Internet service to all households, schools and other public Internet points accessible by children.

I strongly support these parts of the national platform, and it was for this reason that I was very disturbed when the Federal Communications Minister, Senator Stephen Conroy, on 31 December 2007 announced mandatory Internet filters to protect children. Senator Conroy stated that the Government would work with the industry to ensure that the filters do not affect the speed of the Internet and that the new measures are being put in place to provide greater protection to children from online pornography and violent websites. Senator Conroy said it will be mandatory for all Internet service providers to provide clean feeds, or ISP filtering, to houses and schools that are free of pornography and inappropriate material. However, when attempting to justify his proposals he went much further than the national platform allows. He stated:

> Labor makes no apologies to those that argue that any regulation of the Internet is like going down the Chinese road.

This is where I believe the problem occurs. When grilled by a Senate estimates committee this week, he said the Government was looking at forcing Internet service providers to implement a two-tiered filtering system. The first tier, which Internet users would not be able to opt out of, would block all illegal material. Senator Conroy has previously said Australians would be able to opt out of any filters to obtain uncensored access to the Internet. The second tier, which is optional, would filter out content deemed inappropriate for children, such as pornography. But neither filter tier will be capable of censoring content obtained over peer-to-peer file sharing networks, which account for an estimated 60 per cent of Internet traffic. Senator Conroy has said that Britain, Sweden, Canada and New Zealand had all implemented similar filtering systems. However, in all cases, participation by Internet service providers was optional and the filtering was limited in scope to predominantly child pornography. Colin Jacobs, chair of the online users lobby group Electronic Frontiers Australia, has said:

> I'm not exaggerating when I say that this model involves more technical interference in the internet infrastructure than what is attempted in Iran, one of the most repressive and regressive censorship regimes in the world.

Critics of the ISP-level filtering plan say software filters installed by the user on their PC, which are already provided by the government for free at *netalert.gov.au*, are more than adequate. Information technology experts have stated that the plan will break the Internet while doing little to stop people from accessing illegal material such as child pornography. Internet providers and the Government's own tests have found that presently available filters are not capable of adequately distinguishing between legal and illegal content and can degrade Internet speeds by up to 86 per cent.

The Australian Communications and Media Authority released a report in July detailing the results of laboratory tests of six unnamed ISP-level filters. Only one of the filters tested resulted in an acceptable speed reduction of 2 per cent or less. The others caused drops in speed between 21 per cent and 86 per cent. The tests showed that the more accurate the filtering, the bigger the impact on network performance. However, none of the filters were completely accurate. They allowed access to between 2 per cent and 13 per cent of material that should have been blocked, and wrongly blocked between 1.3 per cent and 7.8 per cent of websites that should have been allowed.

One of my major concerns, apart from the impact on our right to freedom of speech and expression, is that this policy is perhaps the thin end of the wedge. Yesterday in the *Sydney Morning Herald* an article appeared that caused me considerable concern. I will quote from that article:

> FAMILY FIRST senator Steve Fielding wants hardcore pornography and fetish material blocked under the Government's plans to filter the internet, sparking renewed fears the censorship could be expanded well beyond "illegal material".

> The Opposition said it would take "a lot of convincing" for it to support the mandatory filtering policy, so the Government would need the support of Senator Fielding as well as the Greens and Senator Nick Xenophon to pass the legislation.
>
> The Opposition's communication spokesman, Nick Minchin, said it would take "a lot of convincing" for the Coalition to support the filtering plan. "The argy-bargy that would result over what is in and what is out strikes me as being almost impossible to manage and it would be a cat chasing its tail," Senator Minchin said.

I note that the Greens have been quite critical of this policy and are unlikely to support this measure. Industry sources said Senator Fielding's sentiments validated the concerns of Internet service providers that the categories of blocked content could be broadened significantly at the whim of the Government, which is under pressure to appease vocal minorities. Despite his earlier promises that Australians would be able to opt out of any Internet filters, Senator Conroy said the first tier would be compulsory and would block all illegal material. The second tier, which is optional, would filter out content deemed inappropriate for children, such as pornography.

But asked to specify the categories of content that Senator Fielding would like blocked by the mandatory first tier, a Family First spokeswoman indicated the party would want X-rated and refused classification [RC] content banned for everyone, including adults. Online users lobby group Electronic Frontiers Australia expressed fears that the filters could be used as a bargaining chip every time the Government needed to pass important legislation. I urge the Federal Government to rethink this policy and to adhere to all aspects of the Australian Labor Party National Platform.

ARMISTICE DAY: NINETIETH ANNIVERSARY

PENOLA WAR MEMORIAL HOSPITAL

The Hon. JENNIFER GARDINER [6.16 p.m.]: It was, of course, at 11.00 a.m. on 11 November 1918 that the guns of the Western Front fell silent after more than four years of continuous warfare, and on each anniversary of the Armistice Australians remember all those who fought and died for our country in war and armed conflicts. As we approach the ninetieth anniversary of the end of World War I, it is pleasing to note the increased interest in reflecting upon and analysing the role that Australians and New Zealanders played in that war and, in particular, the role that the ANZACs played in the battles on the Western Front.

Just as on Anzac Day this year, when there was the first dawn service at the Australian National Memorial at Villers-Bretonneux, on 11 November this year, in addition to Remembrance Day services in many other places, a service will be held at that sacred place. Before that, there will be a re-dedication of the memorial to the Australian Corps at Le Hamel, the theatre in which the Australian Corps successfully employed tactics applied by General Sir John Monash, tactics that foreshadowed those used in the larger offensives that began in August 1918 and led to the Allied victory. More than 46,000 of the 60,000 Australians who died in the First World War lost their lives on the battlefields of the Western Front in France and Belgium. That is, perhaps, the most awful statistic in our nation's history.

Recently, I was honoured to attend the fiftieth anniversary of the opening of a local RSL hall—a birthday party for a hall, and a grand party it was! It was also the club's eighty-fifth annual dinner. My grandfather, Bill Clayfield, MBE, returned from the Western Front. That he survived the awful and ferocious battles in which the 48th Battalion fought must have been a miracle. After the Armistice, General Birdwood sent a message to the 48th Battalion. He said of the battalion and the AIF:

> This long and close association with them has enabled me to appraise at its true worth their loyal comradeship—which in their successful military career has been no less conspicuous than their indomitable valour and determination. I feel I can say that at the root of many individual and collective acts of bravery is their unwritten law never to leave a mate who is in a tight place.

Bill Clayfield became the President of the RSL and with his friend Eric Balnaves, and others who had come home to the South East of South Australia to their communities of Penola and Coonawarra, he set out to be constructive in the local remembrance of the war. They wanted to build a modern RSL hall that would be an adornment, architecturally and socially, to the beautiful town of Penola. They wanted it to be a place in which the whole community could gather, as well as a special place where returned soldiers could be together.

But first they had another objective. The town desperately needed a new hospital. So it was that the RSL committee set about raising funds with which to build a hospital that was to be the district's War Memorial; a war memorial that catered to the greatest needs of residents of any community—to be cared for in a modern, well-staffed and well-equipped, well-run, community-based hospital when they or their loved ones fell ill or were injured, or their babies were due.

The RSL committee organised all manner of events, from rodeos to raffles, and steadily added to the bank balance. It was slow, hard work. Some were growing weary of the task and thought it an impossible one. On one occasion they met at the Mechanics Institute and someone moved that the funds be held in the bank account and left to gather interest. After the meeting, my grandfather said to the secretary, "Did you note down that motion?" The secretary said, "No". My grandfather said, "That's good, neither did I. I'm going to Adelaide to get the rest of the money." He made one of his trips to Adelaide to see the South Australian Minister for Health, successfully lobbying him for the remaining funds and the Penola War Memorial Hospital was built. Bill Clayfield was the inaugural chairman of the hospital board and developing that hospital became one of the most important parts of his life's work.

The Rann Labor Government threatened the viability of small hospitals like Penola. Rural communities rose up against the Government and it backed off. Once the hospital project was brought to fruition, the sub-branch then turned its attention to building the RSL hall. Yet again, the provision of local health services was at the forefront of the project. The district did not have a dentist, so part of the new RSL hall was given over to serve as consulting rooms for two visiting dentists. Today, the hall is a warm and friendly place: full of memorabilia and at different moments it is pervaded by a wonderful mixture of laughter, camaraderie and total reverence for those who served in war, those who returned and those who did not. In keeping with the changing times, today it is the venue for the usual RSL activities as well as hosting events such as tai chi classes. To this day, catering to the health and wellbeing of the local population is at the forefront of the office bearers and the ladies' auxiliary. At the door of the hall are these framed words from my grandfather's opening speech:

> "He concluded by saying he hoped when the club was opened, members would continue to work for the betterment of others. 'We know no class, we know no creed, we are proud of our country'."

The concluding lines of the official history of that battalion include:

> Every fortnight saw small drafts of men trudge off without formality to join the train that should carry them to the French coast. Away they went, to be once more miners or farmers or clerks or mere drifters on the sea of life …

Ninety years later, of those who returned and those who did not, and those who served in the years since, we say, "We will remember them."

TAFE PRIVATISATION

Dr JOHN KAYE [6.21 p.m.]: Yesterday I was handed a document produced by the Council of Australian Governments (COAG) Working Group on its so-called productivity agenda. The September 2008 discussion paper titled, "Skills and Workforce Development" is a blueprint for State and Federal governments to collude to ram through Australia's biggest privatisation program since Telstra, with no public debate. All public funding of TAFE programs is to be thrown open to the private sector for bid by competitive tender. TAFE will have to go begging for its current funding of more than $4 billion to pay its teachers and support staff, to run its libraries and computer rooms, to staff its equity and outreach programs, and to develop curriculum materials. Any recognition TAFE might enjoy as a public agency in competition with private providers will be removed.

Vocational education and training is to be exposed to the full force of the chill winds of national competition policy. The COAG proposal also advocates a HECS-like income contingent loan, which will discourage people from disadvantaged backgrounds from seeking to access training. Further, apprenticeships are to be undermined by moving training packages beyond occupational standards. These standards are to be redefined by developing appropriate definitions of competency. This is nothing but code for moving from education and training a workforce for the future to preparing workers for a specific employer. COAG no longer wants Australia to train electricians; instead, public funds are to be used to provide employers with willing workers fit to a narrow range of tasks, possibly specific to that work site or corporation.

Taken as a whole, these reforms will drive TAFE and its focus on quality education out of the market. It will be a bonanza for the cheap and nasty private providers. Forcing TAFE into competition for its own funding will drive down course durations, destroy education and increase class sizes. It is a recipe for dumbing down the workforce. TAFE is to be made to struggle for its survival against narrowly focused, cherry-picking private providers who do none of the heavy lifting of equity, students with disabilities, youth at risk, or ensuring that all Australians are educated as well as trained. Despite all the reassurances, it is an unfair competition with only one possible end point: TAFE hollowed out to feed a bloated private sector.

It is conceivable if the State and Federal leaders get their way that TAFE will be nothing but a brand name and a set of buildings leased out to private providers. If that is allowed to happen, working people and

Australian society as a whole will be the losers. This proposal is about short-term cost cutting at the expense of losing an educated workforce and driving cheap, employer-specific training that will de-skill Australia and take away this nation's ability to innovate. COAG wants State and Federal governments to be able to boast about the raw numbers of training places, but this will be nothing but an illusion. While the number of certificate holders may increase as private provider sausage factories turn out industrial cogs, the underlying skills and education base of Australia will be undermined. Our quality of democracy and culture will suffer.

The reality is that ideology and cost cutting are combining to sell out the future. At a time when the rest of the world is learning about the limits of market-based solutions, COAG wants to hand over the future of the skilled workforce to the same forces that brought the economy to its knees. Kevin Rudd's education revolution is unmasked as COAG drives Australia's training sector towards a voucher-based, user-choice and user-pay model, without the consent of the voters and without fully considering the long-term consequences. This is all happening behind closed doors. The discussion paper was only forced into the public because the Greens released the paper. COAG has asked the working group to develop a national partnership proposal for consideration at its meeting on 17 November. This will be where the States are expected to sign up for the privatisation of TAFE.

The Greens are calling on New South Wales Premier Nathan Rees and his education Minister, Verity Firth, to lead the charge to protect TAFE from Julia Gillard's privatisation agenda. Minister Firth should reject the COAG paper and start again on negotiations for a new funding deal that allows TAFE to expand to meet the skills needs of New South Wales and Australia. The future of TAFE can only be developed in consultation with the real stakeholders of vocational training: teachers, students, employees and the wider community. A publicly funded well-resourced vocational training sector that is focussed on the needs of students and other needs of society as a whole must be a priority of all levels of governments.

POLITICS ONLINE

The Hon. PENNY SHARPE (Parliamentary Secretary) [6.25 p.m.]: Tonight I bring to the attention of the House the online participation, or lack thereof, of elected representatives in New South Wales. Recently the Whitlam Institute and University of Western Sydney completed a report entitled, "Young People Imagining a New Democracy." The report points to the need for a close examination of the way individual members of Parliament, political parties, non-government and other voluntary organisations, and individual agencies seek to contact, engage and work with younger citizens if we are to fully draw on their ideas and enthusiasm to contribute to our future democratic structures. I believe that the issues highlighted in the report can be applied equally to all our citizens, regardless of age.

In many democracies there is a growing concern about the level of participation of people in traditional democratic forums. This is coupled with a growing level of distrust and cynicism about elected representatives and governments. The Whitlam Institute report found that there is a generational shift away from traditional institutional forms of political participation such as voting, membership of political parties and unions. This does not mean that young people or, indeed, other citizens are not interested in or engaged with political and social issues. The evidence is that they are participating in new and less formal social and advocacy networks; much of this participation occurs online. Young people also are more engaged in cause-oriented activities such as demonstrations, consumer boycotts and petitions. Again, many of these activities are online through blogging at sites such as Facebook, MySpace, YouTube and the microblogging site Twitter.

New media is transforming political participation of all citizens; 80 per cent of Australians have access to broadband and of those, 75 per cent are regular Internet users. For them this is the most important source of information. Without change the traditional ways of gathering and communicating information, such as newsletters, television advertising, direct mail and traditional mainstream news media, will become less relevant as large portions of the population no longer get their primary information through these mediums. This will have a significant impact on the participation within our democracy. The question I ask tonight is: what are we, the elected representatives in New South Wales, doing to make ourselves part of the transformation of political participation? Beyond the old structures that have served us well, are we drawing on all the ideas, energy and enthusiasm to provide input into legislation, policy and practice as we seek to make decisions on behalf of the people of New South Wales?

Recently I was fortunate to have an intern from the University of Sydney, Vicki Wynn, undertake an audit of the online presence of the members of the New South Wales Parliament and compare it with what is happening internationally and interstate. I thank her for her excellent work. Unfortunately, the findings of the

audit were less than inspiring and showed that many members of Parliament in New South Wales are yet to even put their toe in the water of online engagement. Only 39 of the 136 members of the New South Wales Parliament have personal websites. Only 12 of the 39 websites had recently updated information; 18 others had media releases as their only current information; three were a few months old and were out of date, and five were a few years out of date. Only seven members of the Parliament are using Web 2.0 tools, such as blogs, polls and online petitions.

At its simplest level, a website enables people to find their elected representatives and find out a bit about them and the issues that they are working on. But it is also a way of enabling democratic participation through an easy to use, cheap and instantaneous medium. It is a new way of communicating that does not speak at people but rather allows them to communicate, debate and discuss ideas in a two-way exchange. It is something that all elected representatives should engage in more.

What is clear from Vicki's work is that New South Wales members of Parliament are lagging behind the rest of the world when using online tools in their work. As a comparison, 655 out of 746 members of the House of Lords have their own website. It is also worth noting that the House of Lords recently launched a combined blog from numerous Lords from various parties. The *www.lordsoftheblog.net* is worth a look. In the United States, all 100 senators have their own website.

Enormous changes are occurring as part of the digital age. It is an exciting and transformational time. Politicians have many opportunities to embrace changes. In doing so, members of Parliament are opening up decision making, increasing public participation, and, I hope, leading the way towards a healthier and more vital democracy in the future. I encourage members of Parliament to consider opening themselves up to this input.

JOHN COOMBS, FORMER UPPER LACHLAN SHIRE COUNCILLOR

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [6.29 p.m.]: On a cold winter's night in Crookwell, that union warrior and Maritime Union of Australia foot soldier, John Coombs, effectively lost his position on the Upper Lachlan Shire Council. Coombsie was well respected in the Crookwell area, and even conservatives like me, who thought he did a shocking job with the Maritime Union of Australia, thought he was a very good councillor. We lament the loss of Coombs from our council, but he lost that job because of the ineptitude of the Hon. David Campbell.

On that cold winter's night, Katrina Hodgkinson, Pru Goward and I went to a public meeting to talk about the loss of our local sergeant. Alby Schultz was not there, as usual. Mr Coombs indicated that he would call his friend David Campbell, and that nothing more needed to be done because it would be fixed the next day: old mates in the Labor Party always look after things. Because Mr Coombs had been a very good councillor, people were very happy about that. But the ineptitude of David Campbell not only let down Crookwell; it also let down Coombsie.

[*Time for debate expired.*]

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

Motion agreed to.

The House adjourned at 6.31 p.m. until Thursday 30 October 2008 at 11.00 a.m.