

# LEGISLATIVE COUNCIL

Wednesday 17 June 2009

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

**The President** read the Prayers.

**STATE EMERGENCY AND RESCUE MANAGEMENT AMENDMENT BILL 2009**

**RESIDENTIAL TENANCIES AMENDMENT (MORTGAGEE REPOSSESSIONS) BILL 2009**

**ELECTRICITY SUPPLY AMENDMENT (GGAS ABATEMENT CERTIFICATES) BILL 2009**

**PERSONAL PROPERTY SECURITIES (COMMONWEALTH POWERS) BILL 2009**

**Bills received from the Legislative Assembly.**

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

**Motion by the Hon. Tony Kelly agreed to:**

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

**Bills read a first time and ordered to be printed.**

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

## SESSIONAL ORDER

### Budget Debate

**Motion by the Hon. Don Harwin agreed to:**

That during the present session and unless otherwise ordered:

1. Each speaker on the motion to take note of the budget estimates is to be limited to 10 minutes.
2. Debate on the motion to take note of the budget estimates for 2009-2010 is to take precedence after debate on committee reports on Wednesdays.
3. The debate on the budget estimates is to be interrupted at such time so that debate on committee reports and debate on the budget estimates does not exceed two hours. The interrupted debate is to stand adjourned and be set down on the business paper for the next day on which it has precedence.

## GENERAL PURPOSE STANDING COMMITTEES

### Budget Estimates Examination

**Motion by the Hon. Don Harwin agreed to:**

That the resolution appointing five general purpose standing committees reflecting Government Ministers' portfolio responsibilities adopted by this House on 10 May 2007, and as amended, be further amended to reflect the changes to Government Ministers' portfolio responsibilities as follows:

- (a) General Purpose Standing Committee No. 1
  - Roads
  - Ports and Waterways
  - Finance
  - Infrastructure
  - Regulatory Reform
  - The Legislature
  - Treasury
  - Premier
  - Arts

- (b) General Purpose Standing Committee No. 2
  - Health
  - Central Coast
  - Ageing
  - Disability Services
  - Aboriginal Affairs
  - Education and Training
  - Women
  - Community Services
- (c) General Purpose Standing Committee No. 3
  - Police
  - Rural Affairs
  - Lands
  - Local Government
  - Mental Health
  - Attorney General
  - Industrial Relations
  - Corrective Services
  - Public Sector Reform
  - Special Minister of State
  - Gaming and Racing
  - Sport and Recreation
  - Juvenile Justice
  - Volunteering
  - Youth
  - Veterans' Affairs
- (d) General Purpose Standing Committee No. 4
  - Transport
  - Illawarra
  - Planning
  - Redfern Waterloo
  - Fair Trading
  - Citizenship
  - Emergency Services
  - Small Business
  - Science and Medical Research
  - Tourism
  - Hunter
  - Health (Cancer)
- (e) General Purpose Standing Committee No. 5
  - Energy
  - Mineral Resources
  - Primary Industries
  - State Development
  - Climate Change and the Environment
  - Commerce
  - Water
  - Regional Development
  - Housing
  - Western Sydney

## PETITIONS

### South Grafton and Grafton Bus Services

Petition requesting that the Minister for Transport review the Busways Group Pty Ltd bus route and timetable, which has compromised the safety and quality of life for disabled and elderly passengers, as well as schoolchildren in the South Grafton and Grafton areas, received from the **Hon. Rick Colless**.

### Gaden Trout Hatchery

Petition opposing the closure of Gaden Trout Hatchery, received from the **Hon. Melinda Pavey**.

### Program of Appliances for Disabled People

Petition requesting that current and future budgets are based on the need for the timely provision of equipment, aids, appliances and personal care services to improve the wellbeing and quality of life for people with a disability, received from **Mr Ian Cohen**.

**Repco Rally**

Petition requesting that the House reject the proposed Repco World Championship Rally, which will pose a significant threat to the natural environment of both Tweed and Kyogle shires, and replace it with an environmentally friendly event that will promote long-term ecotourism, received from **Mr Ian Cohen**.

**BUSINESS OF THE HOUSE****Suspension of Standing Orders: Presentation of an Irregular Petition****Motion, by leave, by Mr Ian Cohen agreed to:**

That standing orders be suspended to allow the presentation of an irregular petition concerning the Repco World Championship Rally in Tweed and Kyogle shires.

**IRREGULAR PETITION****Repco Rally**

Petition requesting that the House reject the proposed Repco World Championship Rally, which will pose a significant threat to the natural environment of both Tweed and Kyogle shires, and replace it with an environmentally friendly event that will promote long-term ecotourism, received from **Mr Ian Cohen**.

**BUSINESS OF THE HOUSE****Postponement of Business**

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

**STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2009**

**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Tony Kelly, on behalf of the Hon. John Della Bosca.**

**Second Reading**

**The Hon. TONY KELLY** (Minister for Police, Minister for Lands, and Minister for Rural Affairs) [11.13 a.m.]: I move:

That this bill be now read a second time.

The Statute Law (Miscellaneous Provisions) Bill 2009 continues the established statute law revision program that is recognised as a cost-effective and efficient method for dealing with amendments of the kind included in the bill. The form of the bill is similar to that of previous bills in the statute law revision program. Schedule 1 contains policy changes of a minor and non-controversial nature that the Minister responsible for the legislation to be amended considers to be too inconsequential to warrant the introduction of a separate amending bill. That schedule contains amendments to 41 Acts and 3 regulations. I will mention some of the amendments to give honourable members an indication of the kinds of amendments that are included in the schedule.

Schedule 1 amends the Fire Brigades Act 1989 to require an insurance company to inform policy holders renewing their property or home and contents insurance how much of their premium is attributable to any contributions the insurance company is required to make under the State Emergency Service Act 1989 towards the costs of State Emergency Service expenditure. Similar requirements currently exist in relation to an insurance company's contributions under the Fire Brigades Act 1989 and the Rural Fires Act 1997. Schedule 1 also amends the Land Acquisition (Just Terms Compensation) Act 1991 to enable corrections to be made to compensation notices for compulsory acquisitions. Under the proposed amendments, corrections may be made only before the offer of compensation in the notice is accepted and only to deal with clerical errors or obvious mistakes, or to reflect any change in the determination of the Valuer-General as to the amount of compensation to be offered.

Schedule 1 makes a number of amendments to the Environmental Planning and Assessment Act 1979. These include an amendment to the Director General's power to make payments out of the Special Contributions

Areas Infrastructure Fund to a local council or the Department of Planning for the provision of local infrastructure. The amendment clarifies that the power is not limited by the requirement for the Minister to identify what part of a special infrastructure contribution is for the provision of local infrastructure by a local council or the department. Schedule 1 amends the Residential Tenancies Act 1987 to clarify that the Tenancy Commissioner may prosecute any offence under that Act without the need for the prosecution to follow on from the investigation or resolution of a complaint by a landlord or tenant. Comparable amendments are made to the Community Land Management Act 1989, the Residential Parks Act 1998 and the Strata Schemes Management Act 1996 in relation to the power of the Commissioner for Fair Trading to prosecute under those Acts.

The Firearms Act 1996 is amended to require a person whose licence under the Act has expired or ceases to be in force for any other reason is to immediately surrender the licence and any firearm in the person's possession to police and to authorise the police to seize any such firearm. Currently a person is required to surrender a licence and firearms and the police are authorised to seize such firearms only if the person's licence ceases to be in force because it is suspended or revoked. Amendments made by schedule 1 to the Protection of the Environment Operations Act 1997 will enable the Department of Environment and Climate Change to recover reasonable costs from a person when it issues a notice to prevent the carrying out of an activity in an environmentally unsatisfactory manner.

Schedule 1 makes various amendments to the Mental Health (Forensic Provisions) Act 1990, a number of which relate to information-sharing protocols under the Act. These include amendments requiring the existing powers of the departments of Health, Corrective Services and Juvenile Justice to enter into such protocols with each other to be exercised by the heads of those departments, and allowing area health services and statutory health corporations to participate in sharing and exchanging information under the protocols. The amendments will also allow information to be shared or exchanged under a protocol to cover a broader group of persons for the purposes of the Act.

The Law Enforcement (Controlled Operations) Act 1997 is amended to extend the protection given by the Act to a participant in a cross-border controlled operation who is unaware that the authority for the operation has been varied or cancelled. The amendment will ensure that the protection given by the Act applies in respect of operations in the nature of cross-border controlled operations that are authorised by or under the provisions of a corresponding law. This amendment is aimed at ensuring mutual recognition of the Act by Queensland and is consistent with national model laws that have been developed for cross-border controlled operations.

Schedule 1 also makes various amendments to the Water Management Act 2000. The amendments to this Act include broadening the category of persons whom the Minister may require to prepare reports concerning compliance with directions given to them under the Act. The amendments to this Act also include increasing the maximum monetary penalty that a Local Court may impose in proceedings for an offence against the Act—where an offence against the Act is prosecuted in the Local Court rather than a court with greater jurisdiction—so that the maximum monetary penalty parallels, for example, the amount that a Local Court may impose under the Protection of the Environment Operations Act 1997.

Schedule 2 deals with matters of pure statute law revision consisting of minor technical changes to legislation that the Parliamentary Counsel considers are appropriate for inclusion in the bill. Examples of amendments in schedule 2 are those arising out of the enactment or repeal of other legislation, those correcting duplicated numbering and those updating terminology.

Schedule 3 contains statute law revision amendments that are consequential on the enactment of the Legal Profession Act 2004. Most of these amendments involve standardising terms used in other Acts so that they are consistent with those used in those Acts. Schedule 4 contains amendments that relate to the official notification of the making of certain statutory instruments that directly amend Acts on the New South Wales legislation website maintained by the Parliamentary Counsel. Schedule 5 repeals a number of Acts and instruments and provisions of Acts that are redundant or of no practical utility. The repeals also extend to provisions of Acts that contain only amendments that have commenced. The Acts and instruments that were amended by the amending Acts or provisions being repealed are up to date and available electronically on the legislation database maintained by the Parliamentary Counsel's Office.

Schedule 6 contains general savings, transitional and other provisions. These include provisions dealing with the effect of amendments on amending provisions, and savings clauses for the repealed Acts. The schedule also contains—for abundant caution—a power for the Governor, by proclamation, to revoke the repeal of any Act or instrument repealed by the bill. The various amendments are explained in detail in explanatory notes set

out beneath the amendments to each of the Acts and statutory instruments concerned or at the beginning of the schedule concerned. If any amendment causes concern or requires clarification, it should be brought to my attention. If necessary, I will arrange for government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the bill, the Government is prepared to consider withdrawing the matter from the bill. I commend the bill to the House.

**Debate adjourned on motion by the Hon. Rick Colless and set down as an order of the day for a future day.**

## **BUSINESS OF THE HOUSE**

### **Postponement of Business**

**Government Business Notice of Motion No. 2 postponed on motion by the Hon. Tony Kelly.**

**Government Business Order of the Day No. 2 postponed on motion by the Hon. Tony Kelly.**

## **ROOKWOOD NECROPOLIS REPEAL BILL 2009**

### **Second Reading**

**Debate resumed from 3 June 2009.**

**The Hon. GREG PEARCE** [11.23 a.m.]: The Rookwood Necropolis Repeal Bill 2009 repeals the Rookwood Necropolis Act 1901 and makes changes to the Crown Lands Act 1989 to facilitate administration of Rookwood Cemetery as a single parcel of Crown land under a new body, the Rookwood Necropolis Trust, which will replace the Joint Committee of the Necropolis Trustees, taking on its staff, assets, rights and liabilities. Rookwood Cemetery was established in 1867 and is administered under the Rookwood Necropolis Act 1901 by the Joint Committee of the Necropolis Trustees. Rookwood Cemetery is divided into denominational and operational areas with individual officers, staff and equipment to run different parts of the entire area.

The cemetery is now managed by five denominational trusts, each of which is responsible for the care and maintenance of a number of burial sections catering to various ethnic and cultural groups within the community. The trusts are the Anglican and General Cemetery Trusts, the Catholic Cemeteries Board, the Independent Cemetery Trust, the Jewish Cemetery Trust, the Muslim Cemetery Trust, and the New South Wales Cremation Company, which founded and operates the Rookwood Crematorium, the oldest operating crematorium in the country. The New South Wales Cremation Company is the only private company operating a cemetery section within the necropolis grounds and is owned by Invocare Australia Pty Ltd. The individual trusts manage funds for the future upkeep, management and maintenance of the site once the trusts are no longer receiving income from internments—that is, when the cemetery is full in around 20 to 25 years.

The bill is the result of a review conducted by the Department of Lands into the management of the cemetery, which recommended establishing a new independent management body to work closely with the denominational trusts to renew the focus on sustainable management of Rookwood as a single parcel of Crown land. The main change is the proposed replacement of the Joint Committee of the Necropolis Trustees, which represents sectional interests of the cemetery, with the Rookwood Necropolis Trust, comprising skilled land managers who will work directly with the day-to-day operational managers of the denominational trusts. The bill preserves Rookwood Cemetery's current funding sources—that is, rent from the general crematorium lease and internment levies paid by the individual trusts, based on the number of cremations and burials carried out each year—but it moves budgeting to a financial year budget, consistent with the provisions of trusts under the Crown Lands Act.

The proposed changes are consistent with management arrangements for most other cemeteries in New South Wales that are managed in accordance with the Crown Lands Act. The denominational trusts at Rookwood are already established and governed under the provisions of the Crown Lands Act. The bill preserves the income for the overall maintenance and improvement of common infrastructure within Rookwood, preserves the crematorium lease, and preserves the mechanism for determining internment levies paid by denominational trusts and the crematorium lessee. The bill makes no changes to the management of investments

held by the individual trusts that fund the upkeep and maintenance of the Rookwood site now and must do so in the future when there is no income from internments. Some concern has been expressed that these funds were to be grabbed by the Government, but I think we are now satisfied that that is not the case.

Representatives of the denominational trusts have indicated that they are satisfied with the Department of Lands' consultation concerning the proposed changes. Generally, representatives of the denominational trusts indicated that they believe the proposed changes will allow better holistic planning for administration of the cemetery and they understand that they will have a similar level of input into decisions as they currently enjoy. On the other hand, none of the denominational trusts has representation on the new Rookwood Necropolis Trust. There is some concern among the denominational trusts that the Rookwood Necropolis Trust could raise internment levies paid by the denominational trusts and the crematorium lessee, creating a death tax by proxy to be borne by families on burial. Representatives of the denominational trusts have suggested that the proposed changes to the management structure of Rookwood Cemetery could be extended to other cemeteries not covered by the Crown Lands Act, leading to a situation where all New South Wales cemeteries are under the control of a single authority, which I gather is the Perth model.

In reviewing the bill we consulted with a number of parties, including most of the denominational trusts I have referred to. I particularly thank Michael McMahon, the Chief Executive Officer of the Catholic Cemeteries Board, for his assistance in this matter. I also extend my thanks to Ann Braybon, who was the secretary to the trustees from 1964 to 1989. Ann is now a very active resident of the Blue Mountains. Indeed, she lives in Wentworth Falls, where I spent some of my childhood. Ann was very helpful to me in explaining a lot of the background and some of the issues raised in this important legislation. Indeed, she let me know that as far back as 1984 an inquiry had been undertaken by the then Rookwood Necropolis Development and Planning Committee and many of the issues that are now being addressed were raised in that inquiry. Unfortunately, however, the report that went to the then Minister for Natural Resources was not acted upon. Again, I thank Ann Braybon for her assistance. I also thank the other parties we were able to consult regarding the legislation. In conclusion, I confirm that the Opposition will not oppose the bill.

**Ms SYLVIA HALE** [11.30 a.m.]: The Greens support the Rookwood Necropolis Repeal Bill 2009. The objects of the bill are to repeal the 1901 Act and, by means of amendments to the 1989 Act and the by-laws under that Act, to transfer the administration of the Rookwood Necropolis from the 1901 Act to the 1989 Crown Lands Act. The coordinating functions exercised by the Joint Committee of Necropolis Trustees under the 1901 Act in future are to be exercised by the Rookwood Necropolis Trust to be established under the 1989 Act.

The bill has much to commend it: developing common systems under which publicly owned land is administered. Common operating procedures should improve transparency of operation, assuming the procedures and regulations themselves are robust and in the public interest. In the case of this bill it would seem that there is no attempt to dilute openness or to undermine the public interest, as was the case in the recent Heritage Amendment Bill. I will comment on the structure of the Rookwood Necropolis Trust which, in common with other Crown land trusts, will be set up under section 92 of the Crown Lands Act 1989.

The Government's reputation is such that the appointment of a person by a Minister to any government body is almost enough to bring that person under suspicion of nefarious dealings and self-interested motives. This is a great shame as I know there are many good people serving on government bodies around New South Wales who do honest and honourable work in the public interest. No doubt the members of this new trust will be among those number of very good people already serving on government bodies. I regret, however, that the reputation of the Government has fallen so low that, as a result, we should consider in future advertising to and seeking from the community expressions of interest for positions on bodies such as this trust, as opposed to the current procedure whereby the Minister selects people through an opaque process. Were the procedures I have suggested to be adopted, the Minister would still select trust members but through a more open and accountable process and from a broad field of applicants.

The Greens are most concerned that changes to legislation should facilitate increased openness and transparency in government, two areas in which this Government has been a transparent failure. We have discussed the bill with representatives of the National Trust and the Friends of Rookwood, a community volunteer group that helps preserve Rookwood's history and organises historical tours of the necropolis. Both organisations believe that the bill is useful, although it would be fair to say that both organisations are concerned that the organisational relationships they currently have with the Joint Committee of Necropolis Trustees continues to be fostered by the new Rookwood Necropolis Trust. With existing funding and organisational

associations maintained, the important work of supporting the historical connection of Rookwood to the story of Sydney and New South Wales will be continued. The Greens hope that the good work of maintaining Rookwood in recent years is continued under its new structure.

**Reverend the Hon. FRED NILE** [11.32 a.m.]: The Christian Democratic Party supports the Rookwood Necropolis Repeal Bill 2009. The bill repeals the provisions of the Rookwood Necropolis Act and carries over any necessary provisions into the Crown Lands Act 1989 and the Crown Lands (General Reserves) Joint Committee of Necropolis Trustees By-law 2006. It will also preserve the levy and lease structures that contribute to the maintenance and improvement of common infrastructure at Rookwood. It will make amendments to the Crown Lands Act to provide for the ongoing payment and recovery of interment levies and fees. The bill also will allow the Minister to partially revoke a dedication on the approval of both Houses of Parliament. The Government has foreshadowed supported amendments to the bill, particularly the amendment for the Rookwood Necropolis Trust to consult with the denominational trusts as to its expenditure and revenue before making the estimates referred to in new section 41B (1) (a) of the Crown Lands Act. The consultation process is very important in working with the six denominations that make up the denominational trusts.

Rookwood Cemetery is one of the largest cemeteries in the world and is the largest cemetery in the southern hemisphere. The New South Wales Government originally purchased the cemetery in 1862 from a Mr Cohen. At that time the cemetery totalled 200 acres and was part of the Liberty Plains estate near Homebush. The cemetery has always played an important role in the lives, and deaths, of Sydneysiders. More than one million persons are now buried there, from 70 different faiths and denominations. In 1986 improvements were made to the administration of the cemetery after a period of neglect, which was noticed by those of us who visited the cemetery. I am pleased the bill is before the House and I hope it will lead to increased efficiency in the administration of the cemetery.

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [11.35 a.m.], in reply: I thank all honourable members for their contributions to the debate. The Rookwood Necropolis Repeal Bill 2009 ushers in a new management framework for Australia's largest cemetery, but does so whilst preserving the day-to-day responsibilities of the denominational trusts and, importantly, the ongoing funding required to maintain and improve the common infrastructure at Rookwood.

The Rookwood Necropolis Trust has been appointed for the next five years. It reflects a wide range of interests and skills from heritage and planning through to finance and local government experience. This is needed to help steer Rookwood throughout this period of change. During the management review it was clear that a new trust was needed separate from the existing denomination trusts and the preparation of a new plan of management needed to start as soon as possible. That is why the Rookwood Necropolis Trust was quickly put in place, with a small but broadly representative group, to ensure an efficient management structure and decision-making powers.

The Crown Lands Act allows the Minister to decide the way in which trusts are constituted and selected. The Minister could have placed the Rookwood Necropolis Trust under an administrator or even appointed himself as the reserve trust manager. Instead, the Minister has sought a balance between community representation and the need for expediency in moving Rookwood into this new management phase. By bringing the management of Rookwood completely under the provisions of the Crown Lands Act the Government is equipping the new management model with a modern flexible piece of legislation that is able to adapt to the changing demands placed on public cemeteries.

The Rookwood Necropolis Trust will be able to treat the one piece of dedicated land—that is, the Rookwood Necropolis—as one single cemetery. In doing so, it will bring to the table a new focus on the needs and the look of the necropolis as an integrated whole, and how Rookwood presents itself to the community. This focus will complement the ongoing work of the domination of trust managers and their commitment to meeting the needs of the many diverse communities and religious groups they serve. The Rookwood Committee of Managers, largely comprising the operational managers of the various denominational cemeteries, will act as a conduit between the individual trusts, with their needs, and the Rookwood Necropolis Trust, with its overarching goals.

The Rookwood Committee of Managers will be a practically focused group bringing cemetery management expertise and an awareness of the particular needs of their constituent communities to work with the Rookwood Necropolis Trust in implementing a new plan of management and devising practical, consistent and effective policies. In this way the new management structure will not only have a new focus but also will

achieve balanced outcomes in the interests of the individual and in the interests of the whole. The Government will move some amendments in Committee, which I will address when I move them, but I believe they are not controversial amendments.

The Rookwood Necropolis Repeal Bill completes one chapter in the fascinating history of this grand necropolis. It also opens a new page, and new chapter, that will help Rookwood continue to meet the needs of many well into the twenty-first century. At the same time it acknowledges and preserves the rich heritage, the unique environment, the human stories both past and present, as well as the cultural and religious significance that makes Rookwood such a remarkable cemetery, and an important part of the grand tale of Sydney. 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 3 agreed to.**

**Schedule 1 agreed to.**

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [11.40 a.m.], by leave: I move Government amendments Nos 1, 2 and 3 in globo:

No. 1 Page 7, schedule 2. Insert after line 25:

*interment* does not include interment of ashes arising from a cremation.

No. 2 Page 8, schedule 2. Insert after line 11:

(2) The Rookwood Necropolis Trust must consult with the denominational trusts as to its expenditure and revenue before making the estimates referred to in subclause (1) (a).

No. 3 Page 9, schedule 2. Insert after line 12:

(2) No such fee is payable in respect of cremations carried out, by the lessee under the general crematorium lease, in the crematorium situated on the general crematorium site.

Further feedback from the Rookwood trusts has highlighted three minor amendments, which the Government now moves. The first amendment relates to the definition of "interment" in relation to proposed section 51, part 6, of the Crown Lands Act. Whilst the definition has worked till now, with the increasing acceptance of cremation this amendment clarifies that the word "interment" in the context of the Rookwood interment levy does not mean the interment of ashes arising from a cremation. The second amendment to proposed section 41B ensures that the new Rookwood Necropolis Trust, the successor of the Joint Committee of Necropolis Trustees, must consult with the denominational trusts when preparing its annual budget. Given that the Joint Committee of Necropolis Trustees comprised, in part, denominational trust representatives, this amendment ensures a continuation of past practices and that all trusts are involved in the preparation of the Rookwood Necropolis Trust budget. The third amendment to proposed section 41C clarifies that the additional fee for denominational trusts operating at the crematorium is not payable by the general crematorium lessee, which already pays a significant rent under the terms and conditions of the lease.

**The Hon. GREG PEARCE** [11.42 a.m.]: As I indicated in my contribution to the second reading debate, a number of the denominational trusts have expressed concerns, particularly in relation to fees and the involvement of the denominational trusts in the new Rookwood Necropolis Trust. I am pleased that the Government has moved these amendments. The Opposition does not oppose them.

**Question—That Government amendments Nos 1, 2 and 3 be agreed to—put and resolved in the affirmative.**

**Government amendments Nos 1, 2 and 3 agreed to.**



**Schedule 2 as amended agreed to.**

**Schedule 3 agreed to.**

**Title agreed to.**

**Bill reported from Committee with amendments.**

### **Adoption of Report**

**Motion by the Hon. Penny Sharpe agreed to:**

That the report be adopted.

**Report adopted.**

### **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.**

## **COURTS AND OTHER LEGISLATION AMENDMENT BILL 2009**

### **Second Reading**

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [11.45 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 purpose of the Courts and Other Legislation Amendment Bill 2009 is to make miscellaneous amendments to courts-related legislation and other legislation.

The bill is part of the Government's regular legislative review and monitoring program.

The bill will amend a number of Acts to improve the efficiency and operation of the courts and tribunals.

The bill will also make minor amendments to a number of Acts relating to statutory bodies within the Attorney General's portfolio.

I will now outline each of the amendments in turn.

#### Administrative Decisions Tribunal Act 1997

Item 1.1 in schedule 1 of the bill amends section 113 of the Administrative Decisions Tribunal Act 1997 in response to a recent Court of Appeal decision. That decision is *Avilion Group Pty Ltd v Commissioner of Police*, [2009] NSWCA 93.

The amendment is intended to put beyond doubt that an Appeal Panel of the Tribunal, constituted by a single presidential judicial member, may deal with both an application for leave to appeal against an interlocutory decision of the Tribunal and the appeal if leave is granted.

A decision made by the President alone will be dealt with by a full Appeal Panel.

The amendments reaffirm the original intention of section 113, and will enable the Tribunal to save on the cost of three member Appeal Panels and improve the timeliness of decisions on such appeals.

The amendments are supported by the President of the Tribunal.

Anti-Discrimination Act 1977

Item 1.2 of schedule 1 of the bill amends the Anti-Discrimination Act 1977 to enable the Anti-Discrimination Board to give access to information obtained under the Act to academics and other people for research purposes and other similar purposes.

The amendments will also extend the secrecy provisions of the Act to people who have been provided with information by the Board for research purposes.

In addition to the protections offered by the secrecy provisions of the Act, the Privacy and Personal Information Protection Act 1998 will also continue to apply to the Board.

The amendments will enable the Board to contribute to and collaborate on research being done in the area of discrimination. This is likely to have public benefits.

The amendments have the strong support of the President of the Board.

Children (Criminal Proceedings) Act 1987 and Crimes (Sentencing Procedure) Act 1999

I will now deal with item 1.3 and item 1.5 together, which amend, respectively, the provisions relating to the non-association and place restriction orders contained in the Children (Criminal Proceedings) Act 1987 and the Crimes (Sentencing Procedure) Act 1999.

These amendments implement the recommendations made by the Ombudsman in his Report reviewing the Justice Legislation Amendment (Non-association and Place Restriction) Act 2001, which was tabled in Parliament on 4 December last year.

The Ombudsman recommended that Parliament consider amending the relevant legislation to address the apparent need for flexibility when imposing non-association and place restriction orders at sentencing.

I thank the Ombudsman for his detailed and thorough review of the non-association and place restriction provisions contained in the report, and am pleased to implement all the legislative recommendations made via this bill.

Item 1.5 of schedule 1 amends the non-association and place restriction orders contained in the Crimes (Sentencing Procedure) Act 1999.

Section 17A sub-section (3) (a) deals with non-association orders. This section is amended to give the court the power to make a limited non-association order. An offender can now be prohibited from being in company with a specified person at certain times or in such circumstances as the court sees fit. For instance, the court could now make a non-association order prohibiting the offender from being in company with a specified person, apart from the time they attended a drug rehabilitation centre.

A new sub-section (3A) is also to be inserted. It allows the court to make a limited place restriction order prohibiting the offender from frequenting or visiting a specified place or district except at the times or in such circumstances as are specified. For example, the court could now make a place restriction order prohibiting an offender from frequenting or visiting a shopping district, except when in the company of a parent.

These new amendments directly implement the recommendations made by the Ombudsman in his report and give the courts increased flexibility to tailor orders on a case-by-case basis.

Section 100A of the Crimes (Sentencing Procedure) Act 1999 is amended to allow a court to make a non-association order specifying a member of the offender's close family. Such an order is to be made in exceptional circumstances having regard to the ongoing nature and pattern of criminal activity in which the family member and the offender have both participated. The court must be satisfied that there is risk that the offender may be involved in conduct that could involve the commission of a further offence of the kind to which section 17 A applies if the offender associates with that family member. This amendment is a direct result of a recommendation made by the Ombudsman that the Act allow more flexibility to target familial connections in organised criminal activities. Importantly, the court will also have to give reasons for specifying a close family member in a non-association order.

This section is also amended to allow a court to specify a place or district formally restricted from forming part of the order if the court considers exceptional circumstances exist. The court must be satisfied, having regard to the ongoing nature and pattern of participation of the offender in criminal activity occurring at that place or district, that there is risk that the offender may be involved in conduct that could involve the commission of a further offence of the kind to which section 17 A applies. Again, the court will have to give reasons for specifying this place or district when making these orders.

Section 100A is further amended to now prohibit the court from making a place restriction order in relation to a place at which the offender regularly receives a health service, welfare service, or is regularly provided with legal services by an Australian legal practitioner.

Lastly, this bill amends the definition of close family to include persons who are, or have been, part of the extended family or kin of an offender who is an Aboriginal person or Torres Strait Islander.

Item 1.3 amends the corresponding provisions relating to juveniles so that section 33D of the Children (Criminal Proceedings) Act 1987 is consistent with section 17 A of the Crimes (Sentencing Procedure) Act 1999.

These are important amendments flowing directly from the Ombudsman's Report. They will operate to ensure that the community is protected from further crime occurring by breaking down criminal associations and preventing offenders from frequenting their favourite criminal haunts, as well as, importantly, assisting in the rehabilitation of offenders.

Civil Procedure Act 2005

Item 1.4 of schedule 1 of the bill amends section 122 of the Civil Procedure Act 2005 to provide that a garnishee order cannot reduce a debtor's net weekly wage or salary to below the full amount of the standard workers compensation weekly benefit. This amount is currently \$381.40.

As it currently stands, section 122 provides that a garnishee order cannot reduce a debtor's net weekly wage or salary to below 80 per cent of the standard workers compensation weekly benefit.

The increase in the protected amount of wages and salary will reduce the financial hardship for people whose wages or salary are deducted as part of a court order to pay a debt.

It is important that a person still has enough money to pay for the necessities of life when they are paying off a debt.

This amendment has the support of the New South Wales Consumer Credit Legal Centre.

Law Enforcement (Powers and Responsibilities) Act 2002

Item 1.6 of schedule 1 of the bill amends sections 62 and 66 of the Law Enforcement (Powers and Responsibilities) Act 2002 to remove ambiguity in the language in those sections.

These are minor clarifying amendments.

Law Reform Commission Act 1967

Item 1.7 of schedule 1 of the bill amends section 13 of the Law Reform Commission Act 1967 to enable Law Reform Commission reports to be tabled when Parliament is not sitting by presenting copies of reports to the Clerk of each House.

This will reduce delays in the tabling of Law Reform Commission reports, as the Attorney General will not have to wait until Parliament is sitting in order to table reports.

Local Court Act 2007

Item 1.8 of schedule 1 of the bill amends the Local Court Act 2007 to make it clear that a Registrar of the Local Court can exercise functions in respect of one or more designated places in the State or in respect of any place in the State.

The relevant provisions in the Local Court Act 2007 are intended to provide for more flexible arrangements for administering the Local Court.

Advice received from the Crown Solicitor has cast some doubt as to whether these provisions achieve their intended outcome. The amendments are made in response to the Crown Solicitor's advice.

Mining Act 1992

Item 1.9 of schedule 1 of the bill makes a minor amendment to the Mining Act 1992 to update a section reference in the Act.

This bill addresses a number of issues relating to the smooth and effective running of courts and tribunals in New South Wales.

The bill also contains amendments relating to a number of statutory bodies within the Attorney General's portfolio.

The amendments contained in the bill have been the subject of thorough consultation with key stakeholders.

I commend the bill to the House.

**The Hon. DAVID CLARKE** [11.46 a.m.]: The Opposition does not oppose the Courts and Other Legislation Amendment Bill 2009, the purpose of which is to make miscellaneous amendments to nine Acts relating to the administration of the State's courts and tribunals, as well as statutory bodies within the Attorney General's portfolio. The Government indicated that this bill represents part of its continuing legislative review and monitoring program of the State's justice system. The bill amends the Administrative Decisions Tribunal Act 1997 so as to ensure that an appeal panel of the tribunal constituted by a single judicial member may deal with both an application for leave to appeal against an interlocutory function exercised by the tribunal and the appeal, if leave is granted. An interlocutory function exercised by the President of the Administrative Decisions Tribunal will be dealt with by a full appeal panel. These amendments are deemed necessary as a consequence of a recent decision by the Court of Appeal in the case of *Avilion Group Pty Ltd v Commissioner of Police* in which it was decided that the President of the Administrative Decisions Tribunal sitting alone did not have statutory authority to hear an appeal.

The Anti-Discrimination Act 1977 is amended to enable the Anti-Discrimination Board to give access to information obtained under the Act to academics and other persons engaged in carrying out investigations, research or inquiries relating to discrimination when it considers it appropriate to do so. The Act's secrecy provisions will be extended to those persons who have been provided with access to such information. The

Government believes that these amendments will assist research in the area of discrimination. The Children (Criminal Proceedings) Act 1987 is amended to mirror section 17A of the Crimes (Sentencing Procedure) Act 1999 and will enable the court to make limited non-association orders prohibiting an offender from associating with a specified person for a specified term. It also will enable the court to make a limited place restriction order prohibiting an offender from frequenting or visiting a place, except at specified times or in specified circumstances.

The bill makes a number of amendments to the Crimes (Sentencing Procedure) Act 1999. It includes within the definition of "close family" persons who are, or have been, of the extended family or kin of an offender who is an Aboriginal person or Torres Strait Islander. It amends the Act so as to expand the list of places that may not be included in place restriction orders to include places the offender regularly attends to receive certain health, legal and welfare services. It enables the court to make a non-association order prohibiting an offender from associating with a specified person for a specified term except at specified times or in specified circumstances. It enables the court to make a place restriction order prohibiting an offender from requesting or visiting a place except at specified times or in specified circumstances. Finally, it enables the court to impose orders despite the restrictions relating to close family members and places and districts, and requires the court to give reasons for making such an order in specified exceptional circumstances.

The Law Enforcement (Powers and Responsibilities) Act 2002 is amended by the bill to remove ambiguities resulting from the Law Enforcement (Powers and Responsibilities) Amendment (Search Powers) Act 2009 and to clarify that an application for a covert search warrant must include the name of the occupier of the premises that is the subject of the warrant. The bill also amends the Civil Procedure Act 2005. Currently that Act prohibits the amounts attached under one or more garnishee orders from reducing the net weekly wage or salary paid to a judgement debtor to below 80 per cent of the standard workers compensation weekly benefit. The Act will be amended so as to increase the limit to the full amount of the benefit. However, this increase will apply only in respect of garnishee orders entered on or after the commencement of the amendment. This will ensure that judgement debtors, particularly in these difficult economic times, will have adequate funds upon which to live when paying judgement debts.

The Law Reform Commission Act 1967 will be amended so that interim and final reports on the Law Reform Commission's work under a reference can be tabled when Parliament is not sitting. If a House of Parliament is not sitting when the Minister seeks to lay a report before it the Minister may present copies of the report to the Clerk of the House concerned, thus reducing delays in tabling Law Reform Commission reports.

The Local Court Act 2007 is amended to make it clear that, subject to any directions of the Director General of the Attorney General's Department, or his or her delegate, functions generally or in particular may be conferred on a registrar that are exercisable by the registrar in respect of one or more designated places in the State or any place in the State by or under the Act, the rules or any other Act or law. The purpose of the amendment is to give greater flexibility in the administration of the Local Court system.

Finally, the bill makes a minor amendment to the Mining Act 1992 to bring greater clarity to provisions relating to the adjudication of disputes. The Government maintains that the Courts and Other Legislation Amendment Bill 2009 will assist in streamlining and modernising the justice system in New South Wales by, among other things, bringing greater clarity, flexibility and a reduction in delays. The Opposition will be monitoring the bill's effects to see whether it achieves its stated purposes.

**Reverend the Hon. FRED NILE** [11.52 a.m.]: The Christian Democratic Party supports the Courts and Other Legislation Amendment Bill 2009. The bill makes a number of miscellaneous amendments to courts-related legislation and other legislation. They are, in the main, administrative amendments to a number of important Acts. The bill amends the Administrative Decisions Tribunal Act 1997; the Anti-Discrimination Act 1977—the amendment will enable the Anti-Discrimination Board to give access to information obtained under the Act to academics and others for research purposes, while providing privacy protections; the Civil Procedure Act 2005; and the Crimes (Forensic Procedures) Act 2000, which will clarify that an untested registrable person who makes a report under the Child Protection (Offenders Registration) Act 2000 may be required to remain at the place where the report is made for as long as is necessary to request the person to consent to the carrying out of certain forensic procedures and for a senior officer to order the carrying out of the procedure in the absence of consent. The amendment would provide further assistance to the New South Wales Police Force in apprehending persons who have committed offences.

The bill also amends the Crimes (Sentencing Procedure) Act 1999; the Law Enforcement (Powers and Responsibilities) Act 2002; the Law Reform Commission Act 1967—the amendment will enable Law Reform Commission reports to be tabled when Parliament is not sitting by presenting copies of reports to the Clerk of the House; the Local Court Act 2007; and the Mining Act 1992. We support the bill.

**Ms LEE RHIANNON** [11.54 a.m.]: The Greens have very serious concerns about some aspects of the Courts and Other Legislation Amendment Bill 2009. We will not oppose the bill as it contains some good measures. However, we see the need to remove the further restrictions that can be placed on a person's civil liberties with a non-association and place restriction order. This is yet another bill that this Government tries to sweep under the carpet on the basis that it makes so-called miscellaneous amendments to courts-related legislation and other legislation. How many times have we heard that? One would think the Government and its advisers would come up with a new line.

We are told that the amendments contained in the bill are to improve the efficiency and operation of courts. We are told that most of the amendments are minor or technical in nature. Those statements ring alarm bells. This bill is a clear example of why we cannot take this Government at face value. I will not go through each of the amendments in the bill but, rather, I will draw out the changes that the Greens support and the changes we are most concerned about.

We support schedule 1.4, which amends section 122 of the Civil Procedure Act. This amendment provides that a garnishee order cannot reduce a debtor's net weekly wage to below the full amount of the standard workers compensation weekly benefit. Currently a garnishee order cannot reduce a debtor's net weekly wage to below 80 per cent of the standard workers compensation weekly benefit, which is currently \$381. Anyone buying food, paying rent or trying to pay off a mortgage will know that \$381 in this city, let alone this State, is a bare minimum. People whose wages are deducted as part of a court order to pay a debt suffer real financial hardship. People who are paying off a debt must be left with enough money to live on. I understand that the Consumer Credit Legal Centre supports this amendment, and I certainly hope all members of this House will support it also so that even greater hardship is not inflicted on members of the public who run into these problems.

The Greens also support schedule 1.7, which amends the Law Reform Commission Act to enable Law Reform Commission reports to be tabled when Parliament is not sitting by presenting copies of reports to the Clerk of each House. This amendment alters the framework so that there are not long delays in tabling reports. All we need is the political will from the Attorney General to table reports when he receives them. Too often reports gather dust on the Attorney General's desk. It is shameful that every year this Parliament only sits about 50 days—and that is in a good year. But, given that that is the case, it is important the Parliament develops mechanisms to ensure that reports can be made public on the rare occasions that Parliament sits.

The Greens have serious concerns about the amendments to the Crimes (Sentencing Procedure) Act and related changes to the Children (Criminal Proceedings) Act that deal with non-association and place restriction orders. The Greens strongly oppose the introduction of non-association and place restriction orders. We are concerned that these amendments increase the scope of those orders. The Government first introduced these laws in 2001 in the guise of being anti-gang laws. But the law does not specifically mention gangs; rather it targets a specific person and a place. The laws were used to beat up on gangs, and in doing so they unfairly targeted people who are more visible in our community, especially young people, who socialise out in public and on the streets.

We know that something has to be done about gangs but so often laws come before the House that have the effect of undermining our justice system. The Greens argued at the time that the bill targeting gangs was racist, and groups such as the Council of Social Service of New South Wales and the Law Society of New South Wales clearly spelt out how the legislation penalised young people, particularly those from non-English-speaking backgrounds and of Aboriginal descent. Now we see that these laws that restrict freedom of association and freedom of movement are being wound back further, expanding the existing powers of the courts so they can order a complete ban on attendance at a specified place or allow attendance only at times or in circumstances permitted by the court.

In 2001 I said the new provisions were unfair and unnecessary and that they contravened the recommendations in the report of the Royal Commission into Aboriginal Deaths in Custody. Once again, the Government is selling out disadvantaged and marginalised communities with this legislation. My colleague Ian Cohen strongly opposed the original bill, arguing that a non-association order or a place restriction order that was unlikely to reduce gang violence might wreck a young indigenous person's life. Being alienated from their friendship groups could make them depressed and suicidal. That is particularly true for teenagers, who go through a period when their peer group is most important to them.

Members should be aware of the New South Wales Ombudsman's review of the operation of the Justice Legislation Amendment (Non-Association and Place Restriction) Act 2001 that was tabled in Parliament in

2006. The Greens question why it has taken three years to bring any of the Ombudsman's recommendations before the House. Why the delay? The Ombudsman's review noted that the purpose of the Act was supposedly to target gangs and to break down criminal associations, to promote the rehabilitation of offenders and to assist in preventing crime. The review's research revealed that the current legislation does not meet those objectives. Section 8.6 on page 81 of the review clearly sets out—

**Pursuant to sessional orders business interrupted at 12 noon for questions.**

## **QUESTIONS WITHOUT NOTICE**

### **TILLEGRA DAM CONSTRUCTION**

**The Hon. MICHAEL GALLACHER:** I direct my question without notice to the Treasurer. Why has the cost of the Tillegra Dam project blown out to \$477 million from \$344 million, an increase of \$133 million or almost 40 per cent, given that construction of the dam has not even commenced? Will the cost burden of this increase be passed on to the residents of the Hunter and Central Coast? The Treasurer has already told them that they will be paying for the Tillegra Dam construction.

**The Hon. ERIC ROOZENDAAL:** It must be cold and wintry for the Opposition today after the budget and their forecasts of doom and gloom. Yesterday this Government announced a record investment in infrastructure over the next four years.

**The Hon. Duncan Gay:** Point of order: The question was discrete about the Tillegra Dam and the Treasurer has not got within a bull's roar of answering it.

**The PRESIDENT:** Order! The standing orders require the answers of Ministers to be generally relevant to the questions asked and, further, that Ministers not debate questions asked of them other than to refer to the actual issues raised in them.

**The Hon. ERIC ROOZENDAAL:** The budget allocation of \$62.9 billion over the next four years is the largest investment in infrastructure in the history of New South Wales and it underpins 160,000 jobs. At the same time as we are investing in job-creating infrastructure and supporting the hardworking people of New South Wales, record funding has been allocated to all the key areas of government expenditure.

**The Hon. Duncan Gay:** Answer the question!

**The Hon. ERIC ROOZENDAAL:** I am more than happy to discuss the State's needs. Drought conditions have highlighted the vulnerability of water supplies and water agencies across Australia are reassessing potential water supply. A 2007 review by Hunter Water revised down the sustainability yield from 90 gegalitres per annum to 68 gegalitres per annum, and annual demand for water is 72.5 gegalitres. The supply-demand gap is increasing over time. While dam levels are currently near full capacity, storages in the Hunter region are relatively small and can fall from 100 per cent to 30 per cent in 18 months under drought conditions.

Tillegra Dam represents the least-cost option to meet the long-term security and growth needs of the Hunter region. This conclusion is based on the analysis of various options, including desalination, the Grahamstown Dam upgrade, a new Chichester Dam, water recycling and rainwater tanks. Hunter Water's September 2008 submission to the Independent Pricing and Regulatory Tribunal proposed sharing the cost of Tillegra Dam between existing customers and growth. Hunter Water has assessed that 40 per cent of the benefits of Tillegra Dam flow to Hunter Water customers. This is due to the increased water security provided by Tillegra Dam and the reduced risk that more expensive drought security measures will be required, such as desalination. The remaining capacity in Tillegra Dam is available for growth in the Hunter and Central Coast regions if required. This information has been made public in Hunter Water's H250 Plan and its "Why Tillegra Now?" paper. The Tillegra Dam preliminary environmental assessment is available on the Department of Planning's website.

**The Hon. MICHAEL GALLACHER:** I have a supplementary question. How much of the \$133 million blow-out will Central Coast and Hunter region residents be expected to pay?

**The Hon. ERIC ROOZENDAAL:** In November 2006, Tillegra Dam was expected to cost \$355 million in nominal dollars. That assessment was based on preliminary work completed in the 1980s. Following more detailed design, geotechnical studies and costing analysis, the project is now estimated to cost \$477 million, or \$406 million after allowing for the sale of surplus land. Treasury officers are represented on Tillegra Dam's project control group and have been fully consulted on the project's development and costing.

### **CARING TOGETHER: THE HEALTH ACTION PLAN FOR NEW SOUTH WALES**

**The Hon. CHRISTINE ROBERTSON:** My question without notice is directed to the Minister for Health. Will the Minister advise the House how the budget will support implementation of the Government's Caring Together: The Health Action Plan for New South Wales?

**The Hon. JOHN DELLA BOSCA:** The Government has delivered a record \$15.1 billion health plan for 2009-10 to continue to meet the needs of the people of New South Wales. The budget includes an additional \$117 million to support the implementation of the Caring Together: The Health Action Plan for New South Wales. This new money is part of a \$485-million four-year investment program dedicated to improving safety and care for patients.

Caring Together initiatives in the 2009-10 budget include changing the role of senior nurses and midwives to that of nurse or midwife in charge and removing much of the burden of paperwork, thereby allowing them to focus on coordinating services and care around the needs of each patient. The nurse or midwife in charge will also be responsible for responding immediately to any deterioration in a patient's condition, supervising the work of junior staff and ensuring that patients and their families understand what is happening with their care.

In excess of \$6 million will be spent employing additional cleaning staff in all major metropolitan and regional hospitals to improve infection control in wards. In addition, \$3 million will be made available for allied health coverage on ward rounds so that patients receive more support during their recovery, and more than \$2 million will be provided to assist with rural patient and accommodation for clinical care through the Isolated Patients Travel and Accommodation Assistance Scheme. They are just a few examples of the way in which this Government is improving the health care system. At the same time, it is finding better, safer and more efficient ways of treating and caring for patients.

The Government has devoted more than 25 per cent of the State's budget to health spending. It must continue to ensure that the money is being spent as wisely and effectively as possible. One strategy is that, wherever possible, privately insured patients are invited to use their private health insurance when they receive care in public hospitals. This is an option for patients, not a requirement. It will not impact on the care, treatment or time provided to the patient and it will generate revenue for our public hospitals. Our revenue targets are higher in the next budget year, but they are achievable and they complement the Government's investment in health care.

The delivery of health services needs to be understood in the context of the pressures that our health care system is facing. We have the challenges of increasing demand while the population is growing and ageing and the increasing incidence of chronic diseases such as diabetes. We are also dealing with the backlog created by a decade of neglect by the previous Commonwealth Government. These are the challenges we face. Despite them, our hospital performance remains among the best in the world.

We have a public hospital system that, according to the Commonwealth's Australian Institute of Health and Welfare, has the best emergency department treatment times in the country, with our average 20 minutes compared to the national average of 24 minutes. We are employing a record number of doctors and nurses and we have slashed waiting times for elective surgery. As more people use our public health system it becomes more costly to the community to run. We remain focused on delivering high-quality healthcare services, providing the best possible patient care and getting maximum value for our precious health dollar. While we are focused on investing heavily in improving front-line services, Barry O'Farrell has a reckless plan to rip \$300 million out of front-line services by doubling the number of area health services from eight to 20—at a cost of approximately 3,500 front-line jobs.

### **GOVERNMENT ADVERTISING**

**The Hon. GREG PEARCE:** I direct my question to the Treasurer. How much is the Government spending on advertising the budget, including claims that the budget is creating jobs, when the budget clearly shows unemployment rising to 8.5 per cent in New South Wales under this Treasurer's watch?

**The Hon. ERIC ROOZENDAAL:** I am not going to go through every detail of the budget papers. They are quite extensive and I know the Hon. Greg Pearce, of all members, is very capable of finding out that sort of information.

*[Interruption]*

When discussing the issue of unemployment, I would have thought the Coalition would be at least respectful of the fact that the global financial crisis is going to impact substantially on the people of New South Wales. New South Wales was the first to feel the impact of the global financial crisis but we can be the first to come out of it. In relation to unemployment, which the honourable member has raised, we are going to see an increase in unemployment. There is no doubt about that. It may peak at around 8.5 per cent over the forward estimates. That is precisely why this Government has made jobs the centrepiece of the budget that was brought down yesterday. That is, 160,000 jobs underpinned by a \$62.9 billion investment in infrastructure.

It is worth comparing the budget brought down by the New South Wales Government yesterday with what is happening in other States such as Queensland, Western Australia and South Australia, where they have had to cut projects or add burdens to families. In New South Wales we have not only delivered a record infrastructure budget, investing in jobs and extra funding in all major areas, but we have imposed no new taxes whatsoever. It is interesting to note that the honourable shadow Treasurer said quite publicly in the lead-up to the budget that the report card of this Government would be whether we retain the triple-A credit rating. The rating agencies have looked at this budget, have recognised it as a fiscally responsible budget and given it a big tick and taken us off the negative outlook. They have done that because they have seen the measures we have brought into the budget to support jobs in New South Wales and to grow the important parts of government to maintain control over expenses.

To plan for economic growth and prosperity means we are going to see increased unemployment in this State, and that is the inevitable response to the global financial crisis. But in New South Wales we are taking strong, decisive action with a record investment of \$62.9 billion in infrastructure. That builds on our previous record investment in infrastructure in this State. This Government is about supporting jobs in New South Wales.

#### **LIGHT RAIL STUDY**

**Ms LEE RHIANNON:** I direct my question to the Treasurer. Will the Treasurer explain why no specific additional funding has been made available in yesterday's budget for a study into the extension of light rail from its current terminus in Lilyfield to Dulwich Hill? Is the Treasurer aware of the funding source or mechanism alluded to by the transport Minister, David Campbell, in his media statement yesterday in which he said the Government will fund its own study from the existing budget? Will the Treasurer assure local councils that have agreed to make \$60,000 available for planning the extension that the State Government will provide its own contribution for the feasibility study in the coming financial year? Is he aware that the proposal for light rail in this corridor included substantial commitments to cycling and pedestrian facilities, and will the Government ensure that this much-needed active transport infrastructure is fully funded?

**The Hon. ERIC ROOZENDAAL:** The honourable member's question is in relation to light rail and the viability study. From memory, I believe we said if the councils make their contributions available we would match that contribution. I will get some further information on the present position.

#### **INFRASTRUCTURE INVESTMENT AND JOBS**

**The Hon. LYNDIA VOLTZ:** My question is directed to the Treasurer. Will the Treasurer outline to the House the Government's plan to support jobs in New South Wales?

**The Hon. ERIC ROOZENDAAL:** I thank the honourable member for her interest in this important matter. Yesterday I was pleased to announce a fiscally responsible budget that also delivers record investment. This is a budget to support jobs, rebuild the surplus and protect services for New South Wales families. It is a budget that has been framed in the most severe and challenging economic times in living memory.

**The Hon. Michael Veitch:** Charlie cannot understand—speak slowly.

**The Hon. ERIC ROOZENDAAL:** I will speak slowly for the honourable member, since he is clearly a bit dull witted today. There is a record \$62.9 billion investment. For the honourable member's information, that is the biggest investment in jobs in this State in the history of New South Wales.



**The Hon. Charlie Lynn:** Record debt as well.

**The Hon. ERIC ROOZENDAAL:** I am glad the honourable member asks about the issue of net debt in this State. The last time those blokes were in government they took net debt in this State up to 7 per cent of gross State product. Just so the dull-witted ones on that side of the House get it clearly, it was Labor who took it down from 7 per cent of gross State product to 0.5 per cent. That is precisely why we can now borrow. We make the savings in the good times. We strengthen the balance sheet in the good times precisely for the bad times we face today. A record \$62.9 billion investment in infrastructure is underpinning 160,000 jobs across New South Wales over the next four years. We have cushioned the New South Wales economy, its people and families from the worst impacts of the global recession with the largest building investment strategy in a single year in New South Wales of \$18 billion over the next year.

This budget invests massively in jobs to build better hospitals, better schools, safer roads, and it delivers record spending across a number of areas, including a record \$15.1 billion for health; a record \$14.7 billion for education; a record \$7.1 billion for transport; \$4.4 billion for roads; \$2.26 billion for police; \$1.6 billion for community services and \$903 million for emergency services. This budget confirms the New South Wales Government's responsible economic management, as evidenced by the endorsement of the rating agencies Standard and Poor's and Moody's, both affirming yesterday New South Wales' triple-A credit rating. This fiscally responsible budget demonstrates a "moderately low debt burden and strong economic structure," in the words of Standard and Poor's.

The budget is one for consolidation, recovery and growth. I can confirm that New South Wales will weather a deficit this year and next, but the budget will return to surplus by 2011-12. In just two short years New South Wales will be back in the black. This budget provides a kick-start for the economy, with important stimulus measures. We are embarking on a \$35 million community building partnership to support local jobs and deliver community infrastructure right across New South Wales. At the same time we are assisting homebuyers with our new housing dwelling construction acceleration plan, halving stamp duty for people buying newly constructed homes under \$600,000.

#### **RIVER RED GUM LOGGING**

**The Hon. ROY SMITH:** My question is directed to the Treasurer, the Hon. Eric Roozendaal. I noted that early in his Budget Speech yesterday the Treasurer committed the Government to preserving and defending jobs. Can he tell the House what plans the Government has to defend the jobs under threat in the southern Riverina at the moment by proposals to ban logging in the river red gum forests? Does the Treasurer agree with the President of the New South Wales Farmers Association, who said rural and regional New South Wales cannot be ignored any longer and they should get their fair share of government funding?

**The Hon. ERIC ROOZENDAAL:** I am happy to discuss the macro issues of economics, particularly job creation. That question is quite specific and it could be more aptly handled by my colleague the Minister for Primary Industries.

#### **BUDGET FORECASTS**

**The Hon. MATTHEW MASON-COX:** I will ask the Treasurer an easy question without notice. Can he explain his budget's claims of getting back to surplus in "two short years" when his own figures show that without Kevin Rudd's stimulus money, the New South Wales budget would be \$8 billion in deficit over the next four years?

**The Hon. ERIC ROOZENDAAL:** The honourable member has asked a very important question because there is no doubt—and I did acknowledge this yesterday in the Budget Speech—that we, the people of New South Wales and indeed the nation, owe the Kevin Rudd Government real applause for its decisive and deliberate Federal stimulus package that has been vital in helping to insulate Australia and New South Wales from the worst impacts of the global financial crisis. It must be a cultural change for the Coalition to have a Federal government and a State government working together for the benefit of the people. What a change in their thinking. They cannot get over the fact that they are not in power any more federally and there is now a Government in Canberra that cares about the people of New South Wales and is working with us.

The Hon. Matthew Mason-Cox is exactly right. We have been delivering the stimulus package of the Federal Government the quickest and most efficiently of any State government. We passed new legislation to

streamline the approval processes for education infrastructure and for social housing infrastructure. Houses are now being built under the stimulus package. Building sites are popping up at every school around the State as we build the important education infrastructure that this State needs, with the Federal Government—on top of the biggest commitment by this State Government ever in the history of this State to job-creating infrastructure. What a partnership—record investment from the State into job-creating infrastructure and Federal stimulus money from the Kevin Rudd Government. That is how government should work: State and Federal governments together facing the worst global financial downturn in 75 years.

It makes members opposite squirm that in two years we will be back in surplus because they were forecasting we would have deficits until the cows came home. They were forecasting that we would never get back our triple-A rating fully. That is what they were forecasting only a week ago. How they wallow today because this State has a roadmap to recovery. This State has a plan to weather the global financial crisis and to bring back economic prosperity to the whole nation. I shall go through the initiatives. The initiatives in housing construction include the halving of stamp duty and new interest-free loans.

**The Hon. Matthew Mason-Cox:** Point of order: The question was focused on the fanciful claims of bringing the budget back into surplus. No-one believes the Treasurer. I ask that you bring him back to the leave of the question, which is how we can possibly believe this budget will be in surplus.

**The PRESIDENT:** Order! I call the Hon. Matthew Mason-Cox to order for the first time.

**The Hon. ERIC ROOZENDAAL:** On the issue of believability, we had Barry O'Farrell saying on radio a few weeks ago that if he were in government, he would be borrowing billions more. That is what he said a few weeks ago. He is the sort of economic buffoon of the Coalition. Then we had Michael Baird, who is the economic canary of the Coalition. He was saying, "Oh no, we should be running a surplus like Victoria." The two of them cannot even fit into one room to work out one economic policy. If they want to talk about believability, the believability is the biggest investment in job-creating infrastructure in the history of this State. *[Time expired.]*

### PRIMARY INDUSTRIES INVESTMENT

**The Hon. TONY CATANZARITI:** My question without notice is addressed to the Minister for Primary Industries. What action is the Government taking to invest in primary industries across New South Wales?

**The Hon. IAN MACDONALD:** I am pleased to say that, despite the global economic downturn, the New South Wales Government will invest a record \$515 million in the State's valuable primary industries sector in the coming financial year. That is up from \$467 million last year, an increase of almost \$50 million from last year or around 10 per cent. The budget includes a record \$45.3 million to be spent on capital expenditure, an increase of 87 per cent from last year.

**The Hon. Duncan Gay:** Did you feel left out?

**The Hon. IAN MACDONALD:** No, I don't. These figures are fantastic. The Government is making science and research a priority, with \$163 million earmarked for this area. For example, \$8 million will be spent on the relocation of facilities from Narara to the University of Newcastle's Central Coast Campus at Ourimbah. Another \$1.4 million will be used to construct a new laboratory to upgrade research facilities at Wagga Wagga. A total of \$157 million will be spent on enhancing the Department's agriculture, biosecurity and mine safety group, our front line of defence. This figure includes \$17.7 million this year for the ongoing biosecurity upgrade at the Elizabeth Macarthur Agricultural Institute.

All these programs mean more jobs for rural and regional areas—money well spent. There is no doubt that this is a record budget that will deliver upgraded biosecurity and research facilities for New South Wales, as well as significant investment in clean coal technology. The Government's latest funding investment in primary industries is about maintaining our State's world-class reputation for producing clean, fresh quality produce. We are also investing record amounts of around \$320 million to maintain our leading broad-ranging research, extension and industry development programs, as well as important capital works projects—all efforts which form part of essential front-line services that the State Government is committed to maintaining.

Another important aspect of this budget is continued spending to help our primary producers continue to survive the current one in 100 year drought. To date we have spent about \$480 million, and we are committed

to continuing this range of drought assistance measures for as long as they are needed. It is important to note that more than half of New South Wales remains in drought, while many other areas have only just began the long, challenging journey of recovering from many dry years. While ever the need is there, the Rees Government will continue to deliver funding and drought assistance measures to assist our State's primary producers.

For our \$13 billion mining industry, this budget recognises the need to ensure necessary rehabilitation works are carried out and that investment continues in clean coal technology to reduce our carbon footprint. Our funding commitment is \$16.5 million for the development of clean coal technology through the Clean Coal Fund. Other major initiatives in the 2009-10 budget include \$6 million towards combating exotic pests and diseases. Another \$71 million has been allocated for mineral resources, including just on \$2 million contribution towards derelict mine site rehabilitation.

I should add that \$2.5 million will be spent on industry development assistance and restructure under Brigalow structural adjustment arrangements. This follows the 2005 Brigalow decision where around 350,000 hectares of new reserves were created in the Pilliga region of New South Wales. The Government will also be spending almost \$1 million for the construction of artificial reefs off Newcastle for recreational fishers and \$2.4 million will be invested in the development of state-of the-art electronic information systems for catch reporting and quota trading.

An additional \$400,000 is being spent to upgrade the fisheries office at Eden. The upgrade includes the refurbishment of the South Coast Fisheries office and the enhancement of storage facilities for boats, equipment and seized items. In addition, this budget aims to provide the fishing industry with options to develop regional structures to enhance viability, including the introduction of an industry development program to promote local New South Wales seafood as a healthy and sustainable choice to increase returns to New South Wales fishers.

#### **FLYING FOX CONTROL**

**Mr IAN COHEN:** My question is directed to the Minister for Primary Industries. Will the Minister indicate whether there is provision in the current 2009-10 State budget for any new forms of compensation, incentive payments or low-interest loans for farmers to purchase exclusion netting in the Sydney Basin? If the answer is no, can we assume that the Minister is working towards implementing a code of practice for the shooting of flying foxes?

**The Hon. IAN MACDONALD:** I cannot indicate the detail of that at this point, other than to say that we do have a program of management in this area that has been conducted for some time. We will continue, of course, to work towards protecting our valuable horticultural industries, which could be threatened by large flying fox populations. However, as to the details about exclusion netting, I will come back to the member with further details.

#### **DROUGHT ASSISTANCE**

**The Hon. DUNCAN GAY:** My question is directed to the Minister for Primary Industries. What sort of reassurance can the Minister offer for the future of the agricultural research stations earmarked to close, when \$10.6 million of the \$45 million for Primary Industries infrastructure investment is the reinvestment of proceeds from the sale of assets? Given that the Minister said in his press release yesterday that "more than half NSW remains in drought and the Rees Government will continue to deliver funding and drought assistance measures to assist the State's primary producers", can the Minister now explain why there is no figure at all for drought assistance in the budget? Can the Minister also explain whether drought support workers will continue to be funded?

**The Hon. IAN MACDONALD:** I thank the Deputy Leader of the Opposition for his series of questions. The first relates to the \$10.4 million reinvestment that is proposed from the sale of assets. The honourable member would be aware, if he has read the press releases I have put out, that the Narara facility will be transferred to Newcastle university's facility at Ourimbah—a really exciting project bringing the university and the Department of Primary Industries together. The honourable member would then be aware that that would allow for the sale of the Narara site, in respect of which there is currently a development application for a very good housing project. The sale of the site would provide a reasonable amount of funds within that \$10.4 million. With regard to the sale of assets, we can raise funds in a number of ways, and it does not necessarily have anything to do with the mini-budget decision to look at eight agricultural research stations across the State—

**The Hon. Duncan Gay:** Will you rule out the sale of the others?

**The Hon. IAN MACDONALD:** I am not going to make any announcements to your tune. We are properly considering how we are going to handle this issue. A community consultative program has been conducted in relation to each of these agricultural research stations, and submissions have been put to us in relation to them. The closing date for submissions was the end of April. The department is currently considering the submissions and will make a recommendation to me in due course, and we will deal with the matter in that way. What was the second question?

**The Hon. Duncan Gay:** No allocation of money whatsoever for drought funding, and funding for drought support workers.

**The Hon. IAN MACDONALD:** It is a very good question. The Deputy Leader of the Opposition has asked me this question seven years in a row now, and he gets the same answer every time.

**The Hon. Charlie Lynn:** He's consistent.

**The Hon. IAN MACDONALD:** He is a very consistent fellow—he consistently gets it wrong. The allocations for drought relief are additional to the \$515 million. They come from Treasury funds, and they are allocated on the basis of submissions I put to Cabinet each quarter. To explain it for the seventeen thousandth time to the Deputy Leader of the Opposition, towards the end of each quarter we look at the figures and we work out what parts of the State are in drought and what we are likely to need. I then make a submission to the budget committee, and the budget committee, 100 per cent of the time, allocates those funds. I duly announce the funds, and everything goes on. In this way we are meeting the commitment of the Government—of all the Labor Governments we have had, under different leaders—that we will continue to fund farmers throughout this drought. That includes the drought support workers. I will be putting another similar submission to the budget committee shortly. That money is additional—and has been for the last seven years—to the allocation referred to in the budget papers. What was the third question?

**The Hon. DUNCAN GAY:** I ask a supplementary question. In light of the Minister's answer, how does that sit with the fact that last year there was a budget allocation for drought support, whereas this year there is no allocation at all? If we are to believe the Minister's answer, there should have been an allocation this year or there should not have been an allocation last year. Which one is it?

**The Hon. IAN MACDONALD:** The budget figure will be finalised after we go through the process at the end of each three-month period.

**The Hon. Duncan Gay:** How can we believe you?

**The Hon. IAN MACDONALD:** I have done it every year for the last seven years. We are not going to change our policy now. Parts of the State are in drought, and we will continue to provide funding.

#### DEPARTMENT OF LANDS BUDGET

**The Hon. AMANDA FAZIO:** My question without notice is addressed to the Minister for Lands. What is the latest information on how the Department of Lands will contribute to the State's economy over the next financial year?

**The Hon. TONY KELLY:** I thank the Hon. Amanda Fazio for her very good question. The Department of Lands is delivering on the Rees Government's commitment to the people of regional New South Wales. Our \$284 million investment in the Department of Lands will maintain the State's vital property information services, ensuring the responsible management of the State's valuable Crown land assets, assets that comprise about half the land mass in New South Wales. In addition, the Land and Property Information division has received a budget allocation of \$177 million. Of this, \$19 million will be spent on innovative projects such as electronic conveyancing, the digital conversion of historic property records, and improvements to online services, making important land transactions much easier for families and businesses across New South Wales.

The Department of Lands is the custodian of all property titles in New South Wales and registers property transactions worth billions of dollars each year. The rights people have in land are fundamental and represent a large portion of their personal wealth. They trust the protection of the interests in their assets to the

New South Wales Department of Lands. In difficult economic times, the department is building greater confidence in the system of property title in New South Wales. A total of \$2 million will be spent on the development of a national electronic conveyancing system, which will reduce average conveyancing costs by \$170 per conveyance. I am pleased to inform the House that New South Wales is leading the way in this important project. A total of \$4.25 million will go towards an upgrade of electronic data processing equipment. In addition, \$2.8 million will further improve property record management for Crown land.

The Lands budget underlines the Government's commitment to rural and regional New South Wales. Almost half of the entire Lands budget will be spent on infrastructure and projects in rural and regional communities. More than \$160 million will go to directly benefit employment and business expenditure in regional centres such as Bathurst, Newcastle, Wollongong, Dubbo, and many smaller towns and cities. Along our coastline, \$2.9 million will be spent on minor ports and river entrances, including \$500,000 for dredging at Coffs Harbour, \$300,000 for dredging in the Swansea channel, \$500,000 for repairs for the fishing moorings at the Port of Eden, and \$200,000 for jetty repairs at Ulladulla harbour. These projects will ensure that coastal communities have well maintained port infrastructure and safe and secure port access for commercial fishing vessels and recreational boating enthusiasts. In addition, the Tweed sand- bypassing project will continue its important work with \$5.5 million to ensure safe navigation of the Tweed River.

The Government is also investing \$1 million for new recreational facilities at Pioneer Dairy Parklands at Tuggerah Lakes on the Central Coast. Other key aspects of the budget include: \$18.5 million to continue the work of the Soil Conservation Service through soil conservation earthworks and consultancy services; and \$10.6 million for the Public Reserves Management Fund to improve Crown reserves through New South Wales—almost \$30,000 every single day to improve valuable community assets. The Department of Lands is investing in our local communities and maintaining vital local infrastructure for the people of New South Wales in creating and supporting jobs in rural and regional areas where they are most needed.

#### **DEATH IN CUSTODY OF VERONICA BAXTER**

**Ms SYLVIA HALE:** I direct my question without notice to the Minister for Corrective Services. On 10 March 2009 Veronica Baxter, a transgender Aboriginal woman, was arrested at her Sydney home and charged with supplying a prohibited drug. Ms Baxter died in Silverwater Metropolitan Reception and Remand Centre on 16 March 2009—six days later. Why was Ms Baxter remanded to a male-only prison in breach of departmental guidelines? Has a formal inquiry into the circumstances of her death been initiated? If so, when will the report of any such inquiry be made public?

**The Hon. JOHN ROBERTSON:** I thank the honourable member for her question. The department treats seriously every death in custody. A proper review is undertaken and an assessment made of the processes in regard to any fatality. Over many years the department has implemented a series of initiatives to remove things such as hanging points and to ensure it can reduce—

**The Hon. Melinda Pavey:** Did you know about this?

**The Hon. JOHN ROBERTSON:** This is a very serious matter and if the Hon. Melinda Pavey wants to hear about it, I am happy to deal with it. The department undertakes inquiries into every single death in custody. The Coroner also undertakes inquiries into deaths in custody. I undertake to obtain the relevant information and get back to Ms Sylvia Hale with the details.

#### **BATHURST BASE HOSPITAL HERITAGE BUILDING REHABILITATION**

**The Hon. RICK COLLESS:** I direct my question without notice to the Minister for Health. Given that Premier Rees made a major announcement last week in Bathurst that the State Government would fund rehabilitation works to the Bathurst Base Hospital heritage building, with the first stage of those works to be completed by the end of next month, why has there been no funding figure attached to those works in the budget papers? Given the Premier publicly stated the first stage of these works are due to be completed by the end of next month, can the Minister provide any indication of when the level of funds necessary will be announced and, further, when these funds will be issued?

**The Hon. JOHN DELLA BOSCA:** Very simply, the funds have already been made available. That addresses the elementary point of the question but I will take the opportunity to speak a little bit about the capital program for hospital projects presently being carried out around the State. I said yesterday, and I am

happy to repeat it again today, presently there are a number of important projects going on across rural and regional New South Wales—for example, at Orange Base Hospital and in Catholic Healthcare at Dubbo, where the Government is rebuilding the Lourdes Hospital. In other debate the Deputy Leader of the Opposition expressed a good deal of scepticism about my commitments in this regard, but they have been met.

**The Hon. Duncan Gay:** You took your time.

**The Hon. JOHN DELLA BOSCA:** No, it did not take very long at all, given the scale and significance of the project. That project is strongly appreciated by the clinicians and community of Dubbo. We are rebuilding Narrabri Hospital, which has been a long-term community priority. It is also important to note that the Government is rebuilding the Orange Base Hospital. The Bloomfield campus of Orange Base Hospital will provide a range of telemedicine services and telepsychiatry services to the whole of western New South Wales. It will also become an excellent example of the way in which the Government is providing regional New South Wales with outstanding health care services. The new Bathurst hospital is but one of many examples. There are still additional things required to be done to the heritage building, but a \$100 million investment by the Government provides an impressive enhancement to clinical services for the people of Bathurst and surrounding communities.

When a new hospital is built it is not built solely to meet the needs of the current community; it is built to meet the needs of a couple of generations. That is why it is a difficult, but important, task to make sure a new hospital is appropriately commissioned. It is also important to understand that in the context of Bathurst hospital the Government is catering for the community now and well into the future, with eight new beds, five emergency department treatment places, new enhanced dental services and two extra dental chairs. As the Minister for Health I have been intimately involved in the commissioning of Bathurst hospital. I was concerned about the heritage issue; the matter was drawn to my attention by the member for Bathurst as a key issue. Gerard Martin, the member for Bathurst, is an outstanding local member, and both he and I have addressed this issue with the local doctors, nurses and allied health workers with the community.

*[Interruption]*

Members of the Opposition can be smart about this but the truth of the matter is—

**The Hon. Duncan Gay:** Well, he was not smart about it.

**The Hon. JOHN DELLA BOSCA:** He is very smart. The truth about the Bathurst hospital is that it is an outstanding facility—the Deputy Leader of the Opposition should go there.

**The Hon. Duncan Gay:** It is now.

**The Hon. JOHN DELLA BOSCA:** Of course it is now, because this Government has commissioned a new Bathurst hospital that will stand that community in good stead for a generation. I make the important point that we do not go around trumpeting the exact amount of dollars that we will invest in each project. I introduced that change to Health, and I am quite proud of that. I commenced that practice when I was Minister for Commerce and carried it through to the Education portfolio. What builder likes a client who announces exactly how much money is going to be spent on a particular project? It is a mug's game, set up by the Coalition when it was last in office. But we have moved on from that position. The Government has consulted with clinicians at Bathurst about the best way to make sure that heritage building is used for outstanding clinical services.

## PUBLIC SECTOR REFORM

**The Hon. PENNY SHARPE:** I address my question to the Minister for Public Sector Reform and Special Minister of State. What action is the Government taking to reform the public service to deliver better services and reduce costs for taxpayers?

**The Hon. JOHN ROBERTSON:** I thank the member for her question and her ongoing interest in public sector reform. In yesterday's budget the New South Wales Government announced the most significant reform to the public sector in 30 years with the creation of 13 new super agencies. The two key goals of this reform are the reduction of bureaucratic waste and inefficiency and improving frontline services to the people of New South Wales. Agencies will be integrated, planning streamlined and services made the number one priority for the 300,000 strong public sector workforce. Back-office functions, such as procurement and human resources, will be consolidated in order to save taxpayers money and direct resources onto the frontline.

This is no Liberal-National style approach to public sector reform. We will not be slashing jobs and we will not be running down public services. We are investing in the future of New South Wales. I ask the Deputy Leader of the Opposition to make sure he quotes that part of *Hansard*, not selectively quote as he usually does. Consolidation of the public service will be achieved through natural attrition, which is what I said yesterday, via the Government's ongoing back-office recruitment freeze. The Premier has made it clear that there will be no forced redundancies. In addition to the super agency initiative, this Government is committed to boosting training for young people while delivering major infrastructure projects.

In line with the Government's priorities, those involved in infrastructure, apprenticeships and graduate programs are quarantined from the recruitment freeze. The budget will fund 100 new pre-apprenticeship training places for school leavers in Sydney, Newcastle, Wollongong, the Central West and the North Coast. These targeted programs will help deal with shortages in identified trade areas, including building and construction, engineering, electrical and automotive. The purpose of this program is to provide a transition for school leavers into full-time apprenticeships, including the 4,000 additional places being offered in State government projects over the next four years. The Government has already made significant progress with its new apprenticeship program, with more than 560 new apprentices employed since the beginning of 2009. These apprentices are working in a variety of different sectors, including transport, energy and aged care.

The budget also includes a \$5.8 million investment in a whole-of-government e-recruitment strategy that aims to seek out the best people in the least amount of time for front-line jobs. The centrepiece of the strategy is a job search website applicable to all agencies to reduce duplication and the costs of recruitment and advertising. E-recruitment will make managing front-line vacancies, position descriptions, employment criteria, advertising, selection panels, candidate correspondence and data collection faster and easier. This will lead to greater efficiency and millions of dollars in savings across the public sector. As Australia's largest employer, the New South Wales Government has an obligation to ensure that we continuously improve the speed and quality of our hiring. Any member of the public will be able to access government job information— [*Time expired.*]

**The Hon. Penny Sharpe:** I ask a supplementary question. Will the Minister elucidate his answer?

**The Hon. JOHN ROBERTSON:** Any member of the public will be able to access government job information as soon as it becomes available on the site, connecting job seekers with employment in tough economic circumstances. The new e-recruitment website is scheduled to come online later this year. Yesterday's budget represents public sector reform that in tough economic times will deliver enhanced front-line services while delivering value for money for New South Wales taxpayers. It includes better recruitment strategies, more accessible training for young people and a commonsense approach to agency structures. Yesterday's budget clearly outlines the Government's plan for public sector reform in New South Wales. We have a plan. As I said yesterday, the Opposition has nothing.

## PUBLIC SECTOR REFORM

**Dr JOHN KAYE:** My question without notice is directed to the Minister for Public Sector Reform. Will the Minister give the House a succinct definition of "back-office job"? Will he explain why the loss of back-office job numbers will not result in an increased administration and paper workload for front-line public sector workers and why, consequently, that would not result in a decline in front-line services?

**The Hon. JOHN ROBERTSON:** I am happy to answer Dr John Kaye's question. The establishment of 13 super agencies will provide an opportunity to consolidate all back-office functions so that they can be performed by a reduced number of staff. It will ensure that the requirement to undertake those back-office functions does not fall on front-line workers. Through the consolidation of departments we will be able to reduce the number of jobs without anyone losing his or her job or any forced redundancies. I will clarify it for Opposition members: We are reducing the number of positions, but no-one will lose his or her job.

[*Interruption*]

Clearly, Opposition members do not want to listen. They want to put their own spin on this issue. I have informed the House as to how this initiative will operate. There will be a reduction in positions; no-one will lose his or her job. In relation to Dr John Kaye's question—

[*Interruption*]

**The PRESIDENT:** Order! Hansard must be having difficulty reporting the proceedings. Members should allow the Minister to respond to this important question.

**The Hon. JOHN ROBERTSON:** The consolidation of departments through the establishment of 13 agencies will provide an opportunity for efficiencies to be achieved by staff performing those functions without that requirement falling on front-line workers.

### **BERESFIELD POLICE STATION**

**The Hon. ROBYN PARKER:** My question without notice is directed to the Minister for Police. Given there was no funding in the New South Wales Budget for Beresfield police station, will the Minister explain to the House the Government's future plans for the station and its infrastructure? Will the Minister commit to providing a 24-hour, fully manned police station at Beresfield, which also would cover the growing nearby suburbs of Thornton and Woodbury?

**The Hon. TONY KELLY:** As the Hon. Robyn Parker knows, the Government is committed to building a new police station at Raymond Terrace. I am advised that the total budget for the project at Raymond Terrace is \$13.7 million. The new police station will be constructed on the current police station site. The master plan has been completed and a principal design consultant is completing the design process. A development application was lodged with Port Stephens Council in 2008. The issue went before the council on 24 March 2009. I have received advice that the development application was approved. I am advised that following the approval the next phase of design, documents and tenders for an award contract will take between five and six months, the construction phase will take 12 to 13 months and completion is expected in late 2010. Of course, that is dependent on site conditions. Until completion of the new station, Beresfield police station will be used by police operating out of Port Stephens police station.

### **WORKPLACE RELATIONS MINISTERS COUNCIL**

**The Hon. KAYEE GRIFFIN:** My question without notice is addressed to the Minister for Industrial Relations. Will the Minister update the House on the outcomes of the Workplace Relations Ministers Council that was held in Sydney on 11 June 2009?

**The Hon. JOHN HATZISTERGOS:** I thank the Hon. Kayee Griffin for her question, which falls within my responsibilities. The Government is committed to fairness and decency in the workplace. We are committed to protecting our lowest-paid workers and supporting employers, particularly small businesses. We are committed to making sure employers understand their workplace obligations and comply with the law. As New South Wales and Australia face one of the worst economic downturns in our nation's history, it is vital that we continue to look out for vulnerable workers and their families who might otherwise fall through the cracks. Over the next year the Government will spend \$22.9 million to fund the New South Wales Office of Industrial Relations so that its officers can visit more than 20,000 workplaces. Honourable members will know that the Commonwealth is developing a new national industrial relations system based on the Forward with Fairness policy. The New South Wales Government will not make any decision about our involvement in the national system until all the Fair Work legislation has passed the Senate.

The decision to refer is not one that ought to be taken lightly. It is a decision that will affect 200,000 small businesses in New South Wales and 500,000 employees. Discussions between New South Wales and the Commonwealth are ongoing. I can inform the House that I am particularly concerned about three issues. Firstly, the Industrial Relations Commission should play a significant role and should not be isolated from the private sector. Secondly, the line determining what comes under the national system and what comes under the New South Wales system should be clear. Thirdly, our most vulnerable workers should be assisted by targeted compliance and education campaigns.

On 11 June 2009 the Minister for Finance and I welcomed Ministers from across Australia to Sydney for the eighty-second Workplace Relations Ministers Council, or the WRMC. At the Workplace Relations Ministers Council four States confirmed that, in principle, they will refer powers to the Commonwealth. Those States are Victoria, South Australia, Queensland and Tasmania. Only the Victorian referral has been finalised. South Australia, Queensland and Tasmania indicated they will need to resolve a number of outstanding issues with the Commonwealth prior to any referral of powers. The Workplace Relations Ministers Council also featured discussion concerning the regulation of the building and construction industry. The Commonwealth sought the views of the States in relation to the regulation of the industry.



The Government has argued that coercive powers are not required in New South Wales. After all, the Wilcox report did not identify any illegal behaviour in the construction industry in New South Wales. Mr Wilcox QC recommended that coercive powers of compulsory interrogation remain because of situations in other jurisdictions. However, he also recommended that safeguards be put in place to prevent the abuse of these coercive powers. It appears as though the Commonwealth has adopted the Wilcox recommendations and also the views of the New South Wales Government in drafting amendments to the Building and Construction Industry Improvement Act. I support the efforts of the Deputy Prime Minister to reconcile the disparate positions of stakeholders in this manner.

### UNDERAGE SEXUAL INTERCOURSE

**Reverend the Hon. FRED NILE:** I ask the Minister for Police, representing the Minister for Community Services, a question without notice. Can the Government confirm that it is still an offence in New South Wales for a person to have sexual intercourse with a person under 16 years of age because of the legal inability of that person to provide consent? Does the Government acknowledge that it has a duty of care to protect the young and vulnerable in our community? Why has the Department of Community Services failed to act to protect an 11-year-old female child, who is now pregnant, from sexual intercourse with a 15-year-old male in Dubbo? Can the Government confirm that the office of the Department of Community Services in Dubbo ignored the pleas of the girl's father, stating that it wished to have "nothing to do with the situation"? Why have both the Department of Community Services and the New South Wales Police Force chosen to ignore the law in this regard? Will the Government conduct a comprehensive review of the processes and procedures of the Department of Community Services to ensure this situation is not repeated?

**The Hon. TONY KELLY:** Like many people in the community I was shocked and dismayed when I learned of those matters to which Reverend the Hon. Fred Nile alludes. Some media reports have stated that police have refused to act in relation to complaints of underage sex. I am advised by the police that in situations where consensual underage sex has taken place, police are able to lay charges. But, as with any offence, police need to be able to gather sufficient evidence to prove that an offence has occurred. Under section 66C (1) of the Crimes Act any person who has sexual intercourse with another person who is of, or above, the age of 10 years and under the age of 14 years can be imprisoned for up to 16 years, or 20 years if there are aggravating circumstances. However, if the young people involved choose not to cooperate with police—as appears to be the case in the matter referred to by Reverend the Hon. Fred Nile—it can be very difficult for police to gather sufficient evidence to lead to a successful prosecution. The Joint Investigation Response Teams that investigate these types of matters consist of representatives of the New South Wales Police Force, the Department of Community Services and NSW Health, who can ensure that these young girls get access to appropriate counselling and medical services as required.

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

### TAMWORTH HOSPITAL REDEVELOPMENT

**The Hon. JOHN DELLA BOSCA:** Yesterday the Hon. Trevor Khan asked me a question regarding planning for the upgrade of Tamworth Hospital. I can advise that in 2008-09, \$2 million was allocated for the Service Procurement Plan and the Project Definition Plan. This funding is still allocated to the Tamworth project. In addition, Tamworth Hospital will be able to access a sum of money from the \$9 million statewide planning money announced as part of yesterday's budget.

**The Hon. Trevor Khan:** How much?

**The Hon. JOHN DELLA BOSCA:** What is required.

### DROUGHT ASSISTANCE

**The Hon. IAN MACDONALD:** Earlier the Deputy Leader of the Opposition asked me a question about drought assistance funding, a matter raised also in a press release by the member for Burrinjuck. I advise further that last year's budget papers reported only expenditure with respect to drought because this is a demand-driven program.

**Questions without notice concluded.**

**ADMINISTRATION OF THE GOVERNMENT OF THE STATE**

**The PRESIDENT:** I report the receipt of the following message from Her Excellency the Governor:

MARIE BASHIR  
GOVERNOR

Office of the Governor  
Sydney 2000

Professor Marie Bashir, Governor of New South Wales, has the honour to inform the Legislative Council that she re-assumed the administration of the Government of the State on 17 June 2009.

17 June 2009

**CORONERS BILL 2009**

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

**LAND ACQUISITION (JUST TERMS COMPENSATION) AMENDMENT BILL 2009**

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

**Motion by the Hon. Tony Kelly agreed to:**

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

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

*[The President left the chair at 1.05 p.m. The House resumed at 2.30 p.m.]*

**STANDING COMMITTEE ON SOCIAL ISSUES****Report: Overcoming Indigenous Disadvantage in New South Wales: Final Report**

**Debate resumed from 3 June 2009.**

**The Hon. GREG DONNELLY** [2.30 p.m.]: I am pleased to be able to speak on the final report of the Standing Committee on Social Issues inquiry into overcoming indigenous disadvantage in New South Wales. This report is the culmination of an 18-month inquiry during which the committee received 105 submissions, conducted 13 public hearings, and held two public forums, three roundtable discussions and three informal discussion sessions. In order to hear from a wide range of people the committee visited Redfern and Bidwill in Sydney and Kempsey, Dubbo, Nowra, Griffith, Armidale and Broken Hill. The committee greatly appreciated the efforts of all those who came along and contributed to the inquiry. Without that participation the committee would not have been able to examine, as it was able to, the range of issues that must be considered when looking at indigenous disadvantage in New South Wales.

As a committee member listening to the heartfelt evidence of the witnesses I confess that my feelings were often conflicted. I would ask myself rhetorically: Why can these issues not be addressed and resolved once and for all? Is it not possible for indigenous communities to do more to help themselves? Why is it that as a white Australian I am not doing more myself to help my black brothers and sisters? Who is at fault and what are we doing about it? The questions kept coming, one after another. The committee heard about and saw a lot of the problems in Aboriginal communities. Nobody doubts that they exist and we are well familiar with them. However, time and again we heard stories and anecdotes of individual and community achievements and successes, spoken about with pride and hope. The human spirit and the ancient wisdom of the indigenous culture were there to be seen by all except those with the hardest of hearts. Throughout the inquiry the committee was told repeatedly that there was no silver bullet to overcome indigenous disadvantage. The issues the committee has addressed in the interim report and the final report are not new. The solutions to them also are not new. They involve indigenous and non-indigenous Australians working together, hard work and a long-term approach.

This final report addresses the themes underlying those issues for consideration. The main themes address the questions of accountability and responsibility, genuine partnerships, service delivery and cultural

resilience. The report reflects on the Murdi Paaki Council of Australian Governments [COAG] trial, the Northern Territory Emergency Response and the relevance of international programs and initiatives in considering these issues. While this final report has been primarily about what governments can do, we all have a responsibility to make changes to the way in which we respect and work with each other and view the Australia in which we live and which we share. Long-term change in the relationship between indigenous and non-indigenous people is everyone's responsibility and challenge. Governments at all levels have the primary responsibility to ensure that things happen and that policy and programs are financed and implemented. However, governments must not allow political or economic cycles to be the excuse for nice words but little or no implementation.

Genuine partnership between government and Aboriginal communities is fundamental to that approach. However, the committee heard from Aboriginal communities that they do not consider themselves to be genuine, equal partners in the design and delivery of programs and services. Evidence has often shown that localised solutions are the most appropriate and have the greatest chance of making an impact on indigenous disadvantage in a community. Coordination of services at the local level brings multiple benefits. For example, when there is a more culturally appropriate approach to indigenous communities there is less chance of duplication of services and indigenous ownership of the process will be heightened. Therefore, the committee recommended that New South Wales Government agencies engage Aboriginal communities to identify local problems and solutions and to tailor accordingly the programs that are delivered in a community.

Aboriginal communities should be asked what they need, or be able to say what they need, knowing that they will be listened to. They should have ownership of the strategies put in place to address disadvantage. If Aboriginal communities are to be responsible for meeting the objectives they set, they must be supported by Government and provided with relevant training and infrastructure so that they have the resources they need to achieve the outcomes. Being able to demonstrate success is important for a program to receive ongoing funding. However, there is tension between traditional measures of success and flexibility in measuring the outcomes that programs in Aboriginal communities are hoping to achieve. Ongoing work must be done to address this tension.

The effect of short-term funding associated with pilot programs leads to uncertainty and inefficiency as communities and organisations spend a significant amount of time attempting to meet accountability requirements and to identify new sources of funding. The committee therefore recommended that to militate against the effects of short-term funding the Government should commit to funding programs that have successfully completed a pilot for a minimum of five years. Constantly applying for funding is a considerable drain on the already stretched resources of both government departments and applicants. To facilitate the communities' sourcing of funds the committee recommended that the Government develop a whole-of-government website containing comprehensive information on the funding sources that are available.

The criteria under which funding is available also can be a problem for some Aboriginal service providers. Strict criteria that are not sufficiently flexible to enable Aboriginal communities to address self-identified need for programs within their communities are an impediment to a true and equal partnership between communities and government. The committee therefore recommended that the Government, in consultation with the Department of Aboriginal Affairs and Aboriginal communities, review funding criteria for services to Aboriginal communities to provide greater flexibility and to promote programs that focus on Aboriginal communities' identified needs.

To halt the cycle of over-consultation and consultation fatigue that is felt by Aboriginal communities, the committee recommended that the Government require government departments and agencies that are involved in the delivery of services to Aboriginal communities to use representative structures that have been established by the Department of Aboriginal Affairs Two Ways Together partnership community program and engagement strategy.

The regional presence of the Department of Aboriginal Affairs will be critical to the success or failure of that program and engagement strategy. The committee is concerned that the 40 part-time partnership community officer positions that were announced during the inquiry will not be sufficient, and recommended that the number of positions be increased to adequately support the new structure. The committee also recommended that the Government should provide additional funding to the Department of Aboriginal Affairs to implement this recommendation. While governments cannot dispense resilience, the way in which governments use resources can make a difference to cultural resilience. The goal of promoting resilience through projects that demonstrate and promote understanding and respect for culture is as meaningful and important as are other more tangible goals such as the provision of a building for dispensing medical services.

The framework to address indigenous disadvantage is there: the State Plan, Two Ways Together and the Interagency Plan to Tackle Child Sexual Assault in Aboriginal Communities 2006-2011. The tools are also there: Aboriginal community organisations, elders, government and non-government agencies, policies and programs. Following the national apology there is fresh hope that this country will redouble its efforts to attend to the issues that need and deserve our urgent attention. I am sure we all share that goal.

I appreciate that the New South Wales Government has responded to the committee's recommendations and I will leave it up to the committee's chair, the Hon. Ian West, to provide some reflections on that response. I take this opportunity to thank my fellow committee members for the way in which they all participated in this inquiry. I am sure that I speak on behalf of them when I say that we all now have a deeper understanding of issues and challenges facing our indigenous brothers and sisters and share a heightened sense of obligation in respect of doing more to address what needs to be done. I particularly thank the chair, the Hon. Ian West, for sensitively and thoughtfully guiding the committee through this inquiry.

I also thank members of the committee secretariat for their efforts in supporting the inquiry process and preparing this final report: Rachel Simpson, Simon Johnston, Glenda Baker, Lynn Race, Victoria, Pymm, Teresa Robinson and Elizabeth Galton. Particular thanks go to Emilia Lukeman and Chelsea Perry, Macquarie University students who undertook an internship with the committee during the second stage of the inquiry and made valuable contributions. I commend this report to the House.

**The Hon. IAN WEST** [2.39 p.m.]: I thank the members who have spoken in this debate for their kind words and note the unanimous support for the recommendations and their implementation, and the universal hope for a positive outcome from our interim and final reports. The committee is pleased that many of our recommendations are already being implemented. However, there is no doubt that the indigenous community's scepticism and cautious positive response to the chances of the recommendations being fully implemented are somewhat understandable, taking into account the past few hundred years of history. No doubt many in the indigenous community may expect this to be just another report that will gather dust on a shelf. I quote Mr Jack Beetson, the Chief Executive Officer of Birpai Local Aboriginal Land Council, in my report and I quote him again here:

How many times do Aboriginal people have to keep telling? People keep asking and we keep telling, but nobody is listening to what we are saying and that is frustrating.

It is encouraging that the Executive Government has taken on board and embraced the committee's recommendations and responded to our final report presented to this House on 27 May 2009. It is now a question of whether these final recommendations will ever be fully implemented. I also commend the Minister's input and response to our inquiry. Minister Paul Lynch has been positive and supportive of our recommendations. The Minister is extremely well respected for his knowledge and deep commitment to the portfolio of Aboriginal Affairs. I know that Minister Lynch is fully committed to his portfolio—instinctively, intellectually and as the Minister.

The Government has committed itself in words, intent and resources. The indigenous community has been waiting for action, as we know, for far too long. All the elements are there for a real and meaningful partnership between the New South Wales Government and the first Australians. Hopefully, that meaningful partnership will extend across the length and breadth of New South Wales. Outcomes will be marked by more than simply a reduction in the 17-year life expectancy gap. There is a need for real, focused, radical change in the way governments interact with indigenous communities, and the response from the Government clearly indicates that it understands that issue.

The indigenous community has enormous talent, drive and will to succeed. What is needed now is a genuine connection and a drive by government agencies and the Premier and Cabinet to make sure the recommendations and the response from Executive Government, the Premier and Minister Lynch are implemented. It is important for all Australians, indigenous and non-indigenous, to appreciate and understand Aboriginal history and culture. It is what makes this country so special and unique. The committee hopes the Government and the indigenous community can work together through meaningful partnership to make a brighter future.

There must be a long-term focus and concerted effort by the Government. No-one can simply afford to wait around and expect this to happen magically. Overcoming indigenous disadvantage must be an integral part of the core business of every government department. That was central to our recommendations and was

encompassed and agreed to in the response from the Executive Government through the Minister. These issues are dealt with comprehensively throughout the report, particularly in recommendations 1 to 9, which deal with the framework in which the State Plan and Two Ways Together should operate.

Recommendation 3 is key to a real commitment to a partnership with indigenous Australians, a partnership wherein the government of the day is both responsible and accountable for service delivery for indigenous Australians. Recommendation 3 requires the Premier to give a report to Parliament on the first sitting day of every year about the progress in overcoming indigenous disadvantage. The Government has indicated that this is a national responsibility of the Prime Minister—and currently the Prime Minister, Kevin Rudd, is required to give such a report to Federal Parliament. I encourage the Premier to provide such a report to our Parliament as well.

No doubt the indigenous community will be watching these reports with a very keen eye. In the final analysis it will be the indigenous community, not the government of the day, that will be the judge of any commitment to overcoming indigenous disadvantage and closing the gap. As has been said before ad nauseam, any attempts to improve the lives of indigenous Australians must involve a real meaningful partnership, one in which both government and the indigenous community have clearly delineated roles. Time and again we have seen the imposition of government policies and programs over the real wishes, desires and concerns of indigenous people leading to the failure of previous government initiatives.

This Government's response has a clear focus on the value of working in meaningful partnerships. The Government's Partnership Community Program has demonstrated this. Through this program, project officers are supporting communities across the State to develop local governance bodies to work with government agencies. As the committee has identified, local indigenous communities must be the clear focus for the Government, and the Government acknowledges this. Each program or policy we employ must have a local focus and not be a broad-brush, one-size-fits-all approach as we have seen so many times in the past. Our actions will be multifaceted, concise and respectful of the individual situation of each community—responses and action based on the fundamental tenets of respect for and the dignity of the indigenous community, with a real commitment to improving the lives of disadvantaged indigenous members of our community through partnership not paternalism.

The prime driver in this partnership will be the Government and the prime motivator will be a real commitment. The Government currently provides the framework to address indigenous disadvantage through the State Plan and Two Ways Together. The tools are also there, as we have indicated—Aboriginal community organisations, elders, government and non-government agencies, policies and programs. The onus is now on the Government to drive these initiatives so this State can lead the way in overcoming indigenous disadvantage in Australia. Let us envisage that when Federal Parliament sits next year and the Prime Minister gives his annual report on this issue he can say that New South Wales is providing the example for real partnership, real dialogue, real improvement and real outcomes.

From participating in this inquiry it is clear to me that the indigenous community is one of personal pride and strength in the face of adversity and has a cultural resilience to be proud of. If there is any chance of fulfilling the goals that have been espoused by the committee in its recommendations it lies in the Government's responsibility for ensuring implementation. Although this physical document will inevitably just gather dust on a shelf, all members of the committee are adamant that the recommendations it contains must be implemented. On behalf of the committee I thank the Government and, in particular, Minister Paul Lynch for their positive response to our recommendations. The committee looks forward to the full implementation of the recommendations in the shortest time frame possible. I commend the report to the House.

**Question—That the House take note of the report—put and resolved in the affirmative.**

**Motion agreed to.**

## **GENERAL PURPOSE STANDING COMMITTEE NO. 2**

### **Report: Budget Estimates 2008-2009**

**Debate resumed from 3 March 2009.**

**The Hon. ROBYN PARKER** [2.50 p.m.]: The inquiry by General Purpose Standing Committee No. 2 into the budget estimates examined a number of portfolio areas. The committee also held two supplementary

hearings, one into the portfolio area of Education and Training and one into Disability Services. I state at the outset that this year the budget estimates process was much smoother than it has been in the past because members had the benefit of focusing on budget estimates outside of sitting days. I was grateful to Ministers who chose not to make long opening statements because this enabled committee members to ask more questions.

Ministers have their own style when answering questions but it is more beneficial when a Minister attempts to answer the questions rather than seeking to use up valuable time with long and verbose answers or not attempting to answer the question. Sometimes it is good to review some of the questions asked because things change. A number of questions were asked of the Minister for Health, and Minister for the Central Coast, the Hon. John Della Bosca, who had not long been the health Minister, having been handballed that position from the former Minister, Reba Meagher.

**The Hon. Trevor Khan:** Reba who?

**The Hon. ROBYN PARKER:** Indeed, "Reba who?" was the question. The Minister was very interested in answering some of our questions but had no answers on the number of displaced staff or the growing numbers in the system. I note that there has been little or no change with respect to displaced staff and the cost to the budget of those staff. Discussion took place about the rate and reporting of preventable deaths. Questions were asked about the hospital system in general. Since the budget estimates were presented we have had inquiries into a number of health issues, including the Garling inquiry into health services in general.

Questions were asked about health performance data and the operation of the New South Wales Ambulance Service. General Purpose Standing Committee No. 2 also undertook an inquiry into the New South Wales Ambulance Service and very few answers were given during the budget estimates process that gave any support to the notion that Ambulance Service management issues would be fixed. That has been highlighted by the response to the Ambulance Service inquiry report in that the Government and the Minister have agreed to only one of the 44 recommendations—the recommendation that they agree to the committee doing a review after 12 months, which is in October this year.

Further questions were asked about the fact that funding for public dental health in New South Wales is the worst of that in any State or Territory in Australia, below Tasmania's. Questions relating to the Central Coast involved traffic blockages on the F3. However, I note that alternative strategies with respect to traffic management on the F3 have been undertaken, and after pressure from the Coalition those issues have finally been resolved. The closure of police stations, which is becoming somewhat of a pattern—and I refer to the closure of Kincumber police station—was also the subject of questioning. Also questions were asked about the operation of The Entrance fire station, Kariong High School and other issues. However, the bulk of questioning related to health matters.

With respect to ageing and disability services, questions concerned the lack of respite packages and blockages of respite centres. Also of interest was the number of Department of Disability, Ageing and Home Care clients staying for extended periods in respite centres. The Minister was asked about whether the Stronger Together supported accommodation program is meeting its targets in terms of budgets and placements. The Minister gave some very unsatisfactory answers, and this resulted in the need for a supplementary hearing.

Questions were asked about the Program of Aids for Disabled Persons. General Purpose Standing Committee No. 2 has undertaken an inquiry into those issues because of questions asked during the budget estimates process. The Government has responded a little more favourably in terms of those recommendations, but I look forward to debate on that on another day. With respect to the Education and Training portfolio area, questions were asked about asbestos in school buildings, calling for information on surveys undertaken to be publicly available. Indeed, the Government was embarrassed into making some admissions about that. Questions were asked about the operation of the Priority Schools Funding Program and the Priority Action Schools Program for economically disadvantaged schools. The Minister has back flipped on some of those issues. Questions also related to the unsatisfactory situation of air conditioning in some school classrooms and maintenance in schools. I note that since the budget estimates hearings the Rudd Government has moved to bail out the New South Wales Government by providing funding for maintenance in education. Money that could have been spent on educational programs has to be spent on repairing toilets and the like.

Questions were asked during the estimates hearings about support for children with special needs and disabilities, and some very unsatisfactory answers were given. Indeed, the public school system is very disappointed with funding for children with special needs and disabled children. General Purpose Standing

Committee No. 2 has an ongoing interest and may pursue further questions on this matter. Operation of the High School Certificate helpline and the proposed national school curriculum were also the subject of questioning. There are also interesting questions about the school transport system, which has been the subject of a backflip from the Government because of the unpopularity of changes to the school bus transport system.

Of course, one of the most important questions was about the sale of assets. We know that the Government is financially bankrupt and questions were asked about the sale of police stations, the sale and disposal of education assets, including Seaforth TAFE, and the sale of land at Hurlstone Agricultural High School. These questions were rightly asked during the budget estimates process and embarrassed the Government to the point that a further inquiry will be held.

The questions that were raised were also raised in the estimates inquiry—about whether there were plans to sell Hurlstone Agricultural High School, how much of the land would be sold, and whether the department had had any consultation with the school regarding the sale. The committee transcripts and the director general's answers in relation to that issue make interesting reading. Certainly that issue has not gone away, and it will not go away, and members in this place will be very aware of it.

The committee also dealt with the portfolio areas of Women and Community Services. The committee's timetable allowed less time for the portfolio of Women, and long answers from the Minister meant that we had even less time to deal with that portfolio. That was a timetable glitch, and the committee will ensure that we spend more time on that portfolio in the future. We will also ensure that the Minister does not use up quite so much of the timetable with such long answers to the questions asked. Issues raised before the committee included bullying and harassment, the location of the Office for Women, and the Domestic Violence Prevention Policy Unit. As I said at the outset, the programming and timetabling of the estimates process was so much better in terms of our ability to focus on the issues. However, the ability of the Ministers to focus on the issues was another matter.

With regard to the Community Services portfolio, the committee asked valid and probing questions about the "Breaking the Silence" report and about the department's response, or lack thereof, to that report. As with the Aboriginal Affairs portfolio, there have been poor responses in terms of what is happening in the Community Services portfolio. Issues were raised concerning the role of the Department of Community Services. As time has moved on—this is an historical view of what was asked about—the questions asked about the Department of Community Services are now the subject of another inquiry, the Wood special commission of inquiry, which looked into the Department of Community Services and changes happening within that department.

The questions that have been raised within the budget estimates process from General Purpose Standing Committee No. 2 were probing questions leading to very important issues, many of which we have seen continue, sadly, without results and in respect of some we have seen backflips. However, as the story unfolds, what we see from this Government is mismanagement over and over again. That is for all to see in the report of General Purpose Standing Committee No. 2 entitled "Budget Estimates 2008-2009". I thank the committee members and the committee staff, who do an outstanding job. I commend the report to the House.

**The Hon. DON HARWIN** [3.03 p.m.]: The report of General Purpose Standing Committee No. 2 does make some comments about the allocation of time to various ministerial portfolios, including the amount of time allocated to the portfolio of the Minister for Women. I believe the committee made valid observations. It is extremely difficult to come up with an estimates timetable, and the House has many difficult issues to deal with. I think last year a large number of people were involved in setting the budget estimates timetable, and no objections were made before the House adopted the timetable unanimously. Nevertheless, I think that perhaps was overlooked by members, and the committee has brought that aspect to our attention.

If I may be indulged to refer to a motion I currently have before the House outside the Order of Precedence so therefore there is no anticipation involved, this year the portfolio of the Minister for Women has been allocated 4½ hours, the largest amount of time allocated to any portfolio. It is entirely open to General Purpose Standing Committee No. 2 to spend all of the 4½ hours considering the portfolio of Women. If that is what the committee resolves to do, so be it. The committee may equally wish to spend some time looking at the Education and Training portfolio, which is also part of the responsibility of Minister Verity Firth. But these are very difficult issues. Obviously the Ministry for Women does not spend as much money as the various agencies involved in the Education and Training portfolio, but we should not apportion time according to the amount of money spent. I encourage General Purpose Standing Committee No. 2 to give serious consideration to that issue when it holds its deliberative meeting just prior to the budget estimates hearing to be held in September.

**The Hon. CHRISTINE ROBERTSON** [3.05 p.m.]: Members are probably aware by now that I am not a great lover of the budget estimates process. However, during the process one learns lots of interesting things about the relevant portfolios—even when other members are merely trying to destroy whatever a portfolio is trying to work towards. Indeed, the budget estimates process taught our committee members a lot. I want to contribute to the debate about the committee requesting reprogramming of the timetable in relation to the allocation of time for the portfolio of Women. There was not any angst in the committee, or any anger directed towards one member by another, because we recognised that the timetable had been negotiated. It was not until the situation arose that we realised what we had done to ourselves—that is, we had not left enough time to discuss even a fraction of the issues relating to the portfolio of Women. The committee decided unanimously to write to the persons who organise the committee timetable, and we are very happy that by extending the period of time for the Minister for Women the committee will be able to ensure that women's issues receive a proper airing through the budget estimates process.

**The Hon. ROBYN PARKER** [3.07 p.m.], in reply: I look forward to budget estimates this year. But more than that, I look forward to working with General Purpose Standing Committee No. 2, which is a wonderful committee with great support staff. The committee is holding ongoing inquiries into the bullying of children and young people. As Chair of General Purpose Standing Committee No. 2 I am very proud of the work done by the committee throughout the estimates process and during our inquiries. I am also very proud of the members of that committee and its staff. As the committee's deputy chair, the Hon. Christine Robertson, said, certainly the estimates process with General Purpose Standing Committee No. 2 is conducted with a great deal of support from all members, who play their various roles in the estimates process. I commend the report to the House.

**Question—That the House take note of the report—put and resolved in the affirmative.**

**Motion agreed to.**

### **GENERAL PURPOSE STANDING COMMITTEE NO. 3**

#### **Report: Budget Estimates 2008-2009**

**Debate resumed from 3 June 2009.**

**The Hon. AMANDA FAZIO** [3.09 p.m.]: As I was saying on the last occasion, among the issues discussed before the committee were the movement of nuclear materials, climate change, and the future funding of the Emergency Services portfolio. In the examination of the expenditure for the portfolio areas of the Attorney General, Justice and Industrial Relations, we spoke about the budget for the Attorney General's portfolio and the impact of court facilities and staff numbers; the Law Access service; the Court Services restructure and regrading of positions; progress towards a uniform, national spent convictions law; the Terrorism Legislation Amendment (Warrants) Act, including preventative detention orders and covert search powers; the operation and funding of the Regional Solicitors Scheme; trends in the use of mediation; the allocation of resources in response to shifting workloads; the process of making traditional appointments; the operation of the Crimes (Serious Sex Offenders) Act; initiatives for dealing with juvenile offenders; the levels of public confidence in the judicial system; a contract to develop the Justice Link information technology system, a particularly important and useful system; the ramifications from the arrest of Mark Standen, formerly of the New South Wales Crime Commission; technology for vulnerable witnesses in rural and regional areas; the number of staff employed in the media unit of the Department of Corrective Services and their salaries; the staff levels at the Albury and Wagga Wagga correctional facilities; the levels of overtime pay to Corrective Services staff; the impact of the mini-budget on the Corrective Services portfolio; the operation of correctional facilities by private enterprise; the future of the Long Bay Prison Hospital; the management of high-security inmates who were a threat to the correctional system; the future of the New South Wales industrial relations system and the impact of the anticipated Commonwealth reforms, including the future of the New South Wales Industrial Relations Commission; the procurement process and site inspections of contract suppliers; and the services provided by the Office of Industrial Relations.

In examining the portfolios of Gaming and Racing, Sport and Recreation, the committee looked at betting exchange operations, in particular Betfare; the Cameron Review; the Just Enough Faith Foundation, where there were concerns about the inappropriate use of donations; measures to control problem gambling; political donations from hotel and gaming industries; the Responsible Gambling Fund; the review of the New South Wales Registered Clubs Industry by the Independent Pricing and Regulatory Review Tribunal; measures



to control problem drinking; licences for small bars; volunteers in sport; the legacy of the Olympic venues; improving amenities in the patronage of Centennial Park; sports rage, which was going on when I was a school child, particularly among some of the parents who were banned from watching hockey matches at the time—they were crazy people; gender parity in sport; female boxing; V8 super cars and Eastern Creek Raceway, for the revheads; the Indigenous Youth Leadership sports camp; and funding for people with mental illness to participate in sport.

In the examination of the expenditure of the portfolios of Juvenile Justice, Youth and Volunteering the committee spoke about the Juniperina Detention Centre; the number of funded places in the Juvenile Justice system; transfers to the Kariong Detention Centre; disciplinary investigations of employees of the Department of Juvenile Justice; amendments to the Bail Act and the impact on the number of young people on remand; the number of young people on remand because they are unable to meet bail conditions regarding suitable accommodation; the transfer of juvenile detainees to adult prisons; programs to reduce reoffending by young Aboriginal and Torres Strait Islander people; the New South Wales Interagency Plan to tackle child sexual abuse in Aboriginal communities; behaviour management in detention centres; strategies to address youth homelessness and mental health issues; the Youth Homelessness Summit; the closure of the Port Macquarie skate park and the Port Macquarie Police and Citizens Youth Club; the compliance audit of employers by the Commission on Children and Young People; suicide rates among gay and lesbian young people; the impact of volunteers on the New South Wales economy; the development of an Australian standard for volunteering; and the participation of culturally and linguistically diverse groups.

The committee canvassed fully a wide range of issues during these hearings. The range of questions demonstrated the varied interests of the members of the committee and made for an interesting and informative time. The committee had many questions referring to Port Macquarie, which were raised in a vain effort by The Nationals to get some traction for their spectacularly unsuccessful by-election campaign. The committee was able to get back answers to all questions taken on notice in due time and, accordingly, resolved to not have any supplementary hearings.

If budget estimates are run in an adversarial manner, with members continually attacking Ministers and senior bureaucrats who come forward, it is no wonder that answers to questions on notice will be received on the last day they are due. Any committee that operates in a cooperative and positive fashion seeking information for genuine reasons, rather than conducts a crazy fishing expedition, will get a better response from Ministers and bureaucrats. As Chair of General Purpose Standing Committee No. 3 I strive for a fair allocation of time for questions. I do that because often I have observed as a substitute member on other committees that questions are sometimes randomly and haphazardly allocated to different groupings, and that only creates resentment among committee members.

If the committee estimates process is run on a fair and equitable basis, everyone knows what the ground rules are—which should merely be in accordance with the standing orders that apply to the operation of committees—and committee members can get the best value out of their time to put issues on to the agenda and to get information from answers to questions that can be followed up by questions on notice. It is an important lesson for all of us to be far more constructive in getting information. How that information is used is, of course, a matter for individual members. If the estimates process is conducted in a negative way, there will be resistance from those who appear before the committees. I have always found Ministers and senior bureaucrats to be very forthcoming and cooperative with regard to the information they supply.

I was pleased that during budget estimates hearings last year we did not have to go through the silly process of directing people not to take photographs of, or to film, the head of the New South Wales Crimes Commission, given that his face had been seen all over the media trying to protect his organisation during the investigation of the Mark Standen matter. I think that goes some way towards improving accountability and transparency in the operation of that organisation. I thank all the hardworking staff in the budget estimates secretariat. Their assistance was greatly appreciated and their professionalism makes the work of committee members less burdensome. I thank also the committee members for their cooperative approach and reasonable attitude to the budget estimates process. I hope that will be repeated again this year. I commend the report to the House.

**The Hon. TREVOR KHAN** [3.16 p.m.]: Last year the budget estimates process was much more effective than it had been in previous years, and that was largely as a result of the fine work done by the Hon. Don Harwin in negotiations with crossbench members. That effective cooperation between the Coalition and the crossbench is a demonstration of how members in this House can work together. Of course the members

who were left out of that process were the Government members. The Government continues to be intransigent when it comes to processes such as this. Notwithstanding what the Government says about honesty and transparency in government, it does everything it possibly can to frustrate the process.

The Hon. Amanda Fazio has given us a lecture on how to run the budget estimates process and the need for members to be open and transparent in that process. One would think this is an exercise of *Yes Minister* reincarnate because the reality is far different from the picture she paints. One only has to read the record of another place to see that the words of the Hon. Amanda Fazio would be unacceptable to members of her own party. I am sure that Senator John Faulkner does not share the same view of the bureaucracy as that espoused by the Hon. Amanda Fazio.

**The Hon. Amanda Fazio:** Do not equate my actions with his.

**The Hon. TREVOR KHAN:** I acknowledge that very interesting observation. Somebody such as Senator John Faulkner has true insight into the reluctance of some bureaucrats, whether they are senior or more junior bureaucrats, to cooperate in the provision of information. We saw evidence of that in hearings conducted by General Purpose Standing Committee No. 3 into the budget estimates. On numerous occasions when Ministers or particularly bureaucrats were asked a simple question that could have resulted in an answer of only a few minutes or, indeed, a few words, they rattled on for many minutes and in some cases took up almost the whole time allocated to a member for questions. That course of action is not designed to assist or to provide transparency. It is designed to frustrate. That is the consistent approach that the Australian Labor Party in New South Wales takes to not only budget estimate committees but also honesty and transparency in government.

The questions asked by members in relation to the Police portfolio—that is, the questions asked by the Coalition and crossbench members as opposed to the dorothy dixers thrown up by the Government members—demonstrated the importance of issues in that portfolio. For example, the use of taser stun guns and related regulation and oversight is an area of particular importance to the people of New South Wales in the administration of justice. Whether members adopt the position taken by some crossbenchers that tasers should not be introduced or they adopt the position that tasers are a reasonable alternative to the use of firearms when confronted with a dangerous situation, it is a very important issue that deserves to be dealt with in budget estimates by members having the opportunity to ask appropriate questions and to receive appropriate answers. But the Minister for Police, in his answers, said that the matter was under review and we would have to wait for the outcome. Essentially, his answers could not be described as a transparent sharing of information on this most important issue.

Since the conclusion of last year's budget estimates we see that the issues about which questions were asked and answers were not given are now being addressed. Rather than the Government's response of wait and see the outcome of reviews, the Government has made an announcement in this year's budget that tasers will be rolled out hither and thither. We have seen instances, for example, in Oxford Street, where the use of taser guns has brought into question their regulation and oversight. Again, it is a demonstration of the usefulness of the budget estimates undertaken by general purpose standing committees, particularly when Coalition and crossbench members take a cooperative approach. It is a very important process. Another issue in the Police portfolio that warrants mention—and questions were asked and not particularly satisfactory answers were given on this issue also—relates to freedom of information requests. Questions were asked and not particularly satisfactory answers were given about the effective, or this case ineffective, response of the New South Wales Police Force to freedom of information requests. Anyone outside of government bureaucracy would be concerned about this issue and, quite legitimately, questions were asked in that regard. Again, the answers were less than fulsome. Since then, the validity of the concerns raised has been demonstrated time and again.

It takes a long time to get answers from the Government in relation to freedom of information requests. On 11 May 2009 I made a request for information about sick leave at Gunnedah police station. It is now 17 June 2009 and I am still waiting for an answer. I did get one response, which was, "Give us a cheque for \$600 so that we can give you the information." That response suggests that it takes New South Wales Police 20 hours to obtain such information. It seems a bizarre situation that it would take 20 hours to provide information about sick leave at a police station. One would think that such information is available at the press of a button and that a payroll computer program could supply the accumulated sick leave information and even provide little coloured charts showing the amount of sick leave over a period. But, apparently, it takes the New South Wales Police Force 20 hours to provide that information. Questions in relation to sick leave at Gunnedah police station have been asked of the Minister for Police in this House and by letter. The Mayor of Gunnedah has asked questions directly of the Minister when he visited Gunnedah. Notwithstanding all that preliminary work, it will

take New South Wales Police 20 hours to provide such information. Again, that is a demonstration of the lack of transparency and uncooperativeness of this State Labor Government when it comes to answering any questions from anyone. It is again a demonstration of the importance of the budget estimates process in providing an opportunity for the crossbench and the Opposition—presently the Coalition—to obtain legitimate information.

I could go on at length on this but my time is limited. The same can be said about questions directed to the Attorney General about efficiency and staff cutbacks. Legitimate questions were asked of him about how staff cutbacks would impact upon the various courthouses. Again, his answers were less than fulsome. Since that time, 139 full-time equivalent positions have been cut throughout New South Wales. That is, 139 positions have been cut at a time when the State Government talks about creating jobs. That is 139 positions gone from our courthouses—139 staff who serve people in times of stress. Yet this State Labor Government is prepared to cut those positions. I say once again that the budget estimates process worked much better in the past. Unlike the Hon. Amanda Fazio, I believe the process will work better when we will not have to face the same level of frustration that we faced from the Labor Party at the last budget estimates hearings.

**The Hon. AMANDA FAZIO** [3.26 p.m.], in reply: It was interesting that the Hon. Trevor Khan used this opportunity to vent his rage about his freedom of information request. I do not believe that has much to do with the budget estimates process. I bring to the attention of the House the unfortunate habit of the Hon. Trevor Khan during debate to use the word "fulsome" in relation to answers given by Ministers. When the Hon. John Jobling was a member of this Chamber, he constantly, and incorrectly, used the word "fulsome". I am glad that Ministers do not give fulsome answers because "fulsome" means "offensive to good taste as being excessive, gross, insincere". I do not believe any Minister would ever give an answer that would fall into that category. What the member really means are detailed answers to questions. Members complain about the amount of time Ministers take to answer questions. If they ask a question, they cannot complain about the answer just because they do not like its format, length or content.

It is the tradition of this House, and also the Senate during its budget estimates process, that Ministers can answer questions in any way they choose. If members do not like the answers, that is unfortunate. They have the opportunity to ask further questions to draw out a different answer. To just object to answers, particularly the length and detail of answers, is inappropriate given that the most common complaint about answers to written questions on notice is that the answers are too short and lack detail. They cannot have it both ways. Members will have to accept that Ministers will give their answers in the way they see fit. If members are not happy with the answer, they can ask further questions. Like the Hon. Trevor Khan, I too am looking forward to budget estimates this year. Budget estimates are the highlight of my year. I love it! I like nothing better than the revolving parade of characters before the General Purpose Standing Committee No. 3 budget estimates. They are very popular—they must be—because last year about 16 substitute members attended our budget estimates hearings.

I am looking forward to seeing many members' happy faces. I really look forward to budget estimates—I hope that the Hon. Don Harwin's scheduling of them this year does not conflict with any of my prior engagements. I may be prevented from attending the Australasian Study of Parliament Group conference, but that cannot be helped. I am prepared not to go to that conference but instead to take part in the fun and games associated with the examination of budget estimates by this House.

I hope that the Hon. Trevor Khan is looking forward to budget estimates also—particularly as I guarantee we will have our refreshments on time. We will not waste time having tea breaks. We will not fiddle around wasting time. I will make sure that Opposition and crossbench members get their fair allocations of time during budget estimate hearings. That is the way all chairs of committees should operate: we must ensure that everybody gets a fair opportunity. As I said, if honourable members do not like the answers they receive, there is nothing we can do about it. I commend the report to the House. I wish everyone were looking forward to budget estimates as much as I am.

**The Hon. Trevor Khan:** And me.

**The Hon. AMANDA FAZIO:** The Hon. Trevor Khan says that he is also looking forward to budget estimates. There have been some interjections that I will not acknowledge because they may be read the wrong way when they appear in black and white. I commend the report to the House.

**Question—That the House take note of the report—put and resolved in the affirmative.**

**Motion agreed to.**

**MOTOR SPORTS (WORLD RALLY CHAMPIONSHIP) BILL 2009**

**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Ian Macdonald.**

**Second Reading**

**The Hon. IAN MACDONALD** (Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development) [3.33 p.m.]: I move:

That this bill be now read a second time.

The FIA World Rally Championship is the highest profile four-wheel motor sport championship in the world after Formula One. The 2009 World Rally Championship started off in Ireland and will involve a total of 12 countries, including Norway, Argentina, Greece, Spain and Great Britain. In September 2008 Events New South Wales and the Confederation of Australian Motor Sport [CAMS] announced that the Australian round of the FIA World Rally Championship would be staged every two years until 2017 in the Northern Rivers region of New South Wales, with an option to extend until 2027.

The first event, Repco Rally Australia, will be held in the Tweed and Kyogle local government areas from 3 to 6 September. I put on record from the start that the New South Wales Government will be working cooperatively with our local government counterparts and other key stakeholders in the Northern Rivers to ensure the event is a success and to lock the event into that area. Previously the Australian round of the World Rally Championship was held in Perth. There is no doubt that its move to New South Wales will provide a substantial boost to the State's economy. Events New South Wales estimates that the World Rally Championship will generate more than \$100 million in direct economic benefits for New South Wales over the life of the agreement. It will also increase tourism, create jobs and deliver major economic benefits to regional New South Wales.

The Australian rally consists of approximately 350 kilometres of special stages, or competitive stages, which take place on roads closed to the general public. Drivers obviously aim to complete the special stages in the quickest possible time. Special stages are connected together by liaison stages, which take place on roads open to the public, and competitors must comply with all local traffic laws. The event is a great chance to showcase northern New South Wales to the world. For example, in 2007 more than 816 million people in 180 countries watched the televised World Rally Championship, with around 51 million viewers for each round. Tourism NSW and the New South Wales tourism industry are already developing rally packages for both national and international markets to maximise tourism benefits to New South Wales. As well as marketing the State internationally, the rally is anticipated to generate much-needed jobs in regional New South Wales. I reiterate that the New South Wales Government is fully committed to generating jobs, stimulating the economy and boosting tourism in regional New South Wales. Our support of Rally Australia through this bill is another demonstration of that commitment.

Many of the provisions in the bill are based on legislation used for other special events, such as the V8 Supercars sporting event to be held at Sydney Olympic Park. The bill will streamline the approvals process for the rally event while keeping important safeguards in place. The bill will centralise the numerous State and local government approvals needed into one authorisation for the conduct of a rally within the Northern Rivers region. It is simple common sense. The authorisation will be subject to such conditions as are considered appropriate by the Minister, such as conditions relating to public safety, environmental protection, insurance, reporting and consultation requirements, transport and traffic management, and temporary works requirements. It is an offence if the conditions relating to public safety, environmental protection or insurance are contravened.

The authorisation may also allow the construction and dismantling of temporary works associated with the rally, such as temporary structures to support crew, media and spectators—for example, seating and catering facilities—medical and rescue facilities, service roads, ramps, vehicle parking, road maintenance, traffic control facilities and the use of Walter Peate Reserve in Kingscliff as a temporary helipad. The bill authorises public authorities, including state agencies and local councils, to assist in the conduct of a rally event and related works or activities. For example, public authorities can provide advice to the Minister, or Minister's delegate, in determining the appropriate conditions of the authorisation or they can carry out road maintenance works or set up temporary emergency or first-aid facilities for a rally event.

Where a person is authorised, permitted or required to do anything under the bill in relation to the rally event, it will not be necessary to obtain separate approvals under specified legislation. For example, it will not

be necessary to obtain separately a special purposes permit to conduct a car rally on State Forest roads under the Forestry Act 1916, a permit for a road event on a public road under the Roads Act 1993, a licence under the Motor Vehicle Sports (Public Safety) Act 1985, or an approval under the National Parks and Wildlife Act 1974 to use a road managed under that Act. The bill modifies the application of the Environmental Planning and Assessment Act 1979, the Fisheries Management Act 1994, the Local Government Act 1993, the Water Management Act 2000, the Crown Lands Act 1989, the Protection of the Environment Operations Act 1997 and the road transport legislation in relation to a rally event. Criminal proceedings under the Protection of the Environment Operations Act 1997 can still be brought by the Environment Protection Authority or by a person authorised by the authority. In deciding whether to institute or authorise such proceedings, the Environment Protection Authority will have regard to its prosecution guidelines.

The bill also makes it perfectly clear that anything done or omitted to be done by a person pursuant to the proposed Act does not constitute a nuisance. Similar events in other States and at Sydney Olympic Park and Bathurst have been the subject of the same types of legislative provisions relating to proceedings brought in nuisance. Importantly, the New South Wales Government also recognises the need to consult with the Githabul people about the rally. These people hold native title rights over parts of the land in the area in which the first rally event will be held. The rally organisers have been consulting with representatives of the Githabul people for many months and have entered into a heads of agreement. The New South Wales Government will also continue to ensure that the environment and public safety are protected properly.

**The Hon. Catherine Cusack:** It is hardly representative when you sack a council and the administrator has to make all those decisions.

**The Hon. IAN MACDONALD:** I am talking about the Aboriginal people of the area. I do not see how that relates to the member's comment.

**The Hon. Catherine Cusack:** Sacking the council takes the democracy out of it.

**The Hon. IAN MACDONALD:** I think the member is referring to some other part of my speech. I hope that she can occasionally be relevant to the point I am making. I am alert to this sort of stuff.

**The PRESIDENT:** Order! Second reading speeches are very important contributions to debate and I ask all members to allow the Minister to continue without interruption.

**The Hon. IAN MACDONALD:** Temporary works that have been authorised under the bill for the rally event must be carried out during the declared rally period and the rally promoter must reinstate the land by repairing any damage to land, including fixtures within the declared rally area arising from the conduct of a rally event, removing any rubbish generated by the conduct of a rally event within the declared rally area, reinstating the declared rally area affected by the conduct of the rally event as far as practicable to the condition it was in before the conduct of the rally event, and dismantling temporary works unless the damage, rubbish or effect on the land was caused by vandalism or actions of a person aiming to disrupt or obstruct the conduct of the rally event.

The bill will also assist in ensuring the safety of spectators and rally event participants by giving police officers an express power to give directions to persons on a road on which the rally event is being conducted or on public or private land adjacent to, or in the vicinity of, that road. The grounds on which a direction can be made are strictly limited. The direction may be given only if the police officer believes on reasonable grounds that it is necessary for the safety of a person in the conduct of the rally event, and the direction must be reasonable in the circumstances for the purpose of reducing or eliminating the risk to the safety of any person. An example where it may be appropriate to give such a direction would be where a spectator is standing too close to a road on which the rally event is being conducted.

Finally, the bill provides that the proposed Act is to be reviewed five years after it is assented to in order to determine whether its policy objectives remain appropriate. The Government will also undertake an informal review of the rally event to see how well it worked for the community. The outcome of that review can be used to inform the conduct of later rally events. The Government is committed to increased business investment in the State and, in particular, to business investment and job creation in rural and regional New South Wales. There is no doubt that the World Rally Championship represents a significant economic benefit to regional New South Wales. The commonsense measures in this bill will ease the conduct of the Australian rounds of the World Rally Championship in New South Wales while continuing to ensure that the environment and public safety are protected properly. I commend the bill to the House.

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

## **ELECTRICITY SUPPLY AMENDMENT (GGAS ABATEMENT CERTIFICATES) BILL 2009**

### **Second Reading**

**The Hon. IAN MACDONALD** (Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development) [3.44 p.m.]: I move:

That this bill be now read a second time.

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

### **Leave granted.**

In 2003 New South Wales commenced the first mandatory greenhouse gas emissions trading scheme in the world.

The Greenhouse Gas Reduction Scheme, or GGAS, was designed to reduce emissions from the use of electricity in New South Wales, and to encourage activities that offset the production of emissions.

In 2008, the Commonwealth announced a national emissions trading scheme, now to be known as the Carbon Pollution Reduction Scheme or CPRS.

New South Wales strongly supports the introduction of a national emissions trading scheme to deliver the most cost-effective and equitable reduction of greenhouse gas emissions. The CPRS will achieve that outcome.

In 2006 the New South Wales Government provided for the ending of GGAS on the commencement of a national emissions trading scheme. Now that the details of the national scheme are better known, it is now time that New South Wales completes the provisions for the transition to a national scheme. The bill before the House provides for this transition.

The bill proposes legislative amendments to the Electricity Supply Act 1995 that will allow for the reduction in the number of surplus GGAS certificates at the end of GGAS, and the commencement of the CPRS.

### OBJECTIVES OF THE BILL

There are two objectives of the Amendment bill.

The first objective is to reduce the number of surplus GGAS certificates by stopping any new applications for accreditation under GGAS from 1 July 2009, or another date nominated.

This will signal the end of New South Wales GGAS and will communicate to proponents of new projects that they should not expect that they will be entitled to any transitional arrangements, including compensation, and that they need to be developing projects that will fit within the new national arrangements of the CPRS.

The second objective is to remove opportunities to create GGAS abatement certificates from generation projects that were commissioned prior to the commencement of GGAS, known as Category A projects.

This is intended to reduce the number of surplus GGAS abatement certificates by some eight million below what it would otherwise have been by end June 2011, that is, the start of CPRS.

I want to make clear that compensation will not be payable to any accredited abatement certificate provider, or benchmark participant, as a consequence of the Amendment bill.

I would now like to provide a brief background to GGAS, before discussing the details of the bill.

### GREENHOUSE GAS REDUCTION SCHEME (GGAS)

It is widely accepted that the warming of the earth is a result of human activities that have caused a build-up of greenhouse gases in the atmosphere.

Greenhouse gas emissions from the electricity sector represent around one third of the emissions in New South Wales, and thus this sector is a priority for the New South Wales Government in managing the growth in greenhouse gases.

Commencing on 1 January 2003, the New South Wales Greenhouse Gas Reduction Scheme (GGAS) was the world's first mandatory emission trading scheme. The Scheme was established under the Electricity Supply Act 1995.

GGAS aims to reduce greenhouse gas emissions associated with the production and use of electricity. It achieves this by using project-based activities to offset the production of greenhouse gas emissions.

GGAS establishes an annual statewide greenhouse gas benchmark for the electricity sector and then requires individual benchmark participants (who buy or sell electricity in New South Wales) to meet their allocation of the mandatory greenhouse gas benchmark, based on their share of the New South Wales electricity demand.

Benchmark participants achieve this by surrendering abatement certificates created from project-based emission reduction activities. The surrender of these certificates effectively offsets a portion of the greenhouse gas emissions associated with their electricity purchases.

Each certificate represents one tonne of greenhouse gas emissions reduction.

GGAS is a 'baseline and credit' form of emissions trading scheme, where certificates or credits for actions that reduce or "abate" emissions are created, compared to a "baseline" representing previous practices, business as usual or, in some cases, current industry practice.

As I have indicated benchmark participants (mostly electricity retailers) are liable under GGAS to meet greenhouse gas benchmarks, and can reduce their emissions liability by purchasing abatement certificates, and surrendering these to the Independent Pricing and Regulatory Tribunal (IPART), as GGAS Regulator.

How has GGAS performed to date?

To date more than 90 million abatement certificates have been created under GGAS. From modest beginnings in the early years when around seven million certificates per year were registered, it has grown to the level when in the years 2006 to 2008 more around 20 million certificates have been registered per year. These certificates have come from well over 200 accredited GGAS abatement projects.

However, the success of GGAS in bringing forward low cost abatement has brought with it challenges as the supply of certificates now comfortably exceeds the demand for certificates for compliance purposes. This, together with the uncertainty around the treatment of unused GGAS certificates at the commencement of the CPRS, has led to a significant fall in the price of GGAS certificates.

#### TRANSITION FROM GGAS TO THE NEW SCHEME

The New South Wales Government has committed to end GGAS once a national emissions trading scheme, the CPRS, commences.

The New South Wales Government has also committed to ensuring that parties who have invested in good faith under GGAS should not be disadvantaged under the CPRS.

In negotiations about transitioning to the CPRS, the Commonwealth has agreed to consider providing financial compensation to two groups of GGAS participants that would be adversely affected in the transition to the CPRS.

These are generators using waste mine methane, landfill gas and putrescible wastes to generate electricity, and holders of unused GGAS certificates. The Commonwealth has however indicated that it considers the claim of the latter group for compensation to be of lower priority.

Additionally, New South Wales has proposed to the Commonwealth that New South Wales makes an 'in kind' contribution by reducing the number of surplus GGAS abatement certificates that will exist when GGAS ends.

GGAS will transition into the Commonwealth's CPRS in 2011, except for its end-use energy efficiency components which will be incorporated into a New South Wales Energy Savings Scheme to commence on 1 July 2009.

The CPRS is a versatile market mechanism designed to reduce the emissions produced per unit of electricity used, but it does not seek to directly reduce the total amount of electricity demand.

That is why, on 18 June 2008, the New South Wales Government announced a major initiative—the New South Wales Energy Efficiency Strategy.

The New South Wales Energy Efficiency Strategy seeks to complement the CPRS by promoting energy efficiency to reduce overall energy demand. The commencement of the New South Wales Energy Saving Scheme will also assist in reducing the number of surplus GGAS certificates at the end of GGAS.

As I mentioned earlier, the first objective of the bill is to reduce the number of surplus GGAS certificates.

#### SURPLUS CERTIFICATES

In the transition to the national CPRS, a reduction in the level of surplus certificates at the end of GGAS is needed.

The IPART register of GGAS certificates indicates that there were at the end of May 2009 some 23 million certificates that had been created and not surrendered for compliance purposes.

While around 30 per cent of these certificates were created from energy efficiency activities which will, from 1 July 2009, transition to the Energy Savings Scheme, certificates will continue to be created from the remaining eligible activities and projects under GGAS.

The Amendment bill provides for the refusal of new applications for accreditation from 1 July 2009, or a date to be specified.

This is important, as we do not wish to encourage new projects, which will lead to the further creation of new certificates before the transition to the CPRS.

Although the ability to create GGAS certificates from end-use energy efficiency projects will be removed from 1 July 2009 with the commencement of the Energy Savings Scheme, other accredited projects will continue to create certificates.

In particular, there has been a steady growth in the number of certificates from more efficient electricity generation and low greenhouse emission generation projects such as those using waste methane for coal mining or landfill sites. There are also several new significant GGAS abatement projects in the process of ramping up their output.

Emission reduction projects that reduce industrial process emissions have also been growing steadily, although from a relatively low base.

With the compliance obligation set at around twenty million certificates for a full calendar year, the current level of surplus certificates and growth in certificates from generation projects and industrial processes, there is good reason to limit developers of new projects from seeking accreditation to reduce the impact of the end of GGAS.

The second objective of the bill is to remove opportunities to create GGAS abatement certificates from generation projects that were commissioned prior to the commencement of GGAS, known as Category A projects.

#### PRE-GGAS PROJECTS

Category A generation refers to output from generation projects that pre-dated GGAS. These projects were commissioned prior to 1997.

At the commencement of GGAS it was decided that abatement projects that had been brought to account under the precursor voluntary "benchmarks" scheme would be recognised under GGAS on the basis that this would provide credit for early action.

These projects also had the advantage that they were able to provide a flow of certificates for compliance in the early years of GGAS.

However, as these projects pre-dated GGAS, they had clearly been assessed as economically viable under the negotiated Power Purchase Agreement, without the additional GGAS revenue that they were subsequently able to access.

The Commonwealth has recognised that these projects, like other generation projects that have participated in GGAS to reduce their emissions intensity, will not be disadvantaged in the transition to the CPRS, and has clearly indicated that no compensation will be payable for Category A projects.

The proposed removal of the grandfathering of these pre- GGAS projects will not only reduce the level of the surplus of GGAS certificates, but will also improve the robustness of the GGAS scheme design overall.

It is recognised that GGAS participants with accredited Category A projects will therefore lose out on the value that could have been realised from the creation of these foregone certificates.

It is also recognised that State-owned Corporations will be among the businesses affected, particularly Integral Energy.

However, in making this change, the Government is addressing an even more important issue for the transition of GGAS to the CPRS.

#### CONCLUSION

In summary, these changes are designed to facilitate the transition from New South Wales' world leading GGAS to the national Carbon Pollution Reduction Scheme.

The successful operation of GGAS and the carbon price it introduced into the market across the National Electricity Market has made the start of a national scheme such as the CPRS significantly easier.

However, the New South Wales Government recognises that it is time to plan for the transition from GGAS to the CPRS, and the amendments proposed in this bill are aimed at facilitating this transition.

The bill before the House provides for amendments to the Electricity Supply Act 1995 that will reduce the number of GGAS abatement certificates that will be surplus at the end of GGAS.

The proposals mean that there will be fewer certificates created under GGAS than there would have been if no changes had been made. It is important to minimise the transitional burden by reducing the number of surplus certificates at the end of GGAS.

Additionally, this will signal the end of New South Wales GGAS and will communicate to proponents of new projects that they should not expect that they will be entitled to any transitional arrangements, including compensation, and that they need to be developing projects that will fit within the new national arrangements of the Carbon Pollution Reduction Scheme.

I commend the bill to the House.

**The Hon. CATHERINE CUSACK** [3.45 p.m.]: The Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009 is certainly moving at lightning speed. It was introduced in this place having been passed in the other place earlier this morning. At lunchtime today a new list of orders of the day was issued



containing eight items. The earlier version had seven items. The Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009 had not only been added to the list but also rocketed like an Abba song to the top of the chart.

**The Hon. Melinda Pavey:** Mama mia!

**The Hon. CATHERINE CUSACK:** I do not know whether the member is an ABBA fan, but it is extraordinary how this legislation was introduced and put immediately at the top of the list of items to be debated. I will have more to say about that—and perhaps the reason for it—later in the debate.

**The Hon. Melinda Pavey:** Catherine is the dancing queen!

**The Hon. CATHERINE CUSACK:** I think the Minister is the dancing queen on this occasion. However, I will spare the House any further analogies along those lines.

**The Hon. Ian Macdonald:** Whatever you had for lunch, I wish I'd had it too!

**The Hon. CATHERINE CUSACK:** At lunchtime, like most other members of the House, I was still preoccupied by the budget and my concerns about the Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009. The Government is pumping legislation through the Parliament at the moment. For some reason this bill, which was received from the other place after 11.00 a.m. today, has become the first matter for debate this afternoon. This process is unmanageable and undignified, and there is more to it than meets the eye.

The Opposition does not oppose the Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009. The purpose of the bill is to amend the Electricity Supply Act 1995 with respect to abatement certificates and abatement certificate providers and the liability of the State in connection with the Greenhouse Gas Abatement Scheme [GGAS]. The objective is to take a step in the transition from the GGAS to a form of carbon pollution reduction scheme, which, of course, the Senate is considering at the moment. More precisely, the legislation will reduce surplus certificates by stopping new applications for accreditation. It will also remove opportunities to create certificates from category A generation projects that were commissioned prior to the start of the GGAS. It will also provide that compensation is not payable in regard to that part of the Act.

The Liberals-Nationals Coalition supports the movement towards a form of Federal carbon pricing, and we stated that in our submission to the green paper process of the Carbon Pollution Reduction Scheme. We outlined our support for emissions trading and the importance of New South Wales and Australia playing their part in a global agreement. In that submission and since then we have highlighted the New South Wales Government's failure with regard to climate change. We have been strident critics of the GGAS and have helped to shine a light on the many flaws in, and problems with, the scheme. Yesterday, I acknowledged the hard work of my predecessor—the member for Goulburn, Pru Goward—in prosecuting this case, and do so again today. We are more than happy to participate in a process that will rid us of one of the follies of this incompetent and undisciplined New South Wales Labor Government.

Yesterday in the debate on the Electricity Supply Amendment (Energy Savings) Bill 2009 I referred to the good work done by the Centre for Energy and Environmental Markets at the University of New South Wales. In the early years of the GGAS the centre exposed the problem of the inclusion of the category A projects. It is entirely plausible that in the early days of the scheme a majority of the emissions claimed did not exist. In fact, that is now generally acknowledged. That meant that to a very significant degree the scheme operated not as an emissions reduction scheme but rather as a certificate creation scheme, and the certificates often did not relate to actual abatements.

Yesterday I reminded the House that the Coalition had concerns about the inclusion of category A generation programs under the previous voluntary arrangements. The Government overstated its figures regarding the benefits of the GGAS by including category A programs. The savings from this category of certificates occurred before the GGAS scheme commenced and their investment was never predicated upon the sale of certificates. When this bill was introduced in the other place, the member for Shellharbour, Lylea McMahon, stated that category A programs:

... had clearly been assessed as economically viable ... without the additional GGAS revenue that they were subsequently able to access.

When programs have been assessed as economically viable and then undertaken, why you would provide them with a form of subsidy after the fact is a bit baffling. These emissions reductions occurred independent of GGAS, and hence the Government should never have claimed certificates derived from them as cuts to emissions. The reasons offered by the member for Shellharbour, in one of her rare addresses to the House, are insightful. She said the decision was made "on the basis that this would provide credit for early action", and would provide a "flow of certificates for compliance in the early years of GGAS." The former could not have been an intention of the scheme and the latter could have been addressed in other ways—such as in the Energy Savings Scheme that we debated yesterday. This bill was both expected and unexpected. It was expected as there is an awareness in the industry that GGAS must be replaced by a carbon pollution reduction scheme. Nonetheless, much of the industry first heard about this bill when we, the Opposition, informed them of it.

The Government did not consult with many of the groups who buy certificates, despite already being in consultation with them about the Energy Savings Scheme. It is quite shocking, and it has meant that the real impact of this form of transition is difficult to grasp in its totality. The Liberals-Nationals Coalition sympathises with stakeholders in this instance because we think it is not just illogical but also quite ill mannered on the part of the Government. It was very strange for us to inform stakeholders that the bill had been moved forward and would be debated within the hour, and for them to tell us that this was the first they had heard of it and that they had been assured there would be a period of consultation. We find that more than unusual. The aims of removing the ability to become accredited and reducing the supply of certificates are both understandable. The former is largely procedural because it is not as though many, if any, are applying. The latter is worthwhile but truly necessary because too many opportunities to create certificates exist, especially as some do not relate to actual abatements.

If you are to remove a group of certificates, category A programs should be on top of the list as they do not represent the abatements that other certificates do. That said, they are an inexpensive source of certificates, so costs to retailers will increase. We acknowledge this impost, and note that it would not be happening if the Government had run the scheme properly on this principle in the first place. The impost is large and unavoidable, and it is difficult for an Opposition to deal with the issue without the resources of a department—especially since we received notice of this debate only at lunchtime. However, I note that some solution or transition might have been found had the Government consulted its stakeholders properly.

Finally, there is the perplexing matter of compensation. We are highly suspicious about this but we cannot speak with authority because the waters have been muddied significantly. Yesterday we removed demand-side abatement certificates from liability by moving them into the Energy Savings Scheme. The Government is currently in negotiations with the Commonwealth—as it informed us in a briefing paper—about the participants most adversely affected by this transition. We assume that means those not involved in category A generations, which were viable before GGAS commenced. Whether this provision is part of some sort of deal with the Commonwealth we do not know; we can only speculate. We do not have the time to investigate or consider the matter properly. The Government has severely restricted our time to deal with this bill. It is being rammed through Parliament, and we have had to curtail our investigations to deal with it. We will not oppose the bill, but we note our concerns.

**Reverend the Hon. FRED NILE** [3.54 p.m.]: The Christian Democratic Party supports the Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009. The purpose of the bill is to amend the Electricity Supply Act 1995 to facilitate the transition from the New South Wales Greenhouse Gas Reduction Scheme to the proposed national Carbon Pollution Reduction Scheme. The objectives of the bill are, one, to prevent new applications for accreditation under GGAS from 1 July 2009, or another date nominated; and, two, to remove opportunities to create GGAS abatement certificates from generation projects that were commissioned prior to the commencement of GGAS, known as category A projects. I, like all other members, have only just come into possession of the legislation. To that extent, there has to be an element of trust that its operation is bound up with the Government's policy to reduce greenhouse gas emissions in New South Wales.

The bill contains technical aspects, particularly in relation to the certificates. I note that it is based on the supposition that the Commonwealth legislation will be passed. As I said when we debated a related bill yesterday, I wonder what effect the decision of the Senate will have on State legislation if it rejects the Rudd Government's carbon emissions legislation—which seems at this stage to be a likely possibility, as it is strongly opposed by the Greens, led by Senator Bob Brown. The Opposition in the Senate is taking the position that although it does not oppose the bill, it is not going to vote for it. It is the Opposition's view that at some stage it will work out some carbon emissions policy, but at present it does not wish to support the Labor Government's legislation.

**Dr John Kaye:** I thought that was Senator Fielding.

**Reverend the Hon. FRED NILE:** As I said yesterday, Senator Fielding is having a complete rethink on the issue of climate change. The question is—and I do not think the Government answered it yesterday—what effect the Commonwealth legislation not passing will have. I assume that the State legislation will just sit there until the Commonwealth passes its legislation. We support the bill in the interests of assisting the Government to deal with this complex issue.

**Dr JOHN KAYE** [3.57 p.m.]: On behalf of the Greens I address the Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009. The bill is another step on the path to transition in New South Wales from the State-based scheme, the Greenhouse Gas Abatement Scheme, to the Commonwealth's Carbon Pollution Reduction Scheme. To that extent, the bill replaces one ineffective and flawed scheme with another ineffective and flawed scheme in New South Wales. However, it makes sense to have a national emissions trading scheme, so to that extent the Greens do not oppose this bill. However, we raise a number of major concerns about the process of the bill.

The bill provides that there should be no new abatement certificate providers certified under the scheme. So it closes off the scheme for further abatement certificate providers. It will also ensure that on 1 July, or on a date specified by the Minister, no further New South Wales greenhouse abatement certificates will be generated by category A participants in the scheme. Category A participants are the legacy participants. They are the generators who were in the preceding scheme, the voluntary greenhouse benchmark scheme that existed before the GGAS scheme came into existence.

When GGAS was set up the power purchase arrangements were transitioned over into the new GGAS scheme, with quite favourable conditions for category A participants. About one-third of the certificates generated by category A participants come from the Appin colliery waste methane drainage and combustion scheme. It is dominated by a relatively small number of participants.

The third aspect of the bill is that no compensation will be paid in respect of changes introduced by the New South Wales Government. I cannot say that the Greens will shed any tears at the demise of GGAS, which, as I commented yesterday in another context, is a deeply flawed scheme. The New South Wales Centre for Energy and Environmental Markets has been one of the leading critics of the GGAS scheme, prompted by the tendency for the scheme to deliver zero prices or close to zero prices for certificates. The scheme has a high degree of price instability. It is highly sensitive to supply-demand balance as it is not a cap and trade scheme but a baseline and credit scheme that works off benchmarks. As with the European Union scheme, it fails to produce stable prices, which ends up causing considerable instability in the system.

The University of New South Wales analysis of GGAS points to a large number of problems, specifically with respect to additionality. It identified a number of different kinds of causes of lack of additionality. The problem with the scheme is that it is giving credit to things that would happen in any event, things that would happen whether or not the scheme existed. In fact, the Federal Government's own estimates of the GGAS scheme made back in 2007 when it analysed the scheme looking towards 2010 suggested that, while the scheme itself was claiming 20 million greenhouse abatement certificates, the Federal Government said only about five million tonnes of CO<sub>2</sub> reduction could be attributed to the scheme: only one-quarter of the reductions claimed by the scheme would actually eventuate from the scheme. That is quite damaging inasmuch as it becomes an excuse for inaction.

The University of New South Wales produced a handy little graph based on the Commonwealth's analysis. The bottom line shows that projected total greenhouse gas emissions from New South Wales from 2005 to 2024 will fall from nine tonnes per capita to about six tonnes per capita: a reduction of about three tonnes per head of population. Adjusting that for imports, our intensity is likely to rise from just below 10 to just below 12—a two tonnes per capita increase. The Government suggests that there has been a substantial reduction when in reality there will be an increase. I notice that Reverend the Hon. Fred Nile is looking closely at the graph that I am holding, which is interesting, given that he quite often denies the relevance of this figure. Those who believe the figure, such as Reverend the Hon. Dr Gordon Moyes, think it is important.

**The Hon. Catherine Cusack:** He will be voting Liberal at the next election.

**Dr JOHN KAYE:** I very much doubt it. It will be a very cold day in hell if that happens. This graph and the analysis coming from the University of New South Wales accurately show that the scheme has been an

excuse for inaction when the rest of the world is saying we need to seriously act on greenhouse gas emissions. Another issue identified by the scheme, apart from abatement being significant lower than was claimed, is that a large percentage of the greenhouse gas emission abatement certificates came from outside New South Wales.

In the period 2003-05, 33 per cent of the certificates were from projects outside New South Wales. It is good that abatement is happening outside New South Wales but it means we have failed to reduce greenhouse gas emissions in our own backyard. New South Wales should concentrate on its own greenhouse gas intensity rather than trying to help other States. Over half the emission reductions in this State in 2003-05 were outside the electricity sector. Biosequestration made up about 4.3 per cent and methane avoidance made up at least 47 per cent. Only a relatively small amount of reduction of greenhouse gas intensity within the electricity sector was as a result of the GGAS scheme. It did not even set out to address its key objective, which was to reduce the greenhouse intensity of the electricity industry in New South Wales.

That is hardly surprising given that the electricity industry is about 90 per cent based on coal, making it very hard to reduce the greenhouse intensity of the State. Therefore, no real tears will be shed at the loss of the scheme. However, the Greens are concerned about the process. I acknowledge the issues raised by the shadow Minister. We largely agree about the process. This is a substantial change for New South Wales. The bill should not have been rushed through and retailers should have been more widely consulted. They are likely now to face a reduction in the number of certificates available to them and hence an increased price. We are driving up the price of certificates for retailers without careful consideration and any analysis having been presented to the House or to the people of New South Wales of the cost implications. Clearly, what is going on is negotiation between the Federal Government, the State Government and the scheme participants. The scheme participants are, not surprisingly, seeking to get the best deal they possibly can.

One can surmise from what one reads in the public domain and the nature of this bill that category A participants were one step beyond the pale for the Federal Government. It was not prepared to pay any compensation to category A participants given the large number of issues raised about the category A process in the first place. Clearly, category A participants are being tossed overboard and excluded from the scheme in order to prop up the possibilities of achieving compensation for categories B, C and D participants—in particular, I imagine, category B participants, the large coal-fired generators in New South Wales, which seem to have enormous sway over the process.

It would seem to the Greens, therefore, that what the bill is really about is just one stage in showing good faith in a negotiation with the Commonwealth Government. It is not about what is in the best interests of New South Wales, it is not about what is in the best interests of generating jobs in the clean energy industries, and it is not about what is in the best interests of reducing greenhouse gas emissions in New South Wales. It is about a deal between the State Government and the Commonwealth regarding achieving a better compensation deal for the mates in the big end of the polluting world. It is important that there be far greater transparency on these issues. Therefore, we find it difficult to support the bill. We agree with the Opposition that the bill was rushed into the Parliament and that there needed to be more consultation and discussion on it. That said, the end of the GGAS scheme will not be something that the Greens will particularly mourn.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [4.10 p.m.]: I speak to the Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009. The comments of the Hon. Catherine Cusack and Dr John Kaye—

**The Hon. Rick Colless:** Impressive.

**The Hon. Trevor Khan:** Insightful.

**The Hon. DUNCAN GAY:** —apart from being impressive and insightful, as my colleagues said, I totally agree with. The real concern is that we are putting in place a bill with huge ramifications for industry—an industry that is very uncertain at the moment. The electricity industry is rocked because of decisions that have been made in Canberra. It is now having decisions made in New South Wales—

**The Hon. Lynda Voltz:** You've got a lack of decisions being made in Canberra by the Libs.

**The Hon. DUNCAN GAY:** If the Hon. Lynda Voltz wants to make a contribution she should come to the lectern. If not, she should be quiet, because she is not making any sense. She is being shown up for being as

stupid as her Minister. She should be quiet for a while and should not interject on a debate she does not understand. Once again the Minister has misled this House. The Minister misled the House in question time about figures in the budget papers on drought funding, and now he has misled the House about consultation with industry on this bill. Industry has not been consulted on this bill. The industry is not aware of where the Minister is up to on it, and it is a disgrace that the Minister has treated the industry—an industry that is reasonably supportive of him—with disdain. It is just not acceptable when we have jobs on the line in New South Wales. Because industry has not been consulted on the bill, and to provide an opportunity for the Government to talk to industry before the House further debates the bill, I move:

That this debate be now adjourned until Tuesday 23 June 2009.

### **Question put.**

### **The House divided.**

#### **Ayes, 22**

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

#### **Noes, 17**

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

#### **Pair**

Mr Ajaka

Mr Robertson

### **Question resolved in the affirmative.**

### **Motion for adjournment of debate agreed to.**

### **Debate adjourned and set down as an order of the day for a future day.**

## **PROGRAM OF APPLIANCES FOR DISABLED PEOPLE**

### **Production of Documents: Return to Order**

**The Clerk** tabled, pursuant to resolution of 3 June 2009, documents relating to Program of Appliances for Disabled People lodgement centres received on 17 June 2009 from the Director General of the Department of Premier and Cabinet, together with an indexed list of documents.

### **Production of Documents: Claim of Privilege**

**The Clerk** tabled a return identifying the documents claimed to be privileged and not to be made public or tabled. The Clerk advised that pursuant to standing orders the documents are available for inspection by members of the Legislative Council only.

**ROADS AND TRAFFIC AUTHORITY: FREEDOM OF INFORMATION REQUESTS****Production of Documents: Further Return to Order**

**The Clerk** tabled, pursuant to resolution of 6 June 2009, additional documents relating to Roads and Traffic Authority freedom of information requests received on 17 June 2009 from the Director General of the Department of Premier and Cabinet, together with an indexed list of documents.

**COURTS AND OTHER LEGISLATION AMENDMENT BILL 2009****Second Reading****Debate resumed from an earlier hour.**

**Ms LEE RHIANNON** [4.21 p.m.]: Earlier I was referring to the review by the Ombudsman of the Justice Legislation Amendment (Non-association and Place Restriction) Act, which is extremely relevant to this debate. Mr Ian Cohen and I have both raised considerable concerns about that earlier legislation. The Ombudsman noted that in the first two years of the Act's operation it had been used only 20 times and that in none of those instances was the Act imposed for serious organised criminal gang activity, and in only five of the instances did the orders relate to criminal activity involving two or more persons. The Ombudsman surmised in the review that orders under the Act were too inflexible and that courts, instead of using the new orders, continued to impose non-association orders and restriction conditions at sentencing through good behaviour bonds or suspended sentences.

The Greens support moves in this bill to expand the way the Act defines "close family". The review by the Ombudsman recommended that Parliament consider the need to accommodate kinship ties in indigenous communities, which extend beyond the immediate family. Section 100A (1) currently exempts association with close family from non-association orders. This bill inserts proposed section 100A (3) (f), which recognises the extended kinship of Aboriginal persons and Torres Strait Islanders. This should be criminal justice 101: it should be that clear to all members. How many years has it been since the Royal Commission into Aboriginal Deaths in Custody? How many times in this place have we listened to speeches from members of Parliament raising concerns about the misuse of the law and how it penalises and discriminates against indigenous communities? But when it comes to voting on these laws that inflict such hardships we see the usual line-up. That is just so wrong. How many reports have recommended that the legal system recognise extended kinship obligations? How long does it take the Government to get there?

The Greens have very serious concerns about two amendments that would affect freedom of association by extending non-association and place restriction orders. The Greens are concerned about proposed section 17A (3A) (b), which will now allow a court to specify a place or district as being restricted from forming part of the order if the court considers that exceptional circumstances exist. The bill provides that the court must be satisfied that there is a risk that the offender may be involved in conduct that could involve the commission of a further offence. We have a law that is already problematic and inflexible and now the Government, in an unnecessary way and a way that will bring hardship and difficulty, wants to extend what has been established as being so clearly wrong.

Section 100A (2) of the current Act provides that place restriction orders cannot be placed over the offender's place of residence or place of residence of any member of the offender's close family, any place of work where the offender is regularly employed, any educational institution at which the offender may be enrolled, or any place of worship of which the offender regularly attends. That relates to people's homes, their work, school and place of worship. Allowing place restriction orders over these areas is a huge deal. It would severely impinge on people's rights to live in their homes, to visit their family, to work, to worship, to be educated and to be with family.

These rights are enshrined in the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights. Far be it from this House to take away those fundamental human rights. Members should realise that it is not good enough to make fine speeches about how human rights need to be respected, and the need to ensure that Aboriginal communities can live in justice, and then to pass this kind of law. This perpetrates the discrimination, exploitation and oppression that have been going on for centuries. The Greens recognise the need to protect public safety and no argument was put forward

about why such an amendment is necessary. The Greens note that the Legislative Review Committee is concerned that this section may deny an offer of their rights and would be an undue trespass on rights and liberties. The Greens strongly oppose this amendment.

The Greens are also concerned about proposed section 100A (1A), which creates exemptions regarding an offender's association with close family if the court considers exceptional circumstances exist because there is reasonable cause to believe that there is a risk that the offender may be involved in conduct that could involve the commission of a further offence. The Greens acknowledge that the Ombudsman did recommend that Parliament give consideration to the extension of orders to cover close family, but the Ombudsman also acknowledged that there were arguments on both sides. The Government has not brought that issue into this debate and therefore it is not ensuring that it be explored further to enable the necessary balance required in this legislation. The Greens are concerned that this section may restrict freedom of association. Freedom of association is a fundamental right established by article 22 (1) of the International Covenant on Civil and Political Rights. I cannot help feeling it is Groundhog Day in this Parliament.

**The Hon. Amanda Fazio:** I have that feeling too!

**Ms LEE RHIANNON:** I acknowledge the interjection but I doubt that Ms Fazio is referring to the legislation. I doubt she has seen the light, but I hope she is agreeing with the Greens. Barely one month ago the Greens were opposing the Crimes (Criminal Organisations Control) Bill on the basis that it restricted freedom of association. If passed, this amendment would be capable of restricting access to close family. Most members have probably not looked at the legislation, and that is not a criticism. All members have a job in this place and cannot look at everything. But the essence of what is being considered here is extreme legislation that is onerous, unnecessary and deeply wrong. It is not warranted on any ground. The Legislation Review Committee has commented that this amendment may unduly trespass on rights and liberties. I remind the House that the Legislation Review Committee has cross-party membership.

**The Hon. Amanda Fazio:** I am on it.

**Ms LEE RHIANNON:** I acknowledge the interjection of Ms Fazio. I hope she contributes to this debate because she is a member of the Legislation Review Committee, which has commented that this amendment may unduly trespass on rights and liberties. Ms Fazio may have made that input at a meeting of the committee. Restricting access to close family is extremely onerous to offenders who may have few other ties to the community, especially if they are restricted from contact with other usual associates. As an unforeseen impact, this amendment may lead to tensions and divisions within families. The law should not go there. It looks as if once again the Government and Opposition will vote on this together. I foreshadow that the Greens will move amendments in Committee on both these issues.

The Greens also have concerns about the proposed amendments to the Anti-Discrimination Act. The amendments in schedule 1.2 of the bill enable the Anti-Discrimination Board to give information contained under the Act to academics and other persons engaged in investigations, research or inquiries relating to discrimination. The Greens are concerned that this amendment could impact on people's right to privacy and confidentiality. I understand that this amendment is subject to sections 17 and 18 of the Privacy and Personal Information Protection Act, which limits the information that can be given and how it can be used. The Greens recognise that there is a public interest in having informed research in the area of discrimination. But we remain concerned that the Government has not achieved the right balance in introducing these changes. I will expand on these matters in Committee.

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [4.31 p.m.], in reply: I thank honourable members for their contributions to the debate. The Courts and Other Legislation Amendment Bill 2009 contains miscellaneous amendments arising from the regular review of courts-related legislation and other legislation. The amendments will ensure that court and tribunal procedures and criminal procedures continue to be as effective as possible. The amendments also will support the effective administration of justice in New South Wales. The bill will clarify appeals processes in the Administrative Decisions Tribunal; enable the Anti-Discrimination Board to collaborate on research, which will have public benefits; ease the financial hardship on debtors whose wages or salaries are subject to a garnishee order; implement recommendations made by the Ombudsman in relation to non-association and place restriction legislation; and resolve several minor administrative and drafting matters.

I will now respond to some issues raised by members during the debate. In relation to academics accessing files held by the Anti-Discrimination Board, it is not the case that any information on those files will

be released publicly. Researchers will not be able to disclose personal information that has not already been made public by the Anti-Discrimination Board. The bill extends the secrecy provisions of the Act to cover academics who are provided with information by the board for research purposes. A breach of the secrecy provisions carries a maximum penalty of 10 penalty units. The provisions of the Privacy and Personal Information Protection Act 1998 also applies to the board. I note that a direction under this Act has been issued in relation to the disclosure of information by public sector agencies for research purposes. I am advised by the president of the Anti-Discrimination Board that the board will assess each research proposal it receives on its merits and only provide access to information held by the board if it is satisfied it is appropriate to do so. Additionally, the board will establish an ethics committee to review research proposals submitted to the board.

Ms Lee Rhiannon raised a number of issues in relation to non-association orders. In that regard it is important to refer to the Ombudsman's recommendations, which these amendments seek to implement. In relation to the non-association and place restriction orders that are imposed at sentencing, the Ombudsman recommended that Parliament consider amending the relevant legislation to address the apparent need for flexibility when imposing non-association and place restriction orders at sentencing. Specifically he recommended that such consideration should take account of the following issues: firstly, the need to accommodate kinship ties that extend beyond the immediate family and the definition of close family; secondly, the need in exceptional circumstances to make orders that apply to close family members where a court is satisfied of an ongoing pattern of criminal behaviour carried out by the offender and another family member or members; thirdly, the need to expand the list of places that may not be included in a place restriction order to accommodate attendance at health, welfare and related services; fourthly, the need in exceptional circumstances to make orders that apply to places that otherwise may not be included in a place restriction order where a court is satisfied of an ongoing pattern of criminal behaviour in which the offender is involved in that place; and, fifthly, the need to clearly express in the legislation that exceptions are permitted when deemed appropriate by the court. The amendments to the non-association and place restriction orders implement these recommendations. As to non-association orders relating to close family members, the Ombudsman found in his report that in certain situations non-association orders appropriately could be given in relation to close family members. New South Wales Police recommended in a submission to the Ombudsman that the law be changed, stating:

... to allow orders to be applied where there is evidence of an ongoing pattern of criminal behaviour which could be attributed to criminal activity conducted in partnership with specific family members.

The Ombudsman, therefore, specifically recommended that non-association orders be allowed to apply to close family members in exceptional circumstances where a court is satisfied of an ongoing pattern of criminal behaviour. This amendment implements this recommendation and achieves the appropriate balance between ensuring that courts have the power to prevent family members of criminal gangs from associating with each other, whilst recognising that this is a significant incursion on an offender's liberty and should be applied only in exceptional circumstances. This bill has been the subject of wide consultation with the affected courts and tribunals, the Law Society of New South Wales and the New South Wales Bar Association. The Government will not support the amendments that the Greens proposed to move in Committee. I will deal with them in detail at that stage. 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 3 agreed to.**

**Ms LEE RHIANNON** [4.37 p.m.], by leave: I move Greens amendments Nos 1 and 2 in globo:

No. 1 Page 6, schedule 1.5 [3], lines 12-23. Omit all words on those lines.

No. 2 Pages 6 and 7, schedule 1.5 [5], line 33 on page 6 to line 10 on page 7. Omit all words on those lines.

The Greens have moved these amendments to stop the bill from further restricting a person's right to freedom of association and freedom of movement. The Legislation Review Committee raised concerns about this aspect of



the bill. The Greens share those concerns. We believe that it may allow extremely onerous restrictions to be placed on offenders and that further limiting a person's access to close family and places may harm an offender's chance of rehabilitation. It is well and truly on the record that the foundation of rehabilitation is based on people maintaining links with their family and immediate support network. This aspect of the bill will shatter the chance of that occurring. It is a ridiculous provision. The Ombudsman's report asks the Government to address the need for flexibility in the legislation when imposing non-association orders and place restriction orders at sentencing.

The Ombudsman's recommendation should not be used as an excuse for the Government to tighten its grip, as was indicated in the Parliamentary Secretary's speech in reply to the second reading debate. We circulated our amendments, and it is understandable that the Government would want to lay the basis for its arguments against the amendments. But the Government is using the Ombudsman's report to try to justify the next phase in its law and order agenda. It is a low point for the Government to misuse an important report, which shows problems with this legislation, to try to justify non-association orders that are plainly unnecessary.

By removing these clauses the Greens seek to ensure that this bill does not limit the exemptions granted in section 100A—the right to visit a home, workplace or place of worship—and that a person's rights are not being restricted further unnecessarily in this bill. I moved these amendments because the original laws were already heavy-handed and already went too far in threatening unnecessarily the rights of marginalised and disadvantaged groups to associate freely in public places.

I remind the House of what the Ombudsman's review said because people watching this debate have heard members from both sides of the House quote from the Ombudsman's review. The Ombudsman's review made it clear that these laws have not been effective. They have not been used to target any serious criminal gangs, rather they have been used only infrequently and have not been effective in breaking down criminal associations. The previous mechanisms that courts used—good behaviour bonds or suspended sentences—were supported by the judiciary and were adequate for the task. So why is the Government doing this? The proof is there.

These laws were controversial at the time and they should not have been passed. So many legal groups, justice groups and community groups worked hard to bring some sense to this Government. But the Government again took no notice. The review has been done, the figures have been assessed and few cases have been dealt with under this law, but the Government wants to ramp it up more. It is a deeply sad reflection on this Government. It must be a difficult job for the Parliamentary Secretary to have to argue the case for the Government on this shameful piece of legislation. We are concerned that this provision is unduly onerous, it will not deliver any meaningful outcomes for reducing gang-related criminal behaviour and there is too high a risk of it being used to unfairly target young, disadvantaged or marginalised communities.

Time and time again we hear during debates, or later, the Government and the Opposition saying that the Greens are soft on crime and they are soft on gangs. That is ridiculous. We are trying to get effective laws passed. These laws are not effective and they are not about making our community safer. There is a political agenda: it is about getting headlines and it is about the Government preparing for an election so it can trot out what it has done, not what it has achieved for the community with the laws it has passed. It is deeply wrong. The people who will vote for this bill should be ashamed of themselves. It is another real setback for justice in New South Wales. I commend the amendments to the Committee.

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [4.42 p.m.]: As I indicated in my speech in reply to the second reading debate, the Government opposes these amendments. The effect of the first of these amendments would be to prohibit the court from making a non-association order in relation to an offender's close family in exceptional circumstances. This is despite a specific recommendation from the Ombudsman that the legislation should be amended to allow this to occur where a court is satisfied of an ongoing pattern of criminal behaviour within the close family of an offender. The effect of the second of these amendments would be to prohibit a court from making place restriction orders in circumstances that may otherwise not be included in a place restriction order in exceptional circumstances.

Again, this is despite the Ombudsman specifically recommending that the legislation should be amended to do just that when a court is satisfied of an ongoing pattern of criminal behaviour, in which the offender is involved, occurring at that place. These amendments will allow the courts greater flexibility in making non-association and place restriction orders in appropriate circumstances to stop offenders from committing further offences and to assist their rehabilitation. The court must be satisfied that exceptional circumstances exist. That is a very stringent test. Thus the court will make these orders only in rare situations,

and the court must have regard to either the ongoing nature and pattern of criminal activity in which the member and the offender have participated or the ongoing nature and pattern of participation of the offender in criminal activity occurring at that place or district.

Given the fact that they should only be used in exceptional circumstances, the courts must also give reasons for their decisions to make these orders. It is a sad fact that many known criminals commit offences with members of their own family—be that their brothers or sisters, mothers or fathers—and in appropriate circumstances the court, to stop that offender from committing any further offences, will now be given the power to stop these people from associating together. The maximum length of a non-association order is 12 months, and the court must state its reasons for making such an order.

Some members have said that placing a non-association order on close family members in these exceptional circumstances could be negative for rehabilitation. The Government thinks that the opposite is the case. If an offender has a history of committing criminal offences with a close family member, it is in the interests of the offender's rehabilitation and prevention of re-offending that he or she not associate with that family member.

With regard to place restriction orders, this bill also will allow them to be tailored. The court can now make an order in relation to an offender who continually commits graffiti offences outside school hours at his or her school to allow the offender to attend school but to prohibit him or her from being there outside school hours. The Legislation Review Committee questioned whether restricting access to housing, places of employment and places of worship would be an onerous restriction on offenders, particularly when ties to the community and family are important factors in reducing recidivism. However, these orders enhance the prospects of rehabilitation by preventing the offender frequenting an area where he or she commits offences.

The new exceptional circumstances non-association and place restriction orders created by this bill, combined with the ability to tailor orders, will provide an effective and useful tool for the court in ensuring that criminal associations are broken down and offenders are assisted in their rehabilitation. The Greens cannot have it both ways. They frequently argue that the Ombudsman should review certain legislation and that the Government should adopt findings and recommendations made by the Ombudsman. Today it has become clear that they are prepared to cherry pick the ones they like and ignore the advice that does not suit their purpose. The implementation of all of these legislative recommendations demonstrate the Government's vigilance in ensuring the criminal laws in this State are relevant, appropriate and achieve their purpose in reducing crime. We cannot support the amendments.

**The Hon. DAVID CLARKE** [4.46 p.m.]: The Opposition does not support the Greens amendments.

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

**The Committee divided.**

**Ayes, 4**

Mr Cohen  
Ms Hale

*Tellers,*  
Dr Kaye  
Ms Rhiannon

**Noes, 23**

Mr Catanzariti  
Mr Clarke  
Mr Colless  
Ms Ficarra  
Miss Gardiner  
Ms Griffin  
Mr Khan  
Mr Lynn

Mr Mason-Cox  
Reverend Dr Moyes  
Reverend Nile  
Ms Parker  
Mrs Pavey  
Mr Primrose  
Ms Robertson  
Ms Sharpe

Mr Tsang  
Mr Veitch  
Ms Voltz  
Mr West  
Ms Westwood  
*Tellers,*  
Mr Donnelly  
Mr Harwin

**Question resolved in the negative.**

**Greens amendments Nos 1 and 2 negatived.**

**Schedule 1 agreed to.**

**Title agreed to.**

**Bill reported from Committee without amendment.**

### **Adoption of Report**

**Motion by the Hon. Penny Sharpe agreed to:**

That the report be adopted.

**Report adopted.**

### **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.**

## **STATE EMERGENCY AND RESCUE MANAGEMENT AMENDMENT BILL 2009**

### **Second Reading**

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [4.55 p.m.], on behalf of the Hon. John Robertson: 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 Government is introducing the State Emergency and Rescue Management Amendment Bill to improve and streamline emergency recovery arrangements in this State.

This is a particularly timely reform as Northern NSW counts the cost of the severe flooding that has caused widespread damage and hardship throughout the region.

Family homes, businesses and vast areas of farmland were inundated, communities isolated, tourism, fishing and other industries set back and vital infrastructure, including roads and bridges, damaged and in some cases destroyed. Many people are suffering hardship as a result.

The Government declared a natural disaster in 14 local government areas to ensure assistance could start flowing as quickly as possible to those in need.

These riverside communities are resilient and well-prepared for flooding but it is obvious that recovering from such a large-scale natural disaster will take considerable time and extensive Government support.

I want to again assure these communities that this Government is working hard to help them to return to normal as quickly as possible, with the new arrangements outlined in this Bill already being applied under a coordinated, cohesive recovery operation.

Four one-stop-shop Disaster Recovery Centres are operating at Lismore, Grafton, Kempsey and Coffs Harbour to assistance and support to people in need.

These centres are staffed by a range of government agencies, councils and welfare services, whose staff are doing an excellent job, providing residents, businesspeople, primary producers and others with advice and also much-needed emotional support.

As we are seeing in the State's north, the process of helping a community to recover from a devastating natural disaster such as a flood, storm or bushfire or other emergency requires a sustained and coordinated effort.

While a structured recovery process may begin in parallel with a response operation, it will inevitably finish weeks, months or even years after the response operation winds up.

The process needs to be guided to ensure communities can return as soon as possible to where they were before the emergency, or, preferably, to develop and become more resilient - in other words, to build back better.

The State Government takes a leading role in this process, as we have seen in the aftermath of numerous natural disasters, such as the Central Coast floods and storms and Western Sydney hailstorm in 2007, the North Coast floods of 2001 and the Sydney hailstorm in 1999.

This usually starts with the establishment of a disaster recovery committee and a one-stop-shop.

As we saw at Blacktown, the recovery process can also involve bringing together key players such as the building industry, materials suppliers and the insurance industry, to clear away obstacles that might slow down the progress of rebuilding or repairs.

And it is not just about physical rebuilding but also can involve working to help local industries - such as tourism and primary production - and, therefore, regional economies to get back on their feet.

The State's emergency response arrangements and responsibilities are long-standing, well understood and documented in detail in the State Disaster Plan and its supporting sub-plans.

However, there are no parallel guidelines or assigned responsibilities for recovery processes. Responsibility for recovery planning and management has been diffused across different organisations and committees, with no clear lines of accountability or chains of command.

This Bill today amends the State Emergency and Rescue Management Act to address this.

It defines, for the first time, a State official who is responsible for emergency recovery and in doing so, streamlines and formalises our existing mechanisms for providing Government support to communities battered by disaster.

These clear lines of accountability and processes are essential to ensure recovery support is provided in a coordinated and consistent manner, rather than in an ad hoc response to each individual disaster.

The amendments create two new statutory positions, the State Emergency Recovery Controller—known as the SERCon—and Deputy State Emergency Recovery Controller.

The SERCon, appointed by the Minister for Emergency Services, is to be an existing member of the NSW Senior Executive Service with experience in emergency management. The Deputy SERCon is to be an existing member of the Senior Executive Service or Senior Officer, also with emergency management experience.

The SERCon is equivalent to the position of the State Emergency Operations Controller, as defined in the Act, who has responsibility for emergency response operations in the event there is no single combat agency with designated responsibility.

Reflecting the importance of the recovery phase of an emergency, the SERCon also will become a member of the State Disaster Council and State Emergency Management Committee.

The SERCon's primary roles are:

- To create a sustainable emergency recovery capability for NSW and
- To control the recovery from an emergency that affects more than one district or for which he or she assumes responsibility.

In essence, the officer, with the support of personnel in Emergency Management NSW—formerly the Office for Emergency Services—will be responsible for planning and preparing for emergency recovery operations and for overseeing efforts to return a community to normality in the aftermath of an emergency.

The SERCon will bring together the relevant government agencies and organisations to ensure the necessary services and assistance are provided in a coordinated and timely manner.

As well as having the power to engage State Government agencies as required, the SERCon also will liaise with industry, non-government organisations and local and Commonwealth governments, as needed, to address issues that arise.

For instance, this could include helping source grants for non-profit organisations, alternative supplies of building materials once local stocks are depleted, compiling registers of qualified tradespeople or identifying sources of feed for primary producers if their feedstock is burnt or flooded.

A key part of this process will involve establishing and controlling a State recovery coordination centre during recovery operations to gather, analyse and disseminate information about the recovery process to stakeholders and the community.

The new arrangements to be spelt out in the State Disaster Plan also formalise the position of Emergency Recovery Coordinator.

In a prolonged recovery operation, the SERCon can recommend to the Minister the appointment of a State Recovery Coordinator to lead the day-to-day, on-the-ground work with the community.

I would like at this point, to place on the record the Government's thanks to former NSW Police Commissioner Ken Moroney for the tremendous work to assist flood victims since his appointment as the Northern NSW Flood Recovery Coordinator.

Mr Moroney is held in high esteem and affection by the people of this State for his decades of service to the NSW Police and our community and is providing a valuable support to those affected by the floods and also those working on the recovery task. He is currently based in Coffs Harbour, working with government agencies, councils and other stakeholders to help iron out practical problems along the region's road to recovery.

Both the Recovery Controller and Coordinator will work with recovery committees, which can comprise representatives of relevant Government agencies, local government, community and welfare organisations and private sector industry groups, such as the building and insurance industries.

These committees are vital in bringing local knowledge, experience and expertise to the recovery process and I also thank the representatives of councils and other bodies which have joined the four recovery committees established in the wake of these floods.

The legislative amendments we are introducing today will be reflected in amendments to detail the new recovery arrangements in the NSW State Disaster Plan (Displan) and its subordinate plans.

These reforms will ensure that communities devastated by natural disasters and other emergencies continue to receive the full cooperation and support of Government and other agencies to overcome the damage and hardship they have suffered.

They have this Government's commitment that we will work hard to support them every step of the way and now we have the legislative framework to determine the precise mechanisms and processes by which this support will be provided.

This formalised recovery process is a sensible, far-reaching reform that will have enormous benefits for communities that have the misfortune of falling victim to nature's wrath or other emergencies.

We may not be able to prevent natural disasters but in their aftermath, we will be there to help pick up the pieces, restore damage and return a community's lifestyle, economic lifeblood and living standards as swiftly, efficiently and effectively as possible.

I commend the bill to the House.

**The Hon. MELINDA PAVEY** [4.56 p.m.]: The Opposition will not oppose the State Emergency Rescue Management Bill 2009, which amends the State Emergency Rescue Management Act to allow for the formal appointment of a State emergency recovery controller and a deputy State emergency recovery controller. The State emergency recovery controller is to be a member of the State Disaster Council and the State Emergency Management Committee. The bill also makes consequential administrative amendments to the State Emergency Services Act 1989.

This is an important bill for recovery in disaster-affected areas. The genesis of this bill was the hailstorm that occurred in Blacktown in December 2007. Members will recall the great consternation about the time it took the Blacktown area to recover from that devastating hailstorm. Many photos were published showing great stretches of the suburb with houses with damaged and missing roofs, both tile and tin. There was such a level of concern that the local member—Paul Gibson—was very critical of the Government's slow reaction and its handling of that natural disaster. The Government attempted to deflect that criticism by blaming other people for a lack of coordination.

One good thing has come out of that disaster—although it has been almost two years in the making. We are now going through the formal process to provide the instrument to appoint a controller to deal with recovery after a natural disaster. The Western Sydney Storm Recovery Taskforce, which was established after the Blacktown hailstorm, made 25 recommendations, and its major recommendation is the subject of this legislation. That is a good thing.

On 3 April 2009 Premier Rees travelled to the mid North Coast to inspect damage caused by the second major rain event in that area. The event impacted on the community of Coffs Harbour, where I live. During that visit the Premier officially announced that the Director of the Office for Emergency Services, Mr Stacey Tannos, had been appointed as the State Emergency Recovery Controller [SERCon], and that the Department of Premier and Cabinet's Director of Security and Recovery Coordination, Ms Veronica Lee, had been appointed as his deputy. The Premier stated:

The SERCon's job is to ensure the relevant government, welfare and private sector bodies are providing the services, support and other resources needed to help restore affected communities and to clear any obstacles in the way.

This could include helping source alternative supplies of building materials once local stocks are depleted, compiling a register of qualified tradespeople or identifying sources of feed for primary producers if their feedstock is burnt or flooded.

Mr Rees said at the time that Mr Tannos would meet emergency services and community leaders on the mid North Coast. It must be recognised that Mr Tannos has been working incredibly hard since those disaster events

and has met many people up and down the region. Little did Mr Tannos know on 3 April that his duties would not be confined to Coffs Harbour but would include the entire region—but more on that in a minute. Also at that time the Office of Emergency Services changed its name to Emergency Management New South Wales.

The Premier's visit to Coffs Harbour on 3 April came a couple of months after another major event in the district. In February many areas around Bellingen and even down to the Hastings and Nambucca were affected by strong rains. It has been a very busy time. A major rain depression affected those areas in the most profound way. Communities from Tweed Heads almost down to Port Macquarie experienced a profound rain event that saw a metre of rain fall at Dorrigo in May. That created enormous devastation. Anyone who knows the topography of the region knows that when a metre of rain falls at Dorrigo it goes in two directions: north to the Clarence and south to the catchments of the Macleay River. So that rain, on top of the rain that had fallen in the district previously, created an event the like of which some say we have never seen before. However, others say that it is part of our region's history, and that huge flood and rain events happen regularly. The previous big event in Coffs Harbour occurred in 2001. It is part of the cycle of life. Our communities are resilient and magnificent, but the recovery plans established after the May event have helped them to get on. I will detail some of the things that have happened in the region and how this new position has helped.

On 22 May a heavy rain depression covered the area from the Tweed to the Hastings. Within three days as much as half a metre of rain had fallen in some spots. Most debilitating for many communities were the 130 kilometres an hour winds, which affected so many parts of the coast. Amazingly, there was proportionally little damage to homes and buildings—but there certainly was damage to signposts and trees. It was a very powerful wind. Just south of Ballina, I witnessed the Alstonville sign buckle over on itself—the wind was so strong. That gives members a bit of the background to those events. Again, our heartfelt appreciation goes to the State Emergency Service volunteers, in particular. They did a magnificent job throughout the region, assisted by volunteers from all over the State. There were something like 1,500 calls for assistance in 24 hours, which is just incredible. As well as the State Emergency Service volunteers and the local teams who were working magnificently on the ground, we had the support of the Rural Fire Service and the New South Wales Fire Brigades. The community rallied together and became one.

In the speeches of the lower House members on this bill there was much discussion of the community support. I refer in particular to the speech of Geoff Provest, the member for Tweed. His son is a State Emergency Service volunteer, who was nearly swept away in the Tweed River on that night. Geoff Provest has talked in great detail about his concerns regarding floodplain management and the proper assessment that needs to be done given the greater urbanisation of the region and the quick build-up and pooling of water. Those issues must be considered. I refer also to the contribution by the member for Lismore, Thomas George. I mention this in the context of recovery. I know that Stacey Tannos, our SERCon, has been having regular dialogue with these members, and these issues are very much at the forefront of his thinking. Thomas George highlighted the need to ensure that those who helped were thanked, and he acknowledged the work done by local members' offices whenever there is a disaster. Local members' offices are often on the front line in providing assistance to those affected by any natural disaster. Thomas George reiterated in his speech yesterday the need for electorate offices to be considered very strongly as part of any mopping up or clean-up operations and to involve, where possible, local members in the process because of their local knowledge.

Andrew Fraser also expressed concern, both to Mr Tannos at a briefing of North Coast Nationals members of Parliament and in the Legislative Assembly, about the great infrastructure damage to private property adjoining Crown land. That is an ongoing issue. On 31 May Andrew Fraser's office was inundated with water, like so many other properties and homes in the Coffs Harbour district. He has lived through this process too many times but, as a strong member of the community, has worked alongside others to ensure that his community receives the attention it deserves. I also respond to some issues raised by Steve Cansdell, the member for Clarence. He is one of those blokes who gets in there and does the job that needs to be done. When the Grafton central business district was threatened by floodwaters, Steve Cansdell acted in a mighty way. Like so many members of the Clarence community, Steve was helping a mate move property from a shop in the main street to higher ground because the levee bank was expected to break. He received a call on his mobile phone that Nathan Rees was coming. He was asked whether he would like to go down to the State Emergency Service headquarters and take advantage of the opportunity that being seen with the Premier on a day like that would afford him—which is basically media coverage. But Steve Cansdell said, "No, it'll be right; I'm helping my mate to get his stuff to higher ground." That is the sort of bloke Steve Cansdell is.

Andrew Stoner has raised a number of issues with me that I will go into in detail. This disaster has greatly impacted those communities, and they are lucky to have passionate local representation to ensure that

their issues are raised. As I mentioned earlier, Stacey Tannos had a briefing with the Emergency Recovery Coordinator, Ken Moroney, who is our former police commissioner. The decision to appoint Ken Moroney was a good one that is supported strongly by local communities. He is a father or grandfather type of figure. People feel that he listens well to what they say and acts on it. He is trusted within those communities.

Ken Moroney asked for feedback about how local communities were feeling. Also at the briefing was Kay Jones, Executive Director of the Consultancy Strategic Community Project Management, and we had a short chat afterwards. She told me that she had assisted following the 2001 floods in Coffs Harbour and that she was pleased to see an improvement in response and emergency service management and recovery since those floods. While it is good that there has been an improvement, that people are working well and that the response is better than it was, everything is not perfect.

I know that the State Emergency Recovery Controller, Stacey Tannos, and others want to know about the problems encountered during that time. I inspected the Kempsey State Emergency Service facilities with Andrew Stoner and Barry O'Farrell a few days after the floods had passed through Kempsey. The floods did not break the levee bank. The water came to the top and tipped over a little but the levee bank kept Kempsey safe. However, the community has expressed concern that the Kempsey State Emergency Service cannot be reached through directory assistance. The only number it gives is 132500, which connects people with Wollongong. As I stated earlier, something like 1,500 calls were made within 24 hours, which is an enormous number of calls for any call centre to handle. I understand the challenges that State Emergency Service personnel face on the ground when inundated with that number of calls, with the overflow going to the Wollongong office. The concern is that some calls went through to Wollongong and were not acted on. The State Emergency Recovery Controller must review this matter during the recovery phase of the process. May Gill, a famous State Emergency Service controller from Kempsey, said to me:

People were calling the 132500 number and getting diverted to Wollongong. We had some problems with this. Some of the operators were not asking the correct information and it was causing difficulties in some of our helicopter drops in particular.

Those issues must be addressed. The member for Ballina, Don Page, raised a matter of considerable concern: the accurate measurement of rainfall. It has been said that the Bureau of Meteorology assessment of the depression was very good and very accurate. However, there is concern on the ground that the Bureau of Meteorology does not have a lot of gauges in the hill districts where a significant amount of rain falls and this causes inconsistent rainfall readings. At the North Coast briefing with Ken Moroney and the State Emergency Recovery Controller, Don Page recounted the story that as a young boy it was his job, whenever there was a big rainfall depression in the region—and they happened regularly—to go down to the river to check the gauge. This was not a happy experience because of the large number of snakes in the area, but it was an important hourly job. They would then ring through the results to the local State Emergency Service personnel. It has been suggested that that is no longer happening and consideration should be given to the way rainfall and river levels are measured.

Glenreagh, an important community about midway between Coffs Harbour and Grafton, has a strong-flowing river but there is no proper gauge or management plan for closing the river. Recently I received representations from the local branch of the New South Wales Farmers Association about that issue. Councillor Betty Green of Kempsey Shire Council, who is a strong community advocate, believes a proper assessment should be undertaken of rainfall and river levels. The Mayor of Kempsey, Councillor Howell, is also concerned. He said there was a lot of confusion about information processes and the telemetry gauges in the Macleay River and he believes there should be better assessment. Those two representatives will do everything they can to ensure that the information is passed on to Ken Moroney, the coordinator who will undertake an assessment of the situation and its aftermath. Councillor John Howell wrote to Andrew Stoner, the local member and Leader of The Nationals, and to the Minister for Emergency Services with respect to the declaration of natural disaster areas. He is hoping that they can work together with the Commonwealth to provide support to the region in a coordinated submission to be considered by the State and Federal governments. Councillor Howell stated:

It is clearly understood that councils will submit claims in respect of infrastructure restoration in so far as each event which has occurred.

The widespread effects of the current flooding event give rise to consideration of a co-ordinated approach together with the Bureau of Meteorology to Governments ...

Two issues of interest within Kempsey Shire are the sustainable height of levee systems and the accuracy of the telemetry river gauges under stress.

There is a lot to learn from this event. There were the usual problems with insurance companies. Some that had been criticised in the past showed good leadership this time. In particular, I mention the NRMA, which has been criticised over its handling of claims following flood and storm events but was good on this occasion. Luckily only a few companies appear to be causing problems for policyholders over flood insurance. The appointment of a recovery controller is a good step forward and follows the lessons learned in the 2007 storms. It will prove to be a good decision and will save communities a lot of heartache in the future.

**Mr IAN COHEN** [5.17 p.m.]: On behalf of the Greens I support the State Emergency and Rescue Management Amendment Bill 2009. In my home town of Byron Bay, where I travelled to from Parliament, I lived through the rain and floods that wreaked havoc on the New South Wales North Coast and mid North Coast. I was fortunate that my property suffered comparatively minor damage, but the extensive damage to thousands of homes and properties across a huge, waterlogged swathe of the State will take a long time to remediate fully. There is certainly a lot of work ahead. Emergency services personnel did a fantastic job in the coastal areas. In my area flooding was not so much a problem as the wind. On the coast the wind wreaked havoc on many people's houses. On the first night during the major part of the storm the winds were so horrendous that the whole house was rattling—it is not exactly a house—

**The Hon. Melinda Pavey:** A humpy?

**Mr IAN COHEN:** That might be closer to it. If the roof had been ripped off there is absolutely nothing I could have done. I commend the work of the emergency services in getting out there and supporting people under those horrendous conditions. My understanding is that it was a typical North Coast low-pressure system. Small low-pressure systems were evolving off the main low-pressure system that were fairly localised but incredibly intense in the area. Broken Head, which is midway between Lennox Head and Cape Byron, encountered those extremely severe conditions. They certainly made a mess of the road where I live. The next morning I got up early and tried to clear the road together with a group of local residents. We worked our way down what had been a road on the edge of a nature reserve, where there was a lot of debris, and branches and trees that had fallen down. State Emergency Service personnel—or it may have been council workers—came later in the day to cut and remove some of the bigger trees that were lying across the road.

It was a fantastic community effort in the small area where I live. It is interesting that when you get involved in something like that you focus on your immediate area, to make sure that you and other local residents are safe, that the road you live on is passable, and that the clearing work is done in a safe manner. I have to say that the work of the volunteer organisations, emergency services, police, and the National Parks and Wildlife Service in that area was nothing short of fantastic. I ended up with a sally wattle, which is a fairly substantial tree—I guess it was due to fall down—leaning on the side of the communal house on my property. It was a week before I could get to the tree to cut it down, which was pretty much a full day's work. One has to proceed very carefully when undertaking such a task. It makes me appreciate the skill of people who work in emergency services and who undertake tasks like that, often in storm situations, and who complete them safely. Cutting down trees that are broken and leaning against houses is an extremely dangerous activity. I totally admire volunteers who spend so many hours of the day working under those circumstances, often in very dangerous conditions. When you try to cut down a tree while the wind is still blowing it can be a seriously dangerous situation.

I met with the local area commanders at the Byron Shire Council works depot, together with the mayor. I must say that their physical efforts and the time they spent during that emergency, particularly during the two nights when the weather was absolutely extreme, meant that they were working without much sleep. It was a fantastic community effort. Another organisation that deserves mention is ABC radio, which did a fantastic job working out of Lismore. In some cases people could not get into town and there was all sorts of mayhem, which ABC radio related in the most positive and friendly manner, keeping up the spirits of the community. The radio station also constantly let people know about river levels. All the information came through with fantastic reliability. It was great to listen to ABC radio for most of the day. I was in the car at various times as I travelled around, but I kept ABC radio on, getting a firsthand report about the entire region. ABC radio was able to paint the picture, and also deliver messages to people who were genuinely isolated. In many instances, phones were out. I cannot quite remember, because there was a bit of confusion at the time, but I think the power was out in my area for at least 48 hours. For much of the time I had to go to the car to listen to the radio; it was the only power source I had. Many people were in a similar situation.

In Tuntable a major bridge was washed out. The people of Tuntable received fantastic support. I think the residents of Tuntable now have a renewed appreciation of the "straights"—the emergency services people—



in the community. There was a real feeling of camaraderie. I was listening to a young woman being interviewed on ABC radio who had rung in to tell her story. She spoke about the fact that the emergency services were delivering very appropriate food—it may have been lentils or something similar—and she said it was most appreciated. There was a general sensitivity to the needs of all sorts of people in the community. That is certainly one of the best things to come out in people, both the authorities and the general population, when such an emergency occurs.

It was an amazing community effort. The various agencies that responded to the initial emergency certainly did a fantastic job, and I acknowledge their good work. I know that many people were isolated by the floods. It was great that people were able to get information from ABC radio—such as hang a white sheet on the roof of your house, or somewhere high, if you are in need of support. These basic methods delivered emergency support to the people affected by the floods—and who would have been feeling extremely insecure under the circumstances. With a howling wind and rising waters, people found themselves in a vulnerable position, often with families who would not be able to get out of such situations.

Now that the threat has abated it is time to take account of the substantial damage that needs to be addressed. The rebuilding of damaged homes, farms, businesses and infrastructure, the restoration of services, and the return to normalcy for so many people will take a long time. What took only days to destroy will certainly take weeks or perhaps months to restore. Long after the television cameras have gone elsewhere, the people affected by the floods will need to rebuild their communities and restart their lives. I note, as the previous speaker mentioned, that Ken Moroney, the former New South Wales Commissioner of Police, has been given the task of coordinating the flood clean-up. Ken Moroney is a man with a long history of service to this State, and I welcome his appointment.

Climate change will bring more incidences of extreme weather conditions. We can expect that parts of New South Wales will be declared disaster areas with increasing frequency as fires, floods, winds or droughts reflect the changing weather patterns. With this in mind, I hope our existing services are ready to cope with an increased number of emergencies. We saw the debacle of the world's richest nation unable to respond properly to Hurricane Katrina, and people are still homeless four years after that event. In this country, in the aftermath of emergencies, we will require a swift, decisive and coordinated response to emergencies and, later, to post-emergency management. I welcome the creation of the positions of State Emergency Recovery Controller and Deputy State Emergency Recovery Controller. It is recognition of the reality that we are facing a different future, where we must not only expect emergencies—as extreme weather conditions continue—but anticipate them and be prepared to respond.

The bill seeks to create a better transition between the operational emergency management phase and the recovery phase. It will link up a range of community, government and non-government stakeholders to deliver a more consistent approach to emergency services and rebuilding phases. I see on the North Coast the disruption to livelihoods that the floods, high winds and coastal erosion have caused. The inconvenience that a damaged road or bridge can cause seems small, but when you cannot travel to work, take your children to school or get to a doctor it is important that the problem be fixed as soon as possible. Given that the recent floods covered 14 different local government areas, the appointment of a State Emergency Recovery Controller is clearly an important step in making sure the communities of New South Wales can recover quickly from whatever disasters befall us. I commend the bill to the House.

**Reverend the Hon. FRED NILE** [5.29 p.m.]: The Christian Democratic Party supports the State Emergency and Rescue Management Amendment Bill 2009. It is a very practical bill that is important in providing for efficient, urgent recovery from the many disasters we encounter in Australia, particularly in New South Wales, whether they be floods, bushfires, hailstorms, or one of the many other disasters.

As we experience all of those phenomena there is a need for a system to deal with disasters and recovery and the bill will ensure that will happen. The bill will amend the State Emergency and Rescue Management Act 1989 to provide for the appointment of a State Emergency Recovery Controller and a Deputy State Emergency Recovery Controller.

This bill is a response to the recommendations of the Western Sydney Storm Recovery Task Force, which was established in the aftermath of the severe hailstorm in December 2007 in the Blacktown region. The task force made 25 recommendations primarily aimed at improving emergency recovery arrangements because unintentional problems had been experienced by an overlapping of the various emergency management organisations such as the police, the State Emergency Service et cetera. There is a need for a simplified control

and clear source of authority in the recovery phase following a disaster and the bill will ensure that happens. Where there is no designated agency to follow through with a disaster recovery the State Emergency Operations Controller will take control. Initial response activities will inevitably still involve some early recovery activities, such as opening a recovery centre for community assistance or conducting damage assessments, but now there will be a structured process for the formal handover of responsibility from the operations phase to the recovery phase.

Former New South Wales Commissioner of Police Ken Moroney has been appointed to act as the Northern New South Wales Flood Recovery Coordinator. He is doing a good job—as he did when he was the Commissioner of Police. Mr Moroney is currently based in Coffs Harbour, where he is working with government agencies, councils and other stakeholders to help iron out practical problems along the region's road to recovery. That experience will be used in the follow-through of the appointments as a result of this bill and the recovery phase will be improved for the benefit of the citizens of New South Wales. Having gone through a disaster, there is nothing worse than feeling forlorn and lost when cleaning up damaged homes, carpets covered with mud and so on. Families affected by disasters will now be greatly encouraged to know they will receive immediate assistance in the recovery stage. The Christian Democratic Party supports the bill.

**The Hon. HENRY TSANG** (Parliamentary Secretary) [5.33 p.m.], in reply: I thank all honourable members for their contribution to the debate. This bill is an important change to improve and streamline the emergency recovery arrangements of the State Emergency and Rescue Management Act. This is particularly timely as Northern New South Wales continues to count the cost of the recent flooding that has caused widespread damage and hardship throughout the region. Members would be aware that the Premier announced that former New South Wales Commissioner of Police Ken Moroney would lead the recovery efforts. The Government congratulates Mr Moroney on his efforts and the tremendous job he has done to assist flood victims. The people of this State hold Mr Moroney in high esteem and affection for his decades of service to police and our community, and he has provided valuable support to those affected by the floods and those working on the recovery task.

Through Mr Moroney, and the efforts of the recovery team the Government established four disaster recovery centres at Lismore, Grafton, Kempsey and Coffs Harbour to provide a one-stop-shop for advice, support and assistance. A range of government agencies, councils and welfare services, whose staff did a terrific job, staffed these centres to provide residents, business people, primary producers and others with advice and much-needed emotional support. As we witnessed in the State's north, the process of helping a community to recover from a devastating natural disaster, such as a flood, storm or bushfire or other emergency, requires a sustained and coordinated effort. While the recovery process may begin at the same time as a response operation, it will inevitably finish some time after the response operation ceases.

The recovery process is not simply about the physical rebuilding. It also involves working to assist local industries, such as tourism, small business and primary production, to get back on their feet and help the wider region. The State's emergency response arrangements and responsibilities are long-standing, well understood and documented in detail in the State Disaster Plan and its supporting sub-plans. However, there were no guidelines or assigned responsibilities for recovery processes. Responsibility for recovery planning and management has been diffused across different organisations and committees. This bill will fix that. The appointment of the State Emergency Recovery Controller will bring together the relevant government agencies and organisations to ensure the necessary services and assistance are provided in a coordinated and timely manner.

I am sure all members would join me in placing on the record the gratitude of this Parliament for their enormous efforts of both those that worked at the frontline, through atrocious weather conditions, to help those in need and, just as importantly, the dedicated people who worked through the recovery process. I again thank everyone involved in the massive response to this natural disaster. These reforms will ensure that communities devastated by natural disasters and other emergencies continue to receive the full cooperation and support of the Government and other agencies to overcome the damage and hardship they have suffered. 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.**

## **PERSONAL PROPERTY SECURITIES (COMMONWEALTH POWERS) BILL 2009**

### **Second Reading**

**The Hon. HENRY TSANG** (Parliamentary Secretary) [5.38 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 granted.**

The New South Wales Personal Property Securities (Commonwealth Powers) Bill 2009 and the Commonwealth Personal Property Securities Bill 2009 are the product of several years of work undertaken by the governments of Australia to reform the law of personal property securities.

The Bills have been developed in consultation with all Australian jurisdictions.

The Personal Property Securities (Commonwealth Powers) Bill 2009 provides for the referral of power to the Commonwealth Parliament to establish a single national legislative scheme for the regulation and registration of security interests in personal property.

The reforms proposed by the Personal Property Securities Bill - the PPS Bill, are landmark. In a broad sense they are part of the package of reforms approved by the Council of Australian Governments (COAG) aimed at moving towards a seamless national economy through the reform of business and other regulation. The reforms will make it easier for businesses to operate across State and Territory borders.

More particularly, the reforms proposed by the PPS Bill will make life simpler for businesses and consumers. They will establish national comprehensive rules governing security interests in personal property. Central to the reforms will be a clear set of rules relating to security interests in personal property and for ordering priorities between competing secured interests in personal property, and the creation of a single national personal property securities register.

For those Members who are not familiar with this area of the law, I offer a brief background and outline of the PPS reforms.

The Standing Committee of Attorneys General first considered the concept of reform of the law relating to personal property securities in 1992, following the publication of an interim report by the Australian Law Reform Commission.

However, concerns raised by the finance and legal sectors resulted in no further action being taken. This position changed following the 2004 publication of a favourable report on the New Zealand personal property securities legislation, which had been passed five years earlier.

In early 2005, SCAG Ministers agreed to establish an officers' working group to examine reforms in this area. A great deal of work has subsequently been undertaken in examining existing PPS schemes in overseas jurisdictions and in consulting stakeholders.

The streamlining of Australia's personal property securities system follows similar reforms in the United States, Canada and New Zealand.

In April 2007 COAG gave their in principle support for the establishment of a national system for the registration of personal property securities supported by a referral of legislative power by the States to the Commonwealth.

In its communiqué of 3 July 2008 COAG acknowledged that Australia's overlapping and inconsistent regulations impede productivity growth.

The key objective of the reforms is to remove the uncertainty arising from the vast amount of Commonwealth, State and Territory legislation and its uneasy interaction with the common law and equitable legal principles governing personal property securities.

A personal property security is created when a financier takes an interest in personal property as security for a loan or other obligation, or enters into a transaction that involves the provision of secured finance.

Personal property is any form of property that is not land or buildings. It includes tangible property such as motor vehicles, machinery, office furniture, currency, artworks and stock-in-trade. It covers crops and livestock, and extends to accessions (like an engine that is affixed to a boat) and commingled goods (such as steel rods transformed into machinery). It also includes intangible property such as contract rights, uncertificated shares and intellectual property rights, for example, trademarks and patents.

Many Australians are affected by personal property security laws:

- as buyers of property that is subject to an encumbrance
- as consumers or business borrowers who might, for example, borrow money to buy a new car or equipment to expand their businesses
- as investors who might be contemplating buying into a business whose assets are heavily geared or owned by others
- or as financiers who provide the funds to facilitate such activities

The Commonwealth PPS Bill takes a functional approach to personal property securities by applying the same rules to all security interests in personal property regardless of the form of the transaction, who the grantor of the interest is, or the jurisdiction in which the transaction takes place. The PPS Bill also sets out:

- clear priority rules for all security interests in personal property
- a streamlined enforcement regime
- protections for businesses and consumers purchasing and dealing with personal property

The Bill will create a PPS regime that will benefit individuals, consumers and businesses by delivering more certain, consistent, less complex, and cheaper arrangements for securing loans with personal property.

A single national PPS Register will replace numerous registers currently operated by the Commonwealth, States and Territories. The PPS Register will be a publicly accessible, electronic record of personal property securities and will be updated and searchable in 'real time'.

A report on the general costs and benefits of PPS reform prepared by Access Economics identified the key benefits as being lower costs for lenders and borrowers, greater access to lending and improved certainty.

The main cause of high costs under the present system is the existence of multiple regimes and, more specifically, multiple registers. Lenders are subjected to the high cost of having to search multiple registers to check whether pledged property is already subject to a claim. Having one universal register will reduce costs as lenders will only have to pay one access fee for the information required, and may be able to reduce staff costs as the search and verification process will be less time consuming under the reforms.

Debtors will also benefit from lower costs, as lenders cost savings will be passed on. This could occur by way of lower fees or lower interest rates.

Reform to current PPS regulation will result in greater access to lending. Aside from reduced costs, the proposed reforms should encourage lenders to grant loans on the basis of a security interest in personal property.

At present, the scales are tipped in favour of real property, meaning that businesses without holdings of real property are at a disadvantage when seeking debt financing.

This imbalance is not reflective of the changing economic environment, in which "non-traditional" personal properties, such as intellectual property, are increasing in value relative to real property.

Greater access to lending will also have the flow-on effect of better borrower screening. Aside from increasing the pool of potential borrowers, lenders will get a more complete and accurate picture of a borrower's real worth and capacity to repay. By expanding the types of property that can practically be used to secure debt, there is greater scope for "good" lenders to signal their credit worthiness, reducing lenders' risk.

The PPS Bill was developed in consultation with the PPS Review Consultative Group, which included the Australian Consumers Association, nominees of the Ministerial Council on Consumer Affairs and the Standing Committee of Attorneys General, the Law Council of Australia and relevant industry bodies including the Motor Traders Association of Australia and the Australian Bankers Association.

The reforms provided for by the PPS Bill represent a significant change in the way personal property securities are regulated in this country.

I now turn to the referral legislation.

In accordance with existing practice, the Commonwealth cannot introduce legislation, which relies on a referral from a State Parliament, until at least one State has enacted and commenced referral legislation.

New South Wales has agreed to take the lead in introducing the legislation. This will enable the Commonwealth Government to introduce the Personal Property Securities Bill 2009 into the Commonwealth Parliament later this year.

I note that the referral legislation is underpinned by and reflects the provisions contained in an Intergovernmental Agreement.

The referral legislation provides that statutory licenses created under State and Territory legislation that are transferable will in principle be personal property security for the purposes of the PPS legislation. However, where State legislation expressly excludes a licence, right, entitlement or authority from the application of the PPS legislation, the State legislation will prevail.

There may be sound public policy reasons for preventing any form of security interest being registered against a statutory licence or other entitlement. In the coming months the Government will be introducing consequential amendments to various pieces of State legislation to clarify which transferable licenses and entitlements created under New South Wales statutes will be exempted from the national PPS regulatory scheme.

Nevertheless, the referral Bill does specifically identify that both water rights and fixtures are excluded from the PPS Bill.

To ensure an efficient trade in water the New South Wales Government established the Water Access Licence Register. The Register holds a separate record for each water access licence issued. Security interests are only one small part of the information contained on the Register, but they are integral to it. Under the proposed National Water Market System, each jurisdiction will maintain its own register.

The water sub-group of the COAG Working Group on Climate Change and Water has agreed that security interests in water rights should be excluded from the PPS Register. This will avoid inconsistencies between the Water Access Licence Register and the proposed national PPS Register.

Private sector stakeholders have shown strong interest in the PPS Act applying to fixtures. However, their inclusion would have significant potential to impact on the operation of the State Torrens Register and the integrity and indefeasibility of the Torrens title system.

The Standing Committee of Attorneys General has agreed to further work being undertaken and to a review of the current law and the future treatment of fixtures as personal property for the purposes of the PPS Bill.

Should New South Wales consider it appropriate to include water rights or fixtures in the PPS scheme at a later stage, the referral legislation includes separate commencement provisions in relation to these matters.

Lastly, the referral legislation does not refer power regarding State laws that provide for the confiscation, seizure, extinguishment or other forfeiture of property or interests in property, in connection with the enforcement of State laws. Examples include property confiscated under the Confiscation of Proceeds of Crime Act 1989 or the Criminal Assets Recovery Act 1990.

I am sure that Honourable members will appreciate the importance of the passage of the referral legislation - it will give certainty to both business and government agencies alike.

Business is supportive of the proposed reforms to personal property securities and will need to revise business practices before the commencement of the scheme in 2010.

Similarly, Government agencies, particularly those involved in the transfer of data to the proposed PPS Register, will need to take the necessary steps to facilitate the transfer of data and inform stakeholders about the proposed changes.

I am pleased that the New South Wales Government is taking the initiative in introducing this legislation.

It will facilitate the introduction of new arrangements that will apply consistently throughout Australia and make it easier for businesses to operate across State and Territory borders. The reforms should promote more certain and consistent outcomes; and have the potential to stimulate growth in areas currently squeezed out of lending by the current system.

This has obvious benefits both in the current economic climate and for the future of the Australian economy.

The passage of the referral legislation is a major step in bringing these important changes to fruition.

I commend the Bill to the House.

**The Hon. DAVID CLARKE** [5.39 p.m.]: The Opposition does not oppose the Personal Property Securities (Commonwealth Powers) Bill 2009. The referral bill, which includes the provisions of the Commonwealth Personal Property Securities Bill 2009, has come to fruition as a result of much work over past years by the Commonwealth and State governments, working together to reform the law of personal property securities. The object of the Personal Property Securities (Commonwealth Powers) Bill 2009 is to refer certain matters relating to security interests in personal property to the Commonwealth Parliament so as to enable the Commonwealth Parliament to make laws about those matters and, in particular, to legislate for a national personal property securities scheme. The proposed Act will be enacted for the purposes of section 51 of the Constitution of the Commonwealth, which enables State Parliaments to refer matters to the Commonwealth Parliament.

The bill before us provides for the referral of power to the Commonwealth Parliament specifically to establish a single national legislative scheme for the regulation and registration of security interests in personal property. The proposed national scheme has evolved as a result of a process starting in 1992 through the initiative of the Standing Committee of Attorneys General following a report of the Australian Law Reform

Commission. Following a period of relative dormancy the matter took on a new lease of life. In 2005 a working group was set up by the Standing Committee of Attorneys General, which consulted with a number of interested stakeholders. In 2007 the Council of Australian Governments expressed support for the establishment of a national scheme for the registration of personal property securities. The model that has resulted draws on similar reforms in the United States, Canada and New Zealand.

As Minister David Campbell stated last night in the other place when introducing the Personal Property Securities (Commonwealth Powers) Bill 2009, the Commonwealth cannot introduce legislation dealing with personal property securities that relies on a referral from a State Parliament until at least one State has enacted and commenced the legislation. New South Wales has agreed to do so by the introduction of the bill before us, which reflects the provisions contained in an intergovernmental agreement. This legislation will enable the Commonwealth Government to introduce the Personal Property Securities Bill 2009 into the Commonwealth Parliament in the near future. The proposed national scheme that will result from New South Wales and the other States and Territories referring their powers in this area to the Commonwealth will result in the creation of an uncomplicated, simplified scheme for security interests in personal property.

The scheme's purpose is to introduce a nationwide system that transcends the inconsistency and uncertainty arising from a mass of Commonwealth, State and Territory legislation in the field. In its place there will be a clear nationwide set of rules relating to security interests in personal property, regardless of the form of the transaction. There will be the creation of a single national personal property securities register. The advantage of a national register is that it will assist both intending lenders and purchasers to ascertain in advance whether properties are subject to any security interests. There will be a national system for dealing with priority between competing security interests in personal property. The end result will mean that it is easier for businesses to operate across State and Territory borders. The text of the Commonwealth Personal Property Securities Bill was tabled only last night in the other place. It is 295 pages in length. It has been a long time coming and is now proceeding through this Parliament with utmost urgency. It is anticipated that it will provide a major advance for consumers and businesses when the scheme for the national registration and regulation of security interests in personal property is up and running.

I do not propose to traverse all the details of the 295 pages of the Personal Property Securities Bill. An overview contained in the bill gives an insight into the fundamentals, general rules and concepts pursuant to which the national scheme will operate under the Act. First and foremost it is a law about security interests in personal property. A security interest is defined as an interest in personal property provided for by a transaction that secures payment or the performance of an obligation. The form of the transaction and the identity of the person who has title of the property will not affect whether an interest is a security interest. Personal property is defined as including many different kinds of tangible and intangible property, other than real property, including motor vehicles, household goods, business inventory, intellectual property and company shares. The bill identifies that water rights, fixtures, negotiable bills of lading and interests arising out of transfers of land are excluded from the Personal Property and Securities Bill. But the legislation does include separate commencement provisions in relation to water rights and fixtures so that States may, if they wish, add them in the future.

Personal property is known as collateral if it is or is anticipated to be the subject of a security interest. A security interest will be enforceable against a grantor when it attaches to collateral. A security interest attaches to a collateral when a person gives value for acquiring the security interest or does something else to acquire it, and in return the person gains rights in the collateral. A security interest is enforceable against third parties when it has attached to the collateral and either the secured party has possession or control of the collateral or a security agreement covers the collateral. If a security interest in collateral is perfected it takes priority over another security interest that is unperfected when the security interest comes to be enforced. A security interest is perfected if it has attached to collateral and certain extra steps—such as possession or control of electoral or registration on the Register of Personal Property Securities—have been taken to protect the interest, or the interest is perfected by force of the Act. The security party whose security interest has the highest priority is entitled to enforce that interest ahead of others.

The Register of Personal Property Securities enables secured parties to give notice of actual or prospective security interests. Notice is given by the recording of data about secured parties, grantors and collateral. The register may be kept electronically. The bill provides that a search by reference to the details of an individual grantor can be made only for an authorised purpose, as set out in the Act. A person who carries out an unauthorised search or uses data from an unauthorised search may be liable to pay compensation or a civil

penalty or both. The bill clarifies the role of the courts in proceedings that relate to security interest in personal property. It confers and clarifies the jurisdiction of the courts and provides for the transfer of proceedings between courts. It describes the registrar's role in judicial proceedings.

The bill details how it will interact with foreign laws, its constitutional operation and its relationship to other Australian laws that overlap into the same subject matter. It specifies rules relating to the vesting of certain unperfected interests. It clarifies rights to damages and compensation in relation to its contravention. It establishes how requests to secured parties for information may be given and how notices may be given, as well as details of other procedural and administrative matters. The bill deals with references to charges and fixed and floating charges in the proposed Act and it provides for an independent review of the Act within three years after it is enacted. The new national framework that will result from the passage of this referral bill will be advantageous to the people of New South Wales and Australia. It is a positive outcome of a cooperative approach between Commonwealth, State and Territory governments. Accordingly, the Opposition does not oppose the bill.

**Reverend the Hon. FRED NILE** [5.47 p.m.]: The Christian Democratic Party supports the Personal Property Securities (Commonwealth Powers) Bill 2009. The object of the bill is to refer certain matters relating to security interests in personal property to the Commonwealth Parliament so as to enable the Commonwealth Parliament to make laws about those matters. The proposed Act will be enacted for the purpose of section 51 of the Constitution of the Commonwealth, which enables State Parliaments to refer matters to the Commonwealth Parliament. The original draft of the Commonwealth Constitution, which was drafted by representatives of the States, was very restrictive in the powers transferred to the Commonwealth. In the early days those powers were limited.

Over the years decisions have been made in cooperation with the States to expand the Commonwealth's powers. This is another area where the New South Wales Parliament and, in due course, other State parliaments, refer power to the Commonwealth. Power cannot be assumed by the Commonwealth; it can only be given to the Commonwealth with the cooperation and willingness of the State Parliaments. The main argument for this legislation is to provide uniformity across the nation and to allow companies and businesses operating in different States to be able to relate to one set of laws rather than different State laws. If that argument is carried through to its final point it could be argued that the States have no role at all and therefore we would have only uniform Commonwealth legislation and no State legislation. The result of that would be that we would have no State parliaments—they would serve no purpose.

As a simple principle I am reluctant to transfer any powers to the Commonwealth. It should be done only when there are very strong arguments and reasons for it to maintain individual State rights. However, there seem to be some logical arguments in favour of this legislation, although it has not had much time for consideration in this Parliament. I understand that the personal property security matters referred to in the bill relate to personal property other than fixtures and water rights; fixtures which are goods other than crops that are affixed to land; and transferable water rights, which are certain transferable rights, entitlements or authorities, whether or not exclusive, that are granted by or under the common law or legislation of the State in relation to the control, use or flow of water.

I believe that one of the main purposes of this legislation is to deal with water rights. The Commonwealth has been very aggressive in securing water rights in various States, and New South Wales has been criticised by the Commonwealth for being reluctant to fall into line with the Commonwealth plans, but it is mainly to protect water rights for New South Wales and its farming community. When under economic pressures—and we are under pressure now with the recession—there is a tendency to make decisions that we may come to regret in due course, such as selling water rights to the Commonwealth. I support the State Government's caution in carefully examining the request from the Commonwealth. It may assist the Commonwealth's political agenda but it may not be to the benefit of New South Wales in the long run.

I note that there are quite a few clauses in this bill that refer to the issue of water rights. In effect, clause 6 refers to the Commonwealth Parliament the future amendment of the Commonwealth Personal Property Securities Act concerning security interests in transferable water rights. That is referred to in other aspects of this bill. As I said, one of the main purposes of the legislation seems to be to deal with water rights. I urge the Government to be very observant and ensure that it acts in the best interests of the citizens of New South Wales—as it has an obligation to do. Obviously, pressure would be put on the State Labor Government to cooperate with the Commonwealth Labor Government and, under pressure, the State Labor Government could

agree to things that may not be in the best interests of the citizens of this State. The State Government recently indicated its concern over the issue of water rights, and I urge the Government to continue its cautious approach to that matter. We support the bill.

**Ms LEE RHIANNON** [5.53 p.m.]: Dealing with the Personal Property Securities (Commonwealth Powers) Bill 2009 has been quite interesting. I began to think that it is probably like being pressured to sign a blank cheque. We have not had an opportunity to find out what is going on because the legislation has been brought on so quickly. The reason for the hasty passage of this bill through Parliament has not been explained. I understand that there have been numerous discussion papers, exposure drafts and a Senate inquiry for this scheme. Clearly, the need to manage personal property securities is real, but the issue has been hanging around for years. It is hard to understand why the matter now is so urgent that it has to go through both Houses in minimal time.

Pressure is on members of this House to come on board and support this bill, and that is essentially why—although I have never been asked to sign a blank cheque—I started to get the feeling that it is a similar situation. One concern that the Greens have with the bill is that it compromises the privacy impact assessment currently being undertaken for the proposed Commonwealth scheme. I understand discussions are still ongoing regarding outstanding privacy concerns that have not been resolved. I would be deeply concerned if this process were not allowed to reach its conclusion before the Commonwealth legislation is debated. My office is receiving conflicting information on this process. The Minister's briefing that I received this morning states that the bill will be introduced later this year, but the Minister's staff foreshadowed that it could take place as early as next week. I now understand the reason for the rush.

The privacy issues raised in the bill deal with searches of the Personal Property Securities Register—who can search the register, for what reason can they do a search, and potential other uses of the search data. While I am advised that some of the privacy concerns raised during the consultation and review process have been addressed in the latest draft of the proposed Federal legislation, it is important that the discussions are allowed to reach their conclusion. I thank the Minister's staff for their briefings. We have raised on a number of occasions our concern about how the privacy issue was being handled but, from one of the latest documents we have received, it seems to have been a good process, although it is hard to know because it has all been so rushed and we have not had time to check up on what we have seen. It looks like there has been consultation, a number of issues have been put on the table and the Government has come back with a response.

The Australian Privacy Foundation has raised some issues: that individuals should receive notice if their details are to be included on the Personal Property Securities Register before the registration is made; that individuals should receive a copy of the verification statement for a registration; the scope of the register—the registration of other interests indicates there will be scope creep; and the inclusion of details of individual grantors. The foundation has raised a number of points and, to be absolutely fair to the Government, it has come back with some very comprehensive points as to how the matter can be handled in what appears to be a good way. But, again, this is why we are raising the issue of the process. Are they just points on the paper? Is it a good discussion paper? Or is it another one of those occasions where the Government comes forward with some good proposals but it does not go any further and the proposals get left behind in the rush to bring on the legislation, which can be flawed as a result?

We are not sure where that process is up to and that is why we are raising this concern strongly. Nobody can deny that the rush is on. I call on the Government to gain an assurance from its Federal colleagues that the privacy impact assessment report will be finalised and publicly released before the Federal bill is debated. It is important that the Minister or the Parliamentary Secretary—whoever makes the speech in reply—puts that on the record. Otherwise, one would have to wonder what is going on and if the Government really is serious about the privacy matters that have been worked through extensively.

The Privacy Foundation and other interested groups need to know that the process of consultation on the new Federal scheme will go through to completion. Otherwise, one would have to ask why the process was started if it is not to be allowed to run its course. The Greens will not oppose the legislation but we have concerns about the haste with which it was brought and we have concerns about how the process has been managed with regard to the issues raised by the Australian Privacy Foundation. It is important that the Government puts on record what has been going on with the process to date.

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [6.00 p.m.], in reply: The referral of powers legislation before the House is a necessary step to enable the introduction of the Commonwealth Personal



Property Securities Bill into the Federal Parliament. The new regulatory regime will provide for a set of nationally comprehensive rules governing security interests in personal property and a single national online register of personal property securities. The proposed new arrangements will benefit both business and consumers by delivering more certain, consistent, less complex and cheaper arrangements for personal property securities. They will promote lower transaction and compliance costs for all parties involved in personal property securities transactions and encourage more diverse financing options.

Concerns were raised about the urgency surrounding this legislation. Both business and government agencies are looking for certainty concerning the new scheme. Once the legislation is passed, stakeholders will be willing to allocate resources to implement the new system. Business will need to make significant information technology changes, and that will require a long lead-time. Passage of the legislation will allow businesses to begin work on system changes to have them in place for the commencement of the personal property securities regime.

With regard to privacy, I am advised that the Australian Government has engaged external consultants Information Integrity Services to undertake a privacy impact assessment in relation to this bill taking into account the recommendations and comments of the Senate committee. The external agency performing the assessment held a consultative forum to seek the views of parties who have expressed privacy concerns about the bill. A report will be produced on the assessment and will be made available shortly. Consideration will be given to any proposed changes to the bill that may arise out of the privacy impact assessment. However, I note that the bill as currently drafted provides for a number of privacy protections.

Part 5.5 of the Commonwealth Personal Property Securities Bill deals with searches of the Personal Property Securities Register and specifies who may search the register and for what purpose. The register will contain a minimum of personal information. The bill provides that, where the collateral is non-serial numbered consumer property, the only grantor details to be collected about an individual are their name and date of birth. A person will be able to search the register to determine whether personal property is subject to an actual or prospective security interest. Searching the register for any other reason will be unlawful. Additionally, use of data obtained as a result of a search for a purpose other than that set out in the bill will be prohibited. A penalty of 50 penalty units or \$5,500 for individuals and 250 penalty units or \$27,500 for corporations applies for a breach of the relevant provisions. The registrar will have the power to investigate suspected contraventions.

The privacy provisions in the bill feed directly into the complaints mechanism in the Commonwealth Privacy Act 1998. An unauthorised search or use of personal information obtained in a search may constitute an act or practice interfering with the privacy of an individual for the purposes of the Commonwealth Privacy Act. Where a complaint is lodged under the legislation, the Privacy Act would apply as though the complaint involved a breach of the information privacy principles and may also give rise to a claim for damages.

Reverend the Hon. Fred Nile referred to water rights. The Personal Property Securities (Commonwealth Powers) Bill will not cover security interests in water rights at its commencement and water rights will not subsequently be part of the regime unless the relevant State or Territory Minister agrees. The referral legislation has been drafted so that the provisions referring power in relation to security interests in water rights can be commenced separately from the other provisions. The Government's intention is not to refer this power initially.

To ensure an efficient trade in water, the New South Wales Government has established the Water Access Licence Register. The register is administered by the Department of Lands on behalf of the Department of Water and Energy. The register holds a separate record for each water access licence issued. Each of these records shows water access licence details such as the volume of water concerned, extraction details, the water source, the expiry date and any conditions. The record also shows current ownership details and leases as well as security interests. Security interests are only one small part of the information contained on the register, but they are integral to it.

The issue of nationally consistent water access licences is being examined through a separate Council of Australian Governments process. Additionally, a national water initiative is also being developed. This is a blueprint for national water reform that has been agreed to by the Commonwealth Government and all State governments. Among other things, the national water initiative aims to expand and foster the trade in water to encourage the most profitable use of water with the aim of achieving the best environmental outcomes. The water sub-group of the Council of Australian Governments Working Group on Climate Change and Water met in August last year and agreed that security interests in water rights should be excluded from the register.

Excluding water access licences from the bill at this stage will avoid inconsistencies between the Water Access Licence Register and the proposed national Personal Property Securities Register. Should New South Wales consider it appropriate to include water rights or fixtures in the personal property securities scheme at a later stage, the referral legislation includes separate commencement provisions in relation to these matters.

I have been further advised that, aside from the issue of providing certainty, the urgency of the legislation has been necessitated by its prioritisation by the Council of Australian Governments and the need to get the substantive bill through the Commonwealth Parliament by the end of this session, which means that it must be introduced next week. New South Wales agreed to be the representative State to commence its own referral legislation. Before the Commonwealth passes its legislation at least one State should refer its power, and New South Wales has agreed to do that. In order to comply with the Commonwealth timetable, it was necessary to pass the New South Wales bill urgently.

Similar reforms have already successfully been introduced in overseas jurisdictions, including Canada, New Zealand and the United States. This bill draws upon the laws and experience of these and other jurisdictions. The New South Wales Government has supported the proposed reforms from the outset and is pleased to take the initiative in introducing legislation that will allow the reforms to proceed nationally. 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.**

## **RESIDENTIAL TENANCIES AMENDMENT (MORTGAGEE REPOSSESSIONS) BILL 2009**

### **Second Reading**

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [6.08 p.m.], on behalf of the Hon. John Robertson: I move:

That this bill be now read second time.

I am pleased to introduce the Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009, which will, for the first time, give all tenants in New South Wales important protections when a mortgagee seeks to recover possession of rented premises. Presently, the amount of notice given to tenants to vacate in these situations is entirely up to the mortgage lender involved. Some unfortunate tenants return home to find that the locks have been changed by the bank and a note pinned to the door advising them about how to go about retrieving their possessions. Other tenants may be given only a few days or a week or so to move out, if they are lucky. Clearly, this is an unacceptable situation to all fair-minded people and tenants deserve to be better protected.

New South Wales has one of the highest proportions of people living in rental homes in Australia, with about one-third of the community renting their homes. The Government has conducted a comprehensive review of existing tenancy laws. During the consultation period, urgent legislative reform regarding the plight of innocent tenants caught up in the crossfire between mortgage lenders and landlords received almost unanimous support from the community and peak organisations. This Government intends to introduce a wide range of reforms to the tenancy laws arising from the recently completed review. The Minister for Fair Trading expects to be in a position to release an exposure draft bill for public comment before the end of the year. However,

given the impact of the global recession, the Rees Government believes it is critical that these amendments, which will protect tenants from having to pack their bags at the whim of a mortgagee, be separated from the overall reform package and introduced without delay.

There are more than 644,000 residential leases in the private rental market in New South Wales, which is dominated by small investors who rarely own more than one or two properties. The global recession has created unprecedented challenges, exposing more mum and dad investors to the risk of defaulting on mortgages. Among the leading reasons borrowers default on their loans are temporary unemployment, illness or relationship breakdowns. We are all acutely aware that unemployment is set to increase as a result of the current global recession. While there has been a slight downturn in repossession writs executed in New South Wales, the Rees Government is being upfront with the people of New South Wales about the future. In the first three months of this year 395 writs were executed compared to 423 writs executed in the first three months of 2008. While this figure includes owner-occupiers, many innocent tenants through no fault of their own face losing their homes with little or no warning as a result of the financial problems of their landlords.

Being evicted in such a manner has a significant impact on the lives of affected tenants. That is why the Government believes it is absolutely critical that these matters be given priority. Specifically, the bill has three main objectives: firstly, to require mortgagees to give tenants at least 30 days notice if they wish to recover vacant possession of the rental property; secondly, in cases where a tenant is told to leave by a mortgagee, to specify that no rent is payable during the period of the notice given; and, thirdly, to put in place a simple system to allow a mortgagee to authorise release of the tenant's rental bond.

The first objective is the most important, as it will put an end to the practice of tenants being asked to leave with little notice. The 30-day notice period was one of more than 100 reform proposals contained in the report entitled "Residential Tenancy Law Reform—A New Direction", which was released by the Government for consultation purposes. This particular set of proposals regarding mortgagee repossessions drew a wide cross-section of support in submissions—most people acknowledged the obvious inequity experienced by tenants under the present system. The Government considers that 30 days represents a fair balance between the interests of tenants and mortgagees. It will give those tenants affected a reasonable opportunity to find another rental property, while not unduly delaying the sale processes for the mortgagee.

Thirty days is consistent with the current notice period that can be given when a landlord ordinarily sells rented premises and the new owner requires vacant possession. The period is also consistent with the current approach taken in Queensland, Victoria and Tasmania, which all require tenants to be given at least 28 days notice by a mortgagee in such circumstances. That said, the bill will also allow mortgagees the flexibility to give tenants more than 30 days notice to vacate or to extend the notice period given already if the tenant is experiencing difficulty finding other accommodation. I appeal to mortgage lenders in these difficult economic times to consider compassionately all such requests for more time from tenants on a case-by-case basis.

New South Wales will lead other jurisdictions in the provision of a rent-free period for tenants who find themselves caught in such a difficult situation. The bill provides that when a tenant is given notice to vacate by a mortgagee, they will not be required to pay any rent, fee or any charge during the 30-day notice period, and they can recover any rent that they may have paid in advance for that period. This will provide a level of immediate compensation for tenants to help cover their relocation expenses such as removalists' costs and any bonds for electricity and other utilities to be connected at their new home. Unfortunately, there have been occasions where tenants have been evicted by a mortgagee just days or weeks into a new tenancy agreement, resulting in the money the tenant had just spent on moving in essentially being wasted.

The rent holiday provided by the bill is the first time such a measure has been introduced in Australia and it will provide a quicker, simpler and more effective way of ensuring that some funds are on hand to meet the immediate expenses of tenants placed in this situation through no fault of their own. Tenants can and will continue to be able to seek additional compensation from their former landlord for the loss of the tenancy, but this takes time and effort on their part. Where the landlord has financial difficulties or has been declared bankrupt, pursuing them for compensation is often a fruitless exercise. Where a tenant already has paid rent in advance covering part of the rent-free period, he or she will be entitled to a refund from whoever has the money—the landlord, the landlord's agent or the mortgagee.

If the refund is not made, the Consumer, Trader and Tenancy Tribunal will have the power to make appropriate orders. This could include ordering the mortgagee to pay the money from the sale proceeds in the event that the landlord is bankrupt or the amount is otherwise irrecoverable. The New Directions report had

initially proposed that the rent holiday apply for only a fortnight. However, many submissions to the review argued that this was inadequate. The Government has listened to the views of the public on this matter and has decided to extend the rent holiday to equal the notice period.

The third important improvement contained in the bill will enable the Rental Bond Board to refund the tenant's rental bond after receiving written authorisation from the mortgagee. Presently the Landlord and Tenant (Rental Bonds) Act does not recognise mortgagees in any capacity. This can cause delays in obtaining a bond refund for tenants if they cannot get the former landlord or agent to sign the claim form. Allowing mortgagees who issue eviction notices to also authorise bond refunds should help more tenants get their bond back before they need to pay the next one. This reform received general support when it was first outlined in the New Directions report. This proposal will not interfere with the right of the former landlord to lodge a claim against the bond if, for instance, they believe the tenant owes them rent from before the mortgagee obtained possession. If such a claim is received before the bond is released in accordance with a mortgagee authorisation, the Rental Bond Board will retain the bond until the dispute is settled between the parties or by the Consumer, Trader and Tenancy Tribunal.

The bill contains a number of other initiatives that are largely ancillary to the three main objectives. It clarifies the right of the mortgagee, or more specifically the real estate agent they appoint to handle the sale, to gain access to show the property to prospective purchasers. This access will be limited to a reasonable number of occasions and will be subject to agreement being reached with the tenant on the actual dates and times of each inspection. The bill makes it clear that all existing tenants will benefit from these changes. This will apply despite the terms of mortgage contracts or the wording of Supreme Court orders. The only exception will be in those cases where Supreme Court proceedings have already been finalised and the mortgagee is in the process of recovering possession.

The terms of the bill also make it clear that mortgagees will face the same penalties as landlords if they recover possession of a rented property without giving the required notice to vacate or before the specified date in the notice has expired. The Government believes that the bill as presently drafted is sufficiently clear in all aspects. However, in recognition of the bipartisan support for these important measures the Government will be moving an amendment to clarify one provision. The amendment makes clear the commencement date of the rent holiday period for tenants who are asked to leave by a mortgagee. There appears to be some confusion, particularly among members of the Opposition, as to when the rent holiday period is meant to start. This amendment spells out that the tenant is only entitled to stop paying rent once he or she is given the 30 days notice to vacate by the lending institution.

The rent holiday period was never intended to commence, as suggested by the member for Baulkham Hills in the other place, as soon as the owner falls behind with repayments, or when the mortgagee issues him or her with a notice of default, or when the lending institution applies to the court to foreclose. Nor was it meant to start when the Supreme Court makes a judgement order or issues a writ of possession. The rent holiday period is only meant to apply when a mortgagee gives notice to the tenant to vacate. Naturally, in most cases this will be shortly after the court order is made, which means there is essentially little difference between the two timeframes in most cases. However, the Government accepts that, from time to time, there may be some delay from when the court makes its order to when the mortgagee issues a notice to vacate to the tenant.

This Government amendment will remove any doubt and potential for legal argument that the tenant must still keep paying rent up until such time as they receive the 30 days notice from the mortgagee and that the rent holiday period only lasts for the period of the notice. The measures in this bill provide certainty for financial institutions and those investors who have already lost their property to the bank, and they introduce fairness for tenants caught in the system. Given that mortgagees already deal with similar notice requirements in most other States there should not be any difficulty in complying with these new provisions. The Tenants Union is on the public record as calling for these changes to be made to the tenancy laws as a matter of urgency. Other peak organisations such as the Real Estate Institute and the Australian Banking Association also support these reforms. The Property Owners Association does not oppose giving better protection to tenants in this fashion. These measures deserve bipartisan support.

The Hon. Catherine Cusack, when she was Opposition spokesperson for Fair Trading, is on the record committing the Opposition to supporting a bill of this nature and I am pleased to see that support was reaffirmed in the other place last night. The issue of requiring landlords to disclose to prospective tenants if they are behind in their mortgage payments has been raised with the Government. While the Government can see some merit in this proposal, the Government is reluctant to introduce such requirements without proper consultation. The

general issue of pre-disclosure of material facts to prospective tenants is being considered as part of the broader reforms to the tenancy laws. The Government believes issues surrounding the disclosure of mortgage details should be considered as part of the larger reform package to come.

Some have suggested that when a landlord has defaulted, the mortgagee should be required to step into the shoes of the landlord so that the tenancy can continue at least until the property is sold. While the Government considered this approach, we do not agree that this is the way to proceed. This would impose costs on mortgagees to take over the tenancy management role. Such costs would be a particular burden on smaller mortgagees. Some tenants may not wish to go through the inconvenience of having a steady stream of potential buyers traipsing through their home only to be asked to leave at the end of the day. They may prefer a clean break. There will also be those who will suggest that these laws should have been introduced earlier. The Government does not accept that it should have rushed through hasty, ill-prepared legislation just for the sake of being seen to do something.

We have taken the time necessary to examine all of the complex issues and potential ramifications to ensure that no unintended consequences result from these amendments. These changes are important not only for tenants but for landlords and mortgagees as well. They deserve proper consideration. These amendments should make mortgagees stop and think about whether they really need to evict tenants in order to sell the property. The bill specifically recognises the option for mortgagees to offer the tenant a new lease if they want the rent to keep coming in until the premises are sold. If mortgagees still desire vacant possession, the bill will ensure that tenants are given a reasonable period of time to find another home and immediate compensation to help with the costs involved. In doing so, the bill will not unduly interfere with mortgagee sales or discourage investment in the rental property market. I am proud to say that this bill is the result of a genuine consultation process.

I wish to acknowledge the contributions of all the organisations and individuals who assisted in the development of this bill. In particular, I make special mention of the role played by Alison Routley, from the Policy Division of the Office of Fair Trading. Alison was responsible for reading and summarising the more than 1,500 submissions received during the course of the review. Sadly, Alison recently lost her courageous battle with cancer. This bill is a fitting tribute to her dedication and hard work. The bill is tangible evidence of the Rees Government's commitment to helping working families and achieving social justice for vulnerable members of the community, and I commend it to the House.

**The Hon. CATHERINE CUSACK** [6.21 p.m.]: It is an understatement to say that I have been looking forward to the Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009. It is a very, very simple piece of legislation that has taken the Government nearly five years to deliver. The bill contains a grand total of four clauses. It rectifies a well-known injustice in the tenancy Act—an injustice that I know the Real Estate Institute, the banks, the Tenancy Union and all political parties have been united in prevailing upon the Government to do something about, saying it is a flaw and it must be rectified. I cannot think of another tenancy issue that has had such consensus and such a sense of urgency. And these four little clauses, first proposed in government review papers in 2004 and then in 2007, have such significance and benefit to the affected families that it is simply disgraceful that a Labor government would have delayed this reform for so long.

While the Government has been dithering and delaying, thousands of good tenants with valid leases, faithfully paying rent, have been turfed out of their homes with less than 24 hours notice. I have spoken to a number of them. They cannot believe that, although they have met all their legal obligations, they may be evicted with no notice. It is a position they thought would have been rectified 200 years ago. Here in the twenty-first century the New South Wales Labor Party has tolerated their predicament; their predicament is still legal today. This bill, firstly, requires a mortgagee who repossesses a property—and generally mortgagees are banks or finance companies—to give 30 days notice to tenants to leave. Secondly, it gives the tenant a 30-day rent holiday.

The bill deals with the problem of mortgage repossessions where a landlord defaults on repayments and the mortgagee resorts to Supreme Court action in order to take possession of the collateral offered for the loan, that being the investment property. In such a situation any tenants living in the property find their leases are voided by mortgagee repossession action. They are innocent and unwitting victims of the investor's default on a loan. Their situation is dreadful. Tenants who realise foreclosure is imminent cannot leave the property because they are bound by the lease. They are forced to wait for an eviction order before they can leave. When the eviction order arrives, they have no notice whatsoever.

However, most tenants are in an even worse situation. They are not even aware of foreclosure action. They have no standing in the matter and keep paying their rent, as they are required to do, blissfully unaware that the property they live in is about to suddenly change hands. I might add, these people pay their rent to landlords who decide, now they have defaulted, they will not use the rent to repay the loan; they are putting the money in their pocket and getting away with it. Tenants pay the rent and they are out of pocket, and the bank or the finance company is out of pocket. It is unethical and disappointing to leave these groups with so few rights.

Foreclosure is different to the sale of a property. A lease is voided by a foreclosure. In the case of sale there is a proper process for ending a lease. In the case of foreclosure when leases are voided, none of the usual eviction protections apply. Usually, the first the tenant hears of the matter is when the Sheriff knocks on the door and advises them the property has been repossessed and that they must quit the premises immediately. This places honest, hardworking people in a terrible situation. During my period as shadow Minister for Fair Trading, some of the affected families I spoke to were literally being tipped onto the street at the height of the worst rental crisis in the history of this State, with rental vacancies at less than 1 per cent, and astronomical rents being demanded for new leases, if indeed suitable premises could be found at all. The cases that I dealt with were families shell-shocked by their evictions, trying to find a place to live that enabled them to continue to access transport to get to and from work and that enabled their children to continue to attend their local school. Again transport was the key issue for them. They wanted to maintain their community connections.

The rental crisis was so severe that the families I spoke to were unable to access anything in the short term and were living, or as some of them put it "squatting", with friends or family in very undesirable conditions. It was humiliating, depressing and, most of all, it was totally unjust that these responsible, organised, virtuous citizens should have their lives hurled into this chaos of homelessness. The bill means such unfortunate people will at least be entitled to 30 days notice. That is a huge improvement. The 30-day rent holiday is welcome for those whose leases are being torn up. It is compensation that defrays the cost of moving. It brings them into line with those whose landlord has broken their lease and is therefore required to meet removalist costs. It gives some equity to a situation that at present is manifestly unjust.

There are some quibbles with the bill in that it gives the same protections to people who have a lease to those enjoyed by people who are out of lease. There is the suggestion that if we were to be equitable in the way we treat the out-of-lease people, they should not get the 30-day rent-free period. I have sympathy for this position, which has been argued by my friend the Hon. John Ajaka. I note that he is unable to participate in the debate today due to a family emergency. I am very sorry about that because I am sure that he would wish to be here. We have discussed these problems over the past two years, a period during which we have both beseeched the Government to solve these problems. He is very knowledgeable about these laws and I place on record his views that we should be striving for consistency and equity. It is remarkable that the Government has failed, after five long years of contemplation, to achieve this.

The Opposition of course supports this bill. As the Parliamentary Secretary indicated, we have been calling on the Government to introduce such provisions since October 2007 when I offered Minister Burney bipartisan support to expedite this legislation through Parliament. Of course, my offer was refused, not very politely—but then Minister Burney is not famous for her politeness.

**The Hon. Penny Sharpe:** She is not polite to you.

**The Hon. CATHERINE CUSACK:** She is not polite to me; that is quite correct. The Parliamentary Secretary has stood in this Chamber tonight and demanded bipartisan support for these provisions, and certainly we will give bipartisan support for this bill, but the manner in which we do this is very different from the Government's view of bipartisanship that it displayed two years ago when this was being raised as an issue. However, I will come to that. The new Minister for Fair Trading, Virginia Judge, seems not to be aware of the attitude adopted by her predecessor, and of course it is my duty, as a member of the Opposition, to remind Government members of the history of matters when their memory lets them down. In this case, the agreement-in-principle speech of Minister Judge is one of the worst cases of political amnesia I have ever encountered. And given that this is a very forgetful Government, I would have to say that really says something. In her agreement-in-principle speech, Minister Judge said:

During the consultation period urgent legislative reform regarding the plight of innocent tenants caught up in the crossfire between banks and landlords received almost unanimous support. New South Wales has one of the highest proportions of people living in rental homes in Australia, with about one-third of the community renting their homes ...

I expect to be in a position to release an exposure draft bill for public comment before the end of the year. However, given the impact of the global recession, the Rees Government believes it is critical that these amendments, which will protect tenants from having to pack up their bags at the whim of the mortgagee, be separated from the overall reform package and introduced without delay.

I am glad that the Minister does consider this legislation to be urgent. However, I remind the Minister of the history of the matter, which was so hopelessly and needlessly delayed by the Government. The main body of the Act was reviewed in, I think, 2004. It took so long for the Government to address the recommendations of that review that they became outdated and it was necessary to conduct another review, which was done in September 2007, to update the outdated review that the Government had done nothing about. The September 2007 review paper states:

Findings and proposed reforms

The review finds that the current system is unfairly weighted in favour of mortgagees over the interests of tenants who enter into leases in good faith. The outcome of Supreme Court action between the mortgagee and the landlord should not automatically end a tenancy, particularly given that the tenant is not usually involved and sometimes not even aware of these proceedings. A process which encourages mortgagees to more carefully consider continuing the tenancy until the property can be sold would be to the benefit of tenants and mortgagees in many situations.

In the last two years, with interest rates rising, there has been an increase in foreclosures, with some lenders showing a propensity to take action over relatively minor arrears. Mortgagees should continue to have the flexibility to require vacant possession if they so wish, provided the tenant is given adequate notice. Thirty days, similar to what applies in Queensland and Victoria, is considered appropriate.

Where a mortgagee elects to end a fixed term tenancy early the tenant will have unexpected expenses to pay through no fault of their own. They should be able to use at least two weeks rent after being given notice to cover some of these costs. This is a more practical measure than giving the tenant the right to pursue the former landlord or the mortgagee for compensation after the event. A process to ensure the swift refund of the bond should also be put in place.

It is therefore proposed that:

- 39) tenants be entitled to at least 30 days notice if a mortgagee decides to obtain vacant possession, either during or after a fixed term tenancy; and
- 40) where a fixed term tenancy is ended early by a mortgagee, the tenant be able to withhold 2 weeks rent, or a higher amount as agreed, to offset relocation expenses, and a process put in place to allow the bond to be released.

*[The Deputy-President (The Hon. Amanda Fazio) left the chair at 6.33 p.m. The House resumed at 8.00 p.m.]*

**The Hon. CATHERINE CUSACK** [8.00 p.m.]: The Government delivered its review of the Tenancy Act, recommending the changes to legislation that we see before the House tonight, in September 2007. In my remarks prior to the break I was talking about the events of September 2007. At that time the Opposition consulted the Bankers Association, the Tenants Union and the Real Estate Institute, and within a matter of weeks we adopted the recommendations of the report as policy. We did this quickly because we knew it was urgent. During the estimates committee hearings in October 2007 I put the position to Minister Burney, and I would like to quote from that transcript. The questioning went on:

The Hon. CATHERINE CUSACK: ... On the issue of repossessions, you have outlined to the Committee a proposal that is being considered whereby tenants whose leases are nullified by repossession of the property are to be given 30 days notice.

Ms LINDA BURNEY: Yes.

The Hon. CATHERINE CUSACK: The Opposition is willing to make an offer of bipartisan support to bring that particular proposal forward so that urgent legislation can be introduced in time to assist families dealing with repossessions before Christmas. Will the Government be willing to accept our offer of bipartisan support in order to provide urgent relief to these tenants?

Ms LINDA BURNEY: I would hope that there would be bipartisan support. It goes to the question that Ms Lee Rhiannon asked me earlier. I would hope that there would be bipartisan support in terms of the residential tenancies review. As I said, it is a major piece of work, and it is something that obviously is required to go through Cabinet. In relation to the timeframe, I can assure you that there is no dilly-dallying. We are bringing it forward through the proper processes as we speak. I understand your question—

The Hon. CATHERINE CUSACK: We just feel that these tenants are more urgent than anything else.

Ms LINDA BURNEY: It is reasonable that there is a discussion paper out in the community now, and we have to give all the residential tenancy representatives, real estate agents and the public an opportunity—I am required to give an opportunity for proper consultation on that discussion paper.

I can assure the Committee and the Parliament that it will be a balanced outcome. I will not cut off the consultation process to hasten legislation into the House. I want the legislation to be the best legislation, the type of legislation that all the players can feel they have ownership of, and it will be introduced in the autumn session of Parliament.

The Hon. CATHERINE CUSACK: As an interim measure for this specific group of people, we know a big flaw exists. If the house is sold their lease will continue on but not be interrupted. We know that the flaw needs to be addressed, and it is urgent for these families facing eviction before Christmas at no notice. The Opposition is willing to give bipartisan support for this matter to be brought forward urgently. Will the Government consider doing that to give some security to these families before Christmas?

Ms LINDA BURNEY: I know this is probably your press release but I will not give that commitment because there is a proper process in place. There is a three-month consultation process for the people who will be affected by this, the industry and the tenants union—I have had discussions with all of these players. There is a three-month consultation process and then there will be legislation brought in immediately once the proper consultation process is undertaken, and that is my path.

This was in October 2007. I state for the record there was no Opposition media release. It was a genuine offer of bipartisanship. My first media release on the issue occurred many months later when, in spite of the Minister's assurances, nothing had been done and hundreds more bewildered families had been evicted—all of these people, as I say, in utter disbelief that they had been in a legal tenancy agreement, had been paying properly and on time and suddenly they are out of their homes with no notice. It is incredible to the people of New South Wales that this is legal under our laws. The immediate reaction when it happens to you and you face the incredible hardships that this poses at no notice is that this cannot be legal. I am sorry, it is legal in New South Wales. It was legal then and it is legal now.

Following the estimates hearings, in October 2007, I was contacted by numerous tenants in a state of disbelief and distress that they were being evicted into a hostile rental market with no notice and no rights. These worst cases occurred, I would like to say, mainly as a result of action by finance companies rather than banks, who are much criticised and were much criticised by Minister Judge in her agreement in principle speech on the bill. It became clear to me, in looking for a solution to this problem, that the major offenders, the truly heartless and the people lacking in any compassion, were the finance companies. The banks were searching for a solution to this problem, because it was embarrassing. The state of our legislation is as embarrassing to the people who have to take possession as it is humiliating to the tenants. All that was required was for the Government to act, and I have to say, throughout the entire debate—and I am going back more than two years now—the banks, along with everybody else, were begging the Government to act on this as a matter of urgency.

An issue blew up in the media in June 2008. It involves a woman and her children, again a hardworking family who paid its rent—a classic case. The *Sydney Morning Herald* had given positive coverage to Minister Burney in 2007 when she announced her intention to make these reforms. The *Sydney Morning Herald*, like the Opposition and like everyone in the industry, was utterly fed up with the lack of action and it ran a strong story about this dispossessed family and the struggle it was facing. I congratulate the *Sydney Morning Herald* on the strong stand it took to show how outrageous the situation is. I say to anyone in this position: Blame Linda Burney. She had an offer to fix it and she said she would not. She specifically ruled that out. After the story in the *Sydney Morning Herald* there was an interview between Alan Jones and the then Minister for Fair Trading, Linda Burney. It went on:

Alan Jones: Are you falling over to accommodate the banks?

Burney: No—I'm actually meeting with David Bell from the bankers association this afternoon to discuss this particular issue. But the legal situation affecting these particular people has become untenable ...

Jones: You've conceded that the current law allows the banks to evict good tenants without notice after the landlord defaults on the loan?

Burney: That's correct.

Jones: That's unfair.

Burney: Yes.

**The Hon. Ian West:** What is the relevance of Alan Jones?

**The Hon. Christine Robertson:** Are you quoting?

**The Hon. CATHERINE CUSACK:** Yes. I confirm to the honourable member I am quoting from an Alan Jones interview with the then fair trading Minister, Linda Burney, on 23 June 2008. The Labor Party also asked me what is the relevance. The relevance is that today the Minister and the Parliamentary Secretary are presenting this as urgent, as something that needs to be done quickly. I am quoting from an interview that Alan Jones undertook on 23 June 2008. I remind members that the date today is 17 June 2009. So this is 12 months ago and Alan Jones in this interview was begging the Minister to act quickly. That is the relevance of quoting from this transcript of the Minister's interview with Alan Jones. The interview went on:

Jones: You've conceded that the current law allows the banks to evict good tenants without notice after the landlord defaults on the loan.



Burney: That's correct.

Jones: That's unfair.

Burney: Yes.

Jones: In October last year—today's June Linda—in October last year you rejected the Opposition's offer of bipartisan support—

**The Hon. Penny Sharpe:** Point of order: All members agree with the bill. Giving a long-winded history lesson of what the previous Minister may or may not have done is irrelevant to this bill.

**The Hon. Don Harwin:** To the point of order: That was not really a point of order. The comments of the Hon. Catherine Cusack were clearly within the normal conventions of a second reading debate. She is talking about the background of the bill and the Government's record on this exact matter. I submit that there is no point of order.

**The PRESIDENT:** Order! I remind members that in this debate speeches are constrained by the long title of the bill and should not be tedious or repetitious. However, the Hon. Catherine Cusack has not contravened the traditions of this House and she may proceed.

**The Hon. CATHERINE CUSACK:** I continue with the quote:

Jones: In October last year—today's June Linda—in October last year you rejected the Opposition's offer of bipartisan support to move legislation then to close the loophole. I would say to you surely the tenant agreement should be honoured. You should tell the banks this mob that race in rapaciously and greedily to turf some bloke out because interest rates have gone up and he can't pay his loan you should say to the banks today listen, if there's a tenant agreement there, you honour that agreement.

Burney: There's two things that are in place, one is that there has been legislation go through cabinet ... where banks can no longer sell at bargain basement prices, they must get the market rate for the House that they are selling ... that's gone through ...

It is interesting that that legislation is the next item of business for the House to debate, yet it is a year ago that the Minister said that. She then said:

When the Opposition offered bipartisan support it was frankly a stunt it was done in the middle of senate estimates—

Jones: It was urgent, you see you said you'd been reviewing the legislation for four years and you said last October, and I'm quoting you, 'there's no dilly dallying, it will be introduced in the Autumn session of Parliament'. Linda, Parliament adjourns next week for a three-month winter break.

Burney: Yes and I'm not going to argue with you about that Alan. The legislation is at this stage ... my preferred position is to completely re-write the residential tenancies act instead of doing it in a piecemeal fashion.

Jones: But meanwhile these poor coots are being chucked out.

Burney: That's—if I can just finish, the other option that I have is to look at two or three of the major issues that have emerged and bring that forward and perhaps this is one of those issues. When we started the review of the residential act we didn't have this terrible situation.

The Minister goes on to talk about the terrible situation regarding the incredibly tight rental market that honourable members will recall, with vacancy rates under 1 per cent, and extortionate rents being asked of all people trying to enter the rental market. However, in the case of those families who had been paying the rent regularly, who believed they had a legal lease and whose ordinary interpretation was that they were completely secure in their accommodation, to find themselves in this situation was appalling and unacceptable: it was un-Australian. The irony is it was not what the industry wanted and the Tenants Union agitated strongly about the problem.

It continues to amaze me that the Labor Party could be so impervious to the plight of those people. I am a big fan of Midnight Oil's music and some of Peter Garrett's songwriting. I was listening to one of his songs on the weekend, *Put down that weapon*. One line of the song is, "They keep talking about it, they keep talking ... ". If ever there was an example of people talking, this is it. The Government ignored the fact that thousands of good tenants who were paying their rent and their taxes were out on the street at a time when the rental market was difficult. It staggers me that we have this bill on 17 June 2009 when the matter was recommended in 2004 and should have been acted on urgently in 2007. Minister Judge in her agreement in principle speech states that the Government realises that the matter is urgent and brings it forward as a special case. When I go back through

the history of the matter I find the spin of the Labor Party quite astonishing. The extent of spin and lack of genuine compassion make me dizzy. I note in the Minister's speech an appeal to mortgagees who repossess. She states:

This new legislation will require 30 days notice. I appeal to you on the grounds of compassion that you should consider extending it beyond that.

This is not a realistic plea by the Minister because, as I have just indicated, mortgagees tend to be banks and finance companies seeking to recover collateral for loans that have been defaulted on by people and they are not in the business of being landlords. Therefore, it is probably not a realistic plea but it reads very nicely in *Hansard* and it certainly makes the Government sound very compassionate. I ask the House to weigh that against the record of this Government, which, despite knowing about the problem, ignored the plight of these people. The Government received recommendations from its own department and offers of bipartisan support. During the tight rental market when interest rates were high and when one-third of Australia's mortgage defaults were occurring in western Sydney, when property prices were falling below the value of the loans and landlords were defaulting, the Government ignored a huge number of people in a part of this State that Labor loves to trumpet as its own.

I talk to them on the phone. I know that Ministers are very busy and genuinely have a lot to do and have many engagements. They are surrounded by lots of people who deal with inquiries to their office and as a result they rarely get to speak to the individuals directly affected. I notice that the Hon. Christine Robertson is giving a heavy sigh here. This is boring her, is it?

**The Hon. Christine Robertson:** Point of order: I find that extraordinarily offensive. I was not in any way addressing the speech by the honourable member and I find it offensive that she adds me to *Hansard* in that fashion.

**The Hon. CATHERINE CUSACK:** I can only take the honourable member at her word.

**The PRESIDENT:** Order! I ask the Hon. Catherine Cusack to consider withdrawing the imputation.

**The Hon. CATHERINE CUSACK:** I withdraw the imputation.

**The PRESIDENT:** Order! This is an important debate and I remind those members who may find it difficult to resist the temptation that all interjections are disorderly.

**The Hon. CATHERINE CUSACK:** I appreciate your ruling, Mr President. When one is speaking and one hears groans, yawns and sighs it is difficult to put the correct interpretation on the motive behind such utterances. I apologise to the Hon. Christine Robertson if she had something else on her mind at the time. It is unbelievable that this Government is appealing to anybody to show compassion for people in these circumstances when it has been so negligent, when it has played politics for so long on this issue. This afternoon another person in this dilemma contacted my office.

I find it incredible that the Government could, po-faced, ask the rest of the community to show compassion for such people when it has for years had the opportunity to enact this legislation. As I said at the beginning of my remarks, we are talking about a bill that comprises four clauses. It is such a simple loophole to close. It is extraordinary that the Government has allowed this situation to continue for so long. It is absolutely astonishing that the Government, given its record, should be so pious and brag about this legislation, and start lecturing other people.

I now want to deal with the amendment that was moved by the Government without notice, as usual. The Government talks about bipartisanship, but it shows no courtesy whatsoever to the Opposition. I note that we also have a new second reading speech, which was difficult to follow. The Government's practice is that it incorporates a second reading speech if it is the same as the agreement in principle speech delivered in the lower House but it does not incorporate a second reading speech if it is different from the speech delivered in the lower House. So members are left trying to follow the text of the agreement in principle speech delivered in the lower House to work out if there are any differences.

**The Hon. Penny Sharpe:** If you were listening you would know—

**The Hon. CATHERINE CUSACK:** I was trying to work out what was going on. There was no forewarning; there was no indication in advance to the Opposition. We now see that the Government has

presented an amendment to its legislation. The amendment, which was referred to in the Parliamentary Secretary's second reading speech, deals with the bill's lack of explanation as to when the 30-day rent-free period commences. This was dealt with quite extensively in the lower House. There was nothing mischievous about this. The fact that the Government has now been forced to introduce an amendment to its bill—a bill that comprises all of four clauses—vindicates the role of the Parliament in scrutinising legislation. It certainly is heartening to know that Opposition contributions can be recognised in this way, that an improvement has been made to the bill in this way, and that the Government is bringing this amendment forward, albeit in a rather mean way. Nevertheless, the legislation will be improved and this in turn will improve the situation for investors and tenants. The Opposition certainly welcomes that.

I would like to term the amendment the Wayne Merton amendment, because he was the one who raised it and who detailed to the Government the flaws in the drafting of the legislation. I thank Wayne Merton, who is extremely diligent as a member and in the way he scrutinises legislation. The amendment is certainly welcome. It is a positive reflection of Wayne Merton's contribution and of the fact that the Opposition can make a difference on legislation from time to time. I cannot get over the fact that the Government has pondered these four clauses for five years and yet the legislation is so flawed. Nevertheless, the Opposition welcomes the fact that the Government has taken our advice on board and that the legislation will be rectified.

**Ms SYLVIA HALE** [8.24 p.m.]: The Greens support the Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009. First I thank the Minister for Fair Trading for introducing this long-overdue bill. It is, however, amazing how quickly things can happen when the Government is under pressure. Where there is a will even the Government can eventually find a way. I also acknowledge the tireless work of the Tenants Union of New South Wales on behalf of the one-third of residents of this State who live in rented accommodation. The Hon. Catherine Cusack outlined the procrastination and failure on the part of the former Minister, Linda Burney, to introduce this legislation.

It is uncanny that the Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009 now comes before us hot on the heels of my giving notice, on 7 May 2009, of the Residential Tenancies Amendment (Mortgage Default—Tenant Protection) Bill 2009. The purpose of the Greens bill was identical to this bill—that is, to fix the problem of tenants being subjected to immediate eviction where the mortgagee has taken possession. In a situation of growing unemployment and increasing mortgage defaults we desperately need legal protection for those tenants who, through no fault of their own, find themselves confronted by a Supreme Court eviction notice or, worse still, by a sheriff telling them they have to leave immediately. Sometimes the tenant will have received little or no notice.

The Minister for Fair Trading has now responded, has acknowledged that immediate action is necessary, and has now produced this bill—which carves out provisions that were intended to be part of a future bill based upon the review of the entire Residential Tenancies Act. I thank the Minister for briefing my office on the bill. She is proactive, and for that we are thankful. One cannot help noting, however, just how long the review of a 20-year old Act is taking. In relation to the review process, the Minister said last night in the other place:

We have indeed taken the time to consult widely on this issue and to examine closely the complex issues involved to prevent unintended consequences; the Government makes no apology for doing so.

Those pious sentiments have been uttered again and again by Ministers who somehow find that an acceptable excuse for failing to act. I do not think it is churlish to argue that almost five years to review an Act is too long. No doubt a major cause of the delay has been the constant turnover in Ministers for Fair Trading. The first round of discussions reviewing the Act commenced in 2005. The last round of public submissions to the second options paper took place in 2007—two years ago. Along with hundreds of other organisations and individuals, the Greens contributed to that review in good faith and made formal submissions. I do not think it unreasonable to expect a bill to have been prepared within six or nine months of that last round of submissions, given that the whole process has now been drawn out for almost five years.

Last year the former Minister for Fair Trading promised that legislation revising the Residential Tenancies Act would soon be presented to the House. That did not happen, and Ms Burney moved to another portfolio. Changing Ministers is not, however, an acceptable excuse for delaying the delivery of major legislation. Be that as it may, the Minister's office has informed me that the end may now be in sight and that the timeline for completion of the review process and introduction of legislation is as follows: an exposure draft is

to be available in August or September, with the expectation being that legislation will be enacted before the end of 2009. If that is the case, it is good news. If the Government fails to adhere to that timeline I will seek to introduce the Greens Residential Tenancies Bill of which I have given notice.

As I said at the outset, the Greens are very supportive of the bill before us today. I was intending to move an amendment, but I will not do so because the Minister has suggested that it could result in a delay in the passage and proclamation of the bill. Another factor in not proceeding with the amendment has been the Minister's undertaking that the forthcoming legislation will deal with the right of a prospective tenant, prior to entering into a lease, to be informed if the landlord has received a notice of default, with the landlord being subjected to penalties should such a disclosure not be made.

In some ways, a landlord who is already in mortgage default and tries to enter into a new tenancy agreement is comparable to a business continuing to trade while insolvent. The tenant should be apprised of the fact that there is another party with an interest in the dwelling—the mortgagee—and should be informed of the potential repercussions should the landlord fail to meet their mortgage commitments. The prospective tenant would then be in a position to assess the risk before deciding to sign a lease. The declaration could take the form of a written notice to the tenant in a form and manner prescribed in the regulations. The Greens envisage a simple declaration form as part of the standard agreement paperwork that goes with any new tenancy agreement. The would-be tenant would then be able to make an informed decision on whether or not to enter a lease. This issue came to my attention via an email from Mr Nathan Mares of Glossodia, who wrote:

My mother signed her lease agreement two weeks after the landlord was served a default notice by the mortgagee, and nearly seven months after the landlord began defaulting. At the time my mother signed her lease agreement the landlord was approximately \$20,000 in arrears. I have been advised by two different solicitors and the Department of Fair Trading that there is currently no protection for tenants from reckless landlords who sign a lease agreement knowing full well that a property will be repossessed. I propose that landlords be required to disclose if a mortgage held over a property is in default so that tenants can make an informed decision when entering into a residential tenancy agreement.

I thank Mr Mares for his email. I also note the comments of the member for Riverstone in the other place. He instanced a similar case where landlords renting out three townhouses were in default of their mortgage, yet rented one of the townhouses to a single parent and her three children. The tenant had specifically asked for a 12-month lease so her daughter's Higher School Certificate year would not be disrupted. She said she felt particularly cheated because her offer to lease the property was accepted only two weeks after the landlords had received a default notice. The end result was that all tenants of the townhouse complex were evicted with very little notice. The member for Riverstone correctly identified tenants as the more vulnerable persons in such situations.

A tenant currently has no way of checking whether the prospective landlord is in mortgage default. Some may argue that a person struggling with a mortgage should have no duty to disclose this to anyone. The Greens disagree. Tenants have a right to know if premature eviction due to repossession is on the horizon. Landlords and their agents perform credit checks and seek references and proof of employment from prospective tenants, whereas tenants have no information at all about the landlord apart from the landlord's name. If a landlord had to disclose a current mortgage default and the amount, many tenants might make a quite rational decision not to enter into a lease agreement with that landlord. I was proposing to move amendments to address this issue, but will not do so given the Minister's personal undertaking that the matter will be addressed in the next tranche of legislation.

The bill addresses only one part of the Residential Tenancies Act: the section dealing with termination where a mortgagee, following a Supreme Court order, repossesses the landlord's property. Currently, when a house is repossessed, a Supreme Court order for possession in favour of the mortgagee trumps the Residential Tenancies Act and overrides any existing tenancy agreement. The tenant may be given very little notice, or no notice, to vacate. Tenants, however, have no way of knowing that their landlord is in financial trouble. The landlord continues to collect the rent, even if it is not passed on to the lender. The tenant may find out only when they are given a copy of the writ of possession or, in extreme cases, when the Sheriff knocks on the door and demands they vacate immediately. Currently there is no requirement that tenants be given notice of a minimum period in which they must quit the premises.

Proposed section 71A will ensure the tenant receives a minimum of 30 days notice to vacate after a writ for mortgage possession has been issued. The section further provides that the tenant will not have to pay rent in that 30-day period—a "rent holiday" designed to compensate them for their moving costs. The bill also provides for other options. The tenant can choose to move out any time within the 30-day period. If the

mortgagee wishes, a longer period of notice can be given. If the mortgagee and tenant agree, a new lease can be offered to the tenant. A bank or other mortgagee could even decide to sell a property with sitting tenants if it so decided. Proposed section 71A is well drafted and offers a range of options. It will allow tenants and mortgagees to negotiate. At worst, the tenant will receive 30 days notice to vacate and receive 30 rent-free days in the property. Tenants usually pay rent in advance so the bill provides that the tenant may seek recompense for any pre-paid rent.

The bill also amends other legislation in regards to rental bonds. Schedule 2 proposes an amendment to section 11 of the Landlord and Tenant (Rental Bonds) Act 1977 that gives the mortgagee standing so that the mortgagee can instruct the Rental Bond Board to return the bond to the tenant. Any disputes can be dealt with in the usual way at the Consumer, Trader and Tenancy Tribunal. The bill does not place any great imposition on the banks and other mortgagees. It takes time to place a property on the market and sell it. If the mortgagee is willing, the tenant can stay in the premises for an agreed time and pay the mortgagee rent rather than allow the premises to sit empty and vulnerable to vandals.

I hope the Office of Fair Trading will educate mortgagees about the options that will be available to them once the bill is proclaimed, and also provide information to the Sheriff's Office so that it is aware of the new requirement for 30 days notice. A mortgagee's failure to abide by the provisions will attract penalties. I have confirmed with the Parliamentary Counsel that section 125 does cover any eviction not consistent with the Act, such as a lockout, or failure to issue the proper notice. I know that was a concern for the Tenants Union of New South Wales. The Minister's response in the other place last night should allay these fears. She said:

The penalty of up to \$22,000, under section 72 (1) of the existing Act, will be able to be imposed on any mortgagee who recovers possession of a rental property without giving the required 30 days notice or before a notice expires.

There is one other issue I must mention that desperately needs to be dealt with. While the bill today addresses the problem of tenants being evicted with little or no notice when a mortgagee takes possession, the Government has consistently, and I believe wilfully, ignored the plight of boarders and lodgers. I have been advised that the Government has no intention to provide even the most minimal rights for boarders and lodgers in the next round of legislation. Boarders and lodgers can be thrown on the street with no notice, even where there is no wrongdoing or breach on the part of the boarder or lodger. Boarders and lodgers are non-tenants with no tenancy rights. The Greens will take up this issue when the Government introduces its more comprehensive bill later this year. The Tenants Union of New South Wales is very supportive of this bill, as are the Greens.

**The Hon. CHRISTINE ROBERTSON** [8.37 p.m.]: I am pleased to support the Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009. Like many other speakers in this debate I participated in the inquiry process to examine the issues raised by people in such circumstances and I am fully aware of the problems they face. The bill will establish a fair, balanced and reasonable approach to the process for property repossessions by financial institutions. A number of case studies have come to light during the passage of this bill that clearly indicate a need for these types of protective measures. I also understand that broad general support has been expressed for this bill from most quarters of this Chamber, and that is how it should be, given the important issues at hand.

I would hope that few members of the public will ever have to experience the powerlessness felt by those ordered to leave their homes with little or no notice—being virtually forced to abandon their possessions by reason of an order that has the full force of the law behind it. When a tenant moves into a property and signs a residential tenancy agreement he or she is legally bound by that agreement, and the vast majority of tenants observe the terms of such agreement. It is perfectly understandable that tenants feel a strong sense of injustice when, through no fault of their own, they end up without a place to live, deprived of their possessions and possibly facing a significant financial loss. I find it difficult to believe that anyone would consider such circumstances to be fair or reasonable.

If you could for just a moment imagine yourself in that position, how would you handle it? Perhaps you would know what to do. Perhaps you would have somewhere to go. Perhaps you would have the support of family and friends. Perhaps you would have the financial means to sort it all out. But this is not how it plays out for many who simply do not have those advantages. For some people this would be a catastrophe of overwhelming proportions, an emotional and financial disaster. This is when life can fall apart for people who are struggling to get by on low incomes with little or no financial resources or other means of support to fall back upon.

The measures in the bill are not intended to penalise or inconvenience financial institutions that are engaged in the totally lawful exercise of their contractual rights to recover property in the case of mortgage

defaults. The measures in the bill will not prevent property repossession progressing to finalisation. Nor does the bill seek to penalise or punish former owners of repossessed properties. It is unfortunate enough that former owners have experienced such dire financial circumstances that they have been unable to keep up their mortgage payments and possibly have been unable to renegotiate their payments or refinance their mortgage with a financial institution. The bill does not seek to add to their burden. But the bill does recognise that apart from the financial institutions and the mortgage holders, other parties can be caught up in the repossession process and that those parties, namely, the tenants, deserve some small degree of protection. The protection has been provided in a straightforward manner that can be summed up quite simply. Once mortgagees become entitled to possession of the property, they will have to provide tenants with a minimum 30 days notice. Tenants will have the right to withhold rent or be refunded any rent paid in advance for the period of the notice. A more streamlined process for the recovery of the tenant's bond will enable tenants to use that money for their next tenancy. These are the three key elements of the bill.

Despite there being three simple and defined elements of the bill, a great deal of organisation, consultation and work has gone into the process. Furthermore, the bill provides for the mortgagee to arrange for potential purchasers to inspect the property during the period of the notice by making agreed arrangements with the tenants. This could be of some assistance to former owners if the quick sale of the property helps minimise their ongoing costs and prevents their debt problems from growing even larger. As honourable members have already heard, the Rees Government intends to introduce a reform package for residential tenancy law. I understand that it will release an exposure draft bill and seek public comment in relation to it later this year. Ahead of that reform package, a very sensible decision has been taken to move forward with this particularly significant measure in the short term. This initiative is a clear priority. I expect it will receive widespread general support during this debate. Transparency and accountability are two key issues that apply to these measures. The provisions in this bill are not harsh or oppressive and will not impact adversely on the lawful process for the repossession of property. I would urge all honourable members to show their concern for the vulnerable members of our community and support a fair and balanced approach to this matter by voting in favour of the bill, which I commend to the House.

**Reverend the Hon. FRED NILE** [8.42 p.m.]: The Christian Democratic Party is pleased to support the Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009. I thank the new Minister for Fair Trading, the Hon. Virginia Judge, for introducing this bill. Comments have been made about previous Ministers for Fair Trading, but I do not believe it is helpful to spend time focusing on the past. Rather, we should be more positively focused. The bill should pass through the House so that relief can be provided to those tenants who, sadly, may have to leave their premises because their landlord is in financial trouble and the property that they are renting is being repossessed. As has been stated, the Government had the option to either wait and include these provisions in an exposure draft bill that will be released later this year or introduce separate legislation. The Government decided to introduce separate legislation because of the urgency of the matter.

The release of exposure draft bills, if done properly, takes a great deal of time, and ministerial changes can delay the process further. A previous speaker said that ministerial changes should not delay the process. The reality is, however, that they do. Different Ministers have different approaches and emphases. They are not robots made from the same mould; they have their own personalities and views. I am pleased that this bill has been introduced. There are now 644,000 residential leases in the private rental market in New South Wales, and small investors who own one or two properties dominate the market. The current economic downturn has led to more people being unemployed, but there can be other contributory factors to financial problems, such as illness and relationship breakdown. Currently New South Wales has the highest unemployment rate of any Australian State. It is hoped that will change, but that is the present situation.

The bill will require mortgagees, once they have become entitled to possession of rented premises, to give the tenant at least 30 days notice to vacate. It will allow tenants who receive an eviction notice from a mortgagee to withhold all future rent and/or recoup from the landlord or agent rent already paid in advance to help meet relocation expenses. It will also permit the mortgagee who becomes entitled to the possession of the premises to authorise the release of the tenant's rental bond. They are the three key elements of the bill. There has been debate about the date on which the 30 days notice takes effect. The Government has foreshadowed an amendment that will clearly set out the original intent of the bill. The amended provision will state that the former tenant who is holding over after termination of the residential tenancy agreement is not required to pay any rent, fee or other charge to occupy the residential premises during the period of 30 days following the date on which the tenant is given the notice to vacate. That is following the date on which the tenant is given the notice to vacate. That amendment indicates clearly the commencement date of the 30 days.

In her second reading speech the Parliamentary Secretary said that the tenant is not restricted to remaining in a property for only 30 days. The bill has nominated 30 days as what could be termed a rent-free period. But tenants should not be restricted to 30 days if they can negotiate with the mortgagee to remain after that period if they pay rent and meet other requirements. That flexibility is provided in the bill. In a previous debate on another bill I referred to property owners who become unemployed and who, because they cannot keep up their mortgage payments and their house is repossessed, are thrown out on the street by the mortgagee.

I ask the Government to give consideration to introducing a bill that provides to property owners protections similar to those given to tenants in this bill. With the cooperation of the mortgagee they could remain living in the house, which has been repossessed, on the condition that they pay rent and maintain the house. In this way, when the property is eventually sold, hopefully it will not have dropped in value. If a property is not properly maintained, people end up in greater financial trouble because the reduced sale price of the house does not equal their loan repayments. Such a provision would give relief to people who also find themselves in difficult economic situations. I am pleased to support the bill. It will be of great benefit to people who are under the threat of eviction without notice. Now they will have 30 days notice and money to pay for their relocation expenses when they move to another rental property, which hopefully they can find in the present difficult climate. The Christian Democratic Party supports the bill.

**The Hon. PENNY SHARPE** (Parliamentary Secretary) [8.53 p.m.], in reply: As honourable members have heard, the primary aim of the Residential Tenancies Amendment (Mortgagee Repossessions) Bill 2009 is to provide a fair and reasonable process for lending institutions to repossess properties without causing undue hardship to tenants. The bill requires mortgagees to give tenants at least 30 days notice if they wish to recover vacant possession of a rental property; specifies that no rent is payable during the period of the notice given in cases where a tenant is told to leave by a mortgagee; and puts in place a simple system to allow a mortgagee to authorise the release of the tenant's rental bond.

In recent days the Greens have raised the issue of whether landlords should be required to disclose to prospective tenants if they are behind in their mortgage payments. In response to comments made by Ms Sylvia Hale, I will clarify the Minister's position. The Minister has undertaken to the Greens that disclosure will be examined, and public comments sought and considered before the provisions of the final draft bill are settled and it is introduced into Parliament. The general issue of pre-disclosure of material facts to prospective tenants is being considered as part of the broader reforms to the tenancy laws. However, the Government is concerned about the unintended consequences of introducing disclosure requirements. Proposals that landlords disclose any mortgage arrears, and even that they be prevented from signing up a new tenant if in default, are of great concern to a number of peak organisations, and I will place on record the sentiments they have expressed to the Minister's office. The Australian Bankers Association has expressed the following view:

The proposals would be an unreasonable inhibition on a mortgagor's ability to remedy the default under the mortgage through receipt of rental income where the additional income would be sufficient to do this ... potentially limiting the scope for a mortgagee such as a bank to deal with financial hardship and increases the prospect of a mortgagee's sale ... at the same time limiting the mortgagor's opportunity to secure refinancing.

In effect, the remedy could prove worse than the disease, as a single non-payment of one instalment could trigger a default. But that does not necessarily lead to an action by a lending institution to recover possession of a property. The Real Estate Institute has conveyed the following belief:

When a tenant has been alerted to a default notice it would severely reduce the likelihood of signing a lease agreement.

The serious concerns about the Green's proposal are probably best expressed by the Consumer Credit Legal Centre, which stated:

We are deeply concerned. Default notices are issued with alarming regularity and mortgages get back on track—in fact that is the point of a default notice, to give the borrower an opportunity to rectify their default.

Therein lies the grave moral hazard. Premature actions mandated in statutory law, without serious consideration and consultation, could result in an exacerbation of the situation for tenants and investors—and, hearing tonight's debate, that is clearly something about which no-one here is interested. The Consumer Credit Legal Centre further stated:

It also gives them time to make a hardship application to the lender to vary their contract on grounds of hardship etc. We speak to borrowers who decide to move out (back with parents or relatives, to rented premises in a cheaper location or a location with higher employment) and rent the premises as a means of rectifying their default, and do so quite successfully.

This amendment may not only result in additional repossessions, it could also leave premises empty as borrowers who are forced to move for other reasons, and yet have defaulted on their mortgage, cannot rent out their premises. This would only add pressure to the availability of rental premises.

The Government will be targeting specifically mortgagees and the Sheriff's Office as part of its education campaign on the new laws. Mortgagees already comply with similar laws in other States; therefore the Government does not expect there will be any problem in meeting these new requirements.

I also address the issue of whether these reforms could have been dealt with sooner. After what I consider to be her somewhat indulgent, lengthy and self-serving contribution to this debate it is a bit disappointing that the Opposition spokesperson, the Hon. Catherine Cusack is not in the Chamber to hear the speech in reply. The Government does not accept that these reforms have been unnecessarily delayed or could have been introduced earlier. There are more than 644,000 individual leases in the private rental market in New South Wales, which is dominated by small investors who rarely own more than one or two properties. When the Hon. Catherine Cusack was so clever as to offer bipartisan support for a bill several years ago it was at a time when the Government had just released the report outlining proposed reforms to tenancy laws. The public consultation period had not even closed and most submissions had not been received, let alone analysed. Changing the law before knowing what the community has to say about it may be the Opposition's idea of consultation but in that case it was not the Government's. The Government makes no apology for the time that it has taken to get this legislation right. Our commitment to tenants in these difficult situations is shown by the way these amendments have been introduced ahead of the major package of reforms to come.

Issues about sanctions were raised in the debate. The Government has not been convinced that adding further notices in the process will be of assistance. Already a number of notices are required to be sent to a tenant from the mortgagee, the court, the landlord and the Sheriff. This bill also adds a new notice to vacate. There is a potential for the tenant to suffer paperwork overload if too many notices are required. The broader issues of compliance and enforcement are being examined as part of the larger tenancy reform package. This includes what offences should apply, what the appropriate penalties should be and whether penalty notices should be introduced. Non-compliance by mortgagees in areas other than unlawful evictions will be considered as part of this process. I note that after somewhat lengthy debate on this bill there is broad support. It is a very important bill and I commend it 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 and 2 agreed to.**

**The CHAIR (The Hon. Amanda Fazio):** Order! With regard to schedule 1, a number of amendments have been circulated by the Greens on sheet C2009-044A and by the Government on sheet C2009-051A.

**Ms SYLVIA HALE [8.58 p.m.]:** As I stated in my contribution to the second reading of the bill, I do not propose to move the amendments circulated by the Greens on sheet C2009-044A. However, having said that, I am somewhat disappointed by the tenor of the speech of the Parliamentary Secretary in reply to the second reading debate because it suggests that, despite undertakings given by the Minister that the issues would be considered fairly and objectively, the Minister has formed an opinion about disclosure to tenants. As I said during the second reading stage of the bill, these tenants are incredibly vulnerable; everything is weighted in favour of the landlord or the mortgagee—

**The CHAIR (The Hon. Amanda Fazio):** Order! It is not appropriate for the member to speak further at this time. She may seek the call to speak after the Parliamentary Secretary has moved the Government's amendment.

**The Hon. PENNY SHARPE (Parliamentary Secretary) [9.00 p.m.]:** I move Government amendment No.1:

Page 3, schedule 1 [1], proposed section 71A (3), lines 20–24. Omit all words on those lines. Insert instead:

The former tenant who is holding over after termination of the residential tenancy agreement:

- (a) is not, during the period of 30 days following the date on which the tenant is given the notice to vacate, required to pay any rent, fee or other charge to occupy the residential premises, and



This amendment arises out of some discussion in the other place and particular issues raised by the Consumer Credit Legal Centre. The proposed rent holiday of 30 days is the only arrangement of its sort to be introduced in Australia. The Rees Government is breaking new ground with this protection for tenants, and it is very much welcomed. The Government believes that the bill as presently drafted is sufficiently clear in all aspects. However, in light of the concerns first raised by the Consumer Credit Legal Centre and by others, the Government is moving this amendment to clarify a provision that has caused some misunderstanding. This will remove the unlikely potential for this very sound protection for tenants to be exploited and is in keeping with the bipartisan approach to this bill that we have encouraged. The amendment will clarify the commencement date of the rent holiday period for tenants who are asked to leave by a mortgagee. This amendment responds to the Consumer Credit Legal Centre's concern and will make it 100 per cent clear that the tenant is entitled to stop paying rent only once they are given the 30 days notice to vacate by the bank.

The rent holiday period was never intended to commence, as suggested in the other place, as soon as the owner falls behind with their repayments, or when the mortgagee issues them with a notice of default, or when the bank applies to the court to foreclose. Nor was it meant to start when the Supreme Court makes a judgement order or issues a writ of possession. The rent holiday period is meant to apply only when a mortgagee gives notice to the tenant to vacate. Naturally, in most cases this will be shortly after the court order is made, which means there is essentially little difference between the two time frames in most cases. However, the Government accepts that from time to time there may be some delay from when the court makes its order to when the mortgagee issues a notice to vacate to the tenant. This Government amendment will remove any doubt—and potential for legal argument—that the tenant must keep paying rent until such time as they receive the 30 days notice from the mortgagee, and that the rent holiday period lasts only for the period of the notice.

**The Hon. GREG PEARCE** [9.02 p.m.]: The Coalition also supports the amendment. As has been mentioned in earlier debate and by the Parliamentary Secretary, members in the other place raised certain concerns about the uncertainty of meaning. This clarifies that the commencement date for the rent holiday for a tenant required to vacate by a mortgagee is as provided in the amendment, and accordingly we support it.

**Question—That Government amendment No.1 be agreed to—put and resolved in the affirmative.**

**Government amendment No. 1 agreed to.**

**Schedule 1 as amended agreed to.**

**Schedule 2 agreed to.**

**Title agreed to.**

**Bill reported from Committee with an amendment.**

### **Adoption of Report**

**Motion by the Hon. Penny Sharpe agreed to:**

That the report be adopted.

**Report adopted.**

### **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 with a message requesting its concurrence in the amendment.**

## **LAND ACQUISITION (JUST TERMS COMPENSATION) AMENDMENT BILL 2009**

### **Second Reading**

**The Hon. HENRY TSANG** (Parliamentary Secretary) [9.04 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 granted.**

The Government is pleased to introduce the Land Acquisition (Just Terms Compensation) Amendment Bill 2009.

The Bill overcomes some unintended consequences of two provisions of the Land Acquisition (Just Terms Compensation) Act, revealed by a recent High Court decision.

It will restore the intended effect of sections 7A and 7B of that Act.

Sections 7A and 7B of the Act deal with the ability of a public authority to acquire and extinguish native title interests, as well as to acquire land already vested in it.

The High Court recently held that an acquisition of a road already vested in a local council was being done under section 7B of the Land Acquisition (Just Terms Compensation) Act, not the Local Government Act.

It was never intended that sections 7A or 7B would establish a separate legal authority for acquiring these types of property interests in such circumstances. The policy intention of these sections is only to extend or limit—as the case may be—the rights of public authorities to acquire land where those rights are already established by other legislation.

It was not intended, for example, that local councils could acquire native title interests under section 7A without reference to the powers and processes—such as the need for prior Ministerial consent to land acquisition—contained in the Local Government Act.

It was also not intended, for example, that a State government authority would be able to acquire its own land under section 7B, with no reference to the limits on land acquisition imposed by that authority's parent legislation.

This unsatisfactory situation is overcome by this Bill.

Clause 1 of the Bill clarifies that any acquisitions of native title or property already vested in a public authority are always taken to be an acquisition under other legislation empowering the authority to acquire land.

This will ensure that public authorities, including councils, follow any mandatory processes set out in their parent legislation.

Clause 3 ensures that any past acquisitions of a public authority's own land or native title interests are also taken to be acquisitions under the "parent" legislation, not the Land Acquisition (Just Terms Compensation) Act.

This is necessary to ensure certainty of land tenure, not only for public authorities but for any third parties who might have subsequently bought or leased land that would have been affected by the High Court's decision.

The retrospective application of the Bill will not, of course, extend to any acquisition of native title interests that might have occurred contrary to any general, mandatory requirements regarding land acquisition in the parent legislation.

Although it is very unlikely there are any such cases, it is necessary to ensure constitutional validity that acquisition of native title and other interests in land occur in a non-discriminatory way.

It is also important to note that the Bill is not designed to extend the powers of councils to acquire land already vested in them. The intention of the amendments is to ensure the Land Acquisition (Just Terms Compensation) Act operates in the way it had been understood to operate prior to the High Court's recent decision in the Fazzolari appeal.

The Bill does not have any impact on the compulsory acquisition notices issued by Parramatta City Council that were the subject of the High Court litigation. The High Court has found those particular notices to be unlawful and this Bill will not change that.

It is a matter for the Council whether it wishes to take any further acquisition action in relation to those particular properties.

The focus of the Bill is to overcome an aspect of the High Court's decision that the Government considers may produce anomalous and unintended consequences for land owners, native title holders and public authorities alike.

It achieves that purpose in a clear, concise and proportionate manner.

I commend the Bill to the House.

**The Hon. GREG PEARCE** [9.05 p.m.]: The purpose of the Land Acquisition (Just Terms Compensation) Amendment Bill 2009 is to overcome unintended consequences of the Land Acquisition (Just Terms Compensation) Act, which were revealed by the April 2009 High Court decision in *R & R Fazzolari Pty Ltd v Parramatta City Council*, which in part found a new power of compulsory acquisition to exist under section 7B of that Act, which had not been intended to create such a separate power. One of the concerns we have had in approaching this bill is that it seems also to create uncertainty and unintended consequences in relation to the exercise of compulsory acquisition powers. I will come back to that in due course.

State authorities are given the power to compulsorily acquire land for various public purposes under various Acts. These conferring Acts set out the conditions and other rights and obligations of the compulsory

acquisitions. The Land Acquisition (Just Terms Compensation) Act sets out the acquisition and compensation process. The Act was amended in 1994 by including a provision under section 7A to also acquire native title rights at the same time as acquiring land, and section 7B to clarify that councils may acquire land under the Local Government Act even though the land is already vested in the council. The Local Government Act 1993 provides in section 186 (1) the power permitting a council to acquire land for the purpose of exercising any of its functions without the consent of the owners, but not if the land is being acquired for the purpose of resale unless that land adjoins, or is in the vicinity of, land acquired for a purpose other than resale.

Fazzolari's case involved an attempt to compulsorily acquire several properties by Parramatta City Council in relation to a development to be called Civic Place. The redevelopment was to be carried out under a public-private partnership between the council and Grocon under which the council would transfer compulsorily acquired land to Grocon and receive financial payments in return. Ultimately, the High Court overturned the acquisition as it held the proposed acquisition was for the purpose of resale to Grocon and the owners had not consented. This is consistent with the principle that such powers should be permitted only to the extent that least interferes with private property rights.

The bill does not impact on the compulsory acquisition notices issued by Parramatta City Council that were the subject of the High Court litigation as they remain unlawful. The bill also does not extend the powers of councils to acquire land already vested in them. However, some strenuous concerns have been expressed in relation to the possible effect of the draft bill as it was presented. The legislation package dealing with compulsory acquisition is somewhat fragmented and there certainly is a view that it should be comprehensively reviewed to ensure its clarity and that there are no other anomalies, and also to look at what is meant by "just terms". One of the issues raised by a number of commentators and parties is the concern that landowners should be compensated for the gain in value of land that is subsequently redeveloped.

The principle of protection of private property rights while providing appropriate power to compulsorily acquire land for public purposes is one that we accept. The concerns that were expressed in relation to the legislation as it was drafted were summarised by a number of parties, including the Property Council and the Law Society's property committee. I am grateful to the Law Society's property committee, which concluded that it would not support the bill as it stands. It said that whether or not the concerns expressed about the bill were accepted, the committee considered the bill did not in fact do what the explanatory notes implied it was designed to do—and that was address the issues raised in the High Court case. The Opposition will move an amendment in Committee that directly addresses the concerns that have been raised. We believe the Government will accept the amendment and, if that is the case, we will be prepared to support the bill.

**Ms SYLVIA HALE** [9.10 p.m.]: I lead for the Greens on the Land Acquisition (Just Terms Compensation) Amendment Bill 2009. I will refer to the implications of the bill with regard to property rights and the acquisition of land by councils and government authorities, and my colleague Ian Cohen will address the native title implications. The Greens oppose the bill. It is clear that the purpose of the bill is to overcome problems created for Parramatta City Council and its development partner Grocon that arise from the decision of the High Court in *R & R Fazzolari Pty Ltd v Parramatta City Council* and *Mac's Pty Limited v Parramatta City Council*, handed down on 2 April 2009. In speaking to this bill in the lower House the shadow Minister for Planning read detailed legal advice outlining that the impact of the quite technical amendments contained in the bill is to allow Parramatta City Council to compulsorily acquire its own roads and then compulsorily buy the adjacent land owned by Fazzolari and Mac's and to transfer that land to its joint venture development partner and sell the land for a profit. I have also been provided with a copy of that legal advice, copies of statements issued by Parramatta City Council, and the Law Society advice referred to by the previous speaker.

I have no doubt that the purpose of this bill is to overcome the restrictions placed by the High Court on the ability of the council to compulsorily acquire the contested properties. The council and its private joint venture development partner, Grocon, will be the beneficiaries of this bill. The bill will not merely affect Parramatta City Council and this specific development; it will also significantly extend the power of all councils to compulsorily acquire their own roads and then use the powers given to them by this bill to compulsorily acquire land that forms part of, adjoins or lies in the vicinity of those roads. The Government's assertions that this bill is merely about clarifying the original intent of the Act and that it will not affect the Parramatta City Council development are at best disingenuous.

This is not the first time the Government has attempted to provide legislative assistance to Parramatta City Council to compulsorily acquire these properties. The former Minister for Planning sought to include an enabling provision in the Environmental Planning and Assessment Amendment Bill 2008, but withdrew it in the

face of significant public concern and likely opposition in this House. The Greens support local councils and government agencies having the power to compulsorily acquire private property on just terms for not-for-profit community purposes. However, we do not support extending that power to acquire land when the purpose is to facilitate private commercial development projects. The Greens do not oppose the renewal of the precinct at Parramatta, which is the subject of this development. However, it is being developed as a public-private partnership between the council and a private developer, Grocon. It is a commercial development that will deliver significant profits to the proponents.

If a developer needs to acquire private property for a commercial project, the developer must reach an agreed price with the landowner. Neither a local council nor the Government should intervene to the benefit of the developer, especially if the council or the Government is a partner with the developer in the project. That is particularly so in an environment in which developers donate millions of dollars to political parties. In that context, it should be noted that Grocon—the private development partner in the Parramatta development—is likely to gain a significant financial benefit if the disputed properties are acquired compulsorily rather than by negotiation. Grocon is a major political donor, having donated more than \$320,000 to the New South Wales Labor Party.

If a matter such as this came before a local council, the code of conduct would require all Labor councillors to declare a conflict of interest because of Grocon's political donations and refrain from voting. Yet, having searched the contributions to this debate made by Labor Party members, nowhere did I find a declaration of the Grocon donations, despite the fact that Grocon will be a significant beneficiary of the bill. Why are State parliamentarians not kept to the same standards as local councillors? In light of those donations, compounded by the failure of Labor members to disclose them during the debate, the public has the right to ask in whose interest the Government is acting in introducing this bill. The development process in New South Wales is already corrupted by the ability of cashed-up developers to get around planning rules. This bill will simply extend the bias in favour of those developers and will further undermine public faith in the New South Wales planning system. The Greens oppose the bill.

**Mr IAN COHEN** [9.14 p.m.]: As my colleague Ms Sylvia Hale has clearly indicated, the Greens do not support the Land Acquisition (Just Terms Compensation) Amendment Bill 2009. Ms Hale has outlined a number of issues related to the expansion of local government compulsory acquisition powers and I will restrict my contribution to the amendments dealing with compulsory acquisition of native title rights. I know that many people have struggled to understand this bill and the technical and legal nuances inherent in these amendments. That might be because we are dealing with some legal fictions of the highest order. It could be helpful to consider compulsory acquisition under the Australian Constitution as a comparative framework for understanding compulsory acquisition by State and local government authorities. Under section 51 (31) of the Australian Constitution, the Federal Government can make laws for the "acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has the power to make laws". This head of power under the Australian Constitution represents the central legislative power to make laws or regulatory instruments to acquire property.

In High Court compulsory acquisition case law there is often a question of characterisation—that is, what is the true source of legal authority to acquire property? When I say "characterisation", I am referring to the process of interpreting a compulsory acquisition of property and under what legal authority it occurs when there are multiple legal authorities under which to acquire. That was certainly a point of view considered in the famous Tasmanian dams case. The High Court has developed a doctrine that permits the Commonwealth to acquire property solely by reference to another head of power in section 51 of the Constitution—for example, the corporations power, the trade and commerce power or the external affairs power. Where acquiring property can be supported exclusively under another head of power—for example, the corporations power—the requirement for acquisition on just terms, consistent with section 51 (31) of the Constitution, is not mandatory. Characterisation is important in compulsory acquisition cases because it sets out the terms and grounds upon which private property rights can be resumed by a government authority.

In a similar way, we have an issue of characterisation in relation to this bill. Implications flow from characterising compulsory acquisition. Legal authorisation for compulsory acquisition under multiple Acts poses challenges to characterisations. The Government has indicated that the High Court decision in *R & R Fazzolari Pty Ltd v Parramatta City Council* and *Mac's Pty Limited v Parramatta City Council* is contrary to the policy intentions of sections 7A and 7B of the Land Acquisition (Just Terms Compensation) Act. In relation to section 7A, the current legislation is the result of an amendment under schedule 3 of the Native Title (New South Wales) Amendment Act 1998. No statement about the policy intention of section 7A was made in the

second reading speech, and the explanatory memorandum simply states that the purpose of the amendment, which adds subsection (2) to section 7A, was "to ensure that the relevant procedures for acquiring native title rights and interests under the Commonwealth Act can be complied with". I am not sure where the Government finds support for the contention that the High Court decision is contrary to the initial policy intention of section 7A. Perhaps the Parliamentary Secretary or Minister can elaborate.

I will deal specifically with the Government's explanation of, and justification for, the bill. The aim of this legislation as expressed by the Government is to remove a separate legal authority under section 7A of the Land Acquisition (Just Terms Compensation) Act for acquiring native title rights. The primary authority for acquiring native title rights is contained in the Commonwealth Native Title Act. Existing section 7A (2) of the Land Acquisition (Just Terms Compensation) Act holds that any State Government authority acquiring native title rights is authorised to comply with the relevant procedures under the Commonwealth Native Title Act for a valid acquisition.

The proposed amendment will mean that the compulsory acquisition of native title rights will not be undertaken under section 7A of the land acquisition Act. I would greatly appreciate it if the Parliamentary Secretary, in reply, could explain the practical difference between the compulsory acquisition of native title processes under the Land Acquisition (Just Terms Compensation) Act compared with the processes under the Commonwealth Native Title Act. There are important legal implications from the compulsory acquisition forum as the rules of acquisition, including purpose and process of acquisition, vary significantly.

I am not the only one interested in the Government's justification for and understanding of these reforms. I find it particularly strange that such a complicated and legally technical bill was not put out as an exposure draft—a procedure to which the Minister for the Environment and her department usually adhere and which is appreciated, especially in light of the fact that other departments never extend such a basic courtesy to the public. My office has spoken to a number of groups that have said it would take a significant amount of time to understand the full implication of the bill as it relates to compulsory acquisition. Due to the lack of an exposure draft, many groups with policy interests in this legislation have not had an opportunity to comment on it.

The NTSCORP, which was previously known as the New South Wales Native Title Service, was appointed to perform the functions of a native title representative body. It maintains a commitment to securing recognition of native title rights and the interests of traditional owners throughout New South Wales and the Australian Capital Territory. My office contacted NTSCORP to seek its preliminary opinion on amendments to the compulsory acquisition of native title rights. NTSCORP's chief executive officer, Warren Mundine, issued a media release dated 3 June 2009 entitled "Mundine concerned at NSW Government's cavalier approach to Indigenous issues". That media release states:

Indigenous leader and head of NTSCORP, (the native title service provider for NSW and the ACT) Warren Mundine today expressed his deep concern with the State Government's approach to passing proposed amendments to the Land Acquisition (Just Terms Compensation) Act 1991.

Mr Mundine said that NTSCORP which provides services and advice to native title claimants across NSW had received no notification of the proposed changes which could have a significant effect on Native Title rights in NSW.

"We are currently seeking further legal advice on the matter, but at this stage we are very concerned about the effects that these changes might have on native title rights in this state," Mr Mundine said.

"We're also angry the State Government didn't see fit to brief any Indigenous groups about their proposal. We weren't even so much as notified that this was coming up."

"The NSW Government needs to wake up and stop this cavalier approach to Indigenous issues. It's time that they showed a more serious approach to supporting fairness and efficiency in Native Title, this could start with consultation" Mr Mundine concluded.

The fact that New South Wales Government failed to consult with NTSCORP reveals the integrity behind the introduction of the bill. NTSCORP said to staff in my office that it would need much more time to consider fully the implications of the native title bill. The Government probably needs more time to consider the implications of the bill rather than cobbling together something vaguely related to native title to cover up more contentious elements. It is unclear whether the Government reviewed each of the authorities that presently have the right to acquire land and waters compulsorily and, consequently, native title rights and interests, and whether amendments to the parent legislation is required, in particular, to ensure that the acquisition is in accordance with the proposed bill, and to ensure that there are no conflicts with the processes outlined in the bill, the Commonwealth Native Title Act, and the Native Title Act (NSW) 1994.

The most worrying aspect of this bill is that the Government does not really know its true implications, nor has it explained them in a clear and coherent manner. This type of legislation is dangerous. If the Government has legitimate concerns about the compulsory acquisition of native title rights I call on it to engage with those affected by the changes. Often we hear the rhetoric "true partnership with Aboriginal people" emanating from the mouths of members in this House. Although I do not doubt the sincerity with which some members believe that ideal, bills such as this, however, show how readily that principle is discarded. If Labor members want to come into the House and talk about a "true partnership with Aboriginal people", perhaps they should start by ensuring their party gets the basics right. I am greatly disappointed about the lack of consultation on this bill relating to native title rights. Because of that matter and the matters raised earlier by Ms Sylvia Hale, the Greens strongly oppose this bill.

**The Hon. ROBERT BROWN** [9.25 p.m.]: When I first entered this Chamber tonight I was of a mind to let the House know that the Shooters Party would be voting against the Land Acquisition (Just Terms Compensation) Amendment Bill 2009.

**The PRESIDENT:** Order! Members should allow the debate to continue with some decorum.

**The Hon. ROBERT BROWN:** We have received representations from the property owners affected by the Parramatta council decision, which is the subject of a recent High Court ruling. This legislation, in a different guise, originally formed part of a bill introduced by the former Minister for Planning, Frank Sartor, in the other place. At the time we convinced the Minister for Planning that he should remove it from the bill. Much water has since gone under the bridge. We have received representations from the urban task force, which is opposed to the bill. We have received written representations from the Law Society of New South Wales, which also opposes the bill in its current form.

Opposition and Government members have informed me that an amendment will be moved in Committee. It appears as though that amendment will do what the Government wants to do, but it will protect the interests of the test case—Mac's Pty Ltd and Fazzolari of Parramatta. In order to ensure that members understand what this case is about, these people own property that is currently zoned for two-storey development. When an offer is made to them—I point out that an offer has not been made to both parties; the developer made an offer to only one party in 2004—it is made on the basis that the land is worth the current market value for two-storey development. However, this land will become part of a much larger development. The true value of this land would be much greater than it would be worth if these proponents lost their case in the High Court, or this legislation went through unamended. I am not a lawyer, so I am taking the word of the Hon. Greg Pearce, who will move this amendment in Committee, that this amendment will fix the problem.

**The Hon. Greg Pearce:** I have been relying on the parliamentary draftsman.

**The Hon. ROBERT BROWN:** The Hon. Greg Pearce said he was relying on the parliamentary draftsman. After inspecting the amendment, I am sure it will fix the problem. The Government has assured me that it believes that to be the case and that it will support the amendment. I hope everybody has told us the truth tonight. If this amendment is agreed to, the Shooters Party will probably vote for the amended bill.

**Reverend the Hon. FRED NILE** [9.28 p.m.]: The position of the Christian Democratic Party is similar to the position taken by the Shooters Party. We have all had meetings with Michael Winston-Smith and with Ray Fazzolari—the owners of the properties in question affected by Grocon's plan to build a huge civic centre at Parramatta. I do not think anyone would object to the project. From every point of view such a project would be of tremendous value and a valuable asset to Parramatta, its residents, to Sydney, to New South Wales and to Australia. However, the developers, Grocon, have tried to avoid dealing with the owners of these two properties and have sought to gain control of the properties by working through Parramatta council.

Maybe Parramatta council proposed that strategy. We are not sure of its origin, but it is the developer or the council. It may be that the council has been pursuing the strategy as a simple way of finalising the whole project. We can understand the council wants to simplify the procedure as much as it can. The owners have objected to the compulsory acquisition of their properties. Grocon has avoided, as far as I can gather from discussions we have had with the owners, any direct negotiation with them. They have been put outside the negotiating circle, so to speak, and Grocon has been dealing only with the council. I believe it is right and proper for Grocon now to speak to the owners, to have direct negotiations and to come to some business arrangement with them where they are happy with the outcome.

I gather from discussions I have had with them that it is not simply the amount of money that is in question; they would like to retain the right to the sites as part of the new development. It may still be a large high-rise civic centre but they would like the same site areas within the development as the blocks they have allocated to them. I do not see why that would be such a problem. To me, for Grocon to go ahead with the project, which involves hundreds of millions of dollars, it seems to be a simple solution. There may be some problem with ownership of land within the development—obviously it is complicated—but it may be possible to have a 99-year lease on their sites. That is my suggestion; it has not come from the owners. They are the areas that have to be negotiated.

These owners took the matter right to the High Court and the High Court decided that the Parramatta City Council's compulsory acquisition of the two properties within the Parramatta central business district, without the owners' consent, was unlawful. However, one aspect of the High Court decision had the unexpected consequence of enabling public authorities to acquire land and extinguish native title using the Land Acquisition (Just Terms Compensation) Act, the land acquisition Act, possibly without complying with any requirements under the Local Government Act. Whether or not that is the case, the Government's argument for this bill is that it is simply dealing with an anomaly that has occurred with native title land. But the owners of the two properties believe there is a hidden motive, that this bill was to overcome the High Court decision and allow the Parramatta City Council to proceed with the acquisition of their properties. Whether that is the intention of the Government—it says it is not—the owners are suspicious and believe that is the aim of the legislation.

I have just received an email from Michael Winston-Smith—it has just come to me on my BlackBerry—in which the owners state again, in as clear and unequivocal language as I can use, that this particular legislation targets property rights and gives councils more power than they have now to compulsorily acquire property and on sell it to developers for a profit. He goes on to quote the legal opinion of Bret Walker, SC, who he says is one of the greatest legal minds in Australia today:

Consequences of this legislation, the bill before the house.

These amendments will allow councils to "compulsorily" fictitiously buy up their own roads, and then compulsorily really buy up a private owners adjacent land, transfer that adjacent land to a joint-venture partner (i.e. a private developer) pursuant to a Public Private Partnership, and thus sell it at a profit.

They claim that this is Bret Walker's advice and I have no reason to question that. That is why they are suspicious about the legislation. I have strong reservations about supporting the legislation, but now the Coalition has been able to come forward with this amendment. We have had two drafts of it, but the final draft is the same basic content. It states:

Restriction on compulsory acquisition of land by councils for re-sale

**Before approval is given to the acquisition of land by a council for the purposes of resale without the owner's approval because of an acquisition at the same time of other land vested in the council as referred to in section 188 (2) (a) of the Local Government Act 1993, the council must provide a written explanation to the Minister administering that Act as to the purpose (not being the purpose of resale) for which the other land vested in the council is being wholly or partly compulsorily acquired.**

I understand that the owners of the property confirmed that they accept their legal advice that this provides the protection they require. I am not a lawyer and I still have doubts whether that is the case. This amendment simply requires the council to give a written explanation to the Minister. It could certainly give a written explanation as to why it has acquired land and it can state it is for resale to the developer. In other words, it provides the facts, but do the facts stop the event occurring? The Coalition believes it stops the compulsory acquisition occurring. That may have to be tested in court if there is some doubt as to the impact of this amendment. We have only just received the amendment and we have not been able to get any legal advice on it.

The bill is clear and the legal advice is that the bill would have allowed the Parramatta City Council to proceed with the compulsory acquisition of those two properties. It is claimed the amendment will stop that happening. If that is the case—and I can only accept the advice I have been given—we can support the bill, but the amendment must be carried in Committee. If it is not, we will have to vote against the bill on the third reading.

**The Hon. HENRY TSANG** (Parliamentary Secretary) [9.37 p.m.], in reply: I thank honourable members for their contributions to the Land Acquisition (Just Terms Compensation) Amendment Bill 2009. Perhaps I can address firstly the question asked by the Shooters Party—that is, will these changes allow Parramatta City Council to acquire privately owned land without the owner's consent? The bill does not change

the High Court's ruling that the acquisition notices in the Parramatta case were unlawful. That particular acquisition process cannot continue. Clause 4 of the bill makes that abundantly clear. The bill's main purpose is fixing an unexpected consequence of the High Court's decision for native title and land acquisitions by other public authorities.

However, as a result of fixing these unexpected consequences, Parramatta City Council could also choose to start a new compulsory acquisition process in relation to the same land. If the council chooses to take that action, it will be subject to the Local Government Act and the just terms compensation regime as it was always understood to apply prior to the High Court's decision. The outcome of that process may well be different. Any new acquisition process initiated by the council could not fail for exactly the same reasons relied upon by the High Court. But the right to challenge the legality of such a process through the court remains.

Ms Hale and Mr Cohen suggested that a power to acquire privately owned land should be exercised only by a public authority for the public good. Other members, including Reverend the Hon. Fred Nile and the Hon. Robert Brown, emphasised the importance of fair compensation for the owners of the private land acquired by the compulsory process. The Government agrees that these are valid considerations. However, this bill does not undermine the legislative scheme that ensures fair compensation, which has operated successfully in New South Wales for many years. As the Minister noted in her reply in the other place, the power of a public authority to acquire its own land is a longstanding and important way that authorities ensure public land can be put to the best possible use for the local community. It is not a fictitious or backdoor means of gaining access to other privately owned land. It is a power used regularly by councils to undertake all sorts of projects related to their functions.

The Government is confident that the bill did not go further than intended, as suggested by the Hon. Greg Pearce. The Government remains satisfied that the Local Government Act is unambiguous: councils can acquire land only for a purpose related to the exercise of a council function. Nonetheless, the agreed amendment will make councils' obligations crystal clear. The Government agreed to this amendment because it is vital that the scope of a public authority's powers to acquire native title interests is clarified by the bill, regardless of one's views about the Civic Place project in Parramatta. Mr Cohen asked also for further clarification in relation to native title. The bill supports the original policy intention of section 7A that acquisitions of native title interests must occur for constitutional reasons in the same way required of other interests in land. In so doing the bill ensures no ongoing uncertainty about the status of land transactions involving public authorities in New South Wales. The bill does this without affecting the rights of private landowners to just compensation. I commend the bill to the House.

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

**The House divided.**

**Ayes, 24**

Mr Catanzariti	Mr Lynn	Mr Veitch
Mr Clarke	Mr Mason-Cox	Ms Voltz
Mr Colless	Reverend Nile	Mr West
Ms Fazio	Ms Parker	Ms Westwood
Ms Ficarra	Mrs Pavey	
Miss Gardiner	Mr Pearce	
Mr Gay	Ms Robertson	<i>Tellers,</i>
Ms Griffin	Ms Sharpe	Mr Donnelly
Mr Khan	Mr Tsang	Mr Harwin

**Noes, 7**

Mr Cohen  
Ms Hale  
Dr Kaye  
Reverend Dr Moyes  
Mr Smith

*Tellers,*  
Mr Brown  
Ms Rhiannon



**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**Clauses 1 and 2 agreed to.**

**The Hon. GREG PEARCE** [9.51 p.m.]: I move:

No. 1 Page 4, schedule 1. Insert after line 11:

**5 Restriction on compulsory acquisition of land by councils for resale**

Before approval is given to the acquisition of land by a council for the purposes of resale without the owner's approval because of an acquisition at the same time of other land vested in the council as referred to in section 188 (2) (a) of the *Local Government Act 1993*, the council must provide a written explanation to the Minister administering that Act as to the purpose (not being the purpose of resale) for which the other land vested in the council is being wholly or partly compulsorily acquired.

I make it absolutely clear to all members and those who might read this debate that the Liberals-Nationals Coalition was very concerned about this legislation as it was originally presented to the Chamber and about the issues affecting private property that were identified by various parties. We were so concerned that we resolved to oppose the bill if it was put forward in its current form. We indicated that to the Government, which led to the Government initially delaying presentation of the bill to the Chamber. We at all times supported correction of the anomaly that may apply to native title. We support dealing with the legislation now primarily to remove that anomaly but also to try to rectify the other issues that were identified and were of great concern to the Coalition.

In the intervening period, thanks to my colleague the member for Terrigal, Mr Chris Hartcher, who sought to find a resolution to the concerns raised and which we share, this amendment has been drafted by Parliamentary Counsel to correct issues identified in the debate by Ms Sylvia Hale and other speakers. Unfortunately, the amendment has come forward only in the past couple of hours so there has not been a great deal of time to discuss it, but that is the purpose of the Committee stage.

We are dealing with complex legislation. It was convoluted and the decisions involved made it even more difficult because of the anomalies. Frankly, at some point in time we have to rely on Parliamentary Counsel to do what we asked—that is, to draft an amendment that would deal with the problem that if a council used its power to acquire a road vested in it and also acquired adjoining land without an owner's consent it could only do so if there was a proper public purpose. It cannot do so if the purpose is resale. I understand that Parliamentary Counsel has addressed the problem that was identified and was of concern to us. On that basis I moved the amendment to try to resolve the problem and ensure the sanctity of private property while at the same time not having a situation where there are anomalies and uncertainty in the legislation.

Unfortunately, Parliamentary Counsel has a fairly arcane style and the matter is complex. However, at some point in time either we stop second-guessing Parliamentary Counsel and expect the office to deliver or we do not. The Coalition has accepted this is the result of our request, and I have plainly said what that is. I moved the amendment to resolve the matter, remove uncertainty and ensure that we can all go forward.

**Ms SYLVIA HALE** [9.55 p.m.]: There has barely been a speaker in this debate who has not referred to the amendment and said, "We will take on trust that the amendment does what supposedly the Government and Greg Pearce have agreed that it does." No-one has had the opportunity to read it in any depth. The first many members knew of the amendment was when they walked into the Chamber. It may have been some sort of comfortable deal behind closed doors but, as my colleague Ian Cohen outlined, there has been a complete failure to consult those people with an ongoing interest in native title issues and now there is a complete failure to consult with members of this Chamber on the issue.

We are being asked to accept an amendment that, on face value, does none of the things it purports to do. It merely suggests that the council must provide a written explanation to the Minister administering the Act as to the purpose, not being for the purposes of resale for which the other land vested in the council is being wholly or partly compulsorily acquired. It does not say the Minister has to take any notice of the reason, no

matter how feeble it may be. It does not in any way restrain the council from acting. It may well be that the amendment does do as has been suggested, but we have not have had advice from anyone who is particularly skilled on this issue. All the advice we have received, whether it is advice from Bret Walker, the Law Society or Hunt and Hunt, is that this is a bad bill that should be opposed.

I do not think we should act in ignorance. We should take the opportunity to be informed before we vote through legislation that has fundamental repercussions for many people in this State. The Greens do not oppose the compulsory acquisition of land provided it is for a community purpose. We do oppose compulsorily acquiring land for a commercial purpose that would enable the on sale of that land to interests such as the Grocon Corporation, which stands to profit very handsomely should the bill be passed. There can be no reason why we should not defer further consideration of this bill until the next sitting day, that is, next Tuesday. The sky will not collapse in the intervening four or five days. For that reason I move:

That Madam Chair do now leave the chair, report progress and seek leave to sit again on the next sitting day.

**The CHAIR (The Hon. Amanda Fazio):** Order! The motion moved by Ms Hale is in order. In accordance with Standing Order 173 (6), the motion must be moved without debate and immediately put and determined, and it cannot be repeated within 15 minutes.

**Question—That the Chair report progress and seek leave to sit again—put.**

**The Committee divided.**

**Ayes, 8**

Mr Brown	Reverend Nile	<i>Tellers,</i>
Dr Kaye	Ms Rhiannon	Mr Cohen
Reverend Dr Moyes	Mr Smith	Ms Hale

**Noes, 23**

Mr Catanzariti	Mr Lynn	Mr Tsang
Mr Clarke	Mr Mason-Cox	Mr Veitch
Mr Colless	Ms Parker	Ms Voltz
Ms Ficarra	Mrs Pavey	Mr West
Miss Gardiner	Mr Pearce	Ms Westwood
Mr Gay	Mr Primrose	<i>Tellers,</i>
Ms Griffin	Ms Robertson	Mr Donnelly
Mr Khan	Ms Sharpe	Mr Harwin

**Question resolved in the negative.**

**Motion that the Chair report progress and seek leave to sit again negatived.**

**The Hon. ROBERT BROWN** [10.06 p.m.]: Ms Sylvia Hale was quite right to try to have the debate adjourned. When I walked into the Chamber, I held one view; but after examining the amendment, I had a different view. I have had a chat with my colleague who, like me, is not a lawyer. In my view, the amendment does not fix the problem. It may be a valiant attempt and I applaud the Coalition for trying to come to some type of resolution, but I want every member of this place to understand that, when this legislation is passed, they will have created a situation of untold inequity. I am afraid that my colleague and I cannot support the amendment.

**The Hon. HENRY TSANG** (Parliamentary Secretary) [10.07 p.m.]: The Government supports the amendment. The Government remains satisfied that the Local Government Act is unambiguous. Councils may acquire land only for a purpose that is related to the exercise of a council's function. Nevertheless, the amendment is supported because it simply makes the obligations of councils in this regard crystal clear. The Government supports the amendment because it is vital that the scope of a public authority's power to acquire native title interests is clarified by the bill as soon as possible.

**Dr JOHN KAYE** [10.08 p.m.]: When is black white, and when is white black? The answer is: when it is legislation, and when legislation states very clearly that the only requirement is that a local authority write to

the Minister and tell the Minister why it is taking action. We are told that Parliamentary Counsel has informed the Opposition that the provision means something completely different and it does not mean what it states on the face of it at all.

The legislation creates a whole range of protections whereas on the face of what we have been presented with, the only way it can be interpreted is that all a local council needs to do is write to the Minister. It does not say anything about the requisite quality of the explanation or anything about the Minister needing to assess the explanation. It does not give the Minister any powers to override any requirement or to override the council's decision. Therefore, it is almost impossible to believe that this is anything other than a piece of wallpaper—a very thin piece of wallpaper—to cover a massive crack in the legislation and allow the Opposition to vote for a bill that it knows is wrong. One cannot help but think: What would Bob Menzies think of the Opposition in this situation? What would the founders of the Liberal Party think of a party that was busy trying to take away the private property rights of small property owners and hand them over to the large developers? If members were serious about believing this, my colleague's motion to delay consideration of the bill until tomorrow or until next Tuesday, during which time we could obtain independent legal advice, would have been supported. If there were any sense in which this were serious—and that was a test for the Opposition—

**The CHAIR (The Hon. Amanda Fazio):** Order! I remind Dr John Kaye that he should not canvass a decision of the House.

**Dr JOHN KAYE:** Thank you for your guidance, Madam Chair. I was not canvassing the decision of the House; I was pointing out an implication of the decision of the House. An implication of the Opposition's vote is that it is not really serious about this at all. This amendment simply creates an opportunity for the Opposition to vote for the legislation. It is a very small fig leaf that Opposition members can wear to disguise the fact that they are voting for legislation that they know is wrong and that they know runs counter not only to the principles of their party but to the principles of decency and fairness.

What Opposition members are doing is what large parties have done in this Parliament for far too long: they are delivering for the large property developers. This is a shameful situation. We are told that the amendment means something completely different from what it says. We are supposed to take that on good faith. We are told that on those grounds this legislation, which a minute ago was the worst thing possible, is now quite okay. It is just not acceptable. It is not a sensible way to make policy decisions. It is not sensible to make law on the basis of being told: We were told by somebody that this amendment would have an implication that was completely different from what the amendment says in the written word. The Greens cannot do anything but oppose not only the amendment but also the legislation.

**The Hon. HENRY TSANG** (Parliamentary Secretary) [10.12 p.m.]: In response to the matters raised by Dr John Kaye, the Government expects proposals for urban renewal projects such as the Civic Place redevelopment and the redevelopment of private land by councils and their private sector partners to be subject to a fair and just compensation regime. The bill does not change Government policy regarding land acquisition on just terms. In relation to the specific sections affected by the bill, that policy has operated since the provisions were inserted into the Land Acquisition (Just Terms Compensation) Act and the Local Government Act by the previous Coalition Government in 1994. The bill simply ensures that this longstanding policy is not undone by legal technicalities. The Government therefore supports the amendment.

**Reverend the Hon. FRED NILE** [10.13 p.m.]: I have already spoken to the amendment. The heading in the amendment reads: "5 Restriction on compulsory acquisition of land by councils for re-sale" and the body of the amendment contains the words "(not being the purpose of resale)". Parliamentary Counsel has advised that that prevents councils compulsorily acquiring the land for resale. If that is the case, I support the amendment.

**Ms SYLVIA HALE** [10.13 p.m.]: In response to what Reverend Dr Nile—

**Reverend the Hon. Fred Nile:** There is no "Dr". There are not many doctors who are genuine in this place.

**Ms SYLVIA HALE:** Many people may also observe there are not many honourable people in this place. Returning to the serious matter of this debate, it was clear in the case before the High Court that Parramatta council argued that one of the purposes for which it was acting was a broader public purpose of

facilitating the construction of the Parramatta centre. The High Court disagreed with that. It said that whichever complexion one puts on it—regardless of whether it was the primary purpose, a secondary purpose, or even a predominant purpose—it boiled down to a question of resale.

It seems to me that if one takes the amendment at face value, the council is simply required to supply to the Minister a reason as to the purpose. It seems to me that any council could come up with a whole host of reasons separate from the purpose of resale. However, when it comes to the crux of the matter, that could well have been the principal object, even though the council may have come up with a whole variety of other justifications for it.

**The Hon. Robert Brown:** As did Parramatta council.

**Ms SYLVIA HALE:** I acknowledge the interjection by the Hon. Robert Brown that indeed this is what Parramatta council argued primarily in its court case. It may well be that Parliamentary Counsel is right, and that the Opposition and the Government are right: this amendment overcomes the problems that everybody else has with the Act and it is absolutely urgent that we push it through because we must preserve the sanctity of native title.

**The Hon. Trevor Khan:** Have a look at the decision again, Sylvia.

**Ms SYLVIA HALE:** I am not canvassing the decision. I am saying, as is perfectly clear from the contribution made by my colleague Mr Ian Cohen, that the Government did not even bother to consult with the relevant interest groups on the native title aspects of the legislation; the Government singularly failed to consult on it. That is what I think the letter from Warren Mundine that my colleague produced made perfectly clear. If the Government did not have the time to consult with those people, obviously it has not had the time to consult with the Law Society, and obviously it has not had the time to talk to, say, Bret Walker. But somehow we are all expected to take this on trust.

Either one ascribes to the Opposition that it is incredibly naive, that it is incredibly trusting of the Government, or it has done some sort of sleazy deal—in the expectation that when it comes to power as an alternative government it will be able to come to some sort of cosy deal with major developers such as Grocon, who are equally happy to donate to the coffers of the Liberal Party as they are to donate to the coffers of the Labor Party.

**Question—That the Opposition amendment be agreed to—put.**

**The Committee divided.**

**Ayes, 25**

Mr Catanzariti	Mr Khan	Mr Tsang
Mr Clarke	Mr Lynn	Mr Veitch
Mr Colless	Mr Mason-Cox	Ms Voltz
Ms Cusack	Reverend Nile	Mr West
Ms Ficarra	Ms Parker	Ms Westwood
Miss Gardiner	Mr Pearce	
Mr Gay	Mr Primrose	<i>Tellers,</i>
Ms Griffin	Ms Robertson	Mr Donnelly
Mr Kelly	Ms Sharpe	Mr Harwin

**Noes, 7**

Mr Cohen  
Ms Hale  
Dr Kaye  
Reverend Dr Moyes  
Ms Rhiannon

*Tellers,*  
Mr Brown  
Mr Smith

**Question resolved in the affirmative.**

**Opposition amendment agreed to.**

**Schedule 1 as amended agreed to.**

**Title agreed to.**

**Bill reported from Committee with an amendment.**

**Adoption of Report**

**Motion by the Hon. Henry Tsang agreed to:**

That the report be adopted.

**Report adopted.**

**Third Reading**

**The Hon. HENRY TSANG** (Parliamentary Secretary) [10.26 p.m.]: I move:

That this bill be now read a third time.

**Question put.**

**Division called for and Standing Order 114 (4) applied.**

**The House divided.**

**Ayes, 25**

Mr Catanzariti  
Mr Clarke  
Mr Colless  
Ms Cusack  
Ms Fazio  
Ms Ficarra  
Miss Gardiner  
Mr Gay  
Ms Griffin

Mr Kelly  
Mr Khan  
Mr Lynn  
Mr Mason-Cox  
Reverend Nile  
Ms Parker  
Mr Pearce  
Ms Robertson  
Ms Sharpe

Mr Tsang  
Mr Veitch  
Ms Voltz  
Mr West  
Ms Westwood

*Tellers,*  
Mr Donnelly  
Mr Harwin

**Noes, 7**

Mr Brown  
Mr Cohen  
Dr Kaye  
Reverend Dr Moyes  
Ms Rhiannon

*Tellers,*  
Ms Hale  
Mr Smith

**Question resolved in the affirmative.**

**Motion agreed to.**

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

**ADJOURNMENT**

**The Hon. TONY KELLY** (Minister for Police, Minister for Lands, and Minister for Rural Affairs) [10.31 p.m.]: I move:

That this House do now adjourn.

**NATIONAL BROADBAND NETWORK**

**The Hon. CHRISTINE ROBERTSON** [10.31 p.m.]: Investing in quality broadband access for all Australians is a vision the Rudd Labor Government has committed to, and New South Wales is right behind the Federal Government. Premier Nathan Rees has announced the establishment of a New South Wales National Broadband Network Task Force, to work on the rollout of the network in this State. This task force includes independent experts from the Information and Communications Technology industry and has four focus areas: securing the National Broadband Network headquarters in New South Wales; investigating opportunities for leveraging the New South Wales Government's assets and purchasing power for the national broadband network rollout; ensuring the planning process for the rollout proceeds smoothly; and promotion of the Information and Communications Technology industry technology application and development, and training through the course of the rollout.

Further, \$11.6 million of additional funding over five years has been allocated by the New South Wales Government to ensure all communities in our State are part of the National Broadband Network. This commitment is an example of what Labor Governments are willing to do towards building this very important infrastructure for twenty-first century Australia. The National Broadband Network project is the single largest infrastructure project in Australia's history, worth up to \$43 billion over the next eight years. It provides excellent opportunities for regional and rural New South Wales. After all, the aim is to connect homes and businesses in towns with a population of more than 1,000 to broadband speeds of 100 megabits per second—100 times faster than current speeds. All other premises in Australia will be connected with next generation wireless and satellite technologies that will be able to deliver speeds of 12 megabits per second. This will be delivered through a Fibre to the Premise connection, involving a direct optical fibre connection—

*[Interruption]*

Good heavens, I did not think this would create such interest—to each home and workplace. This will provide the ability for future service and speed upgrades. This level of access to broadband is essential to Australia's development this century, especially regional and rural homes, businesses and schools. The applications are endless, but for members in this place it might be enough to imagine having high-quality and readily accessible videoconferencing available where currently planes, long car journeys and overnight accommodation to attend meetings of committees and other groups are involved.

**The Hon. Don Harwin:** Not if you live in a town with less than 1,000 people.

**The Hon. CHRISTINE ROBERTSON:** The honourable member did not listen to the beginning of my speech. Country Labor addressed mayors from across regional New South Wales at the Central NSW Councils [CENTROC] summit in Bathurst last month. This was a very valuable communion of ideas that has led to a number of positive outcomes for the region. The National Broadband Network was one of the topics of discussion and I had the opportunity to note that those not supporting the National Broadband Network during the global recession were involved in destructive politics that affect rural and regional families doing it tough. CENTROC is a mixed group of persons who all support the issues. It seems the Coalition in the Australian Parliament are not supporting the National Broadband Network. This is despite the Leader of the Nationals in the Senate, Barnaby Joyce, claiming the policy was his party's policy, while saying on 7 April, 2009:

How could you disagree with something that is quite evidently our idea? This delivers a strategic infrastructure outcome.

The obvious question is: Why don't you vote for it in the Senate? Instead, the Coalition has chosen to obfuscate the issue rather than make a commitment to a project that it ultimately believes in. Meanwhile, the first decade of the twenty-first century is almost over. Delaying this project is irresponsible. Jobs are on the line and the Coalition—particularly The Nationals—is holding up a vital infrastructure program for Australia, and particularly for rural and regional areas. Do they need to be reminded that when constructed the National Broadband Network will be open-access, meaning any player in the market will have access to the network?

This will ensure healthy competition among numerous technology providers to deliver excellent services at low cost to consumers. Maybe the Coalition has forgotten that high-speed broadband will revitalise our regions, provide new job opportunities, drive efficiency and improve the delivery of social services.

It is not difficult to imagine the benefits to schools, hospitals and other health resources, as well as new trade opportunities and better communications in rural and regional areas. Businesses will benefit from improved access to online services that will facilitate finance and banking, research and information. Perhaps 12 years of the Howard Government, which saw 18 different plans to improve online services and no action, is too much of an embarrassment to the Coalition. Most people in rural and regional communities are more interested in what we can do rather than what we cannot do. That is why I support the Country Labor campaign to get the National Broadband Network through the Senate. I refer members to the website [www.countrylabor.com.au](http://www.countrylabor.com.au) where they can sign a petition to that effect.

### **RAIDERS OVAL, LAKE CATHIE**

**The Hon. CATHERINE CUSACK** [10.36 p.m.]: It has been my privilege to meet with local sporting representatives of the Lake Cathie community in the Port Macquarie area to discuss the problem of the lack of sporting fields to meet the needs of its active and growing community. These are the people this Parliament has been established to support and assist, not for their personal benefit but for the enrichment of future generations. I have such respect for these good citizens that I met them to discuss their modest request for a four-hectare boundary adjustment to their sporting fields, known as Raiders Oval at Lake Cathie. These fields used to adjoin the local tip. Some time ago the Port Macquarie council and the Department of Environment and Climate Change agreed that the creek running near the oval was of high conservation value, contained rare and threatened species and was deserving of status as a nature reserve.

A large tract of land was dedicated for this purpose, including the tip. The fire trail near the oval was used as a boundary. This was an error because it failed to make adequate provision for the growth in population. It is commonsense that adjustment to the boundary be made to allow the sporting fields to expand four hectares into the area that comprised the former tip, a small adjustment to fairly accommodate the needs of the children in the Lake Cathie community and easily accommodated by Government. When I met the community my first thought was that I wish all requests were this easy—but not so for this Government.

The community has been stalemated for nearly a decade in this simple request. The Coalition called for papers to get to the bottom of the matter. As a strong supporter of the New South Wales National Parks and Wildlife Service I have been disappointed with the result. The community believes it has made a submission to achieve a boundary adjustment. A great deal of time and effort has gone into the submission and yet it is clear this has never been submitted for consideration by the Minister. It is scandalous that the bureaucracy has blocked this legitimate request by the community. It is a gross abuse to find technicalities and excuses to prevent this going forward.

It is clear that Minister Tebbutt has only been briefed by way of a possible parliamentary question or PPQs—briefing notes prepared to assist Ministers in the event questions are asked in Parliament, or spin papers. The substantial submission prepared in good faith by the community was not sent and was never seen by the Minister. The Minister's office requested a proper briefing. Since nothing of that nature was returned to Parliament by the Minister's office, I have to assume the department failed to provide it. That is a scandalous abuse by the department, dudding not only the community but also the Minister. This is a very serious matter. It means the department is not only stonewalling the public but also the Minister. It was also clear from the papers that the bureaucrats in the department never supported the proposed boundary adjustment and never wanted to assist the community. It was too much work, annoying to deal with, and they hoped the matter would go away.

The community has endured a blatant and disgraceful charade. They were misdirected and misled by the Department of Environment and Climate Change officers whom they met and trusted to give them advice on how to make a proper submission. They were repeatedly given incorrect criteria to respond to and when their carefully prepared submission failed, it was not for lack of merit but due to bureaucratic misdirection, which they followed in good faith. This is utterly reprehensible. Port Macquarie council was sent a copy of the Department of Environment and Climate Change guidelines for boundary changes but this was not forwarded to the community, and the council did not effectively support the submission. Having said that, the initial criteria provided to Port Macquarie council was also incorrect and the council has been misled, with its time and resources wasted on a hopeless goose hunt, courtesy of the department.

An email received from the regional manager of the North Coast region with the subject "Monday issues" covers three items: the spraying of bitou bush; Leslie Williams described as "the (defeated) Nationals candidate for Port Macquarie"; and the author's plans to go camping in a national park he is told suffers from 'cattle, pigs, four-wheel drives, weeds, rubbish, unhappy tourists etc'." Another email on "hot issues" refers to my visit to Lake Cathie in February: "Mainly political pointscoring issue. Hastings Council proceeding to fast-track area 14 fields, not revoke NR lands. Concern that some Lake Cathie residents are blaming DECC and commenting to Hastings staff". Contrast their concern for themselves with the lack of concern for the community, the needs of our children and, I say this as a country member, the need to be decent and concerned neighbours. I have defended the Department of Environment and Climate Change staff far more than they would realise in the hope that there is an ethical and fair standard in the organisation. In the case of Port Macquarie I am sadly mistaken. I am dismayed that public trust has been utterly abused.

My reading of the policy suggests the boundary between Lake Innes and the Raiders Oval is a mistake that could be easily corrected, but nobody in the department has bothered to try. It is a legal question and if I am wrong then the obligation is on them to try harder and go the route of revocation. To play the games that have been played with their community, to dismiss their legitimate and laudable interests, to groan and wish it would all go away truly scandalises me, not only as a parliamentarian but as a human being. These staff have misled the community and their Minister; they must be brought to account. The Raiders Oval project is reasonable. It benefits children and provides an opportunity to engage the wider community in a positive relationship with national parks. Instead they have treated their fellow citizens and the children of Lake Cathie with contempt. The department has abused its privileged position and the Minister must intervene in the public interest generally as well as the interest of the Lake Cathie community.

### **AUSTRALIA'S BIGGEST MORNING TEA**

### **ITALIAN NATIONAL DAY CELEBRATIONS**

### **CO.AS.IT. ITALIAN NATIONAL BALL**

**The Hon. MARIE FICARRA** [10.40 p.m.]: I advise the House of the success of three important events: Australia's Biggest Morning Tea, the Italian National Day celebrations and the CO.As.It. Italian National Ball celebrating Italian National Day. Every year Australia comes together to support a great organisation, the Cancer Council of New South Wales, through Australia's Biggest Morning Tea. Since the initiative commenced in 1994, more than \$60 million has been raised. Funds raised go towards funding Cancer Council's research, prevention, education and support services. I have attended many morning teas this year for the Cancer Council. However, I particularly acknowledge the efforts of Mrs Gwen Riley and Councillor Zaya Toma, who held a morning tea in Fairfield on Saturday 23 May 2009.

Mrs Riley, Councillor Toma, Ms Ravina Joudo and Ms Annette Walton did a brilliant job in putting on not just a morning tea but also a barbeque lunch that was attended by many Fairfield residents and members of the RSL Auxiliary. It is important that community leaders support such events and I was pleased that local government councillors Frank Oliveri, Vincent De Luca, OAM, Andrew Rohan and Community Relations Coordinator for the New South Wales Leader of the Opposition, Ms Dai Le, attended. As a cancer survivor, Councillor Vincent De Luca, OAM, has supported many people through their own battles with cancer, raised awareness in the community about cancer and prevention, and raised thousands of dollars over the years for the Cancer Council of New South Wales.

This year, it was a great honour to host with Councillor De Luca a Biggest Morning Tea in Parliament House. The event was a great success. It was attended by nearly 200 people and raised more than \$6,000 for the Cancer Council of New South Wales. The Chief Executive Officer of the Cancer Council of New South Wales, Dr Andrew Penman, attended and outlined the great work being achieved through the Cancer Council's services and research initiatives. I thank all members from this House, as well as those from the other place, who attended the morning tea, as well as the many people from across the State who held morning teas. I thank Vincent De Luca, OAM, for all his work in bringing this event to fruition, and those who helped us on the day, including Edwin Dyga, Judith Barrionuevo, Teena McQueen, Maria Venuti, AM, and Angela Assaf. I also thank Anita Yuen and the Phoenix Group of Chinese Restaurants who donated \$1,000 to the Cancer Council. Their generosity is greatly appreciated.

I turn now to the Italian National Day celebrations held at Doltone House and Wharf 8 on 7 June 2009. More than 4,000 people attended the event. Various Knighthoods were announced by the Italian Government—



John Caputo, OAM, and Pino Migliorino were awarded the highest honours by being appointed Commendatores, and Giovanna Cardamone and Giuseppe Sorrenti were appointed Cavalieris. Congratulations to those people who are an inspiration to all those in the Italian/Australian community. I also congratulate Carla Zampatti, AC, who was awarded the highest honour in the Order of Australia and made a Companion of the Order of Australia, and Roy Mustacca, OAM, who was awarded the Medal of the Order of Australia.

Italian National Day could not have been so successful had it not been for the generosity and hard work of many, particularly, John Caputo, OAM, Tony Mustacca, Luigi Stivalla, Paul Signorelli of Doltone House, Ubaldo Larovina of Rete Italia and *La Fiamma*, John and Phil Navara of Le Montage, the Italian Chamber of Commerce, Nick Scali, Nat Zanardo, Roy Mustacca, Vince Cammareri Travel, Jet Set Travel World Group and HSBC.

Co.As.It. held the Italian National Ball on 29 May 2009. More than 400 people attended the dinner. More than \$25,000 was raised towards the establishment of a new centre-based day care for people living with dementia in south-west Sydney, enabling Co.As.It. to help enhance the quality of life for many of our senior Italian-Australians. I congratulate Lorenzo Fazzini, President of Co.As.It., and his hardworking board, Peter Todaro, John De Bellis, Linda Restuccia, Romano Di Donato, Frank Chiment, Claudia Ganora, Francesco Lo Pizzo, Maria Pirrello, Ben Sonogo and Rita Zammit.

### GRIFFITH AGED CARE EXPO

**The Hon. TONY CATANZARITI** [10.45 p.m.]: I attended the Aged Care Expo hosted by Griffith City Council on Thursday last week. I was extremely impressed by the event. The expo gave people a chance to access information about services for the elderly in Griffith and was a great success. A wide range of service providers attended the expo including Scalabrini Village services and Baptist Community Services, to Griffith City Council, Centrelink, Western Riverina Community Care, Home Modification Service, Meals on Wheels, and the Women's Legal Service. Other smaller agencies and services were also present in an environment that was well set up to be comfortable and relaxed.

A great hit on the day was the advice that was made available to people who have to cope with the sad situation of a loved one with dementia. This advice was given in a quiet, respectful and, despite the public nature of the expo, private fashion, and I know that many found the assistance very useful. Others gave advice regarding how the elderly can, if they desire, maintain control over their finances, social security benefits, and other sources of income, or how to properly ensure that financial matters are delegated to others. I applaud the expo as a local initiative, for the problem of aged care is for the individual, and their families, a problem that often simply takes us by surprise. It is something we would prefer to turn a blind eye to, whether in relation to ourselves, or our loved ones, and often, it is not really something we actually plan or prepare for. All of a sudden however, an event occurs that throws the issue into stark relief.

A parent or partner might take ill, or perhaps have a fall and fail to bounce back with usual resilience. Such an event often takes us by surprise, and it is only then that we become aware of the life-changing and often sad reality for the aged when they finally realise they can no longer look after themselves. For too many people this sad moment is a rude awakening that propels them into action to provide for themselves, or their parents, the supports that are necessary to continue their day-to-day lives. Unplanned, this can be a traumatic experience. Unplanned, it may result in short-term placements, or ill-considered service delivery. If it is unplanned, major financial decisions might be made that are later regretted.

I applaud the expo because it assisted people to become generally more aware of the many issues surrounding ageing in a relaxed and comfortable environment, not in response to an emergency. Many service providers at the expo were about prolonging the independence of the aged through dissemination of advice about supported living, such as the valuable service provided by Meals on Wheels, or home visitor programs, clubs and community groups, and home modification advice and services. I also note that many of the services that work in this area also found the expo of considerable benefit because it showed them the range of assistance available in the community, and assisted in generating new relationships. This alone will be of benefit to the elderly and their loved ones as it will allow for better referrals and advice. I note the work of Griffith City Council, its staff Nicola James and Peta Dummett, and Scalabrini Village in organising the expo. I agree with the many people who said that Griffith should hold this expo annually, but go a step further and state that the expo is a great model that should be duplicated right across the State. The Government would be well served to consider funding such a great initiative. I congratulate all involved on hosting what turned out to be an inspiring day.

## **SPECIAL NEEDS AND DISABLED STUDENT SERVICES**

**Dr JOHN KAYE** [10.49 p.m.]: On Wednesday 10 June 2009 I attended a meeting in Parliament House convened by the Public School Principals Forum. The forum was meeting to report back on a survey of primary school principals across New South Wales on the provision of services for children with special needs and disabled students in New South Wales. The report was moving. Each and every one of us was challenged to consider the impact on students, teachers and society of the chronic underfunding of disability services in schools around New South Wales. The key features identified in the report were no or inadequate funding of mainstream enrollees; an antiquated and inflexible staffing formula for class sizes; no support for more than one disability; excessive class sizes; and insufficient school counselling.

In the case of students with multiple special needs, we were told of a child who had a mild intellectual disability, was behaviourally disordered and had autism. Yet the child remained in a class of 18—the same requirement as for a child with a mild intellectual disability and no other disability. It is unbelievable that in New South Wales in 2009 we fail to recognise the way in which multiple disabilities interact in a complex fashion to create a challenging educational environment. Students are funded on the basis of the cost of their least expensive special need. That is unworthy of a modern State. All members of Parliament should commit to ensuring that every student is resourced to address adequately all their special needs.

The mainstreaming of students is an important development for students with a disability in New South Wales. Every teacher in New South Wales welcomes students with special needs as valuable members of their class. But for it to work, students with special needs must be placed in classes of reduced sizes so as to respect the needs of the student, the teacher and the rest of the class. There must be sufficient teacher time to allow for adequate levels of attention to the students with special needs and also all the other students in the class. Support classes around New South Wales for mildly intellectually disabled students have increased in size or have been abolished. That is too high a price to pay for additional teacher assistant time. It is time we committed to a new deal for support classes and for schools with special purposes to ensure that they have adequate resources and class sizes. The funding formula for schools with special purposes has to recognise that many students are engaging in the secondary curriculum. In particular, primary school principals should be acknowledged as principals of schools with secondary students.

There is an inadequate provision of school counsellors in New South Wales. New South Wales has been left behind by the growth in the mental health needs of students. The current shortage of school counsellors is bad, but much worse is to come. We must have a commitment to train more school counsellors and to ensure that New South Wales does not continue with the disgracefully high number of students per school counsellor. We owe it to the people of New South Wales, the students, the teachers and the principals to address these issues. It is more than a human right that every student is offered the ability to reach his or her potential. The fulfilment of the promise of Henry Parkes of comprehensive public education must be extended to students with special needs to ensure that they contribute to society. We must support the principals and teachers in special needs classes and schools with special purposes.

The system functions at the moment only because it exploits the goodwill of teachers who put their bodies and souls into their work. It is unreasonable and unfair and excessively bad public policy to fund the system by burning out teachers. It is a major occupational health and safety issue for many teachers and principals who suffer physical injuries and emotional stress. Worse, they are frustrated by their inability to complete their professional tasks. We owe it to society. Although it is an economic issue because of the massive cost of not dealing with the matter, it is also a social issue because each and every one of those students is a valued member of our society. We owe it to those students and to ourselves to provide them with the ability to reach their full potential.

## **TRIBUTE TO EDDIE BUIVIDS**

**Mr IAN COHEN** [10.54 p.m.]: Tonight I pay tribute to a most significant friend and a fine human being, Eddie Buivids. Eddie moved to Nimbin in 1974 and established his family home at Lillian Rock. Eddie was an architect by profession, and his frugal and careful mannerisms reflected his profession and his life. He was a careful and considered man. He was also an architect and builder of the future, a pioneer of a new way of living and thinking. He was a conservative and somewhat cautious adventurer who held the dream of a better way of societal organisation to the very end. Eddie was influential in the post-Aquarian development of Nimbin. In the 1970s he played a central role in the Home Builders Association and as an architect contributed to many of the dwellings in the Nimbin area today. Legacies of his contribution to public life include the current Choices

Café, the beer garden at the Freemasons Hotel, youth housing, Mulgum House, social housing for the elderly, the Rainbow Power Company, the western car park public toilets, the Steiner School at Lillian Rock, renovations to the Tomato Sauce building for the neighbourhood centre, and the Nimbin recycling centre. He also contributed to the restoration of the Nimbin School of Arts and the Birth and Beyond building, and he established the Nimbin Waste Busters at the Nimbin recycle centre.

Eddie and I first met in 1980 at a meeting in Lismore commemorating Hiroshima Day. I had asked for support for action against sandmining at Middle Head near Macksville. Eddie approached me to tell me that he would be there to help. True to his word, and typical of the man, he threw himself wholeheartedly into the campaign. My mind goes back to his arrival at the beach protest camp one evening with his leather briefcase. I understand he carried that same briefcase some 25 years later. We shared much on the beach at Middle Head in 1980. We camped and strategised and on a big day of police action we were both arrested and ended up, along with 20 others, in the back of a police van and eventually Kempsey police station. Our spirits were so high that arrest was more a rite of passage than a punishment. I remember singing and dancing in the caged courtyard of the police station. We truly believed we were part of a new movement for social change and environmental awareness that was unstoppable.

By the end of the Middle Head protest camp, despite it being essentially a defeat, Eddie was instrumental in the birth of the networking and publications of the Green Alliance, which went on to become a successful magazine that was often collated in Eddie and his wife's kitchen. The idea grew from the Green bans and an early networking concept into the Green movement. We lost a beach but saved the next one down the coast. Grassy Head was never sand mined. During an unlikely interlude in Sydney in 1981, Eddie and I worked together on the 1981 New South Wales election campaign supporting an upper House team. We wanted to use the title Green Alliance, but the group decided on calling it the PEACE team. A memorable action during the election campaign by Eddie was his attempt to crack an interview with John Laws. Eddie lasted an inordinate length of time on the line. Once again, his unflappable stoicism held while he was in the grip of a raving John Laws who labelled Eddie a mad supporter of that stomach-stapled solicitor from New Zealand. We took such insults as honourable mentions. Laws was referring to the brave New Zealand former Prime Minister David Lange.

Around the campfires of Middle Head and Nightcap we dreamed of the future. Eddie had earned respect as one who participated in the Terania rainforest confrontations years previously. Nightcap was a continuum of the Terania action three years before, and Eddie was quietly ever present with camera and recorder in hand. Eddie always maintained a sense of the importance of our actions, a clear sense of history. In the forest during those potentially dangerous times Eddie would be there with a steady voice. He was always prepared to gently calm down both sides when things got potentially aggressive. From John Laws to a logger in Griens Scrub next to a stalled bulldozer, Eddie was consistently patient but forceful in debate. He was able to appeal to the humanity of the opposing team. I never saw Eddie get angry. Eddie was there till the end. Having participated in Terania in 1979, he was an instrumental player in what was an historic win for the rainforests of New South Wales in 1982.

In our peaceful revolutionary roles I always sought his advice. In the months preceding the Tasmanian wilderness campaign it was Eddie who rightly advised that the Franklin would be the big one. As a result I made preparations. Eddie came down to the wilderness encampment with his wife, Else, and two children, Maia and Sophie. Despite difficult living conditions, his whole family flourished on the river in the rainforests of south-west Tasmania. Many a day I was the boat driver and Eddie was the cameraman. We were on the spot for the first barge that broke through the blockade and on the sad day of the landing of the first bulldozer in the wilderness at Warners Landing. Eddie recorded it all on film. He was able to maintain calm in potentially dangerous situations and still get that shot. My driving did not help, but, despite an ongoing knee injury, Eddie never complained. In 1982 we travelled together in my old van as northern New South Wales representatives to the Honeymoon uranium mine protests outside Broken Hill. Again, camera in hand, Eddie participated and recorded.

For the Roxby Downs uranium mine protests in 1983, the following year, we travelled once again to the desert—a small contingent from northern New South Wales. In 1984 Eddie missed Roxby Downs because he was at Ernabella mission with his family working on sustainable buildings for the indigenous community. Eddie's ideals live on, from the many action spots and ecosystems saved in the early days to the cultural evolution of caring that he nurtured in his hometown of Nimbin. In my remembrance of this man is the image of a tall, gentle man dedicated to peace and to the environment. I salute you, Eddie Buivids, a Green warrior and

idealist. You stayed with your lifelong beliefs for the betterment of society. I am proud to have been your friend and fellow traveller. Eddie is survived by five daughters, Viviane, Anita, Christine, Maia and Sophie, his stepdaughter, Sarah, and his partner, Margaurite.

#### **TRIBUTE TO PETER CULLEN**

**The Hon. DON HARWIN** [10.59 p.m.]: On Friday I will attend the funeral of my friend Peter Cullen, who died recently in a motorcycle accident while on holiday in Italy. Peter was, until last year, the treasurer of the Rose Bay branch of the Liberal Party and a delegate to State Council. When Peter King was member for Wentworth he served as that Federal electorate's conference treasurer. I first met Peter Cullen when he was an adviser to Joe Hockey in the former Federal Government during his tenure of the financial services portfolio. He subsequently went to the Bar. I last saw this idealistic, highly principled and very public-spirited man here in Parliament House when he came to tell me that he wanted to be part of our Liberal team as a candidate at the next State election to help start the change in New South Wales. Sadly, he will not now have the opportunity to contribute, as he would have loved to. All his many Liberal friends will miss him. Vale Peter Cullen.

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

**Motion agreed to.**

**The House adjourned at 11.01 p.m. until Thursday 18 June 2009 at 11.00 a.m.**

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