

LEGISLATIVE COUNCIL

Tuesday 3 May 2005

The President (The Hon. Dr Meredith Burgmann) took the chair at 2.30 p.m.

The Clerk of the Parliaments offered the Prayers.

The PRESIDENT: I acknowledge that we are meeting on Eora land.

ADMINISTRATION OF THE GOVERNMENT

The PRESIDENT: I report the receipt of the following message from His Excellency the Lieutenant-Governor:

J. J. SPIGELMAN
LIEUTENANT-GOVERNOR

OFFICE OF THE GOVERNOR
SYDNEY 2005

The Honourable James Jacob Spigelman, Chief Justice of New South Wales, Lieutenant-Governor of the State of New South Wales, has the honour to inform the Legislative Council that, consequent on the Governor of New South Wales, Professor Marie Bashir, being absent from the State, he has this day assumed the administration of the Government of the State.

1 May 2005

SENATE VACANCY

Resignation of Senator John Tierney

The PRESIDENT: I report the receipt of a message from Her Excellency the Governor transmitting a copy of a dispatch from the President of the Senate of the Commonwealth of 14 April 2005 notifying that a vacancy had happened in the representation of the State of New South Wales in the Senate through the resignation of John Tierney on 14 April 2005.

Motion by the Hon. Tony Kelly agreed to:

That the message be taken into consideration on the receipt by this House of a message from the Legislative Assembly dealing with the same subject.

ASSENT TO BILLS

Assent to the following bills reported:

Civil Liability Amendment (Offender Damages) Bill
Independent Commission Against Corruption Amendment Bill
Road Transport (General) Bill
Water Efficiency Labelling and Standards (New South Wales) Bill

INDEPENDENT COMMISSION AGAINST CORRUPTION

Report

The President tabled, in accordance with the Independent Commission Against Corruption Act 1988, the report entitled "Report on Investigation into the Alleged Mistreatment of Nurses", dated April 2005.

The President announced that, pursuant to the Act, it had been authorised that the report be made public.

Ordered to be printed.

NSW OMBUDSMAN**Report**

The President tabled, in accordance with the Ombudsman Act 1974, the report entitled "Working with Local Aboriginal Communities—Audit of the Implementation of the NSW Police *Aboriginal Strategic Direction* (2003-2006)", dated April 2005.

The President announced that, pursuant to the Act, it had been authorised that the report be made public.

Ordered to be printed.

PHOTO CARD**Production of Documents: Order****Motion by Ms Lee Rhiannon agreed to:**

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution all documents in the possession, custody or control of the Minister for Roads, the Attorney General, the Premier and the Roads and Traffic Authority [RTA], in relation to the views of Privacy NSW or the Acting Privacy Commissioner about the proposal to introduce a photographic card for people without drivers licences, including:

- (a) any briefing documents from the Acting Privacy Commissioner or staff of Privacy NSW which provide notes, comment, opinion, advice, expression of concern, opposition to or support for the proposal, between 30 October 2003 and 6 April 2005,
- (b) any correspondence, including faxes and emails, between the Acting Privacy Commissioner or staff of Privacy NSW and the RTA, Attorney General, Premier or Minister for Roads, between 30 October 2003 and 6 April 2005, and
- (c) any document which records or refers to the production of documents as a result of this order of the House.

TABLING OF PAPERS NOT ORDERED TO BE PRINTED

The Hon. John Hatzistergos tabled, pursuant to Standing Order 59, a list of all papers tabled and not ordered to be printed in the previous month.

BRIGALOW BELT SOUTH BIOREGION**Production of Documents: Return to Order**

The Clerk tabled, pursuant to the resolution of 6 April 2005, documents relating to the Sinclair reports concerning the Brigalow Belt South Bioregion received on 13 April 2005 from the Director-General of the Premier's Department, together with an indexed list of the documents.

GENERAL PURPOSE STANDING COMMITTEE NO. 5**Report: Budget Estimates 2004-2005**

The Clerk announced, pursuant to standing orders, the receipt of report No. 23, entitled "Budget Estimates 2004-2005", dated April 2005, together with transcripts of evidence, tabled documents, correspondence and answers to questions taken on notice.

The Clerk announced further that, pursuant to standing orders, it had been authorised that the report be printed.

Mr IAN COHEN [2.34 p.m.]: I move:

That the House take note of the report.

Debate adjourned on motion by Mr Ian Cohen.

LEGISLATION REVIEW COMMITTEE**Report**

The Clerk announced, pursuant to the Legislation Review Act 1987, the receipt of the report entitled "Legislation Review Digest No. 5 of 2005", dated 2 May 2005.

The Clerk announced further that, pursuant to the Act, it had been authorised that the report be printed.

PETITIONS**Crown Land Leases**

Petitions requesting the withdrawal of changes to the rental structure of Crown land leases, particularly enclosed road permits, received from **the Hon. Patricia Forsythe** and **the Hon. Duncan Gay**.

Unborn Child Protection

Petitions requesting legislation to protect fetuses of 20 weeks gestation and to make resources available for post-abortion follow-up, received from **the Hon. David Clarke**, **the Hon. Greg Donnelly**, **Reverend the Hon. Dr Gordon Moyes**, **Reverend the Hon. Fred Nile**, **the Hon. Melinda Pavey** and **the Hon. Greg Pearce**.

Freedom of Religion

Petition praying that the House reject legislative proposals that would detract from the exercise of freedom of religion and the employment of persons whose beliefs and lifestyle are consistent with religious doctrine and values, and retain the existing exemptions applying to religious bodies in the Anti-Discrimination Act, received from **Reverend the Hon. Dr Gordon Moyes**.

Anti-Discrimination (Religious Tolerance) Legislation

Petitions opposing the proposed anti-discrimination (religious tolerance) legislation, received from **the Hon. Patricia Forsythe**, **Reverend the Hon. Dr Gordon Moyes**, **Reverend the Hon. Fred Nile** and **the Hon. Greg Pearce**.

Clothing Industry Worker and Employer Protection

Petition opposing exploitation of clothing industry workers, and requesting protection of small clothing businesses, received from **the Hon. Dr Peter Wong**.

Marriage

Petition opposing any legislative changes that would violate the basic principles of marriage, received from **Reverend the Hon. Fred Nile**.

BUSINESS OF THE HOUSE**Withdrawal of Business**

Private Members' Business item No. 7 in the Order of Precedence withdrawn by the Hon. Tony Catanzariti.

Private Members' Business items Nos 74, 97 and 127 outside the Order of Precedence withdrawn by Ms Lee Rhiannon.

BUSINESS OF THE HOUSE**Postponement of Business**

Government Business Order of the Day No. 1 postponed on motion by the Hon. Tony Kelly.

SENATE VACANCY**Joint Sitting**

The PRESIDENT: I report the receipt of the following message from the Legislative Assembly:

MADAM PRESIDENT

The Legislative Assembly informs the Legislative Council that it has this day agreed to the following resolution:

The Legislative Assembly has resolved to meet the Legislative Council for the purpose of sitting and voting together to choose a person to hold the place in the Senate rendered vacant by the resignation of Senator John Tierney and requests the Legislative Council to name the place and hour for such sitting.

Legislative Assembly
3 May 2005

JOHN AQUILINA
Speaker

Motion, by leave, by the Hon. Tony Kelly agreed to:

That standing orders be suspended to allow the message from the Legislative Assembly relating to a joint sitting to fill a vacancy to be considered forthwith.

Motion by the Hon. Tony Kelly agreed to:

That this House agrees to meet with the Legislative Assembly for the purpose of sitting and voting together to choose a person to hold the place in the Senate rendered vacant by the resignation of Senator John Tierney in the Legislative Council Chamber on Thursday 5 May 2005 at 4.00 p.m.

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

CRIMES AMENDMENT (GRIEVOUS BODILY HARM) BILL

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [2.59 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Crimes Amendment (Grievous Bodily Harm) Bill.

This Bill proposes an amendment to the Crimes Act 1900 to ensure that offences under that Act relating to the infliction of grievous bodily harm extend to the destruction by a person of the foetus of a pregnant woman.

The very tragic case involving the death of Renee Shields' unborn child, Byron, highlighted a deficiency in the law in relation to the charging of offenders.

The Attorney General commissioned a retired judge, the Honourable Mervyn Finlay, to look at the distressing and difficult issues raised when a criminal act against the mother of an unborn child results in the death of that child.

Many people and organisations, including Ms Shields, wrote submissions to the Finlay review. Ms Shields' moving submission expressed the hope that an amendment to the legislation acknowledging unborn children would make the incomprehensible a little easier to handle.

In the meantime, another tragic case came before the courts, that of Kylie Flick, who lost her unborn child as the result of an assault by Phillip King, the father of her child.

The King case proceeded through the courts and resulted in the Court of Criminal Appeal finding, in December 2003, that the close physical connection between a pregnant woman and her unborn child means that the loss of that child can constitute grievous bodily harm to the pregnant woman, even in the absence of other injury to her.

It was, in some sense, an historic finding that ultimately, in December 2004, saw King receive a sentence of 12 years imprisonment with a non-parole period of eight years.

It is clear that the King case has changed the legal landscape with regard to the death of an unborn child that results from a criminal act against a pregnant woman.

As mentioned, the King decision recognises the close physical bond between a pregnant woman and her unborn child. And it is that bond that means the loss of that unborn child can amount to grievous bodily harm to a pregnant woman—even where the woman suffers no other injury.

The amendment the Government proposes will codify the principles enunciated by the Court of Criminal Appeal in the King case, that is, the definition of grievous bodily harm in the Crimes Act will be amended to include the loss of an unborn child.

The amendment is the result of extensive consultations with all stakeholders and careful consideration of their opinions and suggestions.

This amendment means that a range of Crimes Act offences, from the malicious infliction of grievous bodily harm with intent, which carries a maximum penalty of 25 years imprisonment, to causing grievous bodily harm by an unlawful or negligent act, which carries a maximum penalty of two years imprisonment, will be covered.

Criminal acts involving driving, such as that which claimed the life of Ms Shields' unborn son, will also be covered.

It is a significant amendment that allows a range of offences to be charged and a range of penalties applied, according to the subjective elements of each case.

As such, the amendment recognises that not all cases will involve the same factual scenario or even the same level of criminality but that, nonetheless, all offenders should be held responsible.

This amendment codifies the common law of grievous bodily harm without impacting upon or interfering with the law governing other areas.

Foremost of these is the law relating to abortion. It has never been and is not now the Government's intention that this amendment should affect the current law with respect to the lawful termination of pregnancy.

And this Bill does not affect that law.

Nor is it the Government's intention that doctors or nurses or indeed any medical personnel performing a medical procedure that involves or results in foetal death—whether that procedure be a D&C carried out after a woman has suffered a miscarriage; the removal of a cancerous tumour or emergency surgery to save a woman's life—should find themselves open to a criminal charge.

For abundant caution we have, therefore, exempted medical procedures from the amendment.

This Bill, which will commence on assent, recognises the grievous harm that young women like Renee Shields and Kylie Flick have suffered; it recognises their unborn children, and it recognises that those who are criminally responsible for the loss of those unborn children should not go unpunished.

While nothing can ever compensate these young women and their families for the great loss they have suffered, and indeed other women who may lose their unborn children as a result of a criminal act, this amendment will, as Renee Shields hoped, make the “incomprehensible a little easier to handle”.

I know that all honourable members of the House have been moved by the plight of these young women, by their pain and their trauma, and I am sure that this amendment will therefore be welcomed.

I commend this Bill to the House.

The Hon. GREG PEARCE [3.00 p.m.]: The Opposition supports the bill, which extends the existing definition of “grievous bodily harm” in section 4 of the Crimes Act to include the destruction, other than in the course of a medical procedure, of the foetus of a pregnant woman, whether or not the woman suffers any harm. Honourable members would be well aware that the bill arises in part as a result of the well-publicised case of Kylie Flick, who miscarried her unborn child after the father of the child, Phillip Nathan King, repeatedly kicked and punched her in the stomach. King was eventually sentenced to 12 years jail with a non-parole period of eight years after an appeal to the Court of Criminal Appeal.

When ruling that the appeal could go ahead Chief Justice Spigelman noted that “the close physical bond between the mother and the foetus is of such a character that for purposes of offences such as this the foetus should be regarded as part of the mother”. Another case in 2001 involved Renee Shields, who was seven months pregnant when she lost her baby, Byron, as a result of a road rage incident and her car being rammed into a pole. The person responsible was gaoled for causing the accident but could not be charged with manslaughter over Byron's death as the law did not recognise the foetus as human. The Renee Shields and Kylie Flick cases highlighted the need for the Crimes Act to be updated to recognise the offence of harming a foetus maliciously. Concerns have been expressed by various interested parties. I will not repeat all of those concerns: an extensive debate was held in the other place and I am sure that other members will want to join the debate today. However, I draw to the attention of the House the issues canvassed in the second reading speech. In particular, it was stated:

It has never been and is not now the Government's intention that this amendment should affect the current law with respect to the lawful termination of pregnancy. And this bill does not affect that law.

I will speak on the foreshadowed amendments to the bill when they are considered in this Chamber. As I indicated, the Opposition supports the bill.

Ms LEE RHIANNON [3.04 p.m.]: The Greens support the bill. We believe that the Government has found a wearable solution to the difficult issue of how to adequately deal with the situation where the criminal acts of one person lead to the death of a pregnant woman's foetus. The bill deals with deficiencies in the law that were recently highlighted by the tragic experiences of two women, Renee Shields and Kylie Flick. The bill is not about the right to life of the foetus, despite attempts by New South Wales Right to Life to turn it into a debate about just that. The bill attempts to create a fairer justice system for women like Renee Shields and Kylie Flick, who were involved in a road rage collision and horrendous physical attack while pregnant. The bill recognises that because of the unique and close physical relationship a woman has with her foetus the death of it through a criminal act of another can cause her grievous bodily harm. Importantly, it does not seek to accord the foetus itself any enhanced stance at law. The bill clearly acknowledges the impact that the death of a foetus has on the mother when this occurs as a result of an incident that is very much beyond her control.

The bill creates extended offences regardless of whether the pregnant woman herself suffered harm. It appropriately exempts the medical profession where medical procedures are performed that involve or result in foetal death. The Government has codified principles set down by the Court of Criminal Appeal in the case of *Regina v King*. The Greens support the Government's decision to do this rather than adopt the recommendation of Mervyn Finlay, QC, in his report on manslaughter that an offence of child destruction be created in New South Wales. New South Wales Right to Life has been lobbying members of Parliament to adopt this problematic model. But the difficulties with this offence are well evidenced in the text of Finlay's report, where the many conflicting and varied views of interest groups are set out. Establishing an offence of child destruction would assume an incorrect legal position in relation to a foetus, giving it a status not accorded by this bill. It would open a can of worms in relation to when a foetus becomes viable, questions of intent, whether it is necessary to establish that the offender knew the woman was pregnant, what terminology is to craft the offence and so on.

The offence would demand a plethora of supplementary amendments to work effectively. The potential for error in what is a very sensitive area of law therefore would grow. Other Australian jurisdictions have the type of offences proposed by Finlay but they have attracted criticism. The Greens are relieved that the Government did not push on in this direction. Women in New South Wales deserve the best possible solution to the problem this bill seeks to address. The legislation must be solid and unable to be distorted or misrepresented or misinterpreted by a conservative judiciary at the expense of women's rights now and most definitely into the future.

We must proceed very carefully with this bill as it was developed in response to a single high-profile case. There are always problems with moving from the specific to the general that will govern all situations. Cases we have not yet foreseen may arise in the future resulting in injustice as yet unimagined. I welcome the Attorney General's clear and repeated statements in the second reading speech and debate, as well as in the explanatory note, that the bill does not affect the current law with respect to the lawful termination of pregnancies. We know that anti-choice groups such as New South Wales Right to Life have been circling this bill like sharks looking for ways to use it to fortify their agendas. The Greens will resist all attempts by these forces to undermine women's hard-won gains in this area.

Since Prime Minister Howard was re-elected last year anti-abortion forces have stepped up a gear. The flag has been flown not only by big names such as Tony Abbott but also by ordinary Coalition and Labor backbenchers such as the recently resurrected Mr Fred Nile. Reverend Nile obviously feels threatened by the flexing of the new religious muscle by Family First. He hosted a special forum on abortion in Parliament in February, claiming that support for the anti-abortionists' campaign is growing. This ignores a recent poll in the *Sydney Morning Herald* that found that 56 per cent of people are happy with present arrangements and 16 per cent of people would like more access to abortion. Only 17 per cent thought there should be less access. Legislative Council Liberal backbencher David Clarke has made even more extraordinary statements, calling on anti-abortionists to join political parties and kick off an internal religion-based putsch.

A low point during Mr Nile's February forum was Clarke's description of abortion as pure evil and a most heinous crime—hypocritical considering the support of Clarke and Nile for the Iraq war in which innocent women and children died in tens of thousands. That point needs to be considered very clearly in this debate.

Reverend the Hon. Fred Nile has proposed one-stop shops for pregnant women, centres run by Right to Life counsellors where pregnant women will go to be given support, that is to say, offered moral lectures about abortion. I have heard stories from women who inadvertently ended up at such places and found themselves under more pressure at a very difficult time in their lives. The fact that these one-stop shops are aimed solely at women, and men are assumed to bear no responsibility, is a telling testament to the Christian Democrats' anti-women agenda, which will no doubt be seen again today in this House.

Reverend the Hon. Fred Nile: Point of order: the honourable member is misleading the House by stating that I said that they would be given a moral lecture. I made it clear that the one-stop shop would provide counselling, accommodation, and a whole number of matters.

The PRESIDENT: Order! There is no point of order. If Reverend the Hon. Fred Nile wishes to make a personal explanation, he may do so at the appropriate time.

Ms LEE RHIANNON: If this bill or similar future legislation is used as a lever to reopen the abortion debate, Reverend the Hon. Fred Nile and his conservative allies should be warned that Australian women will fight back. Our reproductive rights were won over decades of struggle and will not be surrendered. Outside the very narrow confines of conservative groups such as Right to Life, where there are moves to test the waters on abortion, there is no support for change. If there is a move to bring on this debate this House can be assured the Greens will be campaigning hard to protect women from any such threat to their health and rights. I acknowledge that diverse forces have been working along similar lines and there are many men who are as concerned as I am, and the Greens are generally, with the push by sections of the religious right. I look forward to the day when Parliament will be a safe place to introduce a bill that recognises women's right to choose, and codifies the law as it relates to lawful terminations. Sadly, it seems that day may still be a long time coming.

Reverend the Hon. Dr GORDON MOYES [3.11 p.m.]: This bill proposes an amendment to the Crimes Act 1900 to ensure that offences under that Act relating to the infliction of grievous bodily harm extend to the destruction by a person of the foetus of a pregnant woman. The bill purports to codify the decision by the Court of Criminal Appeal known as *Regina v King*, which was made in December 2003. The King decision recognises the close physical bond between a pregnant woman and her unborn child, so much so that any injury to the unborn child is equated to injuring the pregnant woman. In Committee I will move an amendment to change the term to "unborn child" or "unborn children".

A poignant story was reported in the *Daily Telegraph* of Monday 21 March 2005. The story centred on the death of Susan Harris's unborn son, a child who was named "Lars" by his parents. Lars was conceived after three years of persisting with IVF technology. In January, when Susan Harris was seven months pregnant, she lost her unborn son in a car crash while she and her family were driving home. Honourable members can imagine the trauma and grief felt by this mother to know that her precious baby, conceived after so much trouble through IVF technology, was lost just one month or so before it was due to come into the world. One cannot fathom the utter dismay and numbness felt by this family, especially the pain and distress experienced by Susan Harris. The article went on to say that Susan Harris's unborn son will never be recognised as a living being. This was because the Government had not passed the law we are looking at today in time to protect Lars. Susan Harris is quoted in the article as having said:

But we have a birth certificate for our baby; we had a funeral for our baby. But my baby wasn't considered a human being because he hadn't taken a breath outside the womb.

Expectant mothers, carrying children that they have planned to come into this world, often find it difficult to articulate the joy and awe connected with carrying an unborn child. One can only imagine what is involved in preparing for the unborn child. For example, when they discover that they are pregnant, women are suddenly charged with the responsibility of caring for their pregnant bodies. A woman's lifestyle changes completely, and from the very genesis of the development of the child, an intimate connection begins. The connection not only begins between the mother and child but also between the father and the child, and arguably all others close to the family nucleus. Also, those mothers who have tried for years to conceive should have their dreams protected. Mothers carrying an unborn child are carrying the seed of many dreams inside them. Contrary to what the previous speaker has said, this was not just a high-profile isolated case. At the same time a case was brought before the Parramatta Bail Court. The following report appeared in the *Daily Telegraph* of 21 March 2005:

A man who allegedly punched his 13-week pregnant girlfriend in the stomach and told her he wanted to kill the baby was granted bail yesterday.

Wade Raymond Hunter, of Whalan, appeared in Parramatta Bail Court charged with common assault and maliciously damaging property.

Police prosecutor Sergeant Kim McNaught said Hunter had punched his girlfriend, Sabrina Elingsworth, in the stomach after the two had an argument about child-care arrangements while attending a netball game ...

According to a police statement, Hunter and his partner had an argument after he phoned his ex-girlfriend to discuss visiting arrangements with his children.

He told Ms Elingsworth, "I'm going to kill the baby" as he repeatedly hit her ...

Hunter denied the allegations, but was granted conditional bail to appear at Penrith local Court. This is by no means an isolated case because until now the law has not protected the unborn child. At Common Law unborn children have no rights until birth. For example, in the 1979 United Kingdom case *Paton v British Pregnancy Advisory Service* President Sir George Baker held that "in England and Wales the foetus has no right of action, no right at all, until birth". He also said:

... the foetus cannot in English law, in my view, have any right of its own until it is born and has a separate existence from its mother. That permeates the whole of the civil law of this country ... and ... [also] in America, Canada, Australia ... This means that any "rights" ascribed to unborn children must be defined by the Legislature.

But, in recent years, two cases concerning the deaths of unborn children have catapulted this issue onto the legislative stage. These are the cases of Renee Shields and Kylie Flick. Kylie Flick's unborn child died as a result of the father of her baby, Phillip King, punching and stamping on Ms Flick's abdomen numerous times. Renee Shields lost her unborn child in a road-rage incident. The law as it stands in New South Wales today does not specifically cover instances where unborn children die as a result of violence all road-rage incidents. It is, of course, within the Parliament's functions to legislate to protect vulnerable members of our community.

Parliament is charged with the function of legislating for the benefit of those who require help, and I sincerely believe that the interests of mothers in protecting their unborn children should be protected. The cases of Kylie Flick and Renee Shields and others prompted the Government to commission a review of the laws relating to manslaughter in New South Wales. The Hon. Mervyn Finlay, QC, former Supreme Court judge, undertook this delicate and sensitive task. One of the aims of the review was to include an examination of whether the Crimes Act provisions concerning manslaughter should be amended in such a way as to allow a charge of manslaughter to be brought in circumstances where an unborn child dies.

The Hon. Mervyn Finlay, QC, released his recommendations in April 2003. The former judge recommended that New South Wales legislate to introduce the offence of "child destruction" or "killing an unborn child" relating to a criminal act causing a child, capable of being born alive, to die before it has an existence independent of its mother. In other states of Australia—notably, South Australia, Queensland, Western Australia and the Northern Territory—the offence of "child destruction" or "killing an unborn child" has been statutorily entrenched. But, lamentably, the Government of New South Wales has not heeded Finlay's recommendations, deciding to legislate in a way that effectively denies the importance of the unborn child as an individual. The Premier, Mr Carr, and the Attorney General, Mr Debus, promised to implement all the recommendations of Mr Finlay, QC. This they have not done. It is not at all obvious from the title of this bill that it, in fact, purports to deal with the loss of unborn children through such things as acts of violence. The form in which protection of the unborn child will take place in the proposed legislation reflects the notion that unborn children, the receptacle of many maternal dreams, do not deserve protection in their own right.

The Attorney General announced in his second reading speech that the Government's legislation codifies the decision made by the court in the Kylie Flick case, *Regina v Phillip King*. In the case of the attack by Phillip King—a most brutal, vicious stomping on the woman's abdomen—the Court of Criminal Appeal ruled that the close physical connection between mother and child means that the loss of a baby can constitute grievous bodily harm to the pregnant woman, even in the absence of other injury. Thus, the proposed legislation will expand the definition of grievous bodily harm in the Crimes Act to include harm to an unborn child.

King was subsequently sentenced to 12 years gaol with a non-parole period of eight years. Attorney General Bob Debus commented that the case of King has changed the political landscape in regard to the death of an unborn child resulting from a brutal attack on the mother. Mr Debus referred to Renee Shields's submission to the review as "poignant and articulate", and quoted from it in his address as follows:

Laws are man made and therefore can be changed with today's day and age. Unborn children should be acknowledged in our society. An amendment to the current legislation might lessen the constant tension someone experiences with this kind of incident and maybe make the incomprehensible a little easier to handle.

I commend Mr Debus for that statement. The Attorney General also commented that the process of crafting an appropriate amendment has been an arduous one involving consultation with a wide variety of lay and expert interests. He further said:

The amendment is specifically aimed at criminal attacks upon women and enabling the courts to give due recognition to the pain and trauma experienced by women like Renee Shields and Kylie Flick, who lost their babies following senseless and brutal attacks. Hopefully, it will make the incomprehensible a little easier to handle.

In my opinion the Government had the opportunity to recognise the unborn child as an individual deserving of protection and care, and has wasted this opportunity. Renee Shields was right to point out that "laws are man made" and "can be changed with today's day and age". I do not believe that the manner in which the Government has legislated will make the incomprehensible a whole lot easier to handle. The effect of the legislation is that there is only one defence, one conviction and one penalty where the child is killed and the mother is seriously injured or killed.

The current law will protect only foetuses, that is, unborn children medically defined as older than eight weeks. But what about unborn children who are aged 55 days? Why should the law discriminate between protecting the unborn children of some mothers and not others? If the law is to protect the interests of mothers, why does it not protect embryos as well? It is a sad fact that the Government's law will not protect unborn children less than eight weeks old. I have come across the story of a mother who was six weeks pregnant, lost her child. She said:

Becoming a mother meant so much to me, and each time the realisation set in that it just wasn't time for my little one to come into the world I was devastated. It didn't matter if a couple of days had passed or weeks had passed since the positive pregnancy test, it was still absolutely devastating for me. I wanted to hold my baby, I wanted to nurse him, cuddle him, love him, and he just wasn't ready to be born ... I can only pray that every mother that experiences the loss of a child will some day be given the opportunity to nurture her own infant.

I believe that the codification of King's case will offer little consolation for those still grieving for the loss of their unborn children. This is an issue concerning abortion. I ask the Government, according to Australian Labor Party policy, to allow its members a conscience vote on the amendment I will move in Committee.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [3.24 p.m.]: The Crimes Amendment (Grievous Bodily Harm) Bill extends the definition of grievous bodily harm in section 4 of the Crimes Act 1900 by inclusion of the words, "the destruction of the foetus of a pregnant woman". The present definition defines grievous bodily harm as "permanent or serious disfiguring of the person". The bill is the Government's response to two cases in which foetuses were destroyed by criminal acts. The Government is treading a fine line with this bill. The Attorney General referred to the two cases involving "the death of an unborn child". The amendment refers to "the destruction of a foetus of a pregnant woman". The first question that arises is: When does an embryo become a foetus? The second is: When does a foetus stop being a foetus? The first question can be answered by examining the stages of human development.

The period of time from fertilisation to birth—usually nine months—is divided into trimesters, each about three months long. During pregnancy the zygote undergoes 40 to 44 rounds of mitosis, producing an infant containing trillions of specialised cells organised into tissues and organs. In the first trimester, the three embryonic tissue layers form. Cellular differentiation begins to form organs during the third week. After one month the embryo is five millimetres long and composed mostly of paired somite segments. During the second month most of the major organ systems form, and limb buds develop. The embryo becomes a foetus by the eighth week. At the beginning of the eighth week the sexually neutral foetus activates gender pathways for sex determination, forming testes in XY foetuses and ovaries in XX foetuses. External genitalia develop.

In the second trimester, the foetus increases in size and bony parts of the skeleton begin to form. The mother can feel foetal movements. During the last trimester the foetus increases in size. Circulatory and respiratory systems mature in preparation for air breathing. Foetal growth during this time uses large parts of its mother's proteins and calcium intake. Maternal antibodies pass to the foetus during the last month, conferring temporary immunity. The embryo becomes a foetus at about eight weeks. The foetal period continues until the foetus is born. The definition of "foetus" in the *Collins English Dictionary* is as follows:

The embryo of a mammal in the latter stages of development, when it shows all the recognisable characteristics of the mature animal, especially a human embryo from the second month of pregnancy until birth.

The *Collins English Dictionary* definition of "child" is as follows:

A boy or girl between birth and puberty.

In his second reading speech the Attorney General did not define whether the legislation relates to a viable foetus. However, given his reference to the term "unborn child", it may be the case. The definition of "foetus" does appear in the Crimes Act, and we assume that the Government is relying on the medical definition of the term, that is, a foetus develops at about eight weeks. The Attorney General did not mention anything about this in his second reading speech. However, given his reference to an "unborn child", he may have had in his mind a viable foetus, that is, a foetus that can survive outside the mother. This period of development is usually 26 weeks, but it varies depending on medical technologies and, to some extent, luck.

An unborn child is really a contradiction in terms, in the sense that a child is not a child until it is born. I believe that the Attorney General should have referred to the term "foetus" in his second reading speech. Representatives of the Women's Abortion Action Campaign contacted me to express their concerns about the semantics of this. The group believes use of the term "unborn child" gives encouragement to those who would use this sort of bill to further the passage of an anti-abortion agenda.

The bill is not about rights for unborn children. Rather, it is about extending the definition of injury to the pregnant woman through the destruction of a foetus. It is not about the foetus having rights because grievous bodily harm was committed upon the foetus itself. The grievous bodily harm referred to in the bill relates to its effect on the mother. It does not mean that the mother, if she injured the foetus in any way—for example, by the ingestion of legal or illegal drugs—was guilty of grievous bodily harm on the foetus. This aspect was also not made clear by the Attorney General in his second reading speech.

If we look at the context of the events that precipitated the bill, we may be a little clearer on the points that have been omitted by the Attorney General. As other members have said, two cases led to the introduction of the bill. The first was the case of Renee Shields. In November 2001, in a road rage incident in Milperra, Michael Harrigan rammed his vehicle into Renee Shields's car, forcing it into a power pole. Shields was seven months pregnant. On 27 February 2003 Harrigan was sentenced to four years and nine months imprisonment for dangerous driving occasioning grievous bodily harm, an offence that carries a maximum penalty of seven years imprisonment. Combined with a sentence for perverting the course of justice, Harrigan is likely to spend about five years in gaol. Ms Shields was seven months pregnant and the foetus was destroyed. Doctors also performed a hysterectomy, which means that Ms Shields will never be able to have children.

The second case was a much more deliberate and targeted attack on the foetus. I refer to the case of Kylie Flick, who was six months pregnant in 2002. Phillip King, the father of the foetus, allegedly punched and/or kicked Flick, which resulted in deliberate destruction of the foetus. King was initially sentenced to 10 years gaol for maliciously inflicting grievous bodily harm with intent. On appeal the sentence was increased to 12 years. In December 2003 the Court of Criminal Appeal found:

The close physical connection between a pregnant woman and her unborn child means that the loss of that child can constitute grievous bodily harm to the pregnant woman, even in the absence of other injuries to her.

So, in essence, this amendment codifies the decision in the King case. The King case can be distinguished from the Harrigan case in two ways: first, the Harrigan case involved a driving assault and, secondly, Harrigan could not have known that Shields was pregnant. The Minister stated in his second reading speech that the proposed change to the law would be applied to both cases. The penalties for grievous bodily harm vary significantly, depending on the severity of the attack and the injury sustained. Grievous bodily harm by an unlawful and negligent act carries a maximum penalty of two years, whereas the top of the line is "malicious infliction of grievous bodily harm with intent", which carries a maximum penalty of 25 years. The question remains unanswered as to whether in all these instances of grievous bodily harm the accused has to be aware that the woman is pregnant. The question also remains unanswered as to whether we are talking about an eight-week-old foetus or a 26-week-old viable foetus.

I have immense sympathy for the victims of these crimes. These two women have suffered terribly and I understand that they need to feel that justice has been done. In the case of King this amendment would not change the sentence given as the judge took it upon himself to consider the destruction of the foetus as constituting grievous bodily harm to the mother. This approach was also endorsed on appeal. In the case of Shields the sentence would have been increased by the application of this amendment, provided that one of the elements of the offence was not knowledge of the woman's pregnancy. If the application of this new definition of "grievous bodily harm" requires that knowledge then the sentence would not have changed.

I would like the Minister to clarify what and where the definition of "foetus" is and from what time in the development of the foetus this bill will apply. I would like the Minister to clarify whether it will be an

element of the offence for the accused to be aware that the woman is pregnant. Clarification of these matters would mean that both defence and prosecution at trials involving the death of a foetus in a grievous bodily harm offence would be aware of the effect of the bill. I believe this bill effectively takes up the suggestion of the New South Wales Council for Civil Liberties in its submission to the review of the law of manslaughter in New South Wales, which was commissioned by the Attorney General. In its submission the council suggested on page 17 at item 3.2.6:

A possible alternative to prosecuting someone for the manslaughter of a foetus would be to introduce an offence of deliberately, knowingly and intentionally assaulting a pregnant woman.

Such an offence attracts a high degree of moral culpability. It is drafted in terms of the mother rather than the foetus, thereby avoiding the problems associated with treating the foetus as a legal person.

My understanding is that that is what this bill has done. I acknowledge comments from the Woman's Abortion Action Campaign that some of the semantics employed when talking about unborn children give succour to the anti-abortion forces. However, I think the overall direction of this bill is correct and that it is getting around a difficult area quite neatly. In general, the Australian Democrats support the bill. I would appreciate the Minister addressing my concerns in his reply.

The Hon. DAVID CLARKE [3.34 p.m.]: I support the Crimes Amendment (Grievous Bodily Harm) Bill. However, in my view it does not go far enough. On 10 March 2005 the New South Wales Right to Life Association circulated concerns about this bill to the effect that it did not go far enough and did not accurately reflect the recommendations of Mr Justice Finlay in his report to the Government recommending this legislation. I agree with that association's concerns. Nevertheless, the bill, as far as it goes, has my support. I am concerned that we have had to wait so long for this bill to come before us. This bill is not about abortion—which I certainly oppose, and which involves or is supposed to involve the consent of the mother—it is about something entirely different. This bill is about the death of an unborn child without the consent and against the wishes of the mother through an act of violence. This bill is about the death or injury of an unborn child as a result of an act that, had it occurred after the child had been born, would have seen the perpetrator of the act criminally charged with murder, manslaughter or assault occasioning grievous bodily harm.

We are talking about cases such as that reported in the *Australian* on 10 October 2003 where a judge found that the stomping on the stomach of a 24-weeks pregnant woman causing the death of her unborn child could not result in the perpetrator's conviction for manslaughter. The Government received the report from former Supreme Court judge Mr Justice Finlay recommending this legislation in 25 June 2003, but it has taken nearly two years for this bill to come before the House. That is a shame. At least the bill—although reduced in effect from that recommended by Mr Justice Finlay—is now before us, and I support its passage.

I refer to comments made by the Hon. Lee Rhiannon from the Greens. She referred to comments I have made elsewhere about the evils of abortion and she considers it hypocritical that I oppose abortion but support Australia's involvement in Iraq. I recall comments made by a certain Dr Peter Singer, who members may remember was a Greens candidate for the Senate in Victoria two or three elections ago. He is well known—in fact, he is notorious—for justifying and advocating the killing of mentally and physically disabled children in their first two or three years of life. What does the Hon. Lee Rhiannon have to say about her former candidate in Victoria, Dr Peter Singer? Does the Hon. Lee Rhiannon disown Peter Singer for his comments? I will be waiting with anticipation to hear her answer.

Reverend the Hon. FRED NILE [3.37 p.m.]: Like other members, I am pleased to support the Crimes Amendment (Grievous Bodily Harm) Bill. I congratulate the Government, particularly the Attorney General, on introducing the bill. It will amend the Crimes Act 1900 to ensure that offences under that Act relating to the infliction of grievous bodily harm extend to the destruction by a person of the foetus of a pregnant woman other than in the course of a medical procedure. The bill then outlines the penalties. As honourable members know, this bill arises from the recommendations made by the Hon. Mervyn Finlay, QC, in his report of April 2003 in which he stated:

I **recommend** that New South Wales legislate to introduce the offence of "child destruction" relating to a criminal act causing a child, capable of being born alive to die before it has an existence independent of the mother. I have preferred the description of the offence "Killing an Unborn Child" to "Child Destruction".

The Australian Medical Association and the New South Wales Council for Civil Liberties made submissions in regard to Justice Finlay's report. After considering those submissions, the Government has proceeded with this bill. I note also that a similar bill was introduced into the United States Senate and Congress, and passed by the

108th Congress of the United States of America. That legislation, the Unborn Victims of Violence Act 2004, was signed into law by President George Bush on 1 April 2004. This bill follows the precedent set by the Senate and Congress of the United States of America. Section 919a (4) (d) of the Act emphasises the term "unborn child" and states:

In this section, the term "unborn child" means a child in utero, and the term "child in utero" or "child, who is utero" means a member of the species homo sapiens, at any stage of development, who is carried in the womb.

Honourable members will note that the definition contains the words "at any stage of development". This bill does not follow the exact terms of the United States legislation. It restricts the meaning to "eight weeks or older". That definition causes me, and others, concern. Therefore, I propose to move a simple amendment in Committee to clarify the situation and to make the bill identical to the one passed by the United States Congress and Senate. My foreshadowed amendment No. 2 states:

For the purposes of this definition a child in utero is any form of human life in either the embryonic or foetal stage of development.

I hope that honourable members will accept my amendment. It will give courts the discretion to convict, if they see fit, in circumstances where a child is less than eight weeks; it is a mandatory requirement. The definition in my foreshadowed amendment is also used in United States legislation and medical documents. It is not an unusual definition and I urge honourable members to give favourable consideration to my amendment in Committee. I became involved with this issue long before it was raised in this Parliament or in the public arena. Not long after my election in the late 1980s Caroline Frazer, a friend of mine, told me her sad story. She was several months pregnant when the car she was driving was hit from behind by a bus. The force of the impact threw her forward onto the steering wheel, causing the death of her baby. Naturally, this caused her considerable distress and I asked whether any charges had been laid and whether she had received any compensation. She told me that no charges had been laid because the fact that she had a child in her womb was disregarded. There was a child and that child died.

As a result, I asked lawyers to draft a bill entitled the Unborn Child Protection Bill. I gave notice of this bill some years ago and, although it was debated for some time, I decided to withdraw it because of concerns relating to penalties and other technical matters. This bill is the Government's version of the bill that I introduced and I hope that it will receive the support of the House. I gather from the contributions to date that it has that support. The bill is the result of some important declarations, including the Universal Declaration of Human Rights. The preamble, under the heading "Declaration of the Rights of the Child", which was adopted by the General Assembly on 20 November 1959, states:

Whereas the United Nations has, in the Universal Declaration of Human Rights, proclaimed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status—

and it goes on to state these very important words—

Whereas the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth ...

Honourable members should note the word "before". This declaration was adopted by the General Assembly, which represents the 160 affiliated nations, a further reason to support the bill. I note that some speakers—in particular, Ms Lee Rhiannon—have been critical of the statements made by the Hon. David Clarke and me about abortion. Her remarks demonstrate that she is living in fantasy land, which may be why the pro-abortion camp appears to be in a frenzy. There is a change of attitude taking place in Australia at the grassroots level with respect to abortion. This change has nothing to do with the religious right, the Christian right, or the left or right wings. The Australian community is becoming more conscious of the number of abortions and their effects.

For example, recent figures released by the Federal Health Department, in answer to questions by Senator Ron Boswell, with respect to estimated pregnancies each year confirm that there were 251,161 live births, 106,983 ending without clinical record, 91,358 abortions, 30,973 miscarriages where the mother attended hospital and 1,240 foetal deaths.

A survey conducted not by a religious right individual but by a professional research company called Market Facts—the results have been released today—included questions relating to the issue in this legislation about the importance of the child in the womb and the need to protect that child. In relating that to the abortion

issue, the survey asked this question: Do you support abortion on demand? Seven per cent of the people said they did not know, 60 per cent said yes—the percentage has been much higher previously—and 33 per cent said no.

The Hon. Robyn Parker: How many people were surveyed?

Reverend the Hon. FRED NILE: I cannot find the figure in the survey document, but I assume that the normal number of people—that would be 1,000 or 2,000—were surveyed. I can get the exact figure for the Hon. Robyn Parker. The point I am making is that when people were asked whether they supported abortion for non-medical reasons—that is, for financial or social reasons—only 40 per cent said yes, 52 per cent said no and 8 per cent said they did not know. This is a significant change in public opinion. The survey also asked the question: Do you believe that by 20 weeks of pregnancy, the earliest point at which survival outside the womb is possible, an unborn child is a human person with human rights? Sixteen per cent said they did not know, 56 per cent said yes and 28 per cent said no. On the question of whether people supported abortion at any stage of pregnancy, 9 per cent said they did not know, 55 per cent said no and 36 per cent said yes.

People were then asked at what stage they would allow abortion with or without restrictions. Only 27.5 per cent said at any time, 42 per cent said at any time up to 13 weeks and 30.5 per cent said any time up to 20 weeks. So there was a high degree of agreement between the 56 per cent who believed the foetus at 20 weeks was a person and the 55 per cent who did not support an unqualified right to abort at any time throughout a pregnancy. The divide between the 72.5 per cent who supported abortion before 20 weeks and the 27.5 per cent whose support was unqualified may well prove to be the turning point in the national debate. On these figures, only 10 per cent of Australians approve unreservedly of abortion on demand.

The Greens and those on both sides of politics who are adamant supporters of abortion—some of them have been interjecting during my speech—should consider that change of attitude, even if they do so only for political reasons. Political parties like getting elected; if there is a change in public opinion it may not be popular to be openly advocating abortion on demand from a political sense, if one wants to achieve political success. I congratulate the Government on introducing this bill. I appreciate that the bill does not deal with abortion, but that issue was raised by other members. We congratulate the Attorney General on proceeding with the bill, even with its limitations and the criticism by right to life groups. However, I am aware of political realities, and I am pleased that we have at least reached this point with the bill before the House.

The Hon. JOHN RYAN [3.54 p.m.]: I hope that my comments will clarify some of the thinking in relation to the Crimes Amendment (Grievous Bodily Harm) Bill. First, there has been a great deal of discussion about abortion. It must be pointed out that this bill does not touch on that issue directly. The bill creates an offence of grievous bodily harm when a woman is assaulted. Of course, in all instances that an unborn child is involved, it necessarily involves the assault of a woman; it is not possible to do so otherwise. However, it must be understood that this bill does not, as I understand was recommended by Mervyn Finlay, create an offence against the unborn child. It creates an offence against a woman carrying a child; therefore, in one respect it does not raise the abortion issue because it does not deal with the legal status of the unborn child. Indeed, it extends the status of the injury that can be done to a woman when she is assaulted.

Some Christians get their views about the status of the unborn child from the writings of the Pope; other Christians, particularly Protestant Christians, rely on passages of scripture. Interestingly, one relevant scripture passage that is usually used in reference to this matter is the passage in Leviticus that creates an offence for an assault on a woman when a child is injured. Indeed, it creates the offence almost in a similar way to this bill. Essentially, in mosaic levitical law the penalty for killing a woman was death but the penalty for injuring a woman causing the death of a child was a monetary fine. Interestingly, the *Bible* approaches a similar offence in a similar way.

I have no objection to giving legal rights to an unborn child, particularly during its latter stages, in cases when the person assaulting the woman intended to murder the child in utero. There seems little doubt that the person committing the offence, whilst injuring the woman, actually intended to injure the unborn child involved. One way the law could have proceeded was to make that a separate offence. Some speakers have referred to Merv Finlay's report in which he suggested the creation of the offence of killing an unborn child. I think he suggested that because he regards, as do many doctors to whom I have spoken, the termination of a pregnancy in the latter stages as the death of an individual who may not have taken breath. Interestingly, the whole business of taking breath comes from section 20 of the Crimes Act, which is intended to modify the definition of murder. Section 20 of the Crimes Act states:

On the trial of a person for the murder of a child, such child shall be held to have been born alive if it has breathed, and has been wholly born into the world whether it has had an independent circulation or not.

The issue of the child drawing breath became relevant to the court case because the law refers to it. I recognise that the argument generated by creating a special offence dealing with the child itself would be phenomenal but, interestingly, the result would be no different. In the amendments foreshadowed by Reverend the Hon. Dr Gordon Moyes, the penalties for those offences are identical to the penalties for the offence of grievous bodily harm. They make no difference. Perhaps it just makes the additional point that certainly in the later stages of a pregnancy there is little doubt in most people's minds that the baby involved is independent although it has not taken breath.

Nevertheless, the problem is solved by creating the offence of grievous bodily harm to the woman. The penalties will be the same, and I suspect that the courts will deal with the offences in the same way. Only one other matter to be resolved by the House is the question of whether it is necessary to define foetus to distinguish it from an embryo. I am of the view that the legal implications will not be so grave that honourable members could not agree to that amendment. In some respects the discussion about abortion detracts from the clarification of the issue on which we are seeking to legislate. I support the bill and I commend it to the House.

The Hon. JOHN HATZISTERGOS (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [3.59 p.m.], in reply: I thank honourable members for their contributions to the debate. A number of members have spoken and I will deal briefly with as many of the issues that I can. The fact that this bill has not commenced does not affect the cases that occurred prior to it. The common law still applies and the principles in *Regina v. King* still apply. The loss of a child can still be considered grievous bodily harm to the mother.

A number of honourable members have spoken about former Justice Finlay's recommendations. The Attorney General comprehensively dealt with these matters in his contribution in the other House and I do not propose to revisit this issue. A number of honourable members have spoken about issues relating to abortion. As the Hon. John Ryan pointed out, this bill is not about abortion, and the Government objects to attempts to inject that argument into this debate. I should make a number of references to the Hon. Dr Arthur Chesterfield-Evans, who asked whether the foetus was defined.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

VERO INSURANCE LTD WORKERS COMPENSATION SCHEME UNDERWRITING

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Special Minister of State, and Minister for Commerce. Will the Minister confirm that Vero Insurance announced yesterday that it would be withdrawing from the New South Wales workers compensation scheme? Can he also confirm that Vero was forced into this position after talks broke down between WorkCover executives and Vero staff on Friday? What contingency plan does he have in place in the event that other insurance companies come to the same decision?

The Hon. JOHN DELLA BOSCA: It will become evident as I answer the honourable member's question that a number of the premises of his question are wrong. Honourable members are probably aware that there has been a conscientious attempt through the program of reform that has been put in place in the WorkCover scheme to open up greater competition between insurers and to change the participation of the scheme of insurers to a broader agency role and to include operators in the agency role who are not necessarily insurance underwriting companies. Requests for proposals to deliver workers compensation claims and policy services are currently in the marketplace and WorkCover has received a positive response from a broad range of companies and organisations wishing to provide those services that have, so far, been provided by various insurance companies.

One of the six existing insurers, that is, one of the previous companies that participated in the WorkCover scheme and provided policy services and managed compensation claims, Vero Workers Compensation Ltd, has announced it will withdraw from the two locations where the company does not underwrite policies—New South Wales and South Australia. In New South Wales Vero has only 1.3 per cent of

policies. The company has announced that it will work collaboratively with WorkCover and its executives to ensure a smooth exit from the market, with no disadvantage to premium payers or claimants. The new arrangements are designed to raise the standards of service that agents must provide. Agents will need to demonstrate a business model that is focused on return to work outcomes and care for injured workers.

The new arrangements will allow for the entry of new agents into the market, promote competition and encourage all agents to improve the management of injured workers claims and services to premium payers. The demands put on agents will be higher than those under the current scheme. The onus will be tougher on agents to provide better services for injured workers—and I make no apology for that. Employers and injured workers will receive better case management, better service delivery and better value for money. These changes are part of a continuing improvement of the scheme. Following the Carr Government's 2001 reforms, premiums now cover scheme costs, as most honourable members would be aware. The deficit has been halved in the two years since the main body of the reform program was completed, and WorkCover's finances are at the strongest point in more than a decade. Beneficiaries—that is, workers compensation claimants—are getting faster, better and fairer treatment.

NATIONAL DRUG STRATEGY HOUSEHOLD SURVEY

The Hon. KAYEE GRIFFIN: My question is addressed to the Special Minister of State. Can the Minister inform the House of the results of the national drug strategy household survey, which was conducted by the Australian Institute of Health and Welfare?

The Hon. JOHN DELLA BOSCA: The 2004 national drug strategy household survey was released on 7 April 2005. The survey provides an interesting and useful snapshot of Australian drug use patterns, attitudes and behaviours. The Australian Institute of Health and Welfare has conducted eight previous household surveys for the national drug strategy since 1985. Since 1995 the surveys have been conducted every three years. The 2004 survey involved 30,000 respondents aged 12 years and above, although most statistics in the report only showed data for persons 14 years and above.

Encouragingly, the survey found that since the last national survey in 2001 recent illicit drug use is down from 16.9 per cent to 15.3 per cent and recent cannabis use is down from 12.9 per cent to 11.3 per cent. There are about 17,000 fewer recent injecting drug users, and tobacco use continues to decline from 23.2 per cent to 20.7 per cent. The report also found that nationally heroin use has remained stable at 0.2 per cent of the user population; cocaine use is lower—down from 1.3 per cent in 2001 to 1 per cent in the most recent survey—and methamphetamine use of 3.2 per cent was also slightly lower compared to 3.4 per cent in 2001. However, with regard to ecstasy the survey indicates there has been an increase in recent years from 2.9 per cent in 2001 to 3.4 per cent in 2004.

Later this year the New South Wales Government will be introducing new measures to tackle the use of so-called club drugs such as ecstasy and methamphetamines through significant drug law reform to crack down on illegal manufacture in this State. We will also be introducing new information and education programs to reduce the uptake of and manage the demand for ecstasy and amphetamines. With regard to alcohol, the survey also found that in 2004 Australians were drinking more regularly: 41.2 per cent reported drinking weekly compared to 39.5 per cent; and 8.9 per cent reported drinking daily compared to 8.3 per cent in 2001. The proportion of Australians drinking at levels considered risky or at high risk has remained stable, at approximately 10 per cent, since 2001. This figure is too high.

In the Government's response to the Alcohol Summit, *Changing the Culture of Alcohol Use in New South Wales*, the Carr Government committed to a long-term approach to reducing problem drinking. This included commencement of the statewide rollout of the alcohol linking program, which has reduced alcohol-related crime by about 13 per cent in some areas; commencement of the rural alcohol diversion program in Orange—and shortly in Bathurst—providing defendants before the court with an option of treatment for their alcohol problems as part of their bail conditions; release of an exposure bill with proposals to strengthen liquor accords, preventing public intoxication and antisocial behaviour and reducing alcohol-related crime and violence; introduction of a zero blood alcohol limit for drivers holding learner and provisional licences; and release of the *Play Now-Act Now* DVD containing 14 short films providing peer education to young people at risk of alcohol and illicit drug abuse.

Some other interesting statistics came out of the report. When respondents were asked which drugs are first thought of as associated with the drug problem, unsurprisingly perhaps heroin came first to mind for 39 per

cent, down from 50 per cent in 2001, but cannabis came first to mind for 29 per cent, up from 24 per cent in 2001, and alcohol came first to mind for 10 per cent, up from 8 per cent in 2001. While some of these changes may seem small, nonetheless they are encouraging. I acknowledge that these are national figures—specific statistics for New South Wales are not yet available—but I am confident that the trends for New South Wales will be positive. This happened in the 2001 survey, when New South Wales recorded the second-lowest levels of illicit drug and cannabis use in Australia.

LIVESTOCK TRANSPORT SUBSIDY

The Hon. DUNCAN GAY: My question is directed to the Minister for Primary Industries. Why is the New South Wales Labor Government reducing drought support for producers by stopping assistance for transport of livestock to slaughter or sale in their time of need? Does the Minister recall a claim that producers are not using the transport subsidy? If this is really the case, why not let it just remain in place? Will the Minister reconsider drought support to producers and reinstate this vital funding, or is it just another money-saving grab by the New South Wales Labor Government against our most vulnerable people?

The Hon. IAN MACDONALD: What an amazing hide the Deputy Leader of the Opposition has coming in here talking about a money grab when all Costello is doing federally is one total money grab! It is absolutely outrageous. If he was going to be active in any area of rural funding he would be going to Truss and saying, "What about the \$20 million—"

The Hon. Duncan Gay: Point of order: This is an important question. I asked the Minister a question directly relating to his portfolio and within his area. He has now gone to an area that is outside the terms of the question. I ask him to justify his mongrel act.

The PRESIDENT: Order! I remind the Minister that, whilst it is in order to make general comments, if he wishes to make an imputation against another member he should do so by way of a substantive motion.

The Hon. IAN MACDONALD: The Deputy Leader of the Opposition just loses his cool occasionally in this House and says some things in respect of which he later says, "Look, I am sorry I did that. I went a bit too far." I think he has done it here again today. The final point of his question was to have a go at us over the allocation of funding. He leaves aside the fact that the Federal Government is attacking the New South Wales budget at every level. He claims to be interested in the farming community out west but I have not seen one press release—I would be the only person in Australia who reads every press release he puts out—in which he has called for assistance to be extended to Dubbo, Narrandera, the Riverina, the 11 areas and the 18,000 farmers in this State.

Now I will answer his question. Following careful consideration and consultation with a range of stakeholder groups, the transport subsidy for stock going to sale or slaughter wound up on 30 April 2005. However, producers still have until 31 May to apply for subsidy. The subsidy was originally put in place in July 2002 to protect animal welfare when farmers were destocking on a large-scale and stock prices were low, barely covering the cost of transport. With the ongoing drought most producers have reached minimum stock level and will wait out the drought to revive their stock numbers. Livestock values are also relatively good now, more than covering the cost of transport. This change is being driven by shifting producer priorities and will ensure that the package remains targeted to best meet the needs of producers still fighting to survive the drought.

In view of the current effects of the drought the most important aspect over the next few months will be the fodder subsidy. All other transport subsidy measures will continue for as long as needed. That includes the fodder transport subsidies. The Government will also provide assistance to rural New South Wales and will be represented at the upcoming New South Wales Farmers Association drought summit. Additionally, as the Treasurer announced in the last budget, "If the drought continues we will continue our assistance measures until the rains come."

FOOD COUNTRY-OF-ORIGIN LABELLING

The Hon. TONY CATANZARITI: Is the Minister for Primary Industries aware of media reports on the weekend that signalled a change in the way fish, fruits and vegetables are labelled in Australian supermarkets, corner shops and other types of food retailers? What impact will this have on local producers and on consumers?

The Hon. Michael Gallacher: What about lemons and rockmelons?

The Hon. IAN MACDONALD: I will deal with this serious question in a serious way. I did see a story in the *Sydney Morning Herald* weekend edition and subsequent media coverage. I can assure the honourable member that I will not support changes to the current mandatory country-of-origin labelling requirements for certain foods if those changes take away a shopper's ability to make an educated choice at the local grocer. Right now country-of-origin labelling requirements are set out in what is called a transitional standard, which was carried over from the old Australian food standards code.

The Hon. Duncan Gay: They rolled you again, didn't they?

The Hon. IAN MACDONALD: No. I made that decision with industry. It has not got into your head yet. In addition to stating requirements for packaged foods, the transitional standard also requires that certain unpackaged foods must be labelled with their country of origin or a statement indicating they are imported. This includes uncooked fish, cooked prawns, vegetables, fresh fruit and nuts. In most cases labelling of these types of products can be accomplished by displaying country-of-origin signage or the description "imported" at the point of sale. In 2003 the Australia and New Zealand Food Regulation Ministerial Council agreed to have Food Standards Australia New Zealand [FSANZ] undertake a review of the current transitional standard to come up with a new standard appropriate to the new standards code for Australia and New Zealand. I understand that the review is still in the second round of public consultation phase and it will be several months until the FSANZ board sends the approved standard to the ministerial council for its consideration.

The New South Wales Government has long supported policies that help ensure consumers have easy access to country-of-origin labelling. Many shoppers want to support our local farmers and fishers by purchasing Australian-grown products. Making major changes in this area not only potentially threatens consumer choice but also could have a major impact on the thousands of hard-working growers and fishers across Australia. Members of this House will recall the New South Wales Government's recent campaign to crack down on the improper labelling of imported prawns, imports that were hurting the viability of our local growers. At the start of last year's campaign the New South Wales Food Authority found that of the retailers surveyed up to 42 per cent were not correctly labelling imported prawns. Since then there has been a 95 per cent compliance rate at seafood retailers. Consumers and the industry alike have heralded the campaign. In fact the Federal fisheries Minister, my namesake, Senator Ian Macdonald, has praised the efforts in New South Wales. Most importantly, consumers in New South Wales will now have the information they need to make a choice that suits them. Let me stress that country-of-origin labelling is not about the safety of foods imported into Australia; there are other mechanisms that deal with this issue. How come the Hon. Greg Pearce is on the front bench? Has the Hon. Greg Pearce been promoted?

The Hon. Greg Pearce: No, I am just having a sit down.

The Hon. IAN MACDONALD: He is probably having a nice conversation there.

The Hon. Michael Gallacher: Actually, we are nodding off with your answer yet again.

The Hon. IAN MACDONALD: You obviously are. There has hardly been a comment. Opposition members are very quiet, nodding their heads in agreement and smiling.

The Hon. Amanda Fazio: Just jealous.

The Hon. IAN MACDONALD: Yes, they are jealous. They wish they were in government but quite clearly they will not be for a long time yet if a particular member in the Opposition back bench has his way. I have clearly stated the position: we will protect our country-of-origin labelling laws.

SUTHERLAND SHIRE SEX SHOP LOCATION

Reverend the Hon. Dr GORDON MOYES: I ask the Minister for Lands, representing the Minister for Infrastructure and Planning whether the Minister is aware of a report in a recent article in the *Daily Telegraph* that the Land and Environment Court is to consider a development proposal for the positioning of a sex shop called Sin City within 50 metres of a preschool and a primary school. Is the Minister further aware that the *Daily Telegraph* stated that in October 2004 Sutherland council tried to move an amendment to its planning rules to prohibit sex shops and brothels but that this prohibition was opposed by PlanningNSW? Can the Minister explain why PlanningNSW continues to sanction the running of sex shops and brothels within the areas frequented by children, especially in view of the high risk to the emotional and physical health, safety and

welfare of children exposed to such businesses and certain high-risk individuals? What action has been taken by PlanningNSW to outlaw the operation of sex shops and brothels in areas frequented by children?

The Hon. TONY KELLY: I undertake to pass the question on to the Minister and to get an appropriate answer as quickly as possible.

GROUP HOME PLACES

The Hon. JOHN RYAN: My question is addressed to the Minister for Ageing and Minister for Disability Services. When the Minister was questioned by Philip Clarke on radio 2GB's *Drive Time* show about group home places in New South Wales, did he say, "Well, there's a thousand new group home places"? Did he go on to say that the Carr Government had created "a thousand new places in the last five years"? Does the Minister stand by these comments? If not, can he inform the House exactly how many new group home places have been created in New South Wales over the last five years?

The Hon. JOHN DELLA BOSCA: I am very glad that the honourable member is keeping close track of my aspiring career as a radio personality. Under the bilateral agreement in 2000 the New South Wales and Commonwealth governments agreed to provide additional funding in 1999-2000 and 2000-01 to reduce unmet need for accommodation, respite and community access services for people with disabilities. Over the two-year program the New South Wales and Australian governments each met the total growth targets, with total funding committed at the end of 2001 being \$806 million. Overall funding provided by the New South Wales Government for disability services increased as a result from just under \$500 million in 1999-2000 to \$640 million in 2001-02, an increase of \$140 million over the two years. Over the same period Commonwealth funding increased by \$49 million to \$166 million. With regard to the specific comments raised by the honourable member, the Carr Government has more than doubled funding for disability services since its election in 1996 and is now allocating more than \$940 million to disability services.

The Hon. John Ryan: Point of order: At no stage did I ask the Minister about funding. I asked about the specific provision of a particular form of service, group homes. Additionally, I quoted the Minister specifically. I am questioning the Minister about specific comments he made on radio. Has his Government, as I suspect has not been the case, created a thousand new group homes? It may well have provided funding additional to that provided by the Commonwealth, but has it provided group homes? That was my question. The Minister needs to be relevant to the specifics of this question.

The PRESIDENT: Order! The Minister was making general comments and is in order.

The Hon. JOHN DELLA BOSCA: I do not propose to labour the point except to say that the honourable member needs to be aware that, of course, it is not possible to speak about these matters without speaking about funding. The Carr Government has almost doubled the funding for accommodation and support services to people with disabilities since 1996, now allocating \$455 million per year to assist more than 5,000 people. We have provided—and I think this is the answer to the honourable member's question—over 1,000 new supported accommodation places, including an additional 440 for former private boarding house residents who were not previously receiving a government service, 200 additional attendant care places, more than 400 additional places in group homes, large institutions and intensive drop-in support. We have doubled the funding for respite services since being elected and are now allocating \$158 million this financial year for these services through the disability and Home and Community Care programs.

The Hon. John Ryan: How many places?

The Hon. JOHN DELLA BOSCA: I believe I just answered that.

The Hon. John Ryan: You said funding!

The Hon. JOHN DELLA BOSCA: No, I did not. I said the government had provided over 1,000 new supported accommodation places. That is exactly what I said. This includes an additional \$3.2 million per annum allocated by this Government to provide an additional 400 respite care packages each year. We have allocated \$180 million this financial year for services for children and young people with disability across a range of early intervention, respite therapy and post-school support services.

The PRESIDENT: Order! I call the Hon. John Ryan to order for the first time.

The Hon. JOHN DELLA BOSCA: We have announced an additional \$30.6 million over four years for improved family and children's support services in 2003. We have relocated more than 260 residents from large institutions to community accommodation and assisted more than 440 residents with high support needs living in boarding house accommodation into more appropriate accommodation. As I said in my previous comments and during the course of this answer, we have provided over 1,000 new supported accommodation places, including all those that I have described.

SOLOMON ISLANDS FIRE SERVICE

The Hon. AMANDA FAZIO: My question is addressed to the Minister for Emergency Services. Will the Minister inform honourable members of the New South Wales Fire Brigades contribution to fire safety in the Solomon Islands?

The Hon. TONY KELLY: As honourable members would be aware, Australia is leading the Regional Assistance Mission to the Solomon Islands, which is offering assistance and capacity-building to a country once wracked by civil unrest and corruption. The mission is under the charge of the Australian Federal Police and is an important partnership between Australia and the Pacific. The initial purpose of the assistance mission was to restore order, before beginning the process of civilian reconstruction. A vital part of this work involves rebuilding the Solomon Islands Fire Service. I am proud to say this State's recognised firefighting expertise and technology is being employed to ensure that one of our closest neighbours in the region has the fire protection its community deserves. It is a great credit to the New South Wales Fire Brigades that it was approached to guide this important rebuilding process and reinforces its reputation as a world-class fire and rescue service.

The New South Wales Fire Brigades Zone Commander for the Blue Mountains and Central West, Superintendent Tom Milburn, has been selected to act as the Solomon Islands Chief Fire Officer for the next two years. After undergoing intensive predeployment training, Superintendent Milburn is departing Australia today. Superintendent Milburn's task will be to guide the restoration and management of the Solomon Islands firefighting services to ensure the community's fire protection needs are met. He will implement reforms recommended by his fellow officer, Inspector Chris Jurgeit, who spent three months in the Solomons last year reviewing the fire service. The Solomon Islands Fire Service is part of the Royal Solomon Islands Police and its firefighters are also sworn police officers. Superintendent Milburn will be joining the Participating Police Force comprising 200 Australian Federal Police officers and protective service officers, along with more than 100 other police from throughout the Pacific region.

The Fire Brigades commitment adds to that by the Rural Fire Service, which has produced and shipped five firefighting tankers to the Solomons as part of a specific AusAID-funded project. The RFS vehicles were selected for their excellent design features, simple operating systems and effective off-road capabilities. These tankers were specially fitted with bronze pumps that have the capability to use seawater, which is the main water source for firefighting operations in the Solomons. The Solomons Fire Service will experience significant changes over the next two to three years. Superintendent Milburn's extensive experience with the Fire Brigades will stand him in good stead in his new role. He will need to provide strong, steady leadership to the organisation as he implements new training programs, delivers new infrastructure, and supports the development of local officers so they will be in a position to assume control in the future.

I commend Superintendent Milburn for his commitment to assisting the community not only here at home but in our wider region, where his expertise and professional commitment can be used to directly benefit people in need. The Solomon Islands is comprised of almost 1,000 islands over some 1,300 kilometres in area, with a population of more than 500,000. It will be a difficult job for Superintendent Milburn. I wish him well in his position, which will no doubt be tremendously demanding but also richly rewarding.

CAROLINE BYRNE MURDER INVESTIGATION

Reverend the Hon. FRED NILE: I ask the Minister for Justice, representing the Attorney General, a question without notice. With regard to the ongoing murder case of Caroline Byrne, who was murdered at The Gap, is it a fact that Chief Detective Inspector Paul Jacob recommended that the New South Wales Director of Public Prosecutions formally charge Gordon Wood with the murder of Caroline Byrne in 1995? Is it a fact that this recommendation was made in March of last year? What has been done to prosecute Mr Wood since these recommendations were made? For the sake of the Byrne family, will the Minister ensure that this case is expedited and brought to a close before other suspects, witnesses or persons who may possess relevant information, are found dead?

The Hon. JOHN HATZISTERGOS: I will refer the details of the honourable member's question to the Attorney General.

TAFE SUBSTITUTED STUDENT RECORDS INVESTIGATION

The Hon. CATHERINE CUSACK: My question without notice is directed to the Minister for Education and Training. Has a fraud occurred inside TAFE whereby official records were altered so that the names of unqualified people were substituted for those with diploma qualifications? When did the Minister first become aware of this substitution scam, how extensive is it, and what action has the Minister taken? Should this substitution racket have been picked up by internal departmental checks, and if so why did that not occur?

The Hon. CARMEL TEBBUTT: As the honourable member would know, this issue has been the subject of some media coverage in recent times and it is a matter currently before the Independent Commission Against Corruption [ICAC]. The advice I have received is that in January 2004 TAFE New South Wales, through its own investigation, discovered a significant number of falsely issued documents and transcripts. TAFE New South Wales informed the ICAC and has been actively assisting the ICAC with its investigations in relation to this matter. A staff member was interviewed by the ICAC in June 2004 and, as a result, was subsequently denied access to all student records. The staff member was suspended without pay in October 2004 and remains suspended pending the outcome of the current ICAC hearing.

I assure honourable members that TAFE New South Wales has conducted a comprehensive audit of its student information system and has implemented the recommendations of that audit. It has introduced tough new security measures for student records, including fortnightly spot checks of all changes to student records. Some of the false documents have allegedly been used to gain builders licences. TAFE has been working closely with the Office of Fair Trading to identify those allegedly engaging in such activity. The Office of Fair Trading is in the process of cancelling such licences, according to required legal process.

TAFE New South Wales has simultaneously blocked access to the suspect student records at the college level and has issued letters seeking a retrieval of the suspected false qualifications. If individuals cannot show due cause, they must return to TAFE New South Wales all documentation falsely received. Failure to return the false documents will lead to the Department of Education and Training taking legal action against the individuals concerned. As I have indicated, the matter is still before the ICAC. It may well be the case that further recommendations will be made by the ICAC, and the department will give serious consideration to implementing them. However, we await the final ICAC report.

STATE EMERGENCY SERVICE STORM SEASON 2004-05

The Hon. GREG DONNELLY: My question is addressed to the Minister for Emergency Services. Will the Minister update the House on the work of the State Emergency Service during the 2004-05 storm season?

The Hon. Henry Tsang: This year is its fiftieth anniversary.

The Hon. TONY KELLY: That is right. The hardworking volunteers of the New South Wales State Emergency Service [SES] undertook almost 17,000 emergency tasks during the 2004-05 storm season, which officially ended last Saturday. The work included tarping roofs, removing fallen trees from houses and roads, sandbagging floodwaters, and using flood boats to resupply stranded residents with life's essentials.

I pay special tribute to the more than 10,000 volunteers in the SES, who have helped many of the State's families and businesses facing hardship as a result of severe storms and floods over the seven months since 1 October. Our SES volunteers often go above and beyond the call of duty, and the people of New South Wales are most appreciative of their efforts. It is particularly important that we pay tribute to our volunteers as the SES celebrates its fiftieth anniversary this year, as the Hon. Henry Tsang pointed out.

There were 47 major storm and flood events across the State during the official storm season, including a severe hailstorm that lashed the southern Shoalhaven last Friday afternoon. Striking just hours before the end of the season, the storm's hail caused damage in Ulladulla, Lake Tabourie and Milton. The SES received 247 requests for help, mostly regarding damaged roofs, broken skylights and blocked gutters. SES units from surrounding areas and the New South Wales Fire Brigades assisted the local SES.

Over the season natural disasters were declared to assist the affected communities when storms or floods struck Bellingen, Coffs Harbour, and Muswellbrook in the Hunter. In total, the SES received more than 30,000 calls from members of the community, an increase of more than 75 per cent on the number received the

previous year. The storms were often savage and, in some cases, they were over very quickly. On 25 October a ferocious storm hit the State with heavy rain and reports of golf ball-size hail. Almost 800 calls were made to the SES on that day. In just three days, from 20 January to 22 January, more than 1,000 calls for help were received as the State experienced strong winds, hail and rain. This resulted in major damage to homes and businesses.

The worst storm activity, in relation to the number of calls received, occurred between 2 February and 7 February, with extensive damage to homes and businesses, particularly in Baulkham Hills, Blacktown, Canada Bay, Mount Druitt, Hornsby, Parramatta, Penrith, Bankstown, Canterbury, Gosford and Ryde. Almost 4,000 calls for assistance were made to the SES. The official end of the storm season is not by any means the end of the work of the SES for the year. Our volunteers will continue to provide countless services to the community, including responding to motor vehicle accidents, assisting police with search and rescue operations, supporting local community events, and carrying out necessary training. As always, I remind anyone who is in need of assistance from the SES to call the central hotline on 132 500. In closing, I again commend the SES volunteers for their vital work to protect and assist the community. I am sure all members will join me in saying, "Thanks. Job well done."

MIDDLE EASTERN GANGS POLICE INTIMIDATION

The Hon. DAVID OLDFIELD: My question is directed to the Minister for Justice, representing the Minister for Police. Is the Minister aware of an episode of the television program *A Current Affair* last week that featured footage of Middle Eastern car hooners swearing at police, taunting police, ridiculing and even threatening police? I ask the Minister: While we appreciate the patience and professionalism of police, should police simply expect to be treated in such a manner? When will the citizens of New South Wales be assured that those who publicly display hate-filled, threatening behaviour towards police will suffer penalties under the law? When will the Government understand that police cannot continue to smile and retreat from the ever-increasing audacity and intimidation of Middle Eastern gangs? When will the Government untie the hands of police so they can put the cuffs on the thugs?

The Hon. JOHN HATZISTERGOS: I am aware of the *A Current Affair* program to which the Hon. David Oldfield refers. I agree that the conduct to which the honourable member referred in his question is unacceptable. I believe that any right-minded citizen who watched the program, or heard about it, would be appalled by the behaviour towards police of the people identified in that documentary. With regard to the substantive issues raised, I do not accept that police are hamstrung in the way the honourable member suggests. In fact, the Government has progressively extended the powers of police to allow them to deal with a multitude of circumstances. In any event, I will refer the question to the Minister for Police for his response.

OVINE JOHNE'S DISEASE

The Hon. PATRICIA FORSYTHE: My question without notice is directed to the Minister for Primary Industries. Will the Government undertake a complete and transparent audit of all revenue, outgoings and remaining obligations of the regulatory program for ovine Johne's disease in New South Wales that terminated on 30 June 2004? If not, how will the Government satisfy the across-the-board demand for effective accountability concerning the financial management of that regulatory program, and how will the Government establish a credible definition of any final debt owed by industry to government in connection with it?

The Hon. IAN MACDONALD: I thank the Hon. Patricia Forsythe for her very good question. It seems only in recent times that the Hon. Patricia Forsythe has asked me questions outside a very narrow range, albeit an important range. I wonder whether that has anything to do with the activities of the Hon. David Clarke, who is obviously putting pressure on members opposite, including the Hon. Patricia Forsythe.

The Hon. Duncan Gay: Point of order: The question relates to a very important issue for regional New South Wales and the Primary Industries portfolio. The Minister might think he is smart by delivering this dissertation. Might I suggest he become a little smarter and answer the question, which relates to a serious issue affecting people in regional New South Wales.

The PRESIDENT: Order! I remind the Minister that one of two things a Minister cannot do when answering a question is debate the question.

The Hon. IAN MACDONALD: I did not think I was debating the question. I was simply commenting on the Hon. Patricia Forsythe's sudden interest in matters to do with ovine Johne's disease [OJD], and I find that

most interesting. I invite other members of the Liberal Party to start asking me questions about Primary Industries matters, and to do so beyond the time frame of a preselection battle going on within their party. In answer to the question I advise that last year, during the debate on transaction levies—which were supported by the Deputy Leader of the Opposition—I made it absolutely clear that the figure to be used would be determined after consultation with the industry.

I made that point very clear last year. In fact I will send a copy of that advice to the Hon. Patricia Forsythe, who can forward it to some of the delegates who live in places a little bit remote from the North Shore—places like Dubbo, Albury, and maybe even Cooma. Such areas have had a terrible time with OJD. Together with the Hon. Richard Bull and, more lately, the Hon. Garry West, I have been able to put together a decent package for these people. I just hope the Liberal Party appreciates the great effort we have put into this. It is an example of our Government at work, with a bit of assistance. I will forward to the Hon. Patricia Forsythe a copy of our package on OJD, including the numerous speeches I have made on the topic so that someone, who shall remain nameless—

The Hon. Duncan Gay: You won't answer the question, will you?

The Hon. IAN MACDONALD: I have answered it.

The Hon. Duncan Gay: No, you have not.

The Hon. IAN MACDONALD: I have said that the final figure will be determined in consultation with the industry. That was the agreement I struck with the Deputy Leader of the Opposition on the relevant bill last year. What are you talking about, Duncan? We agreed on that. I suggest that the Deputy Leader of the Opposition provide the Hon. Patricia Forsythe with some background on the subject.

UNIVERSITY OF NEWCASTLE FUNDING

The Hon. PETER PRIMROSE: My question without notice is addressed to the Minister for Education and Training. What is the Government's response to the funding pressures confronting the University of Newcastle?

The Hon. CARMEL TEBBUTT: I thank the Hon. Peter Primrose for his important question. No-one could have failed to note in news broadcasts today the outcome of the funding pressures on the University of Newcastle and the impact that will have on both staffing and course availability. It is a tragedy for Newcastle. Universities are known throughout the world as higher seats of learning and they hold a special place in communities as centres of excellence. They are regarded as the engine rooms of intellectual development, and nowhere is this more so than in places like Newcastle, where the university is a critical part of academic, cultural and community life.

The University of Newcastle is renowned for its research and its innovation. The university announced that it had identified an expected deficit of around \$28 million for 2004; that is almost 9 per cent of its annual budget. Of that amount, \$13 million relates to an advance payment that the university expected to receive from the Commonwealth in December last year for January this year. However, the Commonwealth decided in 2004 that all universities would now receive their January funding in the calendar year for which it is earmarked. This effectively means that the university lost a payment that it was expecting and it has now had to incorporate that into its financial operations, impacting on the deficit that it is confronting.

[*Interruption*]

No, it actually lost a payment. It does not transfer over. The university lost a payment for that year, and it was given very little notice of that. It cannot be denied that for that year the university lost the payment. It did not get an additional payment for the transition to the change; it just lost the payment. Since 1995 Commonwealth funding as a share of total revenue at the University of Newcastle has declined by 13 per cent. Other universities are confronting similar funding pressures because of the Commonwealth's failure to adequately fund higher education in New South Wales. What is even worse for the University of Newcastle—and I am sure members on the opposite side of the Chamber who have a very close relationship with Newcastle will want to take up this matter with the Federal Minister—is that the Commonwealth, for some inexplicable reason, has failed to allow the university to qualify for a regional loading. The University of Wollongong has a regional loading but the University of Newcastle does not.

Such a loading would assist the university greatly; it would assist it with much-needed funds. What does this mean for the university, its staff, the courses and the programs? The university has conducted a painful review of staffing levels and courses and has announced that it will make changes to its academic programs starting in 2006. Staff were told today that it appeared likely that up to 290 administrative jobs and 180 academic positions would have to go. That is up to 470 jobs lost in Newcastle—a major city in New South Wales. It means the possibility of more pressure on students and parents to pay fees and increased Higher Education Contribution Scheme payments so the university can stay afloat.

The Newcastle community is tough and resilient; it has been through many difficult times. But this is unacceptable. It is a body blow to the whole region, and it is a blow to the New South Wales Government's plans for the local economy following the closure of BHP, a plan that included a thriving, financially viable university. I have confidence in the university. The university may have lost its way in this difficult period, but it should not now be faced with such a situation. The Newcastle community should not have to lose up to 470 jobs. [*Time expired.*]

DROUGHT-AFFECTED SCHOOLS POLICY

Ms LEE RHIANNON: I direct my question to the Minister for Education and Training. Given reports today that more than 90 per cent of New South Wales is drought affected, that 76 per cent is facing extreme drought conditions, and that some areas are going into their fifth year of drought, what plans does the Government have for the maintenance of the drought-affected schools policy both now and once the drought breaks, recognising that recovery is not something achieved by one good season? Can the Minister guarantee that the Government will not turn its back on the struggling communities, given that the Government tried—thankfully unsuccessfully—to abandon the drought-affected schools policy following the 2003 State election?

The Hon. CARMEL TEBBUTT: The Government has not turned its back on drought-affected communities, and it will not. In Orange towards the end of last week I discussed with representatives of some of the smaller schools that were taking part in a regional forum the impact of the drought on their communities. I am sure members are aware that teaching staff are allocated to government schools according to a formula based on student enrolments to ensure that resources are distributed equitably across the State. We have dealt compassionately and sensibly on a case-by-case basis with the staffing of drought-affected schools. It is an effective approach because it allows the particular needs of a school community to be assessed.

We have made sure that factors taken into account in approving the retention of teaching positions not supported by the normal enrolment-based formula include local demographic information, a school's enrolment patterns or trend, and its special needs. This year nine schools will receive drought support. Eight schools that had previously received drought support secured sufficient enrolments to maintain teacher staffing levels without supplementation. In addition, other schools are receiving supplementation because of different needs. There is no doubt that the drought is having a significant impact on rural communities and on student enrolments. That is why the Government has taken this flexible and compassionate approach.

Obviously, we look at the circumstances of a particular school. At some schools enrolments have been reducing over a significant period. It may well be that other factors, besides the drought, have played a role in that reduction, and it may well be the reality that student numbers will not increase at those schools. All those factors are taken into account. I am assured that the department's school staffing unit will continue to work with principals and school education directors throughout the 2005 school year.

ROADS AND TRAFFIC AUTHORITY LONDON 2012 OLYMPIC BID TRANSPORT ADVICE

The Hon. ROBYN PARKER: My question without notice is directed to the Minister for Roads, Minister for Economic Reform, Minister for Ports, and Minister for the Hunter. Has the Roads and Traffic Authority's Communications and Corporation Relations Director, Paul Willoughby, provided the London 2012 Olympic bid with professional advice and assistance in relation to transport issues facing the city if it wins the right to host the 2012 Olympic Games? If so, is Mr Willoughby still providing assistance to the London bid?

The Hon. MICHAEL COSTA: Clearly this is a matter for the Roads and Traffic Authority [RTA].

The Hon. Melinda Pavey: But you are the relevant Minister.

The Hon. MICHAEL COSTA: Yes, but Paul Willoughby works for the RTA. I will speak to Paul Forward, the Chief Executive Officer of the RTA, and ensure that I get an answer to the question. I am not aware of any assistance being given but I am sure the RTA can provide a response.

REGIONAL APPRENTICE CHEFS

The Hon. JAN BURNSWOODS: My question is directed to the Minister for Education and Training. Can the Minister inform the House of the initiatives being undertaken to showcase and develop the skills of apprentice chefs in regional areas?

The Hon. CARMEL TEBBUTT: As I have reported to the House previously, the Government does have detailed plans to reduce skills shortages in the State.

The Hon. Melinda Pavey: Strong and detailed plans?

The Hon. CARMEL TEBBUTT: They are strong and detailed, yes. I applaud the Federal Opposition's call this week for apprentice completion bonuses to be introduced in the upcoming Federal budget. This would be a useful way to improve performance completion rates with respect to apprenticeships. An industry area with skills shortages is hospitality. The hospitality industry and associated industries currently employ 88,000 chefs and cooks, and around 21,000 bakers and pastrycooks across Australia. Recent estimates indicate that, in addition to the 13,000 chefs and cooks who enter the industry each year, nationwide we need an additional 17,500 people trained in the next five years to meet the current skills shortages. Both the industry and the training sector are looking at ways to boost the number of young people who will consider professional cooking as a career.

For the past four years the Illawarra Institute, in partnership with the New South Wales Restaurant and Caterers Association, has run the South Coast apprentice cookery competition, which is designed to provide both a forum for learning and an opportunity for competitors to demonstrate the skills and knowledge they are developing throughout their apprenticeship. The competition and the publicity it generates also provide an opportunity for the industry to showcase its work and, hopefully, to inspire others to consider cooking as a career. I am pleased to advise the House that this year's competition was held during April at Bega TAFE and Nowra TAFE, attracting a record 30 entrants. The competitors were drawn from regional restaurants within the Illawarra and Shoalhaven areas.

Competitors were required to cook a menu within a given time, based on their level at TAFE. They were required also to prepare a time plan and work flow to deliver the meal. Once complete, each menu was assessed on presentation, quality, portion size and general taste. The judges were very impressed with the high quality of the meals produced by this year's group. They found that the way in which the apprentices worked in the kitchen was a real credit to their employers and TAFE alike. The competition is a stepping stone to a bigger event. Winners of the various categories proceed to the State competition in August for the chance of claiming the New South Wales Apprentice of the Year title, a cheque for \$1,000 and one week's work experience with one of Sydney's leading chefs.

The winners were announced at a ceremony last night and, on behalf of the Government and the House, I formally congratulate students from Bega, Nowra and Wollongong TAFE colleges. Importantly, the competition motivates and encourages young apprentices to gain new skills and to take back to their restaurants new enthusiasm and creativity for their work. It is an example of how TAFE and industry are working together to meet the needs of local industry and supply the skills necessary to build sustainable local economies. I look forward to reporting on similar initiatives in the future.

LAKE CATHIE PRIMARY SCHOOL PROPOSAL

The Hon. JOHN TINGLE: My question without notice is directed to the Minister for Education and Training. When will the Minister announce the locations of the remainder of the schools to be built under the new five-year Government public-private partnership? Can the Minister say whether a primary school for Lake Cathie is being considered for inclusion in the scheme?

The Hon. CARMEL TEBBUTT: I commend the Hon. John Tingle for his continued active and energetic advocacy on behalf of the Lake Cathie community. I am very familiar with this issue because of representations made by the honourable member and others. As the Hon. John Tingle indicated, at the end of last week the Government announced further funding through public-private partnerships for an additional nine schools. As I indicated at the time of the announcement, the details of the locations of those schools will be announced as they are approved. Obviously, there are issues around timing—

The Hon. John Ryan: Spread the news out over time.

The Hon. CARMEL TEBBUTT: No, we need to closely examine the demographics of particular communities. Two schools were announced, on the Central Coast and at Maitland. I made it clear at the time of the announcement that the other schools were predominantly likely to be in the growth areas of the north-west and south-west sectors of Sydney. I do not want to unnecessarily raise the expectations of the good residents of Lake Cathie whom I met on behalf of the honourable member. I have advised the House previously that I have paid close attention to the views of the Port Macquarie and Lake Cathie communities on this issue.

The provision of new schools is a significant capital investment, and considerations such as demographics, local population trends and potential impacts on surrounding schools must be taken into account in the decision-making process. At the instigation of the former Minister, the Department of Education and Training has completed a comprehensive study of the need for a new school at Lake Cathie. The study considered local population trends, the likely number of primary school age children, and the impact that a new school would have on nearby schools. It concluded that, at this stage, a new school at Lake Cathie would have a negative impact on nearby North Haven Public School in terms of enrolment and, accordingly, the range of resources available to it. However, as I have indicated, the department will retain the two separate blocks of land in the area so that a new school can be built when it is needed in the future, and such a decision will be based on demographic analysis.

WORKCOVER WORKERS COMPENSATION AUDITS

The Hon. DAVID CLARKE: My question is directed to the Minister for Industrial Relations. Can the Minister explain why insurance companies have been allowed to continue charging penalty fees, including interest fees, to small businesses that have had contractors deemed as employees, despite the moratorium instigated by WorkCover regarding fines and penalties resulting from workers compensation audits? How many WorkCover workers compensation audits have been conducted since WorkCover's release of its discussion paper describing the current definition of a worker as lacking "sufficient clarity"? Will WorkCover refund all payments made by employers as a result of audits conducted under these unclear definitions?

[Interruption]

The Hon. JOHN DELLA BOSCA: As the Leader of the Opposition said by way of interjection, the Hon. David Clarke has asked a detailed question—so detailed that I lost the thread of some of its elements.

The Hon. Michael Gallacher: It related to matters across your portfolio.

The Hon. JOHN DELLA BOSCA: I am always across my portfolio, although I am not quite fully across the question he asked.

The Hon. Charlie Lynn: You have lost interest.

The Hon. JOHN DELLA BOSCA: No, it is not because I have lost interest; the Hon. Charlie Lynn has got that wrong. To make workers compensation fairer and more affordable for employers it is necessary to ensure that all employers contribute equitably to the WorkCover scheme. An important part of the workers compensation reform process since 2000 has been the development of a range of strategies, including routine wage audits, to improve compliance by employers with their premium obligations. Using data-mining software to target its activities, WorkCover now issues around 13,000 requests for audits to insurers each year.

The success of this measure is evidenced by the fact that during 2003-04 nearly \$38 million in additional premium was identified as a result of wage audits. Honourable members may not be aware, however, that wage audits also assist employers, with almost 3,000 employers found to have overpaid their premiums and, of course, they have been refunded to the tune of \$11 million. The net result of the scheme is more than \$26 million in additional premium identified for recovery.

Although audits are essential to ensure that the correct premium is being collected, it has become apparent that, in a small proportion of audits, employers have experienced difficulties in determining who is a worker, as distinct from who is a contractor. In particular, where contractors and deemed workers are involved, a number of legal factors have to be considered, and in a relatively small number of cases these issues are not necessarily clear-cut.

Members would be aware that to address these concerns the Government is currently undertaking a wide-ranging review of the definition of "worker" in regard to workers compensation liability premiums. Many options have been canvassed—obvious among them the utilisation of the Commonwealth tax definition of "worker", which is unsatisfactory for a number of purposes and would have some serious problems for employers if used. The definition for "worker" in the Industrial Relations Act, although appropriate for that Act, also has some difficulties when applied to workers compensation premiums. To put it simply, it is a classic problem of insurance. Those who are liable to make a claim against the funding pool need to be defined as "worker" for the purpose of collection of premium.

WorkCover released a discussion paper for circulation, and it has been consulting widely with stakeholders, especially small business employers. The discussion paper set out the current definition of "worker" and specific issues of concern around independent contractors, outworkers and the labour hire industry, and highlighted issues for which stakeholder comment was required. With eight additional information seminars around the State forming part of that consultation process, I put in place a program of public submissions, which closed on 4 March 2005.

Currently, WorkCover is undertaking further consultation with employer and union groups. In the meantime, WorkCover does not intend to penalise employers who undergo an audit and are found to have underdeclared wages due to a lack of understanding of the issues involved, in defining the difference between "contractors" and "deemed workers". Only a relatively small number of them are required to pay uncollected premiums. Honourable members will recall that recently I announced a moratorium on some late payment fees related to workers compensation wage audits. The moratorium extends to wage audits that have occurred since January 2003 and to those late payment fees ordered in respect of contractor and deemed worker issues. [*Time expired.*]

FEMALE PRISONERS REHABILITATION

The Hon. IAN WEST: My question is addressed to the Minister for Justice. What is the latest information on rehabilitation programs for women inmates?

The Hon. JOHN HATZISTERGOS: Previously I informed the House about the tragedy that unfolds in the prison system in terms of women in custody: 42 per cent experienced physical violence as a child, 34 per cent experienced sexual violence as a child, 52 per cent reported that they experienced emotional violence as a child, 70 per cent experienced physical violence as an adult, 29 per cent reported that they experienced sexual violence as an adult, 70 per cent reported that they experienced emotional violence as an adult, 63 per cent felt that they were still affected by abuse and 52 per cent see a link between their abuse and custody. That is from the 1998 women's census.

Between 1995 and January 2005 the population of females in custody increased by 105 per cent. It is incumbent on us in these circumstances, particularly now that there are so many women in custody, to do what we can to assist in their rehabilitation. I am pleased to advise the House, as I previously informed the House, that on 15 July 2004 Her Excellency the Governor opened Dillwynia women's correctional centre at Berkshire Park. Incidentally, I am pleased to say that that had the Opposition's support at the time; the Leader of the Opposition claimed that the emphasis on rehabilitation was important. The facility has been operational now for almost nine months, providing opportunities for women that previously did not exist, including the opportunity to work.

I recall being at Mulawa women's correctional centre when I first became Minister. While speaking to a number of women I was asked, "Can we get an opportunity to work?" Last week, on 29 April—this relates to a matter I will refer to in a minute—I spoke to one inmate aged 20 who is being trained in the call centre enterprise that Corrective Services Industries is establishing. I asked her if she had ever worked or had a job; her answer was that she had never worked and never had any training from the time she left school until she came into custody. As the old saying goes, which I think is plastered somewhere in Long Bay prison, "We should endeavour wherever possible to ensure that inmates not only serve time but make that time serve them."

On Friday 29 April I was pleased to officially launch an important and innovative venture with Gloria Jean's Coffees. The Department of Corrective Services has entered into a partnership with Gloria Jean's Coffees to provide a training facility fully funded by Gloria Jean's Coffees. This will include training of five inmates as staff, store development and fit out paid for by Gloria Jean's Coffees, a store manager paid for by Gloria Jean's to supervise operations and an ongoing supply of ingredients and equipment by the Gloria Jean's people. I take

this opportunity to acknowledge and thank the principals of Gloria Jean's Coffees—Nabi Saleh, Peter Irving, Mike Devlin and Peter Blanco—for the opportunity they are providing and the partnership.

We initially approached Gloria Jean's Coffees not for the purposes of setting up an establishment but simply from the point of running a prison-based coffee shop, as we do in visiting sections of other facilities. We asked them if they would assist us in training. They said, "We can do more than that. We will provide a facility here at no cost to the Government to facilitate training and we will provide opportunities for inmates who have been trained to obtain full-time employment elsewhere once they are released from custody."

Reverend the Hon. Dr Gordon Moyes: It is a Christian church outreach program.

The Hon. JOHN HATZISTERGOS: I acknowledge that it is a Christian-based outreach program and that the principals are heavily involved. [*Time expired.*]

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

GROUP HOME PLACES

The Hon. JOHN DELLA BOSCA: Earlier in question time shadow Minister the Hon. John Ryan asked me about group home places and, I fear, accidentally misrepresented the recommendations of a Legislative Council committee. In 1999 the Standing Committee on Social Issues, on page 37 of its report, recommended:

The Ageing and Disability Department should adopt a growth target of 200 additional supported accommodation places for people with a disability per year for five years from the date of this report.

That recommendation, which was for supported accommodation places, has been delivered. Since 1999 the State has funded more than 1,000 new supported accommodation places, including an additional 440 for former private boarding house residents who were not previously getting a government service, 200 additional attendant care places, and more than 400 additional places in group homes, larger institutions and intensive drop-in support.

As the honourable member correctly described in his question, on 11 April on the Philip Clark program on 2GB during an interview I initially said "1,000 group home places", but I corrected myself to say "1,000 places" subsequently. To confine the Government's response to only group home places would be a narrow response, and fails to recognise that people with disabilities have a range of needs that cannot be met by one model alone. Since coming to office the Government has doubled funding for disability services. I should add that to my knowledge the Opposition has made no further commitment to fund any additional places.

DEFERRED ANSWERS

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

CANNABIS USE AND SCHIZOPHRENIA

On 22 March 2005 Reverend the Hon. Dr Gordon Moyes asked the Minister for Education and Training, representing the Minister for Health, a question without notice regarding cannabis use and schizophrenia. The Minister for Health provided the following response:

I am aware that statements by Professor Vaughan Carr, Scientific Director of the Neuroscience Institute, on the use of cannabis and the onset of schizophrenia have been quoted in the Sydney Morning Herald.

I am advised that there are studies that indicate a higher incidence of psychotic symptoms and schizophrenia among daily users of marijuana. However, I am also advised that research scientists have yet to reach a consensus on the precise nature of the relationship between cannabis use and mental illness.

The Government remains committed to further research and treatment programs in relation to co-occurring mental health and substance abuse issues. A number of Government Departments are involved in initiatives which include research to establish the prevalence of these conditions, information and education for health professionals, high risk groups and the wider community, and the establishment of treatment programs.

The Department of Health has programs in place to address problems arising from cannabis use and also the special problems of dual diagnosis or comorbidity.

ETHNICITY-BASED SPORTING VIOLENCE

On 22 March 2005 the Hon. David Oldfield asked the Special Minister of State, representing the Premier in his role as Minister for Citizenship, a question without notice regarding ethnicity-based sporting violence. The Minister for Citizenship provided the following response:

The incident referred to is the subject of a number of concurrent investigations by NSW Police and Soccer NSW.

NSW Police is investigating the crowd behaviour on the day, has already charged a number of individuals with criminal offences, and is continuing to pursue other lines of investigation.

Soccer NSW has launched an independent inquiry into the incident. The Panel of Inquiry appointed comprises Stepan Kerkyasharian AM, the Chair of the Community Relations Commission For a multicultural NSW, Irene Moss AO, the former Commissioner of the Independent Commission Against Corruption, and Kevin Waller, AM, the former NSW magistrate and State Coroner. Soccer NSW has asked the Panel of Inquiry to report back by 21 April 2005.

In addition, officers of the Community Relations Commission For a Multicultural NSW are meeting with community representatives as part of the ongoing role of the Commission in the promotion of community harmony.

FIREARMS REGISTRY

On 22 March 2005 the Hon. John Tingle asked the Minister for Justice, representing the Minister for Police, a question without notice regarding the Firearms Registry. The Minister for Police provided the following response:

NSW Police has advised me:

The number of licensed firearm owners as at 27 March 2005 was 172,231. The number of registered firearms as at 27 March 2005 was 648,846. These figures represent increases from the same date in 2004.

Current Firearms Registry funding is based on projected revenue for the five year period commencing 1 July 2004. Consequently, the Registry is currently funded to a level that exceeds revenue, a situation that will continue for at least the next three years. Firearms licensing fees are directed to the Firearms Registry only and are not diverted to any other part of NSW Police or elsewhere.

CENTRAL COAST WATER SUPPLY

On 22 March 2005 the Hon. Dr Peter Wong asked the Special Minister of State, representing the Minister for the Central Coast, a question without notice regarding the Central Coast water supply. The Minister for the Central Coast provided the following response:

The honourable Member should be aware that water supply on the Central Coast is not under the care and control of the State Government, but is managed by Gosford City Council and Wyong Shire Council through the Gosford Wyong Joint Water Authority.

Further questions regarding water supply generally should be directed to the Minister for Energy and Utilities, The Hon Frank Sartor MP.

DRUG COURT

On 22 March 2005 the Hon. Dr Arthur Chesterfield-Evans asked the Minister for Justice, representing the Attorney General, a question without notice regarding the Drug Court. The Attorney General provided the following response:

The NSW Drug Court commenced in February 1999 on a trial basis. It was established as a special court to provide intensive supervision and community based rehabilitation for drug dependent offenders.

The Court accepts referrals of residents from the greater western Sydney region who appear at Local and District Courts prescribed in the *Drug Court Act 1998*.

The Bureau of Crime Statistics and Research conducted a comprehensive evaluation of the first three years of the Court's operation. The Bureau reported that the Court was cost effective in reducing drug related crime. The Government has now extended the Court's ongoing operation as part of the Drug Programs budget. The need for further expansion of the Court's coverage will be periodically reviewed.

It should be noted that the court-based drug program—*Magistrates Early Referral into Treatment*—has also received a positive evaluation showing high levels of completion and measurable reductions in re-offending. Since MERIT commenced in Lismore from July 2000 as a pilot program, it has expanded across all 17 Area Health Services. The program is now available at 52 Local Courts which service approximately 65 per cent of the State's Local Court population.

SUPPORTED ACCOMMODATION ASSISTANCE PROGRAM

On 23 March 2005 the Hon. Sylvia Hale asked the Special Minister of State, and Assistant Treasurer, a question without notice regarding the Supported Accommodation Assistance Program. The Assistant Treasurer provided the following response:

NSW and other States and Territories are in the process of negotiating a new SAAP Agreement with the Federal Government.

The NSW Government has significant concerns with the offer from the Federal Government. The Minister for Community Services has raised these concerns and those of the sector with the Federal Minister, Kay Paterson.

The Carr Government provides more than 50 per cent of funding under the current SAAP Agreement, as well as additional funding for other State homeless programs.

Yet despite an expected massive Federal budget surplus and withholding \$3 billion of the \$13 billion of GST revenue collected from the people of NSW, the Federal Government has not offered anything more than a meagre annual inflationary adjustment for the new Agreement.

The Carr Government recognises the importance of SAAP services in preventing and addressing homelessness in NSW.

The Government is keen to ensure that the new Supported Accommodation Assistance Program Agreement includes strategies and a level of funding to support core service delivery and to enable the development of a sustainable system.

The negotiations are ongoing and this Government will continue to push for the best possible outcome for these vital services in NSW.

MR GORDON STEWART PERJURY CHARGES

On 23 March 2005 Reverend the Hon. Fred Nile asked the Minister for Justice a question without notice regarding perjury charges against Mr Gordon Stewart. The following responses were provided:

From the Attorney General:

The Royal Commission into the New South Wales Police Service, Separate Report, The Paedophilia Inquiry (the Report), was presented to the Government in August 1997.

The Report made no official findings or recommendations in relation to Mr Gordon Vivian Stewart.

From the Minister for Police:

NSW Police advise me:

No charges have been laid with respect to this matter. There is insufficient evidence to justify a prosecution.

Questions without notice concluded.

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Membership

The PRESIDENT: I report the receipt of the following message from the Legislative Assembly:

MADAM PRESIDENT

The Legislative Assembly informs the Legislative Council that it has this day agreed to the following resolution:

That Andrew Arnold Tink be appointed to serve on the Committee on the Independent Commission against Corruption in place of Barry Robert O'Farrell, discharged.

Legislative Assembly
3 May 2005

JOHN AQUILINA
Speaker

CRIMES AMENDMENT (GRIEVOUS BODILY HARM) BILL

Second Reading

Debate resumed from an earlier hour.

The Hon. JOHN HATZISTERGOS (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [5.07 p.m.]: Earlier I was referring to two questions asked by the Hon. Dr Arthur Chesterfield-Evans in his contribution, and to which he asked for a response. First, he asked whether "foetus" is defined in the Crimes Act. The answer is no. The word takes on its common meaning. The honourable member also asked about knowledge. He specifically asked whether the offence requires the prosecution to establish that the perpetrator of the offence was aware that there was a foetus or an unborn child. There is a principle in criminal law that states that you take the victim as you find them. Therefore, it is not necessary to know that the victim is pregnant.

However, if the offender does know and does intend to destroy the foetus, this makes the offence even more serious. It is an aggravating feature of a crime. The definition applies to a range of offences which have grievous bodily harm as an element. Two amendments foreshadowed specifically by the Christian Democrats will be resolved in Committee. I do not want to comment on them in detail. However, I make the point that the impact of the amendments foreshadowed by Reverend the Hon. Dr Gordon Moyes is that they would narrow the offence because it would be necessary for the prosecution to prove that the offender was aware that there was an unborn child.

As the current offence the Government has put forward in the bill is framed, the knowledge of the foetus or the unborn child being in the woman is not an ingredient of the offence. All one needs to establish is grievous bodily harm, and the fact that there is an unborn child or foetus can be an aggravating feature depending, particularly, whether there was knowledge or not. However, it is not an essential ingredient that the defendant knew of the existence of the unborn child. To that extent, support for the amendment proposed by Reverend the Hon. Dr Gordon Moyes would be counterproductive, it appears to me, to the intent of this legislation because it narrows considerably the offence in the bill. With those comments, I commend the bill to the House.

Motion agreed to.

Bill read a second time.

Consideration in Committee ordered to stand as an order of the day.

CRIMINAL PROCEDURE AMENDMENT (EVIDENCE) BILL

Second Reading

The Hon. JOHN HATZISTERGOS (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [5.11 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

Sexual assault in New South Wales—indeed in Australia—is a grossly under-reported crime.

Victim surveys reveal that more than half the sexual assaults that occur each year are perpetrated by the partner, boyfriend or former partner of the victim, and in a further 34% of cases by a person known to the victim.

These assaults occur every day. They do not get headlines. Victims do not report their former partners, their husbands, people they thought were their friends.

The Government is determined to provide support and assistance to victims of sexual assault at every stage of the process.

As such, in recognition of the low rates of reporting and convictions, the Government has made a number of reforms designed to assist complainants in the difficult task of giving evidence, thereby encouraging them to come forward and report sexual assault crimes.

The Government is pleased to introduce the *Criminal Procedure Amendment (Evidence) Bill 2005*.

The bill amends the *Criminal Procedure Act 1986* to permit the record of evidence given by the complainant in a sexual assault trial to be admitted as the evidence in any new trial ordered following an appeal.

This bill is part of the on-going process of reform in relation to improving the process surrounding sexual assault prosecutions for complainants. There will be more reforms in this area in the very near future.

Honourable members will be aware that on 3 February 2005, the DPP announced that the re-trial of two Accused would not proceed because the complainant was unwilling to testify again and the case was not strong enough to proceed without her evidence.

The advice of every experienced prosecutor is that it is infinitely preferable, in a jury trial, to have the direct evidence of the complainant.

No other form of evidence has the clear impact of personal testimony. But that option is no longer available. And the Government respects the decision of the young woman in that case.

In certain circumstances under the current state of our law the evidence of complainants from previous trials is admissible on subsequent re-trials.

However, unless an exception to the hearsay rule applies, the record of the original proceedings is inadmissible.

The rule against hearsay, as found at section 59 of the *Evidence Act* 1995 (NSW), currently prevents the admission of representations made by a complainant in a previous trial to prove the facts upon which the prosecution seeks to rely in a subsequent re-trial.

This rule against hearsay is subject to a number of exceptions: section 65 of the *Evidence Act* creates an exception to the hearsay rule where a witness is not available, and they have given evidence in prior proceedings and the accused cross-examined them or had a reasonable opportunity to cross-examine them.

A person is not available if they are dead or if all reasonable steps have been taken to locate them and get them to come to court, but without success. In such circumstances, a recording or transcript of their evidence may be adduced in evidence.

The *Evidence Act* does not provide for the admission of the record of the original evidence of a complainant on a re-trial ordered by an appeal court where the complainant is available but unwilling to give further evidence.

This Government considers that the record of the original evidence **should** be admitted in such circumstances and that the rule against hearsay evidence should not prevent this.

Sexual assault has a devastating effect on its victims. While sexual violence only occasionally results in physical injury, the emotional impact can be extensive. The Australian Institute of Criminology's 2001 report on Sexual Violence in Australia found that:

"Regardless of age, sex, occupation or marital status of the victim, the consequences of sexual assault can include massive and potentially long-lasting trauma, both for the victim and their immediate family or social network."

Not surprisingly, some complainants who have given evidence that resulted in a conviction, decide that they simply cannot return to give evidence again, when a new trial is ordered on appeal. Significant time will have passed and the complainant will have tried as best as possible to put the matter out of their mind.

The proposed new Division 3 of Part 5 of Chapter 6 of the *Criminal Procedure Act* permits the admission of a record of evidence given by a complainant in a prescribed sexual offence proceeding in any new trial that is ordered following an appeal.

Under the proposed s306B the record of the original evidence will be admissible only if the prosecutor gives the court and the accused notice of the prosecutor's intention to tender the record. The form of the notice is prescribed by the regulations.

Proposed subsection 306B(4) provides that the hearsay rule under the *Evidence Act* will not prevent the admission or use of the record as evidence.

Under proposed subsection 306B(5) the Court does not have discretion to decline to admit the record where proper notice has been given by the prosecution.

However, subsections 306B(6) and (7) do allow the record to be edited to remove inadmissible statements. An example of where the transcript will need to be edited is where the Appeal Court has indicated that a part of the complainant's evidence was placed before the original jury in breach of the rules of evidence or law.

That the complainant is not giving evidence orally in the new trial proceedings is not a basis for rejecting the record of evidence. The new trial court must approach issues of admissibility as if the evidence of the complainant were being given orally.

The proposed subsection 306B(7) provides that editing may also occur on the basis of agreement between the prosecution and the accused or his or her counsel.

This bill does not require the record of the original evidence to be admitted in evidence on all re-trials. Some complainants will choose to give all of their evidence again in person. It is important that complainants can choose to give evidence on a re-trial. It empowers complainants and allows them a decision-making role in the court process.

The prosecutor will no doubt advise complainants that the case will be stronger if they can manage to give all their evidence again in front of a new jury. Where the complainant does choose to give all their evidence again on a re-trial no notice need be served by the prosecution.

The complainant will have a choice about whether to give no further evidence, whether to give limited further evidence or whether to give all his or her evidence afresh.

The proposed sections 306C and 306D provide that if a record of the evidence of a complainant is admitted in the new trial proceedings, the complainant will not be compellable to provide any further evidence, but may elect to do so (with leave of the court hearing the new trial proceedings).

A complainant who chooses to give further evidence will not be exposed to further questioning "at large" on all matters.

The proposed subsection 306D(3) requires the court to ensure that only those questions which are necessary to clarify the record of the original proceedings, to canvas new material that has become available since the original proceedings, or that are necessary in the interests of justice, are asked of the complainant.

Subsection 306D(4) makes a complainant who commences to give further evidence compellable to remain to answer such limited further questions as the court allows from both the prosecution and the defence.

The proposed section 306E also makes provision for the form in which a record of the original evidence given by a complainant is to be tendered in new trial proceedings.

The best available record must be tendered. A recording will be tendered where one is available and, where a recording is not available, a transcript may be tendered.

The proposed provisions extend to new trials ordered before the commencement of these provisions. In this way, the procedure of tendering the record of the original proceedings will be available for the matter which received publicity on 3 February 2005 if the DPP choose to proceed to trial against the two Accused.

The bill also amends the *Criminal Procedure Regulation 2000* consequentially to make provision for: (a) the matters to be specified in the notice required to be given by the prosecutor before tendering a record of the original evidence of a complainant, and (b) the arrangements that are to be made for giving an accused person access to that record if it is an audio-visual recording or audio recording.

Madam President, as I foreshadowed, this is not the end of the reforms by the Government in this area. More amendments, aimed at supporting victims of sexual assault will be introduced into this House in the very near future, and I look forward to the continued support from all Honourable members of the House on these issues.

I commend the Bill to the House.

The Hon. DAVID CLARKE [5.11 p.m.]: The Coalition is pleased to support the Criminal Procedure Amendment (Evidence) Bill and believes there has been an urgent need for such legislation for some time. That is why the Leader of the Opposition, John Brogden, and the shadow Attorney General, Andrew Tink, have pursued this matter so vigorously since at least early last year. The Attorney General has stated that the aim of the proposed amendments is to encourage sexual assault victims to see the legal process through when they report an attack against them and to ensure that the court process does not revictimise the victims.

The necessity for this bill—the purpose of which is to amend the Criminal Procedure Act with respect to evidence in criminal proceedings, including evidence given by complainants in sexual offence proceedings—has been highlighted by the issue of rape victims having to undergo further extreme trauma by having to go through the ordeal of giving evidence a second time. It has become a matter of deep public concern. The issue was further well and truly highlighted earlier this year when the Director of Public Prosecutions announced that charges against two accused rapists would not be proceeded with because the complainant was too traumatised to face the understandable ordeal of having to testify a second time and to again have to face a gruelling and aggressive cross-examination and reliving of the gruesome and horrific circumstances of her rape and associated events.

According to the Director of Public Prosecutions, without the complainant testifying a second time there would be insufficient evidence for the retrial of the two alleged rapists. Honourable members will recall that the circumstances of the alleged rape were of such savagery, brutality and depravity that the complainant was just unable and unwilling to cope with the retelling and reliving of what she went through. Who could blame her! There needed to be a means whereby depraved offenders did not escape justice in such circumstances. On 3 March this year in the other place the shadow Attorney General said that we had been calling for legislation like the Criminal Procedure Amendment (Evidence) Bill since at least May last year. He went on to say that in May last year there was great public concern about the trauma suffered by victims of rape who had to give evidence for a second time.

We formed the view then that the problem required the urgent attention of Parliament to avoid in any way possible, consistent with a fair trial, the need to put a victim through the ordeal of a second trial. It occurred to us at the time that the best secondary evidence of a trial was the full video of the evidence given initially by the victim at first trial. This issue is relevant to the bill before the House but it also touches on wider issues. It is a fundamental concern to me that when the idea was floated the Attorney General said in Parliament that this could not be done. On 11 May 2004, in answer to a question from the honourable member for Strathfield, the Attorney General said:

I requested specific advice from the Director of Public Prosecutions [DPP] and others about the merits of those proposals from the point of view of practical prosecutions ...

Those proposals related to, amongst other things, the use of video transcript evidence of the best secondary nature. According to the Attorney General, the Director of Public Prosecutions advised that those proposals,

... arise from a deep and uncomprehending ignorance of the criminal justice process at both the trial and appellate levels.

When the Opposition proposed last year the use of videotaped evidence from a first trial in any retrial in sexual assault cases in order to protect the victim from having again to face the attacker and the court, the Attorney General said that the suggestion was "mad" and that "videotape is of most limited assistance to the jury". It appears that the Attorney General has had a change of heart. I am pleased that he has, because this bill will have a very positive impact. The bill will permit the admission of a record of evidence given by a complainant in sexual assault proceedings in any new trial that is ordered following an appeal. This record will be admissible only if the prosecutor gives the court and the accused person notice of the prosecutor's intention to tender the record.

The bill states that the record of evidence of a complainant tendered in any retrial must be the best available record of the evidence. The best available record is defined in the bill in the following way: first, an audiovisual recording of the evidence; second, if an audiovisual recording of the evidence is not available, then an audio recording of the evidence; third, if neither an audiovisual recording nor an audio recording of the evidence is available, then a transcript of the evidence. Of significance is the fact that the amendments extend to new trials ordered before the commencement of these amendments.

This legislation will make it easier and less traumatic for rape victims to come forward and to do so in less stressful circumstances. In the case of a retrial there will be provision for the complainant's evidence in the original trial to be used. This bill is greatly welcomed and has the support of the Opposition. I congratulate the shadow Attorney General, Andrew Tink, for having so early taken up this issue and for having so unrelentingly pressed the Government for the introduction of such legislation. His perseverance on this issue will now allow rape victims in our State to more readily come forward and get justice in less intimidating and traumatic circumstances.

The Hon. ROBYN PARKER [5.17 p.m.]: I support the bill and congratulate the Hon. David Clarke on his comments. This bill is overdue. It is disappointing that these provisions were not agreed to by the Government last year when we debated this legislation. The Attorney General and the Minister in this place ought to apologise to rape victims for not adopting this sensible provision at the time. All honourable members would agree that our paramount concern should be to cause no further harm to victims of rape while at the same time provide fairness and equity in any trial.

The catalyst for this bill was a terrible case of a woman who suffered extraordinary trauma and who did not want to go through that trauma again by having to give evidence at the retrial. When we were discussing this legislation last year, shadow Attorney General Andrew Tink argued for this proposal strongly, as did members of this place. The Minister dismissed it out of hand. He dismissed out of hand that we should videotape evidence for use at a retrial. He dismissed it as being almost impossible. The Minister's comments were disappointing.

The Attorney General stated that the original proposal put forward by Andrew Tink was misconceived and impractical. He said that, far from assisting complainants, it would make it more difficult to convict offenders. I am pleased that the Minister has had a change of heart and realised that that is not the case. This very sensible proposal will enable previous evidence to be used in retrials. This will encourage more victims to come forward. Use of closed-circuit television and audiovisual recording of evidence will mean that victims will not have to suffer further trauma. To that end I support the bill strongly. I congratulate the shadow Attorney General, Andrew Tink, on vigorously arguing the case for the provisions in the bill and on continuing to do so rather than accepting the Government's first dismissal of his proposals. I support the bill.

Reverend the Hon. FRED NILE [5.22 p.m.]: The Christian Democratic Party is very pleased to support the Criminal Procedure Amendment (Evidence) Bill. The main objective of the bill is to amend the Criminal Procedure Act 1986 so as to permit the admission of a record of evidence given by a complainant in a sexual assault proceeding in any new trial that is awarded following an appeal. All members are very concerned about recent cases involving a brutal gang rape. Through the appeal process the verdict was overturned on technicalities. This could have meant that the victim had to go through a horrific experience, virtually in a mental way being raped again during the retrial by having to explain the details and go through cross-examination. We are very pleased that the Government has brought forward the bill. I ask the Government to indicate whether the case I am referring to can now proceed, which would mean that the bill operated retrospectively to that extent. I hope that will be the case so that matters that have been deferred because the victim was not willing to appear in court again and go through the giving of evidence again can proceed. Perhaps this bill will open the door and the victim will now be willing to be identified as the victim but not be forced in a court case to outline all the events of the rapes and experience the mental anguish that that would bring. I hope the Government can proceed in that case.

The defendants were successful in their appeal because of the enthusiasm of two members of the jury who, on their own initiative, went to investigate the site of the rapes, trying to visualise how dark it was and how much could be seen at the particular time of the day to help them to understand the case. As a non-lawyer I was shocked that such activity by jurors would be sufficient to overthrow the verdict, which in my opinion had nothing to do with what the jurors had engaged in. Nevertheless, the Court of Appeal put a lot of weight on this conduct. Perhaps the Government should consider whether there should be legislation to cover such a case. If the evidence has been so black and white, clearly proving the guilt of the rapist—or offender in another type of case—such activity by a juror should not negate the rest of the court case unless it can be proved by some procedure that what the juror did was reason to overturn the verdict.

The Hon. John Hatzistergos: It is actually already there.

Reverend the Hon. FRED NILE: You have done that?

The Hon. John Hatzistergos: It is already there. They can refuse to set it aside if they do not believe that it will happen again.

Reverend the Hon. FRED NILE: Why was it not done in that case?

The Hon. John Hatzistergos: Because the Court of Criminal Appeal felt that—

The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe): Order! The Minister will have an opportunity later to contribute to the debate.

Reverend the Hon. FRED NILE: The point I am making is that we should restrict the ability of the Court of Criminal Appeal to order a retrial. Some clarification of the law may be needed. I ask the Minister to take that on board with the Attorney General. Input from the Court of Appeal could also be sought. I know that the Opposition has been critical of the Government in relation to the speed with which it has acted in introducing the bill but I am pleased that it has been introduced, and we fully support it.

Ms LEE RHIANNON [5.27 p.m.]: Sexual assault is an ugly and cowardly crime that often leaves its victim—by far the majority of victims are women—with long-term psychological problems. Such is the effect that most women struggle to come to terms with the crime, let alone report it or seek justice. In fact, at least 80 per cent of sexual assault crimes are not reported, and of those only 2 per cent lead to convictions and sentencing. They are indeed extraordinary figures. The justice system in this State, sadly, sends women a clear message that if they try to engage with legal processes they could be in for more humiliation, trauma and intimidation. Women will continue not to report sexual assault while there is a system that does not provide them with support and protection. The Greens renew our calls for the Government to institute a major overhaul of sexual assault laws. This bill highlights the problems involved with providing fair treatment and protection for complainants in sexual assault cases while ensuring a fair trial for people accused of sexual offences.

Any changes to the criminal justice system must seek to reconcile this dichotomy. Indeed, the introduction of transcript evidence in sexual assault cases goes to the heart of this dichotomy. For women, cases involving sexual assault are particularly distressing. Sexual offences involve the exercise of power by one person over another. The exploitative and humiliating nature of sexual offences makes the trial process for women very difficult. In particular, the vast majority of victims identify seeing the accused as one of the worst features of having to attend court. Second, victims find recounting the sexual offences against them in explicit detail humiliating and distressing.

On top of this, the complainant's character is often put on trial in ways that are unparalleled in other areas of the law. As a result many sexual assault complainants consider themselves disadvantaged by the justice process, given the rights of the accused at the cost of the privacy, feelings or emotional welfare of the complainant. However, as the Law Society and the Council for Civil Liberties among others point out, supporting and protecting complainants of sexual assault must not be at the expense of retaining a fair trial process and safeguarding the rights of the accused. The Greens agree with this; we must not increase the chances of wrongful convictions.

In its submission to the Victorian Law Reform Commission's Report into Sexual Offences 2004, the Criminal Bar Association argued that it is important to ensure that the desired reform not result in persons charged with sexual offences being more easily convicted. Doing so would compromise the integrity of the trial

process. The Victorian Law Reform Commission has called for video evidence to be employed as a matter of course in retrials involving child sexual assault cases. Because of the Carr Government's long inaction on sexual assault issues, we now have a situation where a retrospective bill introducing transcript evidence in sexual assault cases is required as a result of the infamous Skaf cases.

This situation is unacceptable. The problems associated with transcript evidence are well documented. The Director of Public Prosecutions and the Law Society have already raised concerns regarding transcript evidence, in particular noting that it does not convey the full impact of evidence, does not enable the jury to assess the credibility of the witness and could have the unintended consequence of hampering a successful prosecution. But, as usual, the Carr Government has moved in a reactive, rushed and knee-jerk fashion to confront a problem that women's groups, justice groups and the Greens have been vocal about for many years. Too often Premier Carr waits until the crisis unfolds or the tabloids and talkback radio are involved and giving him a hard time, and then he acts. It is no way to make law.

This situation would never have happened if the Premier had been prepared to listen to women who confront sexual violence every day and to take preventive action early. Last year the Rape Crisis Centre and the Greens successfully called for a high-level committee to set up a proper legal and administrative framework to handle complaints of sexual assault, one that is fair and just, reflects community attitudes and respects victims. We look forward to its report, which I understand is due at the end of the year. We need a complete overhaul of sexual assault laws. The Greens again call for the law reforms that would protect victims from improper, demeaning or degrading questions when giving evidence; stop the questioning of victims about their sexual history, reputation or experience; include evidence of any past history of sexually violent behaviour by the accused; have multiple rape cases in the one hearing to ensure that victims of rape are required to give evidence only once; conduct pretrial hearings for all sexual assault matters; and change the onus of consent from the victim having to prove she did not give consent to the accused having to prove he obtained consent.

That would have been a sensible package for the Government to bring forward. The Government must bear some responsibility for the fact that sexual assault rates are not decreasing and the rate of conviction is not increasing. It is little wonder that is not increasing when we consider what women and all victims of sexual assault are required to go through. The emphasis needs to be on reforms that seek to provide fair treatment and protection for complainants in sexual assault cases, while ensuring a fair trial for people accused of sexual offences. I urge the Government to adopt such an approach, rather than seeking to stick with the knee-jerk style of devising law reform.

The Hon. JOHN HATZISTERGOS (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [5.33 p.m.], in reply: I thank honourable members for their contributions to the debate. I shall respond to a few matters that were raised. First, there was some criticism by the Hon. David Clarke and, to some extent, by the Hon. Robyn Parker about the Government's position, particularly in response to issues that had been earlier raised by Andrew Tink relating to this matter. The Government, in fact, has been consistent in its approach. I refer honourable members to the Attorney General's comments. He has repeatedly put on the record this fact: the advice of every experienced practitioner, including those who have specialised in this area, is that every possible step should be taken to obtain the direct evidence of the victim.

This has been the strategy of the Director of Public Prosecutions [DPP], and the Government has supported prosecutors in their work with these brave young victims. The Attorney is on the record as stating that fact in May 2004, and I restate it now. The Opposition has never mentioned this point, not in May 2004, not to the media and not during this debate. Opposition members bring nothing of value to this debate when all they do is speak in conclusions. For the benefit of honourable members, I reiterate what the Attorney General said on 14 May 2004 and on 22 February 2005:

Clearly the best evidence in any prosecution case is direct evidence in person of the victim.

This bill acknowledges that fact and allows all complainants to appear and give evidence in person if they are able to do so. As a last resort, it is better for cases to get to the jury rather than simply not proceed because a complainant cannot face giving evidence again. The complainant must have the choice. It is not a perfect solution, since it is always desirable that witnesses appear to give evidence in person. However, it is necessary to have the option of tendering a record of the first trial available as a last resort. However, the possibility that transcript or recorded evidence will be less compelling needs to be balanced against the interests of justice and the interests of the community in having a retrial take place despite the inability of the complainant to appear and give evidence in person. The advantage of the tender of previous evidence on a retrial is that it is evidence given under oath and evidence that has been tested by cross-examination.

The Government acknowledged these hard questions and decided that some evidence-based policy making would be the best course of action. That is why, on 31 August 2004, the Premier announced that the Government was engaging the Australian Institute of Criminology to undertake research into the use of video technology in sexual assault matters and to determine the effect that such evidence might have on jury deliberations. Put simply, this study is aimed at determining whether the use of video evidence will have any effect on witness credit issues in the eyes of the jury. New South Wales has always been a leader in innovative ways of protecting victims of crime and there is no doubt that this work by the Australian Institute of Criminology will benefit and inform not only decision-making in New South Wales but in many other jurisdictions, both in Australia and overseas, that are considering similar mechanisms.

The Opposition also accused the Attorney of misleading the other House in relation to advice received from the DPP regarding this matter. The proposals put forward by the Opposition last year, together with other proposals being floated in the media by various interested parties, were forwarded by the Attorney to the DPP for analysis and comment on 7 May 2004. The DPP replied on 10 May 2004 in unequivocal terms. The Attorney tabled that letter. Its tone was scornful. The DPP expressed explicit concerns about the consequences of using evidence other than the direct evidence of the victim; concerns which are shared by many experienced prosecutors. His precise words were:

... these proposals arise from a deep and uncomprehending ignorance of the criminal justice process at both the trial and appellate levels. It is a matter of abject dismay that the Government should give them more than a moment's passing attention; but I can see that if they are said quickly, they may, just for an instant, have a superficial attraction to the uninstructed.

The letter from the DPP illustrates that there is an acute awareness in legal circles of potential practical ramifications with the proposal to give the complainant's evidence in some way other than in person. As I have stated, the Government has taken into account the potential ramifications and believes that the protection of the complainant, and the overriding public interest in allowing the possibility of these cases being retried, should be the path adopted.

Ms Rhiannon made reference to the Government's record on the issue of sexual assault. In response to those comments I would make this point: this legislation is the latest amendment of this Government's long-term project to improve the circumstances of victims of sexual assault at trial. Unlike the Opposition, we went to the last election with a clear policy of proposed reforms in this area, which we have progressively implemented. We have a sexual offences task force—with representatives from the Rape Crisis Centre, women's groups, legal experts, police and other government agencies—working on a whole range of reforms in the way sexual assault is responded to. The Government has always resisted knee-jerk responses in this area of law, which can only result in appeals, legal challenges and the risk of a reduced conviction rate.

In September 2003 the Government legislated to prohibit unrepresented accused persons from personally cross-examining complainants in sexual offence proceedings. This legislation was challenged all the way to the High Court, which, as recently as this month, upheld the validity of our legislation. We passed legislation to create a presumption in favour of all victims in sexual offence proceedings being allowed to use alternative arrangements for giving evidence in the courtroom, such as closed-circuit television. We acted to exempt child complainants in sexual assault proceedings from being required to attend committal proceedings.

In March 2003 we launched a pilot specialist child sexual assault jurisdiction in Sydney West and Dubbo to improve the way the system deals with child sexual assault cases and to encourage more victims to come forward. This has required upgraded state-of-the-art technology both within existing courtrooms and at dedicated child-friendly, remote witness suites; ongoing training and technical support from head office in the use of new technology; dedicated child-friendly waiting areas catering for witnesses and carers; improved case management of child sexual assault matters; and specialist training resources for judicial officers and prosecutors. However, of course, we must deal with unexpected situations that arise, not least in the context of the recent and quite horrific gang-rape trials that have received more attention than any other criminal trials in recent memory.

Reverend the Hon. Fred Nile: Will the gang-rape cases be able to proceed now?

The Hon. JOHN HATZISTERGOS: Yes. In his contribution Reverend the Hon. Fred Nile raised the possibility of amending the legislation to somehow limit the capacity of the Court of Criminal Appeal to order a retrial in circumstances that the honourable member described as being overwhelmingly in favour of a verdict one way or the other. I simply make the point that under the current legislation the Court of Criminal Appeal has the power to refuse to order a retrial in circumstances in which, in the court's view, the issues that resulted in the

appeal would not have affected the outcome. If the issues are of a technical nature, for example, or are such that they could not have resulted in an injustice in the circumstances, the current legislation gives the Court of Criminal Appeal the discretion to decline to order a retrial. The court did not exercise that discretion on the hearing of the case to which Reverend the Hon. Fred Nile referred.

Reverend the Hon. Fred Nile: It gave the impression that it had no choice.

The Hon. JOHN HATZISTERGOS: If Reverend the Hon. Fred Nile read the judgment he has referred to, he would find that it speaks for itself. The court took the view that in the circumstances justice required that there be a retrial. It must be borne in mind that some members of the jury in that case felt that the evidence before them was such that it was necessary for them to conduct their own independent examinations. That would suggest that the jurors believed that further inquiries were appropriate. It is difficult to determine the circumstances of the case, but obviously the court took the view that the evidence that the jurors took into account in the course of their deliberations could not be said not to have infected or somehow made its way into the jury room discussions as to whether the offences were committed. The Court of Criminal Appeal has such power under the present legislative regime, but in the circumstances of that case the court felt it was appropriate to order a retrial.

Reverend the Hon. Fred Nile also raised an issue in relation to whether the retrials can go ahead. The legislation will apply to any case that is heard subsequent to the legislation coming into force. Although the legislation is not retrospective, it is procedural legislation that will apply to every case. However, it is still up to the Director of Public Prosecutions to make decisions about the available evidence and whether to proceed to prosecution. No doubt the Director of Public Prosecutions will reflect on the circumstances and evidence in individual matters, and will also take into account the availability of this legislation in assisting with prosecutions. With those comments, I commend the bill to the House.

Motion agreed to.

Bill read a second time and passed through remaining stages.

PHOTO CARD BILL

Second Reading

Debate resumed from 7 April 2005.

Ms LEE RHIANNON [5.45 p.m.]: I return to where I left off when speaking to the Photo Card Bill during the last sitting week. At that time I outlined the Greens support for a photo card but raised the need for amendments to the bill because it raises serious privacy issues. On the last occasion I referred to a media release from the Australian Privacy Foundation, and I now wish to read a portion of it. It states:

Acting Commissioner John Dickie will be overseas on a six week holiday. The APF has learned that no-one has been appointed in his place. Moreover, his absence coincides with that of the next most senior officer.

The APF understands that the only plan to deal with this vacuum of leadership is to "act up" four relatively junior officers for a short period each into the role of Privacy Services Manager—including an administrative officer. This means the full responsibility of running the Office, and making important decisions about both the law and public policy, will rest on the shoulders of staff who did not ask for the job, some of whom have only been employed a short time in the Office, and two of whom are not legally trained.

This level of responsibility on junior officers is not only unfair, but the APF questions whether it is lawful.

I have found the Australian Privacy Foundation's material to be most informative. In recent times the Government has tried to virtually abolish Privacy NSW with legislation, and to transfer its functions to the Ombudsman. Thankfully this was blocked in the Legislative Council. The Government has since used a backdoor route to try to render the agency ineffective. It has slashed staff at a time when the agency's workload is increasing. The Greens see this as payback for incidents in which the Government has been embarrassed by privacy rules, and as an attempt to politicise the regulation process. There has been a pattern of attacks on independent watchdogs and policy agencies since the election. The Inspector-General of Prisons has been scrapped and its powers transferred or abolished. The Anti-Discrimination Board has been gutted. The Department of Women has been abolished. The Community Services Commission's functions were rolled into the NSW Ombudsman's Office. Independent watchdogs and independent sources of policy advice are becoming a thing of the past under the third-term Carr Government.

As I said, over the last few years the Ombudsman's Office has had a number of functions added to its core responsibilities and must be suffering some level of change management fatigue. Even the most well run offices cannot sustain the level of growth in jurisdiction and size that the Ombudsman's Office has been subjected to. By axing most of the staff from Privacy NSW, the Government has gotten rid of the agency's capacity to work on policy to prevent breaches of privacy in the first place. Advice received by the Government from the Acting Privacy Commissioner—and used by Minister Costa to gag debate on privacy as part of this Photo Card Bill—is a fine example of the poor advice that is coming from that office now. Privacy NSW deserved to be reinforced, not dismantled.

Another example of the Government's arrogance and disregard for privacy in this State is the fact that the Attorney General has failed to meet his legislatively required deadline to table a report into the legislative review of the Privacy and Personal Information Protection Act 1998, which was due on 30 November 2004. This reporting deadline is a requirement of legislation, and the Government has failed to meet it. The review of the Privacy and Personal Information Protection Act after five years of operation is an important transparency and accountability mechanism. How can the Government expect to be seen as taking the issue of privacy seriously? Is the Government attempting to use this report as a backdoor route to abolishing or transferring Privacy NSW's functions to an already overloaded Ombudsman? The Greens have asked the Attorney General to explain the delay.

The Greens are mystified why the Government has to date refused to make simple changes to the photo card proposal which will allow people who need a card to have the card without compromising privacy. I know that the Council of Social Service of New South Wales [NCOSS] has concerns about the bill, which the Roads and Traffic Authority has apparently promised to address. All NCOSS's concerns are accepted by the Greens as legitimate. Australian Lawyers for Human Rights have also written to us expressing their concerns about privacy and other human rights of people in New South Wales. We have closely studied the amendments of NCOSS and we believe the amendments that I will move in Committee address them, but go further in dealing with the considerable privacy issues as well. I urge the Opposition to support our amendments so we do not end up with an Australia Card by default. The Liberal Party can be proud of the significant fight it undertook 20 years ago—

The Hon. Melinda Pavey: And the National Party.

Ms LEE RHIANNON: And the National Party—against the Australia Card proposed by the Federal Labor Government. It was one of the single biggest civil campaigns in our history. I shall outline a little bit of history—I hope that the Coalition will consider what I have to say because there is a connection with their parties. Yesterday was two years to the day since Chris Puplick resigned as New South Wales Privacy Commissioner and President of the New South Wales Anti-Discrimination Board. As I have mentioned, there has been no move to appoint a full-time, permanent privacy commissioner two years on. That is extraordinary and it should be unacceptable. More people should be complaining about that fact, not just the Greens.

After trying unsuccessfully to abolish Privacy NSW with legislation in 2003, the Government has been killing it by neglect as payback for the grief it caused the Government. Four most senior staff positions have been abolished, and ultimately 9 out of 12 staff have left, robbing the commission of expertise. Acting Privacy Commissioner John Dickie has been on rolling three-month or four-month contracts for more than 18 months and is able to be removed at the whim of the Attorney General, making it difficult for him to give independent, fearless advice. The Premier seems to have been successful in his attempts to bring Privacy NSW to heel. The part-time Acting Privacy Commissioner, John Dickie, has been very quiet, unlike past outspoken Privacy Commissioners.

Privacy NSW is just one more casualty in the Premier's war against watchdogs or other independent agencies that criticise the Government. The Premier is happy to boast about his efforts to combat terrorism. But when it comes to a real threat to people in New South Wales—such as this Photo Card Bill, which will in effect deliver us an Australia Card—he thumbs his nose at privacy concerns. From what I am hearing about where the issue stands at the moment, the majority of members of this Parliament agree with the Premier in this regard. A centralised database is a honey pot for organised criminals and terrorists—it creates one database to hack into or one Roads and Traffic Authority clerk to bribe to locate their next victim, create a fake ID or steal someone's identity. We know the Premier knows this—he sat on the Privacy Committee set up in 1975 by the Wran Government, alongside other human rights champions such as High Court judge Michael Kirby.

Because of this unacceptable situation I will move some amendments during the Committee stage. Some of the issues covered in those amendments include having a simple form of photo identification for people without either a drivers licence or a passport, having a way to minimise the risks inherent in the current bill,

identifying fraud and theft risks to the personal security of card holders, and addressing privacy implications of New South Wales residents as a whole. The amendments will provide an alternative model to protect personal privacy while still achieving the important object of having a card. The model involves photographic cards where the cardholder can choose how much, or how little, of their personal information will be stored or displayed on the card.

I believe this is a key aspect of this debate. The way the card is structured at the moment could put people at risk because the card that they will now be required to have will contain so much information about them. I understand the Royal Blind Society has issued a letter to most members of Parliament about this matter. I believe that the society has misread this proposal because it is concerned that our amendments would require that a person's address not be put on the photo card. This is most definitely not the case, and we have assured the Royal Blind Society of that. Importantly, our amendments will give people applying for the card the choice of whether their addresses go on the card.

We hear many issues in this House and we hear the word "choice" a great deal. Surely this is one case where we should be able to agree. Let people choose what kind of card they want according to their needs and circumstances. The Greens support the card, but we believe that people should have a choice about what information goes on the card. We could have a few types of cards with different matches of information, and that would make a successful identification card to suit the purposes for which people need one. Some people need photo identification but face security risks and do not want others to know where they live. For example, victims of domestic violence or Family Court judges should be able to choose whether their addresses appear on the face of photo identification cards. People with heightened concerns for their safety should be able to have a simple proof-of-age card if that is all they need and want.

Just the other day a member of the Australian Privacy Foundation took a call from a woman seeking advice on how to make a privacy complaint about a major bank. She is blind and, therefore, does not drive. Some months ago she was having much difficulty proving her identity to a bank teller. Despite holding another form of photo identification acceptable under the 100 points of identification rules used by banks, the teller insisted she had to have a drivers licence. She finally convinced the teller and asked the bank manager to ensure all staff were properly educated about the 100 points of identification rules. However, she told me the bank responded by circulating a photocopy of her identification on a poster to all branches in New South Wales. She has told the story of how her photo, name, date of birth and home address were posted up in bank branches across New South Wales for three months—until she found out and insisted they take down the posters displaying her details. Of course, the appropriate thing would have been to create a mock-up "Jane Citizen" card for an educational poster and inform bank workers in that way. This is how we could have a photo card and respect people's privacy. That one example should illustrate the problems we will face if this bill goes ahead unamended.

I shall emphasise some points because I have found misrepresentation of the Greens' position on this. There is no requirement for people to provide or maintain their current residential addresses with the card-issuing agency. People can choose to hold more than one card—that is, they can have different cards for different purposes. The photo card will be issued by a separate agency to the RTA—the Greens propose the Department of Commerce, which already has similar functions and is quite capable of doing so. Photo cards will use a different numbering system to drivers licences. The database supporting the range of photo cards will not be shared or linked in any way to the drivers licence database held by the RTA. This would make it so much more difficult to hack into. The law would explicitly limit the collection and use of data to its original purpose and the law would have explicit prohibitions on the sharing of information from the database, other than with police for law enforcement purposes. It would have been easy to have a photo identification bill and put these protections in place. The fact that the Government has been unwilling to do this is of enormous concern.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.58 p.m.]: The Roads and Traffic Authority Proof-of-Age Card Bill was introduced in Parliament in April 1966. The premise was that too many young people did not have a drivers licence and had no other way of proving their age. According to the Australian Privacy Foundation, 900,000 people in New South Wales do not have a drivers licence. The proof-of-age card is limited to people over 18 and under 25, which is a disadvantage to those aged 25 to 60 who are not eligible for a Seniors Card, which is issued to people over the age of 60.

On the positive side, a proof-of-age card is important for people with a disability who could not in any circumstances obtain a drivers licence. It helps young people gain admittance to bars, nightclubs and R-rated movies. It is also a useful form of identification for financial institutions, which require 100 points of personal

identification. It assists in establishing an identity for government rights and entitlements. On the negative side, the Australian Privacy Foundation sees dangers with the photo card concept as outlined in this bill. A media release of 29 April, which was very strong in this regard, criticised the introduction of the bill after no consultation and against expert advice. Such a card would attack the freedom and privacy of New South Wales citizens.

The Australian Privacy Foundation claims that the bill will create a centralised database aimed at holding the personal records of every resident in New South Wales and will create an identity card with a unique identifier. It will allow the movements and transactions of people to be tracked, linked and profiled by both government and business. If this situation is to be mitigated, negotiations should be held with the Privacy Commissioner. Indeed, one of the features of Chris Puplick's tenure as Privacy Commissioner was his willingness not merely to be a complaints body but to look at individual situations and give advice. He said that there is not necessarily a clash between the collection of information and privacy, that it is merely a question of intelligent appraisal. The collection of data for medical research or long-term studies into individual cases of the Department of Community Services to examine various outcomes could be of benefit, provided the necessary safeguards were in place and that the records were handled responsibly.

It is a major concern that this Government has not filled the position of Privacy Commissioner. Chris Puplick, when speaking to a well-known and relatively powerful interest group, said that anyone who walked throughout the central business district and into a railway station could be photographed about 50 times. That means that if face recognition software is used, the movements of people, their companions and the people they talk to can be traced.

Recently the question of insurance premiums in cars was raised with me. It was suggested that a global positioning satellite tracking system could be fitted to a vehicle—as is the case in some countries already—to record for the insurance company that owned the tracking system the speeds at which the vehicle travelled at all times with a view to refusing coverage to those who had an accident while exceeding the speed limit. As a responsible legislator I raise this matter lest a similar system is proposed in Australia. If insurance premiums were related to the number of miles travelled or the speed at which a vehicle travels, insurance companies would be obliged to provide the necessary cover if on one occasion a normally responsible driver exceeded the speed limit and was involved in an accident. Such a driver would not want a small driving infringement to invalidate his or her years of good driving because the premium seeks to avoid that risk.

It is becoming more apparent that privacy is an issue, with people being aware of the movement of others every moment of the day. I accept that identity fraud is a huge problem. In 1977 I leased my house while I travelled overseas. At that time the real estate agent told me to leave everything in his hands because his office had all tenants on a database of credit references. That was almost 30 years ago. So there is little point fighting against the introduction of an Australia card or information database. The horse has well and truly bolted. What we need to examine is what happens to that data, where it comes from and what can be done about it. I know of a case in which a number of bank accounts were set up by a person who had stolen a wallet from another person and who used the contents of that wallet to satisfy the 100-point identification test required by financial institutions. Loans were also taken out, and both the money and the fraudster disappeared. Despite numerous orders from the court that resulted in the name of the man who was defrauded being removed from the Credit Reference Association database, the name has been put back on the database by some other creditor. The man has been unable to obtain a loan since.

Identity fraud, and how it is dealt with, is a huge problem. I sought to have the debate on the Australia card conducted in the public arena rather than in secret. On balance, the photo card will have some benefits. Any suggestion that the database will be kept separate depends on whether it will be easy to hack into. Certainly, there is some merit for that argument when one considers the number of phone calls that are made during dinnertime by people conducting surveys or asking for money.

During 1985-86 the Hawke Labor Government developed a proposal for a national identification scheme. Following increasing public concern about the implications of the scheme, the Australia Card Bill was defeated in the Senate in November 1986, and the Australian Democrats played some part in that defeat. The idea collapsed amid concerns about costs, implementation and maintenance challenges, and the balance between benefits such as enhanced health services and problems with privacy. Calls for a ubiquitous identification scheme resurfaced periodically, most recently in October 2004 on the grounds of national security.

It is extraordinary that since the September 11 terrorist attack in the United States of America people can have access to private details and can, by accessing web search engines such as Google, access details about

every inquiry that was ever made about anything. Under the free trade agreement with the United States of America it could be argued effectively that our databases will be available to the United States Central Intelligence Agency and other security services of America.

The Government claims that similar schemes operate overseas, although this claim is based on ignorance. Only the Swedish and Danish schemes come remarkably close to what is proposed, and the new West German scheme, which was developed in the context of real and continuing external threat and occasional extremist terrorism, is far less pervasive. The French, Italian and even Swiss schemes are far less centralised and are restricted to fewer uses. The Communist Bloc, because of its backwardness, has largely manual systems. Neither the United Kingdom nor New Zealand has contemplated such a system, at least in respect of its white population. South Africa also has not done so.

The American and Canadian social security numbering schemes are low-integrity systems, designed for a single purpose but are now used with largely spurious success for a variety of additional public and private sector purposes. Successive committees established to consider whether the American social security number and card scheme should be improved or replaced have recommended against such a project on the grounds of impracticality and excessive infringement of human rights.

In Britain a national identification card for adults was introduced in 1915 under war-time legislation but was discontinued in 1922. It was reintroduced in 1939 under the National Registration Act and dropped in 1952 after Lord Chief Justice Goddard ruled in 1951 that police demands for individuals to show identification cards were unlawful because they were not relevant to the defence purposes for which the card was established. In December 2003 the United Kingdom Home Office announced moves towards the introduction of a new compulsory national identification card, with prototype cards featuring biometric data, including fingerprint, iris and facial recognition information, and other personal details.

The September 11, 2001 events revived enthusiasm in the United States of America for a national identification card, with Larry Ellison from Oracle offering his support. The report of the National Commission on Terrorist Attacks upon the United States—that is the 9-11 commission—questioned the notion of a national identification card as a panacea. It suggested that the key problem was insufficient rigour in issuing and checking documents rather than the lack of a uniform identification document. Introducing an additional form of identification might exacerbate the problems by diverging resources.

Senior commission members commented that it would be more effective to make cheaper and existing forms of identification more secure—something that would also be less harmful to civil liberties. So the introduction of an identification card has its problems. Certainly, the idea that such a card should be discreet and available to those who do not have a drivers licence is an important feature. Privacy advocates are concerned about the introduction of the photo card. I will be interested to hear the Minister's answers to the questions asked by Ms Lee Rhiannon prior to the vote being taken. I do not propose to move that this debate be adjourned, given that Ms Lee Rhiannon did not seek to move such a motion. However, I ask that the concerns raised by Ms Lee Rhiannon in the questions she placed on notice be addressed by the Government.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.10 p.m.], in reply: I thank honourable members for their support. I shall reply to some of the comments made by honourable members. The Roads and Traffic Authority [RTA] is well placed to deliver the New South Wales photo card scheme. It has a large and diverse range of customers, a sophisticated and distributed technology infrastructure and secure enrolment processes, and delivers a range of photo cards for different purposes. These include drivers licences, mobility parking scheme cards, firearms and security licences and the current proof-of-age card. The photo card will be based on the drivers licence. Future proofing of the security and integrity of all RTA enrolment and proof-of-identity processes and introducing anti-tampering and anti-forgery devices on all photo cards is a critical strategy to prevent identity crime.

The RTA is at the forefront of national strategies to prevent criminal exploitation of weak entry points in the circular path of identity crime. The RTA will work closely with NSW Police and the New South Wales Crime Commission to ensure that any future technological solutions to identity crime will deliver benefits to law enforcement agencies. Finally, in line with New South Wales privacy legislation and public expectations, the RTA has in place a strict legislative and privacy regime that restricts unauthorised access to personal information and photo images held on the RTA DRIVES database. The bill reinforces this regime and takes further steps to protect unauthorised access to information and photo images contained in all DRIVES database tables. I commend the bill to the House.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 and 2 agreed to.

Ms LEE RHIANNON [6.15 p.m.], by leave: I move Greens amendments Nos 1 and 2 in globo:

No. 1 Page 2, clause 3 (1), line 16. Omit "Roads and Traffic Authority". Insert instead "Director-General of the Department of Commerce".

No. 2 Page 2. Insert after line 28:

5 Delegation of functions

The Authority may delegate any of the Authority's functions under this Act (other than this power of delegation) to any officer of the Department of Commerce or to a person of a class prescribed by the regulations.

With these amendments, the intention is that photo cards will be issued by a separate agency to the Roads and Traffic Authority [RTA]. We are nominating the Department of Commerce as it already has similar functions, and we understand that it could easily handle the job. This is a necessary precaution to prevent the linking of two populations—that is, non-drivers and drivers—into one database. The Australian Privacy Foundation said this about the bill: The photo card is intended to fill the gaps between existing forms of identification so that every resident in New South Wales over the age of 16 will be eligible for either, but not both, a drivers licence or a photo card, both of which will be managed by the RTA through the same database.

What is of most concern about this proposal is that it will create for the first time in Australia a uniform identity management system run by one government agency using one database designed to capture details of all New South Wales residents over the age of 16. This is similar to the type of centralised identity management model that was proposed for the Australia card, which was withdrawn in 1987 because of its controversial and highly unpopular status. Having virtually all residents of a State listed on one database, including their name, gender, date of birth, current address and photographic image, is unprecedented in Australia's history. It means that, when issued by the same agency to two mutually exclusive populations which together make a whole—drivers and non-drivers equals everybody—the two cards together, drivers licences and photo cards, create a near universal identity card and a unique identifier, which is the card number.

That means that the database supporting the system becomes a total population identity database. This has enormous privacy implications for exiting drivers licence holders as well as people holding a photo card. We believe there are a number of side effects: more pressure to collect more and more information about people, not just about their age and identity; more pressure to allow sharing of information across government agencies; and more incentives for businesses to use data from the card to link transactions and conduct profiling of customers, for organised criminals to access the database to create fake identities or steal real ones and for unauthorised use and disclosure—a honey pot database for locating people. We believe there are many arguments for these amendments, and I commend them to the Committee.

The Hon. MELINDA PAVEY [6.18 p.m.]: The Opposition does not support these amendments, which relate to the establishment of photo card identities through the Department of Commerce. While a number of Fair Trading offices can be found in the Department of Commerce across New South Wales, their operations are not nearly as extensive as those of the RTA. Therefore, it would be difficult for people living in isolated areas across regional New South Wales, as well as people in Sydney, to visit Department of Fair Trading offices. The Greens have not been able to detail the cost of and the logistics associated with locating photo card equipment within offices of the Department of Fair Trading. I note also the advice given by the Acting Privacy Commissioner in New South Wales.

Ms Lee Rhiannon made a valid point when she highlighted concerns relating to New South Wales not having a full-time privacy commissioner. This may have everything to do with the Premier not wanting to be accountable, but the Opposition can only go on the advice provided by the Acting Privacy Commissioner, who has said that he does not think there are risks associated with having data collected in one place. While we share some of the concerns raised by Ms Lee Rhiannon, including those with regard to the lack of a full-time privacy commissioner, we believe that the logistics of operating photo card equipment only through the Department of Commerce—which I presume is through offices of the Department of Fair Trading—would cause difficulties for many people living in regional New South Wales.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.21 p.m.]: The Government opposes the amendments.

Amendments negatived.**Clause 3 agreed to.****Clause 4 agreed to.**

Ms LEE RHIANNON [6.21 p.m.]: I move Greens amendment No. 3:

No. 3 Page 3, clause 5 (2), line 5. Omit "A". Insert instead "Subject to sections 10 and 11, a".

The purpose of this amendment is to enable cardholders to choose how much or how little of their personal information will be stored or displayed on a card. The amendment seeks to prevent third parties from seeing or collecting more information about cardholders than they need or that cardholders are comfortable with. This is necessary to protect the security of cardholders and to minimise the risk of identity fraud or theft.

Even if the photo card proposal did not involve a total population database operated by the Roads and Traffic Authority [RTA], some issues of personal security for cardholders would remain that could be addressed using better alternatives. The bill allows the RTA to determine what information will be shown on the card. It does not set any limitations or provide details about what this information might be. A person's home address appearing on a credit card result in personal security implications for that person. I hope honourable members can see that. It is very basic, particularly in this day and age. Earlier I referred briefly to terrorism. On that point alone this matter must be tightened up.

Perhaps it is fair, if I want to enter a pub or claim a senior's discount, that I should show proof of age. But why is it necessary that a bouncer or a shop clerk be able to read my address on a card? For good reason young women, who are at increased risk of harassment, and elderly people, who are at greater risk of burglary, should not reveal their home addresses. But under this proposed system they will have to. Quite a number of groups of people should not be required to reveal their addresses. To do so could prove to be to their detriment. They could be victims of domestic violence, celebrities at risk of stalkers or people in somewhat dangerous professions, such as judges or police. I imagine many such people would not want their home addresses revealed on a card that they have to show regularly to all sorts of people.

Photo card holders should be able to choose what information will be shown on their cards. The information should suit their purposes, not the purposes of government agencies, businesses or criminals. The privacy and security of photo card holders is best protected by multiple documents each serving a limited purpose—and, again, people should be given the choice about what information appears in those documents. A person should have the right to hold multiple cards. Thus there would be multiple identifiers. That would be appropriate so long as the issuing agencies were aware that the cards belonged to the one person. The amendments presents a simple way to tidy up the bill and give greater protection to the people of this State.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.25 p.m.]: The Government opposes the amendment. The New South Wales photo card is a voluntary card. Therefore those who do not wish to have their addresses made public will not apply for such a card.

Amendment negatived.**Clause 5 agreed to.**

Ms LEE RHIANNON [6.25 p.m.], by leave: I move Greens amendments Nos 4, 5, 6, 17, 18 and 19 in globo:

No. 4 Page 3, clause 6 (1) (c) and (d), (2) and (3), lines 16-28. Omit all words on those lines.

No. 5 Page 3, clause 7 (2), lines 32-36. Omit all words on those lines.

No. 6 Page 4, clause 7 (2), (3) and (4), lines 1-8. Omit all words on those lines.

No. 17 Page 5, clause 11 (1) (e), line 12. Omit all words on that line.

No. 18 Page 5, clause 11 (4), lines 20-22. Omit all words on those lines.

No. 19 Page 5, clause 11 (5), line 23. Omit "this section". Insert instead "subsection (1) (a)".

The intent of this group of amendments is to enable photo cards to use a different numbering system from that used for drivers licences and to allow a person to hold more than one card—that is, different cards for different purposes. The amendments seek to allow persons to hold both a drivers licence and a photo card if that person so chooses. Again, multiple photo cards for different purposes. This is necessary to prevent the development of unique identifiers contained on or in the photo card. For example, a person may choose to have one proof-of-age card showing just a photograph and a statement that the holder is over 18 years of age, and a separate prove-of-identity card showing the holder's photograph and full name. This is necessary to deliver what customers want in a way that minimises risks to their privacy and security and to prevent the development of a single identity management system based on each person having either a drivers licence or a photo card.

While we may not mind showing a proof-of-identity card each time we board a plane, mail a parcel overseas, enter a pub or open a bank account, the idea that all aspects of our daily lives may be tracked, linked and profiled and used to make decisions about us is far more disturbing. Again, I urge honourable members to agree to these few simple safeguards. Anonymity in our daily lives is necessary if we are to protect freedom of speech, expression and association.

The bill does not limit the nature or extent of the information about a person that will be stored on the card. Current technology includes magnetic strips or smart card microchips. We do not know whether any security measures will be taken to prevent information being captured electronically from a card by third-party users, such as a hotel employee using a magnetic stripe reader to download a person's details. Again, I urge the Minister to respond to these concerns. How will the data be stored? Where is the protection? At this stage of the debate we should be getting some answers to these questions from the Government. Without them we are left thinking that it has not thought about these problems or that it does not care.

We suggest it should be made illegal, and as technologically difficult as possible, for a third party to copy information from a card in any way. In particular, we should prohibit the card number from being used as a unique identifier through which to link customer information. This is already a feature of privacy laws around Australia except for that which now regulates the RTA.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.29 p.m.]: The Government opposes the amendment. Honourable members know that identity is a very important issue for the New South Wales Crime Commission to ensure that criminals are not able to use different cards for different purposes. One card, a drivers licence, contains all this detail, and this bill will enable people who do not hold such a licence to identify themselves.

The Hon. MELINDA PAVEY [6.30 p.m.]: The Opposition is not in a position to support the amendments. The Minister for Roads is not in the Chamber to reject or put to rest some of the concerns expressed by Ms Lee Rhiannon, which is an abrogation of his duties. The Opposition believes that the Minister should be in this Chamber to respond to the valid concerns of members and the Australian Privacy Commission. I urge him to come to the Chamber to respond appropriately.

Amendments negatived.

Clause 6 agreed to.

Clause 7 agreed to.

[The Temporary Chairman of Committees (The Hon. Jennifer Gardiner) left the chair at 6.32 p.m. The Committee resumed at 8.00 p.m.]

Ms LEE RHIANNON [8.03 p.m.], by leave: I move Greens amendments Nos 7, 22, 23, 24, 28 and 30 in globo:

No. 7 Page 4, clause 8, line 13. Omit "residential". Insert instead "postal".

No. 22 Page 6, clause 14 (2) (d), line 12. Insert "either" before "the".

No. 23 Page 6, clause 14 (2) (d), line 12. Omit "and". Insert "or the person's postal".

No. 24 Page 6, clause 14 (2) (d), line 13. Omit "(if any)". Insert instead "depending on what the person chose to appear on the face of the Photo Card when he or she made the application".

No. 28 Page 6, clause 14 (6), lines 27–29. Omit all words on those lines.

No. 30 Page 7, clause 16 (1) (b), line 8. Omit "residential". Insert instead "postal".

It is interesting when a dinner break intervenes during proceedings. Sometimes things change. Over dinner I watched the *7.30 Report*. There was a very interesting item about identity fraud and a number of problems arising from the abuse of people's identity. The story concentrated particularly on passports but it had considerable relevance to this debate. Experts said that it has never been so easy to forge documents. They were talking particularly about Australian passports but I am sure the same would apply to the identity cards now under consideration. The figures were interesting: the Department of Foreign Affairs and Trade spokesperson said that 200,000 passports are missing overall and 30,000 go missing every year. They are extraordinary figures. The shadow foreign Minister, Mr Rudd, talked about the problems with the system that assist people engaged in drug trafficking and international crime. Both the major parties are aware of identity theft and the abuse of official documents for crime running yet extraordinarily in the New South Wales Parliament—it is like a turning of the tables—both major parties put forward a very weak system without protections. The problems now being created for the people of New South Wales will need to be rectified at some stage. The amendments now being considered provide that current residential addresses do not have to be shown on the card or maintained in a register. We argue that this is necessary to prevent the photo card from being used as a means by which the Government may keep track of people's locations.

The Hon. Duncan Gay: It might make the Greens pay tax.

Ms LEE RHIANNON: I acknowledge that silly interjection. It is also necessary to prevent the database holding the information from being a honey pot of data that would attract people wishing to find out the cardholder's current residential address so as to stalk, harass or harm the person. On this point the Privacy Foundation said:

Even if the Photo Card proposal did not involve a 'total population' database run by the RTA, there would remain some issues of personal security for card holders, which could be addressed using better alternatives.

The Bill allows the RTA to determine what information will be shown on the Card. It does not set any limitations or provide any details about what information this might be.

A disturbing aspect of the bill is the ability of the RTA to deny a photo card to people who want a card even if they meet the primary eligibility criteria of being residents over 16 who do not have a current drivers licence. This means some of the people for whom the photo card is allegedly intended—people who wish to prove their identity to third parties but cannot use a drivers licence to do so—can be denied the benefits the photo card is intended to bring. This creates a whole new regime of punishment determined not by our courts but by our RTA.

I imagine most members are not aware of that. They think everybody will be able to get a photo card but that will not be the case. The authority that determines this will be the RTA. It would appear the drivers licence model was simply applied without thinking through the proposal for an identity card for non-drivers. After all, a drivers licence is not intended as an identity document and thus works on a different set of rules and assumptions. It is a certificate establishing one's credentials: this person has passed certain tests. It is a permissive document: this person is allowed to drive on public roads. And it is a conditional document: this permission may be withdrawn if this person disobeys the road rules. Driving is a privilege and there are public dangers that go on with driving for which people need to be held accountable. This is not true of identity cards. One's identity is not conditional. Yet the bill establishes the RTA as the arbiter of whether or not a person can live with ease in their community or instead be ostracised for their real or perceived shortcomings. How should such people answer the question: Why can you not just get a photo card? I would be interested to hear the comments of the representatives of the major parties. There are real concerns with this aspect of the bill.

The Hon. MELINDA PAVEY [8.09 p.m.]: The Opposition believes that the RTA should have the power to cancel a card if it is used fraudulently or misused in some other way. I make the point that it was Opposition policy before the last State election that there should be provision for people who do not have a drivers licence to be able to obtain some form of formal identification other than a passport. The whole premise is that it be a voluntary card system. The Opposition supports the right of the RTA to refuse to issue a card because misuse of the card would undermine the integrity of the system.

The Hon. HENRY TSANG (Parliamentary Secretary) [8.10 p.m.]: In response to Greens amendment No. 7, this issue was considered by the interdepartmental working group and raised for discussion during consultation with community groups. Older people in particular are strongly supportive of the display of the address on the card to provide evidence of entitlement to enter the clubs, and to obtain access to other services. Without an address displayed or stored on the card, it is difficult for people to undertake transactions, such as sending parcels, hiring videos or gaining access to other services.

In regard to Greens amendment No. 22, as the honourable member will understand, this is in line with the drivers licence provisions. The same applies to proposed amendments Nos. 23 and 24. The Government opposes this amendment because it is in line with the drivers licence provisions. As to Greens amendment No. 28, in line with the drivers licence it is important that customers maintain up-to-date address information so that a renewal notice can be forwarded to them. As to proposed amendment No. 30, this requirement is also in line with the drivers licence provisions. The Government is opposed to each of the amendments proposed by the Greens.

Reverend the Hon. FRED NILE [8.11 p.m.]: The Christian Democratic Party also opposes the amendments. I noted that in her argument the mover stated that a drivers license simply indicates that the person to whom it was issued knows how to drive a car. In fact, the way the licence is used in our society is as an identification card. Every where one goes people ask for a drivers licence. That has become normal procedure and the Photo Card will provide the same facility for those who do not have a drivers licence. We do not support the amendments.

The Hon. MELINDA PAVEY [8.12 p.m.]: The Hon. Henry Tsang referred to a number of amendments moved earlier today by Ms Lee Rhiannon. The Minister for Roads continues to ignore his own legislation in this Chamber. I think that is a great shame because he has a responsibility as Minister and should be in the Chamber to debate these amendments with Ms Lee Rhiannon and other honourable members, explaining the reasons for the introduction of this card, and putting to rest some of the arguments and claims raised by the honourable member.

The CHAIR: Is the member speaking to the amendments?

The Hon. MELINDA PAVEY: I am just making the point that the Minister should be in this Chamber.

The Hon. HENRY TSANG: In responding it should be noted that the Parliamentary Secretary to the Minister for Roads, the Hon. Eric Roozendaal, is right here.

The Hon. Melinda Pavey: Why isn't he talking, Henry?

The Hon. HENRY TSANG: Because I have carriage of this legislation and I want to see it through.

The Hon. Melinda Pavey: Because you can do a better job.

The Hon. HENRY TSANG: No, no. The Hon. Eric Roozendaal is very capable.

The Hon. Melinda Pavey: Really!

The Hon. HENRY TSANG: He is very capable. You watch, he is going to be a Minister very soon.

[Interruption]

The CHAIR: The Hon. Don Harwin will cease interjecting. I will place all members, including the Deputy Leader of the Opposition, on one call to order if interjections do not cease.

Amendments negatived.

Clause 8 agreed to.

Ms LEE RHIANNON [8.14 p.m.], by leave: I move Greens amendments Nos. 8 and 9 in globo:

No. 8 Page 4, clause 9 (2) (b), line 22. Insert "if the applicant does not authorise the Authority to use any existing database photograph, or" before "if".

No. 9 Page 4, clause 9 (3), lines 29 and 30. Omit ", the *Road Transport (Driver Licensing) Act 1998*, the *Licensing and Registration (Uniform Procedures) Act 2002* or any other Act".

If these amendments were adopted, the database supporting the range of Photo Cards would not be shared or linked in any way to the drivers licence database held by the RTA. This includes allowing the use of the drivers

licence photograph on the Photo Card only with the licence holder's consent. This is necessary to prevent the linking of data about holders of Photo Cards with data about drivers licences to form one total population database.

As already noted, having virtually all residents of a State listed on the one database has a number of side effects. There is more pressure to allow sharing of information across government agencies, more incentive for businesses to use data from the card to link transactions and conduct profiling of customers, and more incentive for organised criminals to access the database to create fake identities or steal real ones. Again, I remind honourable members of the figures and what is going on with passports at the moment, which one would think would be much more secure than anything that the RTA will manage. We have 30,000 going missing every year. I commend these amendments to the Committee.

The Hon. HENRY TSANG (Parliamentary Secretary) [8.16 p.m.]: The Government is opposed to Greens amendments Nos 8 and 9. In order to minimise fraud it is important that the RTA can retrieve and use any of the photographs it stores.

The Hon. MELINDA PAVEY [8.16 p.m.]: The Opposition will not support the amendments. The RTA has a reasonable record in maintaining a safe and proper database. Our advice from the Acting New South Wales Privacy Commissioner is to the effect that there is no concern related to arrangement whereby there will be collection of data for drivers licences and the proof-of-page identification.

Amendments negatived.

Clause 9 agreed to.

Ms LEE RHIANNON [8.17 p.m.], by leave: I move Greens amendments Nos 10, 11, 12, 13, 14, 15 and 16 in globo:

No. 10 Page 4, clause 10 (1), line 32. Omit "or otherwise as part of".

No. 11 Page 4, clause 10 (1), line 36. Insert ", but only if that person has approved the inclusion of that information on the Photo Card" after "is issued".

No. 12 Page 4, clause 10. Insert after line 36:

- (2) The Authority must not include any other identifying information, or other information, about the card holder on the face of the card.
- (3) The Authority must not include any identifying information, or other information, about the cardholder on or otherwise as part of the Photo Card (whether by magnetic strip, microchip or other means) other than the information that appears on the face of the card, being information authorised by this section.
- (4) In this section, a reference to the *face of the card* is a reference to the front or back of the card.

No. 13 Page 5, clause 10 (2), line 2. Insert "identifying" before "information".

No. 14 Page 5, clause 10 (2), line 2. Insert ", and that the applicant has approved the inclusion of," after "include".

No. 15 Page 5, clause 10. Insert after line 3:

- (3) In this section, *identifying information* means any or all of the following:
 - (a) full name,
 - (b) date of birth,
 - (c) age bracket (such as "over 15 years old", "over 18 years old" or "over 60 years old"),
 - (d) residential address,
 - (e) postal address,
 - (f) signature,
 - (g) any additional biometric or other information about the card holder prescribed by the regulations.
- (4) A regulation referred to in subsection (3) (g) may not be made unless, before the making of the regulation, the Authority:
 - (a) has conducted a privacy impact assessment concerning the inclusion of such information on Photo Cards, to the satisfaction of the Privacy Commissioner, and

- (b) has publicly exhibited the results of that assessment, and called for submissions on the making of the regulation, over a period of at least 28 days, and
- (c) has taken into account any submissions made.

No. 16 Page 5. Insert after line 3:

11 Inclusion of other non-identifying information on Photo Card

The Authority may include on the face of a Photo Card the card number, which:

- (a) must be unique to that Photo Card, and
- (b) must not be or contain a unique identifier so as to enable the holder of the Photo Card to be distinguished from holders of other Photo Cards, driver licences or other common identity documents, and
- (c) must not be a sequence or pattern similar to that used for driver licences.

12 Multiple cards may be issued

The Authority may issue more than one Photo Card to a person if the person makes more than one application, so long as each different Photo Card shows the same full name but a different set of other identifying information about the person, depending on what the person chose to appear on the face of the Photo Card when he or she made each application.

These amendments would result in the law explicitly limiting the collection and use of data to its original purpose. They provide for a photographic card in respect of which the cardholder can choose how much or how little of their personal information is stored or displayed on the card. It would also provide for a person to be able to choose to hold more than one card—that is, different cards for different purposes. We argue that this amendment is necessary to prevent function creep or the later expansion in the uses of the data.

This is a standard means of privacy protection. It is also necessary to prevent third parties from seeing or collecting more personal information about the cardholder than they need or that the cardholder is comfortable with. This is necessary to protect the security of cardholders and to minimise the risk of identity fraud or theft. The Privacy Foundation has advised that the bill is more likely to exacerbate identity fraud and identity theft. Identity fraud and theft not only facilitate a wide spectrum of unlawful activity from under-age drinking to welfare fraud, from money-laundering to terrorism, but, in the case of identity theft, presents a very serious privacy invasion for the person targeted. As privacy advocates, the foundation therefore takes issue with this very seriously, and has indicated that it wants systems in place to prevent identity theft and fraud. The foundation stated:

The Photo Card Bill allows the RTA to hold personal information about non-drivers on the same database as personal information about drivers. The ... foundation is concerned that this centralised data base model of identity management presents a major security risk, and could hamper, rather than enhance, law enforcement efforts to tackle identity-related crime.

A central database model makes it easier for the organised criminal or terrorist to steal a real identity, or create a new fake one. They only have to bribe one person, hack into one system, forge one document, or fool one agency, instead of many. This model also makes the repercussions of identity theft worse for the victim, as the degree of privacy invasion is greater, and the ability for a person to remedy a theft of their identity is more complex. Centralising identity management increases both the risk of identity theft and the degree of harm suffered by the victim when it occurs. For these reasons the Federal Australian Government and the United States Government have recognised the security flaws in creating or relying on a single identity document or database. Why does the RTA not do so? This model is extraordinarily loose.

These amendments will allow a person to choose to have one proof-of-age card showing just their photograph and a statement that the holder is over 18 years of age, and a separate proof-of-identity card showing their photograph and full name. This is also necessary to deliver what the customer wants in a way that minimises risks to their privacy and security, and to prevent the development of a single identity management system based on each person having either a drivers licence or a photo card. I commend the amendments to the Committee.

The Hon. MELINDA PAVEY [8.21 p.m.]: The Opposition does not support Greens amendments Nos 10 to 16. While it is not beyond the realms of possibility that a criminal or terrorist could bribe an official in the Roads and Traffic Authority to establish a proof-of-age card, if that person then wanted to open a bank account, obtain a passport, or establish a bill-paying mechanism with an electricity or water provider, for example, he or

she would not be able to satisfy the 100-point system that such organisations require. Whilst there is probably no perfect system, the 100-point system requires the applicant to provide a number of forms of identity. The Roads and Traffic Authority has advised that a drivers licence is worth 40 points, and the proof-of-age card will be worth fewer points than that. No matter how hard we try, we will never be able to stamp out corruption, but there is some comfort in the fact that a person will need more than a proof-of-age card to obtain a passport, for example.

Reverend the Hon. FRED NILE [8.23 p.m.]: For the same reasons, the Christian Democratic Party does not support Greens amendments Nos 10 to 16. In my view, allowing people to have two photo cards would increase the risk of fraud and deception. In fact, the cards could be used by two people. The amendments raised a number of serious problems, and therefore we do not support them.

The Hon. HENRY TSANG (Parliamentary Secretary) [8.24 p.m.]: The Government opposes Greens amendments Nos 10 to 16. With regard to amendment No. 10, to minimise fraud it is important that the Roads and Traffic Authority can retrieve and use any of the photographs it stores. Amendments Nos 11 and 12 would undermine the integrity and validity of the card. With regard to amendment No. 13, the requirement is in line with requirements when applying for a drivers licence. With regard to amendment No. 14, the card is voluntary, and to maintain the integrity of the card it is reasonable that consistent and standard requirements apply. With regard to amendment No. 15, the requirements are in line with a drivers licence. With regard to amendment No. 16, unique cards and customer numbers apply for each photo card. These are contained in a separate database specific to the photo card scheme. The numbering system is required for validation purposes.

Amendments negatived.

Clauses 10 agreed to.

Clause 11 agreed to.

Clauses 12 and 13 agreed to.

Ms LEE RHIANNON [8.26 p.m.], by leave: I move Greens amendments Nos 20, 21, 25, 31 and 39 in globo:

No. 20 Page 6, clause 14 (2) (a), line 8. Omit "the person to whom the". Insert instead "the person's".

No. 21 Page 6, clause 14 (2) (a), line 9. Omit "was issued".

No. 25 Page 6, clause 14 (3), lines 18-21. Omit all words on those lines.

No. 31 Page 8, clause 18 (1) (e), (f) and (g), lines 17-26. Omit all words on those lines.

No. 39 Page 15, clause 30. Insert after line 12:

- (3) However, a person authorised to make a request under subsection (2) must not collect personal information from, or copy, download or otherwise take a likeness of the card holder's photograph or other information from, the Photo Card, unless required to do so by law.

Maximum penalty: 20 penalty units.

Under these amendments photo cards would use a different numbering system to drivers licences and a person may choose to hold more than one card, that is, different cards for different purposes. They would explicitly limit the collection and use of data to its original purpose. The amendments have been put forward to prevent "function creep", which I have spoken about on other occasions, or the later expansion in the use of the data, a standard means of privacy protection. This is also necessary to prevent the collection of personal information by businesses or government agencies to track and profile customers. As I have spoken about this in detail previously, I commend the amendments to the Committee.

The Hon. HENRY TSANG (Parliamentary Secretary) [8.27 p.m.]: The Government opposes the Greens amendments. With regard to amendments Nos 20 and 21, a unique customer number is given to each cardholder. This numbering system is required for validation purposes. With regard to amendment No. 25, to maintain the integrity of the card and to protect customers it is important to maintain a record of information presented by customers in establishing their identity. This is in line with a drivers licence. With regard to amendments Nos 31 and 39, the bill already makes it illegal for providers to collect information on the card or to seek seizure of the card.

Amendments negatived.

Ms LEE RHIANNON [8.28 p.m.], by leave: I move Greens amendments Nos 26, 27, 29, 32 to 38, and 40 to 43 in globo:

- No. 26 Page 6, clause 14 (5), line 24. Omit "may". Insert instead "must not".
- No. 27 Page 6, clause 14 (5), line 25. Insert "Roads and Traffic" before "Authority".
- No. 29 Page 6, clause 15, line 34. Omit "or under another law".
- No. 32 Page 8, clause 19 (1) (a), line 33. Insert ", but only if the Authority is satisfied that the release of the photograph, image or matter is reasonably necessary to enable NSW Police to help prevent, solve or prosecute a crime, or to find or identify a missing person" after "Police".
- No. 33 Page 8, clause 19 (1) (b), line 34. Omit all words on that line.
- No. 34 Page 9, clause 19 (1) (c), line 1. Insert "to the Office of the Director of Public Prosecutions, but only if the Authority is satisfied that the release of the photograph, image or matter is reasonably necessary" before "for".
- No. 35 Page 9, clause 19 (1) (d) and (e), lines 5–7. Omit all words on those lines.
- No. 36 Page 9, clause 19 (1) (g), (h) and (i), lines 10–18. Omit all words on those lines.
- No. 37 Page 9, clause 19 (2), lines 19 and 20. Omit "(a)-(d), or authorised by regulations made under subsection (1) (i),". Insert instead "(a) or (b)".
- No. 38 Page 12, clause 26, lines 5 and 6. Omit "or the *Road Transport (Driver Licensing) Act 1998* or the regulations under those Acts". Insert instead "or the regulations".
- No. 40 Page 19, Schedule 2.2 [2], lines 18–21. Omit all words on those lines.
- No. 41 Page 19, schedule 2.2 [3], lines 29–32. Omit all words on those lines.
- No. 42 Page 20, schedule 2.4 [2], lines 18–21. Omit all words on those lines.
- No. 43 Page 20, schedule 2.4 [4], lines 31–34. Omit all words on those lines.

These amendments would ensure that the database supporting the range of photo cards would not be shared or linked in any way to the drivers licence database held by the Roads and Traffic Authority. This includes allowing the use of a drivers licence photograph on a photo card only with the person's consent. This is necessary to prevent the linking of data about photo cardholders with data about drivers licences to form one population database. The amendments will ensure that the law will have explicit prohibitions on the sharing of information from the database other than for law enforcement purposes. This is necessary to prevent the disclosure of personal information about cardholders for other purposes. Again, I quote material from the Australian Privacy Foundation:

Function creep can occur not only in relation to how much information is collected, but in expanding the rules about who has access to that information. Again the argument is usually cast in economic or efficiency terms: since the data already exists, we can avoid duplication/cost/inefficiency by allowing other government agencies access to the central database.

Again it looks like the RTA has already given in to either temptation or pressure to allow function creep in terms of sharing the data. The Bill allows the RTA to disclose photographs, or any other information about Card holders held on their database, to:

- the NSW Sheriff (to recover fines),
- NSW Police (for any reason),
- Driver licensing authorities in other States and Territories (for any reason), and
- Any other person or organisation, so long as it is "as provided under any other law", or "in accordance with the regulations".

"Any other law" is a most extraordinarily broad statement—you could drive a truck through it! In addition, "In accordance with the regulations" is a vague term. It may be reasonable for the police to be able to access information in the database where they need it to help prevent crime or to find a missing person, but why does the bill not just say that? We do not want a situation where any police officer or civilian employee of NSW Police can access the database without a legitimate reason. The provision for interstate government agencies to have access to the information is clearly ridiculous. Why would driver licensing authorities outside New South Wales need to know about people who, by definition, are not licensed to drive? This bill looks as though it has been put together in a hasty and shabby fashion.

Ms Pavey has commented a number of times about the Minister being absent tonight. One wonders whether he has been absent during all stages of the drafting of this bill. I have outlined concerns about privacy.

However, when one goes into the detail of the bill, as the Greens have done, one finds some shoddy drafting. The Australian Tax Office, Centrelink and the immigration department have the power to demand that State government agencies such as the RTA hand over any personal information they hold. The RTA already has legal authority to provide information to the Australian Electoral Commission about drivers from its drivers licence database. Will this apply to non-drivers too? Who would be next in line to seek access to the database?

If the RTA is to be allowed to disclose cardholders' photographs and other personal information to other organisations, those organisations should be named in the bill, along with reasons for that access, so the Parliament can debate those issues. The Parliament should set limitations in the bill. It is not too much to ask that we be exact about what is going on with this bill. I have outlined some of the problems the Greens have with this bill, and they are good reasons for passing my amendments. Obviously, the major parties just give up on trying to get legislation with which we all agree. We all agree that people who do not have a drivers licence need photo identification. Sadly, we are not able to work together to put in place ways to protect people's privacy and other matters.

The Hon. HENRY TSANG (Parliamentary Secretary) [8.34 p.m.]: The Government opposes all the amendments moved by the Greens. I refer to amendments Nos 26 and 27. In order to maintain the security and integrity of the card, it is important that the RTA can ensure that there is one person per card. In regard to amendment No. 29, the RTA is required to act in accordance with appropriate legislation. Concerning amendments Nos 32 to 36, the RTA provides access to any photo images or information only in line with strict privacy provisions and protocols approved by the Privacy Commissioner and, in relation to amendment No. 35, in line with the driver licensing scheme.

In regard to amendment No. 37, it is appropriate that the regulations be carried out in accordance with any protocols approved by the Privacy Commissioner. In relation to amendment No. 38, all photographs are protected in similar ways, including drivers licence images and images pertaining to other cards. The Photo Card Bill introduces new protections to prevent unauthorised reproduction of any photographs. With respect to amendments Nos 40 to 43, this applies consistency to the keeping and use of all photographs held in the RTA's driver's licence database.

Amendments negatived.

Clauses 14 to 16 agreed to.

Clauses 17 to 19 agreed to.

Clauses 20 to 27 agreed to.

Clauses 28 and 29 agreed to.

Clauses 30 to 39 agreed to.

Schedules 1 and 2 agreed to.

Title agreed to.

Bill reported from Committee without amendment and passed through remaining stages.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 4 postponed on motion by the Hon. Henry Tsang.

ELECTRICITY SUPPLY AMENDMENT BILL

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [8.40 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

As the New South Wales population and economy grow there is an ongoing need to ensure that households, businesses and industry have access to reliable, affordable, sustainable and secure electricity supply.

Over the last ten years, overall electricity demand in NSW has been increasing at 2.8 per cent per annum due to strong economic growth and an increasing population. Summer peak electricity demands have increased at 4 per cent, driven largely by strong growth in commercial and residential air-conditioning.

If this trend continues, and under very conservative planning and forecast assumptions, NEMMCO suggest that a new peaking power plant may be required to meet electricity peak demand from 2008 or 2009.

This Government is taking the initiative and acting prudently to ensure that NSW maintains its strong and reliable electricity supply system and prepares the electricity system for a transition towards a lower greenhouse emissions future.

In addressing these challenges I released the Energy Directions Green Paper on 6 December 2004.

The Green Paper seeks comments from interested parties on a range of important issues including:

- options for meeting future electricity needs
- possible ways of reducing greenhouse gas emissions
- regulatory and pricing certainty for investors
- transparency in planning requirements for new power stations and energy saving strategies to improve energy efficiency.

This Government has invested more than \$4 billion in the last five years in distribution and transmission networks and will spend another \$6.2 billion in the next five years. By any measure, this is a significant investment.

The Government's preference is that new investment in power stations be financed by the private sector.

Public submissions on the Green Paper will support and inform the Government's decision-making on NSW's future energy direction. The Government will provide private sector investors with the required regulatory and policy certainty through an Energy Directions White Paper outlining the Government's policy positions.

The White Paper is due for release in mid-2005.

This demonstrates my level of commitment in doing whatever is necessary to secure NSW's electricity needs into the future.

This Government's continuing commitment to electricity reform is also demonstrated in the legislation before us today. This legislation is consistent with the Government's initiatives, to date, in greenhouse policy, electricity market reform, consumer protection and safety measures in relation to electricity supply.

I will today outline amendments to the Electricity Supply Act 1995 that will allow for

- the more effective operation of the Greenhouse Benchmarks Scheme
- enhance customer protection mechanisms
- improve the effectiveness of the licensing regime and
- clarify electricity network safety and maintenance responsibilities.

Electricity generation is the source of around 40 percent of NSW greenhouse gas emissions.

The NSW Government has taken a lead role in developing Australian greenhouse policy by implementing the NSW Greenhouse Benchmarks Scheme. This is in stark contrast to the Liberal Government which continues to bury its head in the sand and seeks to do the same with its emissions.

The NSW Government is continuing to take real action in relation to emissions under the NSW Greenhouse Benchmarks Scheme and is now taking further steps to allow for the more effective operation of the Scheme. I will now outline two separate amendments to the Electricity Supply Act that will further enhance these achievements.

Firstly, the voluntary surrender of abatement certificates will be allowed. This will improve compliance with, and enforcement of, the Scheme as well as providing opportunities to use the certified abatement created under the Scheme more widely.

The Benchmarks Scheme requires that electricity retailers reduce the greenhouse gas emissions associated with the electricity they supply. A supplier whose attributed emissions exceed its emissions benchmark can purchase and surrender abatement certificates rather than paying a financial penalty.

There are currently only two circumstances in which abatement certificates can be surrendered. The first relates to benchmark compliance by electricity suppliers who must surrender certificates to IPART in order to comply with their benchmarks. The second circumstance relates to accredited abatement certificate providers who have been ordered to surrender abatement certificates by IPART, where they have been convicted of improperly creating abatement certificates, or having breached conditions of their accreditation.

In order to enhance the Scheme's operation and provide a desired level of flexibility, a mechanism will now be included to allow for the voluntary surrender of abatement certificates in these circumstances. This mechanism allows accredited abatement certificate providers to voluntarily surrender any inadvertent over-creation of certificates, without being convicted of an offence.

A further benefit of allowing the voluntary surrender of certificates is that the Scheme is broadened beyond the existing mandatory requirements on electricity suppliers. This has the advantage of allowing, for example, environmental groups, or other parties seeking to achieve an environmental goal, the opportunity to purchase and voluntarily surrender abatement certificates.

This extension of the Scheme will build on the experience and expertise of the Scheme Administrator—IPART—which has developed world class accreditation, verification and registry services. The use of certificates for non-liable parties under the Scheme will also extend the abatement of greenhouse gas emissions.

The second important change to the operation of the Greenhouse Benchmarks Scheme will be to increase the flexibility for large electricity users by allowing all sites under a company's control to be included for the purposes of their election as benchmark participants. Such large electricity users must then manage their own greenhouse benchmark under the Scheme, rather than having it managed by their electricity supplier.

In the past the Act required that a benchmark participant must supply or purchase electricity. This was a narrow interpretation of the Scheme's intent and objectives. In a few cases where commercial arrangements of related companies have been different, this has required novation of electricity contracts in order to satisfy the eligibility criteria for election. The proposed amendments to the Act will overcome this unintended requirement and the unintended compliance difficulties for business, while not compromising the abatement delivered.

The initiative has been taken to provide opportunities for further abatement activities by broadening the interpretation of the Scheme under the Act. This will allow some company structures, including holding companies, that do not meet the current eligibility criterion to now elect as benchmark participants. This change will allow a parent company to be able to elect on behalf of subsidiaries and other related entities.

This amendment will deliver important additional benefits to NSW by allowing a number of companies to bring to account a wider range of greenhouse abatement activities than previously possible. In turn, this provides the potential for further opportunities for abatement activities leading to the creation of additional Large User Abatement Certificates. A further benefit is the reduction of costs of the Scheme to industry while encouraging additional abatement activities.

Electricity plays a vital role in our everyday lives. Securing the supply of electricity to consumers is a responsibility this Government takes seriously.

The Government is taking this opportunity to strengthen and clarify existing powers for regulation and effective operation of the competitive electricity retail market.

The retailer of last resort scheme is a customer protection mechanism established to support the retail market. In the event of a retailer's suspension from the National Electricity Market or licence cancellation in New South Wales, the affected electricity retailer's customers would be transferred to retailers of last resort appointed under the powers of the Minister for Energy and Utilities. At present, the retailers of last resort in NSW are EnergyAustralia, Integral Energy and Country Energy.

In order to more effectively manage the circumstances in which customers must be transferred to a retailer of last resort, the Minister for Energy and Utilities needs to be directly informed by the responsible agencies if such an event occurs, or appears likely to occur.

Under the proposed amendment, a head of power will be created enabling commercial-in-confidence information to be obtained from the National Electricity Market Management Company with respect to 'retailer of last resort' events in New South Wales. The use of such information will be limited to the management of potential retailer of last resort events. This power is consistent with the power of other jurisdictions for these circumstances.

The Government is also taking steps to improve the administration and enforcement of the electricity distribution and retail licensing regime.

The Electricity Supply Act provides for certain obligations to be imposed on electricity suppliers by attaching "endorsements" to their licence. An endorsement can be either an obligation to act as a retailer of last resort or an obligation to offer small customers a standard regulated supply contract. The process for imposing, varying or revoking an endorsement requires clarification.

The Independent Pricing and Regulatory Tribunal, as the electricity licence administrator, has proposed an opportunity to more effectively administer endorsements, by clarifying the responsibility for imposing an endorsement on a supplier. As endorsements have a similar purpose and effect to licence conditions it was appropriate that the powers and processes be made consistent. For consistency with similar powers, the Act has been amended so that this power resides with the Minister for Energy and Utilities.

A process has also been established for the varying or revoking of endorsements. This not only improves the effectiveness of the licensing regime but also creates certainty to minimise the potential for legal challenge.

IPART also identified the potential to improve its powers to monitor and enforce compliance with endorsement conditions. In order to fulfil its responsibilities IPART's licence auditing functions have been extended to include endorsements attached to a licence. Distribution network service providers and retail electricity suppliers will be required to concurrently comply with IPART directions to keep specified records and furnish specified information.

The Government is also taking this opportunity to establish a regulation making power for the introduction of prepayment meters in NSW to small electricity customers on a voluntary basis. Prepayment meters offer customers choice and flexibility.

Prepayment meters allow customers to pre-purchase credit for electricity supply. Customers would also be able to use the meter to monitor their electricity consumption, thereby assisting in household budgeting.

The Government has consulted broadly with the electricity industry, consumer groups and the Energy and Water Ombudsman NSW on the use of prepayment meters. In general consumer groups and retailers were supportive of the introduction of prepayment meters in NSW. Prepayment meters will only be offered to customers on a purely voluntary basis under a negotiated contract.

On the basis of this consultation, regulations are being prepared to establish an appropriate and fair regulatory framework for prepayment meters which includes consumer protection mechanisms and technical market rules.

As the Parliament would be aware this Government is committed to high standards of safety and maintenance across the electricity network and electrical installations.

The Bill now before Parliament extends this commitment by clarifying the safety and maintenance responsibilities for electricity networks and electrical installations. The Bill clearly defines the boundary between an electrical installation and an electrical distribution system.

Uncertainty surrounding the location of the distribution system boundary created the potential for disputes as to who was responsible for the safety and maintenance of some electricity assets. This is of particular relevance to electricity distributors who are taking initiatives to ensure private overhead lines are safe. This is a crucial aspect of an electricity distributor's operations to assist with bushfire prevention.

Two new definitions have been included in the Act to clearly define the point of supply between a distribution system and an electrical installation. The definition for electrical installation in the Act has also been amended to ensure maximum consistency with the Electricity (Consumer Safety) Act 2004 while avoiding any unintended consequences.

In conclusion, I would like to remind the House that this Government has a continuing commitment to an electricity industry which delivers safe, reliable, affordable and sustainable energy for NSW.

The legislation before the House provides for the more effective operation of the Greenhouse Benchmarks Scheme and will further enhance customer protection mechanisms, improve the effectiveness of the licensing regime and clarify electricity network safety and maintenance responsibilities.

This legislation delivers ongoing benefits to the people of New South Wales.

I commend the Bill to the House.

The Hon. DON HARWIN [8.40 p.m.]: The Electricity Supply Amendment Bill is a bundling together of miscellaneous amendments to the now 10-year-old Electricity Supply Act, with particular reference to the endorsements on licences and the operation of the Greenhouse Gas Abatement Certification Scheme. Specifically, the bill has the following objectives: first, to clarify the operation of provisions relating to the imposition of endorsements on the licences of retail suppliers of electricity and to clarify the power of the Independent Pricing and Regulatory Tribunal [IPART] to audit and enforce compliance with these endorsements; second, to require electricity distributors and suppliers to provide specified information to IPART; third, to enable large customers to participate in the greenhouse gas abatement certificate arrangements and to allow certificates created under the scheme to be voluntarily surrendered by their owners at any time; fourth, to require the National Energy Market Management Company to provide information to the Minister; fifth, to establish a regulation-making power for electricity prepayment meters for small retail customers; and, sixth, to clarify the boundary of the electricity distribution system.

The flaw with the bill lies not with what has been included but, rather, with what has been left out. The bill ignores the major problems facing the State's electricity system and its provisions make no attempt to address them. New South Wales energy companies produce about 12,800 megawatts each year. The average demand for electricity in New South Wales is about 8,500 megawatts a year. The peak demand for electricity is 12,838 megawatts. During peak periods of use, demand for electricity exceeds the generation capacity of the major energy companies in New South Wales. During these times of peak demand New South Wales relies on power generated from interstate and from the Snowy Mountains Hydro-electric Scheme. However, forecasts indicate that by 2008-09 there will be electricity generation shortfalls unless increased generation capacity is brought on line. If this shortfall occurs, New South Wales will suffer major blackouts.

In a response to the call for public submissions relating to the recently issued green paper on the State's future energy needs, Alan Moran of the Institute of Public Affairs commented on a "crisis in the State's

electricity industry, a crisis which the current government has created and is paralysed to resolve". In the latest round of determinations and draft regulatory decisions the three main New South Wales energy companies—EnergyAustralia, Integral Australia and Country Energy—sought, and were granted, \$3.8 billion in operating expenditure. Their submission for \$6.1 billion in capital expenditure, however, was not granted and capital expenditure was capped at only \$4.7 billion. This lack of investment by the Government has occurred despite the fact that the energy companies have delivered to the Carr Government a massive windfall over the past six years in the form of dividends, tax equivalents and debt loading.

Since 1998 the Government has received \$2.546 billion in dividends, \$1.428 billion in tax equivalents and \$2.918 billion in debt loading. In 2003-04 the average household in New South Wales had its energy bill increased by about \$73 a year. In the same year Integral Energy, EnergyAustralia and Country Energy paid a whopping \$441 million to the Government in dividends and tax payments. The consequences of the Government's lack of maintenance and development are becoming ever more apparent. With each passing month some part of rural or suburban New South Wales suffers from a power blackout, thus demonstrating with increasing emphasis the Government's inability to guarantee supply. It is ironic that the Electricity Supply Amendment Bill does nothing to address these serious problems with our State's electricity supply.

In the last 12 months alone we have the following examples. On 6 May 2004 residents in Shortland and Wallsend in the Hunter Valley were left without power for nearly half an hour following a fault in a substation. On 29 July 2004 peak-hour motorists had to be diverted after an EnergyAustralia fault caused the lights inside the Sydney Harbour Tunnel to go out for over half an hour. On 29 September 2004 residents in Sydney's south-west suffered a blackout following failures at two major electricity substations. On 14 October 2004 residents in Hunters Hill and North Ryde lost power after a circuit-breaker fault at a substation. On 15 October 2004 residents in Mosman, Cremorne, St Leonards and Chatswood suffered a blackout.

The worst example affected the area where I live and no doubt the home of Reverend the Hon. Fred Nile was affected as well. On 1 December 2004, 70,000 Integral Energy customers between Dapto and Jervis Bay had their supply cut on the first day of summer after a failure at a generating plant. I shall return to this interesting example. On 20 December 2004 residents and businesses in Woollahra were left without power following a substation failure. Some remained without electricity for days. Of these blackouts, obviously the incident on the South Coast on 1 December impacted upon the largest number of consumers—approximately 70,000 residents and business operators. According to Integral Energy the disruption to supply was a result of load shedding, an emergency measure that was undertaken due to an overload of demand. The causes of the disruption have been identified as, first, the failure of a generating plant at Vales Point on the Central Coast; second, the fact that some of the State's other generators were out of service; and, third, the fact that the interconnectors from Victoria and Queensland were already operating at or near capacity.

Many customers were without power for between 30 minutes and three hours. For a significant number of business customers, however, the disruption had a much longer impact. In several instances certain machines and various procedures could not be returned to full operation or properly resumed for a further 12 hours because the sudden nature of the blackout meant that operations were not shut down in accordance with procedure.

The implications of the blackout for the community were serious. While residents were inconvenienced, businesses suffered a range of hardships. In addition to the loss of production and in many cases the loss of product, many local businesses and industries suffered damage to equipment and the expense of repairs, clean-ups and additional personnel overtime. The incident raises serious questions about our State's electricity supply and brings into sharp relief the real situation in New South Wales and the problems we face in the near future.

I shall give some examples of how the business of some Shoalhaven industries suffered at their businesses. This should be of concern to all members, particularly the honourable member for Kiama, who has not yet satisfactorily explained why, of all Integral Energy customers, it was residents of the Shoalhaven and in particular the Kiama electorate who seemed to suffer, unlike Integral Energy customers in Western Sydney. For example, a chemical manufacturer said:

Production from all three (3) machines was effectively terminated by an outside source which created issues with our equipment.

... we would prefer to be advised of a power disruption providing an hour or so notice which would enable safety and secure shut down procedures to be effected.

I do not know how easy it would be to do as the manufacturer has asked. One boat builder in the Shoalhaven told Shoalhaven City Council:

We had a spray job that was being done, and now it has to be redone today. We also had some fibreglass panels that were under vacuum that now have to be thrown away and redone. At the end of the day if we were told that the power was to be turned off we could of planned and not lost anything. If this had of happened two (2) weeks ago we would have lost the hull of large yacht that would have cost someone about \$150,000 dollars.

They were lucky it was 1 December; if it had happened two weeks earlier their business would have lost \$150,000. One food processor said:

Our staff reacted quickly and our loss of product would be \$2,000. But the loss to the site would be \$23,300 due to wages and lost production etc.

Another boat builder said:

If we were gelcoating a boat [at the time of such an outage] it would mean the compressor would shut down and the boat would have been destroyed.

Fortunately, they were not doing that at the time. Another food processor said:

Various sections of the plant were out of service for approximately 4-5 hours and some parts of the plant were out of service for approximately 18 hours. In particular, one of the gluten dryers was blocked with product and had to be dug out by hand.

Those are just a few of the problems suffered by businesses in the Shoalhaven as a result of load shedding. Clearly, the energy companies need to consider the implications of what they are doing and the costs to businesses, and work out whether it is practical to take into account some of the problems that businesses will face before load shedding occurs. In some way, the statistics for New South Wales for 2004 are of enormous concern. There was a sharp rise in the length of blackouts, there were 12 substation failures across the State, and there will be little improvement in the length of blackouts in New South Wales over the next four years.

For example, Energy Australia customers suffered on average 102 minutes of blackouts in 2004; customers are projected to suffer just one minute less of blackouts, or 101 minutes of blackouts, in 2009. Integral Energy customers suffered on average 115 minutes of blackouts in 2004; they are projected to have 16½ minutes less of blackouts in 2009. Country Energy customers suffered on average 251 minutes of blackouts in 2004; they are expected to suffer 96 more minutes of blackouts, rising to 347 minutes, in 2009. So for people in Country Energy areas there is a serious problem on the way. The average length of substation outages was 86 minutes in 2004, up from 72 minutes in 2002. The total length of substation outages was 30 hours in 2004, up from 10 hours in 2002.

NEMMCO reports that, based on last year's assessments, these blackouts will become critical by 2007-08 unless there is an increase in the State's power generation. In typical fashion, the tired old Carr Government has neglected the State's infrastructure and allowed it to become rundown. It is only when the cracks can no longer be covered over that there is a sign of action. It is only when the State's infrastructure has been brought to the verge of a major crisis that can no longer be denied that a plan is even considered. Despite the fact that a comprehensive development plan should have been drawn up and implemented years ago, the Government has only recently turned its attention to the considerable challenges facing our energy suppliers.

At the end of last year the Minister for Energy and Utilities released a green paper, and he has scheduled the release of the Government's final policy positions in a white paper sometime next month. The green paper states that the Government "... would prefer new investment in generation capacity to be financed by the private sector". But the Carr Government's policies are unlikely to create an atmosphere in this State in which the private sector is likely to invest in electricity generation. The Opposition will be watching closely to see what steps the Government takes in its white paper to create opportunities for the private sector to advance the development and commercialisation of advanced new technologies in the New South Wales energy sector. However, in the rapidly evolving national electricity market the provisions in this bill are designed to provide greater clarity and improved effectiveness. Therefore, it is no surprise that they have broad support. None of them raises any particular concerns for the Opposition, and therefore we will not be opposing the bill.

Reverend the Hon. Dr GORDON MOYES [8.57 p.m.]: On behalf of the Christian Democratic Party I speak to the Electricity Supply Amendment Bill, the purpose of which is to amend the Electricity Supply Act 1995 in order to cater for initiatives relating to greenhouse policy, electricity market reform, peak demand reductions and safety measures in relation to electricity supply. I commend the initiatives contained in the bill,

and the Christian Democratic Party supports the bill. Electricity supply is one of the staple needs of our community. It is hard to envisage how our lives could be run without the ability to use electricity to resource our activities. We cannot underestimate the value of electricity to today's modern society.

At the same time, however, some controls on the use and offsets against the use of electricity must be put in place in order to reduce greenhouse pollution arising from the creation of electricity. Currently, electricity generation accounts for about 40 per cent of New South Wales greenhouse gas emissions. The bill contains a number of salient points, for example, when an electricity trader becomes insolvent. This is a new situation. Once we had government instrumentalities providing us with all of our electricity and we would not have considered the Government becoming insolvent. But these days, with privatisation, it is possible for a trader to be left high and dry without electricity to accomplish their day-to-day activities.

The Hon. Duncan Gay: Already done \$600 million in this area.

Reverend the Hon. Dr GORDON MOYES: Obviously this situation needs to be prevented, as the Deputy Leader of the Opposition has said. Therefore, the bill will enable the Minister to obtain information from the national electricity market operator, an entity known as NEMMCO, to assist the implementation of a retailer of last resort scheme. This scheme allows customers to continue to be supplied with electricity, which, all honourable members will agree, is fundamental. It is a default plan when a retailer is suspended from the national electricity market. Current retailers of last resort in New South Wales include EnergyAustralia, Integral Energy and Country Energy.

The bill will clarify the operation of provisions relating to the imposition of endorsements on the licences of retail suppliers of electricity. Currently, there are two types of endorsements: a standard retail supplier's endorsement and a retailer of last resort endorsement. Attachment of a standard retail supplier's endorsement makes the licensee a standard retail supplier for a specified supply district with all the rights and obligations that this entails. A person within a standard retail supplier's supply district may apply to the standard retail supplier to be supplied with electricity under terms and conditions that are set out in regulated standard supply contracts. The current law details the types and nature of endorsements but does not specify who issues the endorsements. Thus, the bill amends the relevant provisions by requiring that, under section 33A of the Act, endorsements attached to retail suppliers licences are to be attached by the Minister. Also, the bill will require that conditions attaching to endorsements imposed by the Minister may be varied or revoked by the Minister at any time. Licence administration will be improved by the bill by making it an offence for licence applicants to provide false or misleading information in respect of new licence applications.

The bill proposes to elucidate the role of the Independent Pricing and Regulatory Tribunal [IPART] in the context of enforcement of endorsements attached to licences. For example, currently, section 77 of the Act establishes IPART's regulatory functions and the matters about which IPART is required to make recommendations to the Minister. Section 87 of the Act requires IPART to monitor, and report to the Minister on, the extent to which distribution network service providers and retail suppliers comply, or fail to comply, with the conditions imposed on the licences held by them. The bill will now amend section 77 in order to make it very clear that IPART has the function of making recommendations to the Minister with respect to the imposition, variation or cancellation of endorsements attached to a licence, the action to be taken, and the sanctions to be applied, in respect of a contravention of an endorsement attached to a licence. Furthermore, one of IPART's functions will be to make recommendations in relation to any remedial action that may be warranted as a result of a contravention of an endorsement attached to a licence. IPART's licence auditing functions are extended to endorsements attached to licences.

Most importantly, the bill purports to improve the effectiveness of the greenhouse benchmarks scheme. Only this morning I had breakfast with a group of people, including Baroness Barbara Young, who is the head of the United Kingdom's Environment Office. She was explaining the difficulty facing the United Kingdom, which is investigating expanding nuclear power stations as well as the coal-fire generation of electricity. The problem with both possibilities is global warming. She went on to speak about the impact in the Northern Hemisphere of ocean warming, changed weather patterns and ice cap melts. Honourable members might be aware that there is now no ice at the North Pole. It is possible to walk right across the North Pole without coming across any ice—but one will certainly get wet. Also at this breakfast was the world head of one of the great reinsurance organisations, which has hundreds of billions of dollars in reinsurance, Swiss Re. He spoke of the financial impact of global warming due to electricity creation and how that impacts on each one of us.

The Greenhouse Gas Abatement Scheme, which is established in this bill, commenced on 1 January 2003 and will remain in force until 2012. The scheme imposes mandatory greenhouse gas benchmarks on all New South Wales electricity retailers to abate the emission of greenhouse gas from the consumption of

electricity in New South Wales. This is a worldwide problem and we cannot simply look at another part of the world and say, "It is only your end of the canoe that is sinking." We are in this together and we must do all that we can to reduce the effects of greenhouse gas emissions. In this context, I note a submission made by the Environment Liaison Office [ELO] today to the effect that the New South Wales abatement scheme is a great idea but does not go far enough. The ELO points out that the per capita cap will level out by 2007 but that the population will continue to grow beyond this. In my opinion, it is important for the cap to reflect the change in population in order to ensure that absolute cap emissions are attainable.

I was pleased to read yesterday with regard to carbon credits that some 30,000 trees are being planted in the Murrumbidgee Irrigation Area. We also know about the effectiveness of wind turbine generation, where power is placed back into the grid. Benchmark participants are required to reduce their emission of greenhouse gases to the level of their greenhouse gas benchmark by offsetting their excess emissions through the surrender of abatement certificates. These certificates are created by accredited abatement certificate provisions. At the end of a compliance year, benchmark participants must submit to the tribunal an annual greenhouse gas benchmark statement. This statement will detail their emissions and any abatement certificates being surrendered to the tribunal to meet their greenhouse gas benchmark. Excess emissions remaining after the surrender of abatement certificates are known as a greenhouse shortfall and currently attract a penalty of \$10.50 per tonne of carbon dioxide.

One category of customer that may be covered by the Greenhouse Gas Abatement Scheme, if it elects to be so covered, are what are called large customers—that is, those that use 100 gigawatt hours or more of electricity at a single site in the State in any one year or that use 100 gigawatt hours or more of electricity at more than one site in this State in a year, at least one of which uses 50 gigawatt hours or more of electricity in that year. The bill extends the definition of "large customer" to include a group of customers that are related entities and that use the required amount of electricity. Thus, for example, holding companies, joint ventures and related parties may fall within the ambit of the proposed definition.

The Act currently provides for the creation and use of abatement certificates for the purpose of enabling greenhouse gas benchmark participants to meet their obligations to abate greenhouse gas emissions in each year. One New South Wales greenhouse abatement certificate is equivalent to one tonne of carbon dioxide saved in the production of electricity. The Act only provides for those certificates to be surrendered by participants seeking to comply with obligations to abate greenhouse gas emissions. Where IPART has ordered accredited abatement certificate providers to surrender abatement certificates because they have been convicted of improperly creating abatement certificates or of having breached conditions of their accreditation, the bill will allow for the voluntary surrender of abatement certificates. This will allow accredited abatement certificate providers to voluntarily surrender any inadvertent overcreation of certificates without being convicted of an offence.

The bill will enable regulations to be made permitting electricity prepayment meters for small retail customers. Most people reading the papers tomorrow will find this of great interest. The regulations will also attach requirements in relation to any such prepayment meters. This idea is great for budget-conscious customers but it is easy to envisage how this system could be problematic. There are not always sufficient people who budget well and who pay in advance for their meters. Once electricity is cut off because of non-existent credit—literally when the gas meter runs out of its 10¢, or one shilling as it used to be in the old days—the implications for the conduct of day-to-day activities are apparent. If electricity is cut off, food in refrigerators and freezers will go off, leading to higher living expenses. One should not forget that this option is likely to be used most by those who can least afford the damage to food in fridges and freezers if electricity is cut off. One can envisage the ramifications. The Environment Liaison Office has flagged the use of interval meters instead. This technology is quite good because these meters can now be linked to remote communications technologies, which allow networks to control consumer load to reduce peak demand. This technology is important in demand management programs targeting the reduction of peak loads.

On a final note, as stated by the Legislation Review Committee, "the distribution system is that part of the electricity supply system for which a distribution network service provider has responsibility". It is currently defined as the powerlines, equipment and structures that convey and control the conveyance of electricity to the premises of wholesale and retail customers. There has always been some doubt as to whether the distribution system ends at the beginning of the land or building to which the electricity is supplied. In view of this, the bill will insert a new definition for "distribution system" under the Act. The definition provides for the distribution system to end at the point of supply for the premises concerned and makes it clear that the point of supply may or may not be situated on the building or land comprising the premises being supplied. It is said that this will

only clarify network operators' powers to disconnect unsafe electrical installations from the electricity distribution system. On behalf of the Christian Democratic Party I commend the bill to the House as making positive steps towards a reliable, affordable, sustainable and secure electricity supply for the people of New South Wales.

Mr IAN COHEN [9.11 p.m.]: I speak on behalf of the Greens to the Electricity Supply Amendment Bill, which proposes some minor changes to the regulation of the energy industry. It addresses a number of issues such as greater flexibility for large users of electricity to abate their emissions under the New South Wales Greenhouse Gas Abatement Scheme and allowing the voluntary surrender of certificates under the scheme. However, the bill could be strengthened and achieve greater network efficiency and improved environmental outcomes. The capacity of the New South Wales energy supply and demand system to meet fundamental economic, social and environmental objectives is now being questioned.

Spiralling energy consumption has triggered the approval of billions of dollars in spending by New South Wales electricity networks. If action is not taken billions more could be spent on new generation infrastructure, which will be paid for dearly by electricity consumers and the environment. And for what? Excessively wasteful energy use and economic inefficiency caused primarily by the State's failure to harness the enormous potential of demand management and energy efficiency. Parallel to and perhaps an even greater threat to the problem of escalating demand is the problem of greenhouse emissions. Without effective leadership to implement cost-effective alternatives to another coal-fired power station New South Wales will face a debilitating environmental and economic burden of excessive greenhouse pollution. A cost for emissions is coming—we can all be clear on that. The only question is when. And if New South Wales does not rise to the challenge, we will all be facing an even more costly carbon constrained future.

New South Wales currently faces some urgent choices on how to address excessive and wasteful energy consumption and how to tackle greenhouse emissions. The energy industry can no longer afford to maintain its dependence on fossil fuels. The challenge of reducing wasteful energy demand should be met with a range of forward-looking environmentally sustainable options. One way to meet increased energy demand in a cost-effective and efficient manner is through demand management. Demand management as an alternative to network augmentation is internationally proven, cheap to implement, just as reliable and will result in substantially less greenhouse gas emissions than the traditional "build and generate" approach. There is no shortage of reports that tell us that demand management opportunities are enormous and ready to be utilised. One of these is the Independent Pricing and Regulatory Tribunal [IPART] demand management inquiry in 2002, which found that "there is sufficient untapped potential for efficient demand management".

Demand management includes a diverse array of tools that meet customer energy needs as effectively as—but more efficiently than—building more generators and networks. These include cogeneration, including wind or solar stand-alone distributed generation, standby generation, fuel switching, energy efficiency, interruptible customer contracts, and other load shifting. On a practical level, this could mean replacing inefficient motors with efficient motors, insulating and shading houses, installing interval meters to convey the real price of electricity, or using the heat created by small-scale generation in another factory process instead of letting it go to waste. Despite the huge identified potential for demand management across New South Wales the networks are continuing to ignore it. They tell us, for example, that they intend to spend less than 1 per cent of their total regulated revenue on demand management projects. And in the face of the huge incentives to sell more electricity it is questionable whether IPART's D-factor regulation, which provides networks with the incentive to undertake demand management over the next five years, will have any impact at all.

The result of our lacklustre performance on demand management is that New South Wales electricity networks will spend more than \$8 billion over the coming five years. This will end up in consumer energy bills to the tune of a 5 per cent increase every year. And that is not even including the cost of new generation. At present there is no requirement for New South Wales networks to carry out demand management even when it is cost effective to do so. I will move an amendment to make it a requirement of networks to carry out demand management when it has been found to be cost effective. Whatever happened to Bob Carr's promise of demand management to reduce wasteful electricity use in New South Wales? Not much so far. Instead of pandering to the electricity supply industry the Government must put in place a strong demand management program. Demand management must be a critical component of the Government's response to spiralling electricity demand and greenhouse emissions. It must also be part of the Government's plan to build a more robust and efficient economy.

Demand management is the smart approach to escalating demand, constrained networks and calls for an unnecessary coal-fired power station. Demand management, if actually implemented by this Government

instead of being merely talked about, would provide major benefits including: savings for New South Wales by avoiding or deferring costly demand-driven electricity network infrastructure; savings for consumers and businesses by avoiding charges for unnecessary network augmentation, inefficient consumption and greenhouse costs; reduction of greenhouse emissions in the most cost-effective way; creation of a robust demand management service provider market able to bring about much-needed equity and security in the supply-demand balance within the national electricity market; avoidance of controversial infrastructure projects with a corresponding reduction in community opposition to unnecessary augmentations; more jobs as spending is diverted from the traditional low-employing infrastructure and toward labour-intensive and technologically intensive opportunities; and maintaining New South Wales leadership on cost-effective greenhouse reduction strategies.

Demand management is currently the missing link in the New South Wales Government's energy framework. What is not discussed in this debate is the opportunity to develop industry. There could be a huge benefit, particularly in rural areas where we could have decentralised power generation. The farming community has been adept at working on this in the past. Some years ago there was an opportunity at, I think, Lightning Ridge to have stand-alone electricity from a solar power system that could have projected New South Wales as a foremost proponent of alternative energy production. This sort of scientific and industrial activity would allow a great deal of industry to be decentralised throughout New South Wales.

The Hon. Rick Colless: It was at White Cliffs.

Mr IAN COHEN: I acknowledge the historical knowledge of the member of The Nationals. A classic opportunity was lost. Instead of installing huge distances of power lines there could have been a stand-alone development that would have been an example to the world at the time. It would have provided a fantastic opportunity for exports, particularly to Southeast Asia, where this type of small-scale alternative energy generation technology can be extremely effective. It would have provided a great opportunity for small-scale industry in New South Wales, which one would think The Nationals would be interested in as a way of providing employment in the rural sector. But, of course, that is small bikkies for some!

Today I am proposing amendments to the Electricity Supply Amendment Bill that will deliver some of the elements necessary for an effective demand management response from this Government. I had intended to propose the establishment of the demand management fund that the IPART recommended in 2002 and in respect of which Premier Carr promised a task force in 2003, but the Government has finally taken a step to do so itself. I congratulate the Government for this somewhat overdue but welcome step. The Energy Administration Amendment (Water and Energy Savings) Bill has proposed setting up an energy saving fund. Such a fund could do a great deal to deliver savings on consumers' electricity bills, reduce greenhouse gas pollution and remove the need for a new coal-fired power station for New South Wales. I am very pleased that the Government has taken the step of introducing legislation to create a fund for demand management.

International experience shows that funds such as these do work and can tackle inefficient network expansion and reduce energy costs with excellent rates of return. Twenty-five American States now have similar funds, which have produced superior benefit-to-cost ratios. For example, in California the benefit-to-cost ratio is 8:1; in New York, 3:1; in Connecticut, 2:1; in Massachusetts, 2.5:1; and in Minnesota, 6:1. In New South Wales, of the very few demand management projects that have been undertaken by networks, the Department of Energy, Utilities and Sustainability shows that a 9:1 benefit-to-cost ratio has been achieved. That figure comes from that department's Electricity Network Performance Report of 2001.

These are savings for the average punter. These are savings achieved when the networks can avoid or defer augmentation. These are reduced electricity bills, and these are fewer greenhouse emissions. It is called efficiency; it is no revolution, and I think the community has a right to expect that New South Wales Government-owned and regulated electricity networks run efficiently, and that wastage is reduced to the absolute minimum so that people are not paying for something they do not need. The economy-wide benefits from increased efficiency, increased productivity, defer all expensive infrastructure and GSP growth more than offset revenue losses in the electricity production sector.

Let us look at the studies that have been undertaken into the effect on jobs of demand management. Allen Consulting's Sustainable Energy Jobs Report showed that 3,400 jobs would be created in New South Wales by investment in demand management over a 15-year period, using a payback period of five years. The same report looked at the establishment of a sustainable energy industry fund, which would include demand management, and concluded that 1,400 jobs would be created in New South Wales.

The national framework for energy efficiency, undertaken by the energy efficiency and greenhouse working group of the Ministerial Council on Energy showed that 9,200 jobs would be created nationally by investment in energy efficiency over a 12-year period, using a payback period of four years with only 50 per cent take-up. Finally, although this list is far from exhaustive, the Sustainable Energy Development Authority 2002 report "Economic Performance and Contribution of the Sustainable Energy Industry found that 3,981 jobs had been created in Australia from 1999 to 2003 in energy efficiency, cogeneration and renewables. This was despite limited government support for the renewables industry. Once again, I applaud the instigation of a fund to promote greater demand management.

Regarding the roll-out of interval meters for remote communications and time-of-use pricing, the bill introduces a provision for the installation of prepayment meters, which are a socially regressive electricity pricing mechanism that unfairly penalises low-income households without providing time-of-use price signals that could reduce peak demand. The replacement of old meters with prepayment meters represents a lost opportunity for the installation of more advanced interval meters. It has been shown that other approaches can avoid their pitfalls while still delivering everything their proponents claim. For consumers, these benefits essentially relate to customer choice-budgeting.

What is often not acknowledged is the considerable savings to retailers in lower credit management costs and hidden self-disconnection. The main pitfalls, based on experience in the United Kingdom and Tasmania, are the hidden self-disconnections and the higher cost of electricity when sourced via prepayment—mostly in higher rates of recovery through fixed charges. Proponents of prepayment meters argue that they are a budgeting tool, enabling households to save money by periodically choosing not to use energy. But in reality, by disabling the power supply households are rationing energy use, rather than budgeting. Rationing power supply creates other types of financial burdens. For example, when the electricity self-disconnects the contents of the fridge can spoil, and the health of family members can suffer in cold weather when they deny themselves heating. Rationing energy use through prepayment meters does not save households money; it merely shifts costs to other areas.

Another argument in favour of prepayment meters is that they allow people to reconnect as soon as they have the money to put the meter back in credit. But under the current system energy is provided on credit for three months at a time to customers, regardless of their ability to pay during this period. If at the end of the three-month period the customer has a payment problem, there are a range of strategies that can be explored, such as instalment plans, to help avoid disconnection. Customers of prepayment meters cannot benefit from such options. Nevertheless, some social groups, including the Energy and Water Ombudsman New South Wales, believe that, with strong regulation in place to protect consumers, there can be some benefits to prepayment meters—such as short periods of disconnection instead of potential long periods without power following disconnection.

Prepayment meters are popular with utilities companies because they can also be adjusted to recover existing debts: the meters can be recalibrated to collect a percentage in every dollar as debt repayment. In the United Kingdom, for example, as much as 30 per cent of what people pay for power is actually paying off arrears. Households with prepayment meters do not have a choice about this. Every time they put credit in the meter and use gas and electricity they are paying off the debt to the utilities company, regardless of whether this is the best use of their income in meeting their overall household needs.

In short, prepayment meters are designed for the convenience of the retailer, not the consumer. They are credit management tools that reduce retailers' risks, not devices for delivering affordable energy to low-income consumers. While the Greens will not be opposing the introduction of prepayment meters, I urge the Government to ensure that consumers are protected through strong regulations. Installation of prepayment meters should occur on a strictly voluntary basis at the request of the customer. Other forms of protection that would need to be considered include the following: meters should not disconnect overnight, on weekends or on public holidays; emergency credit arrangements should allow customers to top up their meters; and arrangements and outlets for topping up meters must be easily accessible.

Interval meters are price- and time-sensitive metering technology that allows for load control, a form of demand management. These "smart" meters allow consumers to monitor electricity use and price. They update electricity usage details every half-hour. Where they contain remote communication devices, they allow consumers to switch appliances, such as airconditioners for example, on and off according to electricity demand and price signals, saving them money and managing demand.

It is worth noting that interval metering is being introduced by Energy Australia, and the recent Australian Competition and Consumer Commission determination on the New South Wales metering derogation means that retailers now have the ability to introduce their own interval meters where these have remote communications. The roll-out of interval meters should not occur without a strong package of regulatory and program measures designed to protect vulnerable customers. It should also not occur without the parallel provision of energy efficiency programs for large household energy users, prior to them receiving inflated bills. Consumer protection measures should be developed in close collaboration with social and consumer advocacy groups.

The New South Wales Greenhouse Gas Abatement Scheme is misleading in its claim that it will reduce greenhouse emissions. Indeed, between 2007 and 2012 greenhouse emissions will actually rise in New South Wales, contrary to the Premier's claims. Australia now leads the world as the largest per capita emitter of greenhouse gas pollution. We emit more than 542.6 million tonnes of greenhouse gas every year. Of this, New South Wales is responsible for more than 33 per cent.

To address the dangerous and damaging effects of climate change, to its credit, the Carr Government introduced the New South Wales Greenhouse Gas Abatement Scheme in 2002. However, while the scheme has good intentions it has key flaws that must be rectified. The most glaring of these flaws is that from 2007 actual emissions will begin to rise, and instead of meeting the Premier's commitment of 5 per cent below 1990 levels, New South Wales will emit well in excess of the Australian Government's generous Kyoto target of 108 per cent above 1990 levels.

The problem with the Greenhouse Gas Abatement Scheme is that the per capita cap reduces gradually from 2003 until 2007, when it levels out. Unfortunately, the population of New South Wales does not also level out but continues to grow, as do emissions. The results are horrifying. I can only remind members of the Hon. Ian Macdonald's words when he introduced the Greenhouse Gas Abatement Scheme in 2002. He said:

The Government's main aim is to ensure that there is a real reduction in greenhouse gas emissions.

Unfortunately, after 2007 the Greenhouse Gas Abatement Scheme does little more than keep watch over escalating emissions and worsening climate change, and keep watch over the New South Wales Government's broken promise to reduce greenhouse gas emissions. In order for the Government to keep its promise, the cap must be changed to reflect population growth. This would require the continued reduction of the cap as set out in my amendments. A reduction of the cap would result in a reduction in greenhouse emissions to the equivalent of 42 MtCO₂-e per annum by 2012. I will move an amendment to this effect.

Renewable energy certificates created through the Australian Government's mandatory renewable energy target are able to be used to meet participants' liabilities under the New South Wales Greenhouse Gas Abatement Scheme. These certificates are created through the use of low emission generation plants. However, low emission generation that creates renewable energy certificates under the mandatory renewable energy target would occur regardless of the New South Wales scheme. The ability for these certificates to be used as New South Wales greenhouse abatement certificates means that they are double-counted. Therefore, claims by the scheme are overblown.

In 2003, 544,518 of the renewable energy certificates generated for electricity sold in New South Wales were converted into 488,432 New South Wales greenhouse abatement certificates. They made up 28.5 per cent of total New South Wales greenhouse abatement certificates surrendered in 2003. This information has been provided by the Centre for Energy and Environmental Markets in a document titled "The NSW Greenhouse Gas Abatement Scheme: An Analysis of the NGAC Registry for the 2003 Compliance Period". This is equivalent to one-quarter of the scheme free-riding on the Mandatory Renewable Energy Target Scheme. I will move an amendment to exclude renewable energy certificates from the New South Wales Greenhouse Gas Abatement Scheme.

A significant proportion of New South Wales greenhouse abatement certificates are currently created outside New South Wales. The wide area in which these certificates are able to be created releases pressure for abatement beyond business as usual. As a result, the Greenhouse Gas Abatement Scheme is in danger of getting stuck in the low-hanging-fruit stage, whereby only low-quality abatement is acquired. The consequence is the deferral of real abatement activities for many years. Indeed, little more than business-as-usual abatement could be the outcome of the entire scheme to 2012.

A negative side effect is that New South Wales electricity consumers end up paying for abatement in other States, effectively subsidising out-of-State electricity generation. Only a small proportion of this electricity

is consumed by New South Wales customers. For example, 251,199 New South Wales greenhouse abatement certificates for generator efficiency standards were created in 2003 by Hazelwood power station in Victoria, Australia's dirtiest brown-coal-fired generator. At a price of around \$11 per certificate, this would amount to New South Wales consumers paying \$2.7 million for Victorian electricity. The Greens will move an amendment to limit the creation of New South Wales greenhouse abatement certificates to those created in New South Wales.

With limited enthusiasm I support the Government's Electricity Supply Amendment Bill. Given a little more warning and less haste, further negotiation could have taken place on amendments I will move in Committee. There has not been adequate opportunity to receive feedback on the potential of improving the legislation. The Greens believe we can move forward with demand management, and that clever strategies dealing with various aspects of greenhouse gas abatement in New South Wales are an intelligent step forward, rather than moving towards increased power generation, which so often seems to be the Government's preferred option. To a large degree, that is the result of inappropriate planning in New South Wales, whereby building structures, either commercially owned, New South Wales Government-owned or privately owned, are not appropriately designed to deal with our climate or minimise the use of airconditioning units in both homes and businesses, to the point that we will be in danger of significant energy sources in the near future.

These issues have been around for many years. During the 1990 election campaign I had the opportunity to attend a lecture by Mr Amery Lovens from the United States, who was regarded as the electricity guru. The lecture was conducted in front of a group of Australian environment Ministers, both Federal and State. As a Greens candidate at the time, I crashed the meeting but was then invited in by the rather wily Graham Richardson, who was the then Minister for the Environment. I think he was designing something to increase Greens votes against Democrats votes; indeed, I think that was his main focus.

The Hon. Dr Arthur Chesterfield-Evans: Is that where you got your start?

Mr IAN COHEN: I jumped in front of his car to blockade him, and he stopped and invited me in, so I suppose we had some degree of commonality there. Amery Lovens was showing environment Ministers across the nation, of both major party-political persuasions, the benefits of different types of energy-efficient light globes. It was like listening to a travelling salesman. I remember him remarking on the fact that during the 1980s Edison Electric Light Company in south-west California had done an appropriate assessment, and it found that giving free energy-efficient light bulbs to an entire sector of south-west California meant that it did not have to build a nuclear power plant. To be effective, productive and greenhouse-efficient it was cheaper to give away light bulbs. It does work, and it will continue to work. There is a great opportunity for society to participate enthusiastically in doing something to help save both water and electricity.

People come to the fore in emergencies, and the Greens have been saying for some time that New South Wales is in a state of emergency in terms of electricity and the greenhouse situation. New South Wales is the powerhouse of the Australian economy; it is also a very powerful generator of greenhouse gases. It is incumbent on this Government to take bold steps. The steps taken here are significant but they are somewhat short of being as bold as the Greens would like to see in managing greenhouse gas emissions and taking on the responsibility of dealing with electricity generation and consumption in this State, which is a major contributor to greenhouse emissions on a global level.

The Hon. JON JENKINS [9.40 p.m.]: I must say that I find myself in agreement with some of the concerns received by the Greens views on this issue—but only some.

The Hon. Henry Tsang: Limited enthusiasm.

The Hon. JON JENKINS: Limited enthusiasm. It is absolutely ridiculous and short-sighted not to have taken this opportunity to look at advanced power management facilities for every house and business. Most of the power companies are now using their power distribution network also as an information network and they will have the capacity to network with any power meter on any power distribution board in any establishment. Further, the microprocessor control and information systems are relatively cheap and do not add significantly to any of the establishment costs for new houses.

I note in particular the attendance of Minister Sartor at the crossbench meeting this morning, at which he spoke about a fund set up to look at efficient water and energy usage. I lamented the fact that he was not looking at new, efficient house design, insulation, efficient building, and the use of in-house generated

electricity through solar and other mechanisms. I would have hoped that we could perhaps integrate these two bills to put together some sort of forward-thinking and forward-looking demand management and supply system. It is very short-sighted to fail to use the network's facility to increase the efficiency and prolong the life of our existing natural resources.

As I said, I agree with only some of the Greens' views. They had to include the usual FUD—my nickname for fear, uncertainty and doubt—with regard to greenhouse gas emissions and global warming. I will have to address some of those issues before I come to the other parts of this bill. The premise is that a lot of this mythology is entrenched in greenhouse gases and global warming. There is absolutely no doubt that our planet is getting warmer; we are coming out of the last ice age. If it were not getting any warmer we would still be living in a glacier. The Earth has cycled between hot and freezing cold for hundreds of thousands, in fact millions, of years, and human beings had nothing whatsoever to do with that.

I have a diagram which I have taken out of one of my books on what has been happening with our temperatures over the past 200,000 years. Our sea levels have gone up and down by 120 metres over the past few thousand years and so have our global temperatures; it is just part of our natural cycle—and human beings had nothing whatsoever to do with it.

The DEPUTY-PRESIDENT (Reverend the Hon. Fred Nile): Order! Do you want to table that diagram?

The Hon. JON JENKINS: It is a bit difficult. I am happy for members to come and have a look at the diagram if they wish to. It is entirely possible that the greenhouse gas emissions, both natural and man-made—keeping in mind that the natural gas emissions literally dwarf man-made emissions in terms of the total carbon dioxide emissions—may be enhancing the effect of global warming. But the upshot is that global warming has occurred many times before and much more viciously and faster than it is occurring at the present time. We do not understand the reasons behind global warming and the cycles of ice age and global warming, but every day we discover some new facet. For example, scientists recently found that even dirty snow containing tiny amounts of soot may cause up to 25 per cent of the global warming that scientists have previously attributed to greenhouse gases. Such soot is produced not only from man's activities of burning fossil fuels but also from natural events like fires and volcanoes.

Later still, the little understood issue about global dimming has raised its head. Of course, the extremist green groups jump on a speculative hypothesis by scientists, and the propaganda machine goes into overdrive, playing on people's fears and doubts to extract as much political mileage as possible. Global warming is something that needs to be looked at on a geological time scale. If we consider this from the start of the Cambrian period—about 570 million years ago—the cold periods, meaning the ice ages, have been about 445 million years ago at the boundary of the Silurian and Ordovician periods. Another cold period was in the Permo-Carboniferous period about 290 million years ago. And we are actually currently in an ice age.

It is part of the geological record that for the bulk of the time from the commencement of the Cambrian period the Earth has been far warmer than it is now. Certainly over the approximately 240 million years preceding our current ice age, the Earth has been a much, much warmer place. In other words, we are actually in a cold period in Earth's history. The current ice age/cooling period has been in place for somewhere between two and three million years and in that time the ice caps have periodically advanced and retreated over the past 500,000 years on an approximately 100,000-years cycle. The diagram I have shows that fairly well.

The ice caps were at a maximum advance 18,000 years ago, with places like New York, which I am sure many of us have visited, under hundreds of metres of ice. In fact, Kosciuszko was a permanent glacier, and the Aborigines probably hunted kangaroos on what is the Great Barrier Reef. These are facts of the geological record. The sea level was about 120 metres lower than it is at present. If we go back a very short period, about 140,000 years ago the Opera House would have been under about 50 metres of ocean. So the oceans come and go; the planet gets warmer and colder—nothing to do with us.

In the past 12,000-year period, what did industrial man, burning fossil fuels and creating greenhouse gases, have to do with the oceans rising 120 metres? The answer is, nothing. Is there any evidence in the geological record as to where we are in the current cycle? The answer is yes. In previous retreats the oceans have risen about 10 metres. So if we are following the same cycle the oceans will rise to about 10 metres higher than they are at present. Up around Hawks Nest or Tea Gardens the original ocean land can be seen about eight kilometres further inland than where the current ocean limit is.

The world's oceans are estimated to be currently rising at about two millimetres per year. If we divide the 120 metres of the past 12,000 years we get an average rate of 10 millimetres per year. The last global warming occurred about five times faster than it is occurring now. That is really what one would call accelerated climate change. And we had nothing to do with it; it was a perfectly natural part of the Earth's cycle. The often-heard catch cry that the oceans are rising faster than at any time in the planet's history is simply a lie. To say that CO₂ is higher than at any time in Earth's history is a lie: CO₂ has been much higher. To say that man is the cause of global warming is simply another lie. To then use this false science and outright lies as some sort of justification for managing power lessens the argument and detracts from the laudable aims to reduce our natural resource usage and our reliance upon carbon-based fuels.

Let me try to summarise global warming. The sign for global warming is reasonably conclusive: it is happening. How long it will go and how hot it will get we do not know. The science for anthropogenic, or human-induced warming, is also conclusive: it is crap. This is why more than 17,500 scientists in the United States of America signed a petition refuting the given connection between human activity and global warming. Global warming is not new. As I have said, the most recent global warming event before this one occurred about 10 times faster than the current one. Whether we drive a Toyota Corolla or a Toyota Land Cruiser, whether we use airconditioners or not, it will not make the slightest bit of difference. What we can do is prolong the use of our existing natural resources for as long as possible. For that reason alone it is justification enough for more efficient use of our energy resources.

Although I have no moral objection to nuclear power, we can also extend the time when nuclear power will become necessary. The alternative energy sources such as wind, solar, wave and geothermal do not produce enough power to melt blocks of steel. In order to do that sort of damage one needs to have very high power requirements. The overall thrust of the bill is that the changes will give the Minister and the regulator greater control by enforcing the supply of information and by accumulating the impacts of associated bodies for greenhouse emission accounting, presumably to enable control of greenhouse gas emissions somewhere down the track.

The real issue facing the electricity industry in New South Wales—and the Opposition will have to deal with these issues if it comes to office—is the imbalance looming between supply and demand. Last December New South Wales experienced the most effective form of demand management, namely, a blackout. There is no more effective method of demand management than simply turning off the switch. There will be much more of that over the next decade for the following reasons. No new significant generating plant has been installed in New South Wales since 1992, when Mount Piper was commissioned. It should be noted that Mount Piper was initially planned for commissioning in 1984 but was delayed, probably because the improvement in industrial relations allowed a bit more generating capacity.

More important, the generating plant in New South Wales is getting very old. All the boilers and generators in our major power stations were planned for replacement after a life span of 20 to 25 years. The ages of the current power stations are as follows: the 4 x 360 megawatt units at Munmorah power station are now 34 to 38 years old, 10 to 18 years past their designed life span; the 4 x 500 megawatt units at Liddell power station are now 31 to 35 years old, 6 to 15 years past their use-by date; the 2 x 500 megawatt units at Wallerawang power station are 28 to 30 years old, 2 to 10 years past their use-by date; the 2 x 660 megawatt units at Vales Point power station are now 25 to 26 years old and have now reached their use-by date; the 4 x 660 megawatt units at Eraring power station are now 20 to 23 years old, nearing their end of life; the 4 x 660 megawatt units at Bayswater power station are 23 to 25 years old, also now approaching their end of life; and the 2 x 660 megawatt units at Mount Piper power station are 13 to 14 years old. This station is the only one still operating within its designed life expectancy.

All but one of New South Wales' generating equipment are either at or well past their designed end-of-life cycle. Although the 660-megawatt units have given a sterling performance, they are still subject to boiler and tube erosion like any normal generating equipment and fatigue of high-pressure components. I would be interested to know how the operating hours of all units, including the number of cold starts, compare with the design parameters and mean time between failures [MTBF] figures. Toshiba made the turbines of all the 660-megawatt units and IHI made all the boilers. Should a type fault develop, as happened at Liddell in 1982 when all three generators failed within a short period of time, the State of New South Wales would go into complete meltdown.

The Hon. Dr Arthur Chesterfield-Evans: The probability of that is extreme.

The Hon. JON JENKINS: It has happened before at Liddell, when three power stations went down within a few months of each other, and it will happen again. It was a generic fault. Once a system gets behind in meeting demand, it is very difficult and time consuming to catch up. No new generating plant was installed in New South Wales during the period following the Second World War and it took New South Wales until 1993, 58 years after the end of the war, before it installed sufficient plant to get rid of rotating blackouts. With the current brain-washed environmental mood of the populous, it will be well nigh impossible to get approval for a new large coal or nuclear station to replace existing plants and to meet continuing load growth within the time necessary.

Therefore, I foresee a situation where, out of dire necessity and when shortages become pretty much unbearable, we will see a repeat of the events of 1950: the Government of the day will set up a modern version of the Electricity Commission, with sweeping powers to reform the electricity industry. New South Wales cannot rely on other interconnected States, except possibly Queensland. All other States experience summer peaks. Indeed, Victoria and South Australia are in a worse position than New South Wales. Queensland is continuing its station construction program but we do not know whether it can fill the gaps.

With the flattening of the annual load curve, in other words, the growth of summer peaks, there is restricted opportunity to carry out maintenance on the existing plant, most of which is close to or past its end of life. There were horrific stories of keeping plant in service at Bunnerong during the post-war period where the fire in the boilers was almost extinguished by water leaks from the tubes. It takes four to five years to build a large power station once the development approvals have been obtained. These are likely to be protracted under the current environmental legislation and the mood of opposition groups could add another two to three years. There seems to be little or no planning in place at the present time to meet need and it appears that nothing will be done until demand cannot be met—in other words, the need will arise only when there are blackouts.

It is ludicrous in the extreme to consider using massive amounts of power in desalination plants at a time when the power-generating infrastructure is on the verge of complete failure. There is still time for the Government to look to the short-term future to see what is imminent. It is obvious to anyone that in addition to all the power-saving strategies we currently have at our disposal such as solar, wind, wave and efficient houses and businesses, we will also need to embark upon a significant infrastructure building program in the very near future. Of course, the Greens and other extremists will not encourage such an approach because the social upheaval and crisis that will come with massive rolling blackouts across the State will only add to their political goals.

Debate adjourned on motion by the Hon. Jon Jenkins.

ADJOURNMENT

The Hon. HENRY TSANG (Parliamentary Secretary) [9.56 p.m.]: I move:

That this House do now adjourn.

M4 EAST EXTENSION

The Hon. DON HARWIN [9.56 p.m.]: For the past three years the people of Sydney's inner west have waited for a traffic congestion solution from this tired old Government. For some time the stated policy of the Government has been to extend the M4 motorway in a tunnel to Haberfield, with exits to Parramatta Road and Dobroyd Parade. From day one the Liberals have stood alongside the local community and consistently opposed an exit in Dobroyd Parade at Haberfield. We have supported a tunnel connecting with Anzac Bridge. The shorter tunnel, while an imperfect solution, still had the virtue of bringing early relief to inner west residents, whose quality of life is diminished by traffic congestion. In abandoning the M4 East extension with no alternative plan, the Government has betrayed the people of North Strathfield, Concord, Canada Bay, Five Dock and Drummoyne. In December 2003 the then Minister for Roads, Carl Scully, said:

Parramatta Road east of the M4 is one of the most congested roads in Sydney, with very low speeds in peak periods. Construction of an M4 East would take a large amount of traffic off Parramatta Road and cut down on rat running through local streets. It would provide major benefits for people travelling through the area and for local communities.

With plans for an M4 East now shelved, the local communities in the inner west will not enjoy the benefits that Mr Scully mentioned. The traffic congestion they have endured for the past several years will continue unabated, with no solution in sight. This is a very disappointing outcome. It is nearly three years since the Carr

Government announced in June 2002 that it was investigating the possibility of extending the M4. After three years of investigation, planning and flashy media announcements, the Government is starting the planning process all over again, with no indication of its plans for the future and no commitment that the M4 East will proceed.

Last Wednesday the leaders of the Liberal Party and The Nationals, John Brogden and Andrew Stoner, joined the local Liberal representative, Greg Long, on an inspection of those areas of the inner west that are worst affected by traffic congestion. As John Brogden said, "This decision to shelve the M4 East is the worst of both worlds. The M4 will remain a car park and people will continue to rat run the back streets of the inner west in order to beat the traffic chaos." The streets most affected by this traffic congestion, as Greg Long explained to me, include Queens Road, Ramsay Road, Fairlight Street, Henley Marine Drive, Lyons Road, Tramere Street and Day Street. Effectively people who try to avoid Parramatta Road deviate either side of Iron Cove, going either along Dobroyd Parade or along the northern shore of Iron Cove to link up with Victoria Road.

Australian Labor Party member of Parliament for Drummoyne, Angela D'Amore, is yet to deliver for local residents. The people in her electorate want solutions to the traffic jams on Parramatta Road and the commuter congestion on their residential back streets. The case of the M4 East is a striking example of why this tired old Government must go. It has had 10 years to come up with an integrated approach to Sydney's transport infrastructure. Last week's announcement is a stunning admission of failure. The Government just cannot manage the State's infrastructure needs and the result is a declining quality of life for Sydney's residents. In the case of the M4 East, it is the residents of the inner west who are suffering. We need a fresh approach for the people of the inner west and this can only come from a change of Government.

SYDNEY BASIN AGRICULTURAL LAND

Mr IAN COHEN [10.01 p.m.]: I refer to the future of agriculture within the Sydney Basin. Orchards, market gardens, poultry farms producing meat and eggs, nurseries, dairy farms, mushroom and hydroponic lettuce farms, as well as horse studs, aquaculture and turf farming are all undertaken in the Sydney Basin. Agricultural enterprise here is very successful due to the close proximity to markets, perishability of fresh vegetables and availability of water. All this ensures ongoing volume, freshness and variety of produce for the Sydney market. The groundbreaking forum, From the Outside Looking In, was held last year in Western Sydney. New estimates were released at that forum showing that Sydney agricultural production is worth \$1 billion and represents 12 per cent of the total figure for the whole of New South Wales, grown on just 1 per cent of the land. That \$1 billion can be multiplied by a factor of 4.5 if one takes into account related industries and their contribution to Western Sydney. Sydney Basin agriculture is an important industry that must be supported, protected and maintained.

The Hon. Rick Colless: That applies to Brigalow, too.

Mr IAN COHEN: I acknowledge the comment by the Hon. Rick Colless, a member of The Nationals who is so out of touch. The Nationals do not even apply themselves to the biggest agricultural producer in New South Wales. They are interested only in what is on the other side of the sandstone curtain and not in what is growing on our very doorstep in New South Wales. We do not even have an exhibition from the Sydney Basin at the Royal Easter Show. Perhaps the Hon. Rick Colless might take that on for the western regions. Politicians and policymakers need to be aware that Sydney's agricultural land is not just in a holding pattern waiting for subdivision, or rural or residential development; it creates its own landscape and is a valuable addition to the economy of our area.

The Hon. Rick Colless: Surely you're not supporting agriculture!

Mr IAN COHEN: What a dim-witted comment. When have I not supported sustainable agriculture? I am just not supporting your slash-and-burn method. Twenty per cent of the total vegetable tonnage produced in New South Wales comes from the Sydney Basin, with much of the remainder coming from the Murray and Murrumbidgee regions. However, if one looks only at perishable vegetables, which need to reach the market soon after they are picked, different figures emerge. The Sydney region produces 100 per cent of the State's Chinese cabbages and sprouts, 80 per cent of fresh mushrooms and 91 per cent of spring onions and shallots. Forty per cent of this State's total area devoted to nurseries is in the Sydney Basin, which also produces 55 per cent of all flowers grown in New South Wales. The cut flower industry here is worth \$300 million per annum.

Forty-eight per cent of the State's poultry is also produced in the Sydney Basin and provides employment for about 12,000 people—the Hon. Rick Colless should think about that if he is interested in rural

producers, jobs and employment as he always claims—many of whom are from culturally and linguistically diverse backgrounds. In the Hawkesbury area of the Sydney Basin fruit growing is sadly decreasing, in part due to pressure from increasing population and housing development. However, stone fruit, pears, apples, oranges, citrus fruits, strawberries, grapes and some kiwi fruit are still being grown. The value of various sectors has been estimated as follows: the vegetable industry, \$216 million; hydroponic lettuce, \$21.5 million; greenhouse cucumbers, \$38.5 million; Asian vegetables, \$33 million; traditional market garden, \$70 million; mushrooms, \$71 million; dairy, \$35 million; and fruit and berries, \$55 million.

The new Metropolitan Strategy for the Sydney region, which aims to provide a framework for managing growth and sustainability over the next 30 years, seems to be very light on detail regarding protection of existing bushland and Sydney's unique biodiversity, including riparian zones and creek lines. Protection of agricultural lands in the Sydney Basin is also notable by its scant mention. This is of grave concern. I am aware of the formation of a group calling itself the Sydney Farming Network, which comprises prominent Sydney food experts, some farmers, academics and a broad spectrum of Sydney Basin residents.

I understand that this group aims to raise awareness of food grown in and around Sydney, and to promote and actively support—and choose, wherever possible—food grown on Sydney farmland. The group plans to work towards solving the problems of long-term protection of Sydney agricultural land and giving farmers security of tenure. I join them in encouraging politicians and policy makers to understand the importance of this land and its farms for the long-term future of a sustainable Sydney. The Nationals stand condemned for their lack of interest in farming in the Sydney Basin.

VOLUNTARY STUDENT UNIONISM

The Hon. ERIC ROOZENDAAL (Parliamentary Secretary) [10.06 p.m.]: On 28 April thousands of Australians took to the streets to voice their concerns about the Federal Government's voluntary student unionism [VSU] legislation. Student unionism is a tradition worth fighting for. It is through compulsory fees that student organisations can provide their membership with a range of services, including sporting and recreational activities, welfare, political representation, and the opportunity for students to become politically active. It is a system that has served us well. When the Federal Government last tried to make student union membership voluntary, community opposition was overwhelming and the Coalition's proposed voluntary student unionism legislation was defeated.

Yet late last year Brendan Nelson announced that VSU was back on the agenda; an announcement that came, conveniently, after the Federal election, no doubt because the Federal Government did not have the guts to put it up during the election campaign. That announcement came despite the proven failure of VSU in other States, and despite the fact that students and universities across the nation remain absolutely opposed to the concept. This year the Federal Minister for Education, Science and Training introduced a bill to end compulsory unionism, a bill that includes substantial fines for any university for charging a fee for an amenity, facility, or service that is not of an academic nature.

The Australian Vice-chancellors Committee is understandably shocked by the extent of this pointless draconian legislation. In my time on the governing council of the University of Technology, Sydney, I was made well aware of concerns held by the committee and the entire university sector. Universities are terrified of the disastrous effect the proposed changes will have on student services—services that go far beyond subsidised sausage rolls or beer. Student organisations provide legal advice, child care, medical and dental services, tenancy and academic advice, computer access, newspapers, counselling services, eateries and entertainment, and they are the means by which campus clubs and societies are able to survive. They are a critical part of the academic community.

The Hon. Rick Colless: They are a one-way ticket into the ALP.

The Hon. ERIC ROOZENDAAL: I will talk about people who have gone through university organisations in a minute. Our universities are far more than vocational degree factories. They are incubators for ideas; a meeting place for inquisitive young minds and an investment in social capital. It is a sad day when a government would impoverish campus life merely to make a sad ideological point, to enshrine the right of individuals to disassociate themselves from their community. It is a simple fact that student union services will not continue without compulsory union fees. Universities simply do not possess the resources it would take to replace them. And the loss of student union services will be felt most acutely by disadvantaged students, students for whom attending university represents a real financial struggle, and for whom campus welfare is a

vital safety net. The Liberals, however, seem unable or unwilling to grasp this reality. For them there are issues at stake here apart from the welfare of students. The Liberals' campaign to introduce VSU has been a long-running ideological vendetta, motivated in part by their distrust of all types of unionism, but above all, by their desire to crush student political activism.

Student organisations have always been a means for young people to become politically active. Through student organisations, young people can make valuable contributions to historic political campaigns. The campaign for gender equality is an excellent example. Students sometimes use their organisations to voice dissent from government policy. This may not always please governments, but freedom to dissent is the sign of a healthy democracy. The enthusiasm of our youth is a priceless public resource, and in an age of widespread political apathy the last thing we should be doing is limiting opportunities for young people to participate in civic life. It is of great concern that without student politics as a training ground quality future leaders will be lost to New South Wales.

Indeed, future leaders will certainly be lost to the Liberal Party, depleting what is already a very shallow talent pool. I refer to youngsters who might otherwise have followed in the footsteps of Liberals such as Tony Abbott, who served as president of a student body. From what I have heard, Tony Abbott had a very good time at university. He is not the only Federal Minister who is an old student unionist. Peter Costello and Joe Hockey also served as presidents of their respective student bodies, as did the founder of the Liberal Party, Sir Robert Menzies, who was president of the University of Melbourne student representative council.

Many Liberals have benefited from participation in student unionism. It will be interesting to see what Costello, Hockey and Abbott have to say about this issue as it goes through the Federal Parliament. But perhaps it is more interesting to wonder what old Pig-iron Bob would make of his party, and its reckless attack on a great Australian institution, if he were alive today. I imagine that he would be very disappointed. VSU is a ridiculous strategy and a political agenda adopted by the Liberal Party without any strong justification or reasonable explanation. For many years I participated in the Macquarie University student council. We ran campaigns against racism, political discrimination and academic discrimination. We ran campaigns to improve student facilities—all very valuable contributions—

The Hon. Rick Colless: You're a commie—that's what you are!

The Hon. ERIC ROOZENDAAL: That is one of the most stupid contributions I have heard from someone who is probably one of the most right wing—you and your fascist mates sitting next to you. It is sad that I must listen to the barking of fools opposite but I will, and say that it is important that VSU be opposed at every level as an attack on a valuable asset to the university community and to the future of Australians.

HURSTVILLE GROUP HOME VISITOR ACCESS

The Hon. JOHN RYAN [10.11 p.m.]: This evening I will address in detail an issue that I have raised a number of times during question time with the Minister for Disability Services. It concerns a decision by a non-government disability accommodation provider called Civic Residential Services to lock out families of four clients from a group home in Hurstville. Similar to the visiting arrangements at nursing homes and hospitals, parents, close friends and other family members normally have free and open access to their relatives who are living in group homes for people with disabilities. The group home is the client's home. Like the rest of the community, they have a right to normal contact with their families and relatives. These rights are outlined in standards attached to the Disability Services Act. Denying families access contravenes these rights and places the health of residents at risk.

In December last year Civic management erected signs informing parents that they could no longer enter the premises. This order was apparently made in response to occupational health and safety complaints from group home staff. The Minister referred to concerns about workplace safety when he responded to my questions. What he did not say was that this alleged issue of workplace safety arose from a dispute between a family member of one client and group home staff. I understand that there were some vigorous exchanges but there were no threats of violence and not even bad language. Apparently a finger was waved on one occasion. This is an outrageous exaggeration for Civic, the Department of Ageing, Disability and Home Care [DADHC] and even the Minister to characterise this matter as a workplace hazard so serious that it required the indefinite lockout of every family member of every client. Excluding family access is not only a violation of the client's rights to live in the community; it is dangerous.

I can illustrate this danger by referring to the experience of one client, Nicole Wilken, and her mother, Sue, who has not had free and open access to her daughter's home since 16 December last year. Mrs Wilken used to visit her daughter twice a week. On those occasions she used to feed her daughter a meal. This was important because her daughter is underweight, and she was more inclined to eat food from her mum. For months Mrs Wilken has seen her daughter only when it has been convenient for the staff to arrange for her for daughter to be driven to Mrs Wilken's home in a taxi. Visits are sometimes cancelled because staff are unable to make the arrangements. Her daughter has lost four kilograms in the past three months and appears withdrawn and depressed when she attends her day programs. Parents such as Mrs Wilken want access to group homes so that they can check that their children are being cared for properly. Mrs Wilken has had some very serious concerns about the care given to her daughter.

Mrs Wilken is worried about adequate monitoring of her daughter's personal hygiene. Her daughter was using toothbrushes that belonged to other clients. On another occasion her daughter was scolded by a hot shower and despite having burns she was not taken to hospital for 36 hours. Other concerns have included pressure sores caused by her wheelchair, being left in wet and soiled clothes, and not being showered regularly enough. Two weeks ago Ms Wilken dropped in at the house on the way home from work. She was told by staff that she could not enter the house even though she could hear her daughter crying in the bathroom. Ms Wilken was also dismayed because her daughter was being showered with the bathroom door open, potentially in view of other residents and staff. In his answer to my questions the Minister said that the parents were getting regular access and the group home was about to be taken over by another service provider. I am advised that this is not true.

Tenders have been let for expressions of interest, but to date none of the applications from other organisations has been successful. It now looks like DADHC will now have to take over the place, and, even if it does, the Minister has not given any guarantee that parents will get access back. I am very concerned that this incident sets a dangerous precedent. The Minister should give a guarantee that this sort of sanction will not be tolerated and that no government funded group home should be able to deny access to parents and relatives in this fashion. It should not be allowed because it is a violation of the Disability Services Act, it is violation of client's rights, it is a violation of family values and it is a danger to the welfare of clients.

I am staggered that the Minister has not intervened directly in this matter. Sadly, it illustrates his lack of willingness to intervene in this portfolio and his general disinterest in matters concerning people with disabilities, as evidenced by the inaccurate statements he made in question time today about 1,000 new group homes being provided since the Government came to office. This matter deserves serious consideration and immediate attention by the Minister. This is a matter of basic human rights for clients living in group homes and people with disabilities. I urge the Minister to address this matter urgently.

LEBANESE-AUSTRALIAN COMMUNITY

The Hon. DAVID CLARKE [10.16 p.m.]: Recently my wife and I were privileged to attend two large and significant functions of the Lebanese-Australian community. The first was a rally of some 12,000 people in Belmore Park to protest against the continuing 30-year occupation of Lebanon by the Syrian Army, which I, together with the Leader of the Opposition, John Brogden, and the member for Strathfield, Virginia Judge, were invited to address. Thankfully, recent days have seen the departure of the last of the Syrian Army of occupation, which Lebanon hopes and prays is gone for good.

The second function was the annual dinner of the Lebanese Forces organisation in Sydney, which was attended in Lidcombe by more than 1,000 members and supporters. Guests in attendance included three members of this House—the Minister for Justice, the Hon. John Hatzistergos, the Hon. Don Harwin and me. Each of us were among the parliamentarians invited to speak. I regard it as a great privilege to have been able to address these good and decent members of the Lebanese-Australian Christian community who gathered in honour of the Lebanese Forces. For those who are not aware, the Lebanese Forces is recognised as the main political expression of the Christian community in Lebanon. It has a loyal and dedicated following among the great majority of the Lebanese-Australian Christian community. I pay tribute to the Lebanese Forces, which I believe to be the pivotal factor in forcing the recent withdrawal of some 30,000 Syrian troops from Lebanon.

The original Lebanese are the lineal descendants of the great Phoenician civilisation that goes back 5,000 years or more into history. Amongst other achievements, they are recognised as the greatest seafaring people of ancient times. Even more importantly, however, for the past 2,000 years their descendants, the original founders of the modern state of Lebanon, have been the bearers of Christianity in that part of the Middle East. They have been its bearers in the face of persecution, discrimination and attempts at their annihilation. Of all the

achievements of the Christians of Lebanon, this has been their greatest. What a noble perseverance that has been to have existed for so long in a hostile environment, often surviving only by virtue of maintaining their existence in the safety of mountain isolation. Today they are worthy custodians of the Christian faith, and they have epitomised the sanctity of their great saints, Saint Charbel and Saint Maroun.

From its foundations as a modern State, Lebanon has stood as a centre of Christian civilisation, culture and faith. It stood as a Christian heartland providing a haven where all religions could exist in peace and harmony. However, there have been repeated attempts by outsiders to undermine this position. The Lebanese people opened their borders to large numbers of non-Lebanese Palestinian refugees, even though they were largely of a different religious faith. They provided refuge and sanctuary, but their hospitality was abused and violated. Soon, armed agitators and militia demanded that the guests should become the masters.

Then the Syrians occupied the country, many suspecting that the eventual aim was the incorporation of Lebanon as a province of Syria. Soon to follow was an upsurge of an extremist Islamist presence seeking nothing less than the Islamisation of the country. Not only the Syrians and the Iranians but every Imam who followed Osama Bin Laden sought to interfere in the internal affairs of Lebanon. It is because of this intolerable situation that the Lebanese Forces were founded by the martyred Bashir Gemayel to protect the Christian population. Had it not been for the Lebanese Forces, a Christian presence in the country would probably no longer exist.

The Lebanese Forces are the protectors of Christianity and the embodiment of the history, faith and traditions of Christian Lebanon. And at this time the man who stands as the undisputed symbol of the Christian Lebanese community is Dr Samir Gea Gea, who for 13 years has languished in a cell at the instigation of Syrian and pro-Syrian forces. Everyone knows that the charges against him are manufactured and trumped up. His real crime was to act in defence of his homeland and the threatened Christian community. They believe that whilst Samir Gea Gea is held in a cell there can be no lasting peace in Lebanon. That is why the world patriarch of the Maronite Church and the world Lebanese Christian community, including those in Australia, lobby for his release. His imprisonment represents the imprisonment of the Lebanese Christian community as a whole.

Tonight I pay tribute to the Lebanese Forces as the legitimate and authentic voice of Lebanon's Christian population. I pay tribute to the Christian Lebanese-Australian community in Australia. It has a long history of positive contribution to the building of Australia. They despair when they are tarred with the negative actions of others. Very often they have been mistakenly maligned, and they are undeserving of this. They are a good community and will always have my admiration, respect and support.

DEATH OF MR ALBERT JAIME GRASSBY, A FORMER MEMBER OF THE LEGISLATIVE ASSEMBLY

The Hon. HENRY TSANG (Parliamentary Secretary) [10.21 p.m.]: It is with sadness that I note the passing of Al Grassby on 23 April 2005 in Canberra, after a long illness with liver cancer. He was 78 years old. Al was a larger than life character. It has been said of other people before, but in Al's case the statement could not be more apt: he was a flamboyant character, known for his colourful attire. He was never short on advice and views on community and multicultural issues. He was a great friend and patron to migrants, to those who had yet to participate actively in Australian political life. Al Grassby gave a voice to migrants and Australians from non-English speaking backgrounds as he became one for them. As Minister for Immigration in the Whitlam Government, he provided the blueprint for the principles of multiculturalism to be adopted by successive governments. His contribution to Australian politics was visionary and long lasting. Adopting multiculturalism changed not only the ethnic make-up but also Australian culture. We are as a result a more inclusive and diverse society.

Al Grassby joined the Labor Party in 1951. Before his election as the Federal member for Riverina in 1969, Al served in the other place from 1965 to 1969 as the member for Murrumbidgee. But it is at the Federal level that Al Grassby is most remembered. After losing his seat in 1974, the Government recognised Al's talents and appointed him in 1975 as the first Commissioner for Community Relations. The office and the position were created with the passing of the groundbreaking Racial Discrimination Act. As Prime Minister Whitlam said at the time:

The Racial Discrimination Act wrote it firmly into legislation that Australia is in reality a multicultural nation, in which the linguistic and cultural heritage of the Aboriginal people and of peoples from all parts of the world can find an honoured place.

He went on to say:

For the first time Australia affirmed its opposition to all forms of racial discrimination... The Act, inadequate as it is in many respects, is still the best guarantee that Australians have ever had that the dark forces of bigotry and prejudice which have prevailed so often in the past will never again be able to exercise influences far greater than their numbers in the minority.

Whereas the role of previous governments had been to oversee the sizeable migration program, the focus under Whitlam and Grassby shifted to improving the welfare of migrants already in Australia. They paid attention to overcoming skill shortages, employment difficulties, language difficulties and other social problems, to achieve a fairer society. They achieved this through the establishment of migrant education centres in the capital cities, and through the emergency telephone interpreter services, which recognised community languages for the first time. At the time Whitlam acknowledged that Al Grassby, as Minister for Immigration, was devoted to the happiness and welfare of migrants, and that no-one understood their needs and interests better. Gough was right.

Al Grassby did not have a long parliamentary career. His legacy, however, far outweighs that which members aspire to. His commitment to and support for multiculturalism was unwavering. For this, we got to know him as the father of multiculturalism in Australia—a fitting testament. I am pleased that Al's friends in Sydney will have the chance to remember him at a mass of remembrance and celebration this Thursday at 3.00 p.m. The service will be held at St Patrick's Catholic Church, which is in Grosvenor Street, Church Hill.

Motion agreed to.

The House adjourned at 10.26 p.m. until Wednesday 4 May 2005 at 11.00 a.m.
