LEGISLATIVE COUNCIL

Tuesday 2 December 2008

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The President (The Hon. Peter Thomas Primrose) took the chair at 2.30 p.m.

The President read the Prayers.

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

RURAL LANDS PROTECTION AMENDMENT BILL 2008

CONTAMINATED LAND MANAGEMENT AMENDMENT BILL 2008

Bills received from the Legislative Assembly.

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

Motion by the Hon. Tony Kelly agreed to:

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

Bills read a first time and ordered to be printed.

Second readings set down as orders of the day for a later hour.

ADMINISTRATION OF THE GOVERNMENT OF THE STATE

The PRESIDENT: I report the receipt of the following message from His Excellency the Honourable James Jacob Spigelman, the Lieutenant-Governor of the State of New South Wales:

J. J. Spigelman
LIEUTENANT-GOVERNOR

Office of the Governor
Sydney 2000

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

2 December 2008

GENERAL PURPOSE STANDING COMMITTEE NO. 2

Extension of Reporting Date

Motion by the Hon. Robyn Parker agreed to:

That the reporting date for the reference to General Purpose Standing Committee No. 2 relating to the Budget Estimates and related papers be extended to Thursday 5 March 2009.

TABLING OF PAPERS NOT ORDERED TO BE PRINTED

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

TABLING OF PAPERS

The Hon. Penny Sharpe tabled the following papers:

(1) Annual Reports (Statutory Bodies) Act 1984—Reports for the year ended 30 June 2008:

Institute of Psychiatry
NSW Food Authority—Volumes 1 and 2
Veterinary Practitioners Board.

(2) Report of NSW Businesslink Pty Ltd for the year ended 30 June 2008.

Ordered to be printed on motion by the Hon. Penny Sharpe.

PETITIONS

Rathmines to Morisset Bus Service

Petition requesting a bus service to link Rathmines, Arcadia Vale and Wangi Wangi with Morisset railway station, received from **the Hon. Lynda Voltz**.

Department of Primary Industries Coonamble Technical Assistant Position

Petition requesting reversal of the decision by the Department of Primary Industries not to fill the position of technical assistant at Coonamble, received from **the Hon. Rick Colless**.

BUSINESS OF THE HOUSE

Withdrawal of Business

Private Members' Business item No. 128 outside the Order of Precedence withdrawn by Ms Lee Rhiannon.

BUSINESS OF THE HOUSE

Postponement of Business

Business of the House Notices of Motion Nos 1 and 2 postponed on motion by the Hon. Duncan Gay.

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

LEGISLATION REVIEW COMMITTEE

Report

The Hon. Amanda Fazio tabled report No. 15, entitled "Legislation Review Digest No. 15 of 2008", dated 2 December 2008.

Ordered to be printed on motion by the Hon. Amanda Fazio.

STANDING COMMITTEE ON LAW AND JUSTICE

Reference

The Hon. CHRISTINE ROBERTSON: I inform the House that in accordance with the resolution of the House relating to the establishment of committees, the Standing Committee on Law and Justice resolved on 1 December 2008 to adopt the following reference from the Minister for Community Services, Ms Linda Burney:

That the Standing Committee on Law and Justice inquire into and report on law reform issues regarding whether New South Wales adoption laws should be amended to allow same-sex couples to adopt with particular reference to:

(a) ascertaining whether adoption by same-sex couples would further the objectives of the Adoption Act 2000;

(b) the experience in other Australian and overseas jurisdictions that allow the adoption of children by same-sex couples;

(c) whether there is scope within the existing programs, local and international, for same-sex couples to be able to adopt;

(d) examining the implications of adoption by same-sex couples for children; and

(e) if adoption by same-sex couples will promote the welfare of children, then examining what legislative changes are required.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 2) 2008

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [2.41 p.m.], on behalf the Hon. John Della Bosca: 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 Statute Law (Miscellaneous Provisions) Bill (No 2) 2008 continues the established statute law revision program that is recognised as a cost-effective and efficient method for dealing with amendments of the kind included in the bill.

The form of the bill is similar to that of previous bills in the statute law revision program.

Schedule 1 contains policy changes of a minor and noncontroversial nature that the Minister responsible for the legislation to be amended considers to be too inconsequential to warrant the introduction of a separate amending bill.

That schedule contains amendments to 27 Acts. I will mention some of the amendments to give Honourable Members an indication of the kind of amendments that are included in the schedule.

Schedule 1 makes a number of amendments to the Road Transport (Safety and Traffic Management) Act 1999.

The amendments expand the category of persons who may give certificate evidence as to various matters in relation to approved speed measuring devices that are not used in conjunction with approved speed cameras. This category of persons will now include, in addition to police officers, persons authorised by the Commissioner of Police to test such devices.

The amendments also make the necessary consequential changes following the transfer of the management of the red-light camera program from the New South Wales Police Force to the RTA on 1 July 2008. These amendments relate to the approval of camera detection devices, the authorisation of officers to install and inspect such devices and the issue of evidentiary certificates.

Schedule 1 amends the Business Names Act 2002 to provide that investigators appointed under the Fair Trading Act 1987 have all the functions of authorised officers under the Business Names Act 2002. The option of a separate appointment of authorised officers under the Business Names Act 2002 is retained.

(A comparable amendment is made by schedule 1 to the Motor Vehicle Repairs Act 1980 in relation to inspectors under that Act.)

Schedule 1 also amends various Acts in relation to powers of delegation:

The Justices of the Peace Act 2002 is amended to enable the Director-General of the Attorney General's Department to delegate to a senior officer of the Department the function of re-appointing a person as a justice of the peace on the expiration of the person's term of office; The Banks and Bank Holidays Act 1912 is amended to restore a power of delegation in connection with the granting of approvals to enable banks to open on weekends that was previously provided for under the now repealed Shops and Industries Act 1962.

The National Parks and Wildlife Act 1974 is amended to extend that Act's delegation power to functions of the portfolio Minister and Director-General under particular Acts or categories of Acts that are relevant to the National Parks and Wildlife Act 1974 either because they deal with the reservation of land or because they deal with functions exercisable by an owner or occupier of land.

Schedule 1 makes a number of amendments to the Building Professionals Act 2005. The regulations under that Act currently require accredited certifiers to keep records for 10 years (that being the limitation period for actions for loss or damage in relation to defective building work). The amendments to that Act ensure that the requirements for accredited certifiers to keep records, and to provide those records to the Building Professionals Board on request, extend to a person whose certificate of accreditation has been suspended or cancelled, or has lapsed.

The Commission for Children and Young People Act 1998 is also amended by schedule 1, primarily to allow guidelines under that Act to provide for approved screening agencies to collect, on behalf of the Commission, specified information currently required to be notified by employers directly to the Commission, relating to applicants who are not employed because of the results of background checking.

The amendments prohibit approved screening agencies from using or giving access to any such information obtained from an employer other than for the purpose of providing it to the Commission.

Amendments by schedule 1 to the Interpretation Act 1987 aim to simplify the structure of legislation in two ways: firstly, the amendments remove the need for a schedule to an Act or instrument to be supported by a substantive provision in the Act or instrument that declares that the schedule has effect; secondly, the amendments remove the need to enact, in accordance with current standard practice, an automatic repeal clause in each amending Act, and to extend that automatic repeal to amending provisions of Acts that are progressively commenced.

Schedule 1 also makes amendments to the Police Regulation (Superannuation) Act 1906, the State Authorities Non-contributory Superannuation Act 1987, the State Authorities Superannuation Act 1987 and the Superannuation Act 1916, in relation to the superannuation entitlement of spouses under the Commonwealth Family Law Act 1975.

The amendments will enable the SAS Trustee Corporation (being the body administering the various superannuation funds under those Acts) to transfer the amount of the superannuation entitlement to the First State Superannuation Fund if the spouse fails to provide details as to the manner of payment of the amount within the required period.

This default arrangement for payment is consistent with the circumstances in which other amounts that are not immediately payable in respect of the spouse may be paid under those Acts into that Fund.

The last schedule 1 matter I will mention is an amendment to the Constitution Act 1902 to substitute "exceptional" for "special" in describing the type of circumstances in which the Lieutenant-Governor or Administrator of the State is to assume the administration of the State due to the unavailability of the Governor, where that unavailability is for a reason other than the Governor's assuming the administration of the Commonwealth, absence from the State or physical or mental incapacity.

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

Schedule 3 contains amendments that are consequential on the repeal of certain Acts by schedule 4.

Schedule 4 repeals a number of Acts and provisions of Acts that are redundant or of no practical utility.

The repeals also extend to provisions of Acts that contain only amendments that have commenced. The Acts or instruments that were amended by the amending Acts or provisions being repealed are up-to-date and available electronically on the legislation website maintained by the Parliamentary Counsel's Office.

Schedule 5 contains general savings, transitional and other provisions. These include provisions dealing with the effect of amendments on amending provisions, and savings clauses for the repealed Acts. The schedule also contains (for abundant caution) a power for the Governor, by proclamation, to revoke the repeal of any Act or instrument repealed by the bill.

The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts and statutory instruments concerned. If any amendment causes concern or requires clarification, it should be brought to my attention. If necessary, I will arrange for Government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the bill, the Government is prepared to consider withdrawing the matter from the bill.

I commend the bill to the House.

The Hon. DON HARWIN [2.42 p.m.]: The Statute Law (Miscellaneous Provisions) Bill (No. 2) 2008 makes minor amendments to nearly 100 Acts, and is the second such bundle of non-controversial amendments put forward by the Government this year. The bill continues the statute law revision program established nearly a quarter of a century ago as a cost-effective and efficient mechanism for making minor amendments including the repeal of a number of Acts and statutory instruments. Each schedule of the bill provides different kinds of reform and impacts a different set of Acts and statutory instruments.

Schedule 1 to the bill amends 27 Acts. These changes are all minor in scope but vary in nature. Schedule 1 also makes changes with regard to definitions and terminology and seeks to give greater flexibility of procedure. Other amendments are designed to provide clarity as to the scope of powers. Additional Acts subject to changes under schedule 1 to the bill include the Constitution Act 1902, in which there is a change of some significance, but again relatively non-controversial, that caught my eye.

Schedule 2 is concerned with effecting statute law revision. The purpose of many of the relevant changes is to update terminology and to make definitions consistent. For example, the Anti-Discrimination Act 1977 is altered to include a person's de facto partner in the definition of "relative" in section 49ZYA of the Act, which pertains to discrimination on the basis of age. Other changes under schedule 2 are simple corrections. For example, there are changes to the Mining Amendment Act 2008 to correct the misspelling of the word "colliery" as a result of a typographical error; while the Newcastle Local Environment Plan 2003 corrects a citation of a map included in the definition of "zoning map".

Schedule 3 provides amendments to half a dozen Acts and regulations that are consequential on repeals of various Acts under schedule 4. Among the redundant Acts repealed under schedule 4 are the Bennelong Point (Parking Station) Act, for example, which has well and truly outlived its utility. The bill also repeals redundant provisions of various Acts, as well as Acts or provisions of Acts that contain only amendments that have commenced. Finally, schedule 5 makes other provisions of a consequential or ancillary nature concerned with general savings. The Opposition supports the bill.

Ms LEE RHIANNON [2.45 p.m.]: As the Hon. Don Harwin outlined, with Statue Law (Miscellaneous Provisions) Bills there is a procedure that the House knows and largely trusts. However, at the moment the system, not the trust, has broken down because one of the items that the Greens asked to have removed from the list—the Food Act 2003 No. 43, which appears at lines 19 to 30 on page 11 of the bill—remains. The Greens are pleased that all our other requests for removal have been acceded to. Interestingly, one such Act, the Clean Coal Act, set out the need to amend the term "clean coal" to "low emissions", which is not surprising given the shift in the propaganda of the coal-fired power plant industry by the Federal and State governments. It has been decided that as the term "clean coal" is not working it should be replaced with the term "low emissions".

Curiously, despite repeated requests, the Food Act 2003 No. 43 has not been removed. I was told that an amendment would be circulated to that effect but nothing to that effect has yet been put before us. The Greens are concerned that the procedure has broken down. We appreciate it is a busy time of the year, and that is made even busier by the way the Government conducts its legislative program. It must be a huge strain on Government staff to bring so many bills before Parliament in this way, and today we have witnessed the extraordinary introduction of a bill, the provisions of which were in the form of a regulation that was passed by this House only last Friday. I refer to the latest amendments to the Liquor Act.

I acknowledge that Government staff must be working flat out, but there is a clear agreement about how statute law procedures work in this place and it seems that the agreement has been ignored. We are told at briefings that if we raise objection to any item, it will be removed. It all sounds so simple, with an understanding between members. But on this occasion the procedure has broken down. I have just been informed that the amendment has now been circulated. It is disappointing that the process has been so messy, but I am pleased that the system is working again.

Reverend the Hon. FRED NILE [2.48 p.m.]: The Christian Democratic Party supports the Statue Law (Miscellaneous Provisions) Bill (No. 2) 2008, which contains amendments to 80 pieces of legislation that, in the main, are of a technical nature and non-controversial. The Christian Democratic Party supports the bill.

Dr JOHN KAYE [2.49 p.m.]: My colleague Ms Lee Rhiannon referred to the Food Act 2003 No. 43. The Greens have raised concerns about amendments to section 45, which relates to reporting requirements, because the Food Authority would be able to change the form on which food inspection agencies reported back to the Food Authority simply by its own fiat rather than by regulation. The Greens concern is that undue power will be placed in the hands of the Food Authority to weaken the nature of food sections of restaurants. Given the massive problems we have with food poisoning in New South Wales the last thing we want is a weakening of the reporting requirements of food inspection agencies. I understand in days gone by it has been the practice for the Government to move an amendment to Statute Law (Miscellaneous Provisions) bills to remove that which appears on lines 19 to 30 of page 11.

The Hon. HENRY TSANG (Parliamentary Secretary) [2.49 p.m.], in reply: I thank all honourable members for their contributions. I add as a matter of protocol that the Government respects the objection raised by the Greens and in Committee will move an amendment to remove this provision from the bill, which I commend to the House.

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

Motion agreed to.

Bill read a second time.

In Committee

C**lauses 1 to 7 agreed to.**

[*Interruption*]

The CHAIR (The Hon. Amanda Fazio): Order! People in the public gallery must not try to converse with members who are seated in the Chamber.

The Hon. HENRY TSANG (Parliamentary Secretary) [2.52 p.m.]: I move:

No. 1 Page 11, schedule 1.10, lines 19–30. Omit all words on those lines.

The Government has moved this amendment in respect of the objection raised by the Greens.

Dr JOHN KAYE [2.52 p.m.]: The Greens thank the Government for respecting the process and removing this provision from the bill. I have set out my reasons for seeking its removal in my contribution to the second reading speech.

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

Government amendment agreed to.

Schedule 1 as amended agreed to.

Schedules 2 to 5 agreed to.

Title agreed to.

Bill reported from Committee with an amendment.

Adoption of Report

Motion by the Hon. Henry Tsang agreed to:

That the report be now adopted.

Report adopted.

Third Reading

Motion by the Hon. Henry Tsang agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly with a message requesting its concurrence in the amendment.

RURAL LANDS PROTECTION AMENDMENT BILL 2008

Second Reading

The Hon. IAN MACDONALD (Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development) [2.54 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Rural Lands Protection Amendment Bill 2008 will put in place a number of important amendments to the Rural Lands Protection Act. These amendments will make much-needed changes to the structure and governance of the Rural Lands Protection Board system. Most significantly, the reforms introduced by this bill will improve critical farm gate services to ratepayers and to rural communities throughout New South Wales. They will ensure that the State's animal health surveillance systems and pest insect and animal management systems are world class. The amendments represent an opportunity to improve the financial viability of the board system into the future. The bill implements recommendations from several independent reviews of the Act.

The New South Wales Rural Lands Protection Board System Review 2008, a fundamental review of the board system, was presented to the New South Wales Government in June 2008 by the peak body, the State Council of Rural Lands Protection Boards, seeking action. The State council was seeking action to deal with systemic problems in the board system and to modernise the structure of the system. The New South Wales Government saw great merit in the findings of this review as a means of ensuring the financial viability of the board system into the future. The bill also implements recommendations from the review of the Rural Lands Protection Boards Rating System undertaken by the Hon. Richard Bull, which was released in July 2007 by the State council. As well, the bill includes several amendments remaining from the statutory review of the Act that took place in 2004. Most of the amendments from this process were made by the Rural Lands Protection Amendment Act 2006.

For many generations, rural lands protection boards have been servicing the needs of rural communities in New South Wales. These boards have their roots in organisations established in the 1860s to deal with sheep diseases. Pastures protection boards were established in 1902 to protect pastures and livestock from the depredations of noxious animals. The Pastures Protection Board Act 1934 further expanded the role of these boards to deal with travelling stock; public watering places; rabbit, marsupial and dog-proof fencing; and the identification of stock. In 1990, the Rural Lands Protection Act 1989 significantly modernised the administration of rural lands protection in New South Wales, replacing pastures protection boards with rural lands protection boards. I am sure, Mr Acting Speaker, in the area you represent as in mine, many people still call them PP boards and have done so for many years. The Rural Lands Protection Act puts in place the framework for the rural lands protection board system.

Further changes were made by the Rural Lands Protection Act 1998, which established the State Council of Rural Lands Protection Boards as the peak body to oversee the operations of the local level boards. Currently, there are 47 boards established under the Act. Each board is governed by a board of directors who are elected by ratepayers for four-year terms. Boards are primarily funded from rates charged to landowners. As at 31 December 2007, almost 139,000 land holdings in New South Wales were subject to rural lands protection boards [RLPB] rates. In coastal areas, rateable properties are generally those properties which are larger than four hectares; in the far west they start at 400 hectares. Boards are responsible for animal health surveillance in New South Wales. They investigate disease outbreaks and provide advice on herd or flock health problems such as enzootic bovine leucosis in dairy herds, ovine Johne's disease in sheep and cattle, and footrot in sheep.

Boards also play a significant role in emergency animal diseases outbreaks in this State. Over the past few years there have been a number of significant emergency disease outbreaks in New South Wales. The staff employed by boards, such as vets and rangers, have played a significant role in containing these outbreaks. The recent successful equine influenza control and eradication program was a massive task, to which the boards contributed significantly. The achievement of eradicating this disease in record time is a credit to all those involved. The contribution of boards to the value of our primary industries in this State was also demonstrated by their role in the response to the outbreak of avian influenza at Tamworth in 1996 and 1997, and the outbreaks of Newcastle disease in poultry at Mangrove Mountain in 1999 and Horsley Park in 2002. Boards are also responsible for managing declared pest animals, such as rabbits, wild dogs and feral pigs.

Board staff also made a significant contribution to the successful campaign, in spring 2004, to manage the Australian plague locust outbreak. This campaign saved hundreds of millions of dollars in crop and pasture damage, keeping our rural economy afloat. Boards are again playing a critical role now in the current plague locust campaign. Boards also manage most of the State's travelling stock reserves and the movement of stock on public roads. In addition, they play an important role in drought management. All of these examples show the significance of having a sound functioning rural lands protection board system in New South Wales. However, the environment in which boards operate is changing. More sophisticated and nationally focused animal health programs, increasing demands from ratepayers, ongoing record drought and other factors continue to put pressure on the current system.

It is no secret that some boards are struggling to remain financially viable in a time of growing demands for their services. Although the total rates revenue for the board system for 2007 is expected to be about $27 million, there will be significant differences in rate income between boards. For example, four boards, including one in my electorate, collected less than $100,000 in rates. This income is not sufficient to cover office costs, maintain staff or provide effective services for ratepayers, especially in an environment in which demographic shifts in rural and regional New South Wales have created a more diverse range of landholders with different needs and an ever increasing demand for farm-gate services. The system needs to be modernised. Before I outline the reforms proposed in this bill, it is important for the House to note that these reforms will not adversely affect the range of critical front-line and farm-gate services provided by boards. Rather, the reforms are designed to secure the future viability of the board system and renew its purpose and relevance across the rural sector. The Rural Lands Protection Amendment Bill will reform the rural lands protection board system in three main ways.

Firstly, the bill makes important changes to the structure of the board system. Secondly, the amendments will improve corporate governance in the board system. Thirdly, the amendments will improve the overall administration of the board system in New South Wales, including changing the way in which rates are calculated. Turning first to the proposed amendments relating to the structure of the rural lands protection board system, rural lands protection boards will be renamed livestock health and pest authorities. The new peak body, which I will describe shortly, will be called the State Management Council of Livestock Health and Pest Authorities. The decision to rename the system was made following consultation by the current State Council with its constituents. It is an important decision. The new name more accurately reflects the roles and responsibilities of the board system.

It also marks a change from the past and the desire of the current leaders to create a modern board system for both present and future generations. The bill facilitates the renaming of the board system by introducing amendments that provide for livestock health and pest districts to be constituted under the Act. Livestock health and pest authorities will be constituted for each district, in place of rural lands protection boards. The bill will replace the State Conference of Rural Lands Protection Boards with a new policy making forum to be known as the State Policy Council of Livestock Health and Pest Authorities. The State Policy Council will be an important forum for representatives of the proposed 14 local authorities to discuss local and regional issues. These local representatives will, significantly, be responsible for selecting the members of the new peak body.

The bill replaces the current peak body, the State Council, with a new governing body to be known as the State Management Council of Livestock Health and Pest Authorities. The new State Management Council will, like the current State Council, be accountable to the Minister for Primary Industries in the exercise of its functions. It will also be required to provide its annual

operating plan and budget to the Minister and the State Policy Council. It will report to the Minister at the end of each financial year on its performance against its annual operating plan and its strategic plan. As part of these reforms, the New South Wales Government proposes to reduce the number of new authorities from 47 to 14 through an amalgamation process. It is intended that the amended Act will commence at the same time as the amalgamation proclamation. I take this opportunity to congratulate the State Council, the current board directors and their staff for the significant work they have already undertaken to facilitate the proposed amalgamations. Reducing the number of authorities will be a critical step in ensuring the financial viability of the system into the future. It will also streamline the system's administration and governance functions and allow for a greater focus on front-line service delivery and a renewed local focus.

I now turn to the second main area of reforms. These reforms relate to corporate governance. One of the major findings of the independent review commissioned by the State Council this year was that the board system needs modernising. In response to the recommendations of the structural review, the bill makes important changes to the election, selection, membership and appointment processes for the organisations established under the Act. The membership of the new State Policy Council will consist of two members from each of the 14 new authorities. The council will be responsible for statewide policy setting. This will ensure a renewed local focus in policy making. Its other important role will be selecting and appointing the members of the peak body, the State Management Council. The State Policy Council will be accountable to the Minister. It will be required to report annually to the Minister and to the new authorities on its activities and performance. Unlike the current State Conference of Rural Lands Protection Boards, the State Policy Council will not be responsible for determining the budget of the State Management Council. It will, however, determine how much each authority contributes to the State Management Council's budget.

I turn now to the peak body, the State Management Council. The bill provides for the membership of the new Council to consist of nine members. Eight of these members will be chosen through a merit selection process run by the State Policy Council. This represents a shift away from the current system by which the members of the State Council are elected. Merit selection will ensure that the best and brightest candidates lead the peak body and represent ratepayers at the State level. Six of the members will be drawn from the ranks of directors of the new authorities. Two members will be appointed on the basis of their expertise or experience in law, business, financial management or corporate governance. As I have already noted, the State Policy Council will oversee this selection process. The ninth member of the new State Management Council will be a nominee of the Director-General of the Department of Primary Industries, who has responsibility for biosecurity. This member will be appointed by the Minister for Primary Industries.

That amendment will ensure that biosecurity issues are given the consideration they require at State level. It will also usher in a new era of cooperation between the Department of Primary Industries and the new authorities, which, together, form the first line of defence for biosecurity management in New South Wales. The bill introduces maximum terms for members of the new State Management Council. Generally, members will be able to serve only two four-year terms. This will ensure renewal in the leadership of the peak body. The bill also restates, and amends, the functions of the State Management Council. It will be responsible for supervising the corporate governance of the new authorities, including their implementation of statewide policies, preparing a strategic plan and policies for the new system, promoting the functions and activities of the new authorities, and providing administrative services to the State Policy Council.

As I have already indicated, the bill replaces Rural Lands Protection Boards with Livestock Health and Pest Authorities. The new authorities will consist of six elected directors. In addition, there will be two directors appointed by the six elected directors, following a merit selection process, on the basis of their expertise or experience in law, business, financial management or corporate governance. The bill inserts a definition of "selection on merit". Selection on merit will be defined as the appointment of a member or director after some form of open competition involving the selection of the person who has the greatest merit among the candidates who applied for appointment. The bill makes other important changes to improve the corporate governance of the new authorities. The elected directors will serve a maximum term of office, in general, of two four-year terms. To ensure leadership in the new authorities remains dynamic, elections will be held for half of the elected directors every two years.

The bill will insert a new section into the Act to clarify the animal health functions of the new authorities. The bill also imposes a requirement on an authority to prepare a function management plan in respect of its animal health functions. The bill also provides for the Minister to set remuneration levels for the directors of the new authorities. This will ensure suitably qualified candidates are attracted to the system. To ensure the appropriate standards are maintained by members of the State Policy Council, the State Management Council and directors of the new authorities, the bill inserts a new part in the Act. Proposed Part 6A, Honesty and conduct, gives the State Management Council the power to issue a mandatory code of conduct for all directors of new authorities. A process for suspending or dismissing a director for a breach of the code is also proposed.

In another important reform, the bill provides for ratepayers to be automatically enrolled to vote in elections for the directors of their local authorities. Currently ratepayers have to apply in writing, which reduces the number of people participating in elections. Turning from the governance proposals, I will now outline the third main area of reform. A number of amendments are proposed that are designed to improve the administration of the Rural Lands Protection Act. The bill makes much-needed changes to the way in which rural lands protection rates are calculated. Boards are currently able to levy general, animal health and special purpose rates from ratepayers in their districts. Rates are currently calculated on the basis of the notional carrying capacity of the rateable land holding. The notional carrying capacity is expressed as stock units, or dry sheep equivalents. The rates payable on a holding are determined by the notional carrying capacity multiplied by an amount per stock unit.

This method has proved confusing for ratepayers. It has also been a complicated system for boards to administer. This is because it requires an assessment of the possible stock carrying capacity of the land, even if the land is used for cropping, or for an orchard, for example. The bill provides for rates to be levied on a per hectare basis. The new authorities will also be able to apply general, animal health and special purpose rates differentially across different zones. The zones will be determined largely on land types; that is, by reference to whether it is productive or unproductive land. This will ensure greater equity between ratepayers who have different types of land, but are located in the same district. The bill also proposes to amend the regulations under the Act so that the minimum rateable area for a district will increase to 10 hectares. This approach will deliver greater equity and certainty for landholders. It will be very much welcomed by a number of Monaro electorate ratepayers on hobby farm blocks, for example, and others in the areas surrounding Canberra.

The new method of calculating rates will be easier for ratepayers to understand. It will also be easier, and more cost effective, for the new authorities to administer. To give the new authorities time to implement appropriate new administrative systems, it is proposed that these amendments will commence in 2010. The bill also makes consequential amendments to the Meat Industry Act 1978 and the Agricultural Livestock (Disease Control Funding) Act 1998 as a result of the abolition of the concept of notional carrying capacity of land in relation to levies raised under those Acts. The bill will insert a new section into the Act to provide that during an emergency animal disease outbreak the Director-General of the Department of Primary Industries may direct the animal health staff of the new authorities. This amendment is designed to ensure that during such an outbreak, departmental staff and the staff of the new authorities can work together seamlessly. This is a sensible and practical approach to ensure the best use of veterinary and regulatory resources during these times of extreme pressure.

The period covered by an emergency animal disease outbreak will commence as set out in the Animal Diseases (Emergency Outbreaks) Act 1991. Currently, the financial year of the State Council and the boards commences on 1 January. The bill will make amendments to the Act so that the financial year of the State Management Council and the new authorities will commence on 1 July. The bill will introduce an objects clause into the Act and amend the long title to the Act. The objects clause will outline what the Act is intended to achieve. The bill also makes minor clarifications to the issuing of stock permits and reserve use permits and the lease of stock watering places. For example, the bill will make it clear that in future an authority may only issue reserve use permits for travelling stock reserves, or stock permits for public roads or travelling stock reserves, in the authority's district.

The bill includes a number of provisions of a transitional nature to facilitate a smooth transition from the current system to the new system. Transitional provisions also are included in the bill to provide for the calculation of rates for 2009 and to facilitate the changes made to the financial year of the State Management Council and the new authorities. I take this opportunity to correct some continuing misconceptions in some parts of the community about the management of travelling stock reserves. There is a misconception that the bill, and the reforms which will accompany the bill, will change the way in which the Act deals with travelling stock reserves. This is not the case. The bill does not make any changes to the management of travelling stock reserves.

The fundamental review of the board system, however, recommended that the new authorities look closely at how these travelling stock reserves are being used and whether they are being managed appropriately. This recommendation was made, sensibly, in the light of significant resources required to manage travelling stock reserves in this State, and certainly not with a view to selling them off. The review report found that between 2005 and 2007 the board system spent approximately $8.65 million on maintaining travelling stock reserves. This represents 18 per cent of all board expenditure. The report also found that only five out of 47 boards were operating their reserves at a profit.

I now turn to the important matter of the consultation that has taken place in the development of the recommendations that form the basis of this bill. Extensive consultation was undertaken as part of the two review processes I outlined earlier. Consultation took place with ratepayers and current members of the board system. Public meetings and workshops were held and submissions were received and considered during the review process. Key stakeholders such as the New South Wales Farmers Association and Animal Health Australia were also consulted. The New South Wales Government considered a range of diverse views within the rural sector as part of the process of developing this reform package.

I note that the shadow Minister for Primary Industries was quick to support the recommendations from the review commissioned by the State Council on which much of this bill is based. This legislation is sensible, practical and timely. It will make significant improvements to the way the system operates while enhancing the delivery of services to ratepayers and rural communities in this State. Boards have been an integral part of our rural and regional communities for more than a century. It is vital that we ensure the viability and relevance of these important organisations into the future. I commend the bill to the House.

The Hon. RICK COLLESS [2.55 p.m.]: It is surprising that the Minister did not have any additional comments to make, given the importance of this bill.

The Hon. Ian Macdonald: I cannot incorporate the speech if I make additional comments. I will make my comments in reply.

The Hon. RICK COLLESS: The Minister could have incorporated his speech and made additional comments or he could have commented and then incorporated the second reading speech. The Opposition would have given him leave to do so. The Rural Lands Protection Amendment Bill 2008 involves the implementation of a summary prepared by Integrated Marketing Communications [IMC]. Essentially it relates to the reduction from 47 boards across New South Wales to 14 authorities. At present the boards operate with salaried staff, which include veterinary officers, rangers, managers, customer service officers and field assistants. The boards have been overseen by the State Council under the terms of the New South Wales Rural Lands Protection Act 1998. In the executive summary of the report Integrated Marketing Communications states that the boards are built on localism and professionalism and the ability to act decisively and immediately in the event of an emergency animal disease outbreak. That is a very important function of the rural lands protection boards. A great deal of concern has been expressed to us that the localism, professionalism and ability to act decisively and quickly will be diminished because of the more centralised nature of the 14 authorities that will replace the 47 boards.

The review examined the structure, administration and services to develop recommendations for the long-term direction and overall efficiency, effectiveness and relevance of the board system. The report states that the objectives did not include the cutting of overhead costs within the system at the expense of farm gate

service delivery. Integrated Marketing Communications began work on this report in January 2008 and had a deadline to complete the review and report back to the State Council by May. On 18 June the Minister opened the annual conference of the rural lands protection boards and introduced the report. I was fortunate to be invited by the Minister to participate in the event, and I did. I was present when the report was released. The Integrated Marketing Communications report points out that, of the 47 boards, 20 had recorded a deficit in the past two out of three years and 16 of those boards had recorded a deficit in their management in the past three out of five years. It is unfair to make an issue about the deficit, given the drought conditions throughout the State and other incidents that have caused increased expenditure within the board system. Over the past five to seven years this State has been in severe drought and many ratepayers have been unable to meet not only their rural lands protection board rates but also their local government rates and many other expenses. So the boards have not been operating over the past few years in good economic times, they have been operating in very tough economic times.

The reduction of the boards from 47 to 14 will involve about 30 redundancies at the board manager level across the State and there will also be redundancies amongst the customer services officers due to the centralisation of the administration. This is all information that is coming out of the executive summary of the IMC report. It was upfront about the fact that there will be many redundancies in the system, and that is one of the problems we see with the way this has been structured. Many professional jobs will go out of country towns, as has happened across all levels of government agencies in the past eight or ten years. This Government has been consistently reducing the number of public service positions in regional centres. We have seen examples of that lately with the sell-off of seven research centres in regional centres across New South Wales that will result in the loss of many jobs, such as the 16 jobs that will go out of Glen Innes when the Agricultural Research and Advisory Station there is closed.

One of the other concerns we have is that the report identified that a number of travelling stock reserves will be handed back to the Department of Lands. While we are reasonably comfortable with the Department of Lands managing those travelling stock reserves, there is a great deal of concern about what might happen down the track. Once National Parks decides to get its hands on some of those lands they will be lost to the local management forever. Another concern we have is that all the rural lands protection board director positions now will be remunerated at levels commensurate with State Government guidelines. While we do not object to people being paid for the work they do, these people currently are operating in those positions basically on a voluntary basis and there will be considerably more money involved in paying their salaries.

Another concern is the level of bureaucracy that will exist when the 47 boards are reduced to 14 authorities. A regional forum will operate above the authorities; above that level will be a State board of management; and then a State policy council will operate above that level again. All these positions will mean that people at the ground level will have to jump through more hoops. The new system will include a State chief executive officer and a secretariat. We wonder what salary conditions those sorts of positions will attract.

We do not oppose this bill simply for the sake of opposing it; we oppose it because of the time frame and because of the way it has been introduced. The bill contains some good things. There was a need to have a restructure and a lot of goodwill eventually come out of it, but there has been considerable criticism of the way it is being implemented. Clem Johnson from Coffs Harbour stated in the ABC Rural report on 19 June, the day after the Minister announced the impacts of this review:

> Anger is rife, following a decision to replace NSW's 47 Rural Lands Protection Boards with 14 super boards. The Minister for Primary Industries Ian Macdonald made the announcement at Coffs Harbour yesterday and believes it reflects the interests of all stakeholders. "This is not rocket science. I believe the number of board members is great enough to ensure there will be proper representation of all landholders."
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> He says the restructuring is unlikely to result in higher rates for landholders. "The basis I am working on at the moment is that there will be no change to the current level of fundraising for the RLPBs." Mr Macdonald says all front line staff will remain in their current positions. "I do not believe this is an issue of job losses but of restructuring the boards across the state. I do not believe there should be any changes to front line staff whatsoever."
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> When questioned about the level of consultation with the community, Mr Macdonald responded with the following: "Basically in the end we have to look at what is in the best interest of the state. We need an organisation that is able to pull its weight in the context of disease management and capable of responding to emergencies." The decision to cut the number of boards from 47 to 14, follows the release of report into the current Rural Lands Protections Boards. "The report clearly indicates the need for a more streamlined system in NSW."

What should have happened is that that report should have been released and it should have been debated on the floor of the rural lands protection boards conference, but it was not. The Minister arrived at the conference and

announced that it was going to be implemented, and that was that: basically, no further discussion would be entered into. Customer services officer positions will be cut across the State dramatically. Apparently, the State Council has guaranteed those officers employment until 30 June. A private and confidential document circulated to members of the State Council working committee in September said that many of the customer service officers will not have anything to do other than just sit there and be paid. One wonders why the Government is so intent on implementing this restructure by 1 January when many of these people will still be there anyway.

An organisation called the Rural Lands Action Group wanted to delay the final decision on this matter and delay the implementation until the first week in March to allow further discussion, particularly in relation to the financial management of it all, but, of course, the Minister would not agree to that. We wondered why he was so obsessed with 1 January until it was brought to our attention that the State Council had in fact appointed the general managers of the new boards prior to this bill being passed by the Parliament. That is an extraordinary situation: to assume that the Parliament will pass this legislation and for the State Council to start implementing it before it goes through this House. That shows a great deal of arrogance by the State Council and a great deal of arrogance by the Minister to allow that to happen. I do not believe it should have happened until such time as the House passed the bill.

It is a shame that the State Council and the Minister have not agreed to delay the passing of this bill until there has been a little more time to go into it in more depth. If the bill is passed today simply so that these people can be appointed as general managers because they have already been advised that they will be appointed, I believe that reflects on the management of the Government and the way it handles a lot of these issues. The Opposition will oppose the bill.

The Hon. ROBERT BROWN [3.08 p.m.]: At the outset I might say that I am a little bit confused hearing the Hon. Rick Colless say the Coalition will not support the Rural Lands Protection Amendment Bill 2008. I knew that would happen because I have had some discussions with the Hon. Duncan Gay, but in 1994, when in government, the National Party put forward a proposal to amalgamate the rural lands protection boards. I am not suggesting that this amalgamation in any way duplicates that. Nevertheless, the bottom line is that there must be a provision of adequate services to the ratepayers of the rural lands protection boards system but that that service should be at the least cost to ratepayers. Secondly, ratepayers should be able to have some confidence that the management of their moneys—and I think it is to the tune of $30 million a year—

The Hon. Ian Macdonald: Fifty.

The Hon. ROBERT BROWN: I stand corrected—that $50 million is properly handled. I understand there are about 380 directors of boards across this State and about the same number of employees. I also understand that all the directors participate for little, if any, remuneration while trying to run their rural businesses. I agree with the Hon. Rick Colless that they have been under a lot of stress in recent times because of the drought. Nothing that I say in this debate is designed to cast any aspersions on the members of those hardworking boards. Some of the boards are in a great deal of trouble, but we have had representations from others that are doing fine. A number of rural lands protection boards were facing serious financial and operational problems and biosecurity functions needed to be strengthened. There is no argument about that. Perhaps there is also a need to address the current high cost of administration and, one could argue, any unsustainable rate increases. They are unsustainable in the current circumstances and given the uncertain future for commerce in this country, not least for our export industries.

The external review of the rural lands protection board system by Integrated Marketing Communications Pty Ltd found a broad and strong consensus about the need for change. The Rural Lands Action Group is challenging that consensus. The review received 67 submissions from stakeholders, including the New South Wales Farmers Association, the Department of Lands, the boards, directors, staff associations and individual staff members. More than 80 per cent of those submissions advocated change. New South Wales Farmers Association President Jock Laurie, in welcoming the release of the report on the system review, said that any change in the operation of the boards must not impact on the level of service provided to levy payers. There is then the point of difference between the Opposition's position, the statements made by the Hon. Rick Colless and what the Government says is behind the review with regard to the level of bureaucracy. We should not kid ourselves about this being an extra layer of bureaucracy on the shoulders of rural landholders. I have heard the argument put many times by rural lands ratepayers that the rural lands protection board system should not exist and that its functions should be the province of local government. The system has been operating for 140 years and it appears to provide many services to ratepayers that local government might not be able to provide.

As I said, Jock Laurie welcomes any changes to the rural lands protection board system as long as they do not impact on the level of services provided to those who pay the levies. I am sure all members would agree with his position. The New South Wales Farmers Association is also happy that the recommendations relating to acknowledgement and financial support from the State Government for the private and public good activities that the boards undertake on its behalf were picked up in the report. Mr Laurie pointed out that the review states:

> The core business of the [RLPB] system going forward is to be NSW's advisor, regulator and facilitator in animal health and in pest animal and insect management, operating within a local, state and national bio-security framework.

Interestingly, the review refers to the "state and national" biosecurity framework. There must be high-level coordination with regard to biosecurity. The Rural Lands Protection Act 1989 has been under review since 1994. Last week I had discussions with Mr David Lister, the chairman of the State Council of Rural Lands Protection Boards. I do not think any member in this Chamber—particularly The Nationals and members representing rural electorates who have dealt with him—would doubt his sincerity or desire to see the right things done. He believes that if we want change we need to drive it and that we cannot simply "sit back and watch it flop around and go nowhere". They are his words, not mine. To his credit, he has been driving change and learning a few harsh lessons about how politics works as he has gone along. Mr Lister probably believes that he is not very popular with the Rural Lands Action Group at the moment.

The Hon. Ian Macdonald: He is a fine man.

The Hon. ROBERT BROWN: He is a fine gentleman. Mr Lister concedes that he opposed the 1994 amendments, but that was because they were rushed and there was no proper consultation. That is the same argument being put by the Opposition with regard to this review. Mr Lister has made it very clear that he is fully behind the amalgamation process. He claims that the situation is different from the situation in 1994 because there has been consultation and the changes have been properly thought through. He believes that change is crucial to the future of the organisation. As I said, many ratepayers who are burdened by the payment of these levies and rates perhaps do not believe they are getting the level of service they deserve. On the other hand, some ratepayers may be deliriously happy with the level of service they are receiving.

The Integrated Marketing Communications Pty Ltd review has made some tough recommendations and obviously not everybody will support them. Mr Lister believes that to secure a sustainable long-term future in changing times the boards must accept the need for significant structural and administrative reform and that they should focus more on delivering core functions. I agree. The rural lands protection board system has been operating successfully for 140 years and it has achieved many good things. However, is there any organisation in the world that cannot be improved or do things better? The answer to that question is no.

Rural lands protection boards are handling $50 million of ratepayers' money and there must be accountability, transparency and good practice. All of that is promised under the legislation before the House. All 380 board directors are working for the benefit of their communities, the landscape and their industries. However, not all of them have the necessary skills required to address the fairly onerous rules and regulations involved in the system. They are virtually required to be company directors, and that role requires a great deal of skill. I am not saying that they are unskilled, but over recent years boards have had to increase administrative staff numbers to help directors to cope with their responsibilities, including handling large sums of money, having to deliver core services and reporting appropriately.

Last week crossbenchers were briefed by the Rural Lands Action Group and then had consultations with the Shooters Party. They were as committed to opposing this bill as Mr Lister is to supporting it. So we have heard both sides of the argument. The main issues are the perceived lack of consultation and the belief that amalgamation will not lead to financial savings. They are not saying that they believe the Government's arguments about the reasons for the amalgamation. It was put to us that of the 47 boards, 28 had supported the Rural Lands Action Group's call for the process to be delayed. We did a bit of ringing around and checking and only about 10 of that number supported any change by resolution. There is not much value in pursuing that.

One of the other issues is the future of rates. The Rural Lands Action Group believes that changes will result in a doubling of rates. The Government assures me that that will not be the case and that these amendments are designed to cap rates and to provide more efficiencies. I would like the Minister to confirm that in this House. The New South Wales rural lands protection board rating system was reviewed by a former Nationals member of Parliament, Mr Richard Bull. Mr Bull's report recommended changes to the general, minimum and animal health rates by bringing in a base rate together with a land area based assessment for an environmental rate and an animal health rate. At the moment it is rated on a stock equivalent—or the ability to

grow beef, sheep or other livestock on the land. Mr Bull said that the amendments would reflect a program that delivered greater equity and removed subjectivity and many discrepancies. Discrepancies in rates are the subject of daily fights on boards and between boards.

Mr Bull said it was "the opinion of the Review that change was inevitable and necessary". Mr Bull has recommended a base charge for all ratepayers, set at $40, $50 or $60, at the discretion of each board, but at the end of three years it would be expected that all boards would have the same base rate. In addition to the base rate, all ratepayers would be levied an environmental rate according to the area of the holding, with each board determining the rate per hectare. Those rates would vary according to the productivity of the land.

Another concern expressed by the Rural Lands Action Group related to travelling stock routes [TSRs]. The group expressed serious concern about travelling stock routes being shut down willy-nilly, to use its words. Once more, I am assured by the Government that, in relation to travelling stock routes, there is no threat to the main driftways—which, Mr Lister explained to me, run from the Queensland border, down through New South Wales and into Victoria. Indeed, I am told that newspaper headings that emerged at the start of this change process, such as "the end of the long paddock", are not true, and that this change never proposed putting an end to the long paddock. Everyone knows the benefits of travelling stock routes. It would be a surprise if any of the truly viable stock routes were to disappear. But, equally, they need to be funded and cared for properly.

I call on the Government, in its reply to this debate, to give assurances about these travelling stock route issues. The people who use them need to know exactly what the position will be. My advice is that these stock routes are valuable, not just to the ratepayers in adjacent board areas, but also, as a general adjunct, to the health of the rural industry in the State in that they allow stock to be moved from location to location fairly cheaply, particularly in drought years, and that they should be maintained. Another issue raised by the Rural Land Action Group is the so-called "Treasury" function of the new structure whereby all funds would go into a single account, the idea being that a larger pool of funds enables greater returns.

The Hon. Rick Colless: Consolidation.

The Hon. ROBERT BROWN: Yes.

The Hon. Rick Colless: Centralisation.

The Hon. ROBERT BROWN: That is exactly what it will be—but "Treasury" function is the official description. The crossbenchers were told that a "board could put $5 million into the fund, but there was no guarantee they would be able to give $5 million back …" That is an obvious concern for individual boards. Mr Lister explained the proposed workings. I believe that all boards probably will be better off because of what will happen—provided of course that whoever controls the Treasury fund does not invest in sub-prime bonds in the United States of America?

The Hon. Rick Colless: Or do a Neville Wran and clean the lot out.

The Hon. ROBERT BROWN: Or clean the lot out. A number of boards are currently experiencing difficulty, and those include the Yass, Northern New England and Hunter boards. On the other hand, a number of boards—primarily those represented by the core proponents of the Rural Lands Action Group—are doing extremely well. Those boards do not want to be amalgamated simply because a number of other boards are not performing. My argument to them in my office, where their representation took place, was: On one hand you talk about stock routes being of value right across the rural structure in New South Wales and how good the rural lands protection boards structure has been for the whole of New South Wales but, on the other hand, you cannot leave a body struggling along because some of its members just are not cutting it.

In my view, and in the view of the Shooters Party, the proposed reforms provide a clear avenue to redress the problems, be they financial or relating to inappropriate conduct at board level—provided the new scheme works. I do not think there are many choices in this debate. The Hon. Rick Colless proposed that we wait for three months and have a bit more consultation. He also mentioned a matter that alarmed me when I first heard it: that the State Council of the Rural Lands Protection Boards has appointed 11 general managers, before members of this Parliament have a chance to debate the legislation. That is not very clever. That having been done, there are costs involved. But, in addition, there are questions of equity and uncertainty about what will happen for those 11 managers and the managers of the 47 boards who may not have been tapped on the shoulder. I do not think it is in their best interests to wait another three months or another six months. Of course,

it is a political fact that the closer we get to an election, the harder it is to do things that may well be unpopular. So, maybe, if we let this opportunity slip the Government might not do anything and we could be having the same debate in 2011 or 2012.

The Government has put $3 million into funding the implementation of these reforms. They are underway, and they need to happen. It is one positive for the Government that it ponied up with the money for the boards to undertake this review. It would have been unconscionable to impose a review on the boards and expect the boards to pay for it. Timing is critical to this issue. It seems to me that amalgamation or rationalisation, or no amalgamation or rationalisation, is the issue—not drifting about for another three months of talkfests. Mr Lister also said; "People need to accept change and to be part of it."

That is his personal view. He seems to be a man of great vision, enthusiasm and commitment to this process. I do not think it could be argued that Mr Lister would derive any political, financial or other type of gain. It seems he feels he was given a job to do, and he is going to do it. I believe, on balance, and having listened closely to both sides of the argument, that Mr Lister probably is right. I understand that local offices in all existing rural lands protection board districts will remain open and that there will be no reduction in the number of local field staff involved in animal health and pest work. I ask the Minister, in reply, to confirm that that is the case. Given the likely downturn in employment in New South Wales, I would not like more workers consigned to the unemployment heap. I think all in this House would agree that one of the values of the rural lands protection board system is the local knowledge in those boards. This issue was used by the Rural Lands Action Group as an argument against amalgamation. It said centralising the boards and enlarging their areas may result in a loss of expertise. If the number of field staff and employees is to remain the same, I do not think there necessarily will be a loss of expertise.

As I said at the outset, I am somewhat surprised by the Coalition's stand on this bill. Obviously, the Coalition has its reasons. The Government tells us that 1 January was chosen as the starting date for the new setup because it is the end of the rural lands protection boards financial year. The Government claims that further cost will result from delaying implementation beyond that date—certainly another audit of interim accounts, costing $200,000 or $300,000. The Government has already appointed 11 managers. I do not know how it can do that, but that has already been done. So any delay could cost money and perhaps introduce more uncertainty in the minds of those affected by this bill. The Shooters Party supports the bill.

Mr IAN COHEN [3.27 p.m.]: I speak on behalf of the Greens in this debate on the Rural Lands Protection Board Amendment Bill 2008. This bill, on the surface, appears to be making rational reforms of the corporate governance structures of the rural lands protection board [RLPB] system. The reforms are long overdue. However, from the Greens' perspective, there is much more on the line than corporate governance reform. This bill will institute significant changes to biosecurity and biodiversity management.

The Rural Lands Protection Board Amendment Bill 2008 introduces a raft of measures to rationalise the operations of the rural lands protection boards. In a single breath, the bill centralises administration and stymies the rural lands protection boards mandate. The Greens acknowledge corporate governance reform is needed. As a rural lands protection board ratepayer, I sympathise with ratepayers who feel that some boards do not deliver tangible benefits to all landholders. I have not heard anyone deny the need to reinvigorate these important regional institutions. Proposed part 6A is an appropriate attempt at implementing increased director responsibility, essential to address increasing complaints about rural lands protection board management. I would also praise the new powers given to the Department of Primary Industries director general in proposed section 56A to give directions to animal health staff during an emergency animal disease outbreak. A number of Government representatives and members have provided me with evidence that a very small minority of rural lands protection boards have been less than co-operative during the equine influenza outbreak and the current locust plague.

This is very disappointing to hear because these powers are important to circumvent incumbent directors and managers who are not delivering basic biosecurity compliance. Unfortunately, for all the positives in the bill, the Greens have to agree with the Opposition, that, considering the scale of reform and the veracity of the IMC report, consultation with stakeholders has been less than satisfactory. I acknowledge the concerns about the veracity of the IMC report, its economic presumptions and overall consultative process. Northern Slopes RLPB manager, Deborah King, wrote to me in August outlining some of the key deficiencies in the IMC reform platform. Robert Wason, Chairman of Brewarrina Rural Lands Protection Board, rightly highlighted that a socioeconomic impact of this bill has not been undertaken.

I have also spoken to Robert Groth, a drover from Boggabri, who shared his perspective on the history of RLPBs with me. Where we diverge from the Opposition is that so long as the potential discontinuance of board management of TSRs remains on the table, the Greens cannot support the bill. The Government will say that the new authorities will have an opportunity to make a business case for retaining TSRs. My response would be that making a business case does not address the full ambit of opportunities under RLPB management. Nothing in the bill directs State Council in its assessment of TSR management by RLPBs. No vision or direction is given to State Council to manage TSRs in an innovative manner and the bill does not even attempt to articulate such a role for TSRs.

I will focus my contribution to the bill on the role of RLPBs in regional natural resource management, biosecurity, stock movement and conservation management. The renaming of RLPBs to livestock health and pest authorities [LHPA] indicates the desire of the Government to narrowly constrain the mandate of the RLPBs to biosecurity rather than prescribe a more encompassing land management role. The tenor of the bill is to bolster the financial viability of the boards by reducing TSR management responsibility. The result is a fracturing in TSR tenure. The constraining of RLPB management to the biosecurity mandate appears to be at odds with the new proposed rate calculation formula.

The current formula is based upon notional carrying capacity of land being the number of stock that the RLPB for the district assesses could be maintained on the land as a basis for the levying of rates, yet the formula is based upon a base amount, an amount calculated on a per hectare basis. If the RLPB mandate is to be constrained to livestock health management, why are fees levied to be based upon hectare and not cattle carrying capacity? The IMC report found that RLPB reform could result in ongoing net savings of between $8 million and $8.3 million per annum or around 16 per cent of the 2006 total expenditure.

These projected savings are achieved by three key structural reforms to the RLPB system: centralisation of the administrative functions and board amalgamations, reduction in executive level board directors, and the ceding of TSRs to the Department of Lands. The difficulty is that by artificially increasing the financial viability of the boards through removal of the TSRs from their care, control and management, we are incurring as a society a greater deficit in the form of lost opportunities. I pose the question this way: Why give the Department of Lands a role in TSR management when we have the human capital infrastructure with localised knowledge already undertaking a role in livestock health management and biosecurity that could easily integrate a broader land management mandate? Why have two managers when one can consolidate the responsibilities into one? Does the Department of Lands have to justify a proper economic management of TSRs? It certainly does not under this bill.

The bill makes the assumption that the Department of Lands is the apex land manager that transforms land into pots of gold at the end of rainbows. The assumption is grounded in the preordained process for the Department of Lands to sell off TSRs for other uses. I ask the Shooters Party, which has consistently articulated its concern about the management cost per hectare of national parks, to consider the opportunities for cost effectiveness land management encompassing a range of values if TSRs are maintained by RLPBs. The Greens want to secure consistency of tenure and management for TSRs.

The long paddock, the colloquial term for the TSR, is a tract of land that stretches across three million hectares between Queensland and New South Wales. The origins of TSRs have their roots in the trails of Aboriginal communities, tracks of native animals and bullock tracks of early explorers; they provided routes to early explorers' homes, watering points and townships. From about 1830 onwards drovers used the routes to walk stock long distances between properties and markets. Their routes were set aside in public ownership and widely celebrated in Australia's songs, poems and stories. Travelling stock reserves are an integral part of Australia's history. In New South Wales 47 RLPBs currently manage 600,000 hectares of TSR networks. Another 1.3 million hectares of TSRs are covered by western lands leases in the Western Division. In a letter to Dr Neil Byron, Presiding Commissioner of the Native Vegetation Inquiry, Steve Orr, Chief Executive of the State Council, stated:

> The majority of native vegetation on TSRs is high quality and in some areas such as the Central West, is considered high conservation value because it makes up the majority of remaining native vegetation present in the landscape. TSRs also remain one of the few locations where ecosystems such as Grassy White Box Woodlands can be found intact.
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> An audit has recently been completed of all Board managed land within the State identifying approximately 160 000 hectares of land as of high value for the environment (based on the land's value for remnant vegetation, seed collection, timber, fauna habitat and threatened species)
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> Native vegetation on TSRs is significant not just because it provides habitat for threatened species, has had minimal disturbance, protects water quality, prevents soil erosion and salinity, but because of the nature of the TSR system. TSRs traverse a range of

> vegetation and soil types, climatic zones and topographies. They are often located on the more productive land following watercourses and most importantly form a network throughout the State. This network covering 600 000 hectares, is in effect a chain of reserved land acting as wildlife corridors and seed orchards and contains remnant vegetation from a vast number of ecosystems present within New South Wales. TSRs provide value not only as individual pieces of land containing high value remnant vegetation, but also as a network of land providing many multiplier benefits.

We have here an elucidation of the agricultural and ecological importance of TSRs from the horse's mouth. On 16 August 2008, 500 wildlife scientists and ecologists signed an open letter to the former Premier, Morris Iemma, and Queensland Premier, Anna Bligh, on the importance of the TSR network as an environmental asset. They stated:

> While the network has been managed publicly for generations it is under immediate threat from changes in ownership or delegated management being considered by your governments. This at a time when it offers vital resources to help Australia's livestock industry adapt to greatly increased oil prices and Australia's biodiversity adapt to climate change.

They further stated:

> Stock routes provide ecosystem services to adjacent agricultural lands, for instance, protection from wind and erosion, providing habitat from pollinators and agents of biological pest control. Over the past decades State and Federal governments have invested billions of dollars in projects to restore degraded agricultural lands.
>
> Retention of original vegetation, such as that found in stock routes, is by far the most efficient way of allowing landscape restoration. These areas provide a backbone for re-vegetation, and are a major source of critical resources for revegetation such as seeds of locally adapted plant species.

Before us we have a bill that will directly and undeniably undermine this network and the communities and environment it supports. What this bill lacks is a commitment to properly valuing the capacity of the boards to take on ecologically sustainable management processes and enhance TSRs for joint conservation and stock use activities. It lacks the vision required to strengthen regional New South Wales. I should clarify and specify what I mean by "conservation" in the context of TSRs because Mr Andrew Fraser, in the other place, bandied about grand tales of Green goblins in his characteristic form of misrepresentation. The Greens agenda is not to seek or lobby for national park reservation of TSRs. Mr Fraser stated:

> I am frightened that the Greens may be seeking to do a deal with the Government whereby they will have these reserves handed over to the National Parks and Wildlife Service.

Mr Fraser further stated:

> I suggest that those who are utilising the Greens in defence of travelling stock reserves should be very careful whom they get into bed with. If you sleep with dogs you will get up with fleas.

I wonder what those farmers in the Caroona area woke up with after The Nationals' astonishing U-turn on support for an amendment in the Federal Parliament moved by Tony Windsor and Senator Bob Brown to the Water Amendment Bill 2008. The proposed amendment required hydrologist studies that would have examined the impact of mining on groundwater sources supporting agriculture in the Murray-Darling Basin. The Federal Nationals, wielding a wrecking ball of hypocrisy, bulldozing the remnants of party integrity, have unveiled their true masters and true priorities. If one goes to sleep with The Nationals, one will wake up with BHP.

Mr Fraser is ensnared in his paranoia and archaic political archetypes, and he has missed the fact that the Greens are simply advocating the ecological management of TSRs that supports a range of uses. This morning my office spoke with the Greens local councillor from Orange, Jeremy Buckingham. He talked about some of the excellent ecological restoration work on TSRs around Orange where both conservationists and farmers have come together to manage TSRs for a range of uses. I ask Mr Robert Brown, whom I know is very passionate about the plight of communities affected by the Toorale Station purchase, to consider what impact shifting TSRs to the Department of Lands or private hands will have on regional communities.

The Greens seek consistent and holistic management, not disparate and fragmented land management. The Greens' vision for TSR management places TSRs as the central hub and the foundation upon which private and government-driven conservation initiatives, undertaken on private land, can be linked to establish landscape-scale ecosystem enhancement. For example, landholders who use voluntary conservation agreements [VCAs] on private land could collaborate with TSR managers to create linkages with another landholder undertaking a VCA three kilometres down the range. Conservation on private land is good, but what is even better is when isolated conservation and ecological management measures are linked to create landscape-scale ecoservice enhancement.

In a recent paper by Professor Paul Martin, Susan Shearing and Kip Warren titled, "Concepts for private sector funded conservation using tax-effective instruments" the need for conservation funding to be directed to landscape-scale projects was of key importance. TSRs have the potential to act as a hub for connecting conservation projects on private lands—conservation projects that provide an income stream for regional communities. Whether it be managing soils and vegetation for carbon sequestration or undertaking native vegetation offsets, TSRs will be a critical component in achieving real progression on ecological land management, which is central to the vitality of New South Wales regional communities.

The New South Wales Government has announced a $260,000 pilot study on two travelling stock reserves in the Hunter region examining the future needs and uses of these reserves and providing the basis for a model that can be applied across the State to better manage TSRs. The Minister for Lands also indicated that the local catchment management authority had provided $260,000 to the pilot project. Again reiterating the point, why cannot rural lands protection boards be given this mandate to find new management models and income sources for ecosystem service delivery on land that could be a focal point for building landscape-scale conservation programs?

The IMC report states that during the 2005-07 period TSR maintenance cost the boards $8.65 million per annum, or approximately 18 per cent of all board expenditure. The report further states that only five of the 47 boards operated their TSR at a profit. The IMC then seeks to draw a correlation between loss on TSR management and overall board financial viability. On page 34 of the report the IMC states:

> Of the 18 boards with a negative net financial result in 2006, all but one ran a loss on the TSRs (the exception was Cobar). In seven cases, the loss on TSRs approximated the total operating loss.

Interestingly, the IMC report appears to point the finger at the boards having to address conservation of wildlife and protection of the TSRs against soil erosion and degradation of water quality in TSR management as the cause of detracting from income-generating TSR management activities. It is clear that if the Government were to follow the IMC report we would see a significant reversion of the TSRs to the Department of Lands. The IMC further states:

> Mass livestock transportation across the state has made the role of TSRs more or less redundant and the review team recommends a majority be ceded back to the New South Wales Department of Lands.

The proposed amendment to section 44 requires the board authority to prepare a draft function management plan for its functions in respect of all TSRs under its care, control and management. The new boards will have to make a business case for the retainment of TSR management. Importantly, nothing in the amending bill requires the State Council to take into account non-economic or conservation factors when reviewing the "business" case for board TSR retainment. I believe we must avoid a fragmented management approach to TSR land. Restricting the boards to a biosecurity mandate and handing over to Department of Lands a land use management mandate is simply an inefficient and ecologically damaging proposition. Creating these multiple layers of management will eradicate any opportunity for landscape-scale conservation and land management central to New South Wales biodiversity objectives.

Mr Fraser did not seem to have a problem with the Department of Lands resuming control of TSRs, and simply asked that "they be funded appropriately, particularly in times of drought, to ensure that they are maintained for their original use—that is, travelling stock reserves—and the connectivity is maintained". Believing that TSRs will remain as TSRs in the hands of the Department of Lands is politically naive and blindly ignores both the adverse biosecurity and biodiversity impacts inherent in fractured TSR management. Examining the TSRs ceded back to the Department of Lands in the Maitland area in 2006 shows that not all TSRs will be maintained as TSRs. Of the 13 reserves ceded back to the Department of Lands, only two will continue as TSRs. In the Mudgee-Merriwa area 28 have been ceded back to the Department of Lands, with nine reserves being marked for purposes other than TSRs.

The Government should rethink this bill. The insertion of new section 2A, which refers to new objects of the Act, fails to protect the ecological values and ecological functions of travelling stock reserves and stock watering places, and to maintain a network of travelling stock reserves that connects livestock production areas to livestock markets as an alternative to transport of livestock by road. The Greens want a continuation of board management of TSRs that are better placed to conjoin their biosecurity mandate with broader land use management. We have an opportunity to maintain and build upon an ecologically important vegetation and wildlife corridor, and support a range of users. Unless the resumption of TSRs by the Department of Lands can

be ruled out and specific measures adopted to guide the new authorities to manage TSRs for a range of ecological, agricultural, historic and cultural values, the Greens cannot support the bill. As such the Greens oppose the bill.

Reverend the Hon. FRED NILE [3.47 p.m.]: The Rural Lands Protection Amendment Bill 2008 amends the Rural Lands Protection Act 1998, which established a statewide network of local rural lands protection boards that have a front-line role in the management of animal disease control and surveillance in New South Wales. I understand the bill is the result of a review conducted by the State Council of Rural Lands Protection Boards, which was concerned about the problems that local boards were experiencing and about the need to modernise the structure of the system. The bill is based on the recommendations of that review, as well as on recommendations of a review of the rural lands protection boards rating system that was undertaken by a former member of this House, the Hon. Richard Bull. The State Council released that review in July 2007.

Modernising rural lands protection boards has had fundamental support, and I believe that that modernisation should continue through the bill. As honourable members would be aware, rural lands protection boards have a proud history in this State. The boards were established in the 1860s to deal with sheep diseases. Pastures protection boards were established in 1902 to protect pastures and livestock from the depredations of noxious animals. The Pastures Protection Board Act 1934 further expanded the role of these boards to deal with travelling stock, public watering places, and other matters.

In 1990 the Rural Lands Protection Act 1989 modernised the administration of rural lands protection in New South Wales, replacing pastures protection boards with rural lands protection boards. This legislation will result in further changes to the operation and name of these boards. In future these boards are to be renamed as livestock health and pest authorities, which correctly describes their role and hopefully will enable them to focus on their objectives. The legislation will also amalgamate the existing 47 boards into 14 new boards, and establish the State Management Council of Livestock Health and Pest Authorities and the State Policy Council. Those changes are to be commended.

The levying of rates on landowners has primarily funded the boards. Submissions have been received from some concerned groups, for example, the Rural Lands Action Group, which was not happy with the legislation. However, it was operating under the misapprehension that the legislation would do away with the travelling stock reserve network—I do not believe that will occur. The travelling stock reserve network will retain its important role in this State. I am sure the Hon. Tony Kelly would do nothing to undermine the value of the travelling stock reserve network, which is particularly important in times of drought. During the briefing honourable members met with one of the drovers who was on television and his daughter, whose livelihoods depend on the availability of travelling stock reserves. I would not support any future Government action to have that network absorbed. I believe the bill contains a number of positive features, and the Christian Democratic Party supports its passage through the House.

The Hon. IAN MACDONALD (Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development) [3.52 p.m.], in reply: I thank all honourable members for their contributions to the debate on this wide-ranging reform to the rural lands protection boards. Some members have noted that these particular boards have been around for about 140 years and have served rural communities well during that time.

The Rural Lands Protection Amendment Bill 2008 will make much-needed changes to the structure and governance of the rural lands protection boards system. These amendments will provide a vital opportunity to improve the financial viability of the boards system into the future. These changes will benefit farmers, ratepayers and rural communities throughout New South Wales by improving the efficiency and effectiveness of the system. The amendments will also ensure that the State's animal health surveillance systems, and pest insect and animal management systems will continue to be world class.

I turn to a number of issues that have been raised by honourable members during debate on the bill. The Hon. Rick Colless raised the impact of the drought on the financial position of the boards. There is no doubt that the drought has had a financial impact on them. One of the main burdens has been maintaining travelling stock reserves in some instances. Income from travelling stock reserves has also fallen. However, the current financial problems confronting rural lands protection boards are systemic. The changes proposed in this bill will turn this situation around to ensure that the needs of ratepayers can be met.

The Hon. Rick Colless asked how many staff would be affected by the reforms. Some staff losses will occur as a result of the amalgamation of the rural lands protection boards and the centralisation of administrative

functions. Any staff losses will be managed in accordance with the Change Management Plan, which has been developed by the State Council in consultation with the Public Sector Association and the Public Sector Workforce Office. Redundancies will be offered to staff members who choose to leave their positions rather than relocate or take up alternative positions. The number of veterinary officers or rangers on the ground to provide support and advice to ratepayers will not be reduced. The reforms will, however, result in an improvement of farm-gate services.

The Hon. Rick Colless, the Hon. Robert Brown and Mr Ian Cohen referred to the alleged sell-off of travelling stock routes as a result of the reforms. The New South Wales Government has no intention of selling off the travelling stock reserves network. Further, the bill does not make any amendments to the provisions of the Rural Lands Protection Act that deal with the management of travelling stock reserves. The IMC review found that between 2005 and 2007 the board system spent more than $800 million on maintaining travelling stock reserves. That represents 18 per cent of all board expenditure and a significant cost to ratepayers. The review also found that only five out of the 47 boards were operating their reserves at a profit.

The IMC review also noted the decline in use of travelling stock reserves for their original purpose—to transport stock—as a result of improvements in vehicle transport. In this context the IMC report sensibly recommended that boards should look closely at how their travelling stock reserves are being used and managed. If the reserves are no longer required for the purpose of moving and feeding stock, then boards may not be the appropriate land managers. Once the new boards are in place, they will be required to review the use and management of their travelling stock reserves according to criteria developed by the State Council to ensure a consistent assessment process. They will then be required to report to the new State Management Council on whether they should retain management responsibility for the travelling stock reserves in their district or whether the management responsibilities should be returned to the Minister responsible for Crown lands.

The review process will consider much more than just a business case. The Government is committed to ensuring that farmers continue to have access to travelling stock reserves during times of need, such as during droughts or floods, and that the current level of stewardship delivered by boards will be maintained on reserves managed by the Department of Lands. Honourable members will remember that the Department of Lands already manages a vast number of travelling stock reserves in the Western Division of New South Wales. If travelling stock reserves are returned to the Department of Lands, it will be at that stage that the environmental, social and cultural use of the land will be considered. The assessment will take place under the Crown Lands Act and the regulations that support the Act. The assessment will be done by the Department of Lands. In response to the question raised by Mr Ian Cohen, the final evaluation of the travelling stock reserves will be done within the context of the Department of Lands and will take into account the environmental factors.

A question was also raised in debate as to the remuneration of directors. The IMC review into the rural lands protection boards system recommended that the directors of the new authority be remunerated in line with members of other government boards and committees, which will ensure that suitably qualified candidates are attracted to the system. Until the new arrangements are implemented, the bill provides for the directors of the proposed interim boards to be paid at current rates.

I will deal with the delay that the Hon. Rick Colless raised. These reforms have been in train since 2007. A three-month delay will not achieve anything, as one of the major reasons for resistance is the proposed reduction in the number of directors. The current ratio of approximately 380 directors to 400 staff is completely unbalanced. Despite claims to the contrary by the Rural Lands Action Group, support for the changes is strong, including from the Rural Lands Protection Board Veterinary Staff Association to which I will shortly refer. Momentum has been building to make it happen and a delay will seriously jeopardise the process.

A very significant investment in the reform process has been made to date and may be jeopardised by a delay. For example, offers have been made and acceptances have been received for 11 of the proposed 14 general manager positions. Offers and acceptances have been made to staff of the proposed centralised administration unit. Some of the information technology [IT] infrastructure has been purchased to enable the IT system to be ready for the reforms. Changes have been made to the IT network to facilitate the changeover. A number of consultants have been engaged to ensure delivery of the first stage of reforms by 1 January.

It is estimated that additional costs will be incurred consequential to a three-month delay. One of the reasons that 1 January was chosen was that it is the end of the rural lands protection boards financial year. A delay of three months will require the preparation of another set of financial reports, together with another audit. In 2007 audit and accounting costs for the organisation totalled $425,000. Fourteen general managers will

have been paid over the intervening period, which will cost $452,000 in salaries and on-costs. The staff of the newly created Administration and Finance Unit will need to be employed at an estimated cost of $223,000 in salaries plus on-costs. Upgrades to information technology systems will not be used, which will cost an estimated $30,000 in lease fees on hardware and network connection costs. Based on these estimates, the cost of a three-month delay to the organisation will amount to nearly $1.3 million.

Besides the direct costs resulting from a delay in implementing the reforms, there will be significant cost in lost opportunity by the organisation having to wait longer to accrue the financial benefits of the reform process. Integrated Marketing Communications estimated potential savings to be between $8 million and $8.3 million per annum. A number of boards currently are suffering considerable difficulties, including the Yass, northern New England and Hunter boards. The reforms provide a clear pathway to address their difficulties, whether they relate to finances or inappropriate conduct, such as, in the case of one of the boards, directors punching each other in front of staff. A delay would serve to aggravate those problems rather than resolve them. Elections for directors of the new boards are scheduled to begin in February. A delay will interfere with the timetable and prolong the existing vacuum of uncertainty. Staff have a right to know about their future. Further delays will add to increasing tensions and the strong likelihood that some of the best staff will leave. The Hon. Robert Brown raised the issue of increased rates. There will be no increase in rates to fund the reforms proposed in the bill. The directors of the boards of the new Livestock Health and Pest Authorities will continue to set rates and rates will continue to increase in line with the consumer price index.

Pursuant to sessional orders business interrupted and set down as an order of the day for a later hour.

QUESTIONS WITHOUT NOTICE

TRANSIT OFFICERS

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Police. Is the Minister aware of any proposal to create a transport police command within the New South Wales Police Force, which would replace New South Wales transit officers and take over security of public transport infrastructure by 1 January 2009? Would such a proposal include the recruitment of transit officers into the New South Wales Police Force? Would any such proposal have the support of the New South Wales Government? If so, why?

The Hon. TONY KELLY: It is ridiculous even for the Leader of the Opposition to imagine that we could train people to be police officers by 1 January. It is obviously not true.

COUNCIL OF AUSTRALIAN GOVERNMENTS FUNDING AGREEMENT

The Hon. HENRY TSANG: My question without notice is addressed to the Treasurer. Will the Treasurer please inform the House about the Council of Australian Governments meeting held in Canberra last week?

The Hon. ERIC ROOZENDAAL: I thank the Hon. Henry Tsang for his question and interest in this matter. Last week I, together with the Premier, attended the Council of Australian Governments [COAG] meeting in Canberra. As the first official COAG meeting hosted by Prime Minister Kevin Rudd in Canberra, it was an important indication of how Federal-State relations would work under the Federal Labor Government, even more so given the global financial crisis and its continuing impact on all State and Territory Governments and the Commonwealth. I am pleased to inform the House that the COAG negotiations signalled a new era in Federal-State cooperation. The Commonwealth agreed to provide all States and Territories with additional specific purpose payments and national partnership funding of approximately $15.2 billion over five years to 2012-13. Of this funding, New South Wales has secured over $5 billion, which will go directly into front-line services. Under the five-year COAG agreement New South Wales will receive $2.2 billion mainly in the areas of health and education. We will receive $2 billion for health, housing, education and disability services and general purpose GST payments; $600 million directly into indigenous and health service providers operating in New South Wales; and $200 million for computers in schools.

The new national Health Care Agreement will provide additional funding of $4.8 billion over five years nationally. The New South Wales share of this funding is $1.5 billion over five years. In addition, New South

Wales will receive about $500 million over five years for other important health-related initiatives in the areas of E-health hospital, health workforce reform and preventative health. The Council of Australian Governments meeting also confirmed the important role our schools play in preparing students for the challenges that lie ahead with the allocation of significant new funding. Overall New South Wales can expect to receive an additional $1.1 billion up to 2012-13. This is a good result for New South Wales and for our students. The new national housing agreement will provide additional funding of approximately $21.4 million to New South Wales over five years. In relation to the housing national partnership funding, the Commonwealth will provide New South Wales with $126.4 million over two years for social housing, $202 million over five years for remote indigenous housing, and $102 million over five years to help address homelessness.

This is merely a top-level summary of the funding secured by New South Wales last week. For example, as we are one day away from the International Day of People with a Disability, it is heartening to note that the COAG negotiations also secured additional disability funding. The new national disability agreement will provide additional funding of around $118 million to New South Wales over five years. The COAG negotiations last week represented an important step in correcting the imbalances of the past. While it cannot undo more than a decade of underfunding by the previous Liberal Commonwealth Government and New South Wales continues to face significant budgetary challenges, this is a substantial improvement. We look forward to an ongoing cooperative relationship with the Commonwealth in the future, and with the Prime Minister and Treasurer.

PAEDIATRIC GUIDELINES

The Hon. DUNCAN GAY: My question without notice is directed to the Minister for Health. My question relates to the recent NSW Health paediatric guidelines, which will necessitate the closure of even more obstetric units in rural hospitals and require the transfer to larger hospitals of sick children less than 16 years who have been four hours in smaller hospitals. What is the Minister's response to the Rural Doctors Association's request that he place a moratorium on these guidelines until a genuine formal consultation has been undertaken with the Rural Doctors Association of New South Wales, the medical colleges and other medical and health sector associations? How could such guidelines be imposed without proper consultation, given that the guidelines dramatically affect paediatric care in more than 100 hospitals in regional New South Wales?

The Hon. JOHN DELLA BOSCA: I congratulate the Deputy Leader of the Opposition on asking an excellent question. I thank him for giving me the opportunity to recount important issues that we confront in the provision of rural health.

The Hon. Duncan Gay: I am more interested in an answer.

The Hon. JOHN DELLA BOSCA: I will give him an explicit answer to all the questions he asked.

The Hon. Duncan Gay: I would prefer the latter first.

The Hon. JOHN DELLA BOSCA: Let me answer the first question. Yes, I am aware of the Rural Doctors Association's concerns. In fact, I had a long meeting with them on Thursday of last week, I believe. I could check my diary to be absolutely sure. They were generous with their time and I tried to be generous with mine. They worked their way through issues of importance to the association, and I expressed my support for a number of their concerns. Clearly, they have concerns that do not only reflect on rural doctors but also relate to the medical profession throughout our system. They made it very clear that their fundamental concern is patient care and safety and providing that care as near as possible to where people live. That is what regional health provision is all about. The provision of health care does not matter much from the point of view of citizenship issues, whether you live on the Central Coast, on the North Coast or, as Mr Garling describes in his report, beyond the sandstone curtain.

The Deputy Leader of the Opposition is correct. Our rural hospitals have been under significant pressure, as have all our hospitals. I previously have dealt with some of the reasons for that, and I will not reiterate them. Perhaps I will have an opportunity later during question time to refer to the reasons why so many health facilities have been under pressure. The Deputy Leader of the Opposition pointed out an important issue: the funnelling of patients to an appropriate facility, perhaps a smaller, non-specialised facility, where patients can be effectively managed and often wisely managed from a cost-effective point of view, thereby avoiding placing greater pressure on our base hospitals. At some of our base hospitals, as the member knows—he is

associated with a few of them and he has obviously taken an interest in at least a couple of them most recently—surgeries and other procedures are often subject to considerable pressure because base hospitals are being subjected to greater loads because some procedures have been abandoned or are less likely to occur in smaller facilities. The Deputy Leader of the Opposition mentions paediatrics.

The member has asked a good question and it relates to issues that we will have to look at and respond to in the Government's response to the Garling report. Mr Garling deals with the matter at great length, and of course his inquiry was triggered by an inquiry about a paediatric patient. Fundamentally, in the greater hospital network, many hospitals pass on a patient or bypass their own facilities when they have what is perceived to be a paediatric patient for relatively procedural surgery. I am not a doctor but expert surgeons tell me that a whole range of surgeries for older paediatric patients that are quite acceptable as general surgery in general hospitals are being passed on to our specialist children's hospitals. As a result of the concern by surgeons operating in general hospitals that specialised paediatric principles should apply, there is a very strong sense of risk aversion, which gets us back to the guidelines and Greater Western Area Health Service.

Clearly, not just in the Garling report but right across the system there have been concerns to get paediatric bed management, paediatric medicine and risk management right, and in doing that the Greater Western Area Health Service, like other area health services, responded by stringent—[*Time expired*.]

EDUCATION SYSTEM PRO-BUSINESS POLICIES

Reverend the Hon. Dr GORDON MOYES: I direct my question to the Attorney General, representing the Minister for Education and Training. Is the Minister aware of the recent visit to Australia by Joel Klein, the Chancellor of the New York City Department of Education, during which he actively campaigned for business-friendly education reforms? Is the Minister aware that the Federal Minister for Education, the Hon. Julia Gillard, is preparing to adopt key elements of Klein's business mantra of standards, assessment and accountability in Australian schools? Is the Minister aware that business involvement in the education system could reduce skills in basic literacy, numeracy and computer skills? Can the Minister inform us about what pro-business policies have been discussed at the recent Council of Australian Governments meeting and what pro-business policies will be implemented in the New South Wales education system?

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

COUNCIL OF AUSTRALIAN GOVERNMENTS FUNDING AGREEMENT

The Hon. KAYEE GRIFFIN: My question is directed to the Minister for Health. Will the Minister update the House on the benefits for patients in our hospital system as a result of the Council of Australian Governments negotiations?

The Hon. JOHN DELLA BOSCA: I sometimes wonder how my friends on the other side of the Chamber explain how it came to be that the Commonwealth share of funding public hospitals dropped from 50 per cent to 40 per cent in the last five years of the Howard Government. The Commonwealth reduced its share of funding for the Tweed Hospital, Wyong Hospital, Orange Base Hospital, Port Macquarie Base Hospital and the Children's Hospital—all our public hospitals. How was that a good thing? How do they treat more patients, employ their staff, pay their bills, and meet the demand of a growing and ageing population when the Commonwealth slashes their share of funding?

When members of the Opposition ask questions about funding issues with area health services how do they explain that they remained utterly silent while their colleagues in Canberra deliberately turned off the funding tap to public health over the past five years? How did those hospitals cope? With limited funding options available to the State, with stamp duty and payroll tax and being short-changed on the GST, New South Wales tried to fill the gap created by the Commonwealth's neglect of its historic responsibilities. Fortunately, we now have a Commonwealth Government committed to righting the wrongs of the past.

The Council of Australian Governments negotiations that my colleague the Treasurer attended over the weekend demonstrated that we have turned the corner and put behind us the dark days of Howard. We now have a Commonwealth Government that understands its responsibilities and wants to rebuild. Saturday's Council of Australian Governments negotiations demonstrated what happens when we have Labor governments working cooperatively—governments that believe in public services like health. Under the agreement reached by the

Council of Australian Governments New South Wales will receive $19.83 billion for health in special-purpose payments over five years and the Commonwealth is providing a $500 million increase in base payments nationally in 2008-09. Indexation of 7.3 per cent is up from the previous 5.3 per cent. It is not the ideal rate—a decade of Federal neglect cannot be fixed overnight—but it is a dramatic improvement.

The Commonwealth's share in the first year will move from 40 per cent to 45 per cent—a very, very good start on a journey back towards 50-50. This is a partnership that will deliver for patients. The Australian Medical Association's report card recently showed that New South Wales was the lead jurisdiction in Australia for both emergency department performance and elective surgery. Patients are more likely to be seen in a hospital emergency department and treated in a public hospital operating theatre in a clinically appropriate time in New South Wales than in any other State or Territory.

The Institute of Health and Welfare and the Australian Medical Association have clearly shown New South Wales is the top performer in Australia. The additional funding from the Commonwealth is a great start to addressing the problems of the past. It has provided funding for workforce training, elective surgery and measures to take the pressure off emergency departments due to the lack of general practitioners—again, caused by the neglect of the Howard Government. The Council of Australian Governments has given us a pathway back towards adequate resourcing. Coupled with the Garling report we have a better future in public health. The Council of Australian Governments negotiations were a great start and have demonstrated the benefit of a Commonwealth Government willing to work with the States.

SWIMMING POOL SAFETY

Reverend the Hon. FRED NILE: I ask the Minister for Police, representing the Minister for Local Government and the Minister for Planning, a question without notice. Is the Government aware that many New South Wales children are being unnecessarily put at risk due to unfenced domestic swimming pools? Does the Government acknowledge that most of these pools avoid the requirement for safety fencing because they were built prior to 1 August 1990? Will the Government take immediate action to help prevent further tragedy by ensuring that all pools in New South Wales require safety fencing?

The Hon. TONY KELLY: I thank the honourable member for an excellent question and I undertake to get his question to both those Ministers as quickly as possible and get an answer.

MINISTER FOR PRIMARY INDUSTRIES SPOUSE EMPLOYMENT

The Hon. MELINDA PAVEY: I direct my question to the Minister for Primary Industries. Given the employment of the Minister's wife in the office of his director general constitutes, at a minimum, a perceived conflict of interest—consistent with the ministerial code of conduct that states that Ministers should avoid situations in which they have or might reasonably be thought to have a private interest which conflicts with their public duty and that a Minister shall be frank and honest in official dealings with colleagues—did he disclose this conflict to the Premier?

The Hon. IAN MACDONALD: There is no conflict whatsoever. Anita has worked in the public sector of New South Wales on and off since 1979. She commenced as a secretary in the Premier's Department in that era. She has worked in many different departments over a long period of time. She obtained, through a proper process—a selection panel—in, I think, about 2004 a position in one of the units in the Department of Natural Resources on a similar figure to the one that is in the paper today. As the Department of Water and Energy came under my administration she was therefore part of my administration and has been for four or five years.

That is the problem with the member for Murrumbidgee's little theory. He has chosen to be the Opposition's attack dog for some time. My wife has won two positions through properly constituted selection panel processes. She has a long history of knowing the technical role of government in this State and she has worked in this area for many years. The member for Murrumbidgee has provided background information to a couple of journalists over the past few days. He tried to rope in a few others before that but they would not run the story. For him to suggest that there is something improper in this process is completely erroneous. It is a disgraceful attack on a person who has a very high reputation—much higher than his.

The point that members must remember is that my wife won a job equivalent to the one she has now in another department years before we were married. She won that job through a proper process at that time, just as

she did this job in May. There is no conflict; she has been working in this capacity and in this field for many years. I reject the disgraceful attitude of The Nationals in bringing these matters into Parliament. The member for Murrumbidgee has certainly let the genie out of Pandora's closet.

MUMBAI TERRORIST ATTACKS

DEATH OF BRETT GILBERT TAYLOR, MUMBAI TERRORIST ATTACK VICTIM

The Hon. TONY CATANZARITI: My question is directed to the Minister for State Development. Will the Minister update the House on the status of the trade delegation that was caught up in the terrorist attack in Mumbai, India?

The Hon. IAN MACDONALD: I thank the member for the question on the tragedy that unfolded last week in one of the great cities of the world. As members would be aware, a terrorist attack was launched on targets in Mumbai last Wednesday night with great loss of life. Sadly, a New South Wales Government trade mission comprising 12 companies travelling in India at the time was caught up in the attacks. These men and women were in New Delhi and Mumbai simply to promote their products and services. The companies came from a broad range of sectors, including aircraft component maintenance, pilot training, television production services, information technology, architecture and design and wine. Some delegates had been on previous trade missions and were enthusiastic about this mission to India, which presents many opportunities for New South Wales exporters. The delegates had completed a series of successful meetings in New Delhi and arrived in Mumbai on 26 November when terrorists attacked at least 10 locations, including hotels, tourist sites and the train station.

The hotels attacked included the Oberoi-Trident, where 10 members of a New South Wales trade delegation were staying. I am sure most members would be familiar with the horrific scenes that unfolded on our television screens late last week. Following explosions and gunfire, these people took refuge in their hotel rooms, where they remained until their release on Friday. I am very pleased to be able to advise that most of the trade mission delegates returned home safely on the weekend, having endured a terrifying ordeal. However, a respected Sydney businessman and member of the trade delegation, Brett Taylor, tragically died during the terrorist attacks. This is a terrible loss and on behalf of the New South Wales Parliament I extend my sympathies to Mr Taylor's family, friends and colleagues. Mr Taylor had previously been on a number of trade missions with the New South Wales Government to China. He was well liked and widely respected and he will be sadly missed.

Throughout the crisis, New South Wales Government officials stayed in contact with the delegates and their business associates and families. A 24-hour operational centre was set up at the offices of the Department of State and Regional Development. The department played an integral role with the Department of Foreign Affairs and Trade, the Australian Federal Police, the NSW Police Force and the Department of Premier and Cabinet. I commend these staff for their professionalism in very difficult and uncertain circumstances. We ensured that delegates' families and colleagues were kept up to date and then helped with arrangements for their arrival at Sydney Airport and travel home with families over the weekend. The trade mission delegates have been through a traumatic experience and have lost one of their friends and business associates. They will receive our ongoing support and we have offered a range of services to help them overcome this trauma.

I particularly thank Mr Rory McAlester, who is an export adviser for the Department of State and Regional Development. Rory was the delegation leader for this mission and was trapped in his hotel room for two days until the Indian forces cleared the building. We maintained contact with Rory during this time via text messages to provide him with support and our latest information. He arrived home on the weekend to be re-united with his partner and child. These attacks have resulted in a shocking loss of life and we extend our condolences to the victims and their families, friends and colleagues.

SYDNEY AQUARIUM DUGONGS

Ms LEE RHIANNON: I direct my question to the Minister for Primary Industries. The Sydney Aquarium has lodged a development application to build a dugong enclosure. Has the Minister met with representatives of the aquarium to discuss keeping a dugong at the facility? The World Conservation Union has put the dugong on its red list of threatened animals and they are protected by various Australian laws. Does this mean that no dugongs can be kept in captivity or that only an injured or orphaned dugongs can be kept at the Sydney Aquarium under licence issued by the Minister? Has the Minister sought advice on this matter so that he can determine the impact of captivity on dugongs? If so, will he share that with the House?

The Hon. IAN MACDONALD: I have not met with Sydney Aquarium representatives to discuss this issue, but I have met with them to discuss a range of issues over the years. I will certainly examine this situation. However, it is not entirely incompatible with the aquarium's role because it has a number of grey nurse sharks, which is a highly protected species. I do not think having dugongs of necessity means there is something wrong. I will certainly examine the situation and I will provide further information to the member.

MENAI POLICE NUMBERS

The Hon. MARIE FICARRA: I direct my question to the Minister for Police. Given that the command strength in the Sutherland region has been reduced by 10 officers since 2003, will the Minister commit to increasing police numbers, patrols and vehicles to address concerns expressed by residents and the Sutherland Shire Council about the increased incidence of crime in the Menai district?

The Hon. TONY KELLY: I again make the commitment that the Government will increase police numbers in this State. As I have said repeatedly in this House, the Government made an election commitment to increase police numbers by 750. We now have 15,236 authorised police officers—in fact, we have 230 more than that—and we will have about 30 less than 16,000 by December 2011. The Government will keep its commitment to increasing police numbers. That establishment will be about 3,000 more than when the Opposition was in power.

The Hon. Michael Gallacher: That was last century.

The Hon. TONY KELLY: It must feel like that to the Leader of the Opposition. The allocation of police officers is an operational matter. It is up to the Commissioner of Police where he allocates his officers.

NORTH-WEST REGION STORMS AND FLOODING

The Hon. CHRISTINE ROBERTSON: I direct my question to the Minister for Emergency Services. Can the Minister update the House on the Government's response to the weekend storms and subsequent flooding across the State's north-west?

The Hon. TONY KELLY: I thank the member for her question particularly because the recent floods affected many residents in her area. Members would be aware that communities across the State's north-west are this week mopping up in the wake of severe storms that led to major flooding across a wide area. Floods can and do have a devastating effect. While waters might rise quickly, as we saw in Tamworth on Friday night, it is only after they recede that the damage is fully revealed. It is clear that these floods have caused significant damage to community infrastructure, homes and rural properties. The Rees Government has declared the local government areas of Tamworth, Gunnedah, Narrabri and Walcha as natural disaster areas. This declaration triggers a range of assistance—such as one-off payments to people experiencing immediate financial hardship—and low-interest loans to help with ongoing recovery. As an example, where a house floods, usually a refrigerator or freezer is destroyed, people who suffer financial hardship are able to get financial assistance through the Department of Community Services to replace those items.

These floods will be a cruel blow for wheat farmers and for farmers generally in the area. Some wheat farmers had their best crop in 30 years. There is the potential for further crop losses for farmers who had not yet harvested; many now find the ground too sodden for harvesting equipment. I understand from many of the local farmers that strong winds and heavy rain flattened much of their crops, causing significant losses. Significant losses will be sustained also by lucerne farmers along the river, as many of their crops will be destroyed. That can mean a loss of up to two years of income.

I was joined by the new Director General of the State Emergency Service, Murray Kear, in Tamworth on Saturday to see the damage first hand, and to see the recovery efforts that are already well underway. More than 100 State Emergency Service volunteers responded to calls for help. Storm and floodboat teams from Tamworth, Narrabri, Boggabri, Nundle, Gunnedah, Tambar Springs, Armidale, Liverpool Plains and Lake Macquarie have taken part in the response operation. They have been supported by a number of other agencies, including NSW Fire Brigades, the Rural Fire Service, the Police Force, the Ambulance Service, the Department of Community Services and local council staff.

The State Emergency Service has responded to more than 400 requests for help from the public—primarily for damage from leaking roofs and requests for sandbagging to prevent water from entering buildings.

In a colossal effort by our emergency services, including the Rural Fire Service and the State Emergency Service, 10,000 sandbags were filled on Friday night to hold back rising floodwaters in Tamworth. I want to pay special tribute to the courage and dedication of our emergency services in performing a number of rescues in dangerous conditions on Friday night, as the Tamworth floodwaters rose. Eleven people were rescued from floodwaters, including a grandmother and her 10-year-old grandson who were washed from their vehicle on a flooded causeway near Tamworth.

As an example of how our emergency services members and volunteers often place themselves in harm's way to save others, in the middle of the night three of the State Emergency Service volunteers were thrown into swirling floodwaters when their floodboat overturned. Those three were missing, unaccounted for, for some time. Two were later found, and the third man was found some hours later still—at about 3 o'clock in the morning—clinging to a tree. That is just one example of the ways in which our volunteers risk their lives to protect our lives and our property. I am sure that every member of this House will join me and the wider community in congratulating and thanking our emergency services people on a job well done on the weekend.

GENETICALLY MODIFIED CANOLA CONTAMINATION PROTOCOLS

Mr IAN COHEN: My question is directed to the Minister for Primary Industries. Will the Minister outline what legislative powers are available to the Department of Primary Industries to manage GM canola contamination incidents similar to that which has occurred in Horsham, Victoria? What penalties do farmers face if they do not comply with the Grains Research Development Corporation's Single Vision protocol?

The Hon. IAN MACDONALD: Growers of GM canola have been subject to the provisions of the 2003 Act, subsequently amended. All growers are required to conduct their activities under a licence system that provides for a technology user agreement for the use of, say, Roundup-ready canola, and to follow Monsanto's crop management plan in that instance. In 2008 GM canola is being managed through a closed loop system in New South Wales, with all harvested seed going to grain handlers for sale in the domestic market. Graincorp will manage receival of GM canola in New South Wales under a protocol that will ensure a dedicated pathway for GM canola through receival, testing, storage and out-turn.

Industry has agreed to monitor the performance of key aspects of the GM canola management framework and report back to government. The National Agricultural Commodities Marketing Association has agreed to be the contact point for industry and to coordinate reporting on the performance of the GM canola management framework. Government oversight of the industry's GM canola management framework will focus on industry's continuing preparedness and capacity to meet the criteria set out in section 7A (3) of the Gene Technology (GM Crop Moratorium) Act 2003.

The New South Wales Department of Primary Industries will audit these reports and, where necessary, verify the information through direct inspection or auditing of stewardship and training programs for producers growing GM canola, compliance with crop management plans for GM canola, including resistance management, co-existence strategies with other crops and control of volunteer canola plants, paddock management records, segregation and accountability procedures for GM canola seed suppliers, and procedures and records relating to the delivery, storage and handling of GM canola through the product supply chain. In addition, the New South Wales Department of Primary Industries may seek independent confirmation of domestic and international standards for GM canola, including any relevant market access restrictions on Australian canola. I might add that these provisions are far and away the best in the country and much stronger and tougher than the provisions relating to the growing of GM crops in Victoria.

DEPARTMENT OF PRIMARY INDUSTRIES TECHNICAL ADVISER AND AGRONOMIST VACANCIES

MINISTER FOR PRIMARY INDUSTRIES SPOUSE EMPLOYMENT

The Hon. RICK COLLESS: My question without notice is directed to the Minister for Primary Industries. Does the Minister understand the concerns of residents of regional New South Wales when they see that positions within the Department of Primary Industries such as technical advisory roles at both Coonamble and Walgett and a district agronomist position at Moree are to be left vacant when the Minister's wife has been appointed as a ministerial support officer? Can the Minister provide details of what benefit primary producers from Coonamble, Walgett and Moree will derive from his wife being employed in this role that they would not receive from more technical advice from locally based experts, at a far more modest expense?

The Hon. IAN MACDONALD: Quite clearly, The Nationals have degenerated somewhat in recent years. Members of The Nationals within the Department of Primary Industries who served under previous governments are a cut above the mob opposite. Today's Nationals come into this place and try to defame people; they attack people's families and attack people's wives. That is the absolute truth of the matter. My wife's appointment has nothing to do with the filling of certain positions and whether we can actually get staff to fill those positions, after much advertising. The Nationals are not taking into account the fact that some of those positions have been advertised and we cannot get staff to fill the positions. That is the plain fact of the matter. Some people with qualifications want to work somewhere else; they do not necessarily want to work in some places out west. The same problem affects many government administrations in the far west of New South Wales. In relation to those issues, I said we will continue to try to find people to fill those positions, and we will continue to do that.

JUDICIAL COMMISSION PERFORMANCE

The Hon. AMANDA FAZIO: My question without notice is addressed to the Attorney General. What is the latest information on the performance of the Judicial Commission of New South Wales?

The Hon. JOHN HATZISTERGOS: I thank the honourable member for this important question about the Judicial Commission. Members would be aware that the Judicial Commission delivers high-quality continuing education and information for the State's judiciary, and it continues to be widely regarded as a leading judicial education provider in the Asia-Pacific region. In October 2007 the commission celebrated 20 years in promoting excellence in judicial performance. It is to be remembered that New South Wales is the only jurisdiction in Australia that currently has a body such as the Judicial Commission—although the Commonwealth and other States are looking at replicating a version of the Judicial Commission for a similar purpose in jurisdictions that presently do not have one.

The Judicial Commission has achieved its successes due to the edification of not only its staff but also members of the judiciary who have given of their time, often on a pro bono basis, in order to assist the commission in its work. The commission's most recent successes are highlighted in its annual report, which has recently been tabled. These successes include the delivery of a number of innovative educational programs for the State's judicial officers. These programs promote high standards of judicial performance, assist in the development of judicial skills and values, and keep judicial officers up-to-date with current legal developments and emerging trends. For example, the commission has published two new essential handbooks to aid judicial officers in their work—the *Civil Trials Bench Book* and the *Sexual Assault Handbook.*

One of the commission's key priorities last year was to increase awareness among judicial officers of the impact of Aboriginal cultural issues on Aboriginal people in the justice system. These efforts included visits to Aboriginal communities, seminars on topics specific to Aboriginal people and the justice system, and the publication of educational materials such as an Aboriginal language directory. The commission also continues to play a leading role in educating judicial officers within the Asia-Pacific. During the past year the commission signed a memorandum of understanding with the Magisterial Service of Papua New Guinea to deliver a continuing judicial education program for magistrates in that jurisdiction.

The commission has also made some excellent progress in its research and sentencing program. The judicial information research system, which is an online database featuring information on sentencing decisions, attracted a 24 per cent increase in usage during 2007-08. The system is designed to provide judicial officers with easy access to information that will assist their decision making. In addition to changes in the law and the timely publication of judgements, new information added to the database last year included a Land and Environment Court sentencing database and a Commonwealth sentencing database.

Further to this, the Judicial Commission also published three research studies to provide judicial officers with detailed information about the diverting of mentally ill offenders in the New South Wales Local Court, achieving consistency and transparency in sentencing for environmental offences, and trends in the use of full-time imprisonment. These are just a few examples of how the commission continues to work hard to encourage sentencing consistency across the State's justice system.

Another important function of the Judicial Commission is handling complaints about the ability and behaviour of judicial officers. I am pleased to report that during 2007-08 the commission has been able to finalise 99 per cent of complaints within six months of receiving the original complaint. In 2007-08 the most common ground for complaint to the Judicial Commission was failure to give a fair hearing and apprehension of bias. Of the 76 complaints received by the commission this year, 61 were examined and dismissed.

Given that New South Wales judges hear more matters than any other jurisdiction in Australia, this small number of complaints is evidence of the high standard of judicial conduct and decision making in New South Wales. I take this opportunity to congratulate the Judicial Commission on its twentieth anniversary and acknowledge its continuing efforts to ensure that New South Wales has the highest quality judiciary in Australia.

POLICE TASER USE

Ms SYLVIA HALE: I address my question to the Minister for Police. Is the Minister aware of a complaint by a person arrested during a non-violent protest on Saturday 1 November 2008 at Bayswater power station that he was threatened by a police officer with the application of a taser if he did not unlock himself from a piece of machinery to which he had attached himself? Is the threat of the application of a taser to a person who is neither violent nor threatening violence consistent with the Government's policy on the use or threatened use of tasers? Is the complaint being investigated?

The Hon. TONY KELLY: If the member has any significant claims to make, the appropriate place to send those is the Ombudsman. The police use of tasers in New South Wales is the best in the world. Tasers issued in New South Wales have a video camera and a recorder on each of them. Therefore, any conversation is recorded on the video camera and it is then downloaded—

The Hon. Michael Gallacher: There are not going to be too many words once it is fired.

The Hon. TONY KELLY: Acknowledging the member's comment, I rephrase my last statement and say that any conversation that precedes the use of a taser is recorded. I think the rough figures are that tasers have been drawn 64 or 66 times and have been used on only 16 occasions. The mere threat of drawing the taser makes a difference to the people we are discussing. When police return to their stations following such incidents, the information is recorded on their computer and it is reviewed by one of the Assistant Commissioners or Deputy Commissioners at the end of every month. I repeat: all the recordings of every use of every taser, including the drawing of them, are downloaded for review by the Deputy Police Commissioner.

RURAL DOCTORS ASSOCIATION ANNUAL GENERAL MEETING

The Hon. JENNIFER GARDINER: My question without notice is directed to the Minister for Health. The Minister is no doubt aware that the Parliamentary Secretary for Health answered questions at the Rural Doctors Association Annual General Meeting last weekend suggesting that the best way for rural health issues to be addressed would be for concerned doctors to be candidates for The Nationals at the next State election. Is the Minister aware that doctors were deadly serious in their questioning of Dr McDonald on rural health issues, about which they had just drawn a line in the sand in a protest at Bondi Beach? Is the Minister aware that Dr McDonald also told the meeting, "The State is broke; the hospitals are broke", and that he repeated his advice that doctors should run as candidates for The Nationals? Does the Minister agree with Dr McDonald that the State is broke and the hospitals are broke? Does Dr McDonald have the Minister's confidence, notwithstanding his candid assessment of the crises besetting both the New South Wales Government's budget and New South Wales public hospitals?

The Hon. JOHN DELLA BOSCA: That is probably the easiest question I could possibly be asked. I have absolute confidence in my Parliamentary Secretary and colleague Dr McDonald. He is doing a fantastic job in a range of ways assisting me in managing the large and complex health portfolio. I do not know if the Hon. Jennifer Gardiner is a cinema fan, but she might be aware of a movie about a breed of cuckoo that is immediately aware of what other cuckoos are thinking. I do not know everything that Dr McDonald thinks. I cannot say that I have heard accounts of every aspect of his meeting with rural doctors. The question is not original; it was apparently asked in the lower House and the Premier responded along the lines that somebody in The Nationals must have a sense of humour, which is why the Hon. Jennifer Gardiner qualified her question with the aphorism "deadly earnest". I am deadly earnest about one thing.

The Hon. Duncan Gay: Were you there?

The Hon. JOHN DELLA BOSCA: No, I was not at that meeting. I told the Deputy Leader of the Opposition before that I met rural doctors at a separate meeting. The Hon. Jennifer Gardiner did not mention that in her question, so I am not going to respond to it in those terms. I make a couple of obvious points. First of all, yes, the State is, of course, like every other jurisdiction in the world—

The Hon. Michael Gallacher: Like every other Labor State.

The Hon. JOHN DELLA BOSCA: No, like every other jurisdiction in the world our State is faced with straitened financial and fiscal circumstances. One need only open up a newspaper to read about that. Whatever colloquial observation someone makes in describing that is his or her own business. Dr McDonald was with colleagues and I am sure he made himself very clear to them. We are committed to regularly meeting with the rural doctors to discuss rural health issues.

I take this opportunity also—because it relates to a question asked of me earlier by the Deputy Leader of the Opposition—to state that today I had a long discussion with the Parliamentary Secretary for Health, Dr McDonald. We discussed the Greater Western Area Health Service and the paediatric guidelines that were referred to in the question asked earlier by the Deputy Leader of the Opposition. Given the member's great skills as a paediatrician, his great political skills and his clear capacity for diplomacy, I suggested that he should sit down, go through that new policy in some detail with the area director and relevant paediatricians and general practitioners throughout the Greater Western Area Health Service and review the guidelines that trouble rural doctors so much.

I say, first, that I have absolute confidence in the Parliamentary Secretary for Health. Second, he has done fantastic work in assisting me in managing what is a large, complex and important portfolio. Third, we are addressing in a meaningful way the very issue that Ms Sylvia Hale and the Deputy Leader of the Opposition are concerned about, that is, he is being charged to use his expertise to work through the best way to review the paediatric guidelines of the Greater Western Area Health Service. Last, and most important, he and I are committed to the Garling recommendations and working through them in consultation with doctors, nurses and allied health workers to ensure that we address the former Howard Government's underfunding of the health system and the mistakes made in the health system, and that rural doctors and hospital facilities have the support they need. [*Time expired.*]

WORLD AIDS DAY

The Hon. LYNDA VOLTZ: My question without notice is addressed to the Minister for Health. Can the Minister inform the House of the latest research into the prevalence and understanding of HIV-AIDS?

The Hon. JOHN DELLA BOSCA: This is a very important issue, and the question gives me an opportunity to indicate the way in which New South Wales is leading all other States in Australia, indeed is probably the world leader, in a very important area of health.

The Hon. Don Harwin: It always has.

The Hon. JOHN DELLA BOSCA: I acknowledge the Opposition Whip's interjection. Yesterday, Monday 1 December 2008, marked the twentieth anniversary of World AIDS Day. This anniversary is an opportunity to pause and remind ourselves of the impact of HIV-AIDS in New South Wales and to acknowledge those whose efforts have prevented the spread of HIV and improved the quality of life of people who have contracted HIV-AIDS. Since 1981 more than 15,000 New South Wales residents have been diagnosed with HIV, at least 3,900 of whom, sadly, have lost their lives.

Historically of all the Australian States New South Wales has borne the greatest impact of HIV-AIDS, accounting for some 54 per cent of diagnoses. Over the last 10 years, however, HIV diagnoses in New South Wales have been stable. In 2007, 402 people were diagnosed with HIV, and that is comparable to the figures for previous years. Data from the first half of 2008 indicates that from January to June there were 201 HIV diagnoses, indicating that the epidemic continues to be stable in New South Wales. This is in stark contrast to the situation internationally, and indeed to the experiences in some other States and Territories where HIV infections continue to increase significantly.

The long-term stability of diagnoses in New South Wales provides compelling evidence of the effectiveness of the New South Wales Government's approach, and in particular the strength of the partnership between Government, affected communities, clinicians, researchers—and, I might say, acknowledging the Opposition Whip's interjection previously, the importance of a bipartisan, evidence-based approach to critical health issues. Whilst celebrating these achievements, the New South Wales Government remains committed to further reducing HIV infections. In 2007-08 approximately $91.8 million was allocated to area health services

and non-government organisations for the prevention of HIV-AIDS and related diseases, and for treatment, care and support services for people living with, or affected by, HIV-AIDS or who have been diagnosed with a sexually transmissible infection.

Approximately $27 million of AIDS program funding was expended on HIV and related diseases prevention activities in 2007-08. The New South Wales HIV-AIDS Prevention Program utilises diverse strategies, including large-scale education campaigns to inform the community, individual and group education programs, and community development initiatives with populations at highest risk of HIV infection. Every area health service conducts HIV and sexually transmitted disease prevention activities, and provides free and confidential testing and counselling to individuals at risk. In addition to this, community-based and non-government organisations including the AIDS Council of New South Wales and Positive Life New South Wales are funded to target specific populations through health education and support.

Preventing new HIV infections has important public health and economic benefits. Recent research on the health and economic impact of investment in HIV-AIDS prevention found that from 1981 to 2005 HIV prevention programs in New South Wales averted 44,500 HIV infections, thus avoiding 2,750 deaths. This is a remarkable achievement, and one that New South Wales can be justifiably proud of. Research shows that each dollar spent on HIV prevention has saved the New South Wales Government $13 in health care costs. [*Time expired.*]

WALLERAWANG POWER STATION CONDENSER REPLACEMENT

Dr JOHN KAYE: My question is directed to the Minister for Energy. Is the Minister aware that a Delta community reference group was told of substantial damage that occurred in unit 7 at Wallerawang Power Station involving, inter alia, major repair works to the condensers? What was the nature of that damage and what was the cause of it? Did poor-quality or high-salinity water transferred from Springvale Colliery, or any other colliery, to Wallerawang Power Station contribute in part or in whole to this damage? What was the total repair bill? Did it come to about $35 million? What proportion of the total cost was attributable to the use of high-salinity or otherwise poor-quality water transferred from Springvale Colliery, or any other colliery, to Wallerawang Power Station, and what steps were taken to protect the condensers from the impacts of salinity?

The Hon. IAN MACDONALD: I thank Dr John Kaye for his rather detailed question. I am advised that Delta Electricity will be undertaking a $25 million planned outage of a unit at Wallerawang Power Station to undertake essential maintenance, part of which will involve replacing the unit's condenser tubes. This replacement program is necessary because the tubes are at the end of their operational life. I repeat: they are at the end of their operational life; they have not been damaged. This information was provided to the most recent meeting of Delta's community reference group.

Wallerawang Power Station was designed to run on a blend of the high-quality water from the Fish River water supply system and water pumped out of Delta's dams on the Cox's River, which is of a lower quality due to higher saline and grit levels. The ongoing drought has meant less water is available from the Fish River water supply scheme. In 2005 Delta and Centennial Coal co-funded the construction of a mine water transfer scheme to provide Delta with additional water, and that has enabled Wallerawang to continue to operate during the current drought. The water quality from the mines is monitored, and when used in the power station is within the quality limits seen in the Cox's River. The use of mine water meant that Wallerawang has remained in service during the drought, while in comparison some inland power stations in Queensland have had to shut down or reduce output.

The replacement condenser tubes will be of a material able to handle prolonged use of water with higher saline levels, should the drought mean that continued use of water from the Cox's River and Centennial Mine is necessary. I am advised that Delta Electricity is currently operating within the conditions of its licence. There have been two minor breaches involving pH correction and total suspended solids that resulted from plant failures. These incidents, which are a matter of public record, were reported to the Department of Environment and Climate Change. There have been no significant changes, and a full history of modifications to the licence is available on the department's website.

The most recent change relates to additional monitoring and discharge limits for turbidity and total suspended solids. Under the conditions of the licence Delta must measure pH, salinity, selenium, sulphate and total suspended solids, and keep within required limits. In addition to meeting these requirements, Delta has also opted to monitor sulphates, which is one component contributing to salinity. The Department of Environment

and Climate Change has directed Delta to accept additional monitoring and discharge limits for turbidity and total suspended solids. Delta is also working collaboratively with the department to develop new salinity targets for the Cox's River below Lake Wallace.

Electricity generation is a scheduled activity under the Act and therefore it must be licensed for its discharges. Load-based licensing is a method that recognises that industry may have an impact on the environment but requires that these impacts be kept to a minimum. It effectively provides a financial incentive to reduce environmental impacts.

Dr JOHN KAYE: I ask a supplementary question. Can the Minister make clear whether the first part of his answer relates to unit 7 at Wallerawang Power Station and not unit 8 at that power station?

The Hon. IAN MACDONALD: I do not have that information to hand, but I will get it for the member.

FORESTS NSW PARCEL SALE AGREEMENTS

The Hon. TREVOR KHAN: My question without notice is directed to the Minister for Primary Industries. I refer to an expression of interest document recently issued by Forests NSW calling for tenders for up to 12,000 cubic metres of high-quality sawlogs from the north-east and central regions to be supplied under parcel sale agreements. Can the Minister advise why clause 6.12 of this document expressly forbids Forest Product Association and National Association of Forest Industry members from the tender process? Will this resource therefore be sold overseas, ignoring the State Government's purported value adding strategies? If this is not the case and the tender is awarded to National Association of Forest Industry or Forest Product Association members, is it not true that such a decision would open the Government to the threat of legal action from other tenderers? If this is indeed the case, will the Minister withdraw the expression of interest document and reissue it without this stipulation?

The Hon. IAN MACDONALD: I am aware of an expression of interest document. I am not particularly aware of the clause to which the member refers. I will get the member the details on that. I do not think, under any circumstances—

The Hon. Duncan Gay: Why would you even consider banning the National Association of Forest Industry and the Forest Product Association?

The Hon. IAN MACDONALD: I will have to get the answer to that from Forests NSW, which would have a purpose in relation to that. I just do not have the details to hand. In my view, however, no direction has been made, in any shape or form, to have the product sent overseas.

PASTORAL AND AGRICULTURAL CRIME WORKING PARTY

The Hon. MICHAEL VEITCH: My question is addressed to the Minister for Police. What is the latest information on the efforts by the Government to crack down on crime in rural New South Wales?

The Hon. TONY KELLY: The Rees Labor Government is proud of its track record in delivering police resources to rural and regional New South Wales—a record that puts the Liberal-National Coalition to shame. As I said earlier, as at 31 August the strength of the New South Wales Police Force was authorised at 15,326 and that will soon increase. It was Labor who boosted police numbers in the bush. I am advised that the total number of police in rural and regional New South Wales is 5,196—that is, 34 per cent of New South Wales police are located in rural and regional areas. That is an increase of 44 per cent—or 1,601 police officers—since the Coalition was last in government. Having record numbers of police to patrol our country towns, suburbs and streets will ensure crime is driven down even further.

Rural communities face special and different crime problems. That is why in 2002 the Government set up the Rural Crime Investigators program. I am advised that the New South Wales Police Force currently has 33 rural crime investigators dedicated to policing and investigation of rural crimes. All rural crime investigators have an understanding of our primary industries, as well as experience with practical stock handling and identification. Those specialised officers regularly inspect abattoirs, saleyards, and stock and station agents' offices to build local relationships with the rural community.

I am pleased to inform the House that the Rees Labor Government has today announced the re-establishment of the Pastoral and Agricultural Crime Working Party. This working party will bring together key stakeholders to focus on, explore and make recommendations about pastoral and agricultural crime and the policing of this important sector. The working party will include representatives from the New South Wales Police Force, the Department of Primary Industries, the New South Wales Farmers Association, the rural lands protection boards, and the Ministry for Police as the secretariat. In addition to holding regular meetings in rural locations across New South Wales, I have asked the working party to look at ways of providing farmers with direct access to the working party. The working party will identify measures that build on the work of the rural crime investigators and assist police to conduct successful investigations of pastoral and agricultural crime.

Mr Jock Laurie, the President of the New South Wales Farmers Association, has welcomed the re-establishment of the working party. Mr Laurie recognises the profound impact rural crime can have on businesses and families and the importance of prevention. Mr Laurie said:

> Crime affects all communities. We need to get in front and find measures of prevention … so that rural communities can get on with their jobs safely and securely.

Mr Steve Whan, the Parliamentary Secretary Assisting the Minister for Primary Industries, the Minister for Regional Development and Minister for Rural Affairs, and the Minister for Planning, and member for Monaro, will chair the Pastoral and Agricultural Crime Working Party.

Similar to the work undertaken by crime prevention partnerships, the working party will consider methods of crime prevention that involve the rural community at the local level. One of the other key tasks of the working party will be to look at the ongoing expertise of police officers with respect to the policing of rural crime. I look forward to updating the House on the achievements of the Pastoral and Agricultural Crime Working Party.

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

SWIMMING POOL SAFETY

The Hon. TONY KELLY: Earlier in question time today Reverend the Hon. Fred Nile asked me a question regarding unfenced swimming pools. Two recent tragic events have sheeted home the importance of pool safety to all of us. At the outset, I want to express my deepest sympathies to the parents and loved ones of the children. Although the average number of toddlers that have drowned has halved since the introduction of swimming pool fencing regulations in the 1990s, one child drowning is one child too many. A review process is currently happening around the Swimming Pools Act, which involves talking to stakeholders and to the community.

Pool fencing regulations were tightened in September to include new requirements for non-climbable zones, adjusted mesh sizes for fences, and other safety provisions. Tough penalties exist for pool owners who fail to comply with pool fencing regulations. Council officers are able to inspect a property and fines of up to $1,100 can be issued for non-compliance. It must be stressed that all adults need to be vigilant when it comes to pool safety, especially ahead of the summer holidays. In the end there is no substitute for having effective supervision from a parent or other adults at all times. The inspection regime and penalties that currently exist are being considered as part of the review of the Swimming Pools Act.

Reverend the Hon. Fred Nile: Including pre-1990 pools?

The Hon. TONY KELLY: Yes.

POLICE DEATH AND DISABILITY SCHEME

The Hon. TONY KELLY: Last Thursday 27 November the Hon. Michael Gallacher asked me a question without notice regarding death and disability arrangements for officers of the New South Wales Police Force. The Government remains committed to a death and disability scheme for officers of the New South Wales Police Force, as I said before. It is not the intention of the Government that officers with existing claims under the current scheme should be in any way disadvantaged.

BREAST CANCER SCREENING

The Hon. JOHN DELLA BOSCA: On 28 October 2008 Reverend the Hon. Dr Gordon Moyes asked me, representing the Hon. Tony Stewart, the then Minister Assisting the Minister for Health (Cancer), a question

regarding breast cancer screening. The Supreme Court recently found in Ms O'Gorman's favour. This is a very sad situation and my thoughts are with Ms O'Gorman and her family. Breast cancer is a terrible disease, with one in eight women being diagnosed with the condition in their lifetime. The breast-screening program has been a major success in the early detection of breast cancer; contributing to an 18 per cent reduction in deaths associated with breast cancer in the past 10 years. The New South Wales Government strongly recommends that women aged 50 to 69 years attend for screening mammograms every two years. However, women of any age are encouraged to get to know the look and feel of their breasts, and to see their general practitioner promptly if they notice any changes.

Questions without notice concluded.

RURAL LANDS PROTECTION AMENDMENT BILL 2008

Second Reading

Debate resumed from an earlier hour.

The Hon. IAN MACDONALD (Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development) [5.07 p.m.]: Prior to question time I was dealing with rate increases. In 2010 the method for calculating rates will change from notional carrying capacity to land area. Some ratepayers may be affected by this change. A small number of ratepayers may benefit and some may be marginally worse off. The capacity to address rates differentially within one district should address most of these issues. Every effort will be made to ensure ratepayers are informed about the changes and to ensure that the changes to the rating system do not cause farmers any additional hardship.

The Hon. Robert Brown asked whether farmers would have access to travelling stock reserves that have been returned to the Department of Lands. The State Government is committed to ensuring that farmers continue to have access to travelling stock reserves during times of need, such as when droughts and floods occur. I understand that the Department of Lands will enter into an agreement with the new livestock health and pest authorities in these situations to ensure farmer access is maintained.

The claim by the Rural Lands Action Group that 27 of the current boards support their scaremongering is also wrong. I understand that only 13 boards have passed a motion supporting the action group's position—a long way short of the 27 boards that the Rural Lands Action Group referred to in its correspondence. Momentum has been built to make these reforms happen, this momentum has come from many existing board directors and staff, and a delay will seriously jeopardise that process. The shadow Minister has raised several other issues, which were dealt with in reply in the other place. The shadow Minister supported the recommendations of the review on which much of the bill is based. On 6 June 2008 he said:

> It was essential for the RLPB State Council to commission this independent review.

He said this on the basis that:

> Some areas of the RLPB network were financially unstable. … there was a pressing need to develop a stronger chain of command system …

He went on to say:

> The downsizing of the number of local boards from 47 to 14 will make the level of services more cost efficient, freeing up money within the RLPB system to increase opportunities for future development.

The shadow Minister congratulated the State Council on taking what he called "this bold step". Now he and his colleagues opposite seek to undermine this important reform process. Despite claims by the Rural Lands Action Group—which has been doing the rounds in this place over the past couple of days—there is strong support for the changes in the bill. The District Veterinarians of NSW fully support the implementation of these reforms.

The Hon. Rick Colless: It is the association of veterinarians. It is not all the veterinarians.

The Hon. IAN MACDONALD: It is the District Veterinarians of NSW Inc. I make no more claims than that. The Yass Rural Lands Protection Board writes on behalf of the District Veterinarians of New South Wales, making a number of comments. I seek leave to incorporate the letter in *Hansard*.

Leave granted.

November 20, 2008

Hon Ian Macdonald
Minister for Primary Industries

Re: RLPB restructure under the IMC RLPB Review

Dear Minister Macdonald,

The District Veterinarians of NSW Incorporated, also known as the District Veterinarians Association, fully supports your endorsement and the implementation of the IMC Review of the Rural Lands Protection.

There have been very many positives achieved over the last three months, due mostly to your work and that of your staff, which has been greatly appreciated. These include:

- The consolidation of the majority of new boards along their current board boundaries.
- The name "Livestock Health and Pest Authority" clearly depicts the core roles of the organisation in the future, with the emphasis on livestock health paramount to the future of the NSW livestock industries with respect to biosecurity, livestock traceability and food safety, disease control and livestock production. This focus will be essential for the livestock industries to prosper in the future.
- The maintenance of a strong livestock health field staff presence and its service delivery, along with appropriate administrative support, is comprehensively captured in the IMC Review recommendations and is currently being implemented to enhance our current system.
- The appointment of PricewaterhouseCoopers as change managers has also been very well received. The Association has been very impressed with their input and professionalism throughout the implementation process.
- The newly created Senior District Veterinarian will greatly assist the organisation in attracting and maintaining good field veterinarians to support our valuable livestock industries by creating a career path for aspiring rural veterinarians.
- The Senior District Veterinarian, working under a salaried award rather than a contract is essential in maintaining a strong, unbiased regulatory presence when faced with an emergency animal disease, such as Equine Influenza or a potential food safety issue such as SSE.
- The unspecified location of the Senior District Veterinarian provides the opportunity that the very best person for the position, to serve the new district authority, will not be discouraged by location. This will also assist in attracting well qualified veterinarians to rural NSW.

In the opinion of the Association, these are great steps forward, and we do not underestimate nor take for granted the work you, Minister, and your staff have dedicated to the RLPB Review. It has been very much appreciated by our Association and we would like to convey our continued support for the RLPB restructure to the betterment of the NSW livestock industries and rural communities.

Yours sincerely,

Jim McDonald
District Veterinarian
Yass Rural Lands Protection Board
President, The District Veterinarians of NSW Inc

I thank members for granting leave. This legislation is sensible, practical and timely. The boards have been an integral part of our rural and regional communities for more than a century. It is vital that we ensure the viability and relevance of these important organisations into the future, and this bill goes a long way to achieving that. I congratulate the Rural Lands Protection Boards, led ably by David Lister, on the way in which it has dealt with this difficult process. Change and reform is not easy, as we all know. This legislation sets the boards on the right course for the future. It will ensure the viability of the boards. It will enhance disease management by the boards, which they ably demonstrated in the management of the equine influenza. There will be no reduction in front-line services by rangers and veterinarians, who service our regional communities so well. The structure of this modern board system will be similar to that of the catchment management authorities. This consolidation will ensure sensible decision making, relevant expertise from local areas, and a board that will provide good management of disease and livestock in New South Wales. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

The Hon. IAN MACDONALD (Minister for Primary Industries, Minister for Energy, Minister for Mineral Resources, and Minister for State Development) [5.12 p.m.]: I move:

That this bill be now read a third time.

Question—put.

The House divided.

Ayes, 21

Mr Brown	Reverend Dr Moyes	Mr Tsang
Mr Catanzariti	Reverend Nile	Ms Voltz
Mr Della Bosca	Mr Obeid	Mr West
Ms Fazio	Mr Robertson	
Ms Griffin	Ms Robertson	
Mr Hatzistergos	Mr Roozendaal	*Tellers,*
Mr Kelly	Ms Sharpe	Mr Veitch
Mr Macdonald	Mr Smith	Ms Westwood

Noes, 18

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

Pair

Mr Donnelly	Mr Harwin

Question resolved in the affirmative.

Motion agreed to.

Bill read a third time and returned to the Legislative Assembly without amendment.

CRIMES AMENDMENT (SEXUAL OFFENCES) BILL 2008

Second Reading

Debate resumed from 26 November 2008.

The Hon. JOHN AJAKA [5.21 p.m.]: The Crimes Amendment Sexual Offences Bill 2008 seeks to amend the Crimes Act 1900 and other criminal legislation. Schedule 1 [9] of the bill provides for an aggravated offence of having sexual intercourse with a child under the age of 10 years, with a maximum penalty of imprisonment for life—previously 25 years. The bi1l specifies that kidnapping or deprivation of liberty is an additional circumstance in which sexual intercourse with a child aged between 10 and 16 years is treated as an aggravated offence. Also, breaking and entering and kidnapping or deprivation of liberty are additional circumstances in which sexual intercourse without a person's consent is treated as an aggravated offence. Being sexually assaulted by an intruder in one's personal environment such as a home will now result in tougher penalties that reflect the seriousness of this crime.

The bill also creates a new offence of aggravated act of indecency, with a maximum penalty of 10 years imprisonment, where an act of indecency is committed with or towards a child under the age of 16 years and the

offender knows that an act of indecency is being filmed for the purposes of the production of child pornography. This ensures that anyone who commits an indecent act against a child for the purposes of filming that act will face similar penalties as a person producing, disseminating or processing child pornography material. This even applies to images that are manipulated to make innocent photographs of children appear in a pornographic context. Even though some images may not include real victims, the bill ensures that action will still be taken against these offenders and that this legislation still applies.

Further amendments result in an increase in the maximum penalty for the offence of indecent assault against a child aged between 10 and 16 years from 7 to 10 years imprisonment. The bill also creates a new offence of meeting a child, or travelling to meet a child, following the grooming of that child for sexual purposes. Last year the Government incorporated new legislation to prosecute adult offenders who groom and procure children to engage in unlawful sexual activities. The rate of child sex offences is sadly monumental and that is why the Government is strongly committed to providing extensive protection for victims, and to ensuring that offenders are dealt with accordingly.

The increasing reach of technology over the Internet has sadly created a powerful vessel that enables increased sexual behaviour towards children by allowing adults to form inappropriate online relationships with children, to exploit them by enticing them to enter a cyberworld of child abuse, and to lure them into a meeting under false pretences. The bill increases the maximum penalty for the aggravated offence of causing a person to enter into or remain in sexual servitude to 20 years imprisonment. Circumstances of aggravation include that the victim is under the age of 18 years or has a cognitive impairment.

Schedule 1 [19] provides for a specific offence of inciting a person to commit a sexual offence. Sexual offences are offences specified in division 10 of part 3 of the Crimes Act 1900, such as sexual assault, sexual intercourse with children, indecent assault and acts of indecency; offences against division 10A of part 3, sexual servitude; and offences against division 15A of part 3, child pornography offences. The incitement offence will carry the same maximum penalty as the offence incited. Schedule 1 [22] increases the maximum penalty for receiving money or any other material benefit that is derived from an act of prostitution to 14 years imprisonment, if the offence involves a child under the age of 14 years.

Schedule 1 [23] requires the age of the child to be set out in the charge for the offence if the higher maximum penalty is to apply. The bill increases the maximum penalty for possession of child pornography to 10 years imprisonment. As the offence will now carry the same maximum penalty as producing or disseminating child pornography, the two child pornography offences—one being the offence of possession of child pornography and the other being the offence of production or dissemination of child pornography—are merged into a single offence.

Schedule 1 [25] and [30] make amendments to clarify that the child pornography offence extends to material that appears to depict or describe a child—a person under the age of 16 years—in a pornographic manner. This includes where an image of a person is manipulated in a manner to make the person appear to be a child or a child appearing to be engaged in a sexual activity, in a sexual context or a victim of torture, cruelty or physical abuse.

Schedule 1 [26] defines "produce", for the purposes of the offences relating to production of child pornography, to include filming, photographing, printing or otherwise making child pornography, altering or manipulating an image for the purpose of making child pornography, or entering into an agreement or arrangement to do any of those things.

Schedule 1 [24] is a law revision amendment that creates a separate division for the child pornography offences. Currently, the child pornography offences are contained in the same division as child prostitution offences. The offences are placed in a separate division as the child prostitution offences relate to persons under the age of 18 years and the child pornography offences relate to persons under the age of 16 years.

Schedule 1 [31] creates new offences of voyeurism and filming a person's private parts, and transfers to the Crimes Act 1900, and extends, the existing offence of filming a person engaged in a private act. A person is engaged in a private act if the person is in a state of undress, using the toilet, showering or bathing, engaged in a sexual act of a kind not ordinarily done in public, or engaged in any other like activity, and the circumstances are such that a reasonable person would reasonably expect to be afforded privacy.

The amendments to the Crimes (Sentencing Procedure) Act 1999 set out in schedule 2.4 [1] and [2] provide that an offender's previous good character or lack of previous convictions is not to be regarded as a

mitigating factor in sentencing if the offender is found guilty of a child sexual offence and the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence. Schedule 2.4 [3] amends the Crimes (Sentencing Procedure) Act 1999 to provide that a court must not take into account as a mitigating factor in sentencing a sexual offender the fact that the person has or may become the subject of the various requirements, such as reporting requirements, under the Child Protection (Offenders Registration) Act 2000, the Child Protection (Offenders Prohibition Orders) Act 2004 or the Crimes (Serious Sex Offenders) Act 2006. Schedule 2.4 [4] amends the Crimes (Sentencing Procedure) Act 1999 so that the standard non-parole periods provided for by that Act do not apply to an offender under the age of 18 years. Schedule 2.2 is a consequential amendment to the Children (Criminal Proceedings) Act 1987.

It is important to note that the Government has failed to implement the following recommendations of Justice Wood. Recommendation 1 was for an increased statutory maximum penalty for indecency offences committed against children under subsection 61M, aggravated indecent assault; under subsection 61N, act of indecency; and under subsection 61O, aggravated act of indecency. The bill amends subsection 61M (3) to include children under the age of 16 years and inserts subsection 61O (2) to address this recommendation but makes no amendment to subsection 61N.

Recommendation 3 suggested that section 66C of the Crimes Act 1900 be amended in the following terms: Any person who has sexual intercourse, attempts to have sexual intercourse or incites a third person to have sexual intercourse with another person who is of or above the age of 10 years but under the age of 16 years is liable to imprisonment for 14 years. The current offence carries a maximum penalty of 10 years. Any person who has sexual intercourse, attempts to have sexual intercourse or incites a third person to have sexual intercourse with a person under the age of 16 years in circumstances of aggravation is liable to imprisonment for 25 years. Recommendation 4 was that a note should be provided or an amendment made to section 66E to make clear that it is a separate offence. Recommendation 5 suggested the inclusion of section 66EA in the table of standard non-parole period matters. Recommendation 12 suggested the introduction of a definition of "act of indecency".

The Department of Juvenile Justice submitted that juvenile offenders should not be subject to a standard non-parole period because of their developmental stage, and the council supported that recommendation. The Government has not fully addressed in this legislation any of the council's concerns about the operation of standard non-parole periods. The bill also does not address Justice Wood's recommendations in respect of the role of good character in sentencing and following amendments to section 21A of the Crimes Sentencing Procedures Act 1999. This bill addresses some of the serious gaps in the criminal justice framework for sexual offences. Amendments are made in line with the status quo in other jurisdictions and under Federal law. New offences such as voyeurism and grooming of a child are responsive to the current and emerging practices of sexual offending that are sadly evident in our society. However, the Government has not adequately explained why a number of Justice Wood's recommendations have not been adopted. As previously indicated, the Opposition does not oppose this bill.

Ms LEE RHIANNON [5.32 p.m.]: The Greens support the Government's introduction of tougher penalties for the prosecution of child abuse, including aggravated sexual offences against children and heavier penalties for child prostitution, child pornography, child grooming, causing sexual servitude and incitement to commit sexual offences. The Greens also support the introduction of new criminal offences related to aggravated sexual assault on children under 10 years of age, recognising that heavier penalties are called for regarding crimes of a sexual nature committed against very young children. We also support changes so that good character can no longer be taken into account as a mitigating factor in sentencing if the perpetrator has used their good character to gain the trust of children or their families and then committed a crime against a child.

The Greens support the creation of the new crimes of voyeurism and filming a person engaged in a private act or filming a person's private parts. The proliferation of filming devices and ways that electronic images can be distributed over the Internet has made these new laws necessary. We support the Government's efforts to create new penalties that deal with the offence of filming up a woman's skirt in a public place and appreciate that these amendments are worded to cover that offence. I note that defining what constitutes a person's private parts could differ widely in various sections of the community. I hope that the drafting of this legislation ensures that those differing religious and social attitudes are accounted for in the Act. I am interested to hear the Minister's comments on that issue.

The Greens note that the Attorney General has foreshadowed the removal of the artistic purpose defence for child pornography. The Government has held off on introducing any changes until further

consideration is given to, and advice received from, the Child Pornography Working Party. Artists, journalists and various other cultural producers have raised serious concerns about the need to strike a balance with any new laws restricting the representation of children in art. The Greens agree with their concerns. The censorship issues highlighted during the recent Bill Henson incident should be carefully examined when framing new child pornography laws to avoid unnecessarily restricting artistic freedom. The Government should seek a legal solution that protects children without limiting the arts community by promoting censorship. I urge the Government to engage in a rational public debate with the arts community and the community at large on this matter to maintain a balanced view and to avoid lurching to an extreme position. Protecting children against exploitation is paramount. A review of sentencing laws should not become an opportunity for moral panic to usher in heavy-handed, regressive laws that place unreasonable restrictions on the lawful and acceptable depiction of children in art.

Reverend the Hon. FRED NILE [5.36 p.m.]: The Christian Democratic Party is pleased to support the Crimes Amendment (Sexual Offences) Bill 2008. This bill will overhaul the penalties for child and adult sexual offences and implement the legislative recommendations made by the New South Wales Sentencing Council. The council has conducted a review of penalties imposed for sexual offences in New South Wales and this bill reflects its suggested amendments. The Christian Democratic Party is very pleased that the penalties have been increased. The penalties imposed for the possession of child pornography will be increased from five years to a maximum of 10 years imprisonment. We are very pleased about this emphasis on possession. For some time pornography laws have referred only to production or sale, not possession. This amendment will make the legislation much more effective. The bill also increases the penalty for obtaining a benefit from child prostitution from 10 years to 14 years imprisonment.

We all know about the huge expansion of prostitution in this State. I strongly oppose the prostitution that is permitted in hundreds of legal brothels. However, we also have a growing number of illegal brothels. As honourable members know, one was identified operating in the same building as the Premier's electorate office. His office is on the ground floor and a brothel was operating on the first floor, which highlights how brazen are the people who run prostitution in this State. The legalisation of prostitution in this State was a major error and hopefully the legislation will be repealed in due course. The existence of legal and illegal brothels means that children can be caught in a web of evil. It has been reported to me that children as young as 14 years of age are involved in some brothels; even younger children may be involved. Obviously some teenagers develop physically more quickly than others and it is difficult to determine their age. That is why their age as well as their appearance is important.

The legislation creates an offence of having sexual intercourse with a child under the age of 10 years, which attracts a maximum penalty of life imprisonment. I trust that we will now always agree that life imprisonment means just that, and not simply 12 years in prison. The bill also creates an offence of meeting a child or travelling with the intention of meeting a child following grooming where that involves the communication of indecent materials—for example, showing the child pornographic videos or making suggestions to a child to meet for sexual purposes. This provision is similar to the United Kingdom laws, with penalties ranging from 6 months to 10 years imprisonment. I congratulate the special unit of the New South Wales Police Force that deals with sexual exploitation of children on its success in the past week. The unit apprehended adult males who used the Internet and other forms of communication to solicit under-age children. After grooming children for some weeks, or even months, these predators arranged a meeting. The perpetrators were shocked when, instead of the children they had been grooming turning up, a police officer turned up to make an arrest. That is happening more and more frequently. Police officers monitor perpetrators' activities and then charge them with these offences.

The bill also clarifies that child pornography offences include the production of pseudo images that may be produced without using real children, or with manipulated photos or images of children. The bill includes a definition of producing child pornography. An extensive debate has been conducted about the Bill Henson photographs of naked children. Mr Henson produced a range of photographs, some of which are not controversial. However, he also focused his attention on a sub-teenage naked female. I believe that she was shown in a sexual or sensual pose and that that should be covered by the definition of child pornography.

I know that Bill Henson and his supporters, including the Greens, argue for an artistic freedom exemption. I believe that would create a loophole in the legislation, which in due course would be exploited, with arguments being made in court that the accused person produced such photographs for artistic reasons and not for child pornography. The law must crack down on Bill Henson and anyone else like him. There is absolutely no need for him to take nude photographs of children. He can, with the agreement of their parents,

take photographs of clothed, attractive children. To photograph children the way in which he did is provocative. Whether he intended to do so or not, he challenged child pornography laws. We do not want these laws in New South Wales undermined, weakened or watered down.

The bill increases penalties for offences against adults and children of causing sexual servitude in circumstances of aggravation from 19 to 20 years; increases the penalty for sexual assaults that are committed by breaking and entering a victim's house to beyond the current 14-year maximum; creates a new offence of voyeurism and aggravated voyeurism similar to the United Kingdom laws, with penalties ranging from six months to two years; and creates new aggravated offences of filming for an indecent purpose and installing a device to facilitate filming for an indecent purpose, with a maximum penalty of five years. With technological development comes the use of miniature cameras, and a number of instances have already occurred where someone has installed photographic equipment in boarding houses, with females occupying rooms not knowing that they are being filmed in various stages of undress or in their bathrooms. So I am pleased that this offence is included in the bill.

The bill also creates a new offence of inciting one or more persons to commit a sexual offence, with penalties commensurate with the offence that the person was incited to commit. I am aware that a Sexual Offences Working Party, headed by Supreme Court Justice Elizabeth Fullerton, and a Child Pornography Working Party, headed by District Court Judge Peter Berman, are conducting general reviews, including issues such as the artistic purposes defence to child pornography. I trust that the vocal artistic lobby in this State will not overly influence those working parties, and that they will regard the welfare and safety of children as their first concern, ahead of the interests of some photographer. The Christian Democratic Party supports the bill.

The Hon. MARIE FICARRA [5.42 p.m.]: I support the Crimes Amendment (Sexual Offences) Bill 2008. It is important that our society ensure the protection of the community, children and the vulnerable from sexual predators. We as legislators have to introduce law that not only deters predators from offending but also ensures that if they do offend they are put behind bars for a very long time to guarantee the protection of the community. Indeed, so many lives are destroyed due to sexual predators that I strongly believe that we as legislators owe it to the victims to give them such justice. The Minister, when introducing this bill to the House, advised:

> This bill arises out of the recommendations of the New South Wales Sentencing Council and amends the Crimes Act 1900 and the Crimes (Sentencing Procedure) Act 1999. The bill is an important part of the Government's ongoing legal reforms in the area of sexual assault and child pornography.

However, recommendations similar to those contained in the Sentencing Council's report are not new, and many have been calling for reform for many years now. It saddens me that, despite the startling revelations at the Wood royal commission by victims of sexual assault of inherent problems in the justice system, and the continuing vicious sexual assaults and systemic paedophile networks we read and hear about regularly, we today have major problems in overcoming the power of sexual predators in this State. Back in 1997 the commission reported:

> The laws relating to the protection of children from sexual abuse, particularly the criminal laws, have been the subject of considerable change over the years, and are not free of anomaly.

This was following a November 1996 discussion paper by the Model Criminal Code Officers Committee of the Standing Committee of Attorneys-General, which provided for increased penalties but not so as to increase the maximum penalty beyond 25 years, in various circumstances of aggravation. Why has it taken the Government so long to actually put legislation in place to provide just sentences to offenders?

At the ground level, more than 10 years ago the New South Wales Police Force wrote a report on sexual assault in New South Wales. The project was undertaken under the direction and supervision of the then Assistant Police Commissioner Christine Nixon. Of significance in that report were some of the findings including a low rate of reporting of sexual offences by adults; a high rate of attrition between reporting/charging and indictment; a low rate of conviction resulting from those prosecutions undertaken based on Sydney metropolitan higher courts data only; variable quality of initial police response and generally inadequate response to victims with special needs, for example, people with a disability, Aboriginal victims and victims whose first language is not English; and an apparent incapacity for early recognition of serial offending.

Is it any wonder that there has been a low rate of reporting of sexual offences in view of the low rate of convictions resulting from prosecutions, and the failure of this Labor Government over the past 10 years to introduce tougher sentencing laws to compel the judiciary to apply sentences that the community expects for

these heinous crimes? The report went on to state that the body of research around sex offenders provides evidence of recidivism as a general rule. It also highlights the "career paths" of sex offenders, commencing in adolescence. Certain types of offences, which come to police notice early in a criminal career, are predictive of future sex offending, for example, damage to property by setting fire. Potentially, the most dangerous of offenders are those who assault strangers.

Dr Richard Basham, an authority on criminal profiling and particularly serial sex offenders, stated "the natural apex of serial stranger sex offending is murder". Many people were telling the Government of such concerns more than 10 years ago, and yet this Government has done nothing substantive over the past 10 years to reduce the occurrence of serial sex offences and recidivism. It is clear that New South Wales has had major problems in properly dealing with this issue. Another concern was raised back in 1996, when the New South Wales Bureau of Crime Statistics and Research published a report on the criminal justice system response to victims of sexual assault. The report revealed that satisfaction with the Office of the Director of Public Prosecutions was less evident than it was with the police and health services. Years later, honourable members are still receiving similar complaints from constituents. This Government must provide proper resources to support victims of sexual assault.

I acknowledge that the bill makes some important changes to child pornography laws. Due to changing technologies the dissemination of child pornography has indeed become easier. I note an increase in the number of such offences being prosecuted in the local and district courts, particularly recently as a result of Operation Centurion, during which more than one million child exploitation images were seized by police and more than 70 people across Australia were arrested on charges of child pornography. I support the provisions of the bill that increase the penalties for possession of child pornography. I am glad that the Government has finally realised the importance of the penalty reflecting the seriousness of this crime.

I wholeheartedly reflect the wishes of the vast majority of our community in supporting the bill creating a circumstance of aggravation for the offence of the act of indecency with or towards a child or inciting a child to an act of indecency when the offender knows that the act is being filmed for the purposes of producing child pornography. This legislation is necessary to ensure that anyone who commits an indecent act against a child for the purposes of filming that act will face the same penalties as a person producing, disseminating or possessing child pornographic material.

I support also the provisions in the bill that increase the age from under 10 years to under 16 years for the maximum penalty for an aggravated indecent assault against a child; increase the maximum penalty for the aggravated offence of causing a person to enter or remain in sexual servitude; increase the maximum penalty to 14 years imprisonment for the offence of receiving money or material benefit from prostitution when the child is under the age of 14; create a specific offence of inciting a person to commit a sexual offence; clarify the table of standard non-parole periods in the Crimes Sentencing Procedures Act 1999; and include the offence of persistent sexual abuse of a child under section 66EA of the Crimes Act 1900 in the scheme under the Pre-Trial Diversion of Offenders Act 1985.

As stated earlier, we as legislators need to meet community expectations and ensure the protection of our community from sexual predators. It is apparent that in the past there have been anomalies in New South Wales sentencing laws and that the community expects tougher sentences from the judiciary in response to these crimes. Our community also expects proper resources for victims of the heinous crime of sexual assault. Again, I encourage the Labor Government to ensure that such resources are increased. The Coalition does not oppose the bill.

Reverend the Hon. Dr GORDON MOYES [5.51 p.m.]: As a member of the Christian Democratic Party I give a brief commentary on the Crimes Amendment (Sexual Offences) Bill 2008. This bill arises from proposals for reform relating to child pornography recommended in "Penalties Relating to Sexual Assault Offences in New South Wales", a report by the New South Wales Sentencing Council chaired by Supreme Court Justice James Wood. I congratulate the Attorney on introducing this bill. In its report, the Sentencing Council made a total of 39 recommendations with respect to sexual penalties and offences. The bill implements the majority of those recommendations. The remaining recommendations have been referred to two high-level working groups, one to examine issues in the latest child pornography offences and the other to consider a wider review of sexual offences in the Crimes Act 1900. I will not go through all the objectives of the bill because previous speakers have done so. However, I comment on the bill itself.

The amendments proposed in the bill ensure that New South Wales has the strongest possible legislative protection available to protect children from exploitation. The past decade has seen development and

exponential growth in the use of electronic, computer-based communication information sharing via the Internet, particularly across the Western world. There is now growing evidence that the Internet is the new medium through which some commonly recognised forms of child mistreatment, sexual and emotional abuse may be pursued.

Why has the Internet become a popular means of recruiting children for sexual purposes? It provides easy access to children and a reduced risk to offenders of being identified. It provides an opportunity for offenders to remain anonymous or to misrepresent their identity and intent, leading a child to believe he or she is talking with another child, a trusted friend or a caring parent figure. An offender may lurk in Internet chat rooms, gathering information until the opportunity arises to move the conversation with the child to a private chat room or to a mobile phone and then ultimately to arrange a real life meeting.

The bill also makes important changes to child pornography laws. Issues concerning pornography have been prominent in political and media debates in recent times, particularly this year as a result of the Henson photographs. The proposed removal of the defence of genuine artistic purpose is the most significant far-reaching reform to child pornography laws recommended in the Sentencing Council report. The recommendation comes in the wake of the controversy surrounding the exhibition of photographs by Bill Henson featuring a naked 13-year-old girl. The upshot of the controversy caused by the Henson photographs was that the exhibition opened with entry by invitation only.

The age-old question of art versus pornography was raised in this context, and the use of children for artistic and other purposes in advertising, modelling and the like. Chris Goddard, the Director of Child Abuse Research Australia from Monash University, and 30 other signatories said in an open letter that their main concern was the exploitation of children and their inability to give consent. For child psychologist Steve Biddle, one of the signatories of the open letter, it was not about pornography, it was not even about paedophilia but about the rights of children. Politically, Henson's work attracted considerable comment and criticism. Former New South Wales Premier Morris Iemma said:

> As a father of four, I find it offensive and disgusting.

While Leader of the Opposition, Barry O'Farrell, said:

> Sexualisation of children under the guise of art is totally unacceptable.

The Prime Minister, Kevin Rudd, described the Henson exhibition as "absolutely revolting". On the art side of the argument, the censorship of the arts was the central issue at stake in the Henson controversy. Actress Cate Blanchett and the New South Wales Museum of Contemporary Art Director, Elizabeth McGregor, were among the co-signatories to an open letter urging the Prime Minister to rethink his public comments. Under section 91H (1) "child pornography" is defined as

> ***Child pornography*** means material that depicts or describes [or appears to depict or describe], in a manner that would in all the circumstances cause offence to reasonable persons, a person under (or apparently under) the age of 16 years:
>
> (a) engaged in sexual activity, or
>
> (b) in a sexual context, or
>
> (c) as the victim of torture, cruelty or physical abuse (whether or not in a sexual context).

The offences of the production, dissemination and possession of child pornography are set out in section 91H of the Crimes Act 1900. In 2004 these offences were made indictable offences, able to be dealt with in the District Court by a jury. Maximum penalties were increased from 2 years to 50 years for the possession of child pornography and from 5 years to 10 years for the production or dissemination of child pornography. This penalty reflects the seriousness of the crime. The offence, production or dissemination of child pornography is provided for under section 91H (2), while the possession offence is provided for under section 91H (3). The offence simply states, "A person who produces, disseminates or possesses child pornography is guilty of an offence."

Although it is difficult to gauge the extent of child pornography on the Internet, I am advised that an estimated 14 million pornographic sites are available, some of which carry an estimated one million pornographic images of children. The rate of discovery of activity by law enforcement agencies is one indication of the extent of child pornography today. The rate of conviction for online offences against children in the United States is about 1,000 people each year and rising, with known activity being substantially higher than

actual arrest. Recent publicity is being given to the trial of seven men in the United Kingdom who are members of the Wonderland Club, an Internet organisation of paedophiles operating in Europe, Australia and North America. Reports of this group demonstrate the nature of the online paedophile: membership of the Wonderland Club was granted in exchange for providing 10,000 new child pornographic pictures to the whole group. During investigation into the Wonderland Club law enforcement officers seized 750,000 pornographic images and 1,800 pornographic videos of children, with 1,236 different children being identified in the images and the videos seized.

In our jurisdiction Operation Auxin was the Australian police operation conducted in September 2004. It followed the receipt the previous March of a referral from Operation Falcon, the FBI investigation into online child pornography. A total of 191 arrests were made in Australia, 28 of which involved people living in New South Wales. Police seized one million child exploitation images during Operation Centurion and more than 70 people across Australia,—23 from New South Wales— were arrested on charges of child pornography.

Moreover, media attention is being drawn to high-profile cases including child pornography, such as that of the former New South Wales Deputy Crown Prosecutor Patrick Power, who was convicted in May 2007 of downloading more than five hours of explicit Internet material, for which he served six months of a 15-month sentence in Long Bay jail. His term of imprisonment was spent in complete isolation in a special protection unit, away from the inmates Power had helped place behind bars in his work as a prosecutor. A further high-profile case is that of former New South Wales Minister for Aboriginal Affairs Milton Orkopoulos, who in May 2008 was sentenced to a minimum of nine years imprisonment for child sex and drug offences. He had pleaded guilty to two charges of possession of child pornography.

Although advances in digital technology have enabled the production of "morphed" images—that is, the manipulation of images of adults in sexually explicit poses into sexually explicit images of children—digital technology has also made it easier and safer for amateur collectors to use children for the production of pornography and to electronically transmit their material. Images can also be manipulated to make innocent photographs of children appear in a pornographic context, or to make a person in a sexual context appear to be a child. Some may argue that such images do not include a real victim, and therefore should not be captured by this legislation. However, the vital point is to ensure that all pornographic images, real or pseudo, are covered by the legislation. One of the reasons offenders do this is to make it more difficult to identify the children and the perpetrators, and therefore more difficult to apprehend the perpetrators and rescue the victims. This allows the abuse to continue.

[*The Deputy-President (The Hon. Amanda Fazio) left the chair at 6.02 p.m. The House resumed at 8.00 p.m.*]

Reverend the Hon. Dr GORDON MOYES: The bill also makes important changes to the Crimes (Sentencing Procedure) Act 1999 to stop sentencing courts taking into account good reputation, good character, and lack of a criminal history as mitigating circumstances for child sex offenders when they have used these principles to gain people's trust to commit their crimes.

Other amendments to the bill include increasing the penalty for causing sexual servitude in circumstances of aggravation from 19 to 20 years imprisonment; increasing the penalty for sexual assaults that are committed by breaking and entering into the victim's house above the current 14-year maximum; creating new offences of voyeurism and aggravated voyeurism; creating new aggravated offences of filming for an indecent purpose and installing a device to facilitate filming for an indecent purpose, with a maximum penalty of five years; and creating a new offence of inciting one or more persons to commit a sexual offence, with penalties commensurate to the offence the person was incited to commit.

The Crimes Amendment (Sexual Offences) Bill ensures that New South Wales has the strongest assault laws and that children in this State and our community are adequately protected from sexual predators. The laws not only serve to protect children from abuse but also act as a denunciation and a general deterrent. I strongly support the bill, I thank the Attorney General for introducing it, and I congratulate the Government on implementing legislation to protect children from abuse and to place the interests of sexual assault victims at the centre of the criminal justice system. I commend the bill to the House.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Minister for Industrial Relations) [8.03 p.m.], in reply: I thank honourable members for their contributions to this debate. In deference to some of the comments that have been made, I take this opportunity to respond. The Hon. John Ajaka raised a number of issues about why certain aspects of the report of the Sentencing Council have been

omitted from the legislation. The honourable member specifically referred to recommendation 1 of the report—the proposal by the Sentencing Council for an increase in the statutory maximum penalty for indecency committed against children under sections 61M, 61N and 61O of the Crimes Act 1900. In its report the Sentencing Council recommended that penalties for indecency offences committed against children be increased to 10 years. Currently the penalty for an act of indecency against a child between the ages of 10 and 16 is two years imprisonment. The penalty for an act of indecency committed on a person over 16 years is 18 months imprisonment.

In addressing the Sentencing Council's recommendations it was clear that the council's intent was not to increase the penalty for this offence from 2 to 10 years. To clarify the council's intent, I sought advice from the Hon. James Wood as to the reasoning behind the recommendation. Mr Wood wrote back to me on 24 November 2008, and I seek leave to incorporate in *Hansard* the letter I received from him.

Leave granted.

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24 November 2008

The Hon J Hatzistergos MLC
Attorney General
Level 33, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000

Dear Attorney General

I refer to the Report of the NSW Sentencing Council into Penalties Relating to Sexual 'Assault Offences in New South Wales (Volume 1) and make specific reference to the recommendation to increase the statutory maximum' penalty for indecency offences committed against children (ss 61M, 61N, 61O *Crimes Act 1900*) to 10 years.

As was noted in the Report, offences of indecency committed against children under the NSW *Crimes Act 1900* currently carry a lower statutory maximum penalty than the 10 year maximum penalty for child pornography offences under the Commonwealth *Criminal Code*.

I refer to the findings of Council in the Report which stated:

" ... it would appear to be anomalous that an offence which requires an act of assault committed on in the presence of a child or an act of indecency with or towards a child should attract lower maximum penalties than those applying to offences involving the filming or videotaping of these activities or the publishing, possessing or dealing with the images produced thereby, which would constitute sexual offences falling within the ambit of the Commonwealth child pornography offences. "

The thrust of the recommendation was the concern that persons who committed indecent assaults and acts of indecency for the purposes of producing child pornography faced a lower statutory maximum penalty than the person who filmed, possessed or disseminated the images of that assault occurring. It was not the intent behind the Council's recommendation that all acts of indecency attract a maximum penalty of 10 years.

Yours sincerely

The Hon Justice J Wood
Chair
New South Wales Sentencing Council

Justice Wood confirmed that it was the Sentencing Council's intent not to increase penalties for all acts of indecency to 10 years imprisonment but, rather, to address the concern that persons who committed indecent assaults and acts of indecency for the purposes of producing child pornography faced a lower statutory maximum penalty than the person who filmed, possessed or disseminated the images of that act occurring. The Government has therefore implemented the council's recommendation by creating an additional circumstance by which the offence of aggravated act of indecency is committed under section 61O is of the Crimes Act. Under the legislation, when a person commits an act of indecency with or towards a child under the age of 16 years for the purpose of the production of child pornography they will face a maximum penalty of 10 years jail—the highest penalty for any of the forms of aggravated acts of indecency.

The Hon. John Ajaka also raised recommendation 3 of the Sentencing Council's report. Specifically, he asked why the Government did not amend section 66C to provide for the following provisions: first, any person who has sexual intercourse, attempts to have sexual intercourse or incites a third person to have sexual intercourse with another person who is of or above the age of 10 years but under the age of 16 years is liable to

imprisonment for 14 years; and second, any person who has sexual intercourse, attempts to have sexual intercourse or incites a third person to have sexual intercourse with a person under the age of 16 years in circumstances of aggravation is liable to imprisonment for a period of 25 years.

The Government has referred the recommendations of the Sentencing Council in relation to the offence under section 66C—sexual intercourse with a child between the ages of 10 and 16 years—to the Sexual Assault Working Party. The Government is aware that further issues have been raised by the Director of Public Prosecutions in relation to this section that fall outside the scope of a sentencing review. Thus the Government has decided to refer this section in its totality to the Sexual Assault Working Party, which is conducting a general review of the sexual offences in the Crimes Act 1900. The working party is to be chaired by Justice Elizabeth Fullerton and will consist of members of the Office of the Director of Public Prosecutions, NSW Police, the Legal Aid Office, the Attorney General's Department and the Public Defender's Office.

The Hon. John Ajaka asked why the Government has not addressed the issue of ensuring that the standard non-parole period does not apply to juvenile offenders as recommended by the Sentencing Council. The bill makes it clear that the standard non-parole period does not apply to persons who were under the age of 18 when they committed the offence, as per the recommendation of the Sentencing Council. The bill makes amendments to both the Children (Criminal Proceedings) Act 1987 and the Crimes (Sentencing Procedure) Act 1999 to make it abundantly clear that the table of standard non-parole periods does not apply to the sentencing of an offender in respect of an offence if the offender was under the age of 18 years at the time the offence was committed.

The Hon. John Ajaka specifically raised section 21 of the Crimes (Sentencing Procedure) Act 1999. Interestingly, in his contribution the honourable member said that the amendments to the Crimes (Sentencing Procedure) Act 1999, as set out in schedule 2.4 [1] and [2], provide that an offender's previous good character, or lack of previous convictions, is not to be regarded as a mitigating factor in sentencing if the offender is found guilty of a child sexual offence and the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence. Later the Hon. John Ajaka said:

> The bill does not address Justice Wood's recommendation with respect to the role of good character in sentencing and following amendments to section 21A of the Crimes (Sentencing Procedure) Act of 1999.

The legislation does deal with the issue in the terms articulated by the Hon. John Ajaka earlier in his speech. It specifies that in determining the appropriate sentence for a child sexual offence the good character, or lack of previous convictions of an offender, is not to be taken into account as a mitigating factor if the court is satisfied that the factor concerned was of assistance to the offender in the commission of the offence. The proposed section goes on to say that this has effect despite any act or rule of law to the contrary.

The Sentencing Council's recommendation to provide a note to or amend section 66E of the Crimes Act was raised. Section 66E of the Crimes Act relates to alternative verdicts. I think the Opposition meant the recommendation in relation to section 66EA of the Crimes Act—persistent sexual abuse of a child, which offence has also been referred to the Sexual Assault Working Party. Prior to the Sentencing Council handing down its report, the police and the Director of Public Prosecutions raised the possibility that this section of the Crimes Act was not being used as often as it could be, and the way in which it is currently drafted creates some practical problems.

It was considered preferable that section 66EA be reviewed in totality as part of a general review of the sexual offences of the Crimes Act 1900. Furthermore, the Sexual Assault Working Party comprised senior representatives of various stakeholder agencies and this will allow the practical and legislative issues to be fully addressed. The offence was included in the table of standard non-parole periods because this section of the Act will be further considered by the working party and any decisions in relation to standard non-parole periods will be considered in light of the working party's recommendations.

Reference was made to the non-inclusion in the Act of a definition of "act of indecency". It is important to note that the Sentencing Council recommended that such a definition be considered as part of a substantial review of the Crimes Act 1900. That is exactly what the Government has done: a high-level working party to examine this issue as part of the wholesale review of sexual offences in the Crimes Act has been established. I am to receive a report on that review in approximately 12 months and the working party will have the benefit of the expert opinions of all the relevant stakeholders. Ms Lee Rhiannon stated that she hoped the definition of "private parts" would take into account cultural issues as to what may or may not constitute "private parts". In fact the definition of "private parts" is contained in proposed section 91I, and I refer the member to that definition.

The Hon. Marie Ficarra welcomed the bill but made a number of inaccurate and quite unfair criticisms of the approach of the Government to sexual assault. She indicated that somehow the Government was culpable in respect to the low level of reporting. These issues, as she quite rightly indicated, were raised some time ago but she omitted to make reference to the response of the Government in relation to them. In the time that I have been Attorney General a large number of legislative instruments have been passed to deal with the recommendations made by the Sexual Assault Taskforce, which was set up by former Attorney General Debus.

The Sexual Assault Taskforce, as members will recall, produced a comprehensive report and all the legislative initiatives raised in that report were addressed by this Parliament in its response. The legislation has now been passed: the Criminal Procedure Amendment (Sexual and other Offences) Act 2006 was passed in the time of the former Attorney General Debus; while in my time the Criminal Procedure Amendment (Vulnerable Persons) Act 2007; the Crimes Amendment (Consent – Sexual Assault Offences) Act 2007, which regrettably did not have unanimous support in that the Opposition took issue with a number of aspects of the proposed changes to the law of consent; the Crimes Amendment (Cognitive Impairment – Sexual Offences) Bill 2008; and the Evidence Amendment Act 2007, were passed.

The Government has made a wide variety of responses: remote witness facilities have been expanded to permanent facilities in a large number of courts; the taking of remote evidence in other courts through mobile units; the introduction of legislation to preclude offenders appearing for themselves being able to directly cross-examine victims; and the introduction of legislation to expand the use of audio-visual links. In that regard, the Crime (Serious Sex Offenders) Act was enacted by former Attorney General Debus and the Minister for Justice at the time, the Hon. Tony Kelly. The Government followed those responses by instituting the review by the Sentencing Council. Within a few months of the release of that report the first raft of legislation has been introduced and the two working parties that will further examine the proposal have been set up. A further report of the Sentencing Council is due in the not too distant future on preventative detention.

The Opposition can make whatever political statements it wants about the need for sexual assault reform but the Government cannot be accused of sitting on its hands in this area. The Government has been extremely active in ensuring that it responds not only to community needs but also to the human needs of victims. I believe that is reflected in the fact that more complainants are prepared to now come forward as they feel the system will support them.

Before I conclude my comments I want to pay special tribute to the Hon. James Wood. Those members of the House who know James Wood well would know that he is an extraordinary human being. This year not only has he chaired the Law Reform Commission and the Sentencing Council but also he has produced the report that we have acted upon today. He has also undertaken the Special Commission of Inquiry into the Department of Community Services. The Hon. James Wood has an extraordinary commitment to public service. He has spoken to me about this report and the report that he proposes to conclude in coming months. All members of the House and the community should express special gratitude for the exemplary public service he has rendered in the past and he will continue to render on behalf of the citizens of this State.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. John Hatzistergos agreed to:

That this bill be now read a third time.

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

TABLING OF PAPERS

The Hon. John Hatzistergos tabled the following paper:

Annual Report (Departments) Act 1985—Report of the Judicial Commission of New South Wales for the year ended 30 June 2008.

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

TRANSPORT ADMINISTRATION AMENDMENT (METRO RAIL) BILL 2008

Bill received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. Henry Tsang, on behalf of the Hon. John Della Bosca.

Motion by the Hon. Henry Tsang agreed to:

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

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

CONTAMINATED LAND MANAGEMENT AMENDMENT BILL 2008

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [8.21 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.

Background

Contaminated land is the legacy of past industrial practices and can be difficult and costly to remediate. It can pose serious environmental and human health problems. Investigation and clean up work can be complex, time consuming and costly.

The Labor Government led the way in addressing the legacy of contaminated land by introducing the Contaminated Land Management Act in 1997.

This regulatory framework ensures that contaminated sites are managed so they do not pose serious risks to either human health or the environment. The Rees Government is continuing this commitment.

Consultation

The bill is the result of the statutory five year review of the Act and was drafted after an extensive consultation process.

A key finding was that the Act has significantly improved the management of contaminated sites in New South Wales. The review did however reveal a number of concerns about the operation of the Act. This bill has been drafted to address those concerns.

Summary of amendments

Overall the bill will improve and streamline the operation of the Act by:

- clarifying how contaminated land will be regulated and removing unnecessary regulation;
- strengthening investigation and duty to notify requirements;
- clarifying reporting and disclosure of information arrangements;
- expanding cost-recovery provisions;
- providing for voluntary offset arrangements; and
- strengthening the false and misleading information offence.

The bill also proposes to replace the term "significant risk of harm" with the term "significantly contaminated land". The factors which the EPA must consider to decide whether a site is contaminated, and whether such contamination is significant enough to warrant regulation, remain largely unchanged. The EPA will still be required to take into account any increase in the risk of harm that arises from the current and approved uses of the land.

Interaction with the planning regime

Where an increase in the risk from contamination could occur because of a proposed change in the approved use of the land, this will continue to be managed through the land use planning process under the Environmental Planning and Assessment Act 1979 so that the land is appropriately cleaned up and does not become significantly contaminated land because of the change in the approved use.

Streamlining the Act

The bill will streamline the Act to enable more efficient regulation of contaminated sites. It seeks to amalgamate what are currently two distinct stages—the investigation and remediation of contaminated sites which are essentially duplicate regulatory processes—into management orders that cover both.

The intention is to allow investigation and remediation to be conducted concurrently under management orders and/or approved voluntary management proposals.

New powers

The bill introduces a new power to enable the Environment Protection Authority to require certain persons to carry out preliminary contaminated site investigation to facilitate quicker decision-making. The preliminary investigation is intended to be only a modest "snap-shot" study which will enable the EPA to decide if the land is significantly contaminated and warrants regulation. This will assist in informing the community and addressing the problem as soon as possible.

It will also enable the EPA to require an investigation of the nature and extent of contamination, and whether it is significant enough to warrant regulation, where it is reasonably suspected.

Those responsible for the contamination would be asked to undertake the preliminary investigation. However, if this is not possible or would result in unacceptable delays, the landowner could be directed to do so.

More objective criteria for assessing contaminated land

The bill provides clearer and more objective criteria to trigger the duty to report contamination to the EPA, and strengthens the duty to notify.

The bill seeks to address uncertainty in relation to the "duty to notify" and the term "significant risk of harm" by removing the "significant risk of harm" test as the basis for notifying significantly contaminated sites.

It is proposed to replace this test with an assessment based on the existing Guidelines on Significant Risk of Harm from Contaminated Land and the Duty to Report published by the EPA. I must emphasise that the duty to notify is not intended to capture the notification of general diffuse urban contamination that is not attributed to a specific industrial or commercial activity.

I stress that the EPA will still need to consider largely the same factors that it has always used in determining whether a site posed a "significant risk of harm".

Duty to notify

The bill clarifies that a person will have a duty to notify if that person ought reasonably to have been aware of the contamination. The bill takes into account:

- the person's abilities, experience, qualifications and training;
- whether the person could reasonably have sought advice that would have made the person aware of the contamination; and
- the circumstances of the contamination.

Polluter pays principles

The bill bolsters the widely recognised "polluter pays" principle already incorporated in New South Wales legislation and clarifies that an owner or occupier of land can be responsible for contamination if it occurs because of "inaction".

It is proposed to expand the cost recovery provisions in the Act to allow the EPA to recover costs and expenses that it incurs in association with the approval and implementation of voluntary management proposals. This is consistent with the EPA's existing ability to recover administrative fees in relation to the administration of environment protection licences under the Protection of the Environment Operations Act 1997.

Offset arrangements

The bill proposes allowing the Minister to enter into "off-set" arrangements with the party responsible for contamination.

It is a reality that remediation is expensive and it can take a very long time for the contaminants to be removed.

While remediation is progressing, the community can lose its access to land or water resources. This amendment will provide a way of mitigating the community impacts of contamination.

To ensure the fairness of such programs, the offset arrangements can only be applied to a person responsible for the contamination and cannot include direct financial compensation. I stress that offset arrangements are not an alternative to addressing significant contamination.

Improved transparency

The bill promotes transparency and better information dissemination. The proposed amendments make it clear that the EPA and local councils can disclose site audit Statements and reports without breaching the prohibition on disclosure of information under the Act.

These amendments will provide greater protection to site auditors and councils who rely on reports in making recommendations about land suitability or providing consents for development.

It will be an offence for a person to knowingly or recklessly provide false or misleading information to the EPA or another person, including local councils and accredited site auditors, in relation to a compliance requirement under the Act. This includes information that is required to be provided in relation to the assessment or remediation of site contamination.

Improving the clarity of the Act

Other minor amendments are also proposed to improve the clarity of the Act and to remove inconsistencies and simplify processes.

This includes clarifying that more than one person can be responsible for the contamination of land. The sites regulated under the Act are often complex and have entrenched contamination from multiple uses, and it is not uncommon that more than one party has contributed to the contamination. For this reason, the bill clarifies that a management order can be issued to one or more persons who are responsible for the contamination.

The bill also clarifies that the EPA can issue clean-up and prevention notices under the Protection of the Environment Operations Act 1997 in relation to significantly contaminated land, regardless of whether it is the appropriate regulatory authority under that Act. This will ensure the EPA can respond to pollution incidents in a pragmatic and timely manner.

In summary, the proposed amendments to the Act will reduce red tape and facilitate speedier resolution of contaminated land issues, while bolstering the "polluter pays" principle and improving the operation of the Contaminated Land Management Act.

Industry will be able to make commercial decisions with greater speed and certainty, and the reforms will provide the community and the environment with an even more robust, effective and protective regulatory regime.

I commend the bill to the House.

The Hon. RICK COLLESS [8.21 p.m.]: On behalf of the Coalition I put our perspective on the Contaminated Land Management Amendment Bill 2008, which I indicate at the outset the Coalition will not oppose. The purpose of the bill is to permit the Environment Protection Authority [EPA] to order a preliminary investigation of a site that is identified as potentially contaminated. It also allows the Environment Protection Authority to regulate significantly contaminated land, instead of first determining whether any contamination presents a significant risk of harm, as required under the existing legislation. The bill clarifies that more than one person may be responsible for contamination by cascading liability and enables the Environment Protection Authority to recover costs incurred by the Environment Protection Authority for the investigation and remediation process. The bill allows the Minister to enter into offset agreements with parties responsible for contamination to provide assistance to affected communities. It also clarifies that an owner or occupier of a property is responsible for contamination if the person knew of it or reasonably ought to have known and failed to take reasonable steps to prevent that contamination.

The proposed amendments follow a statutory five-year review of the Act. Although it has coincided with public controversy surrounding a contaminated site at Hunters Hill, which was the subject of an inquiry by this House, neither the lawyer acting for the most affected landholders nor the stakeholders believe that these amendments will, in practice, compromise the case of the residents—although, theoretically, it has considerable capacity to do so. On my first reading of the bill it was clear to me that it was an attempt to remove the liability of the State to correct mistakes made by organisations of the State in the case of Hunters Hill, particularly NSW Health. The report that was tabled in the House in relation to the Hunters Hill inquiry made that very clear.

Essentially the bill seeks to clarify existing powers, arrangements and processes to be undertaken by the Environment Protection Authority. It has been broadly supported by stakeholders, including the New South Wales Farmers Association, which agrees with the general intent of the bill. However, the bill creates additional areas of uncertainty, and they have been addressed by stakeholders in their responses. The bill seeks to ensure that the Government's financial exposure is minimised by an order for a preliminary investigation. In relation to cattle dips, the bill explicitly deems the Director General of the Department of Primary Industries responsible for the remediation of cattle dips, not the owner of the land on which the cattle dip exists. From my perspective, that is an important provision.

There are now three clear stages in the management of contaminated sites: firstly, an investigation of the site that is alleged to be contaminated; secondly, the declaration of a site as contaminated; and, thirdly, the remediation of the site. The test for contamination is now "significantly contaminated" rather than "significant risk of harm". This greatly broadens the Environment Protection Authority's scope for ordering an investigation. Some bodies such as the Total Environment Centre consider that it will reduce the number of declared sites because significant contamination will be more difficult to prove than significant risk of harm. Other stakeholders do not oppose this new test, although it has obvious implications. Investigation orders may be

made by the Environment Protection Authority to any person set out in proposed section 10 (3), but no cascade of liability applies to that section. This means that landowners or notional landowners may be required to finance and carry out an investigation, instead of the polluter. I note that in the case of management orders this cascade applies in accordance with normal environmental law practice.

The Environment Protection Authority may order a preliminary investigation into a site to be conducted by a qualified consultant. There is no requirement that the consultant be an expert although, according to the Department of the Environment and Climate Change, this is based on the premise that the information required at the preliminary stage is to qualify information that the Environment Protection Authority may have already collected from the site, such as polluted water samples. The Department of the Environment and Climate Change also cites cost considerations—it is cheaper to employ a qualified consultant than a qualified expert. The amendments will require those responsible to pay for the site remediation. The bill allows the Environment Protection Authority to choose one or more appropriate persons as the subject of a management order, including an owner of the land whether or not that person is responsible for the contamination of the land. That provision is contained in schedule 1, division 2, section 13 (2) (b). It is consistent with the current legislation, but far more explicit.

The Minister may enter into offset arrangements with the person responsible for contamination under which the person provides assistance to affected communities, but only if the Minister reasonably considers that it would not be practicable to remediate the contamination within a reasonable time. The bill contains strengthened provisions to deal with those who provide misleading or deceptive information and makes explicit the responsibilities of company directors where a corporation has contravened any provision of the Contaminated Land Management Act. The bill does not provide a mechanism for the exemption of cost recovery from landowners if the contamination occurs as a result of natural flooding. That is of particular concern for poultry growers. Cattle producers are already exempt under division 2, section 11 (4) (e). Theoretically, common law provisions enable poultry producers to sue the providers of contaminated bedding materials. However, the New South Wales Farmers Association is concerned about the inequality of market power between landowner and poultry production companies. That problem already exists.

The bill allows for action to be taken in a timely manner without the red tape associated with scientifically proving that a site has been contaminated. It also will allow the recovery of costs incurred by the department from people found guilty of contamination. It provides for certainty of process, and offset arrangements recognise that where remediation is impossible responsible persons still have a duty to compensate those innocently affected. However, there are some disadvantages with the bill.

Changing the definition of "contamination" from "significant risk of harm" to "significantly contaminated" will inevitably necessitate a further series of cases to establish the relevant case law. There may be cases where significant harm could be caused without significant contamination. It may be better to have the option of providing one or the other. Landholders can be made responsible for the cost of the preliminary study and the cost of remediation even when they did not play a role in the contamination of the site. This is the case under existing law, but the appropriate cascade of responsibility should apply to both investigation and remediation orders. We are also concerned that it is potentially costly to remediate a site without scientific studies being undertaken to establish that a site is contaminated.

The offset arrangements are at the discretion of the Minister and although they are to be in writing there is no requirement in the bill that the Minister's deliberations and the offset arrangements be made public. Confidence in the preliminary study may be undermined if a qualified consultant not a qualified expert undertakes that preliminary study. It is not specified in the bill who is responsible for appointing a qualified consultant to do the preliminary investigation although the landowner is responsible for the cost of the investigation, and there is no independent review of that preliminary investigation.

There is no general register of the sites that have been declared contaminated and the establishment of the voluntary management proposals would reduce the certainty and incentives to report contaminated land and voluntarily clean it up. The changes enable the Environment Protection Authority to withdraw its approval of a voluntary management practice at any time and to later serve a management order on that party if it believes the matter was not adequately addressed.

As I said, the Coalition will not oppose this bill but we will seek some amendments, particularly in relation to section 17 regarding voluntary management proposals to reinstate that certainty. We also will attempt to amend the bill to make it explicit that a landowner may seek the cost of recovery for that preliminary

investigation from the contaminator. While that is currently possible under common law, we believe that it should also be possible under this bill. Also, we will attempt to amend part 3 of division 13 to make it explicit that the Environment Protection Authority must first issue a management order on the polluter and then in descending order the owner and finally the notional owner. This is the case in the current Act and also in the proposed section dealing with management orders. With those few comments, I advise the House that the Coalition will not oppose this bill but will attempt to amend it in Committee.

Mr IAN COHEN [8.31 p.m.]: On behalf of the Greens I speak in support of the Contaminated Lands Management Amendment Bill 2008. Like many other natural resources on the earth, land is a finite resource. Contamination of land and ecosystems reduces the stock of this finite resource in a development-hungry world and it limits the development options of future generations in securing sustainable and prosperous lives. Contamination destroys fundamental ecosystem services delivered by biological and natural infrastructure and is a failure of intergenerational equity under which a legacy of environmental degradation is handed down to future generations. Fertile soils and delivery of clean water—the foundations of human sustenance—are fundamental ecosystem services that are threatened by industrial pollution and industrial vandalism.

Remediation of contaminated land reclaims and renews lost ecosystem services. It rebuilds natural ecosystem infrastructures that support human, animal and plant life. In this sense, the contaminated lands management regime should be conceptualised as a mechanism that primarily remediates land, not one that punishes polluters. This conceptualisation can be emotionally difficult when listening to the victims and communities subjected to the health effects of industrial pollution at the hands of morally bankrupt companies. In New South Wales we are familiar with the pollution at the Pasminco Cockle Creek smelter site, the Union Carbide Homebush Bay site and the Orica Port Kembla plant. The spectre of corporate environmental catastrophe stirs up strong feelings. In condemning irresponsible companies and producers, the impact on the innocent landholder often falls to the wayside.

What I find difficult about the contaminated land regime is that it is the last backstop. The very fact that the powers in this bill are invoked is generally an indication of upstream regulatory failure. There are instances of unforeseen industrial accidents and historical pollution, but those aside, the reason the Contaminated Lands Management Act comes into the regulatory equation is because of poor environmental reporting, inadequate adherence to environmental management systems, insufficient environmental and remediation bonds, insufficient environmental risk insurance and lacklustre enforcement. The problems and challenges faced by the Environment Protection Authority in administering the Contaminated Lands Management Act are a result of successive regulatory failures, not necessarily of their own making. In this sense, mitigating the adverse impacts upon innocent landholders should really be addressed by tightening regulation upstream to avert the potential for contamination.

Legislation such as the Protection of the Environment Operations Act arm relevant regulatory agencies with the necessary powers to enforce penalties against a company or persons for destroying the environmental and social amenity of uncontaminated lands. In contrast, the Contaminated Lands Management Act and this bill focus on making the responsible polluter accountable for removing the contamination and pollution. Management of contaminated lands can be managed under the Contaminated Lands Management Act or under planning approval processes applying the remediation of land sections of State Environmental Planning Policy [SEPP] 55. The Environment Protection Authority does not have the resources to intervene in every instance of contamination. Where toxic contaminants are contained, capped and stored to a standard that eliminates trans-boundary migration via various vectors and there is not a significant risk of harm, contamination can be addressed in the land-use change planning processes.

Members of General Purpose Standing Committee No. 5 will be conversant with these processes after the inquiry into the former uranium smelter at Hunters Hill. In that inquiry, the committee considered the different regulatory layers that applied to different parts of Department of Health properties and the marine foreshore. I will come back to this example later in my speech. The truly vexing challenges and policy fault lines are apparent when we are forced to consider issues of access to information about contaminated land, targeted regulatory management under resource constraints of the Environment Protection Authority and divergent standards of remediation. Before I deal with the substantive elements of the bill, I will comment on these broader issues relevant to remediation of contaminated land.

Just as citizens have rights to information under freedom of information Acts or rights to the information governments hold about them, an important component of environmental democracy also requires that the people have the same access as government to information on the environment, natural resources and

biosystems that surround them. It is a fundamental right enabling individuals to make informed decisions about how they interact and engage with particular substances and systems within a particular environment. Incomplete or partial provision of information may have the effect that a person either underestimates the risk or impact to the detriment of his or her wellbeing or overestimates the risk and compounds a loss of opportunity. In both instances there can be considerable economic, social and environmental costs. On the topic of divergent standards of remediation, the Hon. Justice Brian J. Preston, Chief Judge of the New South Wales Land and Environment Court, wrote in a recent article entitled "Ecologically Sustainable Development in the Context of Contaminated Land":

> Where land has already been contaminated, the principle of sustainable use entails that the land should be remediated so as to improve both the range of productive uses of the land as well as its capacity to maintain ecological processes. Remediation to a standard of multi-functionality, that is removal of all contamination to the extent that land can be used for any purpose in the future, in theory maximises the potential of the land for sustainable use.
>
> However, multi-functionality may be "neither technically feasible nor economically viable in the short term". This is particularly the case with "brownfield" sites and orphan sites. Requiring remediation to the standard of multi-functionality may, therefore, be counter-productive. The remediation may not be undertaken and the land may be left in its sterilised or underproductive state.

The issue of multi-functionality is difficult. Part of me is inclined to disagree with the honourable justice and demand remediation to a standard of multi-functionality so that the options of future generations are not narrowed, and, more simply, one remediation process might be more cost-effective long term than two or three remediation processes that adapt to changing land uses and occupations. The third challenge of contaminated land is how can the Environment Protection Authority address the maximum number of sites with limited resources? Leveraging voluntary management proposals—whereby costly regulatory oversight is reduced—is important to widening the scope of management. However, voluntary-management-based remediation is not without its problems.

These three broad issues all intersect with the principle of ecologically sustainable development as contained in proposed section 9 of the bill. Section 9 (3) states that ecologically sustainable development requires the effective integration of economic and environmental decision-making processes. I anticipate that there would be a suggestion from some quarters that the tenor of certain amendments makes it harder to anticipate Environment Protection Authority regulatory action with the implication of higher due diligence costs. I would reject that the amendments in this bill expand the scope of contaminated land regulation so far as to impute excessive due diligence costs on individuals who would not otherwise take measures to comply with the Act. A more fluid and unpredictable Environment Protection Authority administration of the contaminated lands management regime will drive a higher level of due diligence in those sectors that have traditionally exploited the gaps in the existing legislation to avoid undertaking proper investigation and risk management.

I now turn to the substantive elements of the bill. Under the current Act, investigation and remediation are two distinct processes with specific administrative procedures, including gazettal of the orders. The proposed amendments are suggested to enable investigation and remediation stages to be amalgamated into one stage, referred to as a "management order". Proposed section 16 sets out the range of actions that a person subject to a management order may be required to undertake including investigation, containment, storage or disposal of contaminating materials, site monitoring and evaluation and remediation activities. New part 3 division 1 creates preliminary investigation orders and has the implication that the amendments ensure some distinction between investigation and remediation is retained.

It would appear that the amendments implement a more informal fact-finding preliminary investigation to assist the Environment Protection Authority in decision making as opposed to the procedurally formal process of investigation orders under the existing Act. The 2003 Contaminated Lands Management Act Review Paper found that stakeholders wanted the Act to retain the delineation between remediation and investigation stages because a site tagged only for investigation reduces unnecessary alarm or adverse effects on property prices. One of the key differences between the new preliminary investigation order and the existing declaration of land as investigation area is the evidence required by the Environment Protection Authority prior to making the order or declaration and the requirements for publication and public notification. Currently, the Department of Environment and Climate Change must have reasonable grounds to believe the land is contaminated before issuing a declaration establishing an investigation area under section 15 (1) of the Act.

An order under proposed section 10 does not have this requirement, but it is more likely than not that non-compliance with licences under the Protection of the Environment Operations Act 1997 and offences under other Department of Environment and Climate Change administered regulations provide a basis for a reasonable suspicion of contamination. Further, the amendments proposed to section 60 dealing with the duty to notify

should provide stronger empirical evidence so as to form the basis of a reasonable suspicion. In the 2003 review, the then named Department of Environment and Conservation acknowledged stakeholders expressed the view that:

> declarations should not be issued at the initial investigative stage because they can unduly alarm the community

In response the Department of Environment and Conservation stated:

> Nevertheless, it was considered imperative to ensure early community involvement.

I strongly agree with the Department of Environment and Conservation's position that community involvement should be secured at an early stage. Although proposed section 10 does not have an explicit reference to publication in the same way as proposed section 11 (5) does, proposed section 58 (1) (b) will require the Environment Protection Authority to publish a record of preliminary investigation and make the material available to the public. However, preliminary investigation orders will be taken off the register once they cease to have effect. This element of the bill is problematic. A recent article by Craig Deegan and Sophia Ji appearing in the *Environment Planning and Law Journal* in June 2008 titled "Finding information about contaminated sites in Australia: There has to be a better way!" highlights considerable gaps in community access to information about contaminated sites. In explaining their methodology the authors stated:

> The authors searched (on 30 September 2007) the full record by clicking "show me the entire record", resulting in 733 notices relating to 283 sites being shown. Compared to the estimated 30,000 potentially contaminated sites existing in New South Wales, this number is rather incomplete.
>
> A large unknown number of contaminated sites that are not considered to pose "significant risk of harm" are managed by individual local councils and relevant information is not coordinated by a central agency to provide a systematic database to the public. This issue was addressed in the New South Wales State of Environment Report (2003) and has been suggested as a future area for improvement."

I will move an amendment to address this problem and enhance public access to contaminated land information. Putting the public on notice engages the community and enhances monitoring and compliance. Community stakeholders can play an integral surveillance and oversight role and in many instances it is the tireless work of the community in referring various breaches of environmental regulations to the Department of Environment and Climate Change that bolsters the department's enforcement capacity. The 2003 Contaminated Lands Management Act Review questioned whether the term "significant risk of harm" should be replaced. Participants in the review are said to have commented that the term is too emotive. The bill, taking its cue from submissions made to the review, seeks to replace "significant risk of harm" with "significantly contaminated land".

The criteria used to evaluate whether land is a significant risk of harm under existing section 9 and significantly contaminated under proposed section 12 remain almost identical. The replacement of the concept of "significant risk of harm" with the less emotive "significantly contaminated land" in one sense is legislative window-dressing or rebranding to water down the stigmatisation attaching to land with a legacy of harmful environmental degradation and contamination. Concerns have been raised with me that judicial interpretation of the two terms will vary with the new terminology greatly widening the scope for Environment Protection Authority intervention. It has been suggested that notwithstanding the identical criteria, judicial interpretation would find that "significantly contaminated land", isolated from criteria defining it, is a more subjective test, focusing on the Environment Protection Authority mindset, than objective questions of harm posed to human health.

I return to the Hunters Hill matter to demonstrate the point. During the inquiry it was apparent that 7 and 9 Nelson Parade did not fall under the Contaminated Lands Management Act because they were found not to be a significant risk of harm. The Director General of the Department of Environment and Climate Change, Lisa Corbyn, stated to the inquiry:

> From our perspective, sites 7 and 9 in particular were material consolidated, they were capped, they were vegetated and they were fenced. There was not public exposure, which benefited from our regulatory perspective. That means we have not determined it to be a significant risk of harm. As long as it stays in that manner, it would not trigger our involvement.

However, some would state that the change in terminology to "significantly contaminated land" means the question is reframed to whether the land is contaminated, not whether it is a threat to human health, with the implication of widening the Environment Protection Authority regulatory intervention.

My response would be that the Environment Protection Authority still has to have reference to the same guidelines and still has to tick off the same boxes under proposed section 12 (1) (a) to (t). Judicial consideration of or Environment Protection Authority administration of land to be subject to the Contaminated Lands Management Act will be based upon the same criteria, albeit with a different overarching name. Mr Peter Briggs and Claire Smith of Clayton Utz, in a recent article in the *Australian Property Law Bulletin*, have pointed out one potential key difference in the tests. Although the criteria in proposed section 12 and current section 9 are virtually identical, the authors highlighted that there is not a defined threshold, such as statutory guidelines, as to what constitutes contamination significant enough to warrant regulation. Perhaps the Minister could outline whether the current guidelines·will be amended to reflect the legislation change.

Where the amendment does have impact is upon public perceptions of environmental degradation and hazardous contamination. The terminology "significant risk of harm" indicates to the public that particular land has a degree of toxicity that will cause harm to human health. The terminology "significantly contaminated land" evokes the connotation of polluted and environmentally degraded land. Public perceptions of the differing terminology construct a demarcation between what will be harmful to their physical health and what will be harmful to environmental health. The regulatory truth is that both terminologies mean potential exposure to toxic substances harmful to human, plant and animal life. I hope that the intention behind this amendment is to remove the sometimes unnecessary stigma and hysteria that attaches to remediated land being reclaimed and reconstituted to a high level of multi-functionality for new human and environmental services.

The bill enhances and strengthens the duty to report site contamination to the Environment Protection Authority by implementing more objective criteria as the trigger for Environment Protection Authority notification of site contamination. A properly calibrated duty will ensure that the authority receives adequate information about site contamination to allow effective administration of the Act. The limitations of the current Act in respect of a duty of notification were outlined in an article by Cameron Herbert in the *Environmental and Planning Law Journal* titled "The Duty to Notify Site Contamination in New South Wales: an Analysis of s 60 of the Contaminated Land Management Act 1997". Herbert highlighted that there was no real mechanism in section 60 for reporting contamination of neighbouring land. The current Act states in section 60 (1):

> A person who becomes aware that the person's activities in, on or under land have contaminated the land in such a way as to present a significant risk of harm must, as soon as practicable after becoming so aware, notify the EPA that the land has been so contaminated.

The language "the land" potentially restricts the duty to notification to contamination primarily caused by activities on that particular land. The proposed amendments require a person or owner to notify the Environment Protection Authority of contamination if the contaminant enters or will foreseeably enter vectors such as the atmosphere, groundwater, surface water or neighbouring land. I am aware of a specific dissatisfaction with the amendments made to section 60 on the grounds that landowner risk and liability is expanded. The dissatisfaction with the amendments revolves around subsection (4)—what constitutes as soon as practicable after becoming aware of the contamination—and subsection (9).

In relation to the considerations that should be taken into account when evaluating awareness of contamination, the arguments for and against the uses of these considerations are equal. For example, in relation to section 60 (9) (b) the concern is that a person may argue cost impediments as an excuse for not reasonably seeking advice about the presence of contamination. However, I note the provision also could be used as a sword rather than a shield against an owner or occupier. Regarding responsibility for contamination and the issuing of a management order, one of the liability avoidance litigation strategies utilised by polluters is to pass the buck on responsibility. In identifying an appropriate person to be subject to an investigation or remediation order, section 12 (2) (a) states that an appropriate person is:

> "a person who had principal responsibility for such contamination of the land with the substance (whether or not there were other persons who had responsibility for such contamination of the land with the substance) … "

The Government has indicated that new section 13, which will replace section 12, clarifies that orders can be issued to a multitude of parties not trivially responsible for contamination of land. The amendment magnifies the polluter-pays principle by removing the liability escape route for persons proportionately involved in contamination of land. The buck-passing between groups of polluters who argue that they are not the principal polluter will be avoided and those marginally involved may now share the burden of the clean-up. New subsection 13 (3) directs the Environment Protection Authority to specify the polluter as an appropriate person ahead of owners and notional owners who can be described as the beneficiaries of contaminated land remediation.

I have been advised that the majority of litigation in the New South Wales Land and Environment Court pertaining to orders under the Contaminated Lands Management Act have related to situations in which an entity served with an order claims he or she was not the responsible party. Hopefully, the amendment will reduce lengthy and costly litigation, and force those responsible for the contamination to get on with the job of remediation. In addition to these changes, new section 6 (1) (c) clarifies that an owner or occupier of land is responsible for contamination because of a failure to prevent contamination through a failure to act or omission. Together, these amendments close the loopholes that have stalled remediation processes.

Regarding offset arrangements, the terminology "offset" has historically had negative connotations for some within the environment movement. In the context of this bill, the arrangements could more accurately be described as complementary arrangements whereby legislation creates a space to encourage corporate social responsibility activities. In situations where the process of remediating contamination is ongoing and there is scope for stopgap mitigation measures undertaken by owners or polluters to diminish negative community impacts, the Minister can enter into offset arrangements. The Minister can enter into the arrangements only if the Minister considers it is in the public interest to do so.

It is noted that offset arrangements are to be negotiated and executed at ministerial level as opposed to departmental level, but concern still remains that offsets may specifically alter the regulatory management of voluntary management proposals and agreements particularly in cases where an approved party to a voluntary management proposal has failed to comply with timeframe benchmarks and the next step will be for the Environment Protection Authority to impose a management order. I have been advised that offset arrangements will not affect the standard of remediation or alter obligations and benchmarks under the Act. However, the language of new section 111A (3) states that an "offset arrangement may specify the circumstances and manner in which functions under this Act are exercised if assistance is duly provided". The Greens are concerned about the use of this provision, but see some benefit in the community receiving complementary remediation beyond the boundaries of the remediation site. As such we will move an amendment that refines the use of offset arrangements.

Regarding the Environment Protection Authority and local government site audit disclosure, and section 149 planning certificates, new section 48 of the bill makes it clear that local councils and the Environment Protection Authority can disclose site audit statements and reports in certain circumstances. Further, new section 59—which specifies the information relating to "significantly contaminated land" to be recorded on a section 149 planning certificate—enables a local authority to give advice on contamination matters that no longer apply to the land. New section 46 ensures prevention and clean-up notices under part 4.2 or 4.3 of the Protection of the Environment Operations Act can be issued concurrently in relation to significantly contaminated land subject to Environment Protection Authority orders or a voluntary management proposal. This clarification is important to maintain flexible regulatory management of difficult or non-compliant polluters and owners. Strict upstream regulatory intervention is essential to prevent us getting to the point where powers under the Contaminated Lands Management Act are triggered.

In summary, the Greens believe this bill is a considerable improvement on the current Act. In conjunction with the Protection of the Environment Operations (Underground Petroleum Storage Systems) Regulation 2008, which aims to reduce the number of petrol stations falling under the Contaminated Lands Management regime—approximately 30 per cent of all regulated Contaminated Lands Management sites are underground petroleum storage tanks and petrol station sites—the bill enhances the regulation of contaminated land in New South Wales. A robust contaminated lands regime will ensure liability for contaminated land does not fall upon all New South Wales ratepayers and is borne by the polluter. The Contaminated Land Management Program under the Environmental Trust, which includes the Innocent Owners and Council Gasworks programs, is budgeted to spend $6 million over the next four years. By making sure the polluter pays, we can reduce the need for these programs and our subsidisation of polluting industries.

I thank the Minister's staff and Department of Environment and Climate Change representatives for discussing the finer points of this bill with my office. I am looking forward to the publication of the public notification guidelines, which I hope will adopt new and progressive measures to educate and inform the people of New South Wales about the contamination and remediation of land. I commend the bill to the House.

Reverend the Hon. FRED NILE [8.57 p.m.]: The Christian Democratic Party supports the Contaminated Land Management Amendment Bill 2008. The bill will make a number of amendments to the Contaminated Land Management Act 1997 and minor amendments to other related Acts. In the main, the bill introduces a new power to enable the Environment Protection Authority to require a person to carry out a

preliminary investigation of site contamination to assist the authority in its decision making. The bill will also enable the two distinct investigation and remedial stages to be amalgamated into one stage that can cover investigation or remediation, or both. The bill also replaces the concept of "significant risk of harm" with a less emotive concept of "significantly contaminated land". The bill provides a set of clearer, more objective criteria as the triggers for the duty to report site contamination to the Environment Protection Authority and strengthening of the duty to notify.

It is obvious, even as I speak, that a number of sites around Sydney Harbour have suffered massive contamination and that companies are having great trouble decontaminating them. Decontamination may prove to be impossible in the long term. However, it is important that the Environment Protection Authority have the powers contained in the bill clarifying that persons can be responsible for contamination because of their inaction, that is, failure to prevent contamination, enabling the authority to apply that law to contaminating companies. The bill removes the word "principally" from "principally responsible for contamination" to clarify that a management order or orders can be issued to any one or more persons who are not trivially responsible for the contamination of land. The bill also provides a new power to enable the Minister to enter into offset agreements under which the person responsible for the contamination can mitigate the impact of the contamination where clean-up is not feasible within a reasonable time.

The bill is important because it bolsters the widely recognised polluter-pays principle already incorporated into New South Wales legislation and clarifies that an owner-occupier of land can be responsible for contamination if it occurs because of inaction. It is proposed that the cost-recovery provisions in the Act will be expanded to allow the Environment Protection Authority to recover the costs and expenses it incurs in association with the approval and implementation of voluntary management proposals. That is consistent with its other powers. We support the bill.

The Hon. HENRY TSANG (Parliamentary Secretary) [9.01 p.m.], in reply: The bill will significantly improve the operation of the Contaminated Land Management Act 1997 and streamline contaminated site regulation to make it simpler, faster and more cost effective. The amendments will amalgamate the present separate investigation and remediation phases into a separate process. The Environment Protection Authority will continue to focus on high-priority contaminated sites that at present are a serious health or environmental risk. The factors that the Environment Protection Authority will consider when deciding whether to regulate remain substantially unchanged.

As provided under the Act and in the guidelines, the Environment Protection Authority must consider a number of factors in determining whether contamination warrants regulation. It must select the appropriate person to be made subject to a management order and follow a transparent process in assessing and then declaring a site. The amendment that enables the Environment Protection Authority to order a preliminary site investigation will enable it to obtain a snapshot view of any contamination. This will assist in determining as soon as possible whether land is significantly contaminated and warrants regulation.

Proposed new requirements with respect to the duty to notify are not expected to increase the number of sites reported to the Environment Protection Authority. The requirements are based on the existing "Guidelines on Significant Risk of Harm from Contaminated Land and the Duty to Report", published by the Environment Protection Authority. The amendment to remove the "no knowledge" defence for company directors and managers brings the Act into line with the Protection of the Environment Operations Act 1997. The same amendment was made to that Act in 2006 to prevent managers deliberately turning a blind eye to environmental offences being committed by their corporations.

The bill enables the Minister in the public interest to enter into offset programs under which the polluter can mitigate the impact of contamination on the community where remediation will be a long-term process. These arrangements can be made only on a voluntary basis with the polluter. They are not an alternative to remediation and cannot involve direct financial compensation. The bill is aimed at ensuring better and more efficient implementation of the Contaminated Land Management Act, thereby better protecting the community from the impacts of contaminated sites. The Labor Government established itself as a leader in this policy area when it introduced the Contaminated Land Management Act in 1997. A key finding of the statutory review of the Act was that it had significantly improved the management of contaminated sites in New South Wales.

With respect to Mr Cohen's comments on changing the term "significant risk of harm" to "significantly contaminated land", I confirm that the primary intent of the change in terminology is to address concerns

expressed in the consultation process by people who felt that "significant risk of harm" was too emotive and unnecessarily created ongoing stigma for the land in question, even after remediation. Mums and dads who are inadvertently affected by the bad industrial practices of the past share this sentiment.

The new term "significantly contaminated land" does not substantially change the factors that the Environment Protection Authority is required to consider in assessing whether land is contaminated in such a way as to warrant regulation. The test for declaring an investigation area has always contained a subjective element and that has not been changed. It is important that the Environment Protection Authority have sufficient discretionary power to ensure the protection of human health and the environment. This bill seeks to improve on that achievement and continue this Government's commitment to protecting human health and the environment from the risks of contamination. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 5 agreed to.

The Hon. RICK COLLESS [9.07 p.m.]: I move Opposition amendment No. 1:

No. 1 Page 10, schedule 1 [8], proposed section 10. Insert after line 24:

(4) In determining the person or persons on whom a preliminary investigation order is to be served, the EPA is, as far as practicable, to specify:

(a) a person referred to in subsection (3) (a) over a person referred to in subsection (3) (b), (c), (d) or (e), and

(b) a person referred to in subsection (3) (b) over a person referred to in subsection (3) (c), (d) or (e), and

(c) a person referred to in subsection (3) (c) over a person referred to in subsection (3) (d) or (e), and

(d) a person referred to in subsection (3) (d) over a person referred to in subsection (3) (e).

This addition provides the same cascade of responsibility for preliminary investigation orders as it does for responsibility for management orders. Without this amendment the department may choose any of the listed stakeholders to take responsibility for the investigation, which could be an expensive exercise. The most likely stakeholder to be selected for responsibility is the easiest stakeholder to identify, that is, the landowner even if all agree the landowner is not responsible in any way for the contamination. By inserting the same cascade that applies to the management order section, we will ensure the bill is internally consistent and fair at all stages. I note also that the creation of an investigation order is an innovation of the bill, so it provides that same cascade of responsibility.

The Hon. HENRY TSANG (Parliamentary Secretary) [9.10 p.m.]: The Opposition amendment to insert a hierarchy of persons to whom the Environment Protection Authority can issue a preliminary investigation order is not supported as this could create significant delay in progressing the management of contamination that is impacting on human health and the environment. Preliminary investigation orders are intended only to enable the Environment Protection Authority to obtain a snapshot view of contamination to assist it in determining whether the contamination is significant enough to warrant regulation. Because of its modest, snapshot nature, a preliminary investigation will not involve significant costs.

If the Environment Protection Authority determines that the contamination is significant enough to warrant regulation, the Environment Protection Authority would proceed with issuing a management order to require further investigation and/or clean-up actions. The management orders would first be issued to the person responsible for the contamination, if practicable, in accordance with the hierarchy of appropriate persons. It should be noted that these orders are intended to be used where there is insufficient information to determine whether the contamination warrants regulation. Amending the bill by inserting a rigid hierarchy for the issuing

of preliminary investigation orders would delay actions because it would require the Environment Protection Authority to determine in every case the degree of contribution by various parties before the nature of the contamination was known.

Mr IAN COHEN [9.11 p.m.]: The Greens understand the concern and motive behind Opposition amendment No. 1. I note nothing appears in section 10 division 1 that creates a hierarchy of liability for undertaking a preliminary investigation order. I note that section 6 does not change or impact upon the operation of section 10. I wish the Opposition amendment adopted language and form more in line with proposed section 13 (2) and (3), rather than the way it is presented on the Opposition's amendment sheet. I would have liked to have had access to the Opposition's amendments before today.

The Hon. Michael Gallacher: As we would yours.

Mr IAN COHEN: I think the Leader of the Opposition will find that our amendments were circulated. At this point the Greens cannot support Opposition amendment No. 1.

Question—That Opposition amendment No. 1 be agreed to—put and resolved in the negative.

Opposition amendment No. 1 negatived.

The Hon. RICK COLLESS [9.12 p.m.]: I move Opposition amendment No. 2:

No. 2 Page 18, schedule 1 [8], proposed section 17 (6) (b) (ii), lines 24 and 25. Omit all words on those lines.

Section 17 (6) now precludes the Environment Protection Authority from creating uncertainty regarding voluntary management proposals that would discourage good faith stakeholders from negotiating or signing them, and may also discourage disclosure of contamination. Section 17 (6) (b) currently allows the Environment Protection Authority to impose an order on a party to a voluntary management proposal some time afterwards on a variety of grounds. Orders are more onerous than proposals and clearly are intended to be used more as an enforcement mechanism than an advisory-type mechanism. Grounds include those in subparagraph (ii)—to provide that that party had in good faith negotiated and then met the conditions of the original proposal to which all other parties, including the Environment Protection Authority, agreed.

New section 17 (6) (b) (ii) envisages that, for a variety of reasons, the proposal might not adequately address some aspect of the remediation and that this might only become known some time later. While that is understandable, this oversight should not entitle the Environment Protection Authority to unilaterally impose a voluntary proposal order on a party who has acted in good faith. Parties that provide misleading information or who do not carry out the terms of the proposal would, and should, be ordered to do so. The Opposition does not support those parts of section 17 (6) (b), but the inclusion of new section 17 (6) (b) (ii) means that those who have acted in good faith must now suffer having an order imposed upon them. This will discourage the development and adoption of voluntary management proposals and it is clearly unfair. It imposes no discipline on the Environment Protection Authority to consider all the possibilities at the outset, and corrections for oversight may be at the expense of innocent parties. I seek the support of the House for this amendment.

Mr IAN COHEN [9.15 p.m.]: The Greens do not support Opposition amendment No. 2. The statements by the shadow environment Minister in the other place somewhat confuse the potential applicability of new section l7 (6) (b). Generally speaking, the power of the Environment Protection Authority to issue a management order when a voluntary management proposal is not complied with in good faith is an important power. Remediation proponents receive a range of benefits from staying within the voluntary management proposal process as opposed to the management order process. The Environment Protection Authority must have powers to adequately deal with proponents that abuse the voluntary management proposal process. In the context of the Opposition's amendment its concern was enunciated by the shadow environment Minister, who said:

> The Opposition is particularly concerned about this provision. We believe that the EPA, having agreed to a voluntary management order, should not be able to withdraw approval and replace it with a management order.

The shadow Minister further stated:

> The Opposition believes this provision may discourage landowners and businesses from reporting contaminated land and voluntarily agreeing to clean it up.

The Greens position is that there should be instances where the community's right to be free of pollution and contamination is paramount, and that where approved parties refuse to clean up the full extent of contamination a management order is necessary. I would put it to the Opposition this way: If, during the remediation process, further contamination is uncovered and is not covered by the voluntary management proposal, it is in the community interest that that contamination is regulated and managed. The Environment Protection Authority under section 17 (3), which allows a voluntary management proposal to be subject to conditions, could impose conditions that require the approved party to renegotiate or address new and previously unidentified contamination.

A voluntary management proposal is a contract and the Environment Protection Authority will fashion and construct the proposal with the agreement of the remediation proponents. In cases where additional contamination is discovered and the approved party refuses to address it under the voluntary management proposal, a management order is an appropriate response. We do not want approved parties shirking their community responsibilities to clean up contamination simply on the basis that they have already negotiated a voluntary management proposal and they have complied with that proposal. In such a situation there is a clear change in the facts of the matter that give rise to new obligations. For these reasons the Greens oppose Opposition amendment No. 2.

The Hon. HENRY TSANG (Parliamentary Secretary) [9.18 p.m.]: The Government does not support removing the Environment Protection Authority's ability to issue a management order relating to a matter that is not adequately addressed by a voluntary management proposal. Mr Ian Cohen has adequately dealt with this in his contribution. The Government does not support the amendment.

Question—That Opposition amendment No. 2 be agreed to—-put and resolved in the negative.

Opposition amendment No. 2 negatived.

The Hon. RICK COLLESS [9.20 p.m.]: I move Opposition amendment No. 3:

No. 3 Page 23, schedule 1 [9], proposed section 36. Insert after line 37:

(2) A person:

(a) who carries out the requirements of a preliminary investigation order in relation to specified land, and

(b) who is not responsible for any significant contamination of that land,

may recover the person's costs in carrying out those requirements as a portion from each person who is responsible for significant contamination to that land.

The purpose of this amendment is to enable a person who carries out the requirements of a preliminary investigation order [PIO], and who is not responsible for the contamination, to recover the cost proportionally from those who are responsible. If the first Opposition amendment relating to the cascading responsibilities for investigation had been agreed to then this amendment would have been superfluous. However, it was not agreed to and this is another means for giving an innocent party some greater certainty in their ability to recover their costs.

The Hon. HENRY TSANG (Parliamentary Secretary) [9.21 p.m.]: The proposed Opposition amendment to enable cost recovery for primary investigation orders where the site is later declared to be significantly contaminated is not opposed by the Government because the proposed amendment is consistent with the "polluter pays" principle.

Mr IAN COHEN [9.22 p.m.]: The Greens support Opposition amendment no. 3. I note that the Minister for Climate Change and the Environment has stated that the preliminary investigation order process is more akin to a scoping process and should not require the same cost outlay as a full investigation. I also acknowledge that a purchaser of land may acquire a block of land with full knowledge of contamination and pay a reduced price on that land due to contamination and as such should perhaps carry the cost burden of a preliminary investigation order. However, as I have pointed out, the considerable deficiencies in information about contaminated land accessible by the public and the instances where a landowner has full awareness of contamination is limited. In keeping with the "polluter pays" principle, the Greens agree with the Opposition that a landowner should be able to recover costs for undertaking a preliminary investigation order from a person who is responsible for significant contamination of land.

Reverend the Hon. FRED NILE [9.22 p.m.]: The Christian Democratic Party supports Opposition amendment No. 3 as it fulfils the user-pays principle.

Question—That Opposition amendment No. 3 be agreed to—put and resolved in the affirmative.

Opposition amendment No. 3 agreed to.

Mr IAN COHEN [9.22 p.m.], by leave: I move Greens amendments Nos 1 and 2 in globo:

No. 1 Page 29, schedule 1 [14], proposed section 58 (1). Insert after line 31:

(b) a copy of any preliminary investigation order,

No. 2 Page 29, schedule 1 [14], proposed section 58 (1), line 32. Insert "other" after "any".

Greens amendments Nos 1 and 2 go some way to addressing one of the fundamental difficulties with the Act. There has been a concern that contaminated lands that do not pose "a significant risk of harm" and have not satisfied this threshold element, but are nevertheless contaminated, tend to be forgotten over time. Once land is found not to satisfy the threshold requirement, the paper trail on the contamination tends to end. This difficulty is especially problematic when land is not declared "a significant risk of harm" because the current land use means human interaction with the site is minimal or restricted. The end result is that 20, 30, or 40 years on future generations, who have a better understanding of thresholds and contamination impacts, sifting through the evidence will not pick up the paper trail on contaminated land not breaching the legislative threshold.

In 1996 when the Environmental Planning and Assessment Amendment (Contaminated Land) Bill came before the Legislative Council, I moved an amendment that would have created council based contaminated land registers. At that point in time both the Government and the Opposition opposed the creation of council based contaminated land registers. With the same motives and intentions, I move the current amendment to ensure the community and all relevant stakeholders have access to information about land-use and contamination.

A clear legislative requirement to maintain into perpetuity preliminary investigation orders will help us address the difficulty in maintaining information on land which does not exceed the "significantly contaminated land" threshold, yet is contaminated to a varying degree. Without this amendment preliminary investigation orders would be removed from the Environmental Protection Authority register once the order had been complied with, as the order would cease to have effect within the meaning of section 58 (1) (b). Once the order has been complied with the preliminary investigation order would be taken off the register, losing important historical information about contamination. The maintenance on the Environmental Protection Authority register of preliminary investigation orders could have prejudicial impacts; the ability of the Environmental Protection Authority to annotate preliminary investigation orders to explain fully the outcome of the investigation will ameliorate any potential prejudicial impacts.

I understand the Government supports these amendments. It is really an example of history in process because at one point I put the amendment up in the mid-1990s and it was not accepted but it is now recognised as a worthy amendment.

The Hon. Michael Gallacher: You are ahead of your time, Ian.

Mr IAN COHEN: Always have been, but thank you. I commend Greens amendments Nos 1 and 2 to the House.

The Hon. HENRY TSANG (Parliamentary Secretary) [9.25 p.m.]: The Government does not oppose Greens amendments Nos 1 and 2.

The Hon. RICK COLLESS [9.25 p.m.]: Given the concerns that will be expressed in the Chamber when the Hunters Hill inquiry report is discussed, this very issue was one of the things that concerned me about Hunters Hill: there was no paper trail about any of the investigations or remediation works that occurred. It was impossible to find out where that material had gone and no indication of the prior condition of the land, other than reports from some governmental department records. It is important that copies of preliminary litigation orders are maintained. The Opposition supports Greens amendments Nos 1 and 2.

Question—That Greens amendments Nos 1 and 2 be agreed to—put and resolved in the affirmative.

Greens amendments Nos 1 and 2 agreed to.

Mr IAN COHEN [9.26 p.m.]: I move Greens amendment No. 3:

No. 3 Page 40, schedule 1 [52], proposed section 111A. Insert after line 13:

(2) Despite subsection (1), the Minister is not to enter into offset arrangements with a person who is or has been an approved party to a voluntary management proposal in respect of land that has been the subject of that proposal if:

(a) the person has not complied with the approved voluntary management proposal or a condition to which the proposal is subject, or

(b) the voluntary management proposal was approved on the basis of false or misleading information provided by the person.

The purpose of this amendment is to seek to place a sensible caveat on the broad power of the Minister to enter into an offset agreement. The amendment stops the Minister from entering into an offset arrangement with a person who is, or has been, an approved party to a voluntary management proposal [VMP] if the person has not complied with the voluntary management proposal or breached a condition of that proposal. The objective of the amendment is to ensure that people who have negotiated a voluntary management proposal in good faith and breach a condition, such as progress action and timeframes, cannot then negotiate an offset agreement with the Minister. The Greens believe that a person who breaches a voluntary management proposal should be moved straight to a management order, and not have recourse to avoiding a management order by entering an offset agreement.

The amendment is aimed at maintaining incentives for polluter or owner cooperation to negotiate voluntary management proposals. Voluntary management proposals make up approximately 90 per cent of contaminated land management in New South Wales and the benefits and strengths of these instruments must be maintained by incidentally ensuring the threat of a more heavy-handed and transparent management order process, which looms large for those who do not comply voluntarily. I commend Green amendment no. 3 to the House.

The Hon. HENRY TSANG (Parliamentary Secretary) [9.27 p.m.]: The Government does not oppose Greens amendment No. 3.

The Hon. RICK COLLESS [9.27 p.m.]: The Opposition does not oppose Greens amendment No. 3 for similar reasons to those previously stated.

Question—That Greens amendment No. 3 be agreed to—put and resolved in the affirmative.

Greens amendment No. 3 agreed to.

Schedule 1 as amended agreed to.

Schedule 2 agreed to.

Title agreed to.

Bill reported from Committee with amendments.

Adoption of Report

Motion by the Hon. Henry Tsang agreed to:

That the report be now adopted.

Report adopted.

Third Reading

Motion by the Hon. Henry Tsang agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly with a message requesting its concurrence in the amendments.

LIQUOR AMENDMENT (SPECIAL LICENCE CONDITIONS) BILL 2008

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

Motion by the Hon. John Hatzistergos agreed to:

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

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Minister for Industrial Relations) [9.31 p.m.]: I move:

That this bill be now read a second time.

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

Leave not granted.

I refer members to the agreement in principle speech that was made in the Legislative Assembly by the Minister for Gaming and Racing.

The Hon. DON HARWIN [9.32 p.m.]: It is an extraordinary performance by the Government on this bill. Today is the first time the Opposition has seen this bill. The bill was rammed through the other place. Contrary to all the conventions and traditions of this House, as soon as it is received in this House the Minister seeks to bring on the debate, rather than adjourn it to a late hour. The Opposition has had no more than literally 1½ minutes notice that debate on the bill was being brought on. When the Opposition asked for consideration to allow time for the Opposition spokesman on the bill to come to the Chamber, the Minister did not extend any courtesy whatsoever. Now we are expected in a House of review to respond to this bill. It is an absolute disgrace. I challenge the Minister to hold up the second reading speech to show that he actually has one. He has a second reading speech now, but there was none earlier. I will not toy with the House any longer and I will conclude my remarks. The Hon. Trevor Khan, who is now present in the Chamber, will provide more detailed comments on the provisions of the bill. The Government's behaviour speaks volumes about the state it has reached.

The Hon. TREVOR KHAN [9.34 p.m.]: I was delayed in coming to the Chamber because I was watching the division on this bill in the other place. The ink on this bill is hardly dry. This is essentially an amendment to a bill that passed through the House only last week. When the bill went through the other House last week the Opposition spokesman, Mr Souris, made copious remarks about the unusual way in which the bill was presented. As he said, so much of the bill was presented in that place but substantial portions of the essential law were to be introduced by way of regulation. It was plain then that the Government was embarking upon a particular course of action, as it so often does—the bare bones of legislation are passed through the House with the substance of the law essentially to be dealt with by way of regulation. Why? Because the Government had not worked out at the time what it is going to do.

The Hon. Michael Gallacher: Think of the mini-budget.

The Hon. TREVOR KHAN: We can think of the mini-budget. We can think of the Liquor Act itself, where so much was to be done by way of regulation. So much of it was to be done after the event because the Government was in such a level of disarray. That was again the case with the bill last week. The bill was quickly

hobbled together to give effect to a series of media releases in response to articles that had appeared in the *Daily Telegraph*. It was not thoughtful, considered and judicious legislation. It was legislation on the run to appear to be somewhat in control of events. But what was demonstrated last week was far from a Government that was in control of events. It showed a Government that was out of control, a shambling wreck of a Government.

The Hon. Michael Gallacher: Drunk with power.

The Hon. TREVOR KHAN: Drunk with power may indeed be a fair description of events. And, like many drunks, not actually in control of its faculties. Not capable of coherent and rational thought, but rather staggering from event to event. Last week this side of the House gave a clear indication of our concern about the issue of alcohol-related violence and to see the Government behave constructively and rationally. But all the resources that were available to the Government—intellect, money, apparent capacity—were wasted in producing a bill that was, in essence, fundamentally flawed. Regulations were prepared and, perhaps not surprisingly, some of the 48 premises that were to be the subject of the regulations proceeded to exercise their lawful right to commence proceedings in the Supreme Court. The proceedings were returnable at 10.00 a.m. on 28 November 2008. With the commencement of those proceedings and, no doubt, having been served, the Government went ahead with the gazettal by way of special supplement to the *Government Gazette* at 9.00 a.m. on 28 November 2008. That was clearly designed to frustrate the proceedings before the court. But it did not bring the proceedings to an end. So the Government then made the decision to bring this legislation before the House today. This legislation is being brought forward quickly—in fact, almost breathlessly—through both Houses, and as I said earlier, with literally only a few minutes from the time the bill was before the other place and the time it came before this House. That is plainly a demonstration of a government that is, at best, cobbling legislation together as events present themselves, and, at the very least, a government that is in fundamental disarray.

Ms LEE RHIANNON [9.40 p.m.]: The Greens will not oppose the Liquor Amendment (Special Licence Conditions) Bill 2008 that we see being rammed through the Parliament today. The way this bill has been handled today is extraordinary and certainly does not reflect well on the way the Government is handling this whole issue. We do not support the tactics of the Government; we are critical of its methods in moving the new liquor licensing conditions regulation, which came into force only yesterday, into the Liquor Act. That is clearly designed to fend off a legal challenge by the liquor industry that I understand was set down for tomorrow.

I understand that Cabinet passed a motion to move the regulation into the Liquor Act and now we are seeing this bill rushed through the Parliament and we have had only a few hours to examine the legislation properly. The way the Government is managing both Houses is not good enough. One of the key aspects of this bill is the 2.00 a.m. lockout. From the Greens perspective the saviour of the bill is that it is not a blanket lockout. We saw a blanket lockout imposed in Victoria, which was a failure and was eventually scrapped. Lockouts currently are in place in numerous other jurisdictions around Australia: Ballarat, Bendigo, Warrnambool, Traralgon, Frankston and Shepparton in Victoria; Hobart, Launceston and Burnie in Tasmania; a statewide 3.00 a.m. lockout in Queensland; voluntary lockouts in South Australia; and in New South Wales there are 400 voluntary lockouts including the 1.30 a.m. lockout that started in Newcastle on 1 July this year.

The reason I list those places where there are lockouts is that it sounds as though lockouts are common and happening. We have not had any rigorous evaluation of how all these schemes are working and what their impact is on alcohol-fuelled violence. In many cases it was stated that the lockouts were introduced as part of a raft of measures to control violence but assessments were not carried out. We need to make those assessments and we have got an opportunity to do that with this legislation. That is why it is vital that the Government makes every effort to bring forward an evidence-based approach to assessing the effectiveness of these special licence conditions.

The Greens will support this bill provided the Government supports the Greens' amendment to compel the Minister to evaluate the performance of any new special licence conditions, including consulting with the Bureau of Crime Statistics and Research and reporting those findings to this Parliament. These new laws clearly will have a considerable impact on local residents, entertainment precincts and tourism in general. It is important that these new licence conditions are trialled and evaluated for their effectiveness so that the Government can respond to the outcomes. I note that the Government has provided for venues to be added and removed from the list by way of regulation and that licence conditions can be varied by way of regulation also. We expect that the Government will review this list once it has some findings. I urge the Government to do so because clearly the purpose would be to remove from the list venues that are working on problems of alcohol-fuelled violence and are successful in reducing those problems.

The Greens' amendment will effectively make the next 12 months a trial period where the success or failure of the 2.00 a.m. lockout and other measures in this bill will be evaluated. The Government talks about its community consultation, but as in so many areas, it really is woeful. The Government has not consulted extensively with stakeholder groups or the wider community over these new laws. Rather, we are seeing this legislation rushed through tonight. We have placed on the record the concerns of many young people that the 2.00 a.m. lockout schemes will unfairly target the culture of late-night socialising and partying and will unduly restrict Sydney's vibrant nightlife. The Greens expect the Government to undertake meaningful public consultation as part of this evaluation and invite comment throughout the next 12 months and again following the first report to the Parliament of the evaluation of these measures.

A 12-month evaluation period together with a report of the findings of that evaluation will allow the Government to take an evidence-based approach to these new measures. That is what experts in the field, like Dr Alex Wodak, who heads the St Vincent Drug and Alcohol Service, have consistently called for: a detailed study and analysis of the performance of these measures. The Greens also urge the Government to consider any requests lodged by local councils to vary the special licence conditions of problem venues within their local government area to give those communities a say in how the measures will work. I ask the Minister to comment on how he sees this working with local councils because they are on the ground and encountering these problems on a daily basis with many people taking their first round of complaints to local councillors. Clearly there needs to be involvement with local councils. It is local communities that bear the brunt of binge drinking and street violence and there is much more at stake than just the operating profits of hotels. Local councils have to bear the cost of managing the immediate impacts of violence on the streets, and local residents pay both the health and social costs of living in entertainment precincts. This is where we need to get the balance right. The evaluation offers a way forward in finding that balance. I urge the Government to communicate with local councils and involve them in decision making, and I ask the Minister to comment on that aspect in his speech in reply.

While the Greens are concerned about the impact of this bill on local communities and on the people who enjoy the nightlife, we do not share the Opposition's concerns about the overregulation of the liquor, gaming and racing sectors in New South Wales. I was interested in some of the comments made by Mr George Souris on the Liquor Legislation Amendment Bill that we debated last week. It was quite informative as to why the Opposition now opposes the bill. He stated:

> Having been the shadow Minister for this portfolio for a number of years, I believe we have reached saturation point with overregulation and over legislation in the general industry that involves hotels and clubs. In the licensing area, which includes liquor licences, poker machine licences and gambling licences, I fear over legislation and overregulation will go too far. Although I do not know what constitutes too far, I feel we are heading towards it. This approach can only result in creating a black market, sending liquor trading underground.

That is an extraordinary statement. When I read that I hear the voice of the Australian Hotels Association and the voice of some of the big lobby groups. They have certainly got to Mr Souris if he thinks that the gambling and liquor industries are overregulated. No evidence is provided for the accusation that a black market in alcohol is being formed. The regulation of alcohol, gambling, and poker machines is essential to reduce the harm that they inflict on our society.

It is no coincidence that these corporate interests are big donors to the major parties. I was looking at some of those donations and I wondered whether there would be any change after this legislation was passed. It is important to remember that in trying to address these problems the Government has placed undue emphasis on targeting people who enjoy socialising at pubs and bars late at night while falling short of cracking down hard on the big hotel operators whose businesses contribute directly to creating alcohol-fuelled violence. Everyone knows that the big hotels with alcohol-related violence problems do not abide by the responsible service of alcohol regulations. That is a major source of many of the problems we hear about. What is also sorely needed is more visible policing in precincts that are saturated with later-night licence venues and better public transport services in those areas late at night to help people to get home. Growing alcohol-related violence is a serious problem and it needs a genuine community-based approach to find solutions that will reduce its incidence in our streets without unfairly targeting people who are out enjoying themselves.

The Greens will support this limited, targeted trial of special licence conditions for late-night licensed venues. We will await the Minister's first report on its evaluation and look forward to debating it in this House. This is an opportunity for the public to participate in the debate so that we can get the balance right and ensure that we have liquor laws that work for the entire community.

Reverend the Hon. FRED NILE [9.52 p.m.]: The Christian Democratic Party supports the Liquor Amendment (Specialise Licence Conditions) Bill 2008 and congratulates the Government on the Premier's

initial announcement of the policies to provide for a new set of special licence conditions that will apply to the State's top 48 high-risk venues. Crossbench members were briefed today by the barrister representing the proprietors of most of the 48 venues, who are obviously unhappy about the regulations—and now very unhappy about the proposed legislation—because they have commenced proceedings in the Supreme Court challenging their validity. I assume this bill will prevent any further legal challenges. When the House passes this bill tonight it will become an Act of Parliament, not simply a regulation. However, in its briefing today the Government indicated that it would continue to defend the regulations in the court proceedings. It might also have to defend this legislation as well.

The residents of Sydney see widespread violence caused by the irresponsible consumption of alcohol. We have all seen fights in the streets of Sydney and a large number of police officers trying to control them. The Government is responsible for the welfare of the people of the State and it has no option but to introduce tough legislation. Members should wholeheartedly support this legislation. It will ensure that the special licence conditions will apply to the 48 known high-risk venues. The conditions include the imposition of a mandatory lockout from 2.00 a.m. This has been tried in a number of towns and centres, primarily at the urging of the police who are overwhelmed by violence when trying to control drunken mobs. Measures like this have worked and members should support them.

The legislation also requires venues to cease serving alcohol half an hour before closing. The Christian Democrats support that move. It also bans shots, limits drink purchases after midnight and requires a 10-minute sales timeout every hour. This legislation provides that one or more of these 48 high-risk venues can apply for changes in their licence conditions if they believe special circumstances should be considered. Of course, the application may be rejected, but they do have access to a democratic process if they feel they have a genuine grievance.

This State experiences a 5 per cent increase in alcohol-related violence each year. The Government and the Opposition are responsible for that because they have always supported increases in the number of liquor outlet licences. It is obvious that more outlets means more liquor consumption and increased problems. That is a fact of life. Until we step back from giving blanket support to the liquor industry and start to examine alcohol consumption—as we examine the consumption of other drugs—and work out how we can reduce the impact of alcohol in our society we will continue to have violence on our streets. This legislation may be a turning point in the Labor Government's attitude to this problem. I hope it is the beginning of a rollback of the harmful impact of alcohol in our State. The Christian Democratic Party supports the bill.

Reverend the Hon. Dr GORDON MOYES [9.56 p.m.]: I will speak very briefly on the Liquor Amendment (Special Licence Conditions) Bill 2008, the object of which is to transfer from the Liquor Regulation 2008 to the Liquor Act 2007 special licence conditions that are designed to reduce alcohol-related violence in or about the declared licensed premises to which the conditions relate. In so doing, it will enable Parliament to confirm the imposition of those conditions in relation to those licensed premises. Accordingly, under the bill, special licence conditions will apply to 48 alcohol hot spots. I will not go through all the details of this legislation or give a commentary on the statistics on alcohol-related violence in New South Wales; other members have already done so.

I believe that the Government has done the right thing. I applaud Premier Rees's decision to stand up to the mighty and powerful hotel lobby group, the Australian Hotels Association. As mentioned earlier, crossbench members have been approached by the legal representatives of some of the 48 high-risk hotels. I am aware of the fact that this bill is being rushed through the Parliament tonight because the Government wants it passed before midnight—before we all turn into pumpkins—to thwart the legal challenge mounted by the liquor industry that will be heard tomorrow in the Supreme Court. The haste with which this bill is being dealt is deplorable and I am concerned that it appears to do nothing other than thwart that legal challenge.

We are at the crossroads and we have a chance to determine what is right for the people of this State. We have a chance to change this ugly habit of binge drinking that is all too common in our youth. Last Friday night after attending a very late function here in the heart of the city I walked around the central business district to get to my car. On every corner there were ugly scenes as people left nightclubs and other alcohol outlets. One would simply need to spend a Friday or Saturday night on the streets of our cities—whether it be in George Street, at Parramatta, or in regional cities like Newcastle and Wollongong—to see that we are plagued by a drinking culture that has become inherent in our daily lives. There is no turning back, but we have a chance to do something about it tonight. I support the bill and commend it to the House.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Minister for Industrial Relations) [9.58 p.m.], in reply: I thank members for their contributions to the debate. The Liquor Amendment (Special Licence Conditions) Bill 2008 demonstrates the Government's commitment to reducing alcohol-related violence. This bill simply transfers the Government's proposed special licence conditions from the Liquor Regulation 2008 to the Liquor Act 2007. The special licence conditions were announced by the Premier on 30 October 2008 and were approved by the Governor and gazetted last week. They have been in the public domain for more than one month and they have strong community support. Members are aware of the context of this legislation. This bill does not stop the court proceedings from continuing, but it will enable the Parliament to express a view on the matters that are the substance of the legislation.

Though many people dealt with matters of procedure and timing, it is regrettable that they did not focus on the purpose of the bill, and that is to curb the kind of behaviour that has, unfortunately, been the subject of a lot of community concern and is also the subject of a number of personal experiences, as was instanced in particular by Reverend the Hon. Dr Gordon Moyes in his contribution. What the Government is doing in the bill is codifying in the Act what is already in the regulation. Without this legislation, there would be some uncertainty in the context of the proceedings and appeals could drag on for months. The bill puts this matter beyond doubt, so that we have strong, effective laws over the summer period.

Ms Lee Rhiannon raised some issues relating to lockout times. Lockouts encourage a slower, more orderly departure from venues and discourage pub crawls. In comparison, blanket closing times can have a negative effect by pouring drunken and disorderly patrons out onto the streets at the same time. As a general rule, the earlier the lockout, the larger the effect. We know that most violent incidents in Sydney occur on Friday and Saturday nights between midnight and 3.00 a.m. Whilst a 3.00 a.m. lockout would have a more limited effect on violence, a 12 o'clock lock-out would not be workable in a city like ours. So 2.00 a.m. is a good starting compromise. Lockouts that have been implemented in Newcastle and Wollongong along with a similar package of sanctions that have demonstrated a measurable reduction in the number of assaults.

As a number of members have already commented, the legislation still gives the Director of the Office of Liquor and Gaming a reserve power to provide exemptions. The bill provides that the director can use this power only if he is satisfied that alternative conditions will be more effective in reducing the risk of alcohol-related violence in or about declared premises. This is not a free-for-all; it is a sensible reserve power to deal, on a case-by-case basis, with instances where there is a more appropriate way to achieve the objectives of the amendments. We will have in place an implementation team to keep an eye on how things are proceeding. This will include advice on the ongoing imposition of licence conditions on venues that clean up their act.

The Government recognises that this legislation should be kept under review. The Government will accept the amendment foreshadowed by Ms Lee Rhiannon, which provides for review of the legislation in 12 months, or earlier if necessary. We have made our intention clear that these measures should be in place over summer. It is therefore appropriate that the provisions be amended with a reasonable period of time.

In relation to issues relating to haste, I refer again to what I said earlier about the context in which this bill has been brought. I thank members who have recognised that in their contributions and for the way in which they have approached this issue. When this legislation was foreshowed, we offered the Opposition a briefing at the earliest possible opportunity so that they could be informed—

The Hon. Michael Gallacher: The bill was not available.

The Hon. JOHN HATZISTERGOS: Should I say, we attempted to give the Opposition a briefing in relation to this matter. That offer, regrettably, was met with a somewhat indignant response. Nevertheless, I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 5 agreed to.

Ms LEE RHIANNON [10.05 p.m.]: I move:

Page 8, schedule 1 [2]. Insert after line 3:

9 Review of schedule

(1) The Minister is to review this Schedule to determine whether the policy objectives remain valid and whether the terms of this Schedule remain appropriate for securing those objectives.

(2) The review is to be undertaken no later than at the end of the period of 12 months immediately following the date of assent to the *Liquor Amendment (Special Licence Conditions) Act 2008*.

(3) In undertaking the review, the Minister is to consult with the Bureau of Crime Statistics and Research of the Attorney General's Department and take into consideration any information and advice provided by the Bureau in relation to the incidence of alcohol-related violence in or about the licensed premises to which this Schedule applies.

(4) A report on the outcome of the review is to be tabled in each House of Parliament within 3 months after the completion of the review.

I foreshadowed this amendment in my second reading speech. Effectively, it establishes a trial to evaluate the various conditions that are part of the Liquor Amendment (Special Licence Conditions) Bill 2008. The trial will run for 12 months. In the first instance, the review will determine whether the policy objectives remain validated, and then whether they are appropriate for securing the objectives set out in the bill. The amendment requires the Minister, in undertaking the evaluation, to consult the Bureau of Crime Statistics and Research and the Attorney General's Department and to take into consideration any information and advice provided by the bureau with regard to alcohol-fuelled violence. There is need for that wide consultation. A report of the outcome of the review is to be tabled in both Houses within three months of completion of the review. The amendment provides a clear process for evaluation. Hopefully, there will be a body of evidence to inform us of the most effective ways of dealing with the problems that so many communities are facing, to assist us to get the balance right. I commend the amendment.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Minister for Industrial Relations) [10.06 p.m.]: The Government supports the amendment.

The Hon. TREVOR KHAN [10.06 p.m.]: The Opposition will oppose the amendment. A similar amendment was moved last week, and I spoke to that amendment. My recollection is that the Government opposed that Greens amendment. I recall a similar observation was made by the Government: that is, that the amendment sought to do something which, in the course of events, all parties represented in this House would be doing anyway. Alcohol-fuelled violence is a matter of concern to all members of this House. I am sure Ms Lee Rhiannon would recall the observations I made in that regard. Less than a week later, we all remain vitally interested in this issue. One does not need the artificiality of a 12-month review to effect the desired result.

Indeed, the very bringing of the bill before this House within a week reflects the fact that alcohol-fuelled violence, along with licensing of the liquor industry, is a matter of vital importance to everyone. One wonders how long it will be before yet further amendments are brought before this House. Having adopted the position last week—which, in my view, was a commonsense position, a commonsense position supported by the Government—the backflip by the Government in less than a week to accept a very similar amendment is indicative of the disarray of the Government.

The Hon. John Hatzistergos: Is that a reason to oppose the amendment?

The Hon. TREVOR KHAN: No.

The CHAIR (The Hon. Amanda Fazio): Order! All comments will be made through the Chair.

The Hon. TREVOR KHAN: The reason to oppose the bill was put forward last week—not disarray, but that this is a matter that is under constant review.

Ms LEE RHIANNON [10.08 p.m.]: In last week's debate Mr Khan was equally deficient; he could not come up with reasons. We have the same problem now. That is disappointing. He has had a week to reflect, and he still does not have an argument.

The Hon. TREVOR KHAN [10.09 p.m.]: I was told never to rise to the bait of Ms Lee Rhiannon. However, in these circumstances I will respond and invite her to read *Hansard* and she will see the argument articulated there.

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

Greens amendment agreed to.

Schedule 1 as amended agreed to.

Title agreed to.

Bill reported from Committee with an amendment.

Adoption of Report

Motion by the Hon. John Hatzistergos agreed to:

That the report be now adopted.

Third Reading

Motion by the Hon. John Hatzistergos agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly with a message requesting its concurrence in the amendment.

INSTITUTE OF TEACHERS AMENDMENT BILL 2008

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

Motion by the Hon. John Hatzistergos agreed to:

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

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

TRANSPORT ADMINISTRATION AMENDMENT (METRO RAIL) BILL 2008

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [10.12 p.m.], on behalf of the Hon. John Della Bosca: I move:

That this bill be now read a second time.

The objective of this bill is to amend the Transport Administration Act 1988 to enable the establishment of a Sydney Metro Authority, which will be put in charge of developing and managing the CBD Metro and any potential future stages of a Sydney metro system. The bill enables the New South Wales Government to get on with the job of creating a new mode of public transport for Sydney. Not only will the metro be a great new form of public transport, it also will link to buses, rail and light rail, and improve the overall transport system—less waiting, less crowding, more reliability.

As the House will be aware, the New South Wales mini-budget allocated $1.8 billion in the forward estimates to start developing a metro system for Sydney. The mini-budget is about taking financially responsible decisions and that is why we have put aside sufficient funds to commence a metro system for Sydney in which the CBD Metro is the number one priority and the first stage. In these economic times we have to be realistic

about what we can deliver. That is why we have earmarked enough money in the mini-budget to start a metro system for Sydney and we will continue working closely with the Federal Government to see how a potential co-contribution through Infrastructure Australia could enable further expansion of a metro network.

This side of the House has made it clear that the New South Wales Government is certain that a metro system is part of this great city's future. Despite the budget constraints, we want to proceed with the CBD Metro as quickly as possible to ensure we have the transport capacity for growth and jobs in the CBD. The latest estimate is that by 2036 there will be six million people living in Sydney. Providing them with a new metro system starts with the CBD Metro, and the CBD Metro is clearly the enabler of future metros. It will be the spine of the Sydney metro system and other routes can be attached to it. It is pivotal that the metro works in an integrated manner with the other modes of transport to maximise the public transport network. That is why we are actively pursuing the integration of the metro system with the redevelopment of Central station to cater for a smooth London tube-style interchange, bringing commuters from the west through the CBD.

We are also planning a bus interchange in Rozelle so that commuters coming in on buses on the Victoria Road corridor can interchange swiftly from one mode of transport to another, increasing capacity and reducing bus traffic on busy CBD roads. The Government is committed to making this happen. That is why we are establishing the Sydney Metro Authority, whose only focus will be delivering this new public transport mode for Sydney.

Metros represent the future of Sydney's transport. The CBD Metro is the first phase and the creation of a dedicated, focused authority that will ensure the effective delivery of a world-class metro product. As well as providing the foundation for a network of metros, the CBD Metro will also provide a much-needed new high-capacity transport corridor through the city, relieving passenger congestion at Town Hall and Wynyard stations. It is important to understand that presently there are capacity constraints through the CBD, with Central station effectively acting as a bottleneck during peak hours for trains to and from the south, the south-west, the west, and the north.

With the CBD Metro, the CityRail network will be able to schedule more trains into Central from the west for quick and easy interchange to the CBD Metro. One cause of the major bottleneck at Central today is the underutilisation of the 15 platforms in the country and interstate section at Central. By making more use of this existing infrastructure and linking it with the CBD Metro, the Government is maximising its transport infrastructure investment. It is plain to see that the CBD Metro will provide relief to the congested CBD. It provides for a substantial increase in capacity on the existing CityRail network and it provides for future expansion of the metro network.

The principal functions of the Sydney Metro Authority will be to develop safe and reliable metro railway systems for Sydney. The proposed Sydney Metro Authority will be the government body responsible for the development and delivery of the CBD Metro and possible future schemes. The Sydney Metro Authority will have overall responsibility for management of delivery and commissioning of the CBD Metro by 2015, management of the development of other metro lines as directed by government, and oversight of ongoing CBD Metro operations, including dictating service delivery and standards to any private operator. It is important to understand that once a metro line is established and operational, Sydney Metro's role will change and it will dictate service delivery and service standards to the operator, as well as undertake further planning for potential expansion of the metro network on behalf of the Government.

The Sydney Metro Authority will be established under governance arrangements similar to those applicable to other statutory authorities under the Transport Act, such as State Transit Authority and, following the passing of the Transport Administration Amendment Rail and Ferry Transport Authorities Bill 2008 last week, RailCorp and Sydney Ferries. To achieve maximum value for the taxpayer it is essential for the New South Wales Government to have an organisation that can draw from specialised, international expertise in the design, construction and operation of metro systems. It is also important to ensure that the Government has an organisation that is focused solely on the demands of delivering a world-class metro system for Sydney.

The scale of the investment, the need for tight project control and the need for rapid performance to deliver the CBD Metro and future extensions, all combine to necessitate the establishment of a special authority. Importantly, the authority will have a focus on the long-term success of the metro service, not just the construction phase. The New South Wales Government is determined to take this very significant next step in public transport infrastructure for Sydney. Metro will provide immediate benefits to the CBD's transport capacity, and will pave the way for further enhancements to a Sydney metro system. For these reasons, the Government has introduced this bill, which I commend to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [10.18 p.m.]: On behalf of the Opposition I speak on the Transport Administration Amendment Metro Rail Bill 2008. This is yet another bill that we were told only minutes ago would be pushed through the House. We are told it is important to the Government; it is one of its big infrastructure priorities, yet it is being rushed through. The Government's program and the organisation of its priorities are a mess. Be that as it may, this bill seeks to establish a statutory authority that will have the function of developing and overseeing the construction, management and maintenance of metro rail lines called the Sydney Metro.

This follows in the wake of the Government's commitment on 18 March this year to build a $12 billion, European metro-style line, with 32 of the 37 kilometres from the city to Rouse Hill to be underground. Media outlets throughout the State lauded the announcement, quoting the then Premier's commitment for single-deck metros running every four to five minutes, with 17 stops between the CBD and Rouse Hill. We were even told that trains were likely to be driverless.

The Premier claimed that the project was fully funded and not dependent on the sale of our electricity assets. Yeah, right! The project is now as good as dead. The Government's most recent public transport infrastructure announcement has been the CBD metro line, from Central to Rozelle, a project that drew cynicism from the media and the community, who figured that the State Government was hoping the Federal Government would pick up the cost, rather than proposing the best transport solution for inner Sydney.

This Government has a history of promising much and delivering little—in most cases, absolutely nothing. For the clearest example of the Government's ineptitude in promising so much to the people of New South Wales one need only look at Action for Transport 2010—or, as it is more commonly known by long-suffering commuters throughout New South Wales, "Inaction" for Transport 2010.

[*Interruption*]

I hear the bleating voices of those opposite trying to defend the Government's ineptitude and mishandling of public transport throughout New South Wales. I hear their dismay at the fact that so much has been promised by the Government over the years and yet again the Government feels that it can come up with a whole new package. Only a matter of months after the Government made announcements about other metro lines throughout Sydney, it thinks that the public will buy this one. When one looks at "Inaction" for Transport 2010, it foreshadowed what would be in place in 2010 in the Sydney metropolitan area and the outlying areas. I am sure that those who live on some of these rail lines are very happy to know that they are travelling on the very best and the very strongest of commitments—very similar to the very strong commitments we have just heard from the Parliamentary Secretary the Hon. Penny Sharpe.

I am sure all the people who live at Bondi Beach are absolutely thrilled to the back teeth that they are travelling on the Bondi Beach railway line, which was promised to be completed in 2010. I am sure they are happy every morning, when they get on the train at Bondi Beach, to know that they are only minutes away from the city. I am sure the people who travel on the Parramatta rail line are absolutely thrilled to know that their project was completed in 2006 and they are now travelling on beautiful trains between Epping and Chatswood. In the area that I come from, the Central Coast and the Hunter region, we are absolutely ecstatic about the high-speed rail link that was completed in 2007. It is an absolutely wonderful line—

The Hon. Amanda Fazio: Point of order: My point of order is that we have a specific piece of legislation before the House that deals with arrangements concerning the proposed CBD Metro. The Leader of the Opposition has rarely mentioned the proposed CBD Metro in his rambling speech about all sorts of other transport issues that do not relate to the bill. I ask you to bring him back to the leave of the bill.

The Hon. MICHAEL GALLACHER: To the point of order: The longstanding attitude towards debate in this House is that a member may merely be generally relevant. The Parliamentary Secretary made a number of references to the transport hub at Central. All the projects I am talking about will follow their progressive line through to the transport hub of Central; it is an interrelated transport system. The Government cannot have it both ways.

The PRESIDENT: Order! With regard to debate on bills, the contributions of members must be more than generally relevant; they must be relevant. A determinant of what is relevant is the long title of the bill, which in this instance refers specifically to the development, implementation and operation of metro railway systems in the State. True it is that some degree of latitude is given to permit wide-ranging debate on bills, but only if the contributions of members remain relevant to the long title of the bill.

The Hon. MICHAEL GALLACHER: Mr President, thank you for your views in relation to the progress of debate in this House. I will not labour the point in relation to these projects. The projects go together with other projects—such as the Sutherland to Wollongong high-speed rail line and the north-west rail line, from Epping to Castle Hill. It is all part of a continuing myth that this Government trots out every couple of years. Whether we are talking about the Transport Administration Amendment (Metro Rail) Bill, the high-speed rail line, or the Epping to Chatswood rail line, we have heard it all before. When it comes to this Government, it is the same story but with different actors.

The Government trots out a different Minister, it earnestly promises to long-suffering commuters that it will take care of all the problems, and it says it was the previous administration, those nasty people from the past, that was responsible for all these terrible myths that were perpetrated upon the long-suffering travelling public. Government members stand here, with hand on heart, saying, "Yes, we are going to have the metro rail line. We were told that everything is in the budget. Of course, the sale of electricity had nothing to do with it." We were told that the sale of electricity had nothing to do with the Government's future infrastructure needs; we were told that everything was fine. As soon as Government members of the Left indicated that they were not supporting the sale of electricity, all bets were off. The reason we have not progressed with these other projects is the absence of the sale of electricity.

Obviously I was joking a few minutes ago when I spoke about the Bondi Beach rail line, the Parramatta rail link, the Epping to Chatswood rail line, and the high-speed rail line to the Central Coast. Despite the fact that these rail lines were promised—some as long ago as 2002—there are no such rail lines. There are no commuters travelling on trains from Bondi Beach today—nor will there be tomorrow or at any time in the foreseeable future. There is no high-speed rail link, and there is no new Warnervale railway station. Today's Warnervale railway station is the same cobbled-together railway station that I first travelled on 25 years ago. It is all an absolute myth, perpetrated upon long-suffering commuters who are absolutely desperate for some good news. They are desperate for someone to finally come along and actually do what they said they would do—that is, reform rail transport infrastructure, particularly in the Sydney metropolitan area, to allow people to get on with their lives and give them back one of the most valuable assets in our modern society: time. Our long-suffering commuters want to be given back time to spend with their families, to do things in their communities that they want to do, and to have the opportunity to make that choice.

The transport needs of this State have been ignored by the State Government for far too long. For the long-suffering commuters who live on the outskirts of the Sydney metropolitan area, time is something that they cannot comprehend any longer because of the unreliability of a rail service that simply cannot ensure that they will arrive at a location to be involved with an organisation, or to pick up their kids and take them down to the beach. To be able to do anything with any level of certainty is simply non-existent for these people. When the Government makes these announcements time and again, it plays the politics of it but what it is really doing is kicking in the guts the people who have made a conscious decision, a lifestyle choice, to move to these areas to bring up their families, in the hope that one day they will not have to travel an hour and a half or two hours each way in a car, and that this Government will finally do something about the commitments and promises it has made for years and years. The Government simply dusts it off, and gives it a new model and a new name. My concern is that we are seeing this perpetrated upon our long-suffering commuters yet again.

This metro rail bill provides no secure funding for any of the metro projects. One questions the need to establish an agency at this time. Why is it necessary, when there is no money? We have a State Government that tells us it is going cap in hand to the Federal Government. Somehow it suggests that the money is there. The Government says, "We just have to go down to Canberra to pick up the cheque. So we'll go ahead and set up the bill and we'll tell the people in these areas that we are getting underway with the metro rail line." But the fact is that the Government does not have the money to proceed with the project. We cannot help but think, "Here we go again." We have some of the old actors back from the past. We have Carl Scully back. We have a few of the old players back, writing the same old scripts, hoping that the public will not wake up to it. But they are waking up to it.

The public are fed up. They want to get out of their cars and on to trains and buses. The demand is there but there is no commitment from the Government to do the job. Many of the transport experts and commentators do not support a stand-alone Central to Rozelle concept and they are concerned that a metro line to nowhere will be proposed by the Government. The community is switched on enough because they have heard the spin for far too long and they are concerned.

There is concern about the body proposed to override the local government jurisdiction under this legislation. There is concern—as we see so often under this Government—about even more bureaucracy in

already over-bureaucratised sectors, especially in public transport. The legislation offers an expensive and bureaucratic method to work around massive problems within RailCorp, but the Government has not begun to focus on fixing those problems within RailCorp. The Government is more interested in trying to trot out yet another plan, yet another promise, and yet another myth that it seeks to inflict on long-suffering commuters.

The Government asks if the Opposition is going to support the bill? The Opposition will continue to put pressure on the Government to finally do something about rail infrastructure. But the Government will simply return to its old scripts, come up with a model, and organise the fanfare, the lights, the cameras, the balloons and the special hats to show that it is getting on with it this time. But the fact is that the Government is not prepared to pursue it.

The Hon. Amanda Fazio is obviously someone who does not travel by public transport and would have no intention of ever travelling on any future rail lines—she is commenting from the sidelines. The fact is that she has been a Government member for some time and has sat back and said absolutely nothing.

The Hon. Amanda Fazio: Point of order:

The Hon. MICHAEL GALLACHER: I thought it appropriate to get you up and give you the chance of a bit of a walk.

The Hon. AMANDA FAZIO: I object to the comments made by the Leader of the Opposition about my habits in the use or non-use of public transport. I ask the Leader of the Opposition to withdraw his comments.

The Hon. MICHAEL GALLACHER: On what grounds?

The Hon. Amanda Fazio: On the grounds they are not true and I find them offensive.

The PRESIDENT: Order! There is no point of order. The Hon. Amanda Fazio can seek to make a personal explanation to clarify the matter at the appropriate time. The Chair does not regard the remark as offensive. However, the Hon. Amanda Fazio has objected to the remark and it is within the discretion of the Leader of the Opposition to take a course of action if he wishes.

The Hon. MICHAEL GALLACHER: I am glad to see that the Hon. Amanda Fazio thought it was important enough to get up and contribute to the debate on public transport, which is encouraging.

[*Interruption*]

If Government members are happy for me to continue I am more than happy to do so. It appears we have a fairly light night. It does give me an opportunity to return to Action for Transport 2010 but it is purely a matter for the Government. The Government has continued to make promises that it has no intention of keeping. This legislation has no funding stream; it merely has a wink and a nod from the Treasurer that the Government will somehow travel down the Hume Highway to Canberra and hopefully get some money. The Government might be able to distribute more glossy brochures as the 2011 State election approaches. No doubt in the lead-up to the election campaign we will see yellow lines on roads and signs will be put up where the metro rail line is to go—

The Hon. Rick Colless: Then they will pull them down.

The Hon. MICHAEL GALLACHER: They will not pull them down because the fact is they will just rot under this Government, like so many of their projects. Government members have sat here tonight, interjected and screamed out about different things, but the Government has not explained to the people of New South Wales, particularly those in the Sydney metropolitan area, why they walked away from their promises in Action for Transport 2010, why they left the public hanging high and dry, and why they let people move into areas of western Sydney with the belief that there would be rail infrastructure to meet them. Rail freight infrastructure is not there and it is not likely to ever be there. The Opposition looks forward to continued pursuit of the Government in its ineptitude on public transport. I am happy to have represented the Opposition in debate on this bill.

Reverend the Hon. FRED NILE [10.36 p.m.]: The Christian Democratic Party supports the Transport Administration (Metro Rail) Bill 2008. This bill is a substitute for what the public expected with the North West

Metro, which received so much publicity under former Premier Iemma and was a visionary policy—I hope the Government will resurrect that policy. The bill will enable the development of a central business district metro and the potential future stages of the system, which will cost $1.8 billion; the original price was $12 billion. So there is hope of further extension of the CBD Metro.

Although the bill is a substitution for the original project it is better than nothing. The bill will meet the needs of residents who live between the central business district and Rozelle. It is estimated that by the year 2036 Sydney's population will be 6 million. The Government does have to invest in infrastructure and provide trains, not buses. Buses cannot shift the thousands of people who need to get to their jobs and other activities daily. The Christian Democratic Party supports the Sydney Metro Authority, which will develop and manage a metro rail system, including the development of a central business district metro and the potential future stages of the system.

Ms LEE RHIANNON [10.38 p.m.]: The Greens oppose the Transport Administration Amendment (Metro Rail) Bill 2008. The bill will establish a Sydney Metro Authority to develop and manage a metro rail system, including the development of a central business district metro and the potential future stages of the system, but the bill offers no solution to Sydney's transport crisis. Unfortunately I cannot deal with the bill in detail because the bill was only received a few hours ago and members have not had time to adequately access its provisions. This is not a democratic debate but legislation by haste and exhaustion.

A key problem is that the legislation establishes another authority for public transport. The need for a second authority has not been established. A Government briefing and the Minister's agreement in principle speech in the Legislative Assembly have shed no light on the need for another authority. Public transport is in crisis. The Government talks about this serious issue. We all bear the brunt of it, some more than others. Experience tells us that we need one authority, one ticketing system and one timetable. That is the solution. With this bill we are going backwards. Clearly, competing authorities will create barriers, particularly in the movement of people from one transport system to another. It is a serious step.

Further, the Government has an agenda. I often smile when I hear the Coalition talk about the unions controlling the Labor Party. The Coalition has missed the agenda, that is, cutting out the Rail, Tram and Bus Union and reducing the important work of the union in the public transport sector of protecting and improving working conditions. That definitely is part of the agenda here. When the Premier made the announcement about the Rozelle metro—some people have dubbed it the mini metro—it was a surprise. The Premier had badged himself as Mr Westie, determined to deliver for the people of western Sydney. It was left up to the Greens mayor of Balmain, Jamie Parker, to put it forward.

The Hon. Penny Sharpe: Leichhardt. He is not running for Balmain yet.

Ms LEE RHIANNON: I said the mayor.

The Hon. Penny Sharpe: Of Leichhardt.

Ms LEE RHIANNON: I apologise. I probably made the mistake of calling him the mayor of Balmain because in the ward of Balmain there is no Labor representative, for the first time in the history of the birthplace of the Labor Party. I apologise for my mistake, but I thank the Parliamentary Secretary for jolting my memory on that fact. It was left up to Mayor Jamie Parker to highlight the wastefulness of this project and the need for the money to be allocated to western Sydney. In western Sydney so many people either rely on diesel buses or drive because they have no access to any sort of public transport, let alone the high-quality public transport the Premier should be advocating and working on. One of the problems with the proposed metro systems is the excessive cost of tunnelling. That may not be the case with the Rozelle metro, depending on the route. Tunnelling, particularly steep gradients under the harbour, is extraordinarily expensive. It requires huge amounts of diesel and the spoil must be removed. That is one of the factors in the skyrocketing costs of these projects.

It is also important to remember why transport in Sydney, let alone the rest of the State, is in such a serious state. In Sydney over the past 10 years the Carr and Iemma Governments' planning efforts, publicity and spin have all revolved around numerous motorway projects. In those 10 years the Labor Governments have completed five motorways—the Eastern Distributor, the M7, the M5 East, the Cross City Tunnel and the Lane Cove tunnel—giving us a total of 62 new kilometres. It has been a huge investment. The Opposition and the Government will say that it is private money and the private companies bear the risk. But it has been exposed

time and again that public-private partnerships place an incredible burden on the public. Not only do they rob the public of decent transport solutions that lie with public transport, but when these companies go belly up the public pays.

When it comes to public transport rail projects, we have to go back to 1930 to see a substantial increase in rail networks. There has been work around Chatswood and the eastern suburbs line was finished, but the eastern suburbs line stretched over many decades. We have not seen a major expansion of the rail networks in the last 80 years. In that time the population of Sydney has gone from 1.3 million to 4.3 million. Again, the failure to deliver has been the responsibility of both Labor and Coalition parties. We must recognise that public transport has to be funded by the Government. In most cases, that will require the Government borrowing money. Another major concern with the new authority is that the projects it will bring forward more than likely will be public-private partnerships. Public-private partnership is a failed model and is falling on the scrapheap around the world as neo-liberalism becomes more discredited. There is greater recognition that it is responsible governance to borrow money to ensure the maintenance of public assets and the building of new services.

The State Treasury hates not having control of revenue sources. It often puts the kibosh on borrowing money. That attitude must change. It is a matter of concern that the current Premier has not been able to break that obsessive refusal to borrow money for projects. It is also worth contemplating the recent history of State Premiers in relation to metro projects and the fallouts. The previous Premier, Mr Iemma, staked his reputation on the North West Metro. It was going to be his great saviour and was to go ahead under all circumstances. Then in August, as part of the momentum that led to his resignation, there was a leaked Cabinet in-confidence Treasury commission report on Sydney's transport planning. The report, from the London-based transport economist Jim Steer, questioned the merit of the grand North West Metro rail line and similar initiatives. What is waiting in store for the current Premier? Many people are surprised that he has continued to flip-flop on the Government's transport policy. He got rid of the previous metro policy and then comes up with his own. He has failed to introduce the key foundation to public transport planning and development in this city, that is, the north-west and south-west heavy rail lines. That is where he should be putting his efforts.

I also want to put on record data that is most relevant to this debate because it shows the appalling state of public transport in this city. The findings underline our concern about the metro project that we are not going to have, which would boost public transport use and patronage that is now characteristic of cities around the world. I want to share with the House a report by Gary Glazebrook, a public transport planner. The figures put Sydney to shame. Recent data indicates that rail patronage in Melbourne has grown by about 20 per cent in the past two years, bus patronage in Brisbane has grown by 30 per cent in the past three years and rail patronage in Perth has grown by 40 per cent. That follows the opening of the new Mandurah rail line. Sydney should have similar figures.

We should have new rail lines and a similar increase in patronage. We see similar trends overseas. In the first few months of 2008, transit patronage has increased by 5 per cent on New York City's commuter trains, by 8 per cent on the Denver system and by 16 per cent on the Minneapolis-St Paul light rail. We come to Sydney, and what a sad story. In the past two years Sydney's rail system has been constrained to about 4 per cent per annum because of lack of rolling stock and available car parking. We are getting only a few percentage increases in the use of Sydney's rail system. Again, let us remember that people in western Sydney have to either use a car or walk up to five kilometres if they want to travel by train. Our current system is highly unsatisfactory.

I was interested to hear the contribution of the Leader of the Opposition who was, clearly like other speakers and me, disadvantaged by the short notice of the bill, and I acknowledge that. But I was surprised that the Opposition was not able to pull out of the drawer its plans for transport in this city and in this State.

The Hon. Catherine Cusack: We've got a whole policy on that. It's called integrated transport.

Ms LEE RHIANNON: This is your opportunity—

The Hon. Duncan Gay: What, on this bill? It's an authority bill. We've already got a policy on this.

Ms LEE RHIANNON: I acknowledge all the interjections. They are wonderful.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! I remind the Hon. Duncan Gay that he should not interject.

Ms LEE RHIANNON: What we are hearing is that the Opposition supports pulling up the Newcastle rail line. It says a lot about the Opposition's commitment to public transport. There is a real problem here with the Coalition as well.

The Hon. Duncan Gay: Two and a half years to the next election. Come on!

Ms LEE RHIANNON: I acknowledge that. The Opposition has to have policies. That is what it should be doing—developing policies.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! I call the Hon. Duncan Gay to order for the first time. I call the Hon. Catherine Cusack to order for the first time.

Ms LEE RHIANNON: When I have had the opportunity to question members of the Opposition about their transport projects, as I did in a recent hearing—

The Hon. Catherine Cusack: Point of order: Ms Lee Rhiannon is straying well beyond the leave of the bill and is cross-examining us about Opposition policies in relation to our integrated transport scheme. We are more than happy to provide her with a copy of that policy but that is not within the leave of the bill we are debating tonight.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! The Hon. Catherine Cusack will cease speaking. I refer to the earlier ruling of the President on a similar point of order that was taken during this debate about comments made by the Leader of the Opposition. Ms Lee Rhiannon may continue.

Ms LEE RHIANNON: With regard to this bill, the establishment of the authority will be a setback to developing integrated public transport across the State, and that is where the Opposition has real problems. Members of the Opposition often try to keep both sides of the House going: they say they support integrated transport but at the same time they say they will support the authority and they will not acknowledge that contradiction. The Greens are certainly not against metro projects, but as a starting point we need to finish the heavy rail projects. The expense of metro projects is massive. Concentrating that money in the inner west is quite extraordinary for a Labor Government, particularly a Labor Government led by Mr Nathan Rees who regularly badges up his western Sydney credentials.

I congratulate EcoTransit on bringing forward an outstanding plan for extending light rail to Dulwich Hill, which would be a fraction of the cost of this metro project and it would certainly help build up public transport services in the inner west. We would be better off looking at a range of small and comparatively inexpensive measures that can be implemented in the next two years and complementing the requirement to complete the heavy rail lines. The Greens are opposed to this bill. Again I put on record the Greens' deep concern about the way the legislative program has been conducted today. It is quite shameful the way the Government is running this House.

The Hon. PENNY SHARPE (Parliamentary Secretary) [10.54 p.m.], in reply: We have heard some very interesting things here tonight. This bill is quite a simple one: it puts in place a CBD Metro authority. This metro authority will be tasked with the job of putting in place a CBD Metro, which will be the backbone of a metro system for Sydney into the future. The mini-budget committed $1.8 billion to the project and the State Government is working closely with the Federal Government to look at ways to extend this future. It is something that all members in this House should support.

It is also important to note that it will not just have an impact on the central business district; it will increase capacity on our western lines—and that is good news for the people of western Sydney—as part of the building blocks for a system for the future. There was much ranting from the Opposition, which is pretty rich considering that members of the Opposition demonstrated their concern, passion and commitment to public transport by failing to take a public transport policy to the last election. They keep talking about this great integrated plan but we did not hear anything today. Members of the Opposition did not even say whether they would support this bill. It is ridiculous.

I am absolutely gobsmacked that the Greens oppose this bill. That is an unbelievable position. The Greens, who tout themselves as supporters of public transport, are failing to support expansion of public transport for Sydney: they will not support a proposal that puts in place the foundation blocks for a metro system that will build our transport for the future. In the debate Ms Rhiannon praised the Greens mayor of Leichhardt

for his rejection of the proposal. His position is one of the most craven political manoeuvres of the Greens I have ever seen. People in the inner west want additional public transport. The CBD Metro will deliver this. The failure of the mayor of Leichhardt to embrace this proposal has more to do with his desire to be the candidate for Balmain than any commitment to the people in his local government area.

Ms Lee Rhiannon: Point of order: I draw your attention to the distortion that the member has given.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! There is no standing order relating to distortion.

Ms Lee Rhiannon: There is a clear distortion because the benefit is not directly going to the people of the inner west. It is about transferring that benefit to the west.

The DEPUTY-PRESIDENT (The Hon. Amanda Fazio): Order! That is not a point of order; it is a debating point. Ms Lee Rhiannon will resume her seat. The Parliamentary Secretary may proceed.

The Hon. PENNY SHARPE: As I was saying, it is just unbelievable that the Greens fail to support a bill that would put in place a metro system for the future. I commend the bill to the House.

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

The House divided.

Ayes, 35

Mr Ajaka	Mr Hatzistergos	Mr Robertson
Mr Brown	Mr Kelly	Ms Robertson
Mr Catanzariti	Mr Khan	Mr Roozendaal
Mr Clarke	Mr Lynn	Ms Sharpe
Mr Colless	Mr Macdonald	Mr Smith
Ms Cusack	Mr Mason-Cox	Mr Tsang
Mr Della Bosca	Reverend Dr Moyes	Ms Voltz
Ms Fazio	Reverend Nile	Mr West
Ms Ficarra	Mr Obeid	Ms Westwood
Mr Gallacher	Ms Parker	*Tellers,*
Miss Gardiner	Mrs Pavey	Mr Harwin
Mr Gay	Mr Pearce	Mr Veitch

Noes, 4

Mr Cohen
Ms Rhiannon
Tellers,
Ms Hale
Dr Kaye

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.

SUPERANNUATION ADMINISTRATION AMENDMENT (CHIEF EXECUTIVE) BILL 2008

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

Motion by the Hon. Penny Sharpe agreed to:

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

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

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 2) 2008

Message received from the Legislative Assembly agreeing to the Legislative Council's amendments.

RETIREMENT VILLAGES AMENDMENT BILL 2008

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [11.08 p.m.], on behalf of the Hon. Ian Macdonald: I move:

That this bill now read a second time.

This bill demonstrates this Government's commitment to ensuring appropriate consumer protection for a vulnerable segment of our population—that is, the people who live in retirement villages. It does that without compromising the viability of this important and growing industry. Sadly, there has been a significant degree of intentional misinformation circulated about this bill, primarily by the Opposition. Either the Opposition does not understand the bill or members opposite are deliberately trying to scare retirement village residents. That is simply disgraceful.

The new Minister committed to meet with peak groups to discuss the bill, and those meetings have taken place. Key stakeholders have expressed strong general support for the proposals in the bill and all want to see the bill passed by the Parliament. One set of amendments in the bill proposes to introduce a new model for sharing the costs of maintenance and replacement of capital items. Although this proposal would have removed a major area of conflict it has nevertheless caused concern among some residents.

Many people living in retirement villages are on low or fixed incomes, and the suggestions of massive fee increases that they have been hearing from the Opposition have naturally caused them great anxiety. Those concerned residents have now said they want to keep the current system: they pay for maintenance and the operator pays for replacement. The Government has decided that, given the level of concern of residents, the best option right now to allay these concerns is to make these changes to the bill. I foreshadow that in Committee the Government will move amendments that will take account of those concerns. I am pleased that these arrangements were reached following discussion with the Retirement Village Residents Association, the Retirement Village Association and the Aged and Community Services Association, which represents the not-for-profit sector. I can advise honourable members that those key stakeholder groups fully support these measures.

We nevertheless acknowledge that residents still have some concerns about new sections in the bill. The Minister has been hard at work talking to residents and I am happy to say most of their concerns have been put to rest. However, the residents association has raised the distinction made between registered interest holders and residents on loan/licence arrangements when it comes to paying recurrent charges after vacating and to the statutory charge that will be placed over land to protect residents' refund entitlements. Those issues raise legal and financial questions that would need to be examined in detail before they could be addressed in legislation.

The Government is not going to rush in and make last minute changes to the bill that could have unanticipated negative impacts on residents and operators. However, the Minister has committed to giving further consideration to these issues as they operate in practice. She has also undertaken to consult residents and other stakeholders in preparing regulations to address any further concerns about the details of some aspects of the bill, for example, defining more clearly what constitutes capital repair and replacement.

The bill includes many other amendments that will benefit residents and streamline procedures for operators, and I will go through those briefly. Retirement villages are becoming an increasingly popular lifestyle choice for our older citizens. Hundreds of villages operate in New South Wales, providing accommodation for tens of thousands of retirees. The Retirement Villages Amendment Bill 2008 deals with a range of complex issues, and time was needed to properly consult on the proposals. Given the significance of the legislation to so many people, the Government has put considerable effort into consulting and listening to the views of all interested parties. More than 300 submissions were received in response to the issues paper that was released in 2004, illustrating the high level of interest in this review. Further submissions followed the tabling of the report of the review in 2005. This bill largely implements the recommendations outlined in that report.

A consultation draft amendment bill was then tabled in November 2006, giving all interested parties the opportunity to examine the detail of the proposed reforms, prompting more than 500 additional letters and submissions. It is fair to say that both residents and operators have been involved in the development of the reforms. The concerns and issues that they raised have been carefully considered. It cannot be said that the consultation on this bill has been anything other than comprehensive. The proposals in the bill are the result of this process and clearly demonstrate that the Government is listening to the community. The Retirement Villages Advisory Council has also played an important role in the development of these amendments. Their diligent consideration of the issues and constructive advice is acknowledged and appreciated by the Government. All parties involved have expressed the view that they are keen to see the bill finalised as soon as possible.

I turn now to the provisions of the bill. A wide range of changes will benefit both residents and operators. The New South Wales Government is committed to reducing red tape and removing unnecessary restrictions on business. The bill seeks to reduce the compliance burden for smaller village operators. Community-minded volunteers in regional and country towns often run these smaller villages. The bill will provide for residents of villages with an annual recurrent income of less than $50,000 to consent not to have their annual accounts audited, or not to be provided with quarterly accounts. They will also be able to consent to not being supplied with a proposed annual budget. These smaller villages will be able to use the money saved to provide more worthwhile services to residents.

In addition, operators of villages of all sizes will no longer need to seek the consent of residents to the continual appointment of the same village auditor from year to year. Operators will be able to vary expenditure between line items in a village budget as long as the level of services in the village is not reduced and total approved expenditure is not exceeded. This will provide greater flexibility over the financial management of a village. Operators will no longer have to seek the consent of residents for increases in recurrent charges that are at or below the rate of inflation. This will be an incentive to operators to keep their costs down, and this should help those residents trying to meet rising costs on fixed incomes.

The bill makes a number of changes to the law regarding the provision of information to prospective residents. Under the reforms, prospective residents will need to be given a general inquiry document when they make an initial inquiry, followed by a more detailed disclosure statement if they decide to go ahead and move in, and express an interest in a particular unit. These amendments should help to better inform prospective residents by providing the right sort of information at each appropriate stage in the decision-making process. They will also reduce the compliance and cost burden for operators.

A significant new change is the introduction of a 90-day settling-in period for incoming residents. During this time if a resident passes away, needs to move to a nursing home or hostel, or finds that retirement village life is just not for them and elects to move out, they will only be liable for fair market rent for the period of their occupancy and a reasonable administration fee. However, I should point out that the outgoing resident's entitlements will not be affected if the new resident decides to leave.

All operators will be required under the bill to notify the Department of Lands that land they own is being used to operate a retirement village. This will lead to the creation for the first time of a comprehensive public register of all retirement villages in New South Wales, which will provide accurate statistics and assist education and compliance programs. Another reform likely to be well received by residents is that operators will be required to meet any budget deficits at the end of each financial year, rather than just rolling them over or asking the residents to pay a special levy. This should minimise overspending and help to make operators more financially accountable for their decisions. Transitional provisions are included in the bill to fairly deal with existing budget deficits as well as providing a time frame for the removal of these existing deficits.

Safety and security are important issues for many elderly people, including those living in retirement villages. The bill will require operators to prepare written safety and emergency procedures and to take reasonable steps to ensure all residents and staff are familiar with such procedures. They will also be required to undertake a safety inspection at least once a year and report back to residents on the findings of each inspection. Relief is to be given to those hardworking volunteers who find themselves elected to the same position on residents' committees year after year. A three-year cap is to be introduced, which should encourage other residents to become involved and lead to a rotation of positions that should increase the knowledge base among residents. The maximum number of proxies any person can hold is to be reduced from five to two, and a ballot voting system is to be introduced on matters requiring special resolution. This should increase the participation level of residents and result in voting outcomes that are more representative of the resident population.

The bill also proposes to give residents of retirement villages greater control over their living environments. Residents will be able to add or remove fixtures or make alterations to the premises with the consent of the operator, which shall not be unreasonably refused. Many residents pay a large amount of money to enter a retirement village and occupy their premises for many years. It is only fair and reasonable to allow them to make changes to the inside of their residence to suit their individual tastes or needs.

Often disputes arise in retirement villages because of a lack of communication between residents and the operator. To improve communication, operators will be required under the bill to hold annual management meetings with their residents. Importantly, residents will have the opportunity to raise questions prior to or at these meetings and the operator or their representative will be obliged to provide answers in reasonable detail. A concern for many residents and their families is the ongoing charges they remain liable to pay even though they have moved out of a village or passed away. It can be a particular concern for those who move to a nursing home or hostel and are faced with paying two lots of fees.

Currently, when a resident is not an owner or registered long-term lease holder, the maximum period over which charges can continue is six months from the time the resident vacates the premises. The bill will reduce this period to six weeks, which should encourage operators to take all reasonable steps to find another resident as soon as possible. Registered interest holders, including owners, currently face paying these ongoing fees indefinitely until the unit is sold. The bill significantly improves this situation for these residents by capping the length of time they are solely responsible for these fees to 42 days. After this time they will only be required to pay a share of these fees in the same proportion as they will share in the capital gains from the sale of their unit.

Regrettably there are occasional, albeit rare, instances when a retirement village operator goes broke and the village cannot be sold as an ongoing concern. This can place residents in a difficult position in terms of getting their money back as an unsecured creditor. To address this issue the bill will introduce a statutory charge, which will give those residents who are not owners or registered long-term leaseholders priority in the event of a Supreme Court ordered sale of the village.

Extensive consultation has been conducted during all stages of the review process and on the bill itself. Many submissions were received from residents of villages and their families, individual village operators and the lead stakeholder groups—the Retirement Village Association, the Aged and Community Services Association and the Retirement Village Residents Association. The issues raised in all of the submissions were carefully considered in developing and finalising the bill. This bill not only will protect the rights of residents of retirement villages but also provide a legislative framework that will enable the retirement village industry to continue to develop and expand to meet the needs of our ageing population. I commend the bill to the House.

The Hon. CATHERINE CUSACK [11.19 p.m.]: The original Retirement Villages Bill was introduced to Parliament in 1999 by the then Minister for Fair Trading, John Watkins, who described the purpose of the legislation as being to "greatly improve the rights of retirement village residents for the long-term benefit of the industry as a whole." In 1999 Mr Watkins said:

> People living in retirement villages have lived through the Great Depression and fought in the Second World War. Many residents are war widows. They are our mothers and fathers, our aunts and uncles, our grandmothers and grandfathers. They have worked to build our communities and protect our way of life, and they deserve security and peace of mind.

This 1999 statement by Mr Watkins had the strong support of all members, as did measures in the bill that aimed to stamp out shonky practices. However, within a few years those unethical operators who seek to rip off

the life savings of residents had found loopholes in the legislation that needed to be closed. On 19 November 2003 the then Minister Reba Meagher pledged to urgently address deficiencies by bringing forward the statutory review of the Act. On 25 February 2004 Minister Meagher told Parliament:

> Changes are now required to provide greater protection to residents and to those contemplating moving into a retirement village. It is argued that there are certain unfair and inequitable practices within the industry … The complexity of contracts, the standard of village management, excessive fee increases, and who should be responsible for the cost of repairs are some of the issues raised more frequently by consumers.

The Retirement Villages Amendment Bill 2008 is the result of that review. It has taken five Fair Trading Ministers five years to get these reforms into Parliament and while some overdue measures are welcome, there are important areas where the Government has acted contrary to the interests of residents. Opposition members have four major criticisms of the legislation. First, we are adamant the purpose of the Act ought to be to protect consumers. This bill sees the Government move decisively away from resident rights and in favour of developer and banking interests. Second, the Government has failed to rectify a flaw that runs right through the current Act, which streams two classes of consumers, each with different rights and protections. The bill continues this discriminatory approach, replacing the inappropriate term "owners" with "Registered Interest Holders", who predominately reside in for-profit villages. Ironically, it is those residents who get the lesser protection. This bill overrides favourable conditions in their contracts to benefit the for-profit operators.

Third, the Government has dismantled important governance arrangements that gave residents the right to consent or withhold consent for the village budget. One of the objectives of the 2004 review was to improve transparency and reduce cost shifting of business costs onto residents. This bill does the exact opposite. In the name of flexibility, the Government has removed resident rights to review the budget for services and maintenance, ask questions and see quotations used in estimating work costs. The fourth and greatest failure has been to establish an effective consumer framework to police unethical behaviour at the extremes of the industry, and enable retirement village residents and their families to understand their rights and avoid the pitfalls. Resident contracts have thickened and become incomprehensible.

These elderly people and their suburban solicitors are being pitted against the legal and financial resources of Australia's largest public companies. The State Government has failed to take simple steps to simplify contracts and put in place professional advocacy support. The Liberal and National parties are alarmed by many measures in the bill and their negative impact on residents. We have given serious consideration to opposing the bill outright, but have been persuaded by the Retirement Village Residents Association not to do this. The Retirement Village Residents Association argues that, for all its flaws, this bill is better than no bill at all. I am concerned this recommendation may be being made under great duress, and I have discussed my reservations at length; I will discuss those reservations shortly. Nevertheless, we accept the guidance of the residents' representatives in determining our final position and will not oppose the bill.

To understand the complexity of the situation it is helpful to begin by highlighting the positive measures in the bill. For smaller retirement villages, which are mostly operated by the charitable and church groups, the bill will allow them to opt out of onerous requirements that are designed for good governance in very large villages. Taking the two extremes, it is inappropriate for a two-unit village run by church volunteers to meet the same standards of accountability expected for a village of over 500 residences operated by Babcock and Brown communities. A new section 119A in the Act permits villages where recurrent expenditure is less than $50,000 to forgo annual audited accounts. The residents of these villages must first give their consent and are able at any time to withdraw that consent. This measure is strongly supported by the Aged Care Services Association, which represents numerous standalone facilities in rural and remote areas with 12 to 15 beds.

The bill assists intending residents with new disclosure requirements for operators, including a general inquiry document, a disclosure statement for specific premises and a disclosure statement attached to the village contract. Of course we support more disclosure. It is, in principle, positive. However, we are not in a position to evaluate whether the new requirements are intelligently drafted and guard against swamping the consumer with documents that bewilder rather than enlighten their decision. We would all hope when we approve these measures that Fair Trading tests the efficacy of these proscriptive provisions before imposing them on an unwilling industry and bewildered consumers. Retirement village residents are already overburdened with too much paper and too little clarity in the information.

I fear however this is a forlorn hope. Fair Trading's record to date is to require documentation where there is an inverse relationship between the number of words and the level of genuine disclosure. Clause 38, dealing with part 5, division 2 of the Act, provides a new 90-day settling in period for incoming residents.

Residents have up to 90 days after occupying a residence to give notice that they do not wish to proceed with the occupancy. They have up until 120 days after moving in to vacate the premises. These are generous arrangements but necessary because the age of the consumers increases the propensity for a significant intervening event such as death or severe health problems, which may make it impractical for the residency to proceed.

We support the initiative but are concerned it should not impact on the affairs of the outgoing resident. In response to our concerns, the Government has advised me—and the Parliamentary Secretary has restated it—that the outgoing resident, called resident A, will not suffer a delay in the operator refunding their incoming contribution. Should the new resident, being resident B, decide to leave the village during the settling in period, there will be no adverse impact on resident A because the operator will assume responsibility for any costs, including refunding resident A's incoming contribution. Will the Parliamentary Secretary confirm this understanding by stating plainly in her reply that outgoing residents will not have to bear the burden of costs associated with the new settling in period, including delays in refunding their incoming contributions?

The bill strengthens the powers of the Commissioner for Fair Trading to prohibit the distribution of certain types of promotional material. It revises powers of investigation and penalties. These powers are welcome, although they are not of any use unless they are activated. I can see no evidence the commissioner has exercised her existing powers and hope they will not continue to be paper powers of little benefit to consumers. There are new provisions to ensure operators are accountable to refund incoming contributions in a timely way. I will meet with the member for Albury later this week to discuss a dreadful case in his electorate where village residents have been robbed of their refunds, and Fair Trading has done nothing to help them.

The bill will allow residents greater control over their own premises, to undertake some interior decorating changes without having to seek approval. There is improvement to the setting of village rules and better treatment of surpluses in annual accounts so that operators cannot misdirect them. The bill establishes a register of retirement villages through the Lands Office. This will mean for the first time we will know how many villages there are and where. I understand this will assist with compliance activities. We support the register but believe in the initial establishment phase, operators and residents should not be forced to pay for it. By way of an amendment, we propose an amnesty on the initial fee. This will ensure hundreds of villages are not hit with charges they will regard as new red tape. An amnesty will extend the time in which the new villages can register so that they can deal with the paperwork. I remind the Government that many of these are very small villages in rural and remote areas. We also believe an amnesty will improve compliance and expedite the finalisation of the register.

The bill creates a statutory charge so that if the village goes into liquidation, residents who are non-registered interest holders can have some consideration as secured creditors. In a sense I think of these as the Judy Hopwood amendments. Judy crusaded for better security for residents' incoming contributions in the wake of the financial collapse of a village known as Woolcott Court in her Hornsby electorate. After the collapse it was realised the residents were unsecured creditors. Many lost everything and have been living on charity ever since.

New section 182G sets the priority of interests, and the pecking order for residents with existing contracts will be the costs of winding up the village, the banks, and then the residents. This is only a slight improvement in the residents' position because a bankrupt village often has extensive bank loans to be repaid and there will be little left for the residents next in line. At least they will now be ahead of the owner of the village. The full effect of this clause will be felt in future for those who enter retirement villages after the commencement of the Act. Future residents will have priority over the banks. This means the changes will not retrospectively affect existing security for bank loans. However, it will also mean that there will be considerable inequity between pre- and post-amendment residents.

The imposition of a statutory charge will only assist non-registered interest holders. It does not extend to registered interest holders in the for-profit villages. This is a great disappointment, as the operators experiencing greatest instability at the moment are in that sector. The bill gives them no consideration and is another example of the way in which these residents are being discriminated against to the benefit of big developers and banks. Liberal amendments to be moved today seek to give all consumers the same protection.

It is appropriate at this point to detail the substantial burdens the bill imposes upon registered interest holders. The current Retirement Villages Act 1999 has two classes of consumer—owners and non-owners.

Throughout the Act those classed as "owners" are treated differently. It is important to note that I am not referring to village owners or operators; I am referring to residents whose interest is confined to their personal residence. The Government argues in its 2004 discussion paper:

> Currently the Act classifies residents who hold a long term registered lease under which they are entitled to at least 50 per cent capital gains as "owners". While there is little argument that such residents should have the same rights and obligations as ordinary owners, calling a person who has a lease an owner adds an unnecessary element of confusion and complexity.

The review recommended abolishing the term "owners" and replacing it with the term with "registered interest holder". Registered interest holders, as defined in schedule 1 [11] of the bill, include residents who have strata or company title, or who are long-term lease holders where the term of the lease is at least 50 years and there is at least a 50 per cent share of the capital gain. Generally speaking, registered interest holders are in the for-profit villages, while the non-registered interest holders are in the charitable sector.

Registered interest holders receive second-class protection in this bill. When they vacate their premises they do not have the same cap on recurrent charges that apply in the not-for-profit villages. Neither will this bill afford equal protection for their incoming contribution if the operator goes bankrupt. They are second-class consumers in this bill because the Government takes the view that they share in capital gains and have the same rights and obligations as "ordinary owners". The Opposition strongly disagrees. The statement that these residents reap capital gains from their investment is misleading. We all think of capital gain as being profit from a sale after all the costs have been deducted. This is also the Australian Tax Office's definition of capital gain. But that is not the case in this bill. Schedule 1 [11] inserts a definition of "capital gain" which says, "Fees and charges payable under a village contract are not to be included in the calculation of the capital gain."

The definitions are very problematic, because working out the cost of a contract means taking into account all the fees and charges. A capital gain provision in a resident's contract does not mean a resident is profiting—far from it. I have seen instances where a resident with a zero share of capital gain is getting far bigger refunds on their incoming contributions than residents who allegedly receive 100 per cent of the capital gain. For example, a resident whose contract provides for 100 per cent of the capital gain with a 39 per cent draw down and marketing fee on the sale price is much worse off than the resident who pays 25 per cent on the incoming contribution and receives no share of the capital gain.

Registered interest holders are thought to benefit because they have a legal form of ownership. But compare their situation with that of a person who actually owns their own home and can borrow money by mortgaging their home. The retirement village registered interest holder cannot. His residence is not an "asset". The homeowner with strata title can sell and transfer that title to another person. The retirement village resident cannot transfer his lease. Prospective buyers must accept the new lease under the terms decided by a third party—the retirement village operator. If these terms are worse, there is nothing the resident can do about the effect on the saleability and resale value of his home.

Retirement village residents do not enjoy ownership as we understand it. In some villages under strata title the management rights are in perpetuity and the residents have no say over the sale of those rights. That is not ownership, as we know it. The residents I am concerned for are almost all in the commercial for-profit villages. In 1999 the for-profit sector was small and family based, and registered interest holder residents were a minority. Today retirement villages are big business and such residents are almost certainly the majority of consumers. An example of second-class consumer protection for registered interest holders can be found in section 152 (3). This deals with the problem of residents who die or vacate their dwelling but continue to pay recurrent charges, which can range from $400 a month to well over $1,000. It is not a new problem. When John Watkins was Minister for Fair Trading and introduced the initial bill, he told Parliament:

> … the single issue causing the greatest concern to residents is the way they or their families might be treated by operators after they die, or move to a nursing home or otherwise leave the village. All fair-minded people will find it abhorrent to learn that older people and their families are being charged for meals, cleaning and other personal services years after they have died or otherwise left the village. But this is precisely what is happening in certain sectors of the retirement village industry….
>
> Under the [1999] bill, a resident who dies or moves out of a village, either temporarily or permanently, will cease to be liable to pay recurrent charges for personal services after 28 days. Residents and operators can apply to the Residential Tribunal if a dispute about fees arises. The Government recognises that savings are rarely made on general services such as staff costs, council rates and insurance when residents die or move out. It is, however, unjust that residents who no longer get the benefit of living in the village should pay for general services indefinitely.
>
> The bill places a six-month maximum limit on liability for general services unless the resident owns the premises within the village. The liability for general service fees for residents who own their units will cease as soon as they sell their unit.

This was a fine statement by the Minister, except for the 30 words at the end: "… unless the resident owns the premises within the village. The liability for general service fees for residents who own their units will cease as soon as they sell their unit." Those 30 words have had a massive impact on many residents in the for-profit sector who have the misfortune of being defined as "owners". It means that residents in church and charity villages are covered but residents in the not-for-profit sector overwhelmingly are not. It is nonsensical.

Sharp practice by some for-profit operators has seen contracts drawn up so that most of their residents are now trapped in that definition of being "owners" who have no cap on their recurrent charges. The pitfalls are highlighted in the case of Claire Phillips, which was publicised in the *Sydney Morning Herald* last Thursday, 27 November 2008. Mrs Phillips is a pensioner who lived for three years in a village known as Pittwater Palms at Avalon. It is crucial to note that in seeking to find an appropriate place for Mrs Phillips to live the family was not shopping for the right contract; they were shopping for the right accommodation for their mother. When they found the right accommodation, they accepted the contract that was offered.

In this case it was a strata contract, so Mrs Phillips unwittingly fell into the trap of being an "owner" of her premises for the purposes of the Act. The family obtained legal advice and that distinction was not pointed out—and nor is it normally pointed out. Mrs Phillips paid $115,000 for a studio apartment without a kitchen and signed a personal services contract that obliged her to pay $1,236.77 per month for laundry, meals and cleaning. I stress that this was in addition to her recurrent charge, strata fees, strata sinking fund, and council and water rates. Mrs Phillips vacated the apartment in January 2006. Having given proper notice under the termination provisions of clause 13 of her contract, she expected that the $1,236 personal services charge would cease. It did not cease, because a nasty little clause 9 in her contract says that you can terminate the agreement but you cannot terminate the liability to keep paying the charge until the unit has been sold.

Three years later, Mrs Phillips' unit has not been sold. The personal management services fee has been redefined as a "services fee", which has been increased to $1,556.50 per month but then discounted by $302.50 in a sneaky way to comply with the Act. This means Mrs Phillips is still paying $1,254 per month. She cannot afford this, so a special charge has been levied against her strata title. After three years the fee is up to $39,143.37 and it is still growing.

The ability of the operator to continue to rake in such sums means it is in his financial interests for the apartment to be vacant. It is almost impossible to sell the apartment because of the terms of the operator's contract. Mrs Phillips is hopelessly trapped. It is an absolute scam. If Mrs Phillips had not been classed as an "owner", she would have been protected by the 1999 Act. If the manager was bearing the costs instead of shoving them onto Mrs Phillips, you can bet his attitude to the contract would be transformed. A fairer contract would mean the property could be sold. But sadly for Mrs Phillips the Act defines her as an owner, and under this bill a "registered interest holder" is not deserving of the same protection she would have if she lived in a charitable or church-run village with a loan licence agreement. Her family are desperate to sell the unit and have even dropped the price to $87,000 with no luck. There is no prospect of capital gain when an $115,000 unit cannot be resold for $87,000. The prospect of a capital gain is ludicrous. The family is desperately trying to end the costs. Our amendments today seek to give equal protection to Mrs Phillips and to stop the ongoing charges that are bleeding her life's savings dry.

I turn to the village budget that pays for maintenance and services in the common areas and includes gardening, lighting and the costs of managing the village. Operators of villages must obtain the consent of residents to the proposed annual budget under section 114 (1) of the Act because the budget is fully funded by residents through a recurrent charge. There is a clear set of steps as to what information is to be provided, when it is to be provided and what is required of the residents. Village budgets range in size. At Henry Kendall the budget is in the order of $2 million and covers a wide range of services, and the residents committee, in a cooperative spirit with management, closely monitors it. Last year errors in the order of $30,000 were detected by residents and were corrected by management in favour of the residents.

For larger villages the Government proposes to allow operators to increase the budget by the consumer price index without obtaining residents' consent. The Minister did not tell us in her agreement in principle speech in the other place that proposed section 114 (8) suspends the entire budget consent process. This means that as long as the increased charge to residents is at or below the consumer price index, operators will still be required to give residents the annual budget but they will no longer be required to provide information about the budget to the residents committee or show the residents what quotations have been obtained for proposed work, nor do they require the consent of residents.

This also means that items inserted by operators into the budget cannot be disputed at the Consumer, Trader and Tenancy Tribunal [CTTT]. This is a profound and astonishing deletion of residents' rights. The budget process is the only opportunity residents get to have a say about the type and quality of services that they are paying for. Some villages have budgets exceeding $1 million per year, including Henry Kendall at more than $2 million. A lot of the money of the residents is at stake. Minister Burney's failure to explain this in her agreement in principle speech is reprehensible. This provision in the legislation has not been detected by many residents, most of whom were distracted by the madness of the new capital maintenance proposals, which have thankfully been deleted. It will come as a shock when operators tell them what has happened to their right to consent to the budget.

Our amendments seek to reinstate the right of a resident to be consulted and to give consent to the village budget. The Opposition will move to improve transparency of the budget and accounts process by requiring operators to attend and answer questions at the annual budget meeting; to provide residents with monthly statements of accounts and ensure that those accounts are separated where there is more than one village managed by the operator; and that the auditor attend the annual management committee where the audited accounts are presented. It was pointed out to me that residents fund the audit and therefore ought to have the right to meet with the person they are paying for this important service. The biggest hurdle for retirement village residents is lack of knowledge and enforceability of their rights. Our consumer framework for retirement villages is confusing and ineffective.

A key challenge for the 2004 review was the diversity and complexity of contracts that residents are required to sign. It is an even bigger problem today as big banks and developers have created new financial products around retirement villages and thus the complexity has escalated. The laws keep changing and the tribunal disputes process delivers unpredictable and inconsistent decisions. It is a completely unnecessary and unfair problem. Consumers looking to buy a home do not go out contract hunting; they go house hunting. When you find a house you like you do not have to worry too much about the contract because in normal circumstances real estate contracts are standard for all houses. It is a straightforward matter for your solicitor to identify problems in the document and advise you accordingly and you can make an informed decision. The same applies to purchasing a motor vehicle. Standard contracts mean you do not have to sweat over each clause and crosscheck it against the legislation in force.

The situation with retirement villages is the complete opposite: every contract is different. It is the worst-case scenario for "buyer beware" and this situation is unfair and inappropriate for elderly residents. For every resident I encounter who has been ripped off, the complexity of his or her contract will always form part of the explanation. Even within a single village the contracts are all different. The bill treats consumers as two groups even within the same village. Most residents are unaware of the distinction, let alone have the ability to navigate around it. As a result of the complexity, many positive initiatives in the bill will not be of practical benefit to consumers because they will not understand them and, if they do, they will lack the resources to effectively exercise their rights.

There are various measures the Government could adopt to assist residents. The first and most obvious is model contracts to cover the different arrangements in retirement villages. The 2004 review looked at the possibility of the Commissioner for Fair Trading exercising her power to prescribe clauses in contracts as a possible step towards model contracts—the Government has always had the power to do this. However, nothing has been done and we are now in a mess with thousands of different contracts and confusion galore. New South Wales needs model contracts, which would greatly benefit residents and those who seek to help them, including their solicitors, resident committees, family members and advocates. The Office of Fair Trading and the Consumer, Trader and Tenancy Tribunal would similarly be far better placed to advise and rule on matters if model contracts were adopted.

The Government is well aware of the financial and legal might that big business has brought into the retirement village debate. The residents have no such funding or access to professional advocacy. The average age of entry to villages has increased from 65 years to nearly 80 years. It is ludicrous and heartless for the Government to expect elderly pensioners to be a match for the Gordon Gekkos of Babcock and Brown, Macquarie Bank, FKP, Lend Lease and Stocklands, yet these elderly people are the ones left exposed and unprotected by the bill. In 2005 the Victorian Government was alive to this problem when it embarked on reforms to its Retirement Villages Act. A consumer grant of $170,000 was allocated over three years to ensure effective education, research and advocacy during changes to the Victorian Retirement Villages Act. The Victorian Minister's media release of 23 February 2005 stated:

> The Bracks Government is proposing improvements to the industry to ensure some of our most vulnerable consumers are protected,

> The residents association will provide vital information to retirees about their rights and obligations of living in a village. It will also act as a policy advocate and advise the Government on retirement village issues.

That media release announced the purpose of the $170,00 grant. The Minister, the Government and the Parliament of Victoria were confident that the views of residents had been professionally represented and there is certainty and security for residents and industry.

Contrast that with New South Wales, where the volunteers on the residents association have struggled for five years with five different Ministers. Those who served in the early stages have not been able to stay the distance due to illness and stress. The formal consultation period was about six weeks at the end of 2004 and the remainder has been Ministers visiting ad hoc retirement villages, reissuing the same media release over and over again and saying they have consulted. We had a draft bill in 2006 that expired, then a Minister who attended as special guest at a $1,500 retirement industry fundraiser for the Labor Party right at the time when these amendments were being finalised.

As a further measure, the Office of Fair Trading and the Law Society should meet urgently to examine the legal advice given to potential residents. Many solicitors engaged by retirees and pensioners seem unaware of the existence of the Retirement Villages Act. It is essential that they are made more aware of it because the future of residents turns on the quality of legal advice. A resident also has suggested the appointment of an industry ombudsman. I note advice from another resident that last year the New Zealand Government appointed statutory supervisors under its Retirement Villages Act 2003. Given the case-based nature of complaints and the failure of Fair Trading to act to protect residents, they are ideas well worth considering. They would assist the Government and the Parliament immensely in preparing future reforms to the bill.

I have never encountered anything so slipshod and challenging as this legislation. The Government offers little by way of factual information to guide us as parliamentarians. There is no research, no published paper and no explanation for many major changes, such as abandoning the requirement for residents to consent to the budget. The Government does not seem to know how many retirement villages there are, let alone residents. There was no cost modelling for the legislation. On top of this, the Government is moving extensive amendments to its own amendment bill. It is no way to implement reforms that have such a profound impact on the financial and physical wellbeing of elderly residents in retirement villages. Former Minister John Watkins did a good job in 1999. What we face tonight is a farce. I am not at all confident the Government knows fully what it is doing. The governance arrangements for the bill are appalling, and given the nature of the affected constituency, I find that frightening.

A further difficulty in considering this bill is the constant need to refer to the regulations, which have not yet been drafted. The Government has brushed numerous concerns raised by residents aside with the mantra, "Don't worry, we will sort it out in the regs". I am sure all members empathise with residents, who are not reassured by this repetitious and unenlightened response. I have given notice to the Government of the following question and I ask the Parliamentary Secretary to answer it when she speaks in reply: Will the Government give an unequivocal assurance that residents are fully consulted during the drafting of the new regulations and again prior to submitting the final regulations to the Executive Council? Item [163] reads:

> [163] Section 203 Regulations
>
> Insert after section 203 (3):
>
> (4) The regulations may exempt specified village contracts or a specified class of village contracts from any provision of this Act.

What is the Government's intended use of this power? The effect of this proposed subsection, which is buried at the back of the bill, is that the Minister can table at any time a regulation that can exempt any or every contract from all the requirements of the Retirement Villages Act. It is an extraordinary provision and it is unexplained.

I now refer to industry restructure. Although the Government has not referred to it, I draw the attention of the House to the state of the for-profit sector, which is dominated by very large businesses. It has coloured my consideration of the bill and ought to be aired during this debate. On 30 October the *Australian* reported in an article headed "Developers vie for control of retirement villages":

> MORE blood is expected to be spilt in the $30 billion retirement village market battle, according to industry insiders, who say the fight for dominance could extend to unlisted and private aged care operators.

> Lend Lease and Stockland have been vying for slices of the listed retirement groups hit hard by the recent sharp falls in the price of property stocks.
>
> But as the ground in the listed sector is picked over, some say predators will look at the unlisted sector, with stakes in some funds on offer at the right price. …
>
> UBS Investment Research says if Stockland acquired the retirement properties of [FKP and Aevum], it would control 11,500 units, compared with its current portfolio of 3400 units. "SGP [Stockland] would become the largest public for-profit retirement player, with 38 per cent of market share among the top nine players versus Lend Lease and Babcock & Brown at 28 per cent," says UBS in a recent note.

This is taking place through the stock market. Many of us think of the stock market as the not-real economy. But what is being traded is very real. Thousands of homes of elderly residents of this State are being traded like marbles between developers and merchant banks. This morning I read the FKP annual report to its shareholders, who have seen more than 90 per cent wiped off the value of their shares in the past 12 months. FKP is the operator of Claire Phillips's retirement village, Pittwater Palms. I was not surprised to read that FKP's retirement village earnings have surged over the $100 million mark for the 10,000 units it has under management or ownership, or both, over the past financial year. I calculate that to be an annual profit of $10,000 average per retirement unit. FKP's problems clearly do not relate to profit, they relate to debt. I also noted that for his troubles the chair of FKP, Mr Ben MacDonald, received $243,695 in board fees this year. The chief executive officer of FKP, Mr P. R. Brown, was paid $5,378,768. These men, whose fees and salaries are being funded by cheating people such as Claire Phillips of her life savings and pension, show no compassion or mercy.

I am sorry that former Fair Trading Minister Linda Burney saw fit to share food with such people at the Retirement Village Association fundraiser held at the Aria restaurant to raise $39,000 for the Labor Party. I think of Claire Phillips sitting down to tea in her rented apartment in Alstonville. I implore all members to consider her plight when they decide whether to side with our amendment, which will salvage the little Mrs Phillips has left, or side with the Labor Party and its FKP mates to ruin Mrs Phillips completely. Somewhere on this bill's long journey its original intentions to protect consumers have been perverted. The bill, like the Labor Party itself, has been derailed by money, property and big business and has lost its way. There has been one victory of sorts. I use the word "victory" advisedly because it did not improve matters for consumers. It really was a win in the battle to stop things getting far worse.

Members would be aware of a proposal to force all residents to pay 50 per cent of the retirement village owners' capital and capital replacement costs. This was an extraordinary uncosted initiative and it would have been the first time in Australia that one person was required to pay for another person's property. After a large outcry and a fantastic campaign by residents, assisted particularly by Alan Jones, this pernicious plan was dumped. I thank the Government for giving me credit, but Alan Jones played a crucial role and I thank him for that. I will say more about that matter in Committee. My task as shadow Minister has been to research the industry and consult residents. I thank them sincerely for their patience and perseverance. I should particularly thank many people.

I acknowledge Leslie Williams for opening up Pandora's box in the first place when the good residents of Port Macquarie first issued me with my marching orders. I emphasise that the Opposition has not made up the issues. We have been given very robust feedback from residents on all the issues and it certainly began at the village level. I acknowledge Ian Hooper, Malcolm Mackenzie, Phillip Pearson, John Wheelan, who is in the public gallery tonight, John Cooper, Malcolm Squires, Roger Compton, Bryan McGrath, Sarah Fairfall, Neil Smith, Neville Carnegie and Betty Whiffen. I also acknowledge another dear lady who prefers not to be named, but when she rings talkback radio she uses the name "Catherine" to disguise her identity. All of them have spent hours and burned the midnight oil on this legislation. Many others have made submissions and put in hundreds of hours of work. I assure the House that I have read all the submissions and they have been of invaluable assistance.

I acknowledge the editor of the Camden Haven *Courier*, Kelly Burke of the *Sydney Morning Herald*, and Mike Carlton and Sandy Aloisi, who have reported on the seriousness of these changes. The news cycle has been clogged with reporting on global terrorism and, at a State level, the fall of the Iemma Cabinet, with Ministers sacked for dancing in their underpants or bullying staff, and the State's budget crisis. All those stories have conspired to crowd out reporting on this complex and important legislation. As I said, Alan Jones can claim credit for his successful campaign against the capital and maintenance fiasco. We should all be grateful to him, particularly the Minister for Fair Trading, who, admittedly, did not introduce the legislation but would have been the one politically ruined by the consequences of its implementation. And I say that whether she fully appreciates it or not.

The residents and their colleagues are remarkable Australians who have accomplished great things in many fields before having this battle forced upon them. It has been a great responsibility to represent their views in this debate. In preparing for debate on the bill I met with many people from business, industry and peak groups, including the Combined Pensioners Association, the Aged Rights Service—known as TARS but should be renamed TOARS, the Overworked Aged Rights Service—the Aged and Community Services Association representing the not-for-profit sector, the Retirement Village Residents Association and the Retirement Village Association.

Many villages are functioning well and residents want to be happy. But with the industry in the throws of major change the pressure increases every day to suck even greater profits out of resident contracts and all future ownership is uncertain. Some villages have changed hands three times already in three years. One resident said to me that FKP could sell them to the mafia if they liked and there would not be a thing they could do about it. That is literally true.

Residents need genuine protection, not an honesty system of the type that has allowed unethical practices to flourish and become institutionalised. I urge members to carefully consider the amendments we are moving to the bill to restore some fairness for registered interest holders; to maintain the right of residents to review their village budgets and withhold consent; to preserve the status quo with residents committees and their voting rights; and to stop the shifting of business costs, such as payroll tax and owners insurance, onto residents. The overall aim is to give more accountability, to close loopholes as best we can, and to provide some fairness for what is a very lopsided arrangement. Above all, we have got to recognise that the industry has changed from one run by charities and family businesses to one dominated, as I said, by Gordon Gekko's mates down under. Village contracts are vehicles for extracting rivers of profit from people's lifelong savings, and residents themselves are commodified according to computer projections based upon age, gender and health. We have a chance tonight to rescue the industry from itself. I urge crossbench members particularly to join our effort.

Reverend the Hon. Dr GORDON MOYES [12.01 a.m.]: I speak on behalf of the Christian Democratic Party in debate on the Retirement Villages Amendment Bill 2008. I agree with much of what the Hon. Catherine Cusack said. This is very complex legislation. I estimate I have spent 50 or 60 hours working on this bill and I know the Hon. Catherine Cusack has spent many more hours working on it. The bill amends the current Retirement Villages Act 1999, which commenced on 1 July 2000, and regulates the retirement village industry in New South Wales. It amends the principal Act to make further provision with respect to the rights and obligations of residents and operators of retirement villages, and for other purposes.

Under the statutory review, a major update of the 1990 legislation was due in 2005 but that was brought forward to 2004. The former New South Wales Minister for Fair Trading, Linda Burney, introduced to Parliament the long-awaited Retirement Village Amendment Bill on 26 June 2008, which replaced the exposure draft bill tabled by Minister Beamer in 2006. Consultation was conducted during the review process and in relation to the bill. Many submissions were received by the new Minister for Fair Trading, the Hon. Virginia Judge, from residents of villages and their families, individual village operators and stakeholder groups: the Retirement Village Association, the Aged and Community Services Association and the Retirement Village Residents Association. I thank the Hon. Virginia Judge and one of her senior staffers for giving me plenty of time to work through all the points I am about to make. I appreciate the Minister's concern that the bill should reflect an equitable working through of a very complex situation.

Hundreds of village operators in New South Wales currently provide accommodation for tens of thousands of retirees. In the agreement in principle speech, the former Minister for Fair Trading stated that these reforms seek to ensure that the rights of retirement village residents are better protected while also providing a more effective legal framework for the retirement village industry to develop and expand. Clearly, reform is needed in the industry as residents play a more proactive role in the operation and the financial affairs of retirement villages as well as the continued expansion of retirement villages.

It is important to understand why retirement villages are becoming such a major issue in society. The ageing of the population is due to two factors: longer life expectancy and decreasing birth rates. Around 9 per cent of our population—some 2 million people—is aged 70 years or older. This is expected to rise to 13 per cent by 2021 and to 20 per cent—around 5.7 million people—in 2051. With the baby-boomer generation now in or nearing retirement, the proportion of Australia's population over the age of 65 has more than doubled in the past 35 years, with those aged over 85 increasing five-fold. People aged 80 years and over currently make up around 4 per cent of the population and this proportion is expected to increase to 10 per cent by 2051.

Consequently, the retirement village sector and especially the aged-care sector anticipate continuing increases in demand for services. The retirement village sector provides independent living accommodation, generally to older, retired persons. Additional services may also be provided such as meals, cleaning and other personal services, sometimes also including some basic nursing care, and generally that is referred to as assisted living. A number of retirement villages also have on their campus an approved high-care facility such as a nursing home. I always made sure in each of the villages for which I was responsible that we sought to develop high-care nursing homes on the one site.

In general, there are two types of retirement villages: donor-funded villages, which are funded by way of charitable and/or Government contributions as well as donations from residents as they enter the village, such donation being non-refundable; and resident-funded villages, which are, as the name suggests, villages whose total capital expenditure is obtained from residents by way of ingoing payments for the purchase or, more usually, the whole-of-life lease of self-care units or assisted apartments occupied, with such ingoing payments being refundable in full or in part in accordance with the resident's contract at the commencement of occupation.

Figures released by Jones Lang LaSalle show that as of April this year Australia had 1,756 retirement villages, an increase of 35 villages from July 2007. Approximately 140,000 residents are currently accommodated in those villages, with that number set to rise as the supply of villages increases. About 500 new villages are in the development pipeline, including proposed villages. At the same time, more than 300 existing villages are scheduled for some form of major redevelopment over the next few years.

The latest data from Jones Lang LaSalle shows that New South Wales leads the way with 569 villages; South Australia comes in next with 374 villages; followed by Victoria, Queensland, Western Australia, Tasmania, the Australian Capital Territory, and the Northern Territory. In just nine months, there has been a 2 per cent increase in the number of retirement villages, and these latest figures show that the industry will continue to expand with the ageing of the population and the retirement of baby boomers. Current population projections from the Australian Bureau of Statistics show that 5.26 per cent of people aged over 65 live in retirement villages, and that is increasing as each month goes by. These statistics clearly indicate the expansion of the industry as more and more retirees choose to live in retirement villages as a lifestyle choice.

The big issue currently with such expansion is whether we are catering for people or for profits. The Hon. Catherine Cusack has spoken about some of the high-end developers and what they are doing in this field. Retirement villages were initially established to provide a secure and reasonable lifestyle for seniors and pensioners in the latter stages of their lives. However, in recent years retirement villages have become much more of a commercial venture, which has resulted in the financial security of residents being severely threatened. The commercialisation of retirement villages is exacerbated by the expansion and operation of finance and investment companies acquiring the retirement villages. I will briefly list some of them.

FKP Property Group operating under the Aveo-Live Well brand, controls Forest Place Group Ltd and has a stake in the Retirement Villages Group, a joint venture with Macquarie Bank. FKP Property Group owns approximately 5,300 retirement village units with additional expansion underway. FKP also has very substantial property developments and construction activities. In the recent financial downturn it is rumoured that the value of its shares has dropped by 90 per cent.

Primelife Corporation Ltd operates 38 retirement villages with more than 6,000 units. Primelife has had a controversial history through its original founder, Ted Sent, and its initial financing from certain unregistered investment schemes. Another investment company, Babcock and Brown, currently controls Primelife. Babcock and Brown itself has been under considerable pressure.

Lend Lease Corporation operates retirement villages in Australia under the Retirement by Design brand. Retirement villages form only a small part of Lend Lease's overall activities. Certain properties and rights to deferred management fees have been sold to investment funds, with Retirement by Design continuing to manage the properties under licence agreements. Becton Property Group owns approximately 700 retirement village units. Fund management and property development also form substantial parts of its activities. Aevum Ltd operates 1,400 retirement village units under the Aevum Living brand. Aevum has gone through spectacular recent growth following the purchase of properties in August 2006 from Sakkara Living and Moran Healthcare. Zig Inge Retirement Villages Limited is a privately owned group and assets are held by a private entity for which accounts are not available. Zig Inge Retirement Villages Ltd develops and manages retirement village properties under a management agreement with the private entity. Village Life Ltd operate more than

80 retirement villages with around 4,200 units. Retirement villages are run under the rental model. It has had significant financial difficulties in recent years and has undergone several restructuring of its activities. Properties are currently owned by the MFS diversified Trust and leased back to Village Life Ltd.

I do not need to go further to demonstrate that the retirement village sector is causing a great deal of concern for elderly people who have put their life savings and the initial home into their future. It is evident that the retirement village sector is undergoing considerable growth with all the major players planning to expand their number of retirement villages in operation. Smaller and weaker operators will continue to be taken over by financially stronger entities. As seen in the examples I have provided, retirement villages are now saleable, resulting in several changes of ownership. The retirement village operators are more and more becoming large public and private equity companies. This has ensured the ongoing provision of aged accommodation into the future, which comes at a detrimental cost for retirement village residents.

This bill sets out to amend the Retirement Villages Act 1999 in key areas. The much-anticipated definition of "capital gain" as it relates to a resident's exit entitlement has been included in the bill. It is defined to mean any increase between the amount the resident paid for these premises and the amount the next resident pays for those premises, less any costs associated with the resale of the premises. This should overcome uncertainty created by recent court decisions and provide certainty for residents and operators. I met with a number of bureaucrats working with the Department of Fair Trading, a number of whom working on this legislation were greatly confused about the real meaning of "owner". I was able to help them to understand the different styles of ownership that were not mentioned in the previous version of this bill.

This bill replaces the term "owner" of a premises with the term "registered interest holder". The change does not materially affect the previous definition, as a "registered interest holder" is defined as the registered proprietor of land, a strata scheme lot, or community land scheme lot, the owner of shares in a company title scheme, or a resident whose right is created by a long-term lease of at least 50 years duration, including options to renew, and who is entitled to receive at least 50 per cent of any capital gain. I do not know of many aged people going into a retirement village who are talking about a 50-year lease. However, the rights and obligations of a registered interest holder are revised under the bill. References to a resident owning or a resident who owns their premises also incorporate the new definition of registered interest holder.

Capital replacement and maintenance is a vexed question. The Hon. Catherine Cusack made the point quite strongly that this issue has been the subject of a great deal of attention. The bill imposes further regulation with respect to capital maintenance and replacement of property within villages. This includes prohibiting an operator from selling, entering into an agreement to sell or otherwise passing on the responsibility for the replacement or maintenance of capital items for which the operator is responsible and obliging the operator to establish a capital works fund in circumstances where the operator funds capital maintenance or replacement of items that extend beyond the end of a financial year from recurrent charges. For capital items that are the responsibility of the operator and located within the premises of a registered interest holder, the bill specifies that the cost of maintaining and replacing those capital items is to be shared between the operator and the registered interest holder in the same proportion as the parties are to share in any capital gain.

I will not go into the details of recurrent charges because it is a very complex issue. Increases in recurrent charges under village contract may be varied by a fixed formula provided that 14 days written notice is given to the residents, without requiring consent of the residents. There are also issues concerning the cessation of recurrent charges and the registered interest holder who has liabilities in a number of ways. The Hon. Catherine Cusack mentioned a settling-in period similar to that included in the South Australian legislation. This bill introduces a settling-in period that enables new village residents to terminate their resident contracts in approximately 90 days of the resident being entitled to occupy the premises or within 90 days of the resident first occupying the premises.

Departure fees have been a serious problem. The bill gives an outgoing resident the right to apply to the tribunal for a recalculation of the payments the operator must pay to them under their residence contract including departure fee if, amongst other things, the resident considers the operator's conduct has unfairly had a negative financial impact on the resident. I am glad to see that spelt out in the bill and I congratulate the Minister on taking advice on that issue. With regard to costs of sale for registered interest holders under the Act, the costs of sale incurred in reselling the premises are to be shared between the outgoing resident and the operator in the same proportion as the parties are to share in any capital gain. The bill does not seek to change this position. Contributions payable by instalments is an ongoing concerning. The bill permits a residence contract to provide for payment of an ingoing contribution by instalments at intervals specified in the contract

and also for interest to be payable by the resident on the unpaid portion of the ingoing contribution calculated at the rate set out by the regulations. In the absence of any statutory exemption, I query whether the form of contract required and the period over which the ingoing contribution is payable will need to comply with, for example, the provisions of the Consumer Credit Code. The Parliamentary Secretary might examine that and provide an answer.

Statutory charges over village land that is held jointly are also an issue. A number of points have been raised about annual and audited accounts, but I will not go into them. The bill provides that an operator must carry forward any surplus in the annual accounts of the village and is not permitted to carry forward any such deficit and is not permitted to seek a special levy from the residents to make good any such deficit. I will not go into the details of the disclosure requirements because they are complex. The bill also deals with the registration of retirement village land. It requires land used as a retirement village to be notified to the registrar general. If the land is already used as a retirement village immediately before the commencement of proposed section 24A, the operator of the village must provide the notice within three months after such commencement. Otherwise, the notice must be provided before an operator enters into a residence contract with respect to residential premises on that land. This is a very good move and I congratulate the Minister on it.

There are other interesting points, but it is now after midnight so I will not go into the detail of statutory charges to protect certain ingoing contributions. They are complex. Although I have developed a great deal about this for my speech, I will not take the time of the House. There are issues concerning budgets, the concept of statements of proposed expenditure and statements of approved expenditure being replaced with proposed annual budgets and approved annual budgets, respectively. There are issues concerning village safety, residents committees, participation in management, and changes to village premises. I have some concerns with this bill, but I will not take the time of the House to go into them in any detail. I simply indicate that the Parliamentary Secretary should comment on these issues and raise them for careful examination with the Minister for Fair Trading. I refer to section 26, subsections (1), (2), (3), (4) and (5), which probably should be omitted from the bill and replaced with a revised section 26. There is the issue of registered interest holders and section 152, the recurrent fees agreement, when a resident vacates a residence.

I will not go into more detail about the bill, because some of these matters will come up in discussions at the Committee stage of the bill. I have 19 areas of concern, and I am sure the Chair appreciates that I will not go through all 19 now. Instead, I will conclude by making a number of brief points. Many operators have introduced changed leases for new entrants, with far more onerous departure fees to be retained by the operator on the vacation of a unit. With some retirement villages, the current lease provides for a departure fee, capped at 25 per cent after nine years. For example, the operator Aveo now offers new entrants a lease with the departure fee capped at 30 per cent after only five years. This, of course, significantly depresses the market price that a purchaser would be prepared to pay, thus effectively reducing the return that the original leaseholder might reasonably have expected to gain on departure. The outgoing leaseholder has no redress against what seems to be a quiet unfair manipulation of the price of a unit.

The effect on market value is readily demonstrated. One new village in Port Macquarie, for example, recently offered a "nil departure fee lease" as an alternative to its normal lease contract, which has a departure fee structure. The "nil departure fee lease" attracts a higher purchase price, or ingoing contribution, than does the departure fee lease. There are instances of other villages employing similar marketing techniques. A new village in Manly Vale, Sydney, is offering new units with leases having a relatively low departure fee structure—1 per cent per annum, capped at 10 per cent after 10 years. However, the purchase price is much higher than the expected market value for such units in that area. Just as lower departure fees attract purchase prices, so the converse applies—higher departure fees depress the market value of the units, leading to a lower purchase price, or ingoing contribution. In other words, those who are organising the village can easily manipulate the price of units to be either purchased or leased.

I will finish by making one point—a point I think is very important, but one that no member has yet raised: the Department of Housing wants the joint venture clause removed. Removal of the clause would mean that any Department of Housing tenants living in a joint venture would not be able to defend themselves from discrimination in the future. If this clause is removed, the self-funded residents will be protected against discrimination, but Department of Housing tenants will not. This creates an environment where two groups of people living in the same retirement village are not covered by the same legal protection. That can be seen as a form of discrimination in itself. It is about a group of people—in this case Department of Housing tenants—who will become scapegoats and perhaps be demonised by other tenants.

I have assisted in building such joint projects with self-funded retirees and Department of Housing residents. Some years ago I anticipated the problem that has now arisen in many such joint projects whereby self-funded residents disparage Department of Housing residents. Sometimes the village operators, very unwisely, build a section of units on their own within the village for the use of Department of Housing tenants. These units often are referred to as "the slums", for example. Other residents who have paid large sums of money to enter the village feel the Department of Housing referenced residents have got their security in the village on the cheap, and a form of apartheid grows up. Sometimes the management adopts a "them and us" approach to the residents.

Anticipating this kind of problem arising, some years ago I had written into an agreement between Wesley Mission and the Department of Housing that a certain number of department-funded units be made available to the department's recommended residents. These units would not be in a separate building, would not be in an isolated group, and would not actually be able to be identified—because they would be selected at random whenever a unit became available in the entire village. No resident would be identified as a Department of Housing recommended resident. Hence, no-one would know either who or where any Department of Housing recommended resident was, or where the resident lived. My concept was that a retirement village should consist of a normal cross-section of society. Even a village established by a church should not be full of Christians only, but reflect a similar cross-section of any society. I the Minister to consider notifying all village operators who are involved with any joint ventures—such as with the Department of Housing—that responsible relationships be established to prevent isolation and disparagement of those who are recommended by the Department of Housing.

For more than 35 years I have had close links with the retirement village industry and its residents. During my time at the Cheltenham Church of Christ, in Victoria, in the 1970s I established five retirement villages—long before other organisations had really developed self-funded retirement villages. Then, during my tenure at Wesley Mission, I was involved in the establishment of several retirement villages worth in excess of $600 million. Currently, I am chair of the board of an aged persons welfare foundation, which has many millions of dollars involved in helping funding people who want to move into a retirement village without being ripped off in the private sector.

I have met with representatives of several retirement villages on the bill. I have had many discussions with Mr Ian Hooper and the Retirement Village Residents Association. I thank them for their active campaigning on behalf of the village residents. I also thank the Premier, Nathan Rees, who invited me to discuss with him some of the issues about which I had concerns. When I raised with him my concerns, I was delighted to find out that the Premier did not realise that his Government was actually planning to do the very things that I indicated were in this legislation. He made it possible for the Hon. Virginia Judge to spend quite some time with me, along with her senior advisers, and eventually accepted a number of suggested amendments that served the interests of retirement village residents, including removing the amendments that would force retirement village residents to pay more than half of all capital expenditure costs, as well as pay extra levies charged on top of existing charges. In the current economic climate, this clearly would have been an injustice to thousands of elderly residents who are already struggling to pay for basic necessities. I place on the record my appreciation of the Premier and also the Hon. Virginia Judge and her advisers, who took advice in the right way. There is no doubt about the growing importance of retirement villages in our communities. As our population is ageing, retirement villages will have an increased role in service delivery for the elderly and retirees. Some members of this House are approaching retirement age and are considering living in retirement villages.

The Hon. Christine Robertson: Some have gone past retirement age.

Reverend the Hon. Dr GORDON MOYES: I make no comment about those who have passed that age. Some of us have loved ones living in retirement villages. It is vital that we get this matter right. The reforms outlined in the bill will improve overall the quality of operators and will raise the standards of the industry. I do not oppose the main premise and the substance of the Retirement Villages Amendment Bill 2008, as I believe it provides a balance for both the residents and the operators. However, it is in the best interests of public policy that we have a proper and well-informed discussion about this contested issue. I cannot for the life of me understand how we can get through all the debate, plus the 80-odd amendments, before Christmas 12 months. However, I will look closely at the foreshadowed amendments by both the Opposition and the Greens. All in all, I commend the bill to the House.

Ms SYLVIA HALE [12.31 a.m.]: On behalf of the Greens I speak on the Retirement Villages Amendment Bill 2008. Although I have no wish to delay this bill, the Greens are concerned that it needs more

work and are yet to be persuaded that the Government's last-minute amendments cover everything that has caused concern to many retirement village residents. To that end, we have drafted amendments that attempt to address other aspects of the bill, as well as the critical issue of who pays capital replacement costs. We were inclined to send the bill to General Purpose Standing Committee No. 4 for review, in the hope that it would come back next March in a shape that all members here could be confident in supporting, but that option is not available because some members are reluctant to delay the bill further.

In many respects this bill is innocuous and, indeed, it assists residents in a number of key ways. When it was first debated in the lower House the bill contained totally unacceptable clauses. The Government proposed to allow elderly residents of retirement villages to be ripped off. The bill gave carte blanche for them to be charged up to 50 per cent of the costs of capital replacement, costs that should be 100 per cent the responsibility of the owner. The Government told residents, "Don't you worry about having to pay for big-ticket items; they will all be in the regulations. It's a pity but we haven't written these yet, so you can't see them and we can't tell you precisely what is in them." At least the new Minister has realised that this was asking people to take too much on trust. I will return to this aspect of the bill later.

This legislation has been years in the making. Like so many Fair Trading bills, it has taken an inordinate length of time to reach the Parliament and has spanned the incumbency of five different Fair Trading Ministers, the latest being Virginia Judge. The provisions of the bill have been outlined at length, both here and in the lower House. Therefore, I will not comment further, other than to say that following discussions with the Government and in light of the Government's amendments, residents are happy with 90 per cent of the bill and are relieved that, after some years, the bill is finally in the Legislature.

Positive aspects of the bill are: requiring the operators of retirement villages to hold an annual management meeting and to provide certain information at that annual management meeting; requiring the operator of a retirement village to ensure that the retirement village is generally safe and that emergency and home care services have vehicular access to residential premises within the village; limiting the period during which a former occupant is required to pay recurrent charges after permanently vacating premises within a retirement village; providing for a settling-in period during which a resident may terminate a village contract; creating a process by which the right to receive a refund of an ingoing contribution paid under a village contract may be enforced; and creating offences for failing to comply with certain provisions of the principal Act.

The Government should be congratulated on those aspects of the bill. However, residents were desperately unhappy about several aspects of the bill, such as the attempt to shift onto residents up to half of capital replacement costs. The Minister fortunately has had the good sense to back away from this, no doubt due to many residents becoming aware of what was in the bill and making numerous representations. The attempt to cost shift onto residents by the village owners is of concern, all the more so because of the willingness of the former Minister for Fair Trading, Linda Burney, to capitulate to the owners' demands.

We know the operators wanted to include in the bill a section that would allow them to charge residents up to 50 per cent of capital replacement costs and the owners initially got what they wanted. That Retirement Villages Association, which is the industry group, congratulated itself on its success in a media release. Prior to that temporary victory the former Minister, Linda Burney, had supped with industry representatives such as Babcock and Brown and the Tulich family at a $1,000 a head Australian Labor Party fundraiser at the Aria Restaurant at Circular Quay—expensive tastes!

Under the Act as it currently stands, residents are responsible for capital repairs and operators are responsible for capital replacement. This can cause confusion on occasion. The Greens have suggested that if the owners choose unreasonably to repair rather than replace items, residents should have access to the Consumer, Trade and Tenancy Tribunal to resolve the matter and the Office of Fair Trading should investigate if a pattern emerges of an operator attempting to avoid his or her responsibilities in this way. However, the former Minister made residents responsible for meeting 50 per cent of the costs of all capital replacement other than roads. No such provision had appeared in previous drafts of the bill, nor in any of the recommendations of the reviews of the Act.

Residents were rightly concerned about the unknowable amounts they might be asked to pay. They were told not to worry because the regulations would protect them, but without being able to see the regulations, residents were being asked to sign a blank cheque. The Greens did not support this approach, nor did the Opposition and other crossbench members. It seemed obvious to us all that if an owner owns the village and keeps 100 per cent of the capital appreciation when the village is sold, the owner should pay 100 per cent of the

costs of capital replacement. The provision that the former Minister inserted in the bill was contrary to accepted business practice and amounted to blatant cost shifting from owners onto residents. Residents were vocal in their objections. A resident in one Sydney village stated:

> If you read her second reading speech, Minister Burney didn't understand the implications. The Minister's people are acting in favour of the operators' interests … This amendment gives operators licence to improve, maintain or replace their asset at any dollar value in the sure knowledge that they will be subsidised to the tune of 50 per cent. This could never happen in any other business venture … Your urgent intervention is desperately sought.

A letter from another resident stated:

> It seems unfair that operators can benefit handsomely from the use of residents' ingoing contributions (on which no interest is paid) and the retention of a significant part of that ingoing contribution as a retention payment on exit from the accommodation and then back up for more of the residents' money for capital replacement.

Rather than the tranquillity that many retirees seek when moving to a retirement village, the bill, if unamended, would force them to immerse themselves not only in raising funds but also in obtaining quotations, engineers' reports, structural building issues and so forth, in order to make informed decisions about capital replacement. The Minister has backtracked but it is important to acknowledge that, but for their tireless lobbying, residents could well have faced a far grimmer outcome.

The Retirement Villages Residents Association has worked tirelessly and the Greens thank the association for its advice and comments on the bill. The former Minister, Linda Burney, handed Virginia Judge a poisoned chalice although, as pointed out by Ms Catherine Cusack, Ms Judge in her capacity as member for Strathfield is not a complete stranger to donations from village operators. However, to her credit, Ms Judge met with retirement village residents and listened to them. She was no doubt also aware of the distinct possibility of this House amending the capital replacement provisions of the bill. The result is that today the Government is moving to remove those provisions that would have required residents to pay up to 50 per cent of capital replacement costs.

I now turn to the section dealing with recurrent fees. Operators will be able to increase fees without consulting residents as long as fees are in line with Sydney's consumer price index. The Greens do not like this section, but note that it is consistent with other Fair Trading legislation, such as the Residential Parks Act. There is no need for operators to prove that they have actually incurred additional costs before increasing fees. We need to remember that the CPI encompasses a range of goods and, although pensions are linked to average weekly earnings, basic necessities such as groceries, petrol and other goods are increasing in price faster than pensions or the CPI.

There are several other worrying aspects of the bill, such as those that allow residents in the smaller villages whose budget is less than $50,000 to opt out of seeing annual budget figures. That could well be a recipe for trouble. I will save my remarks on the other aspects of the bill that residents are concerned about for the Committee stage. There are other issues that cannot be dealt, however, because they are in regulations or for other reasons. I will refer to a few of these issues briefly. Housing NSW tenants in joint venture retirement villages come under tenancy legislation, rather than retirement villages legislation as proposed in this bill. The Greens do not want to see Housing NSW tenants disadvantaged. If they are living in a retirement village, they should be on the same footing as other residents, that is, be subject to the Retirement Villages Act.

I now turn to the capping of exit fees. Exit fees should not exceed 20 per cent of ingoing contributions. That is, they should comprise 20 per cent of the purchase price of the villa and not 20 per cent of the outgoing price when a resident leaves a village. With regard to the lack of a standard contract, contracts vary and the regulations—unlike, for example, the Residential Tenancies Act regulations—contain no standard contract. I will now deal with the nature of the industry, which other speakers have spoken about at length. While there are many small operators and not-for-profit organisations in the retirement villages sector, increasingly there are some very big businesses owning many villages and doing pretty well. One example is taken from Aevum's latest annual report, which I quote:

> Over the course of the year Aevum delivered a record net profit of $28.5 million, representing a 24% increase over the corresponding period in 2007. Earnings per share were up 4% to 24.1 cents per share. Net tangible assets grew during the period, from $1.97 to $2.17 per share. Most pleasing was the strong cash flow generation of the company's retirement division with operating cash flows up nearly 100% to $20.4 million for the year. This was primarily as a result of the company turning over a record 161 units for the year as well as recording an encouraging result from the aged care business.

Clearly, Aevum was very pleased with the way its retirement village operations were proceeding. Aevum also provides a graph showing net profits since 2001-02. The graph shows a quite remarkable climb in net profit

from 1.5 per cent to 28.5 per cent from 2002 until the most recent financial year. At the same time, assets held have grown to $809 million in value. Clearly the business is profitable. It is also clear that these people can afford to attend $1,000-a-head dinners at the Aria Restaurant with Labor Ministers.

Many members of this Parliament will have parliamentary pensions or superannuation to rely on in their dotage. But it must be remembered that many people do not have superannuation and will only receive the pension. Some sell the family home in order to enter a retirement village, and some do not even own a family home to sell. Regardless, the overwhelming majority of operators of the villages make handsome profits. The Greens will seek to amend the bill. The sheer number of amendments, and those proposed by the Opposition, clearly indicate that the bill needs much more work. I hope, however, that in the next 12 months the Minister will address many of the issues that remain to be resolved, such as adequate protection of registered interest holders and the preparation of a standard contract.

Finally, I thank all the retirement village residents who wrote to the Greens and other members. The Greens acknowledge the work of the Hon. Catherine Cusack, who has been very active on this issue. I also acknowledge the work of Reverend the Hon. Dr Gordon Moyes, who facilitated a meeting between the Minister and residents and expressed his views in no uncertain terms.

Reverend the Hon. FRED NILE [12.44 a.m.]: The Christian Democratic Party supports the Retirement Villages Amendment Bill 2008. As honourable members are aware, the bill was originally introduced by Minister Linda Burney and was then taken over by the new Minister, Virginia Judge. I congratulate Minister Virginia Judge on her cooperative spirit and willingness to listen to residents' concerns. I have also spoken to the Minister on a number of occasions expressing my concerns about the bill and about her willingness to accept amendments to it. Members will vote on 22 amendments that the Minister has introduced to the bill, which will meet many of the residents' concerns that have been causing them unnecessary stress and heartache.

As we can see, tension develops between residents in their retirement, when they have no real cash reserves and only a very limited income—we could almost say they are the new poor—and the commercial operators who want to make a profit from the operation of the village. It is therefore very important that the Government ensures that there is justice for the residents as opposed to the operators, who are concerned about profits. The residents must come first.

I am pleased that the amendments deal with a number of issues. An issue that many residents are very upset about is the proposition that they share up to 50 per cent of the cost of new capital repairs and replacements. I received a letter from residents of the Lake Macquarie Retirement Village in which they said that residents of the village are not the owners of all units that are under loan and licence agreements. Those matters have been dealt with in the bill and also in the 22 amendments. The residents will be pleased that in future the operators will pay for 100 per cent of the replacement of fixed items; the operators will not be allowed to sell capital items to residents; the residents will pay nothing for the replacement of non-fixed capital items; the residents will pay nothing for depreciation; that residents can be reimbursed for the cost of having urgent work carried out in their unit, and can go to the tribunal if the operator does not reimburse them. Under the amendments the operator is responsible for keeping the village properly maintained, including replacing capital items if it is no longer practicable to repair them.

The amendments require the annual budget to contain specific details for capital maintenance work. Each item of work must be listed, together with the expected cost. Operators must provide quotes and must include provision for urgent work. Residents do not have to pay for fixing defective building work, for refurbishment of vacant premises within the village, and so on. The amendments will allow residents to distribute any surplus money from the capital works fund, with respect to maintenance, to themselves. I believe that those amendments have now met the concerns of the residents, and I hope they will remove the stress that many of them have been experiencing.

The amendments and the legislation will make it clear that there will be a 90-day settling-in period for new residents. It will cut the maximum time most residents must keep paying recurrent charges once they move out of village from six months to only six weeks. It will also make village operators responsible for budget deficits. It will require operators to carry out annual safety inspections. It will give the residents the right to add fixtures and make alterations to the property. It will oblige operators to hold annual meetings with their residents. It will reduce the number of proxies any resident may hold from five to two. There will be better protection for refund entitlements of residents in the event of a financial collapse of the operator, which is a

genuine concern, particularly as we face the global economic crisis, particularly in Australia, and given the financial pressure on a number of operators who have invested in these villages, such as Macquarie Bank and so on.

If any of these collapse, that could have a dramatic impact on the rights of residents. The bill will provide better protection for the refund entitlements of residents in the event of the financial collapse of the operator, which we hope and trust will not occur. The bill also reforms the way in which capital repairs and replacements are funded within a village. The Christian Democratic Party and I strongly support the bill. I note that Ian Hooper, President, Retirement Village Residents Association, has welcomed the amendments announced by the Minister for Fair Trading. He said:

> I'm very pleased to see that residents' concerns have been listened to and that the Government will retain the current system and introduce new regulations to clarify any existing uncertainties.

Jill Pretty, Chief Executive Officer of the Aged and Community Services Association of New South Wales and the Australian Capital Territory, said that she was pleased with the conciliated resolution. She said:

> We look forward to continuing to work with the retirement Village Residents Association, the Retirement Villages Association and Fair Trading to ensure the division of capital costs between residents and operators is fair and transparent.

Tom Galetta, President, Retirement Village Association, said that the bill was a good result. He said:

> We are very pleased with the outcome which was the result of active consultation with residents' representatives and now provides certainty for residents and operators moving forward.

I again congratulate the Minister for Fair Trading, Virginia Judge, on her very positive attitude to her role and for her cooperative spirit in dealing with this very complex legislation, which I am pleased to support.

The Hon. MARIE FICARRA [12.51 a.m.]: The Retirement Villages Amendment Bill 2008 amends the existing Retirement Villages Act 1999, which came into effect on 1 July 2000. The bill increases regulation on the retirement village industry in New South Wales and in particular outlines the rights and responsibilities of both operators and residents. Many years of operation of retirement villages in New South Wales and throughout Australia have given us a wealth of feedback and a clear indication of increased regulation to improve social harmony within aged accommodation facilities. However, the bill had in its original presentation, and still has, many deficiencies showing a lack of understanding of concerns of older village residents throughout New South Wales.

The Coalition is delighted that the Government has been humiliated and had to back down from making retirement village residents pay 50 per cent of capital costs of their respective village owners. This backdown took a lot of protesting by residents and I congratulate Mr Ian Hooper, President of the Retirement Village Residents Association, and the many hundreds of residents who wrote or telephoned members of Parliament, newspaper editors and radio talkback hosts—well done folks! The power of grey activism is alive and well, and we hope they remain alert but not alarmed, as governments realise they are no longer a soft-touch constituency. Along with other members, I also congratulate our Coalition shadow Minister for Fair Trading, the Hon. Catherine Cusack, on her relentless pursuit of the Government to reverse this onerous, inappropriate and ill-conceived measure.

We all know and support the fact that retirement villages are becoming an increasingly popular housing option for our senior citizens. It is important for both residents and operators of those villages that we legislate against unfair practices and that we protect the many vulnerable retirees who chose that lifestyle. The bill is long overdue by many years. Why was it rushed through that other place on the one day in August when Parliament was recalled? Coalition members were not able to properly place their constituents' concerns on the record, which was such a miscarriage of democracy given our communities have such an ageing demographic. Aged housing is, apart from healthcare, the major issue for most of our seniors. An estimated 700 retirement village operators in New South Wales provide accommodation for an ever-growing population of retirees, currently estimated to be 70,000 plus, with anticipated growth in this sector being significant given the ageing of our society and healthcare initiatives that are increasing longevity for our citizens.

A deficiency that exists in the present system is the absence of a register for retirement villages and as such, the bill aims to address this by requiring that all land utilised for the purposes of a retirement village be

registered with the Department of Lands. Hopefully it will assist this Government and those that follow to better prepare for the future of our biggest growth sector—the housing, healthcare and social services that retirees will require. Such planning has been a major shortcoming of the Government that has been in power for 13½ years.

The Coalition has received a multitude of submissions and correspondence on which we have formulated our position on the bill. The consultation that has led to this point, with many individual retirees representing, at times, their own interests as occupants of retirement villages or their fellow residents in their particular village, has been frustrating: the process has been too long and government acknowledgement of their concerns has been minimal.

The question asked by all who have been associated with this long, drawn-out consultative period is: Why the long delay between 2004 and late 2008 to get to the point of actually introducing a bill? It has not been a model of public service efficiency; it has taken four Ministers for Fair Trading to get the bill before the House. In 2003 Parliament was told of the urgent concerns of many retirees and the clear need for reform of the sector to protect the interests of senior citizens. The process has been linked to two reviews, the cause of long delays. Many ask: Why have the more than 500 submissions to the draft bill been kept secret? That lack of transparency leads us to ask: How do we know what input has been taken into account and is the bill truly reflective of the bulk of submissions received? Surely they should have been made public.

I am fortunate in having had the experience of family members living in retirement villages and being in local government for 16 years, then representing the Georges River electorate in that other place. I have had many conversations with retirees living in village accommodation. Moving into such facilities is often a quite traumatic experience for our elderly. It is essential that residents and prospective residents understand their rights clearly as it is a major social and financial undertaking on their part. Unquestionably, the most significant changes in the bill and the most controversial involve the treatment of capital maintenance and capital replacement in both the homes of residents and common areas of retirement villages. This was by far the biggest issue that drew the most criticism in submissions to the review process.

It is acknowledged that the current situation, which makes residents responsible for maintenance and operators liable for replacing capital items, has its problems. It encourages attempts at cost shifting, that is where items are repeatedly repaired beyond their economic life instead of being replaced by the operators. Under the Government's original bill that all Labor members voted for in that other place, it was proposed that all capital works, including maintenance, replacement or new improvements, would be treated in the same way; that is, operators would have imposed 50 per cent costs onto residents! The then Minister for Fair Trading, Linda Burney, justified such an amendment when introducing the bill by saying:

> … the changes should take some of the pressure off the need for recurrent charges to rise, and in some cases may result in a reduction in the charges residents are currently paying. This will be particularly beneficial to residents on fixed incomes who struggle to meet the rising costs each year.

The Coalition cannot believe that Minister Burney or her advisers actually listened to any senior citizens living in villages in New South Wales, those vulnerable constituents most often on fixed incomes, particularly those living in villages run by churches or charities. Of course, they were up in arms with this amendment, which led to this bill being introduced. It is difficult to know whom the Minister listened to at that time, and we are grateful that the current Minister has at least met with, listened to, acknowledged and amended the bill. We have heard much about the Government selling out the elderly and the vulnerable retirement village residents when they receive sizeable political donations, including the $1,000 per head fundraising dinner at the famous Aria waterside restaurant in Circular Quay last year.

Minister Burney was the guest of honour on the night. This lovely dinner netted the Labor Party coffers $36,840. Who was there? None other that the Retirement Villages Association, which was looking after the interests of the retirement village operators—not the residents—the operators! Honourable members should keep in mind that in 2004 this Labor Government promised that it would put a stop to village owners charging residents for expensive capital items such as road resurfacing, pavement reconstruction, replacing hot water systems and so on.

Only last year, following the Aria dinner, the Minister embraced the Retirement Village Residents Association wish list, at the top of which was a policy requiring residents to pay 50 per cent of maintenance plus 50 per cent of capital costs. What happened then? In June 2008 Minister Burney introduced the bill before us in

a most hurried fashion on the day that Parliament was recalled to pass the doomed electricity privatisation legislation—28 August 2008—and the Retirement Village Residents Association, quick as a flash, issued a press release thanking this Labor Government for adopting its changes.

Some heartless operators would have used this change to cover the costs of improving their assets. It is outrageous to impose capital costs on residents who have often paid large sums to lease their units, pay substantial weekly levies and contribute to maintenance costs, as well as upon departure to be liable for up to 25 per cent of the final purchase price. The Coalition has been adamant for months now that even though aspects of the bill are worthwhile improvements, due to the overwhelming opposition of residents to this aspect of the bill, if the Government refused to accept our amendment we would have voted against it. The result is what we see today—a humiliating back down by a hapless Minister and her insensitive advisers, and the Government rabble.

Residents throughout the review period had hoped for a tightening-up on payroll tax being allowed into the budget for recurrent charges. Payroll tax should have been excluded from the equation for residents as a part of this bill. It is unacceptable to force residents to meet the costs of the payroll taxes of owners. Payroll taxes have always been a charge to business, and residents should be reassured that that is to remain the case as part of this bill.

An equally important concern for many residents and their families is the ongoing charges they remain liable to pay even though they have moved out of a village or passed away. It can be particularly onerous on those who move to a nursing home or hostel to be faced with paying two lots of fees. Currently if a resident does not own his or her premises the maximum period for which charges can continue is six months from the time the person vacates or dies. The bill will reduce this period to six weeks, which should encourage operators to take all reasonable steps to find another occupant as soon as possible. However, the glaring problem with this bill is the change of terminology from "owner" to describe residents who have strata title or leases that include a share in capital gain. The new term in the bill is now "registered interest holder". These persons will be exempt from the new beneficial provision of the 42-day limit. Many for-profit village residents appear to be adversely affected and they demand to be treated in the same manner as other residents, or have certain pre-existing favourable conditions in their leases upheld. Clarification from the Government would be appreciated.

A significant new change is the introduction of a 90-day settling-in period for incoming residents. During this time if a resident passes away, needs to move to a nursing home or hostel, or finds that retirement village life is just not for them and elects to move out, they will only be liable for fair market rent for the period of their occupancy and a reasonable administration fee. Too often we hear reports of unhappy occupants who realise that the particular culture of a village is not for them, yet the operators bind them to contracts that make their life in retirement most unsatisfactory. Seniors and their families welcome this amendment. It is a shame that this Labor Government does not apply the same financial regulation upon itself.

I highlight the tale of many seniors and their familles who are caught in the trap of purchasing State environmental planning policy [SEPP] 5 approved aged accommodation for themselves in an effort to remain independent but who still have the facilities they need to shower, enter and exit their home with safety, and all the other worthwhile facilities of SEPP 5 approved dwellings. Sadly, in some cases during the time of construction if their health deteriorates to a point where they need to enter a retirement village this Government does not refund in toto, or a portion, their stamp duty for the original purchase of the SEPP 5 dwelling that they were never able to occupy. I believe the aspect of stamp duty collection to be outrageous and I ask the Minister for Fair Trading and the Minister for Ageing to work closely with the Treasurer to address this shameful treatment of our senior citizens who suffer deteriorating health.

Importantly, the bill amends the law regarding the provision of information to retirees prior to moving into a retirement village. This aspect of entry is handled to varying degrees by some of the villages I have come in contact with: some operators and managers who do it well and others are inadequate. Under the reforms, prospective residents will need to be given a general inquiry document when they make an initial inquiry, followed by a more detailed disclosure statement if they decide to go ahead and move in and express an interest in a particular unit. It is reasonable that a more detailed information pack be provided when seniors decide to commit to purchase, and the content of those documents should be prescribed by regulation for consistency and transparency.

In many of the instances of complaints as to the management of villages it was found that communication by operators to residents was woeful, or at the very least lacking, leading to unnecessary

disputes that could be handled better by having good communicators as managers. Ideally, management representatives should attend resident committee meetings regularly but, in particular, prior to the budget being presented for consideration and approval so the committee members can ask all the questions they need so as to fully inform their colleagues.

This bill is long overdue and the Coalition, through the Hon. Catherine Cusack, has expressed its strong views on aspects of the bill that are clearly unsatisfactory. Many amendments to the bill will be moved tomorrow. Chiefly, the Opposition is happy that the Government's cheap shot on behalf of its developer mates in the aged housing market—the imposition of 50 per cent of capital replacement costs on residents—has been defeated. Elderly residents on fixed incomes would have struggled to meet these unexpected costs. Clarification is still needed on payroll tax and what the Government is doing to ensure such costs by village operators cannot be passed on to residents. Consumer price index caps on recurrent charges will also need to be closely monitored to ensure the 42-day limit on recurrent fees post departure applies to all residents regardless of the department's classification of residents across the retirement village spectrum. Safeguarding the welfare and protection of our senior citizens and loved ones living in aged accommodation is vital to the wellbeing of our communities and the State. The Coalition does not oppose the bill.

The Hon. ROBERT BROWN [1.06 a.m.]: The Shooters Party supports the Retirement Villages Amendment Bill 2008. Rather than read a 15-minute speech at this late hour, with so much business still remaining, I will quickly make some observations on comments made by other members in the debate. First, I refer to the comments made by Reverend the Hon. Dr Gordon Moyes on the likely increase in the percentage of aged population in the country and the likely demand on retirement village places. That places less of a, shall we say, moral paw over the filthy, grubby developers such as the Gordon Geckos and the like—reference has been made to all sorts of names—who put their money up for investment in these retirement villages.

Retirement villages need customers and customers need housing, so let us not get too carried away. The purpose of the bill is to try to bring some balance into the equation between people who are generally at the latter end of their lives and therefore one might regard as somewhat frail, particularly in their capacity to negotiate with the Gordon Geckos of the world. Having met Mr Ian Hooper from the Retirement Villages Residents Association and representatives from the not-for-profit villages, I have to say the image of frail people not being able to handle themselves is far from the truth. Mr Ian Hooper and his colleagues have done a sterling job in managing to convince the Minister to move 22 amendments to its bill. That is an outstanding achievement. To place the position of the Shooters Party on record I read from an email that was sent to Reverend the Hon. Fred Nile, my colleague the Hon. Roy Smith and me from Mr Ian Hooper today:

> I am forwarding a copy FYI of an email agreed with the Minister's Chief of Staff this afternoon …
>
> Dear Zoë,
>
> This email confirms the statement that I read out [to] you about 2.15 p.m. this afternoon.
>
> Basically, the Retirement Village Residents' Association [RVRA] agrees that the Bill does deliver benefits for residents, but RVRA does not agree with all aspects of the Bill, such as the Sections on Registered Interest Holders.
>
> RVRA accepts that after lengthy consultation with all stakeholders, the Government has agreed to consult further on RVRA's remaining concerns.

I ask the Parliamentary Secretary when she replies to the debate to re-confirm to this House that that is the case and the Government will consult with the RVRA and the other residents' bodies on the promulgation of the regulations. That is vital. On that basis, the Government has our trust in this. I do not think the Government will betray that trust. Mr Hooper goes on to say:

> To summarise,
>
> > RVRA supports the Bill
> > RVRA supports the Liberal and Greens Party amendments
> > In the event that these amendments are defeated RVRA accepts the result
> > RVRA hopes the Government will accept the result if the amendments are passed.

That is Mr Hooper's wish. Our fix on this is that we—the Hon. Catherine Cusack, the Greens, Reverend the Hon. Dr Gordon Moyes and Reverend the Hon. Fred Nile—have pushed the Government about as far as we think we can push it. Obviously, the Opposition and the Greens disagree, and hence we see another 60 amendments from them. The Shooters Party supports the bill. It has been too long in coming. The residents now need certainty. They need to have this legislation dealt with in this House and passed. We support the bill

but I cannot see us supporting any but the Government's amendments. Once again, I ask the Parliamentary Secretary to re-confirm that the promise the Minister made to the residents will be extended to the RVRA and the other residents' groups. In closing, I say that it has been a pleasure dealing with the new Minister on this bill. She has demonstrated that she is prepared to consult widely and to substantially amend her own bill. I will not say that is rare, but I will say that it is refreshing. I commend the bill to the House.

Debate adjourned on motion by the Hon. Penny Sharpe and set down as an order of the day for a later hour.

SECURITY INDUSTRY AMENDMENT BILL 2008

LIQUOR AMENDMENT (SPECIAL LICENCE CONDITIONS) BILL 2008

CONTAMINATED LAND MANAGEMENT AMENDMENT BILL 2008

Messages received from the Legislative Assembly agreeing to the Legislative Council's amendments.

WORKERS COMPENSATION LEGISLATION AMENDMENT (BENEFITS) BILL 2008

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

Motion by the Hon. Penny Sharpe agreed to:

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

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

INSTITUTE OF TEACHERS AMENDMENT BILL 2008

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [1.13 a.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

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

Leave granted.

The relationship between high-quality teaching and improved student learning is undeniable. Every parent knows it and research confirms it. Teacher quality is the single most significant variable that affects the progress of student learning. The New South Wales Government was one of the first to recognise this fact when it passed legislation to establish the New South Wales Institute of Teachers in 2004. The institute has fulfilled its promise by implementing the most comprehensive framework for accrediting teachers in Australia. No other State in Australia has designed and implemented such a complete approach to supporting the quality of teachers. The key to this approach is professional teaching standards.

The standards set out what teachers should know, understand and be able to do at four key career stages: graduate teacher; professional competence; professional accomplishment and professional leadership. The institute has used practising teachers to develop processes for accrediting teachers at these career stages. These processes include approving teacher training courses and professional development providers. New South Wales now leads Australia on these important areas of ensuring and supporting teacher quality. There is no other body in Australia with such a broad mandate to advise government on teacher quality. On higher level accreditation, the *Daily Telegraph* observed:

> By activating these new top levels of accreditation the NSW Institute of Teachers is pioneering the recognition of excellence in teaching across Australia. … New South Wales is showing how it can be done.

Further, there is broad support from across the education community for the way in which the institute is working to support the quality of education offered to students in our schools. This bill responds to the requirement in the Act to undertake a review to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives. In the main, the proposed changes clarify the intention of the Act in fulfilling the Government's policy objectives for the institute. Extensive consultations have taken place with all relevant stakeholders around the development of these amendments. Wherever possible, stakeholder suggestions have been incorporated into the proposals.

The first changes relate to providing greater flexibility in the definition of a teacher. This will allow, under certain circumstances, some early childhood teachers to benefit from accreditation. The changes are intended to provide the Government with flexibility to more closely integrate early childhood teaching with the teaching profession. This also supports possible developments arising through the current Council of Australian Governments deliberations. In addition, the change will allow the institute to address the current situation where teachers in preschools attached to schools may be required to teach in either setting. The second area of change relates to provisions to revoke accreditation on general grounds, that is, for serious misbehaviour. The changes address anomalies in the current provisions by making the grounds for revocation the same for teachers in government and non-government schools. They also broaden the legal scope of the provisions to include teachers working in temporary and casual positions.

A power to suspend the accreditation of a teacher pending the outcome of an investigation of alleged criminal or serious misconduct is included in the amendment. This means that a teacher under investigation will not be able to continue teaching by simply changing employer. A protection against the frivolous use of suspension by teacher accreditation authorities is included in the amendment. Suspension will only be allowed for periods of three months, after which time the decision to suspend must be reviewed. In the absence of any ongoing investigation by a competent authority the teacher is to be re-instated. If there is an ongoing investigation by a competent authority the teacher accreditation authority is to notify the institute of a continuance of the suspension for a further three-month period.

Revocation of accreditation on general grounds is to remain the responsibility of teacher accreditation authorities. However, the proposed amendment is aimed at clarifying and strengthening the grounds for revocation. In particular, this amendment provides for consistency of treatment of teachers in the government and non-government sectors. The amendment is to allow for revocation of accreditation on three major grounds: that a person becomes a prohibited person within the meaning of the Commission for Children and Young People Act 1998 or is found guilty of specified criminal offences; is dismissed from permanent employment as a consequence of a finding of serious misconduct; or, in the case of a person who is in temporary or casual employment, would have been dismissed following a finding of serious misconduct.

The first set of circumstances is clear. However, in relation to the second, it is intended that teachers will not be allowed to continue to teach if they have been found guilty of a criminal offence where a conviction results in a custodial sentence of 12 months or more, whether suspended or not. The third set of circumstances relate to cases where there is strong evidence that the person is guilty of a serious offence and the allegation is not proven beyond reasonable doubt but could be on the basis of probability—in particular, cases involving an offence against a minor where the victim is unwilling to give evidence in court.

The criteria and processes for revoking accreditation on general grounds are to be set out in guidelines to be approved by the Minister. These guidelines will provide advice to teacher accreditation authorities on the matters to be taken into account, as well as natural justice considerations in relation to teachers suspected of serious misconduct. Teachers will be able to appeal a decision to suspend accreditation through the Administrative Decisions Tribunal. This capacity already exists for teachers whose accreditation is refused or revoked.

The third area of change allows a power for a regulation to be made for the institute to charge fees for services. The original proposal for the institute foreshadowing fees for some services was endorsed by stakeholders. However, the Act requires a specific or general capacity to charge such fees. This amendment will allow the institute to recoup some of its costs through fees for the endorsement and the registration of continuing education courses and programs. The fourth area of change strengthens the actions that can be taken against teachers who do not meet their legal obligations with regard to accreditation. The amendment allows an employer, following reasonable notice to comply, to suspend without pay or dismiss a teacher for non-compliance with a condition of their accreditation.

Whether a teacher is suspended or dismissed will be an issue for the employer. In practice it is likely that a teacher will be initially suspended, given an opportunity to comply and, if they fail to do so, their accreditation will be revoked and they will be dismissed. There are a number of areas where this will impact, including failure to pay annual fees, to undertake the mandatory professional development or to complete qualification requirements. Reinstatement of accreditation of teachers whose accreditation is revoked for non-payment of fees is to be allowed only upon payment of all outstanding fees. The fifth area of change deals with an anomaly in section 28 of the current Act. Teachers returning to employment after a break of five or more years are required to be accredited and upskilled to meet the changing demands of their role.

Some teachers are able to take extended leave for long periods and technically remain employed. These people are currently not required to be accredited because of their ongoing employment relationship. The proposed amendment clarifies that a person who is returning to teaching in a New South Wales school after a break of five or more years is a returning teacher who must be accredited. The amendment will allow expert existing teachers to continue to be regarded as teachers while working in roles supporting teachers.

The seventh amendment amends section 13 (3) of the Act by deferring the introduction of the requirement for elected members of the Quality Teaching Council to be accredited. Deferring this requirement for another term will allow a larger number of expert teachers to be accredited at the higher levels. While I hope that some new scheme teachers will be members on the council, I believe it important that there is a balance between youth and experience. The amendment also allows the term of office of council members to be extended. This extra level of flexibility allows for effective scheduling of the elections around school terms and years.

The last amendment allows for another review of the Act after a further five years. This amendment has been enriched by the committed input and constructive criticisms of individuals and representatives of the Department of Education and Training, the Catholic Education Commission, the Association of Independent Schools, non-government school employer groups, primary and secondary principals associations in the government sector, the Teachers Federation, the Independent Education Union, parent organisations, as well as the Teacher Education Council and the Professional Teaching Council. The amendments I propose will strengthen the capacity of the Institute of Teachers to support quality teaching in New South Wales. I commend this bill to the House.

The Hon. ROBYN PARKER [1.14 a.m.]: On behalf of the Liberal-Nationals Coalition I support the Institute of Teachers Amendment Bill 2008 and make some comments in relation to it. This bill has come about because there is a requirement in the Institute of Teachers Act 2004 to undertake a review every three years to determine whether the Act is meeting its objectives. The Coalition supported the establishment of the Institute of Teachers, and it is supported broadly in the community and within the teaching profession. A review of this nature is a valuable opportunity to consider whether new legislation is working. There has been some consultation during the review and a number of amendments have been brought forward to include groups that were not previously included, tighten up some loopholes and generally strengthen the Institute of Teachers. I think we in New South Wales should be proud of the Institute of Teachers and of the quality of teachers in this State. They do an outstanding job. In many ways we are leading the nation in the quality of the work that our teachers do.

This bill amends the Act in relation to enabling more teachers an opportunity to gain accreditation. For example, they could be early childhood teachers who sometimes teach in a preschool that is associated with a primary school. They sometimes teach right across the school environment. This bill gives them the opportunity to be part of teachers' accreditation. This bill also introduces ways in which accreditation can be taken away from those who are found guilty of serious misconduct or who have a criminal conviction and have been dismissed from employment as a result. Another key change in this bill is that the grounds for accreditation and its removal are made consistent across the public and private school sectors.

Teachers who are not delivering the Board of Studies curriculum are incorporated within the accreditation. Teachers who have been absent from classroom teaching for more than five years and are coming back into teaching are also brought under the Institute of Teachers accreditation process and given an opportunity to upskill. The bill provides a broader definition of a "teacher"—for example, including early childhood teaching means we are saying that teaching is a broader profession than just those who teach in the normal traditional settings of primary or secondary teaching.

The Legislation Review Committee looked at whether this bill and the retrospectivity of revoking accreditation impinged on individuals' rights. It is a balancing act, but it is important when we make parts of legislation such as this retrospective bill to look at how it impinges on personal rights. In this situation the balance has to come down on the side of children and young people to make sure that their rights are the paramount concern. The idea of taking away accreditation from those who have been found guilty of an offence in one circumstance and those same people not being able to teach under a different employer is an important aspect. The suspension of accreditation is important and is a protection for children who are under the care of that professional.

There are seven amendments in the bill. The amendments are clear and have good grounds for endorsement. They certainly strengthen the institute. As well, the institute will have an opportunity to charge fees for registration costs, to recoup fees and to renew membership of the council. The bill also adds an amendment that requires another review of the Act after five years. So there will be an inbuilt and ongoing review of the operation of the Act and the institute. It requires the input of all stakeholders, as occurred with these amendments. I believe it is a very good opportunity for people to see how the institute is going. The Coalition supports these amendments and the review process. We believe that these changes strengthen the Institute of Teachers. Overall we support those wonderful teachers who are doing a fantastic job day in and day out for our children across New South Wales. We are delighted that teachers have the opportunity to participate in the Institute of Teachers and the accreditation process. I commend the bill to the House.

Dr JOHN KAYE [1.21 a.m.]: On behalf of the Greens I support the Institute of Teachers Amendment Bill 2008. I very much echo the comments of the Hon. Robyn Parker and add a few comments. I acknowledge the importance of teachers in New South Wales and Australian society. I make the observation, which every politician should make on a regular basis, that the State is exceptionally well served by the dedication, hard work and professionalism of our public sector teachers. There may be a minority of teachers who do not behave professionally or do not work hard, but the overwhelming majority of our teachers work hard and deliver an extraordinary service under exceptionally difficult circumstances.

It has been recognised that the quality of teaching is one of the key determinants of the success of a society. It is one of the key variables that drives quality educational outcomes and, hence, drives outcomes of success in individual's lives and the success of a community. Recently our State had a visit from Mr Joel Klein, Chancellor of the New York City school system, who had all sorts of prescriptions on how we should improve teacher quality. It was observed by a number of people that Mr Klein had much more to learn from how we do

business, how our teachers operate and how our schools are organised in New South Wales than we had to learn from him. The key understanding is that it is not just measurable outcomes. It is having well-rounded teachers who are well supported, well educated and well remunerated. If there is any jurisdiction that New South Wales should learn from it is Finland, which has had exceptional results, particularly in removing the tail of underperformance by investing in classrooms and the professionalism of teachers and in supporting teachers so that they can exercise that professionalism.

The establishment of the Institute of Teachers three years ago was a revolutionary step in the relationship between teachers and their profession. New South Wales led the way in Australia and around the world in the recognition and regulation of teacher professionalism. I personally was sceptical when it was first set up. However, I have come to accept that this type of accreditation of teachers serves the profession and society exceptionally well. It is important that we review the bill and take careful note of the results of the statutory review. After three years a statutory review took place. The Act is complex. On reading it, one understands that a great deal of thought was put into the original Act. But it was not possible with an Act of that complexity interacting with approximately 80,000 teachers in New South Wales to get it absolutely right. It was appropriate that it be reviewed and that the review be conducted in an environment where teachers and employers from all sectors were consulted and listened to. Often consultation is a desultory process. In this case it was not. There was genuine engagement. A number of sensible amendments to the bill were brought forward, which we understand enjoy the support of teachers and employers across all three major sectors.

As Ms Parker said, a key provision of the bill was to expand the definition of "teach" and "teacher". That is important as we increasingly understand the role of early childhood education and recognise the need for professional teachers to interact with preschool children and create an educational environment for them. The capacity to charge fees and enforcement fees is a sensible way of managing the finances of the Institute of Teachers and the accreditation authorities. The two most controversial provisions within the bill are the revocation of accreditation on general grounds under section 24 and the tightening of the definition of "returning teacher" under section 28. I will talk briefly about those provisions. I point out that the Greens support this legislation and will vote for this amendment. The intention of section 24, which relates to the revocation of accreditation on a range of general grounds, is to bring all sectors under the one set of regulations. That is welcomed and encouraged. Until now we have had three sectors going in three different directions—the Catholic Education Office, the Department of Education and Training, and individual non-systemic private schools each pursuing different standards and different approaches to revocation.

Section 28 effectively will bring independent schools under the same set of standards as applies to public schools. In the past some private schools have ignored their responsibilities to the public in cases of serious misconduct by dismissing a teacher but not choosing to revoke accreditation. That leaves teachers who have been guilty of serious misconduct in a position of being able to go system shopping. They can go to the public sector or the Catholic systemic sector. Proposed section 24 will ensure that private schools, as accreditation authorities, will have the capacity to revoke accreditation for teachers convicted of serious misconduct. Similarly, the suspension or revocation of accreditation provision, particularly suspension, will stop system shopping by teachers who have violated their standards. The Greens have some concerns—which we will refer to during the Committee stage—about proposed section 24 (2) (c), which relates to revocation of accreditation after repeated non-serious offences. We are concerned about two aspects. First, we are concerned about retrospectivity. Will non-serious offences committed in, for example, the 1990s count and cause a teacher to have accreditation revoked?

Our concern is that a teacher in his or her younger days may have behaved irresponsibly—I did so myself when I was young. Unfortunately, this behaviour—being drunk and disorderly, a public nuisance or other similar behaviour that we all engaged in from time to time—might have attracted a minor criminal record. Will that count against such teachers 10 or 15 years later and place them in a position where their accreditation could be revoked?

We are worried also about the relevance of offences. For example, teachers who commit a minor offence—not in their professional capacity—which in no way impinges on their teaching capacity or reputation, and has no bearing on their ability to perform professionally, could be removed from the profession because they lose their accreditation. Proposed section 24 (2) (c) provides that the Government, by regulation, will bring forward a list of offences defined as minor offences. Undoubtedly, the Government has in mind bringing forward only those offences relevant to the teaching profession. However, it is important that the legislation makes that clear. For that reason I foreshadow moving amendments in Committee to ensure a time limit is placed on the date of the commission of the offences and also to make clear that minor offences can only be offences not relevant to the teaching profession.

Our final concern relates to possible adverse impacts of changes to re-accreditation for teachers returning after five years of absence. The largest single class of teachers who will have five or more years of absence will be females who leave to have a family and then wish to return to the teaching profession. We must not create barriers for women who wish to return after taking extended maternity leave to raise a family. We are convinced that that is not the intention of the bill, as we are convinced that its provisions are onerous. However, I ask the Parliamentary Secretary in reply to clarify the purpose of the provisions relating to return to service and make it clear that they will not in any way discriminate against female teachers seeking to return to the workforce after a period of absence in order to raise children.

The amendments within this bill will improve the function of the teacher accreditation system in New South Wales. No doubt over the next five years further flaws and issues will arise with the system. After a statutory review in five years, if we all are still here, no doubt more amendments will be made in an endeavour to improve the legislation. Teacher accreditation will be a moving feast and it will take many iterations to get it absolutely right. Certainly, we are in a better position with accreditation than we were. I congratulate the Government on the spirit in which it entered into the development of these amendments. On behalf of the Greens I commend the bill to the House.

Debate adjourned on motion by the Hon. Penny Sharpe and set down as an order of the day for a later hour.

WORKERS COMPENSATION LEGISLATION AMENDMENT (BENEFITS) BILL 2008

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [1.34 a.m.], on behalf of the Hon. Eric Roozendaal: 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 Workers Compensation Legislation Amendment (Benefits) Bill 2008.

The New South Wales Government is proud of its record delivering reforms to workers compensation and workplace safety in New South Wales and the benefits that these reforms bring to workers and employers.

The Workers Compensation Legislation Amendment (Benefits) Bill 2008 reflects the Government's continued commitment to ensuring the New South Wales workers compensation scheme provides comprehensive and generous compensation packages to the families of workers who die as a result of a workplace injury.

The significant reforms in this bill will provide additional security and peace of mind for these families.

The bill also contains provisions that enable an alternative premium calculation model, creating an incentive for large employers to improve their workplace safety and injury management processes.

These changes are responsible, sustainable reforms for the benefit of both employers and their workers.

The bill reforms the death benefit provisions in the Workers Compensation Act 1987 in a number of ways.

The lump sum death benefit will be increased from the current rate of $343,550 to $425,000, an increase of more than 20 per cent.

This lump sum payment is paid in addition to funeral expenses and the weekly payments available for dependent children.

Death benefit arrangements will also be amended to allow the death benefit lump sum to be paid to a deceased worker's estate where the worker leaves no financial dependants.

Currently in New South Wales, where a worker dies from work-related injuries and leaves no financial dependants, the only compensation payable is funeral expenses.

This bill provides for non-dependant family members of the State's deceased workers, by ensuring that the full lump sum benefit is paid to the deceased workers estate.

This will alleviate hardship for family members, including the parents of 2 deceased young workers, who would otherwise be required to prove financial dependency in order to access the lump sum.

The third reform to death benefits ensures an entitlement to weekly and lump sum death benefit payments is not reduced on the basis of partial financial dependency.

Currently, weekly and lump sum death benefit payments for a dependant child can be reduced if the child was only partially financially dependant on the deceased worker.

This often requires families to go through dispute action, to demonstrate degrees of financial dependency, at a very difficult time.

Under the reforms in the bill, weekly benefits payable to children of the deceased worker will no longer distinguish between partial or total financial dependency.

The entire lump sum benefit will also be paid.

Where there is only one dependant, that dependant will be entitled to the entirety of the lump sum payment regardless of whether they were wholly or partially dependent.

Where there are multiple dependants, the issue of whether the dependants were wholly or partially dependant on the deceased worker may continue to be taken into account when determining the apportionment of the lump sum 3 benefit; however the bill ensures that the total death benefit is apportioned.

The new arrangements will apply to work related deaths occurring on or after 24 October 2007, provided that the injury that caused the death occurred after the relevant provisions of the current workers compensation system commenced, that is, after 30 June 1987.

These reforms will provide greater financial certainty and stability to families during a difficult period.

The Workers Compensation Legislation Amendment Benefits, bill 2008 also contains an incentive for large employers to improve workplace safety.

The bill contains provisions that enable an optional alternative premium calculation method for large employers based on the burning cost premium method, without threatening the viability of the Scheme.

WorkCover conducted a comprehensive review of the Scheme's premium system in 2004, which resulted in a number of changes to premium calculations for the benefit of all employers, but principally for small to medium employers.

In the course of this review, WorkCover received feedback from large employers indicating support for a premium calculation method that would be more flexible and responsive to their needs.

Following extensive consultation with large employers and other Scheme 4 stakeholders, an alternative premium calculation method for large employers has been developed.

Under the Workers Compensation Act 1987, the premium for an employer's workers compensation policy is calculated by reference to an insurance premiums order and is determined on an industry basis.

Under the proposed premium calculation method, instead of having their premium determined on an 'industry' basis, an employer's final premium is based on their individual claims experience as determined five years after the policy commencement date.

An employer's premium expense will be more closely linked to their own claims, not only during the policy period but until the claim is closed, or for four years following the expiry date of the policy period, whichever comes first.

The employer pays an initial deposit premium at the time of the policy being written. This premium amount is subsequently adjusted depending on the employer's claims experience.

The final premium is capped to sit between a specified minimum and maximum premium. Employers who reduce the number and severity of claims and manage claims well can achieve significant savings under this model.

By linking the premium so closely with the actual cost of the claims experienced, this method creates a direct and immediate financial incentive for employers to work with employees to prevent injuries, or where an injury does occur, to assist the worker to recover and return to duty.

When utilised effectively, this method will contribute to improved employee health and return to work outcomes for injured workers and premium savings for employers.

If an employer's injury prevention and management system is not effective, the model can result in higher than conventional premium costs.

These arrangements are therefore most appropriate for large established employers, with a relatively stable claims history and the specialist resources necessary to proactively manage injury prevention and return to work.

The alternative method will only be open to large employers who satisfy eligibility criteria established by the insurance premiums order and who are approved by the Nominal Insurer for the alternative method.

This will ensure that participating employers have the resources and systems to effectively implement the injury prevention and management strategies needed to utilise this premium arrangement effectively.

The deferred premium payment feature of the alternative premium calculation method results in a cash flow benefit for the employer, but also presents a risk to the Scheme and other participating employers from 6 employer insolvency.

To mitigate this risk, the bill requires approved participating employers to provide the Nominal Insurer with security for their premium liability.

This security can be in the form of a security deposit or guarantee to the Nominal Insurer. This security will protect the Workers Compensation Scheme in a situation where a participating employer goes into liquidation.

By holding the required security, the Nominal Insurer can protect the WorkCover Scheme and ensure that other employers are not required to make additional contributions if an individual employer's business fails.

As utilisation of the alternative premium calculation method will be voluntary, employers will be able to take the cost of providing a bank guarantee or other security into account when making the decision whether or not to apply for access to the alternative premium calculation method.

The changes contained in this bill are largely to enable WorkCover to obtain a Bank Guarantee or other surety from participating employers.

It is proposed to introduce the alternative arrangements gradually and initially limit the number of employers granted access, to allow for testing and refinement of the model before it is offered more widely.

Consultation with stakeholders including some of the State's largest employers, employer associations, Unions New South Wales, Scheme Agents and insurance brokers has demonstrated strong broad based support for the introduction within the WorkCover Scheme of this optional premium calculation method.

Honourable Members will see from a close reading of the bill that it contains important measures for the benefit of workers and employers.

I commend the bill to the House.

The Hon. MICHAEL GALLACHER (Leader of the Opposition) [1.34 a.m.]: I lead for the Opposition in debate on the Workers Compensation (Benefits) Bill 2008 and indicate from the outset that we do not oppose it. Ostensibly the bill focuses on two long-overdue areas of workers compensation. Other areas remain to be addressed, but the Government has negotiated its way through these two areas to its final position after strident opposition from the union movement. Be that as it may, the bill addresses the much-needed increase in death benefits payable to a worker killed in the workplace from $343,550 to $425,000 for deaths on or after 24 October 2007, in addition to funeral expenses and weekly payments for dependent children.

The Government does not indicate why it decided on the amount of $425,000. Why is it not $525,000 or $625,000? It would have been beneficial had the Government stated, either in this place or in the other place, how it arrived at this figure. At some stage I suspect this aspect will be revisited—possibly over the next two years, and perhaps beyond that time—and it is important for future reference that we be told how the Government reached that decision. I am sure it applied a formula and came to a final conclusion after debate and negotiation with interested parties. But we have not been told, and the House would have benefited from at least some degree of understanding of how the Government arrived at this final position. The bill provides also that lump sum death benefits must be paid to a deceased worker's estate if the worker dies leaving no financial dependents. Interestingly, the bill also raises the possibility that somebody could leave his or her estate to an organisation, such as the RSPCA, or other voluntary organisation.

The Hon. Duncan Gay: The Nationals.

The Hon. MICHAEL GALLACHER: It might be The Nationals, a very worthwhile organisation.

Dr John Kaye: A very needy one.

The Hon. MICHAEL GALLACHER: Not really. For the Greens $425,000 would probably keep them going for about 10 years.

Dr John Kaye: That is true: lean, green and mean.

The Hon. MICHAEL GALLACHER: One can buy a lot of mung beans and grass sprouts with $425,000. Be that as it may, the bill simply ensures that if a person leaves his or her estate to an organisation, as well-meaning as it is, that organisation will receive the benefit. I do not believe that is the intent of the legislation; it is more designed towards ensuring that the estate of a deceased worker goes to the benefit of the worker's dependents. In this particular case the distinction is drawn with regard to someone having no financial dependents.

The bill deals also with the introduction of an alternative method for calculating workers compensation insurance premiums for large employers. I understand that this applies to companies with premiums in excess of $1 million per year. The Parliamentary Secretary may correct me, as limited information is available on this point. As a result of this bill those companies will be required to lodge a security deposit or guarantee to provide security in the event that the company hits financial difficulties and goes into liquidation.

I shall not be too long in my contribution this evening; we have had a fairly rigorous day of debate in the House, and tomorrow will be even more onerous as members try to maintain focus on the series of foreshadowed amendments and other pieces of legislation. It is important to refer to a couple of matters in this bill. First and most significant, we should never lose sight of the fact that last year 137 people lost their lives as a result of accidents or illnesses in workplaces in New South Wales. It is extremely important that we make sure that injured workers and the families of deceased workers and their dependants are well and truly covered in relation to workers compensation. We need to make sure that adequate protection is in place.

The bill refers to lump sum payments. We all know the position of the Government in relation to lump sum benefits for injured workers: it penalises some, particularly those who have had an actual loss injury. I am not talking about people who have had a not easily identifiable injury such as a back strain or a muscular injury that might prevent them from working. I am talking about people who have lost an eye, a hand or another part of the body such that they can no longer continue in the occupation in which they lost the functionality of part of their body. In those cases a lump sum benefit would give them an opportunity to start a new career path and not become redundant from the workplace altogether. I said as much years ago in debate on other legislation, and the argument is as viable and realistic today, in 2008.

The bill recognises lump sums but only in the context of benefits following the death of an injured worker. The introduction of this bill is both interesting and colourful. In October 2007 the Premier at the time, Morris Iemma, announced that the Government would seek to increase the lump sum death benefit payment to the families of workers who suffer an injury that results in their death. He also foreshadowed changes to aspects of injured worker payments. A couple of days later the Government read the Workers Compensation Legislation Amendment (Benefits) Bill 2007 for a first time, but the bill was never read a second time after unions, particularly the Construction, Forestry, Mining and Engineering Union, expressed concerns about the bill's intention to combine benefits for permanent impairment and pain and suffering lump sums into one payment, which they said would leave a significant number of seriously injured workers with reduced benefits.

Negotiation continued until April this year, when Unions NSW and Labor agreed to increase death benefits, to introduce a new impairment table and to make what they called some very modest improvements in the statutory rate for the long-term incapacitated. One of the agreed changes was the removal of the need to prove dependency in relation to a death claim and ensuring that death benefits were payable to the deceased worker's estate if the worker died without dependants. In July this year the former Premier, Morris Iemma, reaffirmed the commitment of the Government to increasing death benefits, but no mention was made of other lump sum payments.

Since taking over the portfolio, Minister Tripodi has reportedly questioned whether non-dependent relatives should receive compensation. On 18 November 2008—the day the Minister met with the unions—the *Australian Financial Review* reported that in light of the mini-budget the Government wanted to scrap the payment of compensation to non-dependent relatives. These provisions, however, remain in the bill. The bill, which was introduced on 26 November, does not address permanent impairment and pain and suffering lump sum payments, as I indicated earlier. Importantly, the current Premier said on 21 November:

> New South Wales remains on track to meet the national target of a 20 per cent reduction in death-related fatalities by 2012.

As ambitious as the bill is, the Government has a lot more with regard to benefits and, more particularly, in relation to occupational health and safety. As an acknowledgement of the need to reform occupational health and safety in New South Wales, the Government has set about drafting legislation. But, of course, the moment that certain factions outside the Labor Party, namely some within the union movement, got wind of what was being proposed, the occupational health and safety reforms were killed off incredibly quickly, and it fell to the Liberals-Nationals Coalition to have what I would call the Della Bosca legislation introduced and debated in this House.

At this stage the Government is not prepared to back its own legislation. I know we talk about harmonisation, et cetera, but that is all white noise. We have heard all that rubbish before from the Government. The fact is that people in New South Wales workplaces today need certainty and protection. They need to be

assured that each and every one of them, whether employer or employee, are playing a role and are responsible for the workplace—that not all responsibility rests with the employer. Everybody in a workplace must play a role, and the Della Bosca legislation that the Government was going to introduce in New South Wales was a significant step in the right direction. I look forward to being part of a future government that will introduce similar legislation to ensure equity in workplace safety throughout New South Wales.

Dr JOHN KAYE [1.45 a.m.]: I speak on behalf of the Greens in support of the Workers Compensation Amendment Bill. Workers compensation is a key civilising factor in our society: an acceptance of the collective responsibility not only for improving safety at the workplace but also to ensure that when injuries occur workers and their families can live in dignity. Without workers compensation and a system of occupational health and safety there is no question that we would live in a far less civilised and far less dignified society. But there is still much more to do to reduce death and injury in the workplace and to strengthen benefits. This legislation takes some very sensible steps towards achieving both of those objectives.

The bill increases the lump sum death payment by 23.7 per cent, and that is certainly a step in the right direction. No amount of money can compensate a family or friends for the loss of a worker killed in a workplace accident. However, there is no question that it is absolutely essential that the family be compensated so they can live a reasonable life after the injury and death has occurred. A key feature of this legislation is that lump sum death benefits are paid to the estate of a deceased worker who has no dependants. The Leader of the Opposition raised some doubts in respect of the sensible nature of doing that. The Greens disagree with him. Death benefits are earned: they are an entitlement and they are no less an entitlement of the estate than they are of the deceased's family.

The legislation also establishes a weekly benefit for dependent children of a worker killed in the workplace. This is exceptionally important to ensure that those children can live with some degree of economic dignity. It is fair that the lump sum be paid into the estate of a deceased worker who does not have dependants inasmuch as that is part of the system of compensation. The second set of provisions in the legislation is the large employer premium calculations, which I note are optional but which reward employers who have reduced accidents and injuries in the workplace and have been able to reduce their claims. That is an important driver for safer workplaces where employers can see financial benefits. It adds additional pressure to employers to make workplaces safer. These changes are positive by two key measures: they are fairer to workers who are injured or killed in the workplace and their families and their dependants, and they send the correct signals to the industry to drive greater worker safety. The Greens support the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [1.48 a.m.], in reply: I thank all members who have contributed to the debate on the Workers Compensation Amendment Bill. The Leader of the Opposition referred to the time that has elapsed since this legislation was announced in October 2007. The Government announced a suite of reforms to benefits in October 2007, including changes to death benefits. A number of strong concerns about the changes came to the fore before their implementation. The Government agreed to consult stakeholders, particularly union representatives, rather than introduce changes that were not supported.

Unfortunately, it was not possible to come to a mutually agreed position on the contentious aspects of the proposed reform package. This has been further complicated by the deterioration of investment markets in recent months, which impacts upon the capacity of the workers compensation system to accommodate wide-scale benefit increases. The proposed changes to statutory death benefits are not controversial and were supported by employer and employee representatives. Further, the death benefit increases remain affordable and can be implemented responsibly in the current climate. Consequently the Government has determined that it will implement the death benefit increases with effect from the date of the original announcement on 24 October 2007.

The issue of alternative premium calculation for larger employers was raised. The fundamental basis of the proposed burning cost premium calculation method is to reduce the number of injuries in the workplace and improve claim management strategies. This will reduce costs for the employer and improve return-to-work outcomes for workers. This method of premium calculation is most appropriate for established large employers with a relatively stable claims history and the specialist resources necessary to actively manage injury prevention and return to work for injured employees.

Small employers, even those experiencing very few claims, and employers who do not manage their claims effectively are likely to be significantly worse off under a burning cost method than under the conventional method, which features superior protections for small and medium employers. Consequently it is

intended that the selection criteria, which will be described in an insurance premium order, will assist the nominal insurer to select interested employers that are able to benefit from burning cost participation. The selection criteria may include a basic tariff premium size threshold—which I am advised will be $1 million and below which employers will not be eligible—indicators of occupational health and safety, and injury management system suitability. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

Bill read a third time and returned to the Legislative Assembly without amendment.

ADJOURNMENT

The Hon. TONY KELLY (Minister for Police, Minister for Lands, and Minister for Emergency Services) [1.51 a.m.]: I move:

That this House do now adjourn.

INDIJ READERS AND FILM *WANJA*

The Hon. PENNY SHARPE (Parliamentary Secretary) [1.51 a.m.]: Last Thursday I was pleased to host a screening of the film *Wanja* in the Parliamentary Theatrette. The film *Wanja* was inspired by a book from the Indij Readers series, *Wanja: One Smart Dog.* Over the weekend, the book was added to the 2009 Premier's Reading Challenge. Indij Readers is a series of books that feature contemporary Aboriginal stories with illustrations by Aboriginal artists. The stories are written by Aboriginal children, teenagers and adults—some first-time writers—and some books are written by well-known indigenous Australians, such as Anthony Mundine.

The stories deal with issues that affect the lives of all children—culture, family, self-esteem, pride, setting goals and working towards them, good health, humour, tolerance and school attendance. The books aim to help kids, both indigenous and non-indigenous, to learn to read. But the books also help to encourage teachers to explore with their students contemporary indigenous perspectives and learn about indigenous culture and issues. In providing an indigenous perspective, they are also teaching teachers as well as other students about indigenous culture and contemporary indigenous lives in a way and at a level that is relevant to them. The idea for the books came from a fantastic woman named Margaret Cossey, who is a special needs teacher in Cootamundra. She related a story in the *Sydney Morning Herald* that I would like to share tonight. It was reported in the *Sydney Morning Herald* when the first series was launched in 2003:

> Ms Cossey had realised that many children's stories did not interest the children to whom she read. She wrote some of her own before consulting Paul Williams, a literacy lecturer at Charles Sturt University, who said:
>
> "There are enough books written by middle-aged, middle-class white women. Go out to the communities and ask them for their own stories."

That is exactly what Marg did, and that was the beginning of Indij Readers. Indij Readers works closely with Aboriginal communities. The books are developed in collaboration and consultation, with advice from elders and community organisations. Now in their third series, these books have helped numerous kids across the country to learn to read and to find pride in their own culture. One of the books has attracted a deal of attention and has become a film. That was the film shown last week in the Parliament.

Wanja screened earlier this year at the Sydney Film Festival and as part of the Message Sticks festival at the Opera House. *Wanja* is a documentary about the experiences of the community who live at the Block in

Redfern, and it is told through the story of Aunty Barb and Wanja, her blue heeler dog. Aunty Barb is an elder of Redfern's community who lived on the Block for 20 years with her family and dog, Wanja. Aunty Barb and her granddaughter, Shannon, who is now six, came along last week to the screening, as did many other members of the Redfern community. I would especially like to thank Aunty Ali, who gave us a wonderful Welcome to Country.

Wanja was well known and loved by the locals of the Block. But she was also known to the police! She loved to chase police vans and bark at them. Apparently she could even spot police in plain clothes. But Wanja also had another special talent: residents of the Block say that she had the spirit and that she protected residents of the Block. But she also supported them. When residents were down, she would sit by their side and comfort them—whether they wanted her company or not. The film *Wanja* is told through the recollections of residents, including one story about when Wanja jumped into the front seat of a police wagon, barked at police, and prevented them from getting back into the van. But *Wanja* does not just tell the story of a well-loved resident of the Block. The film uses imagery of the surroundings to remind viewers about serious issues—substance abuse, neglect, violence, and conflict with the authorities.

Last Thursday at the screening, we were fortunate to have Dr Romaine Moreton introduce the film. Dr Moreton is a curator with Australianscreen. She is an indigenous writer of immense talent, a poet who also writes prose, and she has produced her own films. She is a friend of filmmaker Angie Abdilla. Angie could not be at the screening as she is in Holland, where *Wanja* has been selected to be shown as part of the International Documentary Film Festival in Amsterdam. Dr Moreton's introduction to the film explained how the filmmaker had collaborated with the local community of Redfern to make the film. She told us how collaborative filmmaking is important to indigenous communities. It was collaboration that allowed the film to explore the serious issues impacting on the community of Redfern, and to do so in a way that is culturally appropriate and sensitive to the issues faced by the community. Ultimately, the story of Wanja really is a story about the community of the Block. I encourage all members to see the film if they get the chance. I thank Tracey Hammond, Aunty Ali, Aunty Barb, Marg Cossey, and Cathy Brown for organising this event.

SALVATION ARMY BRAVER, STRONGER, WISER PROJECT

The Hon. ROBYN PARKER [1.56 a.m.]: I was delighted to be involved recently with the launch of the Salvation Army's Braver, Stronger, Wiser project, which aims to help deal with depression in rural and regional Australia. Depression is estimated to affect a million adults in Australia each year and costs more than $600 million annually. Some researchers predict that depression will be one of the biggest health concerns by 2020. It is estimated that one in five Australians will experience depression at some point in their lifetime. By acknowledging that, the Salvation Army has taken a remarkable step. The Salvos have produced 500,000 copies of a DVD about depression and how to get help in managing the problem in rural areas, which is what Braver, Stronger, Wiser focuses on. The DVD follows the lives of four Australians who live in rural areas and who have fought their own battles with depression. They are remarkable Australians and have displayed great courage in coming forward to tell their stories. They are: Catherine Drive, Warren Timothy, Mark Pickford and Hannah Stone.

Last week when we launched the project at Parliament House we had the honour of having three of the stars of the documentary present. They were able to tell us a little about their story, how they reached out for help, and how this helped them to continue on. For example, Catherine Driver battled postnatal depression and could not obtain assistance. She has been diagnosed as bipolar and today manages a 70,000 hectare property.

Mark Pickford is a fifth-generation farmer and was running a farm, which at one point was losing $10,000 a month. One can imagine some of the thoughts he was having. Hannah Stone is a young woman who had suicidal thoughts and was diagnosed with depression due to a chemical imbalance. Although not present last week she bravely spoke to her school as a teenager about her depression, and today she has turned the corner and works in real estate. Also there was Warren Timothy, who turned to alcohol and marijuana after the death of his father. After seeking help, Warren has also turned the corner. He is clean, sober and is a happy family man. Indeed, he was accompanied by his wife and child, and it was really great to meet him.

The DVD shows how depression can be beaten and also contains a bank of information, such as what depression is, problem solving, taking care of yourself, dealing with panic attacks, men and depression, signs and symptoms, and overcoming negative thinking. The film was made by Anna Rudd, who is from the Salvation Army. She commenced the project after someone she knew considered taking their life. I congratulate her on this tremendous project.

The project also has the support of some well-known Australians such as Stuart Diver, and we all recall his great courage. Country singer Melinda Schneider sang a song entitled "Courage". Anne Kirkpatrick and Iva Davies also attended. Peter Cosgrove, Andrew Gaze, John Williamson, Jack Thompson, Duncan Armstrong, Deborah Hutton, Guy Leech and Ita Buttrose, just to name a few, also support the project. Lieutenant-Colonel James Condon from the Salvation Army said of the launch:

> It is deeply alarming to see what is happening in the bush right now. Depression is a very real issue in regional Australia. We are targeting depression head on with this project because it is vital rural Australia gets a hand with this issue. Some communities are feeling abandoned and isolated. We have to create a situation where people start to realise depression can be a normal experience and that if it's happening to you, you are not crazy you can lead a fulfilling existence.

The Salvos are working with rural general practitioners through the Rural Doctors Association, licensed rural postal agencies, rural Landcare offices, rural ABC radio stations, rural Westpac branches and Beyond Blue to distribute and promote this initiative. Anyone wanting to register for a copy of the DVD can do so at *salvos.org.au.* I congratulate the Salvation Army on this fantastic initiative, which is an inspirational and highly informative piece. If it prevents even one person from committing suicide, it has been well worth it. The back of the DVD has the following notation:

> This is a gift to you. A celebration of life in the country. It is a testimony to the strength, resilience and character of people who live in rural Australia.

EDEN CHIP MILL

Dr JOHN KAYE [2.01 a.m.]: In mid November, with much fanfare the operators of the Eden Chip Mill announced that they were proceeding with the development of a $20 million, five megawatt native forestry biomass power station. The mill's owner, South East Fibre Exports, is seeking to distort the truth to market the power produced as both renewable and low carbon. In truth, it is neither. If State and Federal governments fall for these myths not only will they condemn the forests of south-east New South Wales and north-east Victoria to further ongoing devastation and loss of biodiversity and species but they will also undermine the integrity of both the Carbon Pollution Reduction Scheme and the renewable energy targets.

South East Fibre Exports General Manager Peter Mitchell and the local Federal member Dr Mike Kelly enthusiastically promote the use of more wood as a key tactic in fighting climate change. In truth, Mr Mitchell is responding to the collapse of the international price for woodchips and the imminent oversupply of wood from hardwood plantations. He is desperately seeking new markets for the heavily subsidised native forests of New South Wales. If the myths that support the biomass generator's proposal are maintained they will lead not only to one five megawatt power station but also up to 15 more consuming the forests of the south-east with appalling consequences. The native forest destroyers rely on multiple layers of propaganda, each of which is more outrageous than the previous. The first is the idea that the furnace will be fuelled by mill wastes. The concept of wastes conjures up safe images of that which would have no other uses and would be discarded. Nothing could be further from the truth.

Economic forces will inevitably drag woodchips into the furnace of the power station once the plant is built, as the export price for woodchips plummets and the unit wholesale price of electricity rises dramatically. Just as whole logs are currently declared waste and hence fed into the chippers at Eden, so too will woodchips be declared appropriate fuel for the power station. No matter what prohibitions are contained in the conditions of consent, regardless of the promises made by the State and Federal governments, and irrespective of undertakings by South East Fibre Exports, the economic inevitability is the forests of south-east New South Wales being fed into furnaces to generate electricity. The second myth is that forest biomass is an economic source of power. The massive subsidies paid by the New South Wales Government to the chip-mill owners deliver wood at less than one half of its economic value. The forest furnaces will be able to out compete other cheaper sources of power that do not enjoy the same subsidies, including wind and solar thermal power.

The third myth is the idea that native forest biomass power generation could be declared renewable and qualify to produce certificates under national and State targets. The exploitation of the south-east, the steady conversion of native forest into managed plantations and the devastation of native species and biodiversity are the antithesis of sustainability. An industry that destroys priceless native forests could never be called renewable by any but apologists for the multinational profit takers. The fourth myth is that the electricity from native forest biomass is low carbon emitting. The theory is deceptively simple. The CO_2 emitted from the burning of the wood will be reabsorbed by tree regrowth and in this perfect world there is little or no net release of carbon. Proponents refer to it as solar energy, where photosynthesis stores the energy of the sun as chemical energy.

Forests NSW has been disgracefully negligent in its data collection on carbon storage and release in its forests. Recent work by Professor Brendan Mackey and his team at the Australian National University casts doubt on current carbon accounting practices. Our very rough analysis, based on forestry industry and peer-reviewed data, suggests that for every megawatt hour of energy generated by south-east native forestry biomass, more than 6.4 tonnes of CO_2 would be released instantaneously. This is more than 6.4 times the amount of CO_2 released from burning coal to produce the same amount of energy. Certainly regrowth would bio-sequester some of this carbon but at a very slow rate. It would take about 80 years of regrowth to capture 5.4 tonnes, thus returning the greenhouse gas emissions to the same level as coal. However, the forests are harvested on a much shorter cycle. After 20 years, the forests would have captured only two tonnes, leaving more than four tonnes in the atmosphere. Forestry biomass is at least four times worse than burning coal. Forestry biomass will not be economic, sustainable or low carbon. The development of this one power station will continue and it will accelerate the damage being done to the south-east forests. It will also undermine the integrity of the Carbon Pollution Reduction Scheme. Forestry biomass should be rejected by both State and Federal governments

BECKOM PUBLIC SCHOOL

ST MICHAELS SCHOOL, COOLAMON

The Hon. TONY CATANZARITI [2.06 a.m.]: On 7 November with Senator Mark Arbib and Federal member for the Riverina, Kay Hull, I had the great pleasure of attending two schools in my electorate that recently undertook upgrades of their facilities. The Federal Government, through the $1.2-billion Investing in Our Schools capital grants program, funded the upgrades. These upgrades are highly significant for schools in country towns. Beckom Public School, which is 95 kilometres east of Griffith and 10 kilometres from the home of the kelpie at Ardlethan, is one of those small country schools that is very much at the centre of its community. Beckom Public School was established in 1911 and at present has 14 students from kindergarten to sixth class. A small school like this, and the 80-strong community it serves, benefits greatly when it has $140,000 injected into its infrastructure.

Principal Helen Sturman, who is at the centre of a school that prides itself on its tradition of nurturing children in a caring and safe family atmosphere, welcomed the $70,000 for the covered outdoor learning area and play equipment and the $70,000 sports field that the funding provided. I am always pleased to see the work done by a school such as this rewarded. Such schools form an important part of the backbone of small communities like Beckom. An injection of such substantial funds also lifts the morale of communities such as Beckom which, as members are aware, are doing it tough in this dreadful drought. In this instance, the substantial injection of funds is especially well received simply because this is a community that has a strong tradition of supporting and beautifying the school. I am pleased to inform the House that, reflecting the schools motto, "Seize the day", some reasonable crops have been harvested by farmers around Beckom in the last month. These are not bumper harvests by any means but, as a farmer, I know that bringing a crop in under difficult conditions gives not only hope but also a sense of pride. I am always pleased to hear of farmers bringing in a crop, and congratulate their obvious stewardship and skill under such difficult circumstances.

The other school we had the pleasure of visiting was St Michaels School, Coolamon. Established in 1861 by three sisters of St Joseph sent from Goulburn by Bishop Gallagher, the sisters operated from a weatherboard building attached to St. Joseph's church. The existing school was constructed in 1936 and now serves a community of 1,361 people. The Federal Government through the Investing in Our Schools Program contributed $235,000 to assist in building a new $325,000 classroom and library, which has been fitted out with some of the latest technology, such as a smart board. On behalf of the student body, the school and community, Principal Paul Jenkins welcomed this addition to their school.

The new library replaces its predecessor that was built in 1977 through the time-honoured bush tradition of enclosing one of the school's verandahs. St Michaels is a learning community that functions in the belief that children need to be both supported and challenged for learning to take place. I also had the pleasure of meeting with Bishop Gerard Hanna who blessed the new buildings. Bishop Hanna has been bishop in the Wagga Wagga diocese for six years, after serving 34 years as a priest in Armidale. He is particularly well aware of the issues affecting agricultural communities. The ceremony was well attended and attests to the school's role in its community. The shire has the motto, "Big enough to serve, small enough to care." This was evident, despite the effects of this terrible drought. I congratulate both schools on the valuable work that they do in serving their respective communities.

TELECOMMUNICATION SERVICE PROVIDERS

The Hon. CATHERINE CUSACK [2.11 a.m.]: Australia's telecommunications industry has received an absolute bollocking from the industry Ombudsman, Deirdre O'Donnell, who reported that she received a record 150,000 complaints from irate customers unable to resolve their disputes with their service providers. That 150,000 complaints is the tip of the iceberg of irate customers and represents only those who reach the Ombudsman. It is a 30 per cent increase on complaints from the previous 2007 financial year. Four years ago the industry Ombudsman was receiving 60,000 complaints a year, so news that that figure had jumped to 150,000 is worrying.

Ms O'Donnell reports that there are now more mobile services than landlines in Australia. The Ombudsman logged 47,300 complaints compared with 33,670 complaints about landlines last year. An additional 13,899 complaints related to premium mobile services. In her media release Ms O'Donnell said that people had either not requested the service in the first place or were otherwise unable to subscribe. I was intrigued to read that, although the number of landlines had fallen, the number of complaints had jumped by 60 per cent to 54,000. This is not a complex service; anyone can use a phone. Internet complaints grew at a lesser rate to 34,000, so I am less concerned about that area of increasing complaints with the Internet than I am about complaints regarding landlines.

A 60 per cent growth in complaints about landlines when the service is contracting in size is alarming, because we know that most people dependent on landlines are lower-income families. It suggests a market manipulation that sees a bias against landline services that, in spite of the growth of mobiles, are the foundation of communications services in Australia. I have grave concerns about the lack of ethical standards being displayed by the telecommunications industry, whose share of gross domestic product continues to rise. In 2006 the industry had revenues estimated at more than $30 billion. No doubt there has been a significant jump since then. We are experiencing an information revolution. All the technology is new and there are no experienced consumers.

This is a special time in a special industry that holds the key to our future education, work, social and financial wellbeing. At the same time we have a growing gap between consumer knowledge and skill. In fact, it is a chasm between service providers and their users. Within users there is an increasing inequality between those who can grasp the new ways and those who are being left behind. My husband and I are educated people with access to considerable technological resources but, like almost all other parents, we are increasingly finding that we are turning to our children for assistance. I know that that happens in classrooms on a regular basis. Every teacher, like every adult with a child in his or her life, would have to concede that there is always something they can learn in this area from their children.

I simply highlight the generational difference that is unfolding and the family and long-term social effects are, like technology, heading in directions that we cannot begin to imagine. Conversely, older Australians are being left behind, not only by technology but also by new trends for web pages and BlackBerrys to produce information in two-point font size, and the new complexity in financial products and consumer behaviours into which they are now trying to fit. We need a safe, reliable and ethical telecommunications industry to help us, as a community, navigate this challenging time. For this reason I was dismayed, but frankly not surprised, by the findings of the Ombudsman that showed that the industry as a whole is failing to rise to this challenge.

The report gave figures on confirmed breaches of the industry's voluntary code. The Ombudsman investigates the most serious matters and confirmed that 26 per cent related to complaint handling, which annoys the Ombudsman. It demonstrates a decline in consumer standards overall and tells us that the industry is not coping with the wave of growth, or it is milking it relentlessly—and bugger the consumer. Whichever it is, there is an urgent need for Federal Government intervention because, as I have said, it is a special industry and an essential service. If we allow standards to plummet in this way we will see a dramatic increase in social and economic inequality. Australia can ill afford this as its economy teeters on recession. The Commonwealth should not neglect or underestimate the effects of neglecting customer standards in this industry. I am convinced that there are rip-offs ranging from the annoying premium services to what is going on with landlines. I urge the Commonwealth Government to take much stiffer action now, before it is too late, to improve these much-needed standards in the industry.

WOLLONGONG LOCAL ENVIRONMENT PLAN

Ms SYLVIA HALE [2.16 a.m.]: I understand that the Director General of Planning is currently considering whether to allow the draft Wollongong local environmental plan [LEP] to go on public exhibition.

I believe that the draft local environmental plan should not go on exhibition at this time and that it should be returned to the council with an instruction to undertake a thorough and open investigation to ensure that any proposed rezonings have been put forward on the basis of merit and not on the basis of corrupt or partial dealings with certain Wollongong developers. I have good reason for concern about the way in which the draft local environmental plan has been put together. In July this year I was provided with information that Frank Vellar, the developer named by ICAC in its report on Wollongong City Council as engaging in "serious corrupt conduct", had two currently empty mansions on the Illawarra escarpment at Corrimal recommended for retrospective approval as part of the draft local environmental plan.

It has been alleged that these mansions were built illegally on land zoned for environmental protection. A Wollongong council report found that the Vellar construction site contributed to damage to houses on land below the Vellar property caused by the 1998 Wollongong flood. Documents obtained by the Greens show that Wollongong council, rather than prosecuting Mr Vellar, spent nearly $140,000 of public funds repairing drainage problems on the escarpment caused by his illegal building works. Disgraced former council employee and Australian Labor Party member Joe Scimone was head of the council's engineering department at the time the remediation work was undertaken at council expense. The recommendation to rezone the Vellar land to allow the houses was contained in a draft local environmental plan approved by the disgraced Wollongong council the night before it was dismissed.

Following the public exposure of this scandalous rezoning proposal, the council's administrators withdrew the Vellar mansions site from the draft local environmental plan. That leaves unanswered the question that must be answered: How did the Vellar rezoning find its way into the draft local environmental plan in the first place? I have a very real concern that it was put there as a result of partial, if not corrupt, dealings involving Mr Vellar and officers of the council. There is the additional question concerning how many other proposed rezonings in the draft local environmental plan may be the result of inappropriate or corrupt dealings with developers. Consider, for example, the proposed rezoning of lands at Tallawarra. I raised this matter in the House in May and I do not believe that the issues I raised at that time have been addressed.

The background to the proposed Tallawarra rezoning is that in 2003, in a secret deal, the Carr Government sold to the company TXU Australia, for an upfront payment of $4 million, the publicly owned Tallawarra lands, which comprise some 600 hectares and nearly six kilometres of Lake Illawarra frontage. A further $11 million was to be paid later when a power station was operating on 65 hectares of the site. A condition of this bonanza for the company was that it build a gas-fired power station. In return, some of the remaining 535 hectares could be sold to provide further employment opportunities, and the rest was to be retained for environment conservation. I doubt whether anyone would be surprised to learn that TXU donated $11,000 to the New South Wales branch of the Australian Labor Party at around the time of its secret deal with the Government.

In 2005, the China Light and Power Company, known in Australia as TRUenergy, bought TXU and, with it, the Tallawarra site. We know from council documents that there was a cosy relationship between some Wollongong council officers and representatives of TRUenergy throughout this time. The proposed rezoning will allow for the development of a huge housing estate on the Tallawarra lands. The local environment study [LES] prepared by TRUenergy forms the basis for the draft LEP in relation to Tallawarra. I believe that the LES, prepared as it was on behalf of the proponent, is questionable and needs to be set aside. An LES undertaken independently of TRUenergy, as required by law, should be prepared before any rezoning proposal for Tallawarra is given further consideration. I believe that the draft Wollongong local environmental plan should be sent back to the council and an open and independent inquiry undertaken into all the rezoning proposals contained in that plan. The people of Wollongong have the right to know that any local environmental plan is drafted on the basis of what is best for the community, not on what is best for corrupt developers.

Question—That this House do now adjourn—put and resolved in the affirmative.

Motion agreed to.

The House adjourned at 2.20 a.m. on Wednesday 3 December 2008 until 11.00 a.m. the same day.