NSW Legislative Council Hansard (Proof)

PORTS CORPORATISATION AND WATERWAYS MANAGEMENT AMENDMENT BILL

Second Reading

The Hon. MICHAEL COSTA (Treasurer, Minister for Infrastructure, and Minister for the Hunter) [2.47 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

In 1995 the Labor Government introduced the *Ports Corporatisation and Waterways Management Act*. This groundbreaking legislation dissolved the old Maritime Services Board and created the three port corporations of Sydney, Newcastle and Port Kembla.

The port corporations were established with a charter to operate efficiently on a commercial basis, to maximise the State's investment and to promote trade through their facilities.

Each of the port corporations are also required to carry out certain port safety functions under their port safety operating licence.

The Act introduced new commercial disciplines and management accountabilities. Cross—subsidisation between the major ports has been eliminated.

Many benefits have flown from this initiative, including increased efficiencies and a corresponding reduction in costs.

Greater trade has been attracted to the ports and the adjacent regions.

A clear signal was sent to the business community that this Government is committed to achieving greater economic growth for the State.

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The ports are an integral link in the freight logistics chain handling $60 Billion of trade in New South Wales.

The port of Botany is now the second largest container port in Australia. Trade through Sydney Ports for last financial year totalled 25.9 million mass tonnes, an increase of 3 per cent on the previous financial year.

2005/2006 also saw record growth in total container movements of 1.4 million average size shipping containers, or TEU's … an increase of 5 per cent on 2004/2005.

The port of Newcastle is the economic and trade centre for the resource rich Hunter Valley and much of northern New South Wales.

Newcastle is one of the world's largest coal exporting ports. In 2005/2006, coal exports totalled 85.6 million mass tonnes, an increase of 2 per cent on 2004/2005.

In 2005/2006, Port Kembla Port Corporation achieved $4 Billion worth of trade, a trade growth of 6% on the previous year … the best result since 1997/98.

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Since the ports were corporatised over ten years ago … tonnage throughput at the ports of Newcastle, Port Kembla, and Sydney has collectively risen by more than 30 per cent.

Mass tonnage throughput at New South Wales ports has risen from 103 million mass tonnes in 1995 to more

than 138 million last financial year … an increase of 34 per cent.

Just last year, the ports of New South Wales handled more than 4,500 ships carrying trade estimated to be worth $60 Billion.

This is good news for the ports, for jobs, for business and for the economy. And to reinforce the positive outlook for New South Wales—trade growth is forecast to triple over the next three decades.

This is great news for the New South Wales economy, and I'm delighted with the achievements that have been recorded over recent years by this great maritime State.

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Port safety operating licences are issued to each port corporation to certify their ability to carry out port safety functions.

The *Ports Corporatisation and Waterways Management Act* currently gives the Governor the responsibility for issuing, renewing, and cancelling these licences. The personal involvement of the Governor in administering these licences is an unnecessary formality.

To streamline the administration of this process it is proposed that these functions be assigned directly to the Minister for Ports and Waterways.

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Over the years, the Maritime Authority has undergone considerable transformation and changes to its administrative arrangements.

In 1995, the then Waterways Authority was established as a *'stand alone declared Authority'*, responsible for the regulation of recreational boaters and the operators of small commercial vessels.

Since 1995, the organisation's role has evolved from a core focus on recreational and commercial boating safety to a broader maritime role encompassing:

- oil and chemical pollution response;
- some environmental regulation; and
- safety regulation for all vessels in State waters … other than those that are the responsibility of the port corporations.

In recognition of these developments, the Ports Corporatisation and Waterways Management Act has already been amended to change the name of the Waterways Authority to the Maritime Authority of New South Wales.

Activities regulated by the Maritime Authority under delegation from the Minister include:

- commercial passenger vessels;
- commercial fishing and working vessels;
- recreational boats; and
- marinas.

The Maritime Authority is also now charged with the provision of policy advice on maritime and port matters to the Minister of the day, and the management of any property vested in it.

These property functions include the control and management of dry and submerged land … including structures, roads and installations on that land … to facilitate navigation and port operations in New South Wales.

More recently New South Wales Maritime has additional functions in relation to the redevelopment and management of land for public precincts, including Walsh Bay and King Street Wharf.

The Maritime Authority is also responsible for the safe operation and navigation of recreational vessels and for commercial vessels not subject to control by a port corporation. The Authority also ensures compliance by the ports with the port safety functions exercised by them under their port safety operating licences.

The Maritime Authority is responsible for the protection of the environment from waste associated with vessels

on State waters and coordinating emergency environment protection services in response to oil and chemical spill incidents from vessels. The Authority arranges for the mooring of recreational vessels and commercial vessels not subject to the control of a port corporation.

New South Wales Maritime investigates marine accidents and incidents and manages port facilities, such as Yamba and Eden, not managed by a port corporation.

The Authority is also responsible for the co—ordination of New South Wales policy on port and maritime security and the co—ordination of maritime security activities not covered by either the requirements of the Commonwealth *Maritime Transport and Offshore Facilities Security Act* or plans approved in accordance with that Act.

In light of these developments, the Bill seeks to amend the *Ports Corporatisation and Waterways Management Act* to set out the principal functions of the Maritime Authority.

The Bill also seeks to expressly provide that the Maritime Authority is to exercise maritime or other functions of the Minister under the marine and other legislation as is delegated to it by the Minister.

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It is important to note that the Maritime Authority has taken on a number of functions under non-maritime legislation. For example the Authority is an "appropriate regulatory authority" in relation to pollution from vessels under the *Protection of the Environment Operations Act*.

New South Wales Maritime is also responsible for issuing safety management system guidelines to vessel operators under the *Passenger Transport Act*.

It is therefore proposed to amend the *Ports Corporatisation and Waterways Management Act* to provide the Maritime Authority with a statutory power of delegation. This will assist with the administration of its important environmental and other roles and responsibilities.

The Bill also makes sure that there can be no doubt about the validity of any past approvals issued by the Authority when the Minister of the day had sought to delegate responsibility to the Maritime Authority or its predecessors.

In light of the passage of time since the corporatisation of the ports, it is clear that the cumbersome name of the Act no longer accurately reflects its day-to-day purpose.

Given that the ports are already corporatised, a continuing reference to the process of corporatisation no longer needs to appear in the title of the legislation.

For this reason the Bill renames the principal Act as the *Ports and Maritime (Administration) Act*.

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The 1995 enactment of the *Ports Corporatisation and Waterways Management Act* represented a significant shift in New South Wales port governance. The improvements contained in this Bill provide another example of the New South Wales Government's commitment to improving the administrative efficiency of legislation affecting business and growth.

I commend it to the House.

The Hon. MELINDA PAVEY [2.47 p.m.]: All is not what it seems with the Ports Corporatisation and Waterways Management Amendment Bill, and that only came to light at the last minute of last week. There are genuine concerns about the honesty of the Government in introducing this bill, and doubt the Greens will want to say something about that in this debate. The requirement for urgency for the bill is hidden in the last paragraph of the Minister's second reading speech, which states:

The bill also makes sure that there can be no doubt about the validity of any past approvals issued by the Authority when the Minister of the day had sought to delegate responsibility to the Maritime Authority or its predecessors.

That statement reveals that this legislation is required to give certainty to leaseholders of land under the jurisdiction of NSW Maritime to issue development consents. The bill validates retrospectively all approvals that have been issued by the New South Wales Maritime Authority with the necessary legal authority. In other words, the bill clearly is an attempt to fix up the Government's incompetence.

If we want to talk about incompetence, we can talk about the Ministers who have been responsible for the

corporatisation of New South Wales ports and the New South Wales Maritime Authority—and what a list of Ministers with dubious distinctions have been in control! The Ministers included: Kim Yeadon, who was dumped from the ministry; the current Minister, Joe Tripodi, need I say more; the Minister for Roads, the Hon. Eric Roozendaal, who was given the Ports portfolio on his elevation to Cabinet, and watching his performance during the budget estimates showed that he had no control of and no understanding about what he was expected to do; and Carl Scully, who was given the Ports portfolio on becoming a Minister in 1995. Four pretty ordinary Ministers have been in charge of the New South Wales ports. Is it any wonder that the bill is being rushed through without proper consultation and with no honesty to the Opposition or the people about its need?

The Government advised the Opposition that the bill was just a tidy up, a clarification, to streamline administrative procedures relating to port safety operating licences. It argued that the bill was a tidy-up to allow the Minister rather than the Governor to issue, renew or cancel a port safety operating licence, to set out the principal functions of NSW Maritime and to insert administrative provisions regarding the delegation of functions. That is the major sticking point. The bill also confirms the validity of certain consents, permits and approvals issued by NSW Maritime and its predecessors and renames the Ports Corporatisation and Waterways Management Act as the Ports and Maritime Administration Act.

By way of background, in 1995 the Labor Government introduced the Ports Corporatisation and Waterways Management Act, which replaced the Maritime Services Board with three statutory port corporations, which are now the New South Wales Maritime Authority. Since then there have been a number of changes to the roles and responsibilities of the Maritime Authority that needed to be incorporated into the bill. I have no problem with all of that. The Act gives the Governor the responsibility for issuing, renewing and cancelling port safety operating licences under the recommendation of the Minister. The Government argued that it wanted to streamline the administration of that process by placing the authority directly into the hands of the Minister for Ports and Waterways. The Opposition has no problem with that.

The bill sets out the principal functions of the Maritime Authority, permitting the authority, in keeping with its modern role, to provide advice to the Government on ports and maritime policy, to manage its property and to undertake other activities delegated to it by the Minister. The bill inserts the administrative provisions that clearly state the delegation of the Minister and the chief executive officer of the Maritime Authority. The Opposition's major concern with the bill is that since 1997 leases and development applications in relation to land under the jurisdiction of the NSW Maritime Authority have not been valid. Officers within the Maritime Authority have signed off on approvals and leases without having the power to do so. Essentially, this bill fixes up that anomaly. A new clause 17 will be inserted in schedule 5 to the principal Act. Subclause (2) of that clause provides:

(2) Any relevant instrument purportedly granted, given or issued pursuant to a delegation made by the relevant Minister to the head of a maritime agency is not invalid (and is taken never to have been invalid) by reason only that:

(a) there was no statutory authority for the delegation, or

(b) the relevant instrument was not granted, given or issued in the name of the Minister, or

(c) the relevant instrument was granted, given or issued by a member of staff of the maritime agency.

An upper House call for the production of documents that was instigated by the Greens revealed that in the past 12 months approximately 24 leases or development approvals for structures on land falling under the New South Wales Maritime Authority had been enacted. The Government argued that it would be too difficult to produce all leases since the establishment of the New South Wales Maritime Authority in 1997. However, the Opposition is concerned that with the passing of this bill all leases that have been signed will be immediately validated. If something unusual has happened within the administration of New South Wales Maritime Authority—and as I said earlier, there has been a pretty ordinary lot of Ministers in charge of the authority—and inappropriate approvals have been given, the leases will be immediately validated and any inappropriate approvals will remain. However, the Opposition wants certainty to be given to those affected by the Government's incompetence and believes it would be unfair to create further concern for leaseholders.

The Opposition and members of the crossbench have been placed in a difficult position. Ms Sylvia Hale has placed questions on notice about this matter, and I am sure she will refer to those in greater detail in her contribution. Interestingly, those questions were due to be answered today. But surprise, surprise, many of the questions remain unanswered. It is difficult to accept the Government on face value with this bill. As I pointed out, it was not until the very last moment of his speech in the other place did the Minister get to the main point of the bill. He addressed the delegation by officers to the approval process. Not a very straightforward or honest way to deal with the matter. The Opposition has sympathy and concern for the confused people of New South Wales who have been affected by the Government's incompetence, and it is important that I place those concerns on the record to highlight how sloppy the Government has been in allowing this situation to develop. It has taken nine years for this problem to be addressed—nine years of incompetence—and that is typical of this poor Carr-Iemma Government.

The Hon. Dr ARTHUR CHESTERFIELD-EVANS [2.57 p.m.]: I am very concerned about the Ports Corporatisation and Waterways Management Amendment Bill, which is a typical example of how the Government works. The Greens have asked the Government some questions about leases that it is not happy with. The Government should have provided answers to those questions today but it has not done so. It has given responses, rather than answers: basically it has fobbed-off the issue. The bill is supposed to validate what the Government has done, and that is interesting. The Opposition has been put in the position of either supporting the bill and validating the leases, or simply leaving people in limbo. My view is that any bad behaviour by the Government or those applying for leases should be made public. We should not be asked to give a tick to practices that we do not know were legitimate. No member of this House, no member of the legal system, would stand in the way of anyone who made a legitimate request for a legitimate lease that was legitimately granted. If, however, there have been dodgy practices, we should not be asked to validate them and pass the bill, sight unseen, no questions asked. Nor should we tolerate the fact that the Government has failed to answer questions asked of it. I seek leave to incorporate *Questions and Answers* No. 0164 Ports and Waterways—Authorisation of Development Consents/Refusals in *Hansard*.

Leave not granted.

I will read it. The document states:

Ms Hale to the Treasurer, Minister for Infrastructure, and Minister for the Hunter representing the Minister for Energy, Minister for Ports and Waterways, and Minister Assisting the Treasurer on Business and Economic Regulatory Reform—

> In regard to a memorandum dated 16 August 2006 in which the Acting Chief Executive of New South Wales Maritime stated that the Minister had authorised him to exercise the function of consent authority for development applications on New South Wales Maritime land:

1. Which Minister authorised Mr Moore to act as the consent authority for development applications relating to New South Wales Maritime land?

2. When did the Minister and/or Mr Moore become aware that there had been no authorisation for Mr Moore to sub-delegate that authority?

3. Were development consents or refusals signed without proper authorisation? If so.

a. over what period?

b. how many consents or refusals were issued in this period?

c. what are the particulars of each unauthorised consent refusal?

d. were any consents or refusals illegally made during this period?

4. Has the power of sub-delegation since been granted to Mr Moore?

a. If so, when did this occur?

b. If not, has the sub-delegation been issued?

c. If so, to whom?

5. How many development consent refusals have been forwarded to Mr Moore since 16 August 2006?

6. a. Does the memorandum apply retrospectively to development consent/refusals granted before 16 August 2006?

b. If so, from what date?

7. If consents have been signed retrospectively, what is the legal authority permitting retrospective consent?

Answer—

(1) to (3)Mr Moore has been acting as Chief Executive Officer of the Maritime Authority. It has been both my practice and that of previous Ministers to delegate to the CEO various functions vested in the Minister.

(4) No new delegation has been extended by me to the CEO of the Maritime Authority in the period you are referring to.

(5) I am advised that none have.

(6) Refer to answer to questions from (1) to (3).

(7) Not applicable.

Basically, the Government is saying nothing. The information given to crossbench members at the briefing appeared to be quite innocuous. The Government, which once again is trying to get through these retrospective consents, is making out that this bill is routine housekeeping. I seek leave to incorporate in *Hansard* the crossbench briefing note.

Leave not granted.

As the Treasurer will not permit me to incorporate the note, I will waste the time of the House by reading it onto the record. The crossbench briefing states:

CROSS BENCH BRIEFING

Ports Corporatisation and Waterways Management Amendment Bill 2006

MAIN PURPOSE OF PROPOSAL

To introduce a number of administrative amendments to the Ports Corporatisation and Waterways Management Act 1995 (PCWMA) to improve the efficiency of the legislation.

The Amendment Bill will:

• allow the Minister, rather than the Governor, to issue, renew or cancel a port safety operating licence;

• set out the principal functions of New South Wales Maritime;

• insert administrative provisions regarding the delegation of functions;

• confirm the validity of consents, permits and approvals issued by New South Wales Maritime and its predecessors; and

• rename the Act as the *Ports and Maritime (Administration) Act*.

BACKGROUND

In 1995, the PCWMA was enacted to replace the Maritime Services Board with the three statutory Port Corporations and the Maritime Authority (formerly the Waterways Authority).

In the eleven years that have passed since this Act was commenced there have been a number of changes to the roles and responsibilities of the Maritime Authority which need to be incorporated into the legislation.

The PCWMA currently gives the Governor the responsibility for issuing, renewing, and cancelling port safety operating licences. The personal involvement of the Governor in administering these licences is an unnecessary formality. To streamline the administration of this process it is proposed that these functions be assigned directly to the Minister for Ports and Waterways.

The bill also sets out the principal functions of the Maritime Authority, permitting the Authority-in keeping with its modern role-to provide advice to the government on ports and maritime policy, to manage its property and undertake other activities delegated to it by the Minister.

Administrative provisions that clearly state the delegation authority of the Minister and Chief Executive of the Maritime Authority are also inserted.

The bill also proposes the PCWMA be renamed as the Ports and Maritime (Administration) Act 1995 to better reflect its purposes.

JOE TRIPODI
MINISTER FOR PORTS AND WATERWAYS
17 October 2006

That information does not state what the bill does in substance, which is to retrospectively approve a number of things. When the Greens requested details from the Government it rapidly introduced this bill and provided the

Greens with an innocuous little briefing paper. As the Hon. Melinda Pavey said, that is the way in which this Government does things. We should not say, "We cannot possibly invalidate these things", as these issues should be judged on their merits. The Government should be held accountable for any bad practice and not simply pass legislation and wonder later whether something could have been done. The Government would then be shutting the stable door after the horse had well and truly bolted. I oppose the bill.

I understand that Ms Sylvia Hale wants to defer the bill for similar reasons. There have been rumours that Macquarie Bank, which owns a number of entities, has had things passed very quickly, and that other people have not had things passed so quickly, which is strange. I oppose this appalling bill, which is typical of the underhanded way in which this Government works.

Reverend the Hon. FRED NILE [3.05 p.m.]: The Christian Democratic Party supports the Ports Corporatisation and Waterways Management Amendment Bill, which will make a number of administrative amendments to the Ports Corporatisation and Waterways Management Act 1995 to improve the efficiency of the legislation. The bill allows the Minister, rather than the Government, to issue, renew, or cancel a port safety operating licence; sets out the principal functions of the New South Wales Maritime Authority; inserts administrative provisions regarding the delegation of functions; confirms the validity of consents, permits and approvals issued by the New South Wales Maritime Authority and its predecessors; and renames the Act as the Ports and Maritime (Administration) Act.

Concern has been expressed about an important aspect of this bill, which confirms the validity of consents, permits and approvals issued by the New South Wales Maritime Authority and its predecessors. As other honourable members have said, we are able to defeat this bill by opposing it. It could be said that the Government is not concerned about all those who have been affected and who have legally received valid consents, permits and approvals. However, it has since been shown that those approvals might have been carried out in line with the legislation. The bill gives the Governor responsibility for issuing, renewing and cancelling port safety operating licences, which might involve some technicalities. If we oppose the bill it will create chaos in New South Wales and affect many thousands of people, and I do not believe that is fair to them. I am not really worried about the Government or its reputation, but I am concerned about the rights of citizens in this State who have followed all the correct procedures.

In improving procedures it is necessary to update other aspects of the legislation because of the tremendous growth that has occurred in various ports in this State, which is most encouraging. Obviously our ports are a key part of the State's logistics chain as they enable the movement of freight out of Australia to overseas markets such as Japan and China, as well as incoming freight from other countries that benefits the people of New South Wales and Australia. I believe that more than $6 billion of trade now goes through our ports.

Expansion has occurred in the Port of Botany, the second largest container port in Australia. As a boy I remember holidaying with my family at Kurnell. In the early 1940s we could not get to Kurnell by road; we had to go across the bay by a large launch that carried 30 or 40 people. We would often see sharks following the launch across the bay, which at that stage was tranquil, quiet and peaceful. When my family moved from Kings Cross to Mascot, Botany Bay became a playground for my brother, my sisters and me. We regularly spent time at Cooks River, which at that stage was very clean, and we played on the old steel bridge that crossed the river. The river was then diverted and that bridge was removed. Tremendous changes have occurred at Botany Bay and Port Botany in response to the growth of New South Wales and its expanding industries and trade.

I note that in the past financial year, trade through Sydney's ports totalled 25.9 million mass tonnes, an increase of 3 per cent on the previous financial year. The year 2005-06 also saw record growth in total container movements of 1.4 million TEU—an average size shipping container—an increase of 5 per cent on 2004-05. The same growth has occurred in the Port of Newcastle, where there has been tremendous expansion. In 2005-06 the Port Kembla Port Corporation achieved $4 billion worth of trade, which amounts to trade growth of 6 per cent on the previous year.

The ports of this State are playing an important role in our economy and they must be managed efficiently. We believe that this bill will assist large industry involved in importing and exporting and simplify the system of granting consents, permits and approvals by the Maritime Authority of New South Wales. We hope the bill will eliminate problems that beset that process in the past. The Christian Democratic Party supports the bill.

Ms SYLVIA HALE [3.11 p.m.]: The objects of the Ports Corporatisation and Waterways Management Amendment Bill are:

… to amend the Ports Corporatisation and Waterways Management Act 1995, the principal Act:

(a) to change the name of the Act, and

(b) to provide that the Minister, rather than the Governor, may issue operating licences to Port Corporations; and

(c) to expand the statutory delegation powers of the Minister, and

(d) to give the Maritime Authority a statutory power of delegation, and

(e) to set out the principal functions of the Maritime Authority, and

(f) to confirm the validity of certain instruments issued under non-statutory delegations.

The Bill also amends other Acts consequentially.

It is the last object that has caused honourable members in this place and the Greens the greatest concern. I believe that the Government introduced this legislation for one principal purpose: to rectify, via this retrospective legislation, the possibly unlawful, and therefore invalid, exercise of delegated authority within the Maritime Authority of New South Wales that has occurred over a decade or more.

The legislation confirms retrospectively the validity of an unknown number of invalid development approvals issued by the New South Wales Maritime Authority, and the harbourside leases that rely upon those approvals. I believe that this legislation has been brought before Parliament because the Greens exposed the fact that the Maritime Authority had no basis for issuing certain development consents and other instruments. On 19 September I submitted a series of questions without notice to the Minister for Ports and Waterways, and I subsequently also sought the tabling of papers relating to the delegated authorities.

The Hon. Dr Arthur Chesterfield-Evans detailed the questions I asked on 19 September. They related to a memorandum dated 16 August 2006 in which the Acting Chief Executive of the Maritime Authority of New South Wales, Mr Moore, stated that the Minister had authorised him to exercise the function of consent authority for development applications on Maritime Authority land.

Some of my questions were general but others were extremely specific. Question No. 3 asked whether development consents or refusals were signed without proper authorisation. I think the answer to that question is obvious in view of the provisions in this bill. We also asked over what period any development consents or refusals were signed without proper authorisation and how many consents or refusals were issued in that period. We asked for the particulars of each unauthorised consent or refusal and whether any consents or refusals were made illegally during this period. Question 6 (a). asks:

Does the memorandum apply retrospectively to development consents/refusals granted before 16 August 2006?

(b) If so, from what date?

The Greens also sought other information. The answer to those questions—particularly question No. 3, which asked over what period the consents and/or refusals were issued, how many were issued, what the particulars were and whether any were made illegally—reveals the absolute contempt in which the Government and the Minister hold Parliament. The Minister's answer was that Mr Moore had been acting as Chief Executive Officer of the Maritime Authority and that it had been both his practice and that of previous Ministers to delegate to the CEO various functions vested in the Minister.

The Minister did not even pretend to answer the question. He did not even pay lip service to providing information about the period for which we are now being asked to grant retrospective delegation. As I said before, this is a prime example of the contempt in which the Government holds the Parliament, and the Government's obsession with secrecy. It has refused to provide what I believe is significant and germane information about the bill. We must assume that the number of consents and refusals is quite considerable and that the Government has thrown a veil of secrecy over the period and the number of consents in order to obscure some sinister purpose. I do not know what other construction one can possibly put upon it.

Yesterday I received a response to my questions. In that response the Minister did not answer my questions as to whether there are invalid leases, how many there are, and over what period they were issued. He ignored those questions totally. Yet at 11.27 on the night of Tuesday 17 October the Minister for Ports and Waterways introduced this bill in the lower House. Schedule 1 [9] of the bill seeks to retrospectively validate any instruments that are purported to have been granted or issued by the Maritime Authority without legal authority. It does not identify how many instruments are to be validated, who issued them, or over what period they were issued. The bill simply asks Parliament to give blanket retrospective approval, sight unseen, to an unknown number of instruments issued by unknown officers of the Maritime Authority over an unknown period.

In the Greens' view Parliament has a responsibility to make itself aware of the consequences of the legislation it passes. No-one in this House knows what the consequences of passing this bill will be because no-one knows what invalid instruments it will validate. The Government and the Maritime Authority failed to ensure they were

acting lawfully when exercising delegated authority to issue development consents. The Minister now asks Parliament to retrospectively approve all those consents and other instruments without any scrutiny whatsoever of what instruments are to be validated.

The Greens believe that a retrospective blanket validation of invalid decisions should not be undertaken without detailed scrutiny of the likely effect of such retrospective legislative action. The Greens believe that the House should not give retrospective approval without having detailed knowledge of exactly what is being approved.

The Minister asks us to trust him that there is nothing untoward in any of those instruments. He says that this is merely a technical problem and that Parliament should move quickly to remove uncertainty. While I have some sympathy with wanting to remove uncertainty, I am concerned that the passing of this bill will not do that. I am concerned about how the bill has been drafted, particularly schedule 1 [9], which deals with retrospective validations. Schedule 1 [9] validates:

Any relevant instrument purportedly granted, given or issued pursuant to a delegation …

What exactly is meant by "purportedly granted, given or issued"? This appears to me to be a very broad and poorly defined phrase. If an officer of Maritime Authority told me over the phone "You'll be right. We'll look after you", could that be considered the purported granting of an instrument that would be made valid by this bill? This is not merely a hypothetical question. An article by Susan Wellings in last Saturday's *Sydney Morning Herald* about the status of existing leases for private jetties on the harbour carried the subheading "Despite verbal assurances many waterfront owners are deeply worried". Do the verbal assurances by Maritime Authority referred to in that article fit within the definition of "purported granting of an instrument" under this bill? We do not know because, rather than supply a list of the instruments affected by the bill, the Minister has asked us to take him on trust. Like most people, I am very concerned about the idea of taking Mr Tripodi on trust in relation to this or, indeed, any other matter.

Sydney Harbour leases and approvals is a very hot topic. The lifting of the moratorium on new marina developments, the implementation of the Sydney Harbour Access Plan, and the delays, confusion, and disputes over the new commercial lease policy have put harbour side leases into play, and there is more than one species of shark currently circling the harbour. To understand the amount of money, influence and angst involved, one has only to refer to that *Sydney Morning Herald* article. The harbour lease issue is described in that story as "a tale of love and hate, of fury and betrayal with millions of dollars at stake". The Herald article quotes one real estate agent as putting at up to $2 million the value of adding a private jetty to a harbour side property.

It is a matter of public record that the Macquarie Bank has recently been acquiring marinas in Sydney Harbour, and development proposals from Rose Bay to Rozelle Bay are currently on the drawing boards, causing significant community concern around the harbour. The Rozelle Bay development, for example, attracted a crowd of approximately 200 concerned residents to a recent public meeting. I am also aware from sources within the industry that the great hero of struggle-street, Alan Jones, is actively lobbying the Government on behalf of the development interests and owners of some of Sydney's most expensive real estate. We all know how irresistible his lobbying efforts can be for government Ministers of all stripes.

And into this feeding frenzy of money and influence, this tale of fury and betrayal, waltzes Minister Joe Tripodi with this bill, asking that the Parliament trust him and retrospectively validate, sight unseen an unknown number of instruments issued by an unknown number of officers, over an unknown period of time, worth an unknown amount of money. In this context the trustworthiness of the Minister is clearly an issue.

In the area of developments, authorities and approvals Mr Tripodi has a long and well-documented history. The history is well documented because this Minister has the unenviable record of being subject to two, if not three, investigations by the Independent Commission Against Corruption [ICAC]. From his inaugural speech to the Parliament in 1995 when Mr Tripodi thanked the infamous property developer, Pat Sergi, whom he described as a friend he intended to keep for a long time, Mr Tripodi's relationship with property developers and lobbyists has raised concerns. These concerns surfaced again in the ICAC inquiry into the Orange Grove development, in which his relationship with developers, particularly Mr Nabil Gazal and Mr Sam Bargshoon was a key component of the investigation and in which counsel assisting the ICAC was quoted as describing Mr Tripodi's evidence as "not reliable". The concerns surfaced again recently in relation to the activities of a development company in which he owned shares.

The Hon. Michael Costa: Point of order: I do not see that these matters have any relevance to the bill. If the honourable member has an issue with the honesty of Minister Tripodi she ought to deal with it by substantive motion and have it debated, rather than use a coward's way to attack someone who has not got the opportunity to defend themselves. I also suggest that if the honourable member wants to say these things she has the option of saying them outside Parliament and face the appropriate legal consequence.

Ms SYLVIA HALE: To the point of order: The Greens sought to obtain from the Minister the specific nature,

number and timing of approvals of the instruments for which retrospective validation is being sought. That has not been provided and we are being asked by the Government and by the Minister to take on trust his assurances that all will be well; there is nothing untoward and nothing underhand in any of this.

The DEPUTY-PRESIDENT (The Hon. Penny Sharpe): Is the member speaking to the point of order?

Ms SYLVIA HALE: Yes, I am. The point of order is that my remarks about Mr Tripodi's track record and his trustworthiness are totally central to whether this Parliament should pass this bill.

The DEPUTY-PRESIDENT (The Hon. Penny Sharpe): Order! The member's remarks must be relevant to the bill.

Ms SYLVIA HALE: What is central to the consideration of this bill is whether we should take the good intentions of the Minister and his department on trust, given the singular failure of the Minister to answer very specific questions about what the Parliament is being asked to validate. It seems to me by asking that of the Parliament, the Minister is asking us to accept his trustworthiness. I therefore think it is totally appropriate for us then to look at how trustworthy the Minister is.

The Hon. Michael Costa: Point of order: The reality is that the honourable member is flouting your ruling.

The Hon. Melinda Pavey: She is not.

The Hon. MICHAEL COSTA: She is. She is making references to Mr Tripodi's credibility based on a number of assertions. She selectively chose to refer to ICAC but not to the results of the ICAC investigations, which showed he was cleared on all matters. The bill relates to "the Minister in charge of the Maritime Authority", not to a specific Minister, and that ought to be ruled upon.

The Hon. John Ryan: To the point of order: The expectation in a second reading debate is for robust debate. I have no doubt that what the honourable member has said to date constitutes robust debate. Some of what the Treasurer said in his point of order is an attempt to reply to some of those issues, and has nothing to do with a point of order at all. The honourable member has spoken in reasonably general terms. In relation to her reference to the ICAC matters it was not relevant to point out that he had been cleared. As I understand it her point was that ICAC had made adverse comments about his trustworthiness.

The Hon. Michael Costa: No, she never said that.

The Hon. John Ryan: That is the point she made, and that was certainly not relevant to the outcome of the ICAC inquiry. In any event, the Minister about whom she is speaking is the relevant Minister who is sponsoring this legislation. She has spoken in general terms about issues germane to this legislation.

The Hon. Michael Costa: What is your point of order?

The Hon. John Ryan: My point of order is the one the Treasurer raised, and I do not think I need to remind him of it. He said she was not being relevant. I am arguing in detail that she is being relevant and keeping well within the bounds of what would be considered robust debate. As yet I do not think she has moved beyond the general guidelines that normally cover second reading debates on matters like this.

The Hon. Dr Arthur Chesterfield-Evans: To the point of order: The retrospective validation, which is an unusual step at the best of times, goes to the credibility and honesty of people involved in the process. If something is going to be approved retrospectively one has to have trust in the person who gives that approval. In a sense, the honourable member is giving a history of Ministers who have held this portfolio and supervised decisions that we will retrospectively be approved or not approved. As such, what the honourable member is saying about the credibility of the Minister is absolutely germane to the Minister's retrospective approval or otherwise of what other Ministers have done. Thus it is quite important that this matter be addressed, and the Government should be stopped in its attempts to prevent these matters being aired in the relatively dispassionate way in which the member is listing known facts.

The DEPUTY-PRESIDENT (The Hon. Penny Sharpe): Order! I have heard sufficient on the point of order. The member's remarks must be relevant to the debate. The member is close to casting aspersions on members of the other place, which she cannot do unless by way of substantive motion

Ms SYLVIA HALE: What is being debated is: How reliable are the Minister's undertakings? How much trust can we put in his assurances that he will do the right thing?

The Hon. Greg Pearce: None.

Ms SYLVIA HALE: None whatsoever. I agree. In this context, it is interesting—

The Hon. Ian West: Point of order: I refer to Standing Rules and Orders of the Legislative Council, and in particular to Rule 91(3). It quite clearly states:

A member may not use offensive words against either House of the Legislature, or any member of either House, and all imputations of improper motives and all personal reflections on either House, members or officers will be considered disorderly.

The member is out of order, and I ask the Chair to rule accordingly. The member should stick to the point.

The Hon. Greg Pearce: To the point of order: I note the ability of the Hon. Ian West to read the standing orders. This bill is about giving the Minister, instead of the Governor, the power to issue, renew or cancel safety operating licences. This is a matter of extraordinary significance. It relates to confirmation of various consents, permits and approvals that have already been issued. This debate is about the credibility of the Minister and about his being given these additional powers on a matter as crucial as port safety. It is absolutely relevant for the member to canvas whether or not the Minister can be relied upon in exercising those discretions.

The Hon. John Ryan: To the point of order: The member has been robust, but as yet she has not come close to crossing the line and making a personal reflection on the Minister. Nor has she accused him of any improper motives. She has not actually accused him of any area of corruption. She has said that he is unreliable and untrustworthy. These are comments made regularly in this place. One need only go to the speeches of Labor members to find that those adjectives are regularly used in regard to members of the Opposition, the Federal Government and so on. They are common enough expressions made in second reading speeches, and in my view are well within the parameters of robust debate.

The Hon. Michael Costa: To the point of order: It is clear the imputation was that the Minister was dishonest and could not be trusted with the powers to be conferred by the bill. That is a clear imputation of the Minister being dishonest and corrupt, and it is out of order. The member is not addressing the substantial issue of the bill, which relates to the power to be conferred on a Minister. On other occasions in this House I have made the point that robust debate is fine, but what the member is saying is going to the Minister's character and integrity.

The Hon. Greg Pearce: He has no character or integrity.

The Hon. Michael Costa: That is the point.

The Hon. Greg Pearce: It is the point.

The Hon. John Ryan: To the point of order: If the Minister is worried about Mr Tripodi's honesty, I do not know where that is coming from. The word "dishonest" has yet to be used other than by the Minister.

The Hon. Michael Costa: Untrustworthy. What does that mean?

The Hon. John Ryan: Untrustworthy does not mean the same thing as dishonest. It is perfectly legitimate for a member to refer to a Minister as being untrustworthy. Those are two different things. Not trustworthy is closer to unreliable; it does not necessarily mean dishonest.

The Hon. Michael Costa: The member said we cannot trust the Minister with the powers, and made references to ICAC. Don't give us that! You know exactly what she means.

The Hon. John Ryan: She quoted a report from ICAC that said his evidence was unreliable. That means untrustworthy.

The DEPUTY-PRESIDENT (The Hon. Penny Sharpe): Order! I refer members to a ruling by President Johnno Johnson regarding offensive words:

Member should not use offensive words against a member of either House of the Legislature or towards any member, and imputations of improper motives and personal reflections on members are deemed disorderly. These rules are designed to guard against unbecoming language and insults and accusations in debate.

The member's remarks clearly breach that ruling. I call the member to order and ask her continue.

Ms SYLVIA HALE: What I have done is refer to a comment by counsel assisting the Independent Commission Against Corruption that describes Mr Tripodi's evidence in relation to the Orange Grove development as unreliable.

The Hon. Michael Costa: Point of order: The member is quite clearly canvassing the ruling of the Chair. I ask you to call the member to order.

The DEPUTY-PRESIDENT (The Hon. Penny Sharpe): Order! I have ruled on the point. The member may continue, but she should ensure her remarks are relevant and do not cast aspersions on members of the other House.

The Hon. John Ryan: She has not.

Ms SYLVIA HALE: I am saying that at the heart of the bill is the degree of reliability we place upon the Minister's word. I have noted that in places such as ICAC the Minister's word has been found to be not reliable. That was followed by very misleading statements by the Minister in regard to other matters. Recently, there was the question of his activities in a development company in which he owned shares, Westside Property Developments.

The Hon. Ian West: This is outrageous!

The Hon. Michael Costa: Point of order: Madam Acting-President, you have ruled on this issue. The member continues to flout it.

The Hon. Greg Pearce: No, she has not. It is the first time she has mentioned it.

The Hon. Michael Costa: It is not. It is the second time, because she mentioned Pat Sergi before. The member is clearly flouting the ruling. I ask you to call her to order.

The Hon. John Ryan: To the point of order: The matter that the Minister—

The Hon. Michael Costa: This is a joke! Just get on with the bill.

The Hon. John Ryan: You are so painful! If you find this so difficult, as a member who regularly—

The Hon. Michael Costa: We want to be out of here by the end of the year. Get to the point.

The Hon. John Ryan: As a member who regularly insults members on this side of the Chamber, I do not think the Minister has the right—

The Hon. Michael Costa: I have not called anybody corrupt.

The Hon. Greg Pearce: Except Joe Tripodi. You said Joe Tripodi was corrupt.

The Hon. Michael Costa: I did not. You are the one making the imputation.

The Hon. John Ryan: The matters which Ms Sylvia Hale is raising now have been raised in the public arena and discussed frequently in the public arena, and Mr Tripodi has in fact responded to them, and so on. They relate in part to his administration of personal affairs, but also have regard to his administration of the Housing portfolio during the time that he was housing Minister. That is a matter that is a public affair, and the member was making a point by testing the reliability of public utterances made by the Minister with previous public utterances made by the Minister. As yet, I do not think there has been anything untoward in that regard. It is a common enough feature of debates in this House that a member will compare what one Minister says about one issue and what the Minister says about another issue. As yet, the member has not accused the Minister of any sort of dishonesty or impropriety or corruption; she was simply continuing to question how reliable are public utterances he makes in the public domain. That is a reasonable point to be made—

The Hon. Michael Costa: You have made your point of order.

The Hon. John Ryan: It was your point of order. I am simply responding to your point of order. One of these days you will get to know about debate in this House.

The Hon. Michael Costa: You wont' be here long enough, so don't worry about it.

The Hon. John Ryan: Nothing that the member has said yet, although coming close, has crossed the line and been inappropriate.

The Hon. MICHAEL COSTA: To the point of order: One of the matters Ms Sylvia Hale is canvassing is in fact before ICAC at the moment. I ask, in the interests of fairness, that you rule on this matter in the terms of your previous ruling, that is, that it has nothing to do with the bill that is being debated. It is an imputation against the integrity of the Minister who has presented the bill.

The DEPUTY-PRESIDENT (The Hon. Penny Sharpe): Order! Ms Sylvia Hale should not flout the ruling of the

Chair. I ask the member to confine her remarks to the bill.

Ms SYLVIA HALE: I believe that germane to this debate is the reliability of the Minister; whether his word can be relied on and whether in fact he is prone to issuing misleading statements. I have quoted the questions that were asked, and earlier in my contribution I quoted the nonsense answers that were received or, in fact, the non-answers. It is not as though the Minister does not have a track record of making misleading statements. For example, in relation to his buying and selling of surplus public housing stock, the Minister admitted that he had made a misleading statement when he claimed—

The Hon. Michael Costa: Point of order: This is getting beyond a joke. Ms Sylvia Hale is clearly flouting your earlier ruling. The references are very personal. They are imputations about a person's character and outside the standing orders.

Ms SYLVIA HALE: To the point of order: I am merely attempting to talk about statements that the Minister has admitted were misleading. I am not conjuring up statements. It is not some sort of imputation; it is a straight reference to the Minister making a misleading statement about his involvement in the buying and selling of surplus public housing stock. It is totally appropriate that we consider that in relation to this bill.

The DEPUTY-PRESIDENT (The Hon. Penny Sharpe): Order! The matters being raised by the member have no relevance to the bill. Her comments must remain relevant at all times, otherwise I will call her to order.

[*Interruption*]

The Hon. John Ryan: If she gets thrown out for this, mate, we wouldn't be able to speak at all in this place.

Ms SYLVIA HALE: I acknowledge the interjection. This is a Minister who is now asking this Parliament to give blanket retrospective approval to consents and leases worth millions of dollars, with no scrutiny of those consents and leases. I believe that this House has a responsibility to exercise some level of due diligence when passing legislation. To pass this bill in the current environment of lobbying and jockeying, with the amount of money involved and with some of Sydney's richest and most influential individuals and corporations circling, on the basis of trusting the judgment of Joe Tripodi would appear to the Greens to be a serious dereliction of that duty. Therefore I foreshadow that I will move that this debate be adjourned until Tuesday 14 November 2006.

I wish to move that way because that will give the Minister approximately 2½ weeks to provide substantive answers to the questions that have been put on notice. It is quite possible that everything is above board. I do not know. Who knows? One does not know anything. The whole point of this debate is the sheer veil of secrecy, the ignorance in which the Parliament is being kept. I am not requesting that this bill be defeated at this stage; I am merely saying that it should be adjourned until Tuesday 14 November. The Minister and his department have received adequate notice of the questions that have been placed on notice. By delaying debate for 2½ weeks we will give the Minister the opportunity to provide the answers that have been requested.

If the Minister fails to provide those answers, or if he fails to provide them in a manner that is satisfactory or in as much detail as requested, I suggest that every suspicion that we have about this Minister and about the propriety of his actions is well founded. However, if he can provide the detail that we want, I believe Reverend the Hon. Fred Nile and other members of this House will have no problem with the passage of this bill, and neither will the Greens. I believe it is asking too much to ask us to pass this legislation—which requires the Parliament to do so many things about which it knows absolutely nothing and about which both the Minister and his department have failed to inform the Parliament, despite specific requests. I move:

That this debate be adjourned until Tuesday 14 November 2006.

Question—That the debate be adjourned—put.

The House divided.

Ayes, 5

Mr Breen	
Dr Chesterfield-Evans	
Ms Hale	
Tellers,	
Mr Cohen	
Ms Rhiannon	

Noes, 24

Mr Brown	Ms Griffin	Mr Pearce
Mr Catanzariti	Mr Lynn	Ms Robertson
Mr Clarke	Mr Mason-Cox	Mr Ryan

Mr Colless	Reverend Dr Moyes	Mr West
Mr Costa	Reverend Nile	
Ms Cusack	Mr Obeid	
Mr Donnelly	Mr Oldfield	*Tellers,*
Ms Fazio	Ms Parker	Mr Harwin
Miss Gardiner	Mrs Pavey	Mr Primrose

Question resolved in the negative.

Motion negatived.

The Hon. GREG PEARCE [3.52 p.m.]: I will speak briefly in support of the comments made by the Hon. Melinda Pavey during her excellent contribution to this debate. Having listened to the last part of the debate, it is obvious to me that there is an issue relating to the role of the Minister. The integrity of the Minister relates not only to the public interest but also to public confidence and, more generally, the economic prosperity of this State. The manner in which the ports portfolio has been managed in the past has revealed inadequate strategic planning and integration of ports with transport networks.

In the other place the Minister for Ports and Waterways cited figures relating to trade and made the point that the ports are integral to maintaining the strength of the New South Wales economy. I will not deal in detail with those figures except to say that they emphasise the paramount importance of ports and underline the basis for doubt on the part of the Opposition and many members of the community that this Government has the ability to properly administer this State's ports or the portfolio. Concerns have also been expressed about the massive increase in trade through Port Botany as a result of recent expansion and its concomitant impact upon surrounding areas as well as transport generally. People who use the M5 East know that already it has reached its capacity and that the increased traffic associated with Port Botany will only exacerbate the M5 East's problems.

The Government's policy is for 40 per cent of containers to be transported by rail. However, successive Ministers have failed to implement an integrated ports development, and that is not new. Papers provided several years ago by the Government relating to the approval of the ports expansion strategy by Cabinet in 2003 show that Cabinet considered a report from Mr Chris Wilson who was then the Director, Major Development Assessment of the then Department of Infrastructure, Planning and Natural Resources. Mr Wilson noted, when considering concerns related to the development application and the environmental impact statement for Port Botany at that stage, that there was inadequate supporting information on the wider strategic issues, particularly transport. He also noted that any consent for the port's expansion, regardless of whether a commission of inquiry was undertaken, would not address the significant off-site issues that exist.

In the same bundle of papers, Mr Greg McDowell, Manager, Project Development of the infrastructure co-ordination unit of the Department of Infrastructure, Planning and Natural Resources, also expressed concern about the basis relied upon by the Government to determine its policy. He queried whether we really want to keep concentrating economic activity in the Sydney Basin, thereby creating further pollution, traffic and other environmental pressures, because that was what the expansion of Port Botany would do. He also questioned whether the expansion of Port Botany should proceed or whether the Government should instead consider ports development in Newcastle and Port Kembla. Although those views concern wider issues, they relate to the whole question of whether this Government can be trusted to undertake the management of vital ports in New South Wales.

I could cite many concerns expressed by other commentators and experts relating to rail freight and the failure of this Government to integrate the planning of ports development with the New South Wales transport network. Most honourable members would have read an article in the *Sydney Morning Herald* on 14 October by Michael Duffy dealing with the works undertaken by the Patrick Corporation in expanding its operations at Port Botany. He noted that notwithstanding that the port has the most up-to-date equipment one could expect in port operations, in his view the State Government had let down everyone else. He referred to the proposal of 40 per cent of containers moving through Sydney by rail, with which everyone agrees, and noted with some concern that only half that rate has been achieved. That is a major problem that the Government has not addressed in relation to Sydney's ports development.

The Minister in the other place was very proud of the growth of the port, something that is fundamental to the future prosperity of New South Wales. The figures for the increase in traffic through the three ports are quite extraordinary and reflect the growth of New South Wales, in spite of any proper integrated planning by the succession of Labor Ministers who have had responsibility for Ports and Planning. The bill deals with some administrative issues. Perhaps Ms Sylvia Hale misunderstood the legal nature of the description of the need to address purported consents and purported decisions that may have been made. Certainly the Opposition does not have any opposition to addressing any administrative oversight; that is not to say that we in any way excuse the Government for its inability to properly manage this portfolio.

Pursuant to sessional orders business interrupted.

Proof, NSW Legislative Council Hansard, 24 October 2006, Pages 2 -, article 9.