LEGISLATIVE COUNCIL

Tuesday 28 October 2008

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

The President offered 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.

LEGISLATIVE COUNCIL VACANCY

Election of John Cameron Robertson

The PRESIDENT: At a joint sitting held on 22 October 2008 John Cameron Robertson was elected to fill the vacancy in the Legislative Council caused by the resignation of the Hon. Michael Costa.

PLEDGE OF LOYALTY

The Hon. John Cameron Robertson took and subscribed the pledge of loyalty and signed the roll.

REGISTER OF DISCLOSURES BY MEMBERS

The President tabled, pursuant to the Constitution (Disclosures by Members) Regulation 1983, a copy of the Register of Disclosures by Members of the Legislative Council for the period 1 July 2007 to 30 June 2008.

Ordered to be printed on motion by the Hon. John Della Bosca.

HMAS *ALBATROSS* SIXTIETH ANNIVERSARY

Motion by the Hon. Don Harwin agreed to:

That this House:

(a) recognises that this year marks the sixtieth anniversary of the commissioning of HMAS *Albatross* at Nowra and the Royal Australian Navy Fleet Air Arm,

(b) recognises the important role that HMAS *Albatross* plays in supporting the Navy's four air squadrons and the Navy Aviation Force Element Group,

(c) congratulates the officers, sailors and personnel of HMAS *Albatross*, both past and present, on the excellent service they have given over the past six decades,

(d) pays tribute to those personnel from HMAS *Albatross* that are currently performing peacekeeping, humanitarian and active duty roles, particularly in Operation Catalyst in Iraq, and

(e) recognises the role that crews from HMAS *Albatross* play in police searches and major bushfire responses in the Shoalhaven, and their many other contributions to the local community.

PETITIONS

Retirement Villages

Petition opposing unjust retirement villages legislation threatening the wellbeing of thousands of older citizens by overriding existing contracts in requiring residents to meet up to 50 per cent of capital costs, received from **the Hon. Catherine Cusack**.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 1 to 13 postponed on motion by the Hon. Tony Kelly.

CIVIL LIABILITY LEGISLATION AMENDMENT BILL 2008

Second Reading

Debate resumed from 22 October 2008.

The Hon. JOHN AJAKA [2.40 p.m.]: The Civil Liability Amendment Bill 2008 amends the Civil Liability Act 2002 in order:

(a) to require a person who may have a claim for damages against a *protected defendant* (the Department of Corrective Services and certain other public sector defendants) in respect of an injury to an offender in custody;

(i) to notify the protected defendant within 6 months of the incident that gives rise to the claim, and

(ii) to provide certain information about the incident to the protected defendant,

(b) to provide that the part of the Act dealing with Special provisions for offenders in custody extends to a claim in relation to a tort for which the protected defendant is vicariously liable,

(c) to clarify the fact that the general limitation on the Act's application to intentional acts does not interfere with the operation of Part 2A (in particular, the operation of that Part in respect of victim claims that involve intentional acts),

(d) to make changes to the system under which a victim of an offender can make a claim against damages awarded to the offender against a protected defendant, including:

(i) increasing the period within which a victim can make such a claim from 6 months from the date the offender was awarded damages to 12 months from that date, and

(ii) authorising the Commissioner of Police to provide information to the protected defendant about persons who may have a victim claim against the offender, and

(iii) replacing the requirement that the protected defendant must notify victims within 28 days after damages are awarded to the offender with a requirement that the notification be given as far as practicable within 28 days (so as to facilitate the notification of victims who are identified outside the 28-day period), and

(iv) providing that offender damages are to beheld in trust by the Public Trustee (rather than the protected defendant).

The Bill also amends the *Civil Liability Act 2002*, the *Motor Accidents Act 1988* and the *Motor Accidents Compensation Act 1999* to make it clear that damages are to be awarded for gratuitous attendant care services only if the circumstances where gratuitous services are provided (or to be provided) for at least 6 hours per week and for at least 6 consecutive months.

The amendment is in response to the Court of Appeal decision in *Harrison v Melhem*, 2008 New South Wales Court of Appeal at page 67, which interpreted section 15(3) of the Civil Liability Act as being satisfied by a less demanding test, that before damages may be awarded for gratuitous care there be at least "either" six hours "or" six months gratuitous care rather than six hours "and" six months. The Opposition does not oppose the bill.

The bill amends the Civil Liability Act 2002 to insert new provisions into the Act in relation to claims for damages against a protected defendant in respect of injuries received by a person while the person was an offender in custody. A protected defendant is defined as being "the Crown, a government department, a public health organisation, their staff, any person having or acting in a public official function and a management company". The amendments require the claimant to notify the protected defendant in writing of an incident that may give rise to a damages claim within six months of the incident. Thereafter the protected defendant will be entitled to make a reasonable request for information and documents from the claimant that will enable the protected defendant to assess the merits of the claim and any liability and make a settlement offer where appropriate.

Section 15 of the Act is amended in relation to damages for gratuitous attendant care services to make it clear that such damages are to be awarded only if the services are provided, or to be provided, for at least six hours per week and for at least six consecutive months. The amendment extends to liabilities that arose before the commencement of the amendment but does not apply to proceedings determined before that commencement. Similar amendments are made to the Motor Accidents Act 1988 and the Motor Accidents Compensation Act

1999. Schedule 2 to the bill provides that the amendments extend to liabilities that arose before the commencement of the amendments but do not apply to proceedings that were determined before that commencement. It is submitted that the bill will make it easier for victims of crime to receive a share of damages awarded to prison inmates.

The bill increases the time limit in which the victim can make a claim against an offender from six months to 12 months from the date the offender was awarded the damages. The bill prevents offenders from circumventing the provisions of the Civil Liability Act by specifying that part 2A, the special provisions for offenders in custody, extends to a claim for an intentional tort for which the protected defendant is vicariously liable. Those amendments close a suggested loophole in the Civil Liability Act. That Act does not generally cover intentional torts, and some inmates have sought to avoid the operation of the Civil Liability Act by pleading their claim in intentional tort and therefore seeking to have it dealt with at common law.

It should be noted in regard to the offender damages amendments that Justice Action opposes the six-month limit on claims as being unfair. Also it considered the requirement to assist the Department of Corrective Services by answering questions as an unfair requirement, which potentially has the effect of punishing a claimant for making a claim. Also the Bar Association opposes the *Harrison v Melhem* amendment on the basis that the present interpretation is in line with legislation in Victoria and Queensland, that any modest increases in damages would easily be absorbed by insurers without the need for premium increases given the substantial profits that are currently being made, that the present decision provides a positive incentive for claimants to use cheaper gratuitous services rather than more expensive paid services, and that the proposed amendments will also mean that carers of injured people may be deprived of compensation for regular ongoing care. Insurance interests are clearly in favour of the *Harrison v Melhem* amendment. The Opposition does not oppose the bill.

Reverend the Hon. FRED NILE [2.45 p.m.]: The Christian Democratic Party supports the Civil Liability Legislation Amendment Bill 2008, which will improve the system by which victims pursue claims against offenders who have been awarded compensation payouts under the offender damages provisions of the Civil Liability Act 2002. The bill also ensures that the time and severity limits on claiming gratuitous care damages for all claims under the Civil Liability Act, for example, unpaid care by an injured worker's relative in personal injury matters, operate as originally intended. The bill specifies two particular areas in relation to offender damages trust funds. The bill will make improvements to a scheme introduced in 2005 under which damages awarded to an offender in respect of injuries that occurred while that offender was in custody are held in trust for six months and used to satisfy claims made by victims of an offence committed by the offender.

The community's concern is whether some claims by offenders in custody have been based on fraudulent actions, for example, an arrangement by one prisoner to injure another prisoner so that such a claim can be made. I am sure that the Government, through its officers in charge of the custody of prisoners, will make sure that a claim is genuine and has not been arranged fraudulently. The bill also contains provisions concerning gratuitous attendant care and makes provisions to limit claims for attendant care damages to where the care is needed for at least six hours per week for six consecutive months. The Bar Association is critical of that provision of the bill and wants to retain the correct interpretation of either six hours per week or six consecutive months. This legislation restores the original intention that care must be provided for at least six hours a week and for six consecutive months.

As members know the Court of Appeal has ruled that that is not what the section says. The court found that compensation could be claimed if only one of the thresholds was met. It seems clear from reading the Act that the intent was to include both requirements, and it could be said that the Parliament disagrees with the decision of the Court of Appeal. This bill restores the original intent of the legislation, and the Christian Democratic Party supports it.

Ms LEE RHIANNON [2.48 p.m.]: The Greens do not support the Civil Liability Legislation Amendment Bill 2008, in particular, two key aspects of it, which should be of concern to all members. Firstly, the Greens oppose the Government's attempt to change the law so that an injured person must be found to meet both requirements—that is, six hours a week of gratuitous attendant care and for at least six months—in order to seek damages for that care.

In trying to overturn the Court of Appeal's decision in the *Harrison v Melhem* case, which found that the intention of the law was to allow for damages to be awarded for injuries that required at least six hours per

week or six consecutive months of attendant care, the Government will be making it more difficult for injured people to gain compensation for the provision of adequate care. The bill will impact unfairly on injured people in New South Wales and their carers. Carers of people with reasonably serious injuries that require long-term care would be deprived of compensation for providing regular ongoing care. An injured person who requires five hours of ongoing care for the rest of his or her life should be entitled to seek some damages for the provision of that care. Conversely, a person who requires 40 hours of attendant care for five months should also be entitled to seek damages. This provision quite clearly is too harsh. The Government is being plain mean in bringing it forward.

The Greens do not accept that this bill is needed to limit damages awards for gratuitous care. Similar provisions exist in other States in Australia and there has been no increase in litigation, no significant increase in damages awards in these kinds of cases, and no need for increases in insurance premiums. Nor has there been a flood of litigation in New South Wales following the *Harrison v Melhem* decision to justify a need for this change in the legislation. The New South Wales Bar Association has stated:

> Although there may be individual cases where a decision may result in modest increases in damages awarded for voluntary care, there may well be other cases where damages fall. The Court of Appeal's decision in fact provides a positive incentive for claimants to use cheaper gratuitous services.

The Attorney General has the responsibility to advise in his reply why the Government is pushing ahead with this change when it is clear on so many grounds that it is not needed. The New South Wales Bar Association also pointed out:

> Without the need to satisfy both a six hour and six month threshold, it may well be that judges and assessors make more realistic assessments of care requirements given that lesser time periods are involved, rather than attempting to come to a higher assessment which ensures some compensation for gratuitous care is available.

The Greens also have real concerns about the further changes to the Offender Damages Trust Fund. In 2005 the Government introduced legislation that allowed any damages paid to an offender from successful legal action while he or she was in a correctional centre to be placed in a trust fund and subject to claim by a victim. The offender's victims are notified and have six months to make a claim against the offender in a civil court.

The Greens support increasing fair compensation available for victims of crime. If you are the victim of an assault, or a relative or someone close to you has been murdered—there is a range of horrendous things that happen in this society—the Government has gone a long way toward ensuring that you can gain assistance, and in the majority of cases that is necessary. But here we have moved into a different realm. When this legislation was introduced in 2005, and again in 2007 when the Civil Liability Amendment (Offender Damages) Bill was passed, my colleague Ms Sylvia Hale spelled out many of the problems. The Greens put on record that they do not support imposing additional punishment on prisoners by denying them a damages payment for injuries sustained in prison.

Many Government and Opposition members confuse the issue of punishment meted out to prisoners. Prisoners are in jail, they have had their liberty denied, and they are being punished. For them to be additionally punished having suffered injury because Correctional Services did not properly managed the institution in which they were held is plain wrong and should not be part of the punishment regime. They are already serving a sentence for their crime and should be entitled to compensation for any negligence of prison authorities that results in serious injury or death if the prison officers and the system cannot protect them from risk of injury, violence and sexual assault—a whole range of horrendous things happen in our gaols.

What is happening here is deeply disturbing because once again the Government is wiping its hands of prisoners and the need to address what will happen to them when they leave prison, and how their experience in prison can be detrimental to them and to the wider society. The Greens have previously attempted to amend this legislation to balance victims' rights with those of prisoners who suffer serious injury. The Greens are sympathetic to the victims of crime—I again put that on the record to counter the many ridiculous distortions made by many Government and Opposition members about the Greens position on this subject. We have always supported the right of victims to compensation, and I emphasis that that is not the issue here. If an inmate is injured because the State fails in its duty of care, they are entitled to damages. For that right to be eroded even further is deeply wrong.

My colleague Ms Sylvia Hale observed in 2007 that this legislation is again a reaction to judgements that the Government does not like. It is a response to court cases that the Government has lost—cases that

emanated from flawed laws in the first place. Two wrongs do not make a right. The crime for which the person was incarcerated was not right, and of course they must be punished. And that punishment is the denial of their liberty; they are jailed. But depriving a prisoner of money in compensation for injuries suffered while he or she was in the care and custody of the State does not rectify that wrong. Therefore, the Greens will not be supporting the bill.

The Hon. JOHN HATZISTERGOS (Attorney General, Minister for Justice, and Minister for Industrial Relations) [2.57 p.m.], in reply: I thank honourable members for their contributions. In relation to the issue raised in the debate regarding the changes following the Court of Appeal decision in *Harrison v Melhem* meaning less compensation for injured people, I think it should be stated that the proposed changes to the civil liability legislation will not mean less compensation. The amendments simply ensure that the law does what it always was meant to do.

The motor accidents and the civil liability legislation was supposed to limit gratuitous care damages to claimants who met a two-limb threshold test. It was intended that the care be provided for at least six hours per week for six consecutive months. Until *Harrison v Melhem*, this two-limb test was the standard being applied by claimants and insurers. The changes ensure that the law does what it was always intended to do and, before the Harrison case, was always understood to do. The limits on civil liability damages, including gratuitous care damages, are there to ensure that compensation is available to more seriously injured claimants. They are also intended to ensure the continued availability of affordable insurance, including green slips and public liability insurance. If the changes are not made to correct the drafting problem identified in *Harrison v Melham*, insurance premiums across liability classes could be expected to rise. Insurance premiums have been set on the basis that the limits on gratuitous care damages require claimants to meet a two-pronged threshold test and, since the decision in *Harrison v Melhem* means that only one of the threshold tests must be met, damages awards for gratuitous care will be easier to obtain. If the statutory limits are not clarified, as we propose, so as to reinstate the two-pronged test, then damages awards could be expected to increase and premiums are likely to move upwards as well.

It should also be mentioned that the corresponding provisions in other States were like those in New South Wales based on the New South Wales motor accidents legislation. It was assumed that the New South Wales motor accidents legislation imposed a two-limb threshold test. Court decisions in those States have identified a similar problem with the threshold test on the drafting issue identified in the Harrison decision. It is of course a matter for the other jurisdictions whether the law should be changed in those States. New South Wales believes it is important that the civil liability legislation in this State reflects the original policy intentions of the limits on gratuitous care damages, that is, that liability insurance continues to be reasonably available by ensuring that compensation is directed to the most seriously injured claimants.

In response to the comments of Ms Lee Rhiannon about the offender damages provisions, it is important to recognise that the provisions in relation to offender damages, which were introduced in 2005 and subject to amendment in 2007, were designed to ensure that victims of crime would be able to be compensated for the injuries they received, but for which they were not able to sue at the time of original injury because of the impecunious nature of the offenders.

I think it is eminently reasonable that if the offender comes into possession of damages at a later point in time those damages should be able to be quarantined for the benefit of the victims that previously were unable to obtain satisfactory compensation through damages because that particular person was impecunious. It would be completely unreasonable to have a situation where the victim of the original crime was unable to be compensated but the person who suffered injuries in the jail system or the correctional system should be able to receive a full award simply because they are suing the State, as opposed to the victim who is taking action against the offender. I want to do whatever I can to facilitate victims being able to recover compensation for injuries that they have sustained at the hands of the perpetrators of the crime. This legislation will amend the offender damages provisions—which we proudly introduced; we were the first in the country to do so—to ensure that that happens by extending the time limit in which such a claim can be made; by ensuring assistance is available to victims to be able to pursue such actions; by ensuring at the same time that any claims that might be made against a protected defendant by an offender are able to be substantiated rigorously; and by providing information that may not otherwise be available for some time down the track. I think they are fair, reasonable and sensible changes, and they deserve support.

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

The House divided.

Ayes, 30

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

Noes, 4

Mr Cohen
Ms Hale
Tellers,
Dr Kaye
Ms Rhiannon

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

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

Third Reading

Motion by the Hon. John Hatzistergos agreed to:

That this bill be now read a third time.

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

CHILDREN AND YOUNG PERSONS (CARE AND PROTECTION) AMENDMENT (BODY PIERCING AND TATTOOING) BILL 2008

Second Reading

Debate resumed from 22 October 2008.

Reverend the Hon. Dr GORDON MOYES [3.10 p.m.]: This is important legislation. The object of the Children and Young Persons (Care and Protection) Amendment (Body Piercing and Tattooing) Bill 2008 is to amend the Children and Young Persons (Care and Protection) Act 1998 to prohibit the intimate body piercing of children under the age of 16 years and to require parental consent for non-intimate body piercing of children under the age of 16 years. The bill also extends the circumstances in which it is an offence to tattoo a child or young person under the age of 18 years to include procedures such as scarification, banding and beading. "Intimate" parts of the body are defined in this bill as including the genitals and the nipples of both males and females. The entire remaining body is considered to be "non-intimate", although I believe that this definition does not adequately reflect our multicultural society, which has many ethnic, tribal or religious groups that would consider other areas of the body to be taboo, sacred or intimate, in addition to those mentioned by the bill.

Additionally, parental consent is not always the voice of reason and sense that we would like to think it is. For instance, the pre-teen models for the recently banned exhibit in Sydney all had modelled for the

photographer with their parents' consent and support. Stage mothers who push their children into gruelling acting and singing training, competitions and sometimes compromising situations with casting agents, without regard to the children's actual interest in being there, willingly give their consent. Alcoholic, abusive, neglectful and drug-using parents are already behaving in ways detrimental to their children's welfare, and there is no real reason to assume that they would suddenly take an interest in their children's welfare regarding body adornment. In other words, parents often do not provide the kind of attentive and protective care that we would hope for. However, parental consent is the only practical means of control that we have recourse to, in our desire to protect children and young people from doing something that is, for the most part, non-reversible.

In this bill, the definition of tattooing has been extended to include the practices of beading, scarification and branding. "Beading" is the term for the patterned scar that forms after cutting the skin, and the insertion or implanting of objects beneath the skin to produce what people believe is a decorative lump. An example would be the metallic mohawks implanted into the scalps of young men wishing to look fierce—a form popular a few years ago, particularly in the United States of America. Scarification means the creation of scar tissue by cutting. And branding is the application of heat to the skin to create a permanent marking by burning. All of these practices carry the risk of serious infection no matter where on the body they are performed. It is crucial that they be carried out in a sanitary environment with sterilised equipment.

A range of severe health risks is associated with intimate piercing, beading, implantation of jewellery, or the like. The most common side effect of piercing is infection, which can often be prevented by conscientious aftercare practices and good hygiene. However, infection should not be considered insignificant; it can spread and cause serious health problems, including sterility and potentially life-threatening conditions. If equipment is not being sterilised at a piercing studio, the procedure has the potential to pass on any number of diseases, including tetanus, tuberculosis, hepatitis, HIV, and other sexually transmitted diseases. There can also be serious bleeding, and, in men, the risk of impotence caused by nerve damage. There are also potential allergic reactions to the materials used, and possible difficulties with urination if the urethra narrows in response to the procedure.

It may also prove to be an ongoing inconvenience to set off metal detectors, and then always have to explain that you have metal implants in your private parts. However, it is a myth that you are any more likely to attract lightning with your metal implants. There is apparently some level of community acceptance of these practices, illustrated by the Art Gallery of New South Wales hosting in 2000 an extensive exhibit called "Body Art". This exhibit, although somewhat controversial, was well attended and acclaimed. In researching the topic I found that most photographs online of the work done appeared to be of teenagers in the 16 to 19 years age range and covered large surfaces of their bodies. So this bill is targeting the right demographic.

It is interesting to me that Western civilisation is, or was, considered to be Greco-Roman or Judeo-Christian in its institutions, aesthetic sensibilities, and cultural expressions. The Greeks, particularly, considered the unadorned body the height of perfection, and felt passionately that any mutilation was an offence to the gods who made us. The beauty of the body was so revered that the original Olympic Games were held with male athletes in the nude, so that the entire athletic specimen could be enjoyed—in the fluidity and grace of his motion, strength and effort. Only males competed in or attended these early Olympic Games, but the cultural ideal of the wholeness and perfection of the human body was held by all. The Greeks considered circumcision, which was practised in their small territory of Palestine, to be a barbaric mutilation of the male body. Many battles were fought over the Jews' commitment to this practice while under the jurisdiction of the Greeks, who attempted to ban it.

The *Bible* has something to say about tattooing. It says, according to Leviticus 19, "Do not ... put tattoo marks on yourselves." The Catholic Church outlawed tattoos in the eighteenth century AD, after which the practice was forgotten in the West for nearly a thousand years. Then seafarers involved in the extension of empire in the fifteenth to nineteenth centuries encountered American Indians and Polynesians who all had elaborate tattoo customs, and they brought news of those practices back to the West upon their return. Many of the practices that we are discussing today have been used by various cultures throughout the ages, often to serve as an initiation ceremony or a rite of passage for recognition of adult status. Aboriginal groups, such as the Wardaman and the Jawoyn people, used to slash both males and females at about age 17. Without this identifying scarification they were considered "cleanskins" and were unable to marry or to take part in corroborees, participate in trade, or attend burial ceremonies. Such scarification, according to the Australian Museum Research Library, is now restricted almost entirely to groups of Aborigines in Arnhem Land.

African tribes have traditionally used these various modes of adornment both as adding to beauty and to indicate status. In the past the highest status that New Zealand Maori men and women could attain was

achieved by having their faces tattooed extensively. When visiting Maori communities we can still see some of the very old people with this "moko". The more extensive the tattoo, the more respect they were accorded. We see this still today in NRL players from New Zealand who play in our sporting competitions. In our contemporary society these various slashings, embeddings and markings are used to beautify, to show allegiance to or membership of a subculture such as the emos or the goths, or to give people a sense of identity or a way to stand out from their peers. Some young people have reported lamenting the absence of any rite of passage in our society that is supposed to denote the taking on of the responsibilities of adulthood. They claim to use these practices for that purpose.

Young people generally have no sense of their own mortality, or the span of life yet ahead of them—most cannot fathom it, nor see themselves as adults. Therefore, they do not fear their body being forever altered. Future embarrassment over youthful folly is rarely, if ever, imagined. If it were, there would be far less folly found in youth across all times and cultures. These trends come and go. A health-promoting educational campaign designed to dissuade youngsters from considering this form of self-expression may be a good idea, along with making these procedures harder to obtain, if this bill is passed. However, I have observed that mere illegality rarely prevents people from doing what they want to do, and frequently makes it more tempting. It confers upon them even more status among their peers, whose high opinion is at least part of their motivation. Any resultant black-market or amateur provision of do-it-yourself piercings, implants and beading would carry far more dangers of injury and infection than now exist with regular, legal practitioners. Despite the few misgivings mentioned, I support the bill.

Mr IAN COHEN [3.20 p.m.]: The Children and Young Persons (Care and Protection) Amendment (Body Piercing and Tattooing) Bill 2008 traverses a number of contemporary issues with which our society is currently grappling. There is renewed concern about the protection of children and young persons from a plethora of exploitative forces in society. The Commonwealth Senate inquiry into the sexualisation of children in the contemporary media environment is ventilating some of these concerns. This bill is not the place to open that Pandora's box, but it is appropriate to acknowledge the challenges and pressures facing Australian youth. We need to arm our youth with the tools they need to make informed choices about pervasive, homogenised music television [MTV] cultures and to resist increasingly unethical marketing campaigns unscrupulously targeting youth markets.

This bill originated from concerns of parents—possibly parents whose children have been captivated by gothic and emo youth cultures and want to emulate the facial piercing and full-sleeve tattoos of the various movements' proponents. It is important that we foster strong, mature and independent youth and not necessarily rely upon the involvement of parents to spare their children from pervasive cultural fashions. Instead of moral panic over the end product of underage tattooing, the focus should be equally on ensuring that Australian youth are not simply conduits of globalised American culture. This is achieved by a commitment to giving youth the skills and opportunities to develop and foster their own culture rather than simply to assimilate into Americanised youth markets.

From cultural expression of fickle teenage rebellion to physical adornments of deep spiritual-cultural significance and resonance, tattooing and body piercing raise a number of issues for parents and children. At this point it is of assistance to reacquaint ourselves with the key policy preoccupation of the Children and Young Persons (Care and Protection) Act 1998. Protection, welfare and wellbeing of the child or young person are of paramount concern. One of the key objects of the Children and Young Persons (Care and Protection) Act 1998 requires that:

> … children and young persons receive such care and protection as is necessary for their safety, welfare and well-being, taking into account the rights, powers and duties of their parents or other persons responsible for them …

As with the teenage subcultures of yesteryear, which sought to disassociate their identity from mainstream society using all manner of fashion statements, today's youth continue to adopt fashions that they perceive as being counterculture. Teenage counterculture has always had a tendency to burn bright but fade quickly, with the effect that individuals carry the cultural insignia long after the movement has died—or undertake anywhere between 5 to 12 sessions of professional tattoo removal at $150 to $300 per session. Back in my time the adornment of hair was the fashion and you simply cut it off or—as in my case—it fell out.

The object of the bill is to prohibit the intimate body piercing of children under the age of 16 years and to require parental consent for non-intimate body piercing of children under the age of 16 years. The bill also extends the circumstances in which it is an offence to tattoo a child or young person under the age of 18 years to include procedures such as scarification, branding and beading. Behind these provisions is a need to balance

youth independence, liberty and self-determination with their capacity to make sensible decisions that do not compromise their basic health and wellbeing. Children and young persons, like adults, have a right to inherent liberty and freedom.

The previous Minister for Community Services explained the caveat on this liberty and freedom as "an affirmation of a parental right to be involved in the care and protection of their child". Parents should be involved in this decision-making process, and hopefully in this process will transfer to their children the life skills necessary for making intelligent decisions. Section 230 of the Act is to be replaced with a new section that inserts a definition of tattooing that includes such procedures as scarification, branding and beading. The definition is not restricted to these three procedures and covers any procedure that leaves a permanent mark on the skin. The section makes it an offence, carrying a penalty of 200 penalty units or $22,000, for a person to perform a tattoo on a child or young person without the written or verbal in-person consent of a parent accompanying the child.

In addition to the replacement of section 230, the bill introduces new section 230A. This new section makes it an offence for a person to undertake intimate body piercing of a child. Intimate body piercing includes the piercing of the nipples or genitalia. Consent of a parent to perform intimate body piercing is not a defence to the intimate body piercing of a child. The section also requires that non-intimate body piercing cannot be performed on a child without the verbal in-person consent or written consent of the parent. It is made clear that the decision to allow intimate or non-intimate body piercing to proceed without parental consent for people over 16 years maintains consistency with the age of consent, the right to leave school and enter the workforce, and the greater recognition of independence between the ages of 16 and 18 years. The difficulty is that the capacity to make medical decisions is a fluid concept.

The High Court in Marion's case held that "a minor is capable of giving informed consent when he or she achieves a sufficient understanding and intelligence to enable him or her to understand fully what is proposed ". More than arbitrarily setting a threshold for maturity and capacity, this bill should be interpreted as ensuring best practice by tattoo artists and body piercers in New South Wales. If we focus too much on age restrictions, the fiction of setting a particular age will crumble. I am sure that some 17-year-olds would not be capable of giving informed consent to intimate body piercing while some 15-year-olds would have sufficient maturity and understanding to make such decisions.

Determining capacity to make informed decisions about what is essentially a medical procedure is a difficult process, and one that medical practitioners face regularly. In some circumstances it is appropriate to draw a line in the sand. In this instance, the bill sends a clear message to the very small minority of body art practitioners that parental consent is important. Approximately 30 per cent of the Australian population aged 14 years and over have had their ears pierced, around 7 per cent have had some other form of body piercing and around 10 per cent have had a tattoo. An article in the *Communicable Disease Intelligence Journal 2001* entitled "Prevalence in tattooing and body piercing in the Australian community" reported:

> [a 1998 Australian survey of more than] 10,000 people aged 14 years and over, showed that one in ten people have had a tattoo at some time in their lives and 8 per cent had some form of body piercing (excluding ear piercing).

Considering the health implications that are outlined in the New South Wales Department of Health's Skin Penetration Code of Best Practice, it is important that our youth are not making impulsive decisions to adorn their bodies with art and piercings of a permanent nature without weighing up the potential health implications of piercing and tattooing, such as bacterial and fungal infections, and viral infections such as HIV, hepatitis B and hepatitis C. I am confident that this bill does not represent a significant incursion into cultural expression by the State's youth and merely duplicates what is practised by the sensible majority of body art practitioners. The Greens do not oppose the bill.

Reverend the Hon. FRED NILE [3.28 p.m.]: The Christian Democratic Party supports the Children and Young Persons (Care and Protection) Amendment (Body Piercing and Tatooing) Bill 2008 and congratulates the Government on introducing this legislation. The bill will amend section 230 of the Children and Young Persons (Care and Protection) Act 1998 to prohibit certain tatooing procedures with respect to children and young people and to prohibit body piercing of children in certain circumstances. Clearly, the bill is a response to what has become a new fad or a new craze, such as those often led by prominent entertainers, whereby teenagers and adults pursue the dangerous and unhealthy fad of body piercing. We frequently see on television people who have their tongue pierced, and one wonders how comfortable that would be when eating and what infections may result from metal being permanently attached to their tongue. We can only hope that this fad will fade away, as fads come and go, but there is no sign of that currently.

This bill rightly places the emphasis on protecting children, but I am also concerned about adults over 16 years of age who go overboard with body piercing. Some of the health risks involved with that activity have been mentioned, such as HIV and so on. I would be interested to know whether the Government has any statistics indicating how many people have been admitted to hospitals as a result of infections caused by body piercing. I note that the bill deals with children, but I suggest we should be concerned about adults in the community as well. Just as we are concerned about the harmful effects of tobacco smoking and alcohol on adults, so should we be concerned about and not close our minds or our eyes to the dangers of body piercing and tatooing for adults or young people over the age of 16 years.

The bill emphasises the age of 16 years. Previously we had a debate about the age of a child at which, in the eyes of the law, the child's name may be withheld and their identity protected. That age limit is 18 years, particularly in the Children's Court. That caused me to wonder whether the age stipulated in the bill should have been 18, not 16. I appreciate that 16 years is the age of consent, but I believe that issue should be given further consideration. The bill will create an offence for intimate body piercing of genitalia and/or nipples of children under the age of 16 years, other than for medical treatment. The maximum penalty for such an offence is 200 penalty units, which currently amounts to $22,000. It will not be a defence to a prosecution that the child or parent consented to the body piercing. That very important development in legislation is fully supported by the Christian Democratic Party.

The bill also creates an offence for a person to perform body piercing on any part of a child's body without the consent of a parent of a child. The consent must be in writing or in person by a parent accompanying the child. The maximum penalty for such an offence is 30 penalty units, and that currently amounts to $3,300. Obviously the new offence does not apply to body piercing for medical purposes. The legislation also extends the circumstances in which it is an offence to tattoo a child or young person by adding a definition of tatooing into the Act to include any procedures that make a permanent mark on the skin, such as scarification, branding or beading. The offence for performing tatooing and like procedures on a child or a young person, who is a person under the age of 18 years, without parental consent is a maximum payment of 200 penalty units, and that currently amounts to $22,000.

I note that Queensland already has enacted legislation to outlaw the intimate body piercing of children. Organisations representing tatooing and piercing practitioners have applied some self-regulation and normally require parental consent for those types of procedures. However, I believe it is important to have legislation enforcing the requirement of the consent so that the issue of consent may be clearly determined, rather than being left up in the air. The Christian Democratic Party supports the bill.

The Hon. PENNY SHARPE (Parliamentary Secretary) [3.34 p.m.], in reply: I thank all members who contributed to the debate, and particularly for the very interesting information they placed on the record about the history of tatooing and youth cultures in Australia. This bill relates to the protection of children and young people regarding body piercing and tatooing. In summary, the bill will prohibit certain tatooing procedures with respect to children and young people and will prohibit the body piercing of children in certain circumstances. The bill creates a general prohibition on intimate body piercing of children and will ensure that when a child or a young person wishes to undertake other forms of body piercing, that will be with the full knowledge and consent of their parents. In this way, parents will have the opportunity to ensure that the piercing takes place in a safe environment and that the necessary after-care is provided.

In relation to tatooing, the bill ensures that like procedures, such as scarification, branding and beading which carry a similar health risk, also are captured under the existing provision of the Act that requires parental consent for young people up to 18 years. I appreciate the concerns expressed by the Opposition relating to parental consent. The issue of how consent might be provided was given much thought during the development of this bill. We knew that for the amending bill to be effective, it must also be workable. It is worth reiterating at this point that it was not intended that the amending provisions should be heavy-handed. The focus is on restricting children's access to body piercing without parental involvement or consideration. The amending provisions seek to address an issue previously left to open and trusting dialogue between children and their parents as well as the goodwill and self-imposed ethical practice of body piercing practitioners.

As we have heard, many practitioners in the community already do the right thing by children who are seeking to access those services, including seeking the consent of the child's parents. These and many provisions seek to ensure that all practitioners are cognisant of the importance of parental consent before they undertake the piercing of a child. Requiring a parent to provide consent in person does not in itself resolve the issue raised by the Opposition. To be entirely confident, one would need to require the body piercings practitioner to establish

that the adult who was present was in fact the child's parent or legal guardian. This raises all types of difficulties for both parents and practitioners, and leads to the question of whether that level of investigation is justified in the circumstances.

The amendments will require practitioners to turn their minds to whether or not the child who requests body piercing is doing so with the consent of a child's parents. The bill offers a workable way in which this might be achieved. It seeks to strike the best possible balance between keeping our kids safe and what is most likely to work in practice. The parental consent requirement in the bill is consistent with consent requirements for the regulation of tatooing of children and young persons under section 230 of the Children and Young Persons (Care and Protection) Act. The prohibition on tatooing of children and young persons without parental consent in writing was first legislated for in 1987. In the past 20 years, there has never been a case brought against a tatooing practitioner for tatooing a child without parental consent. That provides strong evidence that the parental consent requirement is effective.

Turning to the issue of consultation on the bill, I point out it is incorrect to say, as suggested by the Opposition, that consultation on the bill has not been broad enough. The proposals in the bill arose from public consultation on the statutory review of the care Act whereby a discussion paper, issued in October 2006, specifically sought comment on whether there was a need for parental consent for unusual body piercing. The submissions received from agencies and individuals on this issue indicated broad support for regulating body piercing of children. For example, New South Wales Police, the Regional Youth Development Officers Network, New South Wales Young Lawyers, the New South Wales Department of Education and Training, New South Wales Health, and Wesley Dalmar clearly support the proposals in the bill for parental consent for body piercing of children. The bill is the result of considerable public consultation. I am pleased to note that it enjoys strong support in the House. I commend the bill to the Chamber.

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.

MENTAL HEALTH LEGISLATION AMENDMENT (FORENSIC PROVISIONS) BILL 2008

Second Reading

The Hon. PENNY SHARPE (Parliamentary Secretary) [3.39 p.m.], on behalf of the Hon. John Hatzistergos: I move:

That this bill be now read a second time.

I am pleased to bring before the House the Mental Health Legislation Amendment (Forensic Provisions) Bill, which represents a culmination of the extensive review of New South Wales mental health legislation that began in 2004. In 2004 the Government commenced a review of mental health legislation that resulted in a new Mental Health Act in 2007. During the course of the review it was recognised that changes in the law applying to forensic patients raised a number of issues that required careful consideration. To this end, the Government convened a separate review of the forensic provisions of the Mental Health Act 1990 and the Mental Health (Criminal Procedure) Act 1990, and appointed the President of the Mental Health Review Tribunal and former Supreme Court judge Greg James, QC, to conduct it.

The review was undertaken over a 12-month period and involved extensive consultation with key stakeholders such as victims groups, health professionals and agencies involved in the provision of services. The

consultation process included a 25-member reference group chaired by Mr James and made up of representatives of a number of agencies and organisations. After preliminary consultations, a consultation paper was issued in December 2006. The paper outlined the current law and practice and options for reform. Some 50 formal submissions were received in response to the paper. Additional consultation meetings were then undertaken with doctors, staff, patients and others involved in all aspects of the forensic mental health systems in New South Wales and elsewhere.

Mr James' report has been accepted by the Government and was released in April 2008. The review made 34 separate recommendations, including a substantial number of recommendations for amendments to the forensic provisions of the mental health legislation. One unusual feature of the current New South Wales system is that it makes use of what is known as executive discretion to determine the release of forensic patients. The term "forensic patient" generally covers persons who have been found not guilty of committing a crime by reason of mental illness, as well as people who are found to be unfit to stand trial. Under the current law, the term also covers correctional inmates subject to a term of imprisonment who have been transferred for mental health care.

Executive discretion is a concept that dates back to nineteenth century English law. It is a concept that has been abandoned in most Australian jurisdictions and in equivalent jurisdictions around the world, including England and Canada. In his review the former Supreme Court judge identified a range of problems with the reliance on executive discretion. These included that the system is cumbersome, overly bureaucratic and operates without transparency or accountability; is out of accord with other systems for care and treatment of forensic patients in Australia and elsewhere; results in the detention of convicted patients in jail so long that in many cases that detention extends for longer than public safety would require and also longer than any sentence which would have been imposed had the patient been convicted and sentenced; and presents difficulties for patients, families, carers and victims who need a formal transparent process in which to express their views and concerns.

Mr James concluded that for these reasons important decisions on release and leave for forensic patients should be transferred to the Mental Health Review Tribunal. Mr James also recommended a range of other changes to ensure that the system is more robust and accountable, and provides formal recognition of victims of crime. The main features of the new system for decision making established in this amending legislation are as follows. Orders for care, treatment, leave and release of forensic patients will be made by the tribunal using a specially constituted panel which, under the legislation, must be chaired by a former judge. Providing this degree of senior legal oversight will ensure an appropriate degree of regard for the law, legal processes and the public interest.

Before making an order for release, the special panel will be required to consider a number of statutory considerations, set out in clause 74 in schedule 1 to the bill. These include matters such as whether the person is mentally ill; whether care, treatment or control is necessary to protect the person or others from serious harm; the possibility of the person's condition deteriorating over time and the likely impact should this occur; and, most importantly, where release is proposed the panel will also be required to consider independent safety reports from a psychiatrist not involved in the care of the person. When a forensic patient has been made subject to a limiting term under the Mental Health (Criminal Procedure) Act the panel will also need to have regard to the length of that term and consider whether the person has spent sufficient time in custody.

I emphasise that the tribunal will only be able to release a forensic patient if it is satisfied that the safety of the patient and any member of the public will not be endangered by the patient's release. The panel will also have the power to grant either conditional or unconditional release of a forensic patient. If a patient is granted conditional release, the patient will remain a forensic patient and will be subject to six-monthly reviews by the tribunal. In his review, Mr James recognised that these are important decisions in which government will maintain an interest. To this end, he also recommended that the system provide both the Minister for Health and the Attorney General with a right to make submissions to the panel when leave or release of a patient is under consideration. This right has been provided for under clause 76A. Further, under clause 77A of the bill, the Minster for Health has a right of appeal on questions of fact and law from decisions of the tribunal, and the Attorney General has a right of appeal on questions of law.

The Government's terms of reference for the James review specifically asked Mr James to consider the role of victims of crime and, in particular, means by which their views and concerns can be addressed in the forensic review process. Mr James made a number of recommendations to ensure the recognition of victims of crime. I am pleased to advise the House that all these recommendations have been adopted and are included in

the current bill, which includes a range of provisions expressly recognising the role of victims in the forensic decision-making process. Amendments to section 160 of the Mental Health Act 2007 in schedule 2 to the bill will allow regulations to be made to provide for the establishment and use of a victims' register, the notification of victims of tribunal decisions in proceedings relating to forensic patients or correctional patients, and notification of victims of the termination of status of persons as forensic patients.

These changes will allow the Government to establish, and make use of, a victims' register, and will allow the tribunal to notify victims of key information affecting them, including tribunal decisions, prospective releases and when a forensic patient's status is terminated. These regulations will in turn further enhance the current processes recently put in place by the Mental Health Review Tribunal which allow victims of crime to make submissions to the tribunal on release issues. Under a new section 76, the tribunal will be given specific powers to include in its orders restrictions on a patient preventing them from associating with a victim, as well as a power to prohibit or restrict the patient from visiting certain places. These non-association orders and place restriction orders can be made on the tribunal's own motion or, importantly, after an application by the victim.

A victim will also have a right of appeal, with leave, from a decision regarding an application for a non-association order or a place restriction order. Mr James consulted extensively with groups representing victims of crime during the course of his review. Groups consulted includes the Homicide Victims Support Group, Enough is Enough and the Victims of Crime Assistance League, all of whom participated as part of the review task force. I am pleased that these groups have indicated their support for the recommendations of the report, including the transfer of decision making to the tribunal. They see the move to a specially constituted forensic panel, presided over by a judge or former judge, along with the formal recognition of victims in the legislation as a major improvement to the current system.

The James report also recommended creating a new category of patients treated under mental health legislation to cover persons who are transferred into a mental health facility for mental health care while on remand or serving a sentence of imprisonment in a correctional centre. The current legislation treats such patients as forensic patients. However, as the James report concluded, this raises a number of problems and does not correctly reflect the status of these patients. Mr James said:

> … the admission of a remandee or convicted offender to a mental health facility is analogous to the admission of any other member of the community to hospital for mental health treatment …

In accordance with Mr James' review, the bill recognises that those who are transferred for care or treatment have a quite different status to forensic patients. Forensic patient status will generally apply to a person who has been found not guilty of a crime due to their mental illness or who has been found unfit to stand trial. Correctional patients, however, will be persons who are subject to a sentence of imprisonment after having been found guilty of a crime or have been charged with a crime and refused bail. The bill recognises the legal distinction between these two classes of patients by classifying inmates and persons on remand who are transferred to a mental health facility as "correctional patients".

Correctional patients will have the same access to mental health treatment as forensic patients, but correctional patients will remain subject to their sentence of imprisonment, including the laws and processes which follow from that status. New provisions set out in clause 67 of the bill will also allow the tribunal to make community treatment orders for correctional centre inmates. This means that where it is appropriate and in accordance with the normal requirements for the granting of a treatment order an inmate can receive mental health treatment while in a correctional setting. Treatment orders will be used where a patient's condition has been stabilised in hospital to ensure his or her mental health will not be allowed to deteriorate upon release back into the community or prison environment. As Mr James noted in his review, "as with the compulsory orders operating in the community, this will assist the long-term management of an offender's mental health."

The review noted that some concerns were expressed in submissions that there was potential for abuse of such a system. To this end, and to ensure there is adequate implementation of these orders, Mr James recommended that an inmate the subject of a community treatment order should be reviewed by the tribunal every three months rather than the standard six-monthly review for forensic and correctional patients. This is reflected in clause 67 of the bill. I should note that changes brought in under the new Mental Health Act in 2007 began the process of allowing treatment orders to be made by the tribunal in relation to a forensic patient recommended to be released conditionally or to be transferred to a correctional centre. This power was, however, subject to confirmation through the exercise of the executive discretion. The new changes ensure the power is clearly placed with the tribunal.

The Act also provides for regulations to be made to adapt the current civil rules to ensure consistency with the laws applying in a correctional setting. It is important to recognise that care, treatment and monitoring of patients covered by these laws involve a range of different government agencies including agencies in the Health portfolio such as Justice Health and other agencies such as Corrective Services and Juvenile Justice. From time to time other human service agencies such as the Department of Ageing, Disability and Home Care or the Department of Community Services may also have a role in some service provision for patients or their families. One of the important elements to come out of the overall review of the Mental Health Act was the need to enhance and support agency cooperation in providing services to persons with a mental illness. This is also a key consideration when looking at the situation of forensic patients.

To this end, the bill proposes to include in a new section 76G in the Mental Health (Criminal Procedure) Act provisions similar to those applying under the civil law to ensure agencies who may be involved in providing services to a person or carers or family members after the person is released are consulted as part of the release planning. The bill will also add provisions to the Act to ensure agencies that may have a role in providing services after release use their best endeavours to respond to a request the tribunal may make in performance of its functions. This will enhance the capacity of the tribunal to assist in developing coordinated service plans for patients on release. Finally, I take this opportunity to thank Mr Greg James, the President of the tribunal, for conducting the review of the laws in this area. His considered and thoughtful work and recommendations have provided a good platform for reform. I commend the bill to the House.

The Hon. JOHN AJAKA [3.52 p.m.]: The Mental Health Legislation Amendment (Forensic Provisions) Bill 2008 seeks to amend the Mental Health (Criminal Procedure) Act 1990, the Mental Health 2007 and other legislation with the following principal objects in mind:

(a) to rename the *Mental Health (Criminal Procedure) Act 1990* the *Mental Health (Forensic Provisions) Act 1990,*

(b) to confer on the Mental Health Review Tribunal … instead of the Minister for Health, the power to order the release of forensic patients from mental health facilities, the power to grant leave to such patients and the power to make orders as to the care, treatment and detention of such patients,

(c) to establish the Forensic Division of the Tribunal to exercise those functions,

(d) to provide for appeals from decisions of the Tribunal in exercising those functions,

(e) to clarify the responsibility for arrangements for care, treatment, security and release of patients transferred from correctional centres to mental health facilities (***correctional patients***) and forensic patients held in correctional centres,

(f) to set out conditions that may be imposed on an order for release and matters that must be considered by the Tribunal in making decisions,

(g) to require the Tribunal, when making decisions about all patients, to consider whether care arrangements that may be alternatives to involuntary care are consistent with safe and effective care,

(h) to make various amendments in relation to community treatment orders,

(i) to provide for the recognition of victims of forensic patients and correctional patients,

(j) to make other minor and consequential amendments,

(k) to provide for savings and transitional matters consequent on the enactment of the proposed Act.

The Opposition does not oppose the bill. This bill follows the 2004 review into mental health legislation and the Mental Health Act 2007. Forensic provisions were firstly omitted from that legislation to allow for further review and extensive consultation in finalising the sensitive provisions around the 2007 Act. The Government commenced the review into forensic patients of the Mental Health Act 1990, conducted by Mr Greg James, QC, President of the Mental Health Review Tribunal. This review was completed and its recommendations presented in August 2007 with 34 separate recommendations primarily focused on the appropriate authority to make decisions as to the terms and conditions of detention and release of forensic patients.

In his report, Mr James, QC, recommends that the resource intensive and lengthy process of control of patients by executive discretion—which New South Wales adopted from English law—supported by six-monthly cycles of review and recommendation to the Minister or the Governor in Council, be replaced with the more continuous monitoring and less cumbersome structured system operating through a Special Forensic Division of the Mental Health Review Tribunal. This move will take away executive discretion in this regard,

which the Government claims is cumbersome, overly bureaucratic and operates without transparency or accountability. The Government has pointed to the detention of unconvicted patients in jail for inordinate periods of time as one of the reasons for this change.

The Forensic Division of the tribunal presided over by either a sitting or former judge will make orders for care, treatment leave and release of forensic patients with reference to the matters for consideration under proposed section 74. The proposed changes seek to ensure that legal experts are involved in the decision-making progress regarding detention. The Minister for Health and the Attorney General may also make submissions to the tribunal concerning individuals before the tribunal and can appeal under section 77A. The tribunal will have the authority to release the forensic patient only if it is satisfied that the safety of the patient and the public will not be seriously endangered. Under present section 45 a recommendation for a person to be released would be forwarded to the Attorney General and the Director of Public Prosecutions. The Director of Public Prosecutions would then have 21 days in which to indicate whether it intends to proceed with criminal charges.

In this difficult area where individuals commit crimes but are not convicted of their offences due to mental illness there is considerable public concern over the scope for manipulation of the system. The proposed amendments may be perceived as watering down the current provisions with respect to forensic patients, particularly in light of the changes that will release persons without allowing the Attorney General or the Director of Public Prosecutions to make determinations to commence prosecutions, although the current practice is that these matters are limited to cases where these authorities would not be inclined to prosecute. The tribunal will have the power to order a conditional or unconditional release. If it elects to order a conditional release the person is still treated as a forensic patient and is subject to six-monthly reviews by the tribunal.

Section 160 will allow the establishment of a victims' register, the notification of victims of tribunal decisions in proceedings relating to forensic patients or correctional patients and the termination of the status of persons as forensic patients. Section 76G will allow plans for release and leave across departments. These proposed changes seek to make the process more transparent and open. Under the proposed amendments, definitions are to be inserted for correctional and forensic patients under sections 41 and 42 respectively. Forensic patients under that definition will only include those who have been found not guilty of committing a crime due to mental illness and will no longer cover those convicted and transferred to a mental facility. These individuals are now covered as correctional patients under section 41. The changes to separate correctional patients and forensic patients recognise the different nature of those persons and ensures their proper classification.

Amendments to section 16 allow for the tribunal to make a recommendation to the court as to the care or treatment of a person who is at present not mentally fit to be tried, rather than to the Minister for Health, as is the case at present. Whilst it has been argued that this will reduce bureaucratic inefficiencies and may bring independence to decision-making, empowering the Mental Health Review Tribunal with decision-making power with respect to forensic patients and taking this away from the Minister may dilute ministerial responsibility. Having consulted the New South Wales Bar Association, the Law Society of New South Wales, the Council for the Intellectually Disabled and the Homicide Victims Support Group, the Opposition does not oppose the bill.

Ms SYLVIA HALE [3.59 p.m.]: I support the Mental Health Legislation Amendment (Forensic Provisions) Bill 2008 on behalf of the Greens. The objects of the bill are to amend the Mental Health (Criminal Procedure) Act 1990, the Mental Health Act 2007, and other legislation for the main purpose of conferring on the Mental Health Review Tribunal rather than the Minister for Health the power to order the release of forensic patients from mental health facilities, the power to grant leave to such patients and the power to make orders as to the care, treatment and detention of such patients. The bill will establish the forensic division of the tribunal to exercise those functions. The move away from the executive power of the Minister toward allowing the tribunal of experts to make the decision is long overdue, but nevertheless welcome.

The tribunal will now make all decisions on the care, control and release, whether conditional or unconditional, of forensic patients who have been held in hospital following the commission of a criminal offence for which they have been declared unfit to stand trial because of their mental illness. Before making an order for release the tribunal must be satisfied that the safety of the patient or any other member of the public will not be seriously endangered by the person's release and that other care of a less restrictive kind that is consistent with safe and effective care is appropriate and reasonably available to the person. The Attorney General may make submissions to the tribunal in relation to the possible release or grant of leave of absence to a forensic patient, but the attorney's power to object has been removed. This prevents the politicisation of the treatment of certain forensic patients and ensures that clinical considerations come first.

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

QUESTIONS WITHOUT NOTICE

OFFSHORE PATROL VESSEL *NEMESIS*

The Hon. MICHAEL GALLACHER: My question without notice is directed to the Minister for Police. Can the Minister inform the House why the offshore patrol vessel *Nemesis* was not deployed on 22 October to assist in the rescue of six persons from a sinking yacht off Broken Bay? Why were commercial freighters and a tourist vessel called in to assist another but smaller police vessel in the rescue, which was undertaken in a six-metre swell with winds of 20 to 30 knots? Is the *Nemesis* not being deployed because this Government has failed to increase the Water Police budget, or are there not enough staff to man the vessel, or are there other operational reasons why the $11 million vessel is still in dry dock?

The Hon. TONY KELLY: I thank the honourable member for his long and detailed question. It is obviously something that requires a specific and detailed response and I undertake to give him that response as quickly as I can.

JUNK FOOD ADVERTISING

The Hon. GREG DONNELLY: My question without notice is addressed to the Minister for Health. Can the Minister update the House on the Government's efforts to protect children from junk food advertising?

The Hon. JOHN DELLA BOSCA: Yes, I can, and I thank the honourable member for his question. It has been observed that Australians are adept at dealing with scarcity, but less skilled when it comes to dealing with abundance. One in four Australian children aged 5 to 16 years is now overweight or obese. Like most western nations, Australia is faced with a rising incidence of childhood obesity. From the mid 1980s to the mid 1990s the number of overweight children in Australia doubled. Against that backdrop, the Australian Communications and Media Authority has released new draft standards on content and advertising during children's television.

Despite widespread community concern about the effects of junk food advertising on children, the draft standards contain no restrictions. The absence of controls has resulted in the market doing what you would anticipate. Retailers of high-fat and high-sugar foods are the major advertisers. In 2007 the New South Wales Centre for Overweight and Obesity analysed food advertising on Sydney commercial television. The proportion of high-fat and high-sugar food advertising during the most popular programs for children in the 5 to 12 years age group increased to 72 percent. There were 10 advertisements per hour for what many would term "junk food" during programs most viewed by 5 to 12-year-olds. Fast food restaurants were the most frequently advertised food group during popular children's programs. In all of these cases the trend was increasing. There were more advertisements for the worst foods when children were more likely to be watching than in previous years.

Today there is a newspaper report about the advertising and sale of energy drinks to children. Coca-Cola's "Mother" brand contains 60 per cent more caffeine than a cup of espresso and 300 per cent more caffeine than a can of Coke. Despite a tongue-in-cheek warning on the can, these products are clearly aimed at a very young market. The Australian Communications and Media Authority has extended its deadline to 31 October, for submissions on television advertising to children. The Children's Hospital Westmead did not require the extension. The head of the nutrition department at the Children's Hospital, Prue Watson, was very clear in the hospital's submission. She said:

> As the dieticians educating families in healthy eating, the lack of regulations on children's TV advertising and the resulting bombardment of junk food advertising contradicts our work directly and it is detrimental to the health of children.

The economic impact has previously been offered as one of the major reasons against imposing regulations on the advertisers of high-fat and high-salt foods. Having allowed these advertisers to completely dominate the airwaves during the times when children are watching does not mean we should say "too late" or "too hard". The television networks will not close tomorrow if they are prevented from advertising soft drinks and doughnuts during their children's programming. The impact on children and on our community from this growing problem cannot be overemphasised. Obesity shortens life expectancy. It reduces wellbeing and dramatically increases the risk of chronic disease. This places further pressure on our health system. We must do everything we can to

encourage the development of lifelong habits of healthy eating and physical activity. I encourage the Australian Communications and Media Authority to rethink its draft standards. It is in the interests of children and the entire community for some improved regulation.

LOURDES HOSPITAL, DUBBO

The Hon. DUNCAN GAY: My question is directed to the Minister for Health. In January this year Reba Meagher confirmed that an agreement had been reached for funding of the $18.5 million redevelopment of Lourdes Hospital in Dubbo. Does the Minister understand the confusion and concern in the Dubbo community given that last week he refused to give a guarantee on funding and failed to give any response? The Premier has since said the planned redevelopment is being considered for funding in the mini-budget. Given that the Premier has already ruled out funding cuts to the Mardi Gras, cancer services, and the V8 street circuit, why can't the people of Dubbo get the same for Lourdes Hospital?

The Hon. JOHN DELLA BOSCA: I think the member has asked a very good question. As he is aware, I was in Dubbo just last weekend.

The Hon. Duncan Gay: And you did not give them an answer. You said you would give them an answer and you didn't.

The Hon. JOHN DELLA BOSCA: I went to the Lourdes Hospital and I had a very interesting meeting, briefing and discussion with them. I had a very long and detailed meeting with the Dubbo clinicians about many issues, including the importance of the Lourdes Hospital as a valuable component of an integrated service plan for health services in Dubbo. The role of Lourdes in providing health services has been reinforced through two significant reviews of service provision in Dubbo and the redeveloped Lourdes Hospital will continue a mix of rehabilitation, residential care and community services in partnership with the area health service and tandem with Dubbo Base Hospital.

The Hon. Duncan Gay: You did learn something then.

The Hon. JOHN DELLA BOSCA: I learn a lot. I am an audio learner, people talk to me and I understand and listen to what they say. The new facility will be located between the nursing home and the current hospital buildings. The community-sponsored hydrotherapy pool will be refurbished and retained. As I have said previously, the funding for this project is being reviewed in the context of competing statewide priorities as a consequence of the Government's mini-budget processes. That remains the case; there is nothing new in that. As promised, I did travel to Dubbo, I met with senior doctors and nurses, and I did visit Lourdes Hospital.

The Hon. Duncan Gay: Why is it less important than the Mardi Gras?

The Hon. Michael Gallacher: He is asking you a question.

The Hon. JOHN DELLA BOSCA: I acknowledge the Leader of the Opposition's interjection. Health care is of course very important. That is why we are working to make sure that we maintain the excellent healthcare services that we have, and why we have a significant and substantial investment in New South Wales health care.

[*Interruption*]

I remind the members of the Opposition that we are talking about $13.4 billion worth of taxpayers' funds. I thank the House for its courtesy and ask the members of the Opposition to reserve their interjections about sundry matters for other Ministers. I am talking about very serious matters relating to health and health care in Dubbo. Issues raised with me included the management of Dubbo Base Hospital, communication with clinicians, recruitment and the payment of creditors. This is all in the context of the maintenance of the infrastructure at not only Dubbo Base Hospital but also initiatives relating to the infrastructure of Lourdes Hospital. I gave an undertaking there and then that I would get back to the Dubbo community about the role of Lourdes Hospital, infrastructure upgrades and the significance of the other infrastructure needs of Dubbo Hospital, and long-term planning in relation to those matters. As soon as possible I will get back to the community about these matters.

The Hon. Duncan Gay: It is more important than the V8s at Homebush.

The Hon. JOHN DELLA BOSCA: I acknowledge the member's interjection. I am happy to say that those matters are outside my portfolio and other Ministers are answerable to the Chamber on those matters. I am quite sure that they will be able to answer all the member's concerns. I am interested in rural health. He apparently is not. He is much more interested in car racing.

The Hon. Duncan Gay: Macdonald?

The Hon. JOHN DELLA BOSCA: No, I am talking about the Deputy Leader of the Opposition. He is more concerned about car races. I am talking about making sure that we deliver the best possible health care for the people of western New South Wales. I am talking about making sure that we utilise the fantastic facility we have in Dubbo Base Hospital, and work in tandem with the School of Rural Health, TAFE, Lourdes Hospital, and the opportunities created by having not one but two university health-related campuses on site. We have some outstanding opportunities in Dubbo. The Deputy Leader of the Opposition wants to talk about car races and he has taken up the time I had for the rest of my answer about Dubbo hospital. [*Time expired.*]

BREAST CANCER SCREENING

Reverend the Hon. Dr GORDON MOYES: My question is directed to the Treasurer, on behalf of the Minister Assisting the Minister for Health (Cancer). Is the Minister aware of a recent case involving a 57-year-old woman who found her own advanced breast cancer after not being called back by BreastScreen NSW despite her breast abnormalities being apparent on several consecutive mammograms? Is the Minister aware that she had not been recalled for appropriate follow-up assessment because of quotas on how many women should be followed up being set at no more than 5 per cent of women screened? Is the Minister in a position to tell the women of this State that they can believe the results of their mammograms, or have they too not been recalled for follow-up assessment because there are just too many of them? Can the Minister explain how the use of quotas that deny women with abnormal mammograms access to reliable diagnostic services and appropriate treatment meets the established international guidelines and standards? [*Time expired.*]

The Hon. ERIC ROOZENDAAL: I thank the honourable member for his question and I will pass it on to the Minister.

CHILD PROTECTION REGISTER

The Hon. PENNY SHARPE: I address my question to the Minister for Police. Can the Minister update the House on recent changes to the Child Protection Register?

The Hon. TONY KELLY: New South Wales Police are ramping up their surveillance and prosecution of convicted child sex offenders who step out of line. New South Wales was the first State to institute a child protection register. It was not only the first, but also the State with the toughest conditions and the greatest resources applied to keeping our children safe. This demonstrates the Government's serious commitment to protecting our children from predators.

I am advised that since October 2001 registrable persons have been required to report their personal details to the New South Wales Police Force for a set number of years while they are living in the community. Registrable persons are required to tell police where they live, where they work, what car they drive, any children they live with and more. They are also required to inform police in advance of their intended interstate or international travel arrangements.

The Government introduced some important changes to the Child Protection Register effective from Monday 20 October 2008. These changes help provide police with the information they need when investigating and prosecuting child sex offences that may have been committed by recidivist offenders. As well, they assist police in the management and monitoring of child sex offenders in the community. These changes include a requirement for people on the register to provide police with their email addresses and other electronic tags. This information may assist investigations of the New South Wales Police Force, particularly in relation to child pornography or grooming and/or procuring of children. It will also deter persons on the register from inappropriately using telecommunications and will provide an added layer of protection for children while using the Internet.

The changes also provide the power for police to take and retain DNA samples from people on the register irrespective of the sentence they have received. This will give police a much better shot at solving other

crimes that the person may have committed. It will also provide police with a powerful investigative tool to identify offenders or to eliminate suspects when new child sexual offences occur. I am advised that if a registered person initially refuses to provide a DNA sample, such as hair, a senior police officer can order them to do so and the law gives police the power to use reasonable force to ensure that the sample is taken. I am advised that police also have the option of applying for a court order to force the registrable person to provide an intimate DNA sample, such as a mouth swab.

The new legislation also provides for an increase in the maximum penalty for breaching the reporting requirements of the register from two years to five years, to provide registrable persons with a sufficient deterrent to encourage them to comply with the reporting obligations. Police advise that a failure to comply with reporting obligations can be an indicator of further offending or evidence of a disregard for the register or the seriousness of the offences they have committed and the register's overall objective of protecting children.

These are just a sample of the suite of changes that the new legislation has introduced and they are a valuable illustration of how New South Wales police continue to be proactive when it comes to the management of child sex offenders. Once again New South Wales is leading the way in this area. Other jurisdictions are currently looking at making similar changes to their child protection registers.

FOOD ADDITIVES

Dr JOHN KAYE: My question is directed to Minister Ian Macdonald as New South Wales's sole representative at the Food Regulation Ministerial Council meeting in Adelaide. At that meeting on Friday last week did Food Standards Australia New Zealand indicate that it had further information in respect of six artificial bright food colourings and that it was considering this information and would report back to the next ministerial council meeting? If so, did this matter relate to the Southampton study of food additives and children's behaviour that appeared in the *Lancet* in September 2007?

The Hon. IAN MACDONALD: The twelfth meeting of the Australia New Zealand Food Regulation Ministerial Council was held in Adelaide last week on 24 October. The Ministerial Council considered a number of strategic policy and food standards issues. Perhaps the most significant outcome was agreement on a substantial and overarching review of food labelling laws and policy. This will be a complete and independent review involving experts drawn from a range of disciplines. This is a big step forward for Australian consumers. It is a wide-ranging review that will examine such things as front of pack labelling, country of origin labelling and health claims. I am pleased to note that this comprehensive review has drawn public support from consumer group Choice.

The Ministerial Council also considered other matters including food colours, trans-fatty acids and a national food incident protocol, certainly a matter of great importance as emphasised by the recent incident concerning melamine contamination in Chinese milk powder. As the Minister concerned and through the Food Authority, and with the strong assistance and support of my colleague the Minister for Health and NSW Health, I will continue to work proactively within the food regulation framework to secure safeguards for New South Wales consumers on food issues.

The New South Wales Government and Food Standards Australia New Zealand [FSANZ] are aware of the United Kingdom study and FSANZ, along with food agencies around the world, has been examining the study and calls to ban certain food colours. In fact, the European Food Safety Authority, after convening a panel of experts concluded there was not enough evidence to change the current limits or use of these additives. FSANZ advises that the food colours used in the study are approved as safe in Australia and that Australian children are exposed to lower levels than those used in the UK study because of the permitted levels stipulated in the Food Standards Code. FSANZ has presently concluded that a change to the Food Standards Code is not required at this point and will continue to monitor developments in this area.

The Food Standards Code governs the composition and labelling of all Australian foods. Current labelling requirements in Australia require food colours to be identified in the mandatory ingredient list to enable consumers to identify and, if desired, to avoid products containing these additives. However, given the community interest in this issue, I have raised the issue with Food Standards Australia New Zealand with a view to that body examining it. As I understand it, that is precisely what they agreed to last Friday. I was not at the meeting. I was represented by my Parliamentary Secretary, Mr Steve Whan.

DNA ANALYSIS BACKLOG

The Hon. RICK COLLESS: I direct my question without notice to the Minister for Health. Did the Premier today contact the Director-General of the Department of Health to fast-track the DNA analysis of a young man who died in a car accident five weeks ago and whose parents still have not been able to inter their son? Can the Minister inform the House what action he has taken to ensure that the backlog of DNA analyses is cleared and what instructions he has given his department to ensure that in future this scenario does not happen?

Hon. JOHN DELLA BOSCA: First, I would like to offer my condolences to the family of Nathan Stenhouse, the individual referred to in the member's question. There can be nothing more painful for a parent than the death of a child, and Nathan died in a car accident on 27 September. The Hunter New England Area Health Service advises that Nathan's body was transported to the Newcastle morgue three days later; a post mortem was completed on 2 October; and the body was released for burial on 3 October, six days after his death. The funeral director picked up his remains on the 8th and, while the body can be buried, it cannot be cremated. This is because dental records were insufficient. DNA samples have been taken to confirm the identity, and the laboratory has not yet completed the results.

NSW Health has asked the Division of Analytical Laboratories to expedite the DNA tests to allow the family to cremate their son, as is their wish. I reiterate that this must be a very difficult time for the family, and I hope that we can reduce their grief by expediting the processes. Forensic testing obviously is a crucial tool for the police. NSW Police Force and NSW Health laboratory scientists have been working hard to reduce DNA testing delays. I am advised that the backlog in samples awaiting analysis has been more than halved in the last year.

SEXUAL ASSAULT PENALTY REFORM

The Hon. HELEN WESTWOOD: I address my question to the Attorney General. Can the Attorney inform the House of the latest information on reform of penalties relating to sexual assault offences in New South Wales?

The Hon. JOHN HATZISTERGOS: On Sunday the Government released the landmark report by the New South Wales Sentencing Council on sexual assault laws and child pornography. It is one of the most detailed and comprehensive reviews of penalties for sexual offences in the history of this State. The Government supports the council's recommendations, which builds on our record of reform, to protect children from abuse and place the interests of sexual assault victims at the centre of the criminal justice system. The penalty for possession of child pornography will double, from 5 years to 10 years, following our reforms in 2005 to increase it from 2 years. There will be a new aggravated offence of having sexual intercourse with a child under 10 years, with a penalty in excess of 25 years.

The Government is grateful for the valuable work done by retired Supreme Court Justice James Wood and his team, who identified a number of inconsistencies and gaps within the New South Wales law, and between State and Commonwealth law, as a result of rapid legislative changes to sexual assault law and child protection in recent years. The Sentencing Council report establishes a gold standard, not only for New South Wales but also across Australia, for legislation to safeguard adults and children from sexual predators. As well as increases to child sex offence penalties, the council recommended that the Government stop courts from taking into account good reputation, good character and lack of criminal history as mitigating factors when the offenders have used these same characteristics to gain people's trust to commit their crimes.

The Government will also create new offences of voyeurism and aggravated voyeurism, similar to those in the United Kingdom, to modernise the law beyond the old peep and pry provisions to deal with new technologies of surveillance and reporting. The Government also supports the council's recommendation to remove the artistic purpose defence for child pornography, to ensure that child pornographers who portray children in situations of torture or sexual activity cannot escape conviction by claiming that they are creating art. These provisions have won the support of victims groups and children's advocates, with Hetty Johnson from Bravehearts saying:

> … the artistic merit defence does create a loophole that can be exploited. And so to close that loophole is a smart thing.

The Government will also establish a Sexual Offences Working Party to conduct larger general reviews, headed by Supreme Court judge Elizabeth Fullerton, and a Child Pornography Working Party, headed by District Court judge Peter Berman SC. Those reviews will include examining the offences of persistent sexual abuse of a child,

achieving greater uniformity between New South Wales and Commonwealth laws, and, for the Child Pornography Working Party, how to remove the artistic purpose defence whilst ensuring that non-pornographic pictures are not criminalised. On Sunday the Leader of the Opposition threw his support behind the Government's reform package, saying:

> I welcome the proposals to change the law.

But then he complained that the changes were taking too long. In fact, the comprehensive, 158-page report was completed by James Wood and his hardworking team in an efficient and speedy manner, only months after he was given the reference, despite the fact that he was also doing a major review of the New South Wales child protection system. Regrettably the Opposition attacks those on the front line of criminal justice reform, whilst the Government gets on with the task of ensuring that our sexual assault laws remain up-to-date and ensuring that our criminal laws are effective in the prosecution of child abuse.

OXYCONTON DRUG ABUSE

Reverend the Hon. FRED NILE: I ask the Minister for Health a question without notice. Is it a fact that 46 per cent of the 17,971 injections at the Kings Cross injecting room in the June quarter involved opioid-based drugs such as oxyconton and ms conton? Is it a fact that twenty doctors have been referred to the Medical Board for wrongly prescribing the oxyconton drug and that up to 60 doctors are being investigated regarding similar prescriptions? What action is the Minister taking to prevent the illegal prescribing of the drug oxyconton by doctors and chemists in New South Wales?

The Hon. JOHN DELLA BOSCA: I thank the member for his question and I commend him for his ongoing interest in this matter. Oxyconton is a morphine-based drug and is subsidised through the Pharmaceutical Benefits Scheme. In its proper use, it is prescribed for chronic pain sufferers, such as cancer patients. The illicit use of prescription drugs is not just a problem related to New South Wales; it is a growing issue across the country, and indeed internationally. NSW Health is working with the NSW Police Force to reduce the illicit use of this drug. Since the trial of the medically supervised injecting centre commenced in 2001, the medical director has reported monthly activity and drug trend data to NSW Health. The information provided by the centre allows for the early identification of changes in illicit drug use. The centre's monitoring committee, which includes New South Wales police, meets regularly and provides a forum to analyse trend data for drug use and develop responses.

The New South Wales Chief Pharmacist has established an education and monitoring unit, which provides drug education for general practitioners and pharmacists, targeting areas where oxyconton appears to be over-prescribed. Doctors found to be over-prescribing irresponsibly, as the member speculates in his question, are referred to the New South Wales Medical Board. They risk losing their authority to issue prescriptions for addictive drugs. Obviously, some of these matters are best dealt with or exclusively with by the New South Wales Medical Board. The New South Wales Police Force appropriately deals with other related matters.

BULLI HOSPITAL SURGERY SERVICES

The Hon. JOHN AJAKA: I direct my question without notice to the Minister for Health. Why was the planned closure of the elective surgery theatres at Bulli hospital made without any real consultation with the medical profession or the community? Given that nearly 1,000 people on the waiting list at Bulli hospital will have to join the 1,500 people already on the waiting lists at Wollongong and Shellharbour hospitals following the planned axing of surgery from Bulli hospital, can the Minister rule out an increase in waiting times? Following the planned closure of surgery and winding back of the emergency department at Bulli hospital, will the Minister rule out further service cuts at the hospital? Will he guarantee that Bulli hospital will not be closed? Why are Minister Della Bosca and Minister Campbell attacking one other in the media, rather than speaking to each other in Cabinet about maintaining services at Bulli hospital?

The Hon. JOHN DELLA BOSCA: I shall first answer the last part of the question: That is absolutely absurd. The Minister for Roads and I enjoy an excellent relationship, both personally and professionally. We regularly communicate about matters in relation to Wollongong. He is an outstanding advocate for the Illawarra.

[*Interruption*]

The interjections from the other side are deteriorating with time; they are getting worse.

The Hon. Trevor Khan: Why are you are ignoring him?

The Hon. JOHN DELLA BOSCA: I am not ignoring him. I have had a number of significant discussions with David Campbell and my other colleagues in the Illawarra. I am aware of the issues at Bulli District Hospital and I have asked the Parliamentary Secretary Dr Andrew McDonald to examine the area health service's proposed plan for Bulli hospital. This follows concerns expressed by the member for Keira and the member for Heathcote. I am advised that the proposals to use Wollongong and Shellharbour hospitals were put to the Health Service by Illawarra surgeons, who feel it will be better use of our health infrastructure. We want to make sure this is workable and will not disadvantage patients or ruin our good record of elective surgery waiting lists.

The numbers referred to by the Hon. John Ajaka in his question were quite extraordinary. A few years ago there were 10,000 people waiting longer than a year for elective surgery. The number is now down to fewer than 50 people statewide as at June this year. I do not know the numbers the Hon. John Ajaka has quoted. Elective surgery is the type of surgery that is conducted at Bulli hospital. I want to be sure that this change does not adversely affect the excellent work already carried out not by politicians or anybody else but by management and surgeons working together to reduce the New South Wales elective surgery waiting lists to make them the best in Australia. To calibrate the effectiveness of those waiting lists, Australia has one of the best health care services in the world, if not the world's best. Therefore, New South Wales is the best of the best.

I think the Hon. John Ajaka's figures are a product of some strange fantasy. The Health Service believes it can accommodate surgery in Shellharbour and Wollongong hospitals and I will test that assertion. Full and adequate consultation will be required. Members opposite continually tell me that they do not believe the numbers presented to them. Let me make the obvious point: nothing has changed except that the waiting list used to consist of 10,000 people and is now fewer than 300, and only a month ago it was 50. Nothing has changed about the way in which we calculate the waiting list. There is no variation, no change in the way we add up the numbers, no change in the way these things are recorded. What has changed is that there has been great work done by the surgeons of New South Wales along with the administrators of New South Wales Health to make sure that we have elective surgery lists that not only are the best in Australia but are the best of the best. So, we are doing very well when it comes to elective surgery. We want to make sure that we maintain that record in the Illawarra. [*Time expired.*]

DEFENCE MATERIALS TECHNOLOGY CENTRE

The Hon. HENRY TSANG: My question is addressed to the Minister for State Development. What is the New South Wales Government doing to help protect our armed forces personnel based overseas?

The Hon. IAN MACDONALD: I thank the member for his important question in these times of international conflict during which, of course, our diggers are playing a vital part. The New South Wales Government honours the important role that the men and women in our armed forces play in trouble spots around the world. New South Wales is home to almost 28 per cent of Australia's defence personnel—more than any other State, including the Australian Capital Territory.

The Hon. Charlie Lynn: They are the ones you usually demonstrate against.

The Hon. IAN MACDONALD: We all change, do we not? The Hon. Charlie Lynn might not have. The nation's defence industry employs about 93,000 people.

The Hon. Charlie Lynn: Are you going to apologise?

The Hon. IAN MACDONALD: Certainly not. The only apology will be when someone apologises to us. For all these reasons, New South Wales will help the Commonwealth fund the research and development of high-technology armour to better protect Australia's armed forces. The New South Wales Government will provide $525,000 from the Science Leveraging Fund towards a new Defence Materials Technology Centre [DMTC] being established by the Federal Government. This new research centre will focus on developing lightweight and blast-resistant materials that can be used by the army, navy and air force to better protect our armed forces during conflict. Research projects will include strengthening the blast resistance of the army's Bushmaster vehicles as well as providing high-strength steel and repair technologies for navy ships, all of which will help make the men and women of our armed forces much safer.

Importantly, this research and the associated products will have spin-off benefits for other sectors of our economy such as manufacturing, civil aviation, marine and mining industries. Major markets for Australian defence exports and technologies include the United States, the United Kingdom, New Zealand, Thailand, Singapore, the Philippines, the United Arab Emirates and Kuwait. I should add that the Defence Materials Technology Centre will have a major New South Wales node at the University of Wollongong and will draw on expertise from partners, including the Australian Nuclear Science and Technology Organisation and companies BlueScope Steel, Thales, Pacific ESI and Bis-alloy.

The centre's work will complement other research centres in New South Wales. These include the ARC Centre of Excellence in Electro Materials, the Co-operative Research Centre for Advanced Composite Structures, the Australian Microscopy and Microanalysis Research Facility, and the Australian National Fabrication Facility. New South Wales businesses will have opportunities also to work on projects, including defence-related businesses from regional areas like the Hunter and Shoalhaven—providing a boost for regional areas as well. The Defence Materials Technology Centre will spend over $26 million in New South Wales over seven years and employ 23 full-time equivalent positions, including PhD students. The centre will help to attract new companies and industry capabilities while developing the State's materials research and development capacity. There will also be significant skilled benefits through the development of industry training, packages from vocational through to postgraduate levels and the development of industry-aware PhD graduates. This is a positive step for our armed forces and for the New South Wales economy.

BERMAGUI STATE FOREST LOGGING PROTESTS

Ms LEE RHIANNON: I direct my question to the Minister for Police. Did officers stationed at Batemans Bay police station in collaboration with Forests New South Wales hold a meeting at the Bermagui Country Club in September to warn locals associated with calling for forest protection not to protest when logging commenced in the Bermagui State Forest? Does the holding of this meeting reflect that Batemans Bay police officers have adopted a zero tolerance policing approach to forest protesters? Considering that since logging started in Bermagui State Forest on 27 October with a group of about 40 protesters gathered in the vicinity, about 15 police cars, more than 20 police, including members of the Public Order and Riot Squad, a mobile police command bus and two police rescue vans have been in attendance, will this level of policing continue for the coming six weeks of logging in this area? What is the anticipated cost of this operation?

The Hon. TONY KELLY: The Far South Coast Local Area Command of the New South Wales Police Force has been advised that New South Wales Forests is to commence logging compartments of Bermagui State Forest later this month. As in the past, protests are expected. As always, the New South Wales Police Force is committed to maintaining public order. For this reason, local police and various commands, including the Public Order and Riot Squad, Highway Patrol and Rescue Squad will join together to conduct an operation. This operation will focus on ensuring the protection of persons engaged in lawful activities. Local police have made it clear that anyone engaging in unlawful or dangerous activity in or near the logging operation will have action taken against them. When offences continue and are considered dangerous, police will arrest and charge people as necessary. Police respect people's rights to protest during these times; in no way are they looking to prevent lawful and peaceful protests. Police have asked anyone who intends to protest to contact them so that they can attempt to facilitate lawful activity, minimise disruption and focus on protecting the safety of everyone involved.

MINI-BUDGET

The Hon. GREG PEARCE: My question is directed to the Treasurer. Does the Treasurer recall his statement in which he announced in relation to the mini-budget process that "this will be a line by line review of operating expenses, and the State's forward capital program" and, further, that "the criteria against which government departments will be measured to find savings include whether or not the program is a core New South Wales Government responsibility or whether the program is providing value for money and achieving objectives"? As the Treasurer was a member of the Cabinet budget committee, why did he approve programs in the 2008-09 budget that are not core New South Wales Government responsibility or not providing value for money or not achieving their objectives?

The Hon. Michael Gallacher: Go on, Eric. Answer that!

The Hon. ERIC ROOZENDAAL: Answer it? I can barely understand it. What a mess! I do not know where the Hon. Greg Pearce has been lately, but we are facing very difficult times, as has been noted on

numerous occasions. I do not wish to bore the House with details of what has been going on, but anyone who reads any newspaper or listens to any news bulletin would understand that these are very difficult financial times right across the State, the nation and the world. We are in an international financial crisis, which has well and truly been widely discussed. The State is on credit watch, as the shadow Treasurer should know.

The Hon. Greg Pearce: It is not on credit watch; we are on negative outlook.

The Hon. ERIC ROOZENDAAL: Or it has been given a negative outlook from Standard and Poor's.

The Hon. Michael Gallacher: Got you!

The Hon. ERIC ROOZENDAAL: That is the first point made so far by the Hon. Greg Pearce. That is the first time he has made a point. He may have moved from No. 15 on the list to No. 14. If the Hon. Greg Pearce offers something constructive, I will always take it on board. Very important decisions are being made by the Government. The mini-budget is a line-by-line examination of capital expenditure going forward, and that is precisely why we are doing a mini-budget. The mini-budget is very important to the future of the State. We need to defend our triple-A credit rating. We need to be prioritising the capital expenditure program going forward. We need to carefully look at our expenditure, our revenue, and our assets. That is precisely what we are doing. All will be revealed in the mini-budget.

OLDER PEOPLE HEALTH SERVICES SUPPORT

The Hon. CHRISTINE ROBERTSON: My question is addressed to the Minister for Health. Will he inform the House what health services the New South Wales Government is providing to support older people in communities across New South Wales?

The Hon. JOHN DELLA BOSCA: I thank the Hon. Christine Robertson for her question. Australians are living longer, and we are healthier than ever. Older people make a huge contribution to community life through working in paid jobs, caring for grandchildren, volunteering, and mentoring. While there is no doubt that our ageing population will have an impact on our health system, it is a challenge that we are prepared for. Currently half of all New South Wales public hospital beds are occupied by people over 65 years of age, and the number of people aged 65 and over will increase by a third in the next decade. The number of people aged over 75 years who seek hospital treatment is growing by 20 per cent each year, and the average length of stay for patients aged over 75 years is more than double that of younger patients.

To assist in delivering faster, safer and better care for older people who have chronic diseases, we are establishing new medical assessment units in our busiest hospitals. The units are staffed by specialist doctors and nurses, geriatricians, physiotherapists, social workers and occupational therapists. The units provide early diagnosis and treatment for older people whose condition is assessed as non-critical by emergency department professionals. I want to emphasise that people who have very serious or life-threatening conditions will continue to be treated in emergency departments.

The PRESIDENT: Order! The Deputy Leader of the Opposition will cease interjecting.

The Hon. JOHN DELLA BOSCA: The aim of the units is to begin specialist treatment earlier, with a focus on returning patients to the comfort of their home environment earlier. Sixteen of the units already have been opened. We have established a range of community-based programs to reduce the time during which older people remain in hospital. The Transition Care Program, for example, provides short-term support to enable people to return home and receive ongoing care. By 2012 there will be 1,378 transitional aged care support packages available across New South Wales. They will reduce the time spent in hospital, improve the recovery process, and prevent early entry to nursing homes. In addition, we are implementing the longer stay of older patients. This initiative recognises the need to improve the care and management of older people who are waiting in hospitals for residential aged care services.

The PRESIDENT: Order! The Hon. Greg Pearce will cease interjecting.

The Hon. JOHN DELLA BOSCA: We are also expanding the number of support packages to people who are older than 75 through the introduction of hospital-to-home packages to help them to return home more quickly. These services will ensure that older people receive the best possible care in hospitals and in the community. We are also focusing on preventive health and screening programs. The "1997-2007 Report on

Older People" by New South Wales Health reveals that we are having a positive impact, with older people living healthy lifestyles. The major report findings include that colorectal cancer screening tests have increased to 49 per cent, which is an increase from 28 per cent; that influenza vaccinations have increased to 72 per cent, which is an increase from 57 per cent; that vaccinations against pneumococcal disease increased to 59 per cent, which is an increase from 38 per cent; and that high-risk drinking behaviour decreased, particularly among older men, to 21 per cent from almost 30 per cent. Unlike members opposite, the Government has a plan and is committed to improving health services—not just for older people, but also for all New South Wales residents.

BERMAGUI STATE FOREST KOALA SURVEY

Mr IAN COHEN: My question is directed to the Minister for Primary Industries. Can he explain the process behind the new koala survey method used in surveying Bermagui State Forest compartments 2004 and 2005? To what extent did the survey find evidence of the presence of koalas, which of course is koala droppings? Can he advise what actions he or Forests New South Wales will take against contractors if they failed to halt logging upon the sighting of koalas?

The Hon. IAN MACDONALD: I thank Mr Ian Cohen for his question. Over a period the honourable member has raised issues relevant to forestry, and basically his position seems to be that we should cease native forestry activity in many parts of the State. I point out to him that around the turn of the century, a number of agreements were struck which led to a massive 5.5 million hectares of State Forest land being incorporated within the National Estate, so there has been a significant transfer of native forest.

The Hon. Marie Ficarra: What about the koalas?

The Hon. IAN MACDONALD: I will come to koalas in a minute. I will answer the question my way, thank you. The issue is that there is a relatively small percentage of that former State Forest estate held by Forests New South Wales to meet 20-year wood supply agreements under a Forestry Industry Structural Adjustment Program [FISAP] entered into in recent years. Those agreements have led to the regeneration of the industry and considerable improvements in the technology employed in activities of the region. In relation to the Bermagui State Forest, it is a 183-hectare forest. It was logged selectively 20 years ago and clear-felled some time before that. It is not an old growth forest. Secondly, an extensive survey was undertaken by Forests New South Wales. I believe it is a very scientific and well-balanced study and it shows that there was no permanent colony of koalas in that area.

In relation to the spotting of koalas, the practice would lead to the assessment of that colony, and I believe that would be checked out and monitored. The point is that we need to supply in accordance with wood supply agreements. They are 20-year agreements and they have a fair amount of time left. Many workers are involved on the South Coast and indeed on the North Coast in this industry. If we were to pull out from providing this hardwood, given that the demand for timber is not decreasing despite the economic downturn—there is still a lot of demand for timber products in New South Wales—it would lead to increased importation of timber. That timber most likely would come from South-East Asia or Brazil, or one of the countries the environmental protocols of which are far inferior to protocols that are available and enforced in New South Wales in relation to the selective harvesting of forests.

We are committed to sustainable harvesting of the remaining forest. We do not believe the koalas are under threat. We believe that that is a furphy that has been put about by people who have no evidence. I have seen their statements relating to the south-east forests. There is no scientific evidence. Forests New South Wales is right. It has done the work, and I believe the forest is being sustainably logged.

Mr IAN COHEN: I ask a supplementary question. The Minister clearly said that the department is committed to logging in that area. Does the Minister agree that the export of woodchips, described by a former Federal Minister as "a bastard of an industry", is absolutely overcommitting the resources of that area?

The Hon. IAN MACDONALD: Again, the member states an inaccuracy. These forests are valuable saw logs used for a number of different products that are in high demand.

Mr Ian Cohen: It is the woodchipping—

The Hon. IAN MACDONALD: Wait a second! The woodchip component of it is in the field of residues, and that is created in the process of felling these trees. No timber company would convert saw logs to woodchip. That is just economically insane.

JINDABYNE HEALTHONE PROJECT

The Hon. MELINDA PAVEY: My question without notice is addressed to the Minister for Health. Is the Minister aware that the Jindabyne HealthOne committee's discussions with the Greater Southern Area Health Service have collapsed after 18 months of meetings, following an admission on Thursday by the health service that it had no plans to build a multipurpose facility in Jindabyne? Is the Minister further aware that the local community feels bitterly betrayed, given that during the 2007 State election campaign the then health Minister, John Hatzistergos, committed the State Government to supporting a health fund facility under the $25 million program, which committed to bringing together a number of practitioners and services under one roof in the town?

The Hon. John Hatzistergos: It was a campaign question.

The Hon. Melinda Pavey: What was that, John?

The Hon. Eric Roozendaal: He said she was the campaign director.

The Hon. John Hatzistergos: I am just reminding her.

The Hon. Duncan Gay: Was it just a campaign promise perhaps?

The Hon. Eric Roozendaal: No, he said she was the campaign director of Port Macquarie.

The Hon. Michael Gallacher: Was it a non-core campaign promise?

The Hon. JOHN DELLA BOSCA: I acknowledge all the interjections, Mr President. HealthOne is a model of care that brings together general practitioners with community health workers, allied health and other medical professionals outside the hospital environment. The initiative is about preventative and primary healthcare services in the community. I am advised that the Jindabyne HealthOne project has had difficulty securing the services of a general practitioner.

The Hon. Melinda Pavey: They have one; she has just walked away.

The Hon. JOHN DELLA BOSCA: The member has the benefit of information I do not have. I will ascertain the latest information on that matter and come back to the house as soon as possible. No HealthOne initiative can proceed without a participating general practitioner.

The Hon. Melinda Pavey: She's walked away out of frustration.

The Hon. JOHN DELLA BOSCA: The Hon. Melinda Pavey has just contradicted herself with that interjection. I acknowledge the interjection and note that it is exactly the opposite of what the member said about 30 seconds previously. My advice is that the Greater Southern Area Health Service followed all appropriate planning guidelines for HealthOne services, including the employment of the Department of Commerce as an independent consultant.

The Hon. Duncan Gay: You are in denial.

The Hon. JOHN DELLA BOSCA: No, members opposite are the ones in a cranky mood. I am simply trying to be reasonable and give the answers, but members opposite do not want to hear them.

The Hon. Michael Gallacher: No, you are not. You are verballing her. I should know. You are verballing her.

The Hon. JOHN DELLA BOSCA: The Leader of the Opposition is the expert at verballing. In the Liberal Party caucus room they say that the Leader of the Opposition never loses a rematch back in his office. He loses in caucus quickly but never loses a rematch back in his office. The Greater Southern Area Health Service is committed to delivering the best health services possible for the Jindabyne community, and is continuing discussions with the local community to progress plans for a HealthOne service.

STATE PARKS

The Hon. IAN WEST: My question is addressed to the Minister for Lands. Will the Minister inform the House of what action the Rees Government is taking to develop and promote State parks in New South Wales?

The Hon. TONY KELLY: This question is particularly important because New South Wales State Parks is holding its conference at Burrinjuck at this very moment. The State park network across New South Wales offers the people of New South Wales and visitors access to some of the most beautiful locations in Australia at a price that will not break the family budget. Managed by the local community, the parks offer a diverse range of activities from picnics and camping through to swimming, water sports and bushwalking. As I said, this week the annual State Parks conference is being held at Burrinjuck Waters State Park in the State's south. By all accounts, it has been another productive get-together of State park managers.

The conference, which started on Monday and concludes tomorrow, is looking at ways to improve designs for caravan areas, walking tracks and trails to deliver an even better experience to the many thousands of visitors who enjoy our State parks each year. The past year has been a busy one for State Parks. Three new State parks were established on the New South Wales mid-north coast: Manning Entrance State Park, Harrington Beach State Park and Bellinger Heads State Park. More recently new State parks were also gazetted along the South Coast, and work is underway on Sydney's first State park in and around Cronulla Beach. In fact, many of my colleagues have approached me asking when and where their new State park will be established.

[*Interruption*]

Members opposite are not interested in State parks, they are not interested in what happens in country areas, and they are not interested in cheap holidays for families. State parks across New South Wales are supported each year with a $1.5 million budget.

The Hon. Marie Ficarra: What about Currawong?

The Hon. TONY KELLY: Currawong is not a State park. This investment provides for ongoing running costs and also helps the parks to upgrade infrastructure, plant and equipment. This year we have promised $272,000 to Killalea State Park; $180,000 for my local State Park, Lake Burrendong; $393,000 for Wyangala Water and Grabine Lakeside Park; $157,000 for Lake Glenbawn; $226,000 for Lake Keepit; $160,000 for Copeton Water near Inverell; and, last but not least, the Hon. Michael Veitch will be pleased to know that his local park, Burrinjuck Waters, is receiving $102,000. This investment will help State Park trusts to supplement their income.

The Rees Government is also helping State Parks to attract additional visitors and generate additional income through a campaign to highlight the wide range of activities on offer. The State Parks website, *www.stateparks.nsw.gov.au*, has been enhanced to make it easier for people to check out fun and affordable holidays in our State parks. The site provides information about accommodation, upcoming events, local attractions, activities, directions and more. Much of the credit for the management of State parks must go to the community trust boards, which manage the parks under the guidance of the Department of Lands. The community trust boards, made up entirely of volunteers, do a fantastic job of managing and maintaining State parks. On behalf of members, I extend my thanks and gratitude to those volunteers for their excellent work. [*Time expired.*]

POLICE POWERS (DRUG DETECTION TRIAL) LEGISLATION

Ms SYLVIA HALE: I address my question to the Attorney General. Given that the expiry date of the Police Powers (Drug Detection Trial) Act 2003 was 23 August 2008, under what legislative authority were police carrying out operations using police sniffer dogs at Newtown train station and the Enmore Theatre in Sydney on the evening of 14 October 2008?

The Hon. JOHN HATZISTERGOS: A similar question was asked of the Minister for Police on Friday. At that time I indicated to the member that I would obtain an answer and provide it to her off the record. Now she has embarrassed herself by asking the question so everyone can hear the response. The legislation that the member referred to is the Police Powers (Drug Detection Trial) Act 2003. That lapsed on 22 August 2008. The member is not aware that this Act was specifically limited to provide police with the power to establish checkpoints for vehicles in defined areas and to stop vehicles and screen them using drug detection dogs. It has nothing to do with the Enmore Theatre. There is other legislation under which the police can act if they want to, but I am not supposed to give the member advice so I will not.

DUBBO BASE HOSPITAL

The Hon. JENNIFER GARDINER: My question is directed to the Minister for Health. Further to the Minister's visit to Dubbo hospital and his acknowledgement that the Greater Western Area Health Service

[GWAHS] has systemic issues affecting staff morale and public confidence in the hospital, does the Minister acknowledge that there are similar systemic issues affecting morale and public confidence in health services across the State? What does the Minister say to Dr Fisher, Chairman of the Dubbo Hospital Medical Staff Council, who says "Clinicians have no say in the running of the hospital"? Is that not a familiar concern of many medical staff councils, not only the staff council in Dubbo? What specific plans does the Minister have to address such systemic problems in the GWAHS and in all the other area health services in New South Wales? What specific proposals does the Minister have to ensure that health services across this State are overhauled to ensure that, among other things, clinicians have a key say in the running of our hospitals?

The Hon. JOHN DELLA BOSCA: The Hon. Jennifer Gardiner obviously had a very good education because I note that she uses the Greek pronunciation of "systemic". I have acknowledged—it is obvious—that there are systemic issues. It is very important to understand that in order to start dealing with the problems that people face—rather than playing politics with people's health and the important issues around the development of good health policy, as the member and her colleagues do. I remind the member about some of the data in relation to Dubbo hospital because she and her party have been doing their best to denigrate the work of clinicians and hardworking staff at that hospital.

The Hon. Jennifer Gardiner: That is not true.

The Hon. JOHN DELLA BOSCA: The Hon. Jennifer Gardiner cannot have it both ways: She cannot keep saying that the joint is a mess, it is hopeless, everybody is unhappy, it is no good and all the performance indicators are no good and then say "No, we still acknowledge that it is a good facility and the doctors are okay." What does the data really show? The new data shows that in August 2008 79 per cent of emergency department patients were admitted to a ward within an eight-hour benchmark—a 4 per cent increase on the corresponding period in 2007—and the target is 80 per cent.

The Hon. Duncan Gay: Point of order: If the Minister wants to make a substantive attack on members of the Opposition, he has to have some facts. He has to detail the facts.

The PRESIDENT: Order! I call the Deputy Leader of the Opposition to order for the first time.

The Hon. JOHN DELLA BOSCA: There were no patients waiting longer than 12 months for their elective surgery compared with nine in August 2007. Benchmarks for all five emergency department triage categories are being met, as determined not by The Nationals, the Government or anybody in the healthcare bureaucracy but by the Australasian College of Emergency Medicine. That is yet another endorsement by a third party, independent of the Government and the health service, in relation to the performance of Dubbo hospital. Dubbo hospital is a major regional referral hospital with a great future. It plays a vital role in delivering health services to the thousands of families who live not only in Dubbo but also in the broader region. As the Minister for Health of course I spend my time listening to what clinicians have to say on the ground, in the boardrooms and in the community to see what we can do to address immediate problems—

The Hon. Jennifer Gardiner: They do not have any boardrooms!

The Hon. JOHN DELLA BOSCA: I met them in a boardroom, which is what I was referring to. If the Hon. Jennifer Gardiner wants to know actually what happened, I am telling her: We met in a boardroom, and there is nothing wrong with that. It is useful to be able to say that. I will continue to advocate strongly for the people of Dubbo to ensure that as much funding as possible is committed to the area—and that includes Lourdes Hospital, which was the subject of the member's previous question. It should be noted that the State Government has already invested heavily in Dubbo Base Hospital. The number of available beds has increased from 136 in 2004-05 to 151 in 2008. The maternity unit has been upgraded, with the installation of a breast-feeding room, improvements to the nursery and the installation of a video security system. In the past financial year 11,008 babies have been delivered at Dubbo Base Hospital. In addition, the hospital has received $1.69 million for the refurbishment of the dialysis unit, which I visited, and the expansion of the oncology and renal diabetes unit, and $200,000 for the replacement of the operating theatre roof and the upgrade of air-conditioning and theatre lights.

The State Government is working hard to improve healthcare services in Dubbo and in the region. For example, last week I announced a $4.1 million increase to provide a new dental clinic in the town, which will boost the number of public dental chairs from four to six. The doctors and nurses at Dubbo hospital are valued

members of the health system and the local community, as are other allied health and support staff at the hospital. They deserve our utmost support; they do not deserve to be used as a political football for the narrow purpose of The Nationals.

I suggest that if members have further questions, they place them on notice.

OFFSHORE PATROL VESSEL *NEMESIS*

The Hon. TONY KELLY: Earlier in question time the Leader of the Opposition asked me a question about the offshore patrol vessel *Nemesis*. I am advised by Mark Hutchings, the Commander of the Police Marine Area Command, that the police vessel that attended the incident in question is stationed at Broken Bay water police and was the closest available in this emergency. It is fully equipped to deal with this type of circumstance under the control of a qualified master of the vessel. This is evidenced by the successful rescue of six men. The police responded to and dealt with the incident well before the *Nemesis* could have arrived at the scene. The *Nemesis* would not have reached the location within this time. Since taking possession of the *Nemesis*, the command has already utilised the vessel in a number of operations and search missions on the far North Coast. In addition, I am further advised, that *Nemesis* is currently on the far South Coast of New South Wales conducting a proactive training operation.

Questions without notice concluded.

ASSENT TO BILLS

Assent to the following bills reported:

State Arms, Symbols and Emblems Amendment (Black Opal) Bill 2008
Child Protection (Offenders Registration) Amendment Bill 2008
Dividing Fences and Other Legislation Amendment Bill 2008
Water Management Amendment Bill 2008
Crimes Amendment (Cognitive Impairment—Sexual Offences) Bill 2008
Succession Amendment (Family Provision) Bill 2008
Classification (Publications, Films and Computer Games) Enforcement Amendment (Advertising) Bill 2008
Administrative Decisions Tribunal Amendment Bill 2008

ADMISSION OF THE TREASURER INTO THE LEGISLATIVE ASSEMBLY

The President reported the receipt of the following message from the Legislative Assembly:

MR PRESIDENT

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

> That the Honourable E. M. Roozendaal MLC, Treasurer, be requested to address the House on Tuesday 11 November 2008 at 12.00 noon.

Legislative Assembly
28 October 2008

RICHARD TORBAY
Speaker

Consideration of message set down as an order of the day for a future day.

MENTAL HEALTH LEGISLATION AMENDMENT (FORENSIC PROVISIONS) BILL 2008

Second Reading

Debate resumed from an earlier hour.

Ms SYLVIA HALE [5.06 p.m.]: In relation to the Mental Health Legislation Amendment (Forensic Provisions) Bill 2008, the Mental Health Review Tribunal can specify certain arrangements following release that must be adhered to. If a person breaches a community treatment order he or she can be readmitted to a forensic institution and be subject to three-monthly reviews. Victims of crimes must also be protected. Provisions in the bill allow victims to apply to the tribunal for the imposition or variation of association or non-association conditions, or for the placing of restriction conditions on release orders or orders granting leave of absence. I will not go into all the other provisions that have been canvassed in great detail by the Minister.

The changes in the legislation have emerged after a number of inquiries, including the Senate inquiry into the Mental Health Act. The bill delivers some long-needed reforms, especially with regard to the removal of executive discretion with regard to forensic patients. The Greens understand that the Public Interest Advocacy Centre, the Council of Social Service of New South Wales and, most importantly, the Mental Health Coordinating Council welcome this bill. Before concluding I will make mention of one provision. Schedule 2 [20] amends section 69 of the Mental Health Act to make it clear that the offence of ill-treating patients in a mental health facility applies to patients detained under the Mental Health Act or any other Act.

Contrast this provision with what is happening today at Long Bay prison hospital, where forensic patients are locked in their cells for 18 hours a day. That is a disgrace, and the Greens have repeatedly asked the Minister to end this regime. Again I ask him to do so. It is extremely disappointing that, although in this bill the Government is moving forward on mental health issues and a brand-new forensic hospital is about to open, at the same time mentally ill Long Bay inmates are locked up for 18 hours a day under a mistaken regime that is preoccupied with cost cutting as well as a dispute with the Prison Officers Association. Meanwhile, as this regime continues, patients are caged for most of the day. That is in stark contrast to the provisions in this bill about the ill-treatment of patients.

Reverend the Hon. Dr GORDON MOYES [5.09 p.m.]: The Mental Health Legislation Amendment (Forensic Provisions) Bill 2008 amends the Mental Health (Criminal Procedure) Act 1990 and the Mental Health Act 2007 with respect to the care, treatment, control and release of forensic patients and patients transferred from correctional centres, and the function of the Mental Health Review Tribunal, and for other purposes. The New South Wales Government convened a separate review, which commenced in 2004, regarding the forensic provisions of the Mental Health Act 1990 and the Mental Health (Criminal Procedure) Act 1990. In early 2007 the New South Wales Parliament passed the Mental Health Bill 2007. The Mental Health Act 2007 will repeal the Mental Health Act 1990 and will transfer chapter 5 provisions dealing with the detention, care, treatment and release of forensic patients to the Mental Health (Criminal Procedure) Act 1990.

In 2006 the President of the Mental Health Review Tribunal and former Supreme Court judge, the Hon. Greg James QC, was tasked with examining a range of options for reform in this area. The core issue for the review was whether the existing system requiring executive decision for the care, detention, treatment, leave and release of prisoners transferred into hospital as mentally ill and of persons found not guilty by reason of mental illness or unfit for trial should be replaced. Some members in this House might consider that to be a legislative review that we must support and pass into law. However, I will mention a little later how this issue has had a very personal impact upon my life. I will tell of my personal experience with the treatment, leave and release of prisoners transferred into a hospital as mentally ill.

The objects of the bill, which I will discuss in detail, are to amend the Mental Health (Criminal Procedure) Act 1990, the Mental Health Act 2007 and other legislation for the following purposes. The first objective of the bill is to rename the Mental Health (Criminal Procedure) Act 1990 the Mental Health (Forensic Provisions) Act 1990. The second objective is to confer on the Mental Health Review Tribunal, instead of the Minister for Health, the power to order the release of forensic patients from mental health facilities, the power to grant leave to such patients and the power to make orders as to the care, treatment and detention of such patients. A little later I will outline how this kind of provision should overcome the problem of successive Ministers of Health not making such orders of release.

The James report made 34 recommendations, including amending the forensic provisions of mental health legislation. One feature of the current New South Wales system is that it makes use of executive discretion to determine the release of forensic patients. What happens if a Minister decides not to exercise executive discretion, for example? In fact, New South Wales remains one of the few jurisdictions—other than Western Australia and the Commonwealth—that have continued this provision. In the review of the New South Wales forensic mental health legislation a range of problems was identified with regard to exercising executive discretion. These included that the system is cumbersome, bureaucratic and lacks transparency or accountability. It also results in the detention of unconvicted patients in jail for so long—I will mention later the patient who has served the longest period in jail in the history of Australia, and who is quite well known to me—that the detention extends longer than public safety would require and longer than any sentence that would have been imposed if the patient had been considered mentally healthy, and convicted and sentenced. As the James report stated:

> The system is cumbersome, lengthy, overly bureaucratic, resource intensive, operates without transparency or accountability, without conformity to the general principles of mental health legislation, and is liable to administrative challenge. It has been the subject of widespread criticism. It is out of accord with other systems for care and treatment of forensic patients in Australia and elsewhere. It is counterproductive to appropriate detection and treatment of those with mental illness coming into the justice system.

The system also presents difficulties for patients, families, carers and victims who need a formal, transparent process to express their views and concerns. The present process can be anti-therapeutic for patients and distressing for other affected persons. The third objective of the bill is to establish the forensic division of the tribunal to exercise those functions.

The James report recommended that for these reasons the executive discretion should be replaced by a specially constituted division of the Mental Health Review Tribunal holding public hearings, presided over by a judge or former judge and including members with particular qualifications in forensic mental health. That division of the tribunal should conduct regular reviews and monitor forensic patients in detention and in the community. It should determine care, detention, treatment, leave and release according to clinical requirements and public safety considerations. This is long overdue. The review made recommendations to ensure the recognition of victims, and all the recommendations have been adopted and provided for in this bill by a power to make regulations for a range of provisions to recognise the role of victims in the forensic decision-making process.

The fourth objective of the Mental Health Legislation Amendment (Forensic Provisions) Bill 2008 is to provide for appeals from decisions of the tribunal in exercising those functions. This is, of course, a form of natural justice. Orders for care, treatment, leave and release of forensic patients will be made by a forensic division of the tribunal with a specially constituted panel that, under the legislation on matters of release, must be presided over by a sitting or former judge. This aims to provide a level of senior legal oversight to ensure that there is regard for the law, legal processes and the public interest. Under the legislation, the Minister for Health will have the right to appeal on questions of fact and law the decisions of the tribunal, and the Attorney General has the right of appeal on questions of law.

The fifth objective is to clarify responsibility for arrangements for the care, treatment, security and release of patients transferred from correctional centres to mental health facilities and forensic patients held in correctional centres. Before making an order for release the special panel will be required to consider statutory considerations set out in new section 74 of schedule 1. These include matters such as whether the person is mentally ill, whether care, treatment or control is necessary to protect the person or others from serious harm, the possibility of the person's condition deteriorating over time and the likely impact if this should occur.

The sixth objective of the bill is to set out conditions that may be imposed on an order for release and matters that must be considered by the tribunal in making decisions. Importantly, when release is proposed, the panel will also be required to consider independent safety reports from a psychiatrist not involved in the care of the person. Where a forensic patient has been made subject to a limiting term under the Mental Health (Criminal Procedure) Act, the panel will also be required to have regard to the length of that term and consider whether the person has spent a sufficient time in custody. The tribunal will be able to release a forensic patient only if it is satisfied that the safety of the patient and the public will not be seriously endangered. It will have the power to grant conditional or unconditional release of a forensic patient. If a patient is granted conditional release, the patient will remain a forensic patient and will be subject to six-monthly reviews by the tribunal. The proposed system gives the Minister for Health and the Attorney General the right to make submissions to the panel when leave or release of a patient is under consideration. Under clause 77A of the bill, the Minister for Health has a right of appeal on questions of fact from decisions of the tribunal, and the Attorney General has a right of appeal on questions of law.

The seventh objective of the bill is to require the tribunal, when making decisions about all patients, to consider whether care arrangements that may be alternatives to involuntary care are consistent with safe and effective care—a very commonsense provision. The eighth objective is to make various amendments relating to community treatment orders. The ninth objective is to provide for the recognition of victims of forensic patients and correctional patients. These changes aim to allow the Government to establish and use a victims register and to allow the tribunal to notify victims of key information affecting them, including tribunal decisions, prospective releases and when a forensic patient's status is terminated. These regulations aim to further enhance the current processes recently put in place by the Mental Health Review Tribunal that allow victims of crime to make submissions to the tribunal on release issues.

Under proposed new section 76 the tribunal will be given powers to include in its orders restrictions to prevent a patient from associating with a victim, and to prohibit or restrict a patient from visiting certain places. These restriction orders can be made upon the tribunal's own motion or by the victim's application. A victim will have a right of appeal, with leave, from a decision regarding an application for a non-association order or place restriction order.

The term "forensic patient" generally covers persons who have been found not guilty by reason of mental illness of committing a crime, as well as people who are found to be unfit to stand trial. However, correctional patients are persons who are subject to a sentence of imprisonment after having been found guilty of a crime or who have been charged with a crime and refused bail. The James report recommended creating a new category of patients treated under mental health legislation to cover persons who are transferred into a mental health facility for mental health care while on remand or serving a sentence of imprisonment in a correctional centre. The current legislation treats these patients as forensic patients. However, as the James report review concluded, this does not accurately reflect the status of these patients:

> … the admission of a remandee or convicted offender to a mental health facility is analogous to the admission of any other member of the community to hospital for mental health treatment.

I agree entirely with this comment. The bill will give recognition to the legal distinction between these two classes of patients by classifying inmates and persons on remand who are transferred to a mental health facility as "correctional patients". Correctional patients will have the same access to mental health treatment as forensic patients, but correctional patients will remain subject to their sentence of imprisonment, including the laws and processes that follow.

New provisions set out in clause 67 of the bill will allow the tribunal to make community treatment orders for correctional centre inmates. This means that, in accordance with the normal requirements for the granting of a treatment order, an inmate can receive mental health treatment while in a correctional setting. Treatment orders will be used when a patient's condition has been stabilised in hospital to ensure that their mental health will not deteriorate on release into the community or the prison environment. To ensure that there is an adequate implementation of these orders, clause 67 enables an inmate who is subject to a community treatment order to be reviewed by the tribunal every three months rather than the standard six-monthly review for forensic and correctional patients. Changes under the Mental Health Act 2007 began the process of allowing treatment orders to be made by the tribunal in relation to a forensic patient to be released conditionally or to be transferred to a correctional centre. This power was subject to confirmation through the exercise of executive discretion. The new changes will ensure that the power is placed with the tribunal.

The tenth objective of the bill is to make other minor and consequential amendments. This includes the addition of proposed new section 76G in the Mental Health (Criminal Procedure) Act, which will be similar to those provisions under the civil law, to ensure that agencies involved in providing services to a person or carers or family members are consulted as part of the person's release planning. That is another very sensible suggestion. Another important element to come out of the James report was the need to support agency cooperation in providing services to persons with a mental illness. The bill will add provisions to the Mental Health (Criminal Procedure) Act to ensure that agencies that may have a role in providing services after release use their best efforts to respond to requests the tribunal may make in performing its functions. This aims to enhance the capacity of the tribunal to assist in developing coordinated service plans for patients on release. The final objective of this bill is to provide for savings and transitional matters consequent on the enactment of the proposed Act.

I indicated earlier that I had some personal interest in the proposed changes. For one thing, during my 27 years at Wesley Mission we managed to develop a range of mental health services when opening two mental hospitals and a number of specialist clinics. In 2006, when I retired, I had 72 psychiatrists working in this field. My experience of mental health patients, assisted by Wesley Mission—particularly prisoners and especially sexual predators—indicated that a large number neither respond to incarceration nor are willing to undertake sexual realignment therapy. These people tend to exceed the length of incarceration that they were originally given because of their unwillingness to undertake treatment and because tribunals have been unwilling to release them into the community.

Members may think that this might not amount to much, but I will give an example of a victim I came to know quite well. In 1964, because of my training, I was both a hospital chaplain and a mental health chaplain and because I had been a probation and parole officer I was also a chaplain to a mental hospital in J ward, as it was called, in Ararat, Victoria. This is where the mental health people had incarcerated the worst of Victoria's murderers—those regarded as never to be released, those regarded as unfit to plead and those incarcerated at His Majesty's pleasure. One of the people I came to know was a man we all called "Old Bill". In 1964 he had been in that one prison for 40 years. In 1924 he had killed a man in an argument over a cigarette. There was no question about his guilt but he would not admit that he had committed the crime, speak to police or say a word in his defence. Consequently the court ruled that he should be detained in a mental health facility in maximum security at His Majesty's pleasure. Eventually His Majesty had enough pleasure and it became Her Majesty's

pleasure. Her Majesty managed to extract whatever pleasure is found in keeping a person in jail longer, and when I came to know Old Bill he had been in prison for 40 years for the murder of a man who had stolen a cigarette from him. As I remember, the crime occurred in a Collins Street cafe in Melbourne.

I knew Old Bill over a period of years and then lost contact with him. One of his great pleasures was that when he turned 100 he received a letter of congratulations from Her Majesty. He also received a letter of congratulations from the then Prime Minister, Mr Malcolm Fraser. However, he stayed in jail because it was determined he was still mentally sick because he would not give any evidence to support his case. He stayed there in J ward until I left and moved on to other parts of my life and career. Eventually Old Bill died aged 108 years. Interestingly enough, he had earned money while in prison and his estate was valued at more than $2 million. However, it had cost more than $5 million to keep him incarcerated in J ward. Eventually, when he was 106 years of age, the Government decided to release him. But where do you release a mentally ill former murderer aged 106? He had no relatives, no family, no known background and no other place to go. So Bill chose to stay in J ward at Ararat. That sort of thing makes a mockery of the law: There was an argument over a stolen cigarette, a man was killed, and his killer remained in jail from 1924 until 1989 or 1990.

It is evident that the bill makes changes to modernise the law with respect to individuals who commit crimes but who are not convicted of the offences due to mental illness. The bill ensures a transparent process involving the victims of crime. Changes to differentiate correctional patients and forensic patients recognise the different nature of those persons and their proper classification. Crimes committed by forensic patients will always be difficult and contentious matters. People with mental health issues who commit crimes with actus reus, the guilty act, or mens rea, the guilty mind, but who are not convicted of their offences due to mental illness will always attract public concern and manipulation, and will always dominate calls to radio talkback commentators, indicating that in the minds of the public these people should not be released, that they should be retained at the Governor's pleasure.

Empowering the Mental Health Review Tribunal with decision making with respect to forensic patients will bring transparency and independence. I certainly hope the changes do not mean a deterioration of ministerial accountability. However, these changes represent significant reform in the forensic mental health area and will bring New South Wales into line with most other States and Territories and with international jurisdictions. The bill takes important and positive steps in the treatment of criminals or those accused of criminal acts who have mental health problems. I thank the Government for introducing this bill and I commend it to the House.

Reverend the Hon. FRED NILE [5.30 p.m.]: The Christian Democratic Party supports the Mental Health Legislation (Forensic Provisions) Amendment Bill 2008, which is based on the recommendations following a review conducted by the Hon. Greg James, QC, President of the Mental Health Review Tribunal. He was asked to conduct a separate review of the forensic provisions of New South Wales forensic mental health legislation. In December 2006 the Hon. Greg James, QC, released a consultation paper outlining the current law and options for reform. During his review he received 50 submissions on the consultation paper and conducted extensive consultation with members of the community, victims groups and key stakeholders.

In August 2007 the Hon. Greg James, QC, released his report on the review of New South Wales forensic mental health legislation. He made 34 recommendations relating to the creation of a new category of transferee patients, the establishment of a forensic division of the tribunal, the removal of executive discretion in relation to forensic patients, express appeal rights and the participation of victims in the forensic decision-making process. Executive discretion had been part of the New South Wales system for many years. This gave the Minister for Health power to exercise that discretion, meaning that the Minister was the only person able to determine the release of a forensic patient. The term "forensic patient" generally covers persons who have been found not guilty of committing a crime by reason of mental illness, as well as people who are found to be unfit to stand trial. Under current law, the term also covers correctional inmates subject to a term of imprisonment who have been transferred for mental health care.

The Hon. Greg James, QC, identified in his review a number of problems with the application of this executive discretion, and thus recommended that the power be abolished and replaced by conferring the decision-making powers on a special panel of the tribunal. I have noted widespread suspicion in the community where someone has been involved in a brutal murder or other very serious crime and found to be not guilty because of mental illness or being declared unfit for trial. Many are always suspicious that the criminal has been able to fool the system to avoid conviction, especially where the person is found to be mentally sound and consequently released from prison. Was it a confidence trick that the offender played on the psychiatrists and others who examined him?

I often wonder whether it would be better to introduce a radical change of finding the person guilty and being sentenced for the appropriate number of years, but being ordered into a mental institution because he or she comes under the heading of mental illness or being unfit for trial. Eventually, where the person is found to be mentally sound and is released, if the original prison sentence is longer than the period he or she spent in the institution, the person should be required to complete the original sentence. That would remove any advantage that a person would gain by faking a mental illness, because the person would know that in due course he or she would still have to spend the time in prison if subsequently deemed to be of sound mind. That is one of my theories. I do not know whether it would work in practice, but I believe it has some value.

This legislation will replace the present system of executive decision making in respect of leave and release of forensic patients with a legislative framework providing for those decisions to be made by a special forensic panel of the tribunal. It will also establish a forensic panel of the tribunal, which will be chaired by a sitting or a former judge. It also recognises the role of victims in the forensic decision-making process by allowing the tribunal to establish a victims register and allowing the tribunal to notify victims of tribunal decisions. That is a very important factor. I know that the needs of victims is an issue that has been the subject of close attention by those on both sides of politics. Often, in the past, victims have been overlooked. The bill also allows victims to make application to the tribunal to impose a place restriction or a non-association order on a forensic patient granted leave or release. Further, appeals rights for victims in respect of applications for conditions relating to non-association and place restriction orders have been provided for in the bill.

The bill sets down statutory criteria to be considered by the tribunal when making release and leave decisions. But it will still allow the Minister for Health and the Attorney General to appear before the tribunal. However, I understand they will not have any veto powers. There is a question mark over whether that is wise, and whether in some circumstances a Minister for Health or an Attorney General should have the right to overrule the tribunal. Personally, I would favour the retention of such a veto power. The bill also establishes a new category of patients, known as "correctional patients", to cover persons transferred to a mental health facility while on remand or serving a sentence of imprisonment, and giving the tribunal the power to make orders as to the care and treatment of correctional patients. Finally, the bill allows the tribunal to make community treatment orders in respect of correction patients and inmates. So, in some ways, the bill repeals what was an ancient arrangement of executive discretion. We will have to monitor the operation of the panel of forensic persons to ensure that the panel works fairly and justly for all concerned, and particularly on behalf of the community. I support the bill.

The Hon. HENRY TSANG (Parliamentary Secretary) [5.38 p.m.], in reply: I thank honourable members for their support of the bill and for their thoughtful comments made in the debate. I am also glad that my colleagues on the other side of the House have welcomed the changes. Let me assure the Opposition that this bill does not water down the power of the Attorney General or of the Director of Public Prosecutions to prosecute. Indeed, the Attorney General and the Minister for Health can appeal the tribunal's decisions. Further, the Attorney General and the Director of Public Prosecutions can make submissions to the Mental Health Review Board. I am particularly pleased that the legislation has been able to achieve a good and reasonable approach to achieving reform in this area, while ensuring that public safety issues and the rights of victims of crime are appropriately and properly addressed.

I would like to take the opportunity provided by this reply to the debate to thank many people in the community, in professional and provider groups, who have contributed to the James review and the development of this legislation over the past two years. I appreciate the time they gave in talking to the Hon. Greg James, QC, and assisting him to develop proposals that are both robust and widely supported. I particularly thank also the Hon. Greg James, QC, whose careful and considered evaluation of these issues has brought us to this point today where this important reform can be considered by the House. It is important also to recognise that further work remains to be done in this area.

Once the legislation is passed, the Department of Health will begin a comprehensive implementation program to ensure a smooth transition to the new system. This will involve close consultation with other agencies directly involved in the care or detention of persons with a mental illness, including the Juvenile Justice and Corrective Services departments. The opportunity will be provided also to further develop and streamline ongoing cooperation between these agencies to further enhance care of patients in the forensic system. In regard to the concerns of Reverend the Hon. Fred Nile, the reform precisely fulfils its obligation because the Minister for Health is not making the decisions. That was the whole point of the review. 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. Henry Tsang agreed to:

That this bill be now read a third time.

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

VEXATIOUS PROCEEDINGS BILL 2008

Second Reading

The Hon. HENRY TSANG (Parliamentary Secretary) [5.42 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 Vexatious Proceedings Bill 2008 is designed to expand the powers of the courts to control vexatious litigants.

The proposed new legislation is based upon model legislation approved by the Standing Committee of Attorneys General. Both Queensland and the Northern Territory have introduced legislation consistent with the model Bill.

The Government recognises the harm caused to, and costs incurred by, opposing parties and other participants in the justice system as a result of persistent litigation by vexatious litigants. Vexatious litigants abuse court processes by repetitively pursuing frivolous applications, raising spurious defences, refusing reasonable settlement offers, failing to pay costs after being ordered to do so, and launching unmeritorious appeals.

These actions impinge on the effectiveness and efficiency of the justice system and make the process more expensive for everyone. Innocent parties can be dragged through the courts, often at great financial and emotional cost.

Both the New South Wales Supreme Court and the Land and Environment Court currently have the power to make orders relating to a vexatious litigant. The relevant provisions provide that the Attorney General or an aggrieved person may seek orders to restrain a vexatious litigant from continuing any proceedings or from bringing fresh proceedings in any New South Wales court except by leave.

The Supreme Court may also make orders relating to a vexatious litigant who has instituted proceedings in any inferior court. However, these provisions are limited in operation.

The proposed legislation continues the power of the Supreme Court and the Land and Environment Court to make orders. It now also enables the Industrial Relations Commission in Court Session to make orders in relation to vexatious litigants.

Under the New South Wales Constitution Act 1902, these courts are superior courts of record of equivalent status. It is therefore appropriate that they be authorised to make vexatious proceedings orders.

However, given the more specialist nature of the Land and Environment Court and the Industrial Relations Commission, their ability to make orders will be limited to proceedings in their respective jurisdictions. Consistent with the model Bill, the Supreme Court will deal with applications for orders against a person who has commenced proceedings in any other court or tribunal.

The Bill enables applications to be made to an authorised court for a vexatious proceedings order. Currently, the Attorney General or the person forced into wrongful litigation—the aggrieved person—may make an application to the court for an order to restrain a vexatious litigant. The Bill expands the range of people who may apply for a vexatious proceedings order to include the Solicitor General and the registrar of the relevant court.

The Bill also allows people who have a sufficient interest in the matter to apply to the court for an appropriate order. However, to ensure there is no abuse of this process, people claiming a sufficient interest must first obtain the leave of the court to make the application.

Current New South Wales legislation provides that a court may only make an order to restrain a vexatious litigant where a person "habitually and persistently and without any reasonable grounds" institutes vexatious legal proceedings. This is a stricter threshold test than that adopted under the new Queensland and Northern Territory Acts and by the High Court.

The proposed new legislation follows the approach taken in those jurisdictions by providing that the court may make a vexatious proceedings order if it is satisfied that a person has "frequently" instituted or conducted vexatious proceedings in Australia.

The new test has been deliberately chosen to make it easier to obtain a vexatious proceedings order against a vexatious litigant. In applying this simplified test, the court may have regard to proceedings instituted in, or orders made by, any Australian court or tribunal.

In addition, the court may make an order when a person is acting in concert with a person who is the subject of a vexatious proceedings order or has frequently instituted or conducted vexatious proceedings.

That could include, but is not limited to, a relative or associate who may institute proceedings on behalf of the vexatious litigant. To ensure that the person's rights are protected, the person must be given the opportunity to be heard in relation to the matter.

When a vexatious proceedings order is made the court can order a stay of all, or part, of any proceedings already instituted by the person, or prohibit the person from instituting proceedings. The court can also make any other orders that it thinks fit—for example, an order directing that the person may only file documents by mail or give security for costs.

A vexatious proceedings order may be varied or set aside by order of the court of its own motion or following an application. An authorised court may also reinstate a vexatious proceedings order prohibiting a person from instituting proceedings if the court is satisfied that, within five years of the order having been set aside, the person has instituted or conducted vexatious proceedings in an Australian court or tribunal, or acted in concert with another person who has done so.

A person who is the subject of a vexatious proceedings order or a person acting in concert with such a person may apply to the appropriate authorised court for leave to institute proceedings that are the subject of an order. The court may dispose of such an application by either dismissing the application or granting it.

Consistent with legislation in Queensland and the Northern Territory, there is no appeal from a decision disposing of the application. The second reading speech introducing the legislation into the Northern Territory Parliament relevantly stated the rationale for this element of the model Bill in this way:

"there is no appeal from the decision of the court to dismiss the application. A decision by the Supreme Court is made after consideration of all the relevant facts. It is considered necessary to block off another avenue of appeal, as vexatious litigants tend by their nature to take action in any way possible to question a court's decision, regardless of the merit of their position".

The Bill also provides for the establishment of a register of vexatious proceedings orders and related orders. The register will be maintained by the Supreme Court on behalf of all authorised courts. The register will be accessible by the legal profession and members of the public and published on the court's website.

The proposed new legislation will enhance the court's ability to control vexatious litigants in a number of ways. The first is allowing an authorised court to take into account any proceedings that a vexatious litigant may have brought in any Australian court or tribunal; secondly, allowing the court to make orders where proceedings have been instituted in a tribunal; thirdly, clarifying both the powers of the court and its procedures; fourthly, setting out comprehensive definitions; and, lastly, enabling orders to be made in relation to people who may be acting in concert with a vexatious litigant.

The Vexatious Proceedings Bill seeks to protect the fundamental right of citizens to approach the courts to seek justice in accordance with the law while preserving the efficiency of the justice system and shielding other participants in the justice system from unmeritorious actions.

The proposed new legislation will achieve greater consistency with other Australian States and Territories in dealing with vexatious litigants. The Bill has been the subject of extensive consultation with stakeholders, including the heads of jurisdiction and the legal profession.

I commend the Bill to the House.

The Hon. JOHN AJAKA [5.42 p.m.]: The Vexatious Proceedings Bill 2008 seeks to amend the Supreme Court Act 1970 and the Land and Environment Court Act 1979 in order to enact provisions, largely based on model provisions developed by the Standing Committee of Attorneys-General, which expand the power of the Supreme Court to make orders restricting proceedings by vexatious litigants, to confer comparable powers on the Land and Environment Court and on the Industrial Court, to repeal section 84 of the Supreme Court Act 1970 and section 70 of the Land and Environment Court Act 1979, and to make savings and transitional provisions accordingly. The Opposition does not oppose the bill. To adopt the language of His Honour Justice Roden, QC, in *Attorney General v Wentworth*:

[1] Proceedings are vexatious if they are instituted with the intention of annoying or embarrassing the person against whom they are brought.

[2] They are vexatious if they are brought for collateral purposes and not for the purpose of having the Court adjudicate on the issues to which they give rise.

> [3] They are also properly to be regarded as vexatious if, irrespective of the motive of the litigant, they are so obviously untenable or manifestly groundless as to be utterly hopeless.'

Such proceedings severely erode the efficiency of the court system, lead to escalating costs and tie up vital resources in frivolous litigation to the detriment of all parties involved. The bill seeks to restrict current vexatious proceedings and to narrow the potential scope for future proceedings. The proposed amendments will modify the current legislation in five key respects.

First, at present, under section 84 (2) of the Supreme Court Act and section 70 (2) of the Land and Environment Court Act, the test to be applied by an authorised court in determining whether to make a vexatious proceeding order is whether a person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings against any person, whether in the Supreme Court of New South Wales or any inferior court.

The bill seeks to impose a less onerous threshold test, such that the court need only be satisfied that a litigant has brought vexatious proceedings on a frequent basis, or that a person is acting in concert with such a litigant. The proposed new test is also less stringent than the High Court Rules 2004, regulation 6.06.1, which formulates the test as whether a person, alone or in concert with any other, frequently and without reasonable ground has instituted or has attempted to institute vexatious legal proceedings.

Second, under current section 84 (1) of the Supreme Court Act, the court has the power to make orders of two kinds. The first of these is the order that the vexatious litigant shall not, without leave of the court, institute any legal proceedings in any court. His Honour Justice Whealy observed in *Attorney General in and for the State of New South Wales v Bhattacharya*:

> The prohibiting order extends beyond the inherent jurisdiction of the Court and is confined to the institution of proceedings in the Supreme Court of New South Wales or any inferior State Court. The second limb of the section is the power to order that any legal proceedings instituted by the vexatious litigant in the Supreme Court of New South Wales or any inferior State Court, before the making of the order, shall not be continued by the vexatious litigant without leave of the Court.
>
> By contrast, under the bill before the House, in addition to these two types of orders, the Supreme Court is explicitly given the power to make 'any other order that the Court considers appropriate in relation to the person.

Under section 70 (1) of the Land and Environment Court Act, the Land and Environment Court may make orders, firstly, prohibiting the vexatious litigant from instituting legal proceedings without the leave of the court and, secondly, staying any proceedings in the court already instituted by a vexatious litigant. The bill also provides that the Land and Environment Court may make any other order it considers appropriate in relation to proceedings by the person in the court. The Land and Environment Court's ability to make orders will be limited to proceedings within its jurisdiction. Likewise, the bill confers comparable powers on the Industrial Court in relation to vexatious litigants in the Industrial Relations Commission.

Third, under sections 84 (1) and (2) of the Supreme Court Act, the Attorney General and the person aggrieved may make an application for a vexatious proceedings order. The bill seeks to extend the range of persons eligible to make an application, to also include the Solicitor General, the appropriate registrar for the court and any person who, in the opinion of the court, has a sufficient interest in the matter. Persons claiming to have a sufficient interest in the matter are required to first obtain the leave of the court before making an application.

Fourth, under section 84 of the Supreme Court Act, the court may have regard to proceedings that the person concerned has brought in the Supreme Court or any inferior court, whether against the same person or against different persons. The bill allows the court to consider a greater breadth of evidence in determining whether a vexatious proceedings order should be made. It provides that an authorised court may have regard to proceedings instituted in any Australian court or tribunal and orders made by any Australian court or tribunal.

Fifth, whilst section 84 of the Supreme Court Act allowed for a vexatious proceedings order to be made against the vexatious litigant alone, the bill widens the scope of the provision to allow for such orders to be made in respect of both vexatious litigants and those acting in concert with such litigants.

In addition to these fundamental changes, the bill also provides that an authorised court may reinstate a vexatious proceedings order it has set aside, which prohibited a person from instituting proceedings, if satisfied that within five years of the vexatious proceedings order being set aside the person has, first, instituted or conducted vexatious proceedings in an Australian court or tribunal or, second, acted in concert with another

person who has instituted or conducted such vexatious proceedings. The bill further provides that an authorised court may grant leave to institute proceedings that would otherwise be prohibited by a vexatious proceedings order.

Leave may be granted by the court that made the vexatious proceedings order, or the Land and Environment Court, when the Supreme Court has made an order which operates to prohibit proceedings being instituted in the Land and Environment Court, or the Industrial Court, in the case of a vexatious proceedings order made by the Supreme Court that operates to prohibit proceedings instituted in the Industrial Relations Commission. Finally, the bill provides for the establishment of a register detailing vexatious proceedings orders and related costs. Members of the legal profession and the public will have access to this register, and it will be available for viewing on the Supreme Court's website. As His Honour Justice Whealy observed in the case of *Attorney General in and for the State of New South Wales v Bhattacharya*:

> The Court should approach the questions involved in s 84 (1) [of the Supreme Court Act] with care and caution. The making of an order under the section effects a significant curtailment of a citizen's rights. Once satisfied that the pre-requisites have been met, however, a court should act firmly and authoritatively to restrain and control new and existing vexatious litigation, to the extent the statutory power enables it to act.

The importance of paying due regard to individuals' civil rights cannot be emphasised enough. The right balance must be struck between those rights and the necessity of minimising vexatious proceedings. Although there is no appeal from a decision disposing of an application for leave to institute proceedings which are the subject of a vexatious proceedings order, procedural fairness arguably is upheld in the sense that the bill provides that an authorised court must not make a vexatious proceedings order in relation to a person without hearing the person or giving the person the opportunity to be heard. Furthermore, the scope for vexatious claims will be narrowed significantly through the simplification and loosening of the threshold test, the expansion of the categories of persons who are eligible to make an application for a vexatious proceedings order, and the type of orders that authorised courts may make. As I previously indicated, the Opposition does not oppose the bill.

Ms LEE RHIANNON [5.51 p.m.]: The Greens have serious concerns about the Vexatious Proceedings Bill 2008. We are concerned that it is a legislative overreaction that takes us down the wrong track of dealing with vexatious litigants. We are concerned that this bill may limit access to justice for many people. The bill is designed to expand the powers of the courts to control vexatious litigants. Under the current law, the definition of a vexatious litigant is a person who frequently and persistently seeks to commence legal proceedings without reasonable grounds or for improper purposes.

The bill will expand the power of courts and tribunals to make orders restricting proceedings by vexatious litigants. Specifically, the bill introduces a less onerous test for determining when to make a vexatious proceedings order. By virtue of this legislation, a vexatious litigant will be one who frequently has brought vexatious proceedings, or is acting in concert with such a litigant. The bill also extends the forums that may make rulings on vexatious litigants to include the Land and Environment Court and the Industrial Relations Commission, and allows the court to take into account all legal actions instituted or conducted and all orders made in any jurisdiction in Australia when considering making a vexatious proceedings order. Further, proposed section 14 (6) provides that there is no right of appeal for a person who is subject to a vexatious proceedings order.

The bill will make it easier for a person to be declared a vexatious litigant. In turn, it will presumably lead to more people being termed vexatious litigants and being denied access to the courts. The Greens do not disagree that there should be some mechanism to deal with people who repeatedly abuse court process. We acknowledge that there may be a small category of genuinely vexatious litigants—people who take up court time and resources for improper purposes and cause considerable distress to other people in the process—but we also recognise, as I hope this House would, that accessing one's legal rights through the court system is a fundamental human right; a right that we as members of Parliament should defend, not seek to truncate.

In particular, moves in this bill to take away any right of appeal for a person who is the subject of a vexatious proceedings order is outrageous and only rubs salt into the wound. The right to appeal and review is not something to be tossed aside by this Parliament. That is what is about to happen tonight. The agreement in principle speech of the Parliamentary Secretary Assisting the Attorney-General and Minister for Justice, Mr Collier, did not provide any detail to back up the need for this bill. We do not know how many people are labelled as vexatious litigants every year, nor do we have a sense of how many more people may be labelled as vexatious litigants in the coming year, if this bill is passed. We have not been told how much court time and resources are taken up by cases that the Government considers to be vexatious.

The evidence to support the passing of this legislation has not been provided and has not been requested by the Opposition, yet this bill is about to sail through the Parliament—another example of Labor, the Liberals and The Nationals working in concert. The Greens are concerned that without data on vexatious litigants, this bill may overstate the significance of the problem and cast a net much wider than is necessary. Both the Victorian Federation of Community Legal Centres and the Fitzroy Legal Service, in submissions this year to a Victorian Law Reform Committee's inquiry into vexatious litigants, expressed concern that expanding the court's powers to label and control vexatious litigants may impact unfairly on marginalised people. The Fitzroy Legal Service states in regard to the reinvigoration of a public debate about vexatious litigants:

> [It has the] overt potential to breed prejudice and contempt for those seeking to pursue their rights (whether misguided or not) on the basis of conduct traits shared by a good many persons involved in legal proceedings generally.

The Fitzroy Legal Service goes on to say that this trend "would tend to reinforce the systemic exclusion, loss of autonomy and sense of injustice that in many cases is the self-ascribed cause of over-reliance on legal forums in the first place".

Surely this bill is tackling the problem from the wrong end. Litigants are more likely to be considered vexatious when they are without representation. Rather than making it easier to exclude people from court and tribunals, the New South Wales Government should instead focus on improving access to legal representation. When a potentially vexatious litigant cannot afford legal representation, they should be able to access free advice about the legal process and the prospects of their case. Unfortunately, the funding for Legal Aid and community legal centres in New South Wales is too inadequate to meet the demand for advice and representation. It seems obvious that early advice and ongoing support would reduce the risk of vexatious litigation without threatening the right to a fair hearing.

The Greens also are concerned about any impact this bill may have on social change campaigners and community groups. Before supporting this bill, members should ask: Could this bill silence dissent? From the Greens point of view, it most definitely could. Clearly other members, who also are law-makers of this House, should be asking that very question. Many campaigns have been won by persistent and tenacious individuals and community groups. I know many people who would proudly wear the label "vexatious" in the course of a campaign—people who have pursued an issue tirelessly over a long period to stop a mining development, to save an old growth forest or to establish a park. The actions of those people are quite selfless and are designed to address issues for the sake of the greater good. The Victorian Federation of Community Legal Centres states in its submission its concern that:

> … much of the present discourse around vexatious litigants assumes that the present legal and complaints systems always work to achieve justice and fairness, and therefore that people who have been consistently unsuccessful must have issues unsuited to litigation or invalid complaints. On the contrary, major social justice changes have sometimes been achieved by people who simply insist on pursuing justice over a long period and who refuse to be deterred.

Such people deserve to be congratulated, not potentially marginalised from the court system. So let us be clear—in essence, that is what this legislation will do. The Greens are concerned that the bill is a legislative overreaction to an ill-defined problem. We are concerned that this bill could be used to silence community groups, silence unpopular people, and silence people who have the courage of their convictions and stand up to be counted. The public interest is weighted in giving people access to courts, not in bills, such as the Vexatious Proceedings Bill, that may restrict access to courts.

Reverend the Hon. FRED NILE [5.59 p.m.]: The Christian Democratic Party supports the Vexatious Proceedings Bill 2008, which adopts national model laws on vexatious proceedings and provides the courts with the power to declare litigants as vexatious. The overview of the bill defines a vexatious litigant as:

> … a person who frequently and persistently seeks to commence legal action without reasonable grounds or for improper purposes. Vexatious litigants often repeat arguments that have already been rejected, disregard the practices and rulings of courts and tribunals or persistently attempt to abuse legal processes. Actions taken by vexatious litigants can often result in the waste of public resources, the harassment of defendants in litigation and the incurring of unnecessary costs.

The bill is designed to provide the Supreme Court and the Land and Environment Court with additional powers. Section 84 of the Supreme Court Act 1970 already enables the Supreme Court to make orders to prevent litigants from continuing or instituting vexatious proceedings in the Supreme Court or in any other court of the State. It also provides a restriction: the court must be satisfied that the litigant has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings in the courts of the State. In determining whether this test is satisfied, the Supreme Court is limited to examining action taken by a litigant in the State. A similar requirement is provided in section 70 of the Land and Environment Court Act 1979.

One significant change is to provide the Supreme Court with the power to consider actions by the litigant not only in New South Wales but also throughout Australia. This legislation creates a new Vexatious Proceedings Act 2008, which replaces the existing vexatious proceedings sections of the Supreme Court Act and the Land and Environment Court Act, to which I have referred. It will expand the powers of the courts to control vexatious litigants. It will achieve greater consistency with the other Australian States and Territories by adopting legislation based on the provisions of national model legislation. Clause 6 of the bill defines the term "vexatious proceedings" to include:

(a) proceedings that are an abuse of the process of a court or tribunal, and

(b) proceedings instituted to harass or annoy, to cause delay or detriment, or for another wrongful purpose, and

(c) proceedings instituted or pursued without reasonable ground, and

(d) proceedings conducted in a way so as to harass or annoy, cause delay or detriment, or achieve another wrongful purpose.

That expands the definition of "vexatious proceedings". The legislation also spells out what courts can do. Certain courts will be able to make orders, called vexatious proceedings orders, that restrict a vexatious litigant or a person acting in concert with such a person from continuing or instituting legal proceedings. This will apply to the Supreme Court, the Land and Environment Court and the Industrial Court. Under clause 8 of the bill, the authorised court must be satisfied that a litigant has brought vexatious proceedings frequently or that a person is acting in concert with a litigant. Clause 8 also provides that, in determining whether to make a vexatious proceedings order against a person, an authorised court can consider all legal actions instituted or conducted, and all orders made, in Australia.

That is a major change from the previous restriction that applied only to orders made in New South Wales. The bill includes actions instituted or conducted and orders made prior to the commencement of the proposed section. Over the years there has been some controversy about vexatious litigants. I will not mention them in the House today, but I am sure members know who those people are. Contrary to the previous speaker, I agree that this legislation is necessary, and we will monitor its operations to see that it is not being abused in any way.

The Hon. HENRY TSANG (Parliamentary Secretary) [6.05 p.m.], in reply: I thank honourable members for their contributions to the debate and support for the bill. The Vexatious Proceedings Act is consistent with model legislation approved by the Standing Committee of Attorneys-General. The legislation enhances the role of the Supreme Court to control vexatious litigants in a number of ways: by clarifying the powers of the court and its procedures, setting out comprehensive definitions, extending the court's power to people acting in concert with a vexatious litigant, and providing for the establishment of a register of vexatious litigants. The court will be able to take into account any proceedings that a vexatious litigant may have brought in any Australian court or tribunal. The legislation provides for a more comprehensive approach and will ensure greater consistency in the approach taken by Australian courts in dealing with this difficult group of litigants. 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. Henry Tsang agreed to:

That this bill be now read a third time.

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

LEGISLATION REVIEW COMMITTEE

Report

The Hon. Amanda Fazio tabled, on behalf of the Chair, a report entitled "Legislation Review Digest No. 12 of 2008", dated 28 October 2008.

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

BIBLE SOCIETY NSW (CORPORATE CONVERSION) BILL 2008

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 Della Bosca.

Motion by the Hon. Tony Kelly agreed to:

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

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

ADJOURNMENT

The Hon. TONY KELLY (Minister for Police, Minister for Lands, and Minister for Emergency Services) [6.08 p.m.]: I move:

That this House do now adjourn.

HOMELESSNESS AND COMMUNITY REGENERATION

The Hon. CHRISTINE ROBERTSON [6.08 p.m.]: Tonight I want to talk about housing—more precisely, homes. The importance of the right to a home cannot be underestimated. In New South Wales we are increasing social housing access, with a target of 30,000 homes over the next 10 years from 13,000 now, and increasing access for persons with mental illness. In February 1980 we moved to a shed on 100 acres in Duri. It was a beautiful place—old soldiers' settlement country not far from Duri peak. The zincalume shed was big with a concrete floor; we divided it into rooms with our furniture. We had a shower room and a toilet. We heated the water for the shower in a black plastic container out the front, and Rick hooked it up at night. There was a pot-bellied stove for the winter. Neighbours used to come in and chew the fat in the warm shed.

There were four of us: Abe and James were 2 years and 8 months old respectively. Lots of nappies. I took the washing to the laundrette in town sometimes but the nappies were mine after work; four buckets, from bleach to rinse, kneeling on the floor. It was work that helped keep me fit and brought self-pitying tears sometimes. We stayed in the shed for about a year while Rick built the house. Knowing it was only temporary helped. Remembering that some people lived like this forever worried me. No private space was no fun. No nest. Once, when it was my turn to have the work's Christmas party—long after we had moved into the house—my boss said rather crossly, "Now I understand you. You have nests, one at home and one in your office, and you go out and shoot bullets and then go back to the nest."

My friend visited from Bondi, our previous nesting place, and said, "It feels the same. Even in this different place, it feels the same." So I got my nest in a most beautiful place. Sure the kitchen and bathroom surfaces were of orange forticon for a couple of years and we got carpet last year. The carpet money went on an evaporative cooler—more urgent at the time as we had discovered incessant heat made it impossible to work in the summer. The first 17 years a slow combustion stove/oven kept the house warm, heated the water and cooked our food. Kept the kitchen ceiling black and the kids busy collecting and chopping firewood. Chooks were our first useful animal and fresh eggs a real bonus. Went into ducks and geese as well. Always had a problem with foxes—disgusting things would kill all the chooks in one go. James cornered one once in the chook yard and killed it with a large rock. We ate the geese and ducks. Abe still whinges about the slaughtering, plucking and gutting day, which was a compulsory family activity. We had a milking cow for a few years—delightful animal although Rick hated the winter milking in the frost.

Droughts, floods, heat and cold—that is what we had moved into. Two years after we got there Rick bought 50 merino ewes at the pub. The seller had bought a couple of hundred "drought" sheep and had them on the long paddock. We crossed them with a border leister ram for the sheep meat market for a few years then started breeding merinos for wool. I remember one day when Rick was out at Rowena doing contract sowing with a mate the laconic neighbour rang to tell me there was a ewe down the back paddock with a lamb stuck. James must have been four or so. I got on the ag bike with James on his pee-wee and off we went. Tried to catch her on foot first, which was a joke. Lamb or no lamb she could still run faster than us! Back on the bike; cornered her; threw the bike from under me, almost professionally—there was only a bit of bruising on the leg; caught the sheep; manipulated the lamb out; the lamb was blue; "Sorry James, the lamb's dead"; James's face very still with tears; nothing for it—gave the lamb mouth to nose/mouth, and the lamb was alive; meanwhile the mother had taken off; James and I spent an hour or so getting her back; she took the lamb and everybody was happy.

The garden has had its ups and downs. Before we got the bore I used to have to let it die every drought—the stock came first. Almost always there is a flower to pick now and usually fresh vegetables. One in five trees survived. "Jabe" looks and feels beautiful. Upon arrival at the front gate after work the worries just slide off. The shed blew down in some hurricane event one year, very large trees were uprooted. We rebuilt the shed and planted some more trees. "Jabe" is a wonderful nest—somewhere to come home to after shooting bullets.

The hollowness and lack of confidence homeless people must feel is really emphasised when you sit back and think about your home—not a house, your home. That is why projects such as community regeneration, addressing infrastructure, quality and community development and unemployment in any sort of public or social housing program is so vital so that we are not just supplying houses and roofs but also so that everyone has a concept for home We must have Aboriginal and mental health housing and provide support for strategies for older people and for new scholarships. Integral also is a component of real social housing so that everyone in New South Wales can have what they are entitled to: a home.

BULLI HOSPITAL SURGERY SERVICES

The Hon. JOHN AJAKA [6.13 p.m.]: I refer to a matter of great significance to me personally and, more importantly, to the people of Bulli and the Illawarra. On Friday last week I was made aware that Bulli Hospital, the hospital in which I was born, will shut its operating theatres. In May this year the shadow Minister for Health, Jillian Skinner, brought some concerning figures to my attention showing a significant reduction in the number of surgical sessions since 2004. The Government's own figures, released under freedom of information, revealed that in 2004-05 there were 2,654 surgical sessions at Bulli Hospital, but they had fallen to 2,286 in 2005-06 and to only 2,110 in 2006-07. I then visited Bulli Hospital with the shadow Health Minister and sought an assurance from management, on behalf of the community, that the hospital was not going to lose its surgical services.

Unfortunately the Labor Government has not listened to the concerns of local residents and has pushed ahead with its short-sighted and ill-advised plans to close surgical services of the hospital. Currently, the hospital provides adult ear, nose and throat surgery, eye surgery and minor orthopaedic surgery. At this very moment, more than 900 patients are on the waiting list for those procedures—minor procedures perhaps, but nonetheless very significant to those waiting for the surgery, as demonstrated by the extensive waiting list and the accompanying five-months average wait. They are the ones suffering pain and discomfort for extended periods. South Eastern Sydney and Illawarra Area Health Service announced on Friday that the Bulli theatres would be consolidated at Wollongong and Shellharbour hospitals. I want to discuss the implications of the closure, planned to take place after the Christmas season, before addressing some concerns that have arisen with the announcement of the shutdown.

Despite the assertion by South Eastern Sydney and Illawarra Area Health Service that waiting times would not be increased, it is not hard to guess what would happen if 924 people on the Bulli Hospital waiting list were consolidated with the 1,500 people awaiting surgery at Wollongong and Shellharbour hospitals. Waiting times would go through the roof. It was reported that a surgeon working in both Bulli and Wollongong hospitals this weekend told the local newspaper the *Illawarra Mercury* that he currently had one-year waiting lists at both facilities. The surgeon told the *Illawarra Mercury* "… if they close Bulli that means all the operations will be done in Wollongong and the waiting times will be two years, even for a simple operation". Therefore not only will the waiting period soar, but straightforward procedures that would otherwise be performed at a site dedicated to day-only surgery will now put unnecessary pressure on operating theatres dealing with major, life-saving surgeries. The surgeon doubted that Shellharbour Hospital had the time and facilities to cope with extra sessions, saying ultimately that it would not be possible.

The surgeon was then reported to say, "I'll just take the time off. If I see more patients that means more patients on the waiting list. It doesn't help." Indeed, it does not. This decision does not help the year-long waiting lists. It does not help the surgeons in Shellharbour and Wollongong hospitals. Shutting down these operating theatres in Bulli just does not help. Despite all that, South Eastern Sydney and Illawarra Area Health Service is committed to ensuring that surgery waiting times will not increase with the closure. I hope that this commitment will not lead to more waiting list manipulation, which has sadly become a standard feature of our health system. Waitlist manipulation involves limiting the number of patients that a surgeon can put on an operating waiting list, making it appear that fewer patients are on it. In reality, they are simply being syphoned to another waiting list: the patient's doctor's waiting list. This manipulation of waiting lists is no secret: it happens throughout the New South Wales health system on a regular basis.

My concern is that with increased pressure to keep waiting times down in places such as Wollongong and Shellharbour, more questionable tactics will be brought into play to keep numbers down. My concern is that Bulli Hospital is facing a slow but sure demise. The signs are all there. In 2004 the emergency department was downgraded and ambulances were diverted. Staffing problems since 2005 continued into this year when in May 2008 patients were being turned away from the emergency department because it was not staffed at night. And now Bulli Hospital's operating theatres will cease to exist by the year's end. Unlike the local Labor member, I am committed to fighting for the people of Bulli and I call on the Government to immediately come clean and reveal its plans for the hospital's future. Local residents are fed up with the spin of successive Labor leaders—Carr, Iemma and now Rees—and want to know that Bulli Hospital has a future. Today the Minister for Health was asked to give a guarantee that Bulli Hospital will not close. Unfortunately no such guarantee was forthcoming.

BISHOP SEBASTIAN BAKARE, ZIMBABWE

Reverend the Hon. FRED NILE [6.18 p.m.]: I refer to the nation of Zimbabwe and particularly a brave leader of the people of Zimbabwe, Bishop Sebastian Bakare. We all know of the tragedy in Zimbabwe, where people have suffered great hardship under President Mugabe's murderous, dictatorial regime. It is important for us to hear firsthand about the true condition of the people of Zimbabwe, their suffering, hunger, unemployment, the persecution of churches, Zimbabwe's staggering inflation, the wrongful repossession of farms and the manipulation of the recent elections for both the country's president and its Parliament. It is important that we are provided with firsthand evidence, and to that end I have invited the Bishop of Harare, the Right Reverend Dr Sebastian Bakare to visit Australia in November this year.

Bishop Bakare will speak at meetings from 21 November until 4 December 2008 in New South Wales, the Australian Capital Territory and Western Australia. He is a very brave Christian leader who has stood up against President Mugabe's regime. Whilst here he will address public meetings at Gosford and the Central Coast, Port Macquarie, Goulburn, Wagga Wagga, Nowra, Tamworth and Coffs Harbour. He will also visit Canberra and Perth. In the Sydney metropolitan area he will conduct meetings at Ryde, Lane Cove, Homebush, Penrith, Parramatta, Oxford Falls, North Sydney and Caringbah, and he will speak at colleges and schools in the Sydney area. During the time that he is here he will be interviewed on television and radio. A special luncheon on 3 December has been planned for members of New South Wales Parliament, to which members of both Houses are invited. He will also address a similar function in the Federal Parliament in Canberra. Whilst he is here, because he is Anglican, he will meet with senior Anglican clergy and other denominational leaders.

Bishop Bakare has had an interesting career. He was ordained a priest in 1963. He studied in the United Kingdom, the United States and in Germany. He has held a number of very important positions in Zimbabwe. He was secretary of the Urban Rural Mission with the Council of Churches and has served as Senior Ecumenical Chaplain at the University of Zimbabwe. He achieved a Doctorate of Ministry at San Francisco Theological Seminary. He has served as senior lecturer in systematic theology at the Africa University. During the time that he has been a bishop he has had many important roles in Zimbabwe. He has been a member of the National AIDS Council and the National Council for Higher Education in Zimbabwe. He spoke recently at the Lambeth Anglican Consultative Council in London, and he is chair of Mission Executive. Because of his experience as a minister of the Lutheran church in Germany, he has been the chairman of the Anglican-Lutheran Dialogue for the African region. In addition, he has been the president of the Zimbabwe Council of Churches and a member of the International Anglican-Lutheran Working Group in the United Kingdom. He has also been a member of the bishops group conducting dialogue with ZANU and MDC political movements in Zimbabwe. He is a very eloquent, inspiring and informative speaker. We pray that God will bless Bishop Bakare's visit to Australia as we pray for the suffering people of Zimbabwe.

WORKCOVER BULLYING AND HARASSMENT

The Hon. CHARLIE LYNN [6.22 p.m.]: Honourable members would be aware of the tragic plight of ambulance officers revealed at recent general purpose standing committee hearings. These relate to unacceptable charges of bullying and harassment by management that have led to several officers committing suicide and others suffering serious psychological damage. I wish to express serious concerns about the Government's own watchdog on bullying and harassment: WorkCover New South Wales.

Last year, the Public Service Association revealed survey results of WorkCover's own officers. They revealed that a significant number were suicidal as a result of bullying and harassment by management. On 23 November 2007 the *Daily Telegraph* carried an article titled "Watch Dog Bites its own Staff" and

documented that 86 per cent of WorkCover staff surveyed nominated their own boss as the culprit. I will repeat that: 86 per cent of WorkCover staff surveyed nominated their own boss as the culprit. The article reported that WorkCover officers felt terrorised in their own workplace. Is it any wonder that businessmen and women in this State fear visits from WorkCover?

While the Public Service Association has tried to stop this environment of terror, its members have allegedly been subjected to increased covert surveillance via tracking of mobile phone locations, monitoring of flex and running sheets, false allegations of misconduct in relation to a union delegate and the sound recording by management of a private conversation between union delegates. We are not talking here about Nazi Germany, socialist Russia or communist China; we are talking about dedicated public service personnel trying to do their jobs in New South Wales.

The Public Service Association also had to intervene when several female officers who had reported sexual harassment and stalking were themselves subjected to investigation following their complaints. While the perpetrator of this conduct left WorkCover, the victims had to endure a harrowing investigation, which has intimidated other women at WorkCover from reporting such misconduct. A WorkCover executive was last year forced to issue a written apology to WorkCover staff for using foul language towards officers. I understand, however, that this appalling behaviour has continued. I hope that the current Minister responsible for WorkCover will be as appalled as I was to learn that a WorkCover staff member, when discussing his handling of the proposed major hazard facilities legislation, was racially vilified and referred to as a "slimy wog" in front of his contemporaries. This is just one of an array of allegations of inappropriate conduct on the part of one particular person. I can only wonder why this conduct has been allowed to continue for so long.

The treatment of courageous whistleblowers at WorkCover is alarming, and their opportunity to be dealt with fairly and impartially has been seriously compromised by the chief executive officer's handling of protected disclosures. WorkCover has delayed the investigation of protected disclosures and also subjected whistleblowers to unforgivable acts of harassment and isolation. The chief executive officer is presiding over several disclosures as decision maker and yet information about his own alleged misconduct, which was brought to the attention of this House in question time on 2 April 2008, is contained in the disclosures.

Whistleblowers are also living in fear after the manager of WorkCover's internal audit unit revealed the names of whistleblowers and victims to the alleged perpetrators. When protests were made, WorkCover engaged lawyers who sent letters to the whistleblowers and victims causing further intimidation, stress and trauma. This is a typical response of this Government, whether it be in relation to police officers or fair trading officers; it has a bottomless pit of money to spend on legal officers whose sole mission is to personally destroy any individual who dares to stand up to them. John Leach and Tim Priest are prime examples of the extent to which some organisations will go. WorkCover management has further intimidated witnesses and victims from coming forward by promoting alleged perpetrators to managerial positions while they have been under investigation for misconduct.

I call upon the new Minister responsible for WorkCover to urgently intervene to stop this shocking behaviour and ensure a full investigation into WorkCover's management and systemic problems of bullying, harassment, maladministration and possible corruption. Neither the Minister nor the Government can sit by any longer and allow the lives of so many to be destroyed.

BATTLE OF PASSCHENDAELE

The Hon. LYNDA VOLTZ [6.27 p.m.]: On 27 April 2008 on the Anzac Bridge the New South Wales Premier and the New Zealand Prime Minister unveiled a statue of a New Zealand soldier, joining the statue of an Australian digger on the bridge. I believe it is therefore appropriate that I not let 12 October and the Battle of Passchendaele pass without mention. As with the Battle of Fromelles, in which Australians suffered their greatest losses in one day, making it the worst 24 hours in Australia's history, 12 October and the Third Battle of Ypres—commonly known as Passchendaele—represents for New Zealanders the worst loss of life in one day in post-1840 New Zealand history.

The Third Battle of Ypres began on 31 July 1917. Passchendaele was the initial objective, but the advance quickly bogged down when heavy rain turned the battlefield into a sea of mud. With the campaign bogged down, Haig turned to General Plumer's second army, which included the New Zealand Division as part of the 2nd Anzac Corps, to seize Passchendaele. The New Zealand Division made its first attack on 4 October 1917. Its role was to provide flanking cover for an Australian assault on the Broodseinde Ridge. The New Zealanders' objective was Gravenstafel spur, the first of two spurs from the main ridge at Passchendaele.

A heavy artillery bombardment, which began at 6 a.m., caught many Germans in the front lines causing heavy casualties and disrupting the defence. Although the going was difficult, the New Zealand troops advanced to secure the spur and consolidate their position. More than 1,000 prisoners were taken, but the attack cost more than 320 New Zealand lives, including that of former All Blacks captain Dave Gallaher. The events of 4 October had a tragic aftermath.

The British High Command mistakenly concluded that the number of human casualties meant enemy resistance was faltering. It resolved to make another push immediately. An attack on 9 October by British and Australian troops was to open the way for the 2nd Anzac Corps to capture Passchendaele on 12 October. The plan failed at the first hurdle. Without proper preparation and in the face of strong German resistance, the 9 October attack collapsed with heavy casualties. Preparations for the 12 October attack on Bellevue Spur, especially the positioning of the supporting artillery, could not be completed in time because of the mud. As a result, the barrage was weak and ragged. Some of the shells dropped short, causing casualties among the New Zealanders waiting to advance. To make matters worse, the earlier artillery bombardment had failed to breach the obstacle presented by the German barbed wire. Another key target, the Germans' concrete pillboxes, with their deadly machineguns, was also left largely undamaged.

Troops from the 2nd Brigade and the 3rd Rifle Brigade advanced. As they struggled towards the ridge in front of them, they found their way blocked by the uncut barbed wire. Exposed to raking German machine-gun fire from both the front and flank, the New Zealanders were pinned down in shell craters in front of the wire. In a letter to his parents, Private Leonard Hart wrote at the time:

> At length our barrage lifted and we all once more formed up and made a rush for the ridge. What was our dismay upon reaching almost to the top of the ridge to find a long line of practically undamaged German concrete machinegun emplacements with barbed wire entanglements in front of them fully fifty yards deep. The wire had been cut in a few places by our artillery but only sufficient to allow a few men through at a time. Even then what was left of us made an attempt to get through the wire and a few penetrated as far as this emplacement only to be shot down as fast as they appeared. Dozens got hung up in the wire and shot down before their surviving comrades eyes. It was now broad daylight and what was left of us realised that the day was lost. We accordingly lay down in shell holes or any cover we could get and waited. Any man who showed his head was immediately shot. They were marvellous shots those Huns. We had lost communications, roads or anything but shell holes half full of water.

For badly wounded soldiers lying in the mud, the aftermath of the battle was a private hell. Many died before they could be rescued. The toll was horrendous. There were more than 2,700 New Zealand casualties, of whom 845 men were either dead or lying mortally wounded between the lines.

On 18 October, the 2nd Anzac Corps was relieved by the Canadians. In a series of well-prepared but costly attacks in atrocious conditions, Canadian troops finally occupied the ruins of Passchendaele village on 6 November. By this time the offensive had long since failed in its strategic purpose. The capture of Passchendaele no longer represented any significant gain, with winter approaching. Apart from pushing the enemy back about eight kilometres, the offensive had achieved nothing. By the time they were finally withdrawn from the Ypres front line in February 1918, the New Zealand Division had suffered more than 18,000 casualties, including around 5,000 deaths, and had won three Victoria Crosses for bravery. I believe it is important that we remember not only those from our shores who fought but also our cousins from across the sea.

DR JIM PENDLEBURY, OAM

Reverend the Hon. Dr GORDON MOYES [6.32 p.m.]: This week Dr Jim Nixon Pendlebury, the honorary treasurer of Wesley Mission Sydney for 40 years, decided to retire and not seek re-election. His has been an extraordinary term of service, not only in its length of time but also in its growing complexity and detail. In his years of service he has overseen the accounting and raising of more than a billion dollars in New South Wales alone, which has been used to serve the needy in our State.

Dr Jim Pendlebury was born in Cessnock. He was educated in primary schools in Cessnock and Griffith and attended Cessnock High School, where he won an exhibition to Sydney university and a teachers college scholarship. Over the next years he graduated with a Bachelor of Science with honours, a diploma of education, a Master of Science with honours at Macquarie University and later a doctorate of philosophy at Macquarie University. He was among the first Master of Science graduates and was the first doctor of philosophy in chemistry to graduate from Macquarie University.

In all the time he was studying his postgraduate work he never gave up his Christian commitment to his home church, Bexley Uniting Church, or to Wesley Mission. He won many awards and scholarships, including an International Teacher Development Program scholarship that led to him travelling to study in the United

States. He was made a life member of the New South Wales Science Teachers Association and was granted the Meritorious Service Medal from the Sydney College of Advanced Education. He was honoured by the Queen with the Medal of the Order of Australia and has been recognised by community, professional and church associations with their highest honours. Dr Pendlebury has written many scientific, educational and research science articles and is the author of several books. As well as that, he was a very popular presenter of science programs on television.

Dr Pendlebury has provided leadership in the Methodist and Uniting churches for more than 50 years. With his wife, Thelma, he has held all the leading official positions in their home congregation at Bexley Uniting Church. Thelma was also recognised for her service to the community by being awarded the Medal of the Order of Australia. In 1968 Dr Pendlebury became a member of the executive board of Wesley Mission and continued in that position for 40 years. He has also been the honorary treasurer of Wesley Mission and has seen the budget grow under his oversight from $1 million per annum to $175 million per annum, all the while working in an honorary capacity. He has held many positions in the Uniting Church presbyteries and synod, and for the past 16 years has been chairman of the council of Wesley Institute for Ministry and the Arts. He has also served on the board of the Alan Walker College of Evangelism.

In 1979 he accepted an appointment to the board of Harold W. Cottee Pty Ltd, the holding company that ran Wesley Mission's large citrus property in Paringa, South Australia. This successful venture saw over his time of directorship a surplus of more than $20 million returned to Dalmar Children's Homes, the child-care activity of Wesley Mission Sydney. In 1996 I asked him to join me as a director of the Aged Persons Welfare Trust, an activity independent of Wesley Mission, which we set up. It now has over $15 million in trust, with revenues being donated to community groups across Australia working for the benefit of aged persons. During the 27 years of my leadership as the senior minister and chief executive officer of Wesley Mission Sydney Dr Pendlebury has been a close colleague, a mentor and an adviser on every aspect of Wesley Mission's growth and development. He and his wife, Thelma, have become close friends with my wife and me. Neither Jim nor his wife has been enjoying their normal vigorous health recently, so this time of retirement gives us the opportunity to wish them both good health, long life and the deep satisfaction that comes from a job well done for Christ, the church and the community.

KARINYA HOUSE FOR MOTHERS AND BABIES INC.

The Hon. GREG DONNELLY [6.36 p.m.]: I take this opportunity to reflect briefly on an organisation in the Australian Capital Territory that I have come to know called Karinya House for Mothers and Babies Inc. I have come to know that organisation because of the work it does not just for young mothers and disadvantaged young mothers in the Australian Capital Territory; significantly, about 30 per cent of its clients originate from New South Wales. The organisation has operated in the Australian Capital Territory for some years under the very strong and dynamic leadership of Marie-Louise Corkhill, who is the coordinator of the centre.

The centre has two primary roles. The first is to provide support and services for women who are pregnant and without appropriate accommodation and support to enable them to continue with their pregnancies. Alternatively, they may have recently given birth and be in need of appropriate accommodation and support for themselves and their babies. Madam Deputy-President, you may recall that last week I made a speech on the adjournment about the work done by the Red Cross at its facility in the eastern suburbs of Sydney. In many respects Karinya House does the same thing in the Australian Capital Territory. It operates two homes, one of which is for the women—many of whom have been exposed to domestic violence or may have mental illness or other difficulties such as not having any accommodation and are in need of care because of the circumstances in which they find themselves. At Karinya House they receive 24-hour support for the duration of their pregnancy. Following the birth of their child they are transitioned to Erin House, which is the sister facility. At Erin House they are provided with support that enables them ultimately to move into their own accommodation. They are taught a range of skills they will need to raise their new babies and are given a range of contacts in the community that will provide them with support.

[*Time for debate expired.*]

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

Motion agreed to.

The House adjourned at 6.38 p.m. until Wednesday 29 October at 11.00 a.m.