LEGISLATIVE COUNCIL

Tuesday 24 November 2009

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PRESIDENT OF THE LEGISLATIVE COUNCIL

Vacant Office

The Clerk of the Parliaments announced the receipt of the following communication from Her Excellency the Governor:

Office of the Governor
17 November 2009 Sydney 2000

Ms Lynn Lovelock
Clerk of the Parliaments and
Clerk of the Legislative Council,
Legislative Council
Parliament House
SYDNEY NSW

Dear Ms Lovelock,

I wish to inform you that the Honourable Peter Primrose, the President of the Legislative Council, wrote to me this morning, 17 November 2009, tendering his resignation as President of the Legislative Council with immediate effect.

I accepted his resignation.

Yours sincerely,

Professor Marie R. Bashir AC CVO
Governor of New South Wales

PRESIDENT OF THE LEGISLATIVE COUNCIL

Election

The Clerk of the Parliaments announced that, under section 22G of the Constitution Act 1902, the office of President of the Legislative Council was vacant and it was necessary to choose a member to be President before the House proceeded to the dispatch of business.

The Clerk of the Parliaments called for nominations for the office of President.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, and Vice President of the Executive Council) [2.33 p.m.]: Ms Clerk, I propose and move:

That the Honourable Amanda Ruth Fazio do take the chair of this House as President.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [2.33 p.m.]: Ms Clerk, I propose to the House and move:

That the Honourable Donald Thomas Harwin do take the chair of this House as President.

The Hon. Don Harwin was first elected to the House in 1999. He has served with distinction as Opposition Whip since 2003. His special interest in electoral matters is well known. Since 2004 the Hon. Don Harwin has served on the Joint Standing Committee on Electoral Matters—a committee he advocated in his maiden speech. He successfully moved for the establishment of this House's Select Committee on Electoral and Political Party funding, of which he was the deputy chair.

Members from all sides in this place would acknowledge Don's depth of knowledge of parliamentary procedure and his respect for the institution. He has long played an active role in this House's Procedure

Committee, of which he is the deputy chair, and the Privileges Committees. Don has been an innovator when it comes to the procedures of this House. He led the negotiations with the crossbench that resulted in the members of this House unanimously adopting changes to the budget estimates process, one of the most important functions of this House. After many years without a budget take-note debate, he moved for the reinstatement of that procedure and it is now a well-established feature of our work.

Don has also demonstrated that he has the ability to work productively with members of all parties. The Government has appointed him to two boards to which it was under no obligation to appoint an Opposition member: the Sesquicentenary of Responsible Government History Project Committee and the New South Wales State Records Authority, on whose board he is the Parliament's representative. He has defended the traditions and powers of this House of review and the community interest that flows from this strength.

I am pleased to propose the Hon. Don Harwin for the position of President because I know he is a person whose record has demonstrated the temperament, skills and experience required by the holder of this important office. He is an outstanding member of Parliament with the qualities that make him a worthy successor to previous Presidents of this place. I commend the candidacy of the Hon. Don Harwin to the House.

The Clerk of the Parliaments invited the two nominees to address the House.

The Hon. AMANDA FAZIO: I submit myself to the will of the House.

The Hon. DON HARWIN: I submit myself to the will of the House.

The Clerk of the Parliaments announced that, there being two nominations, in accordance with section 22G of the Constitution Act 1902, a ballot would be held; and that before proceeding to the ballot the bells would be rung for five minutes.

Ballot

The Clerk of the Parliaments announced that the House would proceed to a ballot; that the candidates were the Hon. Amanda Fazio and the Hon. Donald Thomas Harwin; and that the Clerks would distribute ballot papers for members to complete in their places.

[*The ballot was conducted.*]

Declaration of Ballot

The Clerk of the Parliaments announced that the result of the ballot was: the Hon. Amanda Fazio, 26 votes, and the Hon. Don Harwin, 16 votes.

The Hon. Amanda Fazio was declared elected President of the Legislative Council.

The Hon. Amanda Fazio was then taken out of her place by the Hon. John Hatzistergos and the Hon. Tony Kelly and escorted to the chair.

The President-elect, standing on the upper step said: I express to honourable members my deep sense of the honour proposed to be conferred upon me and I submit myself to the House.

The President (The Hon. Amanda Fazio) took the chair.

The PRESIDENT: I convey to honourable members my deep consciousness of the honour that this House has conferred upon me in choosing me as its independent and impartial President. I express my profound thanks to the Chamber for the confidence that is reposed in me and I confirm that in my role as President I will be an independent and impartial holder of the position.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, and Vice President of the Executive Council) [2.45 p.m.]: Madam President, on behalf of the Government I congratulate you on attaining the office of President of the Legislative Council of New South Wales. You are the third woman to occupy this position and you do so following an extended period in this House both as a member and also as Deputy-President. I am sure the House will benefit from the extensive experience you have had in the

chair at various committee levels and also as the Deputy-President. The Government looks forward to working with you and with the Deputy-President, who will be elected soon, in the high office that you hold in ensuring that high standards of behaviour are maintained and that the business of the House is transacted in an appropriate manner. I congratulate you again on your accession to this important position.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [2.49 p.m.]: On behalf of the Opposition I also congratulate you, Madam President, on your election to the office of President of this House. I make one extremely important plea. Over a number of years the occupant of the office of President has shown a degree of tolerance for robust debate and a preparedness to allow members an opportunity to display their passion for and belief in principles and ideas when participating in debate in this Chamber.

I trust that you will continue the leniency extended in that regard by your predecessors the Hon. Meredith Burgmann and, of course, most recently the Hon. Peter Primrose, recognising that there will be times, because of the nature of particular debate, when you will need to take control. I would ask that you also work with all members and allow them an opportunity to express themselves so that they do not feel they are denied an opportunity to put their points of view.

Reverend the Hon. FRED NILE [2.49 p.m.]: On behalf of the Christian Democratic Party it gives me great pleasure to congratulate you on your election to this high office. We commit ourselves to give you all the assistance we can in carrying out your role.

The Hon. ROBERT BROWN [2.49 p.m.]: I join with my colleagues and, on behalf of the Shooters Party, I congratulate you on your elevation to this high office. We assure you of our cooperation with you in all your rulings.

Reverend the Hon. Dr GORDON MOYES [2.50 p.m.]: On behalf of Family First I congratulate you and will support you in your office.

Mr IAN COHEN [2.50 p.m.]: On behalf of the Greens I congratulate you on your ascendancy to the presidency of the House. During the time I have been a member of this Chamber I have experienced with great interest changes in dress codes, rules and attitude, as well as increased tolerance and fairness, which has been the hallmark of former Presidents Willis, Chadwick, Burgmann and Primrose. I am confident you will carry out your role with the same degree of fairness.

The PRESIDENT: I thank members for their congratulatory remarks and I assure members that I will not be reinstituting wigs, gowns and buckled shoes.

DEPUTY-PRESIDENT AND CHAIR OF COMMITTEES

Election

The PRESIDENT: I announce that, the office of Deputy-President and Chair of Committees of the Legislative Council being vacant, it is necessary pursuant to Standing Order 15 for the House to choose a member to be the Deputy-President and Chair of Committees. I now call for nominations for the office of Deputy-President and Chair of Committees.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [2.51 p.m.]: I propose and move:

> That the Honourable Kayee Frances Griffin do take the chair of this House as Deputy-President and Chair of Committees.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [2.51 p.m.]: I propose and move:

> That the Honourable Jennifer Ann Gardiner do take the chair of this House as Deputy-President and Chair of Committees.

This is an important position. A number of current members of this House have served in that position: you, Madam President, the Hon. Tony Kelly, and I. Given the long hours of Committee consideration, during which members look for fairness and rely on experience, it is important that the best-qualified person be elected to fill that position, and the Hon. Jennifer Ann Gardiner is that person.

The Hon. Jennifer Ann Gardiner was elected to this Chamber in 1991. She was Temporary Chairman of Committees and is the only current member of the Parliament to have served in that role in previous

parliaments. She is the current Chair of General Purpose Standing Committee No. 4, which has conducted many inquiries, including the recent inquiry into land deals and planning decisions at Badgerys Creek in relation to which a report was handed down last week. That committee also undertook an inquiry into the north-west Sydney transport links. She was Chair of General Purpose Standing Committee No. 4 in the last Parliament as well, when it undertook important inquiries into the Pacific Highway upgrades and the closure of the Casino to Murwillumbah rail service, among many others. In the Parliament before that she was Chair of General Purpose Standing Committee No. 2. She is the Deputy Chairman of the Privileges Committee and has been a member of the Privileges Committee since being elected to the Parliament in 1991. She is a member of the Joint Standing Committee on Electoral Matters, and has also served on the Select Committee on Political and Electoral Funding. These are just an indication of the experience that the Hon. Jennifer Gardiner would bring to the role of Deputy-President and Chair of Committees.

The Hon. Jennifer Gardiner is a country member with a business degree. We represent the whole State—the city and the country—and it is important that we get the balance right, that the Parliament reflects the views of the whole State. How better can the Parliament do that than to have a city-based President and a country-based Deputy-President.

The President invited the two candidates to address the House.

The Hon. KAYEE GRIFFIN: I submit myself to the will of the House.

The Hon. JENNIFER GARDINER: I submit myself to the will of the House

The President announced that, there being two nominations, in accordance with the standing orders, a ballot would be held; and that before proceeding to the ballot the bells would be rung, by leave, for one minute.

Ballot

The President announced that the House would proceed to a ballot; and that the candidates were the Hon. Kayee Frances Griffin and the Hon. Jennifer Ann Gardiner and that the Clerks would distribute ballot papers for members to complete in their places.

The ballot was conducted.

Declaration of Ballot

The President announced that the result of the ballot was: the Hon. Kayee Frances Griffin, 24 votes, and the Hon. Jennifer Ann Gardiner, 17 votes.

The Hon. Kayee Frances Griffin was declared elected Deputy-President and Chair of Committees of the Whole House.

The President read the Prayers.

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

PRESIDENT OF THE LEGISLATIVE COUNCIL

Presentation to the Governor

The Hon. JOHN HATZISTERGOS: I will inform the House when I have ascertained it to be the pleasure of Her Excellency the Governor to receive the Legislative Council to present their President to Her Excellency.

ADMINISTRATION OF THE GOVERNMENT

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 14 November 2009.

14 November 2009

ASSENT TO BILLS

Assent to the following bills reported:

Commission for Children and Young People Amendment Bill 2009
Constitution Amendment (Lieutenant-Governor) Bill 2009
Emergency Services Legislation Amendment (Finance) Bill 2009
Food Amendment (Food Safety Supervisors) Bill 2009
Health Practitioner Regulation Bill 2009
Industrial Relations Further Amendment (Jurisdiction of Industrial Relations Commission) Bill 2009
Prevention of Cruelty to Animals Amendment Bill 2009
Road Transport (Vehicle Registration) Amendment (Special Number-Plates) Bill 2009
State Emergency Service Amendment Bill 2009
State Revenue Legislation Further Amendment Bill (No. 2) 2009

MINISTRY

The Hon. JOHN HATZISTERGOS: I inform the House that on 17 November 2009 Her Excellency the Governor accepted the resignations of the following Ministers:

The Hon. Joseph Guerino Tripodi, MP, as Minister for Finance, Minister for Infrastructure, Minister for Regulatory Reform, and Minister for Ports and Waterways, and
The Hon. Ian Michael Macdonald, MLC, as Minister for Primary Industries, Minister for Mineral Resources, and Minister for State Development

On the same day Her Excellency the Governor appointed the following persons to the offices indicated:

The Hon. Eric Michael Roozendaal, MLC, as Minister for State Development
The Hon. Kristina Kerscher Keneally, MP, as Minister for Infrastructure
The Hon. Michael John Daley, MP, as Minister for Finance
The Hon. Anthony Bernard Kelly, MLC, as Minister for Primary Industries
The Hon. Peter Thomas Primrose, MLC, as Minister for Regulatory Reform, and Minister for Mineral Resources
The Hon. Paul Edward McLeay, MP, as Minister for Ports and Waterways

REPRESENTATION OF MINISTERS IN THE LEGISLATIVE ASSEMBLY

The Hon. JOHN HATZISTERGOS: I inform the House that in the representation of Government responsibilities in this Chamber I shall act in respect of my own portfolio and will represent the following Ministers in the other House and all other matters concerning their portfolios:

The Hon. Nathan Rees, MP, Premier, Minister for the Arts, and Minister for the Central Coast
The Hon. Carmel Tebbutt, MP, Deputy Premier, and Minister for Health
The Hon. Verity Firth, MP, Minister for Education and Training

The Hon. Tony Kelly, Minister for Primary Industries, and Minister for Lands, will act in respect of his own portfolios and will represent the following Ministers in the other House in relation to all matters concerning their portfolios:

The Hon. Steve Whan, MP, Minister for Emergency Services, Minister for Small Business, and Minister for Rural Affairs
The Hon. Paul Lynch, MP, Minister for Ageing, Minister for Disability Services, and Minister for Aboriginal Affairs
The Hon. Barbara Perry, MP, Minister for Local Government, and Minister Assisting the Minister for Health (Mental Health and Cancer)
The Hon. Phillip Costa, MP, Minister for Water, and Minister for Regional Development

The Hon. Eric Roozendaal, MLC, Treasurer, and Minister for State Development, will act in respect of his own portfolios and will represent the following Ministers in the other House in relation to all matters concerning their portfolios:

The Hon. David Campbell, MP, Minister for Transport, and Minister for the Illawarra
The Hon. Kristina Keneally, Minister for Planning, Minister for Infrastructure, and Minister for Redfern Waterloo
The Hon. Jodi McKay, MP, Minister for Commerce, Minister for Tourism, Minister for the Hunter, and Minister for Science and Medical Research

The Hon. John Robertson, MLC, Minister for Climate Change and the Environment, Minister for Energy, Minister for Corrective Services, Minister for Public Sector Reform, and Special Minister of State will act in respect of his own portfolios and will represent the following Ministers in the other House in relation to all matters concerning their portfolios:

The Hon. Michael Daley, MP, Minister for Police, and Minister for Finance
The Hon. Virginia Judge, MP, Minister for Fair Trading, Minister for Citizenship, and Minister Assisting the Premier on the Arts
The Hon. Graham West, MP, Minister for Juvenile Justice, Minister for Volunteering, Minister for Youth, and Minister Assisting the Premier on Veterans' Affairs

The Hon. Peter Primrose, MLC, Minister for Regulatory Reform, and Minister for Mineral Resources will act in respect of his own portfolios and will represent the following Ministers in the other House in relation to all matters concerning their portfolios:

The Hon. Linda Burney, MP, Minister for Community Services, and Minister for Women
The Hon. David Borger, MP, Minister for Housing, Minister for Western Sydney, and Minister Assisting the Minister for Transport
The Hon. Kevin Greene, MP, Minister for Gaming and Racing, and Minister for Sport and Recreation
The Hon. Paul McLeay, MP, Minister for Ports and Waterways

PARLIAMENTARY SECRETARIES

The Hon. JOHN HATZISTERGOS: I inform the House that today the following persons were appointed as Parliamentary Secretaries:

The Hon. John Aquilina, MP, Parliamentary Secretary to the Premier (Leader of the House in the other place)
Mr Barry Collier, MP, Parliamentary Secretary Assisting the Attorney General, and Minister for Corrective Services
The Hon. Penny Sharpe, MLC, Parliamentary Secretary Assisting the Minister for Transport
Dr Andrew McDonald, MP, Parliamentary Secretary Assisting the Minister for Health
Ms Angela D'Amore, MP, Parliamentary Secretary Assisting the Minister for Police
Ms Karyn Paluzzano, MP, Parliamentary Secretary Assisting the Minister for Education and Training
Mr Phil Koperberg, MP, Parliamentary Secretary Assisting the Minister for Emergency Services
Ms Lylea McMahon, MP, Parliamentary Secretary Assisting the Minister for Energy and Minister for Mineral Resources, and
Mr David Harris, MP, Parliamentary Secretary for the Central Coast

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business item No. 5, 25, 61, 67, 78, 81, 101, 116, 166, 215, 224 and 227 outside the Order of Precedence objected to as being taken as formal business.

BUDGET ESTIMATES 2009-2010 PORTFOLIOS AND HEARING DATES

Motion by the Hon. Don Harwin agreed to:

1. That upon tabling, the Budget Estimates and related papers for the financial year 2010-2011 presenting the amounts to be appropriated from the Consolidated Fund be referred to the General Purpose Standing Committees for inquiry and report.

2. That the committees consider the Budget Estimates in accordance with the allocation of portfolios to the committees.

3. That the initial hearings be scheduled as follows:

Day One: Monday 13 September 2010
GPSC 1
GPSC 2

Day Two: Tuesday 14 September 2010
GPSC 1
GPSC 3

Day Three: Wednesday 15 September 2010
GPSC 4
GPSC 2

Day Four: Thursday 16 September 2010
GPSC 4
GPSC 5

Day Five: Friday 17 September 2010
GPSC 5
GPSC 3

4. That an initial round of supplementary hearings be scheduled as follows:

Day One: Monday 15 November 2010
GPSC 1
GPSC 2

Day Two: Tuesday 16 November 2010
GPSC 1
GPSC 3

Day Three: Wednesday 17 November 2010
GPSC 4
GPSC 2

Day Four: Thursday 18 November 2010
GPSC 4
GPSC 5

Day Five: Friday 19 November 2010
GPSC 5
GPSC 3

5. That the committees may hold additional supplementary hearings after 19 November 2010 as required.

6. That each scheduled day for the initial round of hearings will begin at 9:15 am and conclude by 6:00 pm.

7. The committees must hear evidence in public.

8. The committees may ask for explanations from Ministers in the House, or officers of departments, statutory bodies or corporations, relating to the items of proposed expenditure.

9. There is no provision under this resolution for a Minister or officer of a Department to make an opening statement before the committee commences questions.

10. A daily *Hansard* record is to be published as soon as practicable after each day's proceedings.

11. The committees are to present a final report to the House by the last sitting day of the first sitting week in March 2011.

12. Members may lodge questions on notice with the Clerk to the committee during a Budget Estimates hearing and up to two days following.

13. All answers to questions taken on notice during the hearing, and questions on notice lodged up to two days following the hearing, must be provided within 21 days, or as otherwise determined by the committee.

TABLING OF PAPERS

The Hon. John Robertson tabled the following reports:

(1) Annual Reports (Departments) Act 1985—Report of the Department of Lands for the year ended 30 June 2009.

(2) Annual Reports (Statutory Bodies) Act 1984—Reports for the year ended 30 June 2009:

Australian Technology Park Precinct Management Limited
Board of Surveying and Spatial Information
Housing NSW
Rail Corporation New South Wales
Rail Infrastructure Corporation
Redfern-Waterloo Authority
Roads and Traffic Authority
Sydney Olympic Park Authority

Ordered to be printed on motion by the Hon. John Robertson.

PRIVILEGES COMMITTEE

Report

The Hon. Kayee Griffin, as Chair, tabled report No. 47, entitled "A Memorandum of Understanding with the ICAC relating to the Execution of Search Warrants on Members' Offices", dated November 2009, together with correspondence received.

Report ordered to be printed on motion by the Hon. Kayee Griffin.

AUDITOR-GENERAL'S REPORT

The Clerk announced the receipt, pursuant to the Public Finance and Audit Act 1983, of a financial audits report of the Auditor-General entitled "Volume Six 2009: Focusing on Human Services and Technology", dated November 2009, received out of session and authorised to be printed on 17 November 2009.

GENERAL PURPOSE STANDING COMMITTEE NO. 4

Report

The Clerk announced the receipt, pursuant to standing orders, of report No. 21, entitled "Badgerys Creek Land Dealings and Planning Decisions", dated November 2009, together with transcripts of evidence, tabled documents, submissions, correspondence and answers to questions on notice, received out of session and authorised to be printed on 20 November 2009.

The Hon. JENNIFER GARDINER [3.16 p.m.]: I move:

That the House take note of the report.

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

LEGISLATION REVIEW COMMITTEE

Report

The Clerk announced the receipt, pursuant to the Legislation Review Act 1987, of the report entitled "Legislation Review Digest No. 16 of 2009", dated 23 November 2009, received out of session and authorised to be printed on 23 November 2009.

COASTAL PROTECTION

Production of Documents: Dispute of Claim of Privilege and Report of Independent Arbiter

The PRESIDENT: I inform the House that on 13 November 2009 the Clerk received from Mr Ian Cohen written correspondence disputing the validity of the claim of privilege on documents lodged with the Clerk on 12 November 2009 relating to coastal management. According to standing order, Sir Laurence Street, being a retired Supreme Court judge, was appointed as an independent arbiter to evaluate and report as to the validity of the claim of privilege. The Clerk released the disputed documents to Sir Laurence Street, who has now provided his report to the Clerk. The report is available for inspection by members of the Legislative Council only.

PETITIONS

Unborn Child Protection

Petition requesting statistical reporting of abortions, legislative protection of foetuses of 20 weeks gestation, and availability of resources for post-abortion follow-up, received from **Reverend the Hon. Fred Nile**.

Adoption Laws

Petitions requesting that the Parliament reject any proposed legislation or amendments to adoption laws that would take away the fundamental human right of adopted children to be raised by both a mother and a father, received from the **Hon. Marie Ficarra** and **Reverend the Hon. Fred Nile**.

Unborn Child Protection

Petition requesting that the House uphold the sanctity of human life, defend the fundamental rights of unborn children and reject all attempts to initiate legislation that emulates the Victorian Abortion Law Reform Act 2008, received from **Reverend the Hon. Fred Nile**.

BUSINESS OF THE HOUSE

Postponement of Business

Business of the House Notice of Motion No. 1 postponed on motion by the Hon. Catherine Cusack.

Business of the House Notice of Motion No. 2 postponed on motion by the Hon. Duncan Gay.

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

Government Business Orders of the Day Nos 1 to 21 postponed on motion by the Hon. Tony Kelly.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

The Hon. JENNIFER GARDINER [3.28 p.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 238 outside the Order of Precedence, relating to an extension of the reporting date for the reference to General Purpose Standing Committee No. 4 relating to Badgerys Creek land dealings, be called on forthwith.

During the committee inquiry into the Badgerys Creek land dealings and planning decisions, which tabled its report last week, witnesses took a substantial number of questions on notice in the hearings. Committee members also submitted a number of written questions on notice to witnesses after each hearing. The witnesses provided a response to each of the questions on notice, with the exception of one witness, Mr Graham Richardson, a professional lobbyist. Mr Richardson appeared as a witness at the hearing on 19 October 2009. Following his evidence at that hearing, on 21 October 2009 the committee secretariat wrote to Mr Richardson to seek answers to a question taken on notice during the hearing, as well as to written questions on notice from committee members that were submitted after the hearing. Mr Richardson was requested to respond to the questions on notice by 28 October 2009. No response was received by the committee by that date.

On 4 November 2009 Mr Richardson indicated verbally to the committee secretariat that he would not be providing a response to the questions on notice. The committee did not receive written confirmation from Mr Richardson on that matter. On 11 November 2009, following a resolution of the committee, I wrote to Mr Richardson to request that he answer the questions on notice by 19 November 2009. The committee also submitted an additional written question on notice to Mr Richardson, which he was requested to answer by 19 November 2009. In that letter Mr Richardson was advised that should he decline to answer the questions on notice the committee would consider whether to issue him with a summons under section 4 of the Parliamentary Evidence Act to attend a hearing to give further evidence. Mr Richardson then provided an interim response to the questions on notice and questioned the authority under which the committee was acting. I responded to Mr Richardson the same day, detailing the committee's authority to seek answers to questions on notice.

The committee believes that the answers to the questions on notice given to Mr Richardson may add to or change the outcomes of the inquiry. Mr Richardson's failure to respond makes it problematic for the committee to complete the task given to it by the House. When this House referred the issues relating to Badgerys Creek land dealings and planning decisions to the committee, the House resolved that it report by 20 November 2009. The committee did report by that date, except on this one matter relating to Mr Richardson. The committee requires additional time to follow up those outstanding issues. Therefore, the committee has requested in its report that the reporting date be extended to Thursday 25 February 2010 so that it may examine this matter. I commend the request of the committee to the House and trust that the House will agree to the extension of time to report on this particular matter, the rest of the report having been tabled.

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

Motion agreed to.

Order of Business

Motion by the Hon. Jennifer Gardiner agreed to:

That Private Members' Business item No. 238 outside the Order of Precedence be called on forthwith.

GENERAL PURPOSE STANDING COMMITTEE NO. 4

Extension of Reporting Date

Motion by the Hon. Jennifer Gardiner agreed to:

That the reporting date for the reference to General Purpose Standing Committee No. 4 relating to Badgerys Creek land dealings and planning decisions be extended until Thursday 25 February 2010.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

Motion by Ms Lee Rhiannon agreed to:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 208 outside the Order of Precedence, relating to the Save the Graythwaite Estate Bill 2009, be called on forthwith.

Order of Business

Motion by Ms Lee Rhiannon agreed to:

That Private Members' Business item No. 208 outside the Order of Precedence be called on forthwith.

SAVE THE GRAYTHWAITE ESTATE BILL 2009

Second Reading

Debate resumed from 11 November 2009.

The Hon. DON HARWIN [3.34 p.m.]: The Save the Graythwaite Estate Bill 2009 seeks to retain the Graythwaite Estate in North Sydney in public ownership and subject to public control. The bill also seeks to preserve areas of open spaces, to ensure public access to these open spaces, to preserve the heritage building and to support the imposition of appropriate controls on future development of the estate. The Opposition supports the bill because its objectives are entirely consistent with the desired outcomes that the Liberals have been working to secure at both State and Federal levels for more than two years. Graythwaite is a magnificent three-storey sandstone historic home set in six acres of landscaped gardens and grounds in the heart of North Sydney. It was built as the residence of Sir Thomas Dibbs in the late nineteenth century and the home is of national heritage significance. Its setting is unusual in that it is one of the few large estates to have survived with the grounds intact.

In 1915 Sir Thomas Dibbs donated the home and grounds to the State for the purpose of providing a convalescent home to soldiers returning from the First World War. The following year Premier William Holman promised that the gift of Graythwaite for the care of returning soldiers would be "honoured for all time." The property was managed by the Red Cross until 1980. Between 1980 and 2008 the auxiliary buildings were used as a high-care nursing home by New South Wales Health, while the historic home was utilised primarily as a storage facility. In 2001 New South Wales Health deemed the property no longer suitable for use as a nursing home and began to explore options for disposing of the site. It is important to note that Graythwaite is held in trust by the New South Wales Government. When he made his bequest, Sir Thomas Dibbs indicated that, if not required for veterans, the property should be used as a convalescent facility for distressed citizens of the empire.

In March 2006 the New South Wales Government commenced action in the Supreme Court to enable it to sell Graythwaite for development. The first phase of the legal proceedings concluded in August 2008, when the court found that the use of Graythwaite as a nursing home for patients with no prospect of recovery was inconsistent with the convalescence use for which Sir Thomas Dibbs had bequeathed Graythwaite. Following this finding, the State Government then sought the approval of the New South Wales Supreme Court to establish what is known as a "cy-pres scheme". Supreme Court approval was a legal requirement because the New South Wales Government is the trustee, not the unencumbered owner of the estate. The cy-pres scheme was designed to allow the State to sell Graythwaite and use the funds raised for similar purposes elsewhere. Specifically, New South Wales Health proposed that the Graythwaite Estate be sold and the proceeds used for a new rehabilitation facility at Ryde Hospital. This new facility would be a replacement for the existing facility at Greenwich.

The Friends of Graythwaite group have noted that this proposal would create not a single additional rehabilitation bed for the people of New South Wales, ignored the intentions of the Graythwaite bequest and did nothing to protect the property's considerable heritage values. The group condemned the plan as simply a grab for cash designed to relieve the State Government of the need to maintain or upgrade the Greenwich rehabilitation facility. As a result of the considerable efforts of the Federal member for North Sydney, Joe Hockey, and the State member for North Shore, Jillian Skinner, in 2007 the previous Federal Government,

under the prime ministership of John Howard, announced that it would allocate up to $25 million under an alternative proposal to save the Graythwaite Estate with the involvement of the RSL, North Sydney Council and the St Vincents and Mater hospitals.

The plan involved a $15 million grant from the Commonwealth to the RSL for the provision of care services to veterans and the leasing of the grounds of Graythwaite to North Sydney Council for use as a regional park. The plan also involved a $5 million commitment from the Commonwealth Government for the restoration of the Graythwaite mansion and the construction of a new rehabilitation facility by St Vincents and Mater hospitals adjacent to the Graythwaite mansion. The Howard Government's funding commitment was matched by the then Federal Labor Opposition. The New South Wales Government could have thrown its support behind the proposal. But New South Wales Labor was not interested in the best outcome for patients or the best result for the future of the estate. The State Government's only concern was getting its hands on as much money as possible and relieving itself of the financial burden of maintaining and upgrading the Greenwich rehabilitation facility. The New South Wales Government opposed the scheme and pushed ahead with its own agenda.

In late 2008 the Supreme Court approved the State's scheme to sell the property and use the funds to fulfil the terms of the trust by constructing a rehabilitation facility in Ryde. Following the court's decision the Rudd Labor Government in Canberra submitted a tender for the estate but was unsuccessful. The Shore school secured the property with a bid of $35.2 million. It is important to note that the court did not specify that the estate had to be sold on the open market but required only that the disposal of the property meet a reserve price of $17 million. The New South Wales Government could have negotiated with the Commonwealth but instead chose to hold out for as much money as it could lay its hands on. It is a glaring example not only of the way in which this broken State Government is prepared to sacrifice our State's heritage for cash but also of this broken State Government's inability to work effectively with its Labor colleagues in Canberra to secure desirable outcomes for the community.

As a result of the way in which this Government has handled the sale of the historic Graythwaite Estate we have lost the opportunity to keep Graythwaite as a public open space and fund a new, additional rehabilitation facility. Instead, the historic estate has passed into private hands and the State Government is going to replace an existing rehabilitation facility with another. Both Jillian Skinner and Joe Hockey have been there at every step of the long campaign to save the Graythwaite Estate and keep it in public ownership. In early 2007 Jillian Skinner committed the Liberal Party to retaining the estate in public hands and working with the community to develop an appropriate aged-care and rehabilitation use for the property. She spoke out against the State Government's neglect of the historic home, which had allowed the building to deteriorate despite its tremendous heritage significance.

Meanwhile, in 2008, Joe Hockey, as I mentioned earlier, worked very hard to secure a fully funded plan for the estate's future, which involved the RSL, North Sydney Council and St Vincent's and Mater hospitals. Both Jillian Skinner and Joe Hockey have attended numerous meetings and public rallies as part of the effort to save the estate for the public. The hopeless handling of the Graythwaite case by the State Government highlights once again the need for a new approach to the handling of our heritage sites. In April this year the Opposition Leader, Barry O'Farrell, who has consistently spoken out also for the preservation of Graythwaite, announced that a State Liberal-Nationals Government would appoint a Minister for Heritage to protect historical and culturally significant items for future generations.

He also pledged that a New South Wales Liberal-Nationals Government would overhaul the operations of the Heritage Council to provide greater certainty and transparency in decision making by relocating the Heritage Office from the Planning portfolio to the Environment portfolio and requiring that the Minister for Heritage publish reasons for determinations on planning approvals involving items subject to heritage conservation orders. The case of the Graythwaite Estate clearly highlights the need for heritage to have a voice of its own in Cabinet and the need for communities to be re-empowered when it comes to planning decisions. When there is a conflict of interest between heritage and planning or, as in the case of Graythwaite, between heritage and health it is all too often our State's heritage that suffers.

The State Government has ignored the local community's interests and clearly articulated desires in the case of the Graythwaite Estate and instead pushed ahead with a shameless grab for cash. The Opposition believes that the Graythwaite Estate should remain in public ownership and subject to public control. That has long been our position on this matter and an outcome we have fought long to achieve. Consequently, we support the bill.

Dr JOHN KAYE [3.43 p.m.]: I support the Save the Graythwaite Estate Bill 2009 and I commend my colleague Ms Lee Rhiannon for her involvement in this campaign and for her hard work to rescue this important public asset. I will not reiterate the reasons given by Ms Lee Rhiannon in her second reading speech in support of this bill other than to briefly outline them and say that I, along with every member of the Greens in this State and in this country, support those reasons. Obviously, it is important to protect public land and open space. This bill is important to protect a heritage asset and to develop a very valuable public health facility. It is important also to honour the wishes and the intent of the original donor, Sir Thomas Dibbs, who gave the land and the building to the State of New South Wales in 1915.

I underline one particular issue with respect to the circumstances leading up to this legislation. This property passed to the Sydney Church of England Grammar School, known as Shore, for $35.2 million. The reality of this $35.2 million land transfer is that it had both an insult and an injury. The injury was the loss of an extremely important asset; the insult associated with it was that the people of New South Wales and the people of Australia largely paid for that transfer. Although, by our calculations, this school collects roughly $29 million a year in fees from its own students, that handsome amount is topped up neatly each year by about $4 million in Federal and State recurrent funding plus Federal capital funding, and is topped up also by the Building the Education Revolution funding package of the Federal Government.

Over the next four years the Federal Government will give the school about $9.9 million in recurrent funding. Unless the argument be raised that recurrent funding is to support recurrent activities and to purchase capital assets, let us be absolutely clear: when a school is given recurrent assistance it frees up money the school receives from fees for other purposes. Saying that recurrent funding is somehow or other quarantined purely to pay for teachers and other ongoing costs disguises the reality. Once that $9.9 million has been received from the Federal Government and about one-third of that from the State Government over the next four years, that is, roughly speaking, $13 million that this school will have to pay its expenses without having to use the money it receives from the payment of school fees. It is very clear that what is happening is not only an insult but also an injury. It is time that this legislation was passed. It is time that the Graythwaite Estate was protected and kept in public hands in perpetuity. I commend the bill to the House.

The Hon. TONY CATANZARITI [3.46 p.m.]: The Government opposes the Save the Graythwaite Estate Bill 2009. The issue regarding Graythwaite has been debated previously in this Chamber on a number of occasions. Some points are clear. First, Graythwaite is not property that is owned by the New South Wales Government; the property was gifted to the Crown in 1915 for use as a convalescent home. The property has been held in trust by the Government and has been used to provide convalescent services and, subsequently, nursing home facilities. However, the Graythwaite buildings are no longer suitable for the provision of these services and would not have met the Commonwealth accreditation standards introduced in 2008.

The Supreme Court has found that the objects of the Graythwaite Trust no longer can be met and has ordered that the property be sold by 20 November this year for not less than $16.8 million. The court also ordered that the proceeds of the sale be reinvested in a rehabilitation facility for public patients at Ryde. This bill would reverse the sale of the Graythwaite Estate despite the Supreme Court decision. In doing so the bill would also prevent the use of the proceeds of the sale—$35.2 million plus GST—to deliver a state-of-the-art new rehabilitation facility. This would be a significant loss for the future patients of this facility.

The Supreme Court ordered the sale and the development of a rehabilitation facility for public patients because Justice Windeyer found that this plan was "as close as possible to the original trust purpose of a convalescent home". By preventing the sale and the construction of a new rehabilitation facility the bill is inconsistent with the intent of the original gift by Sir Thomas Dibbs. That point is important. The Graythwaite Estate is the subject of a charitable trust. The trust is not the unencumbered property of the Government, and the Government, as trustee, does not have the legal authority to act in the manner the bill provides. Rather, as trustee, the Government's responsibility is to ensure that the charitable trust is observed. The bill fails to recognise that. Instead, it seeks to overturn the court's decision on how the trust is to be managed. That decision was made after close examination of the original trust's purpose. By effectively directing ownership of the trust to the Government, this bill would extinguish the trust and divert it for other purposes, which would have the effect of overturning the terms of a private individual's bequest.

Graythwaite Estate has now been sold by public tender to the Shore School and planning is underway to deliver the new rehabilitation facility at Ryde using the $35.2 million received from the sale. The new Graythwaite Centre will be built on land gifted to the trust by the Government and will be operated as part of the Ryde Hospital campus. This investment of the trust's funds will deliver up to 60 rehabilitation beds, some of

which will be new. Previous estimates of the number of beds in the new centre were based on early estimates of the sale price and preliminary planning. Now that we know the sale price, the bed estimates are being refined through detailed planning.

The core purpose of the new Graythwaite Centre as a purpose-built, contemporary rehabilitation service will be to improve access to a range of quality post-acute and sub-acute rehabilitation services. The service will allow people to recover as much function as possible after illness, injury or an operation. The proposed rehabilitation service will have strong linkages to other public health services, including aged care assessment teams, respite services, equipment services and mental health services. This investment will deliver significant benefits to improve access to inpatient rehabilitation and post-acute day therapy services.

The Hon. GREG DONNELLY [3.52 p.m.]: The Government opposes the Save the Graythwaite Estate Bill 2009. It does not take into account the facts and circumstances that led to the sale of the Graythwaite property and would prevent the realisation of significant benefits that the sale proceeds will deliver for our ageing population. It is important to be clear that the sale of Graythwaite was ordered by the Supreme Court and that the Crown, as trustee, was required to action the court order. It is also important for members to understand that the land at North Sydney is not owned by the State Government in its own right but as trustee of the Graythwaite Trust. Because of this, the Government has an obligation to act in the best interests of the trust. The Supreme Court found that the original purposes of the trust as set down by Sir Thomas Dibbs would most closely be met by selling the property and using the proceeds for the construction of a new state-of-the-art rehabilitation facility at Ryde.

The original purpose of the trust did not involve the provision of open space, which is one of the bill's objectives. As trustee, the Government is bound to apply the trust property for the purposes for which it was established. The Supreme Court decision represents the best way of meeting those purposes in the modern setting. The bill also aims to preserve the heritage significance of the Graythwaite property. However, there is nothing specific in the bill to achieve that and the main Graythwaite House is already protected through listing on the National Trust Register and the State Heritage Register. Several of the established trees on the site are also protected by heritage orders. The proceeds of the sale will go directly to the Graythwaite Trust and will be reinvested in a modern, purpose-built rehabilitation centre for public patients.

The fact that the sale of this property achieved such a good result means that the Government will be able to deliver new rehabilitation beds. New South Wales Health has been planning for a 30-bed facility, but the high sale price means that the facility at Ryde will be able to accommodate up to 60 beds, and some of them will be new. The planning for the new facility, which is being refined to reflect the capital funds available, will determine exactly how rehabilitation services can be expanded. The new facility will provide sub-acute rehabilitation services, which are needed primarily by older members of the community, and it will be built within the Ryde Hospital campus on land gifted to the Graythwaite Trust by the Government.

The location of the Graythwaite centre at an acute hospital will optimise the care provided to patients. The collocation of rehabilitation and acute services is of great clinical benefit to patients and is acknowledged both nationally and internationally as the preferred means of delivering rehabilitation care. The intent of Thomas Dibbs will live on in the new facility, which will be called the Graythwaite Centre in honour of the rich history and traditions associated with the North Sydney site. If this bill were passed by the Parliament it could lead to liability being determined and compensation being paid to the new owners of Graythwaite given that the sale is now complete. From time to time members opposite have run scare campaigns about the future of Ryde Hospital. The establishment of this new rehabilitation facility at Ryde Hospital puts beyond doubt that the future of health care services at the site is secure. It will continue to provide high-quality services for the local population.

Design work for the new Graythwaite Centre on the Ryde campus will be underway as soon as possible. Construction will commence in the second half of 2010 and it is scheduled to be completed in 2012. This is a great outcome for health care and for older people and the project should be supported. I reiterate the Government's opposition to the bill and urge members to vote against it.

Ms LEE RHIANNON [3.56 p.m.], in reply: I thank all members who have participated in the debate. However, it was disappointing to hear the contributions of Government members. In the past week, since this Parliament last sat, we have seen momentous changes in the Government. Premier Rees has presented himself as a born-again leader with a new broom. However, that broom is already very stubbly. The events of the past week raised our hopes about how this Government would perform. Sadly, with regard to this bill it has missed

an opportunity to deliver a win-win; that is, a win for the community and a win for the Government. If this bill is passed we could achieve a win-win-win-win for the Dibbs family, the community, the Government and also the Shore School. It is certainly what is needed. Government members who spoke in this debate got it wrong in many ways. First, they and the Minister for Health have relied excessively on a misinterpretation of the judgement in attempting to justify a very poor outcome for all concerned.

The Hon. John Hatzistergos: Don't provoke me.

Ms LEE RHIANNON: No-one provokes the Minister; we simply put points of view. Hopefully, the Minister will address the facts, because the Government members who spoke did not. That is most clearly demonstrated in their interpretation of the court decision.

The Hon. John Hatzistergos: How do you interpret it?

Ms LEE RHIANNON: I am looking forward to spelling that out in detail. According to the Minister for Health, the court judgement makes it mandatory for the Government to sell the estate. That is not the case, and you can see that in a number of ways. The Friends of Graythwaite offered to the former health Minister, Ms Carmel Tebbutt, that they could together go back to the court and agree to sell the estate to the Commonwealth instead of Shore. That was entirely possible if, before the court, there was that joint approach. It was disappointing that the former health Minister refused to go back to the court, so that opportunity was missed. However, the current health Minister is incorrect to say, in the simplistic way he presents his debate, that the court judgement meant that—

Pursuant to sessional orders business interrupted at 4.00 p.m. for questions.

QUESTIONS WITHOUT NOTICE

ALCOHOL-RELATED ARRESTS

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Attorney General. Will the Attorney inform the House how many people have been detained, arrested or fined for public intoxication in the period from 1 January to 31 October this year? If the Attorney General cannot provide these figures, will he inform the House how many people have been detained for public intoxication since the Intoxicated Persons Act 1979 was repealed by his Government? Will the Attorney General inform the House what pieces of legislation police will be encouraged and expected to use during Operation Unite, which is being held on 11 and 12 December across Australia and New Zealand, targeting the culture of binge drinking in public places, as announced at the November Ministerial Council for Police and Emergency Management?

The Hon. JOHN HATZISTERGOS: The official body for statistics is the Bureau of Crime Statistics and Research. To the extent it has available the information that the honourable member has referred to, I am happy to seek it and to provide it to the House in due course. Other aspects of the member's question are more appropriately directed to the Minister for Police, and I will refer them to him.

The Hon. MICHAEL GALLACHER: I ask a supplementary question. Was the Attorney asked for his views on Operation Unite before it was announced at the ministerial council? If so, can he indicate what his views were?

The Hon. Greg Donnelly: Point of order: That is not a supplementary question; it is a new question.

The Hon. Michael Gallacher: No, it is not. It is coming directly from the Attorney's answer.

The Hon. Greg Donnelly: It is a brand new question.

The Hon. Michael Gallacher: No, it is not. I am not asking for an opinion; I am asking what his views are.

The PRESIDENT: Order! The question asked by the Leader of the Opposition to the Attorney General sought further comment on matters raised by the Attorney General in his answer, and is therefore in order as a supplementary question.

The Hon. JOHN HATZISTERGOS: The Minister for Police attends the ministerial council on police.

TRADE AND JOBS

The Hon. GREG DONNELLY: My question is addressed to the Treasurer. What is the Government's response to community concerns about recent developments in New South Wales that have the potential to affect jobs associated with trade in the region?

The Hon. ERIC ROOZENDAAL: Three of the five top New South Wales export market partners are in the Asian region, and China is the State's largest merchandise goods trading partner. That is why our reputation is so important. It means jobs and investment in New South Wales. I often talk about the green shoots of recovery. Today I want to talk about the brown shirts of the extreme right wing spreading through the Liberal Party. Who would have thought in this day and age that anyone associated with One Nation, which did so much damage to our trade reputation amongst our Asian trading partners in the past and, right across the world, caused us so much trouble, would be endorsed by a major political party? Who would contemplate that a major political party would endorse someone who was at the high command of One Nation, someone who was one of the grand puppet masters of One Nation? Who would contemplate a major political party doing that?

The Hon. Duncan Gay: Point of order: I take offence at those comments and ask you to instruct the Minister to withdraw. I was nowhere near One Nation. I was chairman of the National Party, and we stood up against One Nation and made sure that no promises came from the National Party.

The PRESIDENT: Order! The Deputy Leader of the Opposition has taken objection to some comments—I am not sure which ones—and has asked that the Minister withdraw them.

The Hon. ERIC ROOZENDAAL: Withdraw what, Madam President?

The PRESIDENT: Order! What comments does the Deputy Leader of the Opposition seek to be withdrawn?

The Hon. Duncan Gay: The comments that we were part of supporting One Nation.

The Hon. ERIC ROOZENDAAL: I did not say that.

The Hon. Duncan Gay: He said it across the table to me, and I ask him to withdraw.

The PRESIDENT: Order! The Deputy Leader of the Opposition cannot take a point of order about comments that were made when the Minister was not addressing the House.

The Hon. ERIC ROOZENDAAL: Contemplate endorsing someone who was the self-proclaimed national president of One Nation, someone who was the New South Wales-ACT president of One Nation, someone who ran not once but twice. Contemplate that! But there is more. Imagine endorsing somebody who—

The Hon. Matthew Mason-Cox: Point of order: My point of order is under Standing Order 65 as to relevance. The question was about employment opportunities, and we hear this drivel from the Treasurer. I ask you to bring him back to the tenor of the question.

The PRESIDENT: Order! Points of order must not contain that sort of argument. The Minister will continue to be generally relevant.

The Hon. ERIC ROOZENDAAL: The person I am talking about has been handpicked by Barry O'Farrell as one of his candidates. Of course, this person was sacked. Contemplate this: This candidate was sacked by Pauline Hanson for being too extreme but he is good enough for the Liberals in New South Wales. I have more. Not only that, he came to the attention of the State Electoral Office and was responsible for the legal problems of One Nation. Indeed, John Wasson, the State Electoral Commissioner, said that this man's misrepresentation led to his deregistering One Nation. Dishonesty, breaking the electoral laws—and good enough for Barry O'Farrell to endorse. This is the sort of threat that will devastate this State's trade relations with our Asian trading partners. This complete disregard for community standards and for harmony in our community— [*Time expired.*]

The Hon. Greg Donnelly: I ask a supplementary question. Will the Minister elucidate his answer?

The Hon. ERIC ROOZENDAAL: I worry about the state of trade in this State. We need to support jobs. That is why I will continue to speak out and oppose One Nation sympathisers. If the New South Wales Liberals think it is good enough to endorse the previous national president of One Nation, someone who made misrepresentations and falsely signed an electoral declaration, it shows how low Barry O'Farrell has stooped. How low can you go? The New South Wales Liberals have gone down deep. Only the New South Wales Liberals would think it is appropriate to endorse a former One Nation candidate, not once but twice, a former One Nation national president, a former puppet master.

Let me give members the real picture. Here you have it, you judge somebody by who their friends are. You see the three of them. This is the quality of candidate that Barry O'Farrell wants for the New South Wales Liberals. This sort of total disregard for harmony is what will damage this State's reputation and damage trade with our partners. I call on Barry O'Farrell to disendorse this extremist from the Liberal Party. I see David Clarke sitting there very silently. I see Don Harwin is embarrassed by this debate, because he knows what it means. We do not want extremists in the New South Wales Parliament. Barry O'Farrell should disendorse this candidate today.

The PRESIDENT: Order! Members have expressed a desire that the proceedings in the House not be too rigidly controlled. However, the level of interjection should not be such that Ministers answering questions have to shout to be heard.

ELECTRICITY INDUSTRY PRIVATISATION

The Hon. DUNCAN GAY: I direct my question without notice to the Treasurer, and Minister for State Development. Is the Treasurer aware of the assertion by the former Minister for Finance, Joe Tripodi, in managing the sale of New South Wales electricity assets that "having the Snowy Hydro bid for any of those assets would frighten the private sector"? Given this statement, why then was Snowy Hydro's expression of interest accepted last week by the Government and formally acknowledged with a receipt number? Has the Government had a change of heart following the outrage expressed by many in the Monaro area that it is unfair to penalise a successful local company from growing and expanding in their area?

The Hon. ERIC ROOZENDAAL: I could go back and talk about the outrage the community feels at the moment with the quality of their candidates but I will not. We have made it clear that we do not want a situation where a business that is majority owned by the New South Wales Government is bidding for electricity assets as part of the energy reforms.

The Hon. Melinda Pavey: Why not?

The Hon. ERIC ROOZENDAAL: I will tell you why. The Owen inquiry found that the private sector would be unwilling to invest in new generation unless the Government removed itself from certain sectors of the New South Wales electricity industry. Under Snowy Hydro's current ownership structure in which the New South Wales Government is a 58 per cent shareholder, any participation by Snowy Hydro would be inconsistent with our objective to withdraw from competitive aspects of the electricity market and likely to heighten the perception of these concerns.

PRISONER HOLCROFT DEATH

Ms SYLVIA HALE: I direct my question to the Minister for Corrective Services. I refer to the death on 27 August 2009 of a prisoner while in custody and in transit from Bathurst to Mannus Correctional Centre. When was the Minister informed of the death and when was the prisoner's family informed of his death?

The Hon. JOHN ROBERTSON: On 27 August 2009 inmate Holcroft died of a suspected heart attack while being transported from Bathurst Correctional Centre to Mannus Correctional Centre. Inmate Holcroft's death will now be a matter for the New South Wales Coroner and, as is the practice, it is imperative that I do not comment on the circumstances of his death. The death of inmate Holcroft is already the subject of a question on notice and a response will be lodged in due course.

DROUGHT

The Hon. CHRISTINE ROBERTSON: I address my question to the Minister for Primary Industries. Can the Minister update the House on the effect of the drought on regional New South Wales?

The Hon. TONY KELLY: I thank the member for her question and continued interest in rural and regional areas. Hot, dry weather continues from one end of New South Wales to the other and the bad news is there is little reprieve in sight. The latest drought figures show the relentless nature of the long dry and its ongoing toll on New South Wales. The November drought map reveals that only 1.9 per cent of New South Wales is now considered satisfactory and that 73.6 per cent of New South Wales is now officially declared, a marked increase from October's 67.7 per cent. The area considered marginal has decreased from 27.4 per cent to 24.5 per cent. Even coastal areas are now in drought or suffering marginal conditions. In fact, there is only one satisfactory patch in the whole State and that is on the Central Tablelands, around the home area of former Minister Macdonald, that beautiful area between Canobolas and Bathurst.

Each day our farmers wake up to drought-ravaged paddocks and dwindling water supplies for irrigation, stock and domestic use, and many have been doing that for nearly eight years. As summer approaches we can expect to see more hot temperatures, similar to those experienced over the past week. These temperatures, accompanied by drying winds, quickly suck up what little soil moisture there is and surface water remains. On top of this, below average rainfall is forecast. With the winter crop harvest now almost complete, it is clear that dry spring conditions have had a devastating impact on our winter crop.

Hot and dry weather prompted an early harvest this year and in most areas yields have been disappointing because of moisture stress and frost damage. Farmers planted 3.2 million hectares of wheat this year, but just 2.6 million hectares are expected to be harvested. Similar reductions are expected for other winter crops, such as barley, oats, triticale, cereal rye and canola. An estimated 220,000 tonnes harvest of canola is now forecast, following crop failures and frost damage. Summer crops are also being affected by drought.

The New South Wales cotton crop is forecast to be 100,000 hectares, which is less than half of normal plantings. The prospects for dry land summer crops are slightly better, even though they vary from region to region and time of sowing. Current estimates are for summer crop plantings of almost 310,000 hectares, excluding rice. The prospects also remain relatively poor for irrigated summer crops, due to continuing low water levels in major water storages across the State. Rice production is forecast to be only 20 per cent of pre-drought production levels. The ongoing setbacks and hardships caused by years of drought are not what our hardworking, drought-weary farmers need. However, our commitment to helping them survive this drought remains strong.

The State Government has committed more than $500 million in drought assistance measures since the long dry began. Since 2002 the State Government drought hotline has received 16,869 direct calls for assistance, providing advice and information; 143,200 drought transport claims have been processed; about 3,000 drought workshops have been held by Industry and Investment NSW; almost 2,000 Special Conservation Scheme applications have been approved; and almost 40,000 exceptional circumstances interest subsidies applications have been processed for primary producers. This Government will continue to work with farmers in their battle with this relentless drought. [*Time expired.*]

FOOD LABELLING

Dr JOHN KAYE: My question is directed to the Minister for Primary Industries. Did New South Wales develop and lodge a submission to the Blewett inquiry into food labelling conducted under the auspices of Food Standards Australia and New Zealand [FSANZ]? If so, did that submission advocate, first, for the labelling of trans-fat contents in foods; second, for traffic light labelling to warn of the high levels of salt, fat, saturated fat and sugar in foods; and, third, improvements to the country of origin labelling on Australian foods? If not, why did the New South Wales Government miss out on this important opportunity to protect the health and rights to full information of New South Wales consumers?

The Hon. TONY KELLY: The presence of trans-fatty acids or trans-fats in food was thoroughly debated when the Greens bill on this issue was defeated in March this year. At that time it was understood that only 0.06 per cent of our daily kilojoule intake comes from trans-fats. This includes trans-fats from natural and processed sources. Food Standards Australia and New Zealand has subsequently reassessed trans-fat intake based on a national survey led by New South Wales. This assessment was presented to the Australian and New Zealand Food Regulation Ministerial Council on 23 October 2009, along with information on voluntary measures undertaken by industry to reduce trans-fat levels.

Dr John Kaye: Point of order: My point of order relates to relevance under Standing Order 65. The question referred very specifically to whether the New South Wales Government had lodged a submission to the Blewett inquiry, not seeking an exposition on trans-fats.

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

The Hon. TONY KELLY: Dr Kaye interrupted me and I cannot remember where I was up to, so I had better start again. The presence of trans-fatty acids or trans-fats in food was thoroughly debated when the Greens bill on this issue was defeated in March this year. At that time it was understood that only 0.06 per cent of our daily kilojoule intake comes from trans-fats. This includes trans-fats from natural and processed sources. The assessment found that the food industry is continuing to succeed in efforts to reduce trans-fatty acids in food and that the Australian trans-fats intake remains well below the World Health Organisation recommended maximum of 1 per cent and way below the reported American intake of 2.6 per cent.

These outcomes reaffirm the success of the current non-regulatory approach and collaboration with industry. In contrast, the assessment shows that the dietary intake of saturated fats remains higher than the level recommended by the National Health and Medical Research Council. As a consequence, the Ministerial Council will provide the FSANZ assessment for consideration by the Australian Health Ministers' Conference.

BUDGET PROJECTIONS

The Hon. GREG PEARCE: I direct my question to the Treasurer. I refer to my question to the Treasurer concerning the Auditor-General's audit of the total State sector accounts for the year ended 30 June 2009, which revealed that employee-related and other operating expenses exceeded the budget projection by $514 million. I also refer to the Treasurer's response to my question, which failed to account for how the full-year projections the Treasurer announced in his Budget Speech on 16 June 2009 could be so inaccurate given that the actual result was the expenses blowout just 14 days later. Can the Treasurer explain this blowout in expenses and his failure to project the outcome, and specifically advise on the impact of interest rate movements on the expenses outcome?

The Hon. ERIC ROOZENDAAL: I am happy to further illuminate the Hon. Greg Pearce's interest in this matter, because I know that he is a very good, decent member of the Liberal Party—unlike the newly endorsed candidate. In relation to the issues the honourable member has raised, we did see some major movements in revenues. State taxation was down to about $678 million below budget and GST-related receipts were about $1 billion below budget. The increase in revenues is largely attributable to $2.5 billion in additional specific and national partnership payments from the Commonwealth Government. These additional Commonwealth payments increase State expenditure by an equivalent amount. As far as employee costs are concerned, these have been significantly impacted by additional Commonwealth funding and technical accounting adjustments, largely related to actuarial assessments of leave, superannuation and workers compensation liabilities. Nevertheless, I am advised that all public sector wage agreements have been negotiated under the Government's wages policy since September 2007. I re-emphasise to the House the importance the Government places on fiscal discipline and management of the budget, which of course is reflected in the State's triple-A credit rating.

The Hon. GREG PEARCE: I ask a supplementary question. Could the Treasurer elucidate his answer by specifically referring to the last part of my question, which related to the impact of interest rate movements on the expenses outcome?

The Hon. ERIC ROOZENDAAL: I refer to my previous answer.

NATIONAL INDUSTRIAL RELATIONS SYSTEM

The Hon. HELEN WESTWOOD: My question is addressed to the Minister for Industrial Relations. Will the Minister inform the House of the latest developments towards a national industrial relations system?

The Hon. JOHN HATZISTERGOS: I thank the Hon. Helen Westwood for her question on this significant issue. Last week the Government announced that it would participate in the national industrial relations system. Today the Government gave notice in the other place that tomorrow it will introduce a bill that will seek to refer to the Commonwealth our powers to legislate with respect to the unincorporated private sector. There have been extensive discussions leading up to New South Wales announcing its participation in the national system. Some commentators doubted that we would participate in the scheme. There was significant speculation concerning the New South Wales position after other Labor States announced that they would refer their powers. I make no apologies for taking the time necessary to get this matter right. This issue affects approximately 500,000 workers across 200,000 small businesses, and the results of our discussions with the Commonwealth will show that we got this matter right.

As part of our agreement with the Commonwealth, we have secured comprehensive tribunal arrangements for New South Wales. Fair Work Australia, the tribunal that administers the national system, will expand beyond the capital cities. In New South Wales, Fair Work Australia will have an ongoing presence in both Newcastle and Wollongong where it will share premises with the Industrial Relations Commission. As major regional and industrial centres, Newcastle and Wollongong deserve the full-time presence of Fair Work Australia. Further, to ensure that Fair Work Australia is able to handle the workload involved in the national system, and to ensure that the members of the Industrial Relations Commission have ongoing exposure to the private sector, seven members of the Industrial Relations Commission will be appointed to Fair Work Australia working across the equivalent of five full-time positions. These members will have dual appointments; they will be able to work in both the New South Wales and national systems. Three members will work full-time in Fair Work Australia, and four will work part-time. They will bring a wealth of experience to Fair Work Australia. I note that member for Lane Cove in the other place recently stated:

> I place on record what a tremendous job the Industrial Relations Commission has done …
>
> … They have a fantastic history and have played a major role in the development of the society we enjoy now.

We will also be cooperating with the Commonwealth regarding the provision of education and compliance services. For a period of 3½ years commencing January 2010, the Fair Work Ombudsman and the Office of Industrial Relations will work side by side in assisting employers and employees make the transition to the new system. It is essential that the small businesses affected by the move to the national system receive the advice and assistance they need to make the transition. The Commonwealth will be contributing in excess of $16 million to the New South Wales to fund this project.

In participating in the national industrial relations system, New South Wales will become a party to the multi-lateral intergovernmental agreement underlying the system. This agreement provides that any amendment that fundamentally changes the Fair Work Act will have to be supported by at least two-thirds of the participating governments. This will ensure that any such changes have widespread support. We are unashamed in ensuring that the changes inhibit the unilateralism and extremism that, regrettably, has characterised industrial relations for some time. The changes serve to inhibit the sorts of things we saw particularly under the Howard Government, where WorkChoices was able to take root. I note that the *Sydney Morning Herald* editorial of last Friday stated:

> NSW was right not to rush. The State Government has won important commitments from the Federal Government.

We should now be able to move forward and implement the new national system in New South Wales. I look forward to members' cooperation and participation in the debate on this issue. Importantly, I take issue with the position the Coalition has taken in Canberra in indicating that it opposes any referral agreement that enables the States to participate in the national industrial relations system. Interestingly, the announcement came from Michael Keenan, the shadow Minister for Employment and Workplace Relations, who resides in Western Australia, which has indicated that it is not prepared to participate in the scheme. I want to see whether any members of this House embrace Michael Keenan's statements, which were released last week, in which he said, "State governments, which as a majority are unfit to handle such a responsibility— [*Time expired.*]

ABORIGINAL LITERACY SKILLS

Reverend the Hon. Dr GORDON MOYES: I direct my question without notice to the Attorney General, on behalf of the Minister for Education and Training. Is the Minister aware of the Hands Across the Nation Appeal, which highlights that only one in five children in remote indigenous communities can read at the accepted minimum standard? Is the Minister aware that by year 7 only 15 per cent of indigenous children living in remote areas are able to read at the minimum required level, and that illiteracy is the primary factor in low school retention rates? Is the Minister aware that regular absenteeism, poor or unhelpful teaching, and a lack of understanding by teachers of the special needs of indigenous students contribute to the difficulties of indigenous children acquiring functional literacy levels? Given the disturbing figures, what programs will be established to introduce mainstream curriculum and teaching standards in the State, to help marginalised indigenous children gain fundamental literacy skills in order to build successful and fulfilling lives?

The Hon. JOHN HATZISTERGOS: I know Reverend the Hon. Dr Gordon Moyes has joined Family First. The week before last, at the State conference of the Labor Party, the Premier outlined a comprehensive set of initiatives to address this issue. I refer the honourable member to those announcements, which were followed by a meeting at a La Perouse school, which both the Premier and the Minister for Education and Training

attended. I agree with Reverend the Hon. Dr Gordon Moyes: I think there are a number of issues involved in children's education matters, the most fundamental of which is attendance. Students do not get off the starting blocks unless they attend school and participate. We have introduced a range of initiatives, which have been outlined more broadly—covering not just indigenous people—to improve school attendance and to provide additional assistance to ensure we have highly trained teachers who are able to provide, in some instances, one-on-one assistance to the indigenous students who, unfortunately, have missed out. I will obtain a more detailed answer for Reverend the Hon. Dr Gordon Moyes from the Minister for Education and Training. However, I refer him to the Premier's announcements made at the State Labor Conference.

NATIONAL PARKS AND WILDLIFE SERVICE STAFFING

The Hon. CATHERINE CUSACK: I direct my question without notice to the Minister for Climate Change and the Environment, and Minister for Energy. Given the 2009-10 State budget, approved by the Parliament, states that the New South Wales National Parks and Wildlife Service has 1,920 full-time equivalent employees and that staff number will not be changed this financial year, why is your department now cutting back on its staff? What is the savings target and how will funds saved be spent? Will the Minister assure the Parliament that the department is not being forced to axe positions in order to fund a new river red gum national park?

The Hon. JOHN ROBERTSON: I thank the honourable member for her question. Like all government agencies, the Department of Environment, Climate Change and Water is required to look for ongoing efficiency savings. The Director General has informed me that the department will find efficiencies and meet its budget target of this financial year. These savings will be achieved through ongoing operational efficiencies and minor structural changes while ensuring that the department maintains or improves its work to protect and manage our precious national environment. As part of this process the National Parks and Wildlife Service within the department has announced a minor management structural reform. These changes recognise that the management structure, put in place over 10 years ago to match the expansion of the reserve system, can now be streamlined with efforts now firmly focused on maintaining and, where possible, enhancing front-line field positions.

Let me be quite clear on the numbers and debunk any inaccurate scare campaign. The minor changes to administrative boundaries are designed to save approximately 30 positions out of the service's nearly 2,000 officers. There will be no forced redundancies to achieve these savings. The reforms are at the middle management level, administration and general coordination positions. The reforms will not affect front-line staff such as area managers, rangers, field officers or visitor service officers who manage the State's national parks and assist visitors every day. Local parks will continue to be managed by local people who live in the local community and are across the local issues. I said on the weekend, and I will say it again, that I will not under any circumstances allow our firefighting capability to be reduced in parks as a result of these changes. As I said, if any ranger, field officer or other staff providing front-line, on the ground services has received a letter asking if they would be interested in being considered for voluntary redundancy they should disregard it and—as I said at the press conference with the Premier—throw it in the bin.

National parks firefighters are fit, well trained and, above all, brave and committed people. Over the past week they have played a major role in managing fires, taking on the very difficult task of remote area firefighting in many parts of the State. Their efforts meant that a great number of potential fires were contained within 10 hectares. This was a magnificent effort and great relief to the people of New South Wales. The Government has committed $30 million over the next three years to help the men and women in the National Parks and Wildlife Service to continue to do this work. We are upgrading our radio system, increasing opportunities for training, and providing more resources than ever before for fire trail maintenance. We are currently recruiting and training additional field staff and seasonal firefighters to ensure that we are well resourced for the summer peak. In implementing these reforms the department will consult with staff and unions to take into account both individual and organisational needs. The National Parks and Wildlife Service will also continue to make savings from reducing staffing levels and operational costs at head office.

The Hon. CATHERINE CUSACK: I ask a supplementary question. In view of the Minister's explanation, how many staff does he believe should throw their redundancy letters into the bin? Given the Minister's detailed explanation of staff that will not be affected by the restructure, will the Minister now specify which staff will be affected by the restructure?

The Hon. JOHN ROBERTSON: I have already detailed those areas: I talked about middle management positions and administration. What I will say is that—and there is no evidence to suggest that this

has happened—if anyone on the front-line involved in any capacity whatsoever with front-line firefighting services has mistakenly received one of these letters, they should—I will say it again—throw it in the bin. There is no evidence to suggest that this has happened, but let us be very clear about it: we are not compromising our firefighting capacity. Anyone who may have mistakenly received a letter should throw it in the bin.

FRIDGE BUYBACK SCHEME

The Hon. LYNDA VOLTZ: I address my question to the Minister for Climate Change and the Environment. What is the Government doing to assist households to reduce their carbon footprint?

The Hon. JOHN ROBERTSON: I thank the honourable member for her question. The Government is committed to providing support to households to use energy more efficiently and reduce their carbon footprint. That is why I am pleased to inform the House of the recent expansion of the Fridge Buyback Scheme. Old fridges are one of the biggest energy users in the home, consuming up to three times the energy of new fridges, and households that run a second fridge add an average of $210 per year to their power bills.

In 2006 the Government introduced the Fridge Buyback Scheme to provide an incentive to households to remove their old, energy-wasting appliances. The scheme has been so successful that this year the Government has expanded the program to regional areas of the State. The Fridge Buyback Scheme pays households $35 to remove any fridge more than 10 years of age and bigger than 250 litres to be recycled. Through the scheme, households get the fridge taken away free, save money on their power bills, reduce their carbon footprint and get paid $35. Importantly, every fridge taken out of circulation saves an estimated one tonne of carbon pollution per year.

I am pleased to report that since 2006 more than 12,000 inefficient second fridges have been taken out of circulation, reducing carbon pollution by the equivalent of taking 3,000 cars off the road. Over the same period the Fridge Buyback Scheme has saved consumers an estimated $2.5 million on their electricity bills. The program is coordinated by Next Energy and funded through the New South Wales Government's Climate Change Fund. That fund has allocated $2.8 million over three years to roll out this popular emissions-saving scheme. This allocation of funds means that the Government is able to expand the scheme into more areas of the State.

Collection started in the Wollongong and Shellharbour local government areas in April, and so far 759 fridges have been taken out of circulation in those areas. That is a saving of more than 700 tonnes of carbon pollution per year and $150,000 on annual household power bills. Collections started in the Blue Mountains and Central Coast last month, with 140 fridges already collected. This month the scheme became available to Kiama and Shoalhaven residents, and already 169 fridges have been booked for collection. I am advised that an estimated 15,000 second fridges are guzzling energy in garages and laundries in Shellharbour and Kiama. If every one of them were removed, it would save 15,000 tonnes of carbon pollution per year and $3.2 million in annual household power bills.

By extending the program to the Blue Mountains, Central Coast and Shellharbour, the Government is giving hundreds of thousands more New South Wales residents the chance to get rid of their old fridges. Opportunities for the further expansion of the scheme into other areas are currently being explored. The Fridge Buyback Scheme is an energy-saving program that actually pays households to help save the environment and reduce their power bills. The recent expansion of the scheme serves as a reminder to households to take advantage of the program.

To be eligible, second fridges must be at least 10 years old, in working order, and 250 litres or more in size. Every fridge collected is professionally degassed under licence to destroy all damaging gases, and all the metals are recycled. Residents of Sydney, Wollongong, Shellharbour, the Central Coast and the Blue Mountains can book a collection online at *www.fridgebuyback.com.au* or call 1800 708 401. I encourage anyone with an old fridge to log onto the website and take full advantage of the program.

CONSERVATORIUM HIGH SCHOOL

Reverend the Hon. FRED NILE: I direct my question to the Hon. John Hatzistergos, representing the Minister for Education and Training. Is it a fact that the Conservatorium High School, based in Macquarie Street Sydney, which was established nearly 100 years ago, is the only selective music school in the State of New

South Wales? Is it a fact that enrolments have plunged from nearly 200 students in 2004 to approximately 100 in 2009? What urgent action is the Government taking to increase student enrolments to 200 in 2010 to ensure the future viability of the Conservatorium High School?

The Hon. JOHN HATZISTERGOS: I will refer the question to the Minister for Education and Training.

SNOWY HYDRO CORPORATION

The Hon. MELINDA PAVEY: I direct my question to the Treasurer, and Minister for State Development. What impact will the decision by the New South Wales Cabinet to prohibit the Snowy Hydro Corporation from bidding on the electricity assets being offered for sale by the Government have on that regionally based company? Is the Treasurer aware that Snowy Hydro employs 200 people in Cooma and 400 across the Monaro region, with an annual payroll of around $63 million, and contributes up to 40 per cent of the local gross domestic product? Given that the Minister is excluding them from growing their customer and business base, is it not inevitable that the company will contract? Given the Premier's announcement this week that growth and employment is the Government's number one priority, why is the Minister discriminating against one of the most successful regionally based companies in New South Wales?

The Hon. ERIC ROOZENDAAL: I am pleased that finally the Hon. Melinda Pavey and, indeed, the Opposition have acknowledged that our strategy is to support jobs and infrastructure in New South Wales. That is why the Government is investing $62.9 billion into jobs support and infrastructure over the next four years. We will support 160,000 jobs every year for the next four years. The honourable member should be more detailed in her research about the Snowy Hydro. The Snowy Hydro not only has businesses in New South Wales; it has also successfully expanded into Victoria. We are confident that the electricity reform strategy that we are embarking upon is in the best interests of the people of New South Wales, that it will increase competition within the electricity industry, and that it will support the best outcomes for the community of New South Wales.

GEOTHERMAL RESOURCES DEVELOPMENT

The Hon. MICHAEL VEITCH: My question without notice is addressed to the Minister for Mineral Resources. Will the Minister inform the House about recent advances in the development of geothermal resources in New South Wales?

The Hon. PETER PRIMROSE: Having been a Minister now for exactly one week, I consider that the best thing I can possibly do in this portfolio is visit and talk to stakeholders. That is what I am seeking to do. On Friday last week I travelled to the University of Newcastle's Priority Research Centre for Energy to open a tremendous facility—a 100 kilowatt geothermal pilot plant impressively titled the GRANEX Regenerative Super Critical Power Cycle, which I will refer to simply as GRANEX. This was my first outing in my new role as the Minister for Mineral Resources. I was pleased to be able to personally view, together with my colleague the Minister for the Hunter, the fantastic work of the Priority Research Centre for Energy at the University of Newcastle. The University of Newcastle has a proud history in innovation and technological development. It is particularly fitting that the Hunter, which for so long has been at the forefront of our energy needs through its coal production, is also taking the lead in renewable energy and continues to be a powerhouse of the New South Wales economy.

The New South Wales Government's State Plan has set a substantial greenhouse gas reduction target of a 60 per cent cut by 2050 and a return to the year 2000 greenhouse gas emission levels by 2025. I am advised that while solar and wind are good at producing energy, which varies with prevailing conditions, geothermal may have the capacity to produce baseload power without the need for storage. It is clear that if we are to make the transition to a carbon-constrained future, we need to look at a range of options—boosting existing solar and wind capacity, developing other renewable sources, and finding ways to capture and sequester greenhouse gases that are produced from current sources. Geothermal, or hot rock technology, holds enormous potential and is often thought of as the missing piece in the renewable energy jigsaw puzzle. It has both baseload and peaking power applications operating 24 hours a day, 365 days a year, and is unaffected by climatic factors.

Professor Behdad Moghtaderi, Deputy Director of the Priority Research Centre for Energy, informed me that if we are able to successfully harness even 1 per cent of Australia's geothermal energy, we could power Australia for 26,000 years. First, however, we need to overcome the technical challenges. This is an exciting

time for researchers such as Professor Moghtaderi. The State and Federal governments are backing renewable energy and there are clear economic incentives for the development of the new technology. The geothermal team at the University of Newcastle has focused on developing technology that will have many direct benefits by expanding the range of areas where heat exchange generation can be used. They have done this in a joint program between the University of Newcastle and Granite Power Pty Ltd. GRANEX improves the efficiency of electricity generation from low-grade heat sources. This is important, as it not only makes geothermal more commercially viable, reducing the depth required for drilling, but it also makes the capture of waste industrial heat a real possibility. The New South Wales Government welcomes research in this area. Studies by the minerals division of Industry and Investment NSW have shown that New South Wales has the right geological conditions for geothermal energy. In fact, the New South Wales Government called for tenders for geothermal exploration in the Sydney-Gunnedah basin on 30 June this year and tenders are currently being assessed by an expert panel.

LIVERPOOL PLAINS WATER STUDY

Ms LEE RHIANNON: I direct my question without notice to the Minister for Mineral Resources. Is the Minister aware that the Caroona Coal Action Group has been working to secure a fully independent surface and groundwater study of the Upper Namoi catchment area on the Liverpool Plains? What action will the Minister take to ensure that this water study is fully funded and quickly commissioned? Given that this water study may determine that mining on the Liverpool Plains would damage the water catchment, will the Minister place a moratorium on the coal exploration activities currently being carried out under licences already issued until the study is finalised?

The Hon. PETER PRIMROSE: I am advised that the Government initiated a water study in the Namoi catchment. The study is overseen by a ministerial oversight committee, which is chaired by Mr Mal Peters, a former president of the New South Wales Farmers Association. The ministerial oversight committee operates within the scope of the terms of reference and will be responsible for sourcing appropriate funding from key stakeholders, appointing an independent expert, the tendering of the project, and ongoing administrative oversight of the water study. The ministerial oversight committee held its first meeting on 24 August this year. At the latest meeting, which was held in Sydney on 13 November 2009, a preferred candidate was chosen by the committee for the position of technical adviser. An offer was made on 18 November 2009 to Evans and Peck Pty Ltd. If it accepts, this consultancy will prepare contract specifications for the contractor to carry out the study and assist the committee with the tender evaluation. The committee liaises regularly with the stakeholder advisory group, which keeps the local community informed on the progress of the study. Mr John Lyle, a former mayor of Gunnedah, is the independent chair of the stakeholder advisory group, which held its first meeting on 13 October 2009. The next meeting of the stakeholder advisory group is scheduled for today.

LUCAS HEIGHTS WASTE MANAGEMENT CENTRE

The Hon. JOHN AJAKA: My question without notice is directed to the Minister for Climate Change and the Environment. Is the Minister aware that at present the State-owned WSN Environmental Solutions firm is the only approved operator of the Lucas Heights waste depot, which is the only tip in the southern Sydney region? Will the Minister explain how under these conditions he has encouraged competition in the tendering process for the waste processing contracts of southern Sydney councils? Will the Government give all tenderers access to the Lucas Heights tip on the same terms and conditions as are presently available to WSN Environmental Solutions?

The Hon. JOHN ROBERTSON: I am always pleased to be asked questions about the environment and climate change, particularly by a member of the Opposition. Today is a particularly significant day because as a result of the current debate in Canberra about a carbon pollution reduction scheme today we will see the credentials of the Coalition on the environment. The Coalition asks questions in this Chamber about the environment in an attempt to take the high moral ground. But it is interesting that debate continues within the Coalition ranks in Canberra about whether to support a carbon pollution reduction scheme.

The New South Wales Labor Government is supportive of a carbon pollution reduction scheme. Members on the other side claim that they are concerned about the environment. As I have said previously and I will say again, they should go to ABC iView on the Internet and listen to the comments that Senator Nick Minchin made in the *Four Corners* program. Better still, today Andrew Robb emerged, having dragged himself back to Canberra to oppose the carbon pollution reduction scheme. The Coalition asks questions about that

scheme, about solar bonus schemes and the like or they ask questions about waste services and what we will do about access and competition. The fact is that this afternoon the nail might well be hammered into the coffin of the Coalition because when it comes to the environment the Coalition has no credibility.

The Hon. Duncan Gay: Point of order: My point of order relates to relevance. The Minister may have been hoping for a question about Canberra but the question he was asked was not about Canberra; it was about waste and Lucas Heights. I request that you ask the Minister to be relevant to the question that was asked.

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

The Hon. JOHN ROBERTSON: I will be generally relevant. The fact is that the question relates to my portfolio of Climate Change and the Environment. I understand that Wilson Tuckey has now called for a spill! The Coalition has zero credibility when it comes to asking any questions about the environment when it tries to take the high moral ground.

The Hon. Duncan Gay: Point of order: The question was a discrete question on a New South Wales issue. This is the New South Wales Legislative Council and the Minister is a Minister of the New South Wales Government. I request that you ask the Minister to answer the question regarding New South Wales waste issues.

The PRESIDENT: Order! I ask that the Minister be generally relevant to the question that was asked.

The Hon. JOHN ROBERTSON: In regard to the detail, I will take it on notice and get back to the member.

RETAIL SECTOR GROWTH

The Hon. IAN WEST: My question is directed to the Treasurer. Would the Treasurer update the House on the growth of the New South Wales retail sector in the lead-up to Christmas?

The Hon. ERIC ROOZENDAAL: More good news for the New South Wales economy. The latest retail data is in and the news is good for our retail sector. I can advise members that New South Wales families are spending more than $200 million a day as the State's retail sector continues to lead the nation. Our retailers are gearing up for the busiest season of the year. The latest official figures reveal that New South Wales retail consumers are spending $15 million a day more than they did at the same time last year. We are a month out from Christmas and the signs are good. The green shoots of economic recovery are growing well.

The Hon. John Robertson: The Treasurer is the Don Burke of New South Wales.

The Hon. ERIC ROOZENDAAL: I acknowledge that interjection. In fact, I met with retail king Gerry Harvey on Sunday, who believes this will be the best Christmas ever for our retailers. He said:

> Our sales this year are going to be an absolute record, this is going to be the biggest Christmas we have ever had, we are going to break all records.
>
> I am absolutely flabbergasted sales are as good as they are.

What a ringing endorsement! It is more good news. We could not get a better sign of good positive news for the State's retail sector than that. New South Wales is experiencing a sustained high level of consumer confidence and the State's $72 billion-a-year retail sector is seeing the benefit as a result. In the year since the worst days of the global financial crisis, New South Wales remains the number one State for retail growth. We have recorded an 8.8 per cent retail growth, 2.8 per cent above the national average—1.3 per cent better than Victoria, 4.5 per cent better than Queensland, and 7 per cent above Western Australia.

The recovery in consumer confidence remains strong. Between May and September this year the influential Westpac-Melbourne Institute index gained 34.3 per cent, and over the past three months consumer confidence has been sustained at historically high levels. The latest Australian Bureau of Statistics data shows retailers in the hardware, furniture and electrical sectors have seen some of the highest growth over the past 12 months. The green shoots of economic recovery are growing and the New South Wales Government remains committed to rolling out our $62.9 billion job-supporting stimulus strategy.

For the record, the Organisation for Economic Co-operation and Development last week backed economic stimulus packages as "an appropriate response to the needs of the economy". Unfortunately, Barry O'Farrell, who is now handpicking extremist candidates to run for government, and Malcolm Turnbull are still calling for these packages to be cut. Could those two men be more wrong and more out of touch with what is happening in our country at the moment? Our stimulus must and will stay in place despite the constant calls by Malcolm Turnbull and Barry O'Farrell—who is clinging to Turnbull's coattails—to cut the stimulus investment of the State and Federal governments.

This financial year alone the New South Wales Government investment in infrastructure is $18 billion—31.4 per cent higher than last year. The Government and I remain committed to stimulus. We are committed to growing the green shoots of recovery and ensuring that New South Wales gets its fair share of economic growth as we turn the corner towards full recovery.

RIVER RED GUM LOGGING

Mr IAN COHEN: My question is addressed to the Minister for Primary Industries. This week Professor Max Finlayson, President of Wetland International's Supervisory Council, stated that in relation to the Riverina River Red Gum forests "the scientific picture is of an ecosystem in decline, degraded by current management practices and use". In comparison, the former Minister for Primary Industries, Ian Macdonald stated:

> We operate under the highest level of environmental protection in relation to logging operations in those areas. I believe it is very, very environmentally sustainable. We operate a red gum management plan of the highest international environmental order.

Could the Minister explain how Minister Macdonald's "very, very environmentally sustainable" logging operations in the Riverina red gum forests has led to 57 scientists declaring that current Forests NSW management is leading to ecosystem decline?

[*Interruption*]

The Hon. TONY KELLY: The Minister for Climate Change and the Environment suggests that I refer the member's question to him. On 24 July the Premier announced that the Natural Resources Commission would conduct a regional assessment. The terms of reference for the assessment covers both the river red gum and the woodland forests within the Riverina bioregion and the south-western cypress State forests. The Natural Resources Commission will assess environment and heritage values, economic and social values, ecologically sustainable forest management and timber resources. The Natural Resources Commission will also conduct the assessment to meet the requirements of the Commonwealth Environment Protection and Biodiversity Conservation Act.

The Natural Resources Commission is delivering the assessment in two phases. The red gum assessment under reference one was published on 30 September 2009, and a report under terms of reference two and three will be published on 30 November 2009. The cypress assessment under reference one is due on 31 December this year and a report under terms of reference two and three will be delivered by 28 February 2010. The Natural Resources Commission's preliminary assessment report, the Riverina Bioregion Regional Forest Assessment of River Red Gums and Woodland Forests, was released for community consultation through written submissions and a series of regional community forums.

The Natural Resources Commission is in the process of preparing recommendations and a report for the Government on the river red gum forest. I must emphasise that for many of our small towns in the Riverina forestry is one of the few really viable industries, and particularly so during the current drought and the economic downturn. The New South Wales Government is committed to working with all parties involved to strike a constructive and sustainable balance between the environment and timber supply.

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

GOVERNMENT AGENCIES COUNSEL BRIEFING

The Hon. JOHN HATZISTERGOS: On 28 October 2009 the Hon. Don Harwin asked me a question about the Crown Solicitor's jurisdiction over legal costs. I am advised:

> The Crown Solicitor's Office policy sets out ranges of rates for the payment of junior counsel for the guidance of its solicitors.

These rates are well below those paid to senior counsel.

Accordingly, in practice the Crown Solicitor does not brief junior counsel at hourly or daily rates above the standard rates for senior counsel.

CHILD TOBACCO SMOKE EXPOSURE

The Hon. JOHN HATZISTERGOS: On 22 October 2009 Reverend the Hon. Fred Nile asked me a question about child tobacco smoke exposure. I provide the following response:

I am advised that Ms Manning was sentenced for more than one offence at the time she was dealt with pursuant to section 10A of the *Crimes (Sentencing Procedure) Act* 1999 for the smoking offence.

Section 10A allows the court to impose a conviction—which of itself has grave consequences—and decline to set a further penalty. It is often used where a person is being sentenced for more than one offence and the court takes into account the totality of the punishment imposed over all the counts. In this case the offender received a number of fines for other offences. The fact that the magistrate did not impose a fine for this particular offence is not of itself an indication of Her Honour's view of the seriousness of the offence.

SCHOOL BUS SEATBELTS

The Hon. ERIC ROOZENDAAL: On 20 October I took on notice a question from Ms Lee Rhiannon about seatbelts on school buses. I am advised that the safety of schoolchildren on public transport is paramount. The New South Wales Government has been looking closely at the issue of school bus safety, including the question of seatbelts. The work done in New South Wales has led to the development of the National Guidelines for the Risk Assessment of School Transport Routes, which has been endorsed by the Australian Transport Council. These guidelines are being used by States to identify possible risk factors along current school bus routes, particularly in rural and regional areas, and to classify routes according to overall level of risk. Risk factors include a range of road, traffic and climate conditions such as speed limits, road design and curvature or the presence of heavy vehicle traffic. Routes containing higher risk factors are being classified as Environment 3.

Questions without notice concluded.

NORTHPARKES MINE DEATHS ANNIVERSARY

Ministerial Statement

The Hon. PETER PRIMROSE (Minister for Regulatory Reform, and Minister for Mineral Resources) [5.01 p.m.]: As the Minister for Mineral Resources it is my sad duty to advise the House of a memorial service held today to mark the tenth anniversary of the deaths of four men at the Northparkes Mine. Ross Bodkin, Stuart Osman, Colin Lloyd-Jones and Michael House were killed in an air blast on 24 November 1999. The mine today held a private service for the families, friends and colleagues of the four men. Representatives from my department have also attended today's ceremony. It is important that we remember these people and their families.

This tragic event was preventable, and the death of these men highlights why the New South Wales Government is committed to implementing all the recommendations of the New South Wales Mine Safety Review, which was conducted by the Hon. Neville Wran by working closely with industry and unions through the New South Wales Mine Safety Advisory Council. The council promotes world-leading occupational health and safety through its culture working party to drive cultural change. Through the hard work and dedication of the council since 1998 the industry has shown a steady improvement in its safety performance with a significant drop in fatality and injury rates since 1999. I make it clear that any accident is unacceptable and we must and will continue to do more.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.03 p.m.]: I also acknowledge the anniversary of the deaths at the Northparkes Mine. I thank the new Minister for paying me the courtesy of letting me know that he intended to make a statement, and I wish him well in his new portfolio. As the Minister said, on 24 November 1999, four men—Ross Bodkin, Stuart Osman, Colin Lloyd-Jones and Michael House—were killed in an air blast in a tunnel at Northparkes Mine. On behalf of the Liberal-Nationals and the people of New South Wales, I extend my sincere condolences to the families, workmates and friends of the four men who lost their lives in that tragic accident. When a tragedy occurs rural communities like Parkes unite and

demonstrate a strong spirit of comradeship. Northparkes Mine is today holding a private service for the families, friends and colleagues of Ross, Stuart, Colin and Michael. That is testament to a caring community and demonstrates its spirit of unity in once again gathering to reflect on the tragedy and to remember those hardworking men who 10 years ago today set out, as they did every working day, to earn a living. I was at Northparkes 10 months ago when E48 was closed down. I understand the camaraderie and feeling within that community that they are as one. The people who still had their jobs were worried about the people who had lost their jobs. That same spirit would be evident today.

The Northparkes Mine was developed in the early 1970s and 1980s and it was opened in August 1994. Over the years many farmers and their children have been employed at the mine. The opening of the mine was seen as an opportunity to revive the industry on which Parkes was originally built late last century. As the Hon. Tony Kelly knows, I have a connection with Northparkes Mine because my son-in-law and daughter are part of the local community and are involved in the mine project. It is important that we do not forget the deaths of these four men. A mine tragedy reminds us all that we are not invincible. It is important that the lessons of this tragedy are learnt and that we always work on improving safety and management techniques in our mines.

TABLING OF PAPERS

The Hon. John Hatzistergos tabled the following papers:

(1) Annual Reports (Departments) Act 1985—Reports for the year ended 30 June 2009:

Department of Ageing, Disability and Home Care
New South Wales Crime Commission
NSW Police Force

(2) Guardianship Act 1987—Report of Guardianship Tribunal for the year ended 30 June 2009

Ordered to be printed on motion by the Hon. John Hatzistergos.

SELECT COMMITTEE ON THE NSW TAXI INDUSTRY

Membership

The PRESIDENT: I inform the House that on 18 November 2009 the Leader of the Government nominated the Hon. Penny Sharpe and the Hon. Greg Donnelly as Government members on the Select Committee on the NSW Taxi Industry.

UNCLAIMED MONEYS HELD BY THE NEW SOUTH WALES TRUSTEE AND GUARDIAN

Ministerial Statement

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, and Vice President of the Executive Council) [5.05 p.m.]: On Monday 5 October I issued a press release regarding unclaimed monies being held by the New South Wales Trustee and Guardian where a person has died without a will. A hoax email about an entitlement in a fake intestate—that is, a no-will estate—in the name of Heiman de Waal has been sent to people purporting to be from me, as Attorney General. The email has been sent in Dutch and directs people to contact the Australasian Association of Genealogists and Records Agents to find out if they are owed money. The association has informed the Government that it has no knowledge of the author. It, too, has been receiving questions throughout the day.

I condemn this action and have asked that further investigations be conducted to track down the author of this scam. I am also issuing a general media release this evening to warn members of the public. However, I assure members and the community that the monies being held by the New South Wales Trustee and Guardian are carefully scrutinised before finalisation of estates. If persons make a claim for entitlement in an intestate estate with New South Wales Trustee and Guardian, they must provide exhaustive evidence as to their entitlement, which is then thoroughly checked against independently obtained information by the New South Wales Trustee and Guardian Genealogy Unit. Without proof, a person's claim cannot be validated. A family tree in each intestate estate must also be fully completed before any distribution is considered. Therefore, it is not possible for someone to access unclaimed monies if he or she simply present a case without proof and if we cannot subsequently authenticate the claim. However, as Minister I am gravely concerned that an unscrupulous individual is using a legitimate media release possibly to gain unfair advantage over members of our community.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

Motion by Ms Lee Rhiannon agreed to:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 208 outside the Order of Precedence, relating to the Save the Graythwaite Estate Bill 2009, be called on forthwith.

Order of Business

Motion by Ms Lee Rhiannon agreed to:

That Private Members' Business item No. 208 outside the Order of Precedence be called on forthwith.

SAVE THE GRAYTHWAITE ESTATE BILL 2009

Second Reading

Debate resumed from an earlier hour.

Ms LEE RHIANNON [5.09 p.m.], in reply: I continue the speech in reply that I commenced before question time. Government speakers, in making their contributions to the House, have made some incorrect statements, particularly about the court judgement. But they have also provided inaccurate information to the House with regard to the status of rehabilitation beds. I will deal first with the issue of rehabilitation beds. Mr Donnelly stated that there will be 60 new beds. Members need to understand that these are not new beds; they are relocated beds—30 have come from Ryde and 30 from Greenwich.

Government speakers are not being open with members of the House or the public, and their intentions must be examined. This bill seeks to stop the Government selling off the Graythwaite Estate. If we examine the status of rehabilitation beds we see it is possible that the Government will move to sell off the Ryde rehabilitation site, and possibly the Greenwich site as well. That could be why the beds have been relocated: to make it much easier for the Government to proceed with the sales. It is important that members are clear that under the Government's proposal for Graythwaite—and Government members made great play of the rehabilitation issue—we will not gain new rehabilitation beds. We know this because during the court case government representatives identified under oath that the 60 beds would be relocated beds, not new beds. So it is disappointing how the facts are being presented in this place.

I will also recap on the court case. Again, Government members' comments in debate were, at best, deceptive. The estate could have been sold to the Commonwealth with the agreement of the court if the health Minister—who at the time was Carmel Tebbutt—and the Friends of Graythwaite had gone back to the court together. There was provision for that to occur. The Friends of Graythwaite approached the Minister to do that and she refused. Again, it is disappointing. There was a real possibility to have a win-win situation: for the Government to get its money while retaining the estate in public hands and honouring the original intention of the owner of this wonderful estate.

Also relevant to the debate about the status of the agreement is that the tender documents contain a clause that states that the Government can reject any tenderer without giving a reason. So the Government could have rejected the offer from Shore; it was under no obligation to accept it. I found it disturbing that time and again in debate the Minister and his representatives misinterpreted the issue. We should remember that the descendants of the Dibb family want the estate to remain in public hands, and I commend the work of the Friends of Graythwaite and support the legislation. Mr Donnelly, speaking for the Government, referred to the Government's intention to save parts of the garden. We must recognise that that statement also is not completely accurate. The member failed to inform the House that the low-level areas of the garden will be sold off under the Government's plan to sell the estate to Shore. The Government's handling of this matter is a sorry saga indeed.

The bill, if passed, will allow something quite wonderful to happen in the heart of the North Sydney central business district and close to the city centre. As I said, it will allow the estate to stay in public hands. At this point it is worth recapping what the bill will do. It will allow acceptance of the Commonwealth's offer, which means an additional 52 new beds. That would bring the total number of rehabilitation beds to 112, which is much more than we will have under the Government's plan. It will also ensure that the wonderful 2.8 hectares

of public open space can be used by everybody, including the students of Shore school. The site is beside the school so students could still use it; the difference is that it would not be locked up just for their use. If the bill becomes law it will honour the wishes of the Dibb family, whose ancestor made this wonderful bequest to ensure that there was somewhere to rehabilitate service personnel who had served their country. This legislation will allow the grounds to be restored. Under this bill everyone wins: the people win, the local community wins, the Government wins, and even Shore will benefit. This bill offers a solution and a way forward, and I commend it to the House.

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

The House divided.

Ayes, 23

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

Noes, 18

Mr Catanzariti	Mr Primrose	Mr West
Mr Della Bosca	Mr Robertson	Ms Westwood
Ms Griffin	Ms Robertson	
Mr Hatzistergos	Mr Roozendaal	
Mr Kelly	Ms Sharpe	*Tellers,*
Mr Macdonald	Mr Tsang	Mr Donnelly
Mr Obeid	Ms Voltz	Mr Veitch

Question 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 Ms Lee Rhiannon 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.

DISTINGUISHED VISITORS

The PRESIDENT: I acknowledge the presence in the visitors gallery of Ms Song Yuying, Chairwoman of the Chinese People's Political Consultative Conference from the Hubei Provincial Committee, and her delegation. I welcome them to the Parliament.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

Motion by the Hon. Robert Brown agreed to:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 226 outside the Order of Precedence, relating to a select committee on recreational fisheries, be called on forthwith.

Order of Business

Motion by the Hon. Robert Brown agreed to:

That Private Members' Business item No. 226 outside the Order of Precedence be called on forthwith.

SELECT COMMITTEE ON RECREATIONAL FISHERIES

Establishment and Membership

The Hon. ROBERT BROWN [5.24 p.m.]: I move:

1. That a select committee be appointed to inquire into and report on the benefits and opportunities that improved recreational fisheries may represent for fishing licence holders in New South Wales, and in particular:

   (a) the current suite of existing regulatory, policy, and decision-making processes in relation to the management of recreational fisheries in New South Wales, including the process for the creation of marine protected areas, and the efficacy of existing marine protected areas and sanctuary zones,

   (b) the effectiveness and efficiency of the current representational system of trusts and advisory committees in delivering good recreational fishing outcomes to recreational fishing licence holders,

   (c) the value of recreational fisheries to the economy in New South Wales,

   (d) the gaps in existing recreational fishery programs, including the number and location of recreational fishing havens, and

   (e) sustainability issues related to improving recreational fisheries.

2. That the committee consist of seven members:

   (a) Government members: Mr Veitch, Mr Catanzariti, Ms Robertson,

   (b) Opposition members: Mr Gay, Mr Lynn, and

   (c) Crossbench members: Mr Brown, Mr Cohen.

3. That, notwithstanding anything contained in the standing orders:

   (a) the Chair of the committee be Mr Brown, and

   (b) the Deputy Chair be Mr Catanzariti.

4. That, notwithstanding anything contained in the standing orders, at any meeting of the committee, any four members of the committee will constitute a quorum.

5. That the committee report by 25 November 2010.

This is a straightforward motion that seeks to establish a select committee. It outlines the terms of reference of the select committee and suggests that the constitution of the committee be seven members. It nominates the Government members as the Hon. Michael Veitch, the Hon. Tony Catanzariti and the Hon. Christine Robertson. Opposition members nominated are the Hon. Duncan Gay and the Hon. Charlie Lynn, while the crossbench members are Mr Cohen and I. The motion nominates me as the Chair and the Hon. Tony Catanzariti as the Deputy Chair. The motion further states that, notwithstanding anything contained in the standing orders, at any meeting of the committee any four members of the committee will constitute a quorum.

The House is probably aware that a petition is circulating from the Warringah Anglers Club, which has in excess of 16,000 signatories, expressing concern about the creation of further marine parks. The Deputy Leader of the Opposition has a similar petition circulating that has in excess of 4,000 signatories. I have received emails, correspondence and representations from recreational fishers. Licence holders in New South Wales, who pay for their licences, number in excess of 500,000 and they state that this is a huge issue for them. As it is near the end of the parliamentary session and Parliament will not resume until February next year, I sought to suspend standing orders and to bring on my motion, which I commend to the House.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.27 p.m.]: The Opposition supports this very proper motion and we congratulate the Shooters Party on joining us in taking up the fight on behalf of recreational fishers. It was a lonely old fight for a long time so it is good finally to have a couple of mates with us. On behalf of the fishers of New South Wales, we thank the Shooters Party for joining us—albeit belatedly.

They were not with us initially but they are with us now. Who would not support establishing a committee to inquire into and report on the benefits and opportunities that improved recreational fisheries represent for fishing licence holders in New South Wales? I congratulate the Hon. Robert Brown from the Shooters Party.

The Hon. Rick Colless: Better late than never.

The Hon. DUNCAN GAY: As my colleague says, better late than never—but that is a bit harsh. I certainly appreciate working in good faith with the Hon. Robert Brown on this issue. I also thank him for paying me the compliment of seeking to include me as a committee member. However, because of my work pressures as a party leader and shadow Minister, I reluctantly state that I cannot serve on the committee.

Reverend the Hon. Fred Nile: That's a shame because you have knowledge.

The Hon. DUNCAN GAY: It is a shame because I do have knowledge and I would like to be there. However, we propose that my colleague the Hon. Rick Colless, a man who has great knowledge in this area, be appointed to the committee. Therefore, I move:

That the question be amended by omitting "Mr Gay" in paragraph 2 (b) and inserting instead "Mr Colless".

Mr IAN COHEN [5.29 p.m.]: As Primary Industries spokesperson for the Greens, I support the establishment of the committee as proposed in the Hon. Robert Brown's motion. Given the long history of the matter and the fact that it was the subject of an inquiry on which I served approximately 10 years ago—there was an interesting dynamic between Government members, who at the time supported recreational fishers, and Opposition members, who strongly supported professional fishers—probably the inquiry needs green input so that we can make sure there are some fish left. Otherwise it might become a "shoot a fish" inquiry.

The Hon. Michael Gallacher: That was a cheap shot.

Mr IAN COHEN: Indeed, thank you. I acknowledge the Leader of the Opposition's interjection. I believe there is always room to investigate further these matters that are ongoing. I understand that I am to be nominated to serve on the proposed committee. Certainly I am happy to be part of it, and to balance the interests represented on the committee by supporting conservation views. I know from my experience with the Hon. Robert Brown, who will chair the committee, that we can have robust debates on these matters yet undertake inquiries in a mature manner that will hopefully result in a report that will benefit both fishers and fisheries in New South Wales.

I will seek to amend the motion in order to alter the framework of the inquiry. Before I go into the details of the amendment, I advise members that I have discussed the matter with the Hon. Robert Brown. We had a few sticking points, but good communication resulted in an amendment that both he and the Government find acceptable. I believe it is a very reasonable amendment that is intended to assist the process. Certainly in our discussions the Hon. Robert Brown and I have had no great difficulty in coming to an agreement on the matter. Accordingly, I move:

That the question be amended as follows:

(1) In paragraph 1 (a) omit all words after "marine protected areas" and insert instead "marine protected areas and marine parks, and the efficacy of existing marine protected areas and marine parks".

(2) In paragraph 1 (b) omit all words after "advisory committees" and insert instead "that advise government departments and statutory authorities".

(3) In paragraph 1 (e) omit "sustainability" and insert instead "ecologically sustainable development."

The amendment is fairly self-explanatory. We want to cover marine protected areas and marine parks, foreshore zones, and areas other than marine parks in dealing with protected areas. The proposed amendment to paragraph 1 (b), which inserts the words "that advises government departments and statutory authorities", I believe is reasonable. The concept of ecologically sustainable development is incorporated in many pieces of legislation. Indeed, it is an acknowledged term that I believe puts the concept of sustainability in a more concise legislative framework, which I believe will assist in achieving the aims and aspirations of the proposed committee. Given that it is in keeping with other terms used, I am sure that all members of the committee will consider it to be of great importance. Regardless of our individual perceptions on the development of fisheries for recreational fishing and other similar uses, whatever way we look at the issue it is important to acknowledge that

ecologically sustainable development is an aim and a goal that should be maintained so that we can carry on these types of activities in perpetuity without damaging the resource for which we all, for various reasons, have a great deal of regard. I commend my amendment to the House. I support the formation of the committee and am happy to serve on it.

The Hon. MICHAEL VEITCH [5.34 p.m.]: The Government supports the motion to appoint this select committee. Around one million people, including me, wet a line in New South Wales each year. Recreational fishing is not only one of our most popular pastimes but also of great economic importance to New South Wales communities. A 2000-01 survey of recreational fishers showed that fishers spent an average of $550 each per annum on their fishing activities, which is approximately $550 million in direct expenditure alone. Surveys undertaken in 2003-04 showed that the recreational fishing sector is worth more than $20 million per annum to the economy of individual coastal communities such as Port Macquarie and Bermagui.

Since the recreational fishing fee was introduced in 2001, tens of millions of dollars have been put back into our fisheries resource. Funds raised from the recreational fishing fee are placed in saltwater and freshwater recreational fishing trusts and can be spent only on projects to improve recreational fishing. Expenditure from these trusts is overseen by angler expenditure committees on behalf of the recreational fishing community. So anglers can rest assured that the fees they pay are reinvested in worthwhile recreational fishing projects. Each committee is made up of regional representatives with extensive recreational fishing experience. Over the past eight years the committees have worked hard and performed admirably to develop priorities for investment. The Government is confident that the committees are working effectively and efficiently. For the 2009-10 financial year, the State's anglers will directly benefit from more than $13 million worth of new and ongoing projects designed to enhance recreational fishing. The recreational fishing trusts allocated a total of $3.3 million to new and ongoing freshwater projects, while $10.3 million will be spent on saltwater fishing projects. These projects are wide and varied, ranging from science and research to artificial reefs and the extremely popular fish aggregating devices, or FADs.

The trusts also fund the publication of both the freshwater and saltwater fishing guides. The guides can be found in the tackle boxes of many of our State's anglers, including mine, as they outline bag and size limits, information about individual species, useful knots, fishing closures, and things like our trust-funded Fishcare volunteer program, threatened and protected species, stocking information, and catch-and-release best practice. As members are aware, the New South Wales Government is committed to providing services and regulations that enhance recreational fishing in this State. As I have said previously, the Government supports the appointment of a committee to inquire into and report on the benefits of improved recreational fisheries. The Government will also support the amendment moved by the Greens.

Reverend the Hon. FRED NILE [5.37 p.m.]: The Christian Democratic Party supports the motion. We congratulate the Hon. Robert Brown, representing the shooters and fishermen's party, on moving the motion, which proposes that a select committee be appointed to inquire into and report on the benefits and opportunities that improved recreational fisheries may represent for fishing licence holders in New South Wales, and a number of other matters. As members know, more than one million men and women enjoy fishing in New South Wales. Recreational fishers have expressed some anguish over the creation of marine protected areas, which has restricted some of their opportunities. It is important that proposed marine protected areas are considered in an open and unbiased manner in order to achieve the best outcome for everyone involved.

The Hon. CHRISTINE ROBERTSON [5.38 p.m.]: I welcome the motion to appoint the select committee. Last week I caught a very nice flathead on the Clarence as a recreational fisher—I have my licence; I am being good. I assure members that the flathead was well oversize; it was a nice big fish. There are more than one million recreational fishers in New South Wales who expect best-practice management of our recreational fisheries. We already have a strong regulatory framework in place to support the sustainable use of our fisheries and to provide fantastic opportunities for our recreational fishers. We are certainly open to a review of that framework and to seeing whether there are ways in which it can be further improved. Sustainability is the overarching consideration when managing our fisheries. It is fundamental to ensuring current and future recreational and commercial fishers have opportunities to enjoy the fisheries resource.

In 2002 along the New South Wales coast 30 locations were declared recreational fishing havens following the removal of commercial fishing effort. I remember the controversy that caused but it has been an incredibly successful process. Of the New South Wales estuarine waters, 27 per cent are now substantially free of commercial fishing—up from 3 per cent. I might add that where I fish is not an estuarine protected area but

we share the river with the commercial fishers. The purpose of these areas is to improve opportunities for recreational fishing in key areas of significance to recreational fishers. The 30 locations were chosen after a transparent selection process which ensured that socio-economic and ecological issues were considered.

We also have a system of marine protected areas, which encompass 6 multiple use marine parks, 12 aquatic reserves and 62 national parks and reserves with marine components. The vast majority of these areas are open to recreational fishing, and anecdotal evidence suggests that the fishing is better in these areas since the changes came in. The State level marine parks advisory group draws members from the recreational and commercial sectors, marine science and conservation organisations and Aboriginal communities. Local committees provide advice on the day-to-day management of each of the parks and the public consultation processes in relation to the creation and zoning of marine parks are extensive—and will remain so.

Evaluating the effectiveness of the New South Wales system of marine parks through science is a high priority for the Government. The scientific research programs that adhere to world's best practice standards are required to help identify the most appropriate management practices for the parks.

[*Interruption*]

This is an item on which there is total agreement so I cannot understand why I am being bagged when I am talking about how good the process is, including the review. Annual research plans are in place for each marine park. This work is gradually building our understanding of their effectiveness and the best ways to facilitate multiple uses of the resource. The Government is committed to providing a sustainable regulatory framework for recreational fisheries and involving the community in decision-making processes. The Government therefore supports the motion to establish a select committee to inquire into and report on the benefits and opportunities of improved recreational fisheries.

The Hon. ROY SMITH [5.42 p.m.]: I commend my colleague the Hon. Robert Brown for moving this motion. I would also like to inform the House that earlier this month I caught the biggest flathead I have ever caught in my life.

The Hon. ROBERT BROWN [5.42 p.m.], in reply: The Shooters Party supports the amendments moved by the Hon. Duncan Gay and Mr Ian Cohen. This will be a well-rounded committee. I commend the motion to the House and look forward to getting on with the task.

Question—That the amendment of the Mr Ian Cohen be agreed to—put and resolved in the affirmative.

Amendment of Mr Ian Cohen agreed to.

Question—That the amendment of the Hon. Duncan Gay be agreed to—put and resolved in the affirmative.

Amendment of the Hon. Duncan Gay agreed to.

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

Motion as amended agreed to.

CRIMINAL ASSETS RECOVERY AMENDMENT BILL 2009

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

Motion by the Hon. Penny Sharpe agreed to:

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

The Hon. PENNY SHARPE (Parliamentary Secretary) [5.45 p.m.]: Pursuant to sessional orders I declare the bill to be an urgent bill.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [5.46 p.m.]: The Opposition does not oppose the urgency motion but I make the observation that the Minister for Police introduced this bill in the other place. This is a very important piece of legislation but the Minister for Police is obviously too busy to brief his counterpart in this place, me, as the shadow Minister, but I appreciate that someone has spoken to the shadow Attorney General. Whilst the Opposition supports the urgency motion, I make the observation that the Opposition is being asked to support the legislation in good faith without the Government having the decency to explain how it is going to work.

The Hon. DON HARWIN [5.46 p.m.]: I support the comments of the Leader of the Opposition. We moved the sessional order to enable the Legislative Council to deal with legislation at the end of the spring session in an orderly fashion. The sessional order made clear provision for bills to be declared urgent bills and that is fine. I would have thought if the Government was expecting the Opposition to agree to urgency in this House, clearly having said what it wanted to say about the way legislation should be dealt with at the end of the session, at the very least the relevant Minister should have had the decency to tell the shadow Minister that the bill was coming.

DEPUTY-PRESIDENT (The Hon. Kayee Griffin): Order! I interrupt the member to remind him that the question "That the bill be considered an urgent bill" is to be decided without debate, except for a statement not exceeding 10 minutes each by a Minister and the Leader of the Opposition, or a member nominated by the Leader of the Opposition, and a statement not exceeding five minutes each by two crossbench members. As the Leader of the Opposition has spoken in the debate, the Hon. Don Harwin cannot also speak.

Question—That the bill be declared an urgent bill—put and resolved in the affirmative.

Declaration of urgency agreed to.

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

CHILD PROTECTION LEGISLATION (REGISTRABLE PERSONS) AMENDMENT BILL 2009

Second Reading

Debate resumed from 12 November 2009.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [5.48 p.m.]: The Liberal-Nationals Coalition does not oppose the Child Protection Legislation (Registrable Persons) Amendment Bill 2009. This bill seeks to strengthen the ability of police to effectively manage and control the movements and associations of convicted child sex offenders in this State. The Coalition always will support measures that enhance the monitoring capacity of those agencies tasked with protecting our children from harm. Recent events have demonstrated the community's strong desire to have tougher measures in place to monitor convicted child sex offenders once they complete custodial sentences. This bill amends the Child Protection (Offenders Registration) Act 2000 and the Child Protection (Offenders Prohibition Orders) Act 2004. I will summarise those amendments detailed by the Attorney General in his second reading speech.

Proposed section 11 requires a registrable person to report any changes with regard to children who generally reside in the same household as that person or with whom that person has regular unsupervised contact within 24 hours of the change occurring. At present this notification must be given within three days. Proposed new section 11F requires a registrable person to report an intended change in their place of residence to the police commissioner at least 14 days beforehand unless the change of residence arises from an emergency or exceptional circumstances. Proposed section 15 provides for the extension of a registrable person's reporting period during the time in which they are travelling outside of Australia for a month or more or for the duration of their residence outside Australia.

Proposed section 16 allows the Administrative Decisions Tribunal to exempt a registrable person from the reporting obligations imposed by such an extension of the reporting period. Proposed section 19BA enables the police commissioner to direct certain agencies to provide personal information about a registrable person for the purposes of developing or giving effect to a case management plan. Schedule 2 amends the Child Protection (Offenders Prohibition Orders) Act 2004 to enable the Local Court to make a contact prohibition order prohibiting a registrable person in relation to a particular registrable offence from contacting a victim of that

offence or a co-offender who perpetrated that offence. The police commissioner can make such an application in specified circumstances. Under this bill the term of the order cannot exceed 12 months. The penalty for breaching an order is 50 penalty units or 12 months imprisonment.

The Liberals and Nationals have consulted with Bravehearts, the not-for-profit organisation specialising in tackling child sexual assault, and the New South Wales Police Association, both of which broadly support the amendments. Protecting the community from child sex offenders is of the utmost importance, but this obligation does not end once the offenders are apprehended and incarcerated. The majority of child sex offenders will eventually be released from custody. Estimated rates of recidivism among child sex offenders vary. One study found that 42 per cent of offenders reoffended—either a sex crime or violent crime, or both—after they were released. Risk of reoffending was highest in the first six years after release, but continued to be significant even 10 to 31 years later, with 23 per cent offending during this time. A study done in California in 1965 found an 18.2 per cent recidivism rate for offenders targeting the opposite sex and a 34.5 per cent recidivism rate for same-sex offenders after five years. Justice James Wood stated in his 1997 report into paedophiles:

> The general consensus is that paedophiles cannot be cured, only managed and that offending only ceases while the offender is imprisoned.

These amendments acknowledge that it is the management of child sex offenders that must be addressed after their release. Proposed section 11 (1) (a) deals specifically with the period in which an offender must notify if they have had unsupervised contact with a child and legislates that such notification must take place within 24 hours. Currently a person convicted of a child sex offence could have unsupervised contact with a child and not report it for three days. This change will allow law enforcement and other agencies to swiftly address any contact that could have been inappropriate. Proposed new section 11F, concerning the 14-day notification period in which registrable persons must notify authorities of a planned change of residence, not only will allow police to better ensure the protection of whichever community a registrable person intends to move to, but also will provide additional time for agencies to manage the movement of a registrable person who may still pose a threat to children.

Proposed section 15 (3) remains a concern. The Attorney General pointed out in his second reading speech that police are seeing registrable persons going overseas for long periods to avoid their reporting obligations. Whilst proposed section 15 (3) does go some way toward addressing this issue, it has been suggested to us that it may be better if registrable persons were not able to travel overseas at all, as is the case in some foreign jurisdictions. Perhaps the Attorney General, or the Parliamentary Secretary, could inform the House whether the Government has explored this possibility and any decisions or conclusions that have been reached in this regard. The Attorney General, or the Parliamentary Secretary, also could inform the House whether the Government has raised this with the Ministerial Council for Police and Emergency Management and the Commonwealth to make sure that the registration legislation concurs with that of other jurisdictions. The Liberals and Nationals are supportive of the child protection watch teams but we remain concerned that their rollout will not be completed until 2010. We will monitor this rollout closely to ensure the commitment is carried through.

Proposed section 19BA, which allows the police commissioner to compel agencies to provide information on a registrable person, is a positive step. However, one must wonder how it is that police have been operating for so long without these provisions. The community would expect registrable persons, namely, convicted child sex offenders, would forgo some privacy to ensure that those agencies monitoring them were furnished with the appropriate information as to their whereabouts and activities. It has come to our attention that this section may also provide for the New South Wales Police Force to share information with other agencies. The New South Wales Police Association raised with us, whilst consulting on this legislation, that police could not share information with the public housing authority prior to the placement of a registered person. The Parliamentary Secretary, representing the Attorney General, may be able to shed some light on this decision by the Government not to allow this sharing of information. The bill does not cover a situation in which the police commissioner believes there is a need to proactively provide information to the housing authorities so that they can make a proper assessment on an appropriate placement for a registered person.

In relation to schedule 2, it stands to reason that convicted sex offenders should not have any contact with other known or registered sex offenders beyond those activities mandated by the terms of the parole or custody, such as counselling or group accommodation. Unfortunately, there have been numerous instances of convicted child sex offenders colluding to commit further sex crimes or to procure child pornography as part of organised rings. Bravehearts called for contact prohibition orders to be expanded to include all sex offenders and

not just the co-offenders of registered persons. Perhaps this should be looked at. Due to the high risk of recidivism by child sex offenders a tough system of managing the movements and associations of registrable persons is necessary. Given the prevailing research suggesting such high recidivism rates, the Liberals and Nationals are of the belief that these management plans should be ongoing and stringent to best protect the community.

The concern on this side of the House in relation to the provisions of schedule 2 of the bill is the significant difference between the current provisions of the Child Protection (Offender Prohibition Orders) Act 2004 and the proposed amendments. Under the current legislation the Local Court can make a child protection prohibition order to prohibit a person from engaging in specific conduct for a period of up to five years. Under this bill the Local Court can issue a contact prohibition order only for a maximum of 12 months. So, while offenders cannot do certain things for up to five years, they are prevented from contacting their victim or co-offenders for only up to one year. In the case of young and vulnerable victims the impact of the need to renew contact prohibition orders every year will be considerable. I can see no reason why there should be such a significant difference between one set of orders and another under this Act. Both are established to protect victims and the community from registrable persons and their illegal behaviour. I ask the Attorney General, or indeed the Parliamentary Secretary, to provide to the House a comprehensive explanation as to why victims and the community are protected for only a maximum of one year from offenders contacting victims, and their co-offenders.

The Liberal-Nationals Coalition does not oppose the bill but is seeking a response from the Government to the issues I have raised in this debate. I suspect that over time it will become increasingly difficult for police to maintain proper supervision of a list of registrable people that will no doubt increase in size and become an increasing burden on policing if we continue current practices. It will fall to this House and this Parliament to look at innovative ways in which people can be managed and monitored without police resources being stretched further and further, which is, unfortunately, becoming far too common.

Ms SYLVIA HALE [6.00 p.m.]: The Greens do not oppose the Child Protection Legislation (Registrable Persons) Amendment Bill 2009. The bill will place an additional layer of control onto a registrable person. When a child comes to reside at the same place as a registrable person at present that person must report this fact within three days. The bill proposes to change the reporting time to within 24 hours. It is anticipated that all Australian jurisdictions will adopt a similar provision. Other proposed amendments require a registrable person, should he or she intend to move residence, to inform the authorities of this 14 days before they do so. If there are exceptional circumstances that prevent the registrable person giving this notification then he or she must inform the police as soon as practicable, but no longer than three days after the move has taken place.

There are new provisions to cover a situation where a person who, as a condition of their release from jail, is required to report for a specified period of time goes overseas to a place in which no reciprocal arrangements are in place. The Attorney-General gave the example of a registrable person who goes to Indonesia for several years. Under the changes proposed in the bill the period spent overseas will stop the clock in terms of reporting obligations. Upon the registrable person's return to Australia from overseas, he or she will be required to report for the same length of time as if he or she had not departed Australia for a country where reporting requirements were not in force.

While I am very mindful of people's civil rights and the fact that people who have served time in jail should be considered to have repaid their debt to society and should not necessarily be encumbered with further conditions upon their behaviour, I believe that in the case of children—not only here but also overseas—most people would recognise that special consideration needs to be given to preventing people from departing the country to carry on with their behaviour in a jurisdiction with which this country does not have any reciprocal arrangement. To that extent I note the remarks made by the Leader of the Opposition.

Proposed section 19BA makes it clear that government agencies such as Corrective Services, the Department of Community Services, Housing NSW and so forth will be able to exchange information about a registrable person in order to devise and implement a case management plan for the registrable person or to prevent unintended consequences. Where an agency, perhaps apprehensive that it may be breaching privacy laws, does not provide information to another agency, the Commissioner of Police may, via a written notice, require that information be provided to the commissioner.

Proposed new part 2A creates a new order called a contact prohibition order. The order may be placed on a registrable person who is not subject to other orders, such as an extended supervision order, a prohibition

order, or any other court order as prescribed by the regulations. Thus, former sex offenders who are under no form of surveillance because it has been judged that they are at low or zero risk of reoffending and have served their time may be subject to a contact prohibition order. The amendment is clearly a response to the case of Dennis Ferguson, who is not subject to specific control orders and has been at liberty for years without reoffending. Mr Ferguson, however, did seek through Centrelink the contact details of his co-offender and tried to track him down. If he were to be issued with a contact prohibition order now he would no longer be able to pursue that contact.

The Greens do not oppose the suggested part 2A provisions, which would allow the Commissioner of Police, when the commissioner is satisfied that there are sufficient grounds to justify the making of the application, to apply for a court order that a registrable person be ordered not to contact a victim or co-offender. Although Dennis Ferguson has provided the impetus for this amendment, it is difficult to see that such an order would do any harm and may, in fact, protect victims from possible contacts from a registrable person, even if that person were no longer subject to reporting requirements. I note that the bill contains a provision that allows a defence of inadvertent contact to be raised.

An order to restrict contact can be made by the Local Court. Such an order may not apply to members of the registrable person's immediate family unless that family member was a victim or co-offender. An application can be made to vary or revoke a contact prohibition order. If such an order is in place but the registrable person without reasonable excuse tries to contact someone they are prohibited from contacting, either personally or via procuring another person to contact them on their behalf, the registrable person may be subject to a maximum of 50 penalty units or 12 months in jail. The Greens do not oppose the bill.

The Hon. LYNDA VOLTZ [6.06 p.m.]: I support the Child Protection Legislation (Registrable Persons) Amendment Bill 2009. The objects of the bill are to require a registrable person to report a change in the children who generally reside in the same household; to require a registrable person to report an intended change in the place where he or she generally resides; to provide for the extension of a registrable person's reporting period if they are travelling outside of Australia; and to enable the Commissioner of Police to direct certain agencies to provide the commissioner with certain information that he or she needs.

I will just respond to some of the issues raised by the Hon. Michael Gallacher about the work of the Child Protection Watch Team, which is currently being expanded from a trial in south-west Sydney to the whole of New South Wales. The Child Protection Watch Team commenced on a trial basis in south-west Sydney in September 2004 after a 2003 election commitment by this Government to establish multi-agency child protection watch teams to manage high-risk offenders at a local level. Unfortunately, the trial did not become fully operational until April 2005 when issues relating to the exchange of information between human services and law enforcement agencies were resolved.

The Child Protection Watch Team consists of representatives from the New South Wales Police Force, Corrective Services, Juvenile Justice, the Department of Community Services, the Department of Health, Housing NSW, the Department of Ageing, Disability and Home Care, and the Department of Education and Training. An external evaluation clearly identified significant benefits to the interagency management of these high-risk offenders. In addition to enhanced information exchange, benefits were enhanced skills and expertise in managing high-risk child sex offenders; enhanced interagency cooperation and collaboration on other matters; early warnings of inappropriate behaviour, associations and living arrangements; early detection of breaches of reporting requirements; successful applications for child protection prohibition orders; the identification of possible children at risk and minimisation of that risk; and a reduction in the risk of recidivism.

The Child Protection Watch Team currently has branches in Liverpool, Newcastle and Lismore, with an additional five branches to be rolled out in the near future. The evaluation report estimated that around 100 referrals could be made statewide as the watch team progressively expands, and that around 50 of those referrals would be likely to be accepted for management. Those 50 would be child sex offenders who are identified as having the highest risk of re-offending—people who require not only close supervision and monitoring but also significant assistance in reintegrating into the community. The coordinated approach taken by the watch team means that an offender can be assisted in obtaining appropriate housing, developing job skills through a TAFE course or accessing counselling.

Research, whilst not conclusive, strongly suggests that these types of interventions can reduce recidivism as an offender becomes more comfortable living a normal life. It is this coordinated approach that is underpinned by today's amendment in relation to section 19BA of the Child Protection (Offenders Registration) Act, as coordination is not possible without the exchange of information.

Reverend the Hon. FRED NILE [6.10 p.m.]: On behalf of the Christian Democratic Party I am pleased to support the Child Protection Legislation (Registrable Persons) Amendment Bill 2009. I congratulate the Government on introducing this bill and the other bills that it has introduced in recent years dealing with the abuse of children. I raised this issue when I was first elected to Parliament in 1981. Prior to that, in 1979, I invited two senior detectives from the Los Angeles Police Department to visit Sydney to share their more extensive experience in dealing with this issue and the policies they had introduced. The officers—who were in charge of the Sexually Exploited Child Unit and the Abused Child Unit—briefed senior officers of the New South Wales Police Force. We had problems, but we were probably not aware of their scope at that time. The information they provided was helpful in developing special child protection units within the New South Wales Police Force.

This issue has always been very close to my heart. We must protect our children from people who are sexually addicted to them. They seem to have no ability to control that addiction, so we must continually supervise them. They are in a different category from other individuals who break the law. They are a special classification and, as such, we must enact special provisions to deal with them. I acknowledge that such provisions are unusual, but they are essential. The bill will amend the Child Protection (Offenders Registration) Act 2000 and the Child Protection (Offenders Prohibition Orders) Act 2004 to improve the management of child sex offenders in the community. In my view the term "child sex offenders" is a little misleading because it suggests that the child is the sex offender. The legislation deals with sex offenders who abuse children. I accept that we use shorthand terms to deal with certain categories of crime.

The amendments to the Child Protection (Offenders Registration) Act 2000 provide that registrable persons will have 24 hours rather than three days to report any children they live with or any other unsupervised contact with a child over three days or more in a 12-month period. I would prefer them to have no contact at all with children if possible. The bill also introduces a new requirement for registrable persons to advise police of a change in their primary place of residence 14 days before they move unless emergency circumstances make that impossible. In such circumstances police must be notified as soon as practicable up to three days after the move occurs. The bill also amends the Act to provide for the extension of a registrable person's reporting period during the period in which the registrable person is travelling outside Australia for a month or more or residing outside Australia in countries without a corresponding register.

I agree with previous speakers who have said that these offenders should not be allowed to travel overseas. The evidence clearly indicates that paedophiles travel oversees not for the type of holiday that other people would enjoy but to contact vulnerable children in Asia, especially in Thailand, Indonesia and the Philippines. Authorities in those countries regularly identify Australians who are guilty of sex crimes against children. I believe that those individuals travel overseas not only to abuse vulnerable children but also to avoid police supervision in New South Wales. Police officers get to know these individuals who fear detection. However, if they travel overseas the local police are not aware of their activities and they are not closely supervised, which is vital in preventing their re-offending. I do not believe that such people should be allowed to travel. However, if they are, they should be required to provide their itinerary and stick to it, and we should advise the authorities in the places they intend to visit.

The bill will also allow registrable persons whose reporting period is extended under proposed section 15 [3] to apply to the Administrative Decisions Tribunal to have their reporting obligations suspended for the extended period. We seem to be falling over backwards to assist these people. They should not have the same rights as others to have drawn-out cases before the tribunal. The bill also provides that the Commissioner of Police may direct a scheduled agency to provide personal information about a registrable person if that information is required to prevent substantial adverse impact on the registrable person or another person or class of persons if the information is not disclosed or if the information will assist in developing or giving effect to a case management plan for the registrable person.

Finally, the bill amends the Child Protection Offenders (Prohibition Orders) Act 2004 to introduce a scheme of contact prohibition orders. As members know, this amendment is in response to Dennis Ferguson going out of his way to re-establish his relationship with his co-offender, who assisted him in kidnapping three children, taking them to Queensland and sexually abusing them. The fact that Dennis Ferguson can contact his co-offender increases the possibility that they will again indulge in child abuse. In other words, they would stimulate each other by discussing what they have done in the past and thereby reignite their addiction. I raised with the Government representatives briefing us on this bill the case recently made public involving a person who was previously convicted of sexual offences against children and who has reoffended. He is not on the register because he was convicted prior to 2001. People convicted before then are not required to be on the

mandatory register. That loophole should be closed and all persons who are convicted of child sexual offences should be on the register. I hope that the Government gives more thought to that issue. That is now left to the Commissioner of Police, who may initiate some action in respect of a particular person. All persons who have been convicted of sexually abusing a child should be on the register no matter when the offence was committed.

The Hon. PENNY SHARPE (Parliamentary Secretary) [6.19 p.m.], in reply: I thank members for their contributions to this debate. The Hon. Michael Gallacher, Ms Sylvia Hale and Reverend the Hon. Fred Nile referred to sex offenders travelling overseas. The Government recognises that some registrable people appear to be travelling or relocating overseas for long periods in an attempt to avoid their reporting requirements. These changes seek to deal with them. However, under section 11A of the Act registrable persons who travel overseas must tell police of their travel plans and, if necessary, police will report travel plans to the Australian Federal Police, who work in partnership with other jurisdictions so that their overseas activities can be monitored.

Reverend the Hon. Fred Nile raised the issue of retrospectivity and the concern that the child protection register does not capture those offenders released from jail prior to 2001. The Child Protection Act commenced on 15 October 2001 and all child sex offenders who were released from jail or who committed a relevant offence after that date are automatically placed on the child protection register and are monitored by police. However, since October 2008 serious sex offenders who were released from jail prior to the Act's commencement can also be placed on the register through a child protection registration order. These orders can be issued by a Local Court on the application of the Commissioner of Police if the court is satisfied that the person poses a risk to the lives or sexual safety of one or more children or children generally.

The Government believes that any potential benefits of broadening the retrospective scope of the child protection register will more than likely be outweighed by the costs associated with diverging significant law enforcement resources to properly manage the scheme. However, the Commissioner of Police is currently reviewing the matter to make sure police have all the powers they need to monitor convicted offenders. If this review determines there will be some benefit in monitoring historical child sex offenders, we will make the necessary legislative changes.

The Government will be moving an amendment in Committee—not a controversial amendment—relating to section 19BA (5) and the definition of "personal information". Essentially it will change an "and" to an "or". It will clarify that the Department of Health is clearly covered by the exchanges of personal information. I will go into more detail when we deal with the amendment in Committee. I thank honourable members for their contributions. The bill will improve the ability of police and other agencies to effectively manage child sex offenders and ultimately contribute to the safety of our children. 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 and 2 agreed to.

The Hon. PENNY SHARPE (Parliamentary Secretary) [6.23 p.m.]: I move:

Page 5, schedule 1. Insert after line 26:

[10] Section 19BA (5), definition of "personal information"

Omit the definition. Insert instead:

personal information means anything that constitutes personal information for the purposes of the *Privacy and Personal Information Protection Act 1998* or the *Health Records and Information Privacy Act 2002*.

When section 19BA of the Act was first introduced in October 2008 it is was intended to facilitate the exchange of information between agencies in relation to registrable persons. This was intended to facilitate the exchange of information between the member agencies of the Child Protection Watch Team. A drafting error in the definition of "personal information" in section 19BA (5) has recently been identified and means that the current

definition does not cover health information protected under the Health Records and Information Privacy Act 2002. As the Department of Health is a key member of the Child Protection Watch Team, section 19BA is clearly intended to cover the exchange of health information. Therefore, this amendment corrects the definition of "personal information" to clarify that health information is covered by section 19BA and can be exchanged freely between scheduled agencies under section 19BA authorisation. Information that has been exchanged between the Child Protection Watch Team and agencies to date has been exchanged with the consent of the registrable persons. So, agencies have not been relying on section 19BA and, thus, have not been in breach of the legislation.

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

Amendment 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 transmitted to the Legislative Assembly seeking its concurrence in the bill.

[*The Deputy-President (The Hon. Christine Robertson) left the chair at 6.27 p.m. The House resumed at 8.00 p.m.*]

WINE GRAPES MARKETING BOARD (RECONSTITUTION) AMENDMENT (EXTENSION) BILL 2009

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

GRAFFITI CONTROL AMENDMENT BILL 2009

Second Reading

Debate resumed from 12 November 2009.

The Hon. DAVID CLARKE [8.02 p.m.]: The Opposition does not oppose the Graffiti Control Amendment Bill 2009, which is the Government's response to the spreading proliferation of graffiti throughout New South Wales, a proliferation that has been virtually unchecked for years now and which has reached epidemic proportions. It is high time that the Government started to get serious in dealing with the growing plague of graffiti crime. It is an issue that will personally and adversely impact on most people in New South Wales at some time or another. When our public buildings, monuments and other facilities are sprayed with unsightly and ugly graffiti, the people of New South Wales have to pay the bill for its removal through their taxes, charges and rates.

When their homes, businesses, cars and other private property are defaced by graffiti criminals, they face the choice of incurring expense and loss of time in having it removed or else giving up as a lost cause and accepting that the continuing defacement of their property is a permanent feature of life in New South Wales. Another consequence of graffiti crime is the diversion of police resources, which are already severely overstretched in present-day New South Wales. The Government has for too long ignored this epidemic of graffiti crime. However, with an approaching election and with escalating public anger over its inability to be able to deal with this issue, the Government has discovered a new-found desire to show that it is doing something about it. Therefore, the Premier has hobbled together a so-called action plan, which he announced only a few days ago and of which this bill appears to be the central component.

While the Opposition does not believe that this bill will do much to reduce graffiti crime, it does not oppose its passage through this House. It sees it as one small step only in the war against graffiti criminals. In his second reading speech the Attorney General was honest enough to admit that current penalties do not appear to be a deterrent to serious graffiti offenders. He frankly admits that compared with other jurisdictions in Australia the penalties for marking graffiti and carrying a graffiti implement with intent in New South Wales are at the lower end of the scale. The Government admits that limits placed on current sale restrictions of spray paint cans have led to graffitists recruiting adults to purchase cans on their behalf.

An overview of the bill states that its objects are to amend the Graffiti Control Act 2008 to create new offences relating to the supply of spray paint cans to children and the possession of spray paint cans by children, to increase the penalties for certain existing graffiti offences and to introduce a scheme of community clean-up orders under which an offender fined for a graffiti offence can be directed by a court to perform community clean-up work in order to satisfy the fine. It seeks to amend the Graffiti Control Regulation 2009 to enable certain local council employees to issue penalty notices for certain offences under the Graffiti Control Act. It also seeks to amend the Rail Safety Act 2008 to give rail safety officers the power to direct persons to state their name and address if they are found to be committing an offence under the Graffiti Control Act or are reasonably suspected of committing such an act.

The bill amends the Graffiti Control Act to increase the maximum penalty for the existing offence of damaging or defacing property with a graffiti implement from six months to twelve months imprisonment, and increases the maximum penalty for the existing offence of possessing a graffiti implement with the intention that it be used to damage or deface property from three months to six months imprisonment. The bill creates two new offences. The first offence is that of supplying spray paint cans to a person under the age of 18 years. This is a strengthening of the current law, which provides that it is an offence to sell rather than to supply a spray paint can to a person under the age of 18. A person guilty of the new offence of supply will face a maximum penalty of $1,100.

It will be a defence that the person supplying the spray paint can believed on reasonable grounds that the recipient intended to use the spray paint can for a defined lawful purpose, being the lawful pursuit of an occupation, education or training, or if the person charged proves that the supply occurred in a public place and believed on reasonable grounds that the recipient intended to use the spray paint can at or in the immediate vicinity of where the supply occurred for another defined lawful purpose. There will also be a defence if the person charged proves the supply occurred in a private place and believed on reasonable grounds that the recipient intended to use the spray paint can at or in the immediate vicinity of the place where the supply occurred for an activity that does not constitute an offence.

The second offence created by the bill for which the maximum penalty is $1,100 or six months imprisonment is where a person under the age of 18 years is found in possession of a spray paint can in a public place without a defined lawful purpose, being the lawful pursuit of an occupation, education or training. Additionally, it is a defence if the person charged proves that the spray paint can was in their possession for another defined lawful purpose and was at or in the immediate vicinity of the place where the spray paint can was being used or was intended to be used for that defined lawful purpose.

A person convicted of such an offence must not be sentenced to imprisonment unless previously convicted of graffiti offences so as to satisfy the court that the person is a serious and persistent offender and is likely to commit such an offence again. Presently the Act authorises a police officer to confiscate a spray paint can in the possession of a person in a public place reasonably suspected of being under 18 years of age unless the person satisfies the police officer that the purpose for possession is not unlawful. This provision is amended to empower a police officer to confiscate a spray paint can unless the person satisfies the officer that the possession does not constitute an offence under the new provisions.

The bill enables a court imposing a fine on a person for a graffiti offence to make an order requiring the person to perform community clean-up work in order to satisfy the amount of the fine. However, a number of restrictions are placed on the power to make community clean-up orders. The court must be satisfied that the offender is a suitable person for such work. If the offender is a child, the court must be satisfied that the child is sufficiently mature and that the clean-up work is available in the area where the offender lives.

Community clean-up orders are satisfied by an offender being credited with $30 off the fine for every hour worked. A community clean-up order ceases to be in force if the offender pays the fine or the balance of the fine remaining after credit is given for hours worked. No right of appeal is available against the making of a community clean-up order, a failure to make a community clean-up order, or the revocation or variation of a community clean-up order. If consented to by an offender, the functions of a court in relation to the making of such orders may be exercised by the registrar of a court.

The bill amends the Graffiti Control Regulation 2009 to allow certain local council employees to issue penalty notices for offences relating to the sale or display of spray paint cans, which until now only police officers and investigators within the meaning of the Fair Trading Act 1987 could issue. The Rail Safety Act 2008 is amended to give rail safety officers the power to direct a person to state their name and address if the person is found to be committing, or is reasonably suspected of committing, a graffiti offence.

The Government puts forward the bill on the basis that the community clean-up orders provided for in the bill will reduce the cost of graffiti crime. It hopes that its increased penalties regime will act as a deterrent. The Opposition is concerned that the bill does little or nothing to assist in apprehending graffiti perpetrators, particularly as the Government has failed to provide the additional resources police need to deal effectively with the problem. The experience of Chicago with similar legislation that dealt only with spray paint cans shows that any modest reduction in spray paint graffiti saw a corresponding increase in glass etching and marker pen graffiti.

Other concerns of the Opposition relate to the fact that a judge is required to use imprisonment only as a last resort, and that the clean-up provisions apply only to offenders who cannot afford to pay their fine in full. The Opposition believes that if the Government were really serious about confronting graffiti crime it would adopt a more comprehensive approach—particularly in the detection and apprehension of graffiti perpetrators—rather than the minimalist, patchwork approach the Government has hobbled together under the bill. Only time will show whether the bill has any more than just a minor impact on stemming the tide of graffiti crime.

Reverend the Hon. Dr GORDON MOYES [8.12 p.m.]: As a Family First member of Parliament I speak to the Graffiti Control Amendment Bill 2009. The bill amends the Graffiti Control Act 2008 to create new offences relating to the supply of spray paint cans to children and the possession of spray paint cans by children; to increase the penalties for certain existing graffiti offences; and to introduce a scheme of community clean-up orders, under which an offender fined for a graffiti offence can be directed by a court to perform community clean-up work in order to satisfy the fine.

The bill amends the Graffiti Control Regulation 2009 to enable certain local council employees to issue penalty notices for certain offences under the principal Act. It also amends the Rail Safety Act 2008 to give rail safety officers the power to direct a person to state his or her name and address if the officer finds that person committing an offence against the principal Act, or reasonably suspects that the person has committed an offence against the principal Act. As I am a dignified and law-abiding person I am quite sure that no member of this House would believe that almost 60 years ago I was caught in an act of graffitiing.

The Hon. Rick Colless: I didn't think you were that old, Gordon.

Reverend the Hon. Dr GORDON MOYES: I was very young at the time. It was when a yeti was believed to have been seen on Mount Everest.

[*Interruption*]

I was in BUGA UP before you were, Mr Cohen.

Mr Ian Cohen: That's going back a way.

Reverend the Hon. Dr GORDON MOYES: It is going back a way. In the 1950s, when I was at high school and the yeti was seen, I decided that I should enlighten my fellow students about the proximity of the yeti

to our high school. So early one morning, at about 3.00 a.m., I borrowed my parents' vehicle without permission and picked up a friend of mine—who is now a most dignified barrister-cum-judge in the Victorian Supreme Court. We had cut out a stencil of large yeti feet about four feet high and, using cans of white paint, we painted the feet across the high school quadrangle and then up the wall, where the yeti disappeared into the small windows that marked the female staff toilets. The following day our work received a great deal of attention from 900 boys at Box Hill Boys High School. I think the statute of limitations period has passed. In any event, I give permission here and now for our principal, or any other senior teacher at the school at that time, to punish me now that I have confessed to this crime, if they think fit. It is that kind of motivation that I am quite sure encourages graffiti artists to add their tags to trains and public places.

In 2006 the Anti-Graffiti Action Team, led by the Department of Justice and Attorney General, was established to develop and oversee the implementation of new initiatives to stamp out graffiti. Following the commencement of the Graffiti Control Act 2008, a number of new initiatives have been developed to prevent, clean up and reduce the incidence of graffiti. The new initiatives are informed by two items of research: "The Motivations and Modus Operandi of Persons Who Do Graffiti" and the "Review of Graffiti Reduction Demonstration Projects 2007-08".

Under the bill, courts will be given the power to order a graffiti vandal who has received a fine to perform community clean-up work and be credited with $30 off the fine for every hour worked and, if practicable, to participate in a graffiti prevention program. When a person has been fined for a graffiti offence, they will be allowed to apply to the court to perform a community clean-up in lieu of the fine amount. Young people are highly visible in public places and are significant users of public transport where incidents of graffiti occur. The latest figures show that vandalism on Sydney's trains is costing the State Government $15 million a year to clean up. Each month between 30,000 and 50,000 graffiti attacks are removed from trains. Graffiti and vandalism have a negative impact on the State's rail system. The biggest losers are rail commuters who would choose to take public transport but are discouraged from doing so by vandalism and graffiti on train seats.

Policy makers need to differentiate between types of graffiti and understand the motivations for doing different forms of graffiti. There is what we call legal graffiti, which is usually on walls set aside by councils and other public organisations. There are many positive aspects to young people learning to do legal graffiti—although I do not have much confidence in them—such as gaining skills that assist in developing a craft, being part of a peer group and popular culture, and enhancing self-esteem. Personally, I wish young people would develop their self-esteem by engaging in another form of community service. Some local government initiatives encourage young people to develop their skills in stencil art and other forms of graffiti as art. In other cases, local businesses commission street artists to decorate the facade of their shops.

I cite one such example I undertook in the mid 1980s when I opened a centre for homeless youth who were living on the street. The centre, in the theatre district of Liverpool and George streets in the city, was open all night, every night. At that time there were hundreds of young people hanging around with nothing to do. I opened a shop there, which provided hot drinks and food, and dry clothing on nights when it was raining. There were two other floors with counsellors and various activities to encourage young people to come in. In order to help young people cross the threshold and come into the shop, I took in some graffiti artists who had been convicted by the courts and offered to pay them for doing up the premises. They did the job—beautifully—and other people who came into the shop were quite at home. It operated successfully for many years.

For these reasons it is important to make these distinctions in the bill. Some young people have spray cans in their possession not for the purpose of graffiti but for "chroming". This is a volatile and harmful practice that involves inhaling solvent-based products such as spray paints in order to get high. Hence it is important to adopt a harm minimisation approach to solve this ghastly problem amongst our youth, which can cause brain damage. I support a juvenile justice framework that emphasises diversion and rehabilitation. By doing community clean-up, the system aims to prevent low-risk young people from entering the criminal justice system and to rehabilitate more serious young offenders.

It is worth noting that the most cost-effective approach to reducing the incidence of graffiti is to address both the motivation for young people to engage in graffiti and the opportunities available to do so. Examples of opportunity reduction include using materials that are resistant to scratching and marking, improved lighting and better design. At one of Wesley Mission's main centres we constantly suffered from the work of graffiti artists on our high, white walls. High, bright lights were installed at a cost of several hundred dollars, which beautifully illuminated the building so people could clearly see it when driving by, and the graffiti stopped. I discovered at that point the truth of the biblical sentence: deeds of darkness hate the light.

As lawmakers we should further investigate social programs aimed at alleviating some of the boredom and alienation that leads young people to graffiti. These longer-term solutions should include diverting potential offenders through programs and activities to keep them occupied and develop skills; community and school-based education programs that promote a sense of responsibility for, and ownership of, community resources and facilities; and providing more legal outlets for young people to practise their art. Local councils and police should work with community members who are affected by graffiti and with young people who engage in graffiti-related activities. Young people will then become part of the solution rather than being seen as a problem. Police can play an active role in bringing both groups together to discuss the best ways of addressing graffiti and, in the process, may begin to address the issues of alienation, boredom and hopelessness. Where young people come into contact with the legal system because of graffiti-related charges they should be treated fairly and, wherever possible, the young person should be diverted out of the criminal justice system. It is for these vital reasons that Family First supports the bill, and, as the oldest graffiti artist in this place, I commend it to the House.

Ms SYLVIA HALE [8.21 p.m.]: The Greens do not oppose the Graffiti Control Amendment Bill 2009 in its entirety; we support certain aspects of it. However, the Greens will move to amend the bill in Committee to remove the provisions relating to the doubling of penalties and possibly sending serious offenders to jail. The jailing provision for young people amounts to nothing more than chest thumping by the Government. Very few people are caught in the act of graffitiing or in the possession of implements to graffiti. Even when someone is caught, the chance of receiving a jail sentence is almost zero because that person is highly unlikely to fall into the category of a serious repeat offender.

The Greens believe it is unconscionable to consider sending juveniles or young adults to detention or jail for defacing property. The long-term consequences on the juvenile far outweigh the unsightliness of any graffiti. Those consequences include disruption to schooling, the possibility of a criminal record and the possible loss of employment. The impact on the young person of going to detention or jail, and the very experience of being in detention or jail, is so adverse that the Greens believe it is a totally inappropriate punishment for the offence. I have been unable to find any figures on how many young people have been sent to jail for graffiti- related offences. However, the office of the Attorney General has supplied me with the following information:

> BOCSAR's annual court statistics contain charges for offences under sections 9 and 10 of the *Summary Offences Act 1988*. Between 2005 and 2008, no sentences involving imprisonment were imposed under this Act. Note that these sections now are subsumed by the *Graffiti Control Act 2008.*
>
> However, graffiti offenders are often charged with property damage offences under section 195 of the *Crimes Act 1900*, as well as under other Acts depending upon what property is damaged. Whilst imprisonment has been imposed under section 195 of the *Crimes Act*, BOCSAR is unable to identify which of those property damage charges are for graffiti offences and which are for other forms of property damage. BOCSAR does not maintain separate court statistics for all graffiti offenders.

The information further suggested that it might be possible to obtain those statistics once the legislation is enacted. Even if statistics were available, there would be only one or two instances of people being sent to detention or jail. Cheyene Back, a young woman who was caught graffitiing a café in Hyde Park, was sentenced to jail. It was her first offence and, not surprisingly, on appeal the sentence was overturned and she received a good behaviour bond. Cheyene Back is typical of offenders who are caught—most offenders are not caught—and receive a fine or good behaviour bond. As the law stands at present, the possibility of being sent to jail is sufficiently remote as to render the penalty meaningless.

The bill had its origin in legislation enacted in 2006 that required retailers to keep spray paint cans in locked cabinets or stored at least 2.1 metres above the ground. Fines of $1,100 were introduced for the sale of spray paint to persons less than 18 years of age. This and other graffiti-related legislation was consolidated into the Graffiti Control Act 2008. This bill will amend that Act. According to the New South Wales Government's research paper entitled "Graffiti Vandalism: The Motivations and Modus Operandi of Persons Who Do Graffiti", graffiti is basically engaged in by adolescent and young people—typically 17-year-old males—who compete with each other and communicate by "tagging", or employing a stylised signature, and by creating "pieces", which are more elaborate works. Tagging is simply repeatedly making one's mark, while the more elaborate pieces often employ a multi-coloured filling in of works—pieces attract far greater kudos. Other forms closer to art—or which perhaps are street art—involve stencilling or elaborate designs.

The arrest rate for graffitiing is low; closed-circuit television cameras cannot be everywhere and police cannot constantly patrol all public places, such as railway yards. In the study by the Government of those doing graffiti, which made use of interviews with young persons who do or had done graffiti, informants reported that

there is no set time or place where they do their graffiti. They do it opportunistically, making their markings when few or no other people are about, and when they think they will be able to get away with it. Some preferred night-time, while others thought the rush hour from 3.00 p.m. to 6.00 p.m. was the best time to avoid being caught. Of course, the more publicly visible the site chosen for the graffiti the greater the kudos attached to the person who did the graffiti—hence the preference for train lines and carriages. In the study, one young person described the graffitiing of the inside of a toilet cubicle as "toy", which is slang for not cool or too easy.

In 2008 the New South Wales Police Force proceeded against 1,910 persons in graffiti offences: 1,660, or 87 per cent, were male and 1,4456, or 76 per cent, were under the age of 18. If these two categories are overlaid, we can see that males under the age of 18 account for 65 per cent of all persons charged. The motivations underlying graffitiing are not necessarily the same as those underlying vandalism. Vandalism is a means of letting out anger and may involve a mindless tagging of every available surface. In contrast, many young people see graffiti as a form of artistic expression. When walking around Redfern or the inner west one can see more of the arty end of graffiti. Perhaps stencilling and the sticking onto walls of pre-prepared works should be called street art. Some of it is highly political and satirical or it references popular culture in an interesting way. Indeed, there are now books on the street art of Newtown or the street art of Melbourne laneways, and so on.

There is a spectrum. Tagging is probably the more annoying and juvenile form of graffiti. Some would say—as my Greens colleagues Ms Lee Rhiannon and Mr Ian Cohen have pointed out in preceding debates—that legality is no guarantee of artistic merit. Many people find the lawful commercial signs that adorn our public spaces and bombard our senses truly offensive. The black and yellow "Do it longer" billboards that assault us at every turn are a case in point. I do, however, acknowledge that many in the community are annoyed by graffiti, especially when their houses or streets are targeted.

Graffiti is not new. It appears on the walls of the ruins of Pompeii, and on the Great Pyramid in Egypt an unknown soldier in Napoleon's army wrote the equivalent of "I was here". The Hon. Marie Ficarra, when considering an earlier graffiti bill, acknowledged the presence of graffiti in Roman cities but said that it was of "higher value". She seems to be adopting an inherently contradictory position. It implies that yesterday's graffiti is today's art. Some people think today's street art is of high value and even go so far as to purchase a bit of wall that Banksy has stencilled. Banksy is the world's most successful street artist and people travel to Melbourne just to see his laneway art. As I indicated earlier, those who have the money can purchase advertising space and put up any silly or offensive message. But for those who lack the resources to command the advertising industry to do their bidding, it becomes graffiti and it is illegal. With the spread of billboards we see an increase in the commodification of public space. Graffiti can be political. A number of members of this place, past and present, have engaged in political graffiti.

The Hon. Rick Colless: Name them!

Ms SYLVIA HALE: Arthur Chesterfield-Evans comes to mind. I doubt that the Attorney General has ever written on a wall, but I bet he has connived in the erection of Labor campaign posters. It ill becomes anyone who has engaged in minor transgressions of the law to rail against those whose offences may be equally slight. My point is: Why do we turn a blind eye to certain technically illegal activities, which many of us believe are legitimate, while condemning those with fewer resources and fewer outlets for their opinions? People have participated in positive graffiti campaigns, such as the BUGA UP campaign. I suspect my colleague Mr Ian Cohen will talk about that. I now turn to the details of the bill. The bill creates two new graffiti offences. The Attorney General said:

> Given that the current penalties do not appear to be a deterrent to these serious graffiti offenders, there is a need to increase their severity. Moreover, compared with other jurisdictions in Australia, the penalties for marking graffiti and carrying a graffiti implement with intent in New South Wales are at the lower end of the scale.

The illogicality of this argument is the implication that a doubling of the penalty will result in a doubling of the deterrence. There is no evidence to support the contention that simply ratcheting up the penalty will deter anyone. The Attorney General's proposal is window-dressing to create the impression that the Government is doing something meaningful.

Mr Ian Cohen: A cheap political trick.

Ms SYLVIA HALE: A cheap trick. The bill imposes additional penalties for the supply of spray paint cans by adults to minors. It is the case that young people hang around outside shops and ask people to buy them

spray paint cans. The bill provides that an adult who buys or otherwise obtains spray paint cans for a young person for graffiti purposes will be able to be fined up to $1,100. The Greens do not oppose this provision. When a person is found to have supplied spray paint to a minor, the bill includes some defences to the imposition of a fine. For example, it is a defence if the person thought the spray paint was to be used for a lawful activity, such as occupational or education and training purposes, for art that does not constitute an offence, or for lawful construction, renovation, restoration and maintenance activities. It is a defence if the spray paint was given to a person in circumstances where it was thought it would be used in the vicinity of a private place. The example given by the Attorney General was a parent giving a child spray paint to paint a shed in the garden of a private home.

However, there are no restrictions on the sale of other markers or instruments favoured by graffitists, although these other instruments of graffiti are treated on a par with spray paint cans in terms of possession. I am advised that art supply shops report that young people buy or shoplift large textas, oil paint sticks and solids, which plumbers use to write on almost any surface. Some shops put items such as solids under the counter because they know graffitists want them. Shop assistants can refuse to serve a person if they believe that person is buying the product for graffiti purposes. I understand that police have briefed retail staff where such products are sold. The Minister said in his second reading speech:

> An audit of approximately 800 stores by the Office of Fair Trading found 100 per cent compliance with obligations regarding the display and sale of spray paint cans.

This aspect of the existing law obviously has been successfully implemented.

The Hon. John Hatzistergos: Thank you.

Ms SYLVIA HALE: It is a pleasure. Limiting access to spray paint and mark-making items is probably the best method of reducing the prevalence of graffiti. In relation to strategies that seek to deter graffiti by rapidly removing it, the Government report I alluded to earlier states:

> Participants exhibited a mix of reactions to graffiti being removed or painted over by councils; overwhelmingly though the reported reaction was to do more graffiti. "I do it again" or "Just do some more" and some even preferred to tag a clean wall"... once they've gone over it … that's like a whole fresh start ... if they wipe it out it's like a new canvas."

On the other hand, where graffiti has been quickly removed, as Sutherland Shire Council has done under its graffiti reduction program, the incidence of "pieces"—the more elaborate types of graffiti—was reduced because those who executed them realised their "pieces" would not be there for long. Therefore, they were reluctant to put in the time and effort to so little effect. At a local primary school in Newtown the schoolchildren had permission to paint on a wall in the playground. The children put in a great deal of effort and completed a wall painting that was very meaningful to them. However, the council had employed a company to undertake the rapid removal of graffiti. When the company employees saw the wall they did not ask whether the children had been given permission to paint it and, unfortunately, the removal of the painting occurred before the council had the opportunity to put a stop to it.

The Hon. John Hatzistergos: Were you on Marrickville Council then?

Ms SYLVIA HALE: I was indeed. The bill proposes doubling the penalties for a person who is under 18 and is in possession of a spray paint can or other graffiti implement in a public place and proposes a fine of up to $1,100. The same defences will still apply: that the spray paint cans or implements are for occupational or education-related purposes or for home decoration. A police officer can decide whether the possession is legitimate or, if the police officer suspects that the spray paint can will be used for unlawful purposes, it can be confiscated and the person cautioned or charged.

The Greens believe that the proposed six-month imprisonment penalty for possession of a graffiti implement is over the top. Similarly excessive and unreasonable is the proposed increase in the maximum jail term from 6 months to 12 months where a person is found to have defaced property by means of a graffiti implement. That is a questionable deterrent for the vast majority of persons caught, because the imposition of a jail sentence is restricted to serious and persistent offenders only. Someone caught once for a graffiti offence should not be jailed. I would like to know how many people are caught on multiple occasions. I suspect there would be very, very few. A fine of $1,100 or a community service order for young persons is enough of a deterrent—$1,100 is a large sum for any young person to have to find. The proposed increase in jail terms is

simply bombast. If the prospect of three months in jail is not sufficient to deter someone from committing an offence the onus is on the Government to demonstrate that the six months penalty will not be similarly ineffectual. The Greens believe that these provisions should be removed altogether.

Another alternative penalty is a community service clean-up order, and I now turn to that aspect of the bill. The Greens do not oppose the bill's creation of community clean-up orders. It is a better approach than imposing a fine. Offenders can choose to abide by a community clean-up order or pay the fine, or they can do a bit of community clean-up work and pay a reduced fine. Those options do not seem to be unreasonable. A registrar may make a community clean-up order after consultation with the Department of Juvenile Justice in the case of children and the Department of Corrective Services in the case of adults. Prior to this a court must have determined that that is an appropriate option for the offender. Under a community clean-up order the offender must also spend two hours in a graffiti prevention program—a somewhat tokenistic requirement, particularly in the case of troubled young people, but better than simply imposing a fine. If the offender fails to turn up for community service then notice can be given for a revocation of the order. The offender may address the court if he or she wishes and argue against the revocation. If the order for community service is revoked the fine still stands. To conclude, the Government's approach to law and order has not changed. Ramping up penalties always seems to be the suggested solution. The Attorney General stated:

> The tough, extraordinary measures in this bill leave no doubt as to the Government's view of people who deface property and how they deserve to be treated.

The law and order auction charade engaged in by both the Government and Opposition is counterproductive. The Greens urge both major parties to desist from this one-upmanship. What is needed is a serious, productive approach to the problems, not only of crime but of the causes of crime, and a decision made on how those issues are best addressed. Do we really want to lock up young people for writing or painting on a wall, even if they are caught doing it several times? The less young offenders are exposed to detention centres, or worse, to adult jails, the better. We need to differentiate between talking tough and actual evidence-based policy. We know that young people, especially young, disaffected males, enjoy risk-taking behaviour. For those who are caught a community service order is a far better outcome than a jail sentence.

Graffiti is probably an inevitable aspect of urban environments in all major global cities. Most people are annoyed by it, although some people appreciate certain street art aspects of it, but we should not expect to be able to eliminate it completely forever, if for no other reason than the multiple opportunities and surfaces that present themselves for graffitiing activity.

The Hon. GREG DONNELLY [8.44 p.m.]: It is my pleasure to support the Graffiti Control Amendment Bill 2009. This bill makes it a criminal offence for a child to carry or possess spray paint except for certain specified purposes. Consequently, it is only fitting that supplying spray paint to children should be criminalised. The Graffiti Control Act already regulates the sale of spray paint to children by providing fines for the sale of spray paint and also for not properly containing spray paint in stores. I note that this bill provides new powers for officers of local governments to issue penalty notices for stores that contravene these exceptions.

Proposed section 8A of the bill makes it an offence to provide spray paint to a person under the age of 18. A person who does so is, prima facie, guilty of an offence and faces a fine of up to $1,100 unless he or she can prove a defence to the charge. The bill provides a statutory defence to the charge. The statutory defence to the supply offence has three separate parts. The first defence provides that if the supplier can prove that he or she believed, on reasonable grounds, that the child intended to use the spray can in the course of education or training or in the course of work then the supply is not unlawful. The second defence provides that, where the supply occurred in a public place, if the supplier can prove that he or she believed, on reasonable grounds, that the child who received it intended to use the spray can in the immediate vicinity of where the supply occurred for one of the other defined lawful purposes in section 8A (3) then the supply is not unlawful. The third defence provides that, where the supply occurred in a private place, if the supplier can prove that he or she believed that the child who received it intended to use the spray can for any activity that is not an offence at the private place or in the immediate vicinity of that place then the supply is not unlawful.

The lawful purposes defined in section 8A (3) are the lawful pursuit of an occupation, education or training; any artistic activity that does not constitute an offence against the principal Act or any other law; or any construction, renovation, restoration or maintenance activity that does not constitute an offence against this Act or any other law. People now have to take positive steps to ensure that spray paint cans handed to children are to be used for lawful purposes only. Experience has shown the community of New South Wales that giving children free access to spray paint cans leads to the damage to property that graffiti inflicts.

The bill provides a framework that guides adults on when children should properly be given spray paint and promotes the responsible use of it. Having been given this guidance in the bill, adults must be very careful whenever they are providing a child with a spray can. The Graffiti Control Act gives police the power to confiscate spray paint cans from children in public places. This bill also makes it an offence for a child to be in possession of a spray paint can in a public place. The maximum penalty for this offence is six months imprisonment.

The bill provides that a child charged with possessing a spray paint can in a public place has two alternative statutory defences to the possession offence. The first is to prove that he or she had the can in his or her possession for the purposes of education or training or in the course of a lawful occupation. The second defence has two components. First, the child must prove that the can was in his or her possession for a defined lawful purpose. Secondly, the child must prove that the can was being used or was intended to be used at the place or in the immediate vicinity of the place where the child is for a defined lawful purpose. I have already outlined the definition of "lawful purpose" contained in section 8B (3).

There will always be those who attempt to do graffiti. These provisions allow police to stop vandals before they have made their mark with a spray can. Children who possess spray paint for school or work may do so. The Government has carefully considered when it is appropriate to have spray paint, and this is reflected in the defence of lawful purpose that is provided for in the bill. The people of New South Wales have had enough of graffiti. The Government acknowledges that it has taken a tough stance but it does not shy away from it. The Government urges members to support the bill.

Mr IAN COHEN [8.50 p.m.]: I support the contribution of Ms Sylvia Hale on the Graffiti Control Amendment Bill 2009. I take what I believe to be a strong but reasonable stance against this latest interpretation of a law and order campaign by this Government. This legislation is really the lowest common denominator knee-jerk reaction for political purposes that do not achieve the end that it sets out to achieve and criminalises young people in our society when there are better ways to deal with the situation. Members are well aware of my position on graffiti in my former career.

Reverend the Hon. Dr Gordon Moyes: Your past life.

Mr IAN COHEN: I take it Reverend the Hon. Dr Gordon Moyes is not referring to a certain Eastern philosophy but simply what I have done in the past when I was a graffiti artist, dare I say? On occasion I have stepped back and said, "Yes, I am an artist", but it was a rare occasion indeed. Nevertheless, graffiti is as old as history. Different types of graffiti have become artwork for future generations in historically significant places such as Pompeii and many other areas of ancient civilisation. I have covered this issue many times in this House but I will look at it from another perspective. Arthur Stace, who famously wrote "Eternity" around the streets of Sydney, was a perpetrator of graffiti. Stace inscribed the word "Eternity" more than half a million times between 1932 and 1966.

One story about his life says that at the time the city council had a rule against defacing the pavement and it is reported in one of his biographies that the police very nearly arrested him 24 times. He would not hold a fond place in the colourful history of Sydney if he were merely treated as a petty criminal and defacer of the pavement. I have spoken in this House before about graffiti and how it has a multiplicity of meanings, styles and social roles of satire or art or personal expression. I cannot wholeheartedly condemn all graffiti and, of course, as I have said, my past as a BUGA UP activist using graffiti for social commentary makes me reluctant to take a punitive or excessively judgemental stand on graffiti. Like most art, some of it is very good and a lot of it is pretty bad—but who am I to judge? Who are we to judge? I can, however, judge that imposing jail terms for being in possession of spray cans or doubling the custodial time for doing graffiti is an absolutely abominable and wrong decision and one that flies in the face of basic human rights: our younger generation should have a chance to express themselves.

The Hon. Rick Colless: What about the rights of property owners?

Mr IAN COHEN: I agree that there are times when it is a real imposition on property owners.

The Hon. David Clarke: It is a serious imposition on property owners.

Mr IAN COHEN: I also acknowledge the issue raised by the Hon. David Clarke, who says it is always an imposition on property owners.

The Hon. David Clarke: Of course it is.

Mr IAN COHEN: That is typical of this House: the Hon. David Clarke pontificating on what motivates people or what this society needs!

The Hon. Matthew Mason-Cox: And you are about to do the same thing.

Mr IAN COHEN: I am going to deliver an opinion, yes. I do not agree that it is always an imposition on property owners. Saying that it is shows how out of touch the Parliament is that we who have such privileged positions cannot understand what is happening in our society, often with our kids who are at the other end of the socioeconomic scale and at a time in their life when they are starting to be creative. It is basic psychology that often these kids graffiti for attention. Why? Because they feel misplaced in society. Perhaps those who run and rule society do not have such a feeling of misplacement but many young people do. I certainly had a sense of alienation at a certain time in my life. If they are given art space to encourage them towards responsible creativity then we can get somewhere. Introducing the criminal element and coming down hard on these people does not work. It has never worked and it will not work this time round.

In my hometown of Byron Bay youth workers are getting together with young people. Ms Sylvia Hale also mentioned this. In the tourist town of Byron Bay there are many projects. For example, the electricity boxes are turned into buses or kombi vans by fantastic artwork. There are all sorts of artistic statements around town made by young people who are encouraged and supplied with paint. A building in the industrial estate was copping graffiti on a regular basis, and I agree it was a mess. So the owner, Ted, very much a community-minded person involved in disabled surfing, as I was, got together with the young people and supplied them with paint to be creative on his industrial building that was copping a caning with graffiti. They created a wonderful series of murals and, because of the pride in their work, no-one has graffitied that building since. In fact, the artwork is a tourist attraction and the kids feel fantastic.

Byron Bay also has art projects on power poles around town, or in the laneway near the pizza shop or in public toilets. Getting the kids away from tagging, which, as I said before, is messy and is an inconvenience and eyesore, to creating public art is only a small step but it needs support. Where can that support come from? Perhaps if we had an enlightened Government and Opposition, which we certainly do not have in these matters at this time, the proceeds from crime could set up a fund to create opportunities for young people. The Government could work together in tandem with local councils that have to fund a clean-up by providing budgets for young artists to do something positive, as is happening in my hometown.

The media are publishing positive stories about these people who take pride in their work. It is fantastic that what is normally a negative experience is being turned around as a result of councils working with young people, the Youth Advisory Committee [YAC] and youth workers. Instead of graffiti costing local government money it creates art on the streets. Projects are happening in Wollongong and Byron Bay. Byron Bay had a huge problem with graffiti on its buildings and the YAC organised the young people and with a very positive response they now have great artwork when before it was just graffiti. This Parliament, local councils and various authorities have a responsibility that is completely ignored and skated over because of this law and order campaign that is a convenient mantra in the lead-up to the next elections as both major parties compete to use young children as scapegoats. I am not one to judge the art, some of which I admit is bad; however, I can judge that imposing jail terms for being in possession of spray cans or doubling the custodial time for doing graffiti is a very poor, wrong, dare I say criminal, decision on the part of this Government, supported by the Opposition.

I wonder why the Attorney General does not appear to have implemented the recommendations in his department's report "Graffiti Vandalism: The motivations and modus operandi of persons who do graffiti", which does not advocate criminalising young people who do graffiti. In fact, it points to the futility of such an approach. Page 42 of the report states:

> …given that penalties do not appear to be a deterrent to some graffiti offenders, government policy should place emphasis on preventing the crime from occurring in the first instance, for example, through Crime Prevention through Environmental Design.

How wonderfully aware!

The Hon. John Hatzistergos: That is part of the package.

Mr IAN COHEN: Consistent with that package should be a greater effort in that regard rather than taking a cheap shot at young people by imposing jail terms on first offenders. Given that very few people are

caught doing graffiti, I wonder whether this tough on graffiti stance is not just an exercise to show the shock jocks how tough this Government is on teenage crime. Ms Sylvia Hale mentioned Cheyene Back, a young woman caught doing graffiti in Hyde Park who was sentenced to jail for her first offence. That demonstrates why custodial punishment should not be used. The only result was a great deal of media attention and an overturning of the judgement on appeal. That rates with the treatment of the young kid in Western Australia who was hauled before the courts for stealing a chocolate frog a few weeks ago. That was a typical reactive attitude on the part of a government. In the end, it was a waste of the resources of the legal system; it simply produced a lot of hot air for a couple of news cycles.

The graffiti vandalism report lists three factors as the common motivators for doing graffiti: pursuit of illegal fame or recognition; adrenaline rush; and emotional expression. The average age of the 57 respondents in the study was 16.6 years and 37 were males. Therefore, we are talking predominantly about teenage boys—a reviled group. They strike fear into the hearts of communities everywhere and when they are gathered together in groups of more than two they are inevitably labelled as gangs.

We have seen many reports about the schoolies celebrations in the past week and we have heard about young people's emotions or brain development not being sufficient to enable them to make appropriate decisions about drinking and driving and such like—and, of course, we can now add graffiti to that list. However, we cannot have it both ways: We cannot say that we will increase the legal age for drinking and driving but throw young people in jail for graffiti crimes. This legislation will do little to combat graffiti, but it will create inmates out of bad boys who probably need more from society than incarceration to get them through adolescence. Tougher penalties are not the answer to the supposed graffiti problem.

Any parent will say that teenage boys cannot be told and they do not listen, but that they often grow out of inappropriate behaviour. I may not have, but most do. I became a graffiti artist after I had been involved in organised environmental action. I had been trashed by the authorities, I had lost a lot of the battles and I felt depressed about the state of the world. I rode around town with spray cans in the water racks on my pushbike.

The Hon. Rick Colless: In which town?

Mr IAN COHEN: It was in Sydney.

The Hon. David Clarke: Was yours artwork?

Mr IAN COHEN: I acknowledge the Hon. David Clarke's interjection. When I and many others started doing graffiti, tobacco billboards were proliferating all around our metropolises at ground level. I am talking about advertising a product that causes the largest number of avoidable deaths in our society. The Billboard Utilising Graffitists Against Unhealthy Promotions or BUGA UP group was justified in that activity—

The Hon. David Clarke: What about McDonald's?

Mr IAN COHEN: This applies also to McDonald's, alcohol and many other products.

The Hon. Charlie Lynn: What about mung beans?

Mr IAN COHEN: Mung beans do not need to be advertised; they sell themselves. We hear much about the horrors of drugs in this House. That advertising was hard-drug pushing and it was sanctioned by governments. It was legal and it made the producers a lot of money. It was even associated with sport. That is now seen as the greatest hypocrisy ever, but governments supported it. The first response to the BUGA UP campaign was to put the billboards out of the reach of graffitists because they were too easily attacked. One could hop off one's pushbike and create some artwork. In response to the Hon. David Clarke's interjection about whether the graffiti was artwork, I invite him to come to my office and peruse the BUGA UP autumn and spring catalogues, which have wonderful examples of creative artwork on insidious tobacco billboards.

The Hon. David Clarke: I invite you to go down the main road of Rooty Hill to see what is being done there.

Mr IAN COHEN: That is because of the Government's and the Opposition's attitudes. I am not arguing with that. Again, art is in the eye of the beholder. These tobacco billboards were creatively amended. With a very small change, "John Player" became "lung slayer". All sorts of very clever changes were made.

The Hon. John Hatzistergos: What about the people who painted "No war" on the Opera House?

Mr IAN COHEN: I did not agree with the type of paint they used. What about the people who sent our young people off to war? What about the people who have indulged in those types of activities? Many arguments do not need to be pursued at this time, but I am happy to discuss them at any other time.

Tobacco billboards also proliferated on the backs of taxis. Riding up behind a taxi at a red light and spraying those mini-billboards with a cross was perhaps not very artistic, but it got the point across. To be able to spray a small billboard on the back of a taxi with a dollar sign and to do the dot upside down to get the nozzle clean to graffiti the next taxi to come along could be considered artistic. Again, that is in the eye of the beholder. A number of medical professionals, not only Arthur Chesterfield-Evans, did that type of graffiti on a regular basis.

If we recognise that risk-taking and its associated adrenaline rush, the pursuit of peer recognition, or the resentment and defiance of authority are motivating factors in doing graffiti, surely we will do more harm with this legislation because it will bring children into contact with the criminal justice system. Such exposure at a young age will inevitably amplify whatever negative emotions these young people are harbouring. How can we even consider imprisonment for a crime against property by an adolescent? It is astounding that a child who is in possession of a spray can in a public place will be guilty of an offence with a maximum penalty of $1,100 or six months imprisonment. This bill also increases the maximum penalty for someone caught doing graffiti from six months to 12 months imprisonment.

Whilst other social policies are seeking to protect kids from themselves, this bill seeks to make kids responsible for their actions by being excessively punitive. The expanding body of knowledge about the adolescent brain and its development demonstrates that adolescents are biologically programmed to make poor decisions. A recent call to increase the legal drinking age to 21 to protect teens from damaging themselves and others reflects that thinking. The change in the driver's licence system for P-plate drivers recognises the inherent lack of capacity of young people to make sensible decisions for themselves. That may be too hard, but I think there is an element of truth in it. There are many who do make sensible decisions, but others do not. Educationalists too are aware of the impact of the developing adolescent brain on learning. Clinical Associate Professor David Bennett of the Children's Hospital at Westmead writes:

> The prefrontal cortex—responsible for such things as impulse control and strategic planning (anticipating the likely consequences of one's actions) continues maturing through the teenage years. In other words, the adolescent brain is still developing and the highest-level areas may not be completely mature until kids hit their twenties. An immature brain, together with the hormones that stir them up and drive them to be thrill-seekers (especially for boys), is a potentially dangerous mix.

The New South Wales Department of Education and Training website features an article for teachers' professional development entitled "Closed for construction—adolescent brain development in the middle years". The article says:

> Although clinical studies show that adolescents reach adult levels of decision making by age 15, they make poor decisions in real life, often with input from peers in an emotionally charged situation. One key message here is that adolescents are built to take risks. Trying to prevent them from doing so is typically futile, as it is simply part of their biology.

I realise not all young people indulge in risk-taking or foolish behaviour, but many do. If, as the Attorney General's report into kids doing graffiti says, they are doing it for the thrill and for peer recognition, their behaviour should not be criminalised. They should be assisted to grow through this phase and out the other side. A law and order approach as part of the graffiti management equation is unlikely to have results. If parents and the authorities are not getting through to young people who are reoffending, locking them up in prison for a year will hardly bring about better understanding or better adjusted kids.

The media always run sensational stories about the graffiti scourge in our streets and I acknowledge that graffiti is a genuine concern for many community members who do not wish their neighbourhood to look shabby. I am not opposed to the bill's move to impose community clean-up orders, as Ms Sylvia Hale has mentioned in debate tonight. I think this is a better way than imposing fines or imprisoning people. However, because few people are actually caught doing graffiti, it will still largely remain the preserve of local councils to clean it up and use other policy and urban planning strategies to minimise it. Tagging and graffiti may well be annoying and ugly to many people.

There are alternative options to having a young person in the jail system. These are not serious or violent crimes and many would argue that in some cases they should not be crimes at all. That is perhaps a

debate for another time, but if we are to take action against those caught doing graffiti then cleaning up and possible imposition of a fine should be enough punishment to fit the crime. I strongly oppose this direction by the Government that is so wholeheartedly supported by the Opposition. It is a process that alienates me from the value systems of this House, this Government and those in control. It is a process that is very inhumane in its treatment of our young people. It is a very narrow-minded perspective on how to deal with issues in our society, particularly where young people are being dealt with in such a draconian and narrow-minded fashion.

The Hon. JOHN AJAKA [9.13 p.m.]: I had not intended to speak on this bill. I endorse the comments made by the Hon. David Clarke and do not intend to repeat those comments in relation to specific provisions of the bill. However, having heard a number of the speakers, I must say I am a little astonished. We are not here dealing with young people or adults going to a wall provided legally with the owner's consent and painting a beautiful mural. That is not what we are dealing with. We are dealing with situations where young persons and, in many circumstances, adults illegally vandalise a person's property. That is what it is, pure and simple, and time and time again the owners of properties are forced to repaint or repair the damage that is done. That is really what we are dealing with. With all due respect to some of the members of this House, I have had to do this on numerous occasions in relation to various offices I have had over the years. I have spent time or money, or put in insurance claims, which again has cost time and money, over and over again. I am sorry—it is not art. When someone graffitis your wall without your permission or consent and you are forced to repair it, to reinstate it, it is not art. It is vandalism.

Coming from St George-Illawarra, I spend considerable time in Rockdale, Kogarah, Hurstville, and I also travel south, to Miranda, Heathcote or all the way to Wollongong, and I am hearing the same complaint raised time and again: "When will you do something about the graffiti problem? When will you do something?" Now the Government is attempting to do something. I would have preferred if it had done something a little earlier, not this late, but now that it has finally done it some members of the House are getting up and saying, "But they're just kids, and boys will be boys. It's okay. Let's simply allow them to damage hundreds of millions of dollars of our residents' properties".

Mr Ian Cohen: Do you want to throw them in jail?

The Hon. JOHN AJAKA: Hundreds of millions of dollars. I note the comments of the honourable Ian Cohen, but what he does is the exact opposite. He sends out an invitation. He sends them a message saying, "It's okay. You're kids. I used to do it when I was a young boy. It was okay for me to do it; it is okay for you to do it." What a wonderful precedent! What a wonderful example to set for our kids: It is okay. "I used to shoplift. It is okay, son, go out and shoplift"; "I used to damage motor vehicles. It is okay, son, go out and damage motor vehicles"; "I used to deface cars because it was fun and I was frustrated. I didn't know what I did. I scratched it. So what?" Someone spent thousands of dollars repairing it, but it's okay.

That is not a message I want to send to my kids. It is not a message I send my six daughters. The message I send to my six daughters is that it is against the law. It is wrong. It is immoral and you should not do it. It is not something we want in this State. I am sorry, that is the way I feel about it. It is not a message I want to send to my children. It really is not. We need to be sending a message that this is not creative. It is not boys being boys. This is not the way we want to live our lives in this society and this is not how we want to raise our young children. It is too important. They need to be penalised if they do it over and over again, if they are not going to get the message.

Mr Ian Cohen: With jail?

The Hon. JOHN AJAKA: If that is the only option, yes, jail.

Mr Ian Cohen: Twelve months jail for graffiti?

The Hon. JOHN AJAKA: If that is what is needed to send a message, yes, jail. You would rather send a message that every single teenager should have a spray can and go for it all over the place.

Mr Ian Cohen: I didn't say that.

The Hon. JOHN AJAKA: That is exactly what you are saying.

Mr Ian Cohen: I am not saying that.

The Hon. JOHN AJAKA: That is the message you are sending to our young.

Mr Ian Cohen: You want to send 16-year-old kids to jail for having a spray can.

The Hon. JOHN AJAKA: I am pleased that the Opposition, as my good friend and colleague the Hon. David Clarke has said, is supporting the bill. It is the right thing to support the bill and that is what we should be doing.

Reverend the Hon. FRED NILE [9.18 p.m.]: The Christian Democratic Party strongly supports the Graffiti Control Amendment Bill 2009 and thanks the Government for adding further legislative discouragements to graffiti in our State, and particularly in Sydney. What is graffiti? Graffiti is not just vandalism of a wall, of public or private property. Graffiti is something far more serious. Graffiti is a sign of social breakdown, breakdown in community relations, breakdown in community standards—a sign that no-one cares. That is the reality when you visit places where there is a lot of graffiti, either in Sydney or in cities in other countries, such as New York. It is a sign that no-one cares, a sign that the people have been discouraged and have given up. That is why graffiti is so insidious in the way in which it damages our society, and that is why I strongly support the proposals in this bill.

Mr Ian Cohen keeps talking out about sending people to jail. The bill does provide for a penalty of six months imprisonment prison for a person under 18 years of age; however, the judge must make that decision. The Government does not send people to jail, and the Hon. David Clarke and I do not send people to jail. That is a court decision. The judge is given that option after considering all the evidence in a case. If we do not give a judge that option, he or she cannot use it. Persons under the age of 18 years are not sent to Long Bay; they go to juvenile detention centres, which are totally different from jails. I am pleased to support this legislation.

The cost of graffiti has been referred to by other members. The Hon. John Ajaka told us of the expenses involved with renovating offices that have had graffiti sprayed on them. There is also the social cost, when graffiti is placed on buses and railway carriages. Up to $15 million is spent annually cleaning up trains in our various suburban railway yards. If the graffiti is not cleaned up, people are discouraged from using the trains. They are disgusted with what they see and opt to travel in their cars rather than use public transport. That is why this legislation is important. I am pleased that the railway authorities have installed very bright lights to illuminate at night train carriages waiting in some railway yards, for example at Sutherland, to bring commuters into the city. That has discouraged some of these vandals from placing graffiti on railway carriages. It is a good development.

Schedule 1 will create two new offences relating to the restriction of the supply of spray paint cans to persons under the age of 18 years and the possession of spray paint cans by persons under the age of 18 years. As we know, it is already an offence under the principal Act for anyone to sell a spray paint can to a person under the age of 18 years. Under proposed section 8B, a person under the age of 18 who is in possession of a spray paint can in a public place will be guilty of an offence that carries a maximum penalty of $1,100 or six months imprisonment. We support that provision.

The bill makes it clear that there may be a defined lawful use of spray cans. This is a grey area and police will find themselves arguing with people about whether they have permission to legally put graffiti on a site. I assume that the Government will spell this out in the regulations so that police officers fully understand their powers and so that graffitists will not be able to offer any excuse to wriggle their way out of facing a penalty. The bill also increases the maximum penalty for the existing offence of damaging or defacing property with a graffiti implement from six months to 12 months imprisonment, and increases the maximum penalty for the existing offence of possessing a graffiti implement with the intention that it be used to damage or deface property from three months to six months imprisonment.

We are pleased the legislation will strengthen the provision that community clean-up work be done by those who illegally place graffiti. It enables a court to impose a fine on a person for an offence under the principal Act and to make an order requiring that person to perform community clean-up work in order to satisfy the amount of the fine. That is a good provision. If an individual is caught a number of times and is required to clean up large areas of graffiti, I believe others will be discouraged from entering the game. One hour of community work completed by an offender equates to $30 of a fine. If an offender complies with a community clean-up order by completing the required number of hours of work, the fine is deemed to have been satisfied. If the offender performs part of the work under the order, the fine is deemed to be satisfied by calculating $30 for

each hour of community work. However, the community clean-up order can be revoked if the offender fails to report for work under the order within three months after being required to do so, and, within any period of three months, if the offender has failed to comply with the order or is not capable of performing the work or is not suitable to be engaged in work under the order, the court will revoke the community clean-up order and the fine will then come into effect. We are pleased to support this bill.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, and Vice-President of the Executive Council) [9.24 p.m.], in reply: I have listened with interest to the entire second reading debate and to the views expressed by various members. There seems to be a wide range of different perspectives and, moreover, contradictions in approach. I will be interested to see how the Greens vote on the second reading motion, bearing in mind that Ms Sylvia Hale indicated that the Greens would be supporting the second reading albeit moving some amendments, and Mr Ian Cohen indicated that he was opposed to the bill.

I am also interested in the Opposition's approach to this issue bearing in mind that the Opposition spokesperson the Hon. David Clarke quoted favourably from aspects of my second reading speech in relation to the review I undertook of penalties and the need for them to be enhanced, whereas the Leader of the Opposition indicated when this package was announced on 8 November that we did not need increased penalties. That position was at variance to that taken by the member for Epping, who has consistently argued for stronger law enforcement. I will provide a few of his quotes. On 3 February this year he said, "It is time we did what they did in New York and Chicago and other places where they started sending people to jail." On 4 March he said, in relation to a woman who was sent to prison, "Personally I think she should. I understand the culture has not been to jail and we have to change that culture." On 3 February he said, "We need to practice zero tolerance in this State." On 5 March this year he said, "We need to put fear into people's lives." They are all comments of the member for Epping.

On 8 November the Leader of the Opposition responded by saying, "Communities do not need tougher penalties." The member for Albury was quoted in the *Border Mail* as saying, "We don't want to lock people up for graffiti." The Liberal candidate for Gosford, Mr Holstein, echoed this sentiment on 13 November when he was reported by the *Central Coast Express Advocate* as saying, "I don't know if putting graffiti offenders into prison is really the solution to this problem."

Although members have concentrated on the contents of the bill—and it is understandable that they should do so—the announcement by the Premier on 8 November this year was a comprehensive anti-graffiti plan. Moreover, it was an informed anti-graffiti plan. It was not cobbled together quickly. It was released not only on the basis of advice from the anti-graffiti action team but also on the findings of two pieces of research, both of which have been made publicly available—the first being the demonstration projects and the second the modus operandi of those who participate in graffiti. Both of those documents were released, together with a comprehensive response based on what the anti-graffiti action team had put forward. They include things like a graffiti action day, which Keep Australia Beautiful propose, dedicated, amongst other things, to raise awareness and to involve the community in an activity that involves graffiti clean-up.

Then there was the proposal for a shared services approach to graffiti, which we are trialling in Mosman and Blacktown. In this approach the local council will be responsible for coordinating all the graffiti clean-up irrespective of whether it occurs on council land or other land, including State Government land. They will be contracted and will be responsible for cleaning up the graffiti. It is a shared services approach that was put to us and to the anti-graffiti action team. We have agreed to pilot it.

Mr Ian Cohen referred to designing out issues. In that regard it seemed that he was not aware of the context of the announcement. The Government has agreed to a new State environmental planning policy in relation to its own infrastructure and, moreover, guidelines to assist councils to deal with those issues. Bear in mind one report in relation to the demonstration projects that has been released and indicated that one of the most successful strategies in combating graffiti is crime prevention through environmental design. Moreover, we have added $1 million to funding of annual grants programs to implement anti-graffiti design treatments identified in various hotspot areas. There is a range of different initiatives, including the legislative actions we have taken, all of which are evidence based.

During the debate considerable attention was directed to the penalties. I make it clear that any fair reading of the report that has been published on the modus operandi of graffiti participants would reveal there is

a wide spectrum of people involved in this activity. Yes, there are opportunistic people, the very young people—one might describe them as naïve and easily led—who might engage in the odd act of graffiti. But at the other end of the spectrum there is a highly organised, sophisticated operation involving people who participate in groups, who strategise where they are going to carry out their malicious damage, and who use mobile phones, text messages, photographs, websites and multiple instruments.

Only a couple of weeks ago we saw police arrest a person who had in his possession at home some 750 cans of spray paint. That matter is before the court and I will not go into it in details. Let the mind wander where it wants but I ask members to answer this simple question: Are the persons who involve themselves in organised activities, who have access to a wide range of electronic devices to communicate and sophisticated means of involving other people in their activities through websites and so on, and who organise watches so that people can alert them if someone is attempting to detect their activity, the kinds of people we should sympathise with, as Mr Ian Cohen suggests? Should we regard them as just a little disaffected from society and we should therefore mollycoddle them and ask them to have fewer spray cans in their possession and not involve themselves with so many people using mobile phones and suchlike? Let us get serious about this issue.

True, there are people at one end of the spectrum who might be opportunistic and who can be deterred through appropriate intervention from further engaging in graffiti. However, at the other end there are highly organised criminal networks. They are the kinds of networks that the report has indicated also involve themselves in violence when, for example, they paint over to obliterate some other team's tag or graffiti. One group gets upset because their particular defacing has been obliterated and a space war takes place between competing groups. They are the sorts of people we are talking about. Let us not kid ourselves. We have a report that has analysed these activities fairly carefully and has gone to the trouble of identifying the spectrum of offenders who are involved. Yes, there has to be a spectrum of different outcomes according to the level of criminality and the level at which a person is detected.

I know that some members of this House have been perpetrators of graffiti but a number of us, including myself, have been the victims of it, and I can tell members that it is not a pleasant experience. I believe that this legislation, looked at fairly, is a measured response. It increases penalties but it does so in the context of the report that has been released and in the context of a review of penalties in other States that shows that in a number of respects our penalties have been at the lower end of the spectrum. It is also in the context of a report that has shown that some people are clearly not deterred by the current range of sanctions and that because of the level of criminality involved a stronger response is required. At the same time we have recognised the capacity to be flexible in relation to those at the other end of the spectrum and to involve them in clean-up work and educational activities, and we have provided a response that will get the message through to them and prevent them repeatedly violating the law in the way that has led them to come into conflict on a particular occasion.

As I said, anyone who looks at that response in the way I have suggested would see that it is far from an unbalanced, knee-jerk response. It is a very carefully calibrated and considered response, based on research, an analysis of the reports we have undertaken, experience, the review we have carried out and in particular the recommendations of the anti-graffiti action team. I commend the bill to the House.

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

The House divided.

Ayes, 24

Mr Ajaka	Mr Khan	Mr Veitch
Mr Catanzariti	Mr Lynn	Ms Voltz
Mr Clarke	Mr Mason-Cox	Mr West
Mr Colless	Reverend Dr Moyes	Ms Westwood
Ms Ficarra	Reverend Nile	
Miss Gardiner	Ms Parker	
Mr Gay	Ms Robertson	*Tellers,*
Ms Griffin	Ms Sharpe	Mr Donnelly
Mr Hatzistergos	Mr Tsang	Mr Harwin

Noes, 4

Mr Cohen
Ms Hale
Tellers,
Dr Kaye
Ms Rhiannon

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 and 2 agreed to.

Ms SYLVIA HALE [9.44 p.m.], by leave: I move Greens amendments Nos 1 to 4 in globo:

No. 1 Page 3, schedule 1 [2] and [3], lines 7-12. Omit all words on those lines. Insert instead:

[2] Section 4 Damaging or defacing property by means of graffiti implement

Omit "or imprisonment for 6 months" from the maximum penalty for section 4 (1).

[3] Section 4 (2)

Omit the subsection and the note.

[4] Section 5 Possession of graffiti implement

Omit "or imprisonment for 3 months" from the maximum penalty for section 5 (1).

[5] Section 5 (2)

Omit the subsection.

No. 2 Page 4, schedule 1 [5], proposed section 8B, lines 30 and 31. Omit "or imprisonment for 6 months".

No. 3 Page 5, schedule 1 [5], proposed section 8B, lines 16-26. Omit all words on those lines.

No. 4 Page 13, schedule 1. Insert after line 14:

[8] Section 15 Alternative action to imposing fine for graffiti offences under sections 4 and 5

Omit "or sentencing the person to imprisonment" from section 15.

The purpose of these amendments is to remove the prison or detention sentences for juveniles and young adults convicted of graffiti-related offences. There seems to be what I can only assume to be a deliberate misreading of the Greens' position. I have stated at length that the Greens are not opposed to those sections of the bill that provide for clean-up orders or fines. However, we are opposed to the jailing of children. We say that is inherently wrong. My colleague Ian Cohen was at pains to point out that the Greens understand the impulse to do graffiti but that does not mean we necessarily condone graffiti. That distinction needs to be made.

There are multiple instances where graffiti is highly regrettable and mindless tagging is one of those. No-one likes it; it serves no purpose. However, there are other instances, such as those of Billboard Utilising Graffitists Against Unhealthy Promotions [BUGA UP], which indicate occasions where the value of the message or the image of the graffiti far outweighs the visual impact of the image. As I said, the purpose of these amendments is to remove the prison or detention sentences for juveniles and young adults. I ask the Committee: Do we really want to lock up young people for graffitiing?

The argument was suggested that the Parliament does not do it; the court does it. The problem is that not only is the prospective jailing of a young person unnecessarily punitive it also is ineffectual because we know the evidence is that the courts would be very reluctant to impose such a sentence. It sends the wrong

message to say that it is even reasonable for the court to consider imposing a jail sentence. The Greens believe that fines of up to $1,100 in appropriate cases and community service clean-up orders are a sufficient deterrent. Jailing someone for the offences of possessing graffiti implements or being caught for committing graffiti offences will potentially lock up young people for periods of up to six or 12 months. The courts may impose the sentence only if they believe the offender to be a serious and persistent offender.

The doubling of the jail time is simple posturing on the part of the Government and highly unlikely to deter serious and persistent offenders, even though it may be a means by which the Government hopes to grab a good headline or two. The Attorney General may wish to look as though he is tough on graffiti, so he goes about doubling penalties that he knows the vast majority of offenders will not be subjected to. If there are malicious damage offences, there are still remedies available under the Crimes Act, for example, for serious and persistent vandalism such as smashing and destroying things as opposed to graffiti.

The Greens oppose exposing young people to detention centres or, worse still, to adult jails in the case of offenders over 18 because we know that alternative sanctions are better and preferable to having a young person incarcerated and in contact with people convicted of far more serious offences. Tagging and graffitiing might annoy many people and it might be ugly in the majority of instances, but surely a fine and the cleaning of graffiti off walls would be the correct punishment to fit the crime. The Greens commend these amendments to the House.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, and Vice President of the Executive Council) [9.49 p.m.]: I will not attempt to decode the speech that we just heard. For the reasons articulated earlier the Government opposes these amendments.

The Hon. DAVID CLARKE [9.49 p.m.]: The Opposition does not support the Greens amendments. The other day when I walked down the main road in Rooty Hill I noticed that every shop was covered in graffiti. I did not see any political satire; I did not see any genuine art; I did not see any budding Michelangelos; and I did not see anything that would be worthwhile putting on the World Heritage list. However, I came across a lot of angry people. A couple of old age pensioners in their eighties who took pride in their home were in despair: Their front brick fence was covered in graffiti. They tried to remove it but similar graffiti kept reappearing. These people want some relief.

The Greens must be the only people in the whole of Australia who are not keen to see substantial increases in penalties for these offences. The Greens said that virtually no-one goes to jail so we should not have any imprisonment at all. However, judges have the power to send persistent and serious offenders to jail, and that power should be used. We have to send these offenders a strong message: The people of New South Wales are crying out for some action. I believe that the sort of action proposed by Mr Ian Cohen would serve only to encourage these offenders. As I said earlier, the Opposition opposes the Greens amendments.

Mr IAN COHEN [9.52 p.m.]: I support the amendments moved by Ms Sylvia Hale, which I believe to be quite reasonable. The Attorney General did not see fit to reply to her earlier contribution and made only mild insulting comments.

[*Interruption*]

The interjection of the Hon. Rick Colless further denigrates the argument. The Government is entitled to object to these amendments. However, I ask the Attorney General to state right now whether the process of doubling these prison sentences and his draconian position are not intended to appeal to the media in this State.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, and Vice President of the Executive Council) [9.50 p.m.]: I made it clear in my earlier contribution that the Government's approach to this issue was evidence based. I referred earlier to two reports relating to this issue—one that dealt specifically with the modus operandi of graffiti vandals—which articulated the levels at which this activity takes place. I indicated that following a review of the penalties that exist nationwide—and I can go through those penalties if members want me to do so—it was appropriate to increase the sanctions that are available to deal with that upper end of criminality.

One thing that has not been addressed by any member of the Greens is the issue about which I spoke earlier, that is, the level of sophisticated vandalism among some people in our community. To me the electronic devices, the groups, the surveillance that is undertaken and the fact that people have multiple instruments and

involve themselves at different levels in carrying out this activity are highly criminal. It is not opportunistic and it is not one-off; it is highly involved and highly sophisticated. It involves a high level of planning and resources. In those cases it is more than appropriate for the courts to have available to them a stronger range of sanctions than those that are currently available, in particular, when we read some of the comments in the report to which I referred earlier. It is quite clear that some of these people regard graffiti as a game. Page 33 of the report states:

> About half of the participants reported being caught doing graffiti at some stage, with outcomes including formal cautions, conferences, apology letters, being made to clean up the graffiti and fines. A few participants reported getting criminal records for graffiti offences and one respondent was doing community service at the time of the interview:
>
> I have to do community service now ... We were about to do a spray and we were tacking it up and stuff and because we were next to my car, like while we were tacking it up, and it was early morning and the cops pulled up and asked what we were doing and then he asked me for ID and when I pulled it out I had paint on my hands.
>
> Others reported being caught by security guards or chased by officers.
>
> Participants' reactions to being caught by authorities varied. One graffitist currently doing community service reported "I don't do it anymore ..." when asked if being caught had made him consider stopping. However, reactions varied. Another participant thought getting caught was funny.

It is not funny to the graffiti victims. If that is the way offenders are responding it is appropriate for us to send a message to them that it is not funny. Mr Ian Cohen asked me to respond specifically to issues raised earlier and that is what I will do now. In debate on the second reading, when I asked Mr Ian Cohen what he thought about the behaviour of people who painted "No war" on the Sydney Opera House, his response was, "What about stopping the war?" He believes that because a policy decision has been made about participation in a war that gives people a licence to paint "No war" in fluorescent red paint on the Sydney Opera House—one of the most important World Heritage-listed buildings in the world. In his view that should be sanctioned and it should be allowed. We should talk to these people and try to dissuade them next time from engaging in such activity.

Those offenders put themselves at risk by doing that but, moreover, they defaced one of the most important public buildings in the world. Notwithstanding the fact that many graffiti victims are crying out for a strong and a balanced response, the Greens take the view that the only way to prevent graffiti is to take away the causes. As I said earlier, they want us to take away the wars, the disaffection, and all those sorts of things. It would be a great world if we could abolish or take away all the potential buildings and items on which people could place graffiti. Quite frankly, there are many ways in which people can protest about things that they dislike. They can write a letter to the editor, demonstrate, write to their members of Parliament, or sign petitions. However, they are not entitled to go around defacing people's property.

Reverend the Hon. FRED NILE [9.57 p.m.]: The Christian Democratic Party does not support the Greens amendments.

Ms SYLVIA HALE [9.57 p.m.]: I find extraordinary the fact that the Attorney General conjured up visions of marauding gangs of organised criminals whose sole intent was to plaster graffiti across every conceivable neighbourhood. The Attorney General said earlier that the Government's approach to graffiti was evidence based, but he produced not one jot of evidence to show that the prospect of a jail sentence would deter anybody. After all, these jail sentences are already in the Act and have never been used. On the one occasion that a child was sentenced to jail the court overturned that sentence on appeal because, clearly, it was inappropriate and excessive.

There is no evidence to suggest that simply doubling these sentences will produce the outcome the Attorney General wants. All it does is allow the Attorney General to posture and to pretend that somehow he is doing something about it when he is not. The Greens do not oppose crime prevention through environmental design, clean-up orders or the imposition of fines. However, the Greens oppose this over-the-top, excessive and unwarranted doubling of sentences that will lead to children being placed in jail, which is totally inappropriate for this kind of offence.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Acting Minister for Education and Training) [9.58 p.m.]: That is what I meant when I referred earlier to decoding Ms Sylvia Hale's speeches. On the one hand she said that people would not get sent to jail and on the other hand she is concerned about the fact that people would be sent to jail. I cannot understand that aspect of Ms Sylvia Hale's contribution.

Question—That Greens amendments Nos 1 to 4 be agreed to—put.

The Committee divided.

Ayes, 4

Mr Cohen
Ms Hale
Tellers,
Dr Kaye
Ms Rhiannon

Noes, 27

Mr Ajaka	Mr Khan	Mr Tsang
Mr Catanzariti	Mr Lynn	Mr Veitch
Mr Clarke	Mr Mason-Cox	Ms Voltz
Mr Colless	Reverend Dr Moyes	Mr West
Ms Cusack	Reverend Nile	Ms Westwood
Ms Fazio	Ms Parker	
Ms Ficarra	Mrs Pavey	
Miss Gardiner	Mr Primrose	*Tellers,*
Mr Gay	Ms Robertson	Mr Donnelly
Mr Hatzistergos	Ms Sharpe	Mr Harwin

Question resolved in the negative.

Greens amendments Nos 1 to 4 negatived.

Schedules 1 and 2 agreed to.

Title agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. John Hatzistergos agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. John Hatzistergos agreed to:

That 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.

CRIMINAL ASSETS RECOVERY AMENDMENT BILL 2009

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [10.10 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.

- This bill rectifies anomalies relating to restraining orders, based on a recent decision by the High Court of Australia.
- It does this in two ways: by amending the Criminal Assets Recovery Act 1990 and by amending the Confiscation of Proceeds of Crime Act 1989.
- These amendments will ensure that the New South Wales Crime Commission can continue their excellent work in seizing the ill-gotten gains of serious and organised criminals.
- In summary, CARA would now provide that in the making of a restraining order, the Supreme Court:
    - May cause notice of the application by the Crime Commission to be served on the persons with an interest in the application;
    - May take submissions by those persons who may attend the hearing;
    - Must be satisfied that the information in the affidavit provides reasonable suspicion that the person is engaged in serious criminal activity or the assets are derived from criminal activity or the assets are fraudulently acquired.
- If the Court determines that the application is not to be dealt with ex parte, that is, in the absence of the other party, there will be no restraint on the assets until the party is notified and appears (if they so choose) to adduce evidence at the hearing.
- The effect of the restraining order remains the same, to prevent persons or entities subject to possible confiscation orders disposing of their property before the substantive confiscation matter can be determined.
- The Court may, on application, set aside a restraining order if the application is made within 28 days and on the basis of certain criteria and exceptions.
- To give proper effect to the High Court decision, these amendments separate the restraining order process from the forfeiture order process.
- The amendments include provisions that by force of statute validate existing forfeiture orders and make transitional provisions regarding 'current former restraining orders' and 'former restraining orders' effective from the date of the High Court decision.
- In relation to the Confiscation of Proceeds of Crime Act (CoPoCA), similar amendments to those in CARA will be made to make it abundantly clear that the evidence provided by the other party at a hearing of the restraining order application may be considered by the Court in making the order, and that the Court retains the power to set aside or vary the order.
- These provisions do not change the process for restraining orders under CoPoCA but merely clarify and confirm those processes in line with the High Court decision.
- This bill addresses the problems identified by the High Court majority and not only remedies those anomalies, but improves and tightens the processes within both CARA and CoPoCA.
- From now on there will be distinct processes for applying for, notifying persons of and hearing restraining orders.
- Followed by distinct processes for forfeiture orders.
- The new process balances procedural fairness and certainty and ensures that the Crime Commission and the Police Force will continue to fight the good fight against criminals, especially those involved In organised and serious crime, by taking from them that which they desire most—their money.

The Hon. JOHN AJAKA [10.10 p.m.]: The Criminal Assets Recovery Amendment Bill 2009 amends the Criminal Assets Recovery Act 1990 and the Confiscation of Proceeds of Crime Act 1989 as follows: first, to make changes to ex parte proceedings for restraining orders under both Acts as a result of the finding of invalidity of section 10 of the Criminal Assets Recovery Act as found by the High Court decision in *International Finance Trust Company Limited v New South Wales Crime Commission* handed down on 12 November 2009; secondly, to confer a discretion under the Criminal Assets Recovery Act on the Supreme Court to notify an affected person of ex parte proceedings, to confer on a notified person the right to be heard in proceedings and to provide for and confirm in both Acts the right of the Supreme Court to set aside restraining orders; thirdly, to enable the New South Wales Crime Commission to apply for, and be granted, an assets forfeiture order under the Criminal Assets Recovery Act without first applying for or obtaining a restraining order and to provide for additional ancillary orders consequential on this change; fourthly, to continue, by force of the Criminal Assets Recovery Act, the effect of restraining orders that are not set aside or discharged by a

court before the proposed Act commences; fifthly, to exclude the State and employees of the State, or other persons acting for the State, from liability and claims for compensation and relief in relation to an invalid restraining order or assets forfeiture orders founded on invalid restraining orders under the Criminal Assets Recovery Act; and, sixthly, to preserve current assets forfeiture orders under the Criminal Assets Recovery Act that were founded on invalid restraining orders.

Given that the Government has known for some time about this High Court appeal, it is astonishing that the bill is being forced through both Houses within a few hours of its introduction. Put simply, we are being asked to trust that the Government has got this legislation right. Time and again at the end of the parliamentary session the Government pushes legislation through this House without giving members appropriate time to consider and consult. How long will it be before the Government has to right those wrongs? It is interesting to note that the Government did not even brief the shadow Minister for Police when this legislation clearly falls under the Police portfolio. However, I note that a quick verbal briefing was provided to the shadow Attorney General. Chief Justice French in his judgement in *International Finance Trust Company Limited v New South Wales Crime Commission* states in paragraph 42:

> There is a caveat which should be entered in relation to these principles. The court should not strain to give a meaning to statutes which is artificial or departs markedly from the ordinary meaning simply in order to preserve their constitutional validity. There are two reasons for this. The first is that if Parliament has used clear words to encroach upon the liberty or rights of the subject or to impose procedural or other constraints upon the courts its choice should be respected even if the consequence is constitutional invalidity. The second reason is that those who are required to apply or administer the law, those who are to be bound by it and those who advise upon it are generally entitled to rely upon the ordinary sense of the words that Parliament has chosen. To the extent that a statutory provision has to be read subject to a counterintuitive judicial gloss, the accessibility of the law to the public and the accountability of Parliament to the electorate are diminished. Moreover, there is a real risk that, notwithstanding a judicial gloss which renders less draconian or saves from invalidity a provision of a statute, the provision will be administered according to its ordinary, apparent and draconian meaning. In the context of the present case, that risk is enhanced where the provision, on the face of it, appears to require the Supreme Court to hear only from the moving party where that party chooses to make an ex parte application.

At paragraph 56, His Honour states:

> In my opinion the power conferred on the Commission to choose, in effect, whether to require the Supreme Court of New South Wales to hear and determine an application for a restraining order without notice to the party affected is incompatible with the judicial function of that Court. It deprives the Court of the power to determine whether procedural fairness judged by reference to practical considerations of the kind usually relevant to applications for interlocutory freezing orders, requires that notice be given to the party affected before an order is made. It deprives the Court of an essential incident of the judicial function. In that way, directing the Court as to the manner of the exercise of its jurisdiction, it distorts the institutional integrity of the Court and affects its capacity as a repository of federal jurisdiction.

Schedule 1 [3] to the bill repeals sections 10 to 10B of the Criminal Assets Recovery Act, which relate to proceedings for restraining orders, and re-enacts those provisions as sections 10 to 10D with the following modifications and additions:

(a) the Supreme Court is given a discretion (in proposed section 10A (4)) to require the Commission to give notice of an application for a restraining order to a person who the Court has reason to believe has an interest in the property or part of the property proposed to be subject to the order. Any person who is so notified is entitled to appear and produce evidence at the hearing of the application. Such evidence may be considered by the Court in determining an application,

(b) a person affected by a restraining order is given the right to apply to the Supreme Court for an order setting aside a restraining order. The Court may set aside the order on the ground that the Commission has failed to establish that there are reasonable grounds for the suspicion on which the order was based or if the applicant establishes that the order was obtained illegally or not in good faith. An application is generally required to be made within 28 days of notice of the restraining order,

Schedule 1 [5] enables the Supreme Court to now make an assets forfeiture order without the requirement for a restraining order to be in force in respect of the relevant interests in property. The commission may still apply for a restraining order before or at the same time as it applies for an assets forfeiture order. Schedule 1 [4] makes a consequential amendment. Schedule 1 [9] inserts proposed division 2B of part 3, proposed section 31D, as a consequence of the amendment made by schedule 1 [5]. The proposed section enables the commission to seek an order from the Supreme Court for the examination on oath of a person affected by a confiscation order—that is, an assets forfeiture order or a proceeds assessment order. The proposed section also enables the commission to obtain an order directing a person to provide a statement about property or dealings with property. The proposed section enables the commission to obtain orders now available under section 12 of the Criminal Assets Recovery Act for the purpose of its confiscation order proceedings. The explanatory note states:

> Proposed clause 16 gives effect, by force of the proposed clause, to the provisions of a restraining order (a ***former restraining order***), and any ancillary orders, purported to be made before 12 November 2009 (the day the High Court declared current

> section 10 to be invalid) that had not ceased to be in force before that day (a ***current former restraining order***). The proposed clause applies the Criminal Assets Act, and other laws, to these provisions (***restraining provisions***) as if the provisions were restraining orders and ancillary orders. The proposed clause does not give effect to any order specifically set aside by the High Court decision or to anything in respect of an order set aside after 12 November 2009 for any period after the order was set aside.

I ask the Parliamentary Secretary in reply to indicate whether any other order existing prior to 12 November 2009 has been set aside after 12 November 2009 and prior to this Act. Proposed clause 17 enables restraining provisions to be set aside under proposed section 10C but requires any application for such an order to be made within 28 days of the date of assent to the proposed Act.

Proposed section 18 excludes the State—including the commission, the New South Wales Trustee and Guardian and any officer, employee or agent of the Crown—from liability for various matters arising directly or indirectly from the enactment of the proposed Act and relating to former restraining orders, existing interstate restraining orders, assets forfeiture orders and orders ancillary to those orders made before the commencement of the proposed Act.

Proposed section 19 provides that the validity of an existing assets forfeiture order is not affected by the fact that there was no valid restraining order in force when the application for the order, or the order, was made and prohibits any challenge to its validity on that ground. Acts or omissions with respect to existing assets forfeiture orders are validated if they would be valid after the commencement of the proposed Act. Proposed section 20 continues current applications for assets forfeiture orders and removes any requirement that there be a restraining order before any such application can be granted. Proposed section 23 removes the requirement for the commission to cancel recordings relating to property, or withdraw any relevant caveat, because of the invalidity of current former restraining orders.

Schedule 2 [1] makes it clear that the Supreme Court may consider any evidence adduced from an affected party when determining an application for a restraining order. Under section 44 (1) of the Confiscation of Proceeds of Crime Act, the Supreme Court has a discretion, despite the ex parte proceedings, to notify an affected party who may then attend the proceedings and adduce evidence. Schedule 2 [2] inserts proposed section 44A. The proposed section confirms that the ex parte proceedings in the Confiscation of Proceeds of Crime Act for restraining orders does not prevent the Supreme Court from exercising powers derived from rules of court—that is, the Uniform Civil Procedure Rules 2005—and other laws, such as its inherent power to set aside ex parte orders and to set aside or vary restraining orders or ancillary orders.

I again ask the Parliamentary Secretary in reply to comment on the effect, if any, on other existing legislation that would fall within a similar ambit because at paragraph 120 of the judgement in *International Finance Trust Company Limited v New South Wales Crime Commission* three of the justices state:

> It is true that, if the material advanced by the Commission in support of an application for a restraining order meets the requirements of s 10(3), the Court will have no choice but to make the order that is sought. But this is a commonplace in the judicial system.

The Opposition does not oppose the bill.

Ms SYLVIA HALE [10.22 p.m.]: The High Court has done the course of justice a considerable service by disallowing section 10 of the Criminal Assets Recovery Act 1990. My prime source of analysis of the Criminal Assets Recovery Amendment Bill 2009 came from an article on the skepticlawyer website entitled "Proceeds of Crime in Trouble", dated 15 November 2009. That article refers to the majority finding by the High Court bench declaring section 10 unconstitutional. The High Court was concerned at the nature of an ex parte application—that is, an application can be brought by one person in the absence of, and without representation or notification of, the other party or parties. To me that is inherently contrary to any notions of procedural fairness. In his judgement Chief Justice French said:

> Procedural fairness or natural justice lies at the heart of the judicial function. In the federal constitutional context, it is an incident of the judicial power exercise pursuant to Ch III of the Constitution. It requires that a court be and appeared to be impartial, and provide each party to proceedings before it with an opportunity be heard, to advance its own case and to answer, by evidence and argument, the case put against it.

At the very heart of the ex parte application under section 10 was the ability to have an order issued merely on the suspicion that the assets being frozen were the proceeds of crime. There was no specific requirement, other than an affidavit by an officer of the Crime Commission with a simple assertion that he suspected they were the

proceeds of crime. For such extreme action as the seizure of assets to occur without the necessity for the Crime Commission to substantiate its claim, or without affording the opportunity to the person or persons affected by the order to adduce evidence to disprove the claim, is totally contrary to any notion of procedural fairness.

Another cause for concern was the limited right to appeal against the order. The onerous burden on the affected parties was for them to establish that it was more probable than not that the property had not been obtained illegally. The fact that these amendments seek to bring the law into line with the requirements of the High Court, in an attempt to make the Act constitutionally valid, is deserving of support. The High Court had a problem with the requirement for the Supreme Court to make a restraining order if the application for the order was supported by an affidavit of an authorised officer. The High Court felt the compulsion on the court to meet that requirement was placing undue pressure on it and was thus contrary to the notion of the separation of powers. Proposed section 10A (4) states:

> Despite the application for a restraining order being made ex parte, the Supreme Court may, if it thinks fit, require the Commission to give notice of the application to a person who the Court has reason to believe has a sufficient interest in the application. A person who is required to be notified is entitled to appear and adduce evidence at the hearing of the application.

That gives the court the discretion to afford some degree of procedural fairness to the affected parties. The court is also empowered to have regard to matters contained in any such affidavit produced by the Crime Commission and any evidence adduced under subsection (4)—that is any evidence adduced by the affected parties. As a number of members have pointed out, the amendment of section 10 is well overdue. The legislation has been in effect for some 20 years. Therefore, it is appropriate that it has been challenged, which has required the Government to amend the Act. An analysis by Mr Phillip Boulten, SC, of the High Court's ruling appeared in an article in the *Australian* on 30 November 2009. It stated:

> Leading criminal lawyer Phillip Boulten SC said the 4-3 decision was one of the most significant delivered by the court and "a complete disaster for the Crime Commission". He suggested it could "derail the whole process of confiscation orders", which has delivered $173 million to Treasury since 1991—almost $30m in 2007-08.

No-one wishes people to benefit from the proceeds of crime, but that is not the point. We are supposed to live under the rule of law by which people are afforded natural justice. The legislation's wide-ranging effect and the High Court's decision raise the issue of what the decision portends for future High Court decisions. The article also stated:

> It was "one of the most important judgments from the High Court in a very long time", Mr Boulten said, because it had reversed a string of decisions which vested power in state crime authorities. "It is not just about the conduct of the crime commission and the freezing of assets, but (affects) the consideration of any piece of legislation which purports to influence how judicial power should be exercised", he said.
>
> He cited the purported abolition of double jeopardy in crown appeals and bikie laws introduced in NSW and South Australia this year. The latter is already the subject of an appeal to the High Court. Chief Justice French said Section 10 of the Act directed the Supreme Court "as to the manner in which it exercises its jurisdiction and in so doing to deprive the court of an important characteristic of judicial power".
>
> "It distorts the institutional integrity of the court and affects its capacity as a repository of federal jurisdiction," he said.

The significance of the High Court's decision relates not only to this legislation but also to other legislation vehemently opposed by the Greens that has been passed by this Parliament—legislation that reversed the onus of proof, removed restrictions on double jeopardy, and imprisoned people contrary to all notions of habeas corpus. For that reason, and while I salute the decision of the High Court, the Greens will support the bill.

Reverend the Hon. FRED NILE [10.32 p.m.]: The Christian Democratic Party supports the Criminal Assets Recovery Amendment Bill 2009, which amends the Criminal Assets Recovery Act 1990 and the Confiscation of Proceeds of Crime Act 1989 to rectify anomalies relating to restraining orders on the basis of a recent High Court decision. As honourable members know, the High Court heard a matter in which the appellants claimed that section 10 (3) of the Criminal Assets Recovery Act was invalid on constitutional and general legal principle grounds. By a majority four-three decision, the High Court determined that section 10 was invalid. I would be interested to know who the appellants were in that case because most cases involving the confiscation of assets relate to people involved in organised crime, particularly drug trafficking. The proceeds of drug trafficking may be cash amounting to hundreds of thousands of dollars, property and expensive cars. I am pleased that as far as is possible the Government is amending legislation to take into account the High Court's decision.

The New South Wales Parliament does not wish to undermine the ability of the Crime Commission to fulfil its duty of combating organised crime. One of the main ways of assisting the commission to prevent

organised crime from occurring is to imprison the perpetrators or, when that is not possible because of the cleverness of the criminal minds involved, by confiscating all that they have acquired through criminal activity so that they become cash poor. To my mind, that is a very important weapon in the fight against organised crime. I am pleased that the bill before the House will enable the Crime Commission to confiscate assets that are the proceeds of crime. Some may argue that the Government is eager to acquire assets from criminals for its own ends, but that is a secondary motivation. Obviously, confiscated assets may be used for the common good after forming part of the Government's consolidated revenue.

When this legislation is passed and the Criminal Assets Recovery Act is amended, the legislation will provide that the Supreme Court, when making a restraining order, may cause notice of the application by the Crime Commission to be served on persons with an interest in the application, may take submissions by those persons, and must be satisfied that the information in an affidavit provides reasonable suspicion that the person is engaged in serious criminal activity, or that the assets are derived from criminal activity, or that the assets are fraudulently acquired. Those matters are not easy to prove.

Taking into consideration that the higher is the level of operational capability involved in organised crime and the lower is the level of integrity of those involved, every possible step will be taken by organised crime to prevent the Crime Commission from succeeding in its applications by, for example, concealment of the ownership of property, including ownership being vested in wives, children and other family members. The Crime Commission faces an ongoing battle, especially as organised crime has the means by which advice from top lawyers may be obtained to assist criminals in avoiding the effects of successful applications by the Crime Commission.

After this legislation is passed, the effect of a restraining order will remain as it is now and will prevent persons or entities that are subject to possible confiscation orders from disposing of their property before the substantive confiscation application is determined. If organised crime figures have not vested the proceeds of crime in other people, they may wish to rapidly rid themselves of assets when they become aware that they have been identified by the Crime Commission. By consolidating and confirming the principal statutory means of recovering criminal assets, a vital step in responding to organised serious crime will be retained: the Crime Commission will be able to move directly to obtain a forfeiture order, if it so chooses, in particular circumstances. The legislation also will ensure that the restraining order process involves a greater degree of judicial deliberation. The Christian Democratic Party supports the bill and its intent of enabling the Crime Commission to continue to carry out its very effective role in this State.

The Hon. PENNY SHARPE (Parliamentary Secretary) [10.38 p.m.], in reply: I thank all members who contributed to debate on the Criminal Assets Recovery Amendment Bill, which amends the Criminal Assets Recovery Act 1990 and the Confiscation of Proceeds of Crime Act 1989. The bill will correct anomalies identified by the High Court, which recently determined that section 10 of the Act is unconstitutional. While the reasons in the majority judgements were diverse and highly technical, basically they boil down to a lack of opportunity by someone whose property is frozen to have a say in an application for confiscation.

After the bill is passed by Parliament, the amended Criminal Assets Recovery Act will provide that, in making a restraining order, the Supreme Court may cause notice of an application by the Crime Commission to be served on the persons with an interest in the application, may take submissions by those persons, and must be satisfied that the information in an affidavit provides reasonable suspicion that the person is engaged in serious criminal activity, or that the assets are derived from criminal activity, or that the assets are fraudulently acquired. If the court determines that the application is not to be dealt with ex parte, which means it would be dealt with in the absence of the other party, there will be no restraint on the assets until the party is notified and appears, if they so choose, to give evidence at the hearing.

The effect of the restraining order remains the same: to prevent persons or entities subject to possible confiscation orders disposing of their property before the substantive confiscation matter can be determined. The amendments also provide for the review of restraining orders and make it clear that the Supreme Court may set aside a restraining order on application by a person with an interest in the affected property in certain circumstances. The restraining order would remain in force until the court makes a ruling on the review application. The High Court decision is related only to restraining orders, that is, a temporary freeze on the disposition of suspected criminal assets. To give proper effect to the High Court decision these amendments separate the restraining order process from the forfeiture process.

The amendments include provisions that by force of statute validate forfeiture orders and make transitional provisions regarding current former restraining orders effective from the date of the High Court

decision. The Hon. John Ajaka asked about existing orders. As I have said, the amendments include provisions that ensure existing orders remain valid. I am advised that since the High Court decision only two other orders have been discharged. The New South Wales Crime Commission may, if it wishes, recommence matters under the new provisions. However, the transitional provisions will ensure that this additional burden on the commission and the taxpayers of New South Wales is not necessary. This is in no way at odds with the High Court decision.

Amendments to the Confiscation of Proceeds of Crime Act will ensure abundant clarity about the court's ability to consider the evidence presented by the other party at the hearing of an application for a restraining order and the court's power to vary or set aside orders. By consolidating and confirming the principal statutory means of recovering criminal assets a vital step in responding to organised and serious crime is retained. This bill will allow law enforcement to put paid to the main advantage of criminal activity, that is, the accumulation of large assets and funds. 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.

INDEPENDENT COMMISSION AGAINST CORRUPTION AND OMBUDSMAN LEGISLATION AMENDMENT BILL 2009

Second Reading

Debate resumed from 12 November 2009.

The Hon. DON HARWIN [10.42 p.m.]: The Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009 will mainly attract attention because of the changes to the Independent Commission Against Corruption Act. In fact, the changes to the Ombudsman Act are significant and important. All members of the House would agree on the importance of the State taking a comprehensive and effective approach to the issue of child sexual assault in Aboriginal communities. The new power that has been given to the Ombudsman to conduct an audit of the Government's implementation of the New South Wales interagency plan is critical. The Opposition welcomes and supports the amendments to the Ombudsman legislation to make provision for this audit function. We do not oppose that part of the bill.

The Opposition also supports the part of the bill that relates to the Independent Commission Against Corruption, which had a more colourful passage to this House through its reception in caucus. The bill amends the Independent Commission Against Corruption Act to provide that part 2 of the Surveillance Devices Act 2007 will not prevent the Independent Commission Against Corruption from using until 31 December 2010 recordings of private conversations to which Mr Michael McGurk was a party and were obtained in contravention of part 2 and to make it clear that part 2 does not prevent a person from providing until 31 December 2010 any such recordings to the commission if required to do so by the commission. Its stated specific aim is to allow the Independent Commission Against Corruption to inspect the McGurk audio recordings in order to properly conduct its inquiry.

The background of the audio recordings is well known. For the sake of the orderly progression of Government business through the House at this stage of the session I will not review it in this place. I place on record that these tapes were allegedly recorded secretly. As such, they arguably infringe section 11 (1) of the Surveillance Devices Act 2007. Under section 12 it is also an offence to possess a record of a private

conversation without the consent of all parties. There remains an argument that there is sufficient power already in section 17 of the Independent Commission Against Corruption Act that enables the Independent Commission Against Corruption to inspect and listen to a tape. The Liberals and Nationals accept that this legislation was introduced at the behest of the Independent Commission Against Corruption Commissioner and, therefore, is a reasonable protection for that agency in determining the matters put before it with regard to the McGurk murder. On that basis alone we do not oppose the bill.

Reverend the Hon. FRED NILE [10.46 p.m.]: The Christian Democratic Party supports the Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009, which contains amendments to the Independent Commission Against Corruption Act and the Community Services (Complaints, Reviews and Monitoring) Act 1993. The House has been advised that the Ombudsman and the Independent Commission Against Corruption requested these amendments. I do not question that advice. The Independent Commission Against Corruption has indicated it wants the opportunity to investigate the audio recordings that apparently were made by Mr Michael McGurk, who, it seems, was murdered under contract by a hit man. The Independent Commission Against Corruption has requested that the Independent Commission Against Corruption Act be amended to clarify the categories of senior public officials who are under an obligation to report corrupt conduct to the Independent Commission Against Corruption following the creation of the 13 super agencies. That practical amendment will assist the Independent Commission Against Corruption in its role in exposing corruption. The bill also will give the Ombudsman the necessary powers to conduct an audit regarding child sexual abuse or assault in Aboriginal communities.

The Michael McGurk audiotapes apparently were recorded illegally by McGurk. He recorded conversations with people without their consent by the use of a small recording device in his sock. That may be why a great deal of the taped conversations is incoherent, according to reports. I am concerned that the original Surveillance Devices Act 2007 and earlier legislation related to the recording by the police intelligence unit of conversations of people suspected of being involved in criminal activity and their solicitors. The police did not intend to use the information as evidence in court but wanted to study the content in order to apprehend criminals in the act of committing a crime.

It was never intended to use the recordings in court. I believe that the Surveillance Devices Act 2007 has become a hindrance to law enforcement bodies. I know they can get permission and go through procedures so that they can lawfully do phone taps, as ICAC does. However, I believe there is a role in getting intelligence that will not be used as evidence to assist the police, the Crime Commission, ICAC and other bodies to carry out their duties. I am pleased to support this bill, which will assist those agencies.

Ms LEE RHIANNON [10.50 p.m.]: The Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill addresses three main areas: firstly, it clarifies the ability of ICAC to use audio recordings involving the late Michael McGurk in circumstances where those recordings may have been made unlawfully; secondly, it expands the category of senior public officials who are under an obligation to report corrupt conduct to ICAC; and, thirdly, it introduces a new power for the New South Wales Ombudsman to conduct an audit of the Government's implementation of the New South Wales interagency plan to tackle child sexual assault in Aboriginal communities. The Greens have some concerns about schedule 1 [3] of the bill, which will enable ICAC to use audio recordings involving the late Michael McGurk in circumstances where those recordings may have been made unlawfully. This bill effectively allows ICAC to contravene the Surveillance Devices Act.

It is a key tenet of this Act, and a generally agreed legal principle, that any unlawfully obtained recordings cannot be used as evidence. It is only in very exceptional circumstances that Parliament should sanction moving away from this principle. The Greens would not be comfortable supporting this bill if it encourages people to make unlawful recordings in the future, which would undermine the policy of the Surveillance Devices Act. Section 7 of the Surveillance Devices Act makes it clear that a warrant is required to install or use a listening device to overhear, record, monitor or listen to a private conversation to which a person is not a party. I note that this bill contains a series of limitations on ICAC's ability to use the unlawful recordings in this instance. Specifically, there is a sunset clause to enable ICAC to use the recordings until 31 December 2010.

The bill is limited to recordings that appear to ICAC to be recordings of a private conversation in which the late Mr Michael McGurk was a participant. The bill will only apply where ICAC has obtained the recordings through the use of its coercive power during a corruption investigation. It is not possible for ICAC to use recordings provided to it on an unsolicited basis or for any other non-investigative purposes. The Attorney

General in his second reading speech clearly stated that this bill is a "one-off response to a unique set of circumstances" that will not protect any person or organisation, including a law enforcement agency, that has made an unlawful recording contrary to the Surveillance Devices Act. Overruling the Surveillance Devices Act is not something that the Greens take lightly. The Surveillance Devices Act is a key mechanism to protect an individual's privacy and the integrity of investigative processes. Article 17 of the International Covenant on Civil and Political Rights provides:

> No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

But we also acknowledge that there is strong public interest in uncovering the audio recordings at issue that involve the late Michael McGurk. Media reports regarding these recordings raise questions about corruption at upper levels of government. The public has a right to know and ICAC should be able to fulfil its proper function, which is to investigate allegations of corruption. In this case, and given the protections provided in this Act, the Greens believe that the public interest in releasing the MrGurk tapes outweighs the public interest in withholding the tapes. Secondly, this bill expands the category of senior public officials who are under an obligation to report corrupt conduct to ICAC. I understand that this amendment has been requested by the ICAC Commissioner. Currently section 11 of Independent Commission Against Corruption Act provides that the principal officer of a public authority is under a duty to report to ICAC any matter that the person suspects on reasonable grounds concerns or may concern corrupt conduct.

This bill ensures that the management and reporting of corruption allegations in key areas of the public sector continue to operate under the new public sector amalgamation. This bill will extend the duty of principal officers of public authorities to report alleged corrupt conduct to the commission under section 11 to the heads of separate offices within those public authorities. These additional reporting officers will be prescribed by regulation. Under the new public sector arrangements it will ensure that former department heads who continue to hold leadership positions in operationally discrete areas will continue to be subject to reporting obligations. The Greens support this amendment. Finally, this bill introduces a new power for the Ombudsman to conduct an audit of the Government's implementation of the New South Wales interagency plan to tackle child sexual assault in Aboriginal communities. The Greens will not oppose this amendment, and my colleague Ian Cohen will speak in more detail on this proposed amendment.

The Hon. TREVOR KHAN [10.55 p.m.]: I will deal briefly with only two of the amendments contained in this bill. First, I will deal with comments made by representatives of the Greens about the McGurk tape. The Greens seem to be somewhat unsettled by the proposed amendment. One could see a shifting of their feet as we are treading on dangerous ground. One could treat that with some degree of credibility if one did not remember the Badgerys Creek inquiry and, indeed, the bombshell question that Ms Sylvia Hale asked of Mr Medich. If one was interested in due process and being careful about legal issues one would not have asked such a downright objectionable and inappropriate question that, indeed, had been indicated to us at the start of the proceedings we should not ask. When one hears from the Greens this tendency to be so careful about due process and the like—

The Hon. Michael Gallacher: The high moral ground.

The Hon. TREVOR KHAN: Yes, the high moral ground. When one sees the Greens in action one sees them to be the absolute grubby politicians that they can be at times. I turn now to the amendment to section 11. Notwithstanding how often the Greens may seek to give some indication of an understanding of the law, Ms Lee Rhiannon talked about an expansion, extension, of the obligation to report. The amendment to section 11 was introduced because the consolidation of the departments down to 13 greatly restricted the number of people who were obligated to report. Rather than a wide range of departmental heads, all of a sudden it was dropped to 13.

The amendment to section 11 is not a matter of expanding the obligation onto a whole range of people; it is simply addressing the fact that, whether inadvertent or not, the consolidation down to 13 super departments removed from a whole range of public servants the obligation to report. It may have been inadvertent; it may not have been the intention when the proposal was announced, but the effect was fundamentally to lift from public servants the obligation to report. I point out to Ms Lee Rhiannon that that is why section 11 had to be amended. That is why so much of what the Greens say in their high moral principled stance is absolute rubbish. They do not know what they are talking about a lot of the time.

The Hon. PENNY SHARPE (Parliamentary Secretary) [10.58 p.m.], in reply: I thank members for their contributions to the debate. The Government is pleased with the support of members, particularly for the

proposals in the bill to extend the Ombudsman's audit powers in relation to the interagency plan to tackle child sexual assault in Aboriginal communities. That plan sets out a five-year program for the Government, working together with Aboriginal communities as partners, to reduce the incidence of child sexual abuse in Aboriginal communities and to increase family and community safety and wellbeing.

All members of this House have discussed and debated that issue many, many times. The Government looks forward to working with the Ombudsman during his audit. I also thank honourable members for their support for the amendments in the bill that refine the statutory model of corruption-reporting obligations so that it remains the most efficient and effective approach. The Government will consult again with the ICAC before finalising the regulation that prescribes the additional reporting positions.

In relation to the amendments relating to listening devices it is vital that there be no doubt about the ICAC's position in relation to any recordings of private conversations to which Mr McGurk was a party. The Government is confident that the bill, as introduced, strikes the right balance between protecting the privacy of the individuals and the public interest in accountability. No-one wants to live in a community where a person's private conversations can be recorded secretly by members of the public and disseminated with impunity. The amendments are very limited in scope and carefully retain the deterrent effect of the Surveillance Devices Act. The amendments do not alter the legal position in relation to the maker of an unlawful covert audio recording in any way. Such people remain open to prosecution.

The Government has moved very quickly to respond to the ICAC commissioner's request for amendments. The legislation was developed in consultation with the ICAC, and although the amendments are few in number they raise very significant legal and policy considerations. It would not serve the ICAC well or the people of New South Wales to rush ill-considered amendments into the Parliament. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

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

SWIMMING POOLS AMENDMENT BILL 2009

Second Reading

Debate resumed from 11 November 2009.

The Hon. DON HARWIN [11.02 p.m.]: The Swimming Pools Amendment Bill 2009 seeks to reduce the frequency of child drowning deaths and near-drowning injuries by amending the Swimming Pools Act 1992. The amendments include increased penalties, the recision of existing exemptions and the imposition of additional requirements on local councils. All the amendments relate to private swimming pools. The Opposition does not oppose the bill.

The Opposition is keenly aware of the tragic personal dimension to the bill. Official figures reveal that 10 children under the age of five drowned in private swimming pools in New South Wales last year. All of those deaths occurred when the child accessed the swimming pool without the knowledge of a parent or carer. In all cases there was an issue with the pool barrier's condition, use or both. In addition to these deaths were numerous near-drowning incidents. Research indicates that for every child drowning there are three or four hospitalisations as a result of near-drowning incidents. Of those young children hospitalised approximately 20 per cent are left

with debilitating injuries that they will carry for the rest of their lives. Many of those injuries are brain-related and incurable. Deaths and injuries to young children are devastating for the affected families and for their wider community of relatives, friends and neighbours.

However, the Opposition has reservations about several elements of the bill. Primarily, the Opposition is troubled by the removal of the automatic exemptions that have hitherto applied to private swimming pools on very small properties that are less than 230 square metres, on very large properties of more than two hectares, and on properties that have a frontage to open water, such as a lake, river or the ocean. These exemptions were included in the Act for sound reasons. Very small properties were exempt because space restrictions made barrier fencing unfeasible. The removal of this exemption will mean that many residents, particularly in the inner city, will have a vastly reduced capacity to have private swimming pools at their homes. This is also true of some high-end townhouses and apartments.

On properties greater than two hectares the exemption recognised that the range of inherent risks was greater due to the presence of dams, machinery and naturally occurring hazards and that pool fencing was not only nonsensical in the context of the non-fencing of dams but, in fact, it disproportionately increased the other risks associated with the property. The exemption acknowledged that the owners of large properties need to develop broader safety mechanisms such as a fenced play area for young children separate from swimming pools, dams, tool sheds, out-buildings and areas of natural terrain. Similarly, the exemption of waterfront properties acknowledged that it was not feasible to restrict access to lakes, rivers, dams, harbours and ocean fronts and that, consequently, the fencing of pools does not significantly reduce the risk to small children.

The sound reasoning behind the exemptions already in the Act has not changed. Seventeen years later the fencing of private swimming pools on very small, very large or waterfront properties remains as impractical, unfeasible or absurd. The Department of Local Government's options paper on the Review of the Swimming Pools Act 1992, published in April this year, acknowledges that "there is limited evidence that these exemptions have resulted in child deaths." Indeed, the 2008 annual report of the New South Wales Child Death Review Team stated that all 10 drownings of children in private swimming pools in this State last year involved swimming pools that already had pool barriers. The Government has not presented an adequate case for why these longstanding exemptions should be lifted for pools constructed after 1 July next year.

Also, there is the unintended consequence of the exemption removals on local councils. Section 22 of the Act allows for local councils to grant specific exemptions from barrier requirements in particular circumstances on the grounds that they are impractical or unreasonable. Interestingly, the department's options paper even specifically noted that the review of the Act recommended that this section be retained without amendment. The practical consequence of the removal of the exemptions and the retention of section 22 of the Act will be that a clear system with defined categories of blanket exemptions will be replaced by a chaotic system of individual ad hoc exemptions granted by local councils in relation to exemption applications, inspections, assessments and processing as well as in relation to a register of swimming pools in the council area. The Better Regulation Statement, issued by the Department of Local Government in September, states:

> Although there are no accurate figures on the number of exempt pools, anecdotally, they represent up to 50 per cent of pools in some metropolitan council areas.

Given that there was not a single drowning death of any small children last year in any private swimming pool automatically exempt from having a barrier fence, it is extraordinary to think that the Government is going to force pool owners and local councils to carry the financial and administrative burden of fencing or exemption processing on such a high proportion of pools. This Government is, of course, tremendously fond of appearing to take decisive action on particular matters when, in actual fact, it assumes none of the actual costs or responsibilities for its policy.

As we have seen time and time again, local government is the perennial fall guy for this approach. Pool owners and local councils already shoulder the burden of the Swimming Pools Act and this bill seeks to increase that burden. The department's Better Regulation Statement outlined an alternative approach to swimming pool safety—one that took a non-regulatory option. The document dismissed this option because, unlike the regulatory option pursued in this bill, it placed the cost with the State Government rather than pool owners and local councils. On page 6 the Better Regulation Statement states:

> Education has been and continues to be used to good effect in relation to pool barrier requirements and the need for vigilant adult supervision of young children in and around private swimming pools at all times…this option relies on ongoing public funding

> and resources to implement and sustain over time…significant resources, including capital, would be needed to make this option beneficial. This would presumably need to come from the general community via existing State Government resources rather than from the targeted community (ie pool owners).

In the second reading speech the Parliamentary Secretary, the Hon. Penny Sharpe, stated that ultimately responsibility for child safety around backyard pools lies with parents. She said that the Government recognised the fundamental role of awareness in pool safety but rather than presenting funded initiatives in tandem with this bill, she could only say that such schemes were "under active consideration". The Government's attention on private swimming pool fencing rather than pool supervision awareness programs, water familiarisation schemes and resuscitation classes is all the more troubling given that statistics concerning the drowning deaths of 0-4 year olds across Australia show that the percentage of deaths occurring in private swimming pools is dropping versus the percentage of drowning deaths occurring in other localities.

The National Drowning Report from the Royal Surf Lifesaving Association reveals that in the 2008-09 financial year 59 per cent of drowning deaths of 0-4 year olds occurred in swimming pools, down from 66 per cent the previous year. The latest report of the New South Wales Child Death Review Team, which covers the 12 months January to December 2008, reveals that there were 10 deaths by drowning in private swimming pools, a reduction of two from the previous year. It is in localities other than private swimming pools that the number of child drownings is increasing—lakes, rivers, darns, stormwater canals and the ocean. This highlights the need for a greater emphasis on State Government funded awareness programs for parents and water familiarisation lessons for children. Rather than the primary safety measure, barriers around private swimming pools should be a complementary preventative measure in support of a central focus on education and supervision. In a submission to the review of the Act, the General Manager of the Swimming Pool and Spa Association, Spiros Dassakis, expressed the following view:

> CPR training should also be taught in primary and secondary schooling, where children are able to both learn the skill whilst reinforcing safety around the pool.

The association's submission also stated:

> Any proceeds from penalties imposed on pool owners by a Council or Court should go towards Pool Awareness Programs as well as subsidised CPR and swimming lessons for the local community.

This broken Government does not want to address the need for State funded water safety programs. It wants to take a line of legislative action that has no net cost to itself. In addition to questioning the need to remove the existing exemptions and the focus on the Government's response to child drownings, some members of the Liberals and The Nationals are also concerned about changes involving council inspections. This bill seeks to require local councils to investigate all complaints about non-compliance with pool barrier regulations. Those members are worried that this particular mechanism will be open to capricious and malevolent abuse by vexatious neighbours and potentially even the councils themselves. The Local Government and Shires Associations, meanwhile, have expressed concern about the introduction of such a requirement without associated funding. In their submission to the review of the Act, they commented:

> The Associations support this recommendation provided that resources are made available for councils to undertake their enforcement role. We therefore believe that strategies need to be identified to resource any inspection program.

Given the State Government's appalling track record of cost shifting to local government, the associations have acknowledged that their only real opportunity to recover the cost of undertaking backyard pool safety inspections will be to charge an inspection fee. The Opposition notes that despite increased revenue from higher penalties imposed by this legislation, all of it will go into consolidated revenue, not given to councils to pay for their increased administrative workload under this legislation, let alone hypothecated for water safety initiatives.

The Opposition is also deeply concerned that the Government is actively considering further amendments to the Act in addition to those canvassed in this bill, relating to the exemptions granted to swimming pools built prior to 1 August 1990. Legislative retrospectivity should only be contemplated in exceptional circumstances and the Opposition would encourage the Government to retain the historical exemption. The case for lifting the other exemptions has not been adequately made and the justification for removing this historical exemption is just as weak. Further, the key industry stakeholder, the Swimming Pool and Spas Association, has warned that many property owners with very old pools would find it extremely difficult to comply with a retrospectively applied fence requirement. The president of the association, Peter Moore, has explained that many older pools were constructed without fencing in mind and that it would be physically impossible to install fencing without prohibitively expensive alterations.

The Opposition believes that barriers around private swimming pools should only be one element of the State's child drowning prevention strategy, and that a greater emphasis should be placed on awareness and water familiarity. The State Government, rather than pool owners and local councils, needs to assume more of the burden and responsibility and focus more on the number of children who drown in open waterways. The Opposition does not oppose the bill, but urges the Government to assume a greater role in addressing the wider problem of child drownings in all circumstances.

Ms SYLVIA HALE [11.16 p.m.]: The Greens support the Swimming Pools Amendment Bill 2009. As all members are aware, drowning is a leading cause of accidental death of young children. It takes only seconds for a child to fall into a pool and not long thereafter for hypoxia to occur. Laws cannot guarantee protection of all children, but we as legislators must do all that we can within reason. None of what we do, however, exonerates parents and adults from the responsibility of adequately supervising children in their care. The Swimming Pools Act 1992 introduced a requirement that pools be fenced. This bill is a result of a review of that Act which, I am told, has been underway for four years.

The objects of the bill are to: increase the maximum penalty for offences under the Act; remove automatic exemptions under the Act in respect of child-resistant barriers for swimming pools constructed or installed after 1 July 2010 on very small, large and waterfront properties; permit the regulations to prescribe the circumstances in which an opening in a wall is taken to enable access to be gained to a swimming pool at any time; require a local authority to give notice before giving a direction under that Act and to enable a local authority to carry out the requirements of such a direction if there is a failure to comply or a significant risk to public safety; require local authorities to investigate certain complaints; abolish the Pool Fencing Advisory Committee; and make a number of minor and statute law revision amendments.

This bill will remove automatic exemptions that allow some pools to be directly accessed from the house through so-called "child-resistant" doors. The bill will remove exemptions that pertain to pools on certain properties, which means that all pools must be surrounded by a four-sided barrier with a self-closing and self-latching gate. Owners can use an existing wall or fence as part of the four-sided barrier. In special circumstances, an exemption to the barrier requirements can be sought. The penalties have been revised upwards for breaches of the barrier requirements to $5,500, but to temper this there is a warning system prior to the issuing of fines so that the a pool owner can do what needs to be done to ensure the pool and fencing complies with the law. I note that the minimum penalty is $550, which is not excessive. Councils will be required to investigate within 72 hours of the lodgement of a complaint about an unsafe pool or fence. In extreme situations, the council will be able to construct or repair a fence where there is a significant threat to public safety. The New South Wales Water Safety Advisory Council will be the relevant body to oversee the rules relating to swimming pools.

In her second reading speech, Ms Penny Sharpe noted that the amendments in the bill to strengthen pool barrier requirements deal with pools to be built in the future, not with pools already built. That includes pools built prior to 1 August 1990 and pools built after that date on small, large and waterfront properties, including those built up until 1 July 2010. The risk to young people posed by these pools will only increase over time and we must address this risk sooner rather than later. To this end, consultation with a view to making further amendments to the Swimming Pools Act to deal with exemptions for existing pools is underway. One wonders why other pools have not been included in this bill. The Government has had four years to draft the bill, but we now find that the bill does not pertain to swimming pools built before 1990 or certain other pools built between 1990 and 2010 but only to pools that are to be built in the future. If the Government it is going to legislate, it might as well do so properly and comprehensively and cover all pools.

The Samuel Morris Foundation, which provided a briefing and written information to crossbench members, noted that children under the age of five years comprise 22 per cent of all drownings but represent only 7 per cent of the population. The New South Wales Child Death Review Team report covering 1996 to 2005 found that drowning was the only cause of child death not to have experienced a serious decline over that decade. The documents provided by the foundation state that 62.5 per cent of rescues from drowning of children aged between nought and 12 years were from swimming pools. There is concern about noncompliance and little active inspection of pools by councils. As usual it is about resources and having the staff to carry out the inspections.

This bill puts a greater onus on local government to inspect and to do so quickly when a complaint is lodged and, if necessary, to act to make a pool safe in extreme situations and then to pursue the noncompliant owner. The Department of Local Government has calculated that inspecting all the State's swimming pools

could cost $12.5 million if carried out over two years. However, as advocacy groups have pointed out, if the result is a reduction in the number of deaths and disabilities resulting from near-fatal immersions, approximately $9.2 million will be saved. It has been suggested that a proper inspection and compliance regime should be funded on a user-pays basis, perhaps at the rate of $52 per year. The Greens believe that that proposal has considerable merit. The Western Australian legislation provides that pool owners can be charged for the annual inspection. That could be a suitable way to raise funds to underwrite the compliance regime. The Greens support the bill.

Reverend the Hon. Dr GORDON MOYES [11.24 p.m.]: I speak for Family First on the Swimming Pools Amendment Bill 2009, which amends the Swimming Pools Act 1992 to make further provision in respect of ensuring access to private swimming pools is effectively restricted and for other purposes. The object of the bill is to provide the legislative framework for consistent and high standard four-sided pool barrier fencing to surround all newly constructed backyard pools in New South Wales. It also aims to ensure that local councils regulate and promote awareness of the requirements, including through use of appropriate compliance mechanisms.

The bill amends the Swimming Pool Act 1992 to remove automatic exemptions that allow some pools to be accessed from a house through child restraint doors. It proposes to remove the automatic exemptions in the Act for new pools to be built on very small, large and waterfront properties. This aims to ensure that all newly constructed pools are surrounded by a four-sided barrier with a self-closing, self-latching gate, and that the pool is separated from the house and adjoining properties and public spaces at all times.

The bill introduces a warning system so that pool owners are issued with at least 14 days notice prior to being formally ordered to fix a deficient barrier. This focuses on compliance rather than punishment to serve the bill's aim of keeping swimming pools safe. It also proposes that local councils be required to investigate complaints about possible noncompliance with barrier and other requirements under the Act. It requires that all councils undertake investigations within a reasonable time frame. It proposes that councils must commence investigation of a complaint received in writing within 72 hours where practicable.

The bill also provides councils with optional powers to enter a property and to undertake remedial work to rectify deficient pool barriers where non-action poses a significant risk to public safety and where the owner refuses, or is unable, to do the work. The council must provide notice of intention to do the work. The proposed amendments to strengthen pool barrier requirements deal with pools to be built in the future, not existing pools and those pools built prior to 1 August 1990, or pools built after that date on small, large and waterfront properties, including those built up until 1 July 2010.

It is a sad reality that in New South Wales drowning is the second leading cause of accidental death and a major contributor to childhood disability. Reports indicate that eight children under five years of age drowned in private swimming pools in New South Wales in 2007-08. Recent research into barriers around private pools has found that the risk of toddler drowning is significantly less in pools with stronger barrier requirements. I place on record the meeting crossbench members had with the Samuel Morris Foundation. Michael Morris's son, Samuel, was left severely disabled as a result of a hypoxic brain injury caused by a near-drowning incident. Samuel is currently in hospital for the thirtieth time. His hospitalisations have included six major surgeries to correct muscular-skeletal problems resulting from his brain injury and multiple admissions for respiratory and other complications.

According to the National Drowning Report, more than half of all children aged nought to four years who die due to drowning die as a result of accidents in backyard swimming pools. Figures from the Australian Institute of Health and Welfare research shows that for every drowning death there are between three and four hospitalisations as a result of near drowning, and one-fifth of those hospitalised will be left with some form of persistent and ongoing disability. New South Wales research suggests that for every drowning there are up to six hospitalisations. The most alarming study, conducted by the New South Wales Child Death Review Team, highlighted that drowning is the only cause of child death not to have experienced a significant decline over the decade covered by the report.

I do not oppose the main premise of the bill to protect toddlers and children from drowning in backyard swimming pools. However, I strongly believe that it goes no further in significantly addressing the increased number of child-drowning incidents in the State. Ongoing compliance inspection programs should be conducted by local councils, and pool owners should be required to complete a cardio-pulmonary resuscitation training

[CPR] course. One of today's newspapers contains an article about a girl who only last week did such a training course and who pulled her four-year-old brother who was drowning out of the backyard pool and gave him CPR. As a result, her baby brother is alive today. I support the bill and commend it to the House.

Reverend the Hon. FRED NILE [11.29 p.m.]: The Christian Democratic Party supports the Swimming Pools Act 1992 (Amendments 2009), which has arisen from discussions with the Royal Life Saving Society Australia, the peak pool safety group, and local councils, which are responsible for enforcing the Swimming Pools Act. The changes have their support. The object of the bill is to reduce child drowning deaths that occur in private backyard pools in New South Wales and to reduce the number of injuries to children who are prevented from drowning but who may have suffered brain damage or other medical effects as a result.

In the past, it was sufficient for pools to be enclosed by the fence that enclosed the house block. This is no longer adequate. The bill requires all swimming pools to have four-sided pool barriers or fences that isolate them from residences, regardless of their size or location. Until now councils have only inspected pools when there has been a change of ownership of a property, and on such an occasion they sometimes required the new owners to upgrade the pool fencing. I understand that some councils will require all pools to be inspected as a result of this legislation. An inspection fee of approximately $75 will be imposed and a certificate will be issued indicating that the pool satisfies the new legislation. The four-sided fence must be a minimum of 1.2 metres high and must have a childproof gate. We sometimes hear that a child has drowned in a pool because a gate has been left open by adults for their own convenience—for example, a brick may have been placed against the gate so that it would not close and a child has been able to enter the pool area.

The bill will remove automatic exemptions from four-sided barriers for new pools on large sites of two hectares or more, small sites of less than 230 square metres and waterfront properties. It will increase the penalties for non-compliance with fencing regulations with on-the-spot fines increasing to $550 and court imposed fines increasing to a maximum of $5,500. It needs to be clarified whether individuals will be warned if they are not meeting requirements and will be given time to erect fences or whether councils will simply fine individuals for not having erected a four-sided barrier or fence. There needs to be some room for councils to educate owners about their requirements and to give them time to erect four-sided fences. Perhaps councils could provide a sketch to owners to indicate where the fence should be located. Not all owners can make those decisions. Councils should be responsible for ensuring that owners are given clear instructions about how to erect a fence and where the fence should be located. I am pleased to support the bill and hope and pray that it will lead in future to fewer child deaths, which sadly has not decreased in recent years.

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.34 p.m.], in reply: I thank members for their participation in this debate. I also put on record the Government's appreciation of those who participated in the consultation processes that informed the bill. In particular I thank water safety advocate groups such as the Royal Life Saving Society of New South Wales, the local government sector, swimming pool industry groups, State Government agencies and individuals, including pool owners, who have provided comment on reform options. The Rees Government is committed to enhancing the safety of young children around backyard swimming pools. These amendments, together with appropriate backyard pool safety education, are the best means of achieving this.

A number of issues were raised during the debate that I will touch on briefly. The Opposition referred to exemptions. Research indicates that the risk of toddler drownings is significantly less in pools with more stringent barrier requirements. Pools on large, waterfront and very small properties all have less stringent barrier requirements that allow direct access from the residence to the pool area through child resistant doors. These pools pose an unacceptably higher risk of young children drowning. There is an urgent need to phase out the use of so-called child-resistant doors that allow direct access to a swimming pool from the house on properties with exemptions. In circumstances such as the need for disability access, pool owners will continue to be able to apply to their local council for a special exemption if they believe the barrier requirements are impracticable or unreasonable. The costs of removing automatic exemptions are far outweighed by the benefits of reducing the risk of a child drowning and having a consistent standard for all pools.

In relation to the necessity for automatic exemptions on large and waterfront properties, the Government understands that some people in the community argue that there are multiple risks on large properties, such as farms and waterfront properties. The Government agrees with this. On farms there are many risks for children, including dams, rivers, machinery, and hidden spaces where children can—and do—get up to mischief. On waterfront properties, a river, lake or beach is a clear risk. However, there are clear differences between these risks and those associated with swimming pools. The only purpose of a swimming pool is that

people use it to swim in and to relax and have fun. Further, in most cases, a swimming pool is in close proximity to a house. Young children soon learn this and, like many of the young children I know, will display amazing ingenuity to try to get access to the pool. Parents and property owners have a clear responsibility to manage all inherent risks to the best of their ability. For swimming pools this means four-sided fencing.

With regard to data suggesting that just as many children drown in non-exempt pools as in exempt pools, it is an indisputable fact that many backyard toddler drownings have occurred in pools that have some form of barrier in place. Drownings have occurred in pools that have some form of automatic exemptions to the general barrier requirements as well as in pools without such exemptions. While it is difficult to isolate the cause of these drownings, sadly most are associated with the child's natural inquisitiveness and ingenuity coupled with adult behaviour, such as a momentary lapse in supervision, propping open a pool gate, leaving a climbable object such as an upside-down bucket next to a pool fence, or not fixing a faulty latch, gate or barrier. What these drowning figures do not show is the number of young lives that have been saved since the general requirement for four-sided barriers to surround backyard pools was introduced in the early 1990s. This is particularly important when put in the context that there are estimated to be about 70 per cent more pools in New South Wales today than there were in the early 1990s when the Act was first introduced.

With regard to water safety education, the New South Wales Government provides more than $5 million over three years, and the Australian Government provides over $38 million over four years, to key water safety organisations such as the Royal Life Saving Society, Surf Life Saving and AUSTSWIM, which provide a broad range of water safety research, projects and education initiatives. Projects relevant to backyard pool safety for young children include the Royal Life Saving Society's Keep Watch Toddler Drowning Prevention public education program, which includes fact sheets on home pool safety, fencing, supervision and resuscitation as well as a home pool safety checklist for pool owners. National funding includes $4.2 million over four years to support initiatives to reduce drowning injuries and deaths in the 0 to 4 years age group. This includes the development and distribution of a water safety DVD.

Reverend the Hon. Dr Gordon Moyes asked whether CPR training could be mandatory. This issue was seriously considered by the Government; however, there was little community support for mandatory training and it was thought to be costly and complex to administer. Further, while it is important to encourage CPR, it is a measure that is effective only after a swimming pool barrier has been breached. The Government believes that money is better spent on community education and water safety awareness, which focuses attention on prevention rather than cure. I again thank members for their contribution to the debate and commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

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

VALUATION OF LAND AMENDMENT BILL 2009

Second Reading

Debate resumed from 12 November 2009.

The Hon. GREG PEARCE [11.39 p.m.]: The valuation system in New South Wales is complex and is based on fiction and a number of assumptions that have led quite a few people to believe there is a need for a

thorough and proper review of the valuation process, and potentially a review in relation to heritage aspects. The bill highlights that quite a useful series of provisions in the legislation recognise heritage land and the restrictions on it. The bill makes a number of changes to legislation relating to the valuation of heritage restricted land to confirm the previous practice of the Valuer General valuing heritage restricted land for rating and taxing purposes, which had come into question as a result of the Court of Appeal decision in *Valuer General v Commonwealth Custodial Services Ltd*. There is a corresponding amendment to the Heritage Act covering valuation of heritage listed land.

As is the case on many occasions when Parliament's fairly clear intention is overridden by a later case in which the court interprets legislation differently from what the Parliament intended, the course taken by governments is to introduce legislation to restore the status quo and to ensure that what the community, the Parliament and the Government had been acting on—in this case, for 30 years—continues. The Opposition accepts that in this case it is the most sensible way to proceed. Apparently there are around 44,000 heritage properties in New South Wales. The effect would be that the Valuer General would have to separately value each one of those properties taking into account the condition of the heritage structures on the property. That may or may not be a good idea in the minds of some people but it certainly would overturn 30 years of practice in New South Wales.

Section 14G of the Valuation of Lands Act sets out the methodology for valuing heritage restricted land based on a series of assumptions to assist a valuer of property to determine the highest practical use of heritage. A valuation under section 123 of the Heritage Act is made upon the same assumptions as section 14G of the Valuation of Land Act. The decision in *Valuer General v Commonwealth Custodial Services Ltd* concerned the valuation of heritage restricted land. If a property is heritage restricted the landowner can request the Valuer General to provide a heritage restricted valuation to reflect the restrictions on its use and future development. Such a valuation is usually lower than comparable land not subject to heritage restrictions. The Court of Appeal decision in *Valuer General v Commonwealth Custodial Services Ltd* considered the current wording of section 14G and concluded that the current condition of the building on heritage restricted land must be taken into account in a valuation assessment. The decision casts doubt on the validity of heritage valuations undertaken by the Valuer General over some 30 years, as I have already mentioned.

According to the Valuer General, the failure to amend the Valuation of Land Act would require separate valuations to be made for every heritage property in the State, creating enormous strain on the system and cost. As I was briefed today, one of the issues that a lot of people have not considered is that the New South Wales Valuer General does not have the database on the properties that would have to be valued to be able to make the sorts of assessments required. The Valuer General has never valued heritage restricted land in the manner described by the Court of Appeal, although we have had a system similar to the system in Victoria, a valuation system based on the improved value of land. That was changed in 1973, and to go back to that system would require a considerable review of the process.

The retrospective nature of the legislation has been a concern. It is technically retrospective in that it provides that the provisions operate from the time of the original legislation. The Legislation Review Committee has considered this and has found that there would not be any adverse impact on personal rights or liberties as a result of the bill. Accordingly, the Opposition does not oppose it.

Ms SYLVIA HALE [11.45 p.m.]: The Greens support the bill but we also support the proposition raised by the Hon. Greg Pearce that there be a review of the basis of land valuation. The basis for establishing land tax and municipal ratings is derived from the theories of Henry George and the single tax. Henry George, an extraordinarily influential thinker, believed that everything found in nature, most importantly land, belongs equally to all humanity. What individuals created individuals were entitled to retain, but the essential source of wealth was land. Because a lot of that common land had been alienated many thought the easiest way to ensure that the community as a whole benefited from the way that land was being used was to impose a land tax. He thought if the land tax was sufficiently large it would replace all taxes, and that notion became the basis of the single tax movement that was so influential certainly in the United States but also very much in Australia. I believe the Henry George Party still fares particularly well electorally in some States and provinces of the United States and Canada.

That said, it is clear that the prospect of individually valuing heritage buildings would be a very expensive exercise, and the way to approach this issue is to retain the status quo until such time as there is a genuine review of the basis for imposing land taxes and the rating system. It could well be that the approach of

Henry George is the most useful, fair and equitable approach. But until that sort of review is undertaken the Greens believe we should persist with the system that existed until the decisions of the Land and Environment Court and the Court of Appeal were made.

Reverend the Hon. FRED NILE [11.48 p.m.]: The Christian Democratic Party supports the Valuation of Land Amendment Bill 2009. This is a simple bill. Current valuations are made under the Valuation of Land Act and these operate in two ways. One relates to the land value only, or valuations are made using a mass valuation method. A recent court decision in *Valuer General v Commonwealth Custodial Services Ltd* has thrown doubt on the method of valuing heritage land, and there has been some discussion in the newspapers by people who have land on which there is a heritage building that this bill will lead to higher land taxes. Can the Minister confirm whether as a result of the legislation there will be an increase in the land tax on properties where there is a heritage building?

The Hon. Tony Kelly: There will be no change.

Reverend the Hon. FRED NILE: There will not be any increase. It is important to make that clear because a lot of people think there will be an increase as a result of the legislation. We are happy to support the bill.

The Hon. TONY KELLY (Minister for Primary Industries, and Minister for Lands) [11.49 p.m.], in reply: I thank all honourable members for their support for the bill. In relation to the matter raised by Reverend the Hon. Fred Nile, what the Hon. Greg Pearce has said is true. The bill will restore the way valuations have been done in the past, so there will be no increase in either the land tax or the rates paid on these heritage buildings but neither will there be a decrease.

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. Tony Kelly 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.

PUBLIC SECTOR RESTRUCTURE (MISCELLANEOUS ACTS AMENDMENTS) BILL 2009

Second Reading

Debate resumed from 12 November.

The Hon. MATTHEW MASON-COX [11.51 p.m.]: It is my pleasure to lead for the Coalition on the Public Sector Restructure (Miscellaneous Acts Amendments) Bill 2009. As members would be aware, the object of the bill is to amend various Acts as a consequence of the Public Sector Employment and Management (Departmental Amalgamations) Order 2009, which commenced on 1 July 2009, and implement further administrative reforms in relation to the public sector. Members would also be aware that most of the amendments made by the bill either update references to various divisions of the government service as a consequence of the amalgamations effected by the order or rationalise the way in which certain Acts are administered as a result of those amalgamations.

I note in particular that the bill gives effect to the Public Sector Employment and Management (Departmental Amalgamations) Order 2009, which commenced on 1 July, but it is also worth noting that this

order was not published until 27 July 2009. In any event, it was taken to have commenced 26 days earlier. I submit that this is testament to the very rushed nature of the Government's original announcement in this regard. In his second reading speech the Minister made the following statement:

> The changes are the biggest structural reform to the New South Wales public sector in more than 30 years and are designed to ensure a greater focus on delivering services to the taxpayers of New South Wales, to better integrate public services and to cut internal Government red tape. The Government is determined to have the best public sector structure to deliver better services for the people of New South Wales. The reforms will put clients first, remove the silos and artificial barriers between agencies, and make it easier for services to be delivered in a seamless way.

Let us examine some of these claims by the Minister and the Government in respect of these reforms, which are touted as the most significant in 30 years. It is interesting to note that if one was to contemplate reforms of this nature one would, of course, look very carefully at best practice in the public sector in other States. Indeed that would naturally be one's first inclination. Then one would look at the manner in which the public service works, examine all these things over a period of time and reflect upon the changes one might make and the implications of such changes. Through that process one would distil the best practice options available to the New South Wales public sector in a reform sense.

It is worth asking the question whether this Government went through a process similar in nature to the one I have outlined. The original announcement included a series of charts and diagrams, which I have been through in some detail with the Minister. He is very familiar with the colour coding of these diagrams, which were provided to him during estimates. On that occasion we had a very interesting dialogue about whether the Minister had received the various diagrams. I submitted at the time that the Queensland Government restructure, which concluded in April 2009, was in effect duplicated by the New South Wales Government restructure, which came out subsequently. The Minister made it clear during estimates that he had never seen the Queensland structure. It is worth reflecting on that and the similarities between the two structures. I will go through that in some detail.

The Hon. John Robertson: Hold it up and show it to me because I still have not seen it.

The Hon. MATTHEW MASON-COX: On that occasion I provided the Minister with a copy.

The Hon. John Robertson: That is right, you did too.

The Hon. MATTHEW MASON-COX: I will provide him with another copy and we can go through it together. I will table it at the end of the debate with the permission of the House, but I would like to go through a couple of interesting similarities.

The Hon. John Robertson: There is no colour on this copy.

The Hon. MATTHEW MASON-COX: I have only one colour copy, but I will show it to the Minister. The Queensland Government structure of April 2009 has six clusters and 13 departments, and reflects the whole range of ministerial seniority. The New South Wales Government structure does not call them clusters, it calls them policy groupings and there are six of them, surprise, surprise, and 13 agencies rather than 13 departments. There is a little nomenclature difference. The six areas of policy groupings are interesting. They are identical in both structures. There is policy and fiscal coordination; employment and economic development; social development; environment and sustainable resource management; law, justice and safety; and government services. That is fairly uncanny. One would guess there would be some similarities. It is interesting to note that the colour coding of each of the policy groupings is essentially the same on both the Queensland and New South Wales structures. That is probably explainable by itself, but when we add to that some of the nomenclature of the departments it is very clear that it is a lift. It is pretty much identical.

The reality is that the Government spent $15 million on consultants who were revealed by Seven National News to have taken 48 hours to find the Queensland Government website, change the structure a little so that there was some attempt at originality, and provide it to the Government, saying, "Here is your New South Wales Government restructure, compliments of Queensland. You had better go out there and flog it. Get the wheels spinning to make sure you have an announcement to sell to the media today and pretend you are doing something constructive for the people of New South Wales." It is a farcical attempt by the Government. The Minister has done an amazing job defending the indefensible and running the Government line against all the evidence that weighs heavily to the contrary. I seek leave of the House to table the documents that clearly show the similarities between the Queensland and New South Wales government structures.

Leave granted.

Documents tabled.

It is also very interesting to note that some of the accompanying documents, which I do not have with me today, have the same spelling mistakes as the Queensland documents—an uncanny similarity. I suppose they spell incorrectly in Queensland just as they do in New South Wales. The $15 million was not very well spent. Whilst we have clearly established that the reforms from Queensland were copied in New South Wales and that the Minister knew nothing, or next to nothing, about what was happening prior to the announcement by the Premier—which, whilst embarrassing, is the way this Government does business—the Government also claims that it is determined to have the best public sector structure to deliver better services. However, one must ask: If that is true, why has it taken so long for the Government to act? Labor has not been in office for a mere one or two years; it has been in power for 14 years.

A report by Stokes and Vertigan in 2006 made it very clear that there was a range of possibilities with respect to public sector reform that would realise very significant savings for the Government if it had the political will to make the changes. But the Government decided to do nothing in response to the Stokes and Vertigan report. The new Minister was appointed and given a hospital pass from the Premier in his rather cynical reshuffle. The Minister stood in the way of arguably the Government's largest proposed public sector reform—privatisation of the electricity industry—and so was given a hospital pass on public sector reform, along with privatisation. The Premier has a wicked sense of humour and the Opposition enjoys watching the Minister run the Government's line, despite knowing what he believes in his heart. We have heard the real story a number of times. On the night the Minister defeated the Government's electricity privatisation proposal we heard what he really thought about those plans. Yet he comes into this place splitting hairs about when privatisation is privatisation, when it is rationalisation, when it is a restructure or when it is outsourcing.

We have seen the Minister turning somersaults with respect to the privatisation of Parklea, and just about everything else he has been handed. He has done an amazing job defending the indefensible. I do not know how he comes into this place day after day, putting his integrity on the line every moment. I admire the manner in which he does it. I do not think I could do the same—but, then again, the Labor Party has ways and means of ensuring that discipline is maintained at all times, and I respect that. I understand that there are strong views in the Labor party room at the moment, which is good to hear. I understand in the Labor party room these days people are carrying not knives but machetes. That is good to hear too because a robust exchange of ideas is very healthy, even in a democratic entity as twisted as the Labor Party.

One would think the Government would know the savings that are likely to flow from these reforms, which are the most important in 30 years. We have put this question to the Minister on a number of occasions. We have tried to clarify precisely what savings might flow from these wonderful plans but we have received no answer. He merely says, "Trust me, we're going to get some savings because we're all about efficiency." Of course, clustering 100-odd agencies into six new groupings will result in savings, but what are they? We are told that there will be no forced redundancies—we cannot have that—and there will be efficiencies. The Government does not know where they will be, but when it finds those efficiencies they will apparently produce outcomes for the people of New South Wales that will mean a better service in the long run. The Better Services and Value Taskforce—I have to get my Orwellian nomenclature correct—is meant to drive all these savings. On the basis of these arbitrary efficiency dividends, we are meant to be driving forward public sector reform and producing massive savings for the public purse, which no doubt the Minister will inform us will be diverted to more deserving causes.

The reality is we have no details on the costings. There are vague ideas that they will be in the vicinity of 1 per cent or 2 per cent over time in relation to efficiency dividends but we do not have any hard numbers about what it will mean for the State's bottom line. It is another example of how the Minister has taken a hospital pass and had to run with the ball, defending the indefensible. Essentially he is paying a high price with respect to his own integrity by providing information to this place about the serious implications of these reforms. I can best summarise the conundrum we face in the following way: the Minister is asking us to blindly trust that the Government's restructure will deliver better outcomes in the face of overwhelming evidence to the contrary. The reforms have been copied from Queensland. It was a rushed decision that catered to the media's needs at the time. The Minister has had little or no involvement in the process. Indeed, he acknowledged during budget estimates hearings that the Premier had carriage of the matter. The Minister sat on an implementation committee subsequent to the decision and will implement the Premier's will.

We do not have any precise costings of the savings that will flow from the implementation of this plan and we have no real political will to make it work. There is no detail. It is just another media-inspired announcement by this hapless New South Wales Labor Government. In spite of all this, the Opposition will not oppose the bill as the Government has already implemented significant parts of its ill-conceived reforms. Instead, we will continue to watch the ongoing circus with bemusement, observe the clowns as they go through the motions and, in particular, stand united in our condemnation of this hapless Minister and this incompetent New South Wales Labor Government of which he is an integral part.

Dr JOHN KAYE [12.07 a.m.]: On behalf of the Greens I speak on the Public Sector Restructure (Miscellaneous Acts Amendment) Bill 2009. As the previous speaker alluded to, the bill is a tidy up that comes at the end of the merging of 160 government departments and other agencies into 13 super departments. It adjusts titles and responsibilities in a large number of Acts. The bill also dissolves the Wollongong Sportsground Trust and transfers the assets of the trust to the Illawarra Region Sporting Venues Authority. It also enables police and members of the NSW Fire Brigades and the State Emergency Service to be temporarily reassigned to the Department of Police and Emergency Services.

We understand that police officers will retain their powers during the transfer period. We have no objection to the idea of front-line officers being transferred to government departments on a temporary basis. In fact, it often produces far better decision-making within a department and better operation of front-line agencies. However, we raise the issue of maintaining the professional competencies of those front-line police officers and emergency service workers during the transfer period. We want to make sure that they maintain their professional competencies if they are with a department for any period of time.

The most positive and important aspect of this departmental restructure is the Government's guarantee that there will be no job losses. It is a positive aspect as long as it lasts. People in New South Wales do not want to see a further thinning out of the public sector, with the consequent loss of services that results. That guarantee will be honoured until the next election. The contribution of the Hon. Matthew Mason-Cox contained echoes of the Debnam plan to slash jobs. I cannot remember the figure that Mr Debnam used, but somebody who does remember might remind me.

The Hon. John Robertson: It was 20,000.

Dr JOHN KAYE: The Minister reminds me that it was 20,000 jobs.

The Hon. Charlie Lynn: That figure of 20,000 is a furphy.

Dr JOHN KAYE: The Hon. Charlie Lynn says that the figure of 20,000 jobs is a furphy. It might well have been a furphy but I recall standing in the hall at Randwick Boys High School when the then Leader of the Opposition was challenged about that figure of 20,000 during the 2007 election campaign and he failed to deny that 20,000 jobs would be lost.

The Hon. Mick Veitch: He failed to deny it?

Dr JOHN KAYE: He had an opportunity to deny it but he turned down the chance to deny that 20,000 public sector jobs would be lost. The Greens' concern remains. The Rees Government has left the public sector highly vulnerable to a round of job cuts after the next election.

The Hon. Charlie Lynn: You had better believe it!

The Hon. John Robertson: You should acknowledge Charlie's interjection, "You had better believe it."

The PRESIDENT: Order! I know that it is getting late but there are far too many interjections.

Dr JOHN KAYE: Thank you, Madam President; I appreciate your intervention. The Greens' concern remains. This is the first step towards a much bigger plan that will result in the public sector being slashed, with huge consequences for the public sector workforce and for the quality and quantity of public services that it provides. The importance of public services in this State, particularly for low-income communities, remains extremely high. The slashing of public sector jobs will inevitably mean that low-income and disadvantaged communities suffer at the end of the process. It will also damage the quality of policy advice and formulation, which will have a direct bearing on the quality of our democracy.

The Hon. Matthew Mason-Cox and media articles have referred to the quantum of savings from such a restructure. The Government said that it would avoid duplication and achieve some economies of scale, particularly in respect of support services such as information technology and communications. However, these administrative savings will probably be swamped by far greater costs associated with the restructuring of the departments and the moving around of individuals. At this stage it is not possible to state—only time will tell—whether there will be a net policy gain or a net loss to the New South Wales budget. It is something that all members need to watch carefully. When the change is implemented—it was described in the Minister's second reading speech as "the largest structural reform to the public sector in 30 years"—it is important to ensure that it does not result in massive job losses.

In June 2009 it was fascinating to watch "the largest structural reform to the public sector in 30 years" unfold. It did not so much unfold as burst forth onto the stage. According to widespread media reports, we suddenly had a restructure. There was no consultation about the advisability of such a restructure and there was no public consultation about the final shape of the bureaucracy. The public record shows that the Premier largely dry-gulched the public service and the Public Service Association. The announcement was made in the media on 11 June without any public consultation and without much consultation with the Premier's own Ministers. I believe that the Public Service Association was told only the day before.

When an area as large as the public sector is being restructured and massive changes are being made to the way in which it operates, it would be sensible to ensure, first, that such a change is necessary; and, second, that the change being made is appropriate. I am not impressed by the allegation that this was a copy from Queensland. One of the virtues of having States is their capacity to copy: One State innovates and the other States copy. However, I do not think that is the key allegation here. The key allegation is that there was inadequate consultation, or no consultation at all, and therefore the risk remains that this is a wrong restructure.

The Greens' second major concern about this restructure relates to the consequences of reducing diversity. Under Standing Order 52 the Greens recently obtained documents from the Department of Environment, Climate Change and Water that show a robust debate about Tillegra Dam occurred within the then Department of Water and Energy. That robust debate should have afforded the Government access to high-quality advice that would have avoided it making the terrible mistake that its commitment to Tillegra proved to be. Although the Government ignored it, the quality of the advice was achieved because New South Wales has a highly professional and highly intelligent public sector.

Because of the diversity of the public sector and its arrangements within different departments, it was able to view the Government's decision-making from a number of different perspectives. The Greens are concerned that creating 13 super departments will reduce the number of perspectives available to the public service, reduce the dynamic tension within the public service that leads to quality advice, and reduce the diversity that is so important in supporting decision-making. That diversity and that capacity for the public sector to hold a variety of opinions that can inform government and public decision-making is under threat because the Government is intent on reducing the number of departments. The Greens do not believe it is worthwhile objecting to this largely back-end legislation—the major restructure was done by administrative order. However, the Greens are gravely concerned about the way in which that restructure was planned and executed. The Greens are also concerned about the consequences of the restructure for public sector jobs and the services they support, for the quality of ongoing decision-making, and for the diversity of the public sector.

The Hon. JOHN ROBERTSON (Minister for Climate Change and the Environment, Minister for Energy, Minister for Corrective Services, Minister for Public Sector Reform, and Special Minister of State) [12.17 a.m.], in reply: I thank members for their contributions to debate on the Public Sector Restructure (Miscellaneous Acts Amendments) Bill 2009. As has already been mentioned, the Government's public sector restructure, including the creation of 13 super departments, is the biggest structural reform to the New South Wales public sector in more than 30 years. These changes are designed to ensure a greater focus on delivering services to the taxpayers of New South Wales, to better integrate public services, and to cut internal government red tape.

The bill is a necessary part of the Government's public sector restructure. However, it is essential for me to respond to a couple of matters raised earlier in debate. I refer, first, to the reference by Dr John Kaye to the slashing of jobs. The directors general of the agencies are consulting with the unions about these matters and the Government is ensuring that there are no forced redundancies. The Government is consolidating and freezing back-of-house engagements of people, and that process is being delivered effectively. I refer to the issues raised earlier by the Hon. Matthew Mason-Cox.

The Hon. Matthew Mason-Cox: We could be here all night.

The Hon. JOHN ROBERTSON: I am happy to keep going. I refer to the member's insightful comments about the Coalition's view on public sector reform and what that might mean. He expressed a view about job cuts and alluded to the fact that Max Moore-Wilton was sitting in the wings—in the unlikely event that the Coalition assumes office—with his plan in the bottom drawer and Barry O'Farrell's election plans in the top drawer. Nick Greiner made abundantly clear the strategies of a Coalition in Opposition in the lead-up to an election and what we might see after an election—that is, the top drawer, which has everything the Coalition talked about during the election campaign, and then the Coalition pulls out the bottom drawer and tells people the realities of—

[*Interruption*]

The Coalition has secrets. With regard to the Hon. Matthew Mason-Cox's suggestion that the legislation was copied from Queensland, I remind the honourable member that public sector reform is not a colour-by-numbers exercise. This is not Queensland: we are not improving services in Queensland. The New South Wales public sector restructure is focused on New South Wales; it is targeted at ensuring that we are delivering better value for services for the people of New South Wales.

The final point I make in relation to consultants is that the Government is committed to cutting the fat: we are making sure that we commit as little funding as possible to this whole process. But the cost of getting it wrong would be far greater than the initial outlay of engaging the consultants. The Government is determined to have the best public sector structure to deliver better services for the people of New South Wales. 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. John Robertson 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.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 23 postponed on motion by the Hon. John Robertson.

ELECTRICITY SUPPLY AMENDMENT (SOLAR BONUS SCHEME) BILL 2009

Second Reading

Debate resumed from 12 November 2009.

The Hon. CATHERINE CUSACK [12.22 a.m.]: The Electricity Supply Amendment (Solar Bonus Scheme) Bill 2009 seeks to establish a gross feed-in tariff lasting seven years for small-scale solar photovoltaic panels and wind turbines commencing on 1 January 2009. The scheme will pay 60¢ per kilowatt for all electricity generated by systems of up to 10 kilowatts by residential households, small businesses and community groups. It will increase the uptake of small-scale renewable energy in the community.

Feed-in tariffs exist in around 50 countries in the world, and in most Australian States and Territories. The Australian Capital Territory is the only jurisdiction in Australia that currently has a gross feed-in tariff. It is

important to understand the difference between a gross feed-in tariff and a net feed-in tariff. A residential household with solar panels will use much of the energy being generated by the panel. Most households will need to draw extra electricity from the grid. A net tariff, which was the Government's policy up until a few days ago, pays a consumer who uses less electricity than they are generating for the electricity they are feeding back into the grid. It is a miserly policy that penalises people who are users during the day—and that tends to be people who are not working and who are generally on lower incomes.

A gross feed-in tariff pays people for all the power they generate, including the power they use. A gross feed-in tariff recognises that those who generate renewable energy are assisting the State in avoiding the immense infrastructure costs associated with building a new coal-fired power station. We do not want any more of these facilities, because they are escalating our greenhouse gas emissions at a time when we are trying to reduce them. Secondly, the cost of construction will dramatically increase the cost of coal-powered electricity. A gross feed-in tariff makes it cost effective for consumers to make the switch to renewable energy: it relieves pressure on the grid, helps the environment and is the way of the future. A net feed-in tariff, which was the previous Minister's policy, is too miserly to make the necessary difference.

Globally, feed-in tariffs make a more secure environment for investment in renewable energy industries—reducing costs through economies of scale and by providing stable investment patterns, and creating jobs in green manufacturing, servicing and finance. For this reason the Liberal Party and The Nationals have long advocated a gross feed-in tariff. However, the rules of the scheme as outlined in the bill are not at all what we had envisaged. In spite of our concerns, which I will outline in a moment, we will not oppose the bill, because despite the flaws the bill is better than nothing at all. If we are to have a Solar Bonus Scheme effective as from 1 January, then this is it, so we really have no alternative but to allow it.

I have consulted widely on the proposed scheme, and the overwhelming view of the solar industry is that this is one of the shortest, strangest and most oddly cobbled together schemes the world has seen. The renewable energy industry that the Coalition has championed acknowledges that the bill is a step in the right direction but it is poorly crafted. It is evidence of a Minister for the Environment and Climate Change who is in a hurry to try to change his Government's image but who does not really care enough about the outcomes to get it right.

This bill contains all the parts necessary for a government media strategy—it contains the words "gross feed-in tariff" and the amount "$0.60". Interestingly, the Government accused the Opposition of not having a policy and only having a press release. Concurrently, when the solar industry and my office sought the bill, there was no bill but only a media release. We, on the other hand, had released our policy, we had released modelling, and we had been in consultation with the industry and communities across the State. The industry has been frank that there ought to be changes to the bill, to bring it more in line with Coalition policy. The Coalition's position is that such changes should occur after the statutory review, which is a positive feature of the legislation.

The bill will provide a boost to the uptake of panels, especially those smaller than three kilowatts, with a payback period of as little as 2½ to four years, depending on system sizes and the price of renewable energy certificates. Compared with the net feed-in tariff the Government had adopted until its backflip, this scheme is an improvement. That being said, the concerns of the industry have been voiced loud and clear. First, the scheme is unambitious. It excludes the commercial property sector, larger systems, and many innovative technologies that could slash our State's emissions. Secondly, the scheme is unbalanced. It is a top-heavy, front-loaded feed-in tariff that offers massive benefits for those in the first few years and little for those in the final years. This means it could produce temporary growth, rather than long-term growth, in the solar industry. Some parts of the industry fear that a bust might follow a boom. Thirdly, the scheme lacks the degree of nuance that allows it to drive constant efficiency gains in the solar sector over the medium term that will give New South Wales a competitive advantage in renewable energy.

Due to many years of shifting grants and incentives, some of which open and close after an hour's notice, the renewable sector has been at the mercy of shifting, and at times erratic and contradictory, State and Federal government policy. The one thing above all that the industry has called for is certainty to invest. There are two principal policy mechanisms driving the change we have to make towards renewable energy. These mechanisms are, first, a renewable energy target, which would ensure that a given percentage of our energy needs came from renewable energy and, secondly, a feed-in tariff, which would allow decentralised generation and innovative technologies to become a part of our energy mix.

Late last year the Coalition publicly stated its support for a feed-in tariff for renewable energy generation, particularly for solar. Earlier this year we released more details, affirming our support for a gross

feed-in tariff and outlining the principles upon which we would establish one. This policy was developed after long consultation with the renewable energy sector and on the basis of modelling by Access Economics. Compared with other States, New South Wales was dragging its feet on announcing a feed-in tariff, with incessant delays and blown timelines. The task force charged with looking into a feed-in tariff had its report and decision withheld and delayed. The solar industry was deflated when the Government finally got around to announcing a net feed-in tariff on 23 June 2009. This also pushed back the commencement of the scheme by six months—yet more delay for a sector crying out for certainty.

The Government's position on a feed-in tariff reached a point of high farce when the previous Minister for the Environment and Climate Change quoted a cost of $220 per consumer for the Coalition's policy as an argument for opposing a gross feed-in tariff, despite the reputable modelling the Coalition had produced putting the cost at a fraction of that. This unprecedented $220 cost was reached by selectively quoting and reinterpreting a press release. Despite a freedom of information request and questions during the budget estimates process—where the Department of Climate Change and Environment pleaded ignorance as to the source of these statistics—the Opposition has yet to see the flawed arithmetic quoted by Minister Tebbutt. The solar industry was gobsmacked that the Government could get the details so wrong and shocked at the flagrant disregard for the industry.

As I said when this policy was announced, imitation can be the most sincere form of flattery. This policy is a massive vote of confidence in Barry O'Farrell by the Minister for Climate Change and the Environment, and Minister for Energy, who has favoured the Opposition's policy over that preferred by his predecessors Verity Firth and Carmel Tebbutt. The fact that we are debating this bill proves one thing above all else: The Coalition has been correct all this time, despite the protestations and the outrageous claims of the many environment Ministers. The Coalition is delivering the ideas and policies this State needs. This bill is part of a growing list of stolen promises: the south-west rail link, donations reform and now a gross feed-in tariff.

The Government was wrong when it announced a net feed-in tariff. Because it was wrong many thousands of families who were required to install meters compatible with the proposed net feed-in tariff will have to pay from $90 to $300 to replace those meters so they can benefit from the gross feed-in tariff scheme. This fiasco is the direct result of the Government's failure and backflips. The bill recognises the problem by providing for a maximum six-month transition period for Country Energy and other energy providers who have been misled into installing meters. No doubt Country Energy will use every single day of that six-month grace and its customers will not be able to access the scheme's benefits until 1 July 2010. Lost income of up to $700 per customer plus up to $300 for the cost of the new meter totals a potential $1,000 loss directly due to the incompetence of this Government. How unnecessary and how frustrating for those customers.

The task force report released on 23 June 2009 did not model actual uptake for each of the 10 scenarios. Instead, it modelled the costs of the various scenarios on the basis of two uptake levels: high and low. In our briefing we were assured that more modelling was undertaken but, understandably, we are concerned that this modelling has not been made public or scrutinised. Our advice from the Minister's office is that the impact on household energy bills will be $12.70 in the seventh year of the scheme. The Government should release more modelling immediately, if it exists. As the Minister's selective quoting of press releases in this place on the day of the announcement shows, the devil is in the detail of the scheme. This is epitomised by his selective quoting of the Property Council press release and for good reason. The press release is titled "Gross Feed-in Tariff—One Step Forward, Two More to Go". Those two further steps are the inclusion of the commercial property sector investing in larger systems and the exclusion of other technologies, which are both part of the Coalition's policy. The press release stated:

> The decision to limit the scheme's scope risks undermining the sensible objective of giving New South Wales a substantial competitive advantage in renewable energy.

The commercial property sector has been an important part of the Liberals-Nationals gross feed-in tariff scheme and will be part of its policy at the next election. To genuinely achieve transformational change to renewable energy, why exclude the larger, more efficient investments from the commercial sector? There is no rational answer to that question. It would be hypocritical of us to support amendments that have not been modelled. We have centred our policy on a gross feed-in tariff that provides certainty for investment and is properly tailored for technology and type. The Greens proposed amendments are, in a sense, populist, but there is no modelling or explanation for how they will be paid.

Paying everyone for everything is a politically romantic story, but it is not logical; nor is it a fair proposition in economic reality. Therefore, we cannot support the amendments. In my experience, a lack of

legislative modelling is rarely improved by a lack of modelling of amendments. I put a caveat on that with one important statement: any changes the Coalition undertakes will not make existing scheme participants worse off. Certainty is the key. Certainty means that no changes should be retrospective. That is why we will stick to a policy process that is evidence based and thoroughly researched. The two Greens amendments seeking to expand the scheme have two effects. First, they will allow participants who join in the seventh year of the scheme to get seven years of tariff—this is called fixed participation. Secondly, they will extend the scheme further past its original ending date until a rate varied by regulation.

The Coalition prefers fixed participation in conjunction with an appropriate tariff. We believe this would ensure that the renewable sector grows strong and is more competitive. The reason we cannot support these two amendments is simple: they have not been modelled. However, even without modelling, a person entering a scheme in 2017 getting seven years at 60¢ would be receiving an excessive subsidy. We sympathise with the Greens and their concerns because, unlike the Government, they have been more interested in the long-term future of the renewable energy industry, not just the politics of this policy. We believe the scheme can be improved and ought to be after the statutory review. We will take such improvements to the people at the next election.

The Minister often accuses the Coalition of being insincere on the environment. This is hypocritical when he introduces a bill that is a flagrant copy of the Coalition's policy and for which he has not done his homework to get the details right. We welcome this bill because at last the solar industry gets what we have been fighting for for such a long time—a gross feed-in tariff, albeit one with significant flaws. Finally there will be a degree of certainty with decent incentive. I foreshadow that during the Committee stage the Opposition will move one procedural amendment that relates not to the substance of the scheme but to its transparency and reporting. Our relief to see this bill finally before the House is tempered by the knowledge that it is imperfect and, like so many other things in this State, it will be up to the Coalition to fix.

Dr JOHN KAYE [12.36 a.m.]: On behalf of the Greens I contribute to the debate on the Electricity Supply Amendment (Solar Bonus Scheme) Bill 2009. After a long debate the Government was unable to sustain the argument for a net feed-in tariff. Eventually it had to cave in to pressure from the industry, environment groups and even the Property Council and recognise the need to pay for all of the energy generated by solar panels and other smaller renewable energy systems in order to remove the income stream uncertainty. The overwhelming problem with a net feed-in tariff, which was announced in June 2009, was that it created huge uncertainty in the income stream. The income stream from the feed-in tariff would be a direct function of the amount of energy consumed on premises. The more energy consumed the less the income would be, making projects effectively unbreakable.

On behalf of the Greens I pay tribute to the organisations and people who fought valiantly for a gross feed-in tariff. My former colleagues from the University of New South Wales Centre for Energy and Environment Markets, Robert Passey and Muriel Watt, led the intellectual argument for gross feed-in tariffs. Andrea Gaffney from the Clean Energy Council undertook valiant lobbying. Organisations such as Greenpeace, the Clean Energy Fraternity, the New South Wales Nature Conservation Council, the Property Council—it is unusual for the Greens and the Property Council to be on one side of the debate, but it certainly happened in this case—and, indeed, Unions New South Wales, an organisation somewhat familiar to the current Minister, all worked hard to pressure the Government into making the sensible decision. Nonetheless, in June 2009 a net feed-in tariff announced by a new Minister showed a preparedness to at least appear to be doing the right thing for the environment. That decision was reversed with the announcement of a gross feed-in tariff.

The announcement had many positive features. Indeed, the gross feed-in tariff argument in New South Wales and the Australian Capital Territory, but sadly not elsewhere around Australia, has now been won. The need to create certainty so that these projects become bankable has won the day. New South Wales has a gross feed-in tariff and 60¢ a kilowatt hour is a sensible figure to support particularly photovoltaic power. Combined with the renewable energy target scheme of the Federal Government, this will make projects bankable and affordable for at least those who can provide cash upfront.

To make the scheme equitable a number of other steps need to be undertaken: first, to provide capital to low-income households that cannot marshal the capital but could afford to pay for the panels over a period of time; and, secondly, to deal with renters who obviously cannot put the panels on roofs but who should have access to the scheme. The scheme covers solar power and small wind power, which is also a big tick. So the obvious headline issues got the big tick. Indeed, a number of organisations gave the scheme a big tick before they carefully looked at the details.

The scheme was announced as a seven-year scheme. In argument in favour of one kind of seven-year scheme, it is probable that the economics of photovoltaics will have changed quite dramatically. That sounds okay but in reality it is not a seven-year scheme. The scheme has a drop-dead date of 31 December 2016. That means if you were to install a panel on your roof on 30 December 2016 you would get just one day of this tariff. If you were to install a panel on 31 December 2015 you would get just one year. Effectively, every year you wait to install a solar panel on your roof the effective annualised rate of the feed-in tariff goes down by 14.28 per cent per year—that is to say, in the language of the industry, the scheme has a degression rate of 14.28 per cent. That would only make sense if one felt the capital cost of solar panels and the associated equipment was falling at a rate of 14.28 per cent per annum, such that in about three years time solar photovoltaic was economically competitive against fossil fuel electricity without the support of a feed-in tariff.

It would be very nice to believe that were the case. I would like to have the optimism in the technology to say that there will be breakthroughs both in cell design and in panel manufacture that will deliver those kinds of cost reductions. However, the history of the industry simply does not support that. The historical changes in costs in the industry simply do not support the argument that in three years time solar panels will be cost-effective without the support of feed-in tariffs in New South Wales. Nor does it support the argument that costs are falling at a rate of 14.2 to 14.3 per cent per annum.

In fact, the bill will leave households and the entire industry stranded in about two to three years time. This will be the boom and bust bill. The bill is not even as good as Joseph's interpretation of the Pharaoh's two dreams that promised the people of Egypt seven good years followed by seven lean years. At best, this bill will give the solar industry two good years followed by many bad years. Boom and bust is about the last thing that the solar industry needs. The good news story for the Government is that in the lead-up to the election it will be able to point to the figures to show that the industry is doing extremely well and, no doubt, the industry will go into a massive boom.

We have all talked to people in the solar industry. I have friends who work in the solar industry. Many of my former colleagues have also done work in the solar area. Two years is better than nothing—hence the Greens support of the bill—yet two years is not enough to drive a sustained cost reduction around the industry to make it cost competitive. Two years is not enough to provide, as part of a global effort, the input to research and development that is so desperately needed to bring the costs down. Two years is not enough to provide incentives for long-term investment in balance-of-system manufacture, in research and development and, hopefully, in panel manufacture in New South Wales.

Two years will produce two good years of figures so the Rees Government can go to the next election and wave its green credentials about. Green is not just about doing the right thing for a few minutes; green is about a long-term commitment to developing an industry that will sustain itself over the next decades. This bill will not deliver that. This bill will deliver boom and bust but not long-term sustained growth for the industry. It will not deliver the jobs potential, the greenhouse gas potential and the potential for instilling confidence in the people of New South Wales in a solar future. What was really needed to create a secure future for the solar industry was some planning that looked at providing security to the industry so it could invest in training personnel and it could invest in equipment and manufacture.

It is hard to believe that it would be an accident that the Rees Government's policy will deliver a boom that will be in full flight in March 2011. It is cleverly designed so that the installation and the health of the industry will reach a crescendo at the next election. It will leave a wasteland in seven years time. It is a challenge to the Opposition to put their vote where their rhetoric is. I am fascinated by the Opposition's continuation of the idea that Barry O'Farrell produced the world's first policy on gross feed-in tariffs. It will come as a great surprise to German Social Democratic Party member Hermann Scheer and German Greens member Hans Joseph Fell, who designed a law nine years ago, which came into effect on 25 February 2001, for the world's first gross feed-in tariff. It was not Barry O'Farrell, it was not the Coalition, it was not the Greens in Australia; it was people in Germany who had thought long and hard about how to secure a long-term future for the solar industry, who came up with the idea of gross feed-in tariffs. A combination of the Social Democratic Party and the Greens in Germany pushed through a law, a law that has thrown Germany into a long-term sustained growth in solar installations—

Reverend the Hon. Fred Nile: A Christian Democratic Party government.

Dr JOHN KAYE: The Reverend the Hon. Fred Nile claims it was a Christian Democratic Party government. It was not. The law was passed during the time of the Coalition Government between the Social

Democratic Party of Germany and the German Greens. It was actually opposed by the Christian Democratic Party at the time. The current Christian Democratic Party in Germany—which I do not think shares much in the way of ideological or spiritual values with Reverend the Hon. Fred Nile—probably does support it but it is a different kind of Christian Democratic Party.

It is a challenge to the Opposition to support the Greens amendments to secure more than just a boom and bust, to make it more than an election gimmick, and to work towards a long-term future for the industry: a long-term future for the industry that includes all the development of a robust installation industry, the development of marketing, research and development and, in the medium term, balance-of-system manufacture—manufacture of not just the inverters but also the roof mounting systems, many of which have been innovated in Australia and many of which could, if we get the settings right, become the basis of export potential for the rest the world. Hopefully, it will also include the basis for manufacturing cells and panels in Australia, although time is running out. The sands of time have probably run through on that hourglass. We have probably missed the opportunity, because after years of neglect there are other countries around the world that have probably perfected the process and we have probably lost the opportunity. Nonetheless, we should have one last try at bringing back the sole manufacture industry to Australia. While the current bill has some laudable features, in the end it is a triumph of spin over substance—

The Hon. Catherine Cusack: Barry O'Farrell definitely invented that.

Dr JOHN KAYE: It has been noted by the Opposition spokesperson that Barry O'Farrell invented spin over substance, and for once I find myself in furious agreement with the Opposition: he was the man who created spin over substance! The Greens amendments seek to fix four of the key problems with the bill. First, we want to offer seven good years for every eligible generator installed in the period leading up to 31 December 2016. Secondly, we want to extend the scheme beyond 31 December 2016, but I think we were misquoted in the way the Opposition spokesperson referred to this issue. Our amendment allows the rate of the gross feed-in tariff to be set by regulation, which means that from 2016 onwards there will still be, under the Green's proposal, a gross feed-in tariff.

The Hon. Catherine Cusack: To 2023.

Dr JOHN KAYE: Yes, to 2023, but at a rate set by regulation. That will be a rate that we can adapt as we move towards 2023, and presumably that will fall back by 2023 to the retail rate. In other words, as the industry becomes more cost-effective the rate will reduce to nothing at all. Thirdly, we wish to make it absolutely clear that in a situation in which the income from a generator during one billing period exceeds household consumption the money would be paid directly to the generator and not held as credit. This is very important because it will make projects bankable. Fourthly, we would provide public access to the data. The Greens intention is not to play politics or even populism with this bill. Our intention is to create a secure future for solar energy in New South Wales and turn spin into substance.

The Hon. JOHN ROBERTSON (Minister for Climate Change and the Environment, Minister for Energy, Minister for Corrective Services, Minister for Public Sector Reform, and Special Minister of State) [12.51 a.m.], in reply: I thank members who contributed to debate on the Electricity Supply Amendment (Solar Bonus Scheme) Bill 2009, which seeks to amend the Electricity Supply Act to allow for the introduction of the New South Wales Solar Bonus Scheme. Our Solar Bonus Scheme offers the people of New South Wales the best incentive in Australia to install small-scale solar photovoltaic systems and wind turbines.

The Government's goal for the Solar Bonus Scheme is to accelerate the deployment of at least 50 megawatts of capacity in distributed micro-renewable energy generation in New South Wales. Fifty megawatts of capacity will more than triple the existing capacity of small-scale solar photovoltaic systems in New South Wales. This is an ambitious goal and equates to approximately 33,000 new customers with average sized 1.5 kilowatt solar panels on their roofs. This is part of the Rees Government's plan to make New South Wales the greenest State in Australia.

A review of the scheme will occur in 2012 or when capacity reaches 50 megawatts, whichever occurs first. This will allow the Government to explore opportunities for adapting the scheme to any changes that have occurred since its commencement. If the review finds that the scheme is not tracking towards achieving this capacity target prior to its expiry serious consideration will be given to adjusting the parameters of the scheme to ensure that this target is achieved. If the capacity target has been achieved at the time of the review the scheme's levers may be adjusted to ensure that excessive costs are not imposed on energy consumers as a result of the scheme.

I will deal briefly with other matters raised during debate. First, I will deal with matters raised by the Hon. Catherine Cusack. The Government's switch to a gross scheme is something for which we make no apology because it involves the establishment of three of the most generous tariffs in the country. Feedback from the industry has been overwhelmingly positive. Our scheme is designed to jump-start the industry, not to entrench reliance on subsidies. That is why the benefits are concentrated in the critical early years. In relation to those who have net meters, they would always have had to install another meter or metering element. Customers of Country Energy and EnergyAustralia have only had the option of net metering in the long-established programs in those networks.

In response to issues raised by Dr John Kaye, I point out that access for people on low incomes is something we expect the market to go a long way towards providing when it comes to finance. The Government will be keeping a close eye on equity of access to the scheme. The seven-year scheme design is no mistake. I am advised that photovoltaic manufacturers are telling us they expect grid parity within three to seven years. We do not pretend to be able to tell the future of a rapidly changing industry. In the Government's view it is far better to provide certainty that can be delivered rather than promise decades of subsidies. We want to establish an industry and let it stand on its own two feet.

When the Government reviews the bill in 2012, or when 50 megawatts of installed capacity is achieved—which, as I have already stated, will be more than a tripling of capacity—a comprehensive review of adjustment of the scheme can and will be undertaken. The Government's Solar Bonus Scheme places New South Wales in a prime position to make a meaningful and significant contribution to the clean energy revolution. It will begin to chart a course towards achieving an expanded national renewable energy target of 20 per cent by 2020. This Solar Bonus Scheme forms the first plank of the Government's clean energy platform. Our clean energy policy will comprehensively address the State's transition to a low-carbon future. The Solar Bonus Scheme will deliver a very real boost to jobs in the renewable energy sector.

On 10 November this year Modern Solar announced that, as a result of the introduction of the Government's announced seven-year gross feed-in tariff, it expects to double its workforce from 200 to 400 in New South Wales alone. This sentiment was echoed by Unions New South Wales, which noted that the Government's scheme would "spark an explosion in clean energy jobs". The Solar Bonus Scheme will be a transformational event for the New South Wales solar energy industry. I urge members to support this important bill.

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.

Dr JOHN KAYE [12.57 a.m.]: I move:

Page 4, schedule 1 [1], proposed section 15A. Insert after line 39:

(8) The Minister is to cause a copy of any report provided to the Minister under subsection (7) to be tabled in each House of Parliament within 14 days after the Minister is provided with the report.

(9) If a House of Parliament is not sitting when the Minister seeks to table a copy of a report, the Minister may present the copy to the Clerk of the House concerned.

(10) The copy of the report:

(a) is, on presentation and for all purposes, taken to have been laid before the House, and

(b) may be printed by authority of the Clerk of the House, and

(c) if so printed, is for all purposes taken to be a document published by or under the authority of the House, and

(d) is to be recorded:

(i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and

(ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the copy by the Clerk.

This amendment takes the six-monthly data provided by the distribution network service providers to the Minister and causes it to be tabled in this Parliament, hence becoming publicly available. There are three distribution network providers—EnergyAustralia, Integral Energy and Country Energy—which are required by proposed section 15A (7) of the bill to report to the Minister on a six monthly basis the number of small retail customers who have connected eligible systems, the postcodes of the areas in which the retail customers are located, the total number of kilowatts installed, the total number of kilowatt hours in the previous 12 months, and other matters prescribed by the regulation. That will provide a fairly comprehensive snapshot of what is happening across the distribution network service provider franchise in New South Wales.

The amendment will ensure that the Minister, having received the data, which the Minister does under proposed subsection (7), would be required to table the data on a six-monthly basis. There is no additional work for the Minister. By legislation, those reports will be provided to the Minister. All the Minister has to do is table copies. The amendment will ensure public accountability. The public will be able to assess on a rolling six-monthly basis the success of the scheme. The Government should support this amendment. In the first two years of the scheme it will be good news stories for the Government. It will show a healthy and robust scheme. It will show that the scheme is doing what it was designed to do—that is, encourage the installation of solar panels across New South Wales.

It is likely that it will show a dramatic decline in the installation of solar panels after about 2011 or 2012. That is a matter of public importance that will require debate by all the people of New South Wales. This amendment will provide an important and low-cost measure of public accountability. It will allow for various energy experts around New South Wales to analyse the data and make commentary on the scheme. It will provide for a much richer debate about the future of the solar industry. The Greens urge all members of the House to support this amendment to ensure full accountability and that the reports do not just sit in the Minister's office.

The Hon. JOHN ROBERTSON (Minister for Climate Change and the Environment, Minister for Energy, Minister for Corrective Services, Minister for Public Sector Reform, and Special Minister of State) [1.01 a.m.]: The Government opposes this amendment. We believe the reporting requirements are unnecessary. The scheme will be reviewed at 50 megawatts or 2012, whichever comes first, and the report will be provided to the House.

Question—That the Greens amendment be agreed to—put.

The Committee divided.

Ayes, 4

Dr Kaye
Ms Rhiannon
Tellers,
Mr Cohen
Ms Hale

Noes, 27

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

Question resolved in the negative.

Greens amendment negatived.

Dr JOHN KAYE [1.09 a.m.]: I move:

Page 5, schedule 1 [1], proposed section 15A (9), line 4. Omit all words on those lines. Insert instead:

(9) The rate at which a credit is to be recorded under subsection (5) (the ***feed-in tariff rate***) may be varied by regulation for electricity supplied on or after 1 January 2017, but the operation of such a variation is subject to the following qualifications:

(a) the variation does not take effect earlier than 12 months after the Minister publishes notice in the Gazette of a proposal to implement the variation,

(b) the variation does not affect the feed-in tariff rate applicable to electricity supplied during the first 7 years after a complying generator is installed and connected if the generator is installed and connected on or after 1 January 2017 and on or before 31 January 2023 and the variation takes effect after the generator is installed and connected.

This amendment seeks to extend the life of the scheme to 2023, not with a feed-in tariff rate set at 60¢ a kilowatt hour but at a rate that is set by regulation after 2017. Therefore, it allows for the rate to decrease with time as the cost of installing panels goes down. The industry refers to this as degression. It means that while the rate is fixed at 60¢ a kilowatt hour until 1 January 2017, between 2017 and 2023 it is possible to reduce the rate, maybe even back down to the retail purchase rate. Effectively, that would mean there is no feed-in tariff if the economics of solar panels improve to the point that they can stand on their own without the assistance of a feed-in tariff.

To this extent the amendment is symbolic. A malign government could set the feed-in tariff rate at 16¢ a kilowatt hour after 1 January 2017 and make it meaningless. The amendment has important symbolic value, and that important symbolic value is the statement of a commitment to the long-term future of a solar industry in New South Wales. The aim of the Solar Bonus Scheme should be to allow long-term investment, perhaps not by providing the same level of support all the way through to 2023 but by saying that the Parliament is committed to supporting the industry at a level to ensure that it is economically successful and viable so that participants in the industry can invest in plant, training and personnel to bring about the jobs boom that could eventuate if the Solar Bonus Scheme is properly structured.

The Hon. JOHN ROBERTSON (Minister for Climate Change and the Environment, Minister for Energy, Minister for Corrective Services, Minister for Public Sector Reform, and Special Minister of State) [1.11 a.m.]: The Government opposes this amendment. The amendment would remove the provision to repeal the Solar Bonus Scheme on 31 December 2016. As a result, the scheme would become an ongoing commitment with no end date. An ongoing feed-in tariff scheme is an unprecedented move that does not feature in any of the State schemes across Australia. It would dramatically increase the costs of the scheme and deliver windfall gains to owners of eligible renewable energy generators at the expense of New South Wales electricity customers.

An ongoing scheme would create unrealistic expectations for customers of guaranteed premium payments on an ongoing basis when it is possible that the scheme could well be substantially amended or removed by subsequent Parliaments in later years. Any extension of the Solar Bonus Scheme beyond the seven-year period outlined in the bill is too long in today's rapidly changing environment. A scheme duration beyond seven years is unnecessary, given that the price of renewable energy technology is widely anticipated to drop in time, as, too, is the level of support needed by the renewable energy industry. The Government has worked to ensure that any changes to businesses' existing operations are minimised, and this will keep costs down for energy customers.

Dr JOHN KAYE [1.13 a.m.]: I urge the Minister to read the amendment. He made two substantial errors of fact. First, the scheme is not ongoing with no end date. The end date is 31 January 2023, which is a long way away from saying that there is no end date. Secondly, the Minister said that the scheme is open-ended. It is not open-ended at all. The rate paid for systems installed after 1 January 2017 but before 31 January 2023 would be set by regulation. That means the Government would set the rate, and it could set the rate as low as it cared to do. The amendment is not about an open-ended, ongoing scheme. Perhaps the Minister was reading his notes for a different amendment. The statements he made about this amendment were wrong. I ask the Minister to read the amendment and perhaps correct the things he said for the record.

The Hon. JOHN ROBERTSON (Minister for Climate Change and the Environment, Minister for Energy, Minister for Corrective Services, Minister for Public Sector Reform, and Special Minister of State) [1.14 a.m.]: As I said, the Government opposes the amendment.

Question—That the Greens amendment be agreed to—put and resolved in the negative.

Greens amendment negatived.

Dr JOHN KAYE [1.14 a.m.]: I move:

No. 1 Page 5, schedule 1 [4], proposed section 34A. Insert after line 18:

(2) If the amount payable by a small retail customer in any billing period is less than the amount of credit recorded under section 15A for electricity supplied by the customer, the retail supplier must pay an amount representing the balance of the credit to the customer and not use the balance of the credit for the purposes of reducing an amount payable by the customer in a future billing period.

The intent of this amendment is to ensure that if an eligible generator earns credits that are greater in value than the retail customer's bill then the surplus is paid to the customer, not kept by the retailer as a credit. The bill as it stands is highly ambiguous. Proposed section 34A allows the retailer either to pay the credit amount or to reduce the amount payable. No doubt the Minister will argue that regulations will fix this and we should trust that the Minister will do this the right way. The Greens are concerned that if this is done the wrong way, if the retailers are allowed to hold as a credit the money earned by a generator when it exceeds the amount of the bill, then the benefits of the solar panels will not accrue.

The whole point of having a feed-in tariff is to ensure that people can afford to service the loan on the solar panels. Solar panels are up-front capital intensive. For the scheme to work, it is important that the money go directly to the participant so that the participant can service the loan. If the money is held by the retailer, as the bill in its current form would allow, it will cripple the scheme and undermine its effectiveness. We urge the Committee to support this amendment, which will simply ensure that when the generator earns more credit than the cost of the bill to the consumer, then the consumer is paid the net credit amount so that they can put that money towards paying off their solar panels.

The Hon. JOHN ROBERTSON (Minister for Climate Change and the Environment, Minister for Energy, Minister for Corrective Services, Minister for Public Sector Reform, and Special Minister of State) [1.16 a.m.]: The Government opposes this amendment. The bill currently provides for retailers to give the Solar Bonus Scheme tariff to customers via either a credit on electricity bills or cash payments. Any customers who are not satisfied with the arrangement of their retailer may choose to move to another retailer. The proposed amendment unnecessarily restricts how retailers provide the solar bonus tariff to customers, and on that basis we oppose the amendment.

Dr JOHN KAYE [1.17 a.m.]: The Minister has envisaged a situation in which a consumer is unhappy because their current retailer refuses to pay them the cash and holds it as a credit. Will the Minister explain what will happen when the customer decides that they are not happy with that situation and they leave that retailer and choose another retailer? Does the credit go to the new retailer, or is the credit left with the existing retailer? Nothing in the legislation clarifies that situation.

The Hon. JOHN ROBERTSON (Minister for Climate Change and the Environment, Minister for Energy, Minister for Corrective Services, Minister for Public Sector Reform, and Special Minister of State) [1.17 a.m.]: The bill enables regulations to be made to prescribe additional conditions on the circumstances in which retailers can credit or pay customers for electricity generated. The Government proposes to closely monitor the actions of retailers in this area and prescribe regulations to restrict circumstances in which they choose to pay or credit customers if it is required.

Dr JOHN KAYE [1.18 a.m.]: There we have it! We will wait for all the mistakes to be made, and when they are made we will try to patch them up with bandaids. Instead of doing the right thing now and fixing the problem to ensure that the scheme works the way it should, so that it is genuinely effective and delivers the credits as cash to the owners of the photovoltaic systems so that they can afford to pay them off, we will wait for a whole lot of mistakes to be made. We will hope that the market will sort out the situation, and if it does not we will patch it up with bandaids. Not supporting this amendment will be a lost opportunity to ensure that the scheme works the way it is supposed to work. I commend the amendment to the Committee.

Question—That the Greens amendment be agreed to—put.

The Committee divided.

Ayes, 4

Mr Cohen
Ms Hale

Tellers,
Dr Kaye
Ms Rhiannon

Noes, 26

Mr Ajaka	Mr Lynn	Ms Sharpe
Mr Catanzariti	Mr Mason-Cox	Mr Tsang
Mr Clarke	Reverend Dr Moyes	Mr Veitch
Mr Colless	Reverend Nile	Ms Voltz
Ms Cusack	Ms Parker	Mr West
Ms Fazio	Mr Pearce	Ms Westwood
Ms Ficarra	Mr Primrose	*Tellers,*
Miss Gardiner	Mr Robertson	Mr Donnelly
Mr Gay	Ms Robertson	Mr Harwin

Question resolved in the negative.

Greens amendment negatived.

The Hon. CATHERINE CUSACK [1.27 a.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

No. 1 Page 6, schedule 1 [7]. Insert after line 2:

194 Review of solar bonus scheme by Auditor-General

(1) The Auditor-General is to review and report to Parliament on the following aspects of the solar bonus scheme (being the scheme for the payment of electricity supplied to the network by small retail customers using complying generators):

(a) the number of small retail customers that have installed and connected complying generators,

(b) the costs of the scheme including the total amount credited to small retail customers under the scheme,

(c) any other matter that the Auditor-General considers to be relevant.

(2) The review is to be undertaken as soon as practicable after the period of 1 year from the commencement of section 15A.

(3) The Auditor-General is to report to each House of Parliament on the results of the review conducted by the Auditor-General under this section as soon as practicable after 1 July 2011.

(4) If a House of Parliament is not sitting when the Auditor-General seeks to present a report under this Part, the Auditor-General is to present the report to the Clerk of the House concerned.

(5) The provisions of section 63C (Documents presented to Clerk of House of Parliament) of the *Public Finance and Audit Act 1983* apply in relation to a report presented to a Clerk of a House of Parliament under this section in the same way as they apply to documents presented to a Clerk under that Act.

No. 2 Page 6, schedule 1 [7], line 3. Insert "by the Minister" after "solar bonus scheme".

The Opposition is moving to establish a review of the Solar Bonus Scheme by the Auditor-General into select performance criteria including the take-up rates and costs of the scheme as well as the total amount credited to small retail customers. In the public interest and for the purpose of informing policy, this information will be collected and released on or after 1 July 2011. We note that the bill already provides for a statutory review after 1 July 2011. The statutory review is very detailed and reports to the Minister. The Auditor-General's review proposed by our amendment is succinct and it reports to the Parliament. The timing of the Auditor-General's report would inform the statutory review.

The Hon. JOHN ROBERTSON (Minister for Climate Change and the Environment, Minister for Energy, Minister for Corrective Services, Minister for Public Sector Reform, and Special Minister of State) [1.28 a.m.]: The Government does not oppose the Opposition's amendments.

Dr JOHN KAYE [1.28 a.m.]: The Greens do not oppose these amendments but we raise issues as to their effectiveness. Holding a review in 2011 after only one and a half years of operation of the scheme will not give any useful information. Because of the way the scheme degresses, the difficult end of the scheme will be subsequent to July 2011. In many ways this review is happening too early and should be put off for a year or two so that we can untangle the problems that the rapid rate of degression of this scheme will cause.

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

Opposition amendments Nos 1 and 2 agreed to.

Dr JOHN KAYE [1.30 a.m.]: I move:

No. 2 Page 8, schedule 1 [9]. Insert after line 4:

Complying generators eligible for a least 7 years credit

(1) This clause applies to a complying generator that is installed and connected under section 15A on or after 1 January 2010 and on or before 31 December 2016.

(2) Despite its repeal, section 15A continues to apply to and in respect of a complying generator to which this clause applies until 7 years after the day on which the generator became a complying generator.

The purpose of this amendment is to take away the excessive degression that results from the drop-dead date of the end of 2016. If this amendment is passed, generators installed between 2010 and 2016 will get a full seven years of services at 60¢ a kilowatt hour. This will enable a much bigger take-up rate and will enable the scheme to operate for the seven years that are needed in order to ensure an orderly development of the industry. I commend the amendment to the Committee.

The Hon. JOHN ROBERTSON (Minister for Climate Change and the Environment, Minister for Energy, Minister for Corrective Services, Minister for Public Sector Reform, and Special Minister of State) [1.32 a.m.]: In view of the time, I simply indicate that the Government opposes the amendment.

Question—That the Greens amendment be agreed to—put.

The Committee divided.

Ayes, 4

Dr Kaye
Ms Rhiannon
Tellers,
Mr Cohen
Ms Hale

Noes, 26

Mr Ajaka	Mr Lynn	Ms Sharpe
Mr Catanzariti	Mr Mason-Cox	Mr Tsang
Mr Clarke	Reverend Dr Moyes	Mr Veitch
Mr Colless	Reverend Nile	Ms Voltz
Ms Cusack	Mrs Parker	Mr West
Ms Fazio	Mr Pearce	Ms Westwood
Ms Ficarra	Mr Primrose	*Tellers,*
Miss Gardiner	Mr Robertson	Mr Donnelly
Mr Gay	Ms Robertson	Mr Harwin

Question resolved in the negative.

Greens amendment negatived.

Schedule 1 as amended agreed to.

Title agreed to.

Bill reported from Committee with amendments.

Adoption of Report

Motion by the Hon. John Robertson agreed to:

That the report be adopted.

Report adopted.

Third reading set down as an order of the day for a future day.

ADJOURNMENT

The Hon. JOHN ROBERTSON (Minister for Climate Change and the Environment, Minister for Energy, Minister for Corrective Services, Minister for Public Sector Reform, and Special Minister of State) [1.37 a.m.]: I move:

That this House do now adjourn.

RESIGNATION OF THE HONOURABLE HENRY TSANG

EVOLVE—CONTINUE THE PAST INTO THE FUTURE

The Hon. HENRY TSANG (Parliamentary Secretary) [1.37 a.m.]: I thank my parliamentary colleagues for asking me how I am going. My answer is: Yes, I am going. Indeed I am going to leave the New South Wales Parliament. To mark this occasion, I inform the New South Wales Parliament that I have published a book entitled *Evolve*, in the foreword of which I state, "One must review the past, conclude, plan and act for the future", and in the Chinese context "continue the past into the future." This book was the result of a discussion I had with my party secretary Matt Thistlethwaite at the beginning of the year.

In reviewing what I have achieved and what are the important issues that the party needs to address in the future, the party secretary was pleased to hear that I am committed to progressing a number of projects, such as the establishment of New South Wales Government offices in China, India and Dubai, the visit of the Governor of Guangdong Province, the Premier's visit to China, national recognition of traditional Chinese medicine, and the Chinese community centre and dragonboat clubhouse at Pyrmont. I envisage that by the end of this year I will have accomplished these important projects, giving me a sense of satisfaction that I have completed what I set out to do for the community, as I vacate my seat in the New South Wales Parliament to suit the needs of the Australian Labor Party.

We concluded that it was necessary that a new member of Parliament take up the issues of promoting harmony in our multicultural society and understanding the value of Middle Eastern culture and the Muslim faith. I knew from that time that I had a duty in the service of my party to vacate my seat for a new member with a Muslim background like Shaoquett Moselmane. As I was given the chance by the party to address the issue of Asian racial discrimination and racism, it gives me great honour that my vacating my seat will allow Shaoquett Moselmane to carry the torch of promoting racial and religious harmony.

The book has been planned as a publication of the record of my service to the community. I have taken the opportunity to draw together the threads of my 18 years in public service as a Deputy Lord Mayor of Sydney and a member of the New South Wales Legislative Council. The book deals mainly with the speeches that I have delivered, including those I have made in the New South Wales Parliament, which have been translated into Chinese. Included also are selected articles from my column in the Chinese media, which have been translated into English. As a member of the New South Wales Legislative Council I have always taken seriously my role in serving the wider community and in particular promoting a harmonious and inclusive society. I take pride in promoting Australia's beautiful natural environment, and in attracting investors, visitors and students to New South Wales and Australia.

In planning for the future, I believe that when I leave this House I will retain the responsibility I had as a member of the New South Wales Parliament in looking after the environment and our cultural heritage for future generations. We should work together to promote a good relationship with our neighbours in Asia. We should also encourage further economic cooperation in trade, investment and job creation to promote peace and prosperity in our region. I look forward to continuing to encourage understanding, goodwill and friendly ties between the people of Australia and Asia.

In conclusion, I am honoured to have had the opportunity to serve this House and the community. I congratulate Mr Shaoquett Moselmane, who will take my seat in this place. I believe that he will make a great contribution to promoting peace and harmony in our multicultural society as the first Muslim ever elected to the New South Wales Parliament representing the inclusive Australian Labor Party.

I take this opportunity to thank members of the Opposition, who have been very generous to me during my 11 years in this place. I thank Reverend the Hon. Fred Nile, who prayed with me when I was in real trouble, and Reverend the Hon. Dr Gordon Moyes. I even thank the Greens, particularly Ian Cohen, who came to see me and offered me his good wishes. Members of this Chamber might have different views—Dr Kaye certainly does—and that is all right because we all want the best for society. I thank my party for giving me such a great opportunity to represent the interests of the Asian community in this Chamber, which is a very important role. The number of Asian Australians is increasing and it has been my task over the past 11years to encourage them to feel that they are part of our society, like my brother who is now a lieutenant colonel in the Army Reserve. I congratulate the President on her election and thank my great party, which I will never desert—I will always serve it. I seek leave to table my book entitled *Evolve—Continue the Past into the Future.*

Leave granted.

Book tabled.

BUNDEENA-MAIANBAR AMBULANCE SERVICE

The Hon. JOHN AJAKA [1.42 a.m.]: I draw to the attention of the House the continuing lack of ambulance services for the local communities of the Royal National Park, Bundeena and Maianbar and the millions of visitors to the park. Despite the many assurances Sydney residents received after the Coroner's inquest into the death of David Iredale, there are continuing reports of calls to 000 emergency lines not even acknowledging the existence of the Royal National Park, as well as trouble in even understanding normal suburban addresses, as has been reported recently in relation to an accident at President Avenue in Kogarah.

More shockingly, last week I heard the story of two ambulance officers from Bundeena who offered to be on call between shifts to complement the hard work of the two local volunteer ambulance officers already on call in Bundeena. With no thought for the possibility of reducing the massive burden on these officers, the Ambulance Service of New South Wales told the two new volunteers that there was no need for anyone else to be on call because New South Wales Fire Brigades would provide sufficient emergency coverage. The situation is beyond belief. I fail to see why, given the dire circumstances, there is no need for additional emergency service support. I understand that the Bundeena Ambulance Action group, which has been tirelessly fighting for better ambulance services for the area, met with the member for Heathcote, Paul McLeay, on 27 October 2008. In subsequent correspondence the group noted his statement:

> There is an agreement in principle between State Government and Sutherland Council that a new Fire Station be built in Bundeena ... The present plans also allow for the building to be used by police and SES and to house one ambulance ... It would be the first multipurpose emergency building of its kind in the state. There are no present plans for manning the building.

The group also recorded a statement made at that meeting:

> The construction of the building is budgeted for the RFS for this current financial year. It is anticipated that the building will be commenced within the next year or two.

The reference to the current financial year means 2008. Not long after that meeting, the member for Heathcote informed the Bundeena Ambulance Action Group that the project would not be going ahead, or at least not in the near future. That was supposedly due to difficulties in providing the land. However, the group has been told that plans have been prepared and are being promoted by the member for Heathcote on behalf of the joint fire services with Sutherland Shire Council. The point of contention is whether those plans make allowance for shared use by the Ambulance Service of New South Wales, which would enable the introduction of a locally

based ambulance and a quick response service for medical emergencies in the Royal National Park, Bundeena and Maianbar areas. It would cover the needs of not only the local residents but also many tourists who are encouraged to use the inadequate road system between Sutherland and Bulli, a story that I shall leave for another day.

On 11 November I submitted a question on notice to the Minister for Emergency Services, also representing the Minister for Health in the upper House. To this date I, together with the residents of Bundeena and Maianbar, keenly await a response. I have been informed that the handling of the matter by local Labor members of Parliament has been deplorable to say the least. It is a clear indication that after 14 years a broken New South Wales Labor Government cannot fix the problems it created through repeated failure and incompetence.

I have been shocked to learn of a somewhat feeble attempt at community consultation concerning emergency service provision in the area. The Ambulance Action Group, among other community projects, was listed on the member for Heathcote's website for voting by residents for potential funding. However, this was carried out in such a convoluted fashion as to render the entire process somewhat redundant. Unless hard copies of the voting forms were printed and distributed, those residents without computer access were effectively excluded. Rules were different for hard copy and soft copy votes, and the processes for checking that no resident voted online more than once remain unclear. It seems to me that this whole activity was a rather obvious and cynical vote-buying exercise. I am appalled that people with the best intentions who merely want proper funding for worthwhile and often badly needed community projects are subject to such a charade.

IRAN AND LEBANON

Reverend the Hon. FRED NILE [1.46 a.m.]: I refer to the two crisis states in the Middle East—Iran and Lebanon. Several days after the atomic energy chief Mohamed El Baradei made his controversial comments about the clandestine nuclear site near the Shiite holy city of Qom, his own United Nations agency published a report revealing that Iranian technicians and workers had begun moving expensive cutting-edge equipment into the illicit bunker. The report said that the intricate machines are designed to produce up to one tonne of highly enriched uranium per year, which experts say is more than enough to construct a nuclear weapon. The report also expressed International Atomic Energy Agency concerns that Iran may well have hidden other nuclear facilities from international inspection as Israeli leaders have long maintained. It stated:

> The agency has indicated that Iran's declaration of the new facility reduces the level of confidence in the absence of other nuclear facilities under construction and gives rise to questions about whether there were any other nuclear facilities not declared to the agency.

Responding to the latest news regarding Iran's nuclear program, the Israeli Prime Minister warned once again that the Shiite regime presents a severe danger to many more nations than just Israel. He said:

> The threat that Iran poses is very grave for the state of Israel, for peace in the Middle East, and in the whole world.

He added:

> Without any doubt, we are Iran's first target, but we are not the last one.

Israeli naval commandoes staged a daring raid on a storm-buffeted Mediterranean Sea before dawn on 4 November and boarded a German-owned cargo ship. After seizing it they found that it contained 40 Iranian commercial containers. When those containers were opened it was found that they contained 3,000 missiles and hundreds of 122-millimetre rockets along with many mortar shells, hand grenades and hundreds of thousands of machine gun bullets. After it was established that the Polish and German crew on board the ship did not realise they were carrying Iranian-supplied weapons hidden in cargo containers, they were allowed to leave the Ashdod port.

Syrian and Lebanese officials termed the seizure an act of piracy. They denied the ship was carrying any weapons, a contention that was rendered absurd when the huge cache was subsequently displayed at the Ashdod port. The Israeli Prime Minister noted that the United Nations resolution, which ended the 2006 Lebanon war, forbids any country from re-arming the Hezbollah military forces. He said:

> Iran is sending these weapons to terror organisations to harm Israeli cities and kill its citizens.

He added:

> The time has come for the international community to exert real pressure on Iran to stop this criminal activity and to support Israel when it defends itself against these terrorists and their patrons.

Those events show why Israel is always concerned about what is occurring on its borders, whether with Iran or Lebanon. We need to pray for peace in the Middle East. We must pray that the United Nations and other nations of the world will be able to discourage Iran from pursuing what appears to be a policy to develop nuclear weapons and to ensure that Hezbollah is properly disarmed and cannot resume its shelling of Israel's towns and villages. This will only cause Israel to respond with various attacks on those points from which the missiles come. Sadly, Israel is often blamed, but it is provoked by attacks and has no option but to defend its citizens, as any nation would. Australia would do the same if we were in a similar situation.

BOGGABILLA AND TOOMELAH STATE EMERGENCY SERVICE UNITS

The Hon. CHRISTINE ROBERTSON [1.50 a.m.]: State Emergency Service personnel and volunteers do a wonderful job across New South Wales and are the mainstays of our communities, especially in country areas. It is not only the rescue and emergency services provided by some 226 State Emergency Service units and 10,000 volunteers that make their contribution so valuable. It is also the fact that this organisation of volunteers, tasked to help others in emergency situations, draws people from all walks of life to work together while delivering real skills to their communities.

In August this year I was fortunate to see firsthand a great example of this positive community effort when I attended an exciting celebration at the Boggabilla State Emergency Service headquarters, representing the Minister for Emergency Services, the Hon. Steve Whan. I shared this celebration with Federal member Mark Coulton. There were two reasons for the visit: first, an important graduation ceremony; and, secondly, the handover of a new vehicle for the unit. The graduation ceremony was for the newly recruited Aboriginal volunteers from the Boggabilla and Toomelah communities. These two communities are situated on the Queensland border north of Moree. The State Emergency Service unit at Boggabilla had for some time had difficulty attracting enough volunteers to form a functional unit. The very existence of the State Emergency Service unit was due to the tenacity and commitment of the State Emergency Service unit controller, Chris Clarke.

Massive and destructive storms occurred in Boggabilla in December last year. Boggabilla and Toomelah have a high proportion of Aboriginal people who believe they should be working for their communities. Especially after the storm, they wanted to participate in something like the State Emergency Service. The north-west regional controller, along with locals, swung the State Emergency Service Communities in Partnership program into action. A partnership was formed with New South Wales Adult and Community Education under the auspices of the Rees Government's Two Ways Together New South Wales Aboriginal Affairs Plan 2003-2012, and the Emergency Management Australia Keeping Our Mob Safe Project. The program was classified as a pilot program—one that has met every possible performance indicator.

The north-west region also had the benefit of very effective Community Liaison Officer, Indigenous Communities, Carl Ralph. His work in attracting individuals to the State Emergency Service and providing support was very effective—so effective that he has been poached to the State Emergency Service headquarters in Wollongong and his excellent work is now occurring statewide. A training program was run to get the new recruits up to speed with State Emergency Service induction, general rescue and first aid training. I understand that they have assisted with State Emergency Service operations on the North Coast and in the north-west regions this year. In fact, the presentation of graduation certificates was to take place in May, but due to flooding on the North Coast, to which the Boggabilla State Emergency Service unit was called to assist, the ceremony was postponed until August.

Registering the skills, commitment and community sense of the Aboriginal people living in Toomelah and Boggabilla is a wonderful thing for the whole community. The Aboriginal recruits were proud to become part of the State Emergency Service unit, and their communities will greatly benefit from the skill levels and teamwork developed during the training and from participating in State Emergency Service functions. The pride of the community people and supporters who attended the function was palpable. Trainers and assessors from across the north-west region played a part in developing these State Emergency Service volunteers, and many were present at the graduation ceremony—indeed, they also received awards.

The State Emergency Service commissioner, Murray Kear, was on his first tour of the region when he attended the ceremony and was very impressed with the program outcome. I congratulate all the recently

recruited Aboriginal volunteers of the Boggabilla State Emergency Service unit and the trainers and assessors who were involved from across the north-west region, particularly Moree and Inverell. Boggabilla State Emergency Service unit controller Chris Clarke, who worked hard to develop this recruitment drive and reinvigorate his local State Emergency Service, also deserves great praise.

It was Chris Clarke to whom I had the pleasure of presenting the keys to the new unit vehicle, the other reason for my attendance at the ceremony. The vehicle I presented is an impressive Ford Ranger dual cab valued at $35,000. This excellent new vehicle is fitted with a bull bar, tow bar and emergency lighting and will be used for transporting equipment such as flood boats and storm trailers. It will also act as the quick-response vehicle for road crash rescue and other rescues as well as searches. Unfortunately, this area does not get rain very often, but when it does rain it is heavy and there is a lot of flooding. Road crashes are a huge problem at that end of my duty electorate.

Safe and reliable vehicles are crucial when volunteers are called to respond to any operation, particularly flood work. I was incredibly proud to share this celebration of true commitment and success by the State Emergency Service in Boggabilla and the whole north-west region of the State Emergency Service. The program is proof that the whole-of-government approach of the Rees Government's Two Ways Together Department of Aboriginal Affairs plan is the way to go. I look forward to participating in many such programs over the next year.

MOTORCYCLE SAFETY REGULATIONS AND ANIMALS

The Hon. TREVOR KHAN [1.55 a.m.]: Last Friday I had the honour on behalf of the Leader of The Nationals, Andrew Stoner, to take part in the launch of a motorcycle at the Sydney Motorcycle Show at Homebush. The motorcycle was freshly painted and modified to raise awareness, and much-needed funds, for the Prostate Cancer Foundation of Australia. The motorcycle is the brainchild of Tex O'Grady and his partner, Jenny Patton, and is used to transport Australia's fastest dog, Bundy. Bundy is a four-year-old Australian stumpy tailed cattle dog, who, in the past, sat on the fuel tank of Tex's motorcycle as they rode into towns across Australia. Through this method they would raise awareness of men's health issues. Bundy, dressed in her leathers and sunglasses and sitting on the bike's fuel tank, was the biggest drawcard. People would line the streets to get a glimpse of Bundy as she rode into town. She put smiles on faces young and old and, of course, was a significant drawcard for prostate cancer awareness and fundraising.

Together, Tex and Bundy have ridden many thousands of kilometres across Australia and have raised more than $250,000 a year for various charities, but most recently for the Prostate Cancer Foundation of Australia. The Prostate Cancer Foundation was founded in 1996 when well-known television personality Roger Climpson, after surviving prostate cancer, realised how little and how confusing the information was that had been provided to him. The foundation funds research into the causes, detection, diagnosis and improved treatment of prostate cancer, provides information, support and counselling to those affected by prostate cancer, and raises community awareness of the incidence of prostate cancer, thereby encouraging earlier detection and more effective treatment of the disease. To achieve all this, the foundation relies on fundraising and volunteers, and Tex and his dog Bundy have become an integral part of this fundraising effort. Unfortunately, poor Bundy's riding days appear to be over. Regulations brought in to comply with the National Transport Commission's recommendations state at rule 297(3):

> The rider of a motorbike must not ride with an animal on the petrol tank of the motorbike.

This rule has the effect of prohibiting Bundy from riding on the front of the bike. Therefore, any fundraising work that is done now occurs from a stationary position, reducing the impact of a bike-riding, leather-wearing dog. There is no exception to this rule. Tex O'Grady and his partner, Jenny Patton, volunteer their time and energies to help their community. They ride and raise money for one of our major charities—and considerable amounts at that. Sadly, it would seem that instead of encouraging them the Government is, whether deliberately or not, frustrating their valuable efforts. It is time for the Government to provide an exemption to allow Tex and Bundy to continue their efforts to raise money for such an important charity as the Prostate Cancer Foundation of Australia.

RED FROG CHAPLAINCY NETWORK

Reverend the Hon. Dr GORDON MOYES [2.00 a.m.]: I inform the House about an outstanding Christian ministry that is one of the few initiatives successfully challenging the culture of binge drinking in

Australian high schools and colleges, residence halls and meeting places of the young: the Red Frogs Australia Chaplaincy Network. The Citipointe Church in Brisbane founded the Red Frogs in 1997 to help protect students during Schoolies Week, which is underway this week. They are now considered by many State government offices of crime prevention to play a vital role in managing the 17 annual school leavers-schoolies festivals celebrated across Australia, providing an excellent service, offering community concern, emotional support and a wholesome example. The Red Frogs do not proselytise, but concerned young people from local Christian churches present an outreach program.

The Red Frogs have been successfully reducing crime and improving community safety during schoolies celebrations by working in partnership with other State and non-governmental agencies. For instance, it was estimated that last year they protected over 4,000 young Western Australians from harm by providing 24-hour pastoral care, outreach support and diversionary activities at major accommodation sites. There is no other volunteer group providing this level of support during the celebrations and it is filling a crucial need in the community. Every year 1,500 community volunteers are involved with the Red Frogs.

The Red Frogs have greatly assisted the National Association of Australian University Colleges, the peak organisation for tertiary students living on campus. They have assisted that organisation by creating a safer drinking environment and offering practical alternatives to drinking, which has had a very positive impact on fighting the culture of binge drinking. Each year the Red Frogs offer educational pre-schoolies programs that are targeted to students in years 11 and 12. The Red Frogs Year 11 Party Safe Seminar deals honestly with issues such as alcohol and drug abuse, high school dating and relationships, depression and the alternative schoolies locations that are provided for Schoolies Week. The Red Frogs Year 12 Schoolies Seminar is targeted specifically at school leavers and informs students about what really goes on at Schoolies Week, arming them with information and advice they will need to make wise choices and set appropriate boundaries for themselves during their celebrations.

Each of the seminars is presented by enthusiastic and experienced local Red Frog representatives, who are able to empathise with the students and are not afraid to point out the sometimes painful pressures and realities of teenage life. For example, this week on the Gold Coast they have a presence on the social networking sites Facebook and Twitter, and frequently post safety tips like, "don't be afraid to say no", "stay in well-lit areas", "tell your friends where you are going", "drink plenty of water", "alcohol makes you less aware of danger" and "how to avoid drink spiking". They publish a 1300 phone number to offer a Red Frog escort during the Gold Coast schoolies celebrations so partiers can get from place to place safely.

The Red Frogs are helping to change the destructive attitude of needing to drink in order to have fun throughout university colleges and halls of Australia by running non-drinking social gatherings. The Red Frogs make themselves available Australia-wide within colleges and residential halls and in almost every social event that is organised there. Whether it is as simple as catering an event for non-drinkers or helping to keep drinkers safely hydrated, fed and looked after, the Red Frogs have been on hand to assist students. According to the Alcohol and Drug Information Service, alcohol abuse costs the Australian community about $15 billion each year, when factors such as crime, violence, treatment costs, loss of productivity and premature death are taken into account.

Working against that cultural setting, the Red Frogs are acknowledged by various authorities as having an impressive impact on the drinking culture. With their assistance the number of alcohol-induced fights, suicides and hospitalisations has been dramatically reduced. With the terrible cost to young people, personally and socially, from the near ubiquitous use of alcohol, I am impressed that the Red Frogs are really getting out on the streets and assisting young people with concern and compassion. As we go into this year's school leavers' celebrations over the next few weeks I wholeheartedly support the work and commitment of the Red Frog Chaplaincy Network to the wellbeing of young Australians.

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

Motion agreed to.

The House adjourned at 2.03 a.m. on Wednesday 25 November 2009 until 11.00 a.m. the same day.