LEGISLATIVE COUNCIL AND LEGISLATIVE ASSEMBLY

Thursday 5 May 2005

JOINT SITTING TO ELECT A SENATOR

The two Houses met in the Legislative Council Chamber at 4.05 p.m. to elect a senator in the place of Senator John Tierney, resigned.

Mr CARL SCULLY: Mr Clerk, I move:

That the Hon. Dr Meredith Anne Burgmann, President of the Legislative Council, act as President of the Joint Sitting of the two Houses of the Legislature for the election of a senator in place of Senator John Tierney, resigned, and that in the event of her absence the Hon. John Joseph Aquilina, Speaker of the Legislative Assembly, act in that capacity.

Mr JOHN BROGDEN: I second the motion.

Motion agreed to.

The Hon. Dr Meredith Burgmann took the chair.

The PRESIDENT: I thank the joint sitting for electing me chair.

Mr CARL SCULLY: I present proposed rules for the regulation of the proceedings at the joint sitting, which have been printed and circulated. I move:

That the proposed rules, as printed and circulated, be now adopted.

Mr JOHN BROGDEN: I second the motion.

Motion agreed to.

The PRESIDENT: I am now prepared to receive nominations with regard to a person to fill the vacant place in the Senate caused by the resignation of Senator John Tierney.

Mr JOHN BROGDEN: I propose Mrs Concetta Anna Fierravanti-Wells to hold the place in the Senate rendered vacant by the resignation of Senator John Tierney and I announce that the candidate is willing to hold the vacant place if chosen. Senator John Tierney was, at the time he was chosen by the people of the State, publicly recognised to be an endorsed candidate of the Liberal Party of Australia and publicly represented himself to be an endorsed candidate of that party. Mrs Concetta Anna Fierravanti-Wells is a member of the same political party.

The Hon. MICHAEL GALLACHER: I happily second the motion.

The PRESIDENT: Does any member desire to propose any other person to fill the vacancy? There being no other nominations, the question is: That Mrs Concetta Anna Fierravanti-Wells be chosen to hold the place in the Senate rendered vacant by the resignation of Senator John Tierney.

Question resolved in the affirmative.

The PRESIDENT: I declare that Mrs Concetta Anna Fierravanti-Wells has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator John Tierney.

Mr CARL SCULLY: I move:

That the President inform Her Excellency the Governor as soon as practicable that Mrs Concetta Anna Fierravanti-Wells has been chosen to hold the place in the Senate rendered vacant by the resignation of Senator John Tierney.

The Hon. JOHN DELLA BOSCA: I second the motion.

Motion agreed to.

The PRESIDENT: I now declare the joint sitting closed.

The joint sitting closed at 4.11 p.m.

LEGISLATIVE COUNCIL

Thursday 5 May 2005

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The President (The Hon. Dr Meredith Burgmann) took the chair at 11.00 a.m.

The Clerk of the Parliaments offered the Prayers.

CORRECTIVE SERVICES INDUSTRIES MANUFACTURE OF CURTAINS

Production of Documents: Order

Motion by the Hon. Charlie Lynn agreed to:

1. That, under standing order 52, there be laid upon the table of the House within 14 days of the date of the passing of this resolution the following documents in the possession, custody or control of the Minister for Justice, the Department of Corrective Services, the Minister for Commerce and the Department of Commerce in relation to:

    (a) all documents including memoranda, letters, emails and file notes dated between January 2001 and December 2002, between Corrective Services Industries (CSI) and curtain wholesalers, or their agents, which relate to the manufacture of curtains,

    (b) all documents including reports, memoranda, letters, emails and file notes between CSI and the CSI Consultative Council since 2001, which relate to the impact of CSI activities on existing curtain manufacturers,

    (c) all documents concerning orders, supply and delivery, including invoices, that relate to the manufacture of curtains by Corrective Services Industries since June 2004, and

    (d) all documents from 2001 that relate to the supply, purchase and/or provision of pleating equipment to CSI for curtain manufacture.

2. That financial amounts not be disclosed and be "blacked out" on any documents returned with this order.

NOXIOUS WEEDS REVIEW

Production of Documents: Order

Motion by the Hon. Duncan Gay 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 Primary Industries and the Department of Primary Industries relating to the report on the Noxious Weeds Review known as the Gledhill report, including:

(a) a copy of the Gledhill report (Noxious Weeds Review),

(b) all documents including memoranda, letters, emails and file notes between Mr Robert Gledhill, the Minister for Primary Industries and the Department of Primary Industries concerning the formulation of this report,

(c) all public submissions received by Mr Gledhill in relation to the Gledhill report,

(d) all documents concerning the time frame for the review and the preparation and release of the report, including details as to why the Gledhill report has still not been released, five months after its due date in December 2004, and

(e) any document which records or refers to the production of documents as a result of this order of the House.

PRINCE OF WALES AND DUCHESS OF CORNWALL WEDDING

Motion by the Hon. Amanda Fazio agreed to:

That this House congratulates His Royal Highness the Prince of Wales and Her Royal Highness the Duchess of Cornwall on their marriage on 9 April 2005.

DEPARTMENT OF EDUCATION AND TRAINING PUBLICATION "MAKING A DIFFERENCE FOR BOYS"

Production of Documents: Order

Motion by the Hon. Catherine Cusack 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 Education and Training relating to the publication entitled "Making a Difference for Boys", including:

(a) the final and any draft versions of the publication,

(b) all documents relating to the costs, funding and distribution of the publication,

(c) any analysis of the publication and any advice provided to the Minister, including former Ministers, in relation to the publication,

(d) any directives provided by the Minister, or previous Ministers, in relation to the publication, and

(e) any document which records or refers to the production of documents as a result of this order of the House.

PETITIONS

Casino to Murwillumbah Rail Services

Petition requesting the reinstatement of rail services from Casino to Murwillumbah, received from **the Hon. Catherine Cusack**.

Crown Land Leases

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

FAMILY IMPACT COMMISSION BILL

Second Reading

Debate resumed from 23 February 2005.

The Hon. JOHN TINGLE [11.17 a.m.]: I support the bill. I sincerely believe that it might be one of the most significant social impact bills proposed in this House for a long time. At present there is no established system that requires consideration of the impact of legislation specifically on families. Society seems to have lost sight of the central, crucial importance of the family and the importance of cohesion of the groups of people who make up families. We have introduced legislation, or allowed practices that have damaged the traditional hierarchy of the family, as much by omission as by commission. Understanding of the authority lines that flow through a family and society have been lost. The authority that parents have over children has been eroded through legislation limiting ordinary discipline. We have allowed commercial exploitation of children to create tension between parents and children; parents have lost the ability to have a say in what their children are taught in schools—the list goes on and on.

This is why I believe the idea of a Family Impact Commission is not only timely but overdue. I know that Reverend the Hon. Fred Nile has had this bill before this House for a long time and I think it is time we dealt with it and understood the importance of supporting such a bill. We seem to have commissions to investigate and regulate just about every activity we take part in as a community and as a social entity. Many of these commissions do good and necessary work, but we do not have such a commission to review and advise on the impact of much of our legislation with respect to the family unit. In fact, it is very seldom that, as legislators, we stop to ask whether there is likely to be a negative effect on the family unit or an undesirable—and admittedly unintended—effect arising from a particular piece of legislation that could adversely affect the functioning of the family. After all, the family is a preparation for life; it is part of life, and it needs to be supported if life is to be properly supported.

Some dreadful things have been imposed on families, often because a well-intentioned law or practice has rebounded and done more harm than good. I think back to the complaints I received during my broadcasting days about the Department of Family and Community Services, the Department of Youth and Community

Services, the Department of Community Services—various names given to the same government body—and other groups that were supposed to care for children. Many of the complaints were about programs that were introduced in schools some years ago, including ill-considered, so-called personal development programs that told young people, "You are an individual; you have an individual's rights. Nobody has the right to fetter those rights, and nobody can tell you what to do—and that includes your parents!"

Sure, it was part of the "do-your-own-thing" generation, which, thankfully, seems to have largely fallen out of favour in this century. But while they continued, programs like this threatened to cause serious disintegration of society, and encouraged this obsession with violence and the instinctive refusal to respect authority. It also encouraged young people to believe that nobody could gainsay whatever they wanted to do. Society's understanding of the family has been lost. The concept of family is being attacked on all sides. I am not just talking about mum, dad and the kids sitting down together at dinner. Rather, I am talking about an understanding of the training a family should give children for their life role, the values a family should instil in young children regarding respect for other people—the inherited values that our forebears handed down to us to show us how we ought to behave as cohesive members of society, as little pieces of the jigsaw of humanity.

As legislators we do not always understand the impact of the laws and decisions we make or, more importantly, what we allow to happen. What is the effect of violent videos on the family? What is the impact on the family of changed attitudes to sexuality and sexual behaviour? A Family Impact Commission with wide-ranging powers to examine what we prescribe and the ability to say, "No, this is not good for the family; indeed, this is damaging the family", would be an important safeguard against damage. We have to do whatever is left to us to avoid the further disintegration of society. After all, society is the biggest family we have. We need to rebuild the family and society. The bill is essentially a call to create a mechanism to protect the family. It is an SOF—a call to save our family.

The Hon. JON JENKINS [11.22 a.m.]: I support the Family Impact Commission Bill, which was introduced by Reverend the Hon. Fred Nile. I remind members that in my inaugural speech I outlined the reason why I had become involved in politics: my family and I had been prevented from accessing places that were very precious to us. I would like to quote two philosophers whom I consider to be two of the greatest philosophers in recorded history. The first of those was Confucius, who said about the strength of the family:

> The strength of a nation derives from the integrity of the home.

William and Arial Durant, a husband and wife team of philosophers, spent their lives studying the history of civilisation; indeed, they wrote vast tomes on the subject. William Durant said:

> The family is the nucleus of civilisation.

He went on to detail how every great civilisation on earth fell as the families within those civilisations were destroyed. I support the bill of Reverend the Hon. Fred Nile because my family has been impacted severely. I reiterate my belief that the core building block of civilisation is the family unit. Difficulty arises, however, in relation to the definition of a family. Indeed, it involves a philosophical or religious point of view. Families are often very difficult to define. They may include blood relationships, adoptive relationships, or relationships that simply happen almost by accident. Yesterday I discussed with Reverend the Hon. Fred Nile a family I know who are extremely non-traditional. The difficulty that arises with bills of this nature is the definition of a family.

Debate adjourned on motion by the Hon. Dr Peter Wong.

CRIMES AND FIREARMS LEGISLATION AMENDMENT (APPREHENDED VIOLENCE ORDERS) BILL

Second Reading

Debate called on, and adjourned on motion by the Hon. Jon Jenkins.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) ENFORCEMENT AMENDMENT (X 18+ FILMS) BILL

Second Reading

Debate resumed from 3 March 2005.

Reverend the Hon. Dr GORDON MOYES [11.26 a.m.]: The objectives of the Classification (Publications, Films and Computer Games) Enforcement Amendment (X 18+ Films) Bill are to amend the

Classification (Publications, Films and Computer Games) Enforcement Act 1995. The mainstay of these amendments is to remove current bans in relation to the sale and public exhibition of X18+ films under the Commonwealth Act. The amendments also purport to ensure that films classified X18+ are sold only from restricted publication areas such as adult shops. Whilst the bill legalises X-rated films, it also increases penalties in relation to some offences. For example, fines are heightened for the sale and public exhibition of unclassified material, and individuals who allow minors access to adult material will face hefty sanctions under the bill.

Members of this Chamber will have differing views about this bill. Some may feel that the bill, in its entirety, is a welcome initiative that ought to be embraced by this House and the New South Wales community as a whole. People residing in this camp ultimately base their viewpoint on the notion that once individuals become adults they should be able to see and hear whatever they desire. Others will have very strong views against some aspects of the bill, based on practical and moral considerations. I count myself as included in this camp, and I have no qualms about making my opinion known.

At the outset, however, I would like to point out that I wholeheartedly share some of the concerns expressed by the Hon. Peter Breen. The honourable member hit the nail on the head in his contribution to the second reading debate when he indicated that the law relating to the sale and public exhibition of X-rated and other unsavoury material is not being enforced. He referred to research carried out by the Bureau of Crime Statistics and Research, which apparently shows that in the past four years just 14 people have pleaded guilty to a charge of selling or publicly exhibiting an illegal pornographic film, and that the average fine was approximately $300.

Like the Hon. Peter Breen, I am concerned that the law is not being enforced. People are flouting the law because they know they can get away with it. There is no doubt that the lack of enforcement of the law relating to illegal pornographic material is a justification relied upon by many not to observe the existing law. Unless effective enforcement mechanisms are in place, and they are accompanied by a strong political will to rely on and follow through with these mechanisms, breaches of the law will abound. This phenomenon can currently be observed in practice. There can be no effective regulation without an effective sanction that is actively enforced.

This argument might be illustrated by the predicament of the Bali nine as they face sanctions against them in the Bali prison. With all other things being equal, the severe and dire sanctions that are attracted if a person intends to import or export, or actually imports or exports, narcotics to or from Bali ought to be a deterrent to any reasonable person delving in such activity. The message that is sent out by the Balinese Government is closely observed by many. However, based upon expressed views,

I am certain that in hindsight some of the Bali nine would have refrained from attempting to carry narcotics if they had known of the severe consequences that they were facing. Countries such as Bali and Singapore have laws in place in relation to the realm of drug trafficking that are followed through. It is easy to foresee that those countries that have less stringent laws, which are not enforced, will become targets for drug trafficking. There must be enforcement for the laws to be effective. I also concurred with the Hon. Peter Breen when he remarked in his second reading speech on the bill:

> In the old days, the Vice Squad comprised good and professional people who knew what the law was and how to enforce it, but there is nobody in the police force today who has any specialised jurisdiction or qualifications to deal with this complex area of film classification and enforcement of laws in relation to X-rated videos and videos that are refused classification.

I cannot emphasise enough that the current state of affairs is due to the lack of will and lack of resources to enforce the law that is in place. Our police must be thoroughly acquainted with the law and how to enforce it. If there is a lack of specialisation in dealing with the X-rated and otherwise unsavoury material targeted by this bill, it goes without saying that the answer is not to eliminate the law in place, but to improve the mechanisms in place to deal with the enforcement of the law. The Hon. Peter Breen is advocating that the baby be thrown out with the bathwater; for good to be thrown out with the bad.

The problem lies with the absence of effective enforcement, not with the merits of the law. If the police are ill-equipped to deal with the prevalence of illegal pornographic material, our focus ought to be to set up a part of the police force that is specifically designed to regulate and enforce sanctions against X-rated and other material. Our emphasis ought to be to stress the need for our police force to improve and follow through its strategies for the enforcement of the current law. It is anomalous to propose that the law should be done away with, not because of its merit per se, but because it is not being enforced. To lack enforcement is to create bad law. If one person is prosecuted to the full extent of the law it will send a clear message to others that it is not on to flout the law.

Another common ground that I share with the Hon. Peter Breen is the need for stricter penalties to be in place in respect of so-called unclassified material. The bill increases the legal sanctions for, among other things, the sale of unclassified material. The honourable member referred to the existence of bestiality, child pornography, and pain and faeces fetishes being all standard fare in the same-sex shops and second-hand bookshops that are operating illegally, but with apparent impunity, at the lower end of George Street and in Darlinghurst, in King's Cross and in the city of Sydney. Unlike the Hon. Peter Breen, I have not researched this fact and I take his word for it. In the spectrum of sexual material, this material has to be most morally repugnant and reprehensible if I am to believe his research. Clear messages must be sent out that trading and delving in this material is not on in our society. The Government ought to be doing all it can to deter people from selling, buying and distributing this kind of material.

I support the increase in penalties in this context. Last year the Attorney General, Bob Debus, remarked in his second reading speech on the Crimes Amendment (Child Pornography) Bill 2004 that "by increasing the maximum penalties for child pornography offences, the Government is sending a clear message to the courts that such offences should not be tolerated". Now, that is true. A clear message is sent when penalties for offences are increased, but I must stress that it is futile to make changes to legislation that is just not being enforced, because if the proposed changes are put in place, it is more likely that they will not be enforced either. Suffice it to say that the strategy put forward by the Hon. Peter Breen to increase penalties for some offences in the hope that they will be enforced is flawed. What makes the honourable member believe that increasing penalties for some offences will bring about actual enforcement of these penalties?

I concur that more stringent penalties are needed and that a stronger message must be sent out against the sale of unclassified material, but what makes the honourable member think that the law will then be enforced if it has not been enforced to date, and if he has admitted that that is because of lack of policing and political will? Even if penalties are increased for allowing minors to access adult material, what convinces the honourable member that these penalties will be enforced if the current legislation has not been enforced to date?

Further, I strongly hold that there is no evidence that making penalties tougher for what are called the refused classification [RC] films will eliminate the black market in these films. The honourable member indicated in his second reading speech that the main purpose of his bill is to "get rid of this black market and the corruption and exploitation that it necessarily involves". Personally, I am not convinced that increasing penalties for refused classification films will result in the elimination of the black market in those films.

Again, the issue lies in whether there is effective policing of the market. The current state of affairs indicates that sex shops and so-called adult bookstores are acting with impunity. What makes the honourable member believe that his changes to current penalties will bring about effective policing? That is a political decision. In my opinion, liberalising the sale of some pornographic material will not lead to retailers restricting the material that they sell if there are no effective sanctions in place that are being enforced. I cannot comprehend the argument that increasing penalties for hardcore, fundamentally depraved material will bring about a shrinking of the black market if enforcements by police are not effective.

Furthermore, a black market for refused classification material will always exist, because there will always be some individuals in our community that have a penchant for this nasty material. The existence of this material in our community is a reflection of the demands of some members of our community. Also, in my opinion, the lack of enforcement willpower will also ultimately lead to X-rated material being sold, not only in restricted publication areas, but in other areas. This is what currently happens and changing the law to increase penalties will accomplish nothing unless the law is effectively enforced. Rather than advocating changes to the law, we ought to start by ensuring that the current law is effectively enforced. I think that enforcement in this area is the core weakness at present.

The honourable member noted in his second reading speech that if it were illegal to sell as well as buy legitimate X-rated videos in New South Wales, that would enable more effective policing of the illegal industry. I do not think that argument is logical. I have reiterated time and again that unless the illegal industry is currently policed effectively, there is no indication that legalising X-rated material will ensure enforcement of the law into the illegal industry. Why would effective policing instantaneously take place on the introduction of the Breen amendments if enforcement of the current law is not happening right now? Interestingly, the honourable member argued the following in his second reading speech:

> I understand that approximately 10,000 pornographic videos were produced around the world last year, and about 600 of them were classified by the Office of Film and Literature Classification. The remainder, approximately 94 per cent, do not go unsold but, rather, end up in retail shops with forged classifications on the covers, or indeed no classification.

This means that unclassified material consists of 94 per cent of the material on the market. I am not sure why the honourable member believes that tackling the miniscule 6 per cent of the market will lead to reducing the plethora of unclassified material on the market. The argument has already been made that if X18+ classified material could be sold legally in sex shops or adult shops, that is, in restricted access venues, then sale of this material could be made illegal in video shops or so-called adult book stores that are so abundant about town.

It supposedly follows that the sale of X18+ material legal would dramatically reduce market access for illegal pornography. I do not believe that this argument holds. Though there are no statistics kept on the incidence of illegal pornography in the Northern Territory and the Australian Capital Territory [ACT], there is no doubt that these territories are still affected by the prevalence of illegal material.

Second, restricting the sale of such material to adult shops will not deter retailers from stocking and selling this material if the laws against stocking and selling this material are not enforced. Also, the Hon. Peter Breen has argued that one would be able to differentiate between classified and non-classified material by simply viewing whether a label classification on the jacket of the material is endorsed by the Office of Film and Literature Classification. He has indicated that any item that does not have an authentic label would be easy to spot and would be illegal to sell or to buy from any outlet. However, this is a non-argument because the label classifications already exist but are forged by those wanting to represent an otherwise unclassified film as classified.

The ACT and the Northern Territory have laws in place that allow for the sale and public exhibition, in certain circumstances, of X-rated material. The Hon. Peter Breen argues that New South Wales ought to be in step with these territories as if these territories are illuminating the path for the rest of Australia. I remind members that the most recent Australian demographics statistics of the Australian Bureau of Statistics indicate that only 1.6 per cent of Australia's population live in the ACT and that the Northern Territory's population is 1 per cent of Australia's total population. I am not convinced that New South Wales, the State with Australia’s largest population, being one-third of Australia's population, would follow the steps taken by these two other territories.

I think that the honourable member is looking for ways to justify his position, and what better way to justify his position than to look at two of the less conservative entities for guidance: the smallest, the ACT, and the Northern Territory. But what about the status quo that has been held across all Australian States? Does that not count for anything in this argument? I ask this rhetorical question because everybody knows the answer to it.

Given the nature of the debate and my position as a Christian leader in the community with a charge to represent the Christian voice of this State, I cannot leave this debate without putting on the record arguments against the sale and use of X18+ rated and other unclassified material. Many are familiar with the arguments against the sale and use of such material. In processing my arguments, however, I would like to draw the attention of the House to the findings of the United States Attorney General's Commission on Pornography.

The commission was set up in the 1980s to review the available empirical evidence on the relationship between exposure to pornographic material and antisocial behaviour. The commission concluded that there is a causal relationship between the exposure to many forms of pornography and several antisocial effects, including increased levels of violence against women. As a result of these findings, the commission called for a more strict enforcement of existing obscenity laws. In the same vein we would also call for a more strict enforcement of the current pornographic laws.

Further, the Australia Institute, a broadly regarded and reputable think tank on social issues, prepared a report on Regulating Youth Access to Pornography, which was discussion paper No. 53 of 2003. Michael Flood and Clive Hamilton, who drafted the report, stated:

> The research literature's documentation of significant associations between use of certain types of pornography and sexual aggression provides grounds for real concern. Apart from the intrinsically disturbing nature of much Internet pornography, regular consumption of pornography and particularly violent and extreme pornography, is a risk for boys' and young men's perpetration of sexual assault.

In another article authored by Flood and Hamilton, entitled "Youth and Pornography in Australia: Evidence on the extent of exposure and likely effects", the authors concluded that:

> … a wide range of studies has been conducted among young people aged 18 to 25. One of the most important areas of social concern has been the impact of pornography on men's sexual behaviour towards women, and particularly male sexual aggression or rape. One major study integrated the findings of a broad range of research and concluded that there is consistent and reliable

evidence that exposure to or consumption of pornography is related to male sexual aggression against women. This association is strongest for violent pornography and still reliable for non-violent pornography, particularly when used frequently.

In experimental studies, adults show significant strengthening of attitudes supportive of sexual aggression following exposure to pornography.

Members will remember Marlene Goldsmith, a former Chairman of the Legislative Council Standing Committee on Social Issues, who explored the topic of whether there is a causal connection between sexual offenders and pornography. There is an abundance of evidence both for and against the argument that there is a causal connection between pornography and sexual violence. There are some quotes from that report that I would like to incorporate into my speech.

Leave granted.

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"in NSW, in the period 1975-91, a time during which pornography has become increasingly available, there has been a 90.6 per cent increase in the level of rape (Categories 1-3 Sexual Assault) (NSW Bureau of Crimes Statistics and Research 1991)… A Michigan state policy study found that pornography was viewed just before or during 41 per cent of 38,000 sexual crimes committed over twenty years".

In response to the argument that there is solely a correlation between pornography and hostility and violence towards women and not a causal relationship between the two, the former Chairman commented:

"… if the argument were sustainable, then moves to subsequently restrict pornography in already open societies should have no demonstrable effect. Consider then, the following:

In Hawaii in 1974, restrictions were placed on the sale of pornographic material. Rape figures fell for the following two years. The restrictions were then lifted, and rape immediately increased (United States. Federal Bureau of Investigation 1973-78); and

In Oklahoma County, 'adult' stores were closed in 1985 and a 25 per cent decrease in the rape rate occurred over the next five years 1985-90. In the remainder of Oklahoma, there was no such law and no increase in the rape rate."

The brief statements I have just made provide food for thought on the argument that pornography can affect the incidence of sexual assault in NSW.

I would like to now turn to the arguments against pornography per se.

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Reverend the Hon. Dr GORDON MOYES: I conclude by saying that the bill removes the offence of possessing or copying 18+ rated films for the purpose of sale or exhibition, but at the same time increases penalties for the sale or exhibition of RC films. Currently, proceedings are not to be brought against any person for publishing an obscene libel or an indecent article first, for the purposes of an application for classification under the Commonwealth Act, or if the libel or article is, or is part of, a film, publication or computer game. There is no doubt that the crux of the issue is the lack of effective enforcement.

Finally, I point out that it is anomalous that the honourable member is supporting the legalisation of X-rated material when, at the same time, he is so vehemently in favour of supporting the interests of the Muslim constituency, because Muslims, like many Christians, hold strong conservative views about pornography for the reasons that I have previously expressed. I think the honourable member is sending mixed messages.

Debate adjourned on motion by the Hon. Peter Primrose.

WORKPLACE FATALITIES

Ministerial Statement

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Minister for Ageing, Minister for Disability Services, Assistant Treasurer, and Vice-President of the Executive Council) [11.47 a.m.]: I wish to address the House in relation to workplace fatalities. All workplace deaths are a tragedy and in recent years there have been increasing calls for tougher sentences to be applied to the small number of people whose complete disregard for basic occupational health and safety cause the death of a person, particularly a vulnerable person, at work. Following my statement to this House last year I released the Occupational Health and Safety Legislation Amendment (Workplace Fatalities) Bill 2004 for

consultation. Since then the Government has been consulting widely with employers and unions on the specific terms of the proposed offence. Despite some of the exaggerated comments made about the draft bill, I emphasise that it contained no new duties for employers or other duty holders under the current occupational health and safety legislation.

In six months of consultations about the draft bill employers have consistently told me that they want the full force of the law applied to rogues whose disregard of basic safety obligations result in the death of a vulnerable worker. Many employer and union groups have made sensible and constructive comments during the past few months and I thank them for their contributions to the debate about this important matter. Based on this constructive feedback I gave a commitment that the bill would not be introduced in the form as originally released. New South Wales has one of the most robust occupational health and safety frameworks in the world—one this Government is justly proud of and one I think the community is largely satisfied with.

We are one of the few places in the world where employees have a statutory right to be consulted about the safety of their workplace, and where maximum flexibility exists for employers to arrange for a safe, effective and productive workplace. Only a very small percentage of industrial deaths is caused by a complete disregard for basic workplace and worker safety and common decency. In these instances, the community's expectation is that if someone is found to be guilty then that person will face tough penalties, including the possibility of a gaol sentence. Employers have consistently commented that they support strong action being taken against rogue employers whose conduct is negligent or reckless. Indeed, a survey recently undertaken by the State Chamber of Commerce showed that 89.7 per cent of businesses surveyed believed that employers who deliberately and recklessly put their employees' lives at risk should be gaoled.

The Government is keen to ensure that the bill is aimed at the small minority of rogues whose indifference to health and safety in the workplace results in death. For this reason I have today released a revised draft of the bill, the Occupational Health and Safety Amendment (Workplace Deaths) Bill for consultation. The Government proposes to amend the Occupational Health and Safety Act 2000 to create a new offence with a higher penalty regime that will apply to current statutory duty holders under the Occupational Health and Safety Act 2000 and whose reckless conduct causes a death in a workplace. The bill strikes a balance between culpable people being punished and ensuring that people whose conduct was not reckless do not face the risk of prosecution under the new provisions.

Make no mistake: If you are indifferent to occupational health and safety, if you have no concern for the consequences of that behaviour, and a workplace death results, you will face the consequences. A corporation that engages in reckless conduct that causes the death of a person in a workplace can also be charged under the new provisions. The bill includes an amendment to the Occupational Health and Safety Act 2000 to provide a penalty for contravention of the new provisions of up to $165,000 and/or five years imprisonment for individuals and $1.65 million for corporations. These penalties are an appropriate reflection of the gravity of the consequence of the reckless behaviour of the offender when there has been a workplace death. I remind honourable members that the possibility of imprisonment was a specific recommendation of the original panel.

In order to ensure that the rights of individuals convicted of offences under the Act are protected, the bill also includes amendments to the Occupational Health and Safety Act 2000 and the Criminal Appeal Act 1912 to allow a person convicted of the new offence a right of appeal to the full bench of the Industrial Relations Commission in court session. If they are sentenced to a term of imprisonment they will also have a right of appeal to the Court of Criminal Appeal. The prosecution will not be able to appeal if a person is acquitted by the court. A person who is charged with the new offence will be able to use the defence that they had a reasonable excuse, that is, their actions were justified, given all the facts and circumstances of the incident.

The current defences under section 28 of the Act will continue to apply, that is, it was not reasonably practicable or the commission of the offence was due to causes over which the person had no control and it was impracticable for the person to make provision for control. In the recent public debate concern was raised about the possible prosecution of directors and managers. I have said this previously but it is worth repeating: The bill is aimed at the minority, those whose indifference to occupational health and safety results in death. A company director or a manager can be charged if they are personally reckless as to the risk of serious injury or death of another person.

The bill will provide that the new offence can only be prosecuted by a WorkCover inspector, a Mines inspector in the Department of Primary Industries or another person with ministerial consent. However, if either

of these agencies decides not to prosecute a person following a workplace fatality, a union will be able to ask for the reasons for the decision. During the recent public debate there was vocal criticism—some could say it was a frenzied attack—of the fact that a prosecutor could receive part of the fine levied, the so-called moiety. What the people making these comments overlooked was that the Fines Act provides that a court may award half the fine in criminal proceedings to a prosecutor. This is entirely at the discretion of the court. This has been a feature of New South Wales general criminal law since 1901 and the draft bill does not change this.

The reform deals with a very serious matter—the death in a workplace of someone's son or daughter, a friend or a colleague. The community has the right to expect that the appropriate penalties and deterrents are in place to ensure that people who leave for work can return home safely to their families and friends. I can assure the vast majority of employers, who I know are hardworking and responsible, that they will have nothing to fear from this bill. It is only the minority, the rogues, who should be worried. My advice to the minority is very simple: Start paying attention to workplace health and safety. If you remain indifferent and your conduct results in a workplace death you will face the prospect of very severe penalties. I believe that we all want safe workplaces. We all want our loved ones to return home safely from work. I look forward to hearing the views of employers, unions, workers, families, and members of this House on the revised bill.

The Hon. JOHN RYAN [11.53 a.m.]: Today the Government has made a number of changes to its originally circulated bill, the Occupational Health and Safety Legislation Amendment (Workplace Fatalities) Bill. The Opposition, the community and employers in particular had enormous concerns about the previously circulated bill. Our concerns could not have been more fundamental in terms of pursuing justice in this State. The bill originally circulated by the Government provided that a person could be sentenced to a term of imprisonment not by a criminal court but by the Industrial Relations Court, although no jury had been present to hear and weigh the evidence and convict or acquit the person. From memory, that is the only circumstance in which the Industrial Relations Court can send a person to gaol and significantly interfere with their liberty without reference to a trial by jury.

Under the original bill, a company director or manager could have faced the prospect of imprisonment for matters for which they may not have had direct control. They could have made arrangements that they thought were reasonable in discharging their duties as a company director and then discovered that they faced a term of imprisonment for circumstances beyond their direct control, with no right of appeal. I do not imagine that more draconian legislation could have been introduced in this State. Additionally, employers and the community were concerned that 50 per cent of any fine levied—the bill provided for increased fines—could be directed to the union movement if it had initiated the prosecution against an employer. Indeed, it was as if the bill as circulated provided a system of bounties for unions that prosecuted employers in the courts.

The Opposition, employers and the community were concerned that that would have been a gross conflict of interest that the union movement could have exploited unfairly and shamelessly. We believe there should be some distance between the prosecutor and the person receiving the fine. The original bill was disgraceful and the Opposition would have opposed it strenuously and strongly. The Government has now revised the bill as circulated. Although we have had only a short time to look at the revised bill, I do not believe that it addresses our initial concerns. The Government has introduced a provision for appeal to the Court of Criminal Appeal. However, it has not dealt with our concern that an employer could be sentenced to a term of imprisonment on the basis of evidence that had not been heard by a jury. An industrial court is not a criminal court, although we are talking about criminal offences. That would have been totally unjust and a significant imposition on the fundamental right of an individual to a trial by jury.

It would appear that the revised bill circulated by the Government today does not in any way address that fundamental and important concern. The Minister in his speech today said that a person will be able to appeal to the Court of Criminal Appeal. However, all proceedings before the appeal hearing will be dealt with exclusively by the Industrial Relations Court. The Opposition is concerned that the revised bill still provides for a union to be designated as a prosecutor. I draw the attention of honourable members to the Minister's speech, in which he said:

> The bill will provide that the new offence can only be prosecuted by a WorkCover inspector, a mines inspector in the Department of Primary Industries or another person with ministerial consent.

Is it possible that under a Labor administration unions could prosecute an employer as a result of being given ministerial consent? The Opposition is concerned about that. We do not believe that it is appropriate for an organisation outside the Government to carry out the statutory process of prosecution of a criminal matter, especially when a significant fine and gaol penalty could be imposed.

The Minister criticised our concerns as a frenzied attack, saying that the prosecutor could receive part of the fine levy. He said the means of protection was at the discretion of the court, and that includes the Industrial Relations Court. There seems to be generous loopholes, which will still allow the union movement to participate in bounty hunting. The Opposition will be looking at the revised draft of this bill, which was circulated today, and we will be consulting widely to see whether this matter has support.

Pursuant to sessional orders business interrupted.

QUESTIONS WITHOUT NOTICE

NSW POLICE SENIOR OFFICERS POLICE INTEGRITY COMMISSION INVESTIGATION

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Justice, representing the Minister for Police. Will the Minister explain why the Police Integrity Commission is only examining five senior police officers over their actions on 5 April 2004 when clearly someone in NSW Police breached the Telecommunications (Interception) Act and divulged sensitive information about the Bulldogs investigation to the media on or before 4 April 2004—as evidenced by the Channel 9 evening news broadcasts on 4 April and subsequently numerous newspaper reports the following day?

The Hon. JOHN HATZISTERGOS: If the honourable member has any information that might assist the Police Integrity Commission in its investigations, he should provide it.

SCHOOL ATTENDANCE

The Hon. AMANDA FAZIO: My question is directed to the Minister for Education and Training. Will the Minister advise the House what actions the Government is taking to support the attendance of children and young people at school?

The Hon. CARMEL TEBBUTT: I am pleased to provide accurate information to the House about the issue of school attendance. The article in the *Daily Telegraph* today is a blatant misuse of data by the shadow Minister for Education and Training, who consistently parades herself as a supporter of public education in New South Wales. I fail to understand how she can so often get wrong what is happening in schools in New South Wales. We understand the Opposition has a job to do and it likes to get headlines. Everyone understands that is part of the political and democratic process, but the reality is that every time the Opposition spokesperson for education does this she brings public education in New South Wales into disrepute. Misusing data so that it becomes misleading is unacceptable.

The Department of Education and Training collects school attendance data from schools twice each year. The data reports on the number of whole-day absences for each school. The Opposition consistently equates all student absences with truancy, leading to headlines that we saw in today's *Daily Telegraph*, "Truancy crisis 'out of control'." Nothing could be further from the truth. This data reports on the number of whole-day absences, authorised and unauthorised—not just unauthorised absences. It refers to students who are going to see the dentist or the doctor and who have permission from their parents. These student absences cannot be equated with truancy.

Research indicates that on a typical school day approximately 93 per cent of students attend school. Of the 7 per cent who are absent, most are sick or have another legitimate reason for not attending—religious holidays or family reasons. There is no doubt that some parents condone their children's absences from school for unacceptable or unsatisfactory reasons such as birthdays, minding younger siblings or helping with shopping. We do not condone that and we follow that up. To try to equate those school absences with truancy figures is wrong and misleading.

With regard to truancy, which the Government and the department take very seriously, schools and home school liaison officers follow up absences with parents, reminding them of their legal obligations to ensure their children attend school each day it is open. Other fluctuations in attendance at any individual school can be caused by the poor attendance of a small number of students or families or for a variety of seasonal reasons, such as tourism or employment opportunities. Research indicates that on average less than 1 per cent of students are truant. The principals of the schools named in this article are very unhappy that their schools have been singled out and given a reputation for having high levels of truancy, when the figures relate to total absenteeism.

The average daily attendance rates for primary and secondary students have changed little in recent years. On average, 90 per cent of secondary school students and 94 per cent of primary school students are present at school each day, with less than 1 per cent of students truanting. Nonetheless, we have strong and detailed plans to address truanting. For example, on 23 January 2004 the Government introduced the common leave pass system, which has been implemented across the State. We also have joint anti-truancy operations with NSW Police.

NSW POLICE SENIOR OFFICERS POLICE INTEGRITY COMMISSION INVESTIGATION

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Justice, representing the Minister for Police. Why did the Commissioner of Police state that three senior officers—Deputy Commissioner Dave Madden, Assistant Commissioner Peter Parsons and Superintendent Dave Owens—took leave of their own accord, when the commissioner ordered them to take leave with the full knowledge of the director-general of the police ministry? After several days of negative media attention surrounding the treatment of these senior police, why did the Minister order the police commissioner to phone the officers personally and invite them to return to work?

The Hon. JOHN HATZISTERGOS: The Minister for Police made a number of public statements relating to this matter. I refer the honourable member to them.

NORTH-WESTERN SYDNEY POWERLINES INSTALLATION

Reverend the Hon. Dr GORDON MOYES: I ask the Minister for Lands, on behalf of the Minister for Energy and Utilities, a question without notice. Is the Minister aware that Integral Energy is planning to upgrade 8.5 kilometres of powerlines between Vineyard and Rouse Hill in north-western Sydney by installing a new feeder carrying 14 multilevel high voltage wires on 31 steel lattice towers at an average height of 36 metres? Is the Minister aware that the proposed dangerous and unsightly proposed power lines—that are vehemently opposed by the local residents group—will be installed directly adjacent to the homes of local residents, will have an effect on the property prices, public health and standard of living of 20,000 residents and run directly through the middle of an area earmarked by NSW Planning to have a residential focus accommodating 30,000 residents? Why has Integral Energy not considered the manifold costs to local residents, which includes loss of property values estimated to be $19,000?

The Hon. TONY KELLY: I undertake to pass on the honourable member's question to the Minister and get a speedy reply.

COMMUNITY FIRE UNIT PROGRAM

The Hon. HENRY TSANG: My question is addressed to the Minister for Emergency Services. Will the Minister inform the House of the latest information concerning community fire units?

The Hon. TONY KELLY: I thank the Hon. Henry Tsang for his continued interest in the operation of our emergency services. Everyone will remember the terrible bushfires of 1994, when the city was literally encircled by a ring of fire. The efforts of our emergency services were second to none. Those fires gave rise to a new role for residents in bushland interface areas, through the New South Wales Fire Brigades' community fire unit [CFU] program. These units enable residents in bushland communities to play a vital role in supporting firefighting efforts during bushfires.

Under the program, a group of neighbours can volunteer to be trained by the Fire Brigades and equipped with a trailer or fixed unit containing basic firefighting equipment—including a pump, hoses and protective clothing such as overalls, helmets, boots and gloves—at a cost of between $15,000 and $20,000. The Government is committed to continuing this successful and worthwhile program, allocating funding of $1.2 million to establish 100 units between 2003 and 2007. These units, I am reliably informed by the Minister for Justice, are manufactured in our State's gaols, and we also sell them to the Australian Capital Territory and the Solomon Islands.

A total of $80,000 has been provided over two years under the National Disaster Mitigation Program. Essentially, CFU members' major role is to put out spot fires and flying embers in their street after the main fire front has passed, allowing our firefighters to get on with the main job of fighting the bushfire. At this time of the year CFU members also assist with hazard reduction operations in their area and fire prevention and education

of their local community. This program is yet another example of that very Australian characteristic of rolling up your sleeves and chipping in to do your bit. These residents do not want to stand by and do nothing. With the basic training and equipment they receive they will make a valuable contribution in saving their homes.

I emphasise that these units do not exist to usurp the role of our firefighters from New South Wales Fire Brigades or the Rural Fire Service, whose firefighting expertise, hard work and commitment are unparalleled and will continue to be needed in the front line. The CFU program has gone from strength to strength since its establishment in 1994. There are now almost 270 units around the State, with approximately 4,700 community members involved.

By the start of the next fire season in October Fire Brigades plans to install 300 units, and there will be more than 5,000 members across the State. This will include new units on the bushfire interface around Sydney and regional areas such as Albury, Goulburn, Nowra, Tweed Heads and Singleton. It is now time to officially recognise the efforts of these civic-minded members of our community in the legislation. The number of CFUs and growing community involvement has reached a level that warrants formal recognition in the Fire Brigades Act.

I can inform members that the Government yesterday introduced a bill to Parliament to provide this statutory recognition of the CFUs' roles and functions. This also will allow the commissioner to establish CFUs and appoint members to those units and spell out the requirement to provide CFUs with training and equipment to exercise their functions. The legislative framework will also affirm public liability, WorkCover and insurance protection for CFU members working under the authority of the commissioner and in good faith. I congratulate New South Wales Fire Brigades on this positive and sensible initiative to help increase the community's fire protection.

MR GORDON STEWART PERJURY CHARGES

Reverend the Hon. FRED NILE: I ask the Minister for Justice, representing the Minister for Police: When did the NSW Police assessment begin of the case against high-profile lawyer Gordon Stewart for allegedly perverting the course of justice by twice knowingly defending millionaire paedophile Philip Harold Bell on child sexual assault charges under the false name of Philip Hill in 1967 and 1975? Did this assessment begin only after a letter was written to New South Wales Police in December 2004, about seven years after the Wood royal commission found that Stewart had referred Bell—I quote from the Wood royal commission separate report—"to counsel under a name that he knew was not his true name"?

Did this assessment in fact look at the issue of perjury by Stewart before the Wood royal commission? Did this assessment take into account the fact that the former judge, royal commissioner and first head of the National Crime Authority, Donald Stewart—who called Gordon Stewart a liar in a national newspaper—has copies of bills sent to Gadens solicitors, where Gordon Stewart was the partner in charge of Philip Bell's business, for defending a Philip Hill on two occasions, and that he could provide this and other evidence to any New South Wales police investigation? Did this assessment take into account evidence from a police interview with a witness on 18 January who, among other things, told police that Gordon Stewart knew Philip Bell socially and that he went to dinner with Stewart and Bell on two occasions?

The Hon. JOHN HATZISTERGOS: I will refer the matter to the appropriate Minister.

BRIGALOW BELT SOUTH BIOREGION

The Hon. DUNCAN GAY: My question is directed to the Minister for Primary Industries. Does the Minister accept that the New South Wales Labor Government is putting $80 million over five years—$16 million a year—into the Brigalow and Nandewar timber industry when a viable timber and apiary industry generates $50 million a year currently? What is the anticipated income to be generated following yesterday's disastrous decision? What support will be provided for communities in these regions after the five-year period? Will the Minister also detail the rural impact statements that obviously have been completed for Bingara, Narrabri, Baradine and the other communities affected by the Brigalow Belt South Bioregion decision? Will the Minister also recognise that his decision is a step backwards for the environment and for the economy of the bioregion?

The Hon. IAN MACDONALD: Certainly not. I thank the honourable member for this question. The Brigalow and Nandewar decision has always been about finding a sound, balanced decision—one that gives

security to the local timber industry, and also protects key areas for biodiversity. As members would be aware, the State Government announced the much-anticipated decision yesterday. This decision will see $80 million dedicated to job creation, industry development and conservation management over the next five years More than half of this will be directed to boosting the local timber industry—to give it added security, with 20-year contracts, and to help with value adding.

The Hon. Rick Colless: Just like the 20-year contracts on the North Coast?

The Hon. IAN MACDONALD: And it is a terrific industry on the North Coast. There have clearly been many viewpoints about this issue over the years. Yesterday's decision utilised the best elements of the various proposals put to the Government. Most importantly, it delivers the security the timber mills, employees and communities need to move forward. With this decision we expect to see seven mills operating into the future, with new 20-year supply contracts provided to each. These long-term contracts will deliver guaranteed supplies of 57,000 cubic metres of timber per year to the mills. This matches their current supply. These supply agreements, coupled with a multi-million dollar assistance scheme, will underpin the future of the mills.

Yesterday's announcement means that for the first time in years the towns of Baradine, Gunnedah, Gwabegar, Gulargambone, Dubbo and Quirindi have the confidence they need to create a viable future. I am advised that three mills have expressed a preference to exit the industry. This includes two smaller cypress mills and one ironbark mill. These mills will be compensated and all workers who want a job in the timber industry will be offered one. It is also important to note that the State Government's plan for the Brigalow and Nandewar bioregions will create a range of new jobs.

This includes an estimated 35 positions in a new thinning industry and new jobs in the conservation area. Make no mistake: the New South Wales cypress industry is one of the most innovative and progressive industries in Australia—and the State Government has moved to help protect its future. In fact, the cypress industry was the first timber industry sector in this State to undertake its own strategic planning process. The results speak for themselves. The value of cypress timber produced has increased by 45 per cent over the last five years. At the same time the annual level of production has been relatively consistent, demonstrating a sustainable and responsible management of the resource.

The PRESIDENT: Order! I call the Hon. Rick Colless to order for the first time.

The Hon. IAN MACDONALD: The industry has also invested an estimated $13 million of its own funds in recent years for a range of value-adding projects, including work in by-products. It has co-funded a project with the Forest and Wood Products R&D Corporation to evaluate the use of extractive chemical compounds present in cypress sawdust for oils—in an effort to make use of the wood's natural resistance to termites and decay. It is also looking at briquette production as briquettes can be manufactured directly from mill waste and sawdust, as well as the wood pulp residue following oil extraction. Briquette plants can also utilise other waste products such as cypress thinnings.

The Government's package will help the remaining mills expand these very important and innovative endeavours. It will also make sure that key areas are protected for the future biodiversity of the region. The State Government will continue working with all stakeholders—including our timber industries, mineral industries, conservationists, Aboriginal groups and local groups—to put this plan into action. I will continue to meet personally with the affected mills to work through their questions and concerns, as I have been. But the key point in all of this is that the communities have certainty. The mills have the security they need to invest with confidence. And now we can all get on with the job supporting the New South Wales cypress industry in efforts to become world class.

SHOWGROUNDS MANAGEMENT

The Hon. TONY CATANZARITI: My question is addressed to the Minister for Lands. What assistance does the Government provide for community showgrounds managed under the Crown reserve trust system?

The Hon. TONY KELLY: Local showgrounds are essential facilities for important community activities, such as agricultural shows, gymkhanas, trade fairs and social functions. They are often the heart and soul of our rural communities. The New South Wales Government has made available approximately $500,000 for the development and improvement of showgrounds throughout the State in the 2004-05 financial year. Over

the past 10 years more than $6.6 million has been allocated towards many showgrounds in the State enabling a diverse range of projects to be achieved. The funding is in the form of grants and loans under the Showgrounds Assistance Scheme of the Public Reserves Management Fund.

Funds are available for projects including the upgrading of pavilions and kiosks, the construction of new buildings, improvements to amenity blocks, as well as the replacement of fencing to meet occupational health and safety requirements. Both Crown reserves and freehold showgrounds are eligible for assistance. Crown reserve showgrounds are managed by community trust boards, councils and shows societies. I applaud members of the community, who volunteer their time and effort to serve on showgrounds trusts; they put in many long hours, mostly unpaid.

The Showgrounds Assistance Scheme is designed to fund the balance of costs on projects that are beyond the extent of funds available locally. The local contribution could be in the form of manual labour, funds or other resources. The Showgrounds Standing Committee considers the applications for financial assistance and provides recommendations on where the fund should be allocated. Members from State government agencies and agricultural societies in New South Wales also sit on the committee.

Honourable members may be interested in how the funds are put to work in community showgrounds. Recently a grant of $20,000 was paid to the Robertson Showgrounds Trust for the Robertson Showground. The money assisted in the major renovation of the showground, which included upgrading the power supply and installing new floodlights. It is a popular facility, often used by the Robertson Pony Club, junior rugby league and for cattle judging days. The Robertson Showground Trust and the local community raised $90,000 towards this project. It is another example of this Government working with the trusts and regional communities.

In January Shoalhaven City Council was awarded a grant of $5,500 as corporate trust manager of Milton Showground. These funds went towards a new fence in order to properly enclose the showground perimeter. The previous fence did not cover the entire boundary and the lack of security limited the usefulness of the grounds for large events. Over a six-month period the Eurobodalla Shire Council, as corporate trust manager of Moruya Showground, was awarded two grants totalling $15,000. The first grant of $6,000 helped to pay for the conservation management plan.

Two heritage-listed buildings are on the site—the pavilion and the grandstand. A framework was needed for the future direction, development and conservation of the showground. The plan included strategies for marketing and promoting the grounds to raise more revenue for the trust. The second grant of $9,000 assisted with the costs of electrical repairs, flashing around windows to prevent water run-off from damaging the pavilion, and for the treatment of rotten weatherboards and structural strengthening.

On occasion the amounts requested are relatively small but provide a welcome boost for local showgrounds. One example is the Ashford Showground where $2,000 was spent on installing a covered shade area for cattle and competitors. The annual show is held every summer in Ashford where consistently high temperatures make it very uncomfortable for the stock and patrons. The grants and loans under the PRMF serve a diverse range of projects and are beneficial to rural and regional communities.

PIT BULL TERRIER BREED IDENTIFICATION

The Hon. DAVID OLDFIELD: I direct my question to the Minister for Local Government. Is the Government aware of the difficulties related to specific identification of dog breeds? Is the Government concerned about the potential threat by American pit bull crossbreeds? Is the Government aware of suggestions that some American pit bull owners have the dogs registered as other breeds? Will the Government ensure that the complications encountered by pit bull terrier legislation in the United Kingdom are not duplicated in Australia? Will the Government's legislation impact on pit bull terriers or on all bull terrier breeds?

The Hon. TONY KELLY: The New South Wales Companion Animals Act has some of the strongest legislation in Australia in regard to companion animals and dangerous dogs, with the one exception that has banned specific breeds. The Federal Government, through its regulations, banned a number of breeds for import into Australia and the proposal now is to introduce legislation banning the breeding, selling or acquiring of any of those breeds of dogs in New South Wales. We have not used that legislation in the past because the Government took the attitude that we ban the deed not the breed—irresponsible owners. We tried to make sure that irresponsible owners became more responsible. We have heavy fines, including two years in gaol and $22,000 in fines—the most significant penalties in Australia. Obviously that is not working and we need to do more to protect our children, farm animals and other groups from attacks by these dangerous dogs.

I am not aware of overseas experiences but certainly in Queensland, where they have similar legislation to that proposed, they have some difficulty in deciding what dog is a particular breed; in other words, is it full bred or cross bred, a pit bull or Staffordshire terrier, which some people registered the dogs to get around the legislation. Some of those councils have developed a 22-point indicator that helps them identify the breed. We will look at that before we pass the legislation to see if it assists us. Today I am meeting with the local government and Shire association presidents, as well as the president of the local government rangers association to make sure that the legislation that we introduce later this year encompasses and solves some of those problems.

CHIEF SUPERINTENDENT JOHN HARTLEY APPOINTMENT

The Hon. GREG PEARCE: I direct my question to Minister for Justice, representing the Minister for Police. Why was John Hartley, while under investigation by the Police Integrity Commission, appointed to the position of Chief Superintendent, whereas other police officers missed out on senior jobs because their promotions were held up through ongoing investigations?

The Hon. JOHN HATZISTERGOS: I will refer the matter to Minister for Police.

PREMIUM RATE 190 PHONE SERVICES

The Hon. EDDIE OBEID: I direct my question to the Minister for Fair Trading. Can the Minister acquaint the House with the latest information on premium rate 190 phone services?

The Hon. JOHN HATZISTERGOS: Honourable members will be aware that at the Ministerial Council on Consumer Affairs held in Melbourne the week before last I initiated a call for the council to support an inquiry into the promotion and use of premium rate 190 phone and fax numbers. The disturbing and growing use of these expensive 190 numbers to gouge money from unsuspecting consumers and businesses through competitions and certain fax-back offers is of particular concern. In many cases they constitute little more than scams. Consumers are charged anywhere from 50¢ to $5.50 per minute and can rack up a bill as high as $40 per call for services which, in some instances, were previously free, such as the news, weather and sport.

The list I have of the various 190 numbers includes tarot card reading, love psychics—and the following might interest the Opposition—clairvoyance, lonely hearts, psychic counselling. The list also includes "the mentor line, your wise and trusted guide", which must be the honourable David Clarke, and fad diets, horoscopes, matchmaking and other competitions. Indeed, within the last year two 190 phone services competitions were held where consumers were enticed into the prospect of winning two luxury cars.

The competitions used highly intrusive, automatically generated telephone calls. Indeed, one of the competitions locks the phone for the duration of the call so people were forced to pay the maximum call cost—with charges being $5.50 and $3.46 per minute respectively. In one instance, consumers paid up to $40 to receive faxed information on disposal sales that are available for free on the Internet and in major newspapers. I am aware of one individual who was slugged $33 when trying to get contact details removed from the 190 number, despite all the warnings. The reality is that this operation is a total scam.

The industry is self-regulated by a peak industry body, the Telephone Information Services Standards Council, which produces a voluntary code of conduct. Whilst the Australian Communications Authority [ACA] has the power to regulate these expensive phone and fax service providers, the fact is that it does not. Indeed, the 2004 annual report of the Telecommunications Industry Ombudsman refers to the reluctance of the Federal Government to do anything about reining in the industry. In that report the Telecommunications Industry Ombudsman said:

> Regulation in all areas of premium-rated international voice and data call continues to be fraught with difficulty. The previous direction from the Minister to the ACA to introduce a price-capping regime has been revoked, apparently because of the united opposition of the major carriers, although no pubic statement was made.
>
> A new direction has been issued requiring the ACA to establish rules for providers to give information to customers about the cost of these services and other information.

The Telecommunications Industry Ombudsman went on to say:

> Whilst this initiative is welcome, these requirements do not constitute … do not constitute an adequate consumer protection measure; the Telecommunications Industry Ombudsman remains of the view that only price-capping can properly protect all consumers from the risks of excessive credit usage.

We do not know how much Telstra is gouging out of the pockets of consumers through these scams—no doubt the reason we do not know is that the Federal Government is planning to flog it off in a few weeks when it gets control of the Senate. Consumers will then be none the wiser regarding how much they will have to pay until they get their phone bills. The industry is urgently in need of reform. The Telephone Information Service Standards Council has agreed to raise the issue at the meeting to be held in August following a review by the Standing Committee of Officials of Consumer Affairs.

UNIVERSITY OF NEWCASTLE FUNDING

Ms LEE RHIANNON: I direct my question to the Minister for Education and Training. I refer the Minister to her comments in this place on Tuesday regarding the University of Newcastle's decision to axe up to 470 jobs in response to its purported deficit of $28 million. Given that the National Tertiary Education and Industry Union, the peak university union for the University of Newcastle, demonstrated that the actual deficit of the university was considerably less than the $28 million claimed by management, will the Minister use her ministerial authority to refer the entire university accounts to the Auditor-General under section 27B (3) (c) of the Public Finance and Audit Act so the true financial position of the university can be established? If the Minister will not refer the matter to the Auditor-General, will she say why not?

The Hon. CARMEL TEBBUTT: It is my understanding that comment on the university's operations for 2004 will appear in the Auditor-General's next report to Parliament, which should be tabled during May. The university's audited financial statements will also form part of its annual report, which I will table in Parliament before the end of May.

WHITE CYPRESS PINE HARVEST RATE

The Hon. RICK COLLESS: My question is directed to the Minister for Primary Industries. Is the Minister aware that the growth rate of white cypress pine in the Pilliga Forests is between 0.28 and 0.35 cubic metres per hectare per year? What was the harvest rate in the Pilliga Forests prior to the Government's disastrous Brigalow Belt South Bioregion decision yesterday? What is the new harvest rate allowing for 57,000 cubic metres from a forest that is now 348,000 hectares smaller than it was yesterday?

The Hon. IAN MACDONALD: The problem with the Hon. Rick Colless is that he thinks the decision is confined to the Pilliga.

The PRESIDENT: Order! I call the Hon. Melinda Pavey to order for the first time.

The Hon. IAN MACDONALD: We will be sourcing timber—

The Hon. Rick Colless: You don't know, do you?

The Hon. IAN MACDONALD: I could say 30 things about this, and the Hon. Rick Colless would not have a clue what I say. We will be signing 20-year wood supply agreements; we will meet our contracts.

The Hon. RICK COLLESS: I ask the Minister a supplementary question. Is it a fact that the new harvest rate will exceed the growth rate of the remaining forest area?

The Hon. IAN MACDONALD: The Hon. Rick Colless has missed the point again. He thinks that the supply of white cypress is confined to the Pilliga. It is not.

PINK SALT STAFF WAGES RECOVERY

The Hon. PETER PRIMROSE: My question is addressed to the Minister for Industrial Relations. Will the Minister inform the House about action taken by the Office of Industrial Relations to recover wages for restaurant staff?

The Hon. JOHN DELLA BOSCA: I thank the Hon. Peter Primrose for his ongoing interest in industrial relations matters. I am happy to inform the House that the Pink Salt restaurant at Manly has back-paid staff more than $8,000 in unpaid wages. Members may be aware that Pink Salt is competing in the *My Restaurant Rules* television program, and recently was subject to an investigation by the Office of Industrial Relations. The investigation followed an episode of the program in which workers were told their pay had been

cut and they would be placed on Australian Workplace Agreements [AWAs]. Pink Salt co-operated fully throughout the investigation and has now made back-payments of $8,187 to 26 employees.

I congratulate the owners of the restaurant on doing what the vast majority of employers do: happily following the rules once they are made aware of them. The restaurant is now complying with New South Wales industrial laws, including paying staff the correct rates, issuing payslips, and maintaining proper employment records. Once again the New South Wales industrial relations system has worked effectively to protect the rights of workers and ensure that employers understand and meet their obligations towards staff.

The PRESIDENT: Order! I call the Hon. Melinda Pavey to order for the second time.

The Hon. JOHN DELLA BOSCA: This case provides conclusive evidence that the Commonwealth Government's proposed single industrial relations system, the so-called unitary system, which is based on AWAs, would be used to lower wages and reduce working conditions.

The PRESIDENT: Order! I call the Hon. Catherine Cusack to order for the first time.

The Hon. JOHN DELLA BOSCA: Without the safety net of common rule award, AWAs give employers the power to slash pay and working conditions without consultation or negotiation. Staff at Pink Salt discovered first-hand the financial impact of AWAs on workers and their families. However, they were able to use the safety net of the New South Wales industrial relations system, including award wages and a well-resourced compliance team.

If the Federal Government had its way, workers throughout the country would be subject to secretive AWAs under the Federal system, with no effective way of fighting for their entitlements. This year the New South Wales Office of Industrial Relations will inspect more than 11,000 New South Wales workplaces and the employment records of more than 100,000 employees. In Manly, where Pink Salt is located, another compliance campaign covering 50 businesses is scheduled for July.

The New South Wales industrial relations system works well to protect the rights of employees and to ensure that competing businesses comply with the law. It assists to promote fairness, industrial harmony, and productivity. On the other hand, the Federal system is based on conflict, with no safety net and an inferior record on strikes, lockouts and the speedy resolution of disputes. One would not deny car buyers a choice of models and call it efficient; nor should New South Wales employers and workers be forced to use the faulty, unfair and inefficient Federal system simply because it is the only system available. As the Pink Salt case demonstrates, the Commonwealth's drive for a unitary system is aimed not at efficiency but at lowering wages and conditions, and the living standards of New South Wales families.

IMMIGRATION

The Hon. Dr PETER WONG: My question without notice is directed to the Special Minister of State, representing the Premier. A report on the impact of immigration cited in the *Sydney Morning Herald* of Friday 29 April 2005 found that the New South Wales economy stands to gain $60 billion per annum by 2022 because of increased immigration to New South Wales. Why does the Premier continually insist on cutting the immigration level, contradictory to the Federal Government's initiatives and, indeed, the views of his peers in other Labor States? Why does the Premier also insist that immigrants are responsible for ruining New South Wales' public infrastructure, including the Central Coast water supply? Will the Premier stop blaming migrants for his Government's failures, and accept that New South Wales infrastructure problems are of his own making?

The Hon. JOHN DELLA BOSCA: I have not heard the Premier say any of the things that the Hon. Dr Peter Wong has attributed to him. However, I will ask the Premier to respond to the honourable member's question as soon as practicable.

IRRAWANG PRIMARY SCHOOL HALL

The Hon. ROBYN PARKER: My question without notice is directed to the Minister for Education and Training. Will the Minister follow up on an assurance given to the Parents and Citizens Association of Irrawang Primary School, in Raymond Terrace, by former education Minister Refshauge last year that their enrolment numbers would be reviewed to take into account the extra 200 preschool children and the extra 110 children who attend the Thou-Walla Family Community Centre on the grounds each week, so that their 20-year

campaign for a school hall can be revisited? Is a group of 703 children on school grounds enough to warrant a school hall, or will the students of Irrawang Primary School have to continue to hold school assemblies on cold concrete? Is the Minister able to give a timeframe for the inclusion of this project in future capital works budgets?

The Hon. CARMEL TEBBUTT: I am aware of the Irrawang Primary School's campaign for a school hall and I will follow up the issues the honourable member has specifically raised. As to the question about whether I can commit to a timeframe in which that school or any other school would get a school hall, no, I cannot do so at this stage. The provision of school halls is part of the department's capital works budget. The department will spend $364 million on capital works this financial year, but we prioritise that funding. Clearly there are many demands on the Department of Education and Training's capital works budget. We have built many new schools, provided many halls, and undertaken many upgrades under our capital works budget, but funding has to be prioritised in accordance with need.

While enrolment figures are only one factor that the department looks at as part of prioritising its capital works budget, the provision of halls is a critical factor. I am aware that this creates anxiety and concern, particularly in smaller regional communities where it is very hard to meet the minimum required enrolment in order to be moved up the priority list for a hall. I will look at the issues raised by the honourable member and I undertake to get back to the House.

RECYCLED GARDEN MATERIAL

The Hon. KAYEE GRIFFIN: My question is addressed to the Minister for Primary Industries. Will the Minister update the House on new research that is being conducted into the manner in which recycled garden clippings may boost the growth of agricultural crops?

The Hon. IAN MACDONALD: Every year Sydneysiders produce some one million tonnes of lawn and garden clippings, including grass clippings, prunings and other organic materials. This is used to create 500,000 tonnes of recycled organic products, such as composted mulches and soil conditioners for the landscaping and home garden industries. Currently, only about 4 per cent of recycled garden material produced in New South Wales is used in agriculture. As our urban centres grow, it is vital that we continue to look for new uses for garden off-cuts—and agriculture could be the perfect fit.

I am pleased to inform the House that a new four-year research project conducted by scientists at the State Government's Centre for Recycled Organics in Camden is looking to improve that figure. Scientists will evaluate the impact that recycled garden material can have on agriculture. They believe that these materials could help to improve soil health, crop growth, productivity and economic returns to growers.

Scientists will also determine whether recycled organics can help farmers cut back on the quantity of fertiliser they use to help with water retention. If recycled materials deliver quantifiable benefits to farmers, the research could lead to the creation of new markets for recycled garden materials. Researchers have planted the first batch of vegetables in experimental plots, which I inspected the other day, treated with soil conditioner made from recycled garden materials. Some 4,500 broccoli seedlings have been sown. In fact, last Friday I had the pleasure of visiting the centre and planting some of the broccoli plants. In about October, honourable members will be able to see the fruits of my labour. Over the next three years researchers will be testing the performance of organic materials on a range of other crops including cabbage and maize.

The Sydney Basin and central western New South Wales will most likely be the first areas targeted for recycled organic products from Sydney, given their proximity to the area, and the prevalence of horticulture and viticulture growers there. This research project is part of the Carr Labor Government's strong and detailed commitment to help increase profitability and sustainability in agriculture. It could also provide important environmental benefits by recovering resources that might otherwise end up in landfill. The four-year research project is a joint initiative between the New South Wales Department of Primary Industries and the New South Wales Department of Environment and Conservation. I look forward to updating honourable members in the near future on the results of the research by the Centre for Recycled Organics.

[*Interruption*.]

Is the Hon. Charlie Lynn suggesting he does not like this project that is being undertaken at Camden in the south-west of Sydney to try to improve farming practices across the State?

The Hon. Charlie Lynn: I said your consumption of cabbage would add to the carbon dioxide.

The Hon. IAN MACDONALD: Is he saying that? He is saying that! He has been sitting over there, cuddling up to David Clarke—

The Hon. Charlie Lynn: Point of order: I was referring to the carbon dioxide produced by the Minister as a result of the overconsumption of cabbage.

The Hon. IAN MACDONALD: It is about time the honourable member kept his cabbages to himself. I commend this great project, even to the Hon. Charlie Lynn.

NEWSAGENTS AND KIOSKS BUS TICKETS SALES COMMISSION

The Hon. PETER BREEN: My question without notice is directed to the Minister for Justice, and Minister for Fair Trading, representing the Minister for Transport. Is the Minister aware that since 23 March 2005 newsagents and kiosks that sell bus tickets have had their commission rate reduced from an average 4.7 per cent to a flat 2.5 per cent? Is he aware that State Transit representatives adopted a take-it-or-leave-it approach with selling agents who did not accept the new commission arrangements? Does the Minister agree that if there are fewer agents selling bus tickets, commuters will purchase their tickets on buses, creating long queues and causing buses to run out of timetable order? Will the Minister commit to meeting with the Newsagents Association of New South Wales and the Australian Capital Territory to ensure that sufficient numbers of newsagents and kiosk owners continue to sell bus tickets in order to prevent chaos on the buses?

The Hon. JOHN HATZISTERGOS: I will refer the matter to the Minister for Transport.

SUPPORTED ACCOMMODATION PLACES FUNDING

The Hon. JOHN RYAN: I acknowledge the presence in the public gallery of Mr Peter Kell, the newly appointed Chief Executive Officer of Anglicare New South Wales. My question is directed to the Minister for Disability Services. Why has the New South Wales Government not made an application for funding that is available from the Federal Government under its Innovative Pool Funding Program, which offered this State up to 100 supported accommodation places over two years? Is it true that the Victorian Government has used this funding to provide accommodation to get a number of young people out of nursing homes in that State? Why is the New South Wales Government unable to do the same so we can offer some hope to a number of the 400 young people in this State who are inappropriately living in aged care accommodation?

The Hon. JOHN DELLA BOSCA: The honourable member has asked an important question, one that has exercised my mind. I had some active discussions with the Federal Minister, Miss Julie Bishop, about four or five weeks ago. One of the problems we have—and I am sure the Minister for Education and Training would attest to this—is that the proposed funding arrangements, though apparently generous at first blush, unfortunately have the structural disability that one is identifying people who have, in most cases, lifetime needs or certainly long-term needs, whilst the proposed funding arrangements are short-term, which creates a massive problem for the New South Wales Government.

I have given an undertaking to the Commonwealth Minister to see if there are ways in which the New South Wales Government can look at taking up a share of this funding in an innovative way. I think the honourable member will find, although there may have been some new developments in Victoria of which I am not aware, that in the Victorian instances where this funding has been taken up, it has been taken up by a non-government organisation, whose name escapes me, for a specific program. That non-government organisation will then take over some of these long-term funding issues. The essence of the answer to the honourable member's question is yes, I am obviously keen to identify any common ground with the Commonwealth in relation to ways to better service this category of persons who need support.

I have started some fairly preliminary discussions with the Commonwealth Minister, and they are being progressed at an officer level. I would like to believe that if we are prepared to look at some ways in which we could utilise these offers the Commonwealth would be prepared to be more flexible in the way it offers the available funds. We are also, of course, simultaneously discussing with some relevant non-government organisations the possible provision of funding for some of these high needs areas.

The Hon. JOHN RYAN: I ask the Minister a supplementary question. Were any of the discussions you referred to prompted by representations from one of your Labor colleagues who sought to use this funding in his electorate to provide accommodation for 11 aged people living in aged-care facilities?

The Hon. JOHN DELLA BOSCA: I have to say no. The direct answer to the member's supplementary question is that the discussions with the Federal Minister occurred as a result of representations she made directly to me on becoming Minister. She wanted to clear up a number of matters between the two agencies, and the discussion came up in that context. I will make inquiries about the set of circumstances the member is referring to and, if required, come back with a further answer.

CIGARETTES NATIONAL FIRE SAFETY STANDARD

Mr IAN COHEN: My question is directed to the Minister for Emergency Services. Given that discarded cigarettes are estimated to cause around 7 per cent of bushfires in Australia, resulting in an average 21 deaths a year, $80 million annual costs, and immeasurable damage to native species and the environment, what action will the Minister take before the next bushfire season commences to ensure that a national reduced-fire-risk cigarette standard is developed to save lives, money and bushland?

The Hon. TONY KELLY: A very good question from the Hon. Ian Cohen, the sentiments of which I totally support. At the last Council of Emergency Services Ministers I raised just that point. The Ministers were all supportive of a proposition I put forward to introduce the reduced-fire cigarettes. I believe that these cigarettes are available in New York State and in Canada. They do not contain the chemicals that make them continue to burn when a person stops smoking them; they extinguish themselves automatically. So if a smoker falls asleep in bed or on a lounge chair and drops his or her cigarette, the cigarette will automatically extinguish rather than ignite the bed or the chair, and possibly burn the house down and cause death.

I cannot specifically remember the statistics on burning cigarettes causing house fires resulting in the loss of life, but they are high, in the order of the statistics quoted by the Hon. Ian Cohen. I can report to the House that there was unanimous agreement at the ministerial council meeting that by March next year we will have a protocol to introduce reduced-fire-risk cigarettes uniformly across Australia. Because the Federal Government will have to agree to it, during the council meeting we got the Federal Government Minister to agree to that timeframe for the protocol.

ALPINE WAY ROAD 627

The Hon. PATRICIA FORSYTHE: 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 Minister had discussions or negotiations with Tumbarumba Shire Council regarding the Alpine Way Road 627? Why have the last 11 kilometres of the Alpine Way Road 627, from the Bringenbrong bridge to Kosciuszko National Park, not been declared a State road, removing inconsistencies in jurisdiction between council and the Roads and Traffic Authority?

Why has the Minister allowed just 11 kilometres of the entire length of the Alpine Way 627 to remain under the control of council, which has insufficient funds to maintain this important tourism road? Is it acceptable for a major road to be controlled by several jurisdictions that apply different engineering standards and funding? How many lives have been lost on the 11 kilometres section in the past four years, and how many lost lives will it take for the Minister to complete the negotiations and take control of the road?

The Hon. MICHAEL COSTA: I do not know who wrote that question for the honourable member, but she obviously does not understand the way our road funding arrangements work. There are a number of tiers in terms of how we—

The Hon. Michael Gallacher: There are a lot of tears. It's Bringenbrong, not Bringabong, by the way.

The Hon. MICHAEL COSTA: Bringenbrong, was it? I am glad the honourable member is so interested in the question that he is prepared to make those sorts of interjections. The way we fund our roads is quite complex; it involves the national Government having a key responsibility through funding arrangements that are currently tied up in terms of Auslink. I have already explained this to the House.

The Hon. Duncan Gay: It's a council road.

The Hon. MICHAEL COSTA: If you understood anything about anything you would understand that road funding is funded through three sources: the Commonwealth, the State and councils.

The Hon. Duncan Gay: Who funds councils?

The Hon. MICHAEL COSTA: Then it ought to be funded by the council. There is a mechanism that is in place, if the honourable member is prepared to listen, that deals with road classification, called the Road Classification Review. That review involves a number of stakeholders coming together and determining priorities about roads and their classification. That body is the body that makes the judgments that the honourable member is referring to. I do not sit down and personally negotiate with individual councils; it would be quite inappropriate to do that. It is up to the Road Classification Review to determine the classifications of roads, and that becomes the basis of a range of funding arrangements, some national and certainly some State.

I am not going to indulge in an exercise of pork-barrelling on the basis of the regional grants program that the Federal Government was involved in. The Federal Government went around with public funds and sat down with individual councils for pork-barrelling political reasons and came up with projects.

The Hon. Duncan Gay: Name one.

The Hon. MICHAEL COSTA: You know the one in your area. We will go through a sensible process of designating road classifications and funding appropriately rather than what it appears the Liberal Party is used to doing: sitting down with local councils and pork-barrelling for political advantage.

PRIMARY SCHOOL STUDENTS FINANCIAL EDUCATION PROGRAM

The Hon. IAN WEST: My question without notice is directed to the Minister for Education and Training. What action is the Government taking to teach primary school students how to handle finances?

The Hon. CARMEL TEBBUTT: I could think of some members on the other side of the House who could perhaps benefit from this education initiative. It is never too early to learn how to be financially responsible. As Mr Micawber said, the ability to handle finances well is the difference between happiness and misery. Recent research shows that young people are overrepresented among the least financially literate. In fact, 37 per cent of the least financially literate people in Australia are young people aged 16 to 20. That is a worrying figure.

New South Wales is leading the way in recognising the importance of beginning financial education early in life. Recently I launched the MakingCents program, which is a program to help primary school students develop critical literacy and numeracy skills. It is a clever name, but I cannot take responsibility for it. The program is a national first. It is the first curriculum-based financial education program for primary school children in Australia, and it will also be available to other States and Territories. It was trialled in a number of schools in 2003 and 2004 and was judged by teachers to be an overwhelming success.

The material is to be taught to primary school children aged from years K1 to 6, and it is the result of extensive research into financial literacy programs internationally. We only need to look at the financial management skills among the broader population to understand the importance of teaching these skills at an early age. Household debt and credit card debt are on the rise. Of almost 22,000 Australians declared bankrupt last year, 10 per cent were aged between 15 and 24 years.

It is important to start teaching about money early in life so that young people are equipped with the skills to handle money later in life. Primary school children are already actively engaged in financial transactions, and Citibank has been one of the partners of this project. At the launch, as the director of Citibank indicated, primary school children are a key influence on significant financial decisions that families make, including things like going on a holiday and buying a car.

For schools, the MakingCents Program serves more than one purpose. Schools are able to focus on the New South Wales curriculum requirements, as well as using new and interesting materials to teach good money management. The program will be implemented in three stages from years K-6. It will be included in the syllabus for mathematics, as well as human society and its environment.

Students in years 1 and 2 will learn how to handle money, the value of money in relation to everyday items and consider the advantages of savings. Students in years 3 and 4 will learn about budgets and the language of finance, and keep some simple financial records. Students in years 5 and 6 will learn about the traps and fine print of mobile phone use. Students will also learn about banking and credit, and have the opportunity to put their learning into practice by running an actual school event. The Department of Education and Training will conduct training sessions for teachers from all New South Wales school sectors to introduce them to the program. As I said, the cost of the courses, like the development of materials, is being met by the Finance First

Project, which is funded by the Citigroup Financial Literacy Foundation. I congratulate all those who have been involved with this model of a government and business partnership, and I thank them for their contribution.

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

LUNG BUS SCREENING EQUIPMENT

The Hon. JOHN DELLA BOSCA: Yesterday Mr Ian Cohen asked me a question without notice concerning the Dust Diseases Board's Lung Bus. I shall provide the House with a supplementary response to the response I gave yesterday. The Lung Bus is fitted out with a digital X-ray system manufactured by Fuji Medical, which is equal to the best industry standard. The digital printer used in conjunction with this system produces images with a pixel size of 100 microns, which provides a high-quality diagnostic X-ray. The screening procedure on the Lung Bus is designed to detect serious respiratory problems while exposing subjects to minimal risk arising from the screening procedure.

While it would not be appropriate for me to disclose whether any pleural plaques were found in the lungs of any Baryugil people, I can assure honourable members that, despite what the honourable member said, the equipment on the Lung Bus is able to detect pleural plaques. While computer tomography [CT] scans are more sensitive at finding pleural plaques than X-rays, medical experts generally agree that performing routine CT scans on subjects would be unsafe as those subjects would be exposed to radiation levels up to 50 times above a plain chest X-ray, which is itself potentially harmful.

The Lung Bus is a mobile screening service, and a service of this kind simply does not have the capacity to have CT equipment installed. Pleural plaques are not a precursor to mesothelioma. Most people with mesothelioma do not manifest pleural plaques. Plaques are an indicator that the patient has had exposure to asbestos only. Pleural plaques are not compensable under the Dust Diseases Act. The overwhelming opinion of medical experts is that pleural plaques do not cause symptoms or disablement. In summary, the Lung Bus provides state-of-the-art equipment designed to detect significant health problems while maintaining maximum safety for workers screened. The Lung Bus has successfully performed this task over the past four years.

SUPPORTED ACCOMMODATION PLACES FUNDING

The Hon. JOHN DELLA BOSCA: Earlier in question time the Hon. John Ryan asked me whether I had received representations from colleagues relating to the utilisation of Commonwealth funds for substitute funds for nursing homes in the high needs pool. Representations have been made to my department, and my office is currently dealing with representations from my colleagues in the lower House the honourable member for Camden and the honourable member for Campbelltown regarding the issue of people in nursing homes. I will be providing them with further details in response to their representations.

OFFICE OF FAIR TRADING BUILDING PRACTICES COMPLAINTS

The Hon. JOHN HATZISTERGOS: Yesterday Ms Sylvia Hale asked me a question about a complaint purportedly lodged by Mr Bruce Berry with the Office of Fair Trading about the conduct of Hazzouri Constructions Pty Ltd, the letter being dated 9 June 2004. I am able to advise the House that Fair Trading has no record of a complaint being received from Mr Berry or from any other person in relation to the conduct of this building company.

Questions without notice concluded.

APPROPRIATION (BUDGET VARIATIONS) BILL

COAL ACQUISITION AMENDMENT (FAIR COMPENSATION) BILL

Bills received.

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

Motion by the Hon. John Della Bosca agreed to:

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

Bills read a first time and ordered to be printed.

JOINT STANDING COMMITTEE UPON ROAD SAFETY

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 Noreen Hay be appointed to serve on the Joint Standing Committee Upon Road Safety in place of Marianne Frances Saliba, discharged.

Legislative Assembly
5 May 2005

JOHN AQUILINA
Speaker

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

WORKPLACE FATALITIES

Ministerial Statement

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: I seek leave to respond to the earlier ministerial statement.

Leave not granted.

CLASSIFICATIONS (PUBLICATIONS, FILMS AND COMPUTER GAMES) ENFORCEMENT AMENDMENT (X 18+ FILMS) BILL

Second Reading

Debate called on, and adjourned on motion by the Hon. Peter Primrose.

BUSINESS OF THE HOUSE

Postponement of Business

Private Members' Business item No. 5 inside the Order of Precedence postponed on motion by the Hon. Don Harwin, on behalf of the Hon. David Oldfield.

FAIR TRADING AMENDMENT (RESPONSIBLE CREDIT) BILL

Bill introduced, read a first time and ordered to be printed.

Second Reading

Ms SYLVIA HALE [2.35 p.m.]: I move:

That this bill be now read a second time.

Unfortunately, members of this House will be all too familiar with stories of vulnerable people being lured into completely unmanageable levels of personal debt, particularly credit card debt. In researching this bill I was told of old-age pensioners with no assets and no income other than the pension accumulating credit card debts of more than $50,000 and of unemployed students with four department store cards and three credit cards all "maxed out". There are reports of children barely out of school with crippling debts of tens of thousands of dollars.

Young people are particularly at risk with their have-it-now, deal-with-the-consequences-later mentality. They easily succumb to the aggressive marketing techniques of the finance industry. Mobile phones and credit cards are the main items pushing young people into unsustainable levels of debt. As long ago as 1999, Insolvency and Trustee Service Australia estimated that the average level of debt of 18 to 24 year olds was approximately $5,000, with 24 per cent of all people in the age group reporting difficulties servicing debt.

But it is not only young people who are at risk. The Reserve Bank reports that between 1999 and 2004 the number of personal, non-business bankruptcies rose from 4,994 to 16,441. That represents a fourfold increase in 15 years in the numbers of people whose levels of debt have become unmanageable. One of the biggest causes of these personal financial catastrophes is the credit card. The banking industry's own watchdog, the Banking and Financial Services Ombudsman, reported in 2004 that credit cards were the most complained about financial product in New South Wales, representing 81 per cent of all consumer finance complaints and financial counsellors report a sharp increase in the number of people with levels of credit card debt that they have no hope of ever managing to repay.

With interest rates on store cards being as high as 25 per cent and interest on most credit cards averaging 16 per cent, merely repaying the interest, let alone the capital, can cause serious financial difficulties. Credit card limits, which peg the total amount that cardholders can borrow, have surged. CPA Australia estimates that over the past 10 years the 13 per cent increase in credit limits has risen to a record $75.36 billion, meaning Australians can now borrow up to $75 billion on their credit cards. The Reserve Bank reports that in 2004 the total amount borrowed on credit and charge cards reached $28.2 billion. The Reserve Bank estimates that interest is being paid on approximately 75 per cent of this amount, that is, on the debt amounting to approximately $21 billion.

Visa International reports that only about 35 per cent of all credit card holders actually pay interest on their debt. Those able to pay off their credit cards within the interest-free period are not obliged to pay any interest at all. For the fortunate 65 per cent who accrue no interest, the service offered by credit cards is effectively free. But for the other 35 per cent the service is very expensive indeed. As the Visa and Reserve Bank figures demonstrate when taken together, the interest burden on the $21 billion of debt on which interest is being paid is being borne by the bottom 35 per cent of all cardholders—the customers who can least afford to bear the burden.

The poorer one is, the more one pays. Those who are able to make only minimum repayments could take 50 years to pay back a few hundred dollars. And the interest charged over that time would be many times the original amount borrowed. My parliamentary credit card account with the Commonwealth Bank, which charges 16.9 per cent annually, is a case in point. It would take me 129 years to pay off a $2,000 loan if all I made were the minimum repayments indicated on each monthly bill. And that is if I stop using the card—if I were to tear it up. It would take me 129 years to eliminate the original debt, in the course of which I would pay $6,348 in total, that is, $2,000 in principal and more than double that, $4,348, in interest.

Rising levels of unsustainable debt destroy people's lives. People who are already economically stressed make no-win financial decisions on a daily basis: decisions that trade off unbearable alternatives such as money for a bus ticket to get to a job interview, or food for the kids' school lunch. For people in this situation credit cards are not about buying luxury items but about providing the basic necessities of life. What would most people choose if the electricity disconnection notice arrived in the same mail as a pre-approved credit limit increase?

Using the Reserve Bank's conservative figures, 95,000 credit card customers are in extreme financial stress. How do these people regain financial control of their lives? The simple answer is that in many cases they do not. They grind on for years struggling to cope, robbing Peter to pay Paul, often borrowing on one card to make minimum repayments on another. In the process some pay up to 50 per cent of their income in interest payments.

Much of the problem stems from unsolicited, pre-approved, credit limit increases. Lenders mail out offers to increase credit limits without first assessing whether the cardholder actually has the capacity to repay the loan. One unemployed woman had her credit increased incrementally from $2,000 to $10,000 without any assessment of her financial situation being undertaken. Financial counsellors report that it is common to find people with no income other than a government benefit with credit card limits greater than their entire annual income. As long as minimum repayments are made each month lenders are prepared to push people further into debt. As a marketing strategy it is highly profitable. It is also highly unethical. The banks and credit card lenders know this. The Banking and Financial Services Ombudsman, whose activities are underwritten by 30 banks and 17 non-bank financial institutions, acknowledged the problem in the 2004 annual report:

> For Credit Card accounts the main problems identified were unauthorised transactions and maladministration in providing credit. Maladministration arises when credit is provided to a customer in circumstances where they had no reasonable prospect of servicing the repayments.

Yet, despite identifying the problem, the industry has done nothing to fix it. Following recommendations from the Australian Bankers Association in 2001, the Banking Code of Practice was amended to place some responsibility on lenders prior to increasing credit limits. This measure, however, has had virtually no impact because the code is a voluntary one and is self-administered by the industry, with no mechanisms in place for compliance or enforcement. Moreover, the code applies only to banks and not to the multitude of other financial institutions that now offer credit cards. Rather than accepting responsibility for conducting adequate assessments and protecting vulnerable customers from becoming enmeshed in dangerous levels of debt, the industry defends its practices.

The sector places the onus onto individuals to manage their own affairs, arguing that people should take personal responsibility for their own spending habits and financial management. And, in an ideal world, they would. The Greens do not dispute this. But what the personal responsibility argument conveniently does is to shift all responsibility from those who have the resources, skill and capacity to manage money onto those who do not. To exploit the young, the vulnerable, the poor—to take advantage of those in straitened circumstances—may be commercially astute, but it is also immoral. And this is what this bill addresses. Its purpose is to transfer a fair and reasonable level of responsibility and accountability back onto credit providers.

I will now deal with the specific provisions of the bill. The most significant provision requires lenders to conduct an assessment of a debtor's ability to repay the loan before a contract is issued or a credit limit increased. Currently, credit providers conduct such checks only when a new customer applies for an account. As long as that customer meets the monthly minimum repayments credit can be quickly increased to unsustainable levels without any further checks being undertaken. The financial institution makes the brave, and I believe disingenuous, assumption that because a customer is meeting minimum monthly repayments he or she can afford more debt. And so they offer more. But keeping up with interest payments and paying off principal are not one and the same thing. The current system used by credit card providers actively pushes people into unmanageable debt. This provision of the bill will mean that credit providers cannot provide credit or increase a credit limit if they know, or ought to have known after reasonable inquiry, that the debtor could not repay the loan without incurring substantial hardship.

The term "financial hardship" is consistent with terminology used elsewhere in the Consumer Credit Code, but the bill goes further. It stipulates that substantial hardship in this instance means that the creditor must be satisfied—based on its assessment of the applicant's ability to pay—that the debtor has the ability to repay the loan in full within a five-year period. This does not mean that all credit card debt must be repaid within five years. Rather, it means that the credit provider, in its assessment of financial capacity, must assume that debtors have the ability to repay the debt within this period and decline either to issue the card or to increase the limit if that reasonably appears to be beyond the capacity of the borrower. A five-year loan at 17 per cent interest constitutes a very substantial loan.

The 2004 annual report of the Banking and Financial Services Ombudsman referred to the case of an old age pensioner whose financial institution permitted her to run up a debt of $74,000 because she was meeting the minimum monthly repayments. She was doing this by placing her entire pension into her credit card account each month. Such a situation should never have been allowed to happen. Yet under the current legislation there is nothing to stop it. Credit checks are hardly a new practice. We are not asking the finance industry to learn new tricks, or perform a costly new function.

We are asking them to do something that they already do when they first assess an application for a credit card. All the bill requires of the industry is for credit card providers to assess the ability to pay each time an increase in credit limit is sought and to make an informed and reasonable decision in the light of that assessment.

The bill also includes a compliance mechanism. Rather than a penalty in the form of a fine, the bill stipulates that where credit providers fail to assess a debtor’s ability to repay, and where that customer subsequently runs up a bill that a prior check would have revealed they had no realistic capacity to repay, then the liability will rest with the credit provider and not the customer and there will be no obligation on the customer to repay the debt. If the credit provider has been reckless and has failed to carry out appropriate checks, then that provider should live with the consequences.

Of course, the finance sector will not like this provision. I have no doubt that this is precisely why this bill will provide an effective incentive to action, far more effective than the current voluntary code of practice, in ensuring that the industry thinks twice before extending credit irresponsibly in the first place. This penalty

provision is necessary because the only currently available avenue of redress for a debtor is to take legal action, or to threaten legal action, against a financial provider if the debtor believes the provider has been wilfully negligent. Not surprisingly, this seldom occurs because distressed customers, already in a state of deep financial hardship, seldom have the financial or emotional wherewithal to take on the banks.

The bill also improves disclosure about fees and charges. It is true that monthly credit card statements already show interest charged and standard fees and charges, but more can be done. Surveys show that approximately 81 per cent of customers do not know the interest rate being charged or the cost of other charges incurred. Most people do not understand or cannot conceive that making the minimum monthly repayment on a $2,000 credit card debt means that it will take them 129 years to pay it off. This bill requires that a clear explanation of, first, how much interest is being charged; second, how much interest will be charged on the outstanding balance; and, most important, third, how long it will take a customer to repay a loan if all they do is to make the minimum monthly repayment stipulated on the statement. Improved disclosure and more information being provided to the customer is not a panacea for all the problems that credit cards present. But the more information a customer has, the better equipped he or she will be to manage their use of credit cards responsibly.

I would like to turn now to the final provision of the bill, namely extending credit beyond the limit set down in the contract. Once again, it is extraordinary that this even occurs, but let me assure honourable members that it does. Under the Consumer Credit Code lenders are not permitted to extend the limit set down in the contract without the written consent of the debtor. This is why unsolicited credit limits require the borrower to sign and return the letter accepting the credit before the new credit limit takes effect. While it may be the law that credit lenders cannot extend the credit limit without first obtaining written consent, to all intents and purposes the industry is flouting this requirement.

Gone are the days when a customer went to use a credit card, only to be told at the cash register that they had reached their limit. Many credit providers today simply extend credit beyond the limit stipulated in the contract. So, although credit providers are not permitted to alter the contract without written consent, they regularly extend credit beyond the level set in the contract. The Banking and Financial Services Ombudsman's guidelines covering credit card complaints detail the case of an unemployed woman with a credit limit of $3,000, who managed to run up a bill of $13,000 without the financial institution doing anything to stop purchases on the card, despite knowing about the problem as soon as the account was 10 per cent overdrawn. Why was a stop not put on her account?

This situation was first raised by the Ombudsman in 1995, yet virtually nothing has been done in the nine years since then to rein in the practice. In fact, things have gone backwards. In recent years many credit card providers have introduced a new penalty fee known as an "over limit" charge. So, rather than the banks doing their job and customers being told at the cash register that they cannot exceed their limit, now they are hit with a penalty fee and at the same time offered even more credit, pushing people further into unsustainable debt. This bill will put a stop to this practice.

Proposed section 62A reaffirms that a credit limit cannot be extended without the written consent of the debtor. It goes further to require that credit not be extended more than 10 per cent above the level of the limit set in the written contract. The bill sets a 10 per cent buffer to allow some flexibility for accounting fluctuations and minor variations resulting from items such as overseas currency conversions, or incidental fees and charges associated with direct debits. But the credit card providers would no longer be able to countenance, encourage and in fact connive in the running up of debts of $13,000 on a card with a $3,000 limit.

Let me say that these problems are well known. Financial counsellors and key organisations working on these issues at a policy level, organisations such as the Consumer Legal Credit Centre and the Council of Social Service of New South Wales, have been calling for reform for some time. These reforms are not radical. A bill very similar to this was introduced by the Australian Capital Territory Government in 2002.

The Greens are not opposed to credit per se. Borrowing capital is a time-honoured way to create wealth and get ahead in life. But there are different ways of borrowing money. Credit cards can be extremely handy but they are also very expensive. They give consumers tremendous flexibility and enable people to manage their purchases and cash flow in their own way, in their own time. But credit cards, by their very nature, lure people into spending more than they otherwise might. Once the purchase has been made, consumers are then hit with one of the most expensive ways of borrowing money. Paying 16 per cent interest over 10 years on a $10,000 credit card debt is not the most effective way of managing money.

Pushing people into unmanageable levels of debt is not ethical. Nor is it in the interests of the broader community. It is time for credit card providers to start shouldering their share of the responsibility for a fair and just credit system. It is time they helped to extricate people from crippling levels of debt, by putting steps in place to ensure they do not get into unmanageable debt in the first place. This bill puts the responsibility back onto credit card providers by forcing them to conduct an assessment of a customer's ability to repay. It demands greater disclosure of fees and charges, and stops financial institutions flouting credit limit requirements and issuing never-ending credit. All these provisions are eminently sensible and I urge members of the House to support the bill.

Debate adjourned on motion by the Hon. Peter Primrose.

BUSINESS OF THE HOUSE

Postponement of Business

Private Members' Business item No. 7 in the Order of Precedence postponed on motion by the Hon. Rick Colless, on behalf of the Hon. John Ryan.

Private Members' Business item No. 8 in the Order of Precedence postponed on motion by the Hon. Peter Primrose, on behalf of the Hon. Dr Peter Wong.

SHEEP INDUSTRY

Debate resumed from 7 April 2005.

The Hon. RICK COLLESS [3.01 p.m.]: I support the Hon. Amanda Fazio's motion. I wish to say at the outset that I was a little concerned when I heard that the Hon. Amanda Fazio was to move the motion, for one very good reason: I do not believe that People for the Ethical Treatment of Animals [PETA] should be given any oxygen, and I was concerned that the motion would simply give oxygen to the group. It was interesting to hear Amanda Fazio speak on this issue, which she clearly knows little about. During her contribution she basically read from prepared notes, and she appeared not to understand the specifics of what she was speaking about. Despite that, I thought she did a pretty good job.

I would like to place on record my views about this issue. What concerns me about the group PETA and its approach to mulesing is what farming activities the group will turn to if mulesing is discontinued. That is my real concern. Potentially PETA could next get its teeth into other animal management practices that occur on farm, such as ear-tagging of cattle and sheep, dehorning of cattle, castrating of lambs and calves, and foot-paring, shearing and tail-docking of lambs. Mulesing is an essential farm management practice if fly strike in sheep is to be prevented. With the development of soft rolling skin sheep—which has resulted in more folds on the sheep, allowing the growth of more wool fibres and therefore an increasing wool yield—mulesing has become an essential farm management practice to prevent fly strike. Sheep that have soft rolling skin are far more susceptible to flies, whereas the British crossbreeds such as Border Leicesters are not as susceptible.

Sheep blowfly strike takes two forms. The so-called primary fly strike occurs only in wet wool. The fly larvae, or maggots as we call them, live in the wet wool. The far more damaging form of fly strike is what is called secondary fly strike, in which a different breed of fly goes through the wet wool and eats into the flesh of the sheep. It is very sad to see a sheep with secondary fly strike. The practice of mulesing involves the removal of a sheath of skin from around the breech of the sheep, to prevent the wet wool from becoming fly blown.

There are some alternatives to mulesing. They include dipping, which involves bringing all the sheep into the yards and either plunge-dipping or shower-dipping them. It is an expensive process, and it needs to be done every few weeks during the wet summer months if flies are to be controlled. The more traditional method of controlling flies in sheep requires the farmer to walk around the flock spotting fly-blown sheep. Fly-blown sheep can be spotted by the discoloured patches on their wool. They can also be spotted by the sheep staggering and trying to scratch their rumps, or wherever they are fly blown, by rubbing against other sheep, trees, fences, and so on. Fly-blown sheep show obvious signs of discomfort. Sheep blowfly strike can also be controlled by crutching sheep in early summer. The practice of crutching involves the farmer taking the sheep into the woolshed and shearing a strip of wool from around the breech and the pizzle. Some farmers shear in spring, to reduce the impact of fly strike.

I would like to see the reaction of the people from PETA if they had to go into a flock of sheep containing a number of fly-blown animals. To treat sheep after they become fly blown, farmers have to grab them, pull them down, and then get hold of hand shears and clip the rotten, stinking wool off the sheep. The

farmers have to physically get their hands into the wool and scrape the maggots away from the flesh. They have to cut the wool away from the fly-blown area, get their hands in and scrape the maggots off the wool, and then apply an anti-fly dip to the fly-blown area to kill the remaining maggots. That is the sort of thing that sheep farmers have to do on a daily basis during wet summers.

Whether farmers mules, dip, crutch, or whatever, a certain number of their flock will always become fly blown. Treating it is a horrible job. One can imagine doing it in the heat of the day, with the terrible smell that comes out of the sheep. It is an awful thing to have to do—far more awful than a once-off clipping of loose skin around the breech of the animal when it is a lamb. The wound heals in a few days and the sheep has no further problems with fly strike in that area.

Mulesing is a much less traumatic treatment option, for both the animal and the operator. Regrettably, the Minister for Primary Industries has withdrawn funding for research into alternative treatments for fly strike. I would like to comment on the wording of the motion. Paragraph 2 (b) asks the House to call on the Federal Minister for Agriculture to mount an education campaign on the practice of mulesing. I would like to move an amendment to that paragraph of the motion. I move:

> That the motion be amended by omitting from paragraph 2 (b) the words "the Federal Minister for Agriculture" and inserting instead "all Federal and State Ministers for Primary Industries and Agriculture".

It is far more appropriate that a national education campaign is established on the issues associated with fly strike, involving all Federal and State Ministers for Primary Industries and Agriculture, rather than simply the Federal Minister for Agriculture.

The Hon. MELINDA PAVEY [3.09 p.m.]: I support the motion moved by the Hon. Amanda Fazio and I congratulate her on having moved it. I understand that her family has some real connection with the land. It is good for the health of this State that there are at least a couple of members of the Labor Party with an understanding of New South Wales primary industries.

The Hon. Catherine Cusack: Isn't she the Convenor of Country Labor?

The Hon. MELINDA PAVEY: The Convenor of Country Labor! I also support the amendment moved by my Nationals colleague the Hon. Rick Colless in relation to a proactive approach by all agriculture Ministers throughout Australia to improve the technology associated with the mulesing operation in this State. As I understand it, the Australian wool industry has for many years been undertaking research into this aspect, and there have been some significant improvements in gene technology and its application to mulesing. As the Hon. Rick Colless pointed out, in vivid detail, mulesing is difficult and it takes a pretty strong person to do the job. Honourable members will be aware that farmers are very strong people. It is because of the efforts of those farmers that most of us in this Chamber today are able to dress in woollen suits. As I look around the Chamber I note that almost everyone is wearing wool. I think that even Ms Lee Rhiannon's suit would contain some wool.

Ms Lee Rhiannon: No.

The Hon. MELINDA PAVEY: No, but she is wearing leather shoes?

Ms Lee Rhiannon: Yes.

The Hon. MELINDA PAVEY: Those shoes could be made of sheep hide—or perhaps cowhide. We depend on the growth of our primary products—I have just received a hand-written interjection from the Reverend the Hon. Dr Gordon Moyes, which has rather thrown me.

The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe): Order! All interjections are disorderly.

Reverend the Hon. Fred Nile: She is even blushing.

The Hon. MELINDA PAVEY: There is a very good reason for that. Mulesing is a necessary practice, the end result being healthy sheep that produce the wool for the suits many of us are wearing today. It is a very hygienic practice and gives the sheep a much better quality of life. It is disgraceful that the organisation People for the Ethical Treatment of Animals [PETA] would exploit the use of this practice as a means by which to cause harm to Australian farmers and ultimately to the very sheep they profess to be concerned about. The group's reactionary, emotive, disgraceful and dishonest actions have certainly had an impact, though a very

small impact. The Hon. Rick Colless made a very telling point when he said there is a danger in the media sensationalising this issue in that it could lead to a boycott of the industry by some consumers.

I believe that most consumers are very savvy people who appreciate that animal products, whether we eat them or wear them, are an essential part of our lives, and who understand that the practice of mulesing is employed not only for the benefit of the animal but also for society as a whole. The Hon. Amanda Fazio's motion has presented us with an opportunity to have a look at what the industry is doing in this regard. The Nationals have received some information from the Hon. Warren Truss, which states that there have been developments and improvements in the process. In recent times there have been reports of genetic technology that has been developed in Queensland with a view to preventing sheep from growing wool in the problem area. That will eventually be streamlined. I have every confidence that the technology will take us to that point.

The Deputy Leader of the Opposition and shadow minister for agriculture has reacted vigorously to the PETA campaign. He indicated that the Australian wool industry has responded to international pressure from animal rights groups, which are threatening a total boycott of Australian wool products, and he asked the Minister for Primary Industries what alternative practices were being investigated in the New South Wales wool industry. Unfortunately, the Minister has not been very forthright with the Deputy Leader of the Opposition or with the New South Wales wool industry.

As I said, some excellent work is being undertaken in Queensland. Queensland is known as the "Smart State", having adopted that clever slogan attributed to it by the Queensland Labor Premier, Peter Beattie—who sometimes confuses me, because he often walks in the shadow of the former Nationals Premier, Joh Bjelke-Petersen. The smart State is investing heavily in science and technology not only within the agricultural field but also in the Queensland education system. It is a shame that New South Wales does not seem to have that drive and passion for technology and advancement. The shadow minister has expressed concern that the New South Wales Department of Primary Industries is not doing enough. It is to be hoped the New South Wales Government can speed up the processes and perhaps learn from what is being done in Queensland to improve the technology in relation to mulesing and genetic technology generally, and that it will also help to stamp out this ridiculous campaign by PETA.

The American retailer Abercrombie and Fitch reacted in a very alarming manner to PETA's campaign. It took only a television crew and a few crazies from PETA for that company to cease to stock Australian wool products. In the scheme of things Abercrombie and Fitch is not one of the bigger retailers in the United States of America; there are many other retailers in that country who have exercised their commonsense. That company's boycott has had an impact, though not a lasting impact, on wool sales and it has been the focus of the wool industry coming to terms with this renegade animal liberation group. PETA professes concern for the welfare of animals, but if it were truly concerned about animal welfare it would understand the distress that would be caused to sheep in the Australian climate if we did not have the practice of mulesing.

We should all lend our support to the Australian wool industry. We should also encourage our primary industries Ministers to actively investigate alternative technologies. Most importantly we should support the continuation of the practice of mulesing. The Australian economy and the Australian lifestyle both derive benefit from wool growing in New South Wales and throughout the nation. It used to be said that Australia lived off the sheep's back. Their adaptation and the new breeds that we have created—

The Hon. Amanda Fazio: Spain.

The Hon. MELINDA PAVEY: Spain, the United Kingdom. Dorset sheep come from the United Kingdom. We have created our own sheep lines and, particularly in the past decade or so, superfine wool production has been an incredible success with amazing prices received at the saleyards for the superfine wool Merinos, with million-dollar bales sold to the finest wool makers in Italy. So the technology continues within the wool industry to create the best production, and regional New South Wales and regional Australia will continue to derive great benefits from the sheep industry. The Hon. Rick Colless made some excellent points in relation to farmers' concerns for the welfare of their livestock and, in particular, their sheep.

It was reported in April that Australian scientists say a vaccine to prevent fly strike in sheep may be only some 18 months away. The Queensland Department of Industries says that fly strike kills about three million sheep in Australia each year and treatment and production losses cost the industry about $160 million a year. Tim Mahoney from the department says the vaccine could be used instead of mulesing, in which the skin around a sheep's backside is cut to prevent fly strike. The scientists have discovered that the

blowfly actually suppresses the sheep's immune systems from responding to the infection. This is a further step towards developing the vaccine technology that will help sheep respond to fly strike when a strike occurs.

As the Hon. Rick Colless pointed out, not every mulesing procedure is successful. If there is a particularly hot, wet and humid summer there may be other problems with fly strike. The idea of a vaccine to prevent sheep responding to a blowfly infection is certainly the way to go. Good on Queensland for taking this technology to the next level.

I congratulate the Hon. Amanda Fazio on bringing this motion to the attention of the House, but I echo the words of my colleague the Hon. Rick Colless that we also have to be careful not to elevate this issue and respond to the phoney war set up by PETA and blow it out of all proportion, so to speak. In summing up, I thank our primary producers and our sheep producers for the work they do in creating vibrant and good economies, despite the drought in much of New South Wales. If it is not drought that farmers are faced with, it is floods; if it is not some sort of natural disaster, it is a man-made disaster they have to respond to. They must be in despair at the actions of a group like PETA, but they are responding well and they certainly have the support of this side of the House.

Reverend the Hon. FRED NILE [3.23 p.m.]: I support the motion moved by the Hon. Amanda Fazio. This is a very important motion concerning the activities of an organisation called People for the Ethical Treatment of Animals [PETA]. I thought how ironical it is for that organisation to use the word "ethical" when it is most unethical in its operations, its statements, it claims, and its methods. The Hon. Melinda Pavey said we should not make a fuss about the organisation, but the fact is that it is causing damage to Australian industry, particularly the sheep industry. It has had success in already having a major American retailer, Abercrombie and Fitch, boycott Australian wool in 749 shops in the United States of America. That is a very serious matter and it will have a dramatic impact on the sale of products manufactured from Australian wool.

PETA is quite weird in many ways because of its philosophy. It originally had associations, and probably still has, with some very radical groups, such as the Environmental Liberation Front, which has engaged in terrorist acts, including the torching of a $25 million apartment building in San Diego in 2003. PETA uses every method to achieve its purposes and what may sound on the surface to be a reasonable request, when put into context is found to be non-negotiable with PETA because that organisation operates under the simple principle that animals are not ours to eat, wear, experiment on, or use for entertainment. If PETA had its way it would virtually close down the farm industry; we would not be able to have cattle farms, sheep farms or any farms where animals are being grown for the production of meat as food for human beings.

As a Christian I believe that part of God's creation was that the Creator intended the human race to be able to sustain itself on food provided by animals. But that raises, of course, questions about how animals should be treated humanely, and about how they are put to death. We debated that matter and there was a comparison made of the various methods used, including some controversy over the way animals are put to death according to the Islamic religion and whether that seems cruel. It seems cruel to me. Some of these issues have been raised in recent times. Nevertheless, the reality is that some animals have to die if humans are to eat their meat.

The effect of the motion is that various organisations, such as the South Australian Farmers Federation or the Australian Wool Innovation, which are referred to in the motion—or maybe the State Government in co-operation with the Federal Government—may be able to expose the activities of PETA—who is behind it and what is its leadership, its financial basis, and its methods—and, hopefully, discourage the community from giving it any support and reduce its impact on retail shops and other areas. Australia is very dependent on its export of wool, as well as its export of live animals to the Middle East and so on, and all these areas are now under attack. If we are not careful, there will be a major harmful economic impact upon Australia. I am pleased to support the motion.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [3.29 p.m.]: I congratulate the Hon. Amanda Fazio on moving the motion, although it is interesting that she, a Government backbench member, rather than the Minister, did so. An indication of where the strength in the Labor Party lies these days is the fact that initiatives in this tired, old Government come from the backbench; Ministers have no initiatives whatsoever. The motion is a terrific initiative—and I congratulate the Hon. Rick Colless on his amendment; he can share the honour, so to speak. Whenever I have asked the Minister questions about this issue he has had only one reaction; indeed, if we ask the Minister questions about anything in his portfolio he pulls out the same answer: it is the Federal Government's fault. If he does not want the job he should not accept his pay.

The State Minister for Primary Industries should be responsible for some things, rather than blaming everything on the Federal Government. This debate is an opportune time for me to tell honourable members about a conference to be held this Saturday at the Mercure Hotel in Ultimo, hosted by the Australian Wool

Growers Association. I have been given the honour of opening the conference, which among other items will address the mulesing of sheep. At least one group of farmers has not said, "We will put our head in the sand and this thing will go away." Because it will not!

[*Interruption*]

The Hon. Amanda Fazio might like to attend the conference. I am willing to drive to wherever she lives and pick her up and take her to the conference. She would be most welcome to attend. That the conference is to be held is evidence that some people are working on this issue. One of my colleagues said that a spray to help with mulesing has been developed. Indeed, the Australian Wool Growers Association has worked with eminent veterinarians in the field to develop a spray. As dishonest as the People for the Ethical Treatment of Animals [PETA] campaign is—and it is a dishonest campaign—it will not go away. No matter how much better it is for sheep to be mulesed than to die a horrible, maggot-infested death by fly strike, there is still a visible wound from a harsh operation, and people who oppose our industry will use that for political gain.

We must embrace those people and talk to them and to those who buy our product; if we do not do that we will become an easy target in this campaign. Sadly, this professional organisation puts together mistruths and circulates them well. The wool forum on Saturday will have a key speaker on groundbreaking research into sheep welfare, as well as practical solutions, hopefully, for the resolution of animal welfare issues. The organisers have also invited people from Animal Liberation to speak. We will see if we can work with them to provide answers and show that our industry is moving into the future. There will be a panel forum with many speakers, and key people from the Australian merino industry will address the conference.

I take this opportunity to congratulate Chick Olsson on his initiative of bringing wool growers together on Saturday, rather than putting their heads in the sand or fighting court cases in Australia that will have no effect overseas. Mr Olsson is attempting to address the issue. PETA is a professional organisation that has targeted clothing companies operating on the fringes of wool production. Many people will remember that Abercrombie and Fitch were purveyors of fine men's suits in the old American tradition. That may have been the case once upon a time, but now the bulk of its clothing is for the younger generation; it is more avante garde.

The Hon. Amanda Fazio: It's a preppy style.

The Hon. DUNCAN GAY: A preppy style, and mostly made of cotton. Abercrombie and Fitch had no difficulty embracing the PETA philosophy, given that it uses little wool, if any. If one is being harsh, it was probably a good management decision by the company, considering its clientele and its embracing the beliefs of those who buy its product. The decision is cold, hard and tough on other groups, but we understand that it was made for business reasons. One company that should be applauded is Benetton, which operates at the top fashion end of fine wool products. Obviously, Benetton has been targeted by PETA. The PETA web site highlights its campaign against companies operating in the high fashion area. Honourable members will remember the dishonest campaign against kangaroo products that the Hon. Richard Jones ran in England, with some success, a few years ago. PETA's campaign is no less dishonourable. PETA's web site states:

> Little Bo Peep Confronts Benetton About Sheep
>
> Holding a sign that reads, "Benetton Is Baaaad to Sheep," and showing graphic footage of the abuses that lambs and sheep endure in the Australian wool industry, PETA's sexy Little Bo Peep will be visiting Benetton stores to protect their use of cruel Australian wool.

There is a graphic image of sexy Little Bo Peep. I am sure Reverend the Hon. Dr Gordon Moyes will agree that her outfit would attract attention.

Reverend the Hon. Dr Gordon Moyes: It depends. On whom?

The Hon. Duncan Gay: The Hon. Amanda Fazio, not me! The campaign is professional, despite the dishonesty of it. It is directly targeted at the high fashion end of the market. It is similar to the campaign against furs, et cetera, that target high fashion areas.

Ms Lee Rhiannon: Tell us where it is dishonest?

The Hon. DUNCAN GAY: Sorry?

Ms Lee Rhiannon: You are using emotive terms. Tell us where it is dishonest!

The Hon. DUNCAN GAY: Interestingly, some people simply cannot help themselves; they invite themselves into areas where they should never be.

The Hon. Rick Colless: You want to go and get fly blown. Then you'll find out why it's dishonest.

The Hon. DUNCAN GAY: I acknowledge the interjection. I think it is worthwhile. If livestock were not mulesed they would suffer.

Ms Lee Rhiannon: PETA acknowledges that the practice is terrible.

The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe): Order! Interjections are disorderly. Ms Lee Rhiannon should refrain from interjecting further. The Deputy Leader of the Opposition has the call.

The Hon. DUNCAN GAY: I ignore interjections, of course, but I have been hearing voices, and those voices acknowledge that. They do not acknowledge the correlation between mulesing and stopping sheep dying a horrible death from fly strike. We in the industry acknowledge that we are performing an operation that many people would find offensive, and indisputably there is some pain to the animal. Any unnecessary pain is to be avoided, but we do not believe it is unnecessary pain. We believe it is necessary to avoid the sheep suffering further pain in the future.

We also acknowledge that in the next few years we need to look at better ways of dealing with fly strike and thus alleviate the pain, either through breeding or some other way, and to avoid having to perform mulesing at all. We accept that but we do not accept that the campaign that PETA has mounted has been honest. We believe that it has been a totally dishonest campaign, without any merit. Having said that, we acknowledge that if it were not PETA, some other organisation would be trying an easy fix to shut down our industry.

We need to pre-empt that. We need to work with the sensible side of the environmental movement. We need to work with our customers. It is not enough for us to put our heads in the sand, take legal action against somebody overseas, and expect our customers—people like Benetton—to wear the flak. We need to protect people like them by embracing the groups that are talking to us and looking at a timetable for changes.

I cannot think of anything else we can do. It is important that at the very least we do that. If we do not, and the industry is lost because of this, we can only blame ourselves. The lessons are there and there is the ability to do something about it. Obviously people more sensible than the honourable member opposite will talk about the realities, because she does not appear to be able to. Her colleague Mr Ian Cohen probably represents the more sensible side of the argument—she has always been on the lunatic fringe when it comes to these types of argument. Let us hope that more sensible people will be able to say: These guys are trying to have a go, let us see if we can work together to fix this.

Ms LEE RHIANNON [3.42 p.m.]: Ms Fazio declared that this campaign is not mainstream. From listening to her speech and reading the motion I felt there was a sense of irritation about how PETA is working. It has not been dishonest, as some honourable members have stated. It has run a successful, high-profile campaign that has garnered widespread support. I was interested in the comments made about PETA because at the end of last year I went to one of its fundraisers at Mosman.

The Hon. Amanda Fazio: That would be typical.

Ms LEE RHIANNON: I acknowledge that interjection. Obviously it was a pleasant place, looking over beautiful views of The Spit Bridge. Mr Turnbull, previously with the NRMA, was there and offered a $5,000 donation.

The Hon. Duncan Gay: Whose money?

Ms LEE RHIANNON: I wondered about that myself, and I understand that the donation never arrived. Nevertheless, it was a successful function and many mainstream people were there. This is where honourable members are making such a mistake.

The Hon. Rick Colless: Who were the mainstream people who were there?

Ms LEE RHIANNON: I cannot say I knew all of them.

The Hon. Rick Colless: So how do you know they were mainstream?

Ms LEE RHIANNON: Again I acknowledge that interjection.

Debate adjourned on motion by Ms Lee Rhiannon.

SENATE VACANCY

Joint Sitting

The DEPUTY-PRESIDENT (The Hon. Patricia Forsythe): I shall now leave the chair for the joint sitting. The business of the House will be suspended during the joint sitting and the House will resume at the conclusion of the joint sitting, following the ringing of the bells.

[*The Deputy-President (The Hon. Patricia Forsythe) left the chair at 3.45 p.m. The House resumed at 5.05 p.m.*]

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): I report that at a joint sitting this day Concetta Anna Fierravanti-Wells was elected to fill the vacant seat in the Senate caused by the resignation of the Hon. John Tierney. I table the minutes of proceedings of the joint sitting.

Ordered to be printed.

BUSINESS OF THE HOUSE

Precedence of Business

Motion, by leave, by the Hon. Peter Primrose agreed to:

That standing and sessional orders be suspended to allow General Business to take precedence until 6.00 p.m.

SHEEP INDUSTRY

Debate resumed from an earlier hour.

Ms LEE RHIANNON [5.07 p.m.]: As Ms Fazio outlined, part of the concern of the People for the Ethical Treatment of Animals [PETA] is about a procedure called mulesing. This process means lambs are restrained under metal bars while gardening shears are used to cutaway folds of a lamb's skin without any painkillers. The industry says that they undertake this procedure to prevent flies from laying their eggs in the sheep's wrinkly skin, but there are much more humane ways to deter flies. Ms Fazio advised in her opening remarks that this option—

The Hon. Rick Colless: How do you know that?

Ms LEE RHIANNON: You have said it; I listened to your contribution.

The Hon. Rick Colless: That is right.

Ms LEE RHIANNON: And I also know from what PETA has said.

The Hon. Rick Colless: They don't count. They don't know.

Ms LEE RHIANNON: They obviously count because you have become so worked up.

The Hon. Rick Colless: They have got it wrong.

Ms LEE RHIANNON: Because of their actions, the industry is now taking the matter more seriously.

The Hon. Rick Colless: That is nonsense.

Ms LEE RHIANNON: It is actually true, and that is how we will move forward on this issue. Ms Fazio advised in her opening remarks that this option was the better of two options, the other option being that sheep wander around paddocks, ill from disease. She ignores the other steps that can be taken; the most simple

being the use a local anaesthetic when undertaking the procedure. Further, the industry needs to increase its funding for research into alternatives to the practice of mulesing. The practice could be avoided altogether. Researchers from the Australian Wool Innovation claim that an alternative to mulesing, an injection to tighten the skin, is likely to be commercially available by 2007. The industry adds, however, that this alternative will not be used unless it is financially viable.

This gets to the heart of the reason that the cruel practice of mulesing is maintained: it is cheap. The pain and suffering of animals run a poor second. Hopefully, as a result of the pressure from PETA, the industry will become more active in ensuring that the alternative practice I have outlined becomes commercially viable. In the meantime, it is hoped that the industry will introduce and subsidise the practice so we can move towards a regime that ensures reduced animal cruelty. I was pleased to hear members, including the Hon. Rick Colless, acknowledge the importance of livestock welfare.

The Hon. Rick Colless: Of course it is important. Every farmer knows that.

Ms LEE RHIANNON: Yes, and I acknowledge that. That is why there is increasing support amongst farmers for the proposal that PETA is putting forward.

The Hon. Rick Colless: There is not. That is a lie.

Ms LEE RHIANNON: There is increasing support for PETA's proposal, because people on the land recognise that the cruelty being suffered by many of their livestock is not only unacceptable, in this day and age, it is not necessary. It is the responsibility of the industry and the Government to develop a cost-effective alternative to the inhumane practice of mulesing. I am confident that most Australian farmers would choose a kinder alternative if it were available to them. PETA and the Greens know that mulesing is not the only way in which sheep are treated inexcusably in this country. For example, the way in which sheep are treated once their wool is no longer needed is deplorable. Millions of sheep are crammed onto crowded, disease-ridden ships and sent for slaughter overseas. Their throats are slit while they are fully conscious, and many sheep die on the voyage.

The Hon. Rick Colless: That's nonsense.

Ms LEE RHIANNON: It is not nonsense.

The Hon. Rick Colless: What's it got to do with mulesing?

Ms LEE RHIANNON: Let us deal with your comment that it is nonsense.

The Hon. Rick Colless: Point of order: This debate is about the mulesing of sheep; it is not about the export of live sheep to the Middle East. I ask you to direct Ms Lee Rhiannon to address the motion.

The Hon. Amanda Fazio: To the point of order: I support the comments of the Hon. Rick Colless. Even though the campaign being run by PETA refers to two different forms of animal cruelty suffered by merino sheep in Australia, that is mulesing and live sheep exports, my motion specifically refers to mulesing of sheep and the campaign that PETA was running about the issue. I ask you to uphold the point of order.

Ms LEE RHIANNON: To the point of order: The point of order is not valid. A key aspect of the motion of the Hon. Amanda Fazio relates to the tactics of PETA. As the Hon. Amanda Fazio has just acknowledged, the work of PETA also involves live exports, so my comment is clearly relevant.

The DEPUTY-PRESIDENT (The Hon. Kayee Griffin): Order! I uphold the point of order. I ask Ms Lee Rhiannon to direct her remarks to the subject matter of the motion.

Ms LEE RHIANNON: Honourable members will remember that during the last Federal election campaign Australian activists dressed as Lucy the sheep followed Prime Minister John Howard and then Labor leader Mark Latham as they engaged in their campaign activities, and they had an enormous number of photo opportunities with them. The activists called on the two leaders to put an end to the cruel practices that characterise aspects of the sheep industry. PETA tried desperately to persuade the Government to act on this issue but, regrettably, it refused. Since the Federal election on 9 October 2004, PETA has continued to work very hard to ensure that animal welfare is at the forefront of people's minds so that we have a greater chance of achieving change on this important issue.

Over the past year PETA has tried to work with Australian Government officials, sending letters, reports and video documentation of the cruelty involved in the Australian wool industry in relation to mulesing and live export. The organisation has gone out of its way to engage with Government officials. I believe that is extremely relevant to the debate because PETA has been severely slandered by some members and a vast amount of inaccurate information has been put forward. After holding multiple protests on three continents and issuing a year-long warning to the Australian Government to curb the worst abuses of sheep raised for their wool, PETA believes it has little choice other than to launch an international boycott of Australian wool that will last until the grossly inhumane practices of live export and mulesing have stopped. Again I emphasise that the tactics of PETA that are objected to were not the initial action that the organisation undertook. As I have said, PETA has tried to engage with the Government on many occasions.

PETA could hardly be accused of jumping the gun or not giving the Government an opportunity to address the issue. Contrary to the suggestion of the Hon. Amanda Fazio, PETA does not tackle fringe issues. More than three-quarters of the Australian population, including many legislators and other government officials, are opposed to live animal export. The Australian RSPCA, which is not a radical animal welfare organisation by any stretch of the imagination, continues its campaign against that cruel practice. More than 110,000 individuals recently signed a petition supporting a ban on live animal export. Many prominent Australians have joined with Animals Australia to call on Prime Minister John Howard to end the practice. With regard to mulesing, PETA's success in convincing American retail giant Abercrombie and Fitch to boycott Australian products shows that people are concerned about this practice. The boycott will hopefully set a new standard for clothing companies.

Reverend the Hon. Fred Nile: Shame on them!

Ms LEE RHIANNON: I acknowledge the interjection of the representative of the Christian Democratic Party. It is not shameful. The company is simply trying to encourage practices that have a commitment to animal welfare and ending cruelty to animals. Surely a person who is committed to the Christian faith would support measures to—

Reverend the Hon. Fred Nile: It is shameful that those shops have been blackmailed.

Ms LEE RHIANNON: The shops have not been blackmailed at all. They have made a decision on the information presented to them because of the cruel practices used to source the goods they were selling. That is not blackmail. It is a pity that Reverend the Hon. Fred Nile does not do more to promote animal welfare, because obviously it is an issue that is central to Christian tenets. Abercrombie and Fitch has pledged not to use Australian wool in any of its garments until both mulesing and live exports are stopped. The Abercrombie and Fitch boycott will hopefully set a precedent that other retailers can follow to help end the needless suffering of sheep. These corporations are taking responsibility for what they purchase. The wool industry in this country should show some corporate responsibility with regard to the way it treats animals.

As more and more retailers follow the lead of Abercrombie and Fitch and stop buying wool that comes from mutilated and abused Australian sheep, hopefully the Australian wool industry will be forced to abandon its cruel practices. If retailers choose to not follow its lead simply because it is the right thing to do, hopefully this campaign will hit them in the only place they seem to feel it: the hip pocket. It is worth commenting on the statements on the Hon. Amanda Fazio condemning PETA campaigners for simply campaigning. Perhaps the honourable member is feeling a little outdone here; PETA has organised a pretty hot campaign. Perhaps she is jealous that the organisation has been able to outdo her. The Hon. Amanda Fazio might believe it is reasonable to call animal rights campaigners extremists, but the Greens know that groups such as PETA has historically brought important issues such as these to the public's attention.

There is an increasing awareness about animal issues within the wider community, and that is how we achieve change. At one time there were no laws to restrict cruel practices regarding animals. We now have some laws in place, and in time those laws will be improved. The work that PETA is doing will certainly make a contribution to that. The Hon. Amanda Fazio would be better advised to defend socially minded activists rather than the rights of shoppers to shop without protesters present, as she did in her speech on this motion. I believe that PETA's campaign has put the international spotlight on the deplorable conditions under which sheep are kept in parts of Australia.

On behalf of the Greens I congratulate PETA on standing up for animal rights. I congratulate the many Australians and Americans who has been part of this campaign, and hope it succeeds in forcing the wool

industry and the Government to address this issue in the immediate future. Even if it is not in the immediate future, I believe that this campaign will be successful in time.

The Hon. AMANDA FAZIO [5.20 p.m.], in reply: In speaking in reply to this very important motion, I remind honourable members that when I first moved the motion in this House on Thursday 7 April I indicated that I would be happy to entertain an amendment to paragraph 2 (b) to ensure that the motion called on all State Governments with a significant wool industry to join with the Federal Government in promoting a campaign of honesty in relation to this issue. For that reason I am pleased that the Hon. Rick Colless took up my offer and has moved an amendment to paragraph 2 (b), which I encourage honourable members to support.

I am happy to do that because this motion deals with an issue of importance to wool producers and rural communities in Australia. I acknowledge that the Hon. Warren Truss, the Federal Minister for Agriculture, Fisheries and Forestry, on 11 November last year when this issue really started to receive some coverage in the media, issued a press release supporting Australia's $7 billion sheep and wool industries. He referred to the overall approach that was being taken co-operatively by the Federal Government and the State governments to promote animal welfare.

There is currently in existence an Australian animal welfare strategy, which was endorsed in May 2004, which is based on the principle that good health is an essential component of good animal welfare, and that diseases should be prevented and controlled. That strategy includes diseases that are caused by insect pests, such as the sheep blowfly. The press release notes that the industry is committed to phasing out the mulesing procedure by 2010, and also notes the fact that the Australian government is jointly funding research and supporting industry moves for that to occur. In the meantime the industry has been encouraged to reduce the need for mulesing by adopting an integrated approach to managing the risk of blowfly strike. Australia has a model code of practice for the welfare of sheep, developed in conjunction with industry bodies, animal welfare groups, veterinarian and other organisations to set standards for the mulesing procedure.

Australia constantly seeks to improve all its animal welfare practices, including those for fly strike prevention. A review of this model code has commenced and will be completed in 2005, in consultation with State and Territory governments and other stakeholders. All current sheep husbandry procedures, including mulesing, will be considered as part of this process. That is why I am happy to entertain the amendment moved by the Hon. Rick Colless, because I think for the benefit of rural communities and the sheep industry we need to make sure that we are united in saying that while mulesing is not a pleasant practice, it is the only thing we can do at the moment to stop the blowfly strike problem. The industry and governments at both State and national level are committed to having alternate procedures in place by 2010.

I would like to turn to some of the comments that have been made during the course of this debate. In particular I want to refer to some of the comments made by Mr Ian Cohen in his contribution on 7 April. I will quote from *Hansard*. He said, "Massive flocks of sheep are being kept in an inappropriate environment." What we need to look at here is the whole issue, which unfortunately arose during some evidence given quite sometime ago, I think during the course of an inquiry by General Purpose Standing Committee No. 5 into the control of feral animals. An animal liberation group gave evidence before that committee. Prior to that the Committee had been referring to feral animals as being feral goats, pigs, horses, wild dogs, feral cats, rabbits, deer and even feral bees—because there are some problems related to feral bees that are affecting the apiarist industry.

This group appeared before the committee and said that we were just tinkering around the edges and wasting our time, quite frankly, because until we took on the major feral animal problem that was confronting us in Australia, we were doing nothing. The major problem they identified to us was the feral animal problem of cattle and sheep. These people seriously expected a committee that was looking at ways of genuinely doing something about feral animals to concentrate on eliminating the cattle and sheep industries in Australia. It is the sort of extremist and left-field comments that we have been hearing during the course of this debate.

I acknowledge that Mr Ian Cohen went on to say that sheep are not native to Australia and that they were introduced purely for the purpose of animal husbandry. Quite frankly, some of his other comments were reasonable, I thought, in terms of promoting animal welfare, but to say that sort of thing I believe really strikes at the heart of the complaints surrounding this issue at the moment. I also want to say that on 18 April I received a letter from the New South Wales Farmers Association in the following terms:

> I am writing to thank you for bringing to the attention of the Parliament and people of NSW the threat to the Australian Wool industry posed by the extreme radical animal liberationist group People for the Ethical Treatment of Animals (PETA).

> The NSW Farmers Association has been heavily involved in countering the intimidation and peddling of misinformation to consumers by PETA. As recently as 5 April we participated in the Australian Wool and Sheep Industry Taskforce forum which exchanged information and provided an outline for the strategies that are in place to curb PETA's impacts.
>
> At this forum, the Taskforce detailed a strategy that they are pursuing which you are similarly seeking to have addressed in your motion 2 (b). The Taskforce is mounting an education campaign in the USA in order to target retailers and inform them of the necessity of mulesing to ensure the highest levels of animal welfare possible.
>
> The Association will continue to actively seek other ways to counter the threat against this radical animal rights group on behalf of members.
>
> I once again thank you for bringing this issue to the attention of the NSW Parliament. Please convey the support of the NSW Farmers' Association for your motions.

The letter was signed, "Yours sincerely, Mal Peters, President". I was pleasantly surprised to receive that letter because I had not contacted that association to seek a response to the issues raised in debate. I want to refer to other comments, in particular the rather unfortunate comments made by the Hon. Rick Colless and the Deputy Leader of the Opposition, in which they raised party-political issues in relation to this motion. I worded the motion very carefully in the hope that it would receive the support of major parties in this Chamber and probably the more reasonable members of the crossbench.

I was disappointed to hear those comments because I really think that this is an issue in respect of which we can work together, with the mainstream forces in Australian politics, to make sure that this dangerous threat to our wool industry is overcome. I took particular exception to the unkind comments that I do not know about the sheep industry. I have made it my purpose to find out as much as I can . As a child I regularly played the board game "Squatter" and you would have to be pretty interested in the sheep industry to go to that extreme. I also took exception to the implication that because I read from notes I did not do research myself. I assure the House that I always do my own research for my speeches, which is why occasionally they probably contain some strange comments.

I would now like to turn to the idea of the attack on PETA being unfair and I will have a look at some of the material from the PETA web site. They have these lovely little segments which refer to the hidden lives of different farm animals. There are the hidden lives of cows, pigs, chickens, fish, turkeys, ducks and geese. I have not made it my purpose to read all of these, but they all talk about these animals having innate human qualities. I would suggest that anyone who carries on too much like this—and this is the sort of material young kids have a look at on the Internet—is running deceptive campaigns. I think that is fair enough.

In relation to the comments that perhaps talking about this issue was giving it oxygen that was not warranted, I will merely say that I did a quick Internet review in late April. There was a comment from the French press agency that Indian designers had boycotted Australian wool at Fashion Week in India—which is an emerging garment manufacturing country—simply because of the campaigns that were being run by PETA. It noted that over 160 buyers, including Saks Fifth Avenue of the United States of America and Selfridges and Harrods from Britain, were at Indian Fashion Week, where designers were showing their collections for autumn-winter 2005. That is potentially another very large market that Australian wool products are being locked out of.

But now let us turn to PETA itself. It is a very interesting organisation; it raises around $15 million a year. Of that, it spends 1 per cent on animal welfare; the rest of it goes on political campaigns, very sophisticated advertising campaigns and paying its paid employees and executives very, very well. One per cent of the money donated goes directly to animal welfare—that is an absolute shame. I would not call its campaigns dishonest if it was spending significant amounts of money to help find an alternative to mulesing. If it did that I would say it is a genuine animal welfare group, but it is simply not.

PETA raises huge amounts of money from very concerned people in the community, people who like animals and who are concerned about animal welfare, but it squanders that on political campaigns; it does not do anything practical with that money, and I think it deserves to be condemned for that. In relation to the issue that the Hon. Duncan Gay raised, I am very pleased to see that the Australian wool industry has launched its own web site, "Wool is Best", with The Australian Wool Innovation, the Meat and Livestock Association, wool, sheep and meat producers, the National Farmers Federation, Australian Wool Services and the Australian Veterinary Association, all supporting the campaign.

I would advise members if they are concerned about this issue to go and have a look at the web site. The Australian wool industry has very comprehensively answered some of the erroneous issues that have been raised by PETA; there is a video on the web site that explains why mulesing is an appropriate practice. If

members get to talk to any young people about this issue, get them to look at both web sites and make up their own minds, because if they have a look at "Wool is Best"—and I really do commend the Australian Wool Industry for its efforts in mounting this campaign—they will see the truth about these issues. The truth is that PETA is being very, very dishonest in this regard.

When one looks at the whole range of issues, particularly the way in which PETA runs its campaigns—and I acknowledge they are really slick campaigns—one would have to say it spends more money on advertising than animal welfare. If one wants to see the lighter side of these things, have a look at the web site "People Eating Tasty Animals", which is a satire, but very good. I commend the motion. [*Time expired*.]

Amendment agreed to.

Motion as amended agreed to.

UNITED STATES OF AMERICA FARMING SUBSIDIES

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.30 p.m.]: I move:

That this House views with concern the passage by the Congress of the United States of America of Resolution 2646, the Agriculture, Conservation and Rural Enhancement Act of 2002, which provides subsidies to American farmers that:

(a) will distort world commodity prices thereby affecting the livelihood of New South Wales farmers and member states of the Cairns Group, and

(b) contradicts the free-market agenda espoused by successive Presidential administrations.

It might be noted that this motion has been sitting on the notice paper since 30 April 2003, which was just after the Farm Subsidy Bill was passed. It also might be noted that there have been a number of changes in the situation with regard to free trade since that time, in particular, the free trade agreement between Australia and the United States of America that had significant subsidies retained with restrictions of trade to Australian farmers within the United States of America and also intellectual property laws, which of course have a great deal of significance in relation to the maintenance of intellectual property and a deficit that Australia will have to pay in that area.

There was a lot of controversy about the passage of that free trade agreement at that time and I foreshadow some amendments to this motion to take those aspects into account and to make the motion as it will read more relevant to the changed circumstances since this was put on the notice paper. I think members will agree, particularly from the point of view of farmers, and indeed from the point of view of Australia generally, that free trade agreements are extremely important and Australia did not do well in terms of the agreements with the United States of America. I think the political pressure to come to a decision had an adverse effect in relation to that free trade agreement also. But that is separate from the Rural Enhancement Act of 2002, which, in essence, provided immense subsidies to American farmers.

It might be noted that Australia is a developed country in terms of its income per capita, but in terms of the percentage of its economy, which is dependent on commodities, it is almost a developing country. The problem we have had and the reason we have been leaders of the Cairns Group is because of that unfortunate accident of history that we are very much price takers in regard to goods and subsidies, particularly initiated by the European Union [EU] to maintain their farms, and they are not all paid directly as subsidies to the price of commodities—which they used to be paid in terms of butter mountains and white wine lakes—they are also paid to maintain the rural environment.

That is extremely significant in maintaining the farmers and enabling those farmers to produce commodities at much less than cost price; they are getting far more income than they are generating from those commodities. Then there are reciprocal subsidies from the United States of America, which maintain their farmers when they are producing goods that would not allow them to live viably, and of course that depresses the world price. This has had an immense effect.

It might be noted that the Agriculture, Conservation and Rural Enhancement Act 2002 was indeed brought in by President George Bush, who at that time got fewer votes than his rival Al Gore, and it reversed the courageous approach to free trade policy that had been introduced by President Clinton in the Freedom and Farm Act of 1996, which had been seen as a watershed in United States trade policy as it tried to end taxpayer-backed subsidies. George Bush, who called himself a free trader, said in his press release:

> The final provisions of the farm bill are also consistent with America's international trade obligations, which will strengthen our ability to open foreign markets for American farm products … I am pleased that this farm bill provides a generous and reliable safety net for our Nation's farmers and ranchers.

This is complete doublespeak and nonsense. It is quite inconsistent with the United States international trade obligations as it gives big subsidies to farmers in the United States of America, which makes it harder for other farmers to compete as it lowers world prices and makes United States farmers likely to overproduce also. The IMF Managing Director, Horst Koehler, called it "unconscionable". Canada's agricultural Minister, Lyle Vanclief, said to CNN that the subsidies were "a serious blow to US credibility to negotiate lower US barriers". The New South Wales Farmers Association President, Mal Peters, said that he was not happy about the situation. The *Washington Post*, in an article by Republican John Boehner on 3 May 2002, called it "turning the clock back 50 years in federal farm policy".

There are a number of ways that trade can be damaged: direct barriers to imports; quotas for imports; subsidies to local producers, such as these; non-tariff barriers, such as quarantine regulations, or just red tape; customs inspections; packaging and labelling regulations, et cetera. This is clearly a subsidy so gross it will distort the markets and make it unlikely that the United States of America can be relied upon to do the right thing in the free trade agreement that Australia was negotiating at that time, and I think time has borne that out. There is some doubt about the exact value of the subsidies. At the time, the best information was that the Act would provide about $A137.8 billion of subsidies over 10 years to inefficient American farmers, and cost Australian farmers about $US16.2 billion. Other estimates were $US180 billion.

The Australian Democrats believe in individual initiative and enterprise, and recognise the need for self-fulfilment. While we believe in and support economic enterprise, we do not want the Australian economy or the global economy to be dominated by the interests of large corporate monopolies in the economic interests of larger national economies. We believe in fair trade, not free trade. We want a level playing field for national economies to compete in the global marketplace. Australia has taken the lead in reducing tariff barriers, such as reducing or removing tariffs. We have also removed a substantial amount of subsidies to our primary industry sector.

Economic theory states that subsidies distort prices and help sustain uncompetitive and inefficient industries. While past Federal Labor and Coalition governments have jumped first into liberalising trade, our trade partners in Western Europe, North-East Asia and especially North America are still dragging their feet in removing trade barriers on primary industries. This motion concerns the passage of the Agriculture, Conservation and Rural Enhancement Act, or the Farm Subsidy Bill, by the American Congress and its ratification by George W. Bush in May 2002.

The Democrats believe that this is a glowing example of hypocrisy in America's long-term policy stance to break down barriers to global trade. It seems that our so-called allies in America will shaft us if they have the opportunity to make money. The billions of dollars in farm subsidies will distort world markets and force even more Australian farmers off the land. Australia has been a good ally to America. We were a nuclear target during the Cold War because we accommodated American military installations. I believe that the Howard Government has lied to the people of Australia about Saddam's links to global terror and Iraq's weapons of mass destruction, and has hitched our wagon to the American President in America's war against terrorism at great expense to the Federal budget. It is a poor result that the Americans have rewarded our strong alliance with such subsidies.

It is ironic that Congress supported the bill even after the Bush Administration released a report stating that subsidies would stimulate excess production, inflate land rents and largely benefit a small number of big farms. So American farm families may suffer in the long term as well. An article in the *Washington Post* by John Boehner and Cal Dooley dated 2 May 2002 and entitled "This Terrible Farm Bill" makes a good case. In 1996 Congress took a historic step to rein in federal agricultural subsidies with the Freedom to Farm Act. Farmers who planted row crops such as corn, wheat and soy beans were supposed to be free from government intervention that stipulated how much they could produce. In return, government subsidies to farmers would be gradually phased out, making farming subject to the free market system.

Boehner and Dooley observed that under the new Act farmers would continue to have flexibility to plant what they chose but generous farm subsidies would be tied to production. Over the past few years current subsidy levels have led to overproduction and lower prices, and more than 40 per cent of net farm income in America now comes from the Federal government. These new and expanded programs represent a 76 per cent increase in agricultural spending from the coffers of the American Treasury. Unlike John Howard, the

Australian Democrats actually value Australia's sovereignty and identity, and it is great to see people out there who share this concern, especially with respect to these trade agreements.

The two agreements—the General Agreement on Trade in Services and the free trade agreement with America—have the potential to subject our national sovereignty to the interests of other countries and even corporations. Even economists and trade experts are divided on the question: Will the trade agreement be of benefit to Australia? While I have more to say, I will seek to adjourn the debate so that I can comment on the American-Australian free trade agreement, which has arisen since I moved the motion.

Debate adjourned on motion by the Hon. Dr Arthur Chesterfield-Evans.

BUSINESS OF THE HOUSE

Postponement of Business

Private Members' Business item No. 2 outside the Order of Precedence postponed on motion by the Hon. David Oldfield.

CRIMES AMENDMENT (CORPORATE MANSLAUGHTER) BILL

Bill introduced, read a first time and ordered to be printed.

Second Reading

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [5.46 p.m.]: I move:

That this bill be now read a second time.

The object of the bill is to amend the Crimes Act to create the offence of corporate manslaughter, for which a corporation may be held liable, and to create a further offence in respect of a senior officer who participates in the corporation's commission of the offence of corporate manslaughter, with a penalty for that individual as well. This is a very well-considered bill. It is modelled on the national model criminal code that was developed by no less than the Standing Committee of Attorneys-General. As such, I believe it has been very thoroughly researched, and I have stuck to that in order to give it legitimacy. It is similar to a bill that has already passed through the Australian Capital Territory Legislative Assembly.

Workplace deaths is a very important issue. Every two days someone is killed in the workplace in New South Wales. In 1999-2000 181 people died in New South Wales from workplace-related disease and injury. This is more than the number of innocent people who died in the Bali bombing, the Port Arthur massacre, and the Thredbo landslide combined. Figures provided by WorkCover to the Construction, Forestry, Mining and Energy Union show that in 2002 WorkCover successfully prosecuted 455 defendants for breaches of the Occupational Health and Safety Act.

However, regardless of the number of prosecutions, some employers who have been found negligently responsible for allowing unsafe work practices that have resulted in the deaths of employees still have to pay their fines. For example, documents from WorkCover dated 17 April 2003 show that employers who have had fines imposed upon them after a prosecution are not paying up. For example, Byrne Civil Engineering Constructions Pty Ltd was fined $125,000 on 26 October 2001 for breaches of the Occupational Health and Safety Act. As at April 2003 the fine still had not been paid and the debt had been transferred to the State Debt Recovery Office for recovery proceedings. Ace Protective Coating Contractors Pty Ltd was fined $40,000 on 2 November 1999. The company went into liquidation and the debt was transferred to the State Debt Recovery Office for recovery proceedings.

I have worked in occupational health and safety medicine for 20 years. The current Act should be strengthened to protect employees and innocent citizens who are victims of the negligent conduct of a corporation. The Democrats' Crimes (Corporate Manslaughter) Amendment Bill is based on the model criminal code for corporate criminal responsibility as developed by the Standing Committee of Attorneys-General. The bill would amend the New South Wales Crimes Act to create the offence of corporate manslaughter for which a corporation may be held liable and subject to a maximum penalty of $5 million.

The bill also creates a further offence in respect of a senior officer who participates in the corporation's commission of the offence of corporate manslaughter, for which the maximum penalty is five years imprisonment or a fine of $180,000, or both. The code applies to corporate bodies in the same way that it applies

to individuals. The test the prosecution must satisfy is that the accused's criminal negligence resulted in the death of a person.

The best legal minds in the country drafted the template on which this bill is based. The Bracks Labor Government in Victoria attempted to pass a similar bill while the Coalition had a majority in the upper House. However, after the election, once the Bracks Government came to office, the bill mysteriously disappeared. I have called this the corporate manslaughter bill rather than the industrial manslaughter bill because the general public, not merely employees, need the protection of this legislation. My nephew was electrocuted at the age of 18 on a family sailing boat, when the mast touched an overhead power line. The line was poorly signposted, was not on the estuary map pamphlet, and was not marked by large balls to make it visible. Other lines in the area were marked, so one might have expected it to be marked also.

The same power line had been the cause of a similar accident 19 months before, with the boat driver shocked but not injured. All that the electricity authority, Westpower, did was to replace the line. No safety improvements were made to a proven hazard that had already caused a non-fatal incident. Standard practice in similar situations is to put the power lines underground or to put safety lines in place. This is why action is needed to provide safety for the public as well as employees. If individuals can go to gaol for manslaughter for changing lanes negligently in the heat of a traffic snarl, surely corporations that can identify and qualify risks should also be held responsible. The bill is tight and will not result in hasty prosecutions. If the Carr Government is a real Labor government, it will support the Democrats' corporate manslaughter legislation. I will have a good deal more to say on this, but I move:

That this debate be now adjourned until the next sitting day on which general business takes precedence.

Motion negatived.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: The importance of this bill is that corporations must be responsible for what they do. One of the key problems in a number of industrial accidents is that the chief executive officer of the corporation gives an instruction to the middle managers to accept the cheapest quote, because that is seen as a financially prudent thing to do. If the middle manager accepts the cheapest quote, the subcontractor for a small but possibly dangerous task cannot use the best occupational health and safety methods and still win the tender. In other words, occupational health and safety is sacrificed so the job can be done cheaper. If an employee is then killed, the subcontractor is technically liable. The reality is that the subcontractor was forced to do the job very cheaply.

A 17-year-old boy was killed when he fell off a roof on the Central Coast. He was an inexperienced boy and it was his first job and he was delighted to have it. Harnesses, safety nets, scaffolding and the training involved in working safely all have a considerable cost attached to them. One can see why a subcontractor, who had worked on roofs for years with minimal safety, can put in a cheap tender and often get away with it. This inexperienced boy was asked to do that work, and he fell off the roof and was killed only a few days after he started work.

That subcontractor would ask what could he do. That boy was the only staff he could get, and he had to accept that tender or he would not get the job. The manager says it was the subcontractor's responsibility, that he was answering his boss's command to keep costs down and take the cheapest tender, and the boss of the whole corporation says he cannot be responsible for every aspect of his huge corporation. He had to save money, and what else is he expected to say?

I have worked in occupational health and safety for some years. The danger is that occupational health and safety is sometimes difficult to quantify and it gets marginalised. Generally, two indices are used. One is the lost time injury frequency rate, in which one asks how many lost time injuries have there been this month and what is it as a percentage of the workforce or the hours worked, or some other measurement like that. That equates to a back injury—which might ruin somebody's life—with a cut finger, because they are both lost time injuries.

At the other level the working time lost is compared with the man-hours worked so there is an index and a graph. Whether there are a lot of little injuries or there is only one person who cannot work at all, that contributes to the number of hours and everything becomes very clinical, even if the occupational health and safety people are reporting to their managers. Of course, if someone is killed, that does not add to the hours index. That is less noticeable than the workplace hours lost. In a sense there is a depersonalisation of this.

A matter that is not in the bill but needs to be mentioned is that when there is a significant accident a manager should have to speak to the injured worker or to the family so the manager will see the human impact. Often the manager only sees this clinically and in a boardroom setting, and the worker whose life has been destroyed and the family that is battling to survive are treated appallingly by insurance companies once they start to cost them serious money. There must be a chain of responsibility, as there is in other aspects of corporate behaviour, corporate investment, and corporate policy. If there is a chain and a subcontractor is injured, someone asks the middle manager why occupational health and safety conditions were not stipulated in the contract and enforced. The question then goes back up the chain. Unless there is a real paradigm change I do not think this will happen. The Government's approach to this in its draft bill is not satisfactory: it has been put under the Occupational Health and Safety Act.

Pursuant to resolution business interrupted.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Notices of Motions Nos 1 and 2 postponed on motion by the Hon. Peter Primrose.

ENERGY ADMINISTRATION AMENDMENT (WATER AND ENERGY SAVINGS) BILL

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (DEVELOPMENT CONTRIBUTIONS) BILL

Bills received.

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

Motion by the Hon. Eric Roozendaal agreed to:

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

Bills read a first time and ordered to be printed.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 1 to 10 postponed on motion by the Hon. Eric Roozendaal.

ENERGY ADMINISTRATION AMENDMENT (WATER AND ENERGY SAVINGS) BILL

Second Reading

The Hon. ERIC ROOZENDAAL (Parliamentary Secretary) [6.02 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.

Yesterday I outlined to the House the latest government efforts to save and recycle water in Sydney and to save energy across the State.

An important part of these reforms is the establishment of the Water and Energy Savings Funds.

The funds provide incentives, particularly for businesses, to introduce measures to make sure they use water and energy more wisely. They will be able to compete for financial support to put these initiatives into place.

These funds go hand in hand with the requirement that those who are the biggest users prepare savings action plans to conserve water and energy.

By 2010/2011 the expected benefits from initiatives supported by the funds include:

- saving between 30 and 80 billion litres of water pa, which is 5-12% of Sydney's total water use;
- saving 900,000 MWh per year;
- a gross saving in consumer energy bills of $370 million (NPV); and
- reducing greenhouse gas emissions by 800,000 tonnes of Co2 per year by 2010/11, equivalent to removing 170,000 cars from the road.

The Water Savings Fund is an important part of the Government's *Metropolitan Water Plan*, released in October 2004, which is a strong and detailed plan to secure the future water needs of the Sydney region.

The Plan contains a package of new actions the Government is taking to respond to the current drought and give certainty to our water supplies. The Government has evaluated all sensible practical options to supply, save or substitute water. No single option is sufficient by itself. The combination of the actions in the Plan to save, substitute and supply water will ensure a sustainable balance between water supply and demand in the greater Sydney area over 25 years.

As part of its contribution to the partnership with the community in conserving water, the Government will undertake major capital works projects:

- Work is underway already to tap into the deep water stores at the bottom of dams.
- The Government is conducting a $4 million Planning and Feasibility Study into the potential use of desalination technology to supplement Sydney's drinking water supply.
- The use of the existing system of dams around Sydney will be optimised by capturing high flows in the Shoalhaven system to increase supplies.

As with the Water Savings Fund, the Energy Savings Fund is a sensible and prudent investment, to make the use of these essential services more efficient and protect the environment.

This builds on the Government's strong record on electricity. Since 1995, we have significantly reformed the electricity system—lowering electricity prices and greatly improving its performance.

In fact, NSW regulated prices for electricity are currently lower than all other States. For example, in Melbourne the typical household bill is $205 pa more than in Sydney.

The Energy Savings Fund could pay for measures such as:

- specific energy saving projects submitted by industry and commercial enterprises, determined on a contestable basis;
- specific energy saving projects submitted by local councils and state government agencies, determined on a contestable basis;
- joint water and energy retrofit programs for residences; and
- accelerating investment in energy efficient appliances.

These are good, practical initiatives which will complement plans to bolster generation over the next decade, as well as the State Government's commitment to invest a record $6.2 billion to further strengthen the electricity network over the next five years

This initiative is not a substitute for augmenting supply by way of additional generation, this will be addressed in the government's Energy Plan.

I will now turn to the details of the Bill.

The Electricity Administration Act will be renamed the *Energy and Utilities Administration Act*, and have its objectives extended, to better reflect its broader application to water utilities and their customers, especially in relation to water saving.

The first key initiative being implemented by the Bill is the establishment of two Funds to encourage savings in water and energy.

The purpose of the Energy Savings Fund is to provide funding, primarily on a contestable basis:

- to encourage energy savings,
- to address peak demand for energy,
- to stimulate investment in innovative energy savings measures,
- to increase public awareness and acceptance of the importance of energy savings measures,
- for cost-effective energy savings measures which reduce greenhouse emissions arising from the use of energy,
- for contributions made by the State for the purposes of national energy regulation.

The purpose of the Water Savings Fund is to provide funding for conservation projects, again, largely on a contestable basis, to:

- encourage water savings and the recycling of water,
- stimulate investment in innovative water savings measures, and
- increase public awareness and acceptance of the importance of water savings measures.

The Minister can require Sydney Water and the Electricity Distribution Network Service Providers (Energy Australia, Country Energy and Integral Energy) to make annual contributions to the relevant Fund by order published in the Gazette. The Order will specify the contribution amount and the time or times by which it must be paid. The amount is not to exceed any maximum set by a regulation.

The Bill also leaves provision for funds to be sourced from other mechanisms including any advances by the Treasurer, appropriations by Parliament, investment proceeds of the Fund or voluntary contributions by any person or body including State agencies if they wish to do so.

Public calls for expression of interest will be made for each of the Funds to make sure we are supporting the best ideas brought forward by the NSW public and business. Selection criteria for the Funds will ensure the greatest possible savings are made.

Funding will be made available predominantly through a contestable pool, to promote value for money.

Funds will be set aside within the Water Savings Fund for the existing Sydney Water programs such as the retrofitting of households and rebates for rainwater tanks.

The second initiative under this Bill relates to requiring certain categories of high water and energy users to prepare savings action plans which set out measures to save water and energy. The Minister will specify the designated categories of water and energy users through savings orders published in the Gazette, and when plans have to be prepared.

For water, the designated users will include all local government councils within the target areas and other water users that may be prescribed in a savings order. Initially the designated users will include the thirstiest (top) 200 non-residential water customers of Sydney Water Corporation. For energy, the designated users initially will include the 200 highest energy users, from business, local councils and State Government agencies.

To allow the Minister to determine which are the highest users, the Bill amends section 40 of the Act so the Minister can require certain water and energy providers to provide information about the identity of high users and the amount of water or energy being used.

Draft savings action plans prepared by these users are to:

- include a description of the designated user's current water/energy usage,
- include a list of individual water/energy savings measures prioritised in terms of water/energy saved, cost effectiveness and potential benefits,
- identify the water/energy savings measures included on that list that the designated water/energy user proposes to implement in the 4 year period following approval of the action plan (including initial set up costs and annual costs for each measure and time frames for implementation), and
- include any other matter prescribed by a savings order.

Users required to do both water and energy savings action plans can prepare a plan which covers both.

The Minister for Energy and Utilities will issue guidelines, which must be complied with, concerning the preparation of such water or energy savings actions plans. These guidelines are being prepared by DEUS, in consultation with business and local government.

Once a savings action plan is approved by the Minister (with or without alterations), the plan has effect for a period of 4 years. A plan can be amended or replaced if the designated user wishes to prepare a new one. The Minister may by regulation direct users to implement savings measures as necessary.

The Bill amends the *Energy Administration Act 1987* to:

- enable regulations made under that Act to make provision for contributions that distribution network service providers are required to make to the Energy Savings Fund to be passed through to retail customers of electricity, and
- to enable the Governor to make regulations of a savings or transitional nature consequent on the amendment of the Act by the proposed Act.

In conclusion, the legislation before the House will implement Government initiatives for securing sustainable and affordable water and energy for NSW. The legislation delivers ongoing benefits to water and energy consumers – large and small alike – and to all of the people of New South Wales.

I commend the bill to the House.

The Hon. DON HARWIN [6.04 p.m.]: In a very real sense the budget has come 19 days early with this bill, because it is really pretty much about the budget line and the Government's fiscal strategy and not so much about energy and water conservation. It is a quite dishonest approach that is principally about generating revenue. It is a new tax but we will not hear about it in the budget speech.

The Government claims that the bill will establish a monetary savings fund for the electricity and water industries, provide for submissions to be made to the Minister, or a committee the Minister has selected, to receive funding to develop conservation projects, demand management policies, and alternative sources of electricity and water projects. It will require designated users named by the Minister in the *Government Gazette* to develop water and energy savings action plans that have to be approved by the Minister or the Minister's appointed committee. It will also allow for penalties to be issued against designated users, including managers and directors, who do not submit an energy or water savings plan by the deadline set by the Minister, or who knowingly break such plans.

The Government asserts that the bill will help it implement part of the Metropolitan Water Plan announced back in October 2004, under which it set up a water savings fund. It asserts that through the

promotion of demand management of the energy and water industries it will better utilise these resources and thus pressure will be taken off the capacity constraints these two industries are currently facing. If the bill did just that it would be a different story.

Tonight I lead on behalf of the Opposition. I also represent the new shadow Minister for Energy and Utilities, the Leader of The Nationals, the member for Oxley. When the bill was debated in the other place yesterday he made a number of remarks that are worth putting on the record because they clearly encapsulate the attitude of the Leader of the Nationals on behalf of the Opposition. He said:

> The Opposition supports the aims of the bill, which provides incentives for water and energy savings. However, the Opposition disagrees with how the incentives will be funded. Disagreement in relation to funding of the proposed water and energy savings funds is to the Government's preferred method of increasing water and power bills, and the objection is on two grounds. Firstly, the Government, now in its eleventh year, has not properly planned for power and energy demand versus supply. It has failed to invest in infrastructure, despite a golden flow of revenue for at least the first nine years of its tenure. Each and every year it has received approximately $1 billion over and above budget revenue.
>
> That revenue should have been invested in, for example, better stormwater collection, better waste water re-use, investigation into desalination—about which, belatedly, we have heard something, but very scant detail—and additional power generation, especially in relation to alternative or non-coal fired generation. Despite that golden flow of revenue, we have seen no investment. The Labor Government is now asking consumers to foot the bill to fund marginal power and water savings simply to buy the Government time to deal with the fundamental issue of supply of power and water versus demand.
>
> Secondly, the Opposition will not agree to consumers funding those savings plans through higher charges on power and water bills because Labor has ruthlessly milked water and energy utilities to prop up its poor financial management, with that money going into the State budget bottom line instead of being reinvested in infrastructure or, indeed, directed towards the type of savings fund proposed in the bill. By all means, the savings funds should be established, but fund them from the hundreds of millions of dollars being ripped out of Sydney Water, Integral Energy, Country Energy and EnergyAustralia, rather than hike up the water and power bills of the State's long-suffering taxpayers.

That succinctly outlines the Opposition's overall approach to the bill. Insofar as the Government has resorted to these sorts of funds before, I think it is worth reminding the House that those funds are very much like the Government's waste levy. It is important to note that of the $432 million that has been raised from the waste levy from the 2000-01 financial year until today, $278 million has gone back to Treasury instead of into the programs it was intended for. That is a major concern the Opposition has. Given the Government's bottom-line approach to funding its budget, we are concerned that these funds will simply be a way of adding to consolidated revenue.

Honourable members should bear in mind the $30 million that Sydney Water will be levied each year, which will represent approximately 2.2 per cent of its total revenue, based on the 2004-05 revenue forecast. Why is it that the Government has not taken this $30 million from the $115 million dividend it received from Sydney Water last year for projects that will eventually be funded out of the Water Savings Fund? The Government has a significant budget problem and it is dealing with it today by introducing, by stealth, a tax about which we will hear nothing on 24 May 2005, when the budget is brought down. The Minister admitted on radio 2GB on 3 May 2005 that some money from the Water Savings Fund will go back to Sydney Water. We should bear in mind that once it is returned to Sydney Water, a dividend will then be payable back into consolidated revenue.

Reverend the Hon. Dr Gordon Moyes: A double tax!

The Hon. DON HARWIN: Absolutely. The fund is primarily about raising more money from the people of New South Wales. In terms of the funny-money approach, my colleague the Leader of The Nationals in the lower House stated:

> Why else would he be billing Sydney Water an annual levy? So they can get higher price rises, to then give it back to Sydney Water, who will then give the money back to the Labor Government in higher dividends.

That is really what it is all about. An obvious concern is that one effect of the levy on suppliers is that they will have a much better claim for price rises in their submissions to the Independent Pricing and Regulatory Tribunal after the establishment of the savings funds. Therefore, consumers will be hit with a stealth tax passed on by suppliers. The Opposition will not support this legislation, on the basis that it will inevitably mean an increase in the tax burden for the people of New South Wales. We are already the highest taxed State in Australia, and revenue should not be supplemented by the measures in this bill.

There is widespread concern about the payment of dividends. Just prior to entering the Chamber at 5.00 p.m., for what I thought would be government business, I was handed a media release by the Total Environment Centre headed "Energy Savings Fund: Bill allows future raid". The release states:

> The Total Environment Centre today slammed the New South Wales Government for putting the energy savings at risk of being drained for other purposes.

This concern is held not only by the Opposition but also by a number of people who will now be levied and by the environment movement. I believe that the Total Environment Centre has asked the Greens to move an amendment in Committee. There are problems with what the Greens are doing and, unfortunately, it will not prevent these revenue raids. In fact, it will probably make the problem worse. We will wait and hear the arguments put in Committee before deciding what our attitude to that amendment will be.

The savings funds are to be controlled by the Minister and the agencies responsible to him, and there is substantial concern about public accountability. The transparency of the contestable process of applying for money from both the energy and the water savings funds is of great concern to the Opposition. Given the structure of the bill and the capacity of the Minister to impose savings action plans on the private sector, as well as, of course, on public sector agencies, the Opposition is considerably concerned that so little transparency and so little public accountability is built into the legislation.

I ask why the savings funds could not be subject to greater parliamentary oversight or why they could not be independent from the control of the Minister. There have been previous models, such as the environmental trusts set up by the Hon. Tim Moore, a Minister for the Environment in a former Coalition Government. Under the arrangements at that time, environmental trusts were more at arms-length, and they dispensed moneys extracted from industry through trade waste levies. There were great similarities in those models, but they did not have the ministerial control that is a feature of this bill, and that is of great concern to the Opposition.

The Opposition has consulted a large number of people who are concerned about the bill to seek their views on it. In particular, we have consulted the Local Government Association of New South Wales and the Shires Association of New South Wales, which oppose the bill in its current form, for good reason. Every council in New South Wales could, as an entity, be forced to contribute to energy and water savings funds. Local government is very concerned about the manner in which the funds have been set up, and the fact that the necessary checks and balances have not been put in place to give local government confidence that some of the laudable and worthy objectives that the Government asserts are behind the bill will be achieved. The Opposition believes that those laudable objectives are not the main game here. The bill is about increasing revenue available to the Government, which is in a difficult fiscal situation, largely as a result of the Government's own making. For those reasons the Opposition does not support the bill.

Reverend the Hon. Dr GORDON MOYES [6.21 p.m.]: The Energy Administration Amendment (Water and Energy Savings) Bill amends the Energy Administration Act 1987, principally to establish the mechanisms required for the establishment of both the Energy Savings Fund and the Water Savings Fund, initiatives brought about by the Government to encourage savings in water and energy. I wholeheartedly commend the purpose of the bill, although I find it strange that the initiative is not part of the New South Wales Budget to be handed down in a few weeks time. Perhaps the Minister is simply pre-empting the Treasurer.

Given the impending increase in population to 4.5 million and the current state of the environment, particularly in a time of drought, it is no surprise that governments will have felt the need to establish effective frameworks for the provision of basic utilities such as water and energy. Mechanisms for the provision of such utilities must be sustainable for the sake of future generations. Thus, a good government will have in place schemes to ensure that water and energy are provided to communities in a safe, stable and sustainable way. In my opinion, the advent of savings funds, as introduced in this bill, is one step closer towards realising effective water and energy reform.

I note that the Auditor-General's performance audit report entitled "Planning for Sydney's Water Needs", dated May 2005, refers to a whole series of reforms. However, those reforms are not addressed in the bill. One of the main initiatives provided in the bill is the establishment of the Water Savings Fund and the Energy Savings Fund. The funds will go towards mitigating excess resource use, and conserving water and energy. It is envisaged that the savings generated by the funds will be substantial. The second reading speech states:

> By 2010-11, the expected benefits from initiatives supported by the funds include: savings of between 30 and 80 billion litres of water per annum, which is 5 to 12 per cent of Sydney's total water use ... a gross saving in consumer energy bills of $370 million in net present value terms; and reducing greenhouse gas emissions by 800,000 tonnes of CO_2 per year, equivalent to removing 170,000 cars from the road.

That it is a remarkable visionary statement, but the public wants a straightforward plan for closing the gap between supply and demand. We are still awaiting such a visionary plan. Minister Sartor has said:

> The Government has evaluated all sensible practical options to supply, save or substitute water.

Indeed, the Government must employ a holistic approach to adequately deal with the water problem that we face. The bill's initiatives will assist in remedying one aspect of this jigsaw puzzle. Reducing water consumption by consumers, both large and small, through the implementation of water-saving devices, and thereby providing incentives for businesses to create better water and energy saving strategies, is amongst the many reforms needed. However, it seems that this involves merely imposing a major tax on water use. Detecting new water supplies and exploring new ways to recycle water are also required. Water usage in the agricultural industry, which is a major issue, must also be addressed. Vast proportions of New South Wales' water consumption go towards supporting the needs of our agricultural industry, particularly in a time of unusual drought.

The purpose of the Water Savings Fund is to provide funding for conservation projects, largely on a contestable basis, to encourage water savings and the recycling of water, to stimulate investment in innovative water-saving measures, and to increase public awareness and acceptance of the importance of water-saving measures. It is envisaged that the Energy Savings Fund could pay for measures such as specific energy-saving projects submitted by industry and commercial enterprises, specific energy-saving projects submitted by local councils and State government agencies, joint water and energy retrofit programs for residences, and increased investment in energy-efficient appliances. Projects put forward by business will be assessed on a contestable basis. It is great to know that money will be set aside for these purposes. But how will it be possible to differentiate between equally good causes? Attention must be paid to that issue.

How will these funds be resourced? The Minister will be able to require Sydney Water and the electricity distribution network service providers—EnergyAustralia, Country Energy and Integral Energy—to make annual contributions to the relevant fund by order published in the *Government Gazette*; in other words, by the imposition of a tax upon service providers. The order will specify such things as the contribution amount and the date by which it must be paid. Other sources of funds will supplement this main source, such as advances by the Treasurer, appropriations by Parliament, investment proceeds of the fund, or voluntary contributions by any person or body, including State agencies. I believe it is highly unlikely that that will occur.

The bill also provides the important initiative that certain categories of high water and energy users will be required to prepare savings action plans, setting out measures to save water and energy, which is commendable. These categories will be established by the Minister and published in the *Government Gazette*. The time frame for the preparation of such plans will also be specified in that publication. Some examples of these designated users include local councils and the top 200 non-residential water customers of Sydney Water Corporation. For energy, the designated users will initially include the 200 highest energy users from business, local councils and State government agencies. Plans are important because they establish a vision for the future. As stated in the wisdom of Solomon in the Old Testament, "Where there is no vision, the people perish." That seems applicable here.

The bill amends section 40 of the Act to allow the Minister to require certain water and energy providers to supply information about the identity of high users and the amount of water or energy being used. Those required to provide both a water and energy savings plan can prepare one plan that covers both. It must be also pointed out that contributions to these funds will ultimately be passed on to consumers in some manner or form. The bill amends the Energy Administration Act 1987 to enable regulations to be made to allow for contributions that distribution network service providers are required to make to the Energy Savings Fund to be passed through to retail customers of electricity.

The Minister may require the Independent Pricing and Regulatory Tribunal, when making pricing determinations with regard to the provision of water services, to take into account contributions that Sydney Water Corporation and other State water agencies are required to make to the Water Savings Fund. The bill will give benefits to consumers, but there will also be a cost involved through higher prices for water and energy. With every action there is an equal and opposite reaction. There must be a sacrifice, a cost involved, to reap a benefit in this area. I am sure that many consumers will be content to part with more money in order to have greater security that their money will be managed wisely and distributed fairly to save both water and energy.

The community is keenly aware that Sydney's inflow of water has been decreasing at an alarming rate and that by April 2005, Sydney storages had dropped to 41.5 per cent of their capacity, their lowest level in the past 45 years. More needs to be done to better manage water resources, such as reduction in leaking of old pipes

and other infrastructure, the use of surface water, grey water, ground water and stormwater, and the like. All of this is difficult, but I commend the Government for the Energy Administration Amendment (Water and Energy Savings) Bill. The Christian Democratic Party will support the Government on this initiative.

Mr IAN COHEN [6.30 p.m.]: I speak to the Energy Administration Amendment (Water and Energy Savings) Bill on behalf of the Greens. I have listened with interest to the contributions of previous speakers. I think it is reasonable to say that the Greens welcome the introduction of this bill. I am, however, somewhat disappointed at what I see as a rather narrow perspective put forward by the Opposition. For a number of reasons I am disappointed in the Opposition's interpretation of this as being yet another new tax.

I recall parts of the excellent debate on water issues that the Hon. John Ryan has contributed to, to the point where at different times I have felt that the Opposition was somewhat ahead on environmental issues. The Opposition's stance on this bill indicates that it is perhaps falling behind because I believe this is a significant step forward. It is much more significant than just discussion on a new tax. I believe, if properly instituted, this could be a driving force for important change, both social and in terms of perspective on the misuse of water and energy in our society at the present time. It is an opportunity to make significant savings, something that is welcomed by the Greens.

This type of saving in water and energy use is extremely important—critical I might say. It comes at a time of drought, and with the potential for further wasteful coal-fired power plants that make the Greens shudder. This bill, together with some of the decisions that have been made this week with respect to the decision on the Brigalow and the inappropriateness of the Opposition's reaction, has somewhat restored my faith in the Government. I believe it is an indication that the Government is moving to re-establish some of its bona fides. With regard to the comments of Reverend the Hon. Dr Gordon Moyes, echoing those of the Opposition, about it being an extra tax, I simply say: Ye of little faith, reverend. I am disappointed. I might also say that your mob has somewhat failed to deliver in recent times. The water is not there and society is wanting. I think it is up to government and society to act, perhaps with the support of all sides of the political spectrum, because this is something that impacts on everyone in the community. It is something in respect of which there can be a high degree of participation by all members of our community, and that is very important.

Before honourable members so readily condemn the Government's moves on this issue, they should consider the fact that with a positive education campaign and the right publicity we can move forward and our population, which has been a profligate user of water and electricity—our rare shared resources—can become more frugal. I would have thought that Reverend the Hon. Dr Gordon Moyes would perhaps tap that nerve of elegant frugality, which is what we need in this society, in keeping with perhaps his Christian principles, to actually move ahead. By supporting rather than condemning this type of legislation we could reduce the incredible waste that is part of our consumer society and seek some level of maintenance of our ecosystems.

Reverend the Hon. Dr Gordon Moyes: I agree with you.

Mr IAN COHEN: I am glad to hear the minister—well, Reverend the Hon. Dr Gordon Moyes is a minister! It is very confusing. It is interesting that he is able to support the Hon. Frank Sartor's Ministry in this instance. The Greens believe that the energy and water savings funds have the potential to deliver huge savings for consumers and a more sustainable environment through the more efficient use of water and energy resources. That is what it is all about. We are not talking about taxes here; we are talking about efficient usage of our rare and valuable resources, be they nature given or God-given. I believe this legislation makes a small but significant step in the direction of a conserver society.

Let me start with the Energy Savings Fund, and I shall go straight to the claims that have been made by the opponents of this fund, claims by those who are a little behind the times. The basic line that these people are pushing is that the fund is just another tax on electricity consumers. I will begin by clearing up those dangerous and misleading notions. The Energy Saving Fund is the smart way to save on electricity bills and, whilst saving on electricity bills, it will also reduce greenhouse gas emissions. Let me put it another way for those who have difficulty understanding this basic economic principle: saving energy is cheaper than building more unnecessary infrastructure.

A mountain of reports tell us that huge savings are just sitting there, waiting for someone to come along with a plan to harness them. Report after report tells us how much we are wasting and how much consumers can save. These reports tell us that greenhouse emissions can also be reduced at the same time. The watershed Independent Pricing and Regulatory Tribunal report on demand management is one such report. Another is the

Ministerial Council on Energy report entitled "Toward a National Framework for Energy Efficiency". This high-level report confirmed that 9,200 jobs would be created, gross domestic product would be $1.8 billion higher and greenhouse emissions from the energy sector would be reduced by nine million tonnes if conservative energy efficiency programs were taken up nationally.

I have spoken about this aspect and given examples of energy-efficient light bulbs, examples used in the United States of America, and a philosophy put forward by experts in the field who have been taking an interest in these issues for many years. It is not new; people have been discussing these matters for 20 years. Still there are those who say that saving energy will cost too much. For the doubting Thomases I will now present some hard evidence on what actual energy savings programs have delivered in this State and overseas.

In 2001 the New South Wales Ministry of Energy and Utilities reported that of $6.5 million spent on energy savings, there was a saving of $32 million! The opponents of this bill would like to deprive New South Wales electricity consumers of those savings. They would like to tell us that saving energy is too costly. Let us have a look at more evidence. Last year the New South Wales Department of Energy, Utilities and Sustainability reported that, for an investment of $7 million, consumers saved $48 million. That is seven-times the return for every dollar spent. This is more money that opponents of this bill would take from consumers and spend on inefficient networks and polluting power stations.

For those still not convinced by basic facts, let us go abroad. In 25 American States similar funds deliver $4 billion in savings per annum. Let me repeat that: in the United States of America these funds reap $4 billion in savings per annum. To those who try to portray the Energy Savings Fund as just another tax, I say: Get your facts right. The average cost of helping consumers to reduce demand is less than half the cost of providing additional electricity supply.

It makes me wonder why on earth anyone who believes in efficiency would seek to derail this fund. Why would anyone want to increase wasteful energy use and build more dirty, polluting coal-fired power stations when it is cheaper to do the opposite? Scaremongering about blackouts and price rises to score a few cheap points is certainly not in the interests of the people of New South Wales. Indeed, the quickest way to ensure more blackouts and price rises is to continue to encourage wasteful energy use.

So what will this fund achieve? If properly administered, at the very least the Energy Savings Fund should turn around the waste growth demand that is occurring in this State. Average energy demand is currently growing at 2.8 per cent per year. Peak demand—far more wasteful and expensive—is growing at 3.8 per cent. The fund should turn that demand growth around and achieve a zero demand growth rate within the next five years. It will do this through a range of tools, from better installation and lighting to more efficient motors and more accurate pricing. The list is endless.

There are so many innovative ideas in terms of passive solar buildings. In fact, I have asked in this Parliament for an audit of energy and water use in this building. I would love to have a look at such a document, which would translate to water and energy usage in all State government buildings. It would be great if the Government could set an example because this Parliament has insufficient dual flush toilets and inefficient airconditioning. There is significant room for improvement in this and other government buildings, and such a move would be a step in the right direction. Perhaps this legislation will assist in the drive to encourage society to look more closely at a conserver mentality on these issues.

Most important, the fund can and should avert the need for new coal-fired power generation in this State. The Energy Savings Fund must be a key tool against greenhouse gas emissions and dangerous climate change. People in this State are concerned about coal-fired power electricity generation. The community wants more effective and efficient means of energy production, and part of that would be for conserver society to use clever technology—and technology that often is decentralised—so that smaller, decentralised industries rather than major utilities, which cost the earth, can return jobs to country areas. Many people in those areas are servicing types of decentralised power cogeneration systems—bolt-on systems, for that matter—in private houses. That is something that I am enthusiastic about.

In my part of the world Rainbow Power Company and others are effectively working with the storage and major grid systems; putting in solar and wind energy generation systems that save on power bills immediately and pay their way in a matter of a few years. In many circumstances they use the grid system, which is the weakest part of alternative power generation systems, as storage. They work hand-in-hand with the major utilities, but have an exceptionally effective way of cutting down the greenhouse gas emissions.

That could be happening throughout the State with government support and if we can drive down the resistance from different parties in this House and generation utilities, which have a mentality of producing more. Power generation companies are out to maximise their profits but, at the same time, given that they have a monopolistic practice in this State, they have a responsibility to the consumer also to be more efficient and to encourage energy conservation throughout the State.

The Greens believe that climate change is a scientifically proven phenomenon. I hear considerable rantings in this Chamber from other honourable members to the contrary. However, the international scientific community has confirmed that there is a direct and dangerous link between the burning of fossil fuels and climate change. Climate change will increase the likelihood of bushfires, extreme weather and drought, not to mention the devastation of biodiversity and the long-term ability of the environment to sustain us. Without action, climate change will affect our farmers, tourist industry, jobs, and the health of people, and will have a devastating effect on our environment.

I have heard others in this House state that is just a fact of life, but in a few years, a matter of a century—which is the blink of an eye in historic terms—climate change is having the same impact as change that might take many thousands, if not millions of years in other circumstances. This rapid climate change is impacting on our native species, and causing the extinction of certain species in New South Wales. I am not sure whether the high rate of extinction in New South Wales is the result of climate change or the fact that we have still have certain species in this State, but they are declining at a rapid rate, which is a great tragedy. We should seriously consider the overall concept that what is good for the environment is also good for us. We are not separated from it, as many who like to live in airconditioned comfort think; we are part of the environment and it is important that we protect it.

The greenhouse gas emissions that cause climate change rose in New South Wales by 44 per cent between 1990 and 2000—one decade in our lifetime—and I have spent five years in this House talking about these issues. That figure appears in the Government's own energy directions green paper. More important, the bulk of those emissions come from energy generation. Let us not be mistaken: New South Wales has a huge problem with greenhouse gas emissions, and that is why I call on the Minister for Energy to avert the need for new coal-fired power by setting strong energy savings targets for the fund. Those targets must be included in the energy directions white paper. There must be a link between energy savings and the avoidance of new coal-fired power.

Comprehensive annual reporting should be conducted to ensure that the fund delivers on its objectives. I shall outline later an undertaking that I will seek from the Minister in that regard. It is critical that the fund achieves actual energy savings. The most problematic flaw of this bill is that it allows money to be taken from the Energy Savings Fund and redirected towards national energy regulation. This is an inappropriate use of the fund. This money should come from consolidated revenue or another source. The amount required for the new national energy regulator bodies, comprising the Australian Energy Regulator and the Australian Energy Market Commission, has not yet been established. Because of the uncertainty in the future with respect to the development of the national electricity market, there is no guarantee that the entire proceeds of the Energy Savings Fund will be appropriated towards that market.

Too many times we have seen these funds ransacked for other purposes, leading to the Government's policy agenda being at a standstill. It happened to the waste fund and, unless the bill is amended, it could happen to the Energy Savings Fund. The fund is too important. That is why I will move an amendment in Committee to put a cap on the use of this fund for the national energy regulator at 5 per cent. Without a cap, savings for electricity consumers and greenhouse gas emissions reductions will be put at risk. Unless the bill protects the fund from being siphoned off for other purposes, consumers will have a right to ask why they are paying for it. The Energy Savings Fund should be used for energy savings.

The Greens support the Water Savings Fund. In the past governments have been reluctant to make the switch from mega systems, such as like the extraction of water from the Shoalhaven, to home-based systems that have the side benefit of reducing stormwater flows. The Water Savings Fund could help deliver water savings by providing incentives for measures to reduce demand for water consumption. This is a step in the right direction. I welcome permanent low-level water restrictions on outdoor water use. I think it is vital that communities accept those cultural changes. We must get into the habit of saving water and changing our culture. We have seen a profligate use of water for so many years. New South Wales is a very dry State in a dry continent, so it is essential that we change our attitudes. Domestic water has been wasted for many years. Such water could be used far more effectively and efficiently.

I have installed recycled grey water systems in the properties I am involved with. Although recycled grey water systems provide a big saving on rainwater catchments, it is difficult to get financial support from local councils, or in my case Rouse County Council in northern New South Wales, because of the issues involved. The difficulties involved makes such moves the domain of extremists like me; the average person considers that it is too costly.

I have installed grey water systems and reed beds to clarify grey water from domestic dwellings. This is in suburbia; this is not necessarily in country areas only. I am aware that I am painted as an extremist, but I repeat that 30 per cent of household potable water is wasted when it is flushed down the toilet. Highly effective and efficient compost toilet systems are manufactured in New South Wales. I wish there was further government support for such systems, and there is an opportunity for many houses to have such a system retrofitted. As I have said previously in the House, there is also an opportunity to bring back the great Aussie outhouse, but make it a composting toilet. Outhouses work. They are effective and clean; they do not smell or pollute the environment. They create a resource by cutting off 30 per cent of the water supply for the average household. That is an effective way of lowering water usage of water in general households.

The Hon. Peter Breen: They are horrible when they don't work.

Mr IAN COHEN: I note the interjection of the Hon. Peter Breen that they are horrible when they do not work. There are many instances of outhouses in public places not being properly managed. However, with a tiny amount of management—overall, that involves a fistful of sawdust each time they are used and a rake down every month—they can work in the average household. They work extremely well. Indeed, they would resolve many problems in terms of water consumption. There is also an opportunity of reusing grey water for flushing toilet systems in many households. That is an effective way of reusing water and cutting down on another source of pollution that we see en masse with sewage outfalls being pumped into the ocean. That water should be resourced and reused.

At the microcosmic level, grey water being pumped into the system from households could be reused, particularly the grey water from baths, washing machines and the like. I am not talking about reusing kitchen water and toilet effluent. So there are many, many options for a sustainable water supply in the future. The Government should grasp all these opportunities. A sustainable water supply deserves a change of culture and perspective. One way to drive this change of culture and perspective is to give significant rebate and cost opportunities to people who are prepared to undertake these initiatives. At the same time we must start paying what resources are really worth. For too long these resources have been subsidised. When it comes to electricity or water supply, it must be the total cost, including the cost to the environment.

It is pleasing to see the Government setting up a framework to urge the big commercial water users to reduce their water use through the preparation of plans and providing access to farms on a competitive basis. This is a positive step and should be commended. As I said, use of the fund for education purposes is also important. If we are to get serious about water savings, industry and members of the public need to be educated. There needs to be a shift in attitude away from the idea that water is an infinite, readily available resource that will always be there to be exploited, and that when dam levels drop we can simply pump water out of our river systems or purify sea water. We need to recognise that water is a precious resource that must be used wisely.

It is concerning and disappointing that the Minister, in his second reading speech in the other place, still looks to water extraction from the Shoalhaven and desalination as solutions to New South Wales water shortages. The suggestion is a $2 billion desalination plant for Sydney. This would produce large amounts of damaging greenhouse gases. A desalination plant producing 100 million litres of fresh water a day would create more greenhouse gas emissions than 50,000 new cars on the roads would produce each year. A 500 million litre plant, which the Government is foreshadowing, would be disastrous and is an unnecessary step to take. On the other hand step pricing, minimum performance standards for water appliances and permanent low-level water restrictions would not only produce no greenhouse gases but would save more water than a desalination plant would create.

Figures given to the Government during the preparation of its water policy last year showed that water saving initiatives would save 58 billion litres of water a year by 2029—significantly more than the amount produced by a desalination plant. During my shower this morning I thought about the process of showering; I mix the water to the right temperature, get wet and then I simply turn off the water with a knob on the shower rose to stop the flow while I soap up. When I turn the water back on it is at the right mix, so there is no further waste of water. Showering in this way becomes a habit of use. It is simple. I save water when I turn off the

shower to soap up, which could be up to five minutes. The shower rose, which is worth about $30 or $50, prevents water running off to waste. It is simple, effective and cheap. I do not know why we do not have them everywhere. This is not rocket science; it is basic stuff. Honourable members are looking at me incredulously.

The Hon. John Ryan: I'm thinking of what my teenage kids would do if confronted by such a concept.

Mr IAN COHEN: I acknowledge the concern of the Hon. John Ryan about what his teenage kids would do. Surely they are capable of learning how to turn the system off. I cannot comprehend that they would not take note of that. Perhaps they need the right type of encouragement, but I am not sure how. The incredulity on the Hon. John Ryan's face is interesting. I wonder why his children would be incapable of doing something like that. If offspring such as the Hon. John Ryan's children are incapable of deviating from profligate water use, perhaps parents could simply set a good example. I presume that an average household would have a 50 per cent reduction in water usage for showers, at least for a short time.

The Hon. John Ryan: A hot shower is one of the few pleasures I have during the day.

Mr IAN COHEN: Exactly. I acknowledge the pleasure the Hon. John Ryan gets from a hot shower, and no-one is denying that. Perhaps he could educate me later about the point of lathering and showering at the same time, and washing the soap away before it gets on one's body. These shower roses are readily available; they are sold everywhere. The extraction of water from the Shoalhaven risks blocking its tidal entrances and increasing salination. In the Hawkesbury, water extraction has resulted in algal blooms. There are algal bloom problems where water is pumped from the Shoalhaven. We have major algal bloom problems in our waterways and water supplies, and the proliferation of other problems. Increasing extraction from the Shoalhaven River could result in similar problems. Moreover, extraction is still reliant on rainfall but in this case it is reliant on rainfall in the Shoalhaven, rather than in Sydney's catchments. This afternoon I took a delegation from the Shoalhaven to the environment Minister's office, and Minister Debus and his advisers gave it significant time.

[*The Deputy-President (The Hon. Amanda Fazio) left the chair at 6.59 p.m. The House resumed at 8.00 p.m.*]

Mr IAN COHEN [8.00 p.m.]: Before the dinner adjournment I was discussing the issue of extraction from the Shoalhaven River. It has been a catchcry of the Greens for many years—and I think we have led the way and caused some degree of change in the culture of society—to support the more careful use of resources, and in this case water resources. I believe water re-use is a far more preferable option to a desalination plant. It provides better value for money and is a far better option environmentally. A short while ago the Premier described the extraction of drinking water by desalination plant as being bottled electricity. He made that statement yet the Government is still going forward with the concept of undertaking desalination. There are many downsides to it. It is opting for a high-tech option when there are many other ways to go forward, and I will mention those in a moment. While it is good to be able to recycle water to a level of potability, recycled water can be of great use to the community without necessarily being to the point of potability. I see the Hon. Rick Colless nodding his head. As he is from a farm, he would understand.

The Hon. Rick Colless: Walgett is an example.

Mr IAN COHEN: He has mentioned the example of Walgett. In rural regions there are many ways of cleverly collecting water and effluent. Redistributing it on the land—supporting the growth of crops and plants, the revitalisation of gardens, and such like, in low rainfall areas—can be very effective. The water does not have to be processed in all these cases to the point of being potable. In Byron shire I have been involved in a project in a suburban house where the water used to go into a septic tank and through an absorption trench. Now, effluent goes from a septic tank through a reed bed and then into another septic tank for storage. It is pumped regularly through flow forms, which is a final polishing for water, where the water is aerated. It forms quite a pleasant fountain and a series of, in this case, beehive patterns to give a final polish to the effluent, and it is of quite high quality—not that it would be used for drinking, and that is not suggested—for use on gardens. That effluent can be used to water gardens and for outside purposes, other than for food production, very successfully in times of drought.

I hope more and more people will undertake those activities so they can mine the effluent from individual households. This experiment, which has the option of running to an absorption trench, allows the household virtually every day to utilise about 1,000 litres of water out of the shower, the bath and the laundry which can be re-used. That can be done at the individual house level with a minimal garden area, and the same principle works on a mass scale. Rather than pumping various levels of effluent, be it from grey to black, into

the system and forgetting it, if we are able to harvest it and take an active role, that can go a long way towards alleviating the problem.

I say again—although I do not expect to be listened to—that it creates local industries and industries that employ local people on a small scale. Rainbow Power Company from Nimbin, up my way, successfully exported these small-scale packages and treatment plants to South-East Asia. It is a fantastic export opportunity and there is a real need in these areas. One can only hope that governments can move away from large utilities and big solutions and allow these small-scale industries to flourish. They can be very successful in changing waste into a resource and employing people in the community.

We have seen successful water recycling examples internationally. It is common in Europe and it occurs in Singapore. One wonders why the Government is so resistant to the idea of recycling water to a potable level on a major scale. Water recycling is referred to in the Minister's second reading speech as one of the things that the water-saving fund can encourage. I hope the Government will seriously look at water recycling as a viable part of the solution to Sydney's water shortages. It can be done in many ways. I look forward to some innovative opportunities. In new developments grey water is being pumped back through toilet flushing, so there is a double use of the same water. I look forward to the time when someone finds creative storages for that grey water, even in flats and units—under a bath or such like—so it can be pumped back into the toilet cistern and used for grey water flushing. Those things can be very effective.

Over dinner this evening I was discussing the fact that so many unit blocks in Sydney do not have individual water metering, so there is no incentive to save water. Many people renting in flats and units do not have water bills. There is no user-pays principle. This is unfortunate, because with more metering those who are frugal would get the benefit and those who are profligate would have to pay for it. Those who use the water should pay for it. The Greens support the user-pays principle. The opportunity is there, if we could only get Sydney Water to install more meters so that there is a real pay-as-you-use system, which could achieve further water efficiencies.

Services Sydney is a private company that has been controversial in putting forward proposals for large-scale reuse of water. I believe its plans could dramatically reduce marine pollution from the partially treated sewage discharges from the major ocean outfalls. In the vicinity of 400 gigalitres a year is available to be sourced from the ocean outfalls, and this amount is increasing every year. I have consistently taken this issue to Minister Sartor. Many of the problems of re-using water in Sydney are not so much because of technical problems or expense; it is just that we have a culture of pipe builders. The culture in Sydney Water goes back for generations. Engineers want to build more pipes, more infrastructure—

The Hon. Rick Colless: Pipes that leak.

Mr IAN COHEN: Yes. Frank Sartor claimed that Sydney Water's pipes have a high level of efficiency but with exfiltration in dry weather and infiltration in wet weather there is a recipe for further impact on the environment and major inefficiencies—

The Hon. Rick Colless: Not to mention the wastage of water.

Mr IAN COHEN: Yes. A lot can be done to rectify the system. I support the concepts put forward by Services Sydney. There is an opportunity to stop the pollution from the ocean outfalls. I have been irked by this pollution for many years as a frequent ocean user. Many years ago I surfed in filth that had come from the outfalls at Maroubra, Bondi and Manly. I also campaigned against extending the outfalls by three kilometres, which was undertaken by the then Minister for Planning, Bob Carr, in the Wran Government. I and many others were very unhappy about that and instituted the big poo marches back in the late 1980s. The pollution was inappropriate and unnecessary. It was a result of a culture of the then Sydney Water Board, now Sydney Water. That culture has never been successfully challenged. Solutions still involve piping sewage into the ocean. The North Head megapipe, an outfall tunnel, will be used to store sewage.

This is a further example of the tendency to turn everything out to the ocean rather than turning it back and using effective recycling processes. I hope that Minister Sartor will be able to change the culture. I may be disappointed but I think that he has the energy to undertake that challenge. It is vital that we keep campaigning against Sydney Water's penchant for pumping a valuable resource into the ocean. Services Sydney is proceeding with its model. It is absurd to consider pumping massive quantities of water across from the Shoalhaven River at great greenhouse gas cost and yet at the same time allowing that amount of effluent to flow out into the oceans.

Tens of millions of litres of stormwater, waste water and sewage are there to be harvested but it will continue to simply drain away and cause pollution because the Government has not taken the hard decisions necessary. So many times I have been assured that with the modern methods of sewage treatment it would be okay. I was assured of that in the early 1980s on the Lennox Head outlet by the engineer from Ballina council and others at the council. They were wrong. I have campaigned against the Lennox Head outfall, as I have campaigned against many outfalls in Sydney. It is sad that we have not achieved a more sensible regime for the utilisation of a valuable resource in such a dry climate. We are presently gripped by drought, and reuse of effluent could be very effective in this situation.

There is also a need for greater incentives for rainwater tanks. This could be achieved through the Water Savings Fund. I understand that Premier Carr has admitted that the program to encourage installation of rainwater tanks in schools has resulted in only two schools receiving the $2,500 grant after a year of operation, although more than 150 schools registered for the scheme but have yet to qualify. They are precisely the sort of water savings measures that should be encouraged. There is a real failure in their implementation if so few schools are qualifying.

Apart from the actual water saved, such programs show schoolkids that they can capture the water from the guttering systems and utilise it in the schoolyards. That is an important educational tool that will encourage a proliferation of rainwater tanks in future. Often the systems are not appropriate. I need to check on this, and I stand to be corrected if I am wrong, but I understand that Rouse Water on the far North Coast put certain conditions on water tanks—back flush valves and such like—that make it expensive for people to qualify for rebates for rainwater tanks. I also understand that it applies only to very large rainwater tanks.

People who retrofit need to use relatively small tanks that can go into limited areas. One type of plastic tank is quite effective. It is the size of a large mattress and can be used to form a wall. We can make water walls and be very creative. Water authorities such as Rouse County Council should have a degree of flexibility to encourage use of different capacity tanks so that people can qualify for subsidies. People will participate if they are given the opportunity and the right information.

The Minister indicated in his second reading speech that the water savings estimated to come from the Water Savings Fund will be between 30 billion and 80 billion litres. This is only 30 to 80 per cent of the water required to get the recommended flows down the Hawkesbury-Nepean of 100 billion litres by 2015, and does not include potential climate change impact on other factors such as catchment runoff. The savings proposed by the fund are a good start but the targets need to be greater. This is where we need to reuse sewage instead of wastefully pumping that very valuable resource into the ocean.

Recently the Water Efficiency Labelling and Standards (New South Wales) Bill was passed. Water-efficient toilets and water appliances are a form of water savings available to the average person. They are to be supported, but we need to go beyond stars on appliances, as I have said before in this House. Earlier tonight I said that I am looking forward to seeing an audit of Parliament House and other Government buildings for water efficiency measures—simple things such as dual-flush toilets and a waterless urinals. They are used in many areas. They are used in my hometown in the Top Pub and in council toilets.

A urinal that uses no water is quite a simple concept. A count of the number of urinals in Parliament House and an estimation of the amount of water used in flushing them would result in the realisation of an amazing misuse of a resource. That misuse could be easily rectified by the installation of waterless urinals, which have been well trialled and are functioning in public toilets in many areas. I have asked the Minister a number of times to consider this significant step forward, and will continue to do so. I make it very clear that these simple measures should be undertaken so that the Government can set an example: it should practise what it preaches in this case.

I hope also that the Government does not use the Water Savings Fund to fund works for Sydney's metropolitan strategy. Savings from the fund should be additional to the savings in that strategy. The recently released Auditor-General's report was critical of a number of aspects of Sydney Water's performance. There is the problem of ageing water infrastructure, and water authorities are unable to measure water use in thousands of houses and apartments, as I have said previously, because they do not have water meters. If people are not aware of how much water they are using, there is no incentive for them to use less. The New South Wales Government is ignoring opportunities to save tens of billions of litres of water by the use of recycling initiatives in existing homes and the replacement of cracked pipes beneath them.

One thinks of water meters as being quite bulky. These days water meters for houses are extremely small and could fit quite easily into a small corner of a unit near the hot water system. There is plenty of

opportunity to install water meters, and I encourage it. I would install a water meter in my unit if I had the opportunity, because I would be able to monitor my water use. Sydney Water has advocated that 31 per cent of its stormwater system is at least 75 years old and that only 175 kilometres of its 22,000 kilometres of pipeline was replaced in 2001-02. Sydney Water's calculations show that its own daily water wastage via leaks in water mains is 188 million litres, the equivalent of 94 swimming pools. That statistic not only confirms that the Government is not doing enough to protect and conserve precious water supplies but also makes a mockery of water restrictions.

The Hon. Frank Sartor said that on a global basis Sydney Water has a high level of efficiency in dealing with water leaks. If that is a high level of efficiency, obviously there is room for a great deal of improvement. I am well aware of the problems involved in keeping water pipes and systems up to standard in fixing water leaks. In this day and age, particularly during such a severe drought, far more could be done to resolve the wastage of water through leakage. A glaring omission from the bill is the lack of provision for reporting on the energy and water savings funds. Therefore, I call on the Government to give an undertaking for annual public reporting under the Act, when it comes into force, for both the Energy Savings Fund and the Water Savings Fund, as to how the funds have been spent and what benefits they have achieved.

The first such report should be made public 18 months after the Act comes into force. Governments need to listen to the concerns of all honourable members, and I represent a significant constituency in New South Wales that is calling for clever solutions to these major problems. Together with the significant number of criticisms that I have and will continue to have, at this stage I commend the Government on introducing this bill and on finally setting up funds for greater energy and water efficiency. I do not believe, as other members have suggested, that the funds are just a tax. Potentially they are a visionary step in the right direction in dealing with those valuable resources.

Following debate both inside and outside Parliament on water use, water misuse, electricity and energy use, greenhouse gas emissions and climate change, I hope that the Energy Administration Amendment (Water and Energy Savings) Bill will indeed be a step in the right direction and will be seen as landmark legislation that can lead to greater consciousness with regard to water use in the future. With that comment I commend the Government on its efforts on this issue.

The Hon. JON JENKINS [8.25 p.m.]: Again, as usual, I find myself in agreement with the Greens on some matters, and diametrically opposed on others. This bill is a step in the right direction. Provision of an incentive scheme for the saving of water and energy is laudable. I really do hope that the projected savings can be realised, if only in part. Even if it is successful only in part, the scheme would justify its instigation. One reservation mentioned by others is that those funds may just be a form of indirect tax in that the money may be appropriated back to general revenue by Treasury. Although I am not a legal expert it appears to me that section 34H, with regard to payments out of the Water Savings Fund, and section 34L, with regard to payments out of the Energy Savings Fund, at least on the surface, seem to preclude payment of the money to Treasury. As far as I can see there is no legislative basis for that claim. Unless someone can show me the legal routes by which the legislation allows for such movement of money to general revenue or Treasury, I will have to consider this point moot.

However, I have two reservations. The first is with the often misused and abused public awareness issues. Many government-funded bodies have simply become propaganda mills for the extreme environmental movement. I notice that the bill states that the purpose of the Energy Saving Fund is "to provide funding to increase public awareness and acceptance of the importance of energy saving measures", and there is a similar provision in regard to water savings. I hope that the Government is starting to realise that the money will not end up where it is supposed to; it will probably end up being used against the Government to a certain extent. My second reservation relates to the sting in the tail of section 34L, as it provides funding for cost-effective energy savings measures that reduce greenhouse gas emissions arising from the use of energy.

I am becoming fed up with this greenhouse crap and I am fed up to the teeth with the falsehoods portrayed in this place as fact. Let us go through the lies about greenhouse gases and global warming. Global warming has happened before, and we had nothing to do with it. On Tuesday during debate on the Electricity Supply Amendment Bill I referred to data relating to greenhouse gases and global warming on the planet. I have more data with me today that members can read, if they are interested in verifying what I am saying. I have a copy of Ian Plimer's *A Short History of the Planet Earth*. The last time global warming occurred it happened 10 times faster than the current episode. We had nothing whatsoever to do with that either. The Earth has generally been a lot hotter than it is at present. We are actually in a cold period of the Earth's history. Carbon dioxide levels are at one of the lowest points in the Earth's history.

Generally we have had much higher levels of carbon dioxide: in fact, as much as 10 times higher than present levels. The idea that this is the fastest rise in temperatures, sea levels or carbon dioxide levels is wrong; it is a lie, it is a falsehood. The connection between global warming and greenhouse gases is unproven rubbish. We should not be making public policy based on that presumption, because it is wrong.

Mr Ian Cohen: How could you convince anyone that it is wrong?

The Hon. JON JENKINS: I acknowledge the interjection by Mr Ian Cohen. Ian Plimer's history of the earth backs up my facts. I am happy to debate this with him at any time, publicly or privately, anywhere he wants.

Mr Ian Cohen: No.

The Hon. JON JENKINS: No, I did not think so. Again the reference was made to extinction of the species being due to global warming and greenhouse gases. That is rubbish!

Hon. Dr Arthur Chesterfield-Evans: It is people.

The Hon. JON JENKINS: I acknowledge the comment of the Hon. Dr Arthur Chesterfield-Evans. I tend to agree with him that the problem is too many people. I will move an amendment in Committee, which probably will not be supported, to emphasise that the connection between greenhouse gases and global warming should not be underpinning our public policy. The second issue that concerns me with this bill is that there does not appear to be a formal mechanism for the reporting or overview of how the money is spent. I thought there would be an amendment to provide for some sort of audit or oversight as to how the money is spent. In reply I would like the Minister to at least elucidate some mechanism by which the public can verify that the money is spent reasonably judiciously.

This bill is a good step in the right direction. I would have liked a parallel scheme for residential buildings with the inclusion of new building standards, as several other States in Australia already have: new insulation standards, new building materials and designs. I would like to see New South Wales move in the same direction as Queensland, where before you can build any structure you must earn a certain number of efficiency points—the building has to have the right insulation, the right windows, the right aspect, and the right water and energy savings. The inclusion of new building standards, better insulation, more efficient electrical devices, power management, the recycling and reuse of grey water and other such easily implemented schemes should be equally rewarded in the home as they are in business. I have seen a very innovative system in my area, where a person has a large water tank under the floor of the house, and that tank is used both for water storage and a hot and cold sink so air can circulate around the tank, which then heats and cools the house. In closing, I reiterate my fundamental support for the bill and note that I will move an amendment at the Committee stage.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [8.33 p.m.]: I support the Energy Administration Amendment (Water and Energy Savings) Bill. This is actually a very exciting bill, a piece of vision. I do not say that very often. It has to be acknowledged that in conservation markets there has been a failure of the market mechanism. You cannot ask companies that make their money from selling a product to sell less; clearly they have a conflict of interest. If you want less sold you either put the price up or compel them to sell less. This conflict makes it very difficult for corporations involved in any part of the cycle of generating, transmitting or retailing of electricity or water to respond to the need to conserve. There needs to be someone to oversee the situation, look at demand management and try to create alternative approaches. This bill sets up mechanisms to do that. In a sense, it comes under the category of all-power-to-the-Minister bills.

One is always frightened of bills that give Ministers more power because at one point in time a Minister might know what he is doing yet some years later another Minister might not know what he or she is doing. I confess that when we were debating a bill to give more power to a police Minister to combat terrorism, I had little faith in that police Minister's judgment, I was scared, and I spoke against it in this House. However, in this instance I have faith in the Minister. It needs someone with vision to break the problem of market failure and act in an intelligent and integrated way to lessen the demand for both power and water.

I believe that the best systematic control and implementation of demand management and alternative solutions in both electricity and water are extremely important. The amount of money that has been promised for this is horrendous, and simply leaving it to market mechanisms would not provide an optimum solution. I refer to my speech yesterday on the Electricity Supply Act in which I talked about the difficulties of this. I will

not repeat what I said at that time but I do refer honourable members to my comments because I despair at the lack of commitment to demand side management. Of the huge amount of $7.6 billion that the Government was planning to spend on electricity infrastructure, very little was to be spent on generation. According to the New South Wales green paper the intention was for generation to be done by private companies.

The paradigm that needs to be changed is that we have to conserve electricity for greenhouse reasons and because we are consuming huge amounts of both electricity and water. Apart from Antarctica, Australia is now the driest continent in the world. Our tradition of water use has been extremely profligate. We have used water for every possible purpose and we have not had grey water. In France, in the short period after 1800 when Napoleon was in charge, before his international ventures that eventually cost him power, he effectively laid both fresh and grey water pipes throughout Paris. We have been quite profligate in our water use and have not done that. Indeed, until recently there had not been any savings at all, and we had used relatively fresh water, with almost all the rivers in the Sydney Basin allocated. There is now some rather foolish scheme being suggested to take water from the Shoalhaven—the last of the rivers accessible from Sydney—into the Sydney catchment. The desalination of water is also being suggested rather than the use of sewerage and rainwater in the Sydney tunnel leading to the Manly ocean outfall.

There is a need for a fundamental change in the paradigms for the use of electricity and water. If we have a Minister who is sufficiently interested to set up a structure to do this, I must confess I believe all power to him. It is very depressing that when this idealism and attempt to change paradigms come before this Parliament all the Opposition can do is sneer about the taxation aspects. Such cynicism is quite depressing for a party that considers itself an alternative government.

While I do not agree with everything that the Minister for Energy and Utilities does, and whilst I consider that the Minister makes mistakes, nevertheless he has energy and enthusiasm, and he intends to do things and leave a legacy that matters and extends beyond his personal ambition. That is very important. It is a lovely irony that his department's acronym is [DEUS]—the Latin word for God. That is a very nice touch, perhaps from some public servant or minder with a sense of humour and a knowledge of Latin—or perhaps by chance by somebody who does not have a clue, which always has to be considered. It is a wonderful acronym for the department of this man who is going to change paradigms of energy and water in New South Wales.

I will refer next to some of the more mundane aspects of the Energy Administration Amendment (Water and Energy Savings) Bill. The bill will promote savings in water and establish water and energy savings funds that will be used for conservation initiatives. The bill requires high energy water consumers to prepare water or energy saving plans systematically in order to lessen their consumption. Failure to submit a plan when required will result in a $5,500 fine. The bill forms an important part of the Government's Metropolitan Water Plan, which was released in October last year. It will enable the Minister to establish advisory committees, a water savings fund, and an energy saving fund.

Proposed section 34P (2) (a) will limit the contributions payable to "an amount that does not exceed the maximum amount, if any, prescribed by regulations". Effectively, that means that the maximum amount is still to be established by the Minister at a later date and prescribed in a regulation. The fund will be used to encourage water and energy savings and the recycling of water, to reduce water demand, to address peak demand for energy, to stimulate investment in innovative water and energy saving measures, and to increase public awareness and acceptance of the importance of water and energy savings measures.

I wonder whether the television advertisements that are currently being aired in an attempt to justify capital works projects to extract water from the Shoalhaven and other dams fall into that category. I am always concerned about the abuse of government information programs. Honourable members would be aware that I am concerned about programs being used for pre-election propaganda. I have on the notice paper a motion—motion No. 34—that states in part:

> 1. That a select committee be appointed to inquire into and report on the use of public resources for the promotion of government policies and in particular:
>
> (a) advertising and communications strategies used by government including the strategies commonly known as "spin" and "control, "
>
> (b) the expenditure on advertising and media advice by ministers and government departments during the previous Parliament and especially in the lead up to the 2003 general election.

Even the best programs can be used as government propaganda. The changing of a paradigm requires the changing of public understanding and perception. Such communication can be legitimate. I hope and trust that that happens in this case, and that these programs will not be used for election or propaganda purposes. The fund will be used for cost-effective energy savings measures that reduce greenhouse gas emissions, and for contributions made by the State for national energy purposes. I understand that that was a quid pro quo for Federal Government acceptance of this scheme.

Proposed section 34J provides that the Minister can gazette and require a State water agency to make an annual contribution for a specified financial year to the water savings fund. There is a similar provision for distribution network service providers to make contributions to the energy savings fund.

I refer next to water and energy savings plans. The bill requires designated water and energy users to prepare and submit water or energy savings plans, or both. The Minister may approve these plans or refer them back for further consideration. Proposed section 34S provides that a plan may be approved with such alteration as the Minister sees fit. The Minister must consult the designated user concerned before making any alterations to the plan that the user submitted.

A lot of power has been given to the Minister to impose savings on entities that he and presumably his advisory committee think are reasonable or necessary. Under this bill the Minister may require the Independent Pricing and Regulatory Tribunal to take into account contributions that the Sydney Water Corporation and other State water agencies are required to make to the water savings fund in making price determinations for the provision of their water services.

Proposed section 20A will insert into the dictionary in the Electricity Supply Act 1995 the term "distribution network service provider"—a person who controls or owns a distribution system, namely, the electricity power lines and associated equipment and electricity structures that are used to convey and control the conveyance of electricity to the premises of wholesale and retail customers, or to convey and control the conveyance of electricity to, from and along the rail network electricity systems. That does not include a transmission system.

Consequential amendments to the Electricity Supply Act 1995 will ensure that the regulations under that Act provide for the cost of contributions made by distribution network service providers to the energy savings fund to be passed through to retail customers of electricity, which is hardly surprising. Yesterday, when I spoke in debate on the Electricity Supply Bill I said it was interesting and somewhat tragic in these days of greenhouse gases that the Government boasted how cheap electricity is when it has made no provision to replace its existing generation plant. It is ludicrous for the Government to boast how cheap electricity is when it has made no provision for the future. But that is another story.

The Government is sending signals to the community that it wants to reduce energy consumption. The more expensive electricity is, the more cost-effective it is to buy energy-efficient appliances. The same could be said for demand side management. If the price goes up, demand side management becomes more cost-effective. If that message is not sent to consumers, it will be more difficult to implement these measures. The Legislation Review Committee examined this legislation and said that under proposed section 34J the Minister is required to request an agency to make specified annual contributions to the water savings fund. The report of the committee states:

> 18. The Committee notes that enabling the Government to prescribe a State agency as a State water agency by regulation, and thereby subjecting that agency to requirements to make annual contributions, is a significant delegation of legislative power.
>
> 19. However, given that any such regulation would be subject to disallowance by either House of Parliament, the Committee does not consider that this comprises an inappropriate delegation of legislative power.

It very much depends on the person to whom one is delegating the power. The personality and energy of the Minister are extremely important. If there were a change of Minister there might have to be a change of legislation, unless the advisory committee established by this Minister becomes self-sustaining. At the moment it is at the discretion of the current Minister. It could become entrenched and perhaps refined and work beyond the tenure of this Minister. I hope the structures that are established under this legislation become robust enough to survive the Minister. One wonders whether the legislation the Minister has shepherded through this Parliament will outlast his tenure as Minister for Energy and Utilities.

I referred yesterday to the importance of demand side management in electricity and water. That has to be outside the market. Proposed sections 34I (b) and 34O (b) will enable excess money collected under the bill to be invested, as suggested by the Treasurer. I hope those provisions are not used as a mechanism to put the

money back into consolidated revenue, or to enable the money to be used for other purposes. There is a possible loophole in the legislation that will enable the collection of these levies and ensure that they are used for purposes other than demand side management and investments. The bill states that if the money is not in use—it might be in the kitty waiting for allocation to worthwhile projects—it will be invested in the interim.

I hope that the money will not be used for other purposes. The Federal Government has been slow to take action in the area of greenhouse gas emissions and water, although honourable members would be aware that it has come good by allocating money for irrigation licences. It was alleged that the coal industry was given or sold places as negotiators for Australia at the Kyoto talks. The lack of action by the Federal Government is depressing. There is little doubt that energy saving appliances such as those that are used in Denmark can cut household consumption by at least one-third. National standards are needed for that.

Professor John Braithwaite, in a lecture he gave some years ago to the Australian Consumers Association annual general meeting, said that the European approach to standards setting is superior to the American and Anglo-Saxon countries' approach. The European approach is to ask, "What is the best that can be achieved at the moment here?" An achievable standard is then set, and that standard must be achievable universally within three or five years. By way of contrast, the United States of America and Australian approach is to say, "This is achievable now. We will set the standard and we will look at it again in three years." In other words, the standard does not ratchet down automatically as technology changes; it tends to lag and be bureaucratically determined. I believe that is a problem.

It is horrifying to look at the figures for household energy consumption. My household uses about nine kilowatt hours of electricity per day; in a good quarter we use about eight kilowatt hours per day. By way of analogy, a human being pedalling a bicycle as hard as possible uses up to about 300 watts of power. In other words, household electricity consumption of nine kilowatt hours per day would be equal to a fit cyclist pedalling flat out for 30 hours to generate that much energy. Given that only three people live in my house, that equates to 10 hours per person of a cyclist pedalling at maximum human energy. Despite the fact that we use solar hot water and energy-saving light globes, the amount of energy that is going into the house is very high. I understand that many households use more than three kilowatt hours of electricity per person per day. The average household uses a great deal of energy, and that is without considering transport energy used.

Proposed section 34W deals with the composition of advisory committees. Again, it gives all power to the Minister. The number of members to be appointed to advisory committees is not specified, nor whom the members are to be. Perhaps the Minister is still looking for people with the appropriate expertise. Proposed section 40 deals with information that is required to be furnished to the Minister. People involved in electricity demand management have commented to me that if we want to look at alternatives to demand management or cogeneration we need to consider the price of network options, the amount of energy going into the area at a substation level, and the excess capacity available in deciding the most cost-effective alternative.

As I said yesterday in my contribution to the second reading debate on the Electricity Supply Amendment Bill, TransGrid had a record of keeping that information as commercial-in-confidence. We really need electrical engineers to say, "That substation has this much energy to augment its inputs, and its outputs would cost a certain amount." The demand management or alternative energy cost-effectiveness can then be compared with the infrastructure cost of augmenting that area of the grid. We must have inputs and outputs. Perhaps section 40 should say, "information regarding the inputs and outputs of sections of electricity networks". Perhaps water supplies would be needed to evaluate that, and that information should also be available.

I considered moving an amendment regarding this. I spoke to the minders in the Chamber, who said it would be possible under the Act to get that information. However, obviously the advisory committee is then required to have appropriate expertise to look at these matters at the micro level. While it may seem a small amount of electricity, it obviously involves huge amounts of infrastructure. In the case of electricity, much of the $7.6 billion worth of infrastructure spending could be used for more intelligent demand management strategies.

I suspect that with regard to water that the augmentations are of a large magnitude also, although I will not speculate as to how many billion dollars are involved in that. Another reason for my not moving an amendment to the bill is that the Government has stated that it does not want amendments to be made because it wants the scheme to commence on 1 July. I place on record the fact that I totally disapprove of getting legislation more or less at the last minute and then being asked not to amend it. In my view there is no point in having an upper House that amends legislation and improves it if we have that sort of bullying.

This is exciting legislation. It allows a real shift in paradigms. I recently visited Vietnam on holidays. As I was walking in Sapa, which is in the mountains in north-west Vietnam, I observed small tanks a little larger than washing machines. I could see that a creek ran into the bottom of the tanks, which had holes in the top and bottom. The impellers within those small tanks, which were powered by relatively small amounts of water, were providing power for several houses. The possibility for alternative energy use is enormous, and we have to hope that this is the start of a paradigm that will provide alternatives to huge, coal-fired power generators with massive towers in substations across the land. If we are to think small, we need to have that sort of detailed information and the political power to overcome groups that for years have assumed they have a monopoly over supply, information and budget. The budget would have to be taken from these bureaucracies in order to make use of this new paradigm and new opportunities.

Mr Ian Cohen and the Hon. Jon Jenkins referred to the need for reports on where the money goes, to ensure transparency. I agree that that is the only way we will continue to make progress in this regard, rather than have the existing bureaucracy simply assume that it can swallow all the money. I support the bill. Given that we often pass mediocre legislation, this is legislation with real hope and I am pleased to support it.

Reverend the Hon. FRED NILE [8.58 p.m.]: Reverend the Hon. Dr Gordon Moyes delivered an excellent contribution on behalf of the Christian Democratic Party on the Energy Administration Amendment (Water and Energy Savings) Bill. I wish to comment on events that occurred yesterday and today with regard to the report issued yesterday by the Auditor-General, Bob Sendt, who is a very conservative, careful officer of the State. He indicated in his report that Sydney's plan to secure the water supply for the city had a serious flaw because it had not built in buffers for the impact of climate change or a greater than expected population influx.

Mr Sendt said that Sydney's water supply did not have sufficient margins for error, and that failure to meet the assumptions in the plan could result in a water deficit instead of a surplus. He said a 5 per cent drop in rainfall for the Sydney catchment would return the city to a water deficit. He further said, "I am not saying the plan should consider a doomsday scenario, but it should build in a buffer."

I am not saying that I support the doomsday scenario view, but I believe we will face a water and electricity supply crisis in the future. The Premier claims that the population of Sydney increases by 1,000 people per week while others insist that it is only 700 people. But that is certainly enough to put massive pressure on demand for water and power. Our prosperity is increasing so people have money to buy more electrical equipment, particularly airconditioners, which increases demand on energy. In light of the Auditor-General's investigation, I wonder whether the announcement regarding the desalination plant was an attempt to deflect some of his criticisms.

Mr Sartor, the Minister for Energy and Utilities, responded to that criticism by saying that we have a desalination plant. But we do not: It is an idea; it is in the ether somewhere. I wonder whether it will ever be built. I think the announcement was a political move. In an attempt to deflect criticism and allay the community's concerns the Government said, "Don't worry, we're doing something; there will always be plenty of water." I note that today's editorial in the *Australian* makes a strong statement that I fully support. The editorial is headlined "New dam needed to slake Sydney's thirst", and states:

> Sydney's water problems looked bad enough even before yesterday's report from the state auditor-general: a shortfall of 200 gigalitres, or a third of current consumption, by 2030. Now they look worse. Last year, in its Metropolitan Water Plan, the Carr Government announced a raft of new measures—focused on conservation, recycling and desalination—designed to close the gap between supply and demand. But the auditor-general points out some of the numbers in the plan, while not incorrect, are soft. Even when the drought breaks, a small increase in population beyond what the plan assumes, or a modest permanent reduction in rainfall due to climate change, will have Sydney slowly dying of thirst. Quite simply, our largest city "is continuing to use more water than its current water supply can continue to deliver".

The editorial concluded:

> On the supply-side, the auditor-general's report points to the wisdom of allowing private enterprise to break into the cosy monopoly on recycled water enjoyed by Sydney Water.

I agree with that. It continues:

> Good idea, but sooner or later a NSW government with sufficient spine—

which is another way of saying "backbone"—

> will have to ignore the cries of the environmentalists—

the Greens—

> and build a new dam—which will be the first in more than 40 years, a period during which Sydney's population has almost doubled. Desalination is fine, but a dam provides more water at lower cost.

The editorial then makes this point that is most relevant for the Labor Government in New South Wales:

> Queensland Premier Peter Beattie showed the way last week by green-lighting the $149 million Wyaralong Dam. Cautious NSW Premier Bob Carr has shown no propensity to think big during his decade in office, but even he must now concede that the long-term solution hinges on higher pricing and new sources of supply—not fancy shower nozzles and laws against washing the car.

I agree with those sentiments and I hope that, by putting them on the record, the Government—particularly Mr Sartor and the Premier—will give them some thought.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [9.04 p.m.], in reply: I thank all honourable members who participated in the debate on the Energy Administration Amendment (Water and Energy Savings) Bill, particularly those who gave it their support. I will respond first to the Hon. Don Harwin's comments about infrastructure spending. The Government's four-year $30 billion infrastructure plan includes projects announced under the $1.4 billion metropolitan water plan that, in turn, adopts a whole-of-government approach to securing water supplies and maximising water savings. The Government is spending record amounts on energy infrastructure—for example, we have spent more than $4 billion in the past five years upgrading the electricity grid. In the next five years forecast government spending will exceed $6 billion. Incidentally, the Auditor-General announced in his report on the surety of Sydney's water supply, which was released yesterday, that:

> … the Metropolitan Water Plan is a comprehensive plan to close the gap between supply and demand.

It is entirely hypocritical for Opposition members to criticise the collection of dividends, particularly when the former Coalition Government siphoned no less than $170 million from Sydney Water profits in 1992. Dividends were collected throughout the duration of the Greiner and Fahey governments. Perhaps it is been so long since the Opposition has run the State that it is forgotten what governments use dividends for! Dividends from the profits of the State's energy and water businesses are reinvested in schools and hospitals in the community. Would the Opposition prefer that these funds were directed away from these vital services?

The Hon. Don Harwin questioned the use of funds. The Hon. Dr Arthur Chesterfield-Evans also raised concerns about where the funds will be directed. I remind the House once again that the purpose of the fund is to achieve savings in water and energy use. As has been stated on numerous occasions, a small proportion of the fund will be used for national electricity regulation. However, the vast majority of the fund will encourage water and energy savings, stimulate investment in innovative water and energy saving measures, encourage water recycling and increase public awareness and acceptance of the importance of water and energy saving measures.

I will respond to comments about the transparency of the funds. To ensure that we get practical outcomes and effective savings the Minister for Energy and Utilities will establish an advisory committee for the energy savings fund, including representatives of electricity customers, electricity businesses, the energy services industry, environment groups and government agencies. The council will advise the Minister and his department, the Department of Energy, Utilities and Sustainability, on priority areas for the fund. It will review these priorities to take account of changing conditions and the success of various energy saving projects and monitor, review and report to the Minister on the overall performance of the funds against the established objectives.

Regular public calls for expressions of interest will be made for the energy savings fund to make sure that we are supporting the best ideas from New South Wales business and the public. Selection criteria for funding support will focus on ensuring that the greatest savings are made. Funding will be made available predominantly through a contestable pool to promote value for money. I commend the bill to the House.

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

The House divided.

Ayes, 25

Mr Breen	Ms Hale	Ms Rhiannon
Mr Catanzariti	Mr Hatzistergos	Ms Tebbutt
Dr Chesterfield-Evans	Mr Jenkins	Mr Tingle
Mr Cohen	Mr Kelly	Mr Tsang
Mr Costa	Mr Macdonald	Dr Wong
Mr Della Bosca	Reverend Dr Moyes	
Mr Donnelly	Reverend Nile	*Tellers,*
Ms Fazio	Mr Obeid	Mr Primrose
Ms Griffin	Mr Oldfield	Mr West

Noes, 10

Mr Clarke	Mr Lynn	*Tellers,*
Ms Cusack	Ms Parker	
Mrs Forsythe	Mr Pearce	Mr Colless
Mr Gallacher	Mr Ryan	Mr Harwin

Pairs

Ms Burnswoods	Miss Gardiner
Ms Robertson	Mr Gay
Mr Roozendaal	Mrs Pavey

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 4 agreed to.

The Hon. JON JENKINS [9.16 p.m.]: I move Outdoor Recreation Party amendment No. 1:

No. 1 Page, 9 schedule 1, lines 36-38. Omit all words on those lines.

This amendment seeks to remove from proposed section 34L of the bill the words, "to provide funding for cost effective energy savings measures that reduce greenhouse gas emissions arising from the use of energy, and". As I said during the second reading debate, the connection between greenhouse gases and global warming has not been scientifically proved. We should not be making public policy based on fraudulent science, mythology or scaremongering. They should not become part of public policy. I understand that my amendment will not receive Government support and may not receive the support of other honourable members. I moved the amendment to demonstrate that I will not be party to incorporating what effectively amounts to fraudulent science in public policy.

Mr IAN COHEN [9.17 p.m.]: The Greens oppose the amendment. I know that the honourable member is supported by intellectual luminaries such as the Minister for Roads—they share a denial of greenhouse as a coherent philosophy, despite what the rest of the world is saying. The Greens oppose this silly amendment. All I have to say is that the earth is flat!

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [9.18 p.m.]: The Government does not support the amendment. Peak demand for energy is growing at about 4 per cent. The load profile is becoming increasingly peaky and represents a great opportunity for both energy and greenhouse savings. To omit this from the bill would undermine its benefits. There is no point in moving the ability to stimulate investment in energy savings measures. As a result of this amendment, many innovations in the energy industry may not occur.

Amendment negatived.

Mr IAN COHEN [9.19 p.m.], by leave: I move Greens amendments Nos. 1 and 2 in globo:

No. 1 Page 10, schedule 1 [7], proposed section 34N (1) (b), line 36. Omit "any money". Insert instead "subject to subsection (3)—any money".

No. 2 Page 11, schedule 1 [7], proposed section 34N. Insert after line 24:

(3) In any financial year, the maximum total amount of funding of contributions by the State for the purposes of national energy regulation that the Minister may approve under subsection (1) (b) must not exceed 5 percent of the total amount of funds available for payment from the Fund for that year.

The bill contains provisions for the funds to provide contributions to the national energy regulator. This is an inappropriate use of the fund, which has as its goal a reduction in energy and water use. Funding for this purpose should come from another source, probably consolidated revenue. The amount required for the new national energy regulator body, comprising the Australian energy regulator and the Australian energy market commission, has not yet been established. The development of national regulation, including the move of State regulators to a national regulator, has many years to go. There is no guarantee that New South Wales will not have to provide a substantial proportion of this amount or that the costs of the new national bodies will not exceed expectations. The proposal to cap payments to the fund at 5 per cent guarantees that most of the money in the fund will be spent on what the fund is designed for: energy savings.

In moving these two amendments, I am rather concerned about the structure of activities in both Houses of Parliament. The Legislative Council is a House of review and it would have been appreciated if the Minister had seen fit to have further discourse on these reasonable amendments. I accept the argument that certain regulatory hurdles must be overcome for this legislation to meet its deadline of 1 July. However, the Minister is ramming legislation through. The moving of amendments is a pointless task that undermines the activities of the upper House, no matter how legitimate they might be in reviewing legislation that comes before the Parliament. I resent the fact that the Government will not properly consider these amendments. The Minister ignores criticism with respect to the moving of amendments, which should be undertaken through a more effective parliamentary process. Having said that, I commend these two amendments to the Committee.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [9.22 p.m.]: It will come as no surprise, following the comments of Mr Ian Cohen, to learn that the Government does not support the amendments to limit the payment of the New South Wales contribution to the Australian Energy Market Commission to 5 per cent of the energy savings. New South Wales is part of the national electricity market. It is in the interests of our consumers to have national regulation of this market to ensure fair prices. It should be a fully functioning and competitive market in order to ensure the efficient delivery of electricity and natural gas.

The bulk of the cost of a national energy regulation will be for the Australian Energy Regulator. The Federal Government should fund that cost—in the order of about $30 million per annum—in the same way that it funds the Australian Competition and Consumer Commission. Each State will be able to choose how it provides funding for the Australian Energy Market Commission. New South Wales will fund a proportion of the cost of the Australian Energy Market Commission from the Energy Savings Fund. The cost is estimated to be in the order of $3 million per annum of the total cost of $40 million, which is a small proportion of that total fund. Limiting the fund to 5 per cent would be limiting the funds below the current projections and, therefore, would be unsustainable.

Amendments negatived.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

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

CRIMES (SENTENCING PROCEDURE) AMENDMENT (EXISTING LIFE SENTENCES) BILL

Second Reading

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [9.25 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 has continuously stated that it would protect the community forever from never-to-be-released prisoners. That includes the killers of Janine Balding, Anita Cobby and Virginia Morse.

Under the "truth in sentencing" legislation, passed in 1989, all offenders serving indeterminate life sentences were entitled to apply to the court after 8 years for the establishment of a definite sentence, with a minimum non-parole period and a maximum sentence.

The Government has in the past amended sentencing legislation to make it perfectly clear that notwithstanding the provisions of the 1989 legislation, in the case of the very small number of offenders where the courts had previously recommended that an offender should never be released, that recommendation should be enforced.

A recent decision of the Supreme Court in *R v Blessington* has held that an offender with a section 13A application that was pending as at 8 May 1997 is not subject to the present rules for redetermination.

The decision also canvassed the possibility that Blessington (and by extension, any others who have not yet had their application determined) might now be able to appeal the sentencing court's recommendation that they never be released. They would therefore be excluded from the application of the current regime for redetermination of those never to released offenders.

The Government believes that the intention of the legislation passed by this Parliament was clear.

We have sought advice from the Solicitor General, who has advised that there is some prospect of a successful appeal.

But the people of New South Wales, and the Balding family in particular, deserve certainty.

Both the Solicitor General and the Director of Public Prosecutions believe that the best way to deliver that certainty and remove ambiguity is through an appropriate legislative amendment.

Accordingly, the object of this bill is to amend the *Crimes (Sentencing Procedure) Act 1999* and the *Crimes (Administration of Sentences) Act 1999*, to ensure that the present regime, as it applies to non-release offenders, extends to all non-release offenders.

Schedule 1, item [1] ensures that the quashing of the setting-aside of a "never to be released" recommendation by an Appeal Court would not remove Blessington or any of the other never-to-be-released offenders from the scheme.

Schedule 1, item [3] ensures that Blessington is covered by the current regime applying to never-to-be-released prisoners.

This will ensure that the current regime works uniformly and that all never to be released prisoners will:

- not be eligible to have their sentence redetermined until they have served at least 30 years;
- if a non-parole period is fixed on a redetermination, the offender may not receive a fixed term; and
- that where a non-parole period is fixed on a redetermination, parole cannot be granted except where the offender is in imminent danger of dying (or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person) and has demonstrated that he or she does not pose a risk to the community.

The amendments proposed in schedule 2 ensure that section 154A of the *Crimes (Administration of Sentences) Act 1999* applies to a never to be released offender regardless of whether the non-release recommendation has been quashed, set aside, or called into question.

The amendments remove any possible ambiguity in relation to the application of the law in respect of any particular offender.

I am confident that all members of the House will welcome the opportunity to resolve this doubt and put an end to the perpetual ordeal of the Balding family. I commend the bill to the House.

The Hon. DAVID CLARKE [9.26 p.m.]: The Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill, which is supported by the Opposition, amends the Crimes (Sentencing Procedure) Act 1999 so as to overcome the effect of the decision given on 15 April 2005 in the case of *Blessington v The Queen*, thereby achieving the Government's commitment to keep Bronson Blessington, and people like him, indefinitely locked up. The background circumstances are that in 1990 Bronson Blessington, then aged 14, was convicted of the abduction, sexual assault and murder of Janine Balding. It was a crime noted for its brutality, savagery and cruelty. The sentencing judge imposed a life sentence pursuant to the legislation then in force, and recommended that he never be released, a recommendation which, at that time, had no legislative force.

As a result of truth in sentencing legislation passed in 1989, offenders serving life sentences could apply to the court after eight years for a defined sentence with a minimum and additional term. In more recent years amendments to sentencing legislation relating to inmates subject to a non-release recommendation have

been introduced which provide that the period before which an application for a redetermination application could be made was at least 30 years after the original sentence; and even if a non-parole period were set, no specified maximum term could be set so that the person would remain on parole for life. Additionally, a non-release recommendation prisoner can only be released if facing imminent danger of dying, or physically incapacitated to the extent of inability to cause harm.

These amendments were meant to apply to all offenders, subject to a non-release recommendation, including Blessington. However, in April of this year the Supreme Court held that the amendments did not apply to Blessington because at the time of their passage he had an application for a sentence redetermination in progress. The Supreme Court also found that a transition Act to plug this escape hatch for Blessington where an application was current did not apply because it was not specifically stated that the earlier application was a nullity. The court found that he was entitled to apply for a sentence redetermination. Consequently, the Solicitor General has advised that, to put the matter beyond any doubt, an amendment to the law was required.

This bill is that amendment. It amends the Crimes (Sentencing Procedure Act) 1999 so that: first, an application for determination, no matter when originally filed, is not to be determined until the offender by whom it is made has served at least 30 years of the existing life sentence to which it relates; second, the provisions of the Crimes (Sentencing Procedure) Act 1999, which does not allow the court to set a specified term, are applicable to any consideration of the offender's application, thereby ensuring that the offender will remain on parole for life; and, third, the abovementioned provisions and section 154A of the Crimes (Administration of Sentences) Act would continue to apply to a non-release recommendation, even in the event that an Appeal Court quashed, set aside or called into question the recommendation that the offender never be released.

The effect will be that the provisions of the Crimes (Sentencing Procedure) Act 1999, now in force, apply to all offenders subject to a non-release recommendation, including Blessington. It is hoped that this bill will ensure that the quashing or the setting aside of a "never to be released" recommendation by the appeal court will not remove Blessington or any of the other "never to be released" offenders. Clearly, the Government's 1997 legislation failed to achieve its stated object.

When the then Minister for Police, Mr Whelan, introduced the Sentencing Legislation Further Amendment Bill in 1997 he described Blessington as representing "pure evil", and as a person who deserved "never to see the exit sign at the prison gate". The Minister's intention was admirable, but his means to achieve that intention were a failure. According to the Supreme Court, his legislation was flawed, it was faulty, it was ineffective and, as I said, it was a failure. In his recent decision Justice Dunford of the Supreme Court said that the Act:

> … could have provided that such applications (as Blessington's) be rendered null and void, or that any non-release recommendation prisoner irrespective of when his application was made should have to serve 20 years before having his application considered, but it did none of these.

In 1997 the shadow Attorney General, Andrew Tink, said:

> I remain gravely concerned that this bill, let alone the bill debated last week, will not reflect the wishes of the House

How right the shadow Attorney General proved to be. Recently, the Attorney General, Bob Debus, said:

> The Government will put before the House shortly an appropriate amendment to remove any possible ambiguity in relation to the application of the law in respect of any particular offender.
>
> I am confident that all honourable members will welcome the opportunity to resolve this doubt and put an end to the perpetual ordeal of the Balding family.

I am sure that every member of this House will welcome such an opportunity to finally resolve this matter. Hopefully, the Government has finally got it right to provide certainty that offenders of the likes of Blessington get the punishment that they truly deserve.

Reverend the Hon. Dr GORDON MOYES [9.32 p.m.]: I speak on behalf of the Christian Democratic Party on the Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill. The purpose of this bill is to amend the Crimes (Sentencing Procedure) Act 1999 and the Crimes (Administration of Sentences) Act 1999. These amendments seek to ensure that the current regime for redetermination of existing life sentences of "never to be released" offenders extends to all those offenders whose original sentences have not yet been redetermined, and applies to those offenders even if the original non-release recommendations are now appealed. I commend the bill to the House.

This bill closes the legal loophole within the current sentencing legislation that was exposed in the recent Supreme Court judgment of Justice Dunford in *R v Bronson Mathew Blessington*, decided only last month. Justice Dunford's decision held that an offender with a section 13A application under the relevant legislation that was pending as at 8 May 1997 is not subject to the current rules for redetermination. The current rules for redetermination are much stricter than those rules in place at the time Bronson Blessington was sentenced.

The Supreme Court judge's position aired the possibility that Blessington, and perhaps others who have not had their application for release determined, might now be able to appeal the sentencing court's recommendation that they never be released. In this bill the Government wants to set in concrete the fact that the "truth in sentencing" legislation, allowing for sentence redetermination after 30 years rather than the previous eight years, is applicable to all those individuals who had the words "never to be released" pronounced over them. Though lawyers have argued that the words "never to be released" had no effect according to the law at the time, it is completely understandable that the Government wants to take a hard line on those who have committed atrocious and despicable murders.

Rather than wait to see the progress of the case through the courts, the Government has decided to introduce this bill to avoid any further controversy. As the Attorney General, Bob Debus, stated in his second reading speech:

> The Government has continuously stated that it would protect the community forever from never-to-be released prisoners.

In his speech the member for Wagga Wagga, Mr Daryl Maguire, referred to some comments made by Beverley Balding, the mother of Janine Balding. We, of course, know that Janine Balding was murdered in a heinous manner by a number of those individuals marked "never to be released". Beverley Balding had the following to say about Bronson Blessington:

> Although Blessington was only 14 (one month off 15 years of age), he was an uncontrollable child, and had been on the streets for quite some time before he and the others took part in Janine's horrific rape and murder. There is no excuse whatever for what they did, and they were all old enough to know right from wrong.
>
> Our main worry has been that if, by any chance Blessington was released, he would not keep up the "good work" of teaching scripture he is supposedly doing in prison and would return to crime. Justice Newman surely handed down the correct decision when he recommended never to be released.

I acknowledge that the Hon. Peter Breen knows more about Bronson Blessington than anybody in this Chamber because of his close professional association with him. However, I take Beverley Balding's point that Bronson was capable of knowing the difference between right and wrong. I took calls over a long period of time on talkback radio and I found not one comment from the community at large in support of Bronson Blessington's early release or the fact that he be removed from "never to be released" status.

Bronson Blessington was one of a number of people who participated in the dreadful killing of Janine Balding in 1988. He was only 14 years old when he involved himself in the murder. Bronson has had a very sad life, as even Janine's mother indicated. By the age of 14 he had been sexually abused by four adult males. He was a street kid, an alcoholic, a petrol sniffer, and basically uncontrollable. I have been informed on good, reliable authority from those who work within the prison system that when he became a Christian in 1990 his life very dramatically changed.

Over the past 14 years or so his Christian life has made Bronson an outstanding model prisoner. He has said that the Lord has led him to lead more than 580 *Bible* studies within the prison yards, with an attendance of well over 5,500 prisoners. I commend him on the step that he has taken to invite Christ into his life. Staff of mine from Wesley Mission, who go within the prison system, speak most highly of his complete change of life through his Christian commitment. His Christian witness in prison will continue to be powerful witness of the power of Christ to change people. If Blessington is preaching to prisoners, I would encourage him to keep on doing so. But can he continue to be a Christian in gaol? That is what Jesus Christ, the apostle Paul, the apostles Peter and John, and a million other twentieth century Christians have done.

I do not want in any way, shape or form to diminish the suffering that Bronson and others in his company caused to the Balding family, but the retrospectivity of this legislation presents an issue for Bronson Blessington and others who were under the apprehension that one set of laws applied, only to find out that they were subject to other sets of laws. That is an issue for the Government to debate, and because Bronson Blessington has become a Christian does not mitigate against his horrific crime and cannot be used to justify any

reduction in his sentence. The amendments will ensure that section 154A of the Crimes (Administration of Sentences) Act 1999 applies to a never-to-be-released offender, regardless of whether the non-release recommendation has been quashed, set aside or called into question.

I wish Mr Blessington well in his continuing experience as a Christian within gaol. Nevertheless, I do feel strongly that this legislation is important and must be passed because it will give those still grieving over the loss of their loved ones a great deal of comfort and consolation.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [9.39 p.m.]: In recent times this House has been presented with a number of bills by which the Government seeks to change the rules in response to public opinion and concerns about prisoners who have committed heinous crimes. This happened in the cases of Gregory Kable, Kevin Crump and Allan Baker. The last Liberal Government, under Premier Fahey, and the present Labor Government, under Premier Carr, have introduced legislation targeting particular people, changing the sentencing rules and applying those changes retrospectively. Gregory Kable was the subject of the Community Protection Act 1994, Kevin Crump was the subject of the Life Sentence Confirmation Act 1998 and Allan Baker was kept in gaol by the Crimes Legislation Amendment (Existing Life Sentences) Act 2001.

Interestingly, the Community Protection Act was struck down by the High Court and Gregory Kable was released. I attended the Justice Action Christmas party, where there was a fellow who was dressed in fairly outrageous gear having quite a good time. I did not take too much notice of that at the time. After all, it was a Christmas party. Some time later I noted a man whom I thought I recognised working quietly away in the Greens office. I took no particular notice of that fact. He was pleasant enough in the corridor. It took me a while to realise that was the same Gregory Kable that we had passed legislation to keep in gaol because of the extreme danger that he would pose to the community if released. He worked in the Parliament for quite some months, perhaps more than a year, I am not sure. While working amongst us he went quite unnoticed, perhaps by members who had passed legislation to keep him in gaol.

Gregory Kable now works for Justice Action in one of its projects. Justice Action certainly has been very busy. It subsidises projects to mentor those coming out of gaol, particularly young people, so that they will not fall back into crime. Some of the profits from the Justice Action printing business, called Breakout Printing, subside those programs. Gregory Kable was a well-recognised inmate, a person who had been vilified and regarded as a criminal who was beyond hope and should be locked up for over. Therefore, presumably, he would understand what it was like to have a bad family background, to have had a difficult time in gaol, and to have been vilified, yet then to try to build a life. I do not downplay the fact that he committed the crime and caused the families of the victims immense distress, but I do say that as members of Parliament we should not pass legislation on matters that we know very little about. I think we should respect the principle of the separation of powers and let the courts do what they will. I do not believe that we should pass legislation like this if it is to operate retrospectively.

Two recent decisions have prompted the bill now before the House. The first was the recent Supreme Court decision in *Regina v Blessington*, [2005] NSW Supreme Court 30. In that case it was held that Bronson Blessington, a prisoner who made a section 13A application for redetermination of his sentence, was able to do so. At the original trial the sentencing judge recommended that Blessington never be released. At the time, however, this option was not available to the judge and the order was not enforceable because it was effectively an opinion, or obiter dictum, to use the legal term.

The second decision was delivered by the Supreme Court in 2004 in *Baker v The Queen*, [2004] HCA 45, which overturned the decision made in Kable's case regarding the New South Wales Parliament passing legislation specific to one person. The result is that if an appeal against this bill were made to the High Court by Blessington, the appeal would be ruled against, as occurred in *Baker v The Queen*. So the bill before the House is safe from legal challenge. It therefore falls to members of this Parliament to override the courts if we will. That is a sad state of affairs. I do not believe I have sufficient knowledge to overrule the courts. I think it is extraordinarily arrogant of us to be voting on a bill such as this when we have heard not a thing from Blessington.

The Hon. Peter Breen: Not a word.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS: Not a single word. Nor have we even been briefed by the Government about the merits of the case, apart from being told some horrifying facts and being exhorted to do more. Despite those circumstances, we are asked to overrule the courts as if they are nothing. I

repeat, this is a sad state of affairs. If passed, this bill will retrospectively take away the right of this prisoner to have his sentence redetermined. It is not as if we are releasing him; we are removing the right of the legal system to make a decision. We are overriding the courts. On what do we base any such decision? Not on serious knowledge, I put to honourable members of this House.

No-one doubts the abhorrence of the events surrounding the death of Janine Balding, and no-one doubts that Blessington was guilty. I note the comments of Reverend the Hon. Dr Gordon Moyes, who spoke about the fact that Bronson Blessington has turned to Christ and that people within the gaol system have noticed an immense change in him. I was rather surprised that in that circumstance Reverend the Hon. Dr Gordon Moyes did not say he would forgive Blessington. I had thought from the way the honourable member spoke that he might have come to that position. Indeed, from my recollection of a reading of the *Bible*, Jesus Christ forgave sinners on the cross.

Reverend the Hon. Dr Gordon Moyes did not express such forgiveness; rather, he pointed to public opinion expressed to him on talk-back radio. My own view is that we should not act according to what is said on talk-back radio. Our job is to lead the country, not to follow opinions. We must be aware of opinions heard on talk-back radio. If we are not, presumably that is at our own peril. We should lead the people, not follow them. If we merely follow the people, we are cowards and ciphers. We need to do better than that.

First, we should be aware of our own limitations. I have always said that there are three states of knowledge: those who know, those who do not know, and those who do not know they do not know. The first and third states invariably become muddled. We have to be very clear about what state we are in. I do not know the merits of this case, and I know that I do not know, and therefore I should not overturn a court process that might demonstrate that this man has reformed. Whether he turned to Jesus Christ or something else, in the real politics of obtaining release from prison the political power of the church as an advocate would mean that if one turned to Christ one would have a much better chance than if one turned to humanism or some other non-theistic value system. Be that as it may, it seems the fact that Blessington has turned to Christ will not help him in this situation. He was sentenced according to the law of the day, and I believe that is the law that should be applied.

The Hon. Peter Breen knows quite a lot more about this subject, and he will speak to us. The honourable member, having made a study of this subject, probably knows more about Bronson Blessington than any other member of this House. I await his contribution with interest. Perhaps I should not have spoken before the honourable member had made his contribution. However, I think it is wrong that we ignore the separation of powers, make decisions on things we do not know about, and overrule the courts, whose job it is to evaluate evidence and come to a conclusion. We should set the rules, but we should not change them after the game has been played, to use a football analogy. The Democrats oppose bills that operate retrospectively against individuals. I believe we do so without detracting from the suffering of the Balding family. Things can change. We cannot evaluate the people affected by that change. Therefore, we should leave this matter to the courts. We should not change legislation in this manner. The Democrats oppose the bill.

The Hon. PETER BREEN [9.49 p.m.]: I speak against the Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill. All week I have been waiting for the *Daily Telegraph* to do a story on this bill, the object of which is to keep Bronson Blessington in gaol forever, to use the word of the Attorney General in the other place. Certainly, that is the Government's intention. Yesterday I thought the story appeared on page 17 when I read the headline "Dig deep to find the cure for a killer". To my surprise, the article was about heart disease, and seeking donations to the Peter Frilingos appeal. The headline would have been appropriate for a story about the Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill because the Government is digging deep to keep Bronson Blessington in gaol—so deep, in fact, that the ground under the Government's feet on this bill is too hot even for the law and order lobby. The *Daily Telegraph* has not written one word on the bill.

Bronson Blessington was no ordinary offender. When he murdered Janine Balding by drowning her in a dam at Minchinbury in 1988 he was 14 years old, with the mental capacity of a 9 year old or 10 year old. His mental condition gave rise to a classic case of diminished responsibility, but the defence was never pleaded at his trial—a fact that the trial judge drew attention to in his sentencing remarks. I wrote to Blessington's lawyers asking why the defence of diminished responsibility was not raised, and they could not recall. Indeed, they could not recall any discussions about the issue of diminished responsibility. The sentencing judge also observed that the mental condition affecting Bronson Blessington was a temporary disorder of adolescence, and that the boy had good prospects of recovery. Indeed, the judge also observed that the boy was already making excellent progress towards rehabilitation in juvenile detention while he was awaiting trial.

Sentencing judges make those kinds of observations all the time. Sometimes they are prophetic; at other times what they predict turns out to be quite wrong. In the case of Bronson Blessington, everything the sentencing judge said turned out to be true. The boy recovered from his temporary mental disorder, he did well in rehabilitation and, as Reverend the Hon. Dr Gordon Moyes pointed out, at age 17 Blessington converted to Christianity while he was still in juvenile detention. He studied by correspondence at the Moore Theological College. I do not know where that stands in the hierarchy of theological colleges.

Reverend the Hon. Dr Gordon Moyes: It's good Anglican.

The Hon. PETER BREEN: Reverend the Hon. Dr Gordon Moyes says it is good Anglican. For the past 14 years Bronson Blessington has taught scripture in the prisons. Reverend the Hon. Dr Gordon Moyes gave the figures, which are extraordinary. Bronson Blessington has had more than 500 classes and something like 5,500 prisoner attendances in those classes over the past 14 years.

Reverend the Hon. Fred Nile: He has a ministry in prison.

The Hon. PETER BREEN: He has an active ministry in prison. I cannot imagine anyone else being in a position to approach prisoners in the way he does. He goes out into the yard with his *Bible* and says, "Anyone for scripture?" People gather around; it is an extraordinary ministry. Bronson Blessington is living proof that children who make mistakes literally grow out of their problems, that juvenile offenders can be rehabilitated and that giving people a second chance is a sentencing principle that lies at the heart of a justice system that evolved from a penal colony. These are the reasons the legislation before the House today did not get a run in the *Daily Telegraph* this week.

Another statement the sentencing judge made was that he personally was so horrified by the crimes against Janine Balding that he recommended, for the benefit of anyone looking at the case in the future, that Blessington and his two co-offenders should never be released. This recommendation was, of course, completely at odds with the judge's previous remarks about diminished responsibility, the offender's youth and his good prospects of rehabilitation. The reason for the inconsistency in the sentencing remarks was that the judge was engaging in some judicial kite flying for the benefit of the media and everybody else who was horrified by the crimes against Janine Balding. The remarks had no legal effect in relation to Blessington's sentence, and my guess is that one reason the lawyers did not go down the diminished responsibility path is that they would have expected Blessington to serve a few years and then be released because of his extreme youth at the time of the crimes. After all, Bronson Blessington was the youngest person to be sentenced to life imprisonment since transportation ended in 1840.

Murder committed in New South Wales prior to 1990 carried a life sentence unless the trial judge was satisfied that mitigating circumstances significantly diminished the prisoner's culpability for the crime. In practice, a life sentence did not mean natural life as a prisoner could apply to the Supreme Court after eight years to convert the life sentence to a fixed term. Approximately 250 lifers indicted before 1990 have applied for fixed-term sentences to replace their life sentences, and so far 225 of them have been successful. In 1990 the average life sentence served for murder was 15 years. At the end of my speech I will seek leave to incorporate in *Hansard* a chart of comparable offences where life terms have been converted to fixed-term sentences. That was the sentencing regime under which Bronson Blessington was sentenced.

As part of its tougher approach to crime and punishment, the Government changed the law in 1990 to what is called the truth in sentencing legislation of 1989, which came into effect on 12 January 1990. As a result of that legislation, a life sentence now means for the term of a prisoner's natural life. Ten prisoners sentenced to life for murders committed before 1990, including Bronson Blessington, have attempted to get their life sentences replaced with fixed-term sentences. But the Government is determined to keep the 10 in prison at all costs by retrospectively applying the 1990 principle of life means natural life to their crimes.

The 10 prisoners are Allan Baker and Kevin Crump, who murdered Ian Lamb on 4 November 1973 and conspired to murder Virginia Morse in the same year; John Travers, Michael Murdoch, Michael Murphy, Leslie Murphy and Gary Murphy, who were convicted of the murder of Anita Cobby on 2 February 1986; and Matthew Elliott, Bronson Blessington and Stephen "Shorty" Jamieson, who were convicted of the murder of Janine Balding on 8 September 1988. Each of the 10 was the subject of scathing remarks by their trial judges to the effect that they should never be released. When the trial judges made the never-to-be-released recommendations, such remarks had no legal consequences in the sense that they were not part of the prisoners' formal sentences.

Most judges believed that comments about the prospects of release in the future were inappropriate. In numerous other cases where prisoners were responsible for horrendous murders involving appalling facts, the trial judges refrained from making never-to-be-released recommendations and the prisoners subsequently secured reviews of their life sentences. Many were, and continue to be, released on parole; 225 have had their sentences redetermined. In 1997 the New South Wales Parliament passed a law that the 10 never-to-be-released prisoners must serve 20 years before applying for a review of their life sentences. In 2001 a further law was passed requiring the 10 to serve 30 years before making the application. The 2001 law also provided that none of the 10 can be released on parole until they are "in imminent danger of dying" or are incapacitated to the extent that they no longer have the physical ability to do harm to any person. After the 2001 sentencing law was enacted, Premier Carr proudly announced that the 10 never-to-be-released prisoners had been cemented in their cells.

I have a longstanding interest in Bronson Blessington and his convicted co-offender, Stephen "Shorty" Jamieson, who was a victim of foetal alcohol syndrome and a person who was almost certainly innocent of the crimes for which he stands convicted. It was a bizarre case of mistaken identity. Both Blessington and Jamieson have now served 16½ years in prison. The bill before the House is directed solely at Bronson Blessington, who made a successful application before Justice Dunford in the Supreme Court and judgment was delivered on 15 April 2005. On advice from the Prisoners Legal Service and John Basten, QC, Mr Blessington asked the court to answer seven preliminary questions centred on the issue of whether a review of his life sentence filed in 1996 could proceed. Legal argument on those questions was heard by Justice Dunford on 3 December 2004, eight years to the day after the court acknowledged receipt of Blessington's sentence review application.

When His Honour handed down the answers to those questions, just three weeks ago, the most that could be said was that Mr Blessington was free to proceed with his review application. However, it should be placed on record that the judge did not address any of the substantive issues raised in the 2001 debate in this House on the Crimes Legislation Amendment (Existing Life Sentences) Bill. In other words, Mr Blessington had some distance to travel before he had any real prospect of avoiding Mr Carr's cement law. Now the landscape of the debate and the terrain of Mr Blessington's journey will be altered completely by the passage of the Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill. Mr Carr is making a serious error of political judgment with this proposed legislation because the moment it is passed he will be improving immeasurably Mr Blessington's chances of getting out of gaol.

It will come as no surprise to honourable members to be informed that the Government has no idea what it is doing so far as sentencing prisoners is concerned. Although Executive Government sentencing is becoming more and more popular, politicians cannot hold a candle to judges, who have been doing it for more than 800 years, since the Magna Carta of 1215. When it comes to sentencing prisoners, politicians are babes in the woods, and none more so than the amiable Attorney General, who, when announcing this legislation in the other place on 3 May 2005, gave a completely misleading and inaccurate assessment of Justice Dunford's decision on 15 April 2005. The Attorney said:

> In effect, Justice Dunford has found that the recent legislation does not apply to Blessington.

That statement is quite wrong. His Honour merely found that Blessington could apply for a review of his sentence. Whether the recent legislation applied to his case was a question for another day, as they say in lawyer land. As a man of letters and history, Mr Carr should have been aware that his predecessor as Premier, John Fahey, made a similar mistake in 1994 when he rushed through both Houses of this Parliament the Community Protection Act in an effort to keep Gregory Kable in gaol.

The Hon. Dr Arthur Chesterfield-Evans referred to Gregory Kable's case. With the Hon. Dr Arthur Chesterfield-Evans I was at the Justice Action function where I met Kable, who is a very ordinary person. The legislation was struck down in the High Court and Mr Kable was released. I have made the point on previous occasions, and it is worth making again, that Gregory Kable did not turn out to be the demon contemplated by the Community Protection Act. Equally, Bronson Blessington is not the demon contemplated by the current legislation before the House. Today Mr Kable works for Justice Action and does excellent work mentoring younger prisoners and assisting in their rehabilitation. John Fahey was humiliated by the defeat of the Kable legislation, and the law and order lobby turned like the worm it is and voted the Premier out of office.

In my opinion, the Blessington legislation before the House will suffer the same fate as the Community Protection Act. I will address the remainder of my remarks to the reasons the prisoner should not be subjected to this legislation. I regret that it will take me some little time to do that, but the idea of indefinite detention at the pleasure of the Executive Government for such a young offender is so abhorrent to the principles underlying the

Westminster parliamentary tradition that it would be remiss of me not to place all the facts on the record. Furthermore, I want to say at the outset that the prisoner is cemented in by a quirk of the Government's parliamentary sentencing agenda. If he committed the same crimes today he could not be subjected to a life sentence because the law today is that he would be too young to be sentenced to life imprisonment. Mr Carr's 1997 and 2001 sentencing laws were directed squarely at Kevin Crump and Allan Baker, who murdered Virginia Morse. By using the never-to-be-released recommendation of Crump and Baker's sentencing judge as the determinative principle of the legislation, Mr Carr also roped in the murderers of Anita Cobby in 1986 and the murderers of Janine Balding in 1988.

I doubt that even Mr Carr, in the cold light of day, would have considered that children who opportunistically murdered Janine Balding should be treated in the same way as the cold-blooded killers who planned to murder Virginia Morse. Just the other day Brian Morse, the widower of Virginia Morse, telephoned Ray Hadley's radio program on 2GB to say I was an idiot for advancing the cause of Bronson Blessington. I want to say to Brian Morse that there is a principle in sentencing called proportionality, and the problem with legislative sentencing as opposed to sentencing by the courts is that the proportionality principle is not engaged when three different crimes are treated as a job lot.

While the crimes against Virginia Morse are indefensible in any forum in my opinion, in the case of the murder of Anita Cobby at least one innocent man is in gaol forever, and in the case of the murder of Janine Balding at least two innocent men are in gaol forever. Following the 2001 debate in this House on the Crimes Legislation Amendment (Existing Life Sentences) Bill back in 2001 I received a letter from Mr Blessington in relation to the passage of the bill and the letter said in part:

> I may never get out of gaol, and if that is the case I will never stop trying to become a better Person. I also know that I can still Believe in a GOD who will always forgive Me whenever I fail, and reaches out HIS hand to help Me get to My feet again. This new Law does nothing but take away hope from Men who have made huge mistakes. To tell a Man the only Hope in Life He has of getting out of prison is hoping He gets Cancer or something just as hideous is a huge mistake on the part of the Government. The Law is a wonderful thing, as long as it punishes, rehabilitates, and forgives once the sentence is given. My Father wrote to Me just after He heard about this new Law. He said that it would have been more Human for them, meaning the Authorities, to have hung Me when I was 14 years old. When all hope is taken away from someone by the Law, what is there to live for? I am extremely remorseful for My part in the Crimes I was charged with, and I'll be the first one to say that I deserved to get a big sentence. But to leave Me with nothing to hope for in this Life is 10 times more severe than a death sentence.

The letter thanked me for going into bat for the never-to-be-released prisoners, but at that stage I was actually responding to a lobby group, and not particularly enamoured with the idea of defending people who, I understood from the press, were hardened criminals. Before the cement law was debated in the Parliament, the Criminal Law Committee of the Bar Association briefed crossbenchers about what the committee chairman described as the appalling circumstances of the prisoners convicted of the murder of Janine Balding. As a member of the Bar Association, I articulated the prisoners' case in the parliamentary debate. On behalf of several independent and minor party members of the Legislative Council, I argued that it was wrong to pass a retrospective sentencing law that treated the children who abducted, raped and murdered Janine Balding in the same way as vicious killers who cold-bloodedly planned their crimes.

I attempted to amend the new law to exclude child offenders, but Government and Opposition members voted together in the Legislative Council to defeat the amendment 31 votes to 9. Immediately after the vote, Premier Carr announced he had fulfilled a promise made in 1997 to Brian Morse to "do everything in my legal power" to keep Allan Baker and Kevin Crump in gaol. There we had the Premier passing legislation covering 10 people to fulfil a promise made to one person about one murder. The *Daily Telegraph* published a bold front-page headline "Cemented In" with the names and photographs of the 10 prisoners affected by the law directly under the headline. One of the photographs was blacked out because of the extreme youth of the offender, who was Blessington.

Later in 2001 I went to visit Blessington at Goulburn gaol, and at that time he was 28 years of age. He had been in prison almost half his life. A moon-face prison warder provided us with a legals cell for the interview. The warder pushed the cell door open as far as it would go and then left us without a word. As I began to talk with the prisoner I was struck by his openness and his apparent willingness to accept the full measure of responsibility for his crimes. We agreed that nothing he said or did could make up for the loss of Janine Balding's life—even to ask her family for forgiveness was somehow deeply offensive.

Mr Blessington handed me his little red edition of the *New Testament*, the NIV edition. The pages were well read, and the text highlighted and underlined. Most of it he knew by heart so I tested him on a few passages. I am not very good at those things, but I took the book and tested him on passages and he knew

exactly where any passage I quoted to him had come from. He had been conducting *Bible* classes, as I discovered, for the past 10 years. He handed me the book Reverend the Hon. Dr Gordon Moyes referred to listing all the classes he held and the prisoners who had attended them. As the honourable member indicated, the number of prisoners was more than 5,500—at that time it was only 5,000—and the number of classes now exceeds 500.

Many inmates, he told me, "gave their hearts to the Lord". I confronted him about his evangelism and I was amazed to hear him question my popery. When I asked about further restitution for his crimes he drew my attention to another paragraph in a letter he wrote to the Premier asking whether he, as a Christian in prison, could do anything for the Government for other prisoners. Regrettably, a proposal of that kind was much too radical for the Premier, whose ideas about crime reduction are limited to building more prisons and beefing up police powers. The prisoner received no reply to his letter. Australian theologian Gerald O' Collins, who teaches at the Gregorian University in Rome, said evil can sometimes be the means by which the divine revelation takes place. When King David committed adultery and murder, his sin occasioned some profound moments of truth about his state before God.

More popery, perhaps, but it seemed to me that this young man had paid for his crimes and deserved a second chance to give something back to society. After all, a second chance is what our justice system, built on the penal colony, is all about. He produced from his papers a letter from the High Court informing him that any appeal must be filed in person at the registry. The words "in person" were underlined. The letter was a response to the prisoner's inquiry about appealing a decision by a court officer to reject the application he made to review his sentence in December 1996, the very same application that was the subject of Justice Dunford's decision on 15 April.

Attached to the letter were 14 pages of procedural information about applications for leave to appeal to the High Court that few lawyers could get their heads around. What the letter failed to say was that prisoners in New South Wales cannot approach the High Court unless they receive a grant of legal aid from the Government. This prisoner was well and truly stuck in the legal system. A long affidavit among his papers caught my eye. I began reading the document, which was prepared by a solicitor named Joanne Harris, who at the time represented Stephen "Shorty" Jamieson. Blessington swore to the truth of the affidavit and signed each page. On page two it said:

> Stephen Jamieson had no part in the events that followed. He was not present at the kidnapping, rape and murder of Janine Balding. I know this because I was there and took part in these crimes. With me at that time were Matthew Elliott, Wayne Wilmot, Carol Arrow and Mark 'Shorty' Wells. The only 'Shorty' who came with us was Shorty Wells.

On the last page of the document, Blessington referred to an incident in the cells below Glebe Coroner's Court two months after the murder, when the police brought in Shorty Jamieson. Blessington swore that he told his solicitor, Ken Gilson, that the police had arrested the wrong Shorty. Attached to the affidavit was a transcript of Gilson's evidence given in 1990 at the trial of Blessington, Jamieson and Elliott. Gilson confirmed to the court that Blessington and Elliott both informed their legal representatives that Shorty Wells was the co-offender, not Shorty Jamieson.

Immediately below Gilson's evidence as described in the transcript was a notation indicating that the Attorney General had given legal protection to Shorty Wells in the form of an indemnity from prosecution. After 30 years in the law, few revelations surprise me. Numerous prisoners say they are innocent—as the Minister frequently observes—although one prisoner declaring the innocence of another was unusual. More disturbing was the Attorney General giving an indemnity from prosecution to someone who was alleged to be one of the perpetrators of the crimes against Janine Balding. The indemnity made no sense.

I learned from the affidavit that the abduction, rape and murder of Janine Balding started out as a plan conceived by Matthew Elliott to steal the young woman's car. The five street kids surrounded her as she unlocked her Holden Gemini at Sutherland railway station car park and they pushed her into the back seat. Matthew Elliott drove the car, Wayne Wilmot sat next to him and Bronson Blessington and Shorty Wells were in the back with Carol Arrow and Janine Balding between them. Bronson Blessington had a knife. The affidavit sent a chill down my spine and I could not for the moment read any more. I focused instead on the aftermath of the crimes against Janine Balding. Wayne Wilmot entered a plea of guilty to the abduction and rape of the young woman. Wilmot's girlfriend in 1988, Carol Arrow, received a suspended sentence, as she was not considered a voluntary participant in the crimes of the co-accused. Matthew Elliott, I learned, had been transferred to Long Bay gaol under the witness protection program after he gave evidence about an assault with an iron bar in the yard at Goulburn gaol.

The prisoner told me he and Shorty Jamieson were both housed in B wing with the general prison population. This immediately suggested they are not considered by the prison authorities to be a danger to themselves or others. If they really were two of the State's worst killers, I would expect them to be in maximum security—the so-called Super Max section of Goulburn gaol. I also learned that Shorty Jamieson is the prisoner who is supposed to look like an ape, although a small one at 145 centimetres tall and weighing around 45 kilograms. I asked Blessington if he might be mistaken about which Shorty was involved in the crimes against Janine Balding. He said, "I swear to God Shorty Jamieson is innocent." Either the young man was lying, or he was peddling the same awful truth as the criminal law committee of the Bar Association. How could he persist with a lie for all the years of his incarceration and how could he lie in the face of the work he claimed to do for his God? I thought he may be delusional—sometimes you get a dose of it with religion—so I asked about medical evidence. He handed me two reports, both dated in July 1987—just 14 months before the murder.

A clinical psychologist had written one on the letterhead of the Royal Far West Children's Home at Manly and the other was a report from a Manly psychiatrist describing Mr Blessington as a badly behaved 13-year-old with the emotional development of a much younger boy. The psychiatrist said the boy "has found it very difficult to cope with the splitting of his family, the failure of reunion of his parents, the interposition of two partners with his parents and his inability to live with his mother whom he is clearly missing". I asked the prisoner whether the medical assessments were tendered in evidence at his trial and he said the lawyers did not use them. Already I could see that the prisoner was the archetypal juvenile offender—the product of a broken home, poor academic record, and suffering from a possible intellectual disability common in adolescents.

Plenty of juveniles get into trouble and my initial reaction to his circumstances was that there was very little I could do. On the other hand, it was difficult to ignore the string of injustices his case seemed to involve, not to mention the allegation that his convicted co-offender was completely innocent. Few lawyers can ignore the plight of an innocent prisoner. Still, the demands on politicians are not insignificant, and I knew it would be a complex and demanding case. Victims groups would come down on me like a ton of bricks, the major parties would be unsympathetic and I risked being labelled a ratbag.

When I left the legal cells with the prisoner and the moon-face prison warder, I noticed a young prisoner with short-cropped hair and crazy eyes occupying one of the box cells in the visitors centre. He was extremely edgy and apparently suffering from what the psychologists call "non-association". I gained the impression he was expecting Blessington, and as we passed the cell, Blessington stopped and appeared to be counselling the young prisoner. The warder and I continued walking, and when we reached the main reception area he informed me that the young prisoner had just been let out of strict protection—the modern equivalent of solitary confinement—for a family visit, which explained his anxiety and disorientation. As Blessington rejoined us, he called out to his friend, "Don't forget to read your *Bible*". He shook my hand and thanked me for the visit, and I watched him walk towards the prison accommodation quarters.

Initially I was puzzled that a convicted murderer could show such compassion for another human being. Today the law-and-order brigade frequently reminds us that punishment is a debt the criminal owes to society, but society also owes something to the criminal—moral and social rehabilitation and encouragement to do better. Child offenders in particular respond well to programs teaching life skills and basic literacy and numeracy. The prison population in juvenile detention has been coming down while the prison population in mainstream adult prisons has been going up. I think that is because children respond to treatment and rehabilitation. The warder who had accompanied us nodded as if he was reading my thoughts. He said—and this is extraordinary for a warder to say—"I hope you can do something for Blessington." He said it boldly and showed no hint of embarrassment at taking up the prisoner's cause. He said, "It's quite wrong to lock up a man for the rest of his life for something he did when he was just 14 years old."

A few weeks later I met Jack Begnell, who was once assistant pastor at the Cabramatta Anglican Church, and is today retired and lives at Port Macquarie. Jack described the coast as paradise, although at first he hated it, moving only to please his wife and family. Jack was born a Catholic but said he was led to the Lord when he was baptised a Christian—as opposed to being a Catholic—at age 43. He says the Lord moved him up north and then rewarded him with the conversion of his wife, a steadfast woman who resisted his preaching for the 20 years he worked as assistant pastor in the predominantly Vietnamese parish of Cabramatta.

Jack said he loved the Vietnamese people, their quiet dignity and family values. It was a 16-year-old Vietnamese boy, Son Lam, a member of the 5T gang and an inmate at Minda Juvenile Detention Centre, who first turned Jack's attention to the spiritual needs of the boys in the State's juvenile justice system. Son Lam chased a rival gang member through the streets of Cabramatta before catching his hapless prey and stabbing him

to death outside a suburban service station. Although Son Lam stabbed his victim 24 times, he served less than six years in prison before his early release for good behaviour.

Jack Begnell's prison ministry began with regular visits to Minda to pray with Son Lam. The assistant pastor was a magnet for the lost and damaged young men in custody and Son Lam was a good foot soldier. Converts included the general of the 5T gang, Min Tran—Son Lam's former boss. Soon the weekly prison services were attended by up to 20 juveniles, with Jack invited to sporting and social events as well as family visits. He told me his strength lay in the certainty with which he offered peace and hope for those who placed their trust in the Lord. In 1990, Son Lam brought into the fold a young Bronson Blessington, who had just been sentenced to life for the murder of Janine Balding. Jack says he baptised the three of them—Son Lam, Min Tran and Bronson Blessington—in the Minda swimming pool. Jack Begnell did not know it at the time, but Bronson Blessington was partly raised by his paternal grandparents, Mat and Joan Blessington, who were field officers for the Salvation Army.

Visiting the child prisoner, initially at the juvenile detention centres and later in the adult prisons, Mat Blessington and Jack Begnell became good friends, and today they are both resolute and forthright men—even at over 70 years of age—praying ceaselessly for the salvation of Bronson. The assistant pastor reminded me that Christianity is tailor made for prisoners, offering them hope. Jesus Christ himself was a prisoner, as Reverend the Hon. Dr Gordon Moyes has pointed out. He was despised, a man of sorrows, familiar with suffering, and one from whom we avert our gaze, to paraphrase the prophet Isaiah. Jack said:

> God forgives even the greatest sinners, and this is the liberating power of Christianity. Many prisoners who previously had no knowledge of God and led aimless lives find their liberation in prison through the gift of faith.

I suggested to the assistant pastor that many inmates who have suffered injustice and oppression identify with the counter-cultural and revolutionary Jesus who lurks at the heart of Christianity. Sometimes prisoners discover the power of Christian faith when they attend programs run by the Kairos prison ministry. Jack Begnell's faith is the uncomplicated and uncompromising evangelical kind, but he is indisputably a man of God, and I cannot argue with the legitimacy of his conservatism, which draws worldly comfort from the Government's hard line on crime. For my part, I fear that tough-on-crime policies inevitably lead to the erosion of civil rights for law-abiding citizens and too much legalism by obscuring commonsense and ordinary fair-mindedness, which the legislation before the House clearly demonstrates. And I cannot support a Government that doles out vengefulness to the victims of crime instead of proper compensation and the resources needed to rehabilitate offenders.

Over the years Jack Begnell's devotion to Bronson Blessington's cause has remained undiminished. Jack says, "Of all my boys, only Bronson remains in prison. Hardly a week goes by when we're not in touch with one another." By that he means when Bronson does not phone him. I apologise to the House for being emotional: the injustice sometimes gets to me. "He still refers to me as his pastor—even though I was just an assistant in the Cabramatta parish." The assistant pastor also told me, "Following his baptism, Bronson studied by correspondence at the Moore Theological College, which is more than I did". In fact, I have heard prison authorities boasting that one of their inmates studied theology from prison without knowing that that same inmate is the target of this vicious legislative sentencing law.

Another story Jack Begnell told was that he was giving a talk at the Port Macquarie Church of Christ when he mentioned Bronson Blessington's prison ministry. Afterwards a man came up to Jack and shook his hand. The man had been an inmate at one of the gaols. He was traumatised by the experience, but after speaking with Bronson his spirits lifted and he felt he could cope. This is the kind of work this boy does in prison. I informed Jack Begnell that Wayne Wilmot—the fourth boy originally charged with the murder of Janine Balding—had written a letter of apology to the young woman's family. Jack was puzzled by this information since the only "other boy" he knew about was Shorty Jamieson, who was older than Bronson Blessington and Matthew Elliott and therefore never an inmate at Minda. Jack said, "They always said that the Jamieson boy was innocent." Jack told me that hesitantly, wary about passing on apocryphal information. I told him I had heard it before—in legal circles as well as from Bronson Blessington.

At first Jack Begnell rejected the idea that the police arrested the wrong Shorty, but both boys insisted that a boy named Shorty Wells was with them when they abducted Janine Balding, not Shorty Jamieson. Questioning them separately and together about the implications of what they were saying, Jack came to the conclusion that Bronson and Matthew were telling the truth about Shorty Jamieson because neither of them had anything to gain from telling a lie, particularly Bronson, who had given himself to the Lord. Like Jack Begnell, Mat Blessington once supported the death penalty. But then his grandson committed abduction, rape and

murder, and nothing he believed was ever quite the same. Today Bronson Blessington's grandfather lives in the Salvation Army's retirement village on Sydney's northern beaches with his wife, Joan, who also served as an officer for the Salvos.

In the year of the murder of Janine Balding, Mat and Joan Blessington lived in the Blue Mountains at Warrimoo. When I visited them on the northern beaches I gained the impression that they would happily swap the salt spray for cool mountain air. Before moving to Warrimoo they spent six years in New Guinea running the Salvation Army mission at Lae. Mat Blessington told me Bronson's father rang the house at Warrimoo at five o'clock on the Sunday morning Bronson was arrested for the crimes against Janine Balding. For years afterwards, Mat and Joan kept waking up at five in the morning and looking at the phone.

In the year before the murder of Janine Balding, Bronson's father, Steve Blessington, took the boy to Goulburn, ironically, where Steve had a seasonal job as a boner at the meatworks. Originally he worked as a deep-sea fisherman until he lost his fishing trawler in a boating accident. Working as a boner was Steve's second career choice. He and Bronson stayed in worker accommodation at Goulburn provided by the meatworks, and Bronson attended school for a few weeks before dropping out. The boy could not read or write and refused to sit in a class for children with learning difficulties. Every day for four months he wagged school, working instead for a pittance in the local upholstery shop. Then Steve's job at the meatworks ran out and the two of them headed back to Sydney, arriving on Mat and Joan's doorstep at Warrimoo in the New Year of 1988.

Mat found them accommodation at the Salvation Army farm at Boiler Close, Prospect. Steve secured a job at the Flemington meatworks and Bronson enrolled at Blacktown High School. Again the boy was placed in a learning difficulties class because of his poor literacy skills, and again he reacted by wagging school. He was also experimenting with marijuana, alcohol, cigarettes, and petrol sniffing. One day the police picked him up and drove him home to the army farm where Steve went ballistic. Unable to look after his son, Steve headed up the mountains to Warrimoo, and again appealed to Mat and Joan. Mat Blessington told me, "I did everything I could." Mat and Steve contacted child welfare at Blacktown, but the department was unable to do anything. I asked Mat whom he spoke to at DOCS and he could not remember. Mat said:

> He was in charge at Blacktown—a very, very nice bloke—and he sympathised with me, but he said, "Look mate, we just can't do anything. We haven't got anywhere to put him."

Mat also told me:

> When DOCS couldn't help, me and a young lady who I worked with at the Salvation Army welfare office spent three days ringing up every place in New South Wales—from border to border—looking for a place to put Bronson. They were either full up, he was too young or he didn't fit the bill. Eventually we found a place for him out at Penrith, but it was basically a rehabilitation centre for adults—drug addicts and alcoholics. They said, "Look, we're not what you want, but we'll see how he goes".

The boy did not go well. After a few weeks an officer at the centre found cannabis residue and a bong in Bronson's backpack, and Mat received a phone call to come and collect his grandson. He begged the caller to give Bronson another chance, but there were to be no second chances at Penrith. Someone from the Department of Community Services [DOCS] rang Mat and "blew a fuse" with him for putting the boy in an adult institution. Mat Blessington expressed to me his concerns about the reports from the Far West Children's Home at Manly and he could not understand why they were never presented to the judge and jury in the murder trial. Mat said:

> But the thing is—now I don't know anything about law—but to me it's not right. I would suppose that if the boy has got an intellect of nine or ten, and a physique of fourteen, when it comes to sentence and cross-examination and everything like that, you don't consider him as fourteen—you consider him as nine or ten. Now if that happened, then I'm sure it would've been altogether different—the result would've been entirely different.

Indeed, the result could not have been worse from a sentencing point of view. Mat also said:

> I know you've got to do the time for the crime—whatever they say—but I feel there has been an injustice. I'm not denying the terrible thing that happened with that woman. I can just feel for the mother—how it must be continuously in front of her all the time. I can understand that. But by the same token, people are still committing crimes—I reckon that are just as terrible today as what happened at that time. And yet they only just get five or six years. Bronson's been locked up [at that stage] for sixteen years.

I explained to Mat Blessington that New South Wales politicians wanted to "cement in" his grandson for a few lousy votes and he found it difficult to understand. He said:

> Books have been written about victims of crime and occasionally you will see people on television about the victim of a crime. But nobody has ever given a thought to the relatives of the criminal. Joan and I are his grandparents. Now, admittedly, no-one

> could ever say that we have gone through the same trauma as Mrs Balding. Never! But nevertheless we have gone through a terrible time. At least her daughter's gone if nothing else—she's gone. But we've got a grandson who's spent 16 years in jail, and every time we think of him we know he's alive, we know he's in jail and we know what he's done. For us it's always a trauma. Every time his name is mentioned—whenever we see his father—and any time he rings us up. He's beaut on the phone, but the trauma of what he did is still with us. Our grandson!

For me, the more perplexing question is why the medical and psychiatric reports about Blessington failed to find their way into his trial in any meaningful way. Defence lawyers, prosecutors and police invariably make difficult decisions about the evidence they will use in a criminal trial. Regrettably, the object of the trial is not always to elucidate the truth of what happened but to facilitate the free movement of the wheels of justice.

Prosecution and defence lawyers have opposing tasks: one seeks a conviction and the other seeks an acquittal. Police assist the prosecution and play a critical role in deciding what will be investigated and how the evidence is presented. Juries, for the most part, are kept in the dark about the bargaining that goes on between the prosecution and defence over the evidence. But when it comes to sentencing, the judge, as sole arbiter of the fate of a prisoner, ought to have the benefit of all the facts, and those facts ought to form the basis of the prisoner's sentence. That is one of the problems with Parliament deciding sentences. We are never going to get all the facts. Judges and courts spend days and days getting facts. We have to do it in the context of a debate. How can we make a judgment about the life of a person without getting the facts?

Like Mat Blessington, I wondered whether evidence of Bronson's mental age at the time of his crimes might have influenced the judge to hesitate about recommending that such a young boy should never be released. I obtained a copy of Justice Peter Newman's sentencing remarks, which are a narrative of the crimes against Janine Balding and the reasons for the prisoners' sentences. The judge did in fact say he had the benefit of psychiatric evidence indicating Bronson's mental age was lower than his 14 years. A psychiatrist, Dr Clark, said the youth suffered from "a conduct disorder of adolescence", a defined medical condition in the Diagnostic and Statistical Manual of the American Psychiatric Association. The psychiatrist concluded that the boy suffered from an abnormality of mind "which was present at the time of the offence" and "fits the criteria for a defence of diminished responsibility".

After quoting from the report Justice Newman said, "I might add this defence was at no stage raised during the course of the trial". In the very next sentence he observed that the condition diagnosed by the psychiatrist is transient and the good doctor expected it to be resolved in time. The judge said, "On the basis of this Dr Clark held out the strong hope that the boy Blessington is capable of being rehabilitated". Then the judge referred to reports from the Department of Youth and Community Services indicating Bronson had already made "excellent progress" towards rehabilitation in the juvenile detention centre while awaiting trial. This was when Bronson was 16. For all that, the judge concluded his remarks by saying that the facts surrounding the commission of the crimes were "so barbaric" he believed he had no alternative other than to impose a life sentence on Blessington, Elliott and Jamieson with the recommendation "that none of the prisoners in this matter should ever be released".

As I said, I wrote to Blessington's former lawyers and asked why the defence of diminished responsibility was never pleaded, either at trial or on appeal. The lawyers were strangely silent, so I wrote again, this time with greater urgency. Finally a reply arrived that the lawyers were "unable to recollect what discussions took place regarding the issue of diminished responsibility". The only other question for the moment was whether Justice Newman would have made his never-to-be-released recommendation if he had known the Parliament would later turn his words into black letter law. I presumed the judge was now retired and I drafted a letter to him at the Supreme Court, from where I expected my letter would be forwarded to him.

When I rang the court to check the mailing address I discovered that the judge, although retired, was still working part-time in the role of an acting judge. As a rule, sitting judges loathe receiving letters about their decisions, taking the position that the place for evidence is the witness box, not the mailbox. I decided to write to Justice Newman anyway since I could not reconcile the anomalies of his decision. A few days later I received a curt reply under the hand of one Pauline Hansen, an acting judge's associate, who wrote:

> As a matter of both protocol and principle, it is inappropriate for serving or retired judges to enter into either correspondence or discussion involving past decisions, unless required to do so by law.

The letter reminded me of the musings of the great Thomas More, Chancellor of England in the sixteenth century, who died for his faith—or pigheadedness, depending upon who is telling the story. More said the criminal laws are like cobwebs in which the nits and flies stick fast and the bumblebees fly straight through.

It took another trip to the northern beaches to work out the details of how Bronson Blessington came to be in the custody of the State. After the Department of Youth and Community Services blew a fuse with Mat Blessington for placing his 14-year-old grandson with the adult rehabilitation centre at Penrith, the department found a place for the boy at a Wyong refuge. Mat and Joan Blessington drove him there from their home in the Blue Mountains, arriving late one Sunday afternoon in the first days of winter in 1988. Bronson was unhappy about going into the refuge but Mat explained there was nowhere else for him to go until his father sorted out his work and was better placed to look after him. Besides, he had nobody to blame but himself for constantly running away and getting into fights at school. I cannot imagine which kids do not get into fights at school. Mat and Joan did not see the boy again until he was arrested three months later for abduction, rape and murder.

I learned from Bronson Blessington that he ran away from the Wyong refuge and was brought back after two days and placed in Gosford Hospital suffering from pneumonia. From the hospital he was discharged to the care of the Department of Youth and Community Services, and the department placed him in Phillip House, which is a home for State wards at Gosford, where he was again in trouble for drinking and fighting. Security was lax and four of the Phillip House boys including Bronson went out on the town and were picked up by the police four nights in a row. On the last night, the police arrested the boys and charged them with a variety of property offences, including a charge against Bronson of stealing a pair of sunglasses from a parked car.

The boys were held in the police cells overnight and brought before Gosford court the next day. Although Bronson had no previous encounter with the justice system, nobody appeared at court to take responsibility for him, and he was remanded with his co-offenders to Ormond Juvenile Detention Centre at Thornleigh in Sydney. The police drove the boys to Sydney in the paddy wagon. The property offences were listed for hearing in the Gosford Local Court on 18 August 1988, and early on the morning of that day the four boys were placed in a prison transport van at Ormond and driven back to the Central Coast. Other prisoners from adult jails were already in the van. Bronson said he had never seen prisoners before. The four boys began the journey by giving cheek to the prisoners—from the relative safety of their separate compartment in the van—but they arrived at Gosford Court fearing they would be bashed if the prisoners got half a chance.

Local police shepherded the boys into the courthouse lockup until their case was called. As occurred on his previous appearance, nobody came forward to claim custody of Blessington, although his mother's sister sat in the public gallery as a family observer. The magistrate fined Bronson $20 for stealing the sunglasses, placed him on a six-month good behaviour bond and asked whether anyone was willing to take charge of the boy. When Bronson's family members sat on their hands, the magistrate sent him back to Sydney, this time to the care of the Minali Juvenile Detention Centre at Lidcombe. Shortly after arriving at Minali, Bronson ran away again, and three days later he was involved in the crimes against Janine Balding.

Yesterday in the other place the honourable member for Wagga Wagga quoted from correspondence to me and to himself from Beverley Balding, the mother of Janine Balding. That correspondence suggested that Bronson Blessington was living on the streets for "quite some time" before he was involved in the crimes against Janine. As I said, just three days elapsed from the day he ran away from Minali until the day of the murder. While the boy's co-offenders might have been street kids with some form in the juvenile justice system, the same could not be said of Bronson Blessington. From the papers I have read and the people I have spoken to, the Blessington case still makes no sense. In the year before his arrest, when the boy decided to leave his mother and move into a caravan with his father, he was still receiving prophetic letters from the Central Coast Area Health Service. One letter stated:

> Bronson, most of the consultants are still very concerned about your future … Already there have been problems at your new school as you find it very difficult to accept being in the class you are in. It seems that you have given up trying at school completely, and this can only cause you further problems. These consultants are worried that these school problems will start to affect things at home between you and your Dad, and will start to cause arguments. If things do go this way, Dad may get fed up with you, and you will then be unable to live with him. You might even end up in a home of some sort, as Mum fears.

Bronson's father, Steve Blessington, was happy to talk with me, and as I made my way up the coast I wondered whether the unbelieving son of strict Salvation Army parents could provide any answers to my questions. At first, Steve Blessington appeared to be unconcerned about being identified in his local community as the father of a notorious murderer. But then he railed against the *Daily Telegraph* for publishing Bronson's name in 2001 when the cement law was passed. He said, "What I'd like to know is why they had in the newspaper about all these people who were never to be released and they had photos of them—except for Bronson's—but they had his name there and just a silhouette." I remembered the front page of the newspaper and I agreed it was a shocker. Steve continued, "I thought when you were 14 that your name and everything wasn't allowed to be divulged." I thought so too, I told him, until I discovered that the privacy laws in force at the time meant a child's name could be published once he or she turned 18 years of age.

I pressed Steve Blessington about his reaction to the newspaper story, and he said, "I felt a bit upset over it because I didn't do the crime but it's my name." Then I asked him how often he was questioned about his connection to the Blessington kid, and he replied, "A fair bit." He lived in a small community and people talk. He said, "When that thing came out with them all splashed over the front page, well, I'm not going to deny he's my son." Steve Blessington told me he and Bronson were staying in the Salvation Army accommodation at Prospect. He said, "The police brought Bronson home one night—he was hanging around making a nuisance of himself. And I said to the coppers, 'Well, what can I do?' And they said, 'We can't take him away or do anything. You'll have to ring up Youth and Community Services'. So I rang them up."

I questioned whether he knew anything about his son stealing a pair of sunglasses from a parked car at Gosford and going to court to face charges. Steve Blessington said he knew nothing about the incident. I asked him how long the boy stayed with him at the Salvation Army farm at Prospect and he said, "Four or five months." I asked him, "How was Bronson while you were there?", and he replied, "He seemed alright at first, but then he just went downhill, sort of thing." I pressed him for more information and he said he put the boy on a bus for his first day at Blacktown High School because he had to go to work at the Homebush abattoirs.

Steve Blessington said, "He wouldn't go to school and I'd get home from work and he wouldn't be home until 10 o'clock at night. It was no good him living in Sydney and being able to run his own race. I didn't want him on drugs or anything, so I sort of said, 'Oh well, I'll just have to warn you.' And I warned him and he kept on doing exactly the same thing." I questioned him about the warning, what did he tell the boy? Steve said, "I said, 'Look, if you don't go to school when I've got to work, I'm going to have to put you on a farm and see how it's like for three months. After that, you can come back out and see how it's going'." Steve learned about the farm when he took Bronson to the Local Court and tried unsuccessfully to have him declared a ward of the State.

Steve Blessington said, "Before I put him in as unruly, they said they'd take him away to this farm." Steve liked the idea of the farm. He said, "He would get an education, jump on a tractor and everything will be sweet." So far as Steve can recall, Bronson did finish up on the farm. He said, "It was a shock the coppers coming round and saying, 'Your son's up here and we're questioning him on the murder thing. Do you want to get dressed and come up to the station?' When I said, 'He's on a farm', they said, 'Oh no he's not. He escaped three days later and he is in the cells'."

Some vengeful part of me wanted to beat Steve Blessington over the head, but punishing parents for the crimes of their children is a complete waste of time, of course, since the parents already punish themselves by trying to work out what went wrong, and forgetting or avoiding the bits that cause the most pain. Steve Blessington remains devastated by his son's sentence. He told me, "Nowhere in the world would they say you're going to be locked up never to be released at 14." I told Steve that Bronson is the youngest person sentenced to life in the State's criminal history. Steve said, "It's shocking, but, you know, I think he was more led than anything." Unlike the vast majority of serious criminals, Bronson Blessington was neither neglected nor abused as a child. During his first year at secondary school as he made his rite of passage from child to adult, the boy was unable to settle with either of his parents, and, immature and bewildered, he searched desperately for his place in the world.

I often wondered whether he was too difficult to handle, or simply whether nobody in his family had sufficient space in their lives to give him the care he needed. Either way, he faced adolescence alone and without the benefit of a suitable role model. For all his troubles, until the month before the abduction, rape and murder of Janine Balding, he had no criminal record, a fact the trial judge found "rather surprising"—as he would! Bronson's first recorded crime is the conviction in the Gosford Children's Court for stealing sunglasses from a parked car. Entry number two on his criminal record is a life sentence for the crimes against Janine Balding, with the judge's recommendation that "the prisoner should never be released". A closer reading of the papers reveals an additional sentence condition imposed by the Children's Court at Gosford for the stealing charge, which states that the boy must reside "where directed by his mother".

Fascinated by that entry and anxious to know what was behind it, I contacted Bronson's mother and canvassed the possibility of an interview. Barbara agreed to see me after several telephone discussions, provided I did not disclose her second name, the place of her work or where she lived. Also, she reserved the right to edit a transcript of my tape recording of the interview. Although the woman's love for her son was palpable, even down the telephone line, she wished to protect her identity and that of her daughter, who is Bronson's younger sister. I gave the undertakings and Barbara directed me to the regional office of an organisation providing child welfare and family support services, where she had worked since shortly after Bronson's arrest.

A couple of hours out of Sydney I found myself on a guided tour of a Federation building bustling with activity while Barbara proudly explained her work. The woman was slim, neatly dressed in cargo pants and a white cotton shirt, with short blonde hair and minimal jewellery. She told me she had qualifications in welfare and human resources, which she achieved after resuming her education "when all this happened". I had a sense of her trying to make up in some small way for the havoc wrought by her son. She showed me a photograph of Bronson from his first year at secondary school when he attended the Henry Kendall High School on the Central Coast. The boy in the photograph is a mere child and I could scarcely believe he committed murder in the year after the photograph was taken.

Barbara said, "Bronson always had lots of friends. He was charismatic and people liked him." I asked her if she could remember the circumstances in which he was convicted for stealing from a parked car at Gosford, but she had no recollection. I told her the magistrate ordered that she was to decide where he should live. She said, again, that she could not remember. I asked her if she could remember the first time she tried to get help for him, and she said it was just after he started high school. She said, "Every fortnight we visited the counsellor at Gosford Hospital. I've got all the reports. I'll have a look for them. One is dated about the time he got into trouble."

At that point Bronson chose to live with his father, a move that included a change of school to Raymond Terrace High School, where the principal suggested to Steve Blessington that the boy might benefit from an assessment by the Far West Children's Home at Manly. Barbara told me that Bronson called at least once a week on the telephone—usually on the weekend. I mentioned that he spoke to his father each week as well and Barbara said, "He's always been there for both of us." It seems to me the boy had achieved a remarkable balancing act from inside prison. He holds nobody responsible for what happened except himself and when I expressed surprise that he avoided the easy option of blaming his parents, Barbara said, "I think he's way past that." Indeed, he is even past blaming his co-offenders, as I discovered, and I remain deeply moved at the extent to which he accepts responsibility for his crimes.

I established that Barbara knew few details of the crimes against Janine Balding and when I pressed her for an explanation of this gap in her knowledge she said, "I think Bronson was concerned how I would react, so in a way he sheltered me." I explained that the cement law meant that Bronson could be treated the same as all prisoners whose files were marked "never to be released" and he might be in gaol until he died. Barbara caught her breath and changed tack. She said, "By the time the case went to court, Bronson was beginning to look like a man. He wasn't that little boy any more." The extraordinary thing about it is that if one saw a picture of this boy at the time of the murder, one would have realised he was a child. He was a child mentally and he looked like a child. Although Barbara visited him at Minda during the trial, she could not bring herself to attend the court hearings.

I realised that Barbara watched her son grow from boy to man in the relative safety of the juvenile detention centre, far removed from the influences that brought on his problems of adolescence. He was still 16 when Judge Newman sentenced him to life imprisonment and he remained at Minda until he turned 18. Barbara told me she visited him on his eighteenth birthday—the last day at Minda before he was transferred to Long Bay. There was a moment of silence and then she said, "It broke my heart when he went into the adult gaol." Bronson consoled his mother with the observation that prison had been his salvation, not just in the spiritual sense but because the chances of his physical survival had greatly improved now that he was an adult. Like Steve Blessington, Barbara laments a system that has locked up her son and thrown away the key. She said, "I thought that prison was supposed to be about correction and rehabilitation."

I attempted to explain to her that the reports are that her son is a model prisoner now that he is a man. The words rattled in my head, offering little consolation or hope and failing completely to answer any of my questions about a legal system that seems to have thrown up such a manifest injustice. How could the trial judge allow the introduction of evidence of diminished responsibility due to Bronson's age and mental development, draw attention to it in his sentencing remarks, and then impose a life sentence with a "never to be released" recommendation? It simply makes no sense.

Less than three weeks after his conviction in Gosford Children's Court for stealing a pair of sunglasses, Bronson Blessington made the fateful decision to run away from Minali Juvenile Detention Centre at Lidcombe. He had made another call to his mother at a phone number in Queensland, where she was staying with her new boyfriend, begging her to let him come home. She told him to wait six more months "to prove yourself". Bronson told me that he was crying on the telephone and then he became angry before hanging up the receiver.

The opportunity to run away presented itself unexpectedly when another boy at Minali, Scott Agius, invited Bronson on an excursion to celebrate Scott's sixteenth birthday. I asked Bronson whether he and Scott planned to run away and he said they did, putting on two sets of clothes so they could change once they escaped

from the youth worker. It turned out to be a perfect spring day as they left the detention centre by car, the youth worker driving, Scott in the front seat and Bronson in the back. They headed for the Blue Mountains and Bronson said he was roasting in his double layer of clothes. He wound down the window in the back seat and thought about bolting when the car stopped at a set of traffic lights just down the road from the detention centre.

The youth worker was a sympathetic young man. He was anxious to give the two boys as much leeway as he could, and as the group alighted from the car at the top of the walking track in the Blue Mountains he allowed his charges to go on ahead so long as he could see them. The boys obeyed the instruction for a few hundred metres but when the walking track turned sharply, they were out of sight and, once out of sight, they headed off into the bush, running along the ridgeline and gradually working their way back towards the road. They crossed the road and pushed their way through another stretch of bush before arriving at a train line they had seen earlier. Then they strolled along the train line until they reached a railway station. A Sydney train came along and they jumped aboard, congratulating each other on their escape and making plans for the next stage of the adventure.

The two of them arrived at Central railway station with no money and no rail tickets so they jumped over the ticket barrier and disappeared into the crowd on the railway concourse. It was just past lunchtime in the first week of spring in the year of the bicentenary celebrations when Bronson Blessington began his short life on the streets of Sydney. That night the two boys met another 16-year-old boy, Matthew Elliott, who was an acquaintance of Scott Agius. Elliott introduced Bronson and Scott to his friends, Wayne Wilmot, aged 15, and Elizabeth Lopez, aged 16. At Elliott's suggestion, the group walked from George Street to Belmore Park, near Central railway station. They left Belmore Park, crossed Eddy Avenue, and jumped on a train to Flemington, where Elliott and Wilmot had taken over a squat.

Bronson said he was much smaller than the other two boys and felt intimidated by them. Nevertheless, he found other ways to measure up, by stealing food and giving cheek to a bunch of skinheads on the railway concourse. They spent the night at the Flemington squat and the next morning they stole food from a nearby corner store. After breakfast, Elliott, Wilmot, Scott Agius, Lizzy Lopez and Bronson jumped on a train from Flemington to Central railway station. When they reached Central, Wilmot wanted batteries for his Walkman radio and sent Blessington to the newsagency on the railway concourse to steal them. Then Wilmot and Elliott directed him to steal Mars bars from another shop. He said, "I stole the batteries and the Mars bars the same way I stole the food from the corner store."

The group left the railway concourse, headed for George Street, and then walked north in the general direction of The Station drop-in centre, near Wynyard railway station. Along the way Wilmot went into a supermarket to steal a candle for the squat, but he soon discovered he was much less adept at shoplifting than Blessington. A store detective arrested Wilmot and took him into custody. Within minutes undercover police wearing backpacks were questioning the rest of the group standing on the footpath outside the supermarket. Blessington said:

> We gave them bodgie names and addresses, and then we decided to go back to the squat and wait for Wilmot. Just after lunch, I seen a bunch of coppers in flak jackets through the open door of the squat. They were comin' in with guns drawn. Matthew screamed at me to pick up the sledgehammer. I grabbed it just as the coppers came through the door and one of them said, "Put it down or I'll shoot you." I weren't about to argue with the bloke and did as I was told. The coppers started searching the place and through the front window of the squat I could see Wilmot sitting in the back seat of the police car. The copper who had spoken to me said, "What were you goin' to do with the sledgehammer?" I said, "I thought you were someone off the street." Then he said, "Get out of the squat. We'll be back tomorrow and you'd better be gone." As they drove off, I seen Wilmot again through the back window of the police car.

Late in the afternoon the group, minus Wilmot, headed back to the city. I asked whether anyone complained about Wilmot giving them up to the police and Bronson said that nobody said anything he remembered. At Central they met another group, including Dianne Adams, a friend of Lizzy Lopez, and a boy named Warren Purchase, who came back to the squat with them. I worked out from the court papers that the "next morning" they were talking about was the morning of 6 September. The murder took place on 8 September, so this was the first of their three days on the street. It was the day when Warren Purchase, one of them, was assaulted with the sledgehammer. Warren Purchase joined Matthew Elliott, Bronson Blessington, Scott Agius and Lizzy Lopez on an excursion to Parramatta, where the group visited a disposal store. Matthew was looking for a knife and selected one with a yellow handle from a glass cabinet. They also bought a billycan, cutlery, plates and fluorescent tubes called glow sticks for lighting.

The trouble started when they returned to the squat. Warren Purchase was tied up and hit with the sledgehammer. According to the indictment against Blessington and Elliott, they "maliciously did inflict

grievous bodily harm upon Warren Purchase". Elliott was sentenced to a fixed term of penal servitude for two years for his part in the assault and Blessington received a sentence of one year and six months. Elliott struck the victim on the back of the head at least six times with the sledgehammer and Blessington struck him at least once. The most serious of the victim 's injuries was a lineal fracture to the right occipital region of his skull. Blessington was described in the judge's sentencing remarks as "the lesser assailant", reminding me that Steve Blessington had said his son was led.

After the assault on Warren Purchase the group caught a train to Cental railway station where Scott Agius separated from them. He tried to get Bronson to join him, and Bronson told me he made "the biggest mistake of my life by not going with Scott". They never saw each other again. He also told me, "A couple of transit cops grabbed us as we were running along the railway concourse and they took us to the railway detectives' office. They also grabbed Elizabeth. We explained that a bloke was trying to kill us. Matthew was doing all the talking. We gave them bodgie names and they let us go."

After they left Central railway station the group crossed Eddy Avenue and sat down in Belmore Park with a group of Aboriginals drinking from a wine flagon. From there they wandered the city. When I asked where they spent the night since they were obviously unable to return to the Flemington squat, the prisoner told me he is not sure where they stayed. The next day was 7 September, the day before the murder, and Bronson said he remembered being tired all day and sleeping intermittently when he had the chance. That night the three of them climbed the fence at the back of Central railway station, crossed the maze of steel railway tracks, and walked towards the repair yards where they found an unlocked railway carriage. Bronson said, "Matthew and me climbed into the carriage and we hauled up Elizabeth. Matthew broke the glow sticks to find our way inside and then we fell asleep as soon as we put our heads on the seats."

They rose with the sun on the day of the murder, 8 September, and jumped out of the railway carriage ahead of the fettlers and fitters arriving for work. Scurrying between the early morning trains, they scaled the barrier fence before sauntering up onto the railway platform and mingling with the commuters. Matthew directed Bronson to steal chips and a chocolate bar from a newsstand on the platform. Bronson said he was unhappy doing it but made no excuses. Crossing Eddy Avenue, they spotted Wayne Wilmot on the edge of the park, and Matthew Elliott went up to him and asked how the coppers found out about the squat at Flemington. According to Bronson, Wilmot replied to Elliott that the police "must have followed you there", an explanation that seemed to satisfy Elliott, even though Wilmot had been clearly visible in the back seat of the police car. His girlfriend, Carol Arrow, who was about the same height as Bronson and a year or two older, accompanied Wilmot. She also lived on the street.

The five of them walked along Eddy Avenue towards George Street and then followed their familiar route to The Station drop-in centre behind Wynyard for breakfast. Other kids waited on the steps for the doors to open, and I asked if he remembered meeting Shorty Jamieson outside. He said:

> Not outside, but I remember him inside talking with Elizabeth Lopez and Bill Rowland. He was talking about undercover detectives and what kind of cars they drove. He'd point to cars out the window and say, "There's one." We spoke about being on the street and he told me about the Salvation Army refuge where he said he stayed the night before. Matthew and me found a bucket of condoms and we filled some of them with water and began chucking them at people on the street from the upstairs window. Jamo thought that was pretty funny, but someone working in the place came up the stairs and said if we didn't cut it out the police would be called.

I asked Blessington to go over the order in which the kids left the station. He said, "Lizzy went off with Shorty Jamieson and Bill Rowland. Matthew and me stayed there until lunchtime. I remember we had bread rolls for lunch. After lunch we walked back to Central. Wayne Wilmot, Carol Arrow and Shorty Wells came with us. Shorty Wells wore a black duffel coat and he was pretending to flash at people in the street." I asked what else Shorty Wells was wearing. Blessington said, "He had black jeans and a black T-shirt under the coat and he wore black boots—army boots or motor cycle boots. He also had a black bandana. First it was tied around his neck and then he tied it around his head." I asked what happened when they got back to Central. Blessington said:

> We jumped off the end of the platform, walked across the tracks, and went back to the train carriage where we had slept. It was an old red rattler with leather-studded seats. We were hungry again and Matthew said, "Go and get some food, Bronson." The others chimed in and said, "Yeah Bronson, go and get some food." I was sick of getting the food, but Matthew said there was a shop along the road beside the railway tracks. So I walked over the tracks and crawled under the fence just up the road from the shop.

On the way back to the railway carriage, Bronson found a bottle shop, and he slipped inside, placed a bottle of Bundaberg rum down the front of his pants, and walked out again. He said:

> When I got outside I ran without looking back so I don't know if anyone seen me stealing the rum. I went under the fence again and back across the railway tracks to the train carriage. Everyone was really happy that the trip had been so successful. We drank about half the rum, ate the food and smoked some cigarettes. Then we left the train carriage and Matthew carried the remaining half bottle of rum in his jacket.

I asked what happened then, and he said:

> We went back under the fence and walked around to the front of the railway station. I was tired and pissed and didn't care what people thought, so I knocked off a *Penthouse* magazine from the newsstand in front of the station. We walked up to the electric trains platform and boarded a train. I don't think any of us knew where the train was going.

I asked whose idea it was to catch a train, and he said, "Matthew's I suppose. Sometimes street kids ride round all day on the trains." I asked what happened on the train, and he said, "We had four seats on the train—two seats opposite each other—and we took turns at one of us standing up or walking about." I asked who were the others, and he said, "Wayne Wilmot, Carol Arrow, Matthew Elliott and Shorty Wells." I asked what he remembered from the train. He said:

> We were looking at the pictures in the magazine and showing them to people on the train to shock them. It was about four in the afternoon and there were lots of school kids on the train. We were swearing and drinking the rum and flashing the magazine pictures at the school kids. Matthew said, "Let's go and pick up a girl," and then we got off the train. I thought Matthew meant we would pick up a girl from a pub. At the time I had no idea where we were.

They left the train at Sutherland railway station, and ran to the end of the platform where they crossed the train tracks and scaled a cyclone wire fence adjoining the railway car park. The time had advanced to about twenty to five as the five walked through the car park and into a reserve called Cecil Park beside the main road. Several hundred metres up the road, Matthew noticed a takeaway shop, and the older boy told Bronson to do his thing. Bronson said, "I didn't want to go to the shop, no." But the others said, "Go on; we're hungry." They said it about eight times. Then Matthew said, "Go and do it if you want to be with us. If you don't do it, you can go." "What could I do?" the prisoner asked me. I said, "You could've walked away—the way Scott Agius did," and he agreed that is what he should have done.

It occurred to me that getting into trouble is easier than getting out of it, particularly when you are young and looking for a family, as he appeared to be doing. Bronson said he walked along the main road in the direction of the takeaway shop. He told me he ordered fish and chips and drinks from the takeaway shop, and when the shopkeeper put them on the counter in a plastic bag, he said he asked for a packet of smokes. He then told me:

> The bloke turned around to get the smokes and then I bolted with the plastic bag. I ran like mad, without even turning around to see if the bloke was chasing me. The others were on the side of the road where I left them, and as I approached, they turned and we all ran through the park into the railway station car park where we hid behind a maintenance shed and ate the food. After we finished eating Matthew said, "Let's pinch a car and go for a joy ride." We broke into a HQ Holden and stuck a screwdriver into the ignition, but it wouldn't turn. We found another car that was unlocked, but we couldn't start it.

I asked who broke into the HQ Holden, and he said Matthew. I asked had he stolen a car before, or tried to break into one. He said, "Never. I couldn't drive—couldn't even reach the pedals." I said, "You stole a pair of sunglasses from a parked car", and he replied that somebody else broke into the car. I asked what happened next. He said:

> Then we went back and sat beside the shed. Matthew said, "I've got a plan. We'll get someone and push them into their car and steal it that way." Matthew said to me, "We'll wait for a woman to come down from the station. You use the knife to push her in the car and we'll come up straight away." Shortly afterwards, a woman came down the steps from the station and walked across the car park. As she walked past us, she looked over and then looked away. Matthew said, "Ask her for a cigarette." We were sitting on the ground, just outside the shed, and I stood up and followed the woman to her car. She was parked about 10 metres from the shed.

He said:

> As she was unlocking the car, I came up behind her and said, "Have you got a cigarette?" She turned around and said, "No," and then jumped in the car. She wound down the driver's side window of the car and I said, "What's the time?" She started the car and gave me the time with a cranky tone in her voice. As she drove off, I showed her the yellow-handled knife. I think she seen it. I showed it to her because I thought she was being rude.

I said, "Maybe you were trying to show the others how tough you were." He said that I might be right, and then I asked him to continue. He said:

> Anyway, I went back to the shed and the others were standing outside, on the edge of the car park. They hadn't followed me to Mobberley's car. They laughed at me and said I should have pushed her into the car. We sat down again and Matthew said, "We'll get someone else." At this point, Mark Wells got up and untied the black bandana he had round his neck. He tied it across his

> forehead and at the back of his head. He found a stick in the shed and went out into the car park where he started walking up and down and waving the stick around like he was a Ninja fighter.

I asked, "What happened next?" He said:

> Then Janine Balding came down the railway steps and walked towards her car, which was parked about four metres from the shed. She also looked towards us and then looked away. As she walked past, Matthew said again, "Ask her for a cigarette, Bronson." I stood up and followed her to her car. It was a greenish blue Holden Gemini. This time the others followed me. As Janine Balding began unlocking the car, I walked up behind her and said, "Have you got a cigarette?"

A few hours later, following the abduction, rape and murder of Janine Balding, the group caught a train from Mount Druitt back to the city. Blessington, Elliott, Elizabeth Lopez and a young person named Dianne Adams sat on a platform seat at Wynyard railway station under the indicator board and fell asleep. After a couple of hours Blessington and Elliott woke up. Dianne Adams had already gone. The two boys left Elizabeth Lopez sleeping on the seat and caught a train to Gosford. At Gosford they went to a fish and chip shop where Blessington stole food and drinks again. They ran up the road a few hundred metres and sat down under a tree and started eating the fish and chips. A man came up to them and said, "Are you going to pay for that?" Elliott said, "We're on the streets and we can't pay." The man said nothing and walked off. Blessington placed Janine Balding's credit cards in a bush near where they were sitting. Then they went to East Gosford and stole an HQ Holden from a laneway at the back of some shops. Elliott cut his hand on the gear stick, which snapped off while he was driving. He stopped the car outside a chemist shop and the pharmacist gave him bandages for the wound. I asked what happened next and Blessington said:

> Matthew drove onto the freeway after we left Gosford and we headed for Sydney. When we reached the Harbour Bridge the tollgate alarm went off because we didn't stop to pay. Matthew drove through the city and onto Parramatta Road, where we almost hit a telegraph pole. We did a "fill and run" at a service station and then headed for the youth detention centre at Cobham, where Matthew knew the regional director. We went into his house and he gave Matthew and me a beer. Matthew went into another room with the man to tell him about the sledgehammer attack. Another man stayed with me in the living room.

I asked about the police, and he said:

> I think the regional director rang the police. Anyway, they turned up after a while and took Matthew and me to Penrith police station. We sat in the back seat of the police car. The policeman in the front passenger seat was the Penrith footballer Craig Izzard. I asked Matthew what I should do with the yellow-handled knife and he pointed to Izzard and said, "Give it to him." I reached into the front seat with the knife in my hand and said, "Do you want this?" The policeman was startled at first and then he took the knife from me. I told him I didn't think Penrith would make the football finals and we had a bet about it. A few years later I seen him in court and he reminded me I lost the bet.

I should add that the two boys, despite the terrible crimes that they committed, gave themselves up the next day. They took the police to the scenes of the crimes and, to that extent, to my mind they demonstrated the pattern of behaviour of children. They were not cold-blooded killers who planned their crimes, which is the way that adults commit crimes. They did things impulsively—unplanned. The fact that they handed themselves up, to my mind, is an extraordinary matter that was not even mentioned in the judge's sentencing remarks.

The trial of Shorty Jamieson, Matthew Elliott and Bronson Blessington in 1990 for the abduction, rape and murder of Janine Balding was the first case in New South Wales criminal history where DNA evidence was used to help secure the conviction of one of the prisoners. Oddly enough, the new DNA profiling technique identified only Bronson Blessington as a sex offender—a feature of the evidence that puzzled me from the beginning because Matthew Elliott and Stephen Jamieson were also convicted of raping Janine Balding. In the absence of DNA evidence, I wondered how the prosecution made its case against Elliott and Jamieson. As well as vaginal rape, Jamieson was convicted—alone of the offenders—of anal intercourse without consent. Jamieson's buggery conviction came to light when I asked the Supreme Court for copies of the indictments and the sentences handed down to the prisoners.

Enough questions were raised about the prosecution case against Jamieson to arouse my curiosity and I wrote to the Minister for Corrective Services seeking permission to visit the prisoner. In the weeks that elapsed before the approval came through, I spent several hours in the State Library reading press clippings of the arrest and trial of the offenders. When I found nothing of any consequence about the DNA evidence in the case, I reviewed my notes from a parliamentary inquiry by the Standing Committee on Law and Justice into the new DNA laws. As a serving member of the committee, I recalled evidence by Linzi Wilson-Wilde of police forensic services to the effect that the first time DNA evidence was used in Britain in a homicide case it unexpectedly acquitted the alleged offender.

When Shorty Jamieson was arrested for the rape and murder of Janine Balding in 1988, DNA evidence had never been used in an Australian court. Today the genetic "fingerprint" evidence is routine and DNA profiling technology is so sophisticated that a person can be identified from a single cell left at a crime scene. It

occurred to me that DNA analysis of any surviving evidence from the Janine Balding crime scene might resolve the question as to whether Shorty Jamieson or Shorty Wells was involved in the crimes against the young woman. But finding the physical evidence after 14 years would be the first challenge, not to mention the problem of access since police hold all physical evidence from crime scenes in New South Wales. Following conviction of an offender, the head of police investigations decides whether the evidence will be retained.

The initial trial of Blessington, Elliott and Jamieson before Judge Wood was abandoned because of the "other Shorty" allegations and the details are recorded in an article by Joe Morris dated 24 October 1989 from the *Australian* that has the disturbing headline, "Balding murder trial aborted as another 'Shorty' surfaces". The article states:

> A Sydney judge yesterday aborted the trial of two youths and a man for the abduction, rape and drowning murder of building society clerk Janine Balding in Sydney's west last year. Justice Wood dismissed the jury in the six-week-old trial after police located a man who fitted the description of a person who was allegedly at the murder scene. Police launched their search for the man after evidence last week by the two youths. The youths said their co-accused Stephen Wayne Jamieson, 23, known as Shorty, had been wrongly charged and described another man, also known as Shorty, who they say was responsible. Justice Wood said yesterday that the Crown had informed him the second Shorty had been interviewed by police. He could not be named and had not been charged. Justice Wood described the abortion of the trial as regrettable and the circumstances as "extraordinary if not unique". The judge denied bail for Jamieson after an application by his counsel Mr Ted O'Loughlin, but said it might be appropriate to reapply at some time in the future.

By a cruel twist of fate for Jamieson, Justice James Wood did not adjudicate on the second trial, despite all the parties requesting that he do so and the judge indicating his desire to continue in the case. This is the same Justice Wood who was appointed to conduct the royal commission into the police service in 1994, and the received wisdom is that the Crown had some distance to travel before satisfying Wood that Jamieson was the right Shorty. I wondered what happened in the Supreme Court's list office to cause Justice Wood to be replaced by Justice Newman. In the old days, judge shopping was almost a blood sport amongst well-connected lawyers, although I have not heard such an allegation in 20 years. I suspect there was some bureaucratic mix-up, or perhaps Wood himself decided that the case needed a fresh mind to sort out all the stories.

Two innocent men appear to be in prison for the abduction, rape and murder of Janine Balding. One said he is innocent because he is the wrong person; the other seems to be innocent at law because a child with the mental capacity of a 9-year-old or 10-year-old is incapable of forming the intention to commit serious crime. Apart from wanting to know the details of the crimes against Janine Balding in order to identify the real perpetrators, I was also painfully aware that the young woman's parents would be mortified by any attempt to diminish the culpability of those already convicted by the justice system of degrading and then extinguishing the life of their beautiful daughter.

One part of me wanted to contact the Baldings and alert them to my efforts on behalf of Blessington and Jamieson, placing my actions in the context of the need to protect the justice system from corruption. If I were in their position, how would I feel about a complete stranger opening old wounds on account of some fanciful idea that an injustice has been done? Another part of me understood that anything done to help convicted prisoners is condemned in the modern law and order state as an act of treachery against the victims of crime and their families.

On the other hand, notifying Janine Balding's parents about my intentions seemed like the decent thing to do, rather than have them find out on the grapevine, so I contacted Janet Fife-Yeomans, who was Chief Editor of the *Australian* newspaper and the co-author of a book *The Janine Balding Story* written with Janine's mother, Beverley Balding. Surprisingly, the journalist screamed at me like a banshee, telling me I was a waste of space, and that I should have better things to do with my taxpayer-funded time. The next day, a five-column article with photographs of Janine Balding and me appeared in the *Australian* under the heading, "They've got the wrong Shorty, says MP". It quoted Beverley Balding saying that she was devastated by my support for Jamieson and that I should be spending my taxpayer-funded time on "more worthwhile causes".

For two days I stayed out of sight while the radio commentators peppered the message bank service on my mobile phone. By the time I rang back, the story was no longer news, and nobody wanted to talk to me. The reason for my surprise at the vehemence with which Janet Fife-Yeomans dismissed the wrong Shorty allegation was that the journalist had written extensively—and fairly, I thought—about the consistent claim by Blessington, Elliott, Wilmot and Arrow, that Shorty Wells and not Shorty Jamieson was their co-offender. When Ross Coulthart of the *Sunday* television program became interested in Shorty Jamieson's application to the Innocence Panel, Janet Fife-Yeomans sent him a copy of Judge Newman's Supreme Court judgment with a handwritten note that concluded with the words, "I really can see nothing of value in putting Shorty Jamieson up as a victim of injustice".

One thing of value that the newspaper story flushed out was a telephone call from John Curtinsmith, who was head of the Young Offenders Board when Janine Balding was murdered. Now retired, Curtinsmith said his staff also believed Shorty Jamieson was innocent, and he related the story one of them had told him about Matthew Elliott's reaction to the life sentences. According to the staff member, Matthew Elliott turned to Jamieson and said, "What's it like to be sentenced to life for a murder you never committed?" The retired head of the Young Offenders Board also informed me that Shorty Jamieson was an "old boy" from Werrington Park, a home for State wards located behind Cobham Court, and psychologist Peter Irons, and Lee Mansfield from Juvenile Justice, may be able to provide more information about the Jamieson and Blessington cases.

I wrote to Carmel Tebbutt, the Minister for Juvenile Justice, seeking permission to approach Lee Mansfield and Peter Irons for an interview. Carmel Tebbutt had no objection to me contacting Lee Mansfield, but Peter Irons no longer worked for Juvenile Justice. Speaking with Lee Mansfield on the telephone filled me with hope that I could secure another independent opinion about Shorty Jamieson's conviction. I made a note in my file, and the note reads as follows:

> Spoke to Lee Mansfield, manager of the Juvenile Justice Community Services Office at Blacktown. She was the Juvenile Justice Officer for Matthew Elliott and did a report and gave evidence for him at his trial. She cannot give any information about Matthew Elliott because she was his case officer, but she can talk about Bronson Blessington ... Matthew told her right from the beginning that the police had the wrong Shorty ... After the boys were sentenced, she went downstairs at Darlinghurst court to the cells. The boys were in three separate glass cages. Matthew and Bronson had white shirts on and their faces were as white as their shirts. She spoke with Matthew while Peter Irons spoke with Bronson. Nobody was there for Stephen Jamieson because of the way he is. Bronson was curled up in the foetal position in his cell. Peter Irons asked how he felt and he said, "I can only think about how Stephen Jamieson must feel". About a year after the three were sentenced, she spoke to Matthew at Minda and said, "Please tell me Stephen Jamieson was there that night". Matthew said, "I wish I could say something else, but he wasn't there".

Despite numerous additional telephone calls and letters to Lee Mansfield, she decided not to meet with me for reasons that remain unclear. The file note is the only independent record I have concerning the reactions of the three prisoners to their life sentences. Another call I received in response to the newspaper article turned out to be much more helpful. Peter Moss, QC, is the current head of the Serious Offenders Review Council [SORC]. During the application by solicitor Joanne Harris for a judicial inquiry into Shorty Jamieson's police record of interview, Peter Moss spoke with Matthew Elliott at Long Bay gaol and Matthew offered to provide an affidavit confirming that Shorty Jamieson was not involved in the crimes against Janine Balding.

Moss informed me that SORC made a submission to the Attorney General about the illegality of the cement law and he, Moss, was concerned that the submission did not surface in parliamentary debate on the bill. One of the unfair aspects of the law, he said, was that it prevented a reduction in the security classification of the 10 prisoners, which meant they received no incentives or rewards for good behaviour. Also, they could be housed only at the maximum-security gaols at Goulburn or Lithgow, a cold and depressing thought for anyone facing a long stretch in prison. Opportunities exist to visit other gaols for legal and health reasons, but these opportunities are severely limited for life prisoners. A copy of the SORC submission appeared on my fax machine and it emphasised the injustice of the 10 "never to be released" prisoners being treated as a job lot by the new law. The submission stated in part:

> Most importantly, no account is taken of their [the 10 prisoners] history since the commencement of their respective sentences, nor of evidence pointing, in some cases, to considerable attempts having been made towards rehabilitation. The legitimate expectation each was entitled to have of eventually becoming eligible to apply for parole under the currently applicable principles of law has not been recognised.

Janet Fife-Yeomans' story in the *Australian* gave me something tangible and current to send to people who may be able to assist with information about Shorty Jamieson's case. I distributed copies to all the likely places with a covering letter. I wrote to refuges, drop-in centres, hospitals and clinics in the city with a list of the street kids involved in the case, and inquiring about their present whereabouts. I forwarded a copy of the article to the Director of Public Prosecutions, Nicholas Cowdery, QC, and asked for information, including details of the indemnity signed by the Attorney General to protect Shorty Wells from prosecution. Nick Cowdery, in my opinion, is a giant amongst lawyers and one of the few public figures in the law who is free to say what he thinks on account of the independence of his office.

I decided to attempt to intervene on behalf of Bronson Blessington in the case of *Baker v The Queen*, which was an appeal to the High Court that raised the question of the constitutional validity of the cement law that was keeping Blessington in gaol. A possibility existed that the court would reject my application, but Chief Justice Murray Gleeson had already commented on the "never to be released" recommendation in Bronson's case when the judge was head of the Court of Appeal in New South Wales. The judge said the recommendation gave him cause for concern on account of Blessington's youth and the prospects for his rehabilitation, and I wanted to remind the Chief Justice of his remarks when he considered the Baker case.

The application to intervene in the Baker case was made in Blessington's name and asked the High Court to hear me as his representative. I sought leave to intervene and the leave question was postponed until the day of the Baker hearing. A supporting affidavit by Blessington quoted the remarks of the Chief Justice in the Court of Appeal and said that Blessington had no prospect of release from prison if the cement law was allowed to stand. I argued that the cement law is unconstitutional as it undermines the judicial power in the Australian Constitution, a power that requires judges and not members of Parliament to make sentencing decisions, as politicians were not in a position to consider the individual circumstances of the prisoners.

Reading his affidavit, Bronson Blessington asked why he must piggyback on the case of Allan Baker, arguably the worst of the "never to be released" prisoners. I explained that the legal issues were the same for each of the 10 prisoners and the High Court would not grant leave to appeal in one case while a similar case was outstanding. Applying to the court to be heard as an intervener in the Baker case was the appropriate legal procedure to follow. I handed Blessington a copy of the lower court decision in Baker, which sets out the facts of the case. I will not go over the facts of the Baker case. They have been articulated in this Parliament before. They are simply appalling and the sentencing judge, Justice Brian Taylor, said of Baker and Crump:

> I believe that you should spend the rest of your lives in gaol and there you should die. If ever there was a case where the imprisonment should mean what it says—imprisonment for the whole of your lives—this is it.

Those remarks have been referred to previously in this House. When I showed Blessington the Baker case and the remarks of the judge, he said to me, "What can I say?" It was a rhetorical question, of course. He said, "The judge seems to be right on the money. The law that's wrong is the one that says that I should be dealt with the same as Baker and Crump". He reminded me that children are treated differently from adults under the criminal law and today he could not receive a life sentence as a juvenile since a life sentence now means natural life. Apart from a child's reduced culpability because of his or her age, a life sentence for a child means a much longer period in prison than a similar sentence for an adult. Australia is also a party to several international human rights instruments protecting the rights of the child.

I visited Dubbo to discuss the Janine Balding case with Senior Constable Steve Pearson, who was involved in the investigation of the crimes against Janine Balding. Senior Constable Pearson turned out to be the consummate professional policeman, a beanpole bushy with silver-grey hair and searching blue eyes. He agreed to see me only after I assured him that I was a fan of radio broadcaster John Laws, and while it would not be the first time I lied to a bush copper, the fact is I like Lawsy even though he has torn strips off me quite a few times. I handed Pearson a copy of a letter from the Director of Public Prosecutions nominating the policeman as the person in charge of the physical evidence in the Janine Balding case and informing me that some of his photographs were in the public arena. The policeman said he still holds the negatives of the photographs on behalf of the police, and I wanted him to confirm that only two sets of footprints led into the dam at Minchinbury, those of Blessington and Elliott.

Also, I was interested in the results of the physical examination of Jamieson's shoes. Pearson could not recall receiving the shoes but promised to check his records. Other details of the murder he recalled "as if it happened yesterday", and I realised that police investigating serious crime and the victims of crime and their families are never far from their shared trauma. We chatted about life in the country, and the policeman informed me he travelled to Wagga Wagga a few days earlier and looked up Janine Balding's parents, Kerry and Beverley, who had a joinery business in town. The policeman handed me their business card, urging me to pay them a visit and "see what crime does to families". As usual, I agonised over Beverley Balding, who still suffered inconsolably over the death of her daughter. Her book with Janet Fife-Yeomans about Janine's murder is a cry from the heart, and she remains a fierce advocate of the death penalty for those responsible for the crime.

How does one tell a mother that the child who murdered her daughter has grown into a man who appears to lead an exemplary life, while his convicted co-offender who is the archetypal monster is probably innocent? Steve Pearson would not have a bar of Jamieson being the wrong Shorty. As evidence, he pointed to the way the prisoner "went off" in court. I explained Jamieson's version of what happened, that police in the court provoked him and perhaps his reaction was consistent with his claim of innocence. The investigator in Steve Pearson said it was possible, but his words were unconvincing. For all that, the policeman was affable and open and I had the feeling he would consider any credible information on offer.

One myth I wanted to explode with Pearson's help was the suggestion that any of the accused had anal intercourse with Janine Balding. Blessington, Elliott and Wilmot were all convicted of rape, but only Stephen Jamieson was convicted on the anal intercourse charge, for which he was sentenced to eight years. I remained

baffled as to how the judge arrived at this conviction and sentence when the prosecution appeared to have offered no evidence for the allegation. I showed Steve Pearson the Coroner's medical report of Janine Balding's body from the mortuary and it clearly stated there was no interference with the anus of the deceased. Pearson said he had spoken to Michelle Franco, the forensic biologist who examined the rectal swab taken by Dr Peter Ellis, who performed the autopsy, and she, Michelle Franco, might be able to assist with my inquiries.

Talking with Steve Pearson opened a few unexpected doors, so I decided to press my luck by writing to Tom Sharp, the retired policeman who headed the Janine Balding murder inquiry. I knew nothing about the man except he was held in reverential high esteem by police officers for his skill as an investigator and team leader. To suggest to an esteemed police officer that one of his investigations had been botched was no simple task, although I suspect in the case of the Janine Balding investigation he had heard it before. The first couple of drafts of my letter ended up in the rubbish bin, and then I settled on some words I could live with. After 10 days without a reply, I shot off another missive seeking an urgent response. The policeman rang just after 9 o'clock at night on the day he received the second letter. I asked how he was, and he said he would be a lot better if I stopped writing him letters. He also said:

> I sat through every day of that trial and I'm convinced we got the right bloke. I have no answers to any of your questions, but I think it's a bloody disgrace what you do to the families when you keep dragging these things up. The people you've got to talk to are Kevin Raue and John Carroll—they did the Jamieson record of interview.

Tom Sharp told me that Kevin Raue was working in the Vanuatu police force, and I asked whether John Carroll was the policeman of the same name who headed internal security and police ethics in the New South Wales police service. Sharp said, "That'd be right", and then I thanked him for the call and hung up since I figured from the tone of his voice he did not ring for a friendly chat. I had no plans to talk with the two detectives. In the case of Detective Raue, Vanuatu lies to the east of Australia, above the tropic of Capricorn, but I know nothing about the local constabulary. As for Detective Carroll, television journalist Ross Coulthart tried to talk with Carroll about Jamieson's case and the detective refused to speak with him. There is no reason for Carroll to talk with me. Detectives Kevin Raue and John Carroll denied in cross-examination during Jamieson's trial that they had mistreated or threatened the prisoner, or that they had been involved in recording a false record of interview.

I thought about the way Tom Sharp volunteered victims' families as a reason for not undertaking further investigations and I was not unsympathetic to the proposition. Inevitably, a strong emotional bond is formed between the police officers investigating a crime and the families grieving over its consequences. It is the police who break the tragic news, and the police who speak with the families, sometimes on a daily basis, about the progress of the investigation. Police provide advice and often make arrangements for courts, lawyers, hospitals and mortuaries, and police are given the difficult job of supporting and counselling the families. The emotional dynamic in a notorious crime is intensified by an active and relentless media presence, and demands by elected representatives to arrest the perpetrators and lock them away. Still, if the wrong person is in prison, concern for the victims' families is hardly a good reason to leave a person to rot in gaol.

Police in the Janine Balding case were under the usual community pressure of a high-profile crime to bring the offenders to heel. Their task was simplified when Matthew Elliott and Bronson Blessington handed themselves in to the authorities and took police to the crime scene. Both boys initially blamed the crimes on Blessington's friend, Scott Agius, who had left the group long before they caught the train to Sutherland. Agius was able to prove he was with a social worker at the time of the murder. During his first recorded interview with Detective Sergeant Raue at Mount Druitt police station—just after midnight on the night after the murder—Blessington named the offenders as "Carol, Shorty, Matthew, Scott, myself and Wayne".

Tom Sharp spoke separately with Elliott, who nominated "Wayne, Scott, Carol and Blessington" as his co-offenders. Later, Elliott added the name Shorty to his list. After eliminating Scott Agius from the likely suspects and adding the name of Lizzy Lopez following her bizarre "confession", the only person the police had not identified was Shorty. On the Sunday after the murder Detective Sergeant Carroll interviewed Wayne Wilmot in the presence of his mother at Campbelltown police station. Carroll asked Wilmot to describe in detail the boy Shorty and "also the clothes he was wearing on that night". Wilmot provided a description of Shorty Wells. The description was as follows:

> His name is Mark, 22 or 23 years of age, about 155cm, small build, skinny, white singlet, brown light leather jacket and a black leather jacket with ripped light blue jeans and with black heavy boots, which go half way up your leg, he's got an orange moustache, orange hair and hangs around up the Cross.

A week after the murder Detective Sergeant Raue spoke with a 17-year-old street kid named Terrence Walsh at Parramatta police station. Walsh described himself as Lizzy Lopez's boyfriend, and he claimed to have had a conversation with Matthew Elliott, Wayne Wilmot and a boy named Scott on Central railway station between 3 o'clock and 4 o'clock during the afternoon of the murder. Walsh told Raue that Matthew said, "We are going

to steal a car, then we are going to go to Sutherland and find a woman that we can rape." The boy also said to Raue, "When Matthew said that, I took off." Raue asked Walsh if he knew a person named Shorty, and Walsh said he did. When asked to describe Shorty, Walsh also gave a description of Shorty Wells. The description was as follows:

> About four foot eight, about 21 to 22, he wears black something like a leather jacket with short sleeves and black T shirt with "metallica" written on it and he sometimes wears a headband. He wears black army type boots.

Up to this point, the police had the name Mark and a description that fitted Mark Shorty Wells. And then the record of interview between Raue and Walsh included a fateful question. Raue said to Walsh, "Do you know the person Shorty's full name?" Walsh answered, "I only know his first name is Stephen." Now the police had one description and two names—Mark and Stephen. Raue proceeded to have the witness identify and sign photographs of Wilmot and Elliott. He asked Walsh whether he had ever seen Shorty in the company of Wilmot or Elliott, and the boy said, "No." Had Raue shown photographs of the two Shortys to Walsh, he would have discovered that the boy knew both of them.

Towards the end of the first trial, the Crown Prosecutor called Walsh to give evidence and asked him whether he knew a person named Shorty. Walsh said he knew two Shortys, and he identified Stephen Jamieson in the dock as one of them. The other one had a black T-shirt under his jacket and black army-type boots that "goes up past the ankles". This was the same description Walsh had given Raue a week after the murder. The Crown Prosecutor was so concerned about the Walsh evidence that the prosecution attempted, unsuccessfully, to have him declared a hostile witness.

Terrence Walsh's evidence degenerated into high farce as he lurched from one extraordinary detail to another. The "Scott" he observed at Central railway station in the company of Matthew Elliott and Wayne Wilmot was almost certainly Bronson Blessington, but the lawyers seemed to think the witness was referring to Scott Agius. His description of the second Shorty he knew apart from Stephen Jamieson included the following: "The bloke I saw had skin over his eye". To me it looked like Shorty Wells with an eye patch, but I suppose you had to be there. None of the lawyers called Walsh to give evidence in the second trial, and he disappeared like a shooting star in the night sky, but not before setting the police on a course of inquiry they were not prepared to give up.

Working my way through the witness statements and transcripts of both trials, I realised that most of the witnesses who gave police eyewitness descriptions of a "Shorty" seemed to be describing Shorty Wells. This evidence is far more persuasive than the evidence of the two witnesses who claimed to have seen Stephen Jamieson, that is, Elva Matyas and Simon Lonergan. Both came to light more than a year after the murder and both relied on media depictions of Jamieson to prompt their recollections of the person they observed. Simon Lonergan accompanied another witness, Matthew Simmons, when Simmons spoke to Matthew Elliott and the other offenders at the Mount Druitt shopping centre at about 8.30 p.m. on the night of the murder. Simmons had quite a different recollection from Lonergan. Simmons's description of the Shorty he saw was provided to Detective Senior Constable Kitley on 10 September 1988, just two days after the murder, at Mount Druitt police station. The description was as follows:

> One of the people he [Matthew Elliott] was with I would describe as being about 28 years of age, short, skinny build, was unshaven with a moustache. He was wearing motor bike boots over his blue jeans, denim jacket and he was carrying a plastic shopping bag.

Matthew Simmons gave evidence on the third day of the second trial in 1990. He identified Mark "Shorty" Wells as similar in appearance to one of the people he observed at the State Bank ATM at Mount Druitt shopping centre on the night of the murder. Simmons also identified Blessington and Elliott in court, but he was not asked to identify Jamieson. Ted O'Loughlin, for Jamieson, asked about a bundle of 12 photographs shown to the witness by Detective Sergeant Rayment on 21 January 1990, more than 16 months after the murder. Simmons said this was the first occasion he had seen the photographs. He was never asked to attend a police line-up.

Kristine Mobberley was the person the offenders tried to abduct from Sutherland railway station immediately before they abducted Janine Balding. Ms Mobberley provided a description that generally fitted Mark "Shorty" Wells to Detective Sergeant Smith on 9 September 1988—that is, the day after the murder—at Sutherland police station. The description was as follows:

> The second fellow who was standing behind the first fellow when I first saw them was about eighteen [years] old, he could have been older, I think he was Australian, he had a real long face and he had a bad pock marked face. He was about five foot eight

> [inches] tall, slimmish in build, very dark brown hair, I think it was straight and it was collar length, maybe a little bit longer. He was wearing dark clothing at the time, jeans and possibly a jumper … One thing that I forgot to mention to you was that the second guy with the pock marked face was wearing a black cloth head band, which was about an inch to an inch and a half in width.

Kristine Mobberley gave evidence in both trials of Blessington, Elliott and Jamieson. Ted O'Loughlin did not ask the witness if she recognised Stephen Jamieson as one of the offenders in the car park at Sutherland railway station. The barrister did ask if she recognised Mark "Shorty" Wells, and she said she did not. Ms Mobberley said she was asked to attend only one police line-up on 4 October 1988 when she identified Matthew Elliott as one of the offenders. Neither Stephen Jamieson nor Mark "Shorty" Wells appeared in the police line-up.

According to the medical reports in the police brief of evidence, Mark Wells was diagnosed as suffering "acute exacerbation chronic paranoid schizophrenia", and he was delusional, experiencing auditory hallucinations that people were trying to kill or punish him. Three months before the murder of Janine Balding, he informed a psychiatrist at St Vincent's Hospital at Darlinghurst that he killed a priest in Queensland when he was 15 years of age and "nailed him to a wall". The psychiatrist said:

> In other visits he had a preoccupation with guilt and was washing himself constantly in a ritual cleansing. He was prescribed anti-depressant medication, which improved his behaviour.

Mark "Shorty" Wells provided detectives with a detailed description of the abduction of Janine Balding. He qualified the information in court by saying he saw it in a dream. The most likely explanation for Wells's detailed knowledge of the events is that he was there. Blessington's barrister, Kevin Coorey, questioned Wells about the most incriminating piece of evidence against him, being the black headband. Wells acknowledged in that cross-examination that he was the owner of a black headband.

Police brought Wells to Sydney towards the end of the first trial and kept him in cotton wool. A leading silk, Bruce McClintock, QC—the same Bruce McClintock who has done the recent review of the Independent Commission Against Corruption—was assigned to Wells's case and advised him to claim the privilege against self-incrimination. Detective Rod Dayment of the Parramatta Homicide Unit interviewed Wells at the Darlinghurst court on the last day of the first trial. Dayment told Wells in the presence of the lawyer that he was making inquiries into the abduction and subsequent murder of Janine Balding on 8 September 1988. The detective asked Wells a series of questions, including: "Are you prepared to answer any questions or assist us with the further investigation of this matter? Are you prepared to supply police with a sample of your blood? Are you prepared to be placed in a line-up?" To each of these questions Wells answered "No", on McClintock's advice. During the second trial, the lawyer formally waived the privilege against self-incrimination on behalf of his client, 10 days after the Attorney General's indemnity from prosecution was in place. This is one case, it seems to me, where a suspect needed all the protections the law had to offer.

Whoever was responsible for Shorty Jamieson's police record of interview, they greatly overstated the role of Wayne Wilmot in the crimes against Janine Balding. As the police investigation proceeded, it became apparent that the main perpetrators of the offences were Matthew Elliott and Bronson Blessington. Carol Arrow was deemed an unwilling participant and all charges against her withdrawn. When Janine Balding was abducted, Matthew Elliott drove the car and Wayne Wilmot travelled in the front passenger's seat. At some point on the journey to Minchinbury, Elliott stopped the car and got into the back seat. Wayne Wilmot took over the driving and Carol Arrow sat next to him in the front. Just past the Archbold Road overbridge, Wilmot slowed the car and drove off to the side of the freeway as directed by Elliott. The car came to a halt about 30 metres beyond the grass verge near the edge of a paddock and a waist-high barbed wire fence. Some 30 metres beyond the fence was a shallow reedy dam.

Detective Carroll interviewed Wilmot at Campbelltown police station on 11 September 1988 and the policeman asked Wilmot whether he had sex with Janine Balding. Wilmot answered, "No, I've got me own girl." Wilmot also said that Elliott and Blessington had sex with the young woman on the back seat of her car while he and Carol Arrow remained seated in the front, which is consistent with Bronson Blessington's assurance that nobody had sex with Janine Balding except he and Matthew Elliott. What puzzled me was that Wilmot pleaded guilty to four counts of sexual intercourse without consent. I realised I needed to talk with Wayne Wilmot, and I found him at Lithgow Correctional Centre.

Wayne Wilmot has been a ward of the State since he was 9 years old and has lived on the streets of Sydney since he was 14. He is one of the unfortunate victims of life's fragile circumstances who seem destined never to learn from their errors. He said he was "stitched up" for his latest crimes, committed while he was on parole for the crimes against Janine Balding, and when I offered to assist him, he said, "It's no use—you can't

beat the system." I told Wilmot the way to beat the system is to do the right thing, and he scoffed at the idea. I asked if he had sex with Janine Balding, and he said he had his own girl. I said, "I thought you were very courageous to tell the Crown Prosecutor that Shorty Jamieson shouldn't go away for something he never done." He replied, "They were wrong to put Shorty Jamieson away." I said, "You went away for something you never done—you didn't rape Janine Balding." "That's different", he assured me. "I did a deal with the coppers. They agreed not to charge me with murder if I pleaded guilty to abduction and rape. What could I do?" I said, "But you didn't rape her!" He said, "That's the system. Like I say, you can't beat the system."

The Jamieson and Blessington case went to the Institute of Clinical Pathology and the Medical Research Division of Analytical Laboratories. It was subject to the processes of the Innocence Panel. There were many months of correspondence, and many issues were raised. Finally, when I must confess I least expected it, the Innocence Panel was suspended by the police Minister. It was suspended on the basis of Jamieson's application. In the best of Westminster traditions when a government policy initiative self-destructs, the announcement of the disaster took the form of a press release from the Minister. Part of that press release is as follows:

> Minister for Police John Watkins today suspended the NSW Innocence Panel from taking further applications—pending a review of the operations of the panel and draft legislation being prepared. Mr Watkins said he'd acted after discussions with the Innocence Panel chairman, former Supreme Court Judge Mervyn Finlay QC, which raised questions about the current process …
>
> Mr Watkins today said Stephen Wayne Jamieson, convicted over the rape and murder of Janine Balding in 1988, was one of the 13 applicants who had come forward since the Panel was created. Jamieson was convicted of murder by his own confession, and eyewitness testimony of his part in the horrific crime. In addition, he was convicted of abduction, four counts of sexual assault, and robbery. A 1992 application to the Court of Criminal Appeal, an attempt to seek leave to appeal to the High Court, and an application for a Supreme Court 'Part 13A' hearing were all dismissed …
>
> "I'm suspending the operations of the Innocence Panel because I don't believe there are sufficient checks and balances to protect the victims of crime from further anguish. In this case, the Balding family has suffered enough and without legislation to underpin the Panel, the process just means more uncertainty and pain. This is distressing and I believe the Panel needs legislative support to help it protect victims better. The Innocence Panel process, as it is, leaves too many questions unanswered. It should be more transparent for applicants, victims and their families. We need to clarify its operations and we need to get it right.
>
> "The experience in this case tells me the system must be changed – to better protect the victims, and protect the community." Mr Watkins said Ms Balding's parents were last week informed of these developments, in person, by a member of the Innocence Panel. "I've also offered them whatever assistance, counselling or support they may require," Mr Watkins said.

The first that Stephen Jamieson or I knew of the suspension of the Innocence Panel was a telephone call I received from Stavro Sofios at the *Daily Telegraph* following publication of the police Minister's press release. I happened to be in Byron Bay at the time of the call, and Sofios promised to fax a copy of the ministerial statement to my home, which was 40 minutes away by car. In the time it took me to drive there I logged 27 telephone calls from journalists on the message bank service of my mobile phone. I returned all the calls and answered the media questions as best I could with nothing more than the *Daily Telegraph's* copy of the press release to guide me. Sofios's article in the next edition of the newspaper is headed "MP's hand of help for a murderer" and the story began with a clarion cry that is pure unexpurgated tabloid provocation:

> He raped and strangled a young bank teller 15 years ago in a brutal crime which forever scarred Sydney. But Stephen Wayne 'Shorty' Jamieson is still trying any legal trick he can to get out of the jail cell he is supposed to die in …

I cringed at the next few paragraphs in the article, which quoted Beverley Balding as saying I disgust her. Jim Hanna from AAP rang just after I had spoken to Stephen Jamieson on the telephone, and I informed the journalist that Jamieson was sorry the legal system was causing the Balding family so much grief. He was also concerned that the Baldings and the press were given the jump on the results of the Innocence Panel application. Indeed, I still had no idea what aspect of the case had caused such a furore, and when I called the Innocence Panel the most they would say is that the results were in the mail. By the time the mail arrived, the press had lost interest in the case, except for Richard Ackland, who was filing his usual Friday opinion piece in the *Sydney Morning Herald*. Ackland got it right with an article headed "A question of guilt that's too hot to handle". Ackland made an astute observation about the 10 "never to be released prisoners" when he said:

> Their manoeuvrings through the legal system have considerable potential to traumatise the Government, apart from their victims. That is the reason applications to the Innocence Panel have been suspended …

He concluded the article with the comment that the doors of the Innocence Panel may remain permanently closed unless the Government could resolve the two "grief'" problems, one caused to victims and their families, and the other for the Government. Indeed, it is worth saying that the Innocence Panel doors still remain firmly closed. The Innocence Panel results created more problems than they solved, in every sense conveyed by the

cliché. Most notably, the rectal swab was the only item to disclose the DNA of anyone other than the victim. This was extraordinary given my previous discussions with Robert Goetz and Michelle Franco of the Division of Analytical Laboratories to the effect that the previous testing of the rectal swab was likely to have destroyed any semen. Back in 1988 the only genetic material that could be identified in the rectal smear was a single male reproductive cell, but 15 years later, according to the Innocence Panel, it had become possible to identify the DNA of two known individuals from the remnants of the rectal swab. The written advice from the panel would not say who the two known individuals were, but Shorty Wells and Shorty Jamieson were both excluded. The advice from the panel also said:

> The Panel advises you that at present it believes it would require a Court order, eg, on the return of a subpoena to the Supreme Court in a Part 13A application under the Crimes Act 1900, for the identities of the two known persons to be lawfully disclosed. It would, of course, be a matter for the Supreme Court to determine whether that information be disclosed, and if so, on what conditions.
>
> This matter raised unique policy issues for the panel regarding the disclosure of information relating to third party DNA. The panel has an advisory role to the Minister as stated in its terms of reference, and will raise these unique and complex issues in its current urgent review of the Innocent Panel's functions and procedures. The quotes in italics in the above passages are verbatim from the Certificate of Analysis under section 177 of the Evidence Act 1995, of the Division of Analytical Laboratories dated 16 May 2003. That certificate also reported:
>
> *A partial DNA profile, consistent with originating from a female individual, was recovered from the gag (cloth), on the material forming a loop…Testing of the four remaining areas of the gag (cloth) was unsuccessful…The partial DNA profile recovered from the gag is consistent with originating from Janine Balding. This partial DNA profile occurs in approximately one person in 380 of the general population.*

I had the feeling the letter was written in a rush, and this was consistent with the panel drawing stumps and abandoning its offices in the headquarters of the Police Service with such speed that Australia Post was unable to deliver the best submissions to Justice Finlay's review of the panel. The review was unremarkable and listed all the things that were wrong with the panel long before Stephen Jamieson put his name to an application. I maintained it was grossly unfair that the Government used Stephen Jamieson to scapegoat its own failure to properly resource DNA testing. I received an email from Michael Strutt, a private researcher, saying he agreed with the Government that the Innocence Panel as it stands leaves too many questions unanswered, adding "but how come they only just noticed that so far down the track?"

I called David Barrow, the head of the indictable appeals section of the Legal Aid Commission, explaining that I had done about as much as I could for Jamieson pro bono. What the prisoner needed was a serious lawyer prepared to approach the Supreme Court for a judicial inquiry into his conviction. Barrow suggested I fill out a legal aid application form and attach the new evidence including correspondence from the Innocence Panel. I explained that further testing of the headscarf for a male DNA profile was critical, and Barrow said he will discuss the case with the public defender, Peter Zahra, SC, who is a recognised legal expert on DNA. In the meantime, Barrow suggested I might like to deliver Jamieson's files, and the lawyer got a terrible shock when I turned up at his office with two 60-litre plastic storage tubs filled to capacity with legal papers.

After the initial flurry of interest from the commercial media in the demise of the Innocence Panel, the ABC's Quentin Dempster put together a television piece for *Stateline* in which he looked at police involvement in the collection of forensic samples from crime scenes and recommendations from the Australian Law Reform Commission that police should be required to permanently retain the material. Currently the officer in charge of an investigation has final responsibility for deciding to retain or destroy forensic material at the conclusion of legal proceedings. The decision to destroy material from crime scenes is often taken without proper regard for appeal processes and possible developments in DNA testing technology. Police Commissioner Ken Moroney had issued police with a directive to retain all forensic material, and the Finlay report found that the instruction was routinely ignored.

Dempster raised with Bret Walker, in his capacity as President of the Bar Association, the question of the impact of the Innocence Panel on victims of crime and their families. The lawyer responded that conviction and sentencing are ongoing judicial processes and one part of the process is no less important than another. Few people would suggest abolishing the trial because of the impact on victims and families, and the same principle should apply to the procedures of the Innocence Panel. Walker said:

> Where one is talking about DNA technology … its benefits as well as its burdens ought to be available to everybody whose life can be affected by the outcome of criminal justice and those people must include those convicted of the worst crimes.

Katrina Bolton from ABC Radio presented a comprehensive study of the panel in a program titled *A Question of Innocence.* The Privacy Commissioner, Chris Puplick, was interviewed, and he said the panel had struggled to work out its protocols and procedures because of the absence of a statutory framework. Puplick complained that the panel had to make its own rules, "but this is a job for the Parliament". Bolton asked Beverley Balding:

> What if the DNA testing supports [Jamieson's] claim that he wasn't there?

Janine's mother was unmoved by the possibility. At the end of the program Katrina Bolton spoke with Rob Warden, who heads the Center on Wrongful Convictions at Northwestern University in Chicago. Warden told the story of the Central Park jogger case which was working its way through the American courts. A young woman was raped and beaten senseless as she jogged in New York's Central Park. A group of teenagers were convicted and sentenced for the crimes, but an older man subsequently confessed and his DNA matched forensic samples from the crime scene. Although there had been no DNA evidence against the teenagers, who maintained their innocence, the prosecutor fought to keep them in gaol on the basis that they must all have committed the crimes with the older man. Warden said that the prosecutor refused to give up the teenagers' convictions even though the older man's confession excluded them absolutely, and there was no evidence that they knew him prior to the attack on the young woman. Warden said:

> Those are the kinds of tortured excuses that prosecutor's sometimes come up with to defend their convictions.

The High Court appeal in *Baker v The Queen* was eventually listed for hearing, and John Basten, QC, expected to be given leave to appear in the case on behalf of Bronson Blessington as the Baker decision directly affected Blessington's liberty. Will Hutchins of the Prisoners Legal Service had filed a mountain of documents in the court making two broad arguments: that the exercise of judicial power by a State Legislature to retrospectively vary a prisoner's sentence was inconsistent with the judicial power in the Australian Constitution, and that the legislative scheme so enacted failed to distinguish between child and adult offenders. After my ICAC experience I looked forward to attending a real court with real judges who applied rules of evidence and other forms of due process that have evolved over the 800 years since the Magna Carta.

I arrived early at the High Court on the shores of Lake Burly Griffin, and both entrances to the court were blocked by the media, jostling me with microphones and questions. When I finally reached the inside of the towering glass and metal building I discovered that I could not get a coffee until after the court opened at 10.00 a.m. Chris Reason from Channel Seven followed me into the foyer of the court and I stopped for a chat. The journalist asked if I would do a formal interview with the assembled media representatives—none of the lawyers would talk for fear they might be seen as pre-empting their cases. I agreed on the basis that I enjoyed a good relationship with the press and usually got a good run. Standing outside the main entrance to the High Court and surrounded by microphones, cameras and barking journalists, it is fair to say I felt a bit intimidated.

As I attempted to explain the Baker case and my support for Bronson Blessington, I realised that the reporters regarded me as representing all 10 never-to-be-released prisoners on the basis that Blessington's successful intervention may be sufficient to overturn the cement law and allow the other nine to secure a review of their life sentences. I argued that each of the prisoners ought to have their sentence considered on its merits. With all the confidence in the world, I told the journalists that Blessington's intervention was a dead-set certainty, which was a red rag to a herd of bulls. I also said that the 10 prisoners could be compared with the Australian prisoners David Hicks and Mamdouh Habib, who were incarcerated in Guantanamo Bay at the pleasure of the Executive Government of the United States of America. I was referring to punishment in the form of indefinite detention by way of Executive and not judicial decision, but the journalists were incensed by the comparison.

I retreated to the High Court building and found my way into the courtroom, which was built like a theatre with tiered seating for the audience, an orchestra pit for lawyers and a stage for the seven judges. Leaning across the brass railing that separated me from the lawyers, I caught the attention of Will Hutchins, who gave me the first instalment of a bad news day: the Government opposed John Basten's intervention on behalf of Bronson Blessington. I barely had time to process the information when the seven judges of the court filed out onto the stage and arranged themselves in front of the lawyers and the audience. A court attendant told us to stand and be seated in quick succession. Chief Justice Murray Gleeson sat in the middle of the judges and conducted the orchestra with a wave of his hand. One by one, the lawyers stood and announced their appearance.

Bret Walker informed the court that he appeared for the appellant Allan Baker. Michael Sexton, SC, the Solicitor General for New South Wales, said that he appeared for the respondent, the Queen, and the New South

Wales Attorney General. The States of Western Australia and South Australia were also represented to protect the rights of their respective governments to pass any laws they pleased so far as prisoners were concerned. When John Basten announced that he appeared for Bronson Blessington in support of the appellant, the Chief Justice asked Michael Sexton about his attitude to the proposed intervention. The Solicitor General's response in relation to Blessington was instructive. He said:

> We would oppose [Blessington's] application, your Honours. I can say that shortly. Insofar as Bronson Blessington's case raises the same issues, in our submission, these will be fully canvassed by the parties. Insofar as they raise different issues because, for example, he was under age at the time of the offence, we would say these are matters for another day. In particular, it is our understanding that Bronson Blessington's primary position is that his application, which is on foot before the Supreme Court of New South Wales, is not governed at all by the legislation that is being considered by the Court in this case, that he is governed by earlier legislation. There may be some argument about that, but that is our understanding of his primary position and we say that is a relevant factor in relation to the question of intervention.

I wanted to jump up and say that Blessington's application to the Supreme Court for a review of his sentence had been outstanding for more than seven years because of first one law and then another introduced by the Government to cement him in. To say that his application was "on foot" was technically correct but spurious in light of the fact that the young man must be in gaol for 30 years before the application could be dealt with. Needless to say, I said nothing, and John Basten was given no opportunity to cavil with the Solicitor General. The Chief Justice told Basten that the court was not prepared to grant the leave he sought, and that was the end of the matter. I was heartened by the sonorous voice of Justice Michael Kirby, who said:

> I would have granted the application.

As in politics, one needs the numbers in the law, and Kirby was the sole voice of dissent on a conservative High Court. Protocol demanded that John Basten remain seated at the bar table even though he was excluded from the proceedings. I took the opportunity to leave the courtroom and go into the coffee shop, where I had another look at the debate on the 1997 sentencing law, which is where all this began. That law initially required a prisoner to wait 20 years before applying for a sentence review. I was disappointed to read that Premier Carr had not contributed to the proceedings. And yet I was almost certain that Carr had made a public commitment to Brian Morse in 1997 that he, Carr, would keep Kevin Crump in gaol. I re-read the debate on the bill in the Legislative Assembly, which was led by the then Minister for Police, Paul Whelan, on behalf of the Government. The Minister's opening remarks suggested that he had all 10 never-to-be-released prisoners squarely in his sights. He said:

> Allan Baker, Kevin Crump, Michael Murphy, Leslie Murphy, Gary Murphy, John Travers, Michael Murdoch, Stephen Jamieson, Matthew Elliott, and Bronson Blessington—these animals represent pure evil. These animals deserve never to see the exit sign at the prison gate. These animals are reviled and shunned by anyone who has ever heard of their heinous crimes. There is not a person in our community who does not need protection from these animals and the security of knowing they will never again be free.

Whelan made the point in his speech that Crump-specific legislation would be defeated in the High Court because of the Kable principle, but then he went on to talk about the bill as if it were directed solely at Kevin Crump and the review of his life sentence to 30 years. I continued reading the other speeches in the Legislative Assembly debate, and several members referred to a quote from the Premier in the afternoon edition of the *Daily Telegraph,* which stated:

> The legislation now before the House will ensure Kevin Crump will never be released.

In the Committee stage of the debate the then Opposition Leader Peter Collins asked the Minister for Police to confirm the Premier's undertaking that Kevin Crump would die in gaol. Turning to the debate in the Legislative Council, which was led by former Attorney General Jeff Shaw, QC, on behalf of the Government, I counted 172 occasions on which Kevin Crump was mentioned by name, and only a handful of passing references to any of the other nine never-to-be-released prisoners. While the Government said that the cement legislation was not Crump specific, a casual reader of the parliamentary debate on the bill would be forgiven for drawing some other conclusion. The 1997 sentencing law was introduced into the New South Wales Parliament just 14 days after Crump had his life sentence reviewed to 30 years. It occurred to me that the High Court could be asked in Blessington's case to find that the cement legislation was in fact Crump specific, despite the Government's protestations to the contrary.

Of course, the idea that Parliament should take over the role of the courts and exercise judicial power by retrospectively imposing a natural life sentence is repugnant whether it applies to one prisoner or 10. Reading Bret Walker's written submissions to the High Court on behalf of Allan Baker I smiled when the barrister

referred to his client as the convict. I had no idea whether the expression was a Freudian slip or shorthand for convicted person, since Walker has a way with words that only the most agile mind can follow. Eventually I realised I should be watching the rest of the show instead of being in the coffee shop, and I made my way back to the court. John Basten was still stuck in the middle of the lawyers. To his right Bret Walker was standing at the lectern facing the judges and resting on one elbow, as if he had exhausted the last of his arguments. Walker was dialoguing with His Honour Justice Michael McHugh, and I quote from the exchange between them:

> McHUGH J: Mr Walker … I would have thought the New South Wales Parliament, subject to the Federal Constitution, could take any fact it likes as the basis of one of its laws. If it wanted to, it could have made it a condition of these applications that you are named in a particular newspaper on a particular day.
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> WALKER: I think the traditional example, to emphasise the point, your Honour, is to refer to colour of hair.
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> McHUGH J: Colour of hair, yes …
>
> KIRBY J: If I could just say what I have in mind. We are now considering this issue in the new enlightenment of *Kable*, of what is appropriate, or what is permissible under the Federal Constitution to impose upon judges of a later age by reference to what judges of an earlier age, some but not all, have said. It is a very arbitrary trigger, a very arbitrary trigger indeed. It is offensive to a notion of equal justice under the law, because some judges would have said these things [I recommend this prisoner should never be released] and other judges would never have said them.

The traditional view of the Westminster-style parliamentary democracy is that there are limits on the law-making powers of Parliament. While recognising the supremacy of the legislative arm of government over the Executive and judicial arms, because the people elect Parliament, it was never intended that parliamentary representatives pass any law that might take their fancy. Albert Venn Dicey [1835-1922], who developed and refined the doctrine of parliamentary supremacy, said there are many laws "which Parliament never would and (to speak plainly) never could pass". According to the High Court's interpretation of the doctrine of parliamentary supremacy, there are no limits on the law-making powers of State Parliaments other than the Federal Constitution, an unreadable document as flawed as it is decrepit. And as Justice Mc Hugh noted, any Parliament in Australia could pass a law that certain prisoners named in a particular newspaper on a given day should never be released from prison, or that prisoners with red hair are a threat to the community and therefore should remain incarcerated until the Parliament decides otherwise.

When the Australian Constitution was enacted in 1901, it was assumed that the rights and freedoms of British subjects—Australians were British subjects until 1949—were adequately protected by the common law. Gradually our hereditary ties have been severed from the United Kingdom beginning with the Australian Citizenship Act in 1949, but the common law has not protected us in the way the founding fathers—they were all men—had intended. The Constitution includes two formal rights, the right to freedom of religion and the right to trial by jury for certain Commonwealth offences and a few implied rights, but mostly the document is an anachronism so far as the protection of citizens against the tyranny of government is concerned. As Justice Kirby frequently demonstrates, Australia is part of the international community and bound by international law, and High Court judges could find a host of reasons, if they were so inclined, for declaring that Australian citizens enjoy universal rights and freedoms. Sadly, judges, like politicians, are very good at blaming others for the problems they have the power to solve.

In the year prior to my election to Parliament I mailed a survey to 454 judges throughout Australia for a book about human rights and I asked the question," If a legislative Bill of Rights were in place which provided for its enforcement in any court, would the legislation improve the delivery of justice in your court?" A total of 112 judges responded to the question and 71 per cent of them said a Bill of Rights would make no difference to the justice system. One judge said of the delivery of justice in his court, "It's hopeless anyway." A blitzkrieg of media attention sent me to the trenches over the failed attempt on behalf of Bronson Blessington to intervene in the High Court Baker case. An article in the *Daily Telegraph* described me as "lobbying to get some of the State's worst murderers out of jail—instead of working for the decent people of New South Wales". The same newspaper included an editorial ridiculing Bronson Blessington: "One of the killers … is rehabilitated now and teaches scripture in gaol. Good for him. Let him keep doing so. Full time if he likes. Forever. No-one will begrudge the costs."

An irresponsible radio announcer read the editorial on air, and provided his listeners with my fax and phone numbers. My telephone was soon running hot and the fax churned out hatred and contempt, including two death threats, which sent parliamentary security into a flap spin. One charming correspondent described me as "so low you could parachute out of a snake's arse". Another said, "I hope you are proud of championing the scum of the earth (like you) and not the better things in life." I wondered if this was evil expressed as the good, the virtuous, the decent, the law-abiding and the righteous. Premier Bob Carr and Opposition Leader John

Brogden jumped on the media bandwagon, attacking the idea that a member of Parliament could work for prison inmates. Their criticism annoyed me no end in the context of the parliamentary work Government and Opposition members do for publicans, developers, financiers and other bootleggers in return for donations to the major parties. Many politicians also receive consultancy fees from lobby groups, which are really watching briefs to sound the alarm when adverse legislation is in the air, and to hose it down wherever possible. These arrangements may be permissible but they are quite immoral so far as I am concerned.

From a practical point of view, the problem with branding and stigmatising perpetrators as monsters, scum, animals and the like is that victims of crime and their families are robbed of an important recovery tool, and this is a feature of the popular and all-too-familiar retributive justice model. By isolating and dehumanising offenders as people beyond redemption and deserving only of our vengeance, both perpetrator and victim are locked out of a future. The advantage of restorative justice is that it offers hope to victims and families because understanding is the only way forward for the survivors of heinous crime. A feature of restorative justice is that the offender is encouraged to take responsibility for the harm done—the offender is passive in the present system—and an accountable offender will invariably explain what happened and why it happened. For the survivors, peace of mind is possible through understanding what brought about the tragic events, and in some cases they will be overtaken by forgiveness.

After the Baker case publicity finally subsided, I was at work early one morning when Amanda Collinge from SBS Television rang and wanted to know if I had made a decision whether to appear with a panel of so-called experts at the forthcoming broadcast from old Pentridge prison on the state of the nation’s gaols and their inmates. The by-line for the show hosted by Jenny Brockie was "Crime and punishment: do criminals get what they deserve?" I inquired about other members of the panel and Amanda reeled off a list of unusual suspects including Chester Porter, QC, who was counsel assisting the Morling Royal Commission that finally exonerated Lindy Chamberlain over the death of her daughter Azaria; Cindy Wockner, legal affairs writer for the *Daily Telegraph*; Michael Lavarch, the former Federal Attorney-General; and Justice Peter Underwood of the Tasmanian Supreme Court. Further discussion determined that the show was really a public forum with invited guests strategically placed in a live audience with the final program edited before broadcast. Amanda and I chatted around the issues and then I asked the question about victims' groups both of us seemed to be avoiding.

Amanda Collinge said, "Howard Brown from VOCAL will be there, and Donna Carson, a victim of crime who was set alight by her partner." She also said, "I'm not sure about Beverley Balding; she may or may not be available." My response was I did not think I could take part in a public forum with Beverley Balding. I did not think it was a good idea for either of us. Amanda Collinge suggested Beverley Balding and I might be able to meet beforehand and the arrangements were made. Two days later I arrived in Wagga Wagga, the largest inland city in New South Wales, with a population of 55,000 people, and capital of the State's Riverina district. B & M Joinery Supply is a large brick and glass commercial building lined up alongside factories and retail outlets in the industrial part of town, and I drove off the dirt shoulder of the road and parked out the front. Beverley Balding turned out to be a small and elegant woman, neatly groomed, quietly spoken and very different in person to the firebrand for victims who regularly appeared in the media advocating the death penalty.

My recollection of the meeting, which lasted for nearly two hours, is not good and afterwards I found it difficult to reconstruct. I remembered a green formica table in the kitchen and the spread of tea, coffee, biscuits, cake and scones. Janine' s grandparents on her mother's side were seated at the table and stood up to greet me. They spoke with quavering voices, obviously heartbroken that anyone would articulate the case for the prisoners who murdered their granddaughter. Kerry Balding, who was standing to the left of the table, shook my hand and said I could not imagine the grief I was causing his family. Kerry is a tall and gentle man and I expressed my sorrow as best I could. At one stage Janine's younger brother, David, came in, spoke as politely as his anger would permit, and then left with Kerry to make a delivery to a customer of the joinery business. Beverley and I were left drinking tea with her parents. On the table between us was a collection of photographs of Janine interleaved with newspaper clippings reporting progress of the two trials of Blessington, Jamieson and Elliott.

I spotted a newspaper story about Shorty Wells that included a photograph, and I mentioned that he looked nothing like Jamieson. Beverley said the idea that Jamieson is innocent is ridiculous, and I told her Justice Newman and the jury agreed with her. "The evidence against him is overwhelming," she said. I traversed the testimony of each of the witnesses: Elva Matyas, Simon Lonergan, and the prisoner Ian Glover. I avoided any reference to the police record of interview since the courts found it had not been concocted. I repeated Newman's observation that the wrong Shorty allegation is a "tissue of lies" created by the prisoners to conceal

their involvement in the crimes against Janine. Everyone nodded approvingly, and Beverley said the judge is right. She would not countenance any other possibility.

I was careful not to dispute any of the evidence that went to the jury but I pointed out the possibility of additional information that may assist Jamieson. I suggested Blessington may be as innocent as Jamieson from a lawyer's point of view if he had the mental capacity of a 9- or 10-year-old. To my surprise, the suggestion did not make the Baldings bristle, and I was aware that they blame Elliott and Wilmot more than they blame Blessington. The fact that Wilmot was released from prison after serving seven years for his part in the crimes against Janine and then attempted to abduct another young woman while he was on parole caused outrage in the Balding household. Beverley said the real culprit is Matthew Elliott, whom she described as the ringleader. There was little sympathy for Bronson's religious beliefs, and Beverley said the church had not supported her family in its ordeal. She remembered Grandfather Blessington turning up at the first trial in his Salvation Army uniform and that she was unimpressed.

I explained that Bronson's mother was too upset to attend court. The boy's father was present on occasions, but he found the proceedings too overwhelming, and by the time of the second trial he was worn out. To her credit, Beverley Balding was extremely generous in her response to my remonstrations, and while she appeared to be genuinely interested in Bronson' s progress in prison, we were a long way from agreeing he should one day be released. I was wandering into the domain of Terry O'Connell and his restorative justice program, for which I have no qualifications or experience. For the moment, it seemed to be sufficient that some lines of communication had been established with the Balding family, and we had similar concerns for the important role of victims and their families in the justice system.

A few weeks later Beverley Balding and I checked into the same hotel at Melbourne's Tullamarine airport at the expense of SBS Television and serendipitously found ourselves in the same elevator as we departed the hotel for the *Insight* program at the old Pentridge prison. It was just on dark as we called a taxi, and then we bumped into Neil Holman—another guest of the television company—who has been visiting Bronson Blessington in prison since he was baptised in the swimming pool at Minda Juvenile Detention Centre. Neil is a guitar-playing Christian, husband, father and barely half a dozen years older than Bronson. He has virtually adopted the prisoner as a family member and speaks of him in such glowing terms that I am frequently embarrassed for both of them. Neil's wife, Tracey, once told me, "Jesus put Bronson in our life, and if he's in prison forever, we'll visit him forever." Those words remind me of the Attorney's remarks in the other place yesterday when he said that the intention of the legislation was to leave Blessington in prison forever. I have observed that Bronson's faith is a source of unending inspiration and light to the Holman family.

I was seated in the back seat of the taxi with Beverley Balding while Neil Holman was leaning over the front seat berating us about Bronson's virtues. I reminded Neil that Beverley may not want to hear such glowing and biased reports about the boy, and she graciously smiled and said she was not offended. Neil got the message and engaged the driver in conversation. Beverley and I chatted about the likely format of the television program and the producer's probable agenda. Almost certainly we would be placed in a position of perceived conflict with one another, and on some level, we both understood the importance of participating in the program on our own terms.

Given the legal heavyweights booked to appear on the program, it was likely that the rights of victims would need defending, and I reaffirmed my opinion that involving victims and their families in the trial and sentencing of offenders is a positive development in the criminal justice system. Indeed, restorative justice proceeds on the basis of restoration of the harm done by the offender, as opposed to retributive justice, which focuses on punishing the offender for failing to respect the justice system—the colonial prisoner model.

I paid for the taxi and alighted at the front gate of the old Pentridge prison. A security guard guided us through a maze of dark brick and cement corridors until we found ourselves in a large reception room where food and drink covered various trestles and television people fluttered between the assembled guests to settle their nerves. I excused myself from Beverley Balding and Neil Holman and spoke to Chester Porter, complimenting him on his recent book, *Walking on Water: a Life in the Law*. As well as the Morling Royal Commission into the convictions of Lindy and Michael Chamberlain, Porter was instructed to represent the Department of Corrective Services in the prisons royal commission. He expressed the opinion in the book that sex cases before juries have resulted in substantial numbers of innocent men being gaoled.

One of Chester Porter's enduring qualities is his ability to communicate with people at all levels, and before long we were chatting as old friends even though I had not met the man before that night. He devoted a

whole chapter of his book to the Independent Commission Against Corruption and other executive government investigators, and I expressed my agreement with his assessment that the money diverted to these bodies—$15 million each year in the case of the ICAC—would be better spent on properly funding police services, including an integrated forensic laboratory. Porter said that supporting police and giving them sole responsibility for criminal investigations would boost public confidence in the police as well as providing them the skills, expertise and resources they need to do their job properly.

Amanda Collinge and others involved in producing the *Insight* program were soon shepherding us into an adjoining film studio, which had been set up in the assembly area at the end of two rows of prison cells. Tiered wooden seating filled the brick cavern and moulded plastic chairs had been reserved in the front with participants' names on sheets of paper. As I expected, I was seated smack in the middle of victims groups, and I occupied my plastic chair without protest. Beverley Balding sat in the chair next to me on my right, and Donna Carson sat to my left. Donna said she was doused with petrol and set alight by her then partner, suffering burns to 65 per cent of her body. Most of her burns are full thickness, meaning she was burnt to the bone. Her facial disfigurement is shocking and yet the woman is an angel. Soon we were chatting about the studio lights and Donna mentioned that she could easily overheat since the fire destroyed her sweat pores and scar tissue completely sealed her body.

The presenter, Jenny Brockie, emerged from one of the rows of prison cells holding a microphone and stood in front of the tiered seats, which were filled to capacity. Jenny Brockie asked the question: Do criminals get what they deserve? Red lights appeared on cameras in several locations in the studio and the show was starting. Brockie mentioned that this was the prison where Ronald Ryan was controversially hanged 37 years ago—the last prisoner in Australia to receive the death penalty. The program began with the screening of Donna Carson's story and the furore caused by the lenient sentence her assailant received. Lights were dimmed and our attention was drawn to a large screen on the wall above the entrances to the prison cells as Donna relived her dreadful story. There was heart-wrenching footage of her with her children before and after the crime and graphic depictions at various stages during her medical treatment. The reporter was Amanda Collinge, who said Donna spent almost six months in intensive care and had 19 operations in 10 years. She sustained permanent damage to her muscles, lungs and vocal chords.

At the end of the film footage, lights returned and Jenny Brockie approached Donna Carson with the microphone. Donna said her former partner, Garry Clynes, received 15 months gaol and 9 months non-parole period for the crimes. I heard an audible gasp from the tiered seating. Donna had been told that the maximum penalty for maliciously inflicting grievous bodily harm was 10 years imprisonment and that would be the likely sentence. Subsequently the offender pleaded guilty to the lesser charge of negligently causing grievous bodily harm, but Donna had not been aware of this development in the case until after the sentencing. Consistent with my belief that victims and their families should be involved in the trial and sentencing of offenders, I was shocked that Donna played no role in the plea bargaining between the prosecutor and her former partner. One by one the assembled lawyers and others expressed their horror at the case.

The lights in the studio were dimmed again and another film was being played on the screen above us. This time Bronson Blessington's case was under scrutiny. I was surprised to see a church scene and a group of people praying for Bronson. I recognised Jack Begnell with his Port Macquarie Church of Christ congregation and then Amanda Collinge was interviewing Jack, who said, "There's no way a boy of 14 should get life." Then the film cut to Mat Blessington praying in the Salvation Army chapel on Sydney's northern beaches. He said, "Lord, we know you've forgiven him." He then said, "And he has turned away from this evil". Then Amanda Collinge was on screen again giving the background to Bronson Blessington's sentencing predicament. I quote from the program, with Amanda Collinge speaking:

> Amanda Collinge: Back in 1990, when Bronson was sentenced, the law in NSW entitled life prisoners to apply for a review after serving eight years. But in 2001, the Carr Government tightened the laws effectively denying lifers any review, the so-called 'cementing in' legislation.
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> Jack Begnall: He's done what he was told to do—life, [Life was] fifteen years…He's into his sixteenth year now. What more should he do? And then Mr Carr comes along and says no, now it's 20, now it's 30, now you stay there forever…
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> Mat Blessington: We just couldn't comprehend it, not our grandson. The tragedy of it still remains and will forever…I love him very much, love him very much. And of course his nanna does too.
>
> Amanda Collinge: Mat says when Bronson killed Janine Balding he had the mental capacity of a nine year old. It's a claim supported by psychiatric documents at the time.
>
> Mat Blessington: We failed to realise that he was a boy fourteen motivated by a mind of nine. Now you get amongst a group of young men and they'd tell you what to do. A boy of nine does what he's told for fear…I believe he's filled with remorse for what he's done.

> Amanda Collinge: Mat Blessington says he also thinks constantly of the suffering of Janine Balding's parents.
>
> Mat Blessington: If I had a chance to say something to them, I feel, I really feel I would love to go to Mrs Balding and tell her how sorry I am, and I would love to put my arms around her. I would. And I would have to say to her, "Mrs Balding, as much as you feel it's against your desire to do so, but you've got to forgive Bronson. You've got to forgive him and you've got to give it over, you know."

The film ended with Mat Blessington's plea for forgiveness. Lights returned in the prison studio and Jenny Brockie walked over to where I was seated with the victims of crime and their families and said, "Well, Beverley Balding, a direct appeal to you for forgiveness. What's your response?" To my mind, it was a cruel thing to do, but Beverley was courageous as always. She said, "My answer is no way, never ever." She cannot forgive Bronson and the others for what they did to Janine and believes they deserve to stay in prison for the rest of their lives. She was unmoved by his faith and that of his supporters. She said, "Let him preach in gaol", and as to Bronson's rehabilitation, the fact that Wayne Wilmot came out of gaol and almost committed the same crime, "proved to me that these other ones will do exactly the same".

Jenny Brockie then placed her microphone in front of me and asked what I thought of the plea for forgiveness. I said that it was understandable, but inappropriate in my opinion. This is not the reaction the presenter was hoping for, and my response was eventually cut from the program before it went to air on SBS television. I also explained how I became involved in the case when the Bar Association lobbied me during the debate in the Parliament on the cement law in 2001. And then I received a letter from Bronson that prompted me to visit him in prison. As a result of visiting him, I met his family and the other people who are his support base. I said that Bronson's case is unusual because of his extreme youth, because he had the mental capacity of a 9- or 10-year-old, because he had no history in the criminal justice system and because if he committed the same crime today he would not receive a life sentence. Jenny Brockie then turned to the judge and the other lawyers in the forum. I will quote from the program again:

> Jenny Brockie: Judge, I wonder what you think of this idea of locking up—let's talk about it in the broad—about the idea of locking up a fourteen-year-old for the term of his natural life. I mean, what do you think of that as a concept?
>
> [Judge] Peter Underwood: Well, I think it's nothing short of appalling…If you give … [a life sentence] to a 50 year old it's about 25 years jail. If you give it [a life sentence] to a fourteen year old it's about 60 years jail. Now the worst thing about this story is the passing of retrospective legislation. So that when he's sentenced, this is the regime [the average 'life' term is fifteen years], and now just as he's about to apply for a finite sentence, the Carr Government has said, 'No, you can't do that, we're changing the law'. That seems to me to be manifestly unfair.
>
> Jenny Brockie: Michael Lavarch, what do you think about the idea of retrospective legislation on something like this, on this question of life sentencing?
>
> Michael Lavarch: I also think it's appalling. I mean, I can understand the political position of the Carr Government…if you asked ten people in the street, I'm sure nine out of ten would say, yeah, never let them out. And governments do respond to that pressure. But it doesn't make it right…a fourteen year old, I would have thought, is a very clear case [of unfairness] and I'm appalled that the Carr Government would take this action.
>
> Jenny Brockie: Chester Porter, what's your view on this?
>
> Chester Porter: I agree that it's appalling. When the English abolished the death penalty, which incidentally could never be given to a person under eighteen, it was given in evidence that anyone who was sentenced to perpetual imprisonment, that is for true life, would almost certainly go mad, or would suffer terribly. It's a worse punishment really than death. To impose it upon—and unfortunately we have to impose it in a few, very few cases—but to impose it on a fourteen-year-old boy or sixteen-year-old boy is just, I mean, our colonial ancestors wouldn't have hanged a boy of that age. I mean, it's just barbarous.
>
> Jenny Brockie: Beverley, can I get a response from you to all of that?
>
> Beverley Balding: They committed an adult crime as far as I'm concerned. They committed an adult crime and they should be paying for it as an adult.

The program ended on a positive note with Howard Brown from the victims group VOCAL talking about the need for rehabilitation. Howard argued that putting people in prison for minor offences and crimes where there are no victims is a waste of time because, "There's no rehabilitation program that's going to help them." Jenny Brockie asked Shireen Malamoo, who worked with Aboriginal youth, for a final comment and Shireen said, "I should say this country is silent testimony to rehabilitation," referring to our convict origins. Chester Porter agreed and said, "In some ways, we were much more merciful then."

When summing up, Michael Lavarch suggested there were alternative means of dealing with offenders, such as community conferencing, but that politicians were reluctant to talk about these developments. He also said, "You've got to keep your mouth shut about that as a politician because of the fear of being tagged as soft

on crime." I assume Lavarch was referring to major party politicians who have two separate, and often contradictory, belief systems: one is the god of public opinion, as reflected in the party platform, and the other is their private convictions.

Anticipating the High Court's decision in the Baker case was like waiting for the results of an examination that I knew I had failed. Several months after the hearing, Will Hutchins rang me to say that the judgment would be handed down in Canberra at 10 o'clock on Friday morning. He regretted ruining my day, but on the bright side the way was now open for Blessington to revive the application for a review of his life sentence. Agreement had been reached with the Director of Public Prosecutions to resolve a series of preliminary questions. Perhaps the most important of these questions was whether Bronson's 1996 sentence review application put him beyond the reach of the 1997 and 2001 sentencing laws passed by the Parliament.

The Prisoners Legal Service had made the arrangements and the Supreme Court would consider the preliminary questions in December. I asked whether the court has allocated a judge and the lawyer answered in the negative. In one sense the judge, and even the judgment, are unimportant because if Bronson got the green light to review his sentence, the Crown would probably appeal. If the Crown succeeded in its argument that Bronson Blessington was now cemented in, following the Baker decision, Blessington would appeal and the case would eventually wind a tortuous path back to the High Court.

For those of us who are interested in the liberty of the subject and the rights of citizens, in recent years the High Court has been depressingly subservient to the nation's Parliaments. While Prime Minister John Howard has been promoting the idea that his Government will decide who comes to Australia, the majority of judges of the High Court have been deciding what laws have survived the satellite communications from London and Brussels. As a consequence, this country is labouring under a dearth of both migrants and universal human rights principles.

Justice Michael McHugh has attracted particular criticism for upholding international law in academic circles while taking a different view from the High Court bench. In the recent case of Al-Kateb, His Honour left on hold his extracurial assertions that the Australian Constitution protects due process rights to decide with his conservative brother judges that the Executive Government has the power of indefinite detention over stateless refugees. In a sense, Justice McHugh has an invidious role to play on the High Court as he seems to sit intellectually and emotionally with the freedom fighters—Chief Justice Murray Gleeson, Justice William Gummow and Justice Michael Kirby—while he votes with the conservative black-letter lawyers, Justice Ian Callinan, Justice Kenneth Hayne and Justice Dyson Heydon. My understanding of Justice McHugh's position is that he laments the fact that Australia stands alone in the common law world in failing to legislate a statutory or constitutional bill of rights:

> But, desirable as a Bill of Rights may be, it is not to be inserted in our Constitution by judicial decisions drawing on international instruments that are not even part of the law of this country.

Although Justice McHugh is tough and uncompromising, he is also inconsistent, according to Justice Michael Kirby. Other commentators on the Al-Kateb case say that Justice McHugh has overstated his position and there is a judicial responsibility to engage the principles of international law to ensure that the Australian Constitution conforms with universal human rights principles and the most important international treaties to which Australia is a party.

Ahmed Ali Al-Kateb is a stateless Palestinian aged 28 years who arrived in Australia in December 2000 by boat and without a passport or visa. In the words of Justice William Gummow, who delivered one of the minority judgments, Mr Al-Kateb was "destitute of any nationality". In these circumstances Australian migration laws provide for indefinite detention even though the person has committed no crime. If the detention were characterised as punitive it would apparently offend against the judicial power principles in the Constitution and the court would reach a different decision. Such legal hair-splitting in the face of the historical presumption in favour of liberty through the writ of habeas corpus is a poor reflection on the court. The decision is also bad news for Bronson Blessington. If the razor wire and stalag conditions of the immigration detention centres do not constitute punishment of an innocent young man, what sympathy can be expected for one who has committed abduction, rape and murder, even if he had the mental capacity of a child?

Unlike its decisions involving individual rights and freedoms, the High Court is ahead of the field when it comes to modern technology, and the Baker decision was available on the Internet simultaneously with the Chief Justice handing it down in Canberra. I received the bad news without leaving my Sydney office. The court voted six judges to one—Justice Michael Kirby dissenting—to ignore the Kable principle that Parliament should

not recruit the State judiciary to facilitate a sentencing charade. The court had upheld the cement law even though the 10 "never to be released" prisoners were previously entitled to a review of their sentences after eight years incarceration. Gregory Kable would still be in gaol if this court had its way, and the 1994 Community Protection Act might have saved Premier John Fahey from electoral oblivion after all. In his dissenting judgment Justice Kirby referred to the failed intervention on behalf of Bronson Blessington:

> At the time of the offence for which Mr Blessington was convicted and sentenced he was 14 years of age. He is now subject to the same legislation as that challenged in the appellant's case. He applied for leave from this Court to be heard as an intervener in the appellant's appeal because of the direct relevance of the decision in the appellant's case to his legal entitlements, which were pending. By majority, this Court refused that leave. As I indicated at the time of that refusal, I would have granted Mr Blessington the right to be heard. Principle, and an effective lifetime of actual incarceration, warranted our consideration of counsel's supplementary submission estimated to take less than an hour. That submission bore on the extreme nature of the legislation under consideration in this case. It brought the appellant's arguments into even starker relief.
>
> The application of the impugned provisions to Mr Blessington's sentence would appear to bring Australia into clear breach of the Convention on the Rights of the Child. By Article 37 of that Convention, to which Australia is a party, it is provided relevantly that: "Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age". On a true construction of the impugned law, Mr Blessington's "possibility of release" is, in my view, a chimera, and deliberately so. If that is the case, the impugned law is in conflict with binding international obligations expressing universal human rights and fundamental freedoms.

Surprising to me is another decision of the High Court on the same issues as *Baker* and handed down contemporaneously. Robert Fardon was convicted by the Supreme Court of Queensland of rape, sodomy and assault. He was sentenced to 14 years jail, and just before the sentence was due to expire the Queensland Parliament passed the Dangerous Prisoners (Sexual Offenders) Act 2003. Like the 10 "never to be released" prisoners, Fardon was effectively cemented in by that legislation. He was given an indefinite sentence by the Executive Government for a crime he might commit in the future. Again in the case of Fardon, Justice Kirby was the sole dissenting judge, and His Honour pointed out that Kable principle was supposed to offer some protection to minorities in circumstances where governments "endeavour to attract electoral support by attempting to spend the reputational currency of the independent courts in the pursuit of objectives which legislators deem to be popular".

Protecting minorities is often unpopular, whether it involves religious minorities, refugees or prisoners. The role of the High Court is to uphold the constitutional rights of minorities, and for Kirby that role is particularly important in the case of unpopular minorities. Given the proximity to the Al-Kateb decision, the decisions in Baker and Fardon began to cause serious questions to be asked about the direction in which the High Court is travelling. Indefinite detention at the pleasure of the Executive Government has been outlawed in every comparable jurisdiction in the world—the United States Government had to establish its terrorist allegation facility at Guantanamo Bay in Cuba—and yet here we are in Australia lurching backwards towards our convict jurisprudence for the benefit of politicians seeking to emulate the worst features of the Rum Corps. My assessment of the role of the judiciary in this process is quite pessimistic. Not only is the High Court giving the nod to indefinite detention of innocent refugees; it seems to be extending the idea to mainstream prisoners. I was so annoyed by the decisions, I dashed off this letter to the *Sydney Morning Herald*:

> In two recent decisions of *Baker* and *Fardon*, the High Court judges ruled six to one that prisoners who have served their sentences can be detained indefinitely if politicians decide there are votes to be had in keeping them in jail.
>
> Australia is now the proud sponsor of a principle that says a person can be kept in prison on the basis of something they might do in the future. That such a principle is abhorrent to our inherited common law seems to have escaped a majority of the High Court judges.
>
> At a Bar Association conference two weeks ago, a speaker pointed out that the logical extension of this principle is that a person can be arrested and held in indefinite detention because they represent a potential threat to the community.
>
> I was taught that everyone is innocent until proven guilty of a particular crime and entitled to his or her liberty. And one person is as innocent as the next once their sentence has been served. Has the High Court decided these are further rights of the people to be sequestered by politicians on the campaign trail?

For politicians trying to make their mark, newspaper editors are not nearly as gullible as judges, and my letter was not published. Radio National covered the Baker and Fardon decisions on Sandy McCutcheon's *Australia Talks Back* . Professor Dave Brown from the University of New South Wales told McCutcheon he was confounded by Justice McHugh's judgment in Fardon, which said that the legislation designed to keep the prisoner in gaol was not to be regarded as punishing him. Professor Brown said, "I'm sure Mr Fardon will be somewhat surprised to be told that to be kept in gaol beyond the time when his sentence is expired is somehow not punishment".

McCutcheon was concerned that "a government could use this outcome as a political tool—keeping people locked up to placate a law and order lobby group". It could and it does, as this bill demonstrates. Professor Brown made the truly scary observation that the decisions in the cases of Baker and Fardon mean that State governments responding to populist pressures can close down the State courts and replace them with inquisitorial investigators such as the Police Integrity Commission, the Independent Commission Against Corruption and the Crime Commission. According to the decisions in Baker and Fardon the Parliament now has the power to close down the courts.

Chris Maxwell, QC, from the civil rights group Liberty Victoria, said that the decisions mean State parliaments have unlimited power to pass any law they please in the absence of a Bill of Rights. He said, "Our Constitution, sadly, doesn't permit any real consideration of the fundamentally objectionable nature of this kind of legislation." Curiously, political leaders from the major parties declined to talk to McCutcheon on the implications of the two decisions, but they queued up to speak with the commentators on commercial radio stations. They ran the risk of being brought down to size or put in their place, as it was put in some of the emails I received, with personal abuse from the presenters and their listeners, but the upside is a forum to dole out vengeance instead of just compensation for victims and the resources needed to educate and rehabilitate offenders.

After a few days, I stopped scouring the letters pages of the *Sydney Morning Herald* for my letter, and I then heard on the grapevine that Supreme Court Justice John Dunford had been assigned to hear the Blessington application to decide the preliminary questions to determine whether the prisoner is entitled to a review of his sentence. I did not then and do not now know the judge personally, although at different times we have been active members of the St. Thomas More Society, which is an organisation of Catholic lawyers. Dunford is the author of a speech titled "Looking forward: the direction of criminal law" published in the current edition of *Bar News*, in which he talked about recent developments in the law, lamented the cost and delay of justice, and confirmed his standing in the legal profession as a respected and perceptive judge. The article stated:

> Other developments relate to the manner of police investigation, which has become much more sophisticated, particularly with the development of DNA evidence, telephone and listening device intercepts and controlled operations. Moreover, some of us can remember the old police 'verbals' which then gave way to the typed record of interview, both signed and unsigned. This was followed by the video recorded interview, which has now been further refined with the custody manager provisions in the Crimes Act 1900.
>
> These reforms have all been most commendable, providing greater facility for detection of actual offenders, whilst at the same time preserving and enhancing the rights of suspects. On the other hand they all add to the length of the trial. Trials were much quicker when the main evidence in the crown case was often the evidence of police officers reciting the verbal admissions allegedly made by the accused, and the crown prosecutor would comment to the jury, as sometimes the judge would also comment, "Why would they [the detectives] lie?" No right thinking person would regret the departure of the old ways, but the fact is that criminal trials are now much longer.

Justice Dunford heard the Blessington application on 3 December 2004 and handed down his decision on 15 April 2005. On that day I flew from Ballina to Sydney on the early morning flight, which meant I had to be at Ballina airport at six o'clock. The coffee shop was open and the newspapers were there. It always amazes me to find the daily papers on sale in the country so far from the Sydney printing presses. On the front page of the *Daily Telegraph* was a photograph of Schapelle Corby, the unfortunate tourist charged with smuggling 4.2 kilograms of cannabis into Bali. That young woman faces the real prospect of the death penalty and yet she appears to be the innocent victim of a bungled drugs operation between Brisbane and Sydney.

Prime Minister Howard says he has faith in the Indonesian justice system, but the country's presumption of guilt for drug offences is difficult to rebut. Nobody could seriously believe Ms Corby would knowingly take such a large quantity of dope from Australia to Indonesia, where it sells for a fraction of the Australian price. Tony Vinson, the former Commissioner for Corrective Services, wrote an article for a University of Sydney graduation address and an extract was published as an "Opinion" piece in the *Sydney Morning Herald* on the same day, 15 April, of Justice Dunford's decision. The article was entitled "Punishing the hapless is the true crime". The Vinson article began:

> People are lured more by their hopes and the opportunities afforded them than by threats and punitive policies.

He said that politicians have been battling with one another over who can be more punitive, and while this may serve their electoral interests, the war is phoney and self-serving and intended to divert attention from the social neglect that sends large numbers to prison. For our political leaders to boast about the increase in prisoner numbers, Vinson says, is not only abhorrent but also illogical. Law-abiding citizens should draw no comfort from the fact that greatly increased numbers of offenders are behind bars. Although some must be imprisoned

for our protection, the Government cannot reconcile the fact that only 628 of the 9,000 prisoners behind bars are serious offenders. The article further stated:

> It is even more puzzling if you substitute fact for spin and conduct a detailed examination of the prison population, carefully noting each individual's record and present charge or offence. One can find hundreds of cases where the community's need for protection can be reconciled with less damaging ways of punishing offenders or controlling their movements while they await the judgments of our courts.
>
> How long will it take for the lesson to sink in that prisons, which are necessary for handling some cases, are socially toxic institutions? In this State we have had a royal commission lay bare the inherent savagery of the institution. Research like the famous Stanford University Experiment has shown how ordinary people assigned as guards can be transformed into sadists in situations where they perceive others are less than human. That impulse is ever present, requiring nothing more than a careless remark by those in authority for it to re-emerge. Recent political comments like "We've bricked them in" illustrate the point.

The next thing I recalled was the plane landing in Sydney, which means I must have fallen asleep. With no luggage to worry about, I headed straight for the airport rail service. I caught the train from the airport to St James station, that being half the price of a taxi and three times quicker in peak hour. I was in Justice Dunford's court well before the 9.30 a.m. start and it was a good thing, too, because the place was filling with horsehair and silk faster than the saddling paddock at Royal Randwick Racecourse. It turned out that it was Justice Dunford's last day on the bench and the Blessington decision was his last decision. I offered my seat to the public defender, Peter Zahra, who stood nearby but he declined. I figured he was not very happy with me over an article about the Jamieson case that had appeared in the newspapers just before Christmas.

A court attendant said the judge was coming into court and we should all stand, which we did. The judge entered the court through the door adjacent to the bench. He was dressed in full Criminal Court robes and was visibly shocked to see the large turnout for his final judgment. His Honour took his seat and called the matter of Bronson Mathew Blessington, and said there were seven questions to be answered. The answers were yes, no, no, no, does not arise, does not arise, and no. With a last flourish, he handed the 17-page judgment to his associate, and gestured to a court attendant, who began distributing copies of the document to interested parties. There was a scrum at the back of the court around the attendant, and Will Hutchins managed to get me a copy. Neither of us had a clue as to whether the case had been won or lost. Will Hutchins left the courtroom followed by Bronson's supporters.

I returned to my seat near Peter Zahra. On a quick examination of the decision, I could not make head nor tail of it. Part of the problem was that I was reading the numbered paragraphs in answer to the seven questions and simultaneously making notes about the tributes to the judge. Ian Harrison, SC, the President of the Bar Association, congratulated Justice Dunford from the bar table on his 18½ years service on the bench. The lawyer urged the judge to keep working since the rule about judges retiring at age 70 did not apply to judges appointed as acting judges after they retired. The thought occurred to me that only judges could come up with such a bizarre rule. Harrison said, "Age is not important unless you're a cheese or a wine," to which His Honour replied that after 51 years as a lawyer he would not be coming back in any capacity.

I have recounted that because judges have generally been on the bench for a long time and have a lot of experience. They are literally driven away from the system by the constant law and order debate that mercilessly attacks their decisions. The press and the public think it is a much better idea for politicians to make their decisions. If I were a judge, I would feel the same way. Justice Dunford could come back and work part time in the system, but he has decided not to because he has had enough. Why should be put up with it? Increasingly, more and more judges will take that same position, and they will be a great loss to not only the judicial system but also the community. Their great corporate knowledge will be lost. In reply to Harrison, His Honour replied that he would not be coming back in any capacity.

John McCarthy from the St. Thomas More Society said to the judge from the bar table, "There is no finer person who has served this court.". Clearly embarrassed, Justice Dunford thanked McCarthy for what he called his "exaggerated remarks" and added, "There are better lawyers and better judges of the facts." For his final comments, the judge returned to the theme in his recent speech when he expressed concern about the increasing cost and length of litigation. He said that the whole justice system would break down if court cases take longer and cost more. He said, "If we don't solve the problem, politicians and the community will find other ways to resolve their disputes." My own observation is that politicians follow trends, not set them, even though they claim to be community leaders.

The English Bill of Rights 1689 established the independence of the judiciary and the principle that the Executive Government should not interfere with judges in the exercise of judicial functions. Increasingly,

throughout the seventeenth and especially the eighteenth centuries, it fell to the judges to protect the rights of citizens, particularly in cases where it was to the political advantage of the executive to allow those rights to be eroded. Judges bear a far greater responsibility to protect the justice system than their decisions suggest, in my opinion.

The judge stood and bowed to the court for the last time. As he left the bench the assembled crowd began to leave. I congratulated John McCarthy on his exaggerations. I had hoped to talk to him about the Blessington case because of his close position with the Premier as the Premier's legal adviser. Unfortunately, I was not able to do that. I sat down and read the judgment and tried to understand it as best I could, given the short time that I had to study it. I realised that Blessington had succeeded on the primary question—that is, whether his application to review his life sentence filed in 1996 could proceed. That really was the only question that the judge answered. The other questions that the judge did not address related to the cement law, and so those questions remain outstanding.

The problem remains that "never to be released" prisoners, including Blessington, are not eligible for parole until they are physically incapacitated to the point where they are no longer a threat to the community. Without this legislation before the House today the position was that Dunford did not touch those issues that created the cement law. The question of being incapacitated before they could get parole was a question that Dunford did not address. So Blessington was in no better position as a result of Dunford's decision than he was before. It is a complete misunderstanding of the decision for the Government to come to this Parliament with the legislation that it has prepared and seek to override the decision. The issues that are addressed in this new law do not actually address the issue about which Dunford made his decision, but I am too tired at this stage to go into that in any detail.

I was disappointed that the judge squibbed a decision on that part of the sentencing law that raised his ire and caused him to invoke what he called judicial restraint when he was hearing the case. If he were so incensed by the Parliament treating as a charade any judicial review of the cement provision he might have had the courage of his conviction and overturned the law. His explanation was that the issue of parole did not arise "until there is someone who is presently, or soon to be, affected by it". In reality, the 10 "never to be released" prisoners are deeply affected by the prospect of remaining in prison until they are crippled or dying. I know from Blessington's point of view that he spends some time in every conscious hour wrestling with the notion. I suspect that worrying about incapacity and death over a long period—and in Blessington's case he his looking at something like 60 years—would eventually send most people quite mad or drive them to despair.

Concentrating on the last paragraphs of the judgment, I was amazed to read that the judge suggested a course of action that was never argued by John Basten in support of the Blessington case. His Honour said that the non-release recommendation was not an order and consequently not a sentence for the purposes of a criminal appeal. A prisoner could not appeal a non-release recommendation. But now that the Parliament has turned the recommendation into a sentence, there may be an avenue for appealing the recommendation. In other words, the judge is floating the idea of turning the retrospective operation of the new law back on the Parliament. I will focus briefly on that point. The judge is saying that before the Parliament came along and interfered with the sentencing of these prisoners, the recommendation that they should never be released was only a recommendation. Now that we, the politicians, have turned that recommendation into a sentence—that is, a life sentence—the question that then arises in the judge's mind is, "You can appeal a sentence. You might not be able to appeal a recommendation, but now that the politicians have turned it into a sentence why can you not appeal the sentence?"

That raises fundamental questions about the relationship between the executive arm of government, its judicial arm and its legislative arm. These questions now have to be resolved. As a result of the bill before the House and the judge's observations, these questions have to be resolved. As I said at the beginning of my speech, it puts the prisoner, Blessington, in an immeasurably better position in relation to the arguments that he needs to run than he had before. To that extent the legislation has the exact opposite effect to that intended by the Government. Judge Dunford said in his decision:

> It may be arguable that as a result of the amendments effected by the [Parliament] which gave legal effect and authority to a ['never to be released'] recommendation, such recommendation became retrospectively an 'order' and therefore a 'sentence'. If this is so, it may be that, subject to obtaining leave to appeal out of time, an appeal [to the Court of Appeal] could now be brought against the 'recommendation'.

So we have done very well; we have achieved exactly the opposite of what we intended. I have the greatest respect for the judge. However, as he said in his farewell remarks, there have been better lawyers, and John

Basten—who was Blessington's lawyer—is one of them. If the course of action proposed by the judge were in prospect, in my opinion Basten would have considered it. The learned Queen's Counsel has been appointed to the Supreme Court and, since this decision was handed down, has now been sworn in as a judge for what is likely to be a short stint on the Supreme Court before he moves to the High Court. Already I was worrying about how the Prisoners Legal Service would replace Basten. There is a sense in which he is irreplaceable because of his knowledge of constitutional law.

The press honed in on Dunford's suggestion that what was once a mere recommendation may now be a sentence and can therefore be appealed. The press, in response to the decision, indicated that Blessington had been successful. A reading of the judgment would suggest that he was successful on one point but, on the most important issues, the judge decided not to make a decision. At the end of the proceedings I was still left in the courtroom with Peter Zahra, the Public Defender. I began to engage Peter Zahra in conversation. I was particularly interested in asking him about the DNA testing of Shorty Wells's black bandana and whether or not the bandana had been sent to the United States of America for Y chromosome testing and whether such testing facilities were available in Australia.

The response of the Public Defender was that it was a matter for the Attorney General's Department and that it would make the arrangements in its own time. I am concerned about the way in which that has proceeded. Since the Innocence Panel was suspended there has been no effort at all to continue the testing process of the bandana for male DNA. Consequently, I was concerned to talk further with Peter Zahra about that. I suggested to him that he should be making more waves at the Attorney General's office to ensure that something happened. However, I was not in a position to make any demands and his instructions were to proceed softly. Besides, it seemed important to remain on speaking terms with Peter Zahra.

I mentioned my concern that the Government's real agenda was to avoid any review of the Janine Balding case because, inevitably, that would lead to questions being asked about the police investigation of the murder of Anita Cobby. The parallels between the Anita Cobby case and that of Janine Balding are quite frightening. The same police investigated both cases and, in both cases, there are persons in gaol—they have been in gaol for 16½ years—who, according to my reading of the transcripts of the trials and the evidence of the witnesses, are both the wrong persons, certainly in the case of Stephen Shorty Jamieson and probably also in the case of Gary Murphy.

Peter Zahra did not really want to hear about any of that. His assessment of the situation was that I should go away and read something that Lord Denning had to say about the importance of protecting the integrity of the justice system. I had a vague recollection that Lord Denning was involved in the British case of the wrongful imprisonment of what were known as the Birmingham Six. I made a mental note to check that when I got back to my office. When I returned to Parliament House, I checked on the Internet to see what Lord Denning had to say. I found the Birmingham Six case, and Lord Denning's name kept coming up all over the screen. I was reminded that 21 people died in two Birmingham pubs in the early 1970s when a series of bombs exploded. Six Irishmen living in Birmingham at the time were convicted of the killings in 1975, and they spent 16 years in prison before proving their innocence.

I learnt that several books were written about the case, including one by British member of Parliament Chris Mullin. The book, titled *Error of Judgment*, was originally published in 1986, five years before the convictions were quashed. The Internet told me that the book included graphic detail of the way confessions were extracted from the prisoners, and their treatment in Birmingham's Winson Green prison. It also covered the role of Lord Denning, who, as the most senior judge of the Court of Appeal in 1980, denied the Birmingham Six the right to sue the police who arrested and beat them. The quote from Lord Denning's judgment is instructive. He said:

> Just consider the course of events if this action is allowed to proceed to trial … If the six men win, it will mean that the police were guilty of perjury, that they were guilty of violence and threats, that the confessions were involuntary and improperly admitted in evidence and that the convictions were erroneous. That would mean that the Home Secretary would either have to recommend that they be pardoned or he would have to remit the case to the Court of Appeal. This is such an appalling vista that every sensible person in the land would say that it cannot be right these actions should go any further.

His Lordship could not have imagined the reach of the Internet and the extent to which his words would be used, not to protect the integrity of British justice but to demonstrate its deficiencies. While Denning may have believed he was upholding the best traditions of English law, to the public he was denying the six men their day in court and making the justice system look ridiculous. The most respected judge in the country was saying, in effect, that it may be better for innocent people to serve life sentences than to let them go free and bring the law

into disrepute. One commentator compared Denning's remarks to the idea of vicarious or utilitarian punishment put forward by author and social philosopher John Ruskin [1819-1900]. According to Ruskin, it might be possible to deal with unsolved murders by choosing an inhabitant of the place of the murder by lot, and then hang the person to encourage the rest of the community to keep the peace. The idea found currency in the early colony when the likely suspects were rounded up and flogged until someone confessed. And utilitarian punishment is behind the thinking that says a person may be technically innocent, but they probably committed some other comparable crime, so justice has been done.

The principle at risk is the presumption of innocence, a principle already under severe strain as a result of the proliferation of inquisitorial bodies with extraordinary coercive powers. If investigators and prosecutors do not bear the burden of proof, then it shifts to the person under investigation, and allegation and innuendo becomes the new currency of inquiry and a presumption of guilt replaces that of innocence. The Executive Government can utilise its agencies as investigators, superseding the work of police officers, and it can engage the Parliament to sideline sentencing judges. These may be popular developments in New South Wales, but they are not right, and they are only permissible because Australia is the last common law country in the democratic world to secure a bill of rights for the protection of the rights and freedoms of its citizens. At the commencement of my speech I foreshadowed that I would seek to incorporate in *Hansard* a list of comparable sentences that were attached to Blessington's application in the High Court, indicating the high-culpability life sentences for murder where the judges failed to impose non-release recommendations. I now seek leave to incorporate the document in *Hansard*.

Leave granted.

HIGH CULPABILITY LIFE SENTENCES FOR MURDER WITHOUT A NON-RELEASE RECOMMENDATION IMPOSED PRE 1989 LEGISLATION

1. McDonald, William

Date of offence/s:	4 killings on 4/6/1961, 20/11/1961, 31/3/1962 and 3/11/1962.
Date of sentence:	24/9/1963, McClemens J.
Facts:	All victims homeless men who had their genitalia excised. After obtaining conviction on one of the murders, the Crown did not proceed with the others.
Redetermination:	He filed an application but has never given instructions to proceed with it.
Parole:	Does not have a parole date. He has been in custody since 1963 and will turn 80 on 17/6/2004.

2. Lawson, Leonard

Date of offence/s:	2 killings on 6/11/1961 and 7/11/1961.
Date of sentence:	4/4/1962, McClemens J.
Facts:	He was sentenced to death in 1954 when 26 yrs old for kidnap and 2 counts of rape which were commuted to 14 yrs and he was released on licence on 27/5/1961. He re-offended 6 months later in Nov 1961 by raping and killing a sixteen yr old girl whose portrait he was painting; and, the following day he shot dead a school girl during a siege at SCEGS school at Moss Vale. In view of the conviction for murder on the 1st killing, the Crown did not proceed re the 2nd.
Redetermination:	Declined on 31/5/1994, Badgery-Parker J.
Parole:	He died in custody on 29/11/2003 aged 76, having been in custody on the life sentence since late 1961.

3. Turner, Eric

Date of offence/s:	4 killings, two on 15/12/1948 and two on 24/8/1973.
Date of sentence:	12/11/1973, Nagle J.
Facts:	Turner, aged 20 choked his fifteen year old girlfriend to death and killed her father with an axe. He was sentenced to death but this was commuted to life. He was released on licence on 20/8/1970. Three years later he stabbed his mother-in-law to death and her 11 year old grandson.
Redetermination:	Granted on 20/8/1992, Judge Wood – minimum term of 20 years from 26/8/73 to 25/8/93 with an additional term of life.
Parole:	Parole has been refused (he will be considered again on 18/8/05).

4. McCafferty, Archibald

Date of offence/s:	3 killings between 24/8/1973 and 28/8/1973.
Date of sentence:	26/4/1974, Glass J.
Facts:	McCafferty, aged 25, just before the first killing, had a delusion that if he killed seven people, his baby son who was accidentally suffocated the year before by his wife, would return to life. He arranged with others to assist commit these offences. The first victim was walking home

when randomly attacked and kicked and stabbed. The other two victims were shot dead after picking up the offenders who pretended to be hitchhiking.

Redetermination: Granted on 15/10/1991, Wood J – minimum term of 20 years from 30/8/73 to 29/8/93 with an additional term of life.

Parole: Released to parole on 1/5/1997 (and deported).

5. Lewthwaite, John

Date of offence/s: 26/6/1974.

Date of sentence: 11/12/1974, Slattery J.

Facts: Lewthwaite aged 18, broke into a house to rape a young boy he believed was there. A 5 year old girl woke up and he furiously stabbed her thirteen times to death. The judge said, "I have the utmost concern as to whether you should ever be released from gaol...considerations of this nature do not become my lot".

Redetermination: Granted on 31/7/1992, Slattery J – minimum term of 20 years from 26/6/74 to 25/6/94 with an additional term of life.

Parole: Released to parole on 21/6/1999 (there is no record in NSW of him returning to custody).

6. Johnstone, Kenneth

Date of offence/s: 1/11/1974

Date of sentence: 2/6/1975, Nagle J.

Facts: Johnstone aged 37, killed and sexually assaulted a thirteen-year-old girl. He had formed a relationship with the girl and on the night of her death, he met her by pre-arrangement outside a skating rink. Her body was found two days later in a shallow grave, naked but for socks with severe tearing injury to the vagina. Cause of death was asphyxiation due to strangulation.

Redetermination: Granted on 20/12/1991, Badgery-Parker J – minimum term of 19 years from 6/11/74 to 5/11/93 with an additional term of life.

Parole: Parole has been refused (he will be considered again on 22/1/04).

7. Lyttle, Reginald

Date of offence/s: 15 died in a fire on 5/12/1975.

Date of sentence: 25/11/1976, Begg J.

Facts: Lyttle, aged 24, started a fire at the Savoy Hotel, Kings Cross, in which 15 people died. He was charged with murder in relation to 4 of the deaths.

Redetermination: Granted on 6/3/1996, Newman J – minimum term of 28 yrs from 14/276 to 13/2/04 with an additional term of life.

Parole: Parole has been refused (he will be considered again on 14/2/04)

8. Conlon, Shirley

Date of offence/s: 13/6/1978.

Date of sentence: 8/12/1978, Slattery J.

Facts: Conlon, aged 22, with the intention of robbing the Housing Commission rent collector, shot him in the stomach, then tied him up and several hours later killed him by shooting him in the head. The judge, in what arguably is a non-release recommendation, commented that Conlon should not ever hold out any expectation for release and maybe she should be one of those persons who will spend the whole of her life in gaol but added, "any recommendation I made would be of little value, because undoubtedly your case will be looked at from time to time".

Redetermination: Granted on 24/4/1992, Slattery J – 27 years comprising a minimum term of 15 yrs from 15/6/78 to 14/6/93 with an additional term of 12 years from 15/6/93 to 14/6/05.

Parole: Released to parole on 15/6/1993 (there is no record in NSW of her returning to custody).

9. Cribb, John

Date of offences: 3 killings on 11/8/1978.

Date of sentence: 22/5/1979, Roden J.

Facts: Cribb, aged 28, kidnapped a mother and her children aged 10 and 4 in her car. He raped the mother and then stabbed them all to death and put bodies in boot of the car where they were found by tow truck operators. The judge said, "I regard it as no part of my function to seek to express the horror and revulsion that is felt in the community when offences of this nature are committed".

Redetermination: Declined on 12/11/1993, Newman J.

Parole: Does not have a parole date. He has a second redetermination application pending.

10. Schneidas, Peter

Date of offence/s: 10/8/1979.

Date of sentence: 8/4/1980, Slattery J.

Facts: Schneidas had been committed to prison in 1977 for 3 years in respect of a series of false pretences. Whilst in custody he attacked a prison officer and a cumulative sentence of 10 years with a non-parole period of 6 years and 6 months was imposed in 1978. On 10/8/79 he attacked another prison officer and killed him. Schneidas attacked the officer from behind striking him

nine blows with a hammer, shattering his skull. The Judge said, "…prisoners who murder prison officers and police officers in the execution of their official duties should not expect to ever return to live in the community…what happens in your case in the future is a matter entirely for the Executive Government".

Redetermination: Granted on 16/12/1993, Grove J - minimum term of 15 years from 8/4/80 to 7/4/95 with an additional term of life.

Parole: Released to parole on 22/3/1997 (there is no record of him returning to custody, but he died within two years of his release).

11. Rees, Berwyn

Date of offence/s: 3 killings on 4/8/1977 and 24/11/1980.

Date of sentence: 13/4/1981, Begg J.

Facts: On 4/8/77, Rees aged 28, robbed a gun and sports store at Bondi Junction, he directed the manager and a customer to lie face down on the floor and shot them in the back of the head and then stole some guns and ammunition. On 24/11/80 police were called to investigate sounds of gunfire in a remote bush area. As a police officer approached, Rees shot him dead. Other police arrived and Rees wounded one in the stomach but was disarmed by the others.

Redetermination: Granted on 12/8/1993, Smart J – minimum term of 18 years for the 1977 killings from 24/11/80 to 23/11/98 and a minimum term of 27 years for the 1980 killing from 24/11/80 to 23/11/07 with additional terms of life.

Parole: Not eligible for parole until 24/11/2007.

12. McWaters, William

Date of offence/s: 2 killings on 8/12/1980 and wound police officer with intent to murder.

Date of sentence: 9/7/1981.

Facts: McWaters, aged 44, had a history of animosity to his neighbours. He shot dead the husband on the lawn and the wife inside the house while on the phone to police. He then shot in the head a police officer who arrived.

Redetermination: Granted on 19/10/1992, McInerney J – minimum term of 13 years from 8/12/80 to 7/12/93 with an additional term of life.

Parole: Released to parole on 13/12/1996 (there is no record in NSW of him returning to custody).

13. Hitchins, Terry

Date of offence/s: 2 killings on 9/6/1981 and 13/7/1981.

Date of sentence: 23/9/1982, Slattery J.

Facts: Hitchins was aged 16. On 29/6/81, along with a co-offender robbed a taxi driver and Hitchins stabbed him to death. On 13/7/81, with another co-offender robbed a second taxi driver and Hitchins killed him by placing him in the boot bound and then set fire to the car. The judge referred to the practice of release on licence after ten years and said, "...serious consideration should be given to the prisoner Hitchins spending the rest of his time in gaol..."

Redetermination: Granted on 3/6/1993 – minimum term of 24 years from 15/7/81 to 14/7/05 with additional term of life.

Parole: Not eligible for parole until 15/7/05.

14. Luckman, Paul (now Nicole Pearce) & 15. Reid, Robin

Date of offence/s: 4/5/1982.

Date of sentence: 2/12/1982, Roden J.

Facts: Luckman, aged 17, and Reid aged 34, picked up two 13 year old boy hitchhikers with a plan to torture and kill. This plan was carried out with one of the boys being tormented over some hours including being stabbed 15 times and buried while still alive. The other boy was released. The judge described the case as "one of the most brutal and callous crimes ever to come before a Court in this State".

Redetermination: Luckman was granted on 20/10/1993, Bruce James J – 24 years comprising a minimum term of 16 years from 6/5/82 to 5/5/98 with an additional term of 8 years from 6/5/98 to 5/5/03. Reid was granted on 26/11/98, Bruce James J – minimum term of 24 years from 6/5/82 to 5/5/06 with an additional term of life.

Parole: Luckman was released to parole on 26/10/1999 (there is no record in NSW of her returning to custody). Reid is not eligible until 6/5/06.

16. Boyd, Samuel

Date of offence/s: 4 killings on 13/9/1982 and 22/4/1983 and wound with intent to murder.

Date of sentence: 4/1/1985, O'Brien.

Facts: Boyd, aged 26, killed first victim when he did a job at her house as a pest controller. Second victim (a male) killed early hours of 22/4/83 after they left a hotel together. Third and fourth victims killed later in the day when he held them hostage at Glenfield Park Special School 22/4/83. The fifth victim was also a hostage at the school, but not killed, and the offence was wound with intent to murder.

Redetermination: Declined on 7/7/1994, Carruthers J.

Parole: Does not have a parole date. He has a second redetermination application pending.

17. Croyston, David & 18. Graham, Kenneth

Date of offence/s:	31/7/1983.
Date of sentence:	28/11/1983, Lee J.
Facts:	Croyston aged 26 and Graham aged 28, picked up two 15 year old girl hitchhikers whom they repeatedly raped vaginally and anally. One of the girls was killed by asphyxiation and raped after she died. The other girl managed to escape. The judge said, "...your hearts and minds that night were the hearts and minds of beasts…the murder can only be described as an outrage…There is not one single mitigating circumstance that can be advanced".
Redetermination:	Croyston was granted on 9/3/1994, Smart J – 28 years comprising a minimum term of 19 years from 1/8/83 to 31/7/02 and an additional term of 9 years from 1/8/02 to 31/7/11. Graham was granted on 24/10/1995, Smart J – 25 years comprising a minimum term of 17 yrs 6 mths from 1/8/83 to 31/1/01 and an additional term of 7 yrs 6 mths from 1/2/01 to 31/7/08.
Parole:	Both have been refused parole

19. Glen, David

Date of offence/s:	10/10/1985.
Date of sentence:	22/12/1986, Wood J.
Facts:	Glen aged 19, met his 10 year old cousin one morning when she was on her way to school and invited her back to his unit. There he tied her up and repeatedly sexually assaulted her. She was strung up to a rail in a wardrobe with a belt tied around her neck and left there to die by asphyxiation. The Judge described the offence as "vicious and sadistic…not a single factor has been advanced to mitigate against the appalling circumstances of this hideous killing…the prisoner has shown not a shred of remorse…(the sentence will) require very careful consideration by the authorities in relation to his future custody and in particular as to whether he should be, at any time in the future, returned back to the community..."
Redetermination:	Declined on 1/10/1999, Wood J.
Parole:	Does not have a parole date. He has a second redetermination application pending.

20. Clarke, Rodney

Date of offence/s:	15/7/1987
Date of sentence:	15/9/1988, Cole J.
Facts:	Clarke, aged 21, broke into a neighbour's house at night. When a 9 year old girl woke up, he grabbed her and then proceeded to rape her vaginally and anally and killed her by suffocation with a pillow.
Redetermination:	Declined on 15/12/1999, Newman J. Granted on 4/5/05, Hidden J – Life sentence confirmed but non-parole period set of 28 yrs from 22/7/87 to 21/7/15 after taking into account that since first application was declined, he completed a 10 month long intensive sex offenders programme.
Parole:	Not eligible for parole until 21/7/15.

21. Potter, Anthony

Date of offence/s:	2/10/1987
Date of sentence:	14/10/1988, Hunt J.
Facts:	Potter was released to parole on 1/12/86 in respect of a 12 year sentence imposed on 5/8/83 for four charges of sexual intercourse without consent, which offences, also occurred while on parole. On 2/10/87, aged 26, he abducted and killed his victim. He was also charged with abduction, administer stupefying drug and sexual intercourse without consent in relation to a second victim. He was sentenced to life for the murder to commence on 28/10/94 the expiry date of the balance of his previous parole. In relation to the other matters he received fixed terms totalling 20 years which, with remissions expired on 30/4/03.
Redetermination:	He has lodged an application for redetermination of the life sentence but it has not yet been heard.
Parole:	Does not have a parole date.

The Hon. PETER BREEN: I thank the House for its indulgence in allowing me to speak for such an extended period. Previously the longest I had spoken on a matter was about 15 minutes, and I underestimated how long my speech would take. I apologise to the House.

The Hon. Dr PETER WONG [1.15 a.m.]: Tonight is indeed a sad night, for it is the night that this House will pass a bill that purports to be a judgment upon one of our fellow citizens. In reality, however, it is a judgment upon all of us. The House is debating the Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill. Bronson Blessington committed a heinous crime at the age of 14 that justifiably shocked, and continues to shock, our society, despite the fact that we have been told that at that time Blessington had a mental age of 9 or 10. While I totally condemn the crime he committed, and I have great sympathy for the sorrow and pain experienced by the family of Janine Balding, I cannot but notice that by all accounts Blessington has matured and transformed, being a Christian or otherwise.

Blessington has served a considerable amount of time, and he now deserves to have his sentence redetermined by a judge. The system previously allowed for this. It allowed a fellow officer of the sentencing judge to weigh up the facts about a case to see whether a prisoner should be released or serve a longer sentence. While perhaps all of us believe that Blessington deserves everything he gets, tonight we say that he should be punished more than the present law allows. While I am totally disgusted by his actions as a child, as a Christian I have been taught that forgiveness and giving someone another chance is not a right that I can accept or deny but a command from Christ himself. Justice and mercy must go hand in hand. As a legislator who believes in social justice, I cannot but do otherwise.

I feel saddened even more tonight that among the many who are here, including me, we are left with few members who will plead for mercy and justice. One of those members is an atheist, the Hon. Dr Arthur Chesterfield-Evans, who quoted from the *Bible* as though to seek help from a higher court, while the other is a failed seminarian, the Hon. Peter Breen. Against the odds, both have valiantly tried to change our minds and divert us from passing this draconian law. I should suppose that the speeches of the Hon. Dr Arthur Chesterfield-Evans and the Hon. Peter Breen will not be successful, but I hope that our future leaders and the next generation will reflect upon what we have done tonight. In particular, I hope they reflect upon how we have used a political power and abused our legislative authority to change the rule of law, simply to appease popular opinion and media commentary. May God forgive us for what we have done tonight. In the words of Jesus on the cross, "Father, forgive them for they do not know what they have done." May we all sleep well tonight.

Ms LEE RHIANNON [1.17 a.m.]: The Greens do not support the Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill. It would not solve anything, and it will not make things any better. It provides no hope for the families of victims, it does not rehabilitate serious criminal offenders, and it does not make our society safer. The Greens do not believe that laws should target individuals; it is unnecessary. The bill usurps the role of the courts to arbitrate and decide complicated and contentious issues. I congratulate the Hon. Peter Breen on his thorough work, his comments and his analysis. The honourable member has made a huge contribution, and I believe it could go a long way to helping overturn the legislation.

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [1.19 a.m.], in reply: I thank honourable members for their contributions to this debate. The Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Bill puts beyond doubt that the provisions of the Crimes (Sentencing Procedure) Act 1999, as now in force, apply to all inmates in respect of whom a judge has made a recommendation that they should never be released. The provisions will apply regardless of when the inmates applied for sentence redetermination.

The truth in sentencing legislation put in place by the Coalition when it was in government in 1989 gave those who had been the subject of "never to be released" recommendations the right to seek a minimum term and specified term after eight years and to seek ultimate release. Because that legislation did not deal properly with the issue of these particular life sentences that were then indeterminate, the Government has enacted a scheme to deal properly with offenders who are the subject of a non-release recommendation. The scheme, which the Government put in place through several pieces of earlier legislation, is as follows. Offenders subject to non-release recommendations will not be eligible to have their sentences redetermined until they have served at least 30 years. If a non-parole period is fixed on a redetermination, the offender may not receive a fixed term. When a non-parole period is fixed on a redetermination, parole cannot be granted except when the offender is in imminent danger of dying, or is incapacitated to the extent that he or she no longer has the physical ability to do harm to any person, and has demonstrated that he or she does not pose a risk to the community.

The proposed amendments are a more desirable course to follow than appealing the decision of Justice Dunford. Justice Dunford effectively held that the increased eligibility period of 20 years in the 1997 legislation was not applicable to Mr Blessington's 1996 application because the provision in the 1997 transitional legislation set out above did not state specifically that earlier applications were nullities or that the 20-year period applied to any application, whenever made. Because the application was pending litigation it could be affected, in the view of Justice Dunford, only by clear and express words in the legislation. The Solicitor General has advised that there are good arguments that the 1997 transitional legislation applies and that there would be some prospects of a successful appeal of Justice Dunford's decision. Since the Government is not sure that an appeal would be successful, the best means of ensuring that the scheme applies uniformly to all "never to be released" recommendation offenders is this legislative amendment. It spares the victims' family the pain and uncertainty of waiting for an appeal to be determined. I commend the bill to the House.

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

The House divided.

Ayes, 29

Mr Catanzariti	Mr Gay	Ms Parker
Mr Clarke	Ms Griffin	Mr Pearce
Mr Colless	Mr Jenkins	Mr Ryan
Mr Costa	Mr Kelly	Ms Tebbutt
Ms Cusack	Mr Lynn	Mr Tingle
Mr Della Bosca	Mr Macdonald	Mr Tsang
Mr Donnelly	Reverend Dr Moyes	Mr West
Ms Fazio	Reverend Nile	*Tellers,*
Mrs Forsythe	Mr Obeid	Mr Harwin
Mr Gallacher	Mr Oldfield	Mr Primrose

Noes, 6

Mr Breen
Mr Cohen
Ms Rhiannon
Dr Wong
Tellers,
Dr Chesterfield-Evans
Ms Hale

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time and passed through remaining stages.

ADJOURNMENT

The Hon. TONY KELLY (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [1.30 a.m.]: I move:

That this House do now adjourn.

GOLDBRIDGE CLOTHING COMPANY PTY LTD, BEXLEY, AND TEXTILE, CLOTHING AND FOOTWEAR UNION

The Hon. Dr PETER WONG [1.30 a.m.]: Tonight my adjournment speech is entitled "Union Stitched Me Up". Tonight I wish to speak about Goldbridge Clothing Company Pty Ltd and its treatment by the Textile, Clothing and Footwear Union of Australia [TCFUA]. By way of illustration, I will refer to the example of Mr and Mrs "C", who strongly believe that they have been stitched up by the union. Mr and Mrs "C" migrated to Australia in mid-1980 and have not received a single day of government benefit. Mr "C" is now self-retired but had previously worked for many years in the shipping industry as a manager. He was an active and proud union member in Hong Kong and believed that the union was indispensable. He said that in Hong Kong everyone was a union member, without exception. When I asked why, he replied, "Because you had a win-win-win situation for everyone, the employee, the employer and the union". However, he expressed complete amazement at the lose-lose-lose mentality of the TCFUA.

Mr "C" is angry at the union's outrageous allegations, namely, that his wife was enslaved and earning between $1 and $4 an hour. He explained that any young child could quickly calculate that if his wife, with two children, had decided to stay at home, she would earn much more in government benefits than what the union claims she presently earns. As for bars on the doors and windows that the union expressed fears about, his understanding was that there had been many robberies in the area, and, in fact, most of his neighbours had identical security precautions in place.

During the course of an interview, Mr "C" told me about a Chinese proverb that states, "A bad person is a person who harms others to benefit himself or herself." He asks, "What silly person would harm others and not

benefit himself or herself?" He added, "I have never seen such a ridiculous situation in which a union would seek to harm others and themselves at the same time." I have in my possession written statements from three Asian women embroiled in this incident. All three of these women reject all allegations made by the union.

Furthermore, they have stated that they all earn above award wages, they are all Australian citizens, they all pay their taxes and they do not receive any government benefits. In addition, all three women have their own Australian business numbers, and it is here that the whole confusion arises. Mrs "C", like the others, is a subcontractor and believed she was self-employed. This is not the case, however, and all those who work in the workshop of Goldbridge are deemed to be employees under a clause in the Industrial Relations Act 1996 that applies only to textile workers. Even today, many lawyers and accountants are unaware of this clause in the Act.

Mrs "C" explained to me that she had enjoyed working with others at Goldbridge for the past two years because it offered flexible working hours, the occasional trip to Yum Cha and shopping with other workers, an airconditioned workshop with Chinese television programs and the ability to go on holidays whenever it suited her family. Her working agreement with Mr Tan and Mrs Deng was for her to be paid on working pieces. On that basis she earned approximately $15 an hour, as stated in her written statement, which is much more than the outrageous claims made by the TCFUA. Since the raid on Goldbridge by the TCFUA she had stopped working and has only started again recently. Her new workplace is about 20 minutes drive from home, with fixed and regular hours of work. She earns a similar amount of money and is under pressure to produce, with minimal conversation available. She has no free time and her husband must drive her to work, causing further unnecessary expenses for her family.

Once happy in her previous work, she is now compelled by the union to endure a less friendly and more regimental atmosphere in her new and unionised workplace. This is not an attempt to chastise or lecture the unions; it is merely an attempt to highlight a number of deficiencies within an organisation that has the aspiration to protect the interests of workers. There is an undeniable fact that the union movement, including the TCFUA, has, in the past, provided for better working and pay conditions for its members. I appreciate the difficulty that the TCFUA has had in an increasingly globalised, very competitive and otherwise difficult working environment, which has unfortunately seen many closures within this industry while other businesses have moved offshore, leaving the TCFUA in a losing fight for its own survival.

The recent militaristic approach by the New South Wales branch of the TCFUA in the case of Goldbridge is a reflection of what has happened, and warrants closer scrutiny. As a final means of survival, the TCFUA has resorted to targeting individual workers and small business owners, intimidating and threatening such persons and then offering them a compromise deal of unionisation. Their actions have become more desperate in the face of intervention and new legislation from the Federal Government. It is undeniable that we should uphold the rights of workers for decent wages. I am also of the opinion that many workers within the clothing industry are being exploited and paid below award wages, and that others are receiving government benefits to offset their lowly paid and tax-free wages.

The citizens of New South Wales can be assured that I will not stand for biased and unsubstantiated allegations by the TCFUA that continue to target a particular ethnic group, namely, the Asian community. At the same time I will not stand by and allow vulnerable workers to be exploited by any employer and fully support the union's legitimate right to protect the interests of workers in situations where the exploitation of a worker is shown to have occurred and can be substantiated. But when the union uses powers given to it to take untested so-called "evidence" to the media for the purpose of boosting its membership, it is not only treating the Asian community with contempt, it is also treating the Industrial Relations Commission with contempt.

BROKEN DAM BRIDGE OPENING

The Hon. TONY CATANZARITI [1.35 a.m.]: I refer to the opening of an excellent new bridge in Ariah Park, which is located in the Temora shire in south-western New South Wales. Recently I had the pleasure of representing the Minister for Roads, the Hon. Michael Costa, at the opening ceremony of the Broken Dam Bridge, which was held in conjunction with the official launch of Mary Gilmore Way, a new heritage drive. It was a big event for the local community of Ariah Park, and many people attended. The crowd of notable attendees included Mayor Nigel Judd of Temora shire, Mayor Maurice Simpson of Weddin shire, Mayor David Bolte of Bland shire, Councillor Robert Menzies of Coolamon shire, and Bills Spears, the museum curator for the area.

Council staff worked hard not only on the roadworks and the construction of the bridge but also on making the launch of the bridge a great success. I thank the Hon. Ian Armstrong, the honourable member for

Lachlan in the other place, not only for his attendance but for his assistance and kind words on the day. I have a great deal of respect for Mr Armstrong, and I thank him very much for his help and for the help of his office. It was a great honour to help the Temora community celebrate the opening of this bridge and to pay tribute to council's work on the project.

Building and maintaining roads in rural and regional areas is a vital role of the Government. Building roads helps keep communities connected and, among other benefits, roads provide reliable routes to markets for rural industries. The bridge was constructed under the State Government's REPAIR funding program, which provides funding on a 50:50 basis to help councils with regional road infrastructure. The program contributed $185,000 to this important project. Since it has opened, the new bridge has already provided benefits to all road users, including the region's farming community and freight transporters. The benefits of the new bridge were obvious during the wheat season, when the bridge experienced its fair share of heavy vehicle traffic.

The new bridge replaced the original timber structure, which was built in 1933. The name of the bridge came from our colonial history. The area got its name back when the early pioneers in that part of New South Wales attempted many times, unsuccessfully, to dam the Mirool Creek, a meandering creek which runs across the State before ending up in Griffith, when and if it rains. Eventually they just built a bridge, which is a great example of original Australian history. I am pleased that the new bridge will span the Mirool Creek for a long time. I must certainly pass along my congratulations to those men and women who built this bridge and also to those who managed the traffic while the construction was occurring. It probably was not an easy task. It would probably have been more dangerous if not for the dedicated work of New South Wales road safety officers, an initiative funded jointly by the State Government and local councils.

In relation to that initiative I am pleased to say that both Temora and Bland shire councils have road safety officers. The officers, Bruce Barrett at Temora and Emily Hartley at Coolamon, work on road safety awareness projects throughout the region, including campaigns on speeding, fatigue on the Newell Highway and pedestrian safety. Their work, and that of everyone involved in the construction of this new bridge, is a credit to the local community. I am pleased to speak about the new bridge in Temora shire and to be able to report that I was at an event hosted so ably by the town of Ariah Park. I am particularly pleased to announce that the Broken Dam Bridge and Mary Gilmore Way are now officially open. Honourable members should think of them the next time they are travelling south.

PORT STEPHENS INFRASTRUCTURE

The Hon. ROBYN PARKER [1.40 a.m.]: Port Stephens is a massive growth area and it is not unreasonable to want and to expect that vital facilities grow along with the area. Yet Port Stephens schools, medical and law enforcement facilities remain neglected by the Carr Government. Over the past 12 months the Nelson Bay Polyclinic has been campaigning within the community to raise $120,000 for airconditioning. There is something about the Carr Government and airconditioning. We have heard countless stories of schools not only in Port Stephens and the Hunter fundraising for airconditioners, but schools across the entire State, and now hospitals are doing the same thing. The polyclinic has been without airconditioning apart from the emergency department since in opened in 1988. Indeed, the polyclinic is just one of 37 hospitals in the Hunter New England Area Health Service that are not fully airconditioned and one of the 87 hospitals in New South Wales that are not fully airconditioned. I congratulate the Port Stephens community for their fundraising efforts.

The Government's reluctance to provide airconditioning in some of the worst affected schools in New South Wales was the focus of the visit by shadow education minister, Jillian Skinner, and me to yet another school in Port Stephens, Grahamstown Primary School. At Grahamstown Primary last month, the lack of airconditioning resulted in students and parents boycotting the school in protest. On 20 March, only 20 of the school's 376 students attended classes. The rest stayed home in protest. Grahamstown school has the unique problem of aircraft noise from the nearby RAAF base. Double-glazed windows were installed by the Federal Government to insulate against the noise, but classroom temperatures reached 40 degrees over the summer so windows had to be opened. On 30 November last year the temperature in one classroom temperature reached 41.6 degrees.

So we have children in sweltering classrooms, with classes interrupted when aircraft fly overhead—not very conducive to learning. And it is not conducive to teaching either, with two teachers calling in sick on 1 December last year after working in classrooms with an average temperature of 36 degrees. Finally, the Government has agreed to aircondition 10 permanent classrooms, with work to be completed before the start of next summer. So all it took was parents and students to boycott the school, teachers threatening to boycott the

school, a petition by 80 per cent of the school's parents, years of disrupted learning, students unable to concentrate on learning and teachers unable to teach. Throw in the obligatory passing of the buck to the Federal Government and you have standard operating procedure for the Carr Government.

Three weeks ago shadow Attorney General Andrew Tink and I made another visit to the very neglected courthouse in Raymond Terrace. I have spoken about Raymond Terrace police station several times in this place and the poor facilities in which Raymond Terrace police work every day. I reiterate the comments made by Andrew Tink on his visit in which he indicated that an upgrade of Raymond Terrace police station and courthouse would be an election issue for the Coalition. He said:

> … it's the 21st Century and we've got 19th Century law enforcement facilities.

I eagerly await the State budget to see whether the $2.6 million in funding that was originally allocated for an upgrade of Raymond Terrace police station in 1996 finds it way back into capital works spending, although it seems that the Government believes it has sufficiently upgraded the police station. In answering a question on notice last year, former Treasurer Michael Egan said that the station had been "substantially upgraded over the past decade". I can only assume that Mr Egan was referring to the changes made to the station required after shots were fired at the building! Does that sound like substantial upgrading? I would consider that to be necessary upgrading, but in no way is it substantial.

In May of 2003 Corrective Services officers imposed a ban on taking inmates to the Raymond Terrace court because conditions were too dangerous. This ban came after the Industrial Relations Commission ruled that the facilities were inadequate and unsafe. Shortly after that, when the courthouse was threatened with closure, the Government reluctantly committed funds to the upgrading of police cells at Raymond Terrace—and no sooner. That, of course, came after the police, the law fraternity, the public and I embarked on an exhaustive campaign to keep the cells operating following their threatened closure. There is the standard operating procedure again: protests, petitions, years of inadequate facilities and a threatened closure before anything is done by the Carr Government.

But the police station still needs to be bigger and the courthouse still needs its security and interview facilities reviewed. Raymond Terrace solicitors have raised concerns about the fact you can be overheard in interview rooms, which has a major impact on confidentiality. Local solicitors have expressed concern for potentially dangerous occurrences in one waiting area outside the courthouse. Do the people of Port Stephens need to keep protesting, boycotting, petitioning and fundraising before the Carr State Government and their State member step up? It seems they do.

AUSTRALIAN WAR VALOUR

The Hon. DAVID OLDFIELD [1.44 a.m.]: In the weeks leading up to Anzac Day all decent Australians were horrified by the tragic Sea King helicopter crash that claimed nine Australian lives. The ensuing debate over heroism, bravery, sacrifice and the awarding of medals caused me to refresh my memory of the consequences of actions undertaken by Australians at war. Without question, the recipients of the Victoria Cross symbolise the most outstanding acts of bravery in wartime. One example is Corporal John French VC, who, in the battle for Milne Bay, single-handedly silenced three heavily supported Japanese machine-gun posts successively. Corporal French, armed only with hand grenades and a Thompson sub-machine gun, which he fired from the hip as he advanced into withering fire, was integral in bringing about the complete collapse of Japanese resistance—a feat that cost him his life.

Many today often misuse the term "hero". At least for a time in history heroism was related to deeds of great bravery and conspicuous acts of gallantry such as those of John French and so many of his mates. Unfortunately many Australians now use the term "hero" to describe sporting prowess. This is wrong. We should be proud of the significant deeds of our great sportsmen and women; they perform with immense skill, but they do not perform acts of bravery. They are sporting greats, not fighting heroes. With "sacrifice" I am reminded of a story originally told to me by my father. His squadron was divided between three islands in an attempt to stem the massive movement of Japanese troops towards Australia in early 1942. Dad was the last man on the last plane to escape Timor before the Japanese took the island.

Dad's best friend, Isaac Read, stationed on Ambon, was scheduled for the last plane from Ambon's airstrip at Laha, but that aircraft did not get off the ground. Ike, as my father knew him, with fellow crew members, including Flight Lieutenant Bill White DFC, evaded the multitude of Japanese swarming across the island and attempted to make their way by boat to the island of Ceram to rendezvous with another aircraft. They

were intercepted by a Japanese patrol boat and returned to Laha, where they were to suffer a fate little known to most Australians. Some 300 Australians were captured at Laha; all were beheaded by the Japanese and buried in mass graves which were discovered at the end of the war. My father learned of his best friend's murder when he was captured by the Japanese in the final months of the war.

The defenders of Laha airfield paid a terrible price, and while there have been many sacrifices in all the wars Australia has fought, few if any would surpass the butchery of the 300 tortured and helpless Australian survivors of Laha. I raise these matters because, while the loss of just one good person is a tragedy that should be felt by us all, far too many Australians are not aware of how much suffering has been endured by those who fought to keep Australia free. Far too many Australians do not know about John French, Diver Derek or Percy Cherry, whose feats of bravery were so extraordinary he was awarded the Victoria Cross and the Military Cross for separate acts performed on the same day. Far too many Australians do not know about Laha, the triumphs of the independent commando companies on Timor or the tragedies of Rabaul.

These men and others like them share a place in history, along with even more of our fellow Australians who have no awards, often no known grave and whose existence only continues because of our commitment to remember them. In theory we commemorate such deeds of valour and terrible sacrifice on Anzac Day and Remembrance Day, and maybe even on anniversaries for such battles as occurred at Long Tan, but the men and women who fought for Australia's freedom did so for 365 days a year over many years. Every one of those days marks a date in the annals of our country's sacrifice and we cannot strive too much to acquaint ourselves and others with what should be known by us all and never forgotten by anyone.

HI-TECH CRIME

NRMA MANAGEMENT

The Hon. AMANDA FAZIO [1.49 a.m.]: Everyone in the community should be concerned about the burgeoning rate of hi-tech crime. It is pleasing to note that the Australian Institute of Criminology has a dedicated Australian hi-tech crime centre. Everyone makes jokes about spam emails in which you are asked to provide $100,000 to help a princess from Uganda—pick any African country—who has been left a mega fortune but needs just a little assistance to pay the banking fees to access it. Most people delete those emails and think that you have to be crazy to fall for them, but, unfortunately, some people do.

The Hon. Henry Tsang: I got an email saying that.

The Hon. AMANDA FAZIO: I hope he deleted it. People with a criminal bent turn their minds to working ever more ingenious ways to rip people off through such email campaigns, by hacking into computers or by setting up bogus web pages that mirror exactly your bank's web page. It takes a lot of resources to keep on top of this problem and, like a lot of other areas, technology is outstripping the ability to regulate and control what is happening. We must ensure that everyone who uses computers regularly is aware of identity theft, credit card fraud, banking fraud and a whole range of other issues. Parliament House has a very good security system. In the last 24 hours most honourable members would have received lots of emails saying "virus deleted". If people use their home computers for Internet banking and they do not keep their computers up to date they are at risk of one of those viruses infecting their computers, which enables others to watch every transaction, and access their bank account numbers, sign-on names and passwords.

It is important to be aware of trends in high-tech fraud to ensure that whatever mechanisms can be put in place at the regulatory level are put in place. It is a very difficult area to police. There are no boundaries on the Internet. There are no national or international boundaries. There is no limit to the ingenious ways people will try to work out to commit fraud in this manner. I recommend that people who have an interest in this area look at the Australian Institute of Criminology "Trends & Issues in crime and criminal justice" discussion paper No. 285 issued in October last year, which gives probably the best overview that I have seen to date of developments in dealing with transnational hi-tech crime and the impediments to tackling the problem.

I now refer to the ongoing woes of the NRMA. Like many people, as soon as I got my first car and a drivers licence I joined the NRMA just on the off chance that I had a flat battery, a flat tyre, ran out of petrol or a whole lot of other things for which I deigned not to soil my hands by opening the bonnet and fiddling around. I assumed that as it was a mutual organisation that would chug along, you pay your fees and everything would be fine. We have seen the dreadful damage factional brawling wreaked on the NRMA prior to its demutualisation. More recently we saw a takeover by a group that promised to be a more successful and highly professional

business group. They installed Ross Turnbull as the President of the NRMA, who did so well and brought such bad business expertise that he has been declared bankrupt and thrown off the board.

The Hon. Rick Colless: He offered $5,000 to PETA.

The Hon. AMANDA FAZIO: He offered $5,000 to PETA. As far as I am concerned, good riddance to a crazy person. But I am concerned that the headhunters the NRMA have replaced him with is somebody who I consider to be yet another failed businessman, Gary Punch. I have great concern for the ongoing welfare of the NRMA.

BRIGALOW BELT SOUTH BIOREGION

The Hon. RICK COLLESS [1.54 a.m.]: Tonight I expand on the disastrous decision to remove 348,000 hectares from harvestable forests in the Brigalow Belt South Bioregion announced by this tired, old and obviously incompetent Government yesterday. To suggest that it is a win for conservation and a win for jobs is nonsense, and one has only to look at the history of events on the North Coast of New South Wales to see history repeating itself in this region. The timber and apiary industries in the Brigalow are valued at about $50 million per year, and the Premier has committed $80 million over five years as compensation for what he is doing to the area. There is no indication of what will happen after that.

The realities of the issues are that cypress pine in the Pilliga forests grows at the rate of 0.28 to 0.35 cubic metres per hectare per year. Up until yesterday 70,000 cubic metres of cypress pine were harvested annually off 470,000 hectares of forest—a harvest rate of about 0.15 cubic metres per hectare per year. As the harvest rate was less than the growth rate, the forests of the Pilliga were growing in quantity and quality. From today 57,000 cubic metres of cypress pine will be harvested off 122,000 hectares—that is, 470,000 less the 348,000 that were declared yesterday as national parks—a harvest rate of 0.46 cubic metres per hectare per year. As the harvest rate will now be higher than the growth rate, the forest will be in decline. It will be overcut and will not regenerate sufficient timber to continue to provide millable timber to the industry.

Practising foresters in the region are really worried, as they can see the writing on the wall. They know there will not be sufficient timber in the system to meet the ongoing needs of the timber industry. This is supported by a case study from the North Coast, where a mill in Casino was promised a 20-year timber guarantee if it installed high-tech gear such as kilns and veneering machinery. It did so at a subsidised cost of some millions of dollars only to be told after three years that the timber was no longer available from local compartments. This mill is now closed, and the proprietors battled for nearly three years to get compensation from the Government.

The biodiversity claims are also spurious. Again, the forestry people I spoke to this morning told me that there is a huge population of koalas in the Pilliga—something I have seen myself. It is estimated there are about 15,000 koalas in the Pilliga, and they tend to live in communities. These communities are mostly located in areas that will not be converted to national parks. This makes a farce of the biodiversity argument for declaring that 348,000 hectares as national parks. Obviously a cosy deal has been done with the Greens for voting preferences. As the Premier's media statements were distributed, a media statement from Mr Ian Cohen from the Greens, supporting the Government, was included in the package.

Aboriginal communities in the Pilliga have been sidelined. Their "Options for Development for Aboriginal Stakeholders" document was not considered in the final decision. If it was, this Government has done more for Aboriginal discrimination than the 10 generations since European settlement of Australia. In addition, the Government has also ignored the Brigalow Belt United Stakeholders Group contribution and the contribution by the Rt Hon. Ian Sinclair, whom it commissioned to progress this issue. In short, it has ignored all the advice it received, with the exception of the scientifically flawed nonsense it received from the environmental extremists. How can this result possibly be good for the environment or the communities of the Brigalow Belt South Bioregion?

Motion agreed to.

The House adjourned at 1.59 a.m., Friday 6 May 2005, until 11.00 a.m. on the same day.