



New South Wales Government
Department of Premier and Cabinet

Director
Budget Estimates Committees
Room 812
Parliament House
Macquarie Street
SYDNEY NSW 2000

23 OCT 2009

Dear Sir/Madam

I refer to the appearance of the Premier, the Hon Nathan Rees MP, and the Director General of the Department of Premier and Cabinet, Mr John Lee, on 15 September 2009 before General Purpose Standing Committee No 1, for the purpose of giving evidence in relation to the 2009-10 Budget Estimates.

Responses to questions taken on notice at the Estimates Hearing (Attachment 1) and the subsequent Questions on Notice (Attachment 2) are enclosed. As required by the Committee, a soft copy of these responses has been forwarded to budget.estimated@parliament.nsw.gov.au.

Should you have further enquiries please do not hesitate to contact Emanuel Sklavounos, on (02) 9228 3570.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Lee'.

John Lee
Director General

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Ms LEE RHIANNON: Premier, have you ever had in your possession, or in the possession of any of your staff, a document that was intended to be a submission from the New South Wales Government to the Henry inquiry into taxation that was not the IPART review of State taxation?

Mr NATHAN REES: I certainly have not. That was news to me when it emerged today. I could not speak for my staff. I would have to take that part of your question on notice.

ANSWER: No.

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Ms LEE RHIANNON: Thank you, Mr Premier. Mr Premier, since the new election laws came in last year, what training has been provided for your government MPs with regard to their responsibilities to report monetary and in-kind donations?

Mr NATHAN REES: I will have to take that on notice.

ANSWER: Under section 90 of the *Election Funding and Disclosures Act 1981* (the "Act"), official agents are responsible for reporting monetary and in-kind donations made to candidates, groups and MPs.

The training of official agents is undertaken by the NSW Election Funding Authority in accordance with section 27 of the Act.

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Ms LEE RHIANNON: Has the Election Funding Authority been given additional funding and additional staff to administer the new legislation?

Mr NATHAN REES: Bear with me for a moment. I have got the most recent budget papers here. Obviously, I will have to take a comparison with those.

Ms LEE RHIANNON: I must admit I am surprised at you taking the questions on notice, Premier, considering you have spoken in the media many times about the need to reform this area. In fact you were trumpeting that those laws demonstrate the advance you have made in this area. So, no information can be provided to this Committee at this point in time?

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Mr NATHAN REES: *There is some information here. I am not sure whether it will satisfy your question, but I am happy to run you through it. During the 2008-09 year the New South Wales Electoral Commission was focused on the delivery of the local government elections that year, the operational costs of those elections and the by-elections that were also held, but those elections were charged to local councils on a cost-recovery basis. The four State government by-elections were held during the 2008-09 year as well, and funding has been provided for two by-elections in 2009-10. Planning for the State general election has commenced. The electoral roll is currently supplied from the Australian Electoral Commission, and the estimated costs for 2009-10 is \$4 million, and a capital budget provision of \$6 million has been made this financial year to deliver election systems and infrastructure. The commission's net cost of services for the 2008-09 year was \$17.6 million. Twenty million dollars was to fund the local government elections, and that was fully recoverable through councils. Treasury did allow councils under financial stress to pay that back over two years. Of the total funding, \$2.2 million was paid to candidates and parties for election funding. The commission's budget for the 2008-09 was increased to \$19.8 million, acknowledging the work and commencement for the next State election.*

Ms LEE RHIANNON: *So the increase was for the next State election, not to handle the changes made in the legislation?*

Mr NATHAN REES: *That is what my notes say. I will have to take the body of your question on notice.*

ANSWER: The Election Funding Authority has been given additional funding to administer the new legislation. Funding as been provided as follows:

Recurrent Funding:

2008-09 \$1.374M plus transitional costs of \$0.625M, total \$1.999M

2009-10 \$1.374M

2010-11 \$1.374M

Capital Funding: (Total \$3.229M)

2008-09 Election Funding System \$0.75million plus fit out to accommodate staff \$0.15 million

2009-10 Election Funding System \$1.874 million

2010-11 Election Funding System \$0.455 million

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Where in the exercise of office an actual or apparent conflict of interest arises or is likely to arise in a matter, a Minister shall disclose the nature of that conflict to the Premier. A record of that disclosure shall be placed upon a schedule to the register of interests and a copy of the schedule will be kept in the office of the Auditor-General. The Minister shall abstain from further acting in that matter unless and until the relevant interest has been divested or the Premier in writing directs the Minister to continue to act.

The Hon. TREVOR KHAN: *Self-evidently, that is an important component of the ministerial code of conduct. Would you agree?*

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Mr NATHAN REES: *Agreed.*

The Hon. TREVOR KHAN: *You would ensure that the condition was complied with, would you not?*

Mr NATHAN REES: *Yes.*

The Hon. TREVOR KHAN: *Have you ensured that it has been complied with?*

Mr NATHAN REES: *I believe so.*

The Hon. TREVOR KHAN: *Where is the schedule of those conflicts of interest to be maintained?*

Mr NATHAN REES: *In the office of the Auditor-General.*

The Hon. TREVOR KHAN: *I take it that it is?*

Mr NATHAN REES: *I would have to take that question on notice. To the best of my knowledge—*

The Hon. TREVOR KHAN: *Premier, it is your Government and your Cabinet.*

Mr NATHAN REES: *To the best of my knowledge, yes.*

The Hon. TREVOR KHAN: *Would you accept that on 3 July 2008 the Office of the Auditor-General wrote to Andrew Stoner, member of Parliament, advising him that it does not keep the schedule; it is kept within your own department?*

Mr NATHAN REES: *I am not familiar with that bit of correspondence. Obviously it went to Mr Stoner.*

The Hon. TREVOR KHAN: *Would you now like to express a—*

The Hon. PENNY SHARPE: *The Premier indicated that he would take that question on notice.*

Mr NATHAN REES: *I will take that question on notice. If in the interim that situation has remained and it is an issue we will fix it.*

ANSWER: The register of interests under the *Ministerial Code of Conduct* is kept by the Department of Premier and Cabinet on behalf of the Premier.

The Code does not require a copy of the register, or any schedules to it, to be kept in the office of the Auditor General.

In 1993, the previous Government approved the removal of a requirement in the Code that a copy of the register be kept by the Auditor General. Since that time the register of interests has been maintained by The Cabinet Office and, now, the Department of Premier and Cabinet.

Last year the Auditor General alerted the Department of Premier and Cabinet to an anomalous reference to the Auditor General in clause 3.3 of the then current version of the

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Code and requested that this clause be amended to remove that reference. It appears the reference to the Auditor General had been inadvertently included in a reissued consolidation of the Code some years ago. The Code was amended in late 2008 to correct this oversight.

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Mr NATHAN REES: *In answer to your question I will walk you through some of the reforms in which we have engaged: disclosure of political donations every six months—*

The Hon. MICHAEL GALLACHER: *What year was that?*

Mr NATHAN REES: *In 2008. Other reforms include: a mandatory disclosure threshold of \$1,000 for political parties, a ban on in-kind donations to political parties, and a ban on donations from foreign companies.*

The Hon. MICHAEL GALLACHER: *When was that in 2008?*

Mr NATHAN REES: *I would have to take that question on notice. As I have said previously, I am committed to further reform in this area. My preference is for public funding of election campaigns. It has been well canvassed that these are complex issues. I note that while you are seeking to make an issue out of this you are still charging people \$4,000 a head to talk to shadow Ministers. You refuse to comply with the lobbyists register as it should apply to the Opposition.*

ANSWER: *The Election Funding Amendment (Political Donations and Expenditure) Act 2008 and the Local Government and Planning Legislation Amendment (Political Donations) Act 2008 were assented to on 30 June 2008 and commenced on 10 July 2008 and 1 October 2008 respectively. The Acts provide for, among other things, biannual disclosure of political donations and electoral expenditure, a universal disclosure threshold of \$1,000, and new rules for the management of campaign finances.*

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Ms LEE RHIANNON: *Premier, considering that a young woman and her partner are facing a possible prison sentence in Queensland for procuring an abortion, and considering that the New South Wales law on abortion is similar to the Queensland law, do you think this law needs to be reviewed?*

Mr NATHAN REES: *I will have to take that question on notice. It is not a matter where I would arrive at a position on my own. There is a wide variety of views, not just in the community but also in the Parliament.*

ANSWER: *I am advised that in NSW, the common law provides that abortion is lawful under certain circumstances and adequately protects women and health professionals. I am advised that there are differences between the Queensland and NSW law regarding abortion. The circumstances in which abortion is allowed under Queensland law are more restrictive than those in NSW.*

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Ms LEE RHIANNON: *Thank you, Premier. Minister Macdonald promised that the Game Council would be self-funding. The Treasurer approved a \$5 million loan from TCorp between 2004-05 and 2006-07. When the Game Council failed to pay back \$2 million of that loan, the Government wiped the loan. Can you explain why that decision was taken?*

Mr NATHAN REES: *I will have to take that question on notice. I suspect the Treasurer is best placed to answer that.*

ANSWER: In mid 2008, the NSW Government provided the Game Council with funding to support implementation of a 4 year business plan. These funding arrangements included supplementation of \$2 million to repay the TCorp loan that was provided to the Game Council in January 2004.

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CHAIR: *Budget Paper No. 3, Volume 1, page 2-96, under grants and contributions, shows \$36.5 million for 2009-10 for Events New South Wales Pty Limited. Does that include a grant to the Gay and Lesbian Mardi Gras parade, which was provided in 2009? If so, how much will the grant be? Do you believe it is justified for a grant to go to a private company?*

Mr NATHAN REES: *I will have to take that on notice.*

CHAIR: *Do you have any views on whether that grant should continue?*

Mr NATHAN REES: *It will depend on the quantum. Again, there are always competing demands for funding. I will have to take it on notice and look at the quantum. Perhaps we can get that information during the course of this afternoon.*

ANSWER: The \$36.5 million referenced relates to the payment from Treasury to Events New South Wales Pty Limited to enable the Company to undertake its operations.

Events New South Wales does not provide grants to organisations.

In general, investments made by Events New South Wales are commercial-in-confidence. This allows the company to bid for events in a competitive market.

The 2009 Sydney Gay and Lesbian Mardi Gras generated \$29,548,761 in economic benefit for the State. In the first quarter of 2009, Mardi Gras generated more money for the State through visitation than any other event on the NSW Master Events Calendar.

Mardi Gras also generated significant interstate and global media coverage for Sydney and last year the Mardi Gras Parade was voted by the prestigious Conde Nast as one of the world's top ten costume parades.

In 2008 it was disclosed that around \$400,000 was invested by Events New South Wales into the 2009 Sydney Gay and Lesbian Mardi Gras.

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CHAIR: *Much concern has been expressed about the recent decision of the Director of Public Prosecutions to not proceed with certain cases. He claims under law that he does not have to give anyone any reasons—I do not know whether that includes the Government or the Premier. I believe that system is unsatisfactory. I would not expect detailed reasons to be given but, in principle, he should provide some explanation rather than there just being a wall of silence. Do you believe that procedure should be reviewed?*

Mr NATHAN REES: *It is fair to say that the separation of powers is a long-established doctrine that has served western democracy well. Notwithstanding, on occasion directors of public prosecutions frustrate members of the public and in doing so frustrate members of Parliament. The DPP needs to be mindful, as we all do, of public confidence in the institution. Ultimately, it is a matter for him or her to determine whether or not to publish reasons for decisions. On balance, it would be a good thing to do that but ultimately, depending on the issue, it is a matter for the DPP.*

CHAIR: *As you know, he dropped charges against Mr McGurk, who was recently murdered?*

Mr NATHAN REES: *Yes.*

CHAIR: *Which makes it a very controversial issue?*

Mr NATHAN REES: *Indeed.*

CHAIR: *It raises the question of pressure being involved and the need for him to give reasons to remove public concern about that decision. Would you at least give some assurance that this matter will be reviewed? It may mean changing legislation to do that.*

Mr NATHAN REES: *I am not in a position to commit to a formal review of the legislation. I can say that I will speak to the Attorney and seek advice from him on what custom and practice is in other jurisdictions. If there are areas where we believe that public confidence in the DPP's decision making could reasonably be improved, I am happy to look at that.*

ANSWER: *As provided by the Director of Public Prosecutions Act 1986, the general responsibility for the prosecution of serious criminal proceedings and related matters, including any subsequent appeals, is vested in the Director of Public Prosecutions.*

This is because an independent, impartial Director of Public Prosecutions is an essential element of a fair prosecution process that is free from political interference.

Prosecution Guideline 12 provides that reasons for decisions made in the course of prosecutions or of giving advice, in appropriate circumstances, may be disclosed by the Director to people outside the Office of the Director of Public Prosecutions (ODPP). Reasons will not be given in any case where to do so may cause serious undue harm to a victim, a witness or an accused person, or could significantly prejudice the administration of justice. Generally the disclosure of reasons for prosecution decisions is consistent with the open and

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accountable operations of the ODP; however, the terms of advice given to or by the Director may be subject to legal professional privilege and privacy considerations may arise.

Prosecution Guidelines 19 and 20 make provision with regard to seeking, considering and taking into account the views of victims before decisions are made in relation to prosecution decisions, including decisions not to proceed.

The legislation in other Australian and comparable international jurisdictions does not specifically require the Director of Public Prosecutions to give reasons for a decision not to proceed.

However, in NSW the Charter of Victims Rights provides that a victim should be advised of any decision of the prosecution to modify or not to proceed with the charges laid against the accused and outlines circumstances in which a victim must be consulted.

The Department of Justice and Attorney General is currently undertaking a review of the Charter to ensure that it meets the needs of victims in the 21st century. One of the areas being examined is how improvements can be made with regard to communications with victims about prosecution decisions.

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CHAIR: *In Budget Paper No. 3, Volume 1, at page 22-31, it is stated, "The Ombudsman made 88 recommendations to Government to improve access to information in New South Wales".*

Mr NATHAN REES: *I read that. I am happy to take it on notice. I am certain that we did a recommendation-by-recommendation reply. I am happy to furnish you with that.*

ANSWER: The Government's final response to the Ombudsman's Report on the Review of the *Freedom of Information Act 1989* ("Opening Up Government") was published on 17 June 2009. It is available on the Department of Premier and Cabinet's website at www.dpc.nsw.gov.au/foireform.

It includes a response to each of the 88 recommendations made by the Ombudsman. Of those 88 recommendations, the Government has already agreed in full to 80 of them, including the Ombudsman's key recommendations that new legislation be enacted to replace the *Freedom of Information Act 1989* and that an independent office of the Information Commissioner be established.

Some of the Ombudsman's other recommendations concern the treatment of personal information and the intersection between FOI laws and privacy legislation. These recommendations will be considered further in the context of the Government's consideration of the reviews currently being conducted by the New South Wales Law Reform Commission into privacy.

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CHAIR: *On page 2-30 another reference deals with child deaths and states that the Ombudsman conducted a review "to make recommendations to prevent and reduce*

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the risk of deaths in the future". Did he actually make recommendations, and were they adopted?

Mr NATHAN REES: *I will have to get advice on the extent of the overlap between the Ombudsman's recommendations and the Wood Special Commission of Inquiry into Child Protection Services in New South Wales. That has been a comprehensive review of the arrangements that we have in place. It is a staged implementation of a very fundamental change to custom and practice, and it has also been funded very well. The critical stages for that rollout of training for staff, who are in front-line positions and come into contact day to day with children, changes the threshold of reporting, and so on. I would need to take on notice the extent of overlap between the Ombudsman's recommendations and the Wood inquiry.*

ANSWER: The Ombudsman made recommendations regarding child death reviews to the Special Commission of Inquiry into Child Protection in NSW, led by the Honourable James Wood AO QC. These recommendations were reflected in the Inquiry's November 2008 report which made three related recommendations in regard to child death reviews.

First, the Inquiry recommended that Community Services should review the deaths of children, or siblings of children, reported to Community Services within three years of their death.

Second, the Inquiry recommended that the Ombudsman's power to review these deaths should be repealed and that the Ombudsman's review function should be limited to the deaths of children who died as a result of abuse, neglect or in suspicious circumstances.

Third, the Inquiry recommended that Ombudsman should be made the convenor of the Child Death Review Team (CDRT) and the Commissioner of the Children and Young People a member of the team rather than its convenor. It was also recommended that the secretariat and research functions of the team be transferred to the Ombudsman's Office.

All three recommendations were endorsed by the NSW Parliament in the passage of the Children Legislation Amendment (Wood Inquiry Recommendations) Act 2009.

In the Ombudsman's *Report of Reviewable Deaths in 2007* (published in April 2009), the Ombudsman stated that he was pleased that all three recommendations had been endorsed by the NSW Parliament. He also stated that he had chosen not to make new recommendations arising from his work in 2007. Instead, the Ombudsman indicated his intention to seek advice later in 2009 from agencies about specific strategies they intend to implement to further the intent of his previous recommendations, in the context of the NSW Government's plans arising from the Inquiry.

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The Hon. MICHAEL GALLACHER: *So they are a qualified chef?*

Mr NATHAN REES: *I do not know whether they are qualified. I would have to take that on notice. I do not believe they are.*

ANSWER: The Office Manager is not a qualified chef.

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The Hon. MICHAEL GALLACHER: *What sort of wage scale are we talking about?*

Mr NATHAN REES: *I would have to take that on notice.*

ANSWER: The position is a Clerk, Grade 3/4.

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The Hon. TREVOR KHAN: *Are you able to give us an indication of the number of meals that have been prepared by the office manager since you became Premier?*

Mr NATHAN REES: *I would have to take that on notice.*

ANSWER: The Office Manager's role in relation to preparation of food is mainly to arrange light refreshments when functions are held in the office. Assistance with sit-down meals may occur occasionally where circumstances warrant such arrangements.

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Ms LEE RHIANNON: *Minister Campbell said that we have got to get rid of legislation that protects rail lines in order to install cycleways, which is a lame excuse.*

Mr NATHAN REES: *My understanding is that the existing statute precludes any other activity, other than rail. Are these disused lines that will never be used again? It is envisaged that if the community want a bike path and so on to be put down that track—*

Ms LEE RHIANNON: *Do you seriously say that is the only reason to do it?*

Mr NATHAN REES: *Ms Lee Rhiannon, the same comment as I made to Mr Gallacher a moment ago, please let me answer the question. The situation arises if, indeed, a community wants to use an existing disused corridor, and there are no foreseeable plans for its use, then this allows that option to be available to them. My recollection is that we had no option other than to change the legislation. I am happy to have a look at it, and take it on notice.*

ANSWER: The purpose of this legislation is to facilitate alternative uses of disused rail corridors, especially for rail trails, where there is little chance such lines will ever be required for transport purposes in the future.

The current legislation is unnecessarily restrictive as it does not allow for the ready transfer of these corridors because disposal of rail corridor land or removal of railway tracks or other infrastructure legally can't occur unless the line is closed, which requires an Act of Parliament.

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The Bill will enable transfer of disused rail lines, on a case by case basis, to the administration of the Land and Property Management Authority, without closing them for community purposes.

The Bill also allows for railway tracks or other infrastructure on any non-operational line to be removed and sold or disposed of without necessitating a closure of the railway line concerned.

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Ms LEE RHIANNON: *Do you say you would seriously consider looking at specific cases, without repealing the whole Act?*

Mr NATHAN REES: *My recollection is that the existing legislation does not allow us to use those lines for anything other than rail, without a change to the legislation.*

Ms LEE RHIANNON: *But you can by introducing an Act of Parliament! That is how it has been handled so far—when you want something done with a line, legislation is introduced about that line.*

Mr NATHAN REES: *I will take that on notice. I have some information to note.*

ANSWER: The Government considers that the existing situation where an Act of Parliament is required in order to use a disused rail corridor for a different purpose is unnecessarily cumbersome.

Under the proposed legislation, disused rail corridors will be able to be transferred to the Land and Property Management Authority to be managed under the Crown Lands Act for community purposes without necessitating closure. The transferred corridors would be Crown Lands and the Minister for Transport would retain the discretion to return a corridor to transport use in the future.

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Ms LEE RHIANNON: *Does it remain as public land or can it be sold off?*

Mr NATHAN REES: *It would depend on the proposition. It may be, for example, that a council may seek to purchase the land.*

Ms LEE RHIANNON: *So it can be sold?*

Mr NATHAN REES: *I will have to take it on notice.*

ANSWER: Rail lines administered under these arrangements by the Land and Property Management Authority will not be able to be sold.

In other cases where there is no interest in a disused line for community purposes, it may be appropriate to consider closing it to facilitate its sale. The Bill will therefore allow the Minister for Transport, on a case by case basis, and following public consultation, to authorise the closure of a discussed railway line.

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CHAIR: I refer to Budget Paper No. 3, volume 1, on page 2-96, in relation to Events NSW Pty Ltd \$36,900 million in grants. Will you provide the committee with a list of the grants?

Mr NATHAN REES: I will take that question on notice.

ANSWER: Events New South Wales is a proprietary company limited by shares, owned and funded by the State of New South Wales. Under the company's constitution the holder of the shares is the Crown, and the designated representative is the Premier.

Events New South Wales does not currently operate a formal grants program or provide grant funding to organisations of any kind.

Events New South Wales does engage in event sponsorship. As this is a highly competitive arena, its level of investment in events is commercial-in-confidence.

Although in the interests of the State, Events New South Wales investment in events is confidential, comprehensive corporate governance, compliance and audit practices are in place to ensure the appropriate use of funding provided by the State, and sponsorship investments made by Events New South Wales are subject to NSW Government scrutiny.

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CHAIR: I refer to Budget Paper No. 3, volume 1, page 2-6 where reference is made to your department managing the "sale of the Cumberland College Campus to the University of Sydney. Part of the sale will be allocated to the Westmead Research Hub". What was the final sale price?

Mr NATHAN REES: I will take that on notice. It is coming back to me. It is the Lidcombe site you are referring to?

CHAIR: Cumberland College campus.

ANSWER: The Government has agreed to the sale of the Cumberland Campus of the University of Sydney to the University for \$47 million.

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Mr NATHAN REES: From memory, \$30 million. If memory serves, it involved the transfer of Crown land that the university had been operating on into freehold title for the university, allowing them to borrow against it. They paid that money to us, or arrangements are in place to get those funds. It went into a grant of \$30 million for the Westmead Millennium Institute and the medical research that they do, which is very considerable; it is an essential plank of our research focus, but a long overdue contribution to a western Sydney medical research institute. Regrettably it got no

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media coverage at the time, but I know that Professor Tony Cunningham and the researchers and doctors there were greatly appreciative of that increase in funding through what can only be described as an innovative arrangement with the University of Sydney.

CHAIR: *The budget papers said that only part of that sum went to the Westmead institute, but you are saying all of it went?*

Mr NATHAN REES: *That is my understanding, but I will take the substance of that question on notice and come back to you.*

ANSWER: As a result of the sale of the Cumberland College Campus, the Government will allocate \$30 million towards the Westmead Millennium Research Institute and also contribute \$17 million to the recently established NSW Knowledge Fund.