

LEGISLATIVE COUNCIL

Tuesday 1 December 2009

The President (The Hon. Amanda Ruth Fazio) 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.

ASSENT TO BILLS

Assent to the following bills reported:

Child Protection Legislation (Registrable Persons) Amendment Bill 2009
 Graffiti Control Amendment Bill 2009
 Independent Commission Against Corruption and Ombudsman Legislation Amendment Bill 2009
 Public Sector Restructure (Miscellaneous Acts Amendments) Bill 2009
 Valuation of Land Amendment Bill 2009
 Wine Grapes Marketing Board (Reconstitution) Amendment (Extension) Bill 2009

PASSENGER TRANSPORT AMENDMENT (TAXI LICENSING) BILL 2009

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

ELECTRICITY SUPPLY AMENDMENT (SOLAR BONUS SCHEME) BILL 2009

SWIMMING POOLS AMENDMENT BILL 2009

Messages received from the Legislative Assembly returning the bills without amendment.

TABLED PAPERS NOT ORDERED TO BE PRINTED

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

STANDING COMMITTEE ON LAW AND JUSTICE

Government Response to Report

The Clerk tabled correspondence from the Leader of the Government advising that the Government's response to Report No. 38, entitled "Legislation on Altruistic Surrogacy in NSW", tabled 27 May 2009, which was due on 27 November 2009, will be tabled on 16 December 2009.

LEGISLATION REVIEW COMMITTEE

Report

The Hon. Robyn Parker, on behalf of the Chair, tabled a report entitled "Legislation Review Digest No. 17 of 2009", dated 1 December 2009.

Ordered to be printed on motion by the Hon. Robyn Parker.

PETITIONS**Adoption Laws**

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

Unborn Child Protection

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

BUSINESS OF THE HOUSE**Suspension of Standing and Sessional Orders: Presentation of an Irregular Petition****Motion, by leave, by the Hon. Duncan Gay agreed to:**

That standing and sessional orders be suspended to all the presentation of an irregular petition from 111 citizens of New South Wales concerning marine parks.

IRREGULAR PETITION**Marine Parks, Sanctuaries and Habitat Protection Zones**

Petition requesting that the Government introduce a moratorium on the creation of all new proposed marine parks, sanctuaries and habitat protection zones, and reject extensions to existing parks, sanctuaries and zones that further restrict fishing activities, received from the **Hon. Duncan Gay**.

BUSINESS OF THE HOUSE**Suspension of Standing and Sessional Orders: Presentation of an Irregular Petition****Motion, by leave, by Dr John Kaye agreed to:**

That standing and sessional orders be suspended to allow the presentation of four irregular petitions from 1,774 citizens of New South Wales concerning Hurlstone Agricultural High School

IRREGULAR PETITION**Hurlstone Agricultural High School**

Petitions opposing the sale of Hurlstone Agricultural High School educational land, received from **Dr John Kaye**.

BUSINESS OF THE HOUSE**Postponement of Business**

Business of the House Notice of Motion No. 1 postponed on motion by the Hon. Duncan Gay.

Government Business Notices of Motions Nos 1 to 3 postponed on motion by the Hon. Tony Kelly.

Government Business Orders of the Day Nos 1 to 9 postponed on motion by the Hon. Tony Kelly.

PRESIDENT OF THE LEGISLATIVE COUNCIL**Presentation to the Governor**

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, and Vice President of the Executive Council) [2.45 p.m.]: I inform the House that I have ascertained it to be the pleasure of Her Excellency the Governor to receive the Legislative Council to present the President to Her Excellency tomorrow at 11.30 a.m.

BUSINESS OF THE HOUSE**Suspension of Standing and Sessional Orders: Order of Business**

Mr IAN COHEN [2.47 p.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 249 outside the Order of Precedence, relating to the Snowy Water Licence, be called on forthwith.

This motion is urgent. The New South Wales Government is proposing to finalise the first five-year review of the Snowy Hydro licence before the end of this year. Significant implications will flow from the finalisation and this will be the only opportunity for members of the Legislative Council to express their wishes on how the Government should proceed on this matter. We will not get another chance to do so. If we do not deal with this motion before the Parliament rises for the summer recess, most likely the licence will be finalised before the resumption of Parliament next year. For these reasons I claim that the motion is urgent.

The Hon. GREG DONNELLY [2.47 p.m.]: The motion is not urgent. This week we have a large volume of Government business to transact, including some complex bills, and I am sure that a number of members would like to have a say in debate on those bills. Moreover, at the beginning of the parliamentary session the House determined that all legislation should be introduced in the Legislative Council before the end of a certain period, a couple of weeks ago. It would be hypocritical of those members who voted for that motion—

The Hon. Catherine Cusack: When exactly was that?

The Hon. GREG DONNELLY: I think it was a fortnight ago; I do not have the exact date with me but I can obtain the date for members. It would be hypocritical of those who voted for that motion to seek now to obstruct the Government from doing its business this week, during which we have a detailed program to get through. This matter is not urgent, and the motion for suspension should be rejected.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 5

Ms Hale
Dr Kaye
Ms Rhiannon
Tellers,
Mr Cohen
Reverend Dr Moyes

Noes, 32

Mr Ajaka	Mr Hatzistergos	Mr Primrose
Mr Catanzariti	Mr Kelly	Ms Robertson
Mr Clarke	Mr Khan	Ms Sharpe
Mr Colless	Mr Lynn	Mr Tsang
Ms Cusack	Mr Macdonald	Mr Veitch
Mr Della Bosca	Mr Mason-Cox	Ms Voltz
Ms Ficarra	Reverend Nile	Mr West
Mr Gallacher	Mr Obeid	Ms Westwood
Miss Gardiner	Ms Parker	<i>Tellers,</i>
Mr Gay	Mrs Pavey	Mr Donnelly
Ms Griffin	Mr Pearce	Mr Harwin

Question resolved in the negative.

Motion negatived.

ELECTRICITY SUPPLY AMENDMENT (GGAS) BILL 2009

Second Reading

Debate resumed from 12 November 2009.

The Hon. CATHERINE CUSACK [2.56 p.m.]: The Opposition does not oppose the Electricity Supply Amendment (GGAS) Bill 2009. The effect of the bill is to amend the Electricity Supply Act 1995 with respect to abatement certificates and abatement certificate providers and the liability of the State in connection with the Greenhouse Gas Abatement Scheme, also known as GGAS. The bill is similar to the Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009, which the Legislative Council compelled the Government to withdraw after it tried to ram it through this place. The changes that have been made are important and prove how absurd was the Government's previous attempt to avoid scrutiny on this matter.

The Electricity Supply Amendment (GGAS) Bill 2009 will reduce surplus certificates by stopping new applications for accreditation. It will remove also opportunities to create certificates from category A generation projects, which are projects that were commissioned prior to the start of the GGAS. It will provide also that compensation is not payable in regard to that part of the Act. The aim of this bill is to establish the architecture, that is, the process and time line, of a transition away from the GGAS. We have been strident critics of the GGAS and have shone a light on its many flaws. When the Electricity Supply Amendment (GGAS Abatement Certificates) Bill 2009 was being debated in this place before it was unceremoniously pulled I referred to the good work done by the Centre for Energy and Environmental Markets at the University of New South Wales.

In the early days of the GGAS the centre exposed the problem of including category A projects. These projects meant that the scheme operated not as an emissions reduction scheme but, rather, as a certificate-creation scheme with the certificates often not related to abatements. During the first debate of this bill's predecessor the Government overstated its figures regarding the benefits of the GGAS by including category A programs. The savings from this category of certificates occurred before the GGAS scheme commenced, and their investment was never predicated upon the sale of certificates.

The member for Shellharbour in another place stated that category A programs "had clearly been assessed as economically viable ... without the additional GGAS revenue that they were subsequently able to access". These emission reductions occurred independent of the GGAS and, hence, the Government should never have claimed certificates derived from them as cuts to emissions. The reasons offered by the member for Shellharbour are insightful. She states that they were included "on the basis that this would provide credit for early action" and would provide a "flow of certificates for compliance in the early years of GGAS". Hence we consider it appropriate that, of all certificates, category A certificates should be wound up first.

That said, they are an inexpensive source of certificates, so costs to retailers will increase. We acknowledge this impost and we note that it would not be happening if the Government had run the scheme properly on this principle in the first place. Instead the Government tried to ram the previous bill through the Parliament. If you are able to remove a group of certificates, category A programs should be on the top of the list as they do not represent the abatements that other certificates do: still, that does not mean that we should completely trash democracy to do it. It was a pretty black day for this place.

The affected stakeholders were informed by the Opposition about the bill. The bill was introduced, and the Government rammed it to the front of the queue immediately in this House. More alarming was that the stakeholders were informed by the Government that it would like dialogue about the bill only moments before the Government then decided it would be ramming it through at the top of the list. It was galling arrogance. It was a two-faced act by an arrogant government, with disregard shown for the institution of Parliament.

When we were able to draw this to the attention of the House, the crossbench members—and I appreciate their actions—joined with the Opposition to postpone debate to force the Government to honour its promises to consult with industry. As the consultations show, the original bill was deficient in terms of timing for transition arrangements. First, it failed to give reasonable notice for implementing the new arrangements. The stakeholders pointed out the need to be practical in plans for a smooth transition. Second, the GGAS scheme has been in operation on a calendar year basis.

To bring the GGAS scheme into line with the new scheme, which is anticipated in the leave of the outline of the bill, it is necessary to facilitate a change from calendar to financial years. This practical consideration is the result of stakeholder consultation and vindicates the decision of the House to force the Government to withdraw its bill and instead talk to stakeholders first. These errors were simple things that should not have happened, and would not have happened, if the Government had gone through the normal processes with the previous bill. The Opposition will not oppose the passage of this bill.

Dr JOHN KAYE [3.02 p.m.]: On behalf of the Greens I participate in debate on the Electricity Supply Amendment (GGAS) Bill 2009. This legislation marks the last action that this Parliament will take to facilitate the passing into history of a deeply flawed emissions trading scheme. It is flawed in its fundamental design based on benchmark schemes that are by their very nature inherently inadequate. Benchmark schemes lock in polluting behaviour. Furthermore they are inherently unstable, which leads to game playing and wildly fluctuating prices that fail to create an adequate market for the certificates they are supposed to generate.

The real evidence of that was the failure of the European market in which the price frequently fell very close to zero before it was realised that the system was simply not working. Furthermore the GGAS scheme was flawed in its implementation. In the name of an anti-industry policy, fanaticism that has ruled the New South Wales Treasury and the Treasurers resulted in the scheme allowing brown coal-fired power stations in Victoria to generate the single largest number of certificates within the scheme. The scheme therefore had the perverse impact of rewarding the nation's biggest polluters outside the State for their behaviour, supposedly for marginally reducing pollution or increasing efficiency, but largely the money went back into those power stations that predominantly were responsible for the nation's greenhouse gas emissions.

Even compared to the appalling Carbon Pollution Reduction Scheme [CPRS], which currently is hovering between life and death in the Federal Parliament, GGAS was an ineffective excuse for action on what has to be seen as the greatest economic, social and moral challenge of this or indeed of all centuries. If the Carbon Pollution Reduction Scheme passes now or in the new year, a GGAS scheme will be no longer in existence. It is very hard to mourn GGAS in any meaningful way. The Carbon Pollution Reduction Scheme and GGAS are evidence of a mitigation policy in the hands of the climate deniers—those who would trade off the future and to make their fortunes by robbing future generations. The Carbon Pollution Reduction Scheme is now in the hands of the new Liberal leader, Tony Abbott, who is also the leader of the Federal climate deniers. Their focus will be on appeasing the big polluters.

The Hon. Catherine Cusack: Point of order: I ask the member to refer to the Standing Orders to explain to us where his remarks relate to the leave of the bill. I believe he has strayed way beyond the leave of this bill, which relates to GGAS and some technical issues associated therewith.

The PRESIDENT: Order! Generally debate on bills in this House, particularly during the second reading stage, is quite wide ranging. I ask the member to continue to be generally relevant.

Dr JOHN KAYE: Thank you, Madam President. I appreciate your ruling, and I expand upon it slightly just to point out that the source of this legislation comes from the need to curtail GGAS and roll it into the Carbon Pollution Reduction Scheme. The future impact of this legislation hinges on the Carbon Pollution Reduction Scheme, and the future of the Carbon Pollution Reduction Scheme of course hinges on the new leadership of the Federal Liberal Party.

The Hon. Catherine Cusack: That is not right.

Dr JOHN KAYE: Indeed it is true that the climate deniers, led by Tony Abbott, are now in charge of the Liberal Party and hence are in charge of the fate of the Federal legislation. This legislation is supposed to wind back GGAS and prepare for the transition to Federal legislation. The focus of Mr Abbott and those he supports is on appeasing the big polluters and exploiting in the most grim fashion the healthy scepticism of Australians by turning that scepticism into demonising science, rejecting the benefits of enlightenment, and building on scepticism to create denialism among Australians.

They have used dodgy scientists for hire, like Ian Plimer, whose anti-climate science tome, *Heaven and Earth*, was full of footnotes that do not support the claims they are supposed to refer to; whose use of data and graphs is not just deceptive but in many cases downright mendacious; and whose lack of expertise in the field is minimised only by his willingness to use poor scientific processes to mislead Australians. Emboldened by the climate deniers cheer squad, which now includes Cardinal Pell, Tony Abbott is on the point of rejecting the Carbon Pollution Reduction Scheme.

The Hon. Catherine Cusack: Point of order: I understand that some latitude is allowed in a second reading debate, but the member now is getting onto the topic of George Pell, via Professor Ian Plimer, via another organisation, and via Tony Abbott. I draw your attention to the leave of the bill, which is specifically the Electricity Supply Amendment (GGAS) Bill 2009. The bill has technical amendments that the Opposition and the Government have been addressing. I ask that the member not be allowed to stray so far from the bill that he now lectures us on religious matters.

Ms Lee Rhiannon: To the point of order: I draw attention to the comments made by the member who has taken the point of order. She established the clear connection between Mr Abbott, Cardinal Pell and the issues we are discussing. She has established quite clearly that this material is relevant.

Dr JOHN KAYE: To the point of order: To expand on my colleague Ms Lee Rhiannon's remarks, I point out that this legislation relates to the Commonwealth's \$130 million cash assistance package to facilitate the transition from GGAS to the Carbon Pollution Reduction Scheme. For this debate to proceed, it is important we understand what will replace the GGAS scheme and the mechanisms by which that will happen. As most members would be aware, right now the future of the Carbon Pollution Reduction Scheme hangs in the balance and will probably not be passed by the Federal Parliament.

The PRESIDENT: Order! The member must speak to the point of order rather than address the House on the issue.

Dr JOHN KAYE: I would have thought that issue is germane to this debate.

The Hon. Catherine Cusack: Point of order: The overview of the bill clearly states that this legislation is "to provide for the transition from the greenhouse gas abatement scheme set out in part 8A of the *Electricity Supply Act 1995* ... when a similar scheme is established either nationally or in this State and at least one other State or Territory". It is not referring to the legislation before the Parliament in Canberra. That may or may not be an option. The leave of the bill is general. Another scheme may overtake it in New South Wales. The member is straying deliberately to make a political speech that is completely outside the leave of this bill. I ask you to draw him back to this important legislation to ensure that it is dealt with properly. If the member wishes to make a political speech and express these diverse opinions, relying on seven degrees of separation, he is welcome to do so on the adjournment but not on this legislation.

Dr JOHN KAYE: To the point of order: The member got it absolutely right when she said, "a similar scheme established either nationally or in this State and at least one other State or Territory." To my knowledge, no other State or Territory is currently contemplating establishing an emissions trading scheme. Maybe the member would like to enlighten us, but the only emissions trading scheme to which that could possibly refer is the carbon pollution reduction scheme [CPRS]. Given that this legislation is about the CPRS, when members come to vote it is important for them to understand what is replacing the greenhouse gas abatement scheme [GGAS] and the political realities around its replacement.

The PRESIDENT: Order! The Chair has ruled on numerous occasions that, in accordance with Standing Order 92, members must not digress from the subject matter of the motion or the bill before the House. With regard to the bill being debated at this time, the comments of Dr John Kaye are in order. In proceeding with his contribution, the member should ensure that his comments are generally relevant to the subject matter of the bill before the House.

Dr JOHN KAYE: I appreciate your ruling and will abide by it. The real problem with the debate about the carbon pollution reduction scheme, which is scheduled to replace GGAS, is nothing to do with the climate science; it is about the ability of that scheme to produce genuine savings and reductions in greenhouse gas emissions. However, the CPRS legislation, just like the legislation it replaces here in New South Wales, is marred by its weak targets, its billions of dollars of giveaways to the large polluters and its creation of property rights to pollute. Similar to GGAS, it also opens the back door to dodgy emissions certificates that come from elsewhere. In the case of the CPRS, millions of tonnes—maybe hundreds of millions of tonnes—of emissions certificates will flood into Australia from overseas projects that would not be admissible under the CPRS.

The Hon. Catherine Cusack: Is that the Commonwealth legislation or the State legislation? We are supposed to be talking about the bill before the House.

Dr JOHN KAYE: I remind the member once again, and as she so accurately pointed out, that the bill before the House refers to a "similar scheme ... established either nationally or in this State and at least one

other State or Territory". I am referring now to the only scheme on the books anywhere in Australia that does that, and I am referring to issues associated with that scheme, to which we are preparing the transition in New South Wales from GGAS. It is highly relevant to this legislation that we understand that the Federal legislation is marred by its weak targets, its billions of dollars of giveaways to the larger polluters, rewarding bad and polluting behaviour, and its creation of property rights to pollute, thereby making it much more difficult to adjust targets.

On top of that, the Commonwealth's carbon pollution reduction scheme opens the back door to dodgy international emissions certificates. Those are certificates coming from the clean development mechanism and known as certified emissions reduction units, which in many cases are generated by new coal-fired power stations being built in places like India that are doing nothing more than they would normally do. In terms of doing nothing more than they would normally do, they are being built as supercritical coal-fired power stations, such as the Tata ultra mega 4,000 megawatt coal-fired power plant in Gujarat, India, which will generate 26 million tonnes of carbon dioxide each year for least 25 years and will be able to generate 3.1 million tonnes of carbon offsets [CERs] a year, many of which will end up in Australia.

This is exactly the same style of problem that dogged GGAS; power stations like Hazelwood in Victoria, the nation's most carbon-intensive power station, were able to generate certificates and sell them into the New South Wales market. What is needed in New South Wales is real action on climate change. What is needed in Australia is also real action on climate change—a jobs-rich transition to a renewable energy future, not some time in the future, whenever it suits the large polluters, but now. We must begin now so that we generate jobs in Australia and we do not lose them overseas, and Australia and New South Wales become world leaders in the battle to solve climate change. If we do this seriously, if we do not repeat the errors of GGAS or the errors of CPRS, what awaits us is 73,800 new jobs. There will be a massive increase in employment, including a tenfold increase in employment in the electricity industry alone, according to the University of Newcastle study.

I turn now to the specific features of the legislation. As I said, this legislation arises from the Commonwealth's offer of \$130 million in cash assistance to the large polluters which would supposedly be adversely affected by the transition from GGAS to the CPRS. None of the money comes through New South Wales so the legislation explicitly protects New South Wales from any compensation claims. Our concern is that there are no legislated mechanisms for that \$130 million. This legislation does not even touch on that \$130 million. There are no legislated mechanisms to ensure that that \$130 million does not end up as straight rent-seeking profit in the hands of some of the nation's largest polluters. The legislation will reduce the supply of certificates by stopping new applications for accreditation under GGAS from 1 January 2010. However, now that the climate deniers are running the Federal Liberal Party I do not think the date will be 1 January 2010; it is much more likely to be much later. The Federal Liberal Party is now led by a man who famously said:

The argument on climate change is absolute crap.

Sea levels have risen along the New South Wales coast by more than 20 centimetres during the past century. Tony Abbott responded:

Has anyone noticed it? No, they haven't.

The legislation removes the opportunity, from 2010, to create certificates from generation projects that were commissioned prior to the commencement of GGAS. These are the infamous category A projects—the projects that have in many senses been the outstanding poor performers within GGAS; the projects that have undermined whatever integrity the scheme might have had. The legislation also adjusts the targets for compliance to partial calendar years, allowing for a transition from GGAS, which is based on calendar years, to the CPRS, which is based on financial years.

As I said, it also provides for no compensation to be payable by the State in relation to legislative frameworks for GGAS. It leaves a final benchmark of 7.27 tonnes of carbon dioxide equivalent of greenhouse gas emissions per head of State population per year. There will not be any progress in New South Wales. There will not be any advances beyond that which was here in 2007. A tougher target would have provided jobs, climate protection, and benefits to New South Wales rural and regional communities in terms of a disaggregated and distributed electricity industry, but all of that has been squandered. They have been squandered by setting meaningless targets in a meaningless scheme.

The Greens will not oppose the Electricity Supply Amendment (GGAS) Bill 2009 legislation even though we do not think that going from GGAS to the carbon pollution reduction scheme is necessarily a large

step forward. However, we recognise that the day of GGAS has probably come to an end. We also recognise that New South Wales is thereby signing off on a carbon pollution reduction scheme that will not deliver the employment or climate saving benefits that genuine action, a plan to transition New South Wales out of its dependency on coal and into a renewable future, would have brought.

The Hon. HELEN WESTWOOD [3.20 p.m.]: I support the Electricity Supply Amendment (GGAS) Bill 2009. The Greenhouse Gas Reduction Scheme, or GGAS, which commenced in 2003, was established under the Electricity Supply Act. GGAS aims to reduce greenhouse gas emissions associated with the production and use of electricity. It achieves this by using project-based activities to offset the production of greenhouse gas emissions. When GGAS commenced in 2003 it was a groundbreaking approach to driving down greenhouse gas emissions. New South Wales was the first jurisdiction to impose greenhouse targets on its electricity sector. There is no doubt that the incentives provided by GGAS have led to changes in behaviour of a wide range of scheme participants. We all agree that a change in behaviour is what is needed in order to drive down greenhouse gas emissions right across our nation.

In 2008 the Commonwealth announced a national emissions trading scheme, now known as the carbon pollution reduction scheme. The Commonwealth has more recently announced that the carbon pollution reduction scheme will commence on 1 July 2011. The introduction of a national emissions trading scheme is strongly supported as the most cost-effective and equitable means to drive reduction of greenhouse gas emissions. In 2006 the New South Wales Government introduced amendments to GGAS to provide for its termination on the commencement of a national emissions trading scheme. The Electricity Supply Amendment (GGAS) Bill 2009 will smooth the transition from GGAS to the national carbon pollution reduction scheme. The bill proposes to amend the Electricity Supply Act to make a number of procedural changes to GGAS to facilitate this transition.

Under existing section 97KB of the Electricity Supply Act, the termination of GGAS is permitted by proclamation, provided the Minister for Energy is satisfied that New South Wales will be a participant in a scheme designed to achieve the reduction of greenhouse gas emissions associated with the production and use of electricity. The proposed national carbon pollution reduction scheme is clearly such a scheme. However, as that carbon pollution reduction scheme will be implemented by Commonwealth legislation, it is more accurate to state that the scheme will apply in New South Wales, rather than specify that New South Wales must be a participant in the scheme. The bill amends the Electricity Supply Act by permitting GGAS to be terminated by proclamation provided the Minister for Energy is satisfied that the carbon pollution reduction scheme will apply in New South Wales. This better reflects the way the proposed scheme will operate than the existing section 97KB.

The bill specifies that the final compliance period for GGAS will end on the day immediately preceding its termination. This is necessary to secure final year compliance for GGAS because GGAS operates on a calendar year basis whereas the proposed carbon pollution reduction scheme will operate on a financial year basis. The bill is designed to reduce the number of surplus GGAS certificates that will be left at the end of GGAS. It limits the circumstances in which GGAS certificates may be created in a number of ways. First, no application for accreditation as a GGAS certificate provider in relation to any activity may be made from 1 January 2010 or a later date set by regulations. Second, section 97EC (2A) of the bill provides that certificates may not be created in relation to category A generation on or after 1 July 2010 or another date prescribed by regulations. Category A generation is being targeted for driving reduction in surplus GGAS certificates because category A generation projects were commercially viable prior to the commencement of GGAS.

The ability to set different dates by regulation ensures sufficient flexibility in the event that the Commonwealth does not commence the carbon pollution reduction scheme, or CPRS, on 1 July 2011. Until the CPRS legislation is successfully passed by Federal Parliament, there is no certainty that the CPRS scheme will definitely commence on 1 July 2011. After the events today in Canberra many members have doubts whether it will be successful. We hope that some members of the Federal Opposition will vote in accordance with their ethics, maintain their integrity, and support the legislation as they have committed to do. We will all know the outcome in the next few days. This flexibility is an important way of ensuring that GGAS continues to operate effectively prior to the commencement of the CPRS, and will avoid the possibility that opportunities to create abatement certificates may be removed prematurely if the commencement of the CPRS is further delayed.

Finally, section 97EC (2D) of the bill prevents the creation of GGAS certificates in respect of activities occurring on or after the termination of GGAS. No GGAS certificates may be created later than two months after the termination of GGAS. These changes will help New South Wales move to the new national scheme. I commend this bill to the House.

Reverend the Hon. FRED NILE [3.26 p.m.]: I speak on behalf of the Christian Democratic Party on the Electricity Supply Amendment (GGAS) Bill 2009, which proposes legislative amendments to the Electricity Supply Act 1995 to facilitate the transition from the New South Wales Greenhouse Gas Reduction Scheme to the Rudd Australian Labor Party Government's proposed carbon pollution reduction scheme, or CPRS. As the Hon. Helen Westwood and other speakers have said, there is a great deal of uncertainty about whether there will be a national carbon pollution reduction scheme. Leaving aside what may happen between now and 2011 and a possible double dissolution, there will be a Federal election in 2010. If the Coalition wins government, the CPRS legislation may not go ahead or may be dramatically changed.

In many ways the Electricity Supply Amendment (GGAS) Bill 2009 is jumping the gun by anticipating a very smooth transition in the Federal Parliament of the passage of the carbon pollution reduction scheme legislation, or what is known as the emissions trading scheme [ETS] legislation. The whole question of greenhouse gases is causing great concern around Australia. Two years ago the public accepted the concept in good faith but after further evidence and discussion a change has occurred in the political and public climates in Australia. Recent surveys have shown that more than 60 per cent of the population of Australia believe that any emissions trading scheme legislation should be delayed until after the December Copenhagen conference. That is a big shift in public opinion. Both the State and Federal Labor governments should take note of the change in the community. Only last week during a heatwave Mr Rudd boasted on television that it was evidence of global warning. This week the temperature has dramatically dropped, so where does that leave his claim? Mr Rudd's claim is superficial if it is based on the temperature of a day or a week. Mr Rudd thought last week's heatwave was an extreme event of high temperatures, but it is well known that higher temperatures have been recorded at other times in Australian history.

Mr Rudd based that claim on surveys carried out over the past 100 years. Of course temperatures change. The reason for the pressure for this bill and the Federal bill is the Copenhagen conference and the Copenhagen treaty. It seems that Prime Minister Rudd has decided that he wants the Commonwealth bill to be passed by the Senate so that he can take it to the conference. That would allow him to boast of his success. However, this week the Leader of the Democratic Party in the United States Senate announced that the emissions trading legislation before that House will not proceed now but will be debated next year, beginning in March. The Senate has given up any hope of the United States delegation attending the Copenhagen conference with its legislation having passed both Houses.

Therefore, there is no necessity for Australia to go it alone, so to speak, when there are still many questions to be answered. As other members have said, there has been a dramatic change in the leadership of the Federal Liberal Party, with the election of the Hon. Tony Abbott—members will not be surprised to hear that I believe that is an excellent choice. We look forward to his leadership of the Federal Opposition. There is now growing concern about the emissions trading scheme. Hackers found evidence on the website of a United Kingdom scientific organisation that scientists were manipulating findings and providing selective information to government. A CSIRO scientist who issued a paper questioning some greenhouse emissions propaganda has been gagged and his paper prohibited from being made public. All those issues have caused wide community concern. Scientists have differing views, and politicians should not take the lead until the science is clarified and established beyond doubt.

The Hon. PENNY SHARPE (Parliamentary Secretary) [3.32 p.m.], in reply: I thank honourable members for their contributions to debate on the Electricity Supply Amendment (GGAS) Bill 2009. The New South Wales Greenhouse Gas Reduction Scheme, or GGAS, is one of many measures that this Government has implemented to address the growth in greenhouse gas emissions. Commencing on 1 January 2003, GGAS was one of the world's first mandatory emissions trading schemes. The object of the bill is to facilitate the transition from GGAS to the proposed national Carbon Pollution Reduction Scheme [CPRS]. The bill achieves this objective by reducing the number of surplus GGAS certificates left at the end of the scheme and by making a number of procedural changes to the GGAS legislation. These changes signal the end of the New South Wales scheme and communicate to GGAS participants and proponents of new projects that they need to develop projects to fit within the new national arrangements of the Carbon Pollution Reduction Scheme.

The successful operation of GGAS and the carbon price it introduced across the national electricity market has made the start of a national scheme such as the Carbon Pollution Reduction Scheme significantly easier. The New South Wales Government recognises that it is necessary to plan for the transition from GGAS to the Carbon Pollution Reduction Scheme, and the amendments proposed in the bill are aimed at making this transition as smooth as possible. The Government is doing everything possible to ensure that GGAS participants are not disadvantaged under the Commonwealth scheme. The amendments in the bill will mean that there will

be fewer certificates created under GGAS than there would have been if no changes had been made. The passage of the bill will minimise the transitional burden and help bring certainty for GGAS participants in the lead up to the commencement of the Carbon Pollution Reduction Scheme.

The Opposition raised a number of issues regarding consultation. The Government has consulted widely with industry at every step in the GGAS process. The only time that did not happen was when to do so would have compromised markets due to the sensitive nature of the information. That is why the legislation has always built in flexibility around the dates by allowing amendment by regulation. The industry has been fully consulted about the changes in this amending bill associated with the Federal Government's compensation. Industry consultation, notice and certainty are important priorities for the New South Wales Government, and they are particularly important in relation to these changes.

New South Wales has already secured a \$130 million assistance package from the Australian Government to reduce the impact of the transition to the Carbon Pollution Reduction Scheme for adversely affected GGAS participants. This was achieved following persistent lobbying from the New South Wales Government and GGAS participants. It is welcome recognition for GGAS participants that they have been a driving force in reducing greenhouse gas emissions. The cash assistance will go to landfill gas and avoided methane generators, as well as holders of unused GGAS certificates. Of the \$130 million, \$50 million will be available to adversely affected landfill gas and avoided methane generators, while the remaining \$80 million will assist holders of unused GGAS certificates. A requirement of this compensation package is that New South Wales make an in-kind contribution towards reducing the number of surplus certificates in existence when GGAS ends in 2011. New South Wales has led the world in implementing GGAS, and the changes in this bill will ensure that those who have invested and worked hard under this scheme can transition smoothly to the proposed national Carbon Pollution Reduction Scheme. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. Penny Sharpe agreed to:

That this bill be now read a third time.

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

CRIMES (FORENSIC PROCEDURES) AMENDMENT BILL 2009

Second Reading

Debate resumed from 2 September 2009.

Ms LEE RHIANNON [3.36 p.m.]: A few weeks ago the House commenced debate on the Crimes (Forensic Procedures) Amendment Bill 2009, which seeks to amend laws with respect to the carrying out of forensic procedures and the use of forensic material and DNA profiles. Previously I spoke about the testing of children. Article 3 (1) of the Convention on the Rights of the Child states that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. The Greens apply this standard when assessing legislative moves that impact on children. I note that the bill provides a number of protections, including the requirement that a parent, guardian or lawyer must be present during the procedure; that a parent or guardian must be heard before a magistrate orders a forensic procedure; and that the forensic material must be destroyed within 12 months of being acquired, unless it is being used in an ongoing investigation. I note also that the Minister, in his agreement in principle speech, referring to magistrate orders, stated:

[magistrate orders] are designed to assist law enforcement activities. They do not aim to allow, nor do they empower, the police to investigate or act against children under 10 in any way.

The Greens would feel more assured if words to the effect that "the orders are not to allow or empower investigation against a child under the age of 10 years of age" were included in the bill, and thus in the relevant parts of the Act, not stated only in the agreement in principle speech. I ask the Parliamentary Secretary to confirm in her reply that DNA orders do not empower the police to investigate or act against children under 10 in any way. It is most important that that point be clarified for the information of members and the public.

I also ask the Parliamentary Secretary in her reply to confirm whether DNA collected from a child under 10 will be placed on any index of the DNA database in the 12 months before it is destroyed. From my reading of the bill it seems that the child's DNA will be placed on the volunteers index and cross-matched with other indexes if the magistrate makes the order. I note that the New South Wales Ombudsman recommended that DNA from a child under 10 should not be placed on any index of the DNA database. If this is the case with regard to this bill it is disappointing, if not surprising, that the Government has fallen short of the Ombudsman's recommendations. Again, there clearly is a need for the Parliamentary Secretary to clarify that matter. The Greens do not oppose the bill. We have contacted the Australian Privacy Foundation and the Council for Civil Liberties about this bill and I understand that those organisations have no strong objections to it. I take the opportunity to thank the Council for Civil Liberties and the Australian Privacy Foundation for their comments on the bill and for their tireless work in this area.

Reverend the Hon. FRED NILE [3.40 p.m.]: The Christian Democratic Party supports the Crimes (Forensic Procedures) Amendment Bill 2009. This bill has arisen from recommendations of the Ombudsman's 2006 review of the Act. It will make amendments to the Crimes (Forensic Procedures) Act 2000 in a number of areas, particularly those relating to forensic procedures carried out on children under 10 in certain circumstances. The aim is to provide various protections in that situation because we know a child under 10 is very vulnerable. The legislation will prohibit such a procedure unless ordered by a magistrate or if the parents volunteer a sample for certain purposes. It will lay out the criteria a magistrate must take into account and will limit the use that may be made of the DNA from a child under 10 to the purpose for which it was obtained or as authorised by a magistrate. The bill requires the DNA to be destroyed within 12 months unless it is being used in an ongoing investigation.

I have no problems with the bill as such, although I believe material from the DNA testing is neutral, as it were—it is like collecting fingerprints—and it probably would be better if it were not destroyed. For example, if a child is involved in a serious accident or is drowned and there is some question of identity, the DNA would be very valuable in ascertaining the identity of that child. I do not see it as a law and order issue at all. It is an ongoing matter to which we should give serious consideration. DNA information is very valuable and can be used in positive ways that are in the public interest. I bring that to the attention of the Government.

The Hon. PENNY SHARPE (Parliamentary Secretary) [3.42 p.m.], in reply: I thank honourable members for their contributions to this debate. A few issues have been raised during debate and I will seek to address them. In response to the question asked by the member for Epping in the other place, I am advised that the law already allows for forensic DNA samples to be taken from deceased children in a number of circumstances and for a number of reasons. For example, section 90 of the Coroners Act 2009 allows samples obtained pursuant to certain post-mortem investigation directions to be used for the purpose of investigating an offence or in a legal procedure, among other things. Indeed, the Crimes (Forensic Procedures) Act 2000 makes provision for DNA profiles belonging both to children whose identity is known and unknown. In the latter case, the need to establish the identity of the deceased child is an obvious reason why the data is on the database. There are occasions when the community benefits from having the DNA of a child whose identity is known on the database. For example, if the child is a victim of an unsolved murder, putting his or her DNA on the database might lead to a match with an item belonging to the child in the possession of his or her murderer. The amendments that are the subject of the bill before the House are not designed to alter the current position concerning DNA profiles obtained from deceased children.

Ms Lee Rhiannon raised a couple of issues as well. In response to her concerns about timing, I point out that the Ombudsman's report made 104 recommendations, 98 of which the Government supported. Most of them required non-legislative responses that have been implemented. A number of the legislative responses have already been enacted also. This bill deals with the remaining recommendations and the Government wanted to make sure that appropriate consultation was undertaken before we brought the legislation to the House. In relation to issues around children under 10 who are investigated for crimes and the safeguards that are in place, the law on the criminal responsibility of children in New South Wales presumes that a child under the age of 10 years cannot be found guilty of an offence. The purpose of this rule is to ensure that children without comprehension of the moral consequences of their actions are not held criminally liable.

The bill does not allow for forensic procedures to be conducted on children under 10 except for the specific purposes of investigating an offence, finding a missing person or identifying a dead person. Investigating an offence in this context means an offence committed at law. Where a child under 10 has committed an act that would ordinarily be considered criminal, it is not an offence that can be investigated under those provisions because of the presumption that a child under 10 cannot be guilty of an offence. Therefore, no child under 10 can be investigated as a result of the changes in the bill.

In relation to the specific question about the misuse of material from children under 10, the bill contains safeguards to prevent police misusing forensic material acquired when a child is under 10 years old. Proposed section 81M limits the use of the material to the purpose for which it was acquired; provides for its destruction within one year of its acquisition or at the end of the investigation in which it was acquired, whichever is the later; and limits the matching of any DNA profiles acquired from such material on the database to specific indexes and only for the purpose for which it was acquired. This bill implements important protections for persons who provide forensic material to law enforcement authorities and will boost the effectiveness of, and confidence in, our DNA database system. 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.

CRIMINAL PROCEDURE AMENDMENT (CASE MANAGEMENT) BILL 2009

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [3.47 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.

The Government is pleased to introduce the Criminal Procedure Amendment (Case Management) Bill 2009, which will make significant changes to the way criminal trials are run in the higher courts of NSW.

Recent figures from the Productivity Commission indicate that NSW criminal courts lead the nation in the timely completion of criminal matters. However, there are indications that criminal trial durations in the State have been trending upwards in the last ten years.

This general upward trend in NSW is not of itself a cause for concern. The duration of criminal trials has increased drastically in all Australian jurisdictions in recent decades. Gone are the days when a murder trial could be conducted in under a week, and for the most part, there are good reasons for this. Advances in technology have resulted in forensic evidence that is greater in both volume and complexity than in years gone by, and the rapid adoption of electronic communication in the last 20 years has resulted in an exponential increase in the amount of electronic evidence that is adduced in criminal trials.

However, not all causes of increased trial durations can be said merely to reflect scientific progress, and steps should be taken to provide mechanisms to minimise unnecessary delays in trials, whatever their cause. Further, steps should be taken to manage the impact of the volume of technical evidence on the duration of criminal trials, as this volume is only likely to increase with further advances in technology. With these issues in mind, the Government formed the Trial Efficiency Working Group, made up of members of the judiciary and senior representatives of the legal profession from both sides of criminal practice, and government and non-government bodies, to consider the causes of delay in criminal trials and to propose possible solutions. This bill seeks to

implement those recommendations of the Working Group that require legislative change, and is the result of discussion and agreement between the Chief Judge at Common Law of the Supreme Court of NSW, the Chief Judge of the District Court, the Director of Public Prosecutions, and the Senior Public Defender, on the best way to give effect to those recommendations.

The bill replaces Part 3, Division 3 of the Criminal Procedure Act 1986, which contains provisions relating to pre-trial disclosure in complex trials, with new provisions that provide for multiple tiers of case management. The first level is the mandatory exchange of notices between the prosecution and defence prior to the commencement of the trial. These notices will comprise of non-sensitive information about each party's case, and in most matters, no further case management will be required beyond the exchange of notices. The amendments recognise that the majority of criminal trials do not require substantial case management. Most trials are straightforward affairs and it is not the intention of the Government to impose unnecessary red tape on comparatively simple cases. Rather, the focus is on those criminal trials that would benefit from pre-trial case management, due to the complexity of the relevant issues, the volume of evidence involved, or for other reasons that are apparent to the courts.

In less straightforward matters, the Court will be able to order intermediate levels of case management, in the form of pre-trial hearings and pre-trial conferences. The purpose of the hearings and conferences will be to determine issues such as the admissibility of evidence prior to the empanelment of the jury.

At the highest level of case management, courts will be able to order pre-trial disclosure, requiring the defence to give a more detailed response to the initial prosecution notice. This response will not require the defence to disclose its case, although the defence will be required to identify those parts of the prosecution case as outlined in the initial prosecution notice that are in dispute, and the prosecution evidence that will be the subject of an objection, among other things.

Courts may refuse to admit evidence where it was not disclosed to the other party in accordance with the requirements for pre-trial disclosure. Similarly, courts may refuse to admit evidence from an expert witness where a copy of a report by the expert witness was not provided to the other party in accordance with the pre-trial disclosure requirements. Where a court allows the admission of such evidence, and doing so would prejudice the case of the other party, the court may grant an adjournment to the affected party.

A court is currently able to order a similar form of pre-trial disclosure under section 136 of the Criminal Procedure Act, where having regard to the likely length of the trial, the nature of the evidence to be adduced at the trial, or the legal issues likely to arise at the trial, the court is satisfied that the trial will be complex. In practice, however, the provisions were very rarely invoked, particularly in the District Court, and the Working Group formed the view that the test for identifying complex criminal trials was unnecessarily restricting the application of section 136. A key distinction of the new pre-trial disclosure provisions will be that a court will be able to order them in any case where it would be in the interests of the administration of justice to do so, rather than applying the existing complex criminal trial test.

The higher tiers of case management do not merely represent escalating responses to failures by one or both of the parties to comply with the lower tiers, although it is open to the courts to utilise them in this fashion. Where it becomes immediately apparent to the court that a case would benefit from pre-trial disclosure, it will be able to make relevant orders without first needing to conduct pre-trial hearings or conferences.

In addition to these pre-trial measures, courts will be given a general power to manage the trial on or after its commencement. The power will allow the court to make such orders, determinations and findings, or give directions or rulings, as it thinks appropriate for the efficient management and conduct of the trial. This will include making orders for disclosure that were, or could have been, made prior to the commencement of the trial under the proposed amendments. Unexpected and unnecessary delays can arise during the course of a trial, whether due to the nature of the evidence involved, the conduct of the parties, or other factors. This power will allow a judge to deal with these situations, regardless of whether pre-trial case management was ordered in that case.

The aim of the bill is to increase the efficiency of the trial process and it does so by introducing a number of mechanisms which will give those involved the means to identify and resolve issues at the beginning of a matter rather than during the trial itself. This will also assist the judiciary in undertaking their role in the trial by allowing them to be informed early in the trial process of the relevant issues. For these efficiencies to be achieved it will need the profession to embrace the changes and fully utilise the procedures that have been made available. In this regard, I have been greatly assisted by the Trial Efficiency Working Group, who have assisted in identifying what can usefully be introduced and used by the profession and the judiciary.

I will now briefly outline the more significant provisions of the bill.

Schedule 1 [4] substitutes Division 3 of Part 3 of Chapter 3 of the Principal Act to set out a new scheme for the management of proceedings on indictment.

Clauses 137 and 138 require the prosecutor, at a time to be specified by the judge at the first mention of the matter, to give the accused person notice of the prosecution case, and for the accused person to give a response to the prosecutor's notice. The court has been given the discretion to determine the timeframes within which these notices must be given, in order to provide them the flexibility to respond to the level of complexity of each individual matter. While the bill could have imposed specific timeframes for compliance, this approach will allow judges the ability to impose a timeframe which accommodates the listing of a matter, thereby avoiding unnecessary delays. The clauses also set out the matters that are to be included in the respective notices. Among other things, the prosecution notice will include a statement of facts, and copies of any documents and reports the prosecution proposes to adduce at trial. The defence response will include notice of any consents to be given under section 190 of the Evidence Act, and statements as to whether the accused intends to give a notice of alibi or a notice of intention to adduce evidence of substantial mental impairment.

Clause 139 enables the court to order the prosecutor and the accused person to attend one or more pre-trial hearings. The court may make various orders and rulings during those hearings—for example, as to the admissibility of evidence or on questions of

law that might arise at the trial—that will be binding on the trial Judge unless, in the opinion of the trial judge, it would not be in the interests of justice for them to be binding. If a pre-trial hearing was held and certain matters were not raised at the hearing, the leave of the court will be required before those matters can be raised at the trial.

Clause 140 enables the court to order that the prosecutor and the accused person's legal representative attend a pre-trial conference for the purpose of reaching agreement regarding the evidence to be admitted at trial. This conference can be requested by the parties or be ordered on the court's own motion. After such a conference, the prosecutor and the accused person's legal representative will file a pretrial conference form indicating the areas of agreement and disagreement, and departure from the agreements indicated in the form will not be permitted without the leave of the court, based on an interests of justice test.

Clause 141 enables the court to order pre-trial disclosure on application of a party to the proceedings or on the court's own initiative if it is in the interests of the administration of justice to do so. Under clause 142, the pre-trial disclosure requirements for the prosecutor include the requirements imposed under clause 137, although the notice required under that section will need to be updated with any new material that has come to light since it was first provided. In addition, the prosecution must provide the defence with any material in the prosecutor's possession that would be regarded as adverse to the credit or credibility of the accused person, and a list identifying the statements of those witnesses who are proposed to be called at the trial by the prosecution.

The pre-trial disclosure requirements for the accused person are to provide a defence response in accordance with clause 143, including statements as to the facts alleged by the prosecution that the defence intends to dispute, and notice of certain matters that the defence intends to raise in relation to the evidence proposed to be adduced by the prosecution. This includes a broad requirement to give notice as to whether the admissibility of any proposed evidence disclosed by the prosecution will be disputed, and the basis for that objection. Other requirements under clause 143 require the defence to give notice of more specific issues taken with material disclosed by the prosecution. In some circumstances there will be some overlap between the broad requirement to give notice regarding the disputed admissibility of prosecution evidence and the more specific requirements in clause 143. This is intentional. We have taken particular note of the issues that cause delays in criminal trials, and have taken steps to ensure that the parties in criminal proceedings will have to cast their minds to each of these issues. The contents of the defence response may necessitate a further response by the prosecution, including whether the prosecution intends to dispute the admissibility of evidence the defence proposes to adduce.

Clause 145 enables the court to dispense with formal proof of certain matters in proceedings where the matters were not disputed in the course of pre-trial disclosure. Clause 145(1) is of relevance to facts. The proposed section also enables the court to allow evidence of two or more witnesses to be adduced in the form of a summary in certain circumstances.

Clause 146 enables the court to refuse to admit evidence that was not disclosed in accordance with the pre-trial disclosure requirements of the proposed Division and to exclude expert evidence where a copy of the report of the evidence was not provided to the other party in accordance with those requirements. The court may also grant an adjournment if a party to proceedings seeks to adduce evidence not previously disclosed that would prejudice the case of the other party to the proceedings. The court cannot use its powers under the proposed section to prevent the accused person adducing evidence unless the prosecutor has complied with the pre-trial disclosure requirements.

Clause 149D provides that, with specified exceptions, the prosecutor is not required to disclose anything in a notice under the proposed Division if it has already been included in the brief of evidence or otherwise provided or disclosed to the accused person. Similarly, the accused person is not required to include in a notice anything that has already been provided to the prosecutor.

Clause 149E makes it clear that, on or after the commencement of the trial in proceedings, the court may make orders, determinations or findings, or give directions or rulings, for the efficient management and conduct of the trial, including ordering any of the parties to the proceedings to make disclosures that could have been required under the proposed Division before the commencement of the trial.

Clause 149F creates a number of miscellaneous provisions, including clarification that the Act is not intended to limit any disclosure requirements currently imposed on the parties in a criminal trial by sources such as the common law, other legislation and rules of court, and the Office of the DPP's Prosecution Guidelines. Even where the court orders disclosure under clause 141, the common law or other sources may require a higher level of disclosure than that prescribed in this legislation. It is not the intention of the Act to limit the operation of such requirements. The Act will only prevail over such requirements where it is impossible, or impracticable, to comply with both.

Schedule 1 [3] substitutes section 130A of the Principal Act to extend its application to all proceedings on indictment, not just sex offences. Further, all orders made during the course of a trial, not just pre-trial orders, will be binding on a subsequent trial judge. Currently, section 130A of the Principal Act provides that a pre-trial order made by a Judge in certain sexual offence proceedings is generally binding on the trial Judge in the proceedings unless it would not be in the interests of justice for the order to be binding.

The impact of inefficient trials reaches beyond mere financial considerations. Unnecessary delays in criminal trials bring the jury trial system into disrepute, while placing intolerable burdens on juries, victims of crime, accused persons, and witnesses. This bill represents the Government's commitment to minimise such delays.

I commend the bill to the House.

The Hon. DAVID CLARKE [3.47 p.m.]: The Opposition does not oppose the Criminal Procedure Amendment (Case Management) Bill 2009, the overall intention of which is to streamline procedures in criminal trials so as to reduce the trend of the increasingly longer duration of such cases in recent years. This is a trend that the Government says is an Australia-wide phenomenon, arising for a variety of reasons but in part due

to the greater volume and complexity of forensic evidence collection and presentation. In order to minimise delays to criminal trials as a result of the growing volume of technical and forensic evidence, the Government established the Trial Efficiency Working Group, consisting of members of the judiciary, legal profession and other interested parties, both Government and non-government.

The Government advises that the Criminal Procedure Amendment (Case Management) Bill 2009 is the proposed legislative outcome of this working group in collaboration with the Chief Judge at Common Law of the Supreme Court, the Chief Judge of the District Court, the Director of Public Prosecutions and the Senior Public Defender. The bill states that its object is to amend the Criminal Procedure Act 1986 so as to make further provisions in relation to the management of cases to reduce delays in proceedings on indictment, including provision in respect of pre-trial disclosure, pre-trial hearings and pre-trial conferences; and to extend section 130A of that Act, which currently provides for pre-trial orders by judges in sexual offence proceedings to be binding on trial judges except in certain circumstances, to all proceedings on indictment and to orders whether or not they are pre-trial orders.

The Criminal Procedure Act 1986, which this bill seeks to amend, was introduced to assist the prosecution of indictable offences, the listing of criminal proceedings before the Supreme Court and the District Court, committal proceedings, and proceedings for summary offences in New South Wales. Currently the Criminal Procedure Act enables the Supreme Court or a District Court to order pre-trial disclosure by the prosecutor and the accused in proceedings on indictment, but only if satisfied that the trial will be a complete one, having regard to the likely length of the trial, the nature of the evidence to be adduced at the trial, and the legal issues likely to arise at the trial.

This bill sets out a new scheme for the management of proceedings on indictment, the purpose of which is stated principally as reducing delays in indictment proceedings. The new management requires that at the first mention of proceedings in the court before which the trial is to be heard the trial judge is to give directions for the conduct of the trial. The prosecutor is required to give the accused person notice of the prosecution case and the bill sets out the matters that are to be included in the notice, which includes witness and expert statements and information in the prosecutor's possession relevant to the reliability or credibility of a prosecution witness.

The accused person is required to give a response to the notice of the prosecution case and such a response must include statements as to whether the accused intends to rely on an alibi defence or the defence of substantial mental impairment. The new process enables a judge to order the prosecutor and the accused person to attend one or more pre-trial hearings at which the court may make various orders and rulings as to the admissibility of evidence or on questions of law. Such rulings will be binding on the trial judge except in certain circumstances, such as when it would not be in the interests of justice. Matters may not be raised at trial without leave unless they have been raised at the pre-trial hearing.

The court can order the parties to attend a pre-trial conference for the purpose of reaching agreement regarding the evidence to be admitted at trial, although this will apply only when the accused is legally represented. The court may order further pre-trial disclosure on the application of one party or of its own accord if it is in the interests of justice. Certain prescribed matters listed in the bill, such as prosecution witness lists, must be included in the prosecution's notice. The bill's requirements for a defence response include statements in relation to the facts and matters or circumstances alleged by the prosecution that the defence intends to dispute or agree to. Such a defence response also includes disclosing a copy of any expert report upon which the accused intends to rely; stipulating whether there is any issue with the surveillance evidence of the prosecution; whether evidence of a chain of possession alleged by the prosecution is in issue; and whether an issue is alleged in regard to the indictment or the severability of the trial.

The prosecutor is required to respond similarly to matters raised in the defence response. The court is given power to dispense with formal proof of certain matters and it is empowered to allow evidence of two or more witnesses to be adduced in the form of a summary in certain circumstances. The court may refuse to admit evidence, including expert evidence, that was not disclosed pre-trial, or it may grant an adjournment. The court may also grant an adjournment to a party if the other party seeks to adduce evidence not previously disclosed that would prejudice the case of the party seeking the adjournment. The court retains a power to waive any of the pre-trial disclosure requirements.

A provision in the bill requires notices to be given in writing. Whilst copies of documents and exhibits need not be included in the notice if impractical, they must be available for inspection. Other provisions prohibit

the prosecutor from disclosing addresses and phone numbers of witnesses in a notice under proposed section 149B, and pre-trial orders in proceedings on indictment are binding on the trial judge unless it would not be in the interests of justice. Currently the Criminal Procedure Act provides that a pre-trial order made by a judge in certain sexual offence proceedings generally is binding on the trial judge in the proceedings unless it would not be in the interests of justice for the order to be binding. This bill extends its application to all proceedings on indictment and to orders of the trial judge in the proceedings so that when a new hearing is ordered or the proceedings are discontinued the orders of the original trial judge generally are binding on another trial judge hearing fresh proceedings. The Act is amended to clarify that a reference to a trial judge means the judge before whom the trial proceedings are heard following the empanelling of a jury in proceedings on indictment. The amended Act also provides that the Attorney General must review the new provisions as soon as possible 24 months after their commencement.

For some time now the blowout in the duration of criminal trials has been evident to all. Clearly criminal trials in New South Wales for a variety of reasons—including technological advances and more complex trials—have lengthened unacceptably. This bill goes part of the way towards addressing the complexity of criminal trials in New South Wales and seeking to reduce the length of time such cases take to be completed. Whilst the Government has stated that its focus with these amendments is on complex criminal cases, it is highly arguable that it should focus on all criminal cases and that trial judges should be encouraged to implement these pre-trial procedures as a matter of course and not as a discretionary matter.

Ms SYLVIA HALE [3.56 p.m.]: The Greens do not oppose the Criminal Procedure Amendment (Case Management) Bill 2009, which came about because of the lengthening of criminal prosecutions over the past few years. The bill is the result of recommendations of the Trial Efficiency Working Group, which comprises members of the judiciary, representatives of the legal profession, and representatives of government and non-government bodies. At present, pre-trial disclosure procedures are in place but they have not been used frequently in the District Court. The changes in the bill will make it easier for a court to order pre-trial disclosures when it is in the interests of justice to do so, rather than after the existing complex criminal trial test has been applied.

The bill will extend the application of the existing relevant section to all indictable offences. The bill replaces part 3, division 3 of the Criminal Procedure Act 1986, which contains provisions relating to pre-trial disclosure in complex trials, with new provisions that provide for multiple tiers of case management. The first level is the mandatory exchange of notices between the prosecution and defence prior to the commencement of the trial. These notices will comprise non-sensitive information about each party's case and, in most matters, no further case management will be required beyond the exchange of notices. Proposed section 140 provides some safeguards. When a court orders that there be pre-trial disclosure the accused must be represented when the parties are attempting to agree on the evidence that may be admitted at trial.

Proposed section 145 enables the court to dispense with formal proof of certain matters in proceedings. Proposed section 146 provides a further safeguard that will enable the court to refuse to admit evidence that was not disclosed in accordance with the pre-trial disclosure requirements of the proposed division. I will not go through all aspects of the bill. In theory, pre-trial hearings are effective for expediting an actual trial. I note, however, that the Legislation Review Committee and the New South Wales Bar Association identified some concerns, to which I now turn. The Legislation Review Committee commented:

The Committee, therefore, is of the view that clauses 143 [Defence response—court ordered pre-trial disclosure], 145 [Dispensing with formal proof] and 146, [Sanctions for non-compliance with pre-trial disclosure requirements] potentially undermine the right to silence, onus of proof, or the presumption of innocence notwithstanding that clause 148 enables discretion for the courts to waive any requirements of the pre-trial disclosure requirements under Division 3.

The Committee also notes the relevant reports of the SCAG Working Group on Criminal Trial Reform, the SCAG Deliberative Forum, the Law Reform Commission of Western Australia and New South Wales Law Reform Commission during the period of 1999 and 2000, which had recommended reciprocal pre-trial disclosure for the prosecution and defence. Accordingly, the Committee does not consider the bill as unduly trespassing on individual rights and liberties.

The Attorney General might care to comment on those points when he replies to debate on this bill. I now refer to the comments of the New South Wales Bar Association. I understand the association has given its feedback to the Government. I am sure it would welcome a response from the Minister to the specific points raised. The Bar Association wrote:

The Association has been heavily involved in consultation on the legislation. Stephen Odgers SC, Tim Game SC, Phillip Boulton SC—

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

QUESTIONS WITHOUT NOTICE

LONG BAY JAIL INCIDENTS

The Hon. MICHAEL GALLACHER: My question is directed to the Minister for Corrective Services. When was the Minister informed of the riot at Long Bay jail involving more than 40 inmates and 80 prison officers when shots were fired, described in the media as the worst riot scene in 25 years? Can the Minister provide the House with details of the event given that media sources, and not he, revealed the available details to the public? Given the seriousness of the incident, when did the Minister inform the Premier of the riot? Why did the Premier, when asked on radio on Sunday, say he had not heard about the incident?

The Hon. JOHN ROBERTSON: I thank the member for his question and for the opportunity to advise the House that there was an altercation between two inmates at Long Bay hospital in the early hours of the afternoon on Tuesday 24 November, and that three other altercations followed shortly after. I understand that the inmates involved were fighting with each other and did not at any point target officers or prison property. I am advised that the correctional officers on duty dealt with the incidents quickly and professionally. As a result, order was restored in the centre with minimal damage to property or injury to inmates and correctional staff. Staff responded immediately to each incident, breaking up the fight and removing from the area those inmates involved.

The commissioner has advised me that the security of the centre was maintained at all times. A number of inmates were transferred from Long Bay hospital after the incident and several have been placed in segregation. The inmate assaults were reported to police immediately and an investigation is being conducted into the incident. I am advised that three shots were fired into the ground to disperse inmates. Senior officers will be examining whether appropriate changes to procedures or policies need to be made at the centre.

STATE ECONOMY

The Hon. GREG DONNELLY: My question is addressed to the Treasurer. Would the Treasurer inform the House of the latest developments in the New South Wales economy?

The Hon. ERIC ROOZENDAAL: I have more good news for the New South Wales economy. This morning the Australian Bureau of Statistics released the latest residential building approval data, which shows trend growth of almost 22 per cent in New South Wales over the past year.

The Hon. Greg Donnelly: How much?

The Hon. ERIC ROOZENDAAL: It is 22 per cent. This growth is above the national average. On a trend basis, the number of residential building approvals in New South Wales for October 2009 was 2,458, which includes 440 more residential approvals than the previous year. Trend growth in residential building approvals over the past 12 months in New South Wales is 21.8 per cent—3.3 per cent above the national average of 18.5 per cent and above Queensland, which recorded -5.5 per cent. There is more good news. The value of New South Wales non-residential building approvals rose 4 per cent in October on a trend basis compared to a 1 per cent increase nationally. The State economy is tracking well and we are starting to see those important green shoots of recovery in the New South Wales economy, but there is still a lot more work to be done. These figures are a good forward indicator of activity in the New South Wales residential construction sector.

My priority is supporting jobs and the growth of the \$360 billion New South Wales economy. On a trend basis we have seen seven straight months of increases in residential building approvals in New South Wales. That is good news for the New South Wales economy and for our housing sector. This afternoon the Reserve Bank increased interest rates by 25 basis points, taking the official cash rate to 3.75 per cent—still a relatively low level by historical standards and below the low points of recent interest rate cycles. Regardless, I understand the concern and anger that families will feel by this decision, especially in New South Wales, which is more sensitive to interest rate movements than any other State. However, there is a silver lining for our State's mortgage holders: the Reserve Bank believes the risk of a serious economic contraction in Australia has now passed.

The Reserve Bank has reaffirmed its view that growth will return close to trend levels in 2010. As we head to Christmas I am encouraged that retail growth in New South Wales continues to lead the nation. The

green shoots of recovery are starting to take hold. I can advise the House that the October monthly budget update has been released. This shows a cumulative deficit of \$105 million for 2009-10. The result for the same period in 2008-09 was a \$192 million deficit. Tax receipts are \$172 million higher so far this financial year, in part due to stronger stamp duty receipts.

Stamp duty has increased by \$125 million compared to this time last year. Goods and services tax [GST] receipts for the first four months of 2009-10 are \$467 million lower than for the same period in 2008-09. The difference largely reflects changes to the timing of Commonwealth Treasury allocations to the States. The outlook for New South Wales goods and services tax receipts for the whole of 2009-2010 are expected to improve in keeping with recent improvements in economic conditions. The budget update is a reminder that there is more work to be done, but we are seeing those green shoots of recovery.

DUBBO NATIONAL PARKS AND WILDLIFE SERVICE STAFF REDUCTIONS

The Hon. DUNCAN GAY: I direct my question to the Minister for Climate Change and the Environment. Can the Minister explain why eight full-time staff at the National Parks and Wildlife Service office in the upper Darling region in Dubbo have been offered voluntary redundancies? Why is the department in a situation where it needs to make significant staff cuts in regional areas? What reassurance can the Minister provide to other National Parks and Wildlife Service staff in Dubbo who now fear their positions will be next on the chopping block?

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

The Hon. Duncan Gay: But you're removing them.

The Hon. JOHN ROBERTSON: Let me be quite clear on the numbers and debunk any inaccurate scare campaign, like the one to which the member is trying to give momentum. The minor changes to administrative boundaries are designed to save approximately 30 positions out of nearly 2,000 officers in the service. The Opposition does not like to hear to important part, so I will say it slowly in the hope it actually sinks in: There will be no forced redundancies to achieve the savings. If anybody at Dubbo or anywhere else does not want to take a redundancy, they do not have to and they will maintain their job.

The Hon. Duncan Gay: Eight people are going.

The Hon. JOHN ROBERTSON: Because they choose to go. Voluntary redundancies are being offered. If people choose to take a redundancy, it is their choice. There are no forced redundancies. These reforms are at middle management level and involve administration and general coordination positions. The reforms will not affect front-line staff, such as area managers, rangers, field officers or visitor services officers who manage the State's national parks and assist visitors every day. Local parks will continue to be managed by local people who live in the local community and are across the local issues.

CORRECTIVE SERVICES STAFFING

Ms SYLVIA HALE: I address my question to the Minister for Corrective Services. Has all leave without pay in all Department of Corrective Services workplaces been cancelled because of a serious shortage of staff that puts the safety of Corrective Service officers and prisoners at risk? Has the same shortage of staff also resulted in an increasing use of lockdowns? Are staff shortages due to the inability to attract sufficient staff, or are they part and parcel of the department's Way Forward policies?

The Hon. JOHN ROBERTSON: On numerous occasions I have spoken about the numbers of casual corrections officers who have graduated from the Brush Farm Corrective Services Academy and who have been

engaged. In addition to that, we have transferred officers who previously worked for Corrective Services New South Wales at Parklea to be dispersed throughout the State for operational reasons. We do not have a staff shortage, as the member states. As part of the Way Forward reforms, we are introducing casuals to drive down overtime, et cetera, to meet our budget and ensure that we are maintaining security in our correctional centres. In relation to staff numbers, our prisons operate to ensure that we maintain security at all times in correctional centres.

ROCK FISHERS SAFETY

The Hon. CHRISTINE ROBERTSON: My question is addressed to the Minister for Primary Industries. Will he inform the House about action the New South Wales Government is taking to improve safety for rock fishers?

The Hon. TONY KELLY: I thank the Hon. Christine Robertson for her question. I know she is a keen fisherwoman.

The Hon. Melinda Pavey: She is a very fine fisherwoman.

The Hon. TONY KELLY: She is. It is estimated that one million people across the State go recreational fishing at least once a year. Rock fishers make up a small but passionate sector of the fishing community. While rock fishing is an enjoyable pastime, unfortunately for many it is a sport that poses many dangers.

The Hon. Duncan Gay: Are you going to make sure they wear the jackets?

The Hon. TONY KELLY: Yes. Sadly, according to Surf Life Saving New South Wales, nine people lost their lives in New South Wales from rock fishing in January to October this year. That is an atrocious figure. Last weekend I visited an angel ring site at Maroubra Beach in eastern Sydney to announce a series of safety workshops that are designed to educate rock fishers. I met with members of the New South Wales Recreational Fishing Alliance and was able to see for myself the dangers and attractions of rock fishing. It was a hot day and the sea looked quite placid—a perfect day for fishing off the rocks, I would have thought, as a non-fishing person.

The Hon. Duncan Gay: Just watch the rogue wave.

The Hon. TONY KELLY: Yes. Rogue waves come every 10 minutes or so, and that is exactly what happened. One rock fisher fortunately had a lot of people watching for him when he turned his back to go to his fishing gear. They all yelled out "Run, run!" as a rogue wave was coming in, and that happens quite regularly. I could see the fishers watching the waves and waiting for a break in the swell before rushing onto the rock face to throw in their line. It was exciting to watch, but it was a lesson in how not to approach rock fishing. In a moment's inattention, the fishers could have been swept off the rocks by a wave.

Right next to my viewing point at this popular rock fishing area was an angel ring, which are lifebuoys. They have been installed at nearly 100 ocean fishing spots along the coast from Queensland to the Victorian border. Right next to them is a safety sign that advises people to contact triple-0 for assistance. Clearly angel rings are invaluable if someone is washed off the rocks. They keep the fisher afloat and allow that person to swim away from the rocks until help arrives. That is why the New South Wales Recreational Fishing Saltwater Trust has provided funding of \$62,675.

The Hon. Rick Colless: Bring back Eddie as Minister for fishing.

The Hon. TONY KELLY: The Hon. Eddie Obeid started this. The funds have been provided to install at least another 30 angel rings at various locations along the coast, and that is so important. The angel rings are just one variety of safety measures that have been in place to improve safety along our coastal areas.

The New South Wales Government is providing funding of \$33,000 from the Recreational Fishing Saltwater Trust for a series of workshops that are being run by the Australian National Sportfishing Association. Four of the five workshops are for fishers of non-English-speaking backgrounds who make up a large number of the rock fishing community. Unfortunately they also make up a large proportion of people who are killed in rock fishing incidents. The workshops are scheduled to be rolled out early next year, beginning at Sydney's northern beaches.

The New South Wales Recreational Fishing Saltwater Trust will continue to target the non-English-speaking fishing community with \$50,000 for ongoing distribution of the successful rock fishing safety resource folders. The folders include DVDs on how to rock fish safely and they have been translated into Korean, Chinese and Vietnamese. The program already is proving successful. We have seen a marked increase in the number of anglers who now wear lifejackets on ocean-front rocks.

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

The Hon. TONY KELLY: The funding is part of the Recreational Fishing Trust's \$13 million spending on more than 60 recreational fishing projects across New South Wales over the next year. Industry and Investment NSW are collaborating with the Royal Life Saving Society and recreational fishing groups to undertake research to identify and examine recreational fishing-related deaths since 2002. Rock fishers will be surveyed to gain information about previous rock fishing injuries and precautionary measures. This will lead to improved water safety initiatives, including important preventative education and training programs. These continuing initiatives are the latest examples of the Government's commitment to keep our rock fishers safe. If members would like to have the DVD I have shown—I am not able to table it—I will make it available to them.

MURRAY RIVER SALINITY

Mr IAN COHEN: I address my question to the Minister for Climate Change and the Environment. Is he satisfied that his support for variation of Norske Skog's environmental protection licence does not undermine the aims of the salinity management strategy of the Murray-Darling Basin Commission? Is he satisfied that the discharge of an extra 1,500 tonnes of salt by Norske Skog into the Murray each year will not compromise the quality of town drinking water and the river's ecology? Will he explain to the House the Billabong Creek Salt Interception Offset Scheme, and how that is a benefit?

The Hon. JOHN ROBERTSON: I will take the question on notice.

ILLAWARRA INFRASTRUCTURE INVESTMENT AND JOBS

The Hon. GREG PEARCE: I direct my question to the Treasurer, and Minister for State Development. Is he aware of the latest estimates of unemployment in the Illawarra of 8 per cent and at Wollongong of up to 10.3 per cent, and that the rate of job creation in the Illawarra in the past 10 years has been less than half that of the Hunter in addition to being well below the remainder of the State? Will he explain why in his June budget the Illawarra was allocated less than 40 per cent per capita of that allocated to the Hunter for social and economic infrastructure? What do the people of the Illawarra have to do to motivate him to provide adequate and fair funding to address infrastructure needs and unemployment in the Illawarra?

The Hon. ERIC ROOZENDAAL: I thank the member for his question and interest because he raises a number of issues. When we refer to unemployment, we are talking about jobs. What the Government will do in the next four years is the most ambitious investment in infrastructure across New South Wales in the history of the State. It will amount to \$62.9 billion and will support approximately 160,000 jobs each year. There have been more recent announcements in the Illawarra that are worth noting because they are indeed about infrastructure and jobs.

In October the Premier announced a \$28.9 million commitment to build a brand new western grandstand at the WIN Stadium. That will be a boost to the Illawarra's economy and will deliver an additional 640 direct and indirect jobs. The 50-year-old grandstand will be replaced by a new two-tier stand that will have 6,170 new covered seats, which represents an increase of 3,758 seats. That will increase capacity of the grounds to accommodate 23,150 people. WIN Stadium will become an international concert and entertainment facility. The project is expected to take three years to complete and will also see refurbishment works on the southern stand. The hardworking member for Wollongong, Noreen Hay, and the Minister for Transport, and Minister for the Illawarra, David Campbell, campaigned to see this improvement to the Illawarra.

The New South Wales Government is making a lot of other investments in the Illawarra region. There is \$42 million in the 2009-10 budget for new road projects, which will improve road safety and traffic facilities. That includes \$12 million to complete work to widen the Princes Highway from Oak Flats to Dunmore, which opened to traffic in October; \$10 million to complete plans to widen the highway from Gerringong to Bomaderry; \$2 million for slope stability work to improve safety on Mount Ousley Road; \$12 million for a

program of safety improvements for Picton Road; and \$3 million to complete the northern distributor to a four-lane divided carriageway between Bellambi Lane and Molloy Street, Bulli. Other recent road investments include \$180 million for the north Kiama bypass, and let us not forget the spectacular Sea Cliff Bridge, which cost about \$49 million. In education, which is another important area, \$150 million has been allocated to 71 Illawarra and south-east region schools from the New South Wales Government's Principals Priority Building Program. Let us not forget the excellent stimulus package from the Federal Government, the Building the Education Revolution program.

Members opposite do not want to hear about this because they do not like it. New South Wales is leading the nation in delivering the Building the Education Revolution because of the special legislation we passed. Eighty schools a week are becoming construction zones to deliver that stimulus, particularly in the Illawarra. Let us talk about ports in the Illawarra. The Government has allocated \$167 million for the expansion of Port Kembla to secure 1,000 jobs and inject \$200 million into the regional economy. Members opposite opposed the cars going through Port Kembla, they opposed the industry created by that, and they opposed the jobs that we have delivered at Port Kembla. That is their record.

SENTENCING DISCOUNT RESTRICTIONS AND VICTIMS RIGHTS

The Hon. PENNY SHARPE: I address my question without notice to the Attorney General. What is the latest information on restrictions on the granting of sentencing discounts and measures to better protect the rights of victims in court?

The Hon. JOHN HATZISTERGOS: On 20 January last year I made a reference to the Sentencing Council asking it to examine the current principles and practices governing reductions in sentence, how factors leading to a discount on sentence are taken into account, and the effect of charge negotiations. This request followed from community concerns that some discount principles overlapped and when applied mechanically can lead to sentences that could be perceived to be too lenient. Members would appreciate that for the public and the police to have confidence in the justice system it is important to see offenders being held accountable for their offences, and that any discounts have a legitimate public purpose. Last week I was pleased to welcome the Sentencing Council's release of the "Reduction in Penalties at Sentence" report in respect of the reference to which I referred.

It recommends a number of proposals. First, it recommends legislating to restrict the circumstances where offenders may be granted discounts and that there be safeguards to ensure that victims are adequately included in the charge negotiation process between the prosecution and the offender. The council has recommended that a mechanism be built into the charge negotiation process to ensure that victims of crime get a fair say. The prosecution would have to sign a certificate to certify that it has consulted with victims on the statement of facts submitted to the court during sentencing and that the statement adequately reflects the criminality of the offenders. When this is not complied with, a certificate will be required indicating the reasons. Victims and victim advocacy groups have welcomed these changes, and the report's proposed limits on discounts have also been endorsed. The Vice President of the Victims of Crime Assistance League, Howard Brown, has praised the proposals, saying:

Making the prosecution certify the consultation to the court will make it clear to both prosecutors and victims the importance of proper consultation in charge negotiation and let all parties see when the right process has been followed.

The changes to discounts are also an important step which will increase the transparency of sentencing and provide a great deal of comfort to victims.

The report recommends new laws to prevent discounts being given in circumstances where they are not justified. First, they should not be given to sex offenders solely on the basis that they will be designated prohibited persons under child protection laws and prevented from working with children. It is inappropriate to reduce the sentence of sex offenders to compensate for safety measures to protect children that have been made necessary by the offenders' own conduct. Second, the report recommends that discounts should not be given to offenders solely because their assets have been subject to confiscation. The removal of assets gained through criminal activity should not be considered an additional punishment that requires a reduction in the sentence.

The report also recommends that discounts do not result in a penalty that is unreasonably disproportionate to the serious nature and circumstances of the offence, and requires the court to take into account the circumstances in which the offender pleads guilty. Further education of the judiciary about facilities and programs available in prisons, as recommended by the council, will reduce the risk of hardship discounts

being granted unnecessarily. This will ensure that the courts apply the principle that there is no presumption that an offender who gives assistance to the authorities will necessarily suffer harsher treatment in prison. The council has affirmed the requirement that the offender provide evidence that his or her prison time will be more onerous before the courts can take this into account. The Government is currently consulting with the heads of the New South Wales judiciary about the report and will make necessary changes to the law early next year, in light of the responses received.

HEATWAVE RESPONSE

Ms LEE RHIANNON: I direct my question to the Minister for Climate Change and the Environment. Does the Minister back the public statements of his Federal colleagues Prime Minister Kevin Rudd and climate change Minister Penny Wong who have acknowledged the link between climate change and the recent heatwaves across Australia? Will the Government move to catch up with other States such as Victoria, South Australia and Queensland, and countries such as England, the United States of America and Canada, by developing a comprehensive heatwave strategy? As the Minister for climate change will he provide the House with a response for the Government's delay in developing such a strategic response for climate change, considering the costs to human life, the health budget and the economy of failing to act to implement a comprehensive plan?

The Hon. JOHN ROBERTSON: I can confirm to the House that on this side of the Chamber we acknowledge that climate change is real and that humans are contributing to climate change, unlike the New South Wales Opposition and the Federal Opposition, now led by the one and only mad monk, Tony Abbott. For the benefit of members, I quote the current Federal leader of the Liberal Party, Tony Abbott:

The argument on climate change is absolute crap.

I acknowledge that Dr John Kaye cited that quote earlier in the debate on GGAS. On this side of the House we recognise that climate change is real and that the science is in, unlike those opposite who are now led at the Federal level by the deniers and sceptics. For members who missed it, they should look at *Four Corners* on abc.net.au/iview and read Nick Minchin's comments, which I will read onto the record. Nick Minchin said:

If the question is, do people believe or not believe that human beings are causing, are the main cause of the planet warming, then I'd say a majority don't accept that position.

... I don't mind being branded a sceptic about the theory that human emissions and CO₂ are the main driver of global change—of global warming. I don't accept that and I've said that publicly. I guess if I can say it, I would hope that others would feel free to do so.

To date, no member opposite has said that he or she accepts that humans are contributing to climate change. Not one member has denounced the new Federal leader, who is a climate change denier. I challenge anyone, including the Hon. Catherine Cusack, at some point this week to denounce the views held by their Federal leader. If they do not, then they are in the same cart as the 42 climate change sceptics or deniers in Federal Parliament. We know climate change is real and we are taking steps to implement a range of initiatives to address the real challenges that confront us in that regard. We have been dealing with a policy on sea level rise because we know that is a real challenge. We know that climate change is the greatest economic challenge that faces this State, country and the globe, but the members of the Opposition are now led by the deniers, the sceptics who want us to believe that humans are not contributing to climate change.

I guarantee that by the end of the week not one member of the Opposition will say that he or she disagrees with the Federal Coalition Leader. Not one of them will have the courage to denounce him. We are developing a climate change action plan that will deal with adaptation issues, which will be ready for consultation early next year. [*Time expired.*]

Ms LEE RHIANNON: I ask a supplementary question. Will the Minister elucidate his answer with respect to why his Government has delayed developing a response on heatwaves?

The Hon. Don Harwin: Point of order: No part of the Minister's answer referred to heatwaves. Ms Lee Rhiannon is therefore not asking the Minister to elucidate any aspect of his answer and the question is out of order.

Ms LEE RHIANNON: To the point of order: Clearly when the Minister spoke about mitigation he took into account a whole range of issues including heatwaves. Therefore, elucidation is required and is within the standing orders.

The PRESIDENT: Order! It is very difficult for the Chair to rule on such points of order when members on both sides of the House are guilty of interjecting and making so much noise that little can be heard of the Minister's answer. I did not hear the Minister refer to the term "heatwave". Accordingly, I uphold the point of order.

BEACH WATER QUALITY

The Hon. CATHERINE CUSACK: My question is directed to the Minister for Climate Change and the Environment. The State of the Beaches report released last Thursday reveals popular Georges River bathing spots such as Oatley Bay Baths, Jew Fish Bay Baths, Como Baths, Carss Point Baths and Sandringham Baths received poor results in water quality compliance, as did Gymea Bay Baths in Port Hacking. Minister, given that there was relatively low rainfall in the previous year and poor water quality results in those areas were blamed on high rainfall, how are those figures justifiable? What action is the Minister taking to improve water quality at these popular southern Sydney bathing spots?

The Hon. JOHN ROBERTSON: The Hon. Catherine Cusack missed the opportunity to say she believes that humans are contributing to climate change. The challenge is still out there unanswered. It is tragic that just as Opposition members do not like to hear the Treasurer talk about good news with the economy and the green shoots of recovery, they are now talking down the fantastic results in the State of the Beaches report, which shows that 29 out of 35 of our coastal beaches received, for 100 per cent of the time, a top water quality rating last year. They are the best in the world and the best they have ever been. It is disappointing that yet again the Government's good news is being talked down by Opposition members. They talk down the fact that our beaches are the best they have ever been.

The Hon. Catherine Cusack: You're in denial!

The Hon. JOHN ROBERTSON: I acknowledge the interjection of the Hon. Catherine Cusack that I am in denial, but I would suggest that the pot is now calling the kettle black because the Opposition is in denial. I am not in denial. Our side has acknowledged that climate change is real; that the science is in. Denial is coming from the Opposition.

The Hon. Catherine Cusack: What are you doing for these beaches?

The Hon. JOHN ROBERTSON: I will tell members what we are doing for beaches and why we have got the best results since the release of reports on the state of our beaches. Over the past 10 years this Government has invested \$100 million in dealing with issues such as stormwater and the capture of rainwater run-off. That is why 29 of our coastal beaches, 100 per cent of the time, received the top water quality rating. We are doing more to target all our beaches to ensure that for 100 per cent of the time they receive top water quality ratings. The Opposition talks down good news all the time. Members of the Opposition do not want people to know the good news; they want to talk down good news and talk only about bad news. On the first day of summer they ought to be encouraging people to go out and enjoy the beaches around New South Wales, which has the best beaches on the east coast of Australia. But what do we get from the Opposition? We get climate change denial, talking down our beaches and talking down the great results of the State of the Beaches report.

ELECTRICITY COSTS

The Hon. HENRY TSANG: My question is addressed to the Minister for Energy. How does the Government support electricity customers who are having difficulty meeting the cost of their electricity bills?

The Hon. JOHN ROBERTSON: I thank the member for his interest in this important matter for electricity consumers in New South Wales. The Government understands how important affordable energy is, particularly for customers facing financial difficulties paying their energy bills. I inform the House that from March 2010 the Government will introduce new rules to keep customers connected. The Government considers disconnection an absolute last resort. For that reason, energy companies will now be required to offer customers facing financial hardship a minimum of two flexible payment plans within 12 months before they can move to disconnect. Gas and electricity providers will be required to have in place hardship charters so that vulnerable customers are treated with dignity and fairness. The new rules will be part of the licence requirements for energy retailers, and those who knowingly break the rules may face fines or be required to take corrective action.

Hardship charters will need to be made publicly available to customers and include processes to identify struggling customers at an early stage including the option for people to self-identify to the retailer—or put up their hand for help. The charters should also cover flexible payment options and assist customers to access government concession programs and financial counselling and assistance. I recognise that there are already a number of retailers who do a terrific job helping their customers and administering government rebates. The Government's proposals are about ensuring that the rules governing consumer protection in New South Wales are as strong as they can be. Electricity retailers also offer a range of other measures to make it easier for customers to pay their bills such as extended payment terms contact information for community agencies and energy saving tips and tools.

Both EnergyAustralia and Integral Energy offer a range of free online calculators to help people estimate the amount of energy they consume and work out areas where they can reduce their consumption. The Government has also developed a website that provides information on greenhouse gas pollution and how customers can reduce energy consumption and greenhouse gas emissions. This website can be visited at www.savepower.nsw.gov.au. As well as tips on energy savings, the site provides information on New South Wales Government and Commonwealth rebates available to help customers to purchase energy efficient appliances and insulation. I encourage everyone in New South Wales to take advantage of these resources. We can all take steps to become smarter energy users, reduce our carbon footprint and drive down our energy bills.

The Rees Government is also helping low-income households through the \$63 million Household Refit Program. This initiative will deliver assessments and retrofits to 220,000 homes, paving the way for emission savings and lower power bills for those families and residents who need it most. In fact, the New South Wales Government has committed \$272 million over five years to assist the people of New South Wales to cope with electricity price increases. The package includes emergency assistance in the form of vouchers worth up to \$480 a year per person or \$240 per bill to assist people during a personal crisis or an emergency. The Government has increased the energy rebate for pensioners to \$130 per annum, announced a new medical rebate for people who rely on heating and cooling at home to stay well, and expanded assistance for people on life support at home. The New South Wales Government is working hard to ensure that there is a safety net for New South Wales families and that no-one can be disconnected from the energy network unfairly. I remind the people of New South Wales that the Government can help, and they are not alone.

ELECTRICITY COSTS

Dr JOHN KAYE: My question is addressed to the Minister for Energy. In light of widespread community outrage with rising electricity bills, why has the Minister failed to review the decision to spend approximately \$5 billion on new distribution and transmission infrastructure to meet demand growth? Why has the Minister persisted with outdated supply side planning rather than working with households to manage demand, reduce peak loads, cut emissions and stop the growth in household power bills?

The Hon. JOHN ROBERTSON: In my previous answer I detailed some of the Government's initiatives to deal with demand side management regarding retrofits for low-income families and the like.

MINISTRY

The Hon. TREVOR KHAN: My question without notice is directed to the Treasurer. Is it the case that today on the Treasurer's ministerial office letterhead he issued a media release rejecting leadership speculation? Was the Treasurer's office asked by the Premier's office to put out a statement denying the Treasurer's interest in the Premier's job?

The Hon. ERIC ROOZENDAAL: It has been a big day today.

The Hon. Tony Kelly: I want to know who voted "No".

The Hon. ERIC ROOZENDAAL: Don't ruin my joke! It has been a big day today. We had the sombre news from the Reserve Bank that interest rates have been increased for the third time this year—a big impact on Sydney families—

The Hon. Melinda Pavey: And the rest of New South Wales.

The Hon. ERIC ROOZENDAAL: Yes, and the rest of New South Wales, as I should have said. That is an issue that I am concerned about. We have the ongoing challenges of ensuring that we chart the way

through recovery for the State—and that is of concern to me. And, of course, we have the happenings in Canberra, which are very relevant. The vote for the position of Federal Coalition Leader was 42 to 41. The latest information is that the Federal Opposition is so skilled that one member was incapable of writing "1, 2, 3" on a ballot paper, resulting in an informal vote. The question is simply preposterous.

The Hon. TREVOR KHAN: I ask a supplementary question.

The PRESIDENT: Order! I remind the Minister for Primary Industries that interjections are disorderly at all times. Members who wish to ask a supplementary question should be more prompt in seeking the call to do so.

The Hon. TREVOR KHAN: I will take note of that, Madam President. Can the Treasurer confirm whether last evening he was contacted by the Premier's chief of staff? If so, can he inform the House as to the content of that conversation?

The Hon. ERIC ROOZENDAAL: I understand why the faces of those opposite are a bit sad today. I understand why they press their lips together so tightly. The Hon. David Clarke is smiling so wide that he is going to have sore lips. The Liberal Party has swung so far to the right that the Hon. David Clarke thinks it is where it should be. I can understand that. In answer to the question, I have not had any conversation with the chief of staff of the Premier's office in the past 24 hours.

NATURAL GAS

The Hon. TONY CATANZARITI: My question is addressed to the Minister for Mineral Resources. Will the Minister inform the House about the contribution of natural gas to securing New South Wales energy supplies?

The Hon. PETER PRIMROSE: New South Wales is Australia's largest potential market for oil and natural gas. The nearly seven million residents in the State generate a third of the country's total energy demand. Natural gas already makes up an important part of the energy supplies for New South Wales homes and businesses. It will play an important role in helping us transition to a low carbon future. However, New South Wales is the only Australian State to have a natural gas market primarily based on supplies from another State. Gas was first supplied to Sydney in 1976 via the Moomba, South Australia, to Sydney gas pipeline. Since then the pipeline network has been expanded to include connections to Victoria and encompass regional areas including Wollongong, Newcastle, Dubbo and Wagga Wagga.

The New South Wales Government has also funded a number of exploration initiatives to attract companies to explore for gas in New South Wales. These initiatives have provided enhanced geophysical and geochemical information on the State's sedimentary basins. New South Wales Government legislative changes mean that the State is increasingly recognised as an attractive target for petroleum exploration. As a consequence there has been a dramatic increase in petroleum exploration activity in the State over the past few years with increased supplies of coal seam methane coming online as a result. In dollar values the petroleum industry exploration has gone from \$29 million in 2004-05, to a projected \$76 million for 2008-09.

Gas exploration and development in New South Wales has continued unabated over the past year, in spite of global economic conditions. Currently, there are two major production areas: the Australian Gas Light Company area in the southern coalfield near Camden, and Eastern Star's Narrabri Gas field in the Gunnedah Basin. On a smaller scale, MetgasCo is actively doing appraisal drilling in the Clarence-Moreton Basin and there is a proposal to construct a 30-megawatt Richmond Valley power station using the gas from the Casino project. These developments, among others, highlight the potential our State has in securing New South Wales energy supplies.

New South Wales has major coal-bearing basins with very extensive resources of coal seam methane. Traditionally, New South Wales has relied on importing its gas supplies from interstate. However, locally produced coal seam methane is becoming an important source of gas for the people of New South Wales. Coal seam methane is a natural gas and it has the same composition and characteristics as conventional gas. Importantly for our carbon-constrained future, when methane is burnt for energy, it produces carbon dioxide and water, resulting in around half the carbon dioxide emissions compared to coal. Recently I had the opportunity to inspect the AGL Camden Gas Project, which is engaged in extracting gas located within the southern coalfields of the Sydney Basin. As someone with a long association with and an abiding affection for the area, I was impressed by the support for local jobs and infrastructure provided by the Camden Gas Project.

The hardworking men and women at Camden operate and maintain over 100 coal seam gas wells, underground gas gathering pipes and gas treatment facilities. A community consultative committee meets regularly to keep residents informed and the company responsive to the needs of locals. The wells themselves are unobtrusive and coexist alongside agricultural and residential land uses, and affected landholders are also compensated. And the benefits extend to the rest of the State. Beginning in 2001, the project currently supplies 6 per cent of the New South Wales-Australian Capital Territory gas market, with hopes of doubling that with further exploration and production.

DEPARTMENT OF AGEING AND DISABILITY SERVICES

Reverend the Hon. Dr GORDON MOYES: I direct a question without notice to the Minister for Primary Industries, representing the Minister for Ageing and Disability Services. Is the Minister aware of the Auditor-General's report to Parliament that found that the Department of Ageing and Disability Services has issued \$48 million of grants to non-government organisations without proper agreements, increasing the risk of agreed services not being provided, and unspent money not being returned? Is the Minister aware that the same department had salary overpayments that total \$1.6 million, with \$1.3 million of that unlikely to be recovered? In particular, is the Minister aware that other examples of poor management of public funds included 180 employees earning more than 30 per cent of their salary from overtime, and that more than 40 staff received in excess of 50 per cent of their salary through overtime? Given that the Auditor-General has addressed these issues for a number of years, how will the Minister efficiently and effectively handle the overtime issue?

The Hon. TONY KELLY: I thank the member for his question and undertake to pass it on to the relevant Minister and get an answer as quickly as possible.

MANNING RIVER DREDGING

The Hon. JENNIFER GARDINER: My question without notice is directed to the Minister for Lands. It relates to the Minister's recent comment in the House about a small New South Wales Government contribution to assist with the reopening of Farquhar Inlet.

The Hon. Tony Kelly: I did not say it was small.

The Hon. JENNIFER GARDINER: It was small. No doubt the Minister is aware that the Farquhar Inlet Management Group has obtained a dredge to which local businesses have contributed. Is he aware that a number of businesses at Harrington have also pledged funds to assist that group with a view to having dredging work done at Harrington Lagoon and backwater? Can the Minister guarantee that dredging will go ahead at all three sites given the years of waiting by local communities for action by the Government? Will the Government also consider appointing a coordinator for the entire Manning River, from Gloucester down to the delta, as requested by local communities?

The Hon. TONY KELLY: I thank the member for her question. I did not say it was a small contribution; it was a contribution towards the cost, along with contributions from both the local council and the community. The community made quite substantial contributions to a fund to pay for continuing work to open Farquhar Inlet. Those contributions ensured that the fishery survived and my understanding is that it is still open. Dredging at the entrance of the inner harbour became necessary and that project commenced in early July 2009. We expect that will be completed shortly. The project has provided many benefits, not just restoring access to the inner harbour but also rebuilding the dunes at the park beach, which were damaged during April-May 2009 by the relocation of some 30,000 metres of dredged sand.

In relation to the Old Bar entrance to the Manning River, it became necessary to restore tidal flows. The project cost some \$30,000. The Government contributed \$30,000, as did the council and the community. That is in a trust fund. So far some \$30,000 has been spent. The Farquhar Inlet Management Group is still working with the Government. This has been a perfect example of how the Government, the local community and the local council can work together to make sure that waterways are opened.

The local community bought a dredge and my understanding is that discussions about dredging have been held with people from another inlet and an agreement has been reached with regard to the use of the dredge. The Department of Lands is working with the Farquhar Inlet Management Group and the owners of the dredge to try to ensure that process proceeds.

STATE ECONOMY

The Hon. EDDIE OBEID: My question is addressed to the Treasurer. Would the Treasurer inform the House about the Government's latest efforts to strengthen the New South Wales economy?

The Hon. ERIC ROOZENDAAL: I thank the honourable member for his interest in this very important matter. When it comes to the world's greatest sporting and entertainment fixtures there can be no better place to be this week than here in Sydney. On the weekend the New South Wales Government announced Sydney Superweek, an unrivalled sporting and entertainment event that will inject up to \$35 million straight into the New South Wales economy. This is an outstanding opportunity to promote Sydney as a tourist destination while reinforcing our reputation for hosting significant major events and will further strengthen Sydney's reputation as Australia's only global city.

Tomorrow night, in boxing, Danny Green takes on Roy Jones Junior for the world cruiserweight title at Acer Arena. That will attract more than 18,000 people. I say on behalf of the House that we want Danny Green to win and we wish him all the best tomorrow night. On Thursday, the Australian Open golf tournament starts at the New South Wales Golf Club at La Perouse. In May, the United States *Golf Digest* rated the New South Wales Golf Club as the top-ranked course in Australia and the top-ranked course in the world outside the United States and the United Kingdom. How is that for another vote of confidence in Sydney! World-class Australian and international talent will battle it out for the most esteemed trophy in Australian golf, the Stonehaven Cup. An estimated 40,000 people are expected to attend. While the Australian Open continues on Friday, the V8 Supercars will get running at Olympic Park. This major sporting spectacular is another example—

[Interruption]

Yes, running, in the same way as Tony Abbott ran over the top of Malcolm Turnbull and Joe Hockey. Madam President, the Hon. David Clarke is smiling so much he is distracting me from my answer. Poor Don Harwin is grimacing. Someone should paint a smile on his face, because his life is going to be very unpleasant for him with Abbott in charge federally. This major sporting spectacular is another example of economic growth for this great State, proudly supported by the New South Wales Government. This event is expected to generate more than \$100 million for the New South Wales economy over five years. That is \$100 million for small business, caterers and hoteliers.

Madam President, I know you have a big interest in racing cars as you are the owner of a classic V8 vehicle. A crowd of 150,000 spectators is expected to attend the three-day event with thousands coming from interstate and overseas. Surrounding these events are a number of music acts, such as The Presets, Sneaky Sound System, and Cold Chisel, and the music festival Homebake will be held in the Domain. That event is also sold out, with another 20,000 people expected to attend. Sydney Superweek builds on the news last week that Sydney has been selected by FIFA [Fédération Internationale de Football Association] as one of just seven world cities, along with London, Paris, Rome, Berlin, Mexico City and Rio de Janeiro, to host an official FIFA fan fest live site for the 2010 World Cup. Over one million people are expected to descend on Darling Harbour during the 30 days of the FIFA World Cup to view live broadcasts of the 64 matches— [Time expired.]

The Hon. EDDIE OBEID: I wish to ask a supplementary question. Can the Minister elucidate his answer?

The Hon. ERIC ROOZENDAAL: During the 30 days of the World Cup more than one million people are expected to come to Darling Harbour to view live broadcasts of the 64 FIFA World Cup matches from South Africa—that is a soccer smorgasbord—as well as a range of performances, concerts, displays and other FIFA activities. The jobs and investment derived from events like these are testament to this Government's continuing commitment to strengthen the New South Wales economy and put it on the path to recovery. The green shoots on the road to recovery continue to be seen.

I have more good news—it is a smorgasbord of good news today. Members will be pleased to learn that the leading home improvement and outdoor living retailer Bunnings has secured sites to open at least 12 new stores in New South Wales over the next three years.

The Hon. Michael Gallacher: That is a big sporting event.

The Hon. ERIC ROOZENDAAL: Members of the Opposition want to talk down the State and be negative about it. It is an investment of \$420 million creating 2,000 new jobs. Bunnings has advised me that the

construction of these 12 new stores will support another 2,400 construction and trade jobs—more good news for the New South Wales economy. All this good news is testament to Sydney being the global city of Australia. The New South Wales Government is feeding and nurturing those green shoots of recovery to ensure that it guides this State through to economic growth.

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

MARINE PARK WATER QUALITY MONITORING

The Hon. JOHN ROBERTSON: On 27 October Mr Ian Cohen asked me a question about water quality in marine parks, to which I now provide a more detailed response. I am advised that in New South Wales 67 estuaries drain into coastal waters in New South Wales, which form part of our marine parks. Under the current program 27 estuaries have been or are in the process of being accessed to monitor the health of New South Wales estuaries. The program takes into account the delivery of nutrients, some of which originate from agricultural fertiliser, which may stimulate excessive algal growth.

I am advised that, in general, the estuaries in marine parks in New South Wales have been assessed to be in good condition. If an estuary is healthy it is assumed the material that passes through it is unlikely to be of concern to the ecosystems of coastal waters. Marine ecosystem health is reported on regularly through the State of the Environment report. Questions as to the overall health of fish stocks in New South Wales should be referred to my colleague the Minister for Primary Industries, the Hon. Tony Kelly, who has responsibility for fisheries management.

ROCK FISHERS SAFETY

The Hon. TONY KELLY: Earlier in question time, when I was speaking about rock fishing, I think I said "last Saturday" when I meant to say "the Saturday before last".

WATERMARK AREA COAL EXPLORATION

The Hon. PETER PRIMROSE: Last week the Hon. Rick Colless asked me a question regarding the amount paid by Shenhua for the Watermark exploration licence. Following consultation with the Deputy Leader of the Opposition, I am pleased to provide the following further information. The total Shenhua bid relating to the Watermark exploration licence was \$300 million. That amount comprises compulsory payments of \$23.6 million, an environmental security deposit of \$0.1 million, and an additional payment of \$276.3 million. An amount of \$296.4 million was paid to the Crown as follows: a \$20 million one-off non-refundable payment; \$276.3 million as the remaining financial contribution as part of the expression of interest; and a \$0.1 million environmental security deposit.

In addition, \$3.6 million of the \$23.6 million compulsory payments was disbursed to the former New South Wales Department of Primary Industries Mineral Resources Division for the following purposes: \$100,000 to reimburse costs incurred for expression of interest administration, advertising and evaluation costs; \$2 million as a contribution towards the New South Wales Government's Coal Development Fund for continued coal exploration; and \$1.5 million to reimburse the public expenditure previously incurred for exploration and evaluation of the area. These figures and the licence conditions are available to the public through Industry and Investment NSW.

DEFERRED ANSWERS

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

CHILD TOBACCO SMOKE EXPOSURE

On 22 October 2009 Reverend the Hon. Fred Nile asked the Attorney General a question without notice regarding child tobacco smoke exposure. The Minister for Health provided the following response:

NSW Health has been advised that in the first three months of operation of the new offence in the Public Health (Tobacco) Act 2008, 45 fines of \$250 each were administered by NSW Police, in addition to the Local Court attendance referred to by the Honourable Member. This demonstrates the commitment of NSW Police to enforcing this provision of the Public Health (Tobacco) Act 2008.

Prior to the introduction of the new offence, on 1 July 2009, NSW Health conducted a community education campaign in relation to the new offence, including print media, radio advertisements, bus back advertisements and online advertising, with local campaign support also provided by Area Health Services. The evaluation of this campaign demonstrates that the community is aware of the new offence, and that community support for the new offence is high.

NSW Health will monitor the fines administered by NSW Police and local courts to determine whether additional community information activities are required to enhance awareness of and compliance with the important new offence of smoking, by a driver or passenger, in a car with a child under 16 years of age present.

EASTERN CREEK WASTE RECYCLING

On 22 October 2009 the Hon. Catherine Cusack asked the Minister for Climate Change and the Environment a question without notice regarding Eastern Creek waste recycling. The Minister for Climate Change and the Environment provided the following response:

I am advised that at no time has Waste Services NSW refused to accept waste from councils. However, the Eastern Creek alternative waste processing facility has resumed processing waste on behalf of its client councils, following a legal dispute between Waste Services NSW and the facility's operator, Global Renewables Eastern Creek. During the dispute, Waste Services NSW continued to deal with the facility's client councils' waste safely and responsibly.

STORMWATER USE

On 22 October 2009 the Hon. Marie Ficarra asked the Minister for Climate Change and the Environment a question without notice regarding stormwater use. The Minister for Climate Change and the Environment provided the following response:

I am advised that:

The managed aquifer recharge project is a joint initiative between Western Sydney councils, the Western Sydney Regional Organisation of Councils and the Cooperative Research Centre for Irrigation Futures.

I understand that the consortium is currently seeking funding through the National Urban Water and Desalination Plan, which is managed through the Commonwealth Department of the Environment, Water, Heritage and the Arts. The amount of funding to be requested is still being determined.

State agencies have been consulted in the development of the project and have provided in-kind support and guidance.

The Government's Metropolitan Water Plan includes a strong emphasis on recycling, including stormwater. These recycling initiatives are detailed in the plan, which is publicly available and can be accessed at the Water for Life website.

TEACHERS

On 27 October 2009 Reverend the Hon. Dr Gordon Moyes asked the Attorney General, representing the Minister for Education and Training, a question without notice regarding teachers. The Minister for Education and Training provided the following response:

All teachers employed in NSW public schools must have met the academic requirements for teaching, be personally suitable for teaching and have satisfied relevant probity checks.

The Department of Education and Training regularly undertakes a comprehensive analysis of school teacher supply and demand to ensure that NSW public schools are staffed with qualified teachers and to identify potential shortage areas so that suitable strategies to address them can be implemented. This process takes into account a range of factors including teacher retirement rates.

Currently, there is an adequate supply of primary teachers, except in a very small number of geographic locations.

There is also an adequate supply of secondary teachers, except in the areas of mathematics, science with physics, some specialist teachers and some specific subjects in particular geographic locations.

To address any potential shortages the Department offers teacher education scholarships and retraining programs to support people to train or retrain in these areas.

The Department also implements a range of strategies to ensure that teaching remains an attractive and rewarding profession. New South Wales public school classroom teachers are among the highest paid public school classroom teachers in Australia, they have access to a comprehensive range of professional development programs, and the Department offers a range of attractive employment conditions including generous leave provisions, salary packaging and a range of incentives to assist in attracting and retaining teachers to isolated rural areas of need.

In 2009/10 the NSW Government has provided for record funding of \$14.7 billion for education and training, an increase of \$8.7 billion, or over 146% compared to when the Government came to office in 1995.

The average recurrent funding per public school student in 2009/10 is \$12,316, the highest per capita amount in the history of public education in this State. This is up from \$5,273 in 1994/95, an increase of 134 per cent.

It is clear that the efforts of this Government are working to ensure that students in New South Wales have access to high quality teaching.

Questions without notice concluded.

BUSINESS OF THE HOUSE

Order of Business

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

That, notwithstanding anything to the contrary in the standing or sessional orders, on Wednesday 2 December 2009, following the presentation of the President to Her Excellency the Governor, the order of business will be:

Routine Business under Standing Order 38.
Questions.
Debate on committee reports.
Debate on Budget Estimates 2009-2010.
Other business.

TABLING OF PAPERS

The Hon. Tony Kelly tabled the following paper:

Annual Reports (Statutory Bodies) Act 1984—Report of the New South Wales Rural Assistance Authority for the year ended 30 June 2009.

Ordered to be printed on motion by the Hon. Tony Kelly.

CRIMINAL PROCEDURE AMENDMENT (CASE MANAGEMENT) BILL 2009

Second Reading

Debate resumed from an earlier hour.

Ms SYLVIA HALE [5.05 p.m.]: Before debate was interrupted for question time I was about to refer to the comments made by the New South Wales Bar Association relating to the Criminal Procedure Amendment (Case Management) Bill 2009. I congratulate the Attorney General on the extent of the consultation. As I said at the time, I believe there should be more of it. The association had this to say about the bill:

The Association has been heavily involved in consultation on the legislation—Stephen Odgers SC, Tim Game SC and Phillip Boulten SC (all members of the Association's criminal law committee) were on the Working Party which developed the proposals.

The Association supports the legislative scheme, however we note that the new arrangements will not be able to meet their very worthwhile objectives if not matched by appropriate funding. The new scheme will require more work upfront by the DPP (both State and Commonwealth). There may also be a need for further resources for the Public Defender's Office and Legal Aid.

The Association also wishes to raise the following drafting concerns:

- the wording of clause 137 (1) (k) is unworkable as "relevant " is too vague—the clause should be in the same terms as cl 142 para (b)
- s 139 (3) (f) appears to give the court on a pre trial hearing power to determine that a matter not go to trial—it is not sufficiently clear what is meant by this—as drafted this is too drastic and final an order for a judge to be empowered to make in pre-trial proceedings. It may be used as a de facto "No Bill " (which should be a matter for the prosecutor alone) or arguably a "Verdict by Direction" which should not be exercised until the Crown has run its case. Such final orders should not be part of a pre-trial process. This may not have been the drafter's intention, but if it is not, this should have been made clearer.
- It should be made clear that the prosecution is not required to disclose material about the credibility or reliability of defence witnesses or material that goes to discredit an alibi or other issue raised by the defence.
- cl 147 deals with the ongoing duty of disclosure—thought should be given to include any relevant appeal period.

I conclude by asking the Attorney General to comment on the issues that have been raised by the Bar Association.

The Hon. CHRISTINE ROBERTSON [5.08 p.m.]: I would like to deal with those aspects of the Criminal Procedure Amendment (Case Management) Bill 2009 that relate to procedural and evidentiary matters. One question that might be asked is: Why are there not more significant sanctions for failure to comply with pre-trial disclosure? Under the bill sanctions for failure to comply with pre-trial disclosure will allow the courts

to refuse the adducing of evidence at trial by a party when that evidence was not disclosed to the other party in accordance with pre-trial disclosure. The working group considered other potential sanctions, such as allowing a judge to make adverse comment to the jury in relation to a party's failure to comply. This sanction is used in other jurisdictions such as in Victoria and the United Kingdom. However, the judiciary in those jurisdictions has experienced difficulty in framing such adverse comments in a manner that does not distract the jury from a proper consideration of the evidence.

Consultation with practitioners in Victoria suggested that the sanctions were rarely utilised. In addition, adverse comment and other sanctions for non-compliance may have the effect of unduly punishing the accused for a failure that may lie with his or her representative. Another question is: Why are the summary provisions not going in the Evidence Act, circumventing that Act? Ideally, amendments would have been made to the Evidence Act 1995. However, as acknowledged in the report of the Trial Efficiency Working Group, the uniform nature of that legislation with other jurisdictions that have adopted the Uniform Evidence Act would have made the process of amendment laborious.

In order to effect immediate change in New South Wales the working group decided to initially place the provisions in the Criminal Procedure Act with the possibility of future inclusion in the Evidence Act following discussions with other jurisdictions.

Reverend the Hon. FRED NILE [5.09 p.m.]: The Christian Democratic Party Supports the Criminal Procedure Amendment (Case Management) Bill 2009. This bill will help to create new case management powers to help manage and reduce delays in long and complex criminal trials. We have all been amazed in recent years at the length of criminal trials in New South Wales. This trend to longer trials, apparently across all States, can be attributed partially to the introduction of core forensic evidence, which is so important in establishing the guilt or innocence of an accused. Nevertheless, lengthy cases put pressure on all participants, particularly jury members who have to maintain their attention to the evidence while enduring the added pressure of being absent from their homes, families and jobs. We are pleased to support the bill, which will reduce the length of criminal trials in New South Wales.

The bill will make further provision in the management of cases to reduce delays in proceedings on indictment, including specific provisions in respect of pre-trial disclosure, pre-trial hearings and pre-trial conferences. The bill also will extend section 130A of the Criminal Procedure Act to apply to all proceedings on indictment. Currently this is restricted to pre-trial orders by judges in sexual offence proceedings. This bill has the support and goodwill of the Trial Efficiency Working Group, which included senior legal officers and bodies in this State, for example, senior Supreme and District Court judges, public defenders, and the Law Society. We hope and trust that after the bill is passed New South Wales will have shorter and more efficient criminal trials. We support the bill.

The Hon. IAN WEST [5.12 p.m.]: I shall address the background of the reforms contained in the Criminal Procedure Amendment (Case Management) Bill 2009, which came out of the recommendations of the Trial Efficiency Working Group. The Attorney General established the Trial Efficiency Working Group in early 2008. The impetus for the formation of the group was, in part, the success of New South Wales in leading Australia in the timely disposition of trials. Whilst great success has been achieved in this respect, the Attorney General was concerned that the length of trial proceedings, and the impact on victims of crime, juries and the criminal justice system, needed to be looked at more closely. The Attorney General appointed the Chief Justice of the Common Law Division of the Supreme Court to chair the committee, which met for the first time on 15 May 2008.

The working group comprised senior trial practitioners with experience in both prosecution and defence. The committee members were Justice Megan Latham, Supreme Court of New South Wales; Registrar Gabrielle Drennan, Supreme Court of New South Wales; Judge Greg Hosking, SC, District Court of New South Wales; Mr Caleb Franklin, Principal Solicitor, and Ms Nell Skinner, Managing Solicitor, Aboriginal Legal Service; Ms Penny Musgrave, Director, Criminal Law Review, New South Wales Attorney General's Department; Mr Craig Smith, Director, Judicial Support, Courts, New South Wales Attorney General's Department; Mr Stephen Odgers, SC, Chair of the Criminal Law Committee, New South Wales Bar Association; Mr Neil Adams, In House Counsel, Commonwealth Director of Public Prosecutions; Mr Phillip Boulton, SC, President of the Criminal Defence Lawyers Association; Mr Mark Tedeschi, QC, Senior Crown Prosecutor, Office of the New South Wales Director of Public Prosecutions; Mr Stephen Kavanagh, Solicitor for Public Prosecutions, Office of the New South Wales Director of Public Prosecutions; Mr Ernest Schmatt, PSM, Chief Executive, Judicial Commission of New South Wales; Mr Tim Game, SC, Chair of the National Criminal

Law Committee, Law Council of Australia; Ms Pauline Wright, Chair of the Criminal Law Committee, New South Wales Law Society; Mr Brian Sandland, Director, Criminal Law, Legal Aid Commission; and Mr Mark Ierace, SC, Senior Public Defender, Office of the Public Defenders.

The committee considered issues contributing to inefficiencies in criminal trials, in accordance with the following terms of reference. First, evaluate the use and efficacy of current provisions aimed at reducing the length of trials, such as pre-trial disclosure, disclosure requirements imposed on investigating police and the prosecution, alibi notices and pre-trial binding directions for sexual assault proceedings, relating to section 130A of the Criminal Procedure Act 1986; second, examine whether the provisions of the Evidence Act 1995 are sufficiently broad to streamline proceedings in criminal trials; third, evaluate the extent to which improved courtroom technology and training of Director of Public Prosecutions officers and court staff could save time and resources; fourth, develop proposals to curtail time-wasting questions, legal argument and addresses by bringing about cultural change or by imposing statutory regulations, such as imposing time limits on submissions; fifth, consider the introduction of a reciprocal disclosure scheme applicable to all cases, similar to the Victorian legislative scheme under the Crimes (Criminal Trials) Act 1999 (Vic); and, sixth, develop effective judicial case management practices by ensuring that disclosure obligations have been met and any procedural steps have been resolved prior to the commencement of the trial.

The working group concluded that the major problem affecting trial efficiency was the management of the trial process. A failure to establish the issues early in the trial has obvious consequences for trial efficiency, including the presentation of evidence that has little or no probative value, and difficulties in managing the trial, especially in ruling on questions of relevance. It was agreed that it is essential to identify issues before the trial to allow proper management. I commend the bill to the House.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, and Vice President of the Executive Council) [5.17 p.m.], in reply: I thank members for their contributions to this debate. The Criminal Procedure Amendment (Case Management) Bill 2009 has its genesis in conversations I had with a number of stakeholders in the justice system prior to the establishment of a working group. In particular, I acknowledge Mark Tedeschi, SC, senior Crown Prosecutor, and also the Chief Judge at Common Law, Peter McClellan, who chaired the task force, as well, of course, as others, including the Director of Public Prosecutions, Nicholas Cowdrey, QC. I make special acknowledgement also of Lord Justice Leveson from the United Kingdom, with whom I also had the opportunity to discuss the processes engaged in the United Kingdom to streamline trials.

The working group was set up following concerns expressed relating to the length of trials and their impact not only on accused persons and delayed decisions, but also on juries in their capacity to be able to digest complex cases and adjudicate on the guilt or innocence of the accused. Very early in the process I took the view that if we were to successfully navigate the issues the task force was asked to address it would be necessary to have broad consultation with all the relevant stakeholders—both prosecution and defence as well as the judiciary. Without naming all of them because they have been identified by my colleague earlier, I take this opportunity to thank all the members of the task force for the quality and manner of their approach to the task and the report they prepared. I trust that they will all see this legislation as the fruit of their good work.

The committee noted that the most common arguments against defence of disclosure focus on principles such as the right to silence, the onus of proof and the presumption of innocence, which are more relevant to comprehensive defence disclosure requirements, such as those that operate in the United Kingdom. In the United Kingdom, defendants in all trials on indictment are required to set out in general terms the nature of their defence. They also must set out particulars of the matters of fact on which they intend to rely for the purposes of their defence, the matters of fact with which they intend to take issue against the prosecution and why, and any points of law they intend to make. The provisions of the bill fall far short of those requirements.

This bill requires the defence to disclose only the aspects of the prosecution's case that are in dispute, the aspects of the prosecution's evidence that are in dispute, and a copy of any report that has been prepared by an expert witness whom the accused intends to call at the trial. In many cases, this will disclose some parts of the defence case. Nevertheless, the degree of disclosure required by the defence is significantly less than that required in the United Kingdom, and less than has been recommended in the last decade in various Australian jurisdictions. For example, in 1999, the Law Reform Commission of Western Australia recommended that the defence should be required to disclose the factual elements of the defence or particular propositions of law identified by the prosecution upon which it may be contended that guilt may not be proved, the documents disclosed by the prosecution to which objection will be taken and specifying the grounds, and any other ground upon which it may be contended that guilt will not be proved.

Similarly, in 2000, after considering the various arguments for and against defence disclosure, the New South Wales Law Reform Commission recommended that the trial judge, or some other judge who is charged with the responsibility for giving pre-trial directions, should have the authority at any time to order the defendant to disclose the general nature of the case that he or she proposes to present at the trial, identifying the issues to be raised, whether by denial of the elements of the charge or exculpation, and stating, in general terms only, the factual basis upon which the case is to be put to the jury. Taking into consideration those and other reports, the Legislation Review Committee concluded that while select provisions of the bill have the potential to impact on the right to silence, the onus of proof and the presumption of innocence, ultimately it does not unduly trespass on individual rights and liberties.

Defence interests were represented on the Trial Efficiency Working Group through the Senior Public Defender, representatives from the private Bar, the Legal Aid Commission, and the Aboriginal Legal Service. Their participation helped to ensure that the bill strikes the right balance between trial efficiencies and an accused's right to a fair trial. I should state that the law already has provisions for disclosure by the defence. For example, as the law currently stands relating to alibi witnesses there is a requirement for notice of the issues to be given to the prosecution. The provisions of the bill are not requirements that are either onerous or unique, particularly having regard to the more onerous requirements that exist in other jurisdictions. Nevertheless, it is important to recognise that defence lawyers have had a very important role to play in the task force's recommendations and have concurred with the recommendations that form the basis of this legislation.

In civil matters there is already a significant exchange of information between the parties, which assists in narrowing the issues in dispute by the time the hearing begins. Generally criminal matters do not involve the same degree of communication between the parties largely because a person's liberty is not at stake. However, it is only natural in a criminal trial that the defence may want to play its cards close to its chest. However, the Government considers that it is possible to take steps to improve the efficiency and management of criminal trials without trespassing on the right of an accused to a fair trial. As I have indicated, the Law Reform Commission of Western Australia and the New South Wales Law Reform Commission previously have recommended levels of defence disclosure that reach far further than is proposed in the bill.

While the fundamental differences between civil and criminal proceedings have necessitated the use of different mechanisms, the aim of the bill is to foster in criminal cases the type of communication that occurs between the parties in civil matters when criminal cases would benefit from such an indication. That will narrow the issues at trial and result in significant time savings. For example, when an alleged fact is disclosed to the defence in accordance with the provisions of this bill, a court will order the defence to provide a response. If the defence does not dispute that fact in its response, a court may order that a document asserting that fact may be admitted at trial as evidence of that fact. This will save the prosecution from having to call witnesses to give evidence at the trial in relation to that fact. The provisions of the bill hinge on the accused being represented by a solicitor or barrister: consequently, the streamlining procedures will not create miscarriages of justice. There will be no diminution of opportunity for an accused person to have their day in court.

When the task force was established I took the view that if its recommendations were to have effect and if the process was to be productive, it would be necessary for all the participants involved—the judiciary and legal representatives—to have some ownership in what was being moved forward; otherwise, whatever changes would be enacted would suffer from the potential risk of their being undermined in practice. The process has been exhaustive. Those who participated in the process have ownership of the legislation. I believe goodwill will prevail in ensuring that the purpose of the establishment of the task force, to whose recommendations the legislation responds, will be achieved.

I will respond to some of the issues Ms Sylvia Hale raised in connection with criticisms in correspondence from the New South Wales Bar Association. Ms Hale referred to new section 137 (1) (k), in schedule 1 [4]. The working party agreed that the initial exchange of information should require the prosecution in large part to do what it now does when there are complex trial management orders. The wording of new section 137 (1) (k) reflects this, as it is the wording of the current obligation under the Criminal Procedure Act. In respect of new section 139 (3) (f), in schedule 1 [4], I point out that courts are routinely asked to consider issues in relation to an indictment in the early stages of a trial. Judges are well versed in determining whether they are in a position to determine a question of law or whether the issue raised requires ventilation of issues before a jury.

I should note that the assistance of a working party was sought when considering the extension of section 130A with the retention of the interests of justice test, and there was significant support for its extension.

The bill does not require that. The provisions must be read with new section 149F of the bill, which provides that the common law will apply, save for any inconsistency. Section 147 is limited to pre-trial disclosure under the Act. It must be read with new section 149K of the bill, which provides that the common law will apply, save for any inconsistency.

In conclusion, I take this opportunity to thank members who participated in the debate and who have supported the legislation. I believe that the bill will do much to ensure that we avoid cases that unfortunately gain media attention, such as the aborted trial involving sudoku in which a juror was distracted by lengthy evidence, much of which was uncontested and non-controversial, leading her to play games. Cases will be focused on the real issues in dispute between the parties, thereby saving costs, time and inconvenience of jurors who would otherwise have to wade through large slabs of evidence that do not go to the real issues which juries are required to determine.

I again express my appreciation to all members of the Trial Efficiency Working Group. I particularly acknowledge the Chief Judge at Common Law, Justice Peter McClelland, who generously gave up his time to chair the task force and, moreover, work collaboratively with all of the participants towards achieving the outcome of introduction of this legislation, which is a product of the Trial Efficiency Working Group's report.

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 returned to the Legislative Assembly without amendment.

RURAL LANDS PROTECTION AMENDMENT BILL 2009

Second Reading

Debate resumed from 16 June 2009.

The Hon. TONY KELLY (Minister for Primary Industries, and Minister for Lands) [5.30 p.m.], in reply: I thank Mr Ian Cohen, the Deputy Leader of the Opposition, Reverend the Hon. Fred Nile and the Hon. Robert Brown for their contributions to the debate. I remind members that the Hon. Robert Brown promoted this legislation. The amendments in the Rural Lands Protection Amendment Bill 2009 will ensure that there will not be a repeat of the rate hikes experienced by some ratepayers this year. A rate will not take effect until I approve it. Let me spell out the conditions I will impose on rate increases so that we are absolutely clear about what this means for ratepayers. First, I will not approve any increases to general or animal health rates for any livestock pest and health authority unless I am satisfied that the increase in revenue raised from these types of rates does not exceed the previous year's rates by more than the consumer price index [CPI]. This means that authorities will need to live within their means. Their revenue from these rates will not increase beyond the consumer price index.

Secondly, I will not approve any increase in excess of 10 per cent in the individual components of the general or animal health rates set by each authority. For example, if a base rate was \$40 in the previous year it will not increase by more than \$4. If a per-stock unit rate was 10¢ in the previous year it will not increase by more than 1¢. This means that for nearly all individual ratepayers, rates will not increase by more than 10 per cent. For most, the increase will be much less than 10 per cent, or may even decrease due to the consumer price index cap on total revenue collected from general and animal health rates. The 10 per cent margin for increases on individual components of rates provides scope to gradually move all ratepayers in a single authority towards a single rate change. The reduction from 47 former boards to 14 Livestock Health and Pest Authorities means that many still have different rates for different parts of their district.

The 10 per cent leeway on individual rates gives authorities the capacity to bring those rates together by decreasing the highest rates and gradually increasing the lowest rates within an overall consumer price index cap on revenue. Only those ratepayers whose notional carrying capacity for the same area of land is reassessed and increased in the previous year could possibly experience an increase of greater than 10 per cent under these conditions. This is because the per-stock unit rate is multiplied by the notional carrying capacity of a property. If the notional carrying capacity is assessed to have increased, a higher total rate for an individual would result. The notional carrying capacity for each property is assessed at least once every five years. All ratepayers have an opportunity to challenge any assessment of notional carrying capacity if they disagree with it. This provides a check and balance for unjustified increases.

These commitments are consistent with the intent of the amendments proposed by the Opposition and outlined by the Deputy Leader of the Opposition in his contribution. The Government opposes the Opposition amendments as they are not necessary. This is because the bill already gives me the capacity to approve any rate. The conditions of approval that I have outlined today will achieve the necessary restraints on rate increases. This approach still leaves the way open to transition to a per-hectare rating system. The proposed amendments from the Opposition are also difficult to implement administratively. They would require changes to billing systems and detailed modelling of the impacts of rate changes on the more than 100,000 individual rate notices. The time of Livestock Health and Pest Authority staff is better devoted to delivering front-line services than spending time on their billing systems.

The conditions of approval that I have outlined will achieve a similar outcome to those proposed but will be much simpler to administer. They will also make the rate approval process more transparent without the need to rely on detailed modelling provided by each Livestock Health and Pest Authority. I will respond to Mr Ian Cohen's points about exemptions for landholders with voluntary conservation agreements when the issue is raised in Committee. I reiterate what was said previously in this place, that is, as the Act currently stands I do not have the power to direct individual authorities in the setting of rates. The Act established a State management council, a State policy council and 14 Livestock Health and Pest Authorities. Although the Act provides me with a supervisory role in relation to the State Management Council of Livestock Health and Pest Authorities, that role does not extend to the local authority level and it does not relate to rates.

The setting of rates is currently the responsibility of local authorities, and neither the Government nor I as the Minister for Primary Industries has any control over the rates. The bill goes to this issue by providing me with the ability to approve rates set by local authorities and the State Management Council of Livestock Health and Pest Authorities. The Livestock Health and Pest Authority system and its predecessors have been supported by successive governments from both sides of the House over the past 100 years. It is a system that is worth supporting, and this Government is committed to its continued longevity. This legislation is necessary and timely. This bill will stop excessive rate increases in the future, and provide for a smooth transition to a more equitable and easier-to-understand rating system. 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.

Suspension of Standing Orders: Instruction to Committee of the Whole

Motion by the Hon. Duncan Gay agreed to:

That standing orders be suspended to allow the moving of a motion forthwith: That it be an instruction to the Committee of the Whole that it has power to consider an amendment to limit an occupier's liability to pay rates to the extent that rates increase by 10 per cent over the previous year.

Instruction to Committee of the Whole

Motion by the Hon. Duncan Gay agreed to:

That it be an instruction to the Committee of the Whole that it has power to consider an amendment to limit an occupier's liability to pay rates to the extent that rates increase by 10 per cent over the previous year.

Suspension of Standing Orders: Instruction to Committee of the Whole

Motion by Mr Ian Cohen agreed to:

That standing orders be suspended to allow the moving of a motion forthwith: That it be an instruction to the Committee of the Whole that it has power to consider an amendment relating to the definition of rateable land.

Instruction to Committee of the Whole

Motion by Mr Ian Cohen agreed to:

That it be an instruction to the Committee of the Whole that it has power to consider an amendment relating to the definition of rateable land.

In Committee

Clauses 1 and 2 agreed to.

The CHAIR (The Hon. Kayee Griffin): There is a Greens amendment and two amendments from The Nationals to schedule 1. We will consider the Greens amendment first.

Mr IAN COHEN [5.42 p.m.]: I move Greens amendment No. 1:

No. 1 Page 3, schedule 1.1. Insert after line 3:

[1] Section 60 What is rateable land?

Insert at the end of the section:

- (2) Despite subsection (1), if the whole or any part of a single parcel of rateable land is the subject of a conservation agreement within the meaning of the *National Parks and Wildlife Act 1974*, any rate levied on that parcel of land is to be reduced by the following percentage:

$$(A_{ca} \text{ divided by } A_{whole}) \times 100$$

where:

A_{ca} is the area of the parcel that is the subject of the conservation agreement.

A_{whole} is the area of the whole of that parcel.

Note.

For example, if a parcel of land would normally be subject to a rate of \$1,000, but 40% of the area of the land is subject to a conservation agreement, that rate is to be reduced by 40% to \$600.

- (3) Despite subsection (1), land that is vested in, owned by, held on trust by or leased by the Nature Conservation Trust of New South Wales constituted by the *Nature Conservation Trust Act 2001* is not rateable land.

As I mentioned in my contribution to the second reading debate, there was some concern that landholders with conservation agreements on their land will have to pay Livestock Health and Pest Authority rates for management actions that they are already obliged to undertake. Additional to this concern is the desire to encourage private owners to enter into voluntary conservation agreements. Conservation on private land is fundamental to achieving full and comprehensive ecological representation of all bioregions across New South Wales.

Greens amendment No. 1 seeks to provide a proportional Livestock Health and Pest Authority rate exemption for landowners with voluntary conservation agreements or land held in the Nature Conservation Trust, which is a voluntary conservation agreement equivalent under the Nature Conservation Trust Act 2001. This is generally in line with the recommendation of the independent "Review of the Rural Lands Protection Boards Rating System in NSW" conducted by Richard Bull in 2007, which recommended "reductions in rates for voluntary conservation agreements and for pensioners". The independent report, which became the basis of reform pursued by the Government, recommended also that "the requirement of a landholder to supply an annual return should be waived if the property is subject to a Voluntary Conservation Agreement". The

language and structure of this amendment is borrowed from section 555 of the Local Government Act, which provides proportional local government rate exemption for voluntary conservation agreement holders. The impetus for voluntary conservation agreement rate exemption was explained by the Hon. Verity Firth, the then Minister for Climate Change and the Environment, when she stated:

The Government is committed **through its State Plan** to encouraging private and other public landholders to be **involved in protecting and conserving significant natural and cultural heritage on their land**. Recognition of their voluntary commitment to dedicate their land under an in-perpetuity conservation agreement needs to be **supported by the whole community**. One important way to support private landholders in their management of these conservation areas is to **give some rate relief**.

I applaud the Government for its commitment, through the State Plan, to encourage voluntary conservation agreements via economic incentives. This amendment provides the Labor Government with an opportunity to continue to live up to this commitment. The New South Wales Department of Environment, Climate Change and Water also has advocated strongly for Livestock Health and Pest Authority rate exemption for voluntary conservation agreement titleholders in a number of submissions to government and independent inquiries. The department's position has focused on gaining recognition that conservation agreements legally restrict stock and that landholders have been paying higher levies based on "notional stocking rates". I find it amazing that the former Minister, the Hon. Ian Macdonald, flew directly in the face of his own Government's policy. But it is not surprising. It was probably the primary reason the Premier dumped him from Cabinet—a total inability to adhere to government policy. I repeat the words of the Hon Verity Firth:

Land under an in-perpetuity conservation agreement needs to be supported by the whole community.

Not according to former Minister Macdonald. I am amazed at the ability of the former Minister to jump into his little red cherry picker and selectively ignore the recommendations of the Bull review, the position of the Department of Environment, Climate Change and Water, and his own Government's policy. How can the Government oppose this amendment when it is government policy? It would appear that the former Minister, who refused consent to a voluntary conservation agreement over unprotected land in Bago State Forest, does not like such agreements. In refusing consent to a voluntary conservation agreement over Brandy Marys, a 900 hectare Crown lease in Bago State Forest, documents obtained under freedom of information reveal that the position of the Department of Industry and Investment and Forests NSW is that voluntary conservation agreements cannot be placed over Crown leases within State forests under any circumstances.

Clause 12 (4) of the Rural Lands Protection (General) Regulation 2001 requires landholders to provide details of any part of the land that is a conservation area within the meaning of the National Parks and Wildlife Act 1974 on their annual return form. The existing information on voluntary conservation agreements is already provided to the Livestock Health and Pest Authority so there would be no real increase in transaction costs to give effect to this amendment. As of 31 May 2009 there were 251 voluntary conservation agreements protecting 23,641 hectares of high conservation value private lands in New South Wales. I would expect the reduction in the rate collection base to be nominal. Subsequently, it means that we are offering a small economic incentive for an important environmental outcome.

Financial incentives already exist under the Income Tax Assessment Act 1997 for primary producers who enter into conservation covenants, but these provisions extend only to primary producers. This amendment provides a small financial incentive to voluntary conservation agreement and Nature Conservation Trust participants, demonstrating our appreciation to those in New South Wales who voluntarily take on the important obligations of environmental stewardship.

This would recognise the sole legal purpose of conservation agreements being the protection and conservation of significant natural and cultural heritage, which results in stocking restrictions. Former Minister Macdonald's opposition to this sensible amendment adds further to the list of breaches of his own party's policies and should sound as a warning to any Premier that this is an individual who cannot be allowed to return to Cabinet. I am disappointed. I have made a lot of submissions on this matter, and I know that those involved with the Brandy Marys issue are dedicated people who are trying to do the right thing. Working in concert with people in the rural sector and with the farming community is the way to go. I am personally very disappointed that I was blocked at every turn by the former Minister. I commend the amendment to the Committee.

The Hon. TONY KELLY (Minister for Primary Industries, and Minister for Lands) [5.51 p.m.]: The Government does not support Greens amendment No. 1. Livestock Health and Pest Authorities are primarily about biosecurity—that is, they deal with pests and diseases. While the authorities' activities have benefits for

conservation, it is not their primary purpose. Conservation is the domain of other agencies, such as the Department of Environment, Climate Change and Water, and the Nature Conservation Trust. If landholders wish to engage in conservation, it is at the discretion of the landholder to engage with these agencies whose primary mandate is conservation. Various grants and payments are made available to landholders under programs managed by the agencies if their land has particular conservation value.

I also assure members that across the State many more landholders than those who have registered conservation agreements or receive any form of assistance manage their land for conservation each and every day. Targeting exemptions at a narrow group with registered agreements fails to recognise the enormous contribution that many other landholders make. Livestock Health and Pest Authorities provide services that benefit landholders regardless of whether land is used for conservation or another purpose. I do not accept Mr Cohen's suggestion that there is a duplication of Livestock Health and Pest Authorities' services on properties with voluntary conservation agreements. It is the coordinated activity of the authorities across many properties that makes them effective in dealing with pests and diseases. Landholders operating in isolation cannot achieve the same results. The proposed amendment would require the Livestock Health and Pest Authorities to subsidise conservation agreements. That is simply not a core function for the authorities and it would be unfair on other ratepayers, who are probably undertaking conservation work on their properties without an agreement. Regardless of that, I will refer the issue to the State Management Council of Livestock Health and Pest Authorities for its further consideration. It is on this basis that the amendment is not supported.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [5.52 p.m.]: As I indicated to Mr Ian Cohen when he first raised this matter with me, I totally support voluntary conservation agreements. They achieve a worthwhile aim that is essential in rural and farming areas. Whatever proper encouragement can be extended should be provided. At the time I told Mr Ian Cohen that it is the right idea but the Rural Lands Protection Amendment Bill 2009 is the wrong bill in which to do it. I understand his frustration; he is desperate to find a vehicle for the rate exemption provision so that it will provide some assistance where it is needed. Amending the bill to include that provision is an appropriate aspiration, but it will put the cost on a small section of the community only. The cost would be imposed on a small section of farmers who, frankly, cannot afford any extra costs.

A fixed amount of money needs to be raised to cover the Livestock Health and Pest Authorities' pest and disease control activities. If that money is reduced because an amount is given to certain farmers for voluntary conservation agreements, the other farmers will have to pay for that control. That is why I am concerned about including the provision in this bill. Everyone has a conscience and everyone agrees that it is the right thing to do for farming areas in regional New South Wales. I agree totally that it is the right thing to do. Farmers will get some benefits but not total benefits. That is why Mr Ian Cohen has asked for the farmers' help, as an incentive, by way of the amendment. While it is the right thing to do, this is the wrong bill in which to do it. Sadly, I cannot support Greens amendment No. 1.

The Hon. ROBERT BROWN [5.54 p.m.]: This is a fairly difficult issue. The Deputy Leader of the Opposition has presented a fairly solid case and is correct in saying that cutting out any rateable areas loads up the remainder. But the same applies to the minimum rate holders—why are they given an exemption? They have just as many feral animals on their land! Members may not be aware that the Sporting Shooters Association of Australia owns a 36,000-hectare property near Wanaaring, called Tilterweira, which is managed as a composite property with conservation aims in mind. Recently the association cut a deal with the Department of Environment, Climate Change and Water to fence off several thousand hectares in the more sensitive areas adjoining Nocholecha National Park. The advantage for the Sporting Shooters Association of Australia is that its members are what are called "front-line conservationists". In this case, I feel that the Shooters Party should support Mr Ian Cohen's amendment and support the backroom conservationists in their efforts. I acknowledge the concerns of the Deputy Leader of the Opposition, but given that he will vote against the amendment there will not be too much of a problem with the Shooters Party supporting the Greens on this issue.

Mr IAN COHEN [5.56 p.m.]: It is interesting that even in this frustrating situation perhaps there is a promise of things to come. The Shooters Party recognises the importance of this issue in a similar fashion to the Greens. The Deputy Leader of the Opposition made appropriate and considered comments. However, I am somewhat concerned because the Minister for Lands has an ongoing program in many areas under his purview of paralleling the design of lands with a different protection regime under the Department of Lands, which is not dissimilar in his opinion. I have had arguments with him about national parks and various tenures of protection. The Minister is quite determined to move in that way when it suits him. I believe this is a similar

situation: he could jump into the breach and act in a way that is consistent with the espoused conservation land management role of his department. He could declare that national parks or the Department of Environment, Climate Change and Water are not the only purveyors of protection and protection status.

Obviously, the Minister has significant lands under his control yet in this case there is no way of placating the Deputy Leader of the Opposition who spoke of the burden of rural lands rates. The Minister could consider how the Government will move forward effectively with the conservation initiative that I outlined. If there is a will, there is clearly a way through this that could result in significant conservation gains. I acknowledge the comments of the Hon. Robert Brown about front-line conservation. In this case, many people on the land, such as farmers, are doing a fantastic job. As a conservationist I support that initiative. I suggest that it would not be difficult for the Minister, perhaps with the support of The Nationals—

The Hon. Duncan Gay: To top up the money!

Mr IAN COHEN: I take the point raised by the Deputy Leader of the Opposition that it could be an imposition on others. But even the base rate of rural lands payments is an imposition on them. Considering all that, we have a perfect opportunity—at least I am getting it on the record—for the Shooters Party, The Nationals, the Government and the Greens to work together to achieve a win-win result that would benefit conservation in this State. That would send a wonderful, strong message to farmers that there is an opportunity for them to participate in conservation farming initiatives.

Question—That Greens amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 6

Ms Hale
Dr Kaye
Ms Rhiannon
Mr Smith
Tellers,
Mr Brown
Mr Cohen

Noes, 28

Mr Ajaka	Mr Kelly	Ms Sharpe
Mr Catanzariti	Mr Khan	Mr Tsang
Mr Clarke	Mr Lynn	Mr Veitch
Mr Colless	Reverend Dr Moyes	Ms Voltz
Ms Cusack	Reverend Nile	Mr West
Mr Della Bosca	Ms Parker	Ms Westwood
Ms Fazio	Mrs Pavey	
Ms Ficarra	Mr Pearce	<i>Tellers,</i>
Miss Gardiner	Mr Primrose	Mr Donnelly
Mr Gay	Ms Robertson	Mr Harwin

Question resolved in the negative.

Greens amendment No. 1 negatived.

[The Chair of Committees (the Hon. Kayee Griffin) left the chair at 6.07 p.m. The Committee resumed at 7.30 p.m.]

The Hon DUNCAN GAY (Deputy Leader of the Opposition) [7.30 p.m.], by leave: I move Opposition amendments Nos 1 and 2 in globo:

No. 1 Page 3, schedule 1.1 [1]. Insert after line 6:

- (3B) The Minister must not approve a rate for an authority unless the Minister is satisfied that the revenue raised by the authority under the rate for the year concerned will not exceed the revenue raised by the authority under the same type of rate for the previous year (as adjusted for any annual movement in the CPI).

- (3C) Despite subsection (3B), the Minister may approve a rate for an authority where the Minister is not satisfied of the matter referred to in that subsection if the Minister is of the opinion that special circumstances make it necessary or desirable to do so.
- (3D) In subsection (3B), **CPI** means the Consumer Price Index (All Groups Index) for Sydney issued by the Australian Statistician.

No. 2 Page 3, schedule 1.1. Insert after line 6:

[2] **Section 63 How is rate levied?**

Insert after section 63 (4):

- (4A) Despite any other provisions of this Part, an occupier of land is not, in any year, liable to pay a rate levied on the land to the extent that the rate exceeds by 10% the same type of rate levied on the same land in the previous year.

Although I have moved the amendments in globo, I ask the Committee to deal with them seriatim. The former Minister for Primary Industries, the Hon. Ian Macdonald, said in his second reading speech that these rates would not increase above the consumer price index. He said also that he would address the 10 per cent variance, which is the key to Opposition amendments. We want these rates to be limited to the consumer price index and individual ratepayers should not have to pay more than a 10 per cent variance. The Minister said, "Because I made that commitment Opposition members do not need to move any amendments to this legislation." It is obvious to anyone in this place that the Minister who introduced this bill is no longer the responsible Minister. Ministers who hold this portfolio have a habit of moving, and the commitments made by one Minister are not necessarily honoured by another.

The Hon. Tony Kelly: The Hon. Ian Macdonald was in that portfolio for 6½ years.

The Hon. DUNCAN GAY: Minister Kelly is on the bottom of the pecking list. A couple of weeks ago the Premier said he did not trust him and he wanted him to move on.

[Interruption]

Government members can jump up and down and interject but those are the facts. Minister Macdonald said, "Trust me; I am the Minister. I will honour my commitment." I trust Minister Kelly and I believe that whilst he is the responsible Minister he will honour that commitment. However, Minister Kelly cannot guarantee for how long he will be Minister for Primary Industries. This Minister will not support my amendments or ensure that they will be included in this legislation.

Mr Ian Cohen: I reckon Macca will be back.

The Hon. DUNCAN GAY: Many ministerial changes might be made within this Government but I do not believe that Macca is coming back. Government members are shaking their heads in agreement. I will not name any of them, but there is general consensus that Macca will not be back. The Minister also said that this legislation would involve changes to individual rate notices. I did not move these amendments by accident; I moved them because of widespread concern across the State. We finally convinced former Minister Macdonald to change his mind and to introduce this legislation.

Before I formulated these amendments I visited the Livestock Health and Pest Authority [LHPA] in Orange. With these amendments in mind I went out of my way to speak to the person in charge of the billing. I said to him, "Would it cost a great deal more or present any problems if we introduced amendments to ensure that rates did not increase above the consumer price index and that individual ratepayers did not have to pay more than a 10 per cent variance? I do not want to introduce amendments that result in the expenditure of a huge amount of money or that are counterproductive."

The Hon. Tony Kelly: That was generous of you.

The Hon. DUNCAN GAY: I am a generous soul; I always have been. His answer to me was, "It involves only a simple adjustment to the software." The company that developed the software and that contracts out this service would be able to implement these measures with only a small change to the software; it does not present a major problem. I do not know from where the Minister is getting his advice but the people in the Livestock Health and Pest Authority in Orange to whom I spoke told me something completely different. These

amendments are so good that former Minister Macdonald supported them. We need to protect ratepayers in regional New South Wales from the vagaries of people like Frank Sartor in the event that he becomes Minister in the future.

[Interruption]

It could be Richard Torbay, it could be Frank Sartor, or it could be Eric Roozendaal. Imagine what would happen if Eric Roozendaal were Minister for Primary Industries! These safeguards must be included in the bill.

The Hon. TONY KELLY (Minister for Primary Industries, and Minister for Lands) [7.37 p.m.]: In 2009 I put forward a balanced response to deal with the excessive rate increases of a handful of authorities. As I said earlier, the Government does not support these amendments. I remind members that while 8 of the 14 authorities across the State kept rate increases below the consumer price index—including one authority that decreased its rates—a minority imposed excessive increases on their ratepayers. As I have already stated, increases in revenue from general and animal health rates will not be approved beyond the consumer price index. The Government is also committed to limiting any increase on an individual rate to 10 per cent, which means that increases to individual ratepayers are also tightly limited.

The bill provides the Minister with the power to approve rates. We have the balance right in this bill, which keeps the Livestock, Health and Pest Authority system at arm's length from Government, while ensuring that I have the power to do something about rates as the need arises. There is no need to prescribe the level of detail proposed by The Nationals in the Act. On that basis these amendments are not supported. If, for example, The Nationals amendments were included in the bill, a special purpose rate could not be charged, for example, a pest insect levy. If a levy that was in place for a couple of years was dropped, it could not then be reintroduced as it would be locked into legislation and no new levies could be introduced.

The Hon. ROBERT BROWN [7.38 p.m.]: Despite the convincing arguments of the Deputy Leader of the Opposition, the Shooters Party does not support these amendments. I stand corrected, but it is my understanding that as a matter of law statements that are read into *Hansard* by a Minister during his or her second reading speech have the same weight as the bill itself. However, I might be wrong.

The Hon. Tony Kelly: Governments need them and future Ministers might need them.

The Hon. ROBERT BROWN: That is true. We urged the previous Minister to get this glitch under control. The current Minister has proposed something that probably still gives the Livestock Health and Pest Authorities sufficient flexibility. I did not go to Orange, nor did I speak to the guy behind the counter, but I did ring David Lister, chairman of the authority, and discussed this bill with him in detail. He assured me that he was happy—even though the Minister was being given certain powers—that the authority and local boards would have enough flexibility to work within the guidelines set out in the bill. With the Minister's assurance on the table to that extent, the Shooters Party is happy to support the bill.

The Hon. Duncan Gay: You have had that assurance before.

The Hon. ROBERT BROWN: We have. We requested the Minister to sort out this particular issue, which should have happened with the first draft of the bill. Having said that, I have no reason to doubt this Minister or the previous Minister. The Minister made statements in his second reading speech that were almost identical to his written replies to my queries. On that basis we will not support the amendment.

Mr IAN COHEN [7.40 p.m.]: The Greens note the outrage of some rural communities at the exorbitant increase in Livestock Health and Pest Authorities [LPHA] rates.

[Interruption]

I acknowledge the interjection by the Minister that it affects many people throughout the rural communities. Certainly for many years I have been a critic of the old Rural Lands Protection Board rating system on the coast; it was a completely and utterly irrelevant system.

The Hon. Tony Kelly: The rural lands protection boards?

Mr IAN COHEN: Yes, and I will come to those in a moment. It took me a long while to get used to the name Rural Lands Protection Board and referring to them comfortably as "RLPBs". Now the Government has reinvented them and called them Livestock Health and Pest Authorities, or LHPAs. I have to say that it is most annoying. Change was needed—and we wanted change, as many people do in country areas and on the coast where land use has radically changed—but this rebadging has caused nothing but confusion. The Hon. Duncan Gay is once again disparaging hippies in country areas—

The Hon. Duncan Gay: When did I say this?

Mr IAN COHEN: Just then.

The Hon. Duncan Gay: No I didn't.

Mr IAN COHEN: If you did not say hippies, then I withdraw the comment. I misheard the member. Perhaps it was an expectation on my part.

The Hon. Duncan Gay: I may well get to it at some stage.

Mr IAN COHEN: It would be your misfortune to show any prejudice on that matter. The rate increases were excessive. Everyone in this House would agree they were out of line. In my area they were quite irrelevant to the type of changed land use.

The Hon. Greg Pearce: You forgot to have a shave, Ian. Weren't you supposed to have a shave?

Mr IAN COHEN: If the member is going to make interjections, he should make them relevant to the debate. At least then I could respond with something worthwhile. I have not shaved off my moustache because I am still waiting for some support from members for such a worthy cause. After I worked for a month to cultivate—keeping in with a rural theme—this particular growth, I was disappointed to receive only \$35 from all the members of Parliament.

The Hon. Tony Kelly: I gave you \$20 of that.

Mr IAN COHEN: No, that was in addition. I acknowledge that the Minister passed me \$25, and for that I thank him very much. But surely my moustache is worth more than that. Perhaps if I threaten to dye it green before we go to meet with the Governor tomorrow, I might get some support. After now receiving more donations, I might shave half of it. I believe there is a rule against giving money to members in the House. Members opposite will be spared: I will not appear with a green moustache tomorrow in the House.

The Hon. Greg Pearce: We will donate to the cause, but I want a receipt. That money had better not go to your legals!

The Hon. Rick Colless: It's Movember money.

Mr IAN COHEN: Thank you. Yes, it is strictly Movember money; I will abide by that. I return to the issue at hand. As I said, the rate increases were excessive and everyone in this House would agree that they were out of line. The main objective of this bill is to protect against an individual Livestock Health and Pest Authority—that is a mouthful—setting excessive rates through requiring the Minister to approve rates. The Greens understand the position proposed by the Hon. Duncan Gay and that of the Government, and are sympathetic to both arguments. The Nationals amendment No. 1 seeks to restrict the powers of the Minister in approving a rate for a Livestock Health and Pest Authority. Specifically, the amendment states that the Minister cannot approve rates that exceed the rate for previous years adjusted to annual consumer price index movements.

Proposed subsection (3C) provides scope for the Minister to approve rates beyond consumer price index levels where the Minister is of the opinion that special circumstances make it necessary or desirable to do so. The primary concern here is the ability of the Minister to approve increases in rates whereby emergency situations, such as pest or invasive species outbreaks, in a particular area require additional funds. Proposed subsection (3C) should allow the necessary flexibility for these types of situations. I am concerned that The Nationals amendment No. 2 appears to restrict what individual Livestock Health and Pest Authorities can submit to the Minister. How can the Minister actively utilise proposed subsection (3C) if restricted to levying a rate that does not exceed by 10 per cent the previous year's rates?

What needs to be taken into account is that if the Minister cannot allow Livestock Health and Pest Authorities to levy landholders' rates to cover expenses of the Livestock Health and Pest Authorities for specific pest control programs, these programs would have to be funded from consolidated revenue. This is the inverse of the valid argument made by the Hon. Duncan Gay about the Greens amendment. The member argued that Livestock Health and Pest Authority ratepayers would be supporting conservation, not the whole community. The Nationals amendment No. 2 would spread the cost of livestock health and pest management to the whole State of New South Wales, beyond those who directly benefit from such services.

It would be inappropriate for any shortfalls in funding resulting from the operation of these amendments to be supplemented by funds from consolidated revenue. However, as long as the Minister has power to approve rate increases above the consumer price index in appropriate circumstances, it is a fair restriction on ministerial prerogative that does not compromise the ability of the Minister to approve rate increases to respond to the funding needs of particular Livestock Health and Pest Authorities. The Greens cannot support The Nationals amendment No. 2. I am pleased that the amendments will be dealt with seriatim. The Greens will support The Nationals amendment No. 1. I thank members for their kind donations for Movember. It is enough for me to shave off half my moustache. Thank you very much.

The Hon. DUNCAN GAY (Deputy Leader of the Opposition) [7.47 p.m.]: I thank the Hon. Ian Cohen for his comments and support for the first of our amendments. He has a marvellous convoluted mind. Not only did he explain the first amendment to the Minister with a high degree of competency, but also he detailed to the Minister where the Minister's comments were wrong. He quite correctly interpreted my amendment and explained to the Minister that he could introduce a special locust levy under proposed subsection (3C). That was not picked up by anyone in the department. The Minister did not believe he had the power to do that. I am disappointed about David Lister's comments to the Shooters Party because I had spoken to him about this matter. The wording of proposed subsection (3C) was directly as a result of a request from him. The fact that the authority has not responded indicates that the Government made an offer that was conveyed by the Shooters Party, and that is disappointing.

I will now address amendment No. 2. Whereas Mr Ian Cohen was concise and accurate in his appraisal of amendment No. 1, he is unbelievably wrong in relation to amendment No. 2. I will briefly reiterate to the Committee the explanation I gave to him earlier. This amendment does not limit the general rate. The Consumer Price Index [CPI] is a limit on the general rate, but this is a limit on variations from the norm. The Minister acknowledged that in his reply. The Minister's reply to the issues reflects amendment No. 2.

It is a real problem when an increase of 2 per cent, 3 per cent or the rate of the Consumer Price Index is nominated because the amounts may vary more than the Consumer Price Index at the margins. If the total rate is increased at the rate of the Consumer Price Index, people at some points on the spectrum when the interpretation is applied may experience variations of greater than the rate of the Consumer Price Index. It is similar to the position of general rates in local government. The Minister is a former general manager of a shire and he knows that we have rate pegging at 4 per cent, but when the 4 per cent is applied, there may be discrepancy.

The Hon. Tony Kelly: According to the valuation base.

The Hon. DUNCAN GAY: Yes. That is why we have said that individual rates may vary more than 10 per cent. The Consumer Price Index runs at approximately 3 per cent, but above 10 per cent of the norm is the concern that has led to this amendment. The arguments have been canvassed fully and I do not think I need to add more. The Minister and the Government have supported our amendments in principle but have indicated that the Minister will take the required action. My argument is that Ministers come and Ministers go: If we have Government acceptance that a Minister will take the required action, why not put that into black letter law, support the amendment, and have the provision included in the legislation?

The Hon. ROBERT BROWN [7.51 p.m.]: I will briefly correct the record. The Deputy Leader of the Opposition indicated earlier that the conversation between David Lister and me somehow concerned brokering a deal with the Government.

The Hon. Duncan Gay: No, I did not say that.

The Hon. Tony Kelly: You sent me a letter and I responded.

The Hon. ROBERT BROWN: Irrespective, I wrote to the Minister today and I received a reply today after having discussed the matter with David Lister, but not as part of any negotiation or deal with the Government. I simply wanted the Minister to assure me in writing that he would be prepared to state for the record the issues that concern the Shooters Party. The Minister has done so tonight.

Question—That Opposition amendment No. 1 be agreed to—put.

The Committee divided.

Ayes, 19

Mr Ajaka	Mr Gay	Mrs Pavey
Mr Clarke	Ms Hale	Mr Pearce
Mr Cohen	Dr Kaye	Ms Rhiannon
Ms Cusack	Mr Khan	
Ms Ficarra	Mr Mason-Cox	<i>Tellers,</i>
Mr Gallacher	Reverend Dr Moyes	Mr Colless
Miss Gardiner	Ms Parker	Mr Harwin

Noes, 20

Mr Brown	Reverend Nile	Mr Tsang
Mr Catanzariti	Mr Obeid	Ms Voltz
Mr Della Bosca	Mr Primrose	Mr West
Ms Fazio	Mr Robertson	Ms Westwood
Mr Hatzistergos	Ms Robertson	<i>Tellers,</i>
Mr Kelly	Ms Sharpe	Mr Donnelly
Mr Macdonald	Mr Smith	Mr Veitch

Pair

Mr Lynn

Mr Roozendaal

Question resolved in the negative.

Opposition amendment No. 1 negatived.

Question—That Opposition amendment No. 2 be agreed to—put.

Division called for and Standing Order 114 (4) applied.

The Committee divided.

Ayes, 14

Mr Ajaka	Miss Gardiner	Mrs Pavey
Mr Clarke	Mr Gay	Mr Pearce
Ms Cusack	Mr Khan	<i>Tellers,</i>
Ms Ficarra	Mr Mason-Cox	Mr Colless
Mr Gallacher	Ms Parker	Mr Harwin

Noes, 25

Mr Brown	Mr Macdonald	Mr Smith
Mr Catanzariti	Reverend Dr Moyes	Mr Tsang
Mr Cohen	Reverend Nile	Ms Voltz
Mr Della Bosca	Mr Obeid	Mr West
Ms Fazio	Mr Primrose	Ms Westwood
Ms Hale	Ms Rhiannon	
Mr Hatzistergos	Mr Robertson	<i>Tellers,</i>
Dr Kaye	Ms Robertson	Mr Donnelly
Mr Kelly	Ms Sharpe	Mr Veitch

Pair

Mr Lynn

Mr Roozendaal

Question resolved in the negative.

Opposition amendment No. 2 negatived.

Schedule 1 agreed to.

Title agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. Tony Kelly agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. Tony Kelly agreed to:

That this bill be now read a third time.

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

GENERAL PURPOSE STANDING COMMITTEE NO. 2

Government Response to Report

The Hon. Tony Kelly tabled the Government's response to report No. 30, entitled "Governance of NSW Universities", tabled on 1 June 2009.

Ordered to be printed on motion by the Hon. Tony Kelly.

INDUSTRIAL RELATIONS (COMMONWEALTH POWERS) BILL 2009

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

Bill declared to be urgent by the Hon. Tony Kelly.

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

Declaration of urgency agreed to.

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

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

The Hon. LYNDIA VOLTZ [8.08 p.m.]: I move:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 236 outside the Order of Precedence, relating to World Aids Day, be called on forthwith.

The Hon. DON HARWIN [8.08 p.m.]: The Opposition supports the motion.

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

Motion agreed to.

Order of Business

Motion by the Hon. Lynda Voltz agreed to:

That Private Members' Business item No. 236 outside the Order of Precedence be called on forthwith.

AIDS DAY

The Hon. LYNDA VOLTZ [8.10 p.m.]: I move:

That this House notes that:

- (a) 1 December 2009 is World AIDS Day,
- (b) World AIDS Day is recognised and observed in more than 190 countries around the world,
- (c) by 31 December 2008, 28,330 diagnoses of HIV infection, 10,348 diagnoses of AIDS and 6,765 deaths following AIDS had occurred in Australia,
- (d) an estimated 17,444 people, including 12,053 people aged 15 to 49 years, were living with HIV infection in Australia at the end of 2008,
- (e) Papua New Guinea has the highest incidence of HIV/AIDS in the Pacific region and was the fourth nation in the Asia Pacific Region to have a generalised epidemic,
- (f) since 2003, more HIV infections have been detected in women than men, and more than twice as many young women than young men aged 15 to 24 have been diagnosed with HIV,
- (g) acknowledges the contribution of the State and Federal governments for prevention care and treatment for those at risk from HIV/AIDS, and
- (h) calls on the Federal Government to increase its commitment to reducing the incidence of AIDS in Papua New Guinea given the growing impact of AIDS within that nation.

I note that today is World AIDS Day, an initiative of the World Health Organization currently in its twenty-first year. World AIDS Day provides governments, national AIDS programs, faith organisations, community organisations and individuals with an opportunity to raise awareness and focus attention on the global AIDS epidemic. World AIDS Day is observed in more than 190 different countries around the world. AIDS is one of the deadliest and most destructive epidemics in recorded history. In 2007 it was estimated that approximately 33 million people were living with HIV across the globe, and that AIDS killed more than 2 million people. More than three-quarters of these deaths occurred in sub-Saharan Africa, retarding economic growth and destroying human capital.

Although treatment for AIDS and HIV can slow the course of the disease, there is currently no vaccine or cure. Furthermore, antiretroviral drugs, which reduce the morbidity and mortality of the HIV infection, are expensive and not accessible or even available in many, particularly poorer, parts of the world. Internationally, HIV is a significant threat to development and stability, with 25 million deaths to date. In many areas, HIV-related deaths have caused a demographic imbalance by having an impact on people in their most productive years, with resulting social and economic implications. HIV continues to devastate families, communities and nations. The Joint United Nations Programme on HIV-AIDS suggests the global epidemic is stabilising but at an unacceptably high level. The annual number of new HIV infections declined from 3 million in 2001, as estimated from a range of 2.6 million to 3.5 million, to 2.7 million in 2007, from a range of 2.2 million to 3.2 million.

In the Asia-Pacific region, our neighbour Papua New Guinea has one of the most serious HIV-AIDS epidemics in the region. Papua New Guinea has the highest rate of reported HIV cases in the region, and is the fourth nation in the Asia Pacific region, after Thailand, Cambodia and Burma, to have a generalised epidemic. Since the first reported case of HIV in 1987, HIV prevalence in Papua New Guinea has risen dramatically, with HIV cases rising at an estimated rate of 30 per cent per year since 1997. While approximately equal numbers of men and women are infected, young women and older men are disproportionately affected. Children are particularly vulnerable to HIV-AIDS. UNICEF reports that 10,946 children were HIV positive and 9,400 children were orphaned by AIDS as at 2005.

The growing HIV-AIDS epidemic has several long-term implications for Papua New Guinea's future, including reduction of life expectancy, depletion of the workforce, escalation of health expenditure and

reduction of economic growth. A report commissioned by AusAID in 2006 found that unless interventions to prevent the spread and impact of HIV-AIDS in Papua New Guinea were scaled up, by 2025 there will be more than 500,000 people living with HIV-AIDS, 117,000 children will have lost their mothers to AIDS, the workforce will have declined by 12.5 per cent, GDP will be 1.3 per cent less than predicted, and 70 per cent of all hospital beds will be needed for AIDS patients.

In response, the Federal Government devised a five-year strategy to support the approach to HIV-AIDS in Papua New Guinea. Elements of this strategy include the Papua New Guinea—Australia Stand Together HIV-AIDS Program, a \$100 million, five-year program aimed at preventing the spread of HIV, as well as providing treatment, care and support for those infected and affected by HIV-AIDS; and the National HIV-AIDS Support Project, a \$66 million initiative that included installing condom dispensers, training nurses in STI-HIV management, and providing 1,400 counsellors to increase HIV testing and support for those living with the illness.

We cannot forget the effect of HIV-AIDS within Australia. By 31 December 2008 there have been 28,330 diagnoses of HIV infection, 10,348 diagnoses of AIDS and 6,765 deaths following AIDS had occurred in Australia. An estimated 17,444 people including 12,053 people aged 15 to 49 were living with HIV infection in Australia at the end of 2008. Although diagnoses of AIDS have remained relatively stable in Australia since 1999, diagnoses of HIV have actually increased since the same year. This is the result of the effectiveness of antiretroviral therapies in delaying the progression from HIV to AIDS, as well as the accessibility of these treatments.

The per capita rate of HIV diagnosis in the Aboriginal and Torres Strait Islander population is similar to the non-Indigenous population. For example, among indigenous people the rate was 4.5 per 100,000 population during 2003-07, while among non-indigenous people it reached 5.2 per 100,000 population in 2007. However, in the Aboriginal and Torres Strait Islander population a higher proportion of cases were attributed to heterosexual contact. For example, 28 per cent of HIV diagnoses in indigenous people were attributed to heterosexual contact, as opposed to 19 per cent in non-indigenous people, while 18 per cent of diagnoses in indigenous people were attributed to injecting drug use and 3 per cent among non-indigenous people.

In Australia effective prevention efforts among key population groups has had a dramatic impact on both the number of HIV infections and the profile of the epidemic in Australia. Australia's early response to HIV and AIDS is widely recognised as being one of the best in the world. Following the identification of AIDS in Australia, Federal and State governments responded proactively. They implemented often controversial public health strategies, such as condom vending machines, needle and syringe exchange programs and, most importantly, publicly talking about the risk factors for HIV transmission. Australian communities also mobilised to prevent HIV transmission and provide support to those living with HIV. Communication with government was strong, and the partnership between government and those communities most affected by HIV remains a distinguishing feature of the Australian response to HIV. In 2006, Australia's HIV prevalence was less than half that in the United Kingdom and only a tenth of that in the United States of America.

Communication remains the key. It is one of the reasons why we have World AIDS Day, so that AIDS and HIV become part of a wider conversation in our society about the transmission of the virus and the reality of living with HIV or AIDS, whilst challenging myths and misinformation, which undermines our public health efforts. Communication also forms the backbone of public health strategies to deal with the incidence of HIV/AIDS within the community, and reduce harm.

The Hon. DON HARWIN [8.16 p.m.]: The Opposition is pleased to support this motion. Today is the twenty-second World AIDS Day. First held in 1988, it has become the centre of the campaign to raise awareness of HIV-AIDS and to demonstrate support for HIV positive people and those whose lives are affected by AIDS. While the event was planned for many years under the auspices of the Joint United Nations Programme on HIV-AIDS, since 2004 World AIDS Day has been promoted by an independent organisation. World AIDS Day is now recognised and observed in more than 190 countries. It is the subject of annual speeches and messages by many of the world's political and spiritual leaders, including the President of the United States of America and the Pope.

Since 1981 AIDS has killed more than 25 million people worldwide, with a reported 2 million deaths in 2007, including a quarter of a million children. Current estimates suggest that there are close to 35 million people living with HIV-AIDS. In New South Wales there are more than 10,000 people living with HIV-AIDS and on average at least one new infection is diagnosed in our State every day. The development of advanced

antiretroviral drugs has dramatically improved the outlook for those diagnosed with HIV, but the dangers of the illness remain. Australia responded quickly to the AIDS crisis with public health education and harm minimisation programs that resulted in a relatively low rate of HIV infection. In recent years, however, infection rates have once again begun to increase. In 2000, the number of new reported cases dropped 656, but five years later nearly 1,000 new cases were reported, so there is a need to be eternally vigilant on this issue.

The Liberal-Nationals offered bipartisan support when the Wran Government began the first initiatives on HIV-AIDS in New South Wales at a State Government level. The Greiner and Fahey Coalition State governments played an important role in the fight against AIDS during a critical phase of the campaign. They outlawed discrimination against, and the vilification of, people with HIV-AIDS. They gave the AIDS Council of New South Wales a \$1.3 million grant with which to purchase its current headquarters, out of which it does excellent work. Federally, the previous Coalition Government continued a tradition that involved substantial funding for HIV-AIDS and also recognised the importance of combating the spread of the disease in Papua New Guinea.

In its final 2007-08 Federal Budget, under the stewardship of the then health Minister, Tony Abbott, the Howard Government allocated \$9.8 million for a four-year national prevention program to raise awareness of sexually transmissible infections, including HIV. The Rudd Government maintained this funding and program upon its election to office. Worth noting is that in 2007 the Federal Government also committed \$12 million over two years towards a comprehensive program of initiatives to prevent the spread of HIV-AIDS in the Aboriginal and Torres Strait Islander population.

The funding was a response to a report by the Indigenous Australians Sexual Health Working Party of the Australian National Council of AIDS and Related Diseases. Similarly, in July 2007 the Federal Government increased spending on fighting HIV-AIDS overseas by \$400 million to 2010, which the Australian Government's total spend on fighting HIV-AIDS globally to \$1 billion over the 10 years from 2000. The previous Federal Government also provided \$75 million to the Global Fund to Fight AIDS, tuberculosis and malaria, which has helped save the lives of more than 1.8 million people and has provided antiretroviral treatment for HIV to more than one million people.

It is estimated that across the Asia-Pacific eight million people are infected with HIV-AIDS, with infection rates in Papua New Guinea worse than in some parts of Africa. I am pleased that the motion includes reference to the situation in Papua New Guinea. Some reports indicate that more than 2 per cent of the population is infected and that by 2025 the disease will have killed 300,000 people in Papua New Guinea. The Opposition is pleased to support this motion, to formally acknowledge World AIDS Day and to congratulate the Rudd Government on continuing the strong tradition of bipartisanship at the Federal level, which, of course, reflects a similar tradition in State politics.

Ms LEE RHIANNON [8.21 p.m.]: I congratulate the Government and Ms Linda Voltz on moving this motion. World AIDS Day is a very special occasion: it is an opportunity to raise money for work on the prevention of HIV transmission and to help people with HIV. World AIDS Day also plays an important education role, and the range of activities today and during the week is truly remarkable. The HIV-AIDS epidemic in Australia is increasingly unique in global terms. Other members have made that point, and it is worth re-emphasising. In 1981 the first case of AIDS was diagnosed in Australia. There was then a very rapid increase, up to about 3,000 cases, in the 1980s. Then there was quite a dramatic drop, mostly because of the response of the gay and lesbian community and also some forward thinking by health professionals in introducing programs.

Having said that, today we need to remember the large numbers of people who lost their lives, and the suffering of their friends, families and loved ones. In the early 1980s people suffered as a result of considerable community ignorance about the disease. I join my colleagues in speaking about some developments in low-income countries. Over the years I have been quite critical of many of the activities of the bilateral aid program undertaken by AusAID, but this is one area where the Federal Government needs to be congratulated. The figures for HIV-AIDS are stark. HIV-AIDS is still the biggest health and development problem in poor countries, where 95 per cent of the world's infected people live.

Africa is in a particularly difficult situation. It has less than 5 per cent of the world's population but 50 per cent of HIV-positive people, and 60 per cent of all AIDS deaths have occurred in Africa. That is an extraordinary and sobering figure when considering the work that still needs to be done in addressing

HIV-AIDS in our society. As Mr Harwin mentioned, the epidemic is spreading to Asia at an alarming rate. It is spreading also to the Pacific Islands and to Papua New Guinea, which presents a particular challenge for Australia and certainly warrants more support being given to those countries.

I acknowledge the incredible work that is undertaken by a range of non-government organisations and community groups. The AIDS Council of New South Wales undertakes work for World AIDS Day that is truly remarkable, and has inspired similar ideas in many other countries. On World AIDS Day the Red Ribbon Appeal is held. There are stalls, tree plantings and a range of concerts—the creativity is quite unique. Last week the Big Red Bingay evening was held at the Paddington RSL Club, which resulted in some hilarious stories and unique acts. On this day many organisations and communities come together to remember with sadness those who have lost their lives and also to raise the all-important money that helps to build awareness, and which will remain critical to dealing with this complex disease. I again congratulate Hon. Lynda Voltz on moving the motion.

The Hon. PENNY SHARPE (Parliamentary Secretary) [8.25 p.m.]: I also support the motion commemorating World AIDS Day. I thank the mover of the motion for giving members the opportunity to speak briefly about this matter. I will reflect on three issues. First, currently 40 million people around the world are living with HIV-AIDS—which is twice the population of Australia. Every 12 seconds another person is infected with the HIV virus. In New South Wales and Australia it has been a very different story, but we all need to be aware that the danger is always with us.

Secondly, I extend my thanks to a person who headed the predominant HIV organisation in Australia. Stevie Clayton was the Chief Executive Officer of the AIDS Council of New South Wales [ACON] for 11 years, and recently left that position. The AIDS Council of New South Wales has played an incredibly important role in the fight against HIV-AIDS. In fact, New South Wales holds the record for being the only jurisdiction where the government and the non-government sectors have worked in partnership to reduce HIV rates. In fact, we are the only jurisdiction in the world where that is happening. Thirdly, I place on record the history of ACON, and particularly the work of Stevie Clayton. ACON in its first incarnation was born out of the gay rights movement at a time of crisis—a crisis of a disease that few understood, a crisis of a disease that was decimating the gay community, a crisis of a disease that was killing our partners, our friends, and our family members, and a crisis that had the potential to kill many more.

The community and various organisations successfully established the AIDS Council of New South Wales, which was then able to obtain bipartisan government support and the first amount of funding. The AIDS Council, in partnership with many more organisations, followed through with groundbreaking public policy strategies that shaped the Australian response to HIV-AIDS in both New South Wales and Australia. It is an approach that has saved thousands of lives. The ACON policy approach is uncompromising, evidence based and reflects the complexities of the communities that this diverse organisation serves.

On World AIDS Day I pay tribute to the work of Stevie Clayton and the people who have been involved in AIDS issues throughout New South Wales for a very long time. People who were there at the beginning sadly are no longer with us. Others have given their time voluntarily over two decades. There are dedicated staff both within and outside government who have made it their life's work to try to get on top of this disease. I finish with one final fact—an unfortunate and pertinent fact. In Australia we have come so far. However, there is currently a bill before the Parliament in Uganda that gives life imprisonment to people who are found guilty of having gay sex, and the death penalty to people who are HIV positive. We still have a long way to go.

The Hon. LYNDA VOLTZ [8.29 p.m.], in reply: I thank all members who contributed to the debate. I thank the House for its indulgence in allowing us to discuss this important issue at this busy time at the end of the year.

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

Motion agreed to.

INDUSTRIAL RELATIONS (COMMONWEALTH POWERS) BILL 2009

Second Reading

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, and Vice President of the Executive Council) [8.29 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 purpose of the Industrial Relations (Commonwealth Powers) Bill 2009 is to refer certain matters relating to industrial relations to the Commonwealth for the purpose of section 51 (37) of the Australian Constitution and to amend the Industrial Relations Act 1996.

The primary role of this bill is to refer to the Commonwealth sufficient power to enable the creation of a national industrial relations system for the private sector.

The establishment of this system is an event of great historical significance.

It represents an unprecedented willingness of Governments across Australia to work in the national interest.

It demonstrates the very best aspects of cooperative federalism.

It demonstrates an unwavering commitment to fairness and decency in the workplace.

The national industrial relations system will be based on the Fair Work Act 2009—the legislation that revoked the Work Choices laws.

This legislation will extend the coverage of the Fair Work Act to all private sector employees and employers in New South Wales.

Employers who are sole traders, partnerships or non-trading corporations are currently covered by the New South Wales industrial relations system and will be referred into the national system.

There is a seminal difference between what is happening today in 2009, and what happened in 2006 under the former Federal Government.

In 2006 the Commonwealth legislated against the wishes of the States to unilaterally seize powers and impose the WorkChoices laws on the Australia people.

WorkChoices did not merely impose on the Australian people a system that was both mired in complexity and fundamentally unfair, it failed in its attempt to create a national industrial relations system.

WorkChoices redrew the basis on what was covered by federal industrial laws.

The corporation's power of the constitution was used to extend the application of federal laws overriding the limitations on the conciliation and arbitration power that had traditionally been the basis for federal industrial laws.

However this left many organisations in limbo not knowing what laws they were covered by. This uncertainty prevailed most strongly in the charitable services sector amongst those employers and employees with the lowest capacity to seek legal advice or mount legal challenges.

The unilateralism of WorkChoices was equally offensive.

The Howard Government had no mandate from the Australian people.

Nor did they make any attempt to seek common ground in developing a national industrial relations system. Had they done so their laws would have been fundamentally different from WorkChoices.

WorkChoices was a much a result of the Howard Government feeling unencumbered by checks and balances as it was of the Howard Government having an ideological obsession with removing fairness from the workplace.

Today, in 2009, the situation is the antithesis of 2006.

The Rudd Government has a clear electoral mandate from the Australian people and they have engaged with the community, employer associations, unions, industry and State Governments in developing the Fair Work Act.

The national industrial relations system, which is in part created by this legislation, removes once and for all, the ebb and flow of businesses between federal and State laws.

Determining which industrial rules applying to a particular workplace will no longer turn on arcane and legalistic questions of whether or not an employer is a constitutional corporation.

Similarly, this bill removes the need to apply a constitutional test as to whether an employer was genuinely part of an interstate industrial dispute. This referral will eliminate any uncertainty about the status of the employers and ensure that all employers and employees in the private sector are covered by the same broad industrial relations framework.

It will bring unincorporated businesses and charities into the system which will, from 1 January 2010, also cover all private sector organisations in Queensland, Victoria, Tasmania, South Australian and the two Territories.

The House will surely appreciate the historic significance of this occasion.

On the commencement of the provisions of this bill, New South Wales will join the national industrial relations system and a new era will be established in this country.

Given that this bill moves the bulk of the New South Wales industrial relations system into a national framework it is apposite to examine the rich traditions of this State's industrial jurisdiction.

There are several excellent historical records available of industrial relations in this State including the book edited by Mr Greg Patmore on the occasion of the centenary of the Industrial Relations Commission of New South Wales.

That book notes Professor Ron McCallum's view that New South Wales has the longest continuing industrial court or tribunal in the world.

The first sitting of an industrial court in this State occurred on 16 May 1902 but the antecedents for our industrial relations system can be traced back as far as 1873.

In that year the Hunter Valley coal miners' union and employers negotiated an agreement which provided for a disputes resolution committee.

This was not the only example of our emerging and uniquely Australian industrial relations system.

In 1882 the colonial Government adopted an employer proposal for the creation of industrial 'conciliation boards', based on the 1867 English legislation and the French local labour courts.

While this law was not enacted, a further attempt to introduce voluntary conciliation of industrial disputes by statute was attempted in 1888.

This law too was not enacted.

In late 1890 the Parkes Government held a royal commission into strikes following the year-long maritime strike.

This royal commission led to the introduction of voluntary conciliation under the Trades Disputes Conciliation and Arbitration Act 1892.

The 1892 legislation was not a success and was largely ignored by employers.

In 1895 the Reid Free Trade Government, supported by Labor members, introduced a bill providing for compulsory arbitration. Again, this bill did not proceed through the Legislative Council.

By 1899 another attempt at introducing compulsory arbitration was made.

This time the arbitration had to be initiated by the Minister.

Unfortunately, despite a series of significant and protracted disputes, arbitration was ordered on only four occasions.

So, by the close of the nineteenth century, there had been a series of marginally successful attempts at creating a workable industrial relations system.

At this time the remarkable Bernard Ringrose Wise became colonial Attorney General.

In 1900 he introduced a bill for compulsory arbitration, enforceable awards and common-rule effect of tribunal decisions.

It was then, and remains to this day, the blueprint for modern industrial relations statutes.

This bill too was defeated in the Legislative Council in November 1900.

However elections in July 1901 centred on the reforms proposed by Attorney General Wise.

A reintroduced bill was this time passed by the Legislative Council, on 10 December 1901.

So, almost precisely 107 years ago to the day, New South Wales became the first Australian State with a modern industrial relations system.

The 1901 New South Wales legislation also became the first modern industrial relations statute in the new Commonwealth.

It should be noted that Australia's Conciliation and Arbitration Act 1903 drew heavily from this New South Wales legislation.

The course of New South Wales industrial relations has had its high and low points but has generally remained in advance of all other Australian jurisdictions for more than a century.

In 1905 Justice Heydon of the New South Wales industrial court created the first 'living wage' determination in Australia, a full two years before the internationally celebrated Harvester judgement of Justice Higgins in the Commonwealth court.

Justice Heydon's decision in the 1905 Sawmillers Case ordered a minimum wage sufficient for a married man and four children to live a 'human life'.

Notably, Heydon's decision took account of the industry's capacity to pay, demonstrating a balance to New South Wales industrial jurisprudence.

Thus, New South Wales provided the first modern industrial law and the modern concept of a living wage.

This Parliament and the New South Wales Commission have not been idle since in developing a balanced, productive and fair body of law.

In terms of reasonable wages, I have noted that unlike its Commonwealth counterpart, the New South Wales Commission has always upheld the concept of a balanced minimum level.

The interests of industry have been considered, with the recognition that employers have only a limited capacity to pay in some circumstances.

However, since 1958 New South Wales laws have obliged the setting of 'fair and reasonable' rates of pay. Not just the lowest rate of pay.

New South Wales has also pioneered the reduction of maximum weekly working hours.

In 1920 the Commission was permitted to introduce a 44 hour week into State awards.

Six years later the 44 hour week was legislated directly as a right to all workers in the State.

In 1948 the working week was reduced to 40 hours.

This State has also introduced leave entitlements well before other jurisdictions.

In 1944 the Labor Government provided two weeks paid leave to all workers.

This was extended to three weeks in 1958 and four weeks by 1974.

This State also pioneered long service leave entitlements.

In 1951 an entitlement to three months paid long service leave was created by statute after a worker completing 20 consecutive years of service with the same employer.

In 1963 this entitlement was increased to two months' leave after ten consecutive years of service.

In 1974 the creation of a ground-breaking portable long service leave scheme enabled construction workers to gain due recognition for extended periods of service within that industry.

The New South Wales jurisdiction has led the way in extending recognition of industrial rights to people engaged in working activities even though they are not considered to be employees under a strict legal definition.

Amendments to New South Wales legislation in 1943, 1951 and 1957 extended industrial coverage to owner-drivers and taxi drivers.

In 1959 New South Wales became the first Australian jurisdiction to recognise quasi-employment relationships by deeming certain workers in certain occupations to be employees.

In the same year the first unfair contracts jurisdiction in Australia was established in New South Wales.

In the area of job security and dealing with the impact of technological change New South Wales has also been a pioneer jurisdiction.

In 1964 the first mandatory notice obligations were placed on employers who were instituting technological change.

In the middle of the recession caused by the global oil crisis in the mid-1970s the New South Wales Commission became the first tribunal to deal with the effects of widespread workplace redundancies.

The New South Wales Employment Protection Act 1982 was the first legislation of its type in Australia and created a template for the Commonwealth and other State jurisdictions.

Much more recently the 2006 State Secure Employment Test Case dealt with the conversion of casual employment to permanent employment, as well as the treatment of labour hire and contracting out arrangements.

It is in the area of equal rights that New South Wales has played the national leader, in a number of respects.

In 1958 the Cahill Labor Government legislated directly for equal pay for women in this State seventeen years prior to the equivalent federal standard becoming law.

In 1996 the Carr Labor Government brought New South Wales into compliance with the International Labour Organisation standard becoming the first Australian jurisdiction to do so.

The 1996 Act legislated for equal pay for men and women performing work of equal or comparable value.

It is pleasing to note that these same words now appear in the Fair Work Act 2009 some thirteen years later.

In recognising the leadership of the New South Wales in this area Justice Michael Kirby stated that the 1996 Act and the 2000 Pay Equity Principle established under the legislation was 'founded squarely on a human rights approach'.

Justice Kirby stated: "I am aware of no more explicit recognition by an industrial tribunal in Australia of the significance of international human rights norms for Australian industrial relations law and practice."

These are just some of the examples of the proud industrial relations history of New South Wales which will infuse the new national system.

Over the past century the laws passed by this House have provided a framework for minimum wages, maximum working hours, leave entitlements and equality for men and women doing work of equal or comparable value.

The creation of the national industrial system clearly marks the end of one era of State industrial relations however, it also is the start of a new era in which New South Wales will play a significant part in a national system.

Under this referral of powers, the core concepts of New South Wales law and jurisprudence will go into the national law.

The Industrial Relations Commission of New South Wales has served our State with distinction for more than a century, is recognised internationally for its expertise in resolving disputes and developing community standards and has provided us with many of the industrial relations principles we now take for granted.

Amongst the greatest of these industrial relations principles is the concept of a 'fair go all round', which was first enunciated in the New South Wales Industrial Commission in 1971.

The 'fair go all round' concept is the very essence of industrial justice.

It sets the jurisprudence in a bed-rock of balanced interests and common human decency.

This concept endures today, informing decision-making with respect to unfair dismissals and other matters nationwide.

In July of this year, the Rudd Government's Fair Work Act 2009 commenced, putting an end to the divisive era of WorkChoices which undermined the principle of 'fair go all round'.

The Fair Work Act restored fairness and balance to the national system.

The Fair Work Act and its associated legislation were the result of extensive consultation between the Commonwealth Government and business, unions and state and territory Governments.

Significantly, the Commonwealth Government recognised that it could not create a truly national system other than by co-operation with the States and Territories.

Consequently, extensive discussions have taken place between the Governments about how to shape a new national system that will be fair, balanced and enduring.

I wish to take this opportunity to put on the record the Government's appreciation of the considerable personal efforts of the Deputy Prime Minister and her personal staff along with other State ministers and their respective officials from across Australia in these consultations.

The contrast between this process and the unilateralism of WorkChoices could not be more stark.

The Commonwealth Government drew on the vast reservoir of experience in this State to inform its legislative framework.

These discussions have not only improved the quality of the Commonwealth's industrial relations law, they have clarified the demarcation point with many State laws.

Through these discussions it has been possible to sensibly agree that by deliberate exclusion, this referral will not apply to the New South Wales public service or the New South Wales local Government sector.

An agreed mechanism will ensure that State laws continue to regulate local Government and local Government corporations.

Similarly, through discussions, we have been able to agree on how to deal with the interaction between the Commonwealth's Fair Work Act 2009 and State laws dealing with matters such as public holidays, business trading hours, essential services and victims of crime leave.

Unlike Work Choices, which encouraged corporations to make Australian Workplace Agreements overriding these State laws the Fair Work Act 2009 clearly recognises the continuing operation of these important State laws.

These 'non-excluded matters' are set out in the bill, and in the corresponding Commonwealth legislation.

An important aspect of this bill, and an aspect that it is supported in the Commonwealth bill that accepts the referral of powers by this and other States is the recognition that there are areas of law of relevance to employers and employees that remain within the power of the States to regulate.

The list of so-called 'non-excluded matters'—that is areas of law which are 'not excluded' from applying to employers and employees in the national system—includes such important issues as the following:

- Anti-discrimination laws
- Occupational health and safety laws
- Workplace surveillance laws
- The regulation of children's employment and
- Trading and business hours.

I draw attention to two areas in particular.

Firstly, I can confirm that the State's outworker laws are not affected by the referral.

Honourable members will recall that New South Wales was the first State to enact innovative and significant protections for outworkers in the clothing trades.

Matters relating to outworkers (within the ordinary meaning of the term) remain matters about which this State can make laws.

This is reinforced in the referral bill (see clause 3 of the bill) and confirmed in the Commonwealth bill that accepts this State's referral.

Secondly, I would note that this State is the only jurisdiction that affords protection to an employee in the unfortunate circumstance that he or she, or a member of their immediate family, is a victim of serious crime. Part 4B of Chapter 2 of the Industrial Relations Act 1996 ensures that where such employees attend court proceedings in relation to such a crime they are entitled to unpaid leave for such attendance and the time taken to travel to and from the proceedings.

Leave for victims of crime is confirmed in this referral bill and in the Commonwealth bill accepting the referral as a matter which the State law continues to regulate.

The Government took the necessary time to determine to participate in the national industrial relations system. We took a prudent approach.

While the overall shape of the national system framework has been evolving for some time it is only with the introduction of the Commonwealth's Fair Work Amendment (State Referrals and Other Measures) Bill that the final piece of the jigsaw puzzle is now in place.

That bill shows us how it is that referrals by the States will be accepted by the Commonwealth to establish a truly cooperative national system.

The Commonwealth bill also establishes how the transition to the new system will operate for the thousands of private sector employers and their employees who are the subject of this referral.

Furthermore, we have been able to observe the initial operation of the Fair Work Act.

The decision of the Government to participate in the national industrial relations system was made after it was certain what laws would be in place in the national system.

It is also apposite at this juncture to make a few comments about the modern award system being created as part of the transition to the Fair Work laws.

These modern awards are being created by the Australian Industrial Relations Commission.

The dimensions of the task being undertaken in this process should not be underestimated.

The Commission is consolidating literally thousands of industrial standards into approximately 120 new awards.

The changes to pay rates, leave entitlements and employment conditions are quite significant in some industries and occupations.

I am satisfied that the Commonwealth laws now include a range of measures which will ameliorate the transitional difficulties that some commentators have associated with the award modernisation process.

First, employers and employees affected by this referral will, by and large, retain their State award entitlements for at least one year.

There are exceptions to this—all employees will be entitled to the benefit of the new National Employment Standards and Fair Work Australia will be able to periodically adjust these conditions.

Second, the transition to modern awards will be managed by Fair Work Australia over a full five-year period to 2015.

This will give employers and employees a reasonable period to adjust to the new awards.

Take home pay orders will be able to be made by Fair Work Australia in order to ensure that no existing employees will suffer a reduction in net pay.

Finally, Fair Work Australia is fully empowered to adjust the scope of modern awards throughout the transitional period to ensure that any unforeseen ambiguities are properly resolved.

Another area of concern to this Government is the way in which the pay and conditions of low paid workers are adjusted.

Low paid workers are to be found in a diverse range of industries retail and hospitality, child care, cafes and restaurants and many others.

Workers in these industries are most likely to be women, young people, recently arrived migrants or casual employees; often the lowest paid workers belong to several of these categories of worker simultaneously.

It is well established that these workers strongly rely on existing awards and have difficulty bargaining for enterprise agreements.

There are a number of mechanisms in the Fair Work system that will particularly assist low paid workers.

I will refer to two in particular.

First, the Fair Work system incorporates ten legislated minima, called the National Employment Standards.

These Standards provide a range of conditions that apply to all employees in the Fair Work system, including maximum weekly hours, personal/carer's leave, public holidays, parental leave, redundancy pay, and so on.

These National Employment Standards provide the 'floor' of the Fair Work system, and can't be avoided.

Second, the Fair Work system provides special provisions to assist low paid workers to bargain.

The Fair Work Act allows low paid employees working for two or more employers to bargain together so, for example, employees of a group of child care centres could bargain for a single agreement with their employer or employers, if Fair Work Australia authorises them to do so.

The Act also provides for Fair Work Australia to assist the bargaining parties in whatever manner it considers appropriate.

The key strength of these provisions is that they recognise the workplace reality that, in some industries, bargaining is difficult.

Workplaces such as childcare centres, cafes, small shops and hairdressers have not been prominent in the bargaining stream so far.

These provisions give employees in these kinds of workplaces a new and unprecedented opportunity to bargain with their employers.

Employers get a new opportunity to improve workplace productivity, and their employees get a chance to improve their pay and conditions.

While the New South Wales Industrial Relations Act has worked well to provide an industrial relations framework that is fair, just, efficient and productive, the Fair Work laws provide similar outcomes.

The Fair Work system is based on fundamental workplace relations principles that have been agreed between the Commonwealth and the States and Territories.

These fundamental principles are the basis upon which the national system is built.

They are:

- a strong, simple and enforceable safety net of minimum employment standards,
- genuine rights to ensure fairness, choice and representation at work,
- collective bargaining at the enterprise level with no provision for individual statutory agreements,
- fair and effective remedies available from an independent industrial umpire,
- protection from unfair dismissal,
- an ongoing commitment to an independent tribunal system, and
- an independent authority able to assist employers and employees within the national system.

These principles are mirrored in the Commonwealth's Fair Work Amendment (State Referrals and Other Measures) Bill.

The principles are also established in the referring legislation of each of the other participating States.

They are also set out in the multilateral intergovernmental agreement that all States participating in the national system will sign, or have already signed.

The multilateral intergovernmental agreement is a very important document.

It emphasises that the new national system will be a joint endeavour amongst the participating jurisdictions.

It commits all participating jurisdictions, the Commonwealth and the States and the Territories, to support the fundamental industrial relations principles.

Importantly, if any future Commonwealth Government seeks to introduce an amendment to the Fair Work Act that would undermine the fundamental workplace relations principles that issue will be able to be debated at the Workplace Relations Ministerial Council.

If necessary, a vote of the Council will be taken on whether the amendment or proposed amendment undermines the principles.

If a two-thirds majority does not support the amendment, the Commonwealth has committed to not proceed with it.

This political commitment is reinforced in the legislation I am introducing today, and also in the Commonwealth bill that will accept State referrals.

If the New South Wales Government is of the view that an amendment or proposed amendment to Commonwealth legislation undermines the fundamental principles a proclamation may be made declaring that that particular amendment will have no effect in the State of New South Wales.

But this partial termination of the reference of powers will not affect the overall reference—that is, the rest of the national system as it operates in this State will not be affected by such a proclamation.

This mechanism permits the State to precisely identify and quarantine any objectionable amendments to the Fair Work Act.

This promotes the stability of the system whilst also providing the Government with the capacity to target WorkChoices style laws.

The consultative and deliberative arrangements in the multilateral intergovernmental agreement will ensure that the national industrial relations system evolves in a manner consistent with the fundamental principles of that system.

All the referring States, together with the Commonwealth and the Territories, are committed to working together to ensure that the new national system works effectively for all private sector employers and employees.

I can inform members that New South Wales and the Commonwealth are close to finalising arrangements that will underpin this cooperative relationship.

The Commonwealth has agreed that seven members of the New South Wales Industrial Relations Commission will be appointed to positions in Fair Work Australia, the tribunal that administers the Fair Work Act.

Three of these members will work in Fair Work Australia on a fulltime basis, four on a part-time basis.

All will maintain their membership of the Industrial Relations Commission.

This will provide a significant boost to the membership of Fair Work Australia in New South Wales after the membership of its predecessor, the Australian Industrial Relations Commission, was eroded by the Howard Government.

It will ensure that the skills and knowledge of State tribunal members continue to be available to employers and employees throughout New South Wales.

It also facilitates the establishment of Fair Work Australia in the vital industrial centres of Newcastle and Wollongong where Fair Work Australia will share premises with the Industrial Relations Commission.

There will also be considerable cooperation between the Commonwealth and New South Wales in the provision of education and compliance services.

Inspectors from New South Wales Industrial Relations and the Fair Work Ombudsman will work together to deliver information and educational services to the workplaces of New South Wales.

State inspectors will be trained and dual-badged as inspectors under the Commonwealth's Fair Work Act 2009.

Currently, the agencies are preparing an educational program which will be delivered in a variety of ways to employers in this State.

This will ensure, as far as is practicable, that businesses are well equipped during the transition to the new national system.

I am advised that the program will particularly focus on unincorporated employers who are the subject of this bill.

Employers in regional areas of New South Wales will also be a key target for this program.

I now turn to detail the major provisions contained within this bill concerning the operation of this referral of power. The major elements of the bill are:

- the creation of fundamental workplace relations principles in clause 4, reflecting those principles I have described earlier;

- the creation of an initial reference of powers, a referral of the power to amend the referred laws and a referral of power to make transitional laws about the referred matters;
- the exclusion of a specified range of matters in clause 6; and
- the process for the termination of the reference in clauses 7 to 9 of the bill.

Schedule 1 of the bill sets out the text which is required to be inserted in the Commonwealth Fair Work Act 2009 in order to effect the referral of powers.

I now turn to detail the major provisions contained within this bill concerning consequential amendments to New South Wales legislation.

Schedule 2 of the bill sets out the amendments to New South Wales law considered to be necessary to align State law with the national industrial relations system.

Schedule 2 repeals section 146A of the Industrial Relations Act 1996 and amends section 1468 of the Industrial Relations Act 1996.

In the case of the repeal of section 146A, the commencement of the Fair Work Act 2009 clearly overrides the operation of these laws. The section is, accordingly, redundant.

The amendment to section 146B will permit members of the Industrial Relations Commission of New South Wales to be nominated as dispute resolution providers in federal enterprise agreements.

This will ensure that many companies who continue to use the expertise of the Industrial Relations Commission will be able to continue these arrangements.

The implementation period in 2010, and the transitional period through to 2015, will also require a positive contribution from unions, business and employer associations across New South Wales.

In order to ensure that the Government receives comprehensive advice on the operation of this new set of laws, the Government will form an Industrial Relations Advisory Committee.

This body will provide an independent and regular source of advice to Government.

Members will be drawn from employer and employee organisations, as well as professional bodies.

This will ensure that the Government can respond quickly to any issues that arise during the implementation of the new system.

There is an unprecedented level of support for the national industrial relations system.

This significance was recognised last Friday by Australia's peak industrial organisations.

The ACTU, the Australian Chamber of Commerce and Industry and others agreed that this national industrial relations system represents a step forward for co-operative federalism.

This is indeed the case.

I am reminded that the review of industrial relations undertaken by Professor John Niland 20 years ago for the Greiner Government had, as one of its primary recommendations, that New South Wales should seek a uniform national set of laws.

More than two decades later, the future has arrived.

Today this House can heed that guiding principle from Professor Niland and from many other learned commentators.

New South Wales should be proud to take its place amongst the referring States and to contribute positively to the implementation of this new national workplace relations system.

I commend this bill to the House.

The Hon. GREG PEARCE [8.30 p.m.]: Following Federal Labor's changes to the broad framework for industrial relations, and indeed occupational health and safety laws, the Commonwealth Government and the States and Territories, except Western Australia, have agreed to the next stage of the referral of industrial relations powers in relation to the private or non-corporate sector. The Howard Government's industrial relations reforms, WorkChoices, were driven by a desire to modernise the national economy, and to remain internationally competitive as Australia moved from a manufacturing-agricultural-resources base to a knowledge economy, building on our traditional commodities and resources sectors. The goals were to provide flexibility in employment options, productivity reform and skills improvement.

The Rudd Government's Fair Work changes enacted earlier this year leave in place many of the Howard reforms that are desirable for business and workplaces in the twenty-first century. These changes,

which eliminated many of the costs and inefficiencies of the nine separate systems, were based on the Commonwealth's corporations powers, and accordingly only 85 per cent of all employees were covered. The current Fair Work system does not cover public sector workers, other than those employed in Federal agencies, or the employees of private employers, such as incorporated associations, sole traders, trusts, not-for-profits and the like. The Workplace Relations Ministerial Council has agreed to move further to national workplace laws by amending the existing Fair Work legislation to allow States to refer their powers in respect of private employees from January 2010.

The Government is seeking to have the legislation dealt with on an urgent basis to facilitate the 1 January commencement. Under the proposed arrangements all New South Wales employers, other than State Government departments and local councils, will come under the Federal Fair Work legislation. National unfair dismissal, minimum wage and award conditions will replace New South Wales employment law. The legislation will maintain the existing State-based industrial relations system for New South Wales public sector employees except employees of State-owned electricity, gas and water companies, who will move to the Federal system.

Fair Work Australia will open offices in the Illawarra and the Hunter, and inspectors from the New South Wales Office of Industrial Relations will also work with the national regulator, the Fair Work Ombudsman, for a transition period of 3½ years, with Federal Government funds of \$16 million to assist in education and transition. The workload of the New South Wales Industrial Relations Commission, which decreased significantly after the Howard Government's WorkChoices reforms limited its powers to disputes involving public servants and unincorporated businesses, will be further reduced. Seven members of the New South Wales Industrial Relations Commission will be appointed to the national tribunal, Fair Work Australia, with the Commonwealth paying their salaries. The New South Wales commission will continue to operate, hearing only public sector and local government disputes, as well as workplace safety matters.

There are strong arguments for this legislation. The complexity and inconsistencies continue between existing State systems covering non-corporate employees, including significant additional compliance costs and inconsistencies with Federal coverage. For example, the case highlighted in the *Daily Telegraph* a couple of months ago by a Bateman's Bay mum-and-dad business that was still under the State system and open to the old regime of unfair dismissal claims, supports arguments for the remaining private sector powers to be covered under the national system. The New South Wales Government's referral of its industrial relations powers covers half a million or so private sector employees.

The New South Wales Liberal Party and The Nationals support national coverage for employees of corporations and are on the record as criticising the complexity and inconsistencies between existing State systems covering non-corporate employees, which cause problems for businesses operating across State borders. The New South Wales Liberals and The Nationals support the retention of State jurisdiction for the New South Wales public sector and we have said that we will retain the State Industrial Relations Commission, although we will explore ways to integrate the various tribunals to reduce complexity, duplication and cost.

Whilst acknowledging that a national system is better than a patchwork of varying State systems, the Federal Coalition opposed the Federal referral legislation and was critical about its implementation, including lack of consultation with stakeholders, the time frame for the commencement of the Federal scheme, and the process, specifically the extent to which the Federal bill delivers control of the national system into the hands of State governments by way of the two-thirds majority required for changes. The Federal Coalition was concerned about the terms of the intergovernmental agreement that if even one State or Territory believes that an amendment undermines the fundamental workplace relations principles then that amendment will not proceed unless it is endorsed by a two-thirds majority of States and Territories. The Federal Coalition argued that the Federal bill creates a potential situation where State governments would have an active power of veto over amendments or be able to pressure the Commonwealth into amending the Fair Work Act.

We have consulted with a number of industry groups. Industry groups have been critical of the lack of consultation in the lead-up to the introduction of the Federal bill and the tight time frame for the commencement of the system. For example, the Australian Chamber of Commerce and Industry is supportive of a Federal system but critical of elements of the agreement between the States and Commonwealth and the proposed legislation. The New South Wales Business Chamber is supportive of a referral of New South Wales industrial relations powers to the Commonwealth but notes the lack of consultation with industry groups. The Australian Industry Group supports the referral of all State industrial relations powers to the Commonwealth. However, the group believes the Federal legislation, as proposed, could end up being a problem if issues arise with the legislation and vital amendments cannot be made. The initial approach of the Australian Industry Group was that it would have preferred that the Federal legislation not proceed in its current form.

The New South Wales Farmers Federation is strongly in favour of handing over the State industrial relations powers to the Federal Government. It is much happier with the Federal award and it notes particularly the changes in relation to unfair dismissal. Interestingly, the Local Government and Shires Associations have written to us and not expressed any comment at all about the fact that employees of local government and shires will remain in the State system. However the Local Government and Shires Associations have complained that those associations will continue to be in the State system and they want to move to the Federal system for their own employees. Perhaps that tells us a little about their views on the legislation. The Council for Small Business is a fairly good example of what business is doing in trying to move on from the period in the past when there was a lot of dispute over industrial relations and workplace reform. It is in favour of the referral and is being practical and doing something about it. The council has an extensive program of education and assistance for its members. The New South Wales Liberals and The Nationals do not oppose this legislation. Indeed, we encourage the Government to complete the rest of the package, including the occupational health and safety harmonisation.

Ms LEE RHIANNON [8.38 p.m.]: The Industrial Relations (Commonwealth Powers) Bill 2009 hands over to the Commonwealth the power to legislate on industrial relations in the unincorporated private sector in New South Wales. It paves the way for a national industrial relations system for the private sector based on the Fair Work Act. Let us be clear about this: It is a major move for a State government to refer its powers over such an important area of law. It is not a decision to be taken lightly and the Greens will support this decision to refer powers only if it means that workers in New South Wales will not be worse off. This is a key test for the Greens in approaching this bill. It is not a theoretical test of whether power over industrial relations laws should lie at a State or a Federal level, but a test of whether workers and communities in New South Wales will be materially worse off as a result of the referral.

Ultimately we are talking about real people and their real conditions at work. The Greens are informed by the following values when considering workplace laws: the creation of safe workplaces and sustainable communities to protect our environment and ensure a healthy economy; that all people have the right to pursue their wellbeing, conditions of freedom and dignity, economic security and equal opportunity; that working people have the right to be involved in decisions about their work; and that free, independent and democratic unions are an essential pillar of a civil society and that unions can engage in industrial actions, including strikes. The bill refers to the Commonwealth the power to make laws with regard to the unincorporated private sector, the power to change those laws and the power to make transitional arrangements that concern affected employees and employers.

The unincorporated private sector bill includes all employees and employers in the private sector, including employees working for not-for-profit organisations. This covers a huge number of workers, an important segment of whom are social and community services [SACS] workers, who are largely women who are often on low pay with poor working conditions. Last week an article in the *Sydney Morning Herald* indicated that half a million workers employed by small businesses in New South Wales would be shifted to the Federal system if this bill were passed. State public service workers and workers in the local government sector would remain under the State system. It is a real disappointment that workers in State-owned corporations are not carved out from this referral. It means that workers in the water, rail and port sectors, among others, will remain under the Federal system. I understand that the bill maintains the capacity of the New South Wales Government to influence the development of the national system by allowing it to withdraw the referral of powers, allowing referred employees and employers to fall back into the New South Wales system.

The bill will also enable the Government to terminate the amendment reference—that is, to prevent amendments to the Fair Work Act flowing on to referred employees and employers. I understand that, if the amendment reference were terminated, the unamended Fair Work Act would remain in place. The Greens believe this is an important safeguard when referring powers to the Commonwealth. The Greens recognise that the current New South Wales Government has undertaken significant negotiations with the Commonwealth Government about this referral of powers with a view to getting a good outcome for workers in New South Wales. I place on record that the Attorney General, and Minister for Industrial Relations passed me a note that states that the Government cannot carve out the SACS as they are already in the Federal system. I have received different advice, but I appreciate that these days the Minister is ready and available to talk about such things. I look forward to clarifying that matter.

I understand that to this end the Commonwealth Government has agreed as part of this move to appoint seven members of the Industrial Relations Commission to Fair Work Australia, working across five full-time positions; to enter into a multilateral intergovernmental agreement that provides that all major changes to the

Fair Work Act require the support of two-thirds of governments participating in the system; to fund a joint education and compliance campaign between the Fair Work Ombudsman and the New South Wales Office of Industrial Relations; and to open Fair Work Australia offices in the Illawarra and the Hunter. These are positive concessions from the Federal Government but the key question for the Greens remains: Will these concessions outweigh the potential loss of rights and conditions for workers in industries affected by the referral?

The New South Wales system is far from perfect, but it provides robust protections and it has stood the test of time for employers and employees alike over its 100 years of operation. It provides a strong regulatory structure for workers, unions and businesses. The Greens believe that in many ways it is superior to Fair Work Australia, and that is why we are reluctant to support moves that would shift workers under the Federal system. The Federal Fair Work Act did not completely overturn WorkChoices—something that we need to keep in mind in this debate. The Greens support aspects of the system, particularly provisions supporting collective bargaining, including good faith bargaining provisions and the low-paid bargaining stream and new pay equity provisions.

It is clear that Federal Labor has not really shaken off WorkChoices; in fact, it has accepted in large part the fundamental ideological shift made by the Howard Government to leave behind conciliation and arbitration, along with the role of worker and employer representatives in that system. I acknowledge the great work done in this area by my Federal Greens colleagues, led by Senator Rachel Siewert. Federally, the Greens campaigned to end the Howard Government's punitive WorkChoices industrial relations system. The Greens helped to ensure the safe passage of Federal Labor's Fair Work system, and Senator Siewert secured significant amendments to the Fair Work Act, including that the cut-off definition of a small business for the purposes of unfair dismissal provisions be set at 15 and not 20; the right of parents of children with disabilities to request flexible working arrangements; continued discussion over how the unfair dismissal code will operate, and a review of individual flexibility arrangements, an award modernisation process and employment law services; and the right to request flexible working hours. The removal of conscientious objection certificates was also included in those achievements.

One of the key sectors affected by this referral of powers is social and community services workers. Eighty-seven per cent of SACS workers are female and many are employed on low pay and experience poor conditions at work. There is a large turnover in the industry, in no small part due to unfair wages and poor conditions. The Australian Services Union [ASU] has managed to secure an agreement with the Federal Government that will see the social and community services sector as a test case for pay equity under the Federal system. Recently the ASU in Queensland ran a successful pay equity case and it is hoped that the outcomes of that case will flow on to SACS workers nationally.

As set out in the heads of agreement between the Federal Government and the ASU, the ASU has managed also to secure significant protections for its members in relation to unfair dismissal, recognising the particular difficulties faced by community sector employees who are vulnerable to having serious complaints made against them by dissatisfied clients; and resolution of disputes whereby the Federal Government agreed to require Federal Government funding recipients to provide as a minimum genuine dispute resolution mechanisms. I have consulted Sally McManus, Branch Secretary of the New South Wales and Australian Capital Territory branch of the Australian Services Union, who is wholly supportive of the referral of powers. I congratulate Ms McManus and the ASU on their work in securing these protections and their commitment to a Federal pay equity case. The Greens will follow closely this important and historic case.

The Greens have also been approached by the Local Government Association of New South Wales and the Shires Association of New South Wales, which expressed serious concerns about how this bill has dealt with employees of these organisations—namely, that the staff of both associations would be deemed to be local government sector employees under clause 6 (f), which would change the current status of those employees from being under Federal industrial relations jurisdiction to being under State industrial relations jurisdiction. The associations state:

The associations note to date there has been no consultation in relation to this aspect of the proposed legislation.

That is disappointing. When the Minister replies to debate on this bill I would like him to respond to those concerns, as I understand from earlier informal discussions that there has been a shift in this area. I ask also for this to be included in any timetable of ongoing consultation with the Local Government Association of New South Wales and the Shires Association of New South Wales. Obviously it is important for those organisations

and it would be informative for members in this House. As I said earlier, the Greens are concerned about this bill. We believe that Federal Labor has not gone far enough to restore workplace rights and conditions and that it has allowed remnants of WorkChoices to live on.

Having said that, the Greens understand that a majority of workers who stand to be affected by this referral are social and community services workers. Their union, the Australian Services Union, has secured an important and groundbreaking agreement with the Federal Government to provide specific protections regarding unfair dismissal and dispute resolution, and to run the first national pay equity test case that is likely to lift wages and improve a number of conditions. Lifting wages in this sector and ensuring pay equity is a key outcome and one the Greens would dearly love to see come to fruition. All members in this place recognise its importance. On this basis the Greens will not oppose the bill, but we will certainly monitor it closely to ensure that it delivers better outcomes for relevant workers, and that no workers in this State are worse off.

The Hon. HELEN WESTWOOD [8.49 p.m.]: The Industrial Relations (Commonwealth Powers) Bill 2009 elevates measures to address the growing gender pay gap to a national imperative. I welcome the Australian Government's commitment to tackle pay inequity with renewed vigour and encourage a collaborative approach through the national industrial relations system. Over the past two years the industrial relations landscape has changed more than we could have imagined. We could not have hoped that the framework of laws and institutions that honour best employment practice and fairness in New South Wales would become part of a national system with aligned objectives. As the characteristics of the national and international economies change and the conditions of our social life change, we must reinvent the institutions to ensure basic principles can emerge in new settings.

One area that has remained stagnant internationally and that persists in Australia is inequality of pay on the basis of gender. The World Economic Forum's annual Global Gender Gap Index for 2009 showed that on the critical measure of labour force participation of women, Australia has fallen from 40 to 50 in world rankings; and on the measure of wage equality for similar work, Australia ranks only sixtieth in the world. It is with confidence today that I commend the Commonwealth Government for creating a national industrial relations system that offers new avenues to redress the disparity. I am confident that the developers of the new system have seriously considered the views and experience we have developed from running our fair and balanced industrial relations system for over 100 years.

The key features of the new national system provide avenues for women workers to achieve both the opportunity to fully participate in the workforce and to seek equal pay. The new Fair Work system contains unpaid parental leave entitlements that reflect those operating in New South Wales. Employees are entitled to 12 months unpaid parental leave associated with the birth or adoption of a child. Under the national employment standards, which commence on 1 January 2010, parents will also have the right to request a further 12 months unpaid parental leave. The Commonwealth Government has also taken a groundbreaking step by commencing measures to introduce a national paid parental leave scheme in 2011.

Paid parental leave is internationally recognised as conducive to greater attachment to the workforce for women. For parents, especially women, it means maintenance of employment skills and pay levels, which are all intrinsic to reducing financial dependence and pay inequalities across the life cycle. The benefit is also significant for business. Improving the workforce attachment of parents means better staff retention and a greater pool of potential employees from which to recruit. This is an important step in arresting the slide of growing wage disparity and improving the participation of women in the workforce.

The Fair Work Act also allows employees and employers to make individual flexibility arrangements to help balance work and family responsibilities. The new right to request flexible work provisions will help employers and employees to make arrangements to help employees meet their family commitments while also meeting the needs of the business. It is important to remember that the New South Wales Government has a long history of leading the way in policy development on pay equity in Australia. New South Wales has represented the interests of vulnerable workers, particularly women and low-paid workers, through its industrial relations laws and the rigorous dedication of the Industrial Relations Commission of New South Wales.

The New South Wales Industrial Relations Act 1996 contains important provisions designed to advance equal remuneration for female-dominated occupations. In 2000 the New South Wales Industrial Relations Commission made a groundbreaking Equal Remuneration and Other Conditions Principle, which provides an avenue for unions to seek variations to awards by establishing that pay rates are undervalued on the basis of

gender. The principle was momentous in that it set the precedent for other States to develop their own pay equity principles. We are now developing momentum for another significant precedent in the pursuit of pay equity.

The Deputy Prime Minister announced on 4 November 2009 that under a national system the Australian Government will support the first test case on pay equity under the Fair Work Act for community service workers. The Australian Government has agreed to support Fair Work Australia in developing an equal remuneration principle for the Federal jurisdiction. As previous members have mentioned, the community services sector is highly feminised, with nearly 90 per cent of its workers being women, most of whom rely on the minimum award wage of less than \$20 an hour. Many women working in crisis support services; refuges for homeless men, women and families, and particularly refuges for women escaping domestic violence; in aged care facilities; neighbourhood centres and new centres will now have the opportunity to test their claim of undervaluation in a national arena.

I commend Sally McManus and her team at the New South Wales and Australian Capital Territory branch of the Australian Services Union. As someone who formerly worked in the community services sector, I know that the workers are looking forward to the outcome of the test case. They are pleased with the leadership of the Australian Services Union and the Federal Government's willingness to address the issue of pay equity for workers in the community services sector. Employees will benefit from the security of the modern industrial relations system, such as the right to a living wage and the right to seek redress for unfair dismissal. That support for workers in these complex areas will in turn allow them to provide better services for those reliant on their care.

The provisions of the Fair Work Act provide a number of avenues to pursue a pay equity case in the national system. Under section 302 of the Act an employee, union or the Federal Sex Discrimination Commissioner can apply for an equal remuneration order. The principle of equal remuneration for work of equal or comparable value is incorporated in the modern awards objective. This makes it necessary for Fair Work Australia to take pay equity into account when considering the operation of the safety net through modern awards. The principle of equal remuneration for work of equal or comparable value is also incorporated in the minimum wages objective, requiring its consideration by Fair Work Australia when setting or varying minimum wages.

Low-paid bargaining is another avenue that enables multi-employer bargaining for low-paid employees who have not historically had the benefits of collective bargaining at the enterprise level. The New South Wales Government is pleased to participate in a national industrial relations system that is fair and balanced and promotes the rights and entitlements of women and their families at work. I assure members that as opportunities arise the Government will continue to work cooperatively with the Australian Government in pursuit of pay equity. I commend the bill to the House.

The Hon. IAN WEST [8.57 p.m.]: I support the Industrial Relations (Commonwealth Powers) Bill 2009. I shall comment particularly in regard to low-paid workers and bargaining for low-paid employees. Looking after low paid workers is the primary concern of the New South Wales Government and the New South Wales industrial relations system. Low-paid workers are found in a diverse range of industries such as retail and hospitality, child care, cafés and restaurants, and the commercial contract cleaning industry. Workers in these industries are mostly women, young people, people of non-English speaking backgrounds, recently arrived migrants, and casual and part-time employees—those with the least amount of bargaining power in the workforce.

Until now the New South Wales industrial relations system has looked after these people by means of a system of common rule industry awards. As one who has spent some time in the New South Wales system, I cannot but lament in many ways the demise of the New South Wales industrial relations system and the common rule industry awards that have looked after people who are in the least powerful bargaining positions in the workforce. However, the system is changing and we are now moving into a Federal system. It is important that we come to grips with that and make the best of it.

In the New South Wales industrial relations system, common rule awards were updated regularly by means of a review process prescribed by section 19 of the Industrial Relations Act as well as by regular test cases engaged in from time to time by parties to industrial agreements. That system has been maintained and operated by an independent tribunal comprising members with a wealth of industrial experience from employer

and employee sectors, registered industrial organisations under the Industrial Arbitration Act of New South Wales and people who negotiated common rule awards for the benefit of people such as those engaged in the cleaning, hospitality, childcare and retail industries.

The Industrial Relations Commission of New South Wales and the New South Wales Government have a long history and a long-held interest in ensuring that low-paid workers have ready access to pay and conditions that are fair, just and up to date. To that end, the New South Wales system has involved itself in important test cases, such as the 2006 secure employment test case, the 2005 family provisions test case, and the annual State Wage cases. The New South Wales system has been the oldest and best system of industrial relations in Australia. It is important to examine how the Fair Work Australia system will deliver to low-paid workers and those with the least ability to bargain for the things they need and from which they may benefit.

There are three principal ways in which the Fair Work system will deliver for low-paid workers: firstly, by legislated minimum standards; secondly, through modern awards; and, thirdly, by encouraging bargaining and providing special bargaining rules for low-paid workers. Those three elements provide an integrated system of industrial relations and regulation that delivers basic community standards as well as particular terms and conditions that are appropriate for a particular industry and, ultimately, for a particular workplace and work area. The Fair Work system incorporates 10 legislated minimums, which are referred to as national employment standards, that provide a range of conditions that will apply to all employees in the Fair Work system: maximum weekly hours, personal care leave, public holidays, parental leave, redundancy pay, et cetera.

National employment standards provided the basis for the Fair Work system and cannot be avoided or contracted out of. While the national employment standards are a beginning, they are built on by the next element of the system: modern awards. The process of making modern awards has been underway since late 2007, early 2008. Legislation providing for the award modernisation process was among the first introduced by the Rudd Government, along with legislation to abolish Australian workplace agreements. That process considered existing New South Wales awards and incorporated many of their conditions into new modern awards. Personally I think there is a long way to go with that, but clearly there is an intent and people with the right intent: to ensure that modern awards come some way towards common rule awards that exist in New South Wales for low-paid workers. Obviously, as the name suggests, common rule awards will cover everybody who works in low-paid industries, such as contract cleaning. That is a big difficulty in the Federal arena and is something that no doubt the parties involved will be grappling with in their efforts to do something about it.

The award modernisation process has a long way to go. When it concludes, either at the end of this year or some time in 2010, hopefully the result will be a comprehensive safety net of industry awards that incorporate conditions from past Federal and State awards. Fair Work Australia will review modern awards in two years. Hopefully when that occurs, it will be done with the intent of ensuring that nobody is left behind, particularly those with the least bargaining power in the workplace. The Fair Work system provides special provisions to assist low-paid workers to bargain. Those provisions are being examined as I speak with a view to strengthening them.

The Fair Work Act allows low-paid employees who are working for two or more employers to bargain together. The creation of those types of industrial provisions is of absolute importance. For example, employees of a group of childcare centres could bargain for a single agreement with their employer or employers if Fair Work Australia authorises them to do so. That authorisation process will be extremely important in ensuring that there is some semblance of an ability to collectively bargain. The Act also provides for Fair Work Australia to assist the bargaining parties in whatever manner it considers appropriate.

The key strength of those provisions is that they recognise the workplace reality that in some industries bargaining is not just difficult but impossible because of power imbalances. Places such as childcare centres, cafés, small shops, commercial cleaning organisations, hairdressers, et cetera, have not been prominent in the bargaining stream at the State or Federal levels so far. The provisions of this bill give low-paid employees a new and unprecedented opportunity to bargain with their employers. Employers will have a new opportunity to improve workplace productivity and their employees will have a chance to improve their pay and conditions.

Taken together, all the provisions of the Fair Work Act comprise a good deal for low-paid workers in the current environment. The integrated and comprehensive Fair Work system of legislated minimum conditions, a safety net of modern awards and unprecedented opportunities to bargain will mean that low-paid workers will not be left behind. I commend the bill.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, and Vice President of the Executive Council) [9.08 p.m.], in reply: I thank all members who contributed to the debate. On 1 January 2010, subject to the passing of complementary legislation by the Federal Parliament, New South Wales will begin its partnership with the Commonwealth and other States, except Western Australia, under a single national industrial relations system. This will be a historic event. For the first time, all parties to the national system will be brought together, thereby providing the benefits of stability and uniformity within a fair, modern and flexible system.

The national system will be characterised by cooperation between the Commonwealth and the State, with New South Wales actively participating in the system. The cooperative nature of the new system will ensure that the interests of employers and employees in New South Wales will be properly considered both now and in the future. Australian employers and employees will benefit from equity in employment conditions and arrangements, and that provides for the first time a level playing field for business across the nation. Every private sector employer and employee in New South Wales will be included in the national system.

I note the issues raised by the Hon. Greg Pearce, particularly the claims by a number of stakeholders, in relation to concerns that an objection from one State can lead to referral to the Workplace Relations Ministerial Council with respect to any amendments, requiring a two-thirds majority of the council in order for the changes to be proceeded with. Rather than that being seen as a weakness, it is a strength of the new national system because it will promote stability and prevent the system from descending into the kind of system that preceded this national system, that is, the old WorkChoices scheme. We need to be clear on where the scheme might otherwise end up in the event that that provision for a two-thirds majority was not contained in the intergovernmental agreement. It would lead to a situation where effectively the winner takes all. There is no cooperation between the various jurisdictions, and extremism will once again re-enter the industrial relations landscape.

I make it clear that we have no intention of allowing any employees who are referred as a consequence of these arrangements to be party to such an arrangement. If necessary, we are prepared to exercise the powers that we have available to us to prevent that from occurring. It is not a forlorn threat; we already know that a number of Coalition members yearn for the days of WorkChoices. What did Wilson Tuckey say? "The only thing wrong with WorkChoices was the name". Peter Slipper said there was nothing wrong with WorkChoices, and the new Leader of the Opposition, Tony Abbott, said that there were a lot of good things in WorkChoices and people should not forget it. I think many of us would be prepared to forget it, and forget it for good.

Commencing on 1 January 2010, 10 national employment standards, together with modern awards, will form a strong, simple and fair safety net within the national system. The standards will apply to all workers in New South Wales, whether or not they are covered by a modern award. These entitlements include set maximum weekly hours of work, annual leave, long service leave, public holidays, notice of termination, and redundancy pay. The other standards include the right to request flexible working arrangements, parental leave, personal/carers leave, compassionate leave and community service leave. These are comprehensive protections, restored to Australian workers after the disaster of the WorkChoices law. However, these protections will not impede flexibility.

Each worker will have the ability to enter into an individual flexibility arrangement with their employer that will form part of their terms and conditions of employment under the modern award. These individual flexibility arrangements will be subject to a better-off overall test to ensure fairness. Additional protections provide for Fair Work Australia to make a special take-home pay order to compensate any employee whose pay may be impacted by the move to a modern award. I believe these comments and details adequately respond to some of the issues raised by Ms Lee Rhiannon in her contribution.

Employees of employers who are sole traders, partnerships, trusts or non-trading corporations that were previously in the State system will join the national system on 1 January 2010. There are special arrangements in place for these employers and employees to allow a smooth transition into the national system. The wages and conditions contained within their current New South Wales State awards will continue to apply for a period of 12 months from the referral commencement. After that time workers will move onto the appropriate modern award. Transitional arrangements may be applied for any workers who face any significant decreases to their pay. Both Industrial Relations New South Wales and the Fair Work Ombudsman will continue to provide information, advice and assistance to workers and employers about their pay and conditions.

I will respond to two issues raised by Ms Lee Rhiannon. First, she was concerned that State-owned corporations were not excised from the referral. My response is that it is not open to the New South Wales

Government to carve State-owned corporations out of the referral because they are not being referred across. They are already covered by the existing Commonwealth laws, and the Commonwealth has made it clear that, with the exception of one corporation, it is not prepared to excise any of the other bodies, particularly the utilities sector, that are within the Federal scheme. Secondly, Ms Lee Rhiannon referred to concerns of the Local Government and Shires Associations. There has been progress in some discussions with the Local Government and Shires Associations, and we hope that those matters can be resolved in early 2010.

There are mechanisms that will permit local government and shires associations to be part of the national system, pending the outcome of these negotiations. I am troubled by the content of Ms Lee Rhiannon's remarks about the Local Government and Shires Associations. On the one hand, Ms Lee Rhiannon was complimentary of the New South Wales system and implied that people benefit from being in the New South Wales system; yet, on the other hand, she was concerned that we have not addressed the complaint that the Local Government and Shires Associations claim to be in the Federal system and now might be brought under the State system. She cannot have it both ways. In any event, we will, as I have already indicated, consult with the associations before finalising our position in relation to their issues. Having said all of that, I advise that this has been a lengthy process that has involved considerable discussion with the Commonwealth.

I extend my appreciation and thanks to all those who have been involved in the discussions on the part of New South Wales, both from my office and from the Office of Industrial Relations. I also thank the President of the Industrial Relations Commission, Justice Boland, for his cooperation and commentary in relation to the details of the various matters on which we sought the commission's advice. I also thank the Deputy Prime Minister, who has been so responsive to requests that were made of her in terms of securing our agreement to this referral, in particular the joint appointments and the agreements to address the issues of the Australian Services Union in relation to its pay equity case and, moreover, the commitment to ensure a regional presence of the Industrial Relations Commission and Fair Work Australia in both the Illawarra and the Hunter, as well as transitional arrangements relating to the education compliance activities by the Workplace Ombudsman and the Office of Industrial Relations. I commend the bill to the House.

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

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 returned to the Legislative Assembly without amendment.

ADJOURNMENT

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Industrial Relations, and Vice President of the Executive Council) [9.19 p.m.]: I move:

That this House do now adjourn.

ANZAC MEMORIAL

The Hon. KAYEE GRIFFIN [9.19 p.m.]: Tuesday 24 November 2009 marked the seventy-fifth anniversary of the opening and dedication of the principal war memorial in New South Wales, the Anzac memorial building in Hyde Park. For the past 75 years the Anzac memorial in Hyde Park has served as a stark reminder to the people of New South Wales of our solemn duty to never forget the sacrifices made by so many in military conflicts, nor the struggles for freedom that marked the twentieth century. Officially opened on 24 November 1934 by the Duke of Gloucester, the memorial was built as the State's principal monument to the memory of World War I following many years of planning and fundraising.

The story of the Anzac memorial begins in 1916 with the first commemoration of Anzac Day. It was quickly realised at that initial tribute to the Australian forces serving overseas that many souls would never

return and that a lasting memorial to their sacrifice would be fitting and necessary. Fundraising efforts were met with much enthusiasm during the war years, with people giving what they could to the cause. By the war's end some £60,000 had been raised towards the construction of a permanent war memorial.

The difference in opinion about design meant that numerous funds had been created in support of a variety of different options. This led the Government to introduce legislation in 1923 to consolidate these efforts with the introduction of the ANZAC Memorial Building Act. Design deliberations caused delays which led to the Cenotaph in Martin Place being dedicated in 1927, two years prior to the Hyde Park Memorial design competition, which was eventually conducted by the trustees in 1929 with Sydney architect Bruce Dellit's design winning the competition. Construction on the memorial began in 1932 with the laying of foundation stones on 19 July, a significant date, as this was the date in 1919 that the true end of the Great War was celebrated. The Treaty of Versailles had been signed in June that year resulting in victory parades and events across the United Kingdom and Australia on what became known as Peace Day, 19 July 1919. However, 11 November, the date of the actual ceasefire, persisted in people's hearts and Armistice Day, now Remembrance Day, has since become the universal day of peace.

Earlier this year the Premier announced an increase of \$750,000 per annum in the funding of the memorial commencing in 2009-10, bringing the memorial's recurrent budget to a total of \$1.25 million. Those additional funds will enhance security by the provision of guards whilst the memorial is closed at night and also ensure the trustees can fund regular maintenance. Curatorial expertise will be funded for the first time to aid in the preservation and care of the memorial's collection of commemorative and historical memorabilia. Recent refurbishment work saw \$6 million worth of repairs and upgrades to the memorial, with essential conservation of the building's fabric being carried out by the New South Wales Government Architect's Office over the past 13 months.

The work included: refurbishment of the interior services and spaces to provide a high-quality, permanent memorial exhibition and a small travelling exhibition, education and presentation room in the former Assembly Hall; the discreet insertion of a lift to provide elderly and disabled access between the basement, the ground floor and the podium level Hall of Memory; upgrading of offices and amenities for memorial staff; restoration of remaining original offices and counselling rooms as an important and unique window into the past care and comradeship of returned services personnel; successful resolution of longstanding water leakage problems in the building which date back to the early days of the memorial; and internal repairs to the dome ceiling containing the famous Stars of Memory. The Stars of Memory play an important symbolic and practical part in the memorial's story.

During 1933, in the middle of construction of the memorial building, funds ran short. So in order to complete the building of the memorial the trustees accepted a proposal that members of the public could contribute by purchasing a star for two shillings, or 20¢ each. While not all of the stars were sold at the time, the scheme ensured that sufficient funds were raised in order to secure the completion of the memorial. Some 120,000 stars cover the ceiling in the 26 metre high Hall of Memory, representing not only all the men and women from New South Wales who signed up to serve in World War I, but also the support from the community who purchased stars to ensure the memorial was finished. The seventy-fifth anniversary event on 24 November this year echoed this tribute when guests released Stars of Remembrance into the Well of Contemplation. Each Star carried the name of one of the more than 100,000 Australians who have died serving their country.

The ANZAC Memorial Building exemplifies two defining traditions of this country—that of the ANZAC story and spirit and also the importance of volunteering and making sacrifices to provide for the needs of others. I thank the trustees of the ANZAC Memorial Building, past and present, for their efforts in up-keeping the ANZAC Memorial as a lasting memorial and fitting tribute to Australians killed in wartime whilst also providing the means for better understanding for younger generations of the sacrifices of Australian men and women who have served in the armed forces.

HOSPITAL FUNDING

The Hon. JENNIFER GARDINER [9.24 p.m.]: It is a year since the special commission of Inquiry into New South Wales hospitals presented its report. The chairman of that inquiry described the New South Wales hospital system as on the brink of collapse. It is certainly not a happy anniversary. For starters, a recent report released by the Australian Institute of Health and Welfare shows that New South Wales spends the lowest amount of money of all States per person on preventative health. We all know there needs to be a greater

emphasis on preventative health for many reasons, including alleviating long-term pressure on the New South Wales Health budget. Recently the Legislative Council budget estimates confirmed debts of area health services of nearly \$70 million across the State: South East Sydney/Illawarra, \$12 million outstanding; Sydney West, \$14.3 million; North Sydney Central Coast, \$15.2 million; North Coast, \$7.4 million; Greater Southern, \$10.5 million; and Greater Western, nearly \$10 million.

All sorts of strife has been experienced across the State in our hospitals, including cuts of up to 400 staff on the North Coast. A lot of concern has been expressed about the changeover from senior experienced nurses to less experienced nurses on lower salaries because of the implications for patient safety. Mr Garling said we need a hospital system that is patient-centred. The new emphasis by the State Government on relatively junior nurses is of great concern and seems to fly in the face of Mr Garling's core recommendations on patient safety. Last month the Deputy State Coroner, Mr MacMahon, recommended that NSW Health should increase funding for mental health beds and that the Greater Southern Area Health Service, for example, had just over half the mental health beds it needs according to clinical guidelines. Mental health services were also a cause of concern to Mr Garling.

Recently two operating theatres at the Shoalhaven hospital were forced to close when the medical air compressor failed, a problem that had been going on for about a year. There are many other examples of outdated equipment failing in our hospitals—another matter referred to by Mr Garling. Professor Wolfgang Kasper, of the University of New South Wales, said that hospital care is now plagued by cost escalation, pervasive dysfunction, infighting, disgruntlement, waiting lists and poor-quality service. Without reforms New South Wales citizens are bound to face a continuing deterioration in the quality of hospital care and will before long lose their traditional free access to hospitals.

To mark the anniversary the New South Wales Australian Medical Association [AMA] conducted a survey Garling report one year on. A survey of New South Wales doctors showed that many doctors believed the changes to the system have been trivial. It found that three-quarters of doctors say hospitals have not become a better place in which to work—a very sad finding. It is hard to recruit doctors, nurses and other clinicians if there is a bad workplace atmosphere in our hospitals. The survey said that doctors made comments about staff badges that have moved from the hip to the chest and very little else in real changes to patient care. They commented that there was still no involvement of clinical staff in decision-making—another core comment of Mr Garling. Doctors spoke of token meetings where concerns were listened to but ignored anyway—a theme that occurred throughout Mr Garling's inquiry and, before that, the parliamentary inquiry into the Royal North Shore Hospital.

The survey found that many doctors felt the workplace culture had actually worsened since the Garling report was handed down. One said that people working in the public hospital system had lost hope: "People are despairing ... It is depressing and morale is low within the NSW public hospital systems, and you know Garling has not really done anything to actually improve that situation." In its report card for 2009 the AMA found that only 66 per cent of emergency department patients were seen in the recommended time and that emergency department performance in New South Wales is declining. One year on from presentation of Mr Garling's momentous report those findings are very sad indeed. There is only one way to fix it, that is, change the Government.

ASSISTED SUICIDE

Reverend the Hon. Dr GORDON MOYES [9.28 p.m.]: Assisted suicide is as old as humanity; it is not a modern phenomenon and the controversies around it are not new. The Hippocratic Oath, written by the "father of medicine", the Greek physician Hippocrates, and sworn to by new physicians for the past 2,400 years, specifically states, "I will not give a lethal drug to anyone if I am asked, nor will I advise such a plan". This was written because the temptation has always existed to end life when it is seemingly unbearable. Assisted suicide is defined as "being furnished with the means to die painlessly, either by drugs or specific equipment". Recently the press reported a dual suicide by a renowned British symphony conductor and his wife. In that case only the wife was suffering from terminal illness, but the husband did not want to live without her so they both chose death. They were legally assisted to die painlessly together by injection, surrounded by their children in a Swiss clinic called Dignitas. Ludwig Minelli, the founder of Dignitas, told *Time* magazine that business is so good that he now intends to open a chain of suicide clinics to meet the needs of British depressives, in addition to the terminally ill from all over Europe. "We never say no to anyone," he explained. So much for the concept of death with dignity.

The way suicide advocates see it is that everyone should be allowed to decide when and where his or her life ends, as long as there is a framework of safeguards to protect people who do not want to die. In some jurisdictions aid in dying is legal while suicide, whether assisted or not, is illegal. In May this year the Dying with Dignity Bill 2009 was introduced by the Greens into the Tasmanian Parliament. That bill would make it legal for terminally ill people to choose to die with medical assistance. Tasmanian church leaders naturally expressed their opposition to the bill. The Anglican Bishop, John Harrower, condemned the bill and encouraged members of Parliament to vote against it. He said:

Only God has the right to take life. Going down the pathway of euthanasia is literally a way to death, not to life for our society—and it will bring great harm.

The Catholic Church has also lobbied against the legislation. But what do ordinary people think? A recent phone survey of 1,000 Tasmanians revealed that many people point out that we do not let our beloved animals suffer when they are ill, but take them to the vet to be put out of their misery. So why, they ask, can we not extend such kindness to human beings, and put them out of their misery? The position of the mainstream Christian denominations is that they remain totally committed to the principle of the sanctity of human life and to the provision of the best palliative care for the terminally ill. They believe that modern medical science can, in the majority of cases, adequately manage pain through palliative care and medication. In the small number of cases, estimated to be less than 5 per cent, where pain is only partly alleviated, renewed efforts must go into devising better treatment and palliative care.

It is now more than 30 years since I set up, in another life, a palliative care centre both home based and hospital based. My particular concern is always for the vulnerable aged as well as the disabled of all ages. Because the profound fear of being a burden upon others is a major risk for suicide, assisted suicide must not be offered as an easy option. If assisted suicide were to be legalised there would be unbearable emotional, psychological and social pressure for so-called socially useless people to allow themselves to be killed, so that the resources they are using up could be used instead for the able bodied. There are already too many cases of elder abuse, by the young or by unscrupulous lawyers or financial advisors trying to get hold of older people's property and money. Imagine the pressure that could be used by those same people against an old person dependent upon them! The vulnerable person could be methodically and relentlessly cajoled, threatened or tricked into signing the request form for assisted suicide.

Last month, the party that I represent in this House, Family First, plus others were successful in defeating a similar bill in the South Australian Parliament. There is one such bill coming up in the Western Australian Parliament. I place on record that I will commit myself, along with others in this House, to oppose euthanasia in New South Wales if and when it is again brought before us. I believe that we must be always compassionate by protecting the vulnerable, and that that is our duty: to protect and support them. not to lead them into death.

TRIBUTE TO MICHAEL ANTHONY BECKWITH, OAM

The Hon. TONY CATANZARITI [9.33 p.m.]: I inform the House that on Saturday 15 November 2009 Michael Anthony Beckwith, OAM, was awarded life membership of the Australian Labor Party [ALP] at the Australian Labor Party State Conference. The Deputy Premier, the Hon. Carmel Tebbutt, presented this prestigious award to Mick Beckwith for his loyalty and contribution to the Australian Labor Party for the past 44 years. Mick Beckwith is a true-blue member of the Australian Labor Party and an absolute icon in the Riverina area. For more than three decades, Mick Beckwith represented local government as a councillor with Hay Shire Council. Mick was proudly elected to Hay Shire Council in September 1971. He was then elected as President of Hay Shire Council in October 1983 and held that position until September 1987. From 1990 till 1997 he was Mayor of Hay Shire Council and in 1998 he was happily elected as Deputy Mayor.

Retiring after 47 years service in the Department of Lands, Mick served a term as a board member of the Murrumbidgee Catchment Management Authority and gave valuable input in respect of land title matters, public service protocols and local government matters. Mick chaired the Hay Tidy Towns Committee in the early 1990s when Hay Shire won the New South Wales Tidy Towns Award, and to ensure the win Mick got up at 5.00 a.m. to tour the town and pick up rubbish and other material. Further, Mick was instrumental in beautifying the Hay cemetery, using many tins of paint. He has always been a staunch supporter of the New South Wales Keep Australia Beautiful Committee after Hay won the Tidy Towns Award, and he served several years as a Tidy Towns Award assessor.

For eight years, Mick was a very competent member of Murrumbidgee Electricity, formally known as Murrumbidgee County Council. He was deputy chairman for three years then chairman for one year before the council was privatised. Since meeting Mick back in the 1970s, I have never met anyone as ambitious or determined. His strong work ethics and community involvement has delivered remarkable results for the Hay community. This is truly evident given the number of committees he has belonged to. As the list of Mick's achievements and community activities is lengthy, I seek leave to have it incorporated into *Hansard*.

Leave granted.

Hay Hospital New Building Steering Committee
 Hay Days (aged hostel) Committee (Secretary at construction time)
 Hay and District Tourist Association (Publicity Officer - Honorary Tourist Officer)
 Miscellaneous Charity Workers Group (Chairman)
 Festival of the Plains Committee (Secretary)
 Hay Amateur Basketball Association (Secretary 15 years), player and referee (responsible for reviving the sport 1958)
 Hay Spastic Centre Council (Member)
 Hay Arts Council (Member)
 Drum Major, Hay Community Band
 Greater Murray Network Health Council (2 years from establishment)
 Hay Amateur Dramatic Society (Treasurer and performer)
 Hay Swimming Pool Fund Raising Committee
 Lions Club of Hay (Honorary Member)
 Rotary Club of Hay (Honorary Member)
 Hay Auxiliary Royal Blind Society (Secretary for whole period of existence)
 Salvation Army Welfare Unit
 St Vincent de Paul Society (2 years)
 One Tree Bush Picnic Races (Coordinator)
 Community Aid Panel (Chairman)
 Patrol Customer Council
 Neighbourhood Watch Committee (Chairman for several years)
 Hay Business and Development Group
 Centenary of Federation Celebrations Committee (Chairman)
 Year 2000 Celebrations Committee (Chairman)
 Sturt Sesquicentenary Celebrations Committee
 Hay Shire Cultural Activities Committee (Chairman)
 Hay Shire Employment and Development Committee
 Bicentennial Community Committee (Chairman)
 1972 Back to Hay Week Celebrations Committee (Chairman)
 St. Fergals Parish Reunion Committee (Secretary)
 Hay Shire Parks and Properties Committee (Chairman, several years)
 Hay Shire Major Developments Committee
 Hay Shire Staff and Management Committee
 Hay Senior Swimming Club (Captain and Chairman)
 Hay Sport and Recreation Council (Hon. Auditor)
 Hay Youth Club (Honorary Auditor)
 Hay Housing Applications Committee (Chairman)
 Hay Shire Health, Building and Planning Committee 1976-87
 Executive Member Western Division Group of Shires 1983-87 and 1990-97
 Hay Ride Through Hell Committee 1985-86 (Publicity Officer)
 2Hay FM community radio station (member and presenter) 1986-87
 Hay Youth Club Committee 1984-85
 Hay Delegate Riverina Promotion Committee (Tourism) 1981-83
 Hay Railway Centenary Committee 1981-82 (Secretary)
 Presentation Sister Centenary Committee 1984-85 (Secretary)
 M.I.A. Tourist Association delegate 1971-78
 Honorary Auditor for Hay Pony Club, Uniting Church, Rugby League Club, State Emergency Services Unit, and Darts Association
 Served 4.5 years in C.M.F. Promoted to rank of Corporal (accomplished instructor)
 Advance Australia Awards Committee (Co-chairman)
 Local Coordinator State Government Administration Scheme (10 years)
 Cobb & Co. Coach Committee (Chairman)
 Hay Shire Tourism Committee (Chairman)
 Hay Public School P&C Association (Secretary)
 Hay War Memorial High School P&C Association (Member)
 Murrumbidgee Users Rehabilitation Committee (MURC)

The Hon. TONY CATANZARITI: For the majority of the time in the Australian Labor Party, Mick has been either the secretary or president of his branch, the Murrumbidgee State Electoral Council and the Riverina Federal Electorate Council. He has served on almost every position available to the Labor Party with distinction. I believe Mick is a fine example of what is the heart and soul of the Australian Labor Party and his

passion and dedication is truly admirable. Over the past 40 years, Mick has been recognised with some of the most prestigious awards for his hard work. In 1972, he was awarded the Apex Citizen of the Year award; in 1990, the Order of Australia Medal; in 1991, the Hay Australian Citizen of the Year award; in 1998, the Rotary Club Paul Harris Fellowship and Freedom of the Shire of Hay. He was awarded the New South Wales Government's 40-year medal for long service and the Premier's award for Service to Senior Citizens. In 2003, he was awarded the Centenary Medal and Local Government Service Medal.

Although Mick has been retired from local government for several years now, I am still to this day receiving letters and phone calls about ideas to assist and sustain the Hay community. In commemorating Mick Beckwith tonight, I would also like to make a particular mention of his wife Alice, who has always been by his side. I applaud his character as he is seen by many as a rarity and a valuable asset not only to Hay but the State of New South Wales. Mick is a person I am proud to call a friend and on behalf of the people of the Riverina I say: Well done, Mick, we are proud of you.

SHOALHAVEN CITY COUNCIL

The Hon. DON HARWIN [9.38 p.m.]: I take this opportunity to respond to remarks by the Premier during question time in the other place last Thursday about Shoalhaven City Council. The annual report of the Department of Local Government states:

... the actual number of complaints is not necessarily an effective indicator of the seriousness of the matters raised. In some cases the council may be the subject of campaigns, usually about a single controversial issue. This can distort the council's reputation if there is in fact no maladministration on the council's part and the issues relate more to concerns about a particular decision. We generally do not investigate such issues, provided the council's decision is lawful and proper processes are followed.

That is an important quote to bear in mind. Over 12 months from 1 July 2008 to 30 June 2009, Shoalhaven City Council received a large number of arguably vexatious complaints regarding land use planning, particularly about council's consideration of development control plans. A number of those complaints addressed issues that have remained unresolved because the State Government has not approved the Shoalhaven's local environment plan, lodged over a year ago.

Strategic land use plans, of course, were also identified in the Promoting Better Practice report earlier this year as a major problem with the administration of the previous Mayor, Greg Watson, and many of the complaints are a legacy of the former mayor's term in office. Of course, on 13 September last year, Greg Watson was defeated in his bid for re-election. He was soundly rebuffed by the local community, securing just 25 per cent of the primary vote in the mayoral race against Independent Paul Green.

A breakdown of the complaints made about Shoalhaven City Council reveals that of the 75 complaints received, 58 were not deemed worthy of further investigation. This represents 75 per cent of the complaints. Only seven complaints were found to require review or even preliminary inquiry. Only one complaint was made about the council's financial management and only three of the complaints levelled were concerned with alleged mismanagement or maladministration. The Department of Local Government annual report also reveals that there was a 59 per cent decrease in the number of complaints from the previous year. This is a tremendous improvement and one that reflects positively on the changes implemented since the last local government elections.

I also note that in the 2009 Fiscal Star Financial Sustainability Review, Shoalhaven City Council is one of only three councils in the coastal urban category that has policies and management strategies that are financially sustainable. The report found that Shoalhaven City Council has a low infrastructure backlog burden and a low net financial liabilities ratio. Over the past 12 months, Shoalhaven Council has also received numerous significant awards. These accolades include a highly commended citation in the Workplace Management System category at the WorkCover Safety Awards; a runner-up certificate in the Employers of Australian Apprentices category at the Minister's Awards for Excellence; a highly commended citation for Huskisson Beach in the Litter Prevention category of the Keep Australia Beautiful NSW Clean Beach Challenge 2010; a runner-up certificate for Best Local Youth Week Program in 2009 at the Youth Week Local Government Awards; the 2009 Timber Award for Sustainable Houses at the NSW Country Division of the Australian Institute of Architects awards; and the Camping Industry Association Bronze Award in the Environmentally Friendly Tourist Park category for Ulladulla Tourist Park.

Shoalhaven City Council is currently performing extremely well. It is in a sound financial position and is subject to very few complaints of any substance. The councillors and staff do not deserve the thoughtless and

completely misinformed slur on their reputation that the Premier inflicted in the other place last week. The Premier should know better than to besmirch a council and its hardworking staff in such a manner just to make some cheap political point about an individual. I hope that next time he visits the Shoalhaven he acknowledges what an excellent job the council there is doing and what a sound position it is in financially.

MALAYSIAN LOGGING PRACTICES

Ms LEE RHIANNON [9.42 p.m.]: Brewster Pty Ltd looks like a solid Australian company with a long history servicing the building industry. The company started in Hobart in 1927 as a hardware shop. Over the decades it expanded its operations into selling a range of wood products, with outlets across the country. But these days Brewster is not an Australian company. In December 2007, a Malaysian logging company that has a notorious record for human rights abuses and environmental destruction bought it out. Brewster Pty Ltd is 100 per cent owned by Samling Global Limited. The Samling group is based in the Malaysian State of Sarawak, on Borneo, and is one of Malaysia's biggest logging companies. It is responsible for the ongoing destruction of large areas of tropical forest and it is suspected that many of its logging activities are illegal. I recently met with representatives of the plywood industry and representatives of the CFMEU to discuss these matters.

A big concern is the loss of jobs that is occurring in this country. The number of jobs estimated to be under threat from Samling is 130 at Big River Timbers, Grafton; 150 at Boral Hancock, Brisbane; 60 at Ausply, Wagga Wagga; 80 at CHH, Myrtleford; and 40 at Brown Wood Panels, Adelaide. That is about 460 jobs and it is considered 1,380 indirect jobs would also be affected. These job losses could happen quite quickly as Samling is attacking the largest part of the wood market in Australia, the formply sector.

Brewster sources some of its plywood from forests in Malaysia, with certification given by the Malaysian Timber Certification Council [MTCC]. The MTCC has a record of not recognising local people's rights and being heavily influenced by industry. The MTCC chain of custody is not closed, which means there is no guarantee that timber offered by this certification council in fact comes from one of its own forests. It is widely recognised that MTCC certification can mean that the timber has been sourced illegally. Samling oversees about four million hectares of forest concessions in Malaysia, Guyana, Cambodia, China and New Zealand. Samling has often been criticised for the systematic destruction of tropical forests in Sarawak, on the island of Borneo, one of the world centres of biological diversity and the ancestral home of the Penan people.

Bruno Manser, a Swiss environmentalist who lived and worked with the Penan, did important work with these communities in the 1980s and 1990s to help save their homelands. In 1991, I had the honour of meeting Bruno Manser and the Penan representatives travelling with him in Australia. They stayed at my home, which was a great honour, and I assisted with the campaign that they were then involved in. In 1998 the Penan indigenous people of Malaysia filed a suit against the Sarawak Government, Samling Plywood (Baramas) and Syarikat Samling Timber. In their statement of claim the Penan insisted on native customary rights over the forest given to Samling. They claimed there had been no extinction of their rights according to law, no provision for compensation and no compensation received. The Penan have a 20-year history of erecting blockades against the Samling loggers.

Samling certification was awarded by the MTCC without due consultation with the Penan people in one of the most disputed forest areas of Sarawak. Samling gained access to the now certified area by relying on the use of police and military force. It is this timber that is now coming to Australia as plywood and costing Australian jobs. Samling is extracting timber against the declared will of the affected communities and threatening one of the last remaining primary rainforests of Sarawak.

In May 2000, Bruno Manser went missing. Manser's unpopularity with the Sarawak Government and Samling Plywood is well known. As this company and the Government are known for using intimidation and violence and scare tactics, there are suspicions surrounding Bruno Manser's death. Samling Plywood is using an MTCC certification, a discredited system that is not sufficiently performance based to allow for a credible consumer label and there is no clear recognition of land rights and use rights in the standard. At present the Forest Stewardship Council is the only scheme in which social and environmental issues have their own formal place in the organisation. MTCC should not be accepted as a guarantor for sustainable and legal timber. The Brewster company is costing Australian jobs, abusing human rights of indigenous peoples and destroying unique forest habitat. The Australian Government needs to take a stand against these illegal activities.

TRIBUTE TO NICK LOUKISSAS

The Hon. MICHAEL VEITCH [9.47 p.m.]: I advise the House of the passing last week of Nick Loukissas. Nick was the owner of the renowned Niagara Café in Gundagai. Nick purchased the Niagara Café

from the Castrission family in 1983. Nick emigrated from Greece in the mid-1950s. I would often stop at the Niagara Café, particularly after an Australian Labor Party branch meeting, and talk politics with Nick. Unfortunately, I did not stop by often enough, something Nick castigated me for regularly.

I know most country-based members of Parliament from particularly southern New South Wales know of Nick. He had very firm political views. He was an unbelievably generous individual, both of his time and money, and he was extremely hospitable. If you were a Labor politician you had to have your photo taken and it would be placed on the wall, something that Hon. Tony Catanzariti and I had to do a few times. A number of photos of us are on the wall at the Niagara Café. I will certainly miss the conversations with Nick over a cup of tea and a sandwich. Nick's passion and conviction for political discussions will stay in my mind for a very long time. Vale Nick Loukissas.

Question—That this House do now adjourn—put and resolved in the affirmative.

Motion agreed to.

The House adjourned at 9.49 p.m. until Wednesday 2 December at 11.00 a.m.
