

# LEGISLATIVE COUNCIL

Friday 6 May 2005

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

**The Clerk** offered the Prayers.

## SESSIONAL ORDERS

### Routine of Business

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

1. That from Tuesday 24 May 2005 and for the remainder of the present sittings until the adjournment of the House for the winter recess, and unless otherwise ordered, the following sessional orders will apply.
2. That these sessional orders have effect notwithstanding anything to the contrary in any existing standing or sessional orders.

#### [1] Sitting days

That this House meet for the despatch of business each sitting week as follows:

Monday	11.00 a.m.
Tuesday	2.00 p.m.
Wednesday	10.00 a.m.
Thursday	10.00 a.m.
Friday	10.00 a.m.

#### [2] Precedence of business

1. That, except for matters having precedence of all other business under the standing orders:
  - (a) Government Business take precedence on:
 

Monday and Friday  
 Tuesday after Questions until the dinner adjournment  
 Wednesday after General Business (Private Members' Business)  
 Thursday after Questions, and
  - (b) General Business (Private Members' Business) take precedence on:
 

Tuesday and Thursday until the time for Questions  
 Wednesday for one hour from the conclusion of formal business.
2. That debate on committee reports take precedence on Tuesday for one hour after the dinner adjournment.
3. That debate on the budget estimates take precedence on Tuesday for one hour after debate on committee reports concludes.
4. That, if there is no business or consideration of business is disposed of before the expiry of the time allocated under this sessional order, the House is to proceed to business determined by the Leader of the House.

#### [3] Motion for the adjournment

That, unless the House is sooner adjourned, proceedings be interrupted to permit a motion for the adjournment to be moved to terminate the sitting, if a minister thinks fit, at the following times:

Thursday at 6.30 p.m.  
 Friday at 4.00 p.m.

## GENERAL PURPOSE STANDING COMMITTEES

### Portfolio Responsibilities

#### Motion by the Hon. John Della Bosca agreed to:

That the resolution appointing five General Purpose Standing Committees reflecting Government Ministers' portfolio responsibilities adopted by this House on 3 July 2003, be amended to reflect the changes to Government Ministers' portfolio responsibilities as follows:

- (a) Committee No. 1
  - Premier
  - Arts
  - Citizenship
  - Education and Training
  - Treasury
  - State Development
  - Aboriginal Affairs
  - Special Minister of State
  - Commerce
  - Industrial Relations
  - The Legislature
- (b) Committee No. 2
  - Health
  - Community Services
  - Youth
  - Ageing
  - Disability Services
  - Tourism and Sport and Recreation
  - Women
  - Gaming and Racing
  - Central Coast
- (c) Committee No. 3
  - Police
  - Attorney General
  - Juvenile Justice
  - Western Sydney
  - Justice
  - Fair Trading
- (d) Committee No. 4
  - Infrastructure and Planning
  - Natural Resources
  - Roads
  - Economic Reform
  - Ports
  - Hunter
  - Housing
  - Transport
  - Energy and Utilities
  - Science and Medical Research
- (e) Committee No. 5
  - Environment
  - Rural Affairs
  - Local Government
  - Emergency Services
  - Lands
  - Regional Development
  - Illawarra
  - Small Business
  - Primary Industries
  - Mineral Resources.

## **BUSINESS OF THE HOUSE**

### **Suspension of Standing and Sessional Orders**

#### **Motion by the Hon. Catherine Cusack agreed to:**

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 148 outside the order of precedence relating to an order for papers concerning students absent from school on 20 and 21 December 2004 be called on forthwith.

### **Order of Business**

#### **Motion by the Hon. Catherine Cusack agreed to:**

That Private Members' Business item No. 148 outside the order of precedence be called on forthwith.

**SCHOOL STUDENT ABSENCES****Production of Documents: Order**

**The Hon. CATHERINE CUSACK** [11.07 a.m.]: I seek the leave of the House to amend the motion of which I have given notice by omitting paragraph 2.

**Leave granted.**

**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 passing of this resolution the following documents in the possession, custody or control of the Minister for Education and Training or the Department of Education and Training:

1. Any report or briefing notes prepared by the department relating to the number of students absent from school on 20 and 21 December 2004.
2. Any document which records or refers to the production of documents as a result of this order of the House.

**EXAMINATION OF BUDGET ESTIMATES****Financial Year 2005-06**

**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) [11.08 a.m.]: I move:

1. That the budget estimates and related papers for the financial year 2005-2006 presenting the amounts to be appropriated from the Consolidated Fund be referred to the general purpose standing committees for inquiry and report.
2. That the committees consider the budget estimates in accordance with the allocation of portfolios to the committees.
3. For the purposes of this inquiry any member of the House may attend a meeting of a committee in relation to the budget estimates and question witnesses, participate in the deliberations of the committee at such meeting and make a dissenting statement relating to the budget estimates, but may not vote or be counted for the purpose of any quorum.
4. The committees must hear evidence on the budget estimates in public.
5. Not more than two committees are to hear evidence on the budget estimates simultaneously.
6. When a committee hears evidence on the budget estimates, the Chair is to call on items of expenditure in the order decided on and declare the proposed expenditure open for examination.
7. The committees may ask for explanations from Ministers in the House, or officers of departments, statutory bodies or corporations, relating to the items of proposed expenditure.
8. The report of a committee on the budget estimates may propose the further consideration of any items.
9. That a daily Hansard record of the hearings of a committee on the budget estimates be published as soon as practicable after each day's proceedings.
10. That the Leader of the Government is to provide to each committee, by Friday 1 July 2005, a schedule outlining the attendance of relevant ministers to appear before each committee, for the committee's consideration.
11. The committees may hold supplementary hearings as required.
12. The committees present a final report to the House by the last sitting day of the second sitting week in 2006.

**The Hon. DON HARWIN** [11.09 a.m.]: As I have informed the Government and the crossbench, the Opposition seeks to amend the motion. Before moving the amendment I note that the motion reflects the changes that were agreed to by the House last year, and we thank the Government for incorporating them in the motion moved this year. We believe it will make the estimates process stronger. In that spirit the Opposition seeks the support of the House for a further amendment. I move:

That the question be amended by inserting after paragraph 10:

"11. A Committee must not meet to hear evidence on any day on which the House sits."

We believe that the estimates process would be improved by having estimates hearings on days other than sitting days. In the six years that I have been a member of this House, and for longer—I know it was the case

under the former Government—the Government sits the House to consider bills, hold question time and all of the usual things that the House does on a sitting day. The Government then adjourns the House some time between 4.00 p.m. and 5.00 p.m. and the estimates start at 5.00 p.m. and sometimes run until 10.30 p.m. That is the typical pattern for estimates hearings at which Ministers appear. However, general purpose standing committees are not limited to holding hearings on sitting days. The Opposition has moved an amendment to the motion so that estimates cannot sit at all on sitting days. The Opposition's amendment does not preclude deliberative meetings being held on sitting days, and that is important. Yesterday at least one member of the crossbench sought an assurance from me on that point. To enable deliberative meetings to be held on sitting days we have tightened the wording of our amendment.

My point is very simple: Honourable members are forced to prepare for estimates hearings with Ministers, one of the most important parts of the deliberation of a committee on the budget estimates, effectively at the same time as the House is sitting. That results in a double workload. Members have to prepare not only for the full legislative workload but also for the ministerial appearance. It is fair to say that obviously that approach tends to diminish the value of the budget estimates hearings and, in effect, leads to lesser scrutiny. By adopting that pattern of sitting we are placing a very large load on our staff and on the staff of the House. I know that it is their job to service our needs, of course, but we certainly have to consider their occupational health and safety in any decision we make about how estimates are held.

A compacted timetable for estimates hearings, which are held over five days and mostly limited to the evenings, does not allow enough time for examination of Ministers holding the major portfolios. Inevitably those Ministers are asked to return for further hearings. Therefore, it would be much more sensible to schedule a longer time for hearings of the major portfolios on a non-sitting day in the first instance. That scheduling is facilitated by our amendment to the motion. In discussion with a number of crossbench members I reminded them that all honourable members are able to attend budget estimates hearings. All members, within whatever rules the substantive members of the general purpose standing committee make in the allocation of time for questions, are able to ask questions of Ministers at the budget estimates hearings.

Not many members do that, simply because many estimates hearings are held simultaneously. That matter has been dealt with in the motion by limiting the number of hearings to be held simultaneously. However, the sheer speed and compactness of the timetable creates some difficulty. For example, often there is a deliberate scheduling of major portfolios simultaneously, and that presents another difficulty. It ought to be clear to members, particularly crossbench members who are the one representative of their political party, or even those of a political party of two or three, it is hard to spread one's resources over the whole gamut of portfolio responsibilities. The Opposition's amendment would facilitate that difficulty. I commend the amendment to the House.

**The Hon. GREG PEARCE** [11.14 a.m.]: I support the amendment to the motion moved by my colleague the Hon. Don Harwin. Estimates committees are a very important part of the role of this House of review. It is absolutely essential that that process take place in a manner which enables the members of the House, the Ministers and the public servants who are necessarily involved in the process, to be as efficient and effective as possible. This matter has been debated on a number of occasions in the past and, as usual, I am drawn back to the wise comments of Reverend the Hon. Fred Nile and other longstanding members of the House. I will reflect briefly on some of the comments of Reverend the Hon. Fred Nile, because I believe they will help other honourable members. On 7 May 1997 in debate on the establishment of general purpose standing committees, Reverend the Hon. Fred Nile outlined their importance. He said:

... the establishment of the committees will emphasise the importance of this House and expand its activities as a House of review in supervising the government of the day.

I agree with that comment; that is the purpose of estimates committees. He further said:

These committees will reinforce and strengthen this House.

Referring to the timetabling, he said:

The House will have the ability to control how often the committees sit and what they will do.

It is clearly a matter for the House to determine that scheduling. In an earlier debate on this same question, on 26 September 1991, the then Leader of the Opposition moved an amendment to the motion of the appointment of the estimates committees in almost exactly the same terms as that moved today by the Hon. Don Harwin to

ensure that the committees did not sit on House sitting days. In that debate I am again influenced by the sage words of Reverend the Hon. Fred Nile, who said:

Further, the committees should meet at a time when the House is not sitting ... The Government's proposal states specifically that the committees will have the power to sit during the sittings or any adjournment of the House ... That might interfere with the arrangements of country members. However, if they become aware today that sittings are scheduled for those days they will be able to adjust their schedules.

Reverend the Hon. Fred Nile made an important point when he said:

Public servants summoned to answer questions would also suffer from the time constraints and perhaps feel harassed.

He was referring to public servants attending estimates hearings at the same time as the House was sitting. During that debate the member who convinced me of the correct way to proceed—

**The Hon. John Della Bosca:** You weren't there.

**The Hon. GREG PEARCE:** I am reading from *Hansard*. On 26 September 1991, the member who moved the amendment that the estimates committees not sit on a day that the House was sitting was none other than the Hon. Michael Egan. In support of his amendment he said:

... we discover when we read the small print that the establishment of these committees is a complete and utter sham. There are two things that stand out. First, these five estimates committees are going to meet when the Parliament itself is sitting.

The Hon. Michael Egan went on to argue that that was certainly not the way to proceed, and I agree with what he said on 26 September 1991. I certainly respect the views of Reverend the Hon. Fred Nile, who has been a worthy participant in these debates since 1991.

**Ms SYLVIA HALE** [11.20 a.m.]: The Greens support the amendment moved by the Hon. Don Harwin. We believe that estimates committees perform a vital function. In many ways they are a direct conduit between members of the public and interest groups, whereby they can ask questions indirectly of Ministers and senior public servants. During the course of that questioning matters are aired and further information is obtained. As a result of those estimates hearings there are often calls for papers. Earlier calls for papers give rise to questions that members are able to ask at those hearings. Members spend a lot of time preparing questions they wish to ask Ministers and senior public servants at estimates committee hearings, so it is critical that they are explored in depth without the pressures of fatigue and hearings being conducted in the evening. Estimates committee perform an important task. For that reason we should do anything we can to facilitate a better airing of issues that have been raised and a better standard of questioning. Hearings on non-sitting days would facilitate that, and such a move should be supported. The Greens support the amendment to the motion moved by the Hon. Don Harwin.

**Reverend the Hon. FRED NILE** [11.21 a.m.]: The Hon. Don Harwin has moved an amendment to the motion to change the times at which estimates committees will sit to take evidence. That is the first distinction the honourable member should make in his amendment. We are not speaking about restricting the times when committees can meet; we are speaking about restricting the times when they are able to take evidence. Earlier the Hon. Don Harwin quoted at length what I said in relation to the setting up of estimates committees. I recollect stating that estimates committees should not meet when the House is sitting. The present policy is that estimates committees cannot meet while the House is sitting. That is the point that I made. I did not make any reference to estimates committees sitting when the House was sitting. I move:

That the amendment of the Hon. Don Harwin be amended by inserting at the end:

"except during any adjournment for meal breaks or after the adjournment of the House."

That will give estimates committees the flexibility that they need.

**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 [11.23 a.m.]: The Government does not support the amendment moved by the Hon. Don Harwin but, if appropriate, it will support the amendment moved by Reverend the Hon. Fred Nile to the amendment. Reverend the Hon. Fred Nile has now clarified a key distinction in relation to this issue—the taking of evidence. Honourable members are of the view that the Minister's attendance at these estimates committee hearings is required and vastly preferred.

While the Hon. Don Harwin has not been a member in this House while his party has been in government he has worked closely with governments in the past, as have other Opposition members. Some members on the crossbenches have been in this Chamber long enough to see governments of all persuasions in office. The vast majority of Ministers have time limitations, many appointments and additional parliamentary duties that are scheduled by staff and departmental officials. Often community groups outside Sydney or Newcastle want to see them on days that the Parliament is not sitting. If we take a prohibitive approach, which is what the Hon. Don Harwin's amendment proposes, estimates committees will not be able to meet when the House is sitting and those Ministers who have full programs will be less likely to be available to give primary evidence.

I am sure honourable members do not want that to be an unintended consequence of this proposed amendment. Because Ministers have to perform those duties—it is not because of some conscientious attitude or objection—they will be prohibited from attending estimates committees to give primary evidence. We would then be implementing the Federal estimates committee model, which essentially means that we would be interrogating public servants exclusively. It is important to make that distinction. I am sure all honourable members would prefer Ministers to be in attendance to give that primary evidence. For that reason the Government rejects the amendment moved by the Hon. Don Harwin and accepts the amendment moved by Reverend the Hon. Fred Nile.

**The Hon. DON HARWIN** [11.26 a.m.]: I can only speak to the amendment moved by Reverend the Hon. Fred Nile to my amendment. It will come as no surprise to honourable members that I oppose that amendment because it is a direct negative of what I am trying to achieve. While it is permissible under our standing orders, no member of the House should think for one minute that it is some sort of halfway house. It is not. This amendment is deliberately designed to negative the intention of my amendment.

**The Hon. John Della Bosca:** Did you take a point of order?

**The Hon. DON HARWIN:** No. Under the standing orders it is quite permissible for Reverend the Hon. Fred Nile to do that. I am simply exercising my right to point out to the House that I do not agree with what he is doing. The amendment that he has moved will insert the words "except during any adjournment for meal breaks or after the adjournment of the House". When I moved my amendment I was referring to the typical sitting pattern of estimates committees, which, at present, is after the adjournment of the House at 4.00 p.m. or 5.00 p.m. Reverend the Hon. Nile is saying, "It is business as usual for estimates." His amendment should be rejected. My amendment, which facilitates a more sane approach to estimates is preferable. I suggest that it is an approach that facilitates better scrutiny.

If honourable members accept the amendment moved by Reverend the Hon. Fred Nile they will be saying that they are happy with the status quo. It is entirely open to honourable members to do that. The Minister referred to the amendment moved by Reverend the Hon. Fred Nile and to the desirability or option of the appearance of Ministers as primary witnesses. I am sure that many honourable members prefer Ministers to be present at estimates committee hearings. Frankly, I would be surprised if estimates committee hearings were held on days other than sitting days and Ministers ran away from attending those hearings. Ministers who run away from scrutiny will be pilloried in the media if they do not have the guts to front up to an estimates committee. I would be surprised if ministerial diaries did not all of a sudden become a little less free than was suggested by the Minister. Honourable members should not fall for that one.

**The Hon. AMANDA FAZIO** [11.29 a.m.]: I speak briefly in debate on this motion. The one issue that the Hon. Don Harwin did not address in his proposed amendment, which relates to the way in which estimates committees will operate, is the impact it would have on members in this Chamber who do not come from the metropolitan area. I have not heard any member of The Nationals speak in this debate, but a number of Government members and crossbench members find the current arrangements much more convenient and much more acceptable. Estimates committee hearings can be held in conjunction with the sittings schedule, which allows members to make the best use of their time when they are here in the city. The fact that the Opposition has not given consideration to this aspect simply shows that its proposal is not based on the most efficient running of estimates committee hearings but on some other agenda that the Opposition has not been prepared to enunciate today. For that reason I urge members to support the amendment of Reverend the Hon. Fred Nile and to reject the amendment of the Hon. Don Harwin, to allow the country members of this House the maximum opportunity to participate in the budget estimates committee process.

**The Hon. JOHN TINGLE** [11.31 a.m.]: I totally understand the motivation behind the motion of the Hon. Don Harwin, and I can understand the commonsense of trying, as far as possible, not to confuse estimates

committee hearings with sessions of the Parliament. I was tempted to support the amendment, but in my opinion there is one problem with it. If I understand the Hon. Don Harwin's own assessment of the amendment, it would prohibit an estimates committee hearing ever taking place during a session of the Parliament. If I am wrong about that, I would be happy—

**The Hon. Don Harwin:** I said, on a sitting day.

**The Hon. JOHN TINGLE:** I am sorry, on a sitting day. I believe that the proposal of the Hon. Don Harwin would hinder the role of estimates committees. It may become necessary, because of availability of Ministers, to hold an estimates committee hearing, as distinct from the evidence hearings Reverend the Hon. Fred Nile spoke about, either on a sitting day or not at all. I know that Ministers are supposed to be here, but all sorts of funny things happen about that. I believe that we should not flatly prohibit budget estimates committees from holding hearings or taking evidence on sitting days. I would be prepared to support the amendment of the Reverend the Hon. Fred Nile, but before I am prepared to do so, I seek an assurance from the Government that if hearings are held as proposed by Reverend the Hon. Fred Nile in his amendment, the scheduling of estimates committee hearings and the sittings of the House would be open to negotiation between the Government and other party members, particularly crossbench members.

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS** [11.32 a.m.]: This State needs estimates committee hearings because it is the only opportunity members have to cross-examine Ministers. The fob-off and absurd answers we get in question time—and even the ridiculous answers we get to questions on notice—are a big problem. Estimates committee hearings are extremely important. I believe the Government has hijacked such hearings by limiting the times that Ministers are available, pushing the hearings into evening sessions, scheduling several hearings at the same time so there is less media attention, dorothy dixing or filibustering during estimates committee hearings, and insisting on unrealistic reporting dates. In a sense, it is a little like a viva: if you get to the bell without making a major gaffe, you get your degree.

Unfortunately, that is the way the Government works. It has no commitment to open government at all. I believe the way the Government has taken over the timetabling of estimates committee hearings, so the committees are not masters of their fate to any extent, is a bad thing. The proposal of the Hon. Don Harwin would ensure that dates would be specifically set aside for committee hearings, which potentially would be less time limited, to allow committee members to ask as many questions as they wish to ask of Ministers and senior public servants, as occurs in Canberra. I believe that would be a step in the right direction. The amendment of Reverend the Hon. Fred Nile, which proposes that estimates committee hearings be held after the adjournment of the House, would simply maintain the status quo.

If there were open government in New South Wales, as has been suggested in the New Zealand model and as I have suggested on many occasions, estimates committee hearings would not be so critical because we would get information from the Government at other times. However, I believe we need to boost the estimates committee process in order to try to prise information from this secretive and media-management Government. The amendment is a step in the right direction, and I commend it to the House.

**The Hon. JENNIFER GARDINER** [11.35 a.m.]: I support the amendment of the Hon. Don Harwin. It is a matter of concern that estimates committee hearings have been, in effect, tacked onto sitting days. The first round of estimates committee hearings, which involve the Ministers, are currently fairly brief. To facilitate our role as members of the House of review, I believe we need a more extensive first round of estimates committee hearings involving Ministers. During those early hearings, it is necessary for estimates committee members to ask Ministers representing the portfolio areas for which we are responsible a large number of questions.

The ability to hold the first round of hearings on days other than sitting days would provide estimates committees with more flexibility. As to Ministers' availability, I am sure all members respect the fact that Ministers obviously have extensive obligations outside sitting days and sitting weeks. However, if plenty of notice of the hearing is given to Ministers, as it is to other people who appear before estimates committees, we can satisfactorily come up with a timetable that respects and accommodates the other obligations of Ministers. I believe that is simply a matter of organisation.

The same thing applies to country members as applies to Ministers. It is simply a matter of timetabling so that members, whether they are country or city members, can organise their diaries. It is a matter of members knowing in advance when the hearings will be held, the same as with a sitting week. We are here today, on a

Friday, a reserve sitting day. However, each of us would have kept this day free in our diaries just in case it turned out to be a sitting day. So we have been able to plan our commitments many months ahead as to whether we will be in the capital city or a remote part of the State.

I also point out that, as the Hon. Don Harwin said, if the Opposition's amendment is carried, estimates committees will still be able to hold deliberative meetings on sitting days, as is the case now. In fact, the committee that I chair, General Purpose Standing Committee No. 4, will meet today, which is a sitting day, in the normal way. The core function of the Legislative Council as a House of review is to keep the government of the day accountable. The estimates committees are an extremely important part of that process and I believe that, rather than having estimates committee hearings tacked onto sitting days, we should have them properly organised well ahead of time and outside of sitting days.

**The Hon. JON JENKINS** [11.37 a.m.]: I am not involved in estimates committees, so I am not intimately aware of how the estimates committee process works. However, I have sat in on some estimates hearings and I do not consider them to be terribly effective.

**The Hon. Jennifer Gardiner:** Why don't you turn up?

**The Hon. JON JENKINS:** I do turn up. I just said I have sat in on some of the hearings and I do not find them to be terribly effective. If the Opposition is interested in finding out about how a government works, it should support the concept of open government. I make this public offer to the Hon. Dr Arthur Chesterfield-Evans. I am quite happy to donate some of my drafting time to create a system of open government, and I am sure the Opposition will support me. If we had a system of open government we would not need budget estimates committees; we would be able to see everything the Government does.

**Mr Ian Cohen:** That is embarrassing!

**The Hon. JON JENKINS:** It is embarrassing, is it? I am sure they will not support that. One thing that worries me about having an extra sitting day is the extra cost of bringing members back from their country electorates.

**The Hon. Jennifer Gardiner:** What do you think we are here for?

**The Hon. JON JENKINS:** No matter what the cost, you are prepared to do it?

**The Hon. Jennifer Gardiner:** Don't misquote me. We are parliamentarians. We are meant to be in the Parliament.

**The Hon. JON JENKINS:** I am giving you an opportunity to put on the record how much cost justifies bringing this Parliament back. Tell me how you justify being prepared to spend any amount of money for that?

**The Hon. Greg Pearce:** The staff are here, the building is here and the allowances are limited.

**The Hon. JON JENKINS:** They are not limited. Some estimates committees are continuing from last year, and bringing members back from the country to sit on those committees—

**The Hon. Jennifer Gardiner:** It has not been amended yet.

**The Hon. JON JENKINS:** That is right, and we are still bringing people back from the country to sit on these committees to do the budget estimates. If it is now an extra day—

**The Hon. Jennifer Gardiner:** That is what our job is. It is what we are paid to do.

**The Hon. JON JENKINS:** That is right; it is.

**The Hon. Greg Pearce:** Isn't that what the allowance is for? The allowance is already there.

**The Hon. JON JENKINS:** I have not decided whether to support the amendment because I am still listening to the argument. I am asking you to justify the cost of bringing the Parliament back for extra days.



**The Hon. Catherine Cusack:** It is for committees!

**The Hon. JON JENKINS:** At least half of the members come from the country.

**The Hon. John Della Bosca:** You are making a good point.

**The Hon. JON JENKINS:** I am merely asking the honourable member to justify that cost to the people of this State.

**The Hon. Jennifer Gardiner:** I will happily do so. In the end, we are accountable to the Parliament. I will happily do so any day of the week.

**The Hon. JON JENKINS:** As an Independent, where we do not have large numbers of members to cover these—

**The Hon. Jennifer Gardiner:** You have more staff than I do.

**The Hon. JON JENKINS:** I said members, not staff. To have to come and sit in Parliament during the day to try to cover the wealth of legislation that comes through and then cover budget estimates at night is a strain on us. I think it would be a good thing to have a separate day to address the Ministers, but that is a very selfish approach. I am waiting to hear some justification of the costs.

**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) [11.45 a.m.]: I shall make a few comments about the contributions so far. The Hon. Jon Jenkins has made a commonsense contribution. I do not understand why honourable members opposite have been so rude about his sensible contribution. The Hon. Jennifer Gardiner has made the point of saying that today is a reserve sitting day. Today, prior to the decision between the Government and the Opposition being made—

**The Hon. Don Harwin:** Don't tell us that. You are the Leader of the Government. You made the decision to be here.

**The PRESIDENT:** Order! I ask all honourable members to behave themselves. The Minister has the call.

**The Hon. JOHN DELLA BOSCA:** I know we had a very late night and Opposition members are tired, but I state simply, by way of illustration, that prior to deciding that this would be a reserve sitting day, I had two important obligations in my diary as a Minister. The first was a joint appearance with Minister Tony Abbott in Bathurst—I am very sad that I cannot be there—and the other an important engagement with a significant non-government organisation. Given the fact that invitations had already been sent out well in advance, the Opposition has been kind enough to give me a pair to allow me to attend that function this afternoon.

I am not grizzling, but simply state that the point the Hon. Jennifer Gardiner made was redundant. Indeed, it was wrong. Minister Kelly, Minister Costa, other Ministers and I have appointments, sometimes six months in advance. Obviously, we are members of this House and we would go beyond the call of duty to be here. Other Ministers may not have the same attitude. It is much better for the House to take the primary view that Ministers should be present when Parliament is sitting and, contrary to the fairly arrogant assumptions of the Hon. Jennifer Gardiner and the Hon. Don Harwin, they will have perfectly valid community reasons for not being here.

**Question—That the amendment of the amendment be agreed to—put.**

**The House divided.**

**Ayes, 20**

Mr Catanzariti  
Mr Costa  
Mr Della Bosca  
Mr Donnelly  
Ms Fazio  
Ms Griffin  
Mr Hatzistergos

Mr Jenkins  
Mr Kelly  
Mr Macdonald  
Reverend Dr Moyes  
Reverend Nile  
Mr Obeid  
Mr Roozendaal

Ms Tebbutt  
Mr Tingle  
Mr Tsang  
Dr Wong  
*Tellers,*  
Mr Primrose  
Mr West

**Noes, 16**

Mr Breen	Miss Gardiner	Ms Rhiannon
Dr Chesterfield-Evans	Mr Gay	Mr Ryan
Mr Clarke	Ms Hale	
Mr Cohen	Mr Lynn	<i>Tellers,</i>
Ms Cusack	Ms Parker	Mr Harwin
Mr Gallacher	Mr Pearce	Mrs Pavey

**Pairs**

Ms Burnswoods	Mr Colless
Ms Robertson	Mrs Forsythe

**Question resolved in the affirmative.**

**Amendment of amendment agreed to.**

**Amendment as amended agreed to.**

**Motion as amended agreed to.**

**PRISONERS (INTERSTATE TRANSFER) AMENDMENT BILL****Second Reading**

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [11.53 a.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.**

This Bill introduces amendments to Parts 2 and 4 of the Prisoners (Interstate Transfer) Act 1982 to broaden the range of factors that the Minister may have regard to when considering a request by a prisoner to be transferred to, or from, another State or Territory.

The Prisoners (Interstate Transfer) Act 1982 commenced on 1 July 1984. The Act forms part of national co-operative legislative scheme which permits inmates to be transferred between participating jurisdictions for two purposes: to stand trial or for welfare purposes.

Part 2 of the Prisoners (Interstate Transfer) Act 1982 covers transfers for welfare purposes. A transfer for welfare purposes may be made at the request of the prisoner concerned and depends on the Minister forming the opinion that it is in the interests of the prisoner's welfare that the prisoner should be transferred.

This Bill amends Part 2 of the Prisoners (Interstate Transfer) Act 1982 to remove the limitation on the Minister's discretion in relation to transfer requests and provides, instead, that the Minister may have regard to certain matters.

Currently, under the national co-operative legislative scheme, welfare transfers involve a three step process.

Firstly a prisoner makes a request to the Minister in his or her state for a transfer. If that Minister is of the opinion that the prisoner should be transferred in the interests of the welfare of the prisoner, the Minister writes to the corresponding Minister in the receiving jurisdiction requesting that the Minister accept the transfer.

Secondly, under the corresponding legislation the relevant Minister in the receiving jurisdiction then has discretion to approve the transfer.

Thirdly, if the Minister in the receiving jurisdiction consents to the transfer, the Minister making the original request may make the order for transfer.

Where the prisoner is a federal offender, or a joint state or territory and federal offender, the Commonwealth Attorney-General must also consent to the transfer.

Part 4 of the Prisoners (Interstate Transfer) Act 1982 deals with prisoners who have been transferred for the purposes of standing trial, but whose trial has resulted in no sentence being imposed in New South Wales or a New South Wales sentence of

imprisonment being imposed that is shorter than the period of imprisonment the prisoner has left to serve in another participating jurisdiction. In either case the Minister must, with certain exceptions, transfer the prisoner back to the original participating state or territory.

One of the exceptions to this requirement for the Minister to transfer prisoners back if no sentence is imposed in New South Wales or the New South Wales sentence imposed is shorter than the other jurisdiction's sentence is where the Minister receives a request from the prisoner for a transfer for welfare purposes.

This Bill amends Part 4 of the Prisoners (Interstate Transfer) Act 1982 to provide that the Minister may have regard to a broader range of matters.

I now turn to the detail of the Bill.

Schedule 1 [1] amends the heading of Part 2, to change it from "Transfer for prisoner's welfare" to "Transfer at the request of prisoner".

This emphasises the fact that the impetus for a transfer comes from the prisoners themselves and better reflects the prisoner's own part in the welfare transfer procedures.

Schedule 1 [2] amends section 7 of the Prisoners (Interstate Transfer) Act 1982 to broaden the matters the Minister may take into account in relation to transfer requests under the current Act.

A new section 10A is inserted into the Act to provide a non-exhaustive list of factors that the Minister may consider when a prisoner makes a request to be transferred to, or from, another State or Territory.

This Bill provides that the Minister may have regard to the following when considering such a request:

- the welfare of the prisoner concerned;
- the administration of justice in New South Wales or any other State;
- the security and good order of any prison in New South Wales or any other State ;
- the safe custody of the prisoner concerned;
- the protection of the community in New South Wales or any other State; and
- any other matter the Minister considers relevant.

Schedule 1 [4] provides that, when forming an opinion or exercising any discretion about a request for the welfare transfer of a prisoner, the Minister should particularly consider any reports of parole and prison authorities of New South Wales or of any participating State.

Schedule 1 [6] inserts a mirror provision to new section 10A into Part 4 of the Act.

Part 4 of the Prisoners (Interstate Transfer) Act 1982 contains a requirement that a Minister must, in respect of prisoners who have been transferred for trial purposes, transfer those prisoners back if no sentence is imposed in New South Wales or the New South Wales sentence is shorter than the other jurisdiction's sentence. One of the exceptions to this requirement, which is already contained in section 23 of the Act, is where the Minister receives a request from a prisoner for a transfer for welfare purposes.

It follows that the Minister consider the same factors with respect to an application for a transfer for welfare purposes from a prisoner transferred for trial purposes, as the Minister would for an application received for a general request for transfer for welfare purposes.

This Bill amends section 23 of the Prisoners (Interstate Transfer) Act 1982 to remove the limitations in relation to welfare transfer requests after transfer for trial and provides, instead, that the Minister may have regard to the broader range of matters I have just outlined, that is: the prisoner's welfare; the administration of justice; the security and good order of prisons; the safe custody of the prisoner; the protection of the community; and any other matter the Minister considers relevant.

The current terms of the Prisoners (Interstate Transfer) Act 1982 only allow the Minister to consider welfare transfers in a relatively narrow and unclarified manner. This Bill opens up the Minister's discretion to consider broader policy objectives such as the general administration of justice, as well as other important matters such as the prisoner's safety and the safety of the community in general.

A recent Federal Court of Australia case highlighted the need for the current provisions to be clarified.

The changes the Bill makes in relation to welfare transfers may provide increased opportunities for inmates and their families to develop and foster relationships during the prisoner's period of incarceration.

I am pleased to commend the Bill to the House.

**The Hon. DAVID CLARKE** [11.53 a.m.]: The Opposition does not oppose the Prisoners (Interstate Transfer) Amendment Bill. The overview of the bill states:

The object of this Bill is to amend the *Prisoners (Interstate Transfer) Act 1982*... to broaden the range of matters that the Minister may have regard to when considering a request by a prisoner to be transferred to or from another State or Territory.

The Prisoners (Interstate Transfer) Act is part of the national legislative arrangement that permits inmates to be transferred between participating jurisdictions for the purposes of standing trial for welfare reasons. At present a

transfer for welfare reasons may be made at the request of the prisoner concerned but the Minister for Justice can consider such welfare transfers in only a restricted and narrow manner. A transfer request from a prisoner depends on the Minister forming the opinion that it is in the interests of the prisoner's welfare that the transfer proceed. The bill before us removes the limitation on the Minister's discretion in relation to transfer requests and provides that the Minister may have regard to any of the following matters: first, the welfare of the prisoner concerned; second, the administration of justice in New South Wales or any other State; third, the security and good order of any prison in New South Wales or any other State; fourth, the safe custody of the prisoner; fifth, the protection of the community in New South Wales or any other State; and, sixth, any other matter that the Minister considers relevant.

To emphasise that a transfer for welfare purposes is at the request of the prisoner, the bill amends the Act's present wording "transfer for prisoner's welfare" to "transfer at request of prisoner". The bill amends the present legislation to provide that, when exercising any discretion about a welfare transfer request from a prisoner, the Minister should consider any reports from parole and prison authorities in New South Wales or any other participating State. Overall, the bill is consistent with the policy of seeking the rehabilitation of prisoners by providing more flexibility to the Minister when considering requests from prisoners and will serve to assist prisoners in having greater contact with their families during prisoners' periods of incarceration. The Opposition does not oppose the bill.

**Ms LEE RHIANNON** [11.55 a.m.]: The Prisoners (Interstate Transfer) Amendment Bill was introduced in response to the case of *Attorney-General of the ACT v Heiss*, where the Federal Court found that the Minister's decision to refuse the transfer of a prisoner was an error of law because the Minister considered, amongst other things, the cost of transfer in declining the request. This bill, if enacted, would legitimise that decision—which is why we think the bill is wrong. If the bill is enacted in its present form, it will broaden the criteria that the Minister for Justice may consider when deciding whether to grant or refuse a prisoner's application for transfer to or from an interstate prison.

At present the Minister may consent to the transfer of a prisoner if he or she finds that "it would be in the interests of the welfare of the prisoner" to allow the transfer. However, the bill contains a much larger list of criteria that the Minister may consider that could—and the Greens believe will—be used in many cases to resist prisoners' transfer requests. These criteria include:

... the administration of justice, the security and good order of prisons, the safe custody of the prisoner, the protection of the community, and any other matter that the Minister considers relevant.

**The Hon. John Hatzistergos:** Shocking things to take into account, aren't they?

**Ms LEE RHIANNON:** I note the interjection by the Minister for Justice. He often chatters away when I speak. When one considers the form of this Minister and former Corrective Services Ministers, one has many grounds for concern that the expanded criteria will make prisoner transfers—that often make a great deal of difference to a person's time in prison, and ultimately to his or her full rehabilitation into society—more difficult.

Let us consider one criterion: the administration of justice. This can mean many things to many people. It is a murky concept that could be put on a bureaucrat's stamp and used every day as an officious and automatic way of saying no. We believe governments have a responsibility to rehabilitate prisoners, not condemn them to cycles of violence and recidivism. Sadly, that administration style characterises the Government's approach these days. This is well illustrated by the Minister's latest hardline approach to prisoners using laptops in gaols. The Government is making it harder for prisoners to gain an education, get back on track and return to society. The Greens believe prisoners deserve more rights, not fewer—by the way, that includes paying prisoners more than they are currently paid in what I call new-age prison sweatshops, giving them access to computers for learning, and treating them more like humans and less like social refuse. That means giving prisoners rights—

**The Hon. John Hatzistergos:** Who writes this?

**Ms LEE RHIANNON:** I note the Minister's comment: He must be speaking from his own experience. I am always happy to write my speeches and I do so regularly. The Greens believe prisoners should have the right to interstate transfers to be close to loved ones and have access to training courses as a means of rehabilitation, unless exceptional circumstances exist. The Greens would be happy to consider support for this bill in an amended form, as I have just mentioned. Ideally, prisoners would have a right to interstate transfer unless exceptional circumstances existed. In the case of *Attorney General of the ACT v Heiss*, the circumstances

were that the Australian Capital Territory did not have a prison to which the prisoner could be transferred. Other circumstances that could be exceptional would be where, for instance, a maximum security prisoner with a recent history of violence could not simply be accommodated in this State's prison system. In these circumstances the Greens would consider it appropriate for the Minister to refuse a transfer, but these circumstances are in turn discrete and are smothered by this bill in its present form. In essence, the bill will make it easier for the Minister to decline the request of a prisoner to be transferred, and that is why we oppose it.

**Pursuant to sessional orders business interrupted.**

## **QUESTIONS WITHOUT NOTICE**

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### **FREIGHT INFRASTRUCTURE ADVISORY BOARD ROAD TRANSPORT OPERATORS REPRESENTATION**

**The Hon. MICHAEL GALLACHER:** My question without notice is directed to the Minister for Roads. Will the Minister explain to the House why there is no representation from road transport operators on the Freight Infrastructure Advisory Board when representatives of rail and shipping operators are members of the board? Given the recent proposal to impose a levy of \$30 per twenty-foot equivalent unit [TEU] on containers moved by road to fund the development of road, rail and intermodal facilities to move containers through Port Botany, what opportunity is there for the road transport industry to directly contribute to the board's deliberations? Has the Minister issued any terms of reference from the board? If so, what opportunity is there for stakeholders to have input?

**The Hon. MICHAEL COSTA:** The road transport industry is a group I have a good relationship with. I meet with the industry on a regular basis and, certainly, they can have input through the Minister. The prime function of the board is to make some policy positions in relation to how we manage intermodal transport tasks in this State. Really, it is quite appropriate for the road transport industry to have as much input as it wants directly through the Minister. If the honourable member believes there are issues that have not been addressed by the Roads and Traffic Authority, I am happy to facilitate a meeting with the road transport industry.

### **RECONNECT COMPUTER REUSE PROGRAM**

**The Hon. AMANDA FAZIO:** My question without notice is addressed to the Minister for Commerce. Will the Minister advise the House on what steps the Government is taking to address the digital divide through the promotion of computer use by disadvantaged groups and individuals?

**The Hon. JOHN DELLA BOSCA:** I am happy to report that the Carr Government is committed to assisting communities and individuals bridge the digital divide. One such initiative, the Reconnect Computer Reuse Program, was initiated as a pilot program in February 2003. Under the Government program, used computers are refurbished and distributed to socioeconomically disadvantaged individuals, educational institutions and other community groups through six not-for-profit organisations. The program was envisaged as providing an effective means of helping to bridge the digital divide for those in the community who do not have access to computers. The program has helped improve the community's uptake of computers. A recent independent evaluation confirmed that the first 12 months operation of the pilot program has been extremely successful.

The evaluation reports that the participants have identified many benefits from computer ownership, ranging from life changing to relatively trivial. A broad range of people talked about self-confidence, independence and a feeling that they are no longer left out. However, for three groups the refurbished computers delivered quite specific benefits. For seniors there was a common feeling that the digital revolution had passed them by. Simply owning a computer had brought them closer to the modern world and their families, particularly their grandchildren. Many seniors also indicated that using a computer had stimulated their memory and improved their mental capacity. For adult students and job seekers the benefits were often significant and practical in nature. Many cited expectations among training and education institutions, employers and job agencies of access to computers.

While these institutions made computer facilities available to individuals, many of the participants felt that the independence associated with owning their own computer had made a significant difference, particularly

for students with young children. A few students indicated that they would have been unlikely to have completed their training courses without a computer at home. One student reported, "I couldn't afford a computer. I would have failed the TAFE course without one." Parents of school-aged children expressed significant relief at owning a computer, feeling that their children would no longer be disadvantaged at school. A community organisation distributing refurbished computers for Wesley Uniting Employment reported that in one case, after receiving a computer, a year 6 boy from a large family with lots of conflict and violence at home said, "Now I can stay at home," implying that he would now not run away.

Up to the end of March 2005, government agencies had donated over 5,900 pieces of computing equipment to the program. They included 2,753 desktop computers, 2,792 monitors, 234 printers, 54 portable computers and a range of other items, including servers and network equipment. Overall, the responses from participants confirm the existence of the digital divide and show how important computer ownership has become to modern citizenship. They also show that the ReConnect.nsw program has delivered positive social and community benefits. The Government is now looking ahead and planning has already commenced for the implementation of a fully operational program that will increasingly provide more members of the community with the means of bridging the digital divide.

### BRIGALOW BELT SOUTH BIOREGION

**The Hon. DUNCAN GAY:** My question without notice is directed to the Minister for Primary Industries. What sort of detailed work has the Government done on the economic and social dislocation to the timber industries at communities in the Brigalow, correlating to the number of Greens votes the Government hopes to get? How many Greens votes in Sydney are worth one family's job in Bingara or Baradine?

**The Hon. IAN MACDONALD:** What an absolutely ridiculous question! It is ridiculous because everyone will be offered a permanent long-term job in the industry, in the area, following the company requiring voluntary business exit. Everyone will be offered a secure long-term job. The question is ridiculous because no-one's future, no-one's family in those towns will be deleteriously affected by this decision. As for the Greens nonsense—

**The Hon. Duncan Gay:** How many votes are you getting? What was the deal? Country Labor sells out!

**The Hon. IAN MACDONALD:** The Deputy Leader of the Opposition ought to talk! He has been cuddling up to the Greens for months. That is why he is called the Greens National!

### DRUG COURT

**The Hon. Dr ARTHUR CHESTERFIELD-EVANS:** My question is directed to the Minister for Justice, representing the Attorney General. On 22 March I asked whether the Drug Court would be extended. The Minister passed the question to the Attorney General, who replied to the effect that the court's ongoing operation has been extended and the need for further expansion of the Drug Court's coverage would be periodically reviewed. Does that mean that there will be no further Drug Courts, despite the need for them? Does it mean that the matter is still under review? Or does it mean that there will be additional Drug Courts and, if so, when? Is the Drug Court a successful model, and is the Government committed to using successful models rather than putting people in gaol?

**The Hon. JOHN HATZISTERGOS:** It will be periodically reviewed in all its aspects.

### PERIODIC DETAINEES COMMUNITY WORK

**The Hon. TONY CATANZARITI:** My question is addressed to the Minister for Justice. What is the latest information on work performed by periodic detainees?

**The Hon. JOHN HATZISTERGOS:** Earlier this morning while most members were still asleep I was pleased to launch the Toongabbie Walking Track project at Westmead Hospital. Today's event was an excellent example of a successful interaction between Corrective Services and the community. During the past two years detainees from Silverwater Periodic Detention Centre have created an environmentally sympathetic river walk along the bank of Toongabbie Creek at Westmead. The completion of that project now provides local residents of that area, the community of Westmead Hospital as well as the patients and families of the New Children's

Hospital and the Cumberland Hospital with a resource that aids their wellbeing and recuperation, whilst returning a once barren and wasted part of the creek bank to a pleasant and recreationally useful environment.

Allow me to elaborate on the community work undertaken by the detainees. Apart from working on that creek project they have helped with weed control and revegetation works in the upper Parramatta River catchment area. The work has maintained a native plants nursery, the Bunya Nursery, which supplies advanced local native plants for projects around the catchment. Moreover they were involved in the Loyalty Road Flood Retarding Basin, numerous reserves in the district, the Darling Mills Creek near Parramatta gaol and Parramatta River at O'Connell Street bridge. Once one goes beyond the area that has been served by the Silverwater Periodic Detention Centre one sees that across New South Wales offenders serving periodic detention, and indeed community service orders, have performed \$14.5 million worth of unpaid community work.

The 4,500 people serving community service orders and the 800 offenders serving periodic detention give the community a work force that performs valuable work that might otherwise cost local communities many thousands of dollars. Across New South Wales they are cleaning up river or harbour foreshores, removing weeds, planting trees, mowing lawns, maintaining gardens for community groups and a range of community projects. In fact, Silverwater's detainees go further than many people realise. A story earlier this week in the *Sydney Morning Herald* illustrated the excellent work they are doing as far away as Manly. The Manly project is at the Mermaid Pool, for many years a dumping ground, but in earlier times a place which local Aborigines associated with the spirits of creation. As Steve D'Silva, director of the periodic detention program, said:

The environment benefits, the community benefits and the detainees certainly benefit."

He further said:

I know the detainees feel part of the community, feel proud of their contribution.

Some have taken their families back to sites where they have helped to point out how they helped to clear or build the project. I also mention that prior to Anzac Day detainees at Bathurst and Tamworth were active in cleaning up war memorials. I am informed that they took great pride in community involvement. The contribution that detainees have made to the ongoing work to the Kokoda Track Memorial at Concord is significant and deserves recognition. I acknowledge the efforts of Superintendent Steve D'Silva who heads the periodic detention program, and two associated officers, Field Officer Neil Rogers and Assistant Superintendent Fred Paavola. Those people have witnessed a real shift in attitude of some of the detainees. In relation to the project at Westmead, Mr Rogers said:

You can only imagine my genuine surprise, whilst at this site I witnessed on the newly constructed pathway a sick child in a wheelchair being pushed by yet another sick child who stopped and thanked us for providing this facility.

It allowed them to briefly escape the torment of their medical treatment.

The true measure of the understanding of the ownership of this project then became evident when a member of my crew, a giant of a man with tattoos covering most of his body, showed genuine grief at this expression of thanks and then shed a small tear.

The importance of periodic detention cannot be emphasised enough inasmuch as its deployment not only contributes millions of dollars to the community through the work carried out by detainees but is also a pivotal step in rehabilitation. [*Time expired.*]

#### OFFICE OF FAIR TRADING BUILDING PRACTICES COMPLAINTS

**Ms SYLVIA HALE:** My question is directed to the Minister for Fair Trading. Will the Minister investigate the case of complaints regarding substandard building works at 11-13 and 27-29 Calder Road, Rydalmere, by Hazzouri Constructions involving improper disposal of asbestos, inadequate stormwater detention, and building works not complying with approved plans, as brought to the attention of the Parramatta Office of Fair Trading in a letter from Mr Bruce Berry, delivered to that office by hand on 9 June 2004? The Minister indicated yesterday that the department is unable to locate the letter. If I provide the Minister with a copy of the letter today will he undertake to investigate the matter and report to the House on the outcome?

**The Hon. JOHN HATZISTERGOS:** Only because you are a nice person.

### HOME CARE SERVICES

**The Hon. JOHN RYAN:** My question is directed to the Minister for Disability Services. Does the Minister recall me asking the former Minister for Disability Services a question without notice regarding Mr Tom Bell in October last year? Does the Minister remember a story on *A Current Affair* in December last year about the discontinuation of his home care service? Did the Department of Ageing, Disability and Home Care discontinue Mr Tom Bell's home care service that it had restored after my question last year in March this year because media interest in the situation had subsided? Has Mr Bell been living in his wheelchair for the past two months because the department decided that his home care had become too expensive? Has Mr Bell been out of his wheelchair only five times in the past two months? Has Mr Bell been living in the same clothes without a shower for the past four days because no-one from home care has come to help him? Has Mr Bell's medical condition gradually deteriorated because he has been confined to his wheelchair and now relies on his neighbours to provide him with basic personal care? What plans has the Minister made to alleviate his situation?

**The Hon. JOHN DELLA BOSCA:** To the last three highly specific questions about Mr Bell and the state of affairs of the past three days, I will obtain further information and come back to the honourable member as soon as practicable. As to the first part of his question, I do have an excellent memory—

**The Hon. Michael Gallacher:** You should never make that claim, Della!

**The Hon. JOHN DELLA BOSCA:** I know I have an excellent memory and I will stand by that. I must confess that I do not recall the specifics of such a question asked of my predecessor. I confirm that Mr Bell has been assessed by the Department of Ageing, Disability and Home Care as having high needs. The department is unable to provide the level of in-home care and support that Mr Bell needs in the longer term. I will need to get particulars in relation to the claims made in the question by the honourable member as to the state of affairs over the past three or four days but my advice up until this time has been that the department is continuing to provide personal care services for Mr Bell while alternatives for more appropriate care for him are being explored. An alternative provider, Southern Cross, has placed advertisements and attempted to recruit staff to provide services for Mr Bell but has not yet been successful.

**The Hon. John Ryan:** So he just lives in a wheelchair while they are waiting?

**The Hon. JOHN DELLA BOSCA:** In part, that is due to the strict time and personnel criteria insisted upon by Mr Bell. I also understand that Mr Bell has requested another assessment by the aged care assessment team and that NSW Health has agreed.

### TAFE INSTITUTE FASHION DESIGN STUDIO

**The Hon. GREG DONNELLY:** My question without notice is addressed to the Minister for Education and Training. Will the Minister inform the House of recent initiatives undertaken by TAFE in the area of fashion and fashion design?

**The Hon. Duncan Gay:** Henry!

**The Hon. CARMEL TEBBUTT:** Perhaps it should be the Hon. Henry Tsang's question, but nonetheless it is important. This gives me an opportunity to draw to the attention of the House the excellent work being done by staff and students at the TAFE NSW Institute Fashion Design Studio. The fashion industry turns over \$2.6 million per year in New South Wales and supports more than 2,000 clothing, textile and footwear enterprises. That accounts for approximately 35 per cent of the Australian industry and contributes \$360 million worth of exports every year.

Fashion and fashion design courses have been delivered in TAFE NSW since the 1970s. Currently 400 students are undertaking three courses in fashion, namely Certificate IV in Fashion Design and Industry Practices, Diploma of Fashion Design and Advanced Diploma of Fashion Design. TAFE graduates of those courses are finding employment in the fashion industry as designers, buyers, in retail and in publishing. As many honourable members are aware, and I know the Hon. Henry Tsang is aware, Mercedes Australian Fashion Week is Australia's premier fashion event and has launched the careers of some of the most successful designers in Australia and the world.

I am pleased to inform the House that this Friday, 6 May, five students studying at the Sydney Institute Fashion Design Studio will debut their collections as part of Fashion Week. Andrea Cainero, Catherine Maple-



Brown, Joshua Granath, Melissa Polynkova and Miok Kang will be showing their designs to the assembled industry representatives and buyers. Our current TAFE students will join up-and-coming new designers, including Mira Vukovic, Alexandra Nea and Marnie Skillings, who have their own shows as part of Fashion Week. While those names are not familiar now, I am sure they will become as familiar as internationally renowned designers Lisa Ho, Alex Perry, Nicky Zimmerman and Akira Isogawa. They are household names. What all of those designers have in common is that they are all graduates of the TAFE New South Wales Sydney Institute Fashion Design Studio.

This is the fifth year that the TAFE Fashion Design Studio has been invited to showcase its students' work. TAFE's Fashion Design Studio has established a reputation as one of the world's top 20 fashion design schools. Its teachers are highly sought after as judges for international events, and the courses are in high demand. The list of designers showing as part of this Fashion Week demonstrates that the students coming out of the TAFE Fashion Design Studio are living up to the studio's international reputation. The inclusion of TAFE students in this premier fashion industry event clearly highlights the involvement that the industry, in partnership with TAFE, plays in nurturing young talent. One of the great strengths of TAFE is its ability to adapt to meet changing industry needs and to provide the quality training that Australian industry needs to keep up with the rest of the world. It demonstrates the breadth, depth and quality of training provided by TAFE New South Wales.

I congratulate the staff and students on this terrific achievement. The student show at Fashion Week generates significant interest from the fashion elite both in Australia and abroad. I hope that our new designers can tap into the estimated \$60 million worth of wholesale orders and will feature as part of an estimated \$1 billion worth of international media coverage that is generated from the event. The presence of the students and graduates puts TAFE fashion design on the international map and demonstrates why TAFE is an excellent destination for any person seeking training not just in traditional trades but also in creative pursuits in the emerging industries. I wish the students all the very best with their exhibition.

#### **NSW MARITIME AUTHORITY COMMERCIAL LEASES POLICY**

**The Hon. JON JENKINS:** My question without notice is to the Minister for Roads, Minister for Economic Reform, Minister for Ports, and Minister for the Hunter. What will the Government do to ensure that recreational boat users are not disadvantaged and harbour access for users will not be threatened by the New South Wales Maritime Authority's proposed lease policy? Will the Government guarantee to maintain the boating public's access to harbour facilities, such as mooring, fuel, toilet and food? Do the proposed new leasing arrangements have the full support of the Boating Industry Association and the New South Wales Boat Owners Association?

**The Hon. MICHAEL COSTA:** That is a very important question. I met with the Boating Industry Association last Friday, from memory, in Newcastle. A process was put in place to consult on what is a draft policy at this stage. That consultation will go forward. My understanding is that the Boating Industry Association was happy with the meeting. I look forward to ongoing input. Having said that, the State has a responsibility regarding scarce resources, critically important resources in many locations, and must seek to achieve the right balance between addressing the requirements of recreational boat users and observing its responsibilities to the taxpayer.

#### **HOSPITALS AND JUVENILE DETENTION CENTRES SCHOOLS**

**The Hon. CATHERINE CUSACK:** My question without notice is directed to the Minister for Education and Training. Is the Minister aware that special schools located in our hospitals and juvenile detention centres are a vital part of the daily program for young patients or juvenile detainees who are facing lengthy periods of institutionalisation? Is the Minister further aware that some schools in hospitals and detention centres have recognised that these facilities operate 52 weeks a year and have extended their school terms to ensure the children are productively occupied? Given that these local arrangements are very commendable, will the Minister consider formalising arrangements for an extended school term in all our hospitals and detention centres?

**The Hon. CARMEL TEBBUTT:** Yes, I do have a very good appreciation of the important role that special schools play in the education of students in a range of different settings. That appreciation comes not only from my role as Minister for Education and Training but also from my former role as Minister for Juvenile Justice. I have visited on many occasions all of the schools in juvenile detention centres in New South Wales. I

take this opportunity to put on record that the teachers and support staff, teachers aides and others who work in that environment do a fantastic job. They work with students who present a whole range of challenges, not the least of whom are some students who are in juvenile justice centres for limited periods of time. Their poor literacy and numeracy standards are well known.

Therefore teachers are working with some students who, when they come into juvenile justice centres, have limited understanding of the school curriculum and do not know how long they will be in those centres. In those circumstances the teachers have to devise programs that will give the student the opportunity to get as much as possible from their school experience while they are in custody. And they do a fantastic job. I met a number of students who were completing either school certificate or higher school certificate courses while in custody. The encouragement, support and inspiration that teachers gave those students were second to none. So I take this opportunity to place on record my thanks to teachers who work in those special settings.

The Hon. Catherine Cusack asked about extending the school term in all hospital and detention centres. I will seek further advice and come back to the honourable member on that matter, because I am not aware of the detail. Obviously, there would be industrial issues that need to be considered. Nonetheless, I know those teachers have always been incredibly flexible and try to make sure the programs and education courses offered through those schools are well adapted to meet the needs of the students. I will follow up the specific issues that the honourable member raised, and I undertake to come back to her.

### CLOTHING OUTWORKERS PROTECTION

**The Hon. IAN WEST:** My question is addressed to the Minister for Industrial Relations. Will the Minister advise the House on the Government's latest efforts to improve the working conditions of New South Wales clothing outworkers?

**The Hon. JOHN DELLA BOSCA:** Throughout this week the Office of Industrial Relations has been operating a stand at Fashion Week to promote the new Ethical Clothing Trades Extended Responsibility Scheme.

**The Hon. Melinda Pavey:** You did not go.

**The Hon. JOHN DELLA BOSCA:** No, I admit I did not go. I have got a good memory, but I did not go to Fashion Week. I could have set some precedents that would have transformed the fashion world! This is the first time that the Office of Industrial Relations has been involved with Australian Fashion Week and it has been an overwhelming success. The stand has been visited by an estimated 400 to 500 people, who have expressed overwhelming support for the New South Wales Government's initiative. This effort by the New South Wales Government is a continuation of its role in leading industry to prevent the exploitation of clothing outworkers, not only in New South Wales but across the country. This industry response has involved Australia's leading fashion designers, retailers, suppliers and manufacturers.

The new scheme, to commence on 1 July, will require businesses to keep and exchange information about the manufacture of clothing products for retail sale in New South Wales, including names and addresses of those who supplied garments, and addresses where work is performed on clothing products. It will apply to businesses that have chosen not to comply with the voluntary codes, which require ethical treatment of clothing workers. The new scheme will make it difficult for unethical employers to exploit clothing outworkers and will provide a more even playing field for businesses that treat and pay their workers fairly. A large number of retailers have signed up to the voluntary code, including leaders like Target, David Jones, Country Road, Carla Zampatti and Just Jeans.

**The Hon. John Ryan:** Now, there's a fashion label!

**The Hon. JOHN DELLA BOSCA:** Do I detect a hint of elitism in the Opposition ranks? Carla Zampatti is a member of the Liberal Party, isn't she? At least, she is married to a very senior member of the Liberal Party. There is now a need to close the loop on those businesses that are reluctant to do the right thing. Businesses not complying with the new scheme could face fines of up to \$11,000. The people who stand to gain most from the new scheme are workers, mainly women, and mainly from non English-speaking backgrounds, who are forced to work in cramped and unsafe conditions for as little as \$3 an hour. This is yet another example of the New South Wales industrial relations system working to protect workers. It is those same workers who will be severely disadvantaged if the Federal Government goes ahead with its hostile takeover of the New South Wales industrial relations system when it acquires absolute power in the Senate in July.

The Commonwealth plans to introduce a new system which will remove the safety net for honest, hardworking Australian families and a system without the well-resourced compliance regime we have in New South Wales. Remarkably, one of the few policies of the New South Wales Opposition is to hand these powers to the Commonwealth, denying New South Wales businesses and employees the equitable and co-operative system that most choose to use. The Government's efforts to improve the working lives of clothing outworkers are another example of the benefits, fairness and productivity that are features of the New South Wales industrial relations system.

### RURAL YOUTH RISK BEHAVIOUR

**Reverend the Hon. Dr GORDON MOYES:** I ask the Minister for Justice, representing the Minister for Youth, whether the Minister is aware of statistics that indicate that rural youth in New South Wales are more prone to risk behaviour than young people in urban areas. In particular, is the Minister aware that rural youth compared to urban youth are four times more likely to commit suicide, five times more likely to be involved in a motor vehicle accident, four times more likely to commit an alcohol-related crime and up to 11 times more likely to experience physical abuse if they are females living in a rural community? Will the Minister explain whether any positive steps have been taken towards understanding the rationale behind this higher incidence of risk behaviour among our rural youth? In particular, will the Minister highlight what government infrastructure, funding and resources have been dedicated towards reducing risk behaviour among young people in our rural areas?

**The Hon. JOHN HATZISTERGOS:** The honourable member has raised an important question. I will refer it to the Minister, obtain an answer and advise the House in due course.

### KOALA PROTECTION

**The Hon. JENNIFER GARDINER:** My question is directed to the Minister for Primary Industries. Is the Minister aware that there is an estimated population of 15,000 koalas in Pilliga forest? Is he aware that the majority of those koalas live in areas that have been logged over the past 100 years? Is he further aware that the concentrated koala populations are located in areas of Pilliga forest that are not proposed to be converted to national parks? Is it a fact that the Premier's claim that the Brigalow Belt South Bioregion decision will save endangered populations of koalas is incorrect and, indeed, misleading?

**The Hon. IAN MACDONALD:** The Premier is never misleading and certainly never incorrect.

*[Interruption]*

I am supported by the Hon. Henry Tsang. The Hon. Jennifer Gardiner can be assured that our decision will protect and enhance the koala community of the whole region.

### NATIONAL COMPETITION POLICY

**The Hon. HENRY TSANG:** My question is addressed to the Minister for Primary Industries. Will the Minister update the House on the most recent developments with the national competition policy and how it has affected rural New South Wales?

**The Hon. IAN MACDONALD:** That is a good question. The Hon. Henry Tsang is looking absolutely elegant, with total sartorial splendour. Government members have taken a vote and decided that the honourable member will be our entrant in Fashions in the Field at Royal Randwick on Melbourne Cup day. That is a challenge to the Deputy Leader of the Opposition and the Leader of the Opposition to find a suitable outfit to try to match the Hon. Henry Tsang's contribution to fashion today. As honourable members would be aware, the National Competition Council [NCC] has recently targeted several Acts affecting primary producers in this State. While the national competition policy was originally designed to address key services such as water and energy reform, it has since strayed way beyond those original aims and is now getting its hands into countless Acts, many of which affect rural and regional New South Wales.

*[Interruption]*

The Minister for Roads and I would suggest that there is probably a bias against follicly challenged males when it comes to Fashions in the Field. So I do not think we will be entering that, according to the

comment that was made. Honourable members will be aware that the New South Wales Government has continually battled against what we see as unnecessary reforms in areas such as the Poultry Meat Industry Act, the Rice Marketing Act and even the Farm Debt Mediation Act. We have already seen the Federal Treasurer gleefully fine New South Wales for issues as diverse as water, poultry and, worst of all, farm debt mediation.

Forcing New South Wales taxpayers to shoulder penalties is a direct attack by the Howard Government on regional New South Wales. I add that if members opposite truly cared about the people of regional New South Wales they would be doing much more to demand that the Federal Government back away from such ludicrous changes. But instead they have done nothing. I have not seen one statement from the Deputy Leader of the Opposition on this. The latest target of this misguided Federal Government is the State's veterinarians, with the NCC demanding reforms to the Veterinary Practice Act 2003. Under this Act, a person or any form of business association could own a veterinary practice provided one or more registered veterinarians held the controlling interest.

However, the NCC took issue with this, and demanded changes to the Act. I need to make it clear that non-compliance with competition policy creates a risk of another significant financial penalty for New South Wales. As a result, section 14 (5) (a) was included to relax ownership requirements. It does this by exempting agricultural supply businesses from restrictions that would otherwise prohibit them from being able to be publicly represented as veterinary practices. They must still employ a registered veterinary practitioner and potentially become licensed as a veterinary hospital to be able to offer the performance of restricted acts of veterinary science.

In the 2005 assessment the NCC asked the State Government to justify the retention of partial ownership restrictions for veterinary practices and the date for commencement of section 14 (5) (a). Failure to comply with the Federal competition policy in this area will mean that critical funds that could be spent in rural and regional communities will instead have to be redirected to cover the tranche penalty for non-compliance. Given my sympathy with the concerns raised by the veterinary profession and my further concerns regarding the tranche penalty, members of my staff met with the Australian Veterinary Association. Unfortunately, the NCC was not satisfied; instead, it made it clear that New South Wales will have to justify the restrictions.

### CONSTRUCTION INDUSTRY

**Reverend the Hon. FRED NILE:** I ask the Assistant Treasurer, representing the Treasurer, a question without notice. Is it a fact that there has been a dramatic decrease in building and housing construction in New South Wales, which is impacting on companies such as Mirvac? Is it a fact that hundreds of building workers are being laid off as a result of the building and housing construction downturn? Is it a fact that there has been a 14 per cent drop in New South Wales house values, which means that many borrowers have no equity in their house? Is it a fact that Government policies, such as the vendors tax, land tax, et cetera, are damaging the housing and building industry in New South Wales? Will the Government give a firm assurance that it is currently conducting a review of these taxes and that important concessions will be announced in the forthcoming New South Wales budget to give comfort to the people of New South Wales and building construction workers in particular?

**The Hon. JOHN DELLA BOSCA:** I caution Reverend the Hon. Fred Nile—my excellent memory has failed me and I cannot remember the words used by the former Treasurer and Leader of the Government—that the budget will come out when the budget comes out. The Government will indicate the budget initiatives when the Treasurer releases them on budget day. So the honourable member will have to wait until then for any information about the budget. In terms of the first part of his question, he made an interesting economic analysis and a description of some contemporary events, but he had a false conclusion in the final part of his narrative about vendor tax being a cause of all the various concerns he expressed in his question. I will get a detailed response from the Premier and provide it to the honourable member as soon as practicable.

### GROSE WOLD SCHOOL SITE SALE

**The Hon. DON HARWIN:** My question is directed to the Minister for Education and Training. Will the Minister reconsider his predecessor's decision to sell the former Grose Wold School and retain the building and land for much-needed educational purposes?

**The Hon. CARMEL TEBBUTT:** My recollection is that it may be too late to reconsider the previous Minister's commitment to sell the school because, if my memory serves me correctly, the procedure is already

well under way. However, given that I do not have any up-to-date information, I undertake to come back to the honourable member with an accurate response about where the process stands. I will not be revisiting the former Minister's decision.

### **DAVID MILLS PRISON SENTENCE APPEAL**

**The Hon. PETER PRIMROSE:** Will the Minister for Emergency Services update the House on the appeal against the sentence imposed on David Mills, who pleaded guilty to several counts of arson relating to fires in the Ku-ring-gai National Park?

**The Hon. TONY KELLY:** The sentence imposed late last year upon a former probationary trainee member of the Rural Fire Service convicted of arson offences in Ku-ring-gai National Park was a grave disappointment. The former trainee was sentenced to a mere 21 months periodic detention after pleading guilty to a number of charges relating to three fires in the park in January and February 2004. I immediately drew this matter to the attention of the Attorney General, who subsequently advised me that the Director of Public Prosecutions had directed a Crown appeal against the sentence. The matter was heard in the Court of Criminal Appeal on 14 April. The court decision has been handed down today. I welcome the decision of the Court of Criminal Appeal that has, today, increased the sentence from a minimum of 21 months periodic detention to a minimum of 2 years 8 months full-time detention with a maximum of 5 years 2 months full-time detention.

These fires threatened homes and destroyed almost 1,500 hectares of bushland. Our volunteer firefighters gave their time to protect the community against bushfires. Anyone who deliberately lights fires is not only irresponsible but also a danger to the residents and the lives of our firefighters. The Rural Fire Service does not tolerate any form of criminal activity, and the service assisted in the investigation into the cause of the fire. It provided valuable information to NSW Police in relation to this case. Members of the Rural Fire Service occupy a position of trust in our community. It is vital that these people fulfil stringent membership requirements, including a six-month probationary period, and prove themselves to be appropriate members of the service.

The Rural Fire Service has taken care to recruit individuals who are considered suitable to join the service by having senior experienced volunteers interview new members at the local level. However, this process has now been strengthened with the introduction last July of a criminal records checking system as part of the Rural Fire Service Membership Application Program. The criminal records checking system is applied to people who seek to volunteer to work with the Rural Fire Service and to existing members who apply to be transferred from one brigade to another. It also covers the employment of staff. The community puts a great deal of trust in its emergency service personnel. It would be inappropriate to allow people with a record of serious criminal or undesirable behaviour into such a position of trust.

### **MOTORWAY AND TUNNEL PROJECTS PUSH POLLING**

**Ms LEE RHIANNON:** I direct my question to the Minister for Roads. Did the Government commission this week's push polling of Sydney residents—an American method of trying to influence people under the guise of research—which was designed to mould a positive opinion of the rash of new motorways and tunnels across the city? If he claims he did not commission this survey, did he endorse this kind of push polling by others to build support for his motorway and tunnel projects despite the fact that they will leave Sydneysiders, who are already suffering from a crippled public transport system, with increased pollution, congestion and health problems?

**The Hon. MICHAEL COSTA:** The honourable member, as usual, uses an inflammatory question to try to make a political point for her wedged political strategy, which causes much confusion and discontent in the public, to ensure that they get a decline in their measly electoral support base. What is worse than push polling is the behaviour of the Greens, which is based on nothing short of alarmism, which is unfounded, statistically biased, distortionary, uninformed—

**Ms Lee Rhiannon:** There's no such word as "distortionary".

**The Hon. MICHAEL COSTA:** "Distortionary" is a word, of course it is. And, more importantly, alarmist.

**Ms Lee Rhiannon:** You said that.

**The Hon. MICHAEL COSTA:** The Greens are alarmist. I just want to get it through.

**The Hon. Eddie Obeid:** What about drivell?

**The Hon. MICHAEL COSTA:** Drivell. Building their uninformed coalitions around issues that are appropriate to be canvassed amongst our communities, particularly those that believe—

**Ms Lee Rhiannon:** Does this mean you do not know what push polling is?

**The Hon. MICHAEL COSTA:** Ms Lee Rhiannon thinks that any polling that does not agree with the Greens is push polling. That is what she thinks.

**Ms Lee Rhiannon:** No, I do not. It is politics.

**The Hon. MICHAEL COSTA:** That is exactly what I am getting to. The point is that if it does not agree with the Greens it is corrupt, uninformed, push polling or biased. The fact of the matter is that the Greens cause all the confusion that they believe is appropriate for them to use as a tactical wedge.

**Ms Lee Rhiannon:** Didn't you have enough sleep last night, Michael?

**The Hon. MICHAEL COSTA:** No. They use wedge politics—which is even worse than any technique known as push polling—to try to build a small uninformed coalition to keep their irrelevant policies on the public agenda. That is something they are entitled to do in a democracy, as we in government are entitled to canvass broadly our views and not be locked into one ideological position. The Greens have to come to terms with that. It is important that we have an informed public debate, which is the basis of all of our policy outcomes. Unfortunately, the Greens choose to have an informed debate that is skewed with biased statistics.

The fact is that the Greens have consistently caused confusion rather than enlightenment. This morning the *Daily Telegraph* noted that a Greens member of Parliament photographed a worker outside her window without any attempt to ensure that the worker works safely or that the Parliament, as the employer, investigates this situation. It is disgraceful. It is absolutely appalling that the Greens have breached the privacy rights of a worker in this Parliament. This is a disgrace and it is a huge indictment of the Greens that they would start secret surveillance of workers. But it is typical of the Greens' hypocrisy and wedge politics to cause confusion and alarmism to try to build up their end of the vote.

#### SCHOOLS PUBLIC-PRIVATE PARTNERSHIPS

**The Hon. MELINDA PAVEY:** My question without notice is directed to the Minister for Education and Training. Why is north-west and south-west Sydney regarded as the only growth area in New South Wales for consideration for public-private partnerships when the Bonny Hills-Lake Cathie area has one of the State's highest growth rates of 6 per cent? Was the school population for one of the public-private partnerships at Kellyville less than 250? Why is the State Labor Government continuing to block the new school at Lake Cathie at either of the Department of Education and Training sites for the almost 300 Lake Cathie students who travel outside their community to attend school?

**The Hon. CARMEL TEBBUTT:** I have spoken about this on many occasions in this House in the three months I have been Minister for Education and Training. I acknowledge that the Hon. Melinda Pavey has a great interest in Lake Cathie and the proposed school. But on many occasions I have said that the review, which was undertaken by the department at the request of the previous Minister and was made available, did not support the need for a school at Lake Cathie at this stage. The report stated, "At this stage building a new school at Lake Cathie would not be viable. However, the department will retain the two separate blocks of land so that a new school can be built when it is needed in the future."

I acknowledge the strong views of the local community and its desire to have a school at Lake Cathie. I have met with the community and I have met with the local member and the Hon. John Tingle, both of whom are very supportive of the community and its desire to have a school. Nonetheless, we need to make these decisions based on strong demographic grounds, and the department looks to 400 students for a primary school. There is not that number at the moment at Lake Cathie. There is also a real fear that building a school at Lake Cathie would have an adverse impact on the North Haven school.

As I have indicated on many occasions, this matter will be kept under review. We will continue to look at the demographic trends in the Lake Cathie area, and the department has held on to the two blocks of land so we are in a position to be able to respond should the demographic trends show a need for a new school in the

future. Two schools were announced in the public-private partnership announcement. They were not in the south-west or north-west regions of Sydney; they were in Maitland and on the Central Coast. The other seven schools will be announced on completion of the work that needs to be done to make sure we are building schools in the right locations, as demonstrated by the demographic trends.

I indicated that the majority are likely to be in the north-west and south-west growth areas of Sydney. I did not say all of them would be in those areas; I said the majority. I clearly indicated that there is not likely to be a school at Lake Cathie as part of that public-private partnership, because I see no point in raising the community's expectation when it is not going to be part of that process. The community of Lake Cathie and surrounding areas deserves more respect than that. The least I can do is be honest with them and indicate what the situation is as the department advises me, based on the study it has carried out.

### HUME AND HOVELL WALKING TRACK

**The Hon. ERIC ROOZENDAAL:** My question without notice is addressed to the Minister for Lands. What is the Department of Lands doing to promote the wonderful tourism and leisure assets of the Hume and Hovell Walking Track?

**The Hon. TONY KELLY:** Last week I joined a trek along the Hume and Hovell Walking Track, hosted by the Department of Lands. The track follows the route taken by explorers Hamilton Hume and William Hovell on their 1824 expedition from Yass to Port Phillip—the present day Melbourne. It proved to be one of the colony's most significant explorations. Hume and Hovell travelled more than 1,900 kilometres on foot in only 16 weeks.

**The Hon. Melinda Pavey:** How many did you do?

**The Hon. TONY KELLY:** About 19. They opened up some of the most fertile land on the continent. I can tell honourable members from my personal experience that the Hume and Hovell Walking Track is world class. The 440-kilometre track winds between Albury and Yass. It is superbly maintained and offers fun, recreation, rest and tranquillity along the way. It goes alongside the river that the Deputy Leader of the Opposition referred to yesterday—the Goobragandra. I show the honourable member a photograph of me and my wife which I think will equal the Hon. Henry Tsang's efforts. The track has something for everyone—from day walkers to super fit hikers; from nature lovers, like Mr Ian Cohen, to history buffs; as well as those who simply want to escape for a while. It is the largest recreational resource managed by the Department of Lands and has been maintained by the department since the track opened in 1988. The department provides some \$45,000 each year to help fund maintenance and special projects along the track. In recent years this work included construction of a suspension bridge over the Tumut River and shelters at each of the seven campsites along the track.

Before the walk, I was able also to present a print of *The Landing* at Gallipoli to World War II returned serviceman Mr Errol Tod, who accepted it on behalf of the local community. The Government granted \$2,000 towards the cost of renovating the supper room at the Lacmalac Memorial Public Hall. Termites had damaged the structure of the building and destroyed a war memorial print that had held pride of place at the hall. The Hume and Hovell Walking Track starts at Cooma Cottage on the outskirts of Yass and finishes at the Hovell Tree on the banks of the Murray River in Albury. It has three track heads—main access points—at 100-kilometre intervals. The track heads are easily accessible, and towns along the route have excellent public transport links. The seven main campsites are well equipped, and walkers can enjoy wildlife and unique flora or fish, swim, and film the sites. They can also visit points of interest, including the gold rush area of Burra Creek, the caves at Wee Jasper or the natural lookout on Mount Jergyle at Woomargama National Park.

**The Hon. Duncan Gay:** The Hon. Jon Jenkins wants to know if he can take four-wheel drives there?

**The Hon. TONY KELLY:** Four-wheel drives would not fit.

**The Hon. Eric Roozendaal:** What about bicycles?

**The Hon. TONY KELLY:** Yes, occasionally they do use mountain bikes. The Department of Lands has maps for every section of the track, plus *The Hume & Hovell Walking Track Guidebook*. The department also employs a full-time track co-ordinator who can help visitors with other information. I thoroughly enjoyed my time on the track, and I recommend it to anyone considering a healthy, outdoor holiday or those wishing to find out more about our past.

### SEWAGE AND WASTE WATER TREATMENT

**The Hon. Dr PETER WONG:** My question without notice is directed to the Minister for Local Government, representing the Minister for Energy and Utilities. In view of the recent ruling by the National Competition Council that Sydney's sewers should be open to private competition, and in light of a critical shortage of Sydney's water supply, with Warragamba Dam running at 36.8 per cent and the fact that millions of tonnes of raw and partially treated sewage are discharged onto our beaches, what prevents this Government from supporting the proposals that private companies recycle this waste and turn it into potable water?

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

### MYALL WAY AND PACIFIC HIGHWAY OVERPASS

**The Hon. ROBYN PARKER:** My question without notice is directed to the Minister for Roads. Has the Minister consulted with the Roads and Traffic Authority regarding new plans for the intersection of the upgraded Pacific Highway and Myall Way following the rally on Saturday 23 April, at which 1,000 residents of Hawks Nest and Tea Gardens called on him to provide a flyover for the intersection of Myall Way and the Pacific Highway? What details can the Minister provide to the House regarding any revised plans to replace the proposed unsafe intersection?

**The Hon. Amanda Fazio:** That is a false assertion.

**The Hon. ROBYN PARKER:** One thousand people thought it was unsafe.

**The Hon. MICHAEL COSTA:** It is interesting to see how the honourable member handles matters of public expenditure and public policy. She uses the fact that there was a rally as the basis for road allocation, which is consistent with the regional grants program that I commented on earlier in this House. This Government consults experts, who happen to be in the Roads and Traffic Authority.

**The Hon. Jennifer Gardiner:** The people are not experts? They use the road every day.

**The Hon. MICHAEL COSTA:** Is the honourable member implying that somebody who uses something becomes an expert at it? That is very dumb. It is certainly not this Government's position.

**The Hon. Duncan Gay:** We will keep sending it out.

**The Hon. MICHAEL COSTA:** You can keep sending it out. The Federal Minister, Jim Lloyd, is up there today claiming that this project requires funding. If he believes the project requires funding, he is in a position to fund it. As far as we are concerned the Federal Government will not walk away from its responsibility to the Pacific Highway. It has the responsibility to provide funding if it believes it is unsafe. We have taken advice from our experts—

**The Hon. Duncan Gay:** You have taken your own advice.

**The Hon. MICHAEL COSTA:** No, we have taken it from experts. You are the ones who take the position that because you use something you are expert in it. You turn on a switch and you are expert in electricity. You turn on the tap and you are expert in water. What an idiotic position to take!

**The Hon. Duncan Gay:** They are holding the presses now.

**The Hon. Michael Gallacher:** That is right—"Costa says locals don't know a thing. They don't know what they are talking about".

**The Hon. MICHAEL COSTA:** Absolutely, but what we are saying —

*[Interruption]*

Let me finish. What we are saying is that we will take advice off experts and those experts will determine—



**Mr Ian Cohen:** The RTA?

**The Hon. MICHAEL COSTA:** That is right, the Roads and Traffic Authority—not the Liberal Party involved in a bunch of stunts. If the Coalition, particularly the Federal member, thinks the intersection is unsafe, it has a moral responsibility to organise funding for it. We have taken advice from our experts and that advice is very clear. The improvements are based on that advice, and they are appropriate. If the Federal Minister for Local Government Territories and Roads, Jim Lloyd, thinks they are not, we are quite happy to sit down with him. If he believes that it is unsafe, he has a moral obligation to put up the funds. He will not put up the funds because, once again, this is a Liberal Party stunt. If the Coalition actually looks at the commitment that was given in relation to the Pacific Highway, the New South Wales Government—

*[Interruption]*

The advice we have taken from the RTA indicates that the improvements are appropriate. If the Federal Government believes that more significant changes are required, the challenge is for Jim Lloyd to put his money where his mouth is, instead of causing difficulties in communities.

**The Hon. Michael Gallacher:** You would not have enough money to put in yours.

**The Hon. MICHAEL COSTA:** Absolutely—because the Federal Government is ripping off our GST. The RTA has prepared a design for this intersection. If Jim Lloyd or the Libs think it needs better, he can provide the funds. *[Time expired.]*

**The Hon. ROBYN PARKER:** I have a supplementary question: Will the Minister elucidate his answer?

**The Hon. MICHAEL COSTA:** The elucidation is very easy. If Jim Lloyd and the Liberal Party believe that this intersection requires an upgrade, they are in a position to provide additional funding. We have taken advice from the RTA and the RTA's advice is clear in this matter. Improvements are being made to the intersection. This is nothing but a stunt.

**The Hon. JOHN DELLA BOSCA:** If members have further questions, they may wish to place them on notice.

### GROSE WOLD SCHOOL SITE SALE

**The Hon. CARMEL TEBBUTT:** Further to an answer I gave to a question asked by the Hon. Don Harwin today, I advise that the Grose Wold Road school property was sold at auction on 26 February 2005. Revenue raised will be invested in capital works and maintenance programs to improve the standard of facilities in schools on a statewide priority basis.

**Questions without notice concluded.**

*[The President left the chair at 1.03 p.m. The House resumed at 2.00 p.m.]*

### PRISONERS (INTERSTATE TRANSFER) AMENDMENT BILL

#### Second Reading

**Debate resumed from an earlier hour.**

**Reverend the Hon. FRED NILE** [2.00 p.m.]: The Christian Democratic Party is pleased to support the Prisoners (Interstate Transfer) Amendment Bill. The objects of the bill are to amend the Prisoners (Interstate Transfer) Act 1982, the principal Act, to broaden the range of matters the Minister may have regard to when considering a request for a prisoner to be transferred to or from another State or Territory. The bill forms part of a scheme of complementary legislation across Australia dealing with the interstate transfer of inmates. The scheme permits the transfer of prisoners between participating Australian jurisdictions for trial and welfare purposes.

A recent Federal Court of Australia case highlighted the need for current provisions to be clarified, and this bill is the Government's response to that need. The bill will broaden the matters the Minister may take into

account in relation to transfers for welfare purposes. The bill allows for a list of matters that the Minister may consider to be inserted into the Prisoners (Interstate Transfer) Act 1982. They include the welfare of the prisoner, the administration of justice in New South Wales or any other State, the security and good order of corrective services facilities in New South Wales or any other State, the safe custody of the prisoner, the protection of the community, and any other matter the Minister considers relevant.

Questions have been raised in this House about the transfer of prisoners. I remember that on one occasion there was a need to break up a potential terrorist network that may have been forming. The prisoners were not active as terrorists in the prison, but to reduce the possibility of prisoners with similar views planning and working together for future acts the Minister separated the prisoners into different prisons. I understand that some were sent interstate. We commend the Minister for that action and fully support security and good order being matters for consideration. Sometimes threats are made against a prisoner by other prisoners. The prisoner may be thought to be co-operating with the police, other prisoners may seek revenge, and it may be necessary, for the prisoner's safety, to provide greater protection by means of an interstate transfer.

The changes the bill makes in relation to welfare transfers may provide increased opportunities for inmates and their families to develop and foster relationships during the prisoner's time in prison. The media have reported extensively on the international transfer of prisoners, including the case of Miss Corby, who is currently on trial in Bali, Indonesia. Many people hope she will be found innocent. Indonesia and other Asian countries are not as developed as Australia. Our prisons would be of the standard of hotels in some countries and it is probably desirable for a westerner to be in a western-style prison rather than in an Asian prison.

I understand that in Bali, prisoners have what is almost a mat rolled up in the corner of the cell that is unrolled on the floor at night for the prisoner to sleep on. Such conditions would not be congenial to a westerner, to an Australian. I understand that the toilet facilities consist of what is called a squat toilet. I know that it is outside the leave of the bill but the Minister may care to comment on the possibility of a person being shifted to Australia and whether it is a Federal matter. Would the prisoner go from a prison in Indonesia, which would be a Federal prison, to a Federal prison in Australia without involving New South Wales? I assume from the Minister's nod that that is the case. We will watch developments overseas with interest. We fully support the bill.

**The Hon. JOHN HATZISTERGOS** (Minister for Justice, Minister for Fair Trading, Minister Assisting the Minister for Commerce, and Minister Assisting the Premier on Citizenship) [2.07 p.m.], in reply: I thank honourable members for their contributions to this important debate. As honourable members would be aware, the purpose of the bill is to respond to the decision of the Federal Court in *Attorney General for the Australian Capital Territory v Heiss*, a decision in which, in broad terms, the Federal Court overruled a decision of the Attorney General of the Australian Capital Territory in refusing the transfer of a prisoner, holding that the fact that the Australian Capital Territory did not have a prison facility for that prisoner to come to was not a relevant consideration in making a decision to refuse to accept a transfer. If Ms Lee Rhiannon had thought a little longer about the issue she raised she would have seen that it is actually counterproductive to the proposition articulated in her speaking notes.

The aim of the bill is to broaden the base upon which decisions can be made, to extend them beyond purely welfare decisions. I would have thought that on any rational basis, from that perspective, that should be welcomed. From time to time there are other considerations, including the matters raised by Reverend the Hon. Fred Nile relating to security, that might justify a transfer not easily accommodated under the legislation as it stands. I need to respond to one point raised by Reverend the Hon. Fred Nile. International transfers are covered by different legislation. At this time there is no treaty between Australia and Indonesia. Nor, for that matter, is there a treaty between Australia and New Zealand. It is an odd situation that two of our closest neighbours, countries that many Australians visit for business and tourist purposes, do not have a treaty with Australia to facilitate prisoner exchanges.

It is hoped that that matter may be addressed in due course. If and when treaties were to be signed with the Commonwealth, any request for a transfer to Australia would require negotiation between the Commonwealth and the foreign government as to the time that would need to be served in an Australian prison, bearing in mind that sentences in other countries do not necessarily replicate Australian sentences. In Australia we have truth in sentencing, but in other nations sentences may at first blush be quite lengthy but there are provisions for pardons and various other remissions that are not easily accommodated under our system.

It is, therefore, necessary to negotiate the details translating a sentence from a foreign country to an Australian sentence. Ultimately it would require the consent of the relevant State. In the case of the two Thai

women who were transferred from Thailand to Australia, the Commonwealth negotiated the terms of those transfers and the relevant time that had to be served in an Australia prison. I, as the Minister responsible for Corrective Services in New South Wales, agreed to the transfer. However, the prisoners remain Federal prisoners and their parole is governed by Federal law. New South Wales and other States provide the incarceration facilities for them. It is necessary for the States to consent.

**Reverend the Hon. Fred Nile:** Are there any Commonwealth people?

**The Hon. JOHN HATZISTERGOS:** There are no Commonwealth prisoners. There is a requirement under the Constitution that the States provide facilities for the incarceration of Commonwealth offenders. I commend the bill to the House.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## **BUSINESS OF THE HOUSE**

### **Postponement of Business**

**Government Business Orders of the Day Nos 2 to 7 postponed on motion by the Hon. Tony Kelly.**

## **PREVENTION OF CRUELTY TO ANIMALS AMENDMENT BILL**

### **Second Reading**

**The Hon. TONY KELLY** (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.12 p.m.], on behalf of the Hon. Ian Macdonald: I move:

That this bill be now read a second time.

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

**Leave granted.**

The *Prevention of Cruelty to Animals Act 1979* is the principal Act concerning the welfare of animals in this State. Its objects are to prevent cruelty to animals, and promote the welfare of animals through proper care and humane treatment. In terms of its practical application, much of the work under the Act is done by officers of the RSPCA and the Animal Welfare League. Both organisations are independent, approved charities, and they rely almost entirely upon community donations to fund their activities, including their enforcement and compliance activities under the Act. It should be noted that NSW Police officers also have enforcement powers under the Act.

The amendments will significantly improve the Act's operation and the officers' enforcement capabilities. The bill extends the powers of officers, introduces a system of penalty notices for offences, makes a number of amendments to improve the efficiency of enforcement and prosecutions, and also clarifies a number of provisions.

The major aim of the bill is to allow early intervention, with greater powers being given to officers to prevent harm to animals in the early stages. Perhaps most importantly, the bill gives officers the power to issue directions to people to care for their animals.

To a certain degree, the amendments are about education. By giving officers the power to intervene, they can provide essential welfare information about the specific needs of individual animals. Often, the cruelty that animals suffer is due to ignorance. The amendments will help overcome that ignorance by providing officers the ability to give directions about the care and welfare of an animal.

The other major aim of the bill is better responses once offences have been committed. In particular, the powers of police officers and inspectors are being expanded. The rules for conducting prosecutions are also being addressed. Overall, the amendments will significantly improve enforcement and compliance powers, as well as ensure efficiency in procedures when matters come before the courts.

The bill provides, therefore, a dual approach to improving animal welfare. On the one hand, there will be greater early intervention and education and, on the other, there will be improved enforcement and compliance provisions.

Before I explain the details of each amendment, there are two general points I wish to make. The first concerns the consultation that was conducted in preparing the bill.

There are several groups with an interest in this bill, including the farmers of New South Wales, the RSPCA and the Animal Welfare League. I am advised that talks were held with the RSPCA and the Animal Welfare League on a number of occasions,

and that the New South Wales Farmers Association was consulted. I am further advised that there were positive responses to the bill. Additionally, the professional association of this State's vets—the New South Wales Division of the Australian Veterinary Association—was consulted. Once again, I am told that there was positive feedback.

The other point concerns the development of the bill. The bill is the result of a review and improvement process, which the Department of Primary Industries conducts on an ongoing basis in conjunction with stakeholders.

In recent years various shortcomings in the Act have been identified, and new and better ways of preventing cruelty to animals have been considered. As I have indicated, officers of the department routinely meet with staff of the RSPCA and the Animal Welfare League, as well as other groups. Many of the amendments in the bill have come about from discussions at those meetings.

The bill is a collection of sensible and practical reforms that have taken several years to develop. The Government has taken time to make sure that the changes are correct, and that proper consultation has taken place. The recent 2003 penalty amendment bill and the tail docking bill were required quickly to comply with election promises and other government commitments to the Commonwealth and the States, so those changes were introduced separately. Prior to that, the last time the Act was significantly amended was 1997.

So, although recent amendments to the Act have been split into three bills, they should be seen as one package. It is a comprehensive and sensible package, and one that is aimed at improving the welfare of animals.

I will now deal with each of the amendments, beginning with the changes to the powers of police officers and inspectors. These changes are perhaps the most significant reforms in the bill. They expand the powers to investigate offences and to protect animals from abuse. As well as adding new powers, the bill amends the existing provisions—such as those dealing with search warrants and seizure of animals—to make them more appropriate to the job of animal welfare. The provisions under part 3 of the Act dealing with officers' powers have also been rewritten and revised. This was necessary because a number of ad hoc amendments to the Act, which have been made over the years since it was enacted in 1979, have seen its structure and wording become cumbersome and unclear. The amendments clarify the provisions of part 3.

Turning now to each of the amendments, the bill expands the current power under section 27A for an officer to require a person's name and details. At present, the Act provides that an officer can demand the name and address of people who are committing an offence, or who are suspected of committing an offence. The bill extends this power to include the names and addresses of drivers committing an offence involving a vehicle, or drivers who are suspected of committing an offence involving a vehicle.

A related amendment is a new power to require disclosure by the person responsible for a vehicle, or another person who might have information, concerning the name and address of a driver who is thought to have committed an offence. This could apply, for example, where there is a failure to tether a dog on the back of a utility, or where heat-stressed dogs are locked in cars. It could also apply where a driver fails to alleviate the pain of an animal that they have hit, or to stop animals falling from a moving truck due to poor containment. This power is needed because alleged offences under the Act often involve a vehicle, but the only information available to identify the alleged offender is the registration number of the vehicle. The number discloses the owner, but not necessarily the alleged offending driver.

A further amendment improves police officers' current power to stop vehicles. Under the amendment in this bill, the police will have the power to stop vehicles and direct the driver to move the vehicle so that it can be inspected. These powers will apply where an animal is thought to be in distress as a result of cruelty or where an animal has not been provided with proper food, water or shelter.

The extended powers might be used, for example, in relation to stock transport vehicles where animals have collapsed, or they might be used where pigs are sunburned, or where animals have not received water in 24 hours. Where such cases come to the notice of inspectors, they will call the police and seek their help. These are sensible amendments, which will help to ensure that people provide the basic care and protection to animals under their control while the animals are in transit.

The bill makes several other amendments to powers under the Act. These powers will apply to both police officers and inspectors appointed under the Act, such as officers of the RSPCA and the Animal Welfare League.

Beginning with the power of entry, the amendments in this bill extend the power for police officers and inspectors to enter private property. At present, section 26 gives them the power to enter premises if they suspect that an animal is being treated cruelly, or if an animal is going to be treated cruelly. In section 4, "premises" is defined as any place that is not a public place.

The amendment in this bill expands the definition of "premises" to cover vehicles and other forms of transport.

Members would be aware that animals, particularly dogs, are sometimes left in cars. They can suffer heat exhaustion, or even stroke. Livestock too can be confined in vehicles such as trains, trucks, ships and planes. Under current provisions, police officers and inspectors do not have the power to enter the vehicles or vessels to examine animals or to relieve their suffering. The amendment in this bill fixes that problem.

Under this amendment, officers and inspectors will be able to enter or forcibly enter a vehicle if a cruelty offence is suspected. This provision will allow dogs to be rescued when locked in cars on hot days, something that is not legally possible at the present time. As everyone would agree, this is a much needed power.

However, not all the changes to officers' powers in this bill involve extensions. One of the amendments will restrict an existing power.

Currently, officers have an unrestricted ability to enter residences in the exercise of their duties. Under this bill, that power is to be limited to situations where the owner has given consent, or when the officers are authorised by a search warrant, or when it is

likely that an animal welfare emergency exists. These emergencies will include situations where the officer believes that an animal has suffered a serious injury, or is in need of urgent veterinary treatment, or where the officer requires entry to prevent an animal suffering serious physical injury.

This amendment will assist in protecting privacy, while still allowing officers to look after the welfare of animals in need. I must point out that the amendment does not change the law in relation to non-residential places, where there is no need for a search warrant.

The next amendment also concerns search warrants. Under the Act, a search warrant can be obtained in relation to a search for an animal. The amendment in this bill extends the current provision to cover searches for things such as prohibited electrical devices, cockfighting spurs, incriminating documents or the carcass of an animal, in addition to searches for live animals.

Another amendment concerns officers' powers to seize animals.

Under the current provisions of the Act, officers can seize an animal that has been treated cruelly and take it elsewhere, but they cannot seize the animal and keep it where it is. This is a serious omission in the officers' powers, and it could result in even greater suffering for the animal. Imagine stock animals that were not fed or given water, or were very ill through poor treatment. In these cases, if the animals were moved, they would be put through additional distress and could even die.

It would be much better to water, feed or treat the animals where they are found. This bill will allow that to happen. By treating and caring for an animal where it is found, the distress, suffering and possible death associated with transporting the animal will be avoided. The care for the animal by the enforcement agency on the owner's land would terminate when the animal's proper care and health were ensured, or when they could be safely moved.

The last of the amendments concerning officers' powers that I will address is the power to give directions on the care of animals. This is a very important and useful amendment.

Currently, the only enforcement tool in the Act is a prosecution. This necessarily presumes that poor treatment or cruelty has already occurred. It is, therefore, a backward-looking means of protecting animals. There is no tool in the Act that is preventative in nature. The amendment in this bill fixes that shortcoming. A new power will allow inspectors to give directions to those responsible for animals. For example, an officer will be able to direct that an animal receive medical treatment, or water, or be provided with shelter. The range of possible directions to ensure the animal's wellbeing is very broad.

It is likely that this power will be used for first offenders, or in cases of less serious breaches of the Act. It gives people the chance to fix the problem. The power to issue directions will provide a new, more appropriate tool for inspectors to use in the care of animals. It also brings New South Wales into line with the approach in Western Australia, the Northern Territory and Queensland.

Importantly, these directions will prevent serious cruelty from occurring in many cases.

A related amendment is the change to the definition of "veterinary treatment". It is being expanded to cover consultations and diagnostic procedures.

When read with the directions powers, this change will allow inspectors to direct people to have their animal properly examined and its condition diagnosed. In turn, this will improve the chances of the animal receiving effective treatment.

I need to point out some limitations on the directions power amendment. Let me assure members that the power will not be a free-for-all. The bill introduces several safeguards to make sure the power is used properly.

Firstly, the power to give directions can be used only if an officer has reasonable grounds to think that a person has committed an offence under the Act. Officers will not, therefore, be free to make orders without some objective grounds for thinking that cruelty has already occurred.

Secondly, a failure to follow a direction will not be an offence in itself, and there will be no penalty. Failure to follow a direction could, however, be considered in court proceedings for an offence arising from the situation or a similar matter.

Looking more generally, the bill introduces other safeguards on the powers I have described so far. These safeguards were developed in consultation with the Attorney General's Department. In exercising the powers, officers will be obliged to identify themselves. They will have to inform the person why they are using the power, and they will have to warn that a failure to comply with an order could be an offence. Also, as I have previously noted, only police officers will have the power to stop and direct drivers of vehicles.

Therefore, even though many of the powers are being broadened, there will be appropriate protection for the public.

The next amendment relates to penalty notices.

Under the Act as it currently stands, the only way to penalise a person is through court proceedings. Therefore, enforcement agencies are obliged to mount a prosecution if an alleged offender is to be penalised.

But prosecuting offenders, particularly when an offence might be considered in the lower range, imposes a considerable burden on enforcement agencies. There are costs in time and money, particularly legal costs. Therefore, enforcement agencies may exercise discretion to refrain from bringing proceedings where the alleged offence is regarded as less serious in nature. Consequently, the alleged offender is left unpenalised and deterrence is not achieved.

To overcome this shortcoming in the Act, the bill introduces a system of penalty notices. Members would be aware of the many other statutes that have adopted the penalty notice system. It has proven extremely successful in dealing with less serious offences by avoiding the costs of court proceedings.

The amendments to the Act currently before the House bring the benefits of the penalty notice system to the protection of animals. Under a new section 33E, inspectors or police officers will be able to issue penalty notices where the facts are clear and it appears to them that a person has committed an offence. For example, a penalty notice could be issued where someone failed to tether a dog in the back of a utility, or where someone has not provided proper water, food or shelter for an animal. Penalty notices could also be used for first offences where the offence has been committed through ignorance or carelessness.

I must stress, however, that penalty notices will not replace prosecutions as an enforcement tool. Agencies will still be able to bring proceedings for offences, particularly serious offences.

The amendment does not specify the offences covered by the penalty notice system. These will be addressed in the regulations and will include a number of the offences under the Act. Similarly, the amount of the penalty notice will be set in the regulations. At this stage I can indicate that they will range from 2 penalty units, or \$220, to 5 penalty units, or \$550. This is in line with the amounts set for offences under other statutes. It is expected that a full public review of the regulations will occur during 2005. The recommended amendments to the regulations following this review should include a number of penalty notice offences.

The penalty notice amendment will greatly increase the efficiency of the Act's administration. The system will cover many types of offences that were often not prosecuted in the past. It will also free up resources that would be tied up with court proceedings, allowing these resources to be directed to more serious cases. However, the amendment will not take away a person's right to defend himself or herself in court. A person who is given a penalty notice will be able to defend it in the Local Court and the matter will then be heard before a magistrate in the usual way.

The next amendment concerns guidelines. The bill amends section 34A to clarify the use of guidelines for the welfare of farm and companion animals.

This amendment is required because there has been some doubt expressed about whether codes of practice can be considered as guidelines. It is a technical amendment, but it will make sure that the various national codes of practice for the care and welfare of animals come within section 34A. This also means that any reference to guidelines or codes of practice within the Act can be easily found.

Another amendment in this bill removes the existing defence for veterinary surgeons against charges of cruelty under the Act.

This change is consistent with national competition policy. A review of the Act found that veterinarians were unnecessarily protected from prosecution if they were involved in the treatment of an animal or if they were conducting surgery. This defence also provides a significant barrier to disciplinary procedures against vets by the Board of Veterinary Surgeons.

The defence provision once served a purpose, particularly when painful operations were performed without pain relief. This was at a time when the techniques of analgesia were less advanced and public expectations were lower. For example, the firing of horses' legs was done without painkillers. In such cases it would have been inappropriate to charge the vet with an offence under the Act.

However, times have changed, and there have been major improvements to animal care. Veterinary science and public expectations regarding professional behaviour and the humane treatment of animals have greatly progressed. It is no longer acceptable to exempt vets from prosecution for cruel treatment of animals during a medical treatment or surgical procedure. Therefore, this bill removes that defence.

Discussions with members of the New South Wales Division of the Australian Veterinary Association have raised no significant concerns about the repeal of the defence. This change will bring New South Wales into line with Tasmania, Victoria, Queensland, South Australia, the Northern Territory and the Australian Capital Territory.

The removal of the defence is not significant in practical terms. Animal welfare concerns and contemporary standards of veterinary practice are intimately related and are not at odds with each other. Indeed, the Australian Veterinary Association has recently redrafted its code of practice and this is now under consideration by the association's members. In the code the foremost principle of practice states:

*Veterinarians shall always consider the welfare of the animal first in the provision of veterinary services.*

The Act also contains a variety of modifications and other changes. Members can consider these for themselves, but I will point out a few.

Firstly, the bill introduces changes to the reporting obligations of charities, providing that they can report at the end of September instead of the end of July.

Secondly, the power of the courts to prohibit convicted offenders from having animals is expanded to cover any person who is convicted under the Act.

Thirdly, the limitation period for prosecutions is extended from 6 months to 12 months and the requirement that a separate summons for each offence is modified so that a court can consider whether an offence involved more than one animal. In this way the court will be able to examine the seriousness of offences where they relate to herds, flocks or other groups of animals of the same species at the same place.

Fourthly, the requirements for charities to advertise animals for sale are being replaced by other more cost-effective and appropriate means of publicising that the animal is to be sold.

Fifthly, a defence of feeding predatory animals live food is being introduced. However, this defence is subject to several safeguards to ensure that only predatory animals are given live food.

Sixthly, the definition of "stock animal" is being expanded to include deer, which are currently included by means of regulation. This change recognises that deer are commonly farmed these days. However, the amendment has no bearing or influence on other legislation where deer may be separately considered as pest animals or as wild game. Also, the word "swine" is being changed to "pig" to bring the Act up to date.

The seventh change concerns the tethering of birds. Section 10 of the Act currently provides that where an animal may be lawfully tethered, the animal must not be tethered for an unreasonable length of time or by means of an unreasonably heavy or unreasonably short rope, chain or cord.

However, the words in section 10 are inadequate. They mean that animals can still be improperly tethered by means of other materials, which may include a leather thong, a fishing line or wire.

The bill amends section 10, therefore, so that specific mention of tether material or construction is omitted. In this way the full intention behind the prohibition will be reflected in the wording.

Another section of the Act dealing with tethering is also being amended. Section 21D prohibits the chaining of a bird by the use of a leg ring and chain. It, too, is inadequate at present. For example, cockfighting birds can be tethered with a number of different materials and methods that are not presently caught by the words of the Act. To overcome this problem the bill extends section 21D to make it an offence to fasten a bird by any kind of tethering device.

These amendments will not affect the proper use of jesses for birds of prey. In fact, there will be a specific defence for the use of jesses. In case members do not know, a jess is a strip of leather attached to the leg of a raptor. However, the defence is to apply only when a raptor is tethered to its handler.

Also, as a matter of housekeeping, the two provisions concerning tethering will be incorporated in section 10.

The last amendment I wish to address concerns the prohibition in section 21 of the Act. This is the prohibition against sporting-type activities, such as coursing, where an animal is kept or confined and then released so dogs can chase, catch or confine the animal.

There has been concern expressed that the word "used" in relation to a chased animal, which currently appears in section 21, could broaden the scope of the section so that vertebrate pest control and other legitimate activities are caught by the section. For example, it is possible that the section covers the chasing of rabbits by dogs to confine the rabbits in burrows before warren destruction, or it could cover the moving of sheep during dog trials or mustering.

To make sure that there is certainty as to the scope of the offence, the section is to be amended by replacing the word "used" with the more specific words "released from confinement". In this way the offence will be limited to sporting-type activities where animals are kept and released to be chased, caught or confined by dogs. There will also be a specific exemption for sheep dog trials, mustering of stock, working of stock in yards and other animal husbandry activities.

This bill brings a number of significant improvements to the Act. It allows for early intervention and greater public education. But the bill does not ignore the powers of compliance. As I have explained, the powers of officers, inspectors and the courts are to be improved and expanded. It is expected that the combination of the two approaches will greatly improve the welfare of animals.

I commend the bill to the House.

**The Hon. DUNCAN GAY** (Deputy Leader of the Opposition) [2.12 p.m.]: The Opposition does not oppose the Prevention of Cruelty to Animals Amendment Bill. The bill will expand options for early intervention in cases of animal cruelty and place greater emphasis on increasing animal welfare standards. During early consultation on this bill, various stakeholders brought a number of concerns to the attention of the Opposition. While the Opposition originally intended to amend the bill to address those concerns, we have since been advised that the Government has engaged in greater and more thorough consultation with affected stakeholders and we have been assured that for the most part those matters have been resolved—which is unusual, but welcome.

The crux of those concerns was that some of the Government's proposed amendments extended beyond the purpose of the bill and I will raise them today to ensure that the Minister's assurances in response to those concerns are placed on the record. That is, of course, if he bothers to come into the Chamber while his bill is being debated.

By way of introduction, animal welfare is becoming an increasingly prevalent issue in today's society. It is important that the prevention of animal cruelty to companion animals and farm animals remains a priority of any government and society. It is a cause for great concern that animals can be subject to unnecessary and/or brutal practices that inflict pain. Of equal concern are people who are ignorant and lack understanding of the needs of animals. This can cause animals just as much distress and discomfort. However, it is important to recognise that while some routine agricultural practices—including the routine sheep husbandry practice of mulesing that was discussed at length in the House yesterday—cause an animal pain, they are necessary procedures that have obvious benefits that clearly outweigh the short-term negative impact.

Mulesing is currently the most effective means of ensuring the long-term health of our sheep flock. I am sure that all honourable members would be well aware of the attempt by the organisation People for Ethical Treatment of Animals [PETA] to hijack the animal welfare agenda, with its campaign encouraging the boycott of Australian wool products on the basis that mulesing is an act of animal cruelty. I and all farmers who care for their animals can assure honourable members that the often misinformed and misdirected followers of PETA that the vast majority of farmers do not inflict pain on their animals without good reason. The Australian Wool Industry has made a commitment to end the practice of mulesing by 2010.

The Opposition certainly hopes that the New South Wales Government has enough money in its Department of Primary Industries budget following its three-year budget cuts to develop and implement practical and affordable alternatives to mulesing. That sort of help is essential. The bill makes a number of practical amendments that the Opposition believes will update, streamline and generally improve the operation of the Act to prevent animal cruelty. The bill follows on from a number of other pieces of animal welfare legislation introduced by the Government since the 2003 election. Last year the Prevention of Cruelty to Animals (Tail Docking Bill) was introduced by the Government and in 2003 the Government introduced the Prevention of Cruelty to Animals Amendment (Penalties) Bill, which followed on from the Government's pre-election commitment to better care for pets and wildlife.

That latter bill sought to ensure that individuals and corporations who commit serious offences of animal cruelty face tougher penalties. During debate on that bill I cynically stated that tougher penalties alone would not entice people to be kinder towards animals. The fact that the Government has yet again tightened up the Prevention of Cruelty to Animals Act 1979 may be testament to that assertion. For example, the bill expands the current powers of officers and inspectors under the Act to deal with offences of animal cruelty involving vehicles. It also extends the power of officers and inspectors requiring a person's name and details to include the names and addresses of drivers committing an offence involving a vehicle. The bill introduces a new power to require disclosure by the person responsible for a vehicle, or another person who might have information regarding the names and addresses of drivers who have committed an offence.

Provided third parties act with certainty when providing the details of an alleged offender under the Act, the Opposition does not oppose the amendment. For example, this extended power could be applied in the dangerous situation whereby heat-stressed dogs are locked in cars. A further amendment increases the current power of police officers to stop and inspect vehicles. Those powers will apply where an animal is thought to be in distress as a direct result of cruelty or where an animal has not been provided with proper food, water or shelter.

In relation to the transport of livestock, these extended powers may be used where animals have collapsed or where they have not received water in 24 hours. The Opposition hopes that these amendments go a long way towards ensuring that people provide basic care and protection to animals under their control when in transit. The bill extends the power for officers and inspectors to enter private property. That includes vehicles and other modes of transport. While the Opposition does not oppose this new power, I am aware of stakeholder concerns regarding this provision. Those concerns were centred round the fact that inspectors and officers could arrive on a farm unannounced without declaring that they had been on other farms in the previous 72 hours, and thus could bring in diseases.

Legitimate fears were raised that that could create serious biosecurity concerns as disease pathogens could be spread between farms. The outbreak of disease is a multimillion-dollar international trade issue. More and more farmers in intensive agriculture are raising animals under contract growing systems under very strict quarantine guidelines. If disease enters a farm, particularly in the case of an intensive farming operation, the farmer will be held accountable for the losses. I have been advised that an agreement has been reached between stakeholder organisations and the Department of Primary Industries. In regard to biosecurity, standard operating protocol will be written and a biosecurity kit carried by inspectors. For the record, the Opposition would like the Minister's assurance in relation to that issue.

Many honourable members would know that when we are trying to keep chemicals and drugs out of the production of our stock that sort of biosecurity is essential. If we kept some of the animal liberation groups out of the sheds it might also help to maintain security. The Opposition is aware of initial stakeholder concerns regarding section 33E, which relates to penalty notices and to the issuing of spot fines. The crux of these concerns was that the introduction of spot fines would provide excessive discretionary powers to inspectors on subjective issues such as animal cruelty. I have been advised that since this concern was raised the intent of such penalty notices has been clarified and will be included in the regulations. Because spot fines can be challenged legally the Opposition hopes that they will be issued only when there is sufficient evidence to defend the notice in court.



The Opposition also welcomes the Government's indication that standard operating protocols, including the training of inspectors regarding the issuing of spot fines, will be developed. To some degree that satisfies the concerns of the Opposition in regard to spot fines. However, Opposition members remain apprehensive about the fact that the regulations have not yet been made available to guide inspectors or police on the penalties that ought to be issued for different offences. Frankly, there is still no guarantee that the spot fines will not be used as a means of raising revenue for the State Government. Inherent in our concern about spot fines is the fact that it is a reversal of the onus of proof. When a spot fine is issued one is considered guilty until one proves oneself innocent, rather than the Government having to prove that one is guilty before one is fined.

Inherent in our concern of this matter is that it is a reversal of the Westminster system—that is, that someone is innocent until proven guilty. The Opposition does not oppose proposed section 34 regarding the guidelines relating to the welfare of farm or companion animals. However, it was concerned about the fact that the wording of the proposed section was far too wide reaching. The Opposition was concerned that the words "any document" could be interpreted as inconclusive research papers or documents produced by any animal welfare lobbyist groups that, if adopted, could have been relied upon by inspectors to prosecute farmers and owners of companion animals. The Opposition considered it both unfair and unreasonable to make farmers conform to certain changes that had been proposed by so-called researchers engaged and paid for by animal welfare activists.

To some degree those concerns have been somewhat appeased through assurances provided by the Minister's office that the current model codes of practice for the welfare of animals prescribed in the regulations will be mentioned in the Act but will not be legislated codes. I am advised that the legality of these model codes of practice and any other document that is included in the regulations will remain unchanged as a result of the bill. Under the proposed legislation, before the Minister adopts any document as regulations, the Animal Welfare Advisory Council and representatives of any relevant livestock industry are to be given an opportunity to review and comment on the proposed guidelines. We hope that requirement goes a long way towards ensuring balanced, sensible documents that do not adversely impact on routine animal husbandry practices and that are adopted as regulations.

The Opposition does not oppose those amendments that seek to remove the existing defence for veterinary surgeons against charges of cruelty under the Act. That is consistent with national competition policy and has not been met with significant concerns by the New South Wales branch of the Australian Veterinary Association. The amendment also brings New South Wales into line with Tasmania, Victoria, Queensland, South Australia, the Northern Territory and the Australian Capital Territory. A review of the Act found that veterinarians were unnecessarily protected from prosecution if they were involved in the treatment of an animal, or if they were conducting surgery. This defence also provides a significant barrier to disciplinary procedures against veterinarians by the board of veterinary surgeons.

The defence position once served a purpose, particularly when painful operations were performed without pain relief. However, times have changed. Techniques of analgesia are more advanced and public expectations are higher. It is therefore no longer acceptable to exempt veterinarians from prosecution for cruel treatment of animals during a medical treatment or surgical procedure. The Opposition does not believe that this amendment is considerable in practical terms as animal welfare concerns and contemporary standards of veterinary practice in many ways are synonymous. As I have previously stated, the Opposition does not oppose the vast majority of the amendments proposed in the bill.

Section 10 of the Act currently provides that where an animal may be lawfully tethered that animal must not be tethered for an unreasonable length of time, or by means of an unreasonably heavy or unreasonably short rope, chain or cord. However the wording of this section is inadequate as it still allows animals to be improperly tethered by means of other materials including a leather thong, fishing line, or wire. The bill seeks to amend section 10 so that specific mention of tether material or construction is omitted. In this way the full intention behind the prohibition will be reflected in the wording. The bill also seeks to extend section 21D to make it an offence to fasten a bird by any kind of tethering device except in the case where a jess is used that applies when a raptor is tethered to its handler.

The final amendment I comment on relates to the prohibition against sporting-type activities in section 21 of the Act. Concern has been expressed that the word "used" in relation to a chased animal, which currently appears in section 21, could broaden the scope of the section so that vertebrate pest control and other legitimate activities are covered by the section. The bill amends section 21 of the Act by replacing the word "used" with the more specific words "released from confinement". In this way the defence will be limited to sporting-type

activities whereby animals are kept and released to be chased, caught or confined by dogs. The Opposition welcomes the fact that the bill provides a specific amendment to exempt sheepdog trials, the mustering of stock, the working of stock in yards, and other animal husbandry activities.

The Prevention of Cruelty Amendment Bill contains sensible amendments that will improve the effect of early intervention and education in cases of animal cruelty while improving enforcement and compliance provisions. As I said in my opening remarks, the Opposition initially held concerns that a small proportion of the bill's amendments went beyond its original intent. However, we were pleased with the actions of the Minister's staff, who worked with the Opposition and the New South Wales Farmers Association to address those concerns. I only wish such a sensible outcome could have been achieved in relation to the Brigalow Belt South Bioregion decision that was announced yesterday.

[Interruption]

Mr Ian Cohen, in supporting the decision of this deceitful Government over the Brigalow Belt South Bioregion, thinks he has achieved a wildly terrific political win, whereas he has destroyed the very things he wishes to protect. His hypocrisy is just incredible! The Opposition will not oppose the bill.

**Debate adjourned on motion by the Hon. Peter Primrose.**

## **ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT (DEVELOPMENT CONTRIBUTIONS) BILL**

### **Second Reading**

**The Hon. TONY KELLY** (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [2.32 p.m.], on behalf of the Hon. Michael Costa: 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.**

I am pleased to introduce the Environmental Planning and Assessment Amendment (Development Contributions) Bill. This bill makes a number of significant amendments to the development contribution system under the Environmental Planning and Assessment Act 1979 and is an important legislative step in the reform of the New South Wales planning system. It demonstrates the priority of the Government in this critical area and is positive news in that it puts in place some innovative funding mechanisms to enable the provision of infrastructure and facilities. The bill will now lie on the table of the House and there will be further opportunity to discuss any specific issues that are identified. This will allow for consultation on the preparation of the draft regulations that need to be made prior to the commencement of the bill and the updating of guidelines contained in the section 94 contributions plans manual. The Government is committed to continuing to work with stakeholders in finalising the complete package.

Section 94 of the Environmental Planning and Assessment Act is the principal method enabling councils to levy contributions for public amenities and services required as a consequence of development. This may be the provision of new facilities for a new area, or may be the expansion of existing facilities where a developed area is growing. To make the system more transparent, since 1993 councils have been able to levy section 94 contributions only if they have prepared and exhibited a contributions plan. Before outlining the key elements of the bill, I advise the House that these reforms are the product of an extensive consultation process involving all key interest groups.

Section 94 of the Environmental Planning and Assessment Act has been under review for some time in response to concerns raised by the development industry and local councils. The merits of maintaining the existing system and making improvements have been explored, as have alternatives that are more or less prescriptive than section 94. A section 94 review committee reported to the former Minister for Planning, the Hon. Andrew Refshauge, in January 2000. As that report recommended a range of significant reforms, the Minister had the report published in May 2000 and submissions were invited from interested stakeholders. Following the formation of the new Department of Infrastructure, Planning and Natural Resources in 2003, the Minister for Infrastructure and Planning, and Minister for Natural Resources established a task force to look more closely at the way the section 94 developer contribution system currently operates and in particular the alternative mechanisms by which planning authorities may obtain a development contribution.

That task force strongly supported the intent and function of a well administered section 94 regime for funding local infrastructure, for which there is a nexus with new development. The task force also endorsed a number of improvements to the operation and accountability of the current system as well as the introduction of alternative approaches for obtaining development contributions. In a contemporary planning and urban management environment, section 94 is seen by both the development industry and councils as being too inflexible to deal with the uncertainties of development in some areas. The changes proposed recognise that the pattern of development is changing and that a differential approach to the levying of development contributions is needed.

For greenfield areas, the traditional section 94 contributions plan may be the most appropriate. However, in established inner areas, where there is little opportunity to acquire open space, or for small rural councils, where the administration costs associated with preparing a section 94 contributions plan may be exorbitant, application of a flat percentage levy may be the most suitable

option. The reforms brought forward today aim to facilitate the means by which planning authorities may obtain a development contribution to be applied for a public purpose. In addition to obtaining such a contribution under the existing section 94 scheme of the Act, a consent authority will have the option of obtaining development contributions through a defined system of voluntary planning agreements, or imposing a condition of a development consent that requires developers to pay a percentage of the proposed cost of carrying out the development.

It will be up to the consent authority to determine which approach best suits its particular needs. If, for example, a council proposes to use the existing section 94 regime in its release areas but apply the flat percentage levy in its established town centres, it will set out those arrangements in a contributions plan so that an applicant can clearly see what the contribution rate will be for a certain development. I turn now to the provisions of the bill itself. I will cover first one of the specific amendments to the existing section 94 provisions. The bill includes a provision, in clause 93E, designed to clarify the legitimacy of a current practice by councils that allows them to sensibly manage their resources to get the maximum benefit from section 94 funds collected. That provision clearly authorises borrowing between section 94 funds.

In the Sydney region and around the State there is in excess of \$800 million locked up in section 94 contribution accounts, unable to be spent. This amendment means freeing up that money, which is trapped in local government accounts, for the provision of infrastructure. Each contribution plan usually involves raising funds for a number of facilities such as libraries, child care centres and local roads. Sufficient funds are rarely raised to allow all works to be carried out at the same time. Instead, as an interim measure, funds are often transferred between section 94 accounts in order to produce sufficient funds to allow councils to build priority works. However, there is no explicit recognition within the Act of the appropriateness of such borrowing or pooling of contributions.

The bill clearly authorises that monetary contributions paid in accordance with conditions of development consents for a particular purpose may be pooled and applied towards any other purpose for which a monetary contribution is required to be paid. This will promote efficient use of funds and is not designed to weaken the nexus. All borrowing should be accounted for and repaid and this provision is subject to the requirements of any relevant contributions plan or a ministerial direction setting out, for example, the circumstances and facilities for which borrowing will occur, accounting and reporting requirements, and information as to when the actual facility for which the contribution was originally raised will be provided.

Councils and industry groups supported this change on the basis that it provides flexibility and promotes efficient use of funds, provided there is transparency and firm arrangements for the restitution of funds. The pooled use of section 94 funds is a common and reasonable practice that makes for good financial management. Without it fewer facilities could be built, delays in their provision would multiply and councils would retain larger unspent section 94 funds. The practice of entering into planning arrangements to provide agreed infrastructure and appropriate public benefits, in addition to or as an alternative to section 94, is not new. Planning arrangements have existed for some years and in recent times have merged as a market response for development or redevelopment of large-scale sites in single ownership such as the Australian Defence Industries site at St Marys and in the Greystanes development.

However, the legal framework surrounding agreements is uncertain and the existing practice is often hidden from public scrutiny and is, therefore, unaccountable. The bill seeks to make best practice in planning arrangements common practice. The amendments set out in the bill clarify and make the approach less cumbersome by expressly acknowledging the role planning agreements play as part of the development contributions system. Planning authorities and developers will be able to voluntarily enter into planning agreements under which the developer is required to dedicate land free of cost, pay a monetary contribution or provide any other material public benefit, or any combination of them, to be used for or applied to a public purpose.

Planning authorities include local councils, the Minister, a development corporation or other public authority prescribed by the regulations. I stress that the governing principle for planning agreements is that they are intended to be voluntary arrangements between a planning authority and a developer. Planning agreements are particularly appropriate in the case of large-scale developments which have longer time frames and which are likely to be developed in stages and in situations in which the impact upon public infrastructure can be substantial and the developer has a key interest in delivery of public infrastructure.

In the case of such developments it may be necessary and reasonable for the developer to contribute to a range of non-capital added costs, including costs of ongoing monitoring of development impacts and the costs of environmental management, in order for the development to proceed. In many cases planning agreements have been the best way in which vital local and State infrastructure can be guaranteed. Planning agreements can offer different and better outcomes through efficiencies in the process or through innovation by the parties. By recognising the reality in legislation, the Government is regulating the nature and extent of the agreements and also regulating the way in which the agreements are entered into, publicised and reported on. For the first time there will be standards for planning authorities to meet when entering into planning agreements—whether making, amending or revoking them.

The bill will enable communities and the Government to scrutinise the public infrastructure decisions made by planning authorities. The absence of a regulated, fair and transparent system of planning agreements creates an environment conducive to some practices recently reported in the press. However, the system of planning agreements provided for in the bill will ensure that all arrangements between planning authorities and developers are transparent and in the public interest so that the public have the opportunity to comment to the responsible planning authority about the proposed planning agreement and that planning authorities are accountable in the collection and expenditure of funds and the provision of facilities.

The regulations will contain safeguards to ensure that there is no abuse of planning agreements by either planning authorities or developers. Planning agreements must promote the objects of the Environmental Planning and Assessment Act and the applicable environmental planning instrument. They must be directed towards a legitimate planning purpose and provide for a reasonable means of achieving that purpose. The public interest will be the overriding consideration. The procedures in the regulations governing the entering into of planning arrangements will be transparent, accessible and fair to all parties. They will provide for effective public participation and accountability and will protect the regulatory independence of the planning authority involved in negotiating an agreement.

Any evidence of corruption or maladministration in relation to planning agreements will be dealt with by the appropriate courts, the Independent Commission against Corruption, the Ombudsman, the Minister for Local Government or the Minister for Infrastructure and Planning, as appropriate in the circumstances. The key features of the scheme, set out in clauses 93F to 93K, include the provision that planning agreements between a developer and a planning authority would be voluntary. This is clearly spelt out in clauses 93C and 93F. It is important to understand that no planning authority can compel a developer to enter into a planning agreement before a development application [DA] is made or a development consent is granted.

Agreements can be entered into at either the rezoning or development application stage. In order to ensure open, transparent, accountable and consistent decision making, planning agreements must be weighed against other planning considerations when the consent authority determines an application. Hence, a planning agreement that accompanies a development application will be a matter for consideration under section 79C of the Act. Once a planning agreement has been made it will be legally binding and, if registered, bind successors in title and so be enforceable by planning authorities against subsequent purchasers to whom all or part of the land is on-sold by the developer. The agreement would clearly state whether it is an alternative to or co-exists with the usual section 94 contribution.

The State Government can be a party to, and receive contributions under, an agreement. In order to provide for flexible outcomes that best serve the public interest, there does not have to be a direct nexus or connection between development to which a planning agreement relates and the object of expenditure of any money required to be paid under the agreement. Unlike traditional section 94 contributions, a planning agreement is a voluntary arrangement that redistributes the costs and benefits of development through a process that involves public participation. However, clearly, money paid under a planning agreement must be applied for the purpose for which it was paid within a reasonable time.

Planning agreements can provide for infrastructure for a range of public purposes, not just those permitted by section 94. Public purpose includes the provision of, or recoupment of the cost of providing, public amenities or public services, affordable housing, transport or other infrastructure, the funding of resulting recurrent expenditure, monitoring of the impacts of development and the conservation or enhancement of the natural environment. A council may enter into a joint planning agreement with another council or another planning authority. An agreement will be publicly available and exhibited at the rezoning or DA stage as relevant. A copy of the agreement would also be lodged with the Minister or the council, in the event that one is not party to a planning agreement. It is recognised that a properly entered into planning agreement is a relevant consideration for the consent authority when determining a development application or rezoning land.

Acknowledging the voluntary nature of planning agreements, a developer cannot appeal to the Land and Environment Court against the failure of a planning authority to enter into a planning agreement or against the terms of a planning agreement. This approach is consistent with the current law that developers cannot appeal to the court in relation to matters concerning development applications about which they agreed or acquiesced. The bill will enable civil proceedings to be brought by any person in the Land and Environment Court to remedy or restrain a breach of a planning agreement under the Act.

Nothing in a planning agreement will be able to authorise a breach of any environmental planning instrument or development consent. This will ensure that the integrity of planning and assessment decisions is maintained. As well, planning authorities will be prevented from converting planning agreements into mandatory requirements of a planning instrument. Planning authorities will not be able to include provisions in their environmental instruments that would force developers to enter into a planning agreement as a precondition to the grant of consent. Similarly, when negotiations between developers and planning authorities to enter into a planning agreement have failed, the planning authority is not able to refuse consent simply because the developer did not ultimately enter into a planning agreement. A planning authority may not issue a condition of development consent requiring a planning agreement to be made.

In addition, the regulations to be made following the passage of the bill will set out the circumstances in which planning agreements will be publicly available after they are made, their availability at the rezoning or DA stage as relevant and the form and subject matter of agreements. Ministerial directions about the negotiating procedures and other matters will also be able to be given. This will ensure that the new system is implemented reliably and that the planning agreements scheme will operate consistently amongst all planning authorities. The Department of Infrastructure, Planning and Natural Resources [DIPNR] will consult with stakeholders on the preparation of the supporting regulations that need to be made prior to the commencement of the bill. By recognising planning agreements under the Act, the Government will be able to set standards for best practice covering planning and public interest criteria that agreements must meet, as well as the way in which agreements are drafted and entered into.

A further major matter to be covered under the bill is a provision to enable the imposition of a fixed-rate levy. The recent section 94 task force was of the view that flat percentage levies can have a role in circumstances where the strength of either imposing section 94 contributions or entering into a planning agreement is not as great. This would be in situations, for example, where growth rates and development patterns are slow or unpredictable, and therefore accrual of section 94 contribution funds is slow, such as in established urban areas; where there are multiple owners undertaking dispersed and unrelated development; where there is little scope for the receipt of relevant land dedications or works-in-kind; where contributions cannot fund the high administrative demands relative to low outputs of a contributions plan in a slow growth area; or where the costs of needed infrastructure are relatively low and spread over time.

Councils generally agree that a flat percentage levy may be useful in limited circumstances, particularly in slow growth areas. However, the general use of a flat-rate levy would not recognise inherent differences between localities, community needs and the availability of existing infrastructure. By way of example, a flat-rate levies system has been operating in the city of Sydney for some years now. It has been an effective alternative to section 94 contributions due to the difficulties in establishing the strict nexus required for section 94 contributions in the city. The contributions raised assist the council in the provision of public infrastructure, community projects and facilities.

Under clause 94A, a consent authority can impose as a condition of development consent a requirement that the applicant pay a levy of the percentage of the proposed cost of carrying out the development. The levy must be authorised by a contributions plan. However, like planning agreements, there does not have to be a connection between the development the subject of the levy and the object of expenditure of any money required to be paid. Money required to be paid by such a condition is to be applied

towards the provision and recoupment, extension or augmentation of public amenities or services. A consent authority will need to identify these public amenities or services in its contributions plan, including an estimated cost of each and an estimate of the proposed timing for their provision. A consent authority cannot in the same development impose a condition requiring the payment of both the percentage levy and a normal section 94 contribution.

Under the regulations to be made following the passage of the bill, I can foreshadow that the Minister will, amongst other things, set the maximum percentage of the levy at 1 per cent, as is currently the case under equivalent provisions applying to the city of Sydney, as well as prescribe the means by which the proposed cost of a development is to be estimated or determined. The Minister will also set out the requirements for councils to publicise and consult on their intention to adopt a flat percentage levy and report on the expenditure of money collected. The Minister will review this rate and the general operation of this provision in two years, following commencement of the legislation. Indeed, this means that there is a high level of accountability to ensure that the regulations adopted are fair and in the interests of all.

Let me be clear that although the Minister may prescribe the rate of the levy, it will be up to councils to choose whether or not they apply it in their local government area. The regulation-making powers provide sufficient protections to ensure that percentage levies operate within a clear, certain and robust planning framework, and to ensure consistent, reasonable and equitable application. Let me now return to the other major changes to the current section 94 contribution arrangements. A further important position of the bill, clause 94C, concerns cross-council boundary contributions. Council boundaries and facility catchments do not always match. This can lead to inequities between council areas if a development significantly impacts on more than one local government area yet contributes to facilities only in the consent authority's area.

Under the current interpretation of section 94, a neighbouring council cannot levy contributions, nor can levies be spent in a neighbouring council area. This creates inequities as a development might pay one area's section 94 levies for new facilities while creating a demand for facilities in another area where no payment is made. The inability to impose cross-boundary levies also acts as a disincentive to the achievement of economies of scale and related efficiencies in providing facilities which are usually funded from section 94 contributions.

Examples of cross-boundary impacts where it would be reasonable to seek a contribution from developments include community facilities and contributions for cross local government area road or drainage works associated with major developments. The demand for these types of facilities or works would involve clear impacts on the neighbouring area and the need to supply the facility in both places. Duplication of facilities must be avoided. This will be achieved by compliance with the basic section 94 requirements to substantiate demand and demonstrate nexus with the facilities to be provided. The management of cross-boundary issues by councils will be assisted by improved regional and sub-regional planning, now being carried out in both the metropolitan area and regional New South Wales as part of the Government's planning reforms.

The bill allows for joint contributions plans to be prepared by two or more councils to clearly allocate demand in each local government area to substantiate the nexus with the facility that is the subject of the levy. The plan should also set out financial accountability processes for collection and distribution of contributions. A condition can be imposed for the benefit of an adjoining local government area and for the apportionment among the relevant councils of any monetary contribution required to be paid under the condition. A further matter covered by the bill is that section 94 contributions for the recoupment of the historical cost of previously provided public services and amenities will be able to be indexed in accordance with the regulations.

Finally, the bill re-enacts the development contributions provisions in the current Act and makes minor and consequential changes to those provisions. These are important reforms to the Environmental Protection and Assessment Act to improve the system of providing services and facilities required as a result of development. In short, the main object of this bill is to extend the means by which planning authorities may obtain development contributions to be applied for the provision of public amenities and services and for other public purposes. As an alternative to obtaining contributions towards public amenities and services through the imposition of conditions of development consent, as is currently provided for under section 94 of the Environmental Planning and Assessment Act, a council or other consent authority may, if authorised by a development contributions plan, impose a condition of development consent that requires applicants to pay a levy of the percentage of the proposed cost of the development.

In addition, planning authorities will be specifically authorised to obtain development contributions for any public purpose through planning agreements with a developer. I wish to thank all those parties that have contributed to the review process since 1997 when the Urban Development Institute of Australia published a report recommending changes to section 94 through to the recent detailed and extensive comments provided by local government and development industry interests on the draft legislative proposals. Finally, I assure stakeholders of the Government's commitment to continue consultation during the implementation phase of the bill. I note that the Department of Infrastructure, Planning and Natural Resources will consult with stakeholders on the preparation of the supporting regulations and the revision of guidelines on section 94 contained in the section 94 contributions plans manual. Apart from the matters already mentioned, these will also deal with issues like consistency in the format and preparation of contributions plans, the regular review of contributions plans, and better accounting practices. I commend the bill to the House.

**The Hon. PATRICIA FORSYTHE** [2.32 p.m.]: The Opposition does not oppose the Environmental Planning and Assessment Amendment (Development Contributions) Bill, but it is worth noting some of the background to the bill. Honourable members may recall that in December 2003 the House debated a bill of a similar name and tone. At that time the Opposition was of the view that the Government should not have introduced such a bill, because the Government had set up a task force to review section 94 contributions under the environmental planning and assessment legislation and we thought it was absolutely ludicrous to introduce such a bill before that task force, which was set up under the chairmanship of Gabrielle Kibble, had reported to the Government.

With the benefit of hindsight we know that many of the people who made submissions to that task force did so after December 2003, in the first months of 2004. It seems, therefore, that the Government was

attempting to operate in a vacuum. Clearly, at that time the Government recognised, as everyone within planning and development areas recognised, that changes to section 94 contributions were long overdue. However, it made no sense at that time to pre-empt a task force that the Government had established. During debate on that bill we were told that the bill needed to be introduced at that time because the Government had concerns about the GST in relation to section 94 contributions and it needed to address those concerns in the bill. Notwithstanding the fact that that was the Government's reasoning at that time, when it recognised that it did not have the numbers to proceed, it allowed me to adjourn debate on the bill and, as history shows, the bill never came back to the House.

The Environmental Planning and Assessment Amendment (Development Contributions) Bill is, in many ways, similar to that bill; however, it recognises the recommendations of the task force. The bill was introduced in the other place in December 2004. At that time there was no recognition of the Government's apparent concerns about the GST. Despite the fact that 12 months had elapsed since the introduction of the previous bill, and that 12 months earlier the Government had said that the bill was being introduced at that time to address its concerns about the GST in relation to section 94 contributions, the previous bill was silent on the issue. It is therefore ironic that, notwithstanding the fact that the present bill was introduced in December 2004, the provisions relating to the GST were the result of Government amendments moved in the other place in relation to the former bill. It is little wonder that the Opposition from time to time expresses real concern about the state of paralysis of planning in this State under the Carr Labor Government and the Minister for Infrastructure and Planning, and Minister for Natural Resources. By moving amendments to the former bill in Committee in the other place 12 months earlier, the Government had flagged the issue.

However, that issue is secondary to the real issue: the reform of section 94, which we agree in principle is overdue. The object of the bill is to extend the means by which planning authorities can obtain money from developers to pay for public amenities and services. Currently this is achieved through section 94 contributions. The effect of the bill, if passed, will be to maintain section 94 levies, allow section 94 levies to be set across local government boundaries, allow borrowing between section 94 levy funds, permit a flat levy of, we assume, about 1 per cent based on development cost, and permit voluntary planning agreements. The bill repeals division 6 of part 4, which relates to sections 94 to 94E of the Environmental Planning and Assessment Act, and replaces it with a new division 6, which relates to sections 93C to 94EC. A number of provisions of division 6 are re-enacted. In other words, the bill retains the existing method of obtaining section 94 contributions and extends the options available to planning authorities. The bill introduces greater options for developers. Flexibility has been introduced to the process, and that is welcome by both developers and planning authorities.

I note the comments of the Planning Institute of Australia New South Wales Division in relation to the bill. The institute concluded that the effect of the proposal that monetary contributions paid for a particular purpose may be pooled and applied towards other purposes for which a development contribution is required is designed "to promote the efficient use of funds and timely provision of infrastructure". Who would disagree with that? In relation to planning agreements, which are given a statutory framework in the bill, it is not necessary to establish a direct nexus between the development to which a planning agreement relates and the object of expenditure. This is a significant departure from the current law, which requires the consent authority to be satisfied that the proposed development will, or is likely to, require the provision of the, or increase the demand for, public services.

It is worth noting that planning authorities, which will be able to enter into a planning agreement, include local councils, the Minister, the development corporation or other public authority prescribed by the regulations. For example, any Minister approved by the Minister for Infrastructure and Planning, and Minister for Natural Resources is entitled to be an additional party to an agreement. One of the Opposition's concerns is that a number of important aspects of the bill will be determined by regulation and whilst regulations are the subject of disallowance by either House of Parliament, they are less rigorously scrutinised than legislation.

Planning agreements between a planning authority and a developer can be entered into at either the rezoning or development application stage. They are to be voluntary, and as clause 93G makes clear, cannot be entered into, amended or revoked unless public notice has been given and the agreement is exhibited for a period of not less than 28 days. What is not clear is whether there is an obligation on the planning authority to take into account any public comments or objections when the agreement is entered into. Planning agreements were one of the relevant matters for consideration under clause 4 of the terms of reference of the task force and whilst not new, they are not as widely used as other means of obtaining development contributions. In the submission of the Northern Sydney Regional Organisation of Councils [NSROC] to the task force an example of a planning agreement between Willoughby City Council and Marnwest Pty Ltd. was given. It stated:

The parties have successfully negotiated and completed an agreement in 2001 for mutually agreed public facilities (public swimming pool, gymnasium and crèche valued at over \$8 million) to be provided privately (but with public membership access) for fifteen years and then handed over as a public facility.

There is widespread support for the notion that planning agreements should remain voluntary, as set out in the bill. The New South Wales Division of the Planning Institute of Australia makes the valid point that planning agreements need to be made in the context of planned growth and development. In other words, they must comply with the principles of a relevant strategic plan. That would seem to be fundamental to good planning principles but it does not follow that it will always occur. As my honourable colleague the shadow Treasurer and member for the Southern Highlands noted in the other place, while the bill requires that a planning agreement must be entered into for a "public purpose" there is lack of clarity as to what constitutes "public purpose". The definition of "developers" in the bill also lacks clarity.

It should be noted that since the planning authority need not be a local council in whose area the development is to occur, and lacking any clarity as to whether comments or objection made during the exhibition period need to be taken into account, it is possible for a local council to not be a party to a decision and, with no mechanism of appeal, to be completely left out of the process, despite the fact that the consequence of the planning agreement may impact on a local area. As the planning agreement is voluntary, a developer will also have no right of appeal against the refusal of a consent authority to negotiate or enter into a planning agreement. Planning agreements may be registered on the title of the land and in that circumstance would run with the land and bind subsequent owners in the same way as existing conditions of development consent.

Proposed section 94A relates to fixed development consent levies and enables a consent authority to impose as a condition of development consent a requirement that the applicant pay a percentage, authorised by a contributions plan, of the proposed cost of carrying out the development. The Minister's second reading speech referred to a maximum 1 per cent fixed development levy, but that is another provision to be set by regulation. Similar to planning agreements, there does not have to be a connection between the subject of the levy and the object on which the money will be spent. A commonsense authority will need to identify these public amenities or services in its contributions plan.

The concept of a flat percentage levy is not a new phenomenon. I well recall, as I helped draft the bill, that it was a provision of the City of Sydney Act 1988. Since then the Sydney city council has been able to levy contributions for the central business district at a rate of 1 per cent of the estimated value of developments that exceed \$200,000. That does include fit-outs, which is not envisaged in this bill. I note that in debate in the other place the honourable member for Bligh, speaking it would seem in her role as Lord Mayor—

**The Hon. Tony Kelly:** And in Opposition.

**The Hon. PATRICIA FORSYTHE:** She did say at the time she was speaking as Lord Mayor. She expressed her concern that present savings provision for a 1 per cent levy in the central business district under section 61 of the City of Sydney Act should remain. I also note the Minister's response that he would not permit the council to double-dip as a result of that provision in the bill. NSROC also noted in its submission to the task force:

The percentage at which the levy is set is critical. When applying a flat rate percentage levy, councils need to be mindful of the likely funding it would gain or lose in comparison to the current section 94 regime, particularly insofar as it would ensure realistic and adequate funding of required works and facilities as well as in regard to raising the levy of unfunded liability due to apportionment.

The submission noted that the use of a flat percentage levy would provide an opportunity for councils to introduce the most appropriate type of plans, depending on the land use characteristics of the catchment areas. The effect of that type of levy is that commonsense authorities will be able to levy a development contribution, calculated by reference to development cost, in circumstances where it is not feasible or cost-effective to devise a detailed development contributions plan that specifically analyses public infrastructure needs arising from development in particular areas. That is the conclusion drawn by the legal firm Allens Arthur Robinson in its analysis of the bill.

Significantly, under the bill a development contribution may be levied or imposed for the benefit of an adjoining council area, and adjoining councils may collectively develop a development contributions plan and distribute the money between them for public purposes in accordance with that plan. Clearly, a major development in one council area may have consequences for the surrounding areas. That would be particularly so in many of the geographically small urban council areas. Development contributions may be pooled and applied for purposes different to those for which they have been levied, subject to certain conditions.

From the range of submissions I have researched, and those that were submitted to the task force, it would seem that the bill broadly reflects the directions set out by the task force. The bill has been the subject of broad consultation and the Opposition has sought input from a range of groups within the property industry and planning authorities. The bill generally has support. I note the Opposition has concerns about those matters that are to be set by regulation, but, in general, we do not oppose the bill. We realise that it will enable many councils with large reserves of section 94 contributions to apply those funds for public purposes. That should be of benefit not only to fast-developing areas but also to those areas undergoing urban renewal generally associated with increased housing density. I reiterate again that the Opposition does not oppose the legislation. In principle it is certainly overdue.

**Reverend the Hon. Dr GORDON MOYES** [2.48 p.m.]: The purpose of the Environmental Planning and Assessment Amendment (Development Contributions) Bill is to amend the Environmental Planning and Assessment Act 1979. These amendments extend the means by which planning authorities may obtain development contributions to be applied for the provision of public amenities, public services and other public purposes. We commend the bill to the House. When a developer has plans to develop an area likely to need the provision of public services, the current law allows for the consent authority to require the developer to contribute to the creation and/or maintenance of those services in some form. Development contributions are payable in New South Wales where there is an existing development contributions plan. A condition of development consent is the payment of the contributions required. Section 94 is the main provision for the Environmental Planning and Assessment Act governing developmental contributions for public purposes.

Those of us who have been responsible for large-scale developments have got to know section 94 quite well. It has been under review for some time now. That review was prompted by the difficulties faced by the development industry and local councils. One difficulty that has arisen is the inflexibility of this legislative provision. For example, in greenfields areas, areas that are undeveloped and generally unpolluted, the traditional contributions plan under section 94, being the dedication of land free of cost, is workable. However, as pointed out in the second reading speech on the bill in the Legislative Assembly, when development occurs in established inner areas, where there is little opportunity to acquire open space, the traditional plan is unworkable. In such situations it is easy to see that the application of a flat percentage levy is the best option.

That immediately brings to mind a large-scale development in Pitt and Castlereagh streets, known as the Wesley Centre, that I negotiated in the mid-1980s. It ultimately cost \$320 million; development costs and levies on the site were extremely high. At the time I secured approval for a car park but we had to pay an additional levy of \$250,000 to Sydney city council to help it build car parking spaces on the outskirts of the city. When the development reached the building stage Sydney city council rejected the car park that we had negotiated and I appealed against the council's objection. At about the same time the members of Sydney city council were sacked and replaced by three administrators. I appealed to the administrators and, after an enormous search, eventually found the earlier agreement. The administrators discovered that the \$250,000 levy that we had paid for the car park had already been spent. The new administration eventually allowed the construction of some 400 underground car parking spaces in the Wesley Centre, which is what had been agreed in the first place. However, since then I always remembered to keep copies of the relevant documents when we paid such levies.

It is worth pointing out at this stage that a review committee on section 94 was established in order to evaluate the existing system and make recommendations about whether changes should be made. The committee reported to the Minister for Planning in January 2000, and the Minister took the recommendations into account in his report on the issue. Following the formation of the Department of Infrastructure, Planning and Natural Resources in 2003, the Minister for Infrastructure and Planning, and Minister for Natural Resources established a task force to consider closely the way in which the current contribution system operates. It also considered alternative mechanisms through which planning authorities may obtain developmental contributions.

I believe the main merit of the bill is that it offers flexibility in the way in which development contributions may be made and allocated. An inflexible system usually results in less than optimal outcomes. Providing different alternatives for parties in meeting the costs of public services that are situated in areas of development appears to be a commendable initiative. Providing flexibility in allocating those funds is also important. Significantly, the public services concerned do not include public amenities or public services comprising water supply or sewerage works. In practice, the bill will give planning authorities a couple of approaches, and it will be up to the consent authority to determine which approach best suits its particular needs.

First, planning authorities will be able to levy a flat percentage of the development cost to fund public services. As I explained in my earlier illustration, I paid on behalf of Wesley Centre a flat tax or flat percentage



of development costs to fund car parking spaces in another area. Such a levy will be provided as part of a contributions plan. The second reading speech suggests that a maximum 1 per cent fixed development consent levy is proposed for the regulations but this is still to be determined conclusively. A great deal of care will need to be taken because the total costs of large developments vary. In my lifetime I have been responsible for the development of a number of very large retirement villages, for example, whose costs exceeded \$100 million each. We found that our original costings and the costings of those we employed—quantity surveyors and others—increased considerably over time. So a 1 per cent flat development consent levy would obviously need to increase with every rise in value.

Thus in cases where a council opts for a 1 per cent flat levy, it will replace the usual section 94 payment. One concern that should be borne in mind is that a 1 per cent levy may not bring in as much funding as the present system. The planning authority concerned should consider that. Interestingly, the *Sydney Morning Herald* on 9 December 2004 reported that the president of the Local Government Association said that councils were reasonably happy with the changes but she doubted whether many councils would accept the flat levy in preference to the present manner of negotiating a development levy.

Secondly, a voluntary agreement may be entered into between the planning authority, the State Government and developers when a negotiated amount is paid to fund infrastructure needs that may arise. For example, a developer may undertake to dedicate land free of cost, pay a monetary contribution or provide any other material public benefit via a negotiated agreement with the consent authority. There will be a clear statutory framework for this entire process. As the agreement is voluntary, it is important for developers to note that they cannot appeal to the Land and Environment Court against the failure of the planning authority to enter into a planning agreement or against the terms of a planning agreement. According to the second reading speech:

... this approach is consistent with the current law that developers cannot appeal to the court in relation to matters concerning development applications about which they agree or acquiesced.

Thus legal counsel becomes of the utmost importance when entering into such agreements. The saying caveat emptor, or buyer beware, becomes all the more relevant to the developer in this scenario. Another significant change is that councils will be able to levy or spend funds on developments in neighbouring council areas. This is a good initiative for which I commend the Minister. It is envisaged that funds will be allocated on a needs basis and, hopefully, this approach will bridge the gap between those areas that have and those that have not. Present restrictive practices limit the areas in which money can be spent on improvements. According to today's edition of the *Sydney Morning Herald*, one council will now be free to use \$100 million that was previously locked up in a bank. The bill seeks to liberate an estimated \$800 million in developer levy funding, which the council has not yet spent on infrastructure. It is also commendable that if infrastructure lacks maintenance, funds from the public purse ought to be made available to remedy deficiencies on a priority basis. The Christian Democratic Party has great pleasure in commending the bill to the House.

**Ms SYLVIA HALE** [2.57 p.m.]: The Greens support the Environmental Planning and Assessment (Development Contributions) Bill. As we have stated previously in Parliament, the Greens support levying developers to provide funds for infrastructure and for services in relation to approved developments. We see a role for developer contributions not only in greenfields areas, where new, larger scale developments are taking place, but in other areas of the State where new developments place pressure upon existing services and infrastructure. The Greens also support levying developers in relation to the provision of affordable housing, especially when a new development contributes to the overall decline in affordable housing in an area. For too long property developers have had free rein in New South Wales, under a compliant government addicted to political donations. It is time for this to change and for the focus to shift to creating a liveable and sustainable environment for all New South Wales residents, not simply those who are able to purchase favours.

As a point of principle, the Greens believe those whose wealth has been created as a result of property development should contribute to the common good, and the levy is a good way of achieving that. Such a levy should be used to provide services and improve amenities. It is reasonable to levy property developers so that the cost of providing services is shared between ratepayers and developers. In fact, the true cost of development should incorporate the necessary provision of services and better amenity. One should always bear in mind that the profit margins of developers are enhanced by the provision of good infrastructure and services and better amenity in the areas that they propose to develop.

There is no doubt that Section 94 has been something of a mixed blessing for councils. While the contributions made towards social needs have often been valuable, some requirements of the section have also placed major limitations on the section's

potential use. In order to ensure accountability, the current section 94 regime requires the preparation of council development contribution plans, as well as requiring, for each specific development, a nexus between the development and the need being addressed by the contribution. That has resulted in a very transparent system, but one that is often unable to adequately meet the needs of councils and communities. The bill creates a more flexible arrangement.

In practice the current section 94 system has several major limitations. First, it often results in only partial funding of required infrastructure being provided by developers, with the balance having to be met from general council funds or other revenue sources. Section 94 funds are currently kept separate and can only be spent on a specified range of projects. This means that the funds are often held for a substantial period of time before they can be spent. During this time the needs of an area may change significantly, but there is very little flexibility to change the uses to which the section 94 funds can be put. Both the Government and councils report the existence of large amounts of money sitting in council accounts that cannot be accessed.

Another major limitation of section 94 as it currently operates is that, due to the requirement for nexus, the funds are usually used for services in the immediate area of the development. In the local government areas this means that, increasingly, investment is made in the infrastructure of areas that may already be well catered for in terms of community facilities, because that is where the larger amount of development is occurring. This can create a case of the rich getting richer while other less desirable areas languish without the necessary investment.

There is a clear example of this in Marrickville, the council area in which I live. The bulk of development in Marrickville occurs in the northern section of the municipality, which enjoys a disproportionately large number of qualified people on relatively high incomes when compared with the southern area of the municipality. But the southern area is disadvantaged by greater numbers of unemployed people, and with less development occurring in that part of the municipality it is missing out on the improvements that could be funded by section 94.

The proposal being put forward by the Government in this bill recognises that both councils and developers are already in the habit of finding ways around the limitations of section 94. The legislation seeks to codify these arrangements and open them up to public scrutiny. In this respect the Greens support the general thrust of the legislation. The Greens remain concerned, however, that section 94 allows councils to trade off planning decisions in return for contributions. These are decisions about permissible land uses or development controls. So, in return for the dedication of parkland or payment for a particular service, a developer may obtain increased floor space or be allowed to build above a height restriction.

For example, recently Wingecarribee Shire Council initially refused a State Environmental Planning Policy No. 5 application, which was subsequently appealed. After the developer offered a \$500,000 contribution towards the cost of a sewer upgrade, a sufficient number of councillors were persuaded to approve the proposal. Development decisions should not be made on the basis of the type of contribution a developer might make, but rather on the detailed guidelines councils develop to ensure that the community's interest and amenity are projected, and that social and environmental factors are taken into account.

It may be possible in individual cases for councillors to persuade themselves that the public benefit from a larger contribution to community infrastructure can be offset by increases in floor space ratios or a smaller setback for a particular development. However, if this kind of logic is allowed to prevail, the cumulative outcome will competently undermine the effectiveness of the planning system. The Greens believe that regardless of their intentions—pure or otherwise—councils and councillors should not be making such trade-offs.

Such decisions have a cumulative effect. Every time a council allows developers to have more than is permitted by the development control plan, they contribute to increased and undesirable development across the State. The planning system should operate according to clear rules that are laid down, rules developed with public input, rules that balance the benefits to individuals and the community. These rules should not be able to be bent for the highest bidder. Councils should not allow the prospect that section 94 contributions will be able to be used for a more diverse range of projects, to make them more malleable and keener to acquiesce in the desires of developers.

The Greens do not believe, more generally, that the community interest is best served by deals being negotiated out of the public gaze. We believe the proposed developer agreements should be in line with advertised development contribution plans for particular areas. While it is time-consuming, we believe that the opportunity for public submissions is important, and that the debate about the nature and type of any potential

developer agreements should occur in the public domain and be open to appropriate community input. As usual, the details about how this bill will operate are being left to the regulations. This House will not get to see the detail.

The Greens also believe that the issue of political donations from developers should be addressed. I have been impressed and encouraged over the last few weeks to see Greens councillors on many councils moving and debating motions to ban donations from property developers to local government candidates. One such motion, moved by Greens councillor Chris Harris on the City of Sydney Council, has been successful. I congratulate him and the council on this achievement. There should be more stringent obligations on councillors to disclose donations, so that the whole process is more transparent. The Greens believe that councillors should be made to declare a conflict of interest in relation to development applications when they or their party have received a political donation from that developer.

The Greens also believe that developer donations have no place in local government. As demonstrated by the current inquiries into the Tweed and Strathfield councils, developer donations distort not only the election process but also the decision-making process of councillors once elected. Perhaps the most important and controversial role of local councillors is to decide development applications and make decisions on the appropriate planning laws. It is already the case that the public often thinks the worst of its politicians, and clearly it thinks that in respect of this Government. If changes to developer contributions are not made, why should they stop thinking that those who pay the piper call the tune?

Unfortunately, this bill does not go far enough in respect of section 94 contributions for affordable housing. It deliberately misses an opportunity to assist with this issue. I know that Shelter New South Wales wrote to the Government seeking a number of amendments to the bill to allow the council to use inclusionary zoning for the provision of affordable housing. So far the Government appears to have done nothing to address this issue. In Committee the Greens will move amendments in an attempt to cover this aspect.

Inclusionary zoning is a requirement that a certain proportion of affordable housing be included in a development. Inclusionary zoning has been adopted in the regional environment plans for City West, Ultimo, Pyrmont and the local environment plan for Green Square in Zetland. This process should be extended to all local government areas that wish to use it. We know that Parramatta City Council has been asking the Government for some time to add the council area into State Environmental Planning Policy No. 70 so that it can do precisely this. Unfortunately, this bill fails to address that problem.

This bill is structured in such a way that it frees councils to take a planning agreement approach to section 94 contributions for affordable housing. But this approach has some risks compared to inclusionary zoning. Local councils should be the main providers of affordable housing, but they do have an important role to play at the planning level. They can address specific local issues and ensure that council areas are able to offer housing to people in varied financial circumstances. The main responsibility for affordable housing should lie with the New South Wales Government. Sadly, the 80,000 families on public housing waiting lists demonstrate that it is a responsibility that the Government does not appear to take seriously.

Basically the Greens support this legislation. We agree that it does give councils greater flexibility. It is important that councils should be able to borrow funds raised from one area covered by a development contributions plan and apply those funds to another area. That obviously permits developments to take place in a timely manner and allows the accumulation of sufficient funds to permit that to happen. It is also desirable that the bill facilitates lending between adjoining council areas. Obviously the boundaries of council areas do not necessarily correspond to discrete areas of need and anything that allows greater flexibility and co-operation amongst councils should be supported. The Greens support the bill.

**Motion agreed to.**

**Bill read a second time and passed through remaining stages.**

## **PREVENTION OF CRUELTY TO ANIMALS AMENDMENT BILL**

### **Second Reading**

**Debate resumed from an earlier hour.**

**Mr IAN COHEN** [3.13 p.m.]: On behalf of the Greens I support the Prevention of Cruelty to Animals Amendment Bill. The bill contains a number of reforms designed to promote animal welfare and to bring the New South Wales Act in line with other States. The Greens are in favour of legislation aimed at improving animal welfare. Every day in Australia thousands of animals are harmed in incalculable ways, including being

shot, beaten, tortured, starved and imprisoned. We intensively farm animals, eat them, wear them, hunt them, race them, experiment on them and make them perform for us. Animals cannot stand up for themselves; they rely on us for protection. The Greens welcome moves that increase the levels of protection afforded to animals.

The bill aims to extend officers' powers and will improve enforcement and compliance powers when matters come before courts. I support amendments intended to improve enforcement of the Prevention of Cruelty to Animals Act. An amendment in the bill gives police officers power to stop and inspect vehicles. This provision may be used, for example, in the case of livestock transportation where the animals have not been given adequate food, water or shelter. A further amendment extends the definition of premises to include vehicles so that officers and inspectors may be able to forcibly enter a vehicle if they suspect cruelty to animals. This provision can be useful in relation to stock, as well as in situations where, for example, dogs are locked in vehicles and are suffering from heat stress. These amendments are welcomed by the Greens.

Another amendment relates to officers' powers to treat an animal on the premises where previously officers had powers to treat animals after they had been removed from a premise. This is an important amendment as moving a distressed animal that has been treated cruelly can often cause further stress to the animal and could even cause death. I therefore support this amendment. The bill introduces an ability to serve penalty notices on offenders in order to facilitate enforcement of the Act in relation to offences prescribed by the regulations. The Greens support the efforts made in this measure to broaden the scope for enforcement of the Act and to enable resources to be directed to the more serious offences under the Act without ignoring the less serious ones. However, I stress that regulations must be carefully drafted in order to avoid the situation of violent crimes against animals being managed through a system similar to that of traffic fines.

The bill introduces the ability for an inspector to give written notices specifying actions required to take care of an animal. The notice and the taking of or failure to take action may be admissible in proceedings for relevant contraventions of the Act. This educative function is to be commended for its early intervention approach. I imagine that where a potentially cruel outcome is envisaged as a result of a person's ignorance, this could be a very useful provision to prevent cruelty occurring. I note that in the second reading speech delivered by Ms Alison Megaritty on behalf of the Minister in the other place she stated that this power is likely to be used for first offenders or in cases of less serious breaches of the Act. This could be a very useful tool, giving people a chance to deal with potential problems. However, I hope that the level of compliance with notices will be monitored and, where necessary, enforced through one of the other means made available in the legislation.

The exemption of veterinary practitioners from charges of cruelty to animals is removed under this bill. I support this amendment. Animals in the care of veterinarians deserve the same level of protection as others. With advances in veterinary science and the wide availability of analgesics, there is no reason for veterinarians to be exempt from such charges. The bill amends section 10 of the principal Act, which currently contains an offence of tethering or authorising tethering of an animal for an unreasonable length of time or by means of an unreasonably heavy or short rope, chain or cord. The amendment replaces the reference to "rope, chain or chord" so that the offence will apply to any sort of tether. I support this amendment. The words "rope, chain or chord" do not cover other materials, such as leather and fishing wire, such as that used for cock-fighting birds, and is therefore an important amendment.

Some years ago I came across what I understand to be called "peg dogs". They are dogs that are actually chained or tethered beside roadways to stop cattle and other stock from straying through the road to other paddocks. That is often the circumstance where no cattle grids and such are built into those roads. The Deputy Leader of the Opposition assured me that peg dogs generally are used on travelling stock routes so that they are there for a relatively short period of time. From my experience in the area of Lake Cowell, peg dogs were there for weeks at a time, just fed and basically ignored and kept in a state of deprivation, which would send them quite wild on their leads if stock came too close. That is understandable for a short time, be it overnight, if it is just a circumstance for travelling stock but if the practice of chaining or tying peg dogs to what appears to me to be a permanent shelter made of bent corrugated iron that covers an area, and they are just fed and watered and kept in the state of deprivation on their own to stop cattle from moving across to different properties, basically because the farmer has not seen fit to take the trouble or expense of putting in cattle grids, I ask the Government to investigate it if it is still an ongoing practice. I will remain open minded given the lack of information I have at this particular time.

The Prevention of Cruelty to Animals Amendment Bill amends the offence contained in section 21 of the principal Act of causing, procuring, permitting or encouraging an activity in which an animal is used for the purpose of its being chased, caught or confined by a dog. The amendment seeks to limit the offence to

circumstances in which the animal used has been confined and then released. The aim of this amendment is to control the scope of the offence so that it does not cover vertebrate pest control. The Greens do not support this amendment. Coursing has recently been banned in England and Wales, which have a long history of hunting. This is in response to evolving public opinion on the cruelty involved in this type of hunting. The Burns inquiry, a recent study commissioned by the Government of the United Kingdom, found that hunting with dogs causes extreme stress to the hunted animal. Subsequently, the United Kingdom Government passed the Hunting Act, which banned hunting with dogs. An amendment to provide exceptions from the prohibition on coursing is a regressive step.

Hunting with dogs is not an exact science. It is possible that hunted animals are not killed instantly but will be left to a slow and painful death after being seriously injured. Further, there is no guarantee that hunting dogs will not attack non-target species, including native animals, which may inhabit the same environment as the targeted species. The requirement that hunting activities produce unnecessary suffering in order to constitute an offence is vague and prone to different interpretations. What level of suffering can be deemed necessary?

The amendment may also be viewed as an endorsement of hunting and associated blood sports, which the Greens oppose. The use of dogs for chasing and killing rabbits and feral pigs no doubt will continue as a blood sport under the guise of vertebrate pest management. I acknowledge that coursing for sport is prohibited by the legislation. However, there is a problem with enforcement. I acknowledge also that a code of ethics in responsible hunting is being promoted by the Game Council. I support a move towards more responsible hunting in the context of feral animal control. But, while coursing remains legal, I have no doubt that pig-dogging, for example, as a blood sport will continue. This type of practice in fact can contribute to the feral animal problem, rather than help to eradicate it.

In order to ensure a plentiful supply of targets, additional pigs are released to be hunted in particular areas. So instead of only feral pigs being targeted and caught, extra pigs are added to an area, exacerbating the problem. I realise this is prohibited by the Act, but the prohibition is extremely difficult to enforce. I know from anecdotal evidence and what friends have told me that pigs have been seen in areas of forest not far from Sydney, most likely brought in from outlying areas. They probably were caught when they were very young and manageable, to be subsequently released in forests outside Sydney. They have torn ears, which is evidence that in the past they have been held by pig dogs. The hunter takes those smaller pigs to another forest area to ensure an adequate supply of wild pigs to sustain their lust for this type of hunting. From the Greens' perspective, that practice is unacceptable.

I have consulted with the New South Wales Farmers Association, which does not have a strict policy on this issue. While some of the association's membership support hunting with dogs, others have concerns about dogs that are out of control and on their land. Dogs need to be under control and secured at all times. This does not always occur in the use of dogs for coursing. When dogs are used for hunting they are out of control, with their wild instincts awakened. Dogs that sometimes escape or are lost in this manner can increase the population of feral dogs.

Feral dogs are perhaps one of the worst feral animal problems in New South Wales as they kill animals not just for food but for the fun of it. Packs of feral dogs can decimate herds of stock animals, not to mention their impact on native animals. In the *Age* in March this year was an interview with professional dog trapper Jack Mustard, who said that wild dogs are increasing in numbers in Australia. They are very difficult to track down and cause immense damage to livestock. He said he was "worried about what new breeds of wild dog might be capable of, particularly those mated with bigger breeds of hunting dogs." That is very concerning.

I am aware of a significant feral dog problem around Kosciuszko National Park, where enormous wild dogs have been sighted. Apart from posing a threat to other animals, those dogs can be a threat to humans, whether tourists in national parks or people in rural areas and on the fringes of towns. I note Premier Carr's announcement this week that pit bulls and a number of other dog breeds will be banned under new laws to be introduced in New South Wales. If there is concern about the dangers posed by those animals, there should also be great concern about the dangers of hunting dogs, which are blooded, and the real dangers of feral dogs. I would prefer greater controls on pig dog owners. What we have in this legislation is a knee-jerk reaction by the Premier. I understand the issues, but really it is the owners of those animals who must exercise controls.

It is irresponsible dog ownership that leads to difficulties. In some areas of the United States pig dogs and other potentially dangerous breeds must wear muzzles in public and have guaranteed secure places before councils allow people to have them. Those councils control the number of such dogs that can be owned by individuals, who must therefore obtain permission to own more than a certain number of those dogs. There need to be controls, but the Premier of New South Wales is reacting to headlines in the *Daily Telegraph* rather than taking sensible measures. There are issues with dogs attacking humans and other animals, including dogs. It is

important to consider breeding issues, but I think it is more important to ensure that these dogs are treated appropriately by owners who would create ferocious dogs of all sorts of breeds, not only pig dogs.

I concede that feral animals are a significant problem in New South Wales, and the Greens support humane methods to eradicate them. Feral animals starve native animals of food, pollute water and rip up the soil and vegetation. They also pass on diseases to native animals. However, coursing is not the solution to their eradication. I have been told that hunting for feral animals through coursing accounts for a fairly insignificant number of feral animals being destroyed. Given that it has so little impact on the feral animal population, and given the problems with coursing I have just mentioned, the Greens cannot support this exception to the prohibition on coursing.

Just to be clear, I do not suggest that the use of dogs for sheep dog trials, mustering of stock, working of stock in yards or other animal husbandry activities should be prohibited. But coursing for pest control is not an acceptable practice. I will move an amendment regarding the prohibition on coursing for feral animal control. To ensure consistency, the Game and Feral Animal Control Act 2002 should be amended to prohibit the use of an animal to capture or kill another animal during a hunt. The bill proposes to insert "deer" in the definition of "stock animal" in the principal Act. There has been some discussion of this proposed amendment. I would refer to the very valid points made by the honourable member for Bligh, Ms Clover Moore, regarding the fact that stock animals generally are afforded a lower standard of protection from cruelty than are other animals under the Act.

For example, stock animals are exempt from the requirement for adequate exercise. Also, certain procedures performed on animals classed as stock animals are acceptable under the Act as long as they do not inflict what is defined as "unnecessary pain". This is a very subjective definition. Pain that may be considered unnecessary in relation to domestic pets seems to be all right when applied to stock animals. The amendment to include deer in the case of stock animals reflects the fact that deer are now commonly farmed. I understand that the intention behind the inclusion was to bring the Prevention of Cruelty to Animals Act in line with the regulations. However, if the Act and delegated legislation are to be brought into line, it is more appropriate that delegated legislation should follow the Act, and not the other way around. Causing the Act to follow the regulations leads to inadequate public consultation on the issue.

The Greens do not support intensive farming practices, and would like to see this form of farming phased out. The Greens support the prohibition on live animal exports and an end to battery and intensive feedlot farming. These practices are inherently cruel to animals, but because these animals are classed as stock animals they are not afforded the same level of protection from cruelty as are other animals. I note with some concern the inclusion of deer into this category. I will not oppose the amendment. If pigs, sheep and other animals are to be classed as stock animals, the exclusion of deer on the basis of the Bambi factor may be inappropriate. However, the Greens will continue to work towards better conditions for stock animals, the phasing out of intensive farming and the promotion and adoption of more appropriate farming methods.

I will not take up the time of the House completing in great detail a point that I recently made. However, I am concerned about the debate that has taken place in this House on the practice of mulesing. This is a case in point of stock animals being cruelly treated. Mulesing is the method widely used because of the inappropriateness of this particular animal in the Australian environment. That unacceptable practice is used to deal with problems associated with flystrike. Mulesing is one method, not the only method, to deal with the problem. Mulesing is not absolutely necessary. State agriculture departments promote it because it is cheaper and easier to mules once, rather than to provide proper management such as good breeding, inspection and crutching. Mulesing is performed to save labour costs and is an economic decision. In a New South Wales Department of Agriculture publication entitled "Science and the Merino Breeder" the authors note:

Breach strike by the sheep blowfly is a good example of a major disease which can be largely controlled by the breeding for absence of skin folds.

So there are ways around it. Dr John Auty is a veterinarian with vast experience in the meat and sheep trade. He has also worked as an agronomist, as a stud overseer in private practice, as the Chief Commissioner for Soil Conservation and in the Department of Primary Industry. He said this about mulesing:

It is similar to flaying and the pain will be experienced for weeks and months afterwards. Mulesing does not free the sheep from blowfly strike, but proper husbandry practices, including close inspection of sheep, will reduce and virtually eliminate flystrike.

**The Hon. Melinda Pavey:** With 3,000 sheep, how do you do that?

**Mr IAN COHEN:** I acknowledge the interjection of the Hon. Melinda Pavey. Let me put it this way: 3,000 sheep in an environment to which they are not suited means that there is an onus on the owners to find out how to deal with fly strike in our Australian wool industry and by more frequent crutching of sheep, inspection, and breeding sheep that are more suited to this environment. There is a myth that mulesing is necessary to prevent fly strike. If Australian farmers did not mules, up to three million sheep would die from fly strike each year. This claim whittles down the choices to mutilation or death. Published estimates show that at least 20 per cent of Australian farmers use fly strike prevention and control techniques that do not involve cutting into their sheep, including increased monitoring during blowfly season, more frequent crutching, blowfly traps, and breeding to create plain-bodied, bare-breeched sheep.

Mulesing is not foolproof; it does not prevent body strike and it is not necessary to prevent three million sheep from getting strike. It is simply the cheapest and easiest option, and therefore it is presented as the best option by farmers with a vested interest in minimising the effort they expend to properly tend to their sheep. An increasing number of voices in the farming industry acknowledge this. For example, Chick Olsson, the former chair and current director of the Australian Wool Growers Association, said:

The lack of progress to date in changing industry practice reflects not a lack of economic alternatives to mulesing but a lack of will to unsettle entrenched orthodoxy.

I could go on about mulesing but I will not waste the time of the House. However, it is important to recognise that there are many other more humane and effective ways of dealing with fly strike. As I said, the Greens are concerned about intensive farming conditions and the lack of rights and humane treatment of many intensive farm animals. I will give an example of some of the appalling practices that occur in intensive farming. In Australia there are 300,000 breeding pigs or sows in pig farms or piggeries.

Sows in intensive pig farming are seen as production units, rather than animals needing space, comfort, a warm soft place to lie, and ample food. Almost 200,000 breeding sows in Australia are confined in a metal and concrete stall smaller than a child's cot. The sows cannot walk, turn around or even lie down in comfort. If this was done to a dog, the law would strongly deal with the perpetrator. However, as pigs are stock animals they are not afforded protection from these atrocious conditions. Pigs kept in such intensive conditions are chronically stressed and slowly become deranged. Pigs are intelligent animals; they are of similar intelligence to dogs. Many sows become lame and suffer chronic pain and other leg injuries because they cannot walk or exercise.

There is evidence that many piglets of sows in such conditions die from being crushed or suffocated because their mother is deranged from the months and years of such deprivation and suffering and she becomes unresponsive and unable to respond to her piglets' cries as she normally would. Sow stalls are banned in England, Florida and Sweden, and they are being phased out in Europe and New Zealand. Let us hope that we follow suit. The bill gives courts the power to prevent people convicted of cruelty to animals from owning another animal. The Greens support this amendment. It makes sense that if a person has been shown to be incapable of treating an animal properly, he or she should not be allowed to own another.

The limitation period for prosecutions under the Act is expanded from 6 months to 12 months under the bill. While the Greens are in favour of an extension of the period, I do not think that 12 months is adequate. There have been instances of video and photographic evidence of animal cruelty being rendered useless because a year has passed. A more appropriate time limit would be three years, which is the case in Victoria, and I will move an amendment to that effect. I note that recently the Government announced the formation of an Animal Cruelty Task Force, which will consider particular issues in the context of cruelty to animals in New South Wales. I commend the Government for this action.

The Greens support the Prevention of Cruelty to Animals Amendment Bill, but I will move a number of amendments to the bill. The Greens do not represent a bleeding-heart interpretation of animal husbandry. We receive significant concerns from the wider community because we understand that New South Wales has major agriculture and animal husbandry industries. That does not mean we have an excuse to be inhumane and cruel to animals in captivity in these industries. I commend the Government for introducing the Prevention of Cruelty to Animals Amendment Bill. I hope the Government will consider favourably the amendments that the Greens will put forward on this important issue.

**Reverend the Hon. Dr GORDON MOYES** [3.35 p.m.]: On behalf of the Christian Democratic Party I speak on the Prevention of Cruelty to Animals Amendment Bill, the objectives of which are to make certain amendments to the Prevention of Cruelty to Animals Act 1979. That Act is the main legislation concerning the welfare of animals in New South Wales. These amendments intend to widen the number of options available for

early intervention in cases of cruelty to animals, to improve compliance and enforcement powers and to streamline certain aspects of the Act's operations.

Recently the media exposed the atrocious treatment of a kitten named Shelley by two youths on 15 January this year. The eight-week-old kitten was subjected to horrendous cruelty. She was kicked, stoned and run over with a bike before being tossed onto a railway track. News of this incident made headlines across the nation, instigating an intense response from the community. How many people would have asked themselves: How can a young person have such disregard for the life of a small, indefensible animal? One of the youths responsible for this atrocity has been brought to account and is liable to imprisonment and fines.

Instances of animal cruelty are heart wrenching and offensive to civilised standards of conduct. It is disturbing to think that the Shelley incident was not a one-off; it is a reality that many instances of animals subjected to cruel and inhumane treatment go unnoticed. I believe that the Shelley incident brought to the fore the existence of a number of problems, including, for example, the fact that youths act against animals simply because they see the animals as an outlet for their frustration and violence in their lives. As a young probation and parole officer dealing with violent young people, and a psychology student at the same time, I was intrigued by the fact that a large number of articles had been written about the relationship between violence in young adults and violence towards animals.

An article entitled "Animal Abuse and Youth Violence", authored for the American Department of Justice *Juvenile Justice Bulletin* in September 2001, asserted that animal abuse is not a panacea for addressing youth violence because such behaviour is multidimensional, but that it is hard to deny that animal abuse and interpersonal violence towards humans share common characteristics. We must treat the underlying problems faced by our youth and not simply provide a bandaid solution. Interestingly, in 2003 Professor Paul Wilson, in the *Journal of Psychiatry, Psychology and Law*, explored the relationship between criminal behaviour and mental illness in young adults in the context of cruelty to animals. He expressed that cruelty to animals appears to be a strong indicator or red flag in the background of many serial killers, and thus it is suggested in the history of perpetrators of other forms of major interpersonal violence. Professor Wilson gave one good example:

The Tasmanian town of Port Arthur experienced what could be considered Australia's most terrible act of mass violence in April 1996 when Martin Bryant killed 35 people in a 19-hour rampage... there are a number of "red flags" that would indicate cause for concern in light of offender activities. This is particularly so for Bryant who had been referred to mental health officials prior to his involvement in Port Arthur. He was first referred in 1973 when he was 7 years old, and again in 1977 where his assessment at the Hobart Diagnostic Centre noted he had tortured and harassed animals.

Professor Wilson concluded that a link between animal abuse and violent offending is far from proven, but that there appears to be no coincidence that the history of many offenders includes the abuse of animals. Professor Wilson concluded that cruelty to animals deserves more attention from both a research and assessment perspective. I believe there is much truth in the saying in the *Bible* in the book of Proverbs 12:10, which states that "a righteous man cares for the needs of his animals but the kindest acts of the wicked are cruel". Mr Scully has said that he will establish an animal cruelty task force composed of representatives from the Attorney General's Department, NSW Police, the RSPCA and the like to consider these issues, including diversion schemes for juvenile offenders. These plans are welcomed by the peak organisation—the RSPCA—advocating for the rights of animals.

The Minister said in the second reading speech that the bill provides a dual approach to improve animal welfare. On the one hand there will be greater early intervention and education. On the other there will be improved enforcement and compliance provisions. We welcome both of these. As previous speakers said, some measures in the bill give inspectors the power to give directions to people on notice for the way they treat their animals. Inspectors will be well equipped to communicate the standards of behaviour that are acceptable. Preventative and educational measures work hand in hand. I will not take time to speak about the measure it repeals, the current blanket defence for veterinary surgeons, because it is self-evident.

There is clarification of certain offences relating to the tethering of a bird or animal. "Tether" means to restrain so that an animal can move only in a restricted area by a rope, chain or cord. Other members have spoken about this, but I will say one thing. Dogs may be tethered on the back of light trucks to protect the tools of trade and goods in the tray of the truck. However, the tethering of that dog frequently is the cause of its death. Often the dog wants to chase another dog or another vehicle, jumps out, and is run over by the truck it was in.



It is important to note that the bill introduces a defence relating to the work of stock in yards, other animal husbandry activity and sheep dog trials. Like the previous speaker, I believe it is doubtful whether the amendment makes it clear that offences will not be extended to hunting, shooting, snaring, trapping, catching or capturing an animal by using dogs, if it is done in a manner that inflicts no unnecessary pain on the animal. This is extremely doubtful. It is open to all kinds of interpretation. The Act would be stronger if all kinds of coursing were banned in toto.

The bill allows the court to ban persons convicted of certain offences against animals from owning any other animal. The bill also allows penalty notices to be issued by officers for less serious offences. We congratulate the RSPCA on its work. Earlier this year the RSPCA Australian Scientific Seminar discussed "Cruelty to Animals: A Human Problem". The outcome of the seminar should prove fruitful in the cause of animal protection. I was intrigued with the title, because this is where the emphasis belongs, on the human problem, the owners of the animals. We commend the bill to the House.

**Debate adjourned on motion by the Hon. Greg Donnelly.**

**The DEPUTY-PRESIDENT (The Hon. Amanda Fazio):** Order! It being 3.45 p.m. business is interrupted to permit the Minister to move the adjournment motion, if he desires to do so.

### **SPECIAL ADJOURNMENT**

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

That this House at its rising today do adjourn until Tuesday 24 May 2005 at 2.00 p.m.

### **CIVIL LIABILITY AMENDMENT (FOOD DONATIONS) BILL**

#### **Second Reading**

**The Hon. TONY KELLY** (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [3.44 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

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

#### **Leave granted.**

In 2002 this Government introduced broad-ranging reforms to the law of negligence. These reforms focused on ensuring a more sustainable approach to civil liability that provided solutions for people affected by the public liability crisis and protected the simple pleasures enjoyed by our community.

The reforms also protect the good faith actions of people who come to the assistance of a person in danger or who work as volunteers.

This Bill responds to some further concerns about the possible legal consequences of good faith actions of those who provide food to some of most disadvantaged members of our community.

Charities are reporting that companies are now refraining from donating food. These companies believe that they may be subject to civil proceedings for liability for death or injury resulting from eating the donated food.

Such concerns are not surprising given the climate of fear that seems to surround issues of public liability.

The Bill will address these concerns and provide protection from civil liability to those generous members of the community who donate food to charities.

This protection will be provided where:

- 1) The food has been donated in good faith for a charitable purpose, with the intention that the person being given the food will not have to pay for it; and
- 2) The food was safe to eat at the time it left the possession or control of the donor.

Those who donate the food will have an obligation to inform the recipient of any relevant handling requirements for the food, such as whether the food needs to be refrigerated. If the food is only safe to consume for a particular period of time, the donor will also have an obligation to inform the recipient of the relevant time limit.

These provisions are similar to reforms introduced in Victoria.

One Victorian charity now has a major supporter who donates about 50 crates of milk each week. This donor only began donating once legislation was introduced to clarify that food that is safe to eat can be safely donated, without fear of litigation. Many other charities also report a substantial increase in donations of food in the wake of the legislation.

Similar legislation has been passed in Canada and the USA. This legislation works effectively to support the important partnerships that have been developed between businesses and charities to benefit the community.

The Bill balances food safety considerations against the need to support the work of those who provide emergency relief food services to those in need. It will clarify the responsibilities of food donors and make this area of the law more accessible to the community.

The Bill will encourage businesses to donate good quality, nutritious food that they might otherwise throw out, as well as reduce rubbish collection costs.

The Government has moved an amendment to the Civil Liability Amendment (Food Donations) Bill 2004 at committee stage.

The amendment follows a concern that the work of charities that 'on donate' food may not be covered by the Bill. The concern arises because these charities are not the primary donors of the food. Rather, they receive food donations from businesses or members of the public, and 'on donate' the food to the needy, or to other charities.

For example, a charity may collect excess food from corporate functions, and distribute that food to other charities, such as a soup kitchen or a hostel for the homeless. Another example is where a charity collects tinned food donated by members of the public following a winter appeal, and gives that food to families in need.

The Government would like to remove any doubt that the Bill covers the valuable work of these charities that work within a chain of food donation. To achieve this, the government amendment clarifies that the term 'donate food' includes the distribution, without payment or other reward, of food donated by others.

I commend this Bill to the House.

**The Hon. DAVID CLARKE** [3.46 p.m.]: The purpose of the Civil Liability Amendment (Food Donations) Bill 2004 is to give protection from civil liability to persons who in good faith or as an act of charity provide donations offered to others. The Opposition does not oppose it. For some time there has been a growing concern about the proliferation of civil liability claims against those who provide charitable or voluntary assistance to others. Whilst they act in good faith they do so with understandable concern and even fear that they could be subject to civil liability claims. The result has been that such a threat has served to impede and dissuade many people from providing such services.

Many people have become very cautious, and who could blame them? The bill amends the Civil Liability Act 2002 to provide that a person does not incur civil liability for any death or personal injury resulting from the consumption of food supplied by way of donation but subject to three conditions. Civil liability is not incurred if the food has been donated in good faith for a charitable purpose with the intention that the consumer of the food would not have to pay for it, the food was safe to consume at the time it left the possession or control of the donor, and the donor has informed the person to whom the food is donated of any relevant food-handling requirements or time limit for its consumption.

It is our understanding that the bill is the result of requests from charitable organisations. It is similar in effect to laws in Victoria, the United States of America and Canada. High standards will be maintained. Any food provided must be safe to be consumed at the time it left the control of the donor. Any relevant requirements required for handling must be brought to the attention of the recipient, including any time limit applicable before the food becomes unsafe to consume. The bill is a sensible one that will work to the benefit of our community. As I said, the Opposition does not oppose its passage.

**The Hon. TONY KELLY** (Minister for Rural Affairs, Minister for Local Government, Minister for Emergency Services, and Minister for Lands) [3.46 p.m.], in reply: I thank the honourable member for his contribution. I commend the bill to the House.

**Motion agreed to.**

**Bill read 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) [3.48 p.m.]: I move:

That this House do now adjourn.

### SALVATION ARMY OASIS YOUTH SUPPORT NETWORK

**The Hon. GREG DONNELLY** [3.48 p.m.]: On Wednesday 21 April 2005 I had the opportunity to receive a briefing from Captain Paul Moulds about the Salvation Army's youth support network called Oasis. The crisis and administration centre is located in Surry Hills. Oasis is the Salvation Army's major response to youth homelessness. It provides a range of services for young homeless people in the inner city. Accommodation services fall into four broad categories. Crisis accommodation is basically 24-hour emergency service accommodation for homeless youth who have no other accommodation options at all. Each year about 300 young people around New South Wales and Australia seek shelter at the centre.

Facilities like Vera Loblay House in Crows Nest provide longer-term accommodation for young people. Individual case plans are developed for each young person who undertakes skills training programs as part of the activities of the centre. Semi-independent accommodation like Carnarvon Manor at Neutral Bay is designed to assist young people as they take steps to establish themselves back into the community. It provides accommodation for 11 homeless people. Volunteer mentors also live on site to provide guidance and role modelling for the participants. Oasis is developing outreach housing in partnership with the New South Wales Department of Housing and community housing providers.

Oasis staff are placing young people in independent housing provided by these agencies and giving intensive outreach support. Oasis is hoping to significantly grow this area over the next 12 months. Oasis provides a range of outreach and contact services. Street walks and patrols through the inner city and Kings Cross connect the outreach workers with disadvantaged young people. The outreach team provides support, information, assistance, and referral advice. The Street Level Internet Cafe provides a broad range of health and welfare services. Free meals, showers, and laundry facilities are available. Additional forms of assistance include free access to computers, counselling, support, and referral services. However, Oasis has come to understand that young people also require access to a range of other services if they are to successfully leave behind street life and reintegrate into the community.

Over the past 10 years, Oasis has developed a wide range of programs to provide young people with opportunities to participate in the community in ways they never thought possible. Employment initiatives operated by Oasis include preparing resumés, job interview techniques, work readiness, and work placement programs. WorkiT is an innovative program that provides gardening, lawn mowing and cleaning services to Department of Housing properties in Redfern, Waterloo, Balmain, and the eastern suburbs. Highly disadvantaged young people are employed on award rates of pay to deliver these services with supervision, mentoring, and support from qualified team leaders. Reconstruct is a program offering basic training in building trades, including concreting, bricklaying, plastering, painting, carpentry and outdoor maintenance. The course is run by experienced tradespersons to help young people develop their building skills.

Drug abuse continues to be one of the greatest challenges in assisting disadvantaged young people to move forward. Oasis is responding with innovative and effective programs to address the underlying reasons young people are turning to drugs. Specialist Oasis staff provide individual counselling and group support therapy for these young people. Oasis technology programs provide training and work experience in a number of areas, including graphic and web site design, video editing, radio production, and computer refurbishment. Highlights include a fully operational radio studio and Internet training for young people. The Inner City Reconnect Program is an early intervention program designed to help young people at risk of homelessness. The program provides support and assistance to young people and their families experiencing stress or crisis. Through early intervention, it is hoped that homelessness can be avoided. Oasis also runs a Mental Health Reconnect Program, providing support agencies for working families and disadvantaged young people.

Oasis continues to forge new initiatives to meet the ever-increasing need for its services. Oasis is participating in the New South Wales Drug Court program, which diverts young people from detention centres to treatment options. Captain Moulds showed me the mobile technology van that is used on nightly visits to city hotspots. The refitted bus has a coffee machine and laptop computers and it uses the latest wireless technology to bring services closer to homeless people. Over the past 12 months Oasis has made a number of major achievements, including 15,200 client contacts, accommodating 384 young people, helping 226 young people become work ready and assisting 86 families with young people who have been homeless and experiencing hardship. Oasis could not undertake as many wide-ranging interventions without the tremendous support of so many dedicated volunteers. I congratulate Captain Paul Moulds and the Salvation Army on their tireless efforts in assisting, supporting and encouraging young people in need. We wish them well in all their great work into the future.

## GOODS AND SERVICES TAX REVENUE DISTRIBUTION

**The Hon. GREG PEARCE** [3.53 p.m.]: Tonight I draw the attention of the House to another spectacular example of Bob Carr's hypocrisy. This week Bob Carr resorted to legal advice in an attempt to maintain his spurious argument that somehow the Federal Government and the GST split is the reason for this State's current financial crisis. The financial crisis the State finds itself in is entirely due to mismanagement by Bob Carr and his Ministers and their failure to properly run the economy of the State, at a time when they have had record revenues from State taxes. This surprising conversion of Bob Carr to supporting lawyers should be considered in the context of his campaigns during the motor accidents legislation reform, the workers compensation legislation reform, and the tort law reform generally, when he saw lawyers essentially as the source of all evil and attempted to blame them for all the problems in each of those schemes.

Paradoxically, when Bob Carr was giving the two-finger signal to workers and their lawyers over the workers compensation reforms, he was also relying on a legal argument by the Crown Solicitor to ensure that the workers compensation deficit was not included in the State's budget. Honourable members will remember that for a number of years the Auditor-General has been concerned that the State's budget did not reflect the workers compensation deficit. Thankfully that deficit is declining, which I accept, due to the quite draconian changes that the New South Wales Government forced through in relation to workers compensation. Workers compensation and tort law reform will be around for quite some time.

This week the Premier, Bob Carr, and his new so-called Treasurer, Dr Andrew Refshauge, tried to maintain their argument about the goods and services tax on the basis of advice they obtained from Bret Walker, SC. Bret Walker is an old friend and has been known to me for a long time. He is certainly an eminent lawyer, but when it comes to a political argument, it really is not appropriate to try to define it in terms of strict legal rights and a strict legal analysis of an agreement. This debate is all about what happens to the broad-based revenue introduced by the Federal Government with the GST and the fact that the New South Wales Carr Government has been receiving record revenues, not only from its State taxes but in terms of the GST. All members would know that the GST originally was not projected to fully replace the group of taxes that have already been repealed until 2007, but the revenues are coming in so fast that that stage has already been reached.

Just to show the hypocrisy of the Premier, Bob Carr, and the Treasurer, Dr Andrew Refshauge, in trying to rely on strict legal opinion, I bring to the attention of the House some interesting statistics in relation to Bret Walker. As one of the most eminent silks, he has represented direct parties to proceedings in the High Court in 38 cases and has won 20 of those cases. But he has lost 18 of them, and that is the nature of the legal process, an arena for conflicting opinions. Notwithstanding his eminence, experience and skills, Bret Walker's record is 50-50 when it comes to judgements handed down by the High Court.

Bret Walker represented the State of New South Wales in the case of *Ha*, and he lost that case. He also represented the Treasurer of New South Wales in *Zhu v The Treasurer of the State of New South Wales*, and he lost that case. The more interesting case of the two is that of Mr Zhu, the poor fellow who was victimised by the Sydney Organising Committee for the Olympic Games. Recently the Olympic authority had to pay approximately \$5 million because of what was done to Mr Zhu during the Olympics in another episode of thuggery by this Government. In relation to the GST revenues, the issue is not whether there is a distribution back to New South Wales of what has been paid. The distribution formula is about giving revenues back to jurisdictions on a fair and unflawed basis. It is un-Australian for a State or Territory to take more than a fair share of GST revenue.

## ST HELENA-TINTENBAR MOTORWAY

**Mr IAN COHEN** [3.58 p.m.]: Recently I have attended a number of full-house public meetings in the area in which I live, about the St Helena to Tintenbar section of the proposed motorway between Bangalow and Ballina. The Roads and Traffic Authority [RTA] announced through the Hon. Eric Roozendaal a major expansion of the study area to the eastern section, and I ask why. The community is in a state of shock, but is organising. Instead of the highway being upgraded to four lanes by the RTA along the original road reserve, my community, at the whim of "Secretary" the Hon. Eric Roozendaal, is being confronted with a six-lane motorway, potentially through prime agricultural and rural-residential land, cutting through hillsides and boggy lowlands that are prone to fog. I offered to host a meeting for the Hon. Eric Roozendaal in the northern part of this State, but so far he has expressed no interest. All he has to do is listen. I have offered to give him information. I have been given information that motorway madness is trampling the basic human rights of

people to live in peace—a cruel edict from someone who is so keen to represent human rights in a selective manner. A paid advertisement by the honourable member for Ballina, Don Page, states:

An issue of great concern to the residents of the Ballina electorate is that of the protection of prime agricultural land. The Far North Coast has some of the best agricultural land in Australia. It also has a growing population and as a result there are increasing pressures on available land.

It is important that we protect quality viable agricultural lands both to ensure the viability of agriculture industries and hence our food supply but also to protect the rural character of the Far North Coast.

That is the essence of a paid advertisement by the honourable member for Ballina, Don Page, published in the *Northern Rivers Echo* this week, yet The Nationals in this House will not agree to an inquiry by General Purpose Standing Committee No. 5 into the announcement concerning the motorway and why it came about. The Nationals are concerned that the committee might examine other issues concerning motorways that will not represent the interests of the people who live on the North Coast. In the document "Environmental Planning and Assessment Act 1979. Commercial/Retail development along the Pacific Highway, North Coast, from the Queensland Border to Hexam" Craig Knowles, the then Minister for Urban Affairs and Planning, directed the coastal councils from Hexham to Tweed to prepare a draft local environment plan in which they were to take into account a number of objectives. Objective 1 is as follows:

To recognise that the Pacific Highway's function is to operate as the North Coast's primary inter and intra regional road traffic route. This is, the purpose of the Pacific Highway is regional transport.

The directive has not changed. Why then is Mr Costa so hell bent on unleashing a six-lane interstate monstrosity onto the residents of Tinterbar-Ewingsdale? The Pacific Highway is not the national highway; it is the regional highway. Ask Mr Knowles. He is the one who said it and he is the Minister who approved the final plans for the upgrade. Millions of dollars have been spent already on buying up land along the current highway and on developing plans for the Ballina bypass and the St Helena upgrade. It would seem to the taxpayer that the Minister considers such amounts inconsequential, as he now is considering scrapping all that and driving a six-lane monstrosity across flood plains below the Newrybar escarpment and through the water catchment area of Coopers Shoot, which supplies Ballina, Byron Bay and Lismore, ending up in a tunnel of macro proportions and problems under St Helena.

Local residents have pointed out that the new route from Ewingsdale to Ballina is already densely settled with many small holdings, so there will be insurmountable noise problems. The terrain is hilly and the escarpment is riddled with springs. Residents say: Just get on with the job, Mr Costa, and upgrade the highway to dual carriageway along the existing route and save a few lives. They ask: Why can you not concentrate funding on upgrading the New England Highway to B-double standard and maintain the Pacific Highway at a lower than B-double standard? The residents do not understand the Government's hypocrisy in that much of the Ewingsdale to Ballina area was zoned prime agricultural land by the Department of Infrastructure, Planning and Natural Resources because of the sustainable production of this area and the vital need for food for both Australian and overseas markets. This land was considered by the Government to be in need of protection so that current and future farmers would not change the usage.

Now the Department of Roads has decided that this land is not prime agricultural and that a highway can divide and destroy the viability of farms along the route. It has ignored Byron Shire Council biodiversity studies that show endangered flora and fauna along the route. A six-lane highway in the area will devastate many wildlife corridors and destabilise watercourses unnecessarily. The degradation is visual and environmental, with air, water and noise problems, a loss of privacy and devaluation of properties. Jack and Yvonne Harper of Coopers Shoot ask Mr Costa: Why are you destroying valuable coastal farmland and reducing water quality on the coast when more and more of our agricultural land is being affected by drought and climatic change? Why are you presiding over an ad hoc planning procedure for the Pacific Highway that is being carried out in isolation from local council planning?

Why have all the rail services on the North Coast been discontinued at a time when the transport demands of the State are increasing and the cost of fuel is rising? What is the use of putting a six-lane highway through some of the best agricultural land in the country when nobody gains, except truckers? Sugarcane farmers have pointed out to me that conditions on this land make it inherently unsuitable for a six-lane highway. Paul Scanlan, a farmer in the area for more than three decades, points out that the expanded study area is subject to flooding and it becomes soft and bottomless in adverse weather. He said that it is hopeless trying to maintain roads in the area. They keep sinking and maintenance is prohibitive. The density and longevity of fog in the valley would be a death trap for motorists. He points out that a more appropriate position to undertake this highway upgrade would be on the elevated country near the existing highway, where numerous studies and tests have been undertaken—[*Time expired.*]

## POLICE COLLEGE

**The Hon. KAYEE GRIFFIN** [4.03 p.m.]: Last week I had the pleasure of attending the Attestation Parade at the New South Wales Police College for the graduates of the Constable Education Program Class 21 with the Minister for Police, the Hon. Carl Scully. The ceremony also included the presentation of long-service medals and commissioner's commendations for valour. It was a proud day for the new constables and their families, and also for those of us watching the ceremony. One hundred and seventeen new constables graduated—90 men and 27 women. I take this opportunity to say a few words about the New South Wales Police College in Goulburn and the Constable Education Program. The college—formerly the New South Wales Police Academy—has undergone changes in recent times. The functions and processes of the Police College are subject to a number of internal and external checks and assessments with thorough examination by the Anti-Discrimination Board and the Equity and Diversity branch.

The head of the college is the Commander, Education Services, and the senior management group consists of four other directors in the areas of foundational studies, education services, continuing education, and leadership education and support. The Constable Education Program is the required education for New South Wales police recruits. It includes the awarding of an Associate Degree in Policing Practice, in response to the findings of the Wood royal commission. The Constable Education Program focuses on theory and practical training, the foundational studies and applied skills necessary for professional policing practice in the community.

Successful completion of the college-based aspects of the associate degree meet the requirements for recruitment to NSW Police as a probationary constable, with the completion of a further six distance education subjects culminating in the awarding of the Associate Degree in Policing Practice by Charles Sturt University. After last week's attestation parade the graduates leave the college for 12 months field training in police stations as probationary constables. The students we watched graduate last week all commenced the Constable Education Program through one of three different avenues: 48 students commenced via undergraduate entry, 22 students commenced through recognition of a prior learning pathway, and 47 students commenced through distance education.

Some graduating constables had chosen to leave other professions to become police officers, bringing with them some varied life experiences, and backgrounds—valuable assets when working with members of the broader community. The day was a proud one for the new graduates and their families, and also for the officers who received awards, including the Police Medal, during the ceremony. I take this opportunity to congratulate those officers on their achievements. Two officers, Senior Constable Jason Bentley and Leading Senior Constable Sean Phillips, received the Commissioner's Valour Award, which was conferred for conspicuous merit and exceptional bravery at the scene of a fatal motor vehicle accident in 2001.

Detective Sergeant Warren John Perry and Leading Senior Constable Raymond Alfred Smith were awarded a Commissioner's commendation in recognition of courage and devotion to duty shown when apprehending an armed offender after a hostage situation in a school in 2002. Inspector John Alexander Graham, APM, retired, was recognised for outstanding and meritorious performance of duty between 1963 and 2004. The Police Medal was awarded to Inspector Ross Parry, for 45 years service, and Inspector Don Eyb, APM, for 40 years service, in recognition of their long service to NSW Police. The final award presented was the Robert Brotherson Memorial Award. That award is presented to the student who achieves an outstanding level of performance during the pre-attestation session of the Associate Degree in Policing Practice. For Constable Education Program Class 21 the recipient of that award was Probationary Constable Laura Hill. I congratulate her on an outstanding performance.

I have always had great respect for those who choose to serve in the New South Wales police service. I hold our police officers in very high esteem and I am aware of the difficulties involved in such a demanding profession. I come from a family with a proud history of police service and I can appreciate not only the important work police officers undertake, but also the worry and concern felt by their families and friends when they face difficult policing situations. Last week's ceremony was a great chance to publicly acknowledge the efforts of the new graduates and to wish them well as they embark on their policing careers.

It was also an appropriate opportunity to congratulate those officers who received awards for their bravery and service. The Minister for Police delivered an address at the ceremony in which he publicly

congratulated the graduating officers on their achievements. Minister Scully also acknowledged that policing is a career that is sometimes fraught with difficulty and danger and the support of family and friends is vital to the police officer. Today, I record my own appreciation for the invaluable work our police officers do, and extend my congratulations to the Constable Education Program Class 21. I wish those new officers successful and safe careers with NSW Police.

### MELANESIAN IMMIGRATION

**The Hon. CHARLIE LYNN** [4.08 p.m.]: On Anzac Day 2005 I was in Papua New Guinea for the dawn service. While there, I was asked to host a meeting of the Informal Youth Sector to be held in Port Moresby. The meeting was with 10 people, the leaders of the Raskol gangs about whom we hear so much. They had asked to meet with me because in early March I had issued a press release concerning Melanesia allowing Papua New Guineans to come to Australia for seasonal work, given our well-publicised shortage of seasonal workers at various times of the year. It had been reported that one organisation in the Mallee wanted permission to import 10,000 Chinese. I then discovered that Australia has agreements with 26 countries for seasonal work opportunities, but not with Papua New Guinea. As a result of my press release, on 9 March the Papua New Guinea daily newspaper, the *Post-Courier*, stated:

In Australia they can't get their own people to fill all the basic labouring and farming jobs. They also can't get enough skilled tradespeople. This is a fierce debate in Australia.

We are not flushed with skilled tradesmen and women, but we do have many thousands of moderately educated young people who could solve Australia's worries with fruit picking and other seasonal industries.

Australia, give our young people a chance. Lest we forget.

Twelve youth workers came to see me. They explained to me that the leader was Mr Patrick Moroi. The organisation had been established in Papua New Guinea by a remarkable woman by the name of Dame Carol Kidu, who is the Minister for Community Development in a country that does not have a welfare system. She has brought these people together. Patrick Moroi explained to the meeting that I hosted in Papua New Guinea that these groups were responsible for Papua New Guinea's bad reputation in the international community because of the crimes they committed in the 1990s. He also explained that with the urban drift away from villages and the urbanisation of these groups living in settlements, often when they wake up their main task for the day is to get a kilogram of rice to feed their family, and they will do whatever it takes to get that. But he realises that the crime and so forth caused as a result of that attitude and the various cultures living in this urban melting pot has been a major deterrent to international development.

When they realised there was an opportunity for them to come to Australia to pick fruit or harvest vegetables—something they have been doing for between 25,000 and 50,000 years—they thought this would be a way they could break the cycle they were locked into, and they were very positive about it. The next day I attended a meeting, chaired by Dame Carol Kidu, to look at ways of bringing to Australia Papua New Guinean citizens who wished to work in this country under a discipline system. I also met with the staff of the chief of the Defence Force, the Secretary of the Department of Education, and staff of the Department of Community Development, to discuss arrangements to bring them to Port Moresby, have them medically assessed by the defence department, and have them brought to Australia under a discipline system whereby they would establish relationships with various community organisations and agricultural groups. The money could then be remitted back to Papua New Guinea, and some of that money would be put in trust for them so that when they returned to Papua New Guinea they would be able to establish small businesses.

I will be going to Papua New Guinea next Monday as part of my Commonwealth Parliamentary Association trip to further explore the process. I believe it is incumbent upon us to pay much greater attention to our closest neighbour, former territory, wartime ally and former Commonwealth member. The issue that rankles the most there is the fact that they cannot come to Australia. Given the bias we have against them in our immigration system, it is easier for them to go to the United Kingdom to get a short-term work permit than it is to come to Australia. It occurs to me that there is a growing divide between the two countries.

We have already committed almost \$1 billion over the next five years to what is called the Enhanced Co-operation Program. That money will disappear without trace unless we start to consider intergenerational reform with leaders that have not been born yet. Future leaders are about to be born in Australia. By the time

those leaders are grandparents, the populations of Papua New Guinea and Australia will be about the same. We have to start thinking now of positive ways we can help our closest neighbour. If we can introduce this initiative, it would be the greatest contribution we could make. I call on the Department of Immigration to be positive in its outlook and to work with us in developing a process to bring these fine people to Australia and to give them hope, which they do not have at the moment. [*Time expired.*]

### **GOLDBRIDGE CLOTHING COMPANY PTY LTD, BEXLEY**

**Ms LEE RHIANNON** [4.13 p.m.]: The worker protection laws of this State have special provisions to look after the interests of especially vulnerable workers, many of them women and mothers from non-English-speaking backgrounds. These special provisions are contained in the Occupational Health and Safety Act and its regulations, and also in the Industrial Relations Act. A clear example of the proper use of these powers has been the recent exposure of the illegal sweatshop operation conducted by Goldbridge Clothing Company Pty Ltd. The sweatshop was set up in a concealed garage factory, out of sight, in the suburb of Bexley. The workplace safety laws of this State require clothing factories such as this to be registered with the WorkCover Authority. The factory I have referred to was not registered. Indeed, it is still not registered today. The workplace safety laws of this State prohibit any factory from being set up as a firetrap. The Goldbridge factory is such an illegal firetrap.

The workers in the clothing factory and any outworkers are required to be paid at least the award minimum rate of pay. The financial records of the Goldbridge sweatshop operation have been analysed, even its cheque books. The very records of the sweatshop bosses indicate clearly that the workers received payment at a rate far below the award minimum. The union that conducted the inspection of the factory and analysed the records has provided all this evidence to the relevant authorities, in particular the WorkCover Authority and the State Office of Industrial Relations, to gather more information about the rip-off of the Goldbridge sweatshop workers. The union has announced its intention to determine exactly what these workers are owed legally and to ensure that they receive their full legal entitlements.

Faced with this exposure, the Goldbridge sweatshop employers have attempted to divert attention from the undeniable facts. The employers have refused to explain their apparent involvement in tax dodging and black market operations—involvement revealed by their own records. Indeed, the Greens have called on the Australian Taxation Office to investigate. The employers have instead been energetically supplying a stream of unsubstantiated propaganda to many people. Unfortunately for the sweatshop employers, their political ally in this place, Dr Peter Wong, has repeatedly bungled his efforts to support them. He has filed at least five notices of motion and other documents with the House in defence of the sweatshop employers.

At least two of Dr Wong's notices of motion contradict each other. In his first notice of motion he claims that the sweatshop is located in a "home" but by his third notice of motion he is already admitting that it is really a factory "workshop". Dr Wong simply invents some details in one of his later notices of motion and repeats a false claim. According to the false claim, the union is supposed to have "alleged" that the sweatshop workers "had been detained and not allowed to leave". I understand that the Textile, Clothing and Footwear Union has never alleged any such thing—and for good reason, because the union never detained any Goldbridge worker.

I also alert the House to a new development in this curious case. I think it would be useful if Dr Wong were to speak or give notices of motions about this issue. Is Dr Wong aware of the recent activities by the solicitor who acts on behalf of the Goldbridge sweatshop bosses? I believe the solicitor is also a nearby neighbour of the illegal garage factory. Is Dr Wong aware that the Goldbridge solicitor organised a meeting for the principal manufacturers and fashion houses that supply work to the illegal Goldbridge factory?

I understand that at the meeting the Goldbridge solicitor proposed a campaign to undermine and fight against the special laws that protect clothing workers in this State. It seems that this Goldbridge representative further pushed these manufacturers and fashion houses to fund a secret campaign. I understand that some of them—that is, the principal manufacturers—have refused to be involved. Exactly what does Dr Wong know about this proposed campaign by the sweatshop bosses? Is he involved in that campaign? Where will the funds come from to mount this attack against worker protection? Will any of the funds derived from the exposed tax rorts find their way into this covert campaign? I think it would be useful for Dr Wong to speak about these issues.

**Motion agreed to.**

**The House adjourned at 4.18 p.m. until Tuesday 24 May 2005 at 2.00 p.m.**

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