LEGISLATIVE COUNCIL

Wednesday 14 November 2012

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The President (The Hon. Donald Thomas Harwin) took the chair at 11.00 a.m.

The President read the Prayers.

PRIVILEGES COMMITTEE

Report: Citizen's Right of Reply (Mr Cor Disselkoen)

Motion by the Hon. Trevor Khan agreed to:

That the House adopt the report.

Pursuant to standing orders the response of Mr Cor Disselkoen was incorporated.

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Reply to comments by the Hon Jeremy Buckingham MLC in the Legislative Council on 14 August 2012

I, Cor Disselkoen, make this response to the severely damaging and unfounded remarks made by the Hon Jeremy Buckingham MLC in the Legislative Council on 14 August 2012 regarding the Fullerton Cove coal seam gas project, Maria's Farm Veggies and my own personal history and character.

The comments identified me personally by name, and included direct attacks on my character.

At no stage did Mr Buckingham attempt to contact me to verify the authenticity of his remarks. The statement contains multiple errors of fact and false assertions, and wild speculations made recklessly and without sufficient care being given to ascertain the truth of the claims.

Mr Buckingham stated that:

1. ***'While I am not sure what happened to Mr Disselkoen or his hydroponic plans for Bomaderry, I know that a judge from his home country of Holland approved his extradition to Poland in 2010 to face fraud charges dating back to 1997. In 2011 Dutch media reported, "Mr Disselkoen, who then had a deep freeze plant in Poland, was jailed for refusing to pay a tax he claimed didn't exist." He was released on bail after two months but an arrest warrant was issued in relation to the same matter in 2010. These events raise serious questions about Dart Energy's credibility in trying to link its development to an agricultural project with a company with such a dubious background.'***

Mr Buckingham is attempting to draw conclusions from an incomplete set of facts which gives an overall impression of criminality and dishonesty which is unfounded. Importantly, he has not indicated that I was acquitted at first instance, with the criminal proceedings for all other charges discontinued.

The oddity of being extradited for 13 year old charges (which the acquittal proves were not warranted) does not raise any questions about Dart Energy's credibility. Rather it was an abuse of process for which, as the extensive coverage by the Dutch media details, I will be seeking compensation from the Republic of Poland.

Also of the view that these unfortunate events are not a reflection on my character or credibility was Mrs Judith Sargentini, a Greens/European Free Alliance member of the European Parliament, who accompanied me at the trials in Zlotow, Poland, on behalf of the European Parliament and Fair Trials International to ensure a fair trial.

2. ***'My concern is that Dart Energy's plans have little to do with agriculture and more to do with trying to smooth the way for a coal seam gas field spread from Fullerton Cove to Nelson Bay. With such a shaky and possibly shonky partner in Mr Disselkoen, the likelihood of this supply arrangement ever coming to fruition is small. I am not aware of any project proposal to the local council or the Department of Planning for a greenhouse project. What seems to be going on is that the idea of a glasshouse is simply a ruse by Dart Energy—a public relations exercise to con this Government and the community into believing that its gas plans are about food production and local agricultural jobs to try to lessen the community backlash.'***

I completely deny these allegations. Mr Buckingham has based these theories on nothing more than speculation and propaganda.

Whilst such projects are not yet prominent in Australia, the Netherlands uses this arrangement extensively, and has for over 60 years with much success. The global expertise and technology in this area is in fact well established, and we strongly believe that applying this expertise in Australia will result in a highly efficient, sustainable and environmentally friendly (with Maria's Farm likely to be one of the few carbon positive companies in the country) source of food.

Creation of a clean and efficient food source, as well as at least 125 jobs, is certainly not merely a 'public relations exercise' designed to 'con' the community, but a highly desirable outcome which Mr Buckingham has apparently overlooked due to his preconceived and baseless interpretation of my character.

3. ***'I refer to the language used by Dart Energy in the announcement including the lines, "coal seam gas development can co-exist with alternative productive land uses, including agricultural", and that it can, "facilitate sustainable food production and associated job creation in NSW." The likelihood of any of this being more than spin and misdirection is low, given the track record of the partner company involved. Cor Disselkoen is the chief executive of Maria's Farm Veggies and his company's vegetable plans have a bit of history. His Maria's Farm hydroponic project in the Shoalhaven was announced back in 2008. This project was supposed to be twice the size of the Fullerton project at $125 million, and was announced by planning Minister Tony Kelly as Australia's biggest greenhouse ... But the project application was revoked with almost no coverage and little reason offered. Locals in the Shoalhaven believe that the operator went broke.'***

This is a baseless remark by Mr Buckingham which is contrary to the facts. The Shoalhaven project was not aborted due to anybody going broke. Rather, the landowner was unfortunately unwilling to execute the sale at the last minute, preventing the developments at the Bomaderry site from progressing.

These events alone certainly do not result in the company's reputation being as low as Mr Buckingham contends. In fact, over the course of nearly 45 years in the business, I have run some of the largest importers and exporters of fruit, vegetables, flowers and pot plants in the Netherlands with a combined yearly turnover of over $1 billion. I also own and operate seven different greenhouse complexes. Mr Buckingham's derogation of my track record is unfair and unsubstantiated.

4. ***'The recent sign-off of coal seam gas pilot production at Fullerton Cove near Newcastle has shone a spotlight on the desperation of the coal seam gas industry to win a social licence. It is trying all angles to change community perception and a growing reality that coal seam gas and agriculture cannot coexist. But at Fullerton Cove and for Dart Energy these efforts look like being a complete failure with their plans to link gas production to a greenhouse project only further alarming the community and demonstrating the underhanded tactics of gas companies.'***

These allegations are entirely baseless. The co-existence of coal seam gas and agriculture is not only possible, but also presents a significant improvement in energy efficiency.

In the Netherlands, the home of approximately 13,000 hectares of greenhouses (compared to only 80 hectares in Australia), approximately 15 per cent of all electricity is sourced from providers combining their electricity production with horticulture. Over the past 15 years, their use of gas energy to generate hot water both for heating greenhouses and supplying electricity to the grid (a method called 'CHP', or Combined Heat and Power) has resulted in a proven energy efficiency of 92-94 per cent. Comparatively, the average energy efficiency of Australian producers supplying only to the grid is only 42-45 per cent.

In the case of horticulture, in combination with a flue gas cleaner, some of the emissions from this process can also be used as a CO2 fertiliser. Comparatively, attempting to extract CO2 from oil and/or coal boilers would be toxic and hence incapable of being used for this purpose.

Mr Buckingham's remarks that the agricultural link is merely an 'underhanded tactic' and a publicity ploy are entirely false. Not only does CHP provide a 20 per cent price saving on electricity compared to other methods, but this link of gas-produced electricity and agriculture also serves to boost vegetable production by 7-15 per cent. Contrary to Mr Buckingham's statement, this project offers real benefits both to the participants and the community.

SELECT COMMITTEE ON THE PARTIAL DEFENCE OF PROVOCATION

Extension of Reporting Date

Motion by Reverend the Hon. Fred Nile agreed to:

That the reporting date for the Select Committee on the Partial Defence of Provocation be extended to the Wednesday of the first sitting week of February 2013.

Pursuant to sessional orders Formal Business Notices of Motions proceeded with.

AUSTRALIAN LEBANESE CHAMBER OF COMMERCE AWARDS

Motion by the Hon. JOHN AJAKA agreed to:

1. That this House acknowledges that the Australian Lebanese Chamber of Commerce [ALCC] was formed in 1985 to forge stronger commercial and trade relations between Australia and Lebanon.

2. That this House acknowledges Mr Joseph Khattar, AM, President of the Australian Lebanese Chamber of Commerce, for his continued efforts on behalf of the Chamber and the Business Community.

3. That this House notes that:

    (a) the Australian Lebanese Chamber of Commerce 2012 Annual Awards Business Dinner was held on Friday 9 November 2012 at Doltone House, Pyrmont,

(b) the awards celebrate creativity, perseverance and leadership qualities, and inspirational members of the Australian Lebanese business community,

(c) the winners of the 2012 Awards were:

(i) Mr Anthony Karam of TMA for Manufacturing and Printing,

(ii) Mr Eddy Saidi of Elephant's Foot for Waste Management and Recycling Solutions,

(iii) Mr George Sarkis of Sarkis Bros for Sandstone and Quarry,

(iv) Mr Bill El-Cheik of WK Quantum Quarts for Importing and Distribution.

4. That this House congratulates all winners of the 2012 ALCC Awards.

TRIBUTE TO POPE TAWADROS II

Motion by the Hon. DAVID CLARKE agreed to:

1. That this House notes that:

(a) on 4 November 2012, in St Mark Coptic Cathedral, Cairo, the 118th Coptic Pope, His Holiness Tawadros II, was selected as the new Pope of the Coptic Orthodox Church,

(b) the election of Pope Tawadros II comes after the passing of the Church's previous Pope, His Holiness Shenouda III on 17 March 2012, and

(c) His Holiness Pope Tawadros II will take office after his formal investiture on 18 November 2012.

2. That this House acknowledges that:

(a) Pope Tawadros II visited Australia three months ago, as the Bishop of El Behara, and

(b) the news of the election of Pope Tawadros II is being celebrated by Coptic Christians in New South Wales.

3. That this House:

(a) extends best wishes to the Coptic Christian Orthodox community of New South Wales upon the selection of its new Pope, and

(b) commends the community for its positive contribution to New South Wales.

PALLIATIVE CARE NEW SOUTH WALES

Motion by the Hon. GREG DONNELLY agreed to:

1. That this House notes that:

(a) Palliative Care New South Wales is the peak body in this State representing palliative care providers and those with an interest in palliative care,

(b) Palliative Care New South Wales was established in 1981 when palliative care service networks were beginning to develop, and

(c) the organisation has led, and continues to lead, policy development and community education on palliative care in New South Wales.

2. That this House notes that:

(a) Palliative Care New South Wales recently conducted its State Conference in Dubbo from 31 October to 2 November 2012,

(b) the theme of this year's conference was "Reaching Out: Community, Communicating, Connecting", and

(c) the conference, once again, had a range of excellent keynote speakers, panel discussions, presentations and workshops.

3. That this House:

(a) acknowledges and congratulates President Peter Cleasby on the outstanding leadership that he has given Palliative Care New South Wales over the last six years, and

(b) extends its best wishes to the new President, Carolyn Walsh, for all of the important work that lies ahead.

AUSTRALIAN COUNCIL OF CHINESE ORGANISATIONS

Motion by the Hon. MARIE FICARRA agreed to:

1. That this House notes that:

   (a) on 23 September 2012, in Haymarket, the Australian Council of Chinese Organisations [AUSCOCO] celebrated the sixty-third anniversary of the People's Republic of China, the fortieth anniversary of the establishment of the diplomatic relationship between Australia and China, and the Traditional Moon Festival, and

   (b) the Australian Council of Chinese Organisations acts as an umbrella organisation, representing numerous New South Wales Chinese Australian community organisations and people.

2. That this House acknowledges:

   (a) the organiser Dr Tony Goh, Chairperson of the Australian Council of Chinese Organisations, and his executive for organising such a successful multi-celebration event,

   (b) the work of the Australian Council of Chinese Organisations, including its efforts in developing strong economic and cultural ties between New South Wales and China,

   (c) the significant and positive contribution of the Chinese Australian community, through organisations such as the Australian Council of Chinese Organisations, to community harmony and economic prosperity in New South Wales,

   (d) those that attended, particularly:

      (i) Senator the Hon. Kate Lundy, Federal Minister for Sport, Minister for Multicultural Affairs and Minister Assisting for Industry and Innovation,

      (ii) Professor Marie Bashir, AC, CVO, Governor of New South Wales,

      (iii) the Hon. Victor Dominello, MP, Minister for Citizenship and Communities, and Minister for Aboriginal Affairs,

      (iv) Consuls from the People's Republic of China, Madam Wang Yun and Mr Yang Bo,

      (v) former member of the Legislative Council, the Hon. Henry Tsang,

      (vi) Councillor Ernest Wong, Deputy Mayor of Burwood Council,

      (vii) Dr Stepan Kerkyasharian, Chairman of the NSW Communities Relations Commission,

      (viii) Madam Chen Zhonglin, Executive Vice Chairperson of Tianjin City Federation of Returned Overseas Chinese,

      (ix) Mr Henry H. K. Wong, Senior Honorary Chairperson of the Australian Council of Chinese Organisations,

      (x) Mr Frank Chou, OAM, Honour Chairperson of the Australian Council of Chinese Organisations,

      (xi) Mr Daniel Tang, Chief Editor of *Australian Chinese Daily*, and

   (e) the worth of the Chinese community of New South Wales, including its efforts in promoting Chinese culture and diplomacy between our two countries.

KRISTALLNACHT SEVENTY-FOURTH ANNIVERSARY

Motion by the Hon. DAVID CLARKE agreed to:

1. That this House notes that:

   (a) Friday 9 November 2012 marked the seventy-fourth anniversary of Kristallnacht, also known as "The Night of Broken Glass", the occasion on which, 74 years ago, a planned and brutal assault was unleashed against the Jewish community of Germany and parts of Austria which resulted in:

      (i) the murder of at least 91 Jewish people and the infliction of personal injury against countless others,

      (ii) the arrest and incarceration in concentration camps of at least 30,000 other Jewish people,

      (iii) the burning of over 1,000 synagogues and the widespread destruction of Jewish homes, businesses and other property,

(b) this event is acknowledged as a pivotal turning point in the unfolding events which led to the Holocaust, the genocidal program pursuant to which six million Jewish people were murdered throughout Europe in the years up to and including World War II, and

(c) the seventy-fourth anniversary of Kristallnacht was commemorated on Friday 9 November 2012 in Martin Place, Sydney, at an event organised by the NSW Council of Christians and Jews.

2. That this House acknowledges that the NSW Council of Christians and Jews, under the patronage of Her Excellency Professor Marie Bashir, AC, CVO, Governor of New South Wales, seeks to:

(a) educate Christians and Jews to appreciate each other's distinctive history, beliefs and practices and their common ground,

(b) promote the study of and research into the historical, political, economic, social, religious and racial issues of conflict between people of different faiths and backgrounds, with particular reference to Christians and Jews, and

(c) promote, for the benefit of the community at large, education in the fundamental ethical teachings of Christianity and Judaism.

3. That this House commends the NSW Council of Christians and Jews for its endeavours in promoting harmony and understanding between different religious faith traditions.

ILLAWARRA BUSINESS AWARDS

Motion by the Hon. JOHN AJAKA agreed to:

1. That this House:

(a) notes that the 2012 Illawarra Business Awards were held on Friday 2 November 2012, and

(b) recognises that the Origin Illawarra Business Awards:

(i) celebrate the achievements of the Illawarra business community by awarding the region's most successful and innovative businesses,

(ii) promote the importance of local businesses to the future growth and development of the Illawarra region,

(iii) focus on the most important drivers of growth for the region, and

(c) congratulates:

(i) IRT as the recipient of the Business of the Year Award,

(ii) IRT Group for being the Business Leader of the Year,

(iii) Thomas & Coffey Limited for being Young Business Leader of the Year,

(iv) G J Gardner Homes Illawarra for its Excellence in Building and Construction,

(v) IRT for its Excellence in Community Services,

(vi) Pillar Administration for its Exceptional Customer Service,

(vii) Activated Group for its Outstanding e-Business,

(viii) Silos Estate for its Excellence in Environmental Sustainability,

(ix) Rambor for its Excellence in Export,

(x) Fibre Optics Design and Construct for its Excellence in Information, Communication and Technology,

(xi) Featherweight and Fibre Optics Design and Construct for its Excellence in Innovation,

(xii) Rambor for its Excellence in Manufacturing and Resource,

(xiii) Anytime Fitness for being the Outstanding New Illawarra Business,

(xiv) RMB Lawyers for its Excellence in Professional and Commercial Services,

(xv) Dignam Real Estate for its Excellence in Property and Financial Services,

(xvi) McKeon's Swim School for its Excellence Retail and Personal Services,

(xvii) Hangdog Climbing Gym for being an Outstanding Small Business,

(xviii) Silos Estate for its Excellence in Tourism and Hospitality,

(xix) IRT for its Excellence in Workplace Health and Safety,

(xx) The Flagstaff Group for its Excellence in Workplace Learning and Development.

NORTH CURL CURL SURF LIFE SAVING CLUB NINETIETH ANNIVERSARY

Motion by the Hon. MARIE FICARRA agreed to:

1. That this House acknowledges that:

   (a) 90 years ago, on 3 November 1922, North Curl Curl Surf Life Saving Club [NCCSLSC] was founded, and

   (b) Mr Sayce, a member of the local community, was responsible for the construction of the first clubhouse on North Curl Curl Beach.

2. That this House acknowledges the outstanding work of:

   (a) the late Mr Hugh "Snowy" Huston, who served as the club's president for 15 years, was the heart and soul behind the club's Nipper contingent, was awarded the Royal Australian Life Savings' Bravery Award, Life Membership of NCCSLSC, the Warringah Council Outstanding Community Service award and had the road toward North Curl Curl Beach named Huston Parade in his honour,

   (b) Mr Kevin D. Martin, OAM, member of the club's management committee for 36 years, president for three years, senior vice-president for three years, secretary for three years, club member since 1950, Life Member of North Curl Curl Surf Life Saving Club and Northern Beaches Surf Life Saving Association, club historian since 2003, club convenor of the Life Membership Committee since 2004, publicity officer for one year, chairman and member of the Jet Boat Surf Rescue Group, beach patrol member for 15 years, current member of Surf Communication Radio Rescue Services, awarded the Medal of the Order of Australia, OAM, and Warringah Council Outstanding Service Award,

   (c) Mr Rodney Evans, who won seven gold medals at the Australian Surf Championships,

   (d) Mr David Murray, who served as president of North Curl Curl Surf Life Saving Club and is now president of Sydney Northern Beaches Surf Life Saving Association, and

   (e) those members who have been awarded Life Membership in honour of their outstanding service to the North Curl Curl Surf Life Saving Club and surf life saving:

      (i) deceased: R. Agnew, K. Aldridge, P. A. Aldridge, B. K. Andrews, K. Broomham, J. Bulmer, W. M. Carroll, C. Duff, H. G. Foden, C. R. Furro, H. C. Grew, T. A. Grew, R. Harris, C. Hirsch, H. J. Huston, O. J. Kennedy, P. Mets, G. O'Brien, R. Saunderson, W. Spradley, M. J. Sullivan, R. Swift and J. O. Wilson,

      (ii) G. Bruce, L. Bulmer, J. R. Duff, J. P. Duff, W. Eady, W. Geoghegan, C. Hagon, A. Hudson, P. Kember, R. Lambert, N. Langthorne, K. D. Martin, D. Murray, J. Newton, D. O'Brien, R. Porter, L. Saunderson, B. Smith, K. Smith, C. Stoneman, K. Stoneman, R. Watson, A. N. Wye and S. Wye.

3. That this House notes that a time capsule has been secreted in the clubhouse to be opened in the club's centenary year in 2022.

4. That this House:

   (a) congratulates and pays tribute to the North Curl Curl Surf Life Saving Club and its members on the occasion of the club's ninetieth anniversary,

   (b) commends all Life Members for their outstanding service to North Curl Curl Surf Life Saving Club and surf life saving, and

   (c) acknowledges the work of the current executive committee of the club, Mr Stuart Wye, President, Mrs Julie Tassone, Secretary and Mr Chris Stoneman, Treasurer.

AUSTRALIAN CHINESE CHARITY FOUNDATION

Motion by the Hon. DAVID CLARKE agreed to:

1. That this House notes that:

   (a) on Saturday 13 October 2012 the Australian Chinese Charity Foundation [ACCF] celebrated its Annual Dinner Party in Sydney, and

   (b) the foundation's annual dinner is one of its major fundraising events, with the key purpose of distributing funds to successful applicants of the foundation's Fund and Grant Program.

2. That this House acknowledges:

(a) the organisers and volunteer management committee of the Australian Chinese Charity Foundation for organising such a well-attended and successful charity event, particularly:

(i) Mr Hudson Chen, OAM, Chairman,

(ii) Mr Benjamin Chow, Event Chairman,

(b) those that attended, particularly:

(i) Mr John Alexander, MP, Federal member for Bennelong,

(ii) the Hon. Gladys Berejiklian, MP, Minister for Transport,

(iii) the Hon. Victor Dominello, MP, Minister for Citizenship and Communities and Minister for Aboriginal Affairs,

(iv) the Hon. Amanda Fazio, MLC, Opposition Whip in the Legislative Council,

(v) Mr Steve Ingram, Regional Director East, Department of Immigration and Citizenship,

(c) the organisations that the Australian Chinese Charity Foundation contributes to, particularly:

(i) The Exodus Foundation,

(ii) Father Riley's Youth Off the Streets, and

(d) the success the Australian Chinese Charity Foundation has had in promoting multiculturalism in Australian society, responding to the urgent needs of many in a state of emergency and supporting community projects in need of assistance.

UNPROCLAIMED LEGISLATION

The Hon. Greg Pearce tabled a list detailing all legislation unproclaimed 90 calendar days after assent as at 13 November 2012.

AUDITOR-GENERAL'S REPORT

The Clerk announced the receipt, according to the Public Finance and Audit Act 1983, of the Financial Audit report of the Auditor-General, Volume Six 2012, focusing on Environment, Water and Regional Infrastructure, dated November 2012, together with an erratum, received and authorised to be printed this day.

PETITIONS

Rights of the Terminally Ill

Petition requesting that the House respect the creation of laws that protect the rights of individuals to make choices about their own end-of-life arrangement, reject arguments of anti-euthanasia campaigners that seek to impose their own moral judgements and support the Greens Rights of the Terminally Ill Bill 2012, received from the **Hon. Cate Faehrmann**.

DAYS AND HOURS OF SITTING

Motion by the Hon. Duncan Gay agreed to:

1. That, unless otherwise ordered, the days of meeting of the House in 2013 be as follows:

Budget sittings:

February 19, 20, 21, 26, 27, 28
March 12, 13, 14, 19, 20, 21, 25, 26, 27
April 30
May 1, 2, 7, 8, 9, 21, 22, 23, 28, 29, 30
June 18, 19, 20, 25, 26, 27

Spring sittings:

August 13, 14, 15, 20, 21, 22, 27, 28, 29
September 10, 11, 12, 17, 18, 19
October 15, 16, 17, 22, 23, 24, 29, 30, 31
November 12, 13, 14, 19, 20, 21, 26, 27, 28

2. That, unless otherwise ordered, the initial hearings of the General Purpose Standing Committees inquiry into the Budget Estimates and related papers for 2013-14 take place on:

Monday 12, Friday 16, Monday 19, Friday 23 August, and during the sittings of the Legislative Assembly on Tuesday 13, Wednesday 14 and Thursday 15 August 2012.

STANDING COMMITTEE ON LAW AND JUSTICE

Reference

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [11.23 a.m.]: I move:

1. That, in accordance with section 11 of the Safety, Return to Work and Support Board Act 2012, the Standing Committee on Law and Justice be designated as the Legislative Council committee to supervise the exercise of the functions of the following authorities:

   (a) Lifetime Care and Support Authority under the Motor Accidents (Lifetime Care and Support) Act 2006,

   (b) Motor Accidents Authority under the Motor Accidents Compensation Act 1999 and the Motor Accidents Act 1988,

   (c) WorkCover Authority under the Workplace Injury Management and Workers Compensation Act 1998, and

   (d) Workers' Compensation Dust Diseases Board under the Workers' Compensation (Dust Diseases) Act 1942.

2. That the terms of reference of the committee in relation to these functions be:

   (a) to monitor and review the exercise by the authorities of their functions,

   (b) to monitor and review the exercise by any advisory committees, established under section 10 of the Safety, Return to Work and Support Board Act 2012, of their functions,

   (c) to report to the House, with such comments as it thinks fit, on any matter appertaining to the authorities, and the advisory committees, or connected with the exercise of their functions to which, in the opinion of the committee, the attention of the House should be directed,

   (d) to examine each annual or other report of the authorities and report to the House on any matter appearing in, or arising out of, any such report, and

   (e) to examine trends and changes in compensation governed by the authorities, and report to the House any changes that the committee thinks desirable to the functions and procedures of the authorities, or advisory committees.

3. That the committee report to the House in relation to the exercise of its functions under this resolution at least once every two years in relation to each authority.

4. That nothing in this resolution authorises the committee to investigate a particular compensation claim under the legislation referred to in paragraph 1.

This motion designates the Standing Committee on Law and Justice as the committee to oversight the functions of the Lifetime Care and Support Authority, the Motor Accidents Authority, the WorkCover Authority and the Workers' Compensation Dust Diseases Board, as part of the reforms that the House and the Parliament approved in June. The committee is required to undertake a number of oversight processes and to report at least once every two years to the House on its activities in relation to those authorities. I commend the resolution to the House.

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

Motion agreed to.

FORESTRY BILL 2012

In Committee

The CHAIR (The Hon. Jennifer Gardiner): I propose that the Committee deal with the bill by parts. There being no objection, I shall proceed.

Part 1 [Clauses 1 to 4] agreed to.

The Hon. STEVE WHAN [11.26 a.m.], by leave: I move Opposition amendments Nos 1 and 2 on sheet C2012-159 in globo:

No. 1 Page 8, clause 10 (1) (b), lines 25 and 26. Omit all words on those lines. Insert instead:

(b) to have regard to the interests of the community in which it operates,

No. 2 Page 8, clause 10 (1) (d), lines 31 and 32. Omit all words on those lines. Insert instead:

(d) to contribute towards regional development and decentralisation,

Both amendments involve changes to the objectives of the corporation, which I spoke about in detail in the second reading debate. The changes make the objectives more effective by the corporation having regard to the interests of the community in which it operates and contributing towards regional development.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [11.27 a.m.]: The Government does not oppose the Opposition's amendments, although they are unnecessary. The provision is implicit in the corporations legislation. It has been in the State Owned Corporations Act for 17 years and no-one has tried to change it during that time. Given that the Opposition has moved the amendments and we are a good Government that tries to include the thoughts of everyone, we are more than happy to accept them.

Question—That Opposition amendments Nos 1 and 2 [C2012-159] be agreed to—put and resolved in the affirmative.

Opposition amendments Nos 1 and 2 [C2012-159] agreed to.

Mr DAVID SHOEBRIDGE [11.28 a.m.]: I move The Greens amendment No. 1 on sheet C2012-154B:

No. 1 Page 8, clause 10. Insert after line 37:

(3) In the attainment of its objectives and the exercise of its functions, the Corporation is to take all practicable steps that it considers necessary or desirable to ensure the preservation and enhancement of the quality of the environment.

This amendment would reinstate one of the existing objectives in the current 1916 Act and it would include a new subsection (3) in section 10, which would read:

> In the attainment of its objectives in the exercise of its functions the corporation is to take all practical steps that it considers necessary or desirable to ensure the preservation and enhancement of the quality of the environment.

This is the existing statutory requirement that is found in the Forestry Act. Indeed, section 8A was included as an amending provision in the Act in 1972 by the then Country Party member the Hon. John Fuller, who was the Minister for Decentralisation and Development and Vice-President of the Executive Council. In moving the amendment he made it clear that it was necessary to have these environmental controls. The Country Party recognised in 1972 that it was necessary to have environmental controls and it included these protections in the legislation. However, 40 years down the track the Liberal-Nationals Coalition is gutting the environmental controls that its forebears inserted in legislation in 1972. It is extraordinary that this Government has learnt so little. It demonstrates that it is blind to history, to the environment and to the fact that 40 years ago the then Country Party supported these provisions and inserted section 8A in the legislation.

More fundamentally, what is the argument for downgrading the environmental protections in the legislation? What is it about the current level of environmental protection of State forests that the Government thinks is too rigorous? What forest is standing that members opposite think should be destroyed to produce woodchips or to establish a coalmine like the one in Leard State Forest? What environmental protection provisions does the Government believe are too rigorous for forests in New South Wales? Why has the Government decided to turn a blind eye to a provision that had the support of the conservative Government in 1972? Has the current administration become so blind to the environment and so uncaring about the environmental protection of two million hectares of native forest that it is willing to ignore what its predecessors put in place and to strip this key environmental protection from the forestry legislation? Unfortunately that appears to be the case.

In any event, The Greens have moved this amendment not because we believe it provides perfect protection for forests but simply because it maintains the current level of protection. The Greens have been

deeply critical about the lack of environmental rigour that Forests NSW now applies, whether it involves logging in Tallaganda State Forest, Double Duke State Forest or Wedding Bells State Forest. The current level of environmental protection is woefully inadequate, but it would seem that even that is too much for this Government. I urge the Government to note the actions of its forebears in 1972 and to accept this minimal environmental protection for forests in New South Wales.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [11.33 a.m.]: The Government does not support this amendment. Frankly, I am not sure what is more offensive: the member's description of the Government and his hauling in of our illustrious Sir John Fuller, the former Leader of the Country Party in this place and former chairman of the party, or his lack of understanding of the community respect engendered by those involved and what they believed. Referring to Sir John Fuller while not understanding that the Country Party was conservative but not redneck demonstrates that the honourable member does not understand the genesis of this side of politics.

Mr David Shoebridge: Point of order: The Minister is misrepresenting my comments. I have never described the Hon. John Fuller as a redneck. That is a total misrepresentation of my comments. I said that he had foresight.

The CHAIR (The Hon. Jennifer Gardiner): Order! There is no point of order.

The Hon. DUNCAN GAY: They are always misrepresented. An amendment inserting further environmental protections for the new State-owned corporation is not necessary. Clause 10 (1) (c) of the bill already provides that a principal objective of the Forestry Corporation is, where its activities affect the environment, to conduct its operations in compliance with the principles of ecologically sustainable development contained in section 6 (2) of the Protection of the Environment Administration Act. Section 6 (2) of the Act provides that ecologically sustainable development can be achieved through the conservation of biological diversity and ecological integrity and that conservation of biological diversity and ecological integrity should be a fundamental consideration.

The bill therefore addresses environmental and biodiversity issues in the objectives for the Forestry Corporation by providing that the corporation is required to conduct its operations in compliance with the principles of ecologically sustainable development, which include biodiversity considerations. The amendment is therefore not necessary. The amendment provides that in the exercise of its functions the Forestry Corporation is to take all practicable steps that it considers necessary or desirable to ensure the preservation and enhancement of the quality of the environment.

While the amendment provides only that the corporation is to take steps that it considers necessary or desirable, the provision requires the corporation to conduct its operations that affect the environment in accordance with the principles of ecologically sustainable development. In this way the existing provision is stronger than the amendment. The principal objective of the corporation in the bill is identical to the principal objective in section 20E (1) (c) of the State Owned Corporations Act, which was inserted in that Act in 1995 and which has been in place for 17 years. This is a standard provision that applies to State-owned corporations. To introduce another objective relating to environmental matters could lead to confusion about the relationship between the two provisions and how they should be applied. Far be it from me to suggest that that is what the honourable member is seeking to achieve.

The Hon. STEVE WHAN [11.37 a.m.]: The Opposition supports The Greens amendment, although I do not necessarily support all the comments made by Mr Shoebridge about Forests NSW. It is important to point out that Forests NSW and the new corporation will be subject to a full range of environmental and other legislation. This is not the only legislation that governs their activities. However, the Opposition believes that the amendment adds some strength to the legislation and we support it.

The Hon. CATE FAEHRMANN [11.38 a.m.]: I also support this amendment. Given that this legislation is designed to corporatise State forests, it is imperative that we do everything possible to ensure that our forests are managed sustainably. The interjections by members opposite during the second reading debate last night were very worrying indeed if they represent this Government's commitment, or lack thereof, to environmental protection and its understanding of the biodiversity values of a forest. In particular, in his address in reply the Minister suggested that The Greens had signed off on the wood supply agreements, which I mentioned in my contribution. I said that it is because of those agreements, which have locked in unsustainable yields, that many of our forests are being trashed and that many timber industry operators can no longer sustainably log forests.

Contrary to the Hon. Duncan Gay's numerous assertions that The Greens had signed off on the wood supply agreements—I think he said that The Greens ticked off on every agreement and could not rush in quickly enough to do so—on 2 July 2003 the Hon. Ian Cohen made The Greens' position clear. If members were to trawl through *Hansard* and his media releases at the time they would see how often in his role as spokesperson for the environment and forests he opposed the wood supply agreements. In his contribution to debate on the National Parks Estate (Reservations) Bill 2003 the Hon. Ian Cohen said that it "… requires the Government to enter into long-term, binding wood supply agreements at current volumes until the end of 2023", which is what I referred to specifically yesterday. He further said, "The Greens oppose the amendment and are surprised and disappointed that the Opposition has moved it. It flouts the policy it espoused prior to the election." On 8 June 2006 the Hon. Ian Cohen also asked this question in Parliament about the wood supply agreement:

> Has the Minister granted a 20-year wood supply agreement over State forests in central New South Wales, areas that have never had a regional assessment or any systematic conservation assessment? If so, how can he justify the impact this will have on threatened species and their habitats?

That is hardly an indication of The Greens signing off on wood supply agreements—a dishonest statement that the Minister for Roads and Ports kept repeating and putting in *Hansard* last night when members of The Greens said that they or any part of the environmental movement had not signed off on wood supply agreements.

The Hon. Duncan Gay: Is this a second reading speech?

The Hon. CATE FAEHRMANN: No, I am speaking to the amendment. On 8 November 2005 in debate on the National Parks Estate (Reservations) Bill the Hon. Ian Cohen said:

> Proper mapping and proper recognition of forest types and forestry assessments were not accurate with regard to wood supply assessments …

The Hon. Duncan Gay: Point of order: My point of order relates to relevance. The Hon. Cate Faehrmann is addressing issues raised in the second reading debate that are outside the leave of the amendment before the Committee.

The CHAIR (The Hon. Jennifer Gardiner): Order! I remind all members to address the amendment before the Committee.

The Hon. CATE FAEHRMANN: In moving this amendment my colleague Mr David Shoebridge referred to the wood supply agreements. On 2 May 2012 in an adjournment speech relating to native forest logging he said that other wood supply agreements had suffered similar problems because of the chronic inability of Forests NSW to supply the levels of timber required. I could go on and on about the fact that The Greens have spoken out against wood supply agreements.

The Hon. Duncan Gay: Point of order: It is not helpful for the Hon. Cate Faehrmann to suggest she is prepared to go on and on about wood supply agreements when that is outside the leave of the amendment before the Committee.

The CHAIR (The Hon. Jennifer Gardiner): Order! I ask the Hon. Cate Faehrmann to address the amendment before the Committee.

The Hon. CATE FAEHRMANN: This amendment will ensure that the corporation takes all the practical steps that it considers necessary or desirable to ensure the preservation and enhancement of the quality of our environment. At one point The Greens might have considered that to be not the fine object that we ordinarily would have liked to have seen in the Forestry Act. That object has now been removed. This Government continues to talk down the environment and not accept its biodiversity conservation responsibilities, which is why we must ensure that any environmental protection legislation that is passed or amended in this Chamber is strengthened rather than weakened. Yesterday the Minister for Roads and Ports gave members in this place false information relating to The Greens and to wood supply agreements. The Minister knows that that information is false.

The Hon. Duncan Gay: It's not true.

The Hon. CATE FAEHRMANN: It is true.

The Hon. Duncan Gay: You guys are despicable with what you have done.

The Hon. CATE FAEHRMANN: I just corrected the record by indicating what The Greens said on numerous occasions in the past. The Greens did not support wood supply agreements that locked this State into the unsustainable logging of forests—something that has been espoused by the Minister's timber industry mates. I support the amendment moved by my colleague Mr David Shoebridge.

The Hon. JAN BARHAM [11.44 a.m.]: I support this necessary amendment to the Forestry Bill 2012 as the objectives in division 2 of the Act do not ensure the protection of the natural environment. Despite the fact that it might be annoying for some members to listen to my contribution, I was concerned when I heard the Minister for Roads and Ports speaking about the position taken by The Greens historically to the management of forests and specifically to wood supply agreements. I ask the Minister to correct his statement that The Greens had not dealt appropriately with this issue and had supported the process.

The Hon. Rick Colless: Point of order: The comments of the Hon. Jan Barham are well outside the leave of the amendment. She is trying to justify comments that were made by The Greens in the second reading debate. She should be asked to direct her comments to the amendment before the Committee.

Mr David Shoebridge: To the point of order: The point being made by the Hon. Jan Barham is relevant to the amendment. She should be given some leniency to set the scene and to indicate its relevance to the amendment. Because of the level of interjections and the sledging from across the Chamber it is difficult for the Hon. Jan Barham to contribute to debate on the amendment.

The CHAIR (The Hon. Jennifer Gardiner): Order! I ask the Hon. Jan Barham to refer to the amendment before the Committee. I agree with Mr David Shoebridge that there has to be some linkage between the amendment before the Committee and what the member is speaking about. However, I ask the Hon. Jan Barham to direct her comments to the amendment before the Committee.

The Hon. JAN BARHAM: The amendment moved by my colleague Mr David Shoebridge will ensure the preservation and enhancement of the quality of our environment. I note the comments of the Minister for Roads and Ports relating to the principles of ecologically sustainable development in clause 10 (1) (c). When talking about ecologically sustainable development we must take into account the precautionary principle and intergenerational equity—matters that are not referred to or considered in this place. In 1996, when ecologically sustainable development provisions were included in environmental legislation, I was strongly of the belief that it would result in a meaningful process but that did not eventuate.

The Hon. Duncan Gay: Refer to clause 10 (1) (c).

The Hon. JAN BARHAM: I referred to clause 10 (1) (c) which will not ensure the preservation and enhancement of the quality of our environment, which is why my colleague Mr David Shoebridge moved this amendment. Ecologically sustainable development is not being delivered. I refer to earlier comments relating to the former Labor Government's management of State forests. Ecologically sustainable development cannot be delivered if appropriate research, assessment and monitoring are not undertaken to ensure that the precautionary principle is applied.

The Hon. Duncan Gay: And resource.

The Hon. JAN BARHAM: And resource to which the Minister just referred. Last night I was offended by his remarks that The Greens did not comment on the lack of resource, which clearly is untrue. On 26 November 1998—some time ago now, but almost its anniversary—during debate on the Forestry and National Park Estate Bill in this place the Hon. Ian Cohen queried whether or not there was supply. The assessment of supply is what drives the lack of ecologically sustainable processes and the lack of assurance of protection. If contracts are given—

The Hon. Duncan Gay: Are you going to get back to the amendment?

The Hon. JAN BARHAM: This is about the amendment.

The Hon. Duncan Gay: No, it is not.

The Hon. JAN BARHAM: The tragedy of this is a lack of understanding of how the words on the page translate. Will those words deliver ecologically sustainable and managed forests? We do not have them so it is

wrong for the Minister to keep saying that we do as that totally invalidates the work already done by many interested in assessing whether or not our forests are being properly managed and whether logging should be allowed. Independent audits of timber harvesting operations in public hardwood forests in north-east New South Wales have revealed rainforests, wetlands and stream buffers being logged, rare non-commercial forest-type damage, old growth forests being intensively logged, widespread breaches of fauna prescriptions, endangered ecological communities being logged and habitat attributes retained under prescription being trashed. Habitat trees are not being marked because people are sent into our forests to take out resources. How many independent audits get done?

It cannot be said that the bill is about compliance with principles of ecological sustainability when it contains four other equally weighted objectives. This amendment will seek to ensure the preservation and enhancement of our forests. In fact, it needs to go further to clarify the processes undertaken to deem an area appropriate for logging. It must be independent, rather than being done by someone engaged in the lucrative business of removing timber from our forests. These Crown lands are meant to be managed in the interests of this State. Since 1998 it has been sought in this place to have the assessments undertaken by an independent person. That has not happened. I support Mr David Shoebridge's amendment.

The Hon. PAUL GREEN [11.52 a.m.]: The Christian Democratic Party is confident that the Government will do the right thing. The Minister informed the House about the new Forestry Corporation and forestry protections. The Hon. Steve Whan also mentioned other Acts that will give added protection to this legislation. The Christian Democratic Party does not support The Greens amendment.

Mr DAVID SHOEBRIDGE [11.53 a.m.]: The Hon. Paul Green said he is confident that the Government will do the right thing. This entity is being corporatised; it will not be under the Government's control. Whatever the level of misplaced comfort the Hon. Paul Green may have in this Government about environmental protection, it will have no bearing on what the corporate entity will do. The purpose of the bill is to remove it from government oversight. The Christian Democratic Party cannot rationally oppose this amendment on that basis. More fundamentally, the Minister misunderstands the key point of the amendment.

Under clause 10 of the bill the objectives of the Forestry Corporation are given equal weight to the environment. The first principal, and the primary objective under the State Owned Corporations Act, is to be a successful business, to operate efficiently and to maximise the net return for the State's investment. The next objective is to exhibit a sense of social responsibility—whatever that means—and to exhibit a sense of responsibility towards regional development and decentralisation. The last objective is providing timber with an equal weight to the environment. That is in direct contrast to the Act, which provides that in the exercise of all its functions and in entertaining all its objectives the environment is to be considered.

The Greens amendment would keep existing clause 10 (1) (c), which talks about principles of ecological sustainable development and is the weakest of the five objectives, but it would ensure that there was an overarching obligation to consider the environment in all its objectives and activities. The Government has removed that. The Minister fails to understand that when a piece of legislation gives equal weight to the wiping out of a threatened species on one hand and potentially providing two jobs to a regional economy on the other hand—which is exactly what these objectives do—inevitably it will downgrade environmental control. For instance, the new Forestry Corporation could well say, "We will wipe out three threatened species by clearing this forest but we will go ahead and do it because that will give equal weight to the two potential contractor jobs that will be available for three months while we clear-fell the State forest." We know that threatened species licences are regularly breached. Clause 10 as it currently stands gives equal weight to those propositions and will inevitably downgrade environmental controls. I commend The Greens amendment to the Committee.

Question—That The Greens amendment No. 1 [C2012-154B]—be agreed to.

The Committee divided.

Ayes, 17

Mr Buckingham	Mr Primrose	Ms Voltz
Ms Cotsis	Mr Searle	Ms Westwood
Mr Donnelly	Mr Secord	Mr Whan
Ms Fazio	Ms Sharpe	*Tellers,*
Dr Kaye	Mr Shoebridge	Ms Barham
Mr Moselmane	Mr Veitch	Ms Faehrmann

Noes, 20

Mr Ajaka	Mr Gay	Mrs Mitchell
Mr Blair	Mr Green	Reverend Nile
Mr Borsak	Mr Harwin	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Mr Clarke	Mr MacDonald	*Tellers,*
Ms Cusack	Mrs Maclaren-Jones	Mr Colless
Ms Ficarra	Mr Mason-Cox	Dr Phelps

Pairs

Mr Foley	Mr Gallacher
Mr Roozendaal	Mr Lynn

Question resolved in the negative.

The Greens amendment No. 1 [C2012-154B] negatived.

Part 2 [Clauses 5 to 12] as amended agreed to.

Part 3 [Clauses 13 to 37] agreed to.

Mr DAVID SHOEBRIDGE [12.06 p.m.]: I move The Greens amendment No. 2 on sheet C2012-154B:

No. 2 Page 25, clause 44, lines 3 and 4. Omit all words on those lines. Insert instead:

A timber licence may not be issued in respect of a flora reserve. A forest products licence or forest materials licence in respect of a flora reserve may not be issued unless:

This amendment would have the effect of amending clause 44 to provide that a timber licence may not be issued on a flora reserve, but it would still allow for a forest products licence or a forest materials licence on a flora reserve to be issued in limited circumstances. There is a clear environmentally essential reason for this. If a timber licence is issued on a flora reserve we will see, as we have seen in the past, the extraordinary destruction of parts of our native forests that have been consciously set aside because of their environmental values and because they have been determined to be an area that should be protected as a flora reserve. Indeed, this bill continues the process of setting aside parts of State forests as protected areas in the form of flora reserves. Clause 16 provides that notice may be published in a gazette of the dedication of Crown land that is set aside as a flora reserve for the preservation of native flora.

One must wonder what the purpose is of setting aside a flora reserve if a timber licence is then issued that allows for the trees inside the flora reserve to be chopped down. Unfortunately, we have seen that happen in the past. If we are to give any teeth to the concept of genuinely protecting flora reserves and if we have areas of the State that, on the advice of the Government, the Governor believes should be set aside for the preservation of native flora, surely we should prohibit the issuing of timber licences on those flora reserves. There are some truly precious parts of our State forests that are enormously biodiverse and contain old-growth timber as well as many threatened and vulnerable species. Setting them aside as a flora reserve should mean something. It should mean that once they are set aside as a flora reserve, because of their precious biodiverse values, they cannot be the subject of a timber licence, which would effectively see them clear-felled.

Anyone who has been in these precious parts of State forests in New South Wales would recognise that there are parts of them that should never be logged; that parts of them are of such extraordinary natural and environmental value that they should never be logged. Some of those parts are already set aside as flora reserves. Recognising that, The Greens moved this amendment to prevent a timber licence being issued over the precious parts of State forests set aside as flora reserves. I commend the amendment to the Committee.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [12.11 p.m.]: The Government opposes The Greens amendment. I am sure the amendment is well intentioned, but it would have the real effect of stopping any timber licence being issued in respect of a flora reserve—whether or not the licence is in accordance with the working plan for the flora reserve. The amendment would even stop a collection of citizens of New South Wales

from gathering firewood. So the Government opposes the amendment for that reason. We also believe the amendment is unnecessary. It would create unnecessary complexities in the administration of the forest estate. The bill provides for adequate and proper management of flora reserves in the way that legislation has for some time.

The Hon. STEVE WHAN [12.12 p.m.]: The Opposition will not support the amendment. In a flora reserve there has to be compliance with the plan of management. That seems to me to be the appropriate way to go. If the plan of management suggests it would be damaging to log in an area, presumably logging in that area would not be allowed under the legislation. The Opposition does not see the benefit of a blanket ban on those areas regardless of what the plan of management says. It is appropriate to manage these areas through a well researched and properly considered plan of management, which is what we would hope the Government would do.

The Hon. PAUL GREEN [12.13 p.m.]: The Christian Democratic Party does not support the amendment. As was noted by the Minister and the Hon. Steve Whan, high-value lands already have plans of management or supervision arrangements in respect of them, and to burden them with more red tape would be unhelpful and probably not necessary. The Minister noted that the legislation has protections for flora reserves and that that protection will not be removed.

Mr DAVID SHOEBRIDGE [12.13 p.m.]: There is no protection at all in this legislation that the trees in a flora reserve will not be clear-felled. That is why The Greens have moved this amendment. The only protection for flora reserves is that the conditions of the timber licence need to be in accordance with the working plan for the letter. We know that the working plan will be delivered in accordance with the objectives contained in this bill, and that those objectives give the same weight to profit, decentralisation and return on investment as they give to environmental controls. Let us be very clear about what we are discussing here. The vast bulk of native forest in this State has already been cleared for farmland, urban development and industrial development; more than 90 per cent of native forest cover that existed in this State when white settlers came here more than 200 years ago has already been cut down.

We are talking about saving those precious remnants that remain. Surely even this Government could on occasion err on the side of the environment. We are talking about the precious remnants, the last stands. Even that seems too much for this Government. We hear comments and cries from the likes of the Hon. Rick Colless, who says that The Greens talk about the environment too much and are too concerned about the trees and the forests. I am more than happy to plead guilty to that. The Greens are concerned because the tiny remnant of native forest that is left is under industrial-scale attack to meet unsustainable wood supply agreements—even the Minister referred to unsustainable wood supply agreements.

These remaining precious parts of our State forests set aside as flora reserves should be protected from logging. Let us be clear about this: If it is a flora reserve, it should be protected from logging. That is the aim of the amendment. It is remarkable that the Opposition is happy to log flora reserves. That has been made very clear from the contribution of the Hon. Steve Whan, who I do not think mentioned the word "environment" in a contribution he has made on the Forestry Act. It is remarkable that the Opposition is happy to log flora reserves and would join with the Government in opposing an amendment that would ensure that these precious flora reserves in New South Wales are not logged.

The Hon. STEVE WHAN [12.15 p.m.]: Mr David Shoebridge, with his usual arrogance, misled the Chamber on what the Labor Party said. On a number of occasions during the second reading debate I spoke about the environmental value of State forests and the fact that in this case flora reserve protection needs to be managed in accordance with the plan of management and that we would expect the Government to put in place a reasonable plan. It is arrogant of The Greens to pretend to be the people who protect the forests of New South Wales. Quite frankly, the Labor Party in New South Wales is the great environmental achiever in this State. We are the people who protected the South East Forests and turned them into national parks and we created wilderness in the south-east. Labor governments put in place the forest agreements that protected large slabs of New South Wales. We are proud of those achievements made while in government. We do not sit on the sidelines and snipe like The Greens.

Question—That The Greens amendment No. 2 [C2012-154B] be agreed to—put and resolved in the negative.

The Greens amendment No. 2 [C2012-154B] negatived.

Part 4 [Clauses 38 to 56] agreed to.

Mr DAVID SHOEBRIDGE [12.18 p.m.]: I move The Greens amendment No. 3 on sheet C2012-154B:

No. 3 Page 33, clause 59. Insert after line 27:

(4) The land manager of a forestry area is, in the attainment of the land manager's objectives and in the exercise of the land manager's functions, to take all practicable steps that the land manager considers necessary or desirable to ensure the preservation and enhancement of the quality of the environment.

This amendment would insert a new subsection (4) in the objectives of the land manager. During the second reading debate I spoke about the new process being inserted into the Act enabling land managers, who can be land managers of private entities or government authorities, effectively to take over the entire operations of State forests except forestry operations. They will be able to do anything in a State forest that the corporation could do apart from forestry operations. As a consequence, the controls, objectives and principles of the Act under which land managers operate must be right. We therefore need to put in place the kinds of environmental protections that currently apply to all the kinds of actions to be undertaken under this bill by Forests NSW.

Currently Forests NSW is effectively the land manager for all its properties—although that is a new term that is being proposed in the bill—and as land manager it is required in the attainment of its objectives and in the exercise of its functions to take all practical steps it considers necessary or desirable to ensure the preservation and enhancement of the quality of the environment. All The Greens amendment does is to maintain the existing requirement to take into account the preservation and enhancement of the quality of the environment in relation to what the land managers do. I note and I accept that land managers are to have a number of objectives such as looking after fauna, except for feral animals, and that their actions are to be not inconsistent with forestry practices. I accept those provisions are in the bill and I can already hear the Minister's reply.

What is missing and what our amendment would put in place is to ensure that all the land managers' actions as a private entity will be controlled. Land managers can do things unrelated to forestry; they can potentially establish resorts and hunting parks and allow trail bike riding—it is effectively unlimited. The land mangers' actions need to be controlled by the principles and objectives of the bill. For that reason I commend the amendment to the Committee. Let us be clear: This amendment would only retain the existing level of environmental protection for those parts of our State forests that are likely to be effectively farmed out and privatised to other entities.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [12.21 p.m.]: Whilst we do not see the need for this amendment and we will oppose it, the reconstruction of a land manager's role by the member was remarkably accurate and in the main I cannot disagree with him. I continue to disagree with his colleague who tries to assert that mining companies will become land managers. As I indicated last night, that will not happen. The bill precludes that, as do my comments as Minister with the carriage of the bill in this place.

We do not support the amendment because a land manager, other than the Forestry Corporation, does not have the function of carrying out forestry operations, as the member said. That is the function of the Forestry Corporation. The bill already provides that the Forestry Corporation has the objectives of conducting its operations that affect the environment in compliance with the principles of ecologically sustainable development, and to be an environmentally sustainable supplier of timber. A land manager for a forestry area has the objectives of facilitating public access to the forestry area, promoting the recreational use of the forestry area and conserving fauna—other than feral animals, as the member indicated—living in the forestry area.

Under the bill the functions of a land manager of a State forest are to be exercised in a manner that is not inconsistent with forestry operations and in accordance with the management plan for the State forest and good forestry practice. The bill also provides that the functions of a land manager of a flora reserve are to be exercised in a manner not inconsistent with the use of flora reserves for the preservation of native flora and in accordance with the working plan of the flora reserve, as we discussed in debate on the previous amendment. Given that the functions of a land manager do not include those relating to the carrying out of forestry operations, the provisions in the bill appropriately set out the objectives of a land manager. It is important to remember that a land manager's functions are to facilitate public access to forestry areas and to promote recreational uses of those areas, for example, by providing areas for families to enjoy picnics. These low-impact activities are not designed to adversely impact the quality of the environment.

The Hon. STEVE WHAN [12.23 p.m.]: I expressed concern yesterday during the second reading debate about the provisions relating to land managers in that they were to be defined by regulation, which we

have not seen yet. The Government's explanation of that and discussion with the Minister reduced my concerns a little but I still remain somewhat suspicious of what might happen with land managers in the longer term. While I accept the point the Minister made that these land managers are not in charge of forestry operations, their management oversight of an area certainly has the potential to impact on the environment of that area in the longer term.

This side of the House certainly wants to encourage recreational use of State forests whether for picnics, for mountain bike tracks—such as we have in the Bombala area—or a whole range of recreational uses that can provide healthy activities. We need to acknowledge that managing forestry operations in an area can also impact on the environment and therefore I think it is desirable to include a provision that says specifically that the quality of the environment is an important thing for the land manager to consider. The Opposition will support the amendment.

The Hon. PAUL GREEN [12.25 p.m.]: The Christian Democratic Party does not support the amendment.

Question—That The Greens amendment No. 3 [C2012-154B] be agreed to—put and resolved in the negative.

The Greens amendment No. 3 [C2012-154B] negatived.

Part 5 [Clauses 57 to 69] agreed to.

Parts 6 to 8 [Clauses 70 to 93] agreed to.

Schedules 1 to 5 agreed to.

Mr DAVID SHOEBRIDGE [12.28 p.m.]: I move The Greens amendment No. 4 on sheet C2012-154B:

> No. 4 Page 1, Long title. Omit "and use of State forests and other Crown-timber land for forestry and other purposes". Insert instead ", conservation and use of State forests and other Crown-timber land for forestry and for ensuring the preservation and enhancement of the quality of the environment".

I accept that this high-level principle amendment does not specifically amend an operative provision of the Act. Amending the long title of the bill would make clearer, if there are any concerns about ambiguity in the legislation, the extent to which environmental values should be advanced. The Greens believe that having a clear statement in the long title—which the bill always should have contained—would ensure the preservation and enhancement of the quality of the environment. That would be a step forward should any question of statutory interpretation arise and it would demonstrate that the weight to be given to environmental values had been considered in that statutory interpretation. For those reasons The Greens have moved the amendment, which we commend to the Committee.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [12.30 p.m.]: As the member said, this amendment seeks to change the long title of the bill. The Government believes the long title as it stands is totally appropriate. Frankly, it is an accurate reflection of the content of the bill, which is as it should be. We do not believe it should be amended. We do not believe it is appropriate to place an ideological twist to the title of legislation that is important to our rural communities and regional industries. We deal with facts rather than ideological spin.

Mr DAVID SHOEBRIDGE [12.31 p.m.]: Of all the Minister's contributions I find remarkable the argument that putting the preservation and enhancement of the quality of the environment in legislation is an ideological spin or an ideological twist. Surely every credible party that has a concern about the long-term future of this State would accept as a minimum that he or she should be considering the preservation and enhancement of the quality of the environment. It should effectively be blind. The basic principle that the preservation and the enhancement of the quality of the environment are matters that the legislator should take into account should not be political. For the Minister to suggest that wanting to put that as an element of the long title of the bill and even making the reference that preserving and enhancing the environment is somehow some ideological warfare shows how far to the brown right this Government has lurched.

The Hon. Matthew Mason-Cox: Oh, come on, David!

Mr DAVID SHOEBRIDGE: I hear the mutterings of the great civil libertarian the Hon. Matthew Mason-Cox, and the Hon. Rick Colless, who views State forests as tree farms, is sitting in the Chamber. Thankfully, the Government Whip is not in the Chamber. He probably would say any kind of environmental regulation is an impost on the market. The ideological blinkers with which this Government approaches the environment—any statement about environmental protection is seen as some kind of ideological attack—shows how this Government has lost touch with what should be a fundamental principle for any legislator.

By all means take into account the economy. By all means take into account social welfare and social justice. By all means take into account the need for people to make a decent living. Regardless of our political colours, we should all be concerned about preserving and enhancing the quality of the environment. Regardless of which side of the Chamber it comes to when it is raised, it should not be seen as an ideological element; it should be seen as basic DNA in any politician.

The Hon. STEVE WHAN [12.33 p.m.]: The Opposition will not support the amendment. The key thing to be dealt with today is the objectives of bill.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [12.33 p.m.]: I am reticent to comment again. I think it is obvious to members of the House how inclusive and how understanding The Greens are. If one agrees with their warped sense of priority one is fabulous, but if one has a different view one cops heaps. There is no restraint and no understanding. If people read the contribution that just came from the mouth of the member they will understand how blinkered The Greens really are.

Question—That The Greens amendment No. 4 [C2012-154B] be agreed to—put and resolved in the negative.

The Greens amendment No. 4 [C2012-154B] negatived.

Title agreed to.

Bill reported from Committee with amendment.

Adoption of Report

Motion by the Hon. Duncan Gay agreed to:

That the report be adopted.

Report adopted.

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

ELECTRONIC CONVEYANCING (ADOPTION OF NATIONAL LAW) BILL 2012

Message received from the Legislative Assembly returning the bill without amendment.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 2 to 5 postponed on motion by the Hon. Duncan Gay.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 2) 2012

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [12.37 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

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

Leave granted.

The *Statute Law (Miscellaneous Provisions) Bill (No 2) 2012* continues the long standing statute law revision program. Bills of this kind have featured in most sessions of Parliament since 1984 and are recognised as an effective tool for making minor policy changes, repealing redundant legislation and maintaining the quality of the New South Wales statute book.

Schedule 1 to the bill contains policy changes of a minor and non-controversial nature that are too inconsequential to warrant the introduction of a separate amending bill.

That schedule contains amendments to 23 Acts. I will mention some of the amendments to give Honourable Members an indication of the kind of amendments that are included in the schedule.

Schedule 1 amends the *Australian Museum Trust Act 1975* to provide that a trustee of the Australian Museum Trust, the Director of the Australian Museum or a person acting under the direction of the Trust or the Director is not personally liable for an act or omission done in good faith for the purpose of executing that Act. The amendment does not affect the liability of the Trust for any such act or omission.

The schedule contains equivalent amendments to the *Library Act 1939*, the *Museum of Applied Arts and Sciences Act 1945* and the *Sydney Opera House Trust Act 1961*.

Schedule 1 contains miscellaneous amendments to the *Children and Young Persons (Care and Protection) Act 1998*. These include an extension of the present scheme under which mandatory reporters, such as teachers, health care workers and police officers, can refer their suspicion that a child is "at risk" to assessment officers within the Child Welfare Units of their agencies, as an alternative to reporting directly to the Director-General of the Department of Family and Community Services. In the interests of consistency, the amendments extend the scheme by enabling mandatory reporters to refer to assessment officers where the person suspected of being "at risk" is an unborn child or a young person who is 16 or 17 years of age.

Another amendment to that Act will simplify applications to the Children's Court for care orders, in line with recommendations of the 2008 *Special Commission of Inquiry into Child Protection Services in NSW*. The amendment will achieve this by generally requiring an application to be accompanied by a written report summarising the circumstances of the case only if the application is for an initial care order, rather than (for example) an order rescinding or varying a care order.

Schedule 1 will update a definition of "offences involving violence" in the *Criminal Procedure Act 1986* by correcting a cross reference to the offence of recklessly causing grievous bodily harm and inserting a cross reference to the offence of recklessly causing bodily harm in company. Alleged victims of "offences involving violence" who have made a written statement cannot generally be directed to attend committal proceedings.

Schedule 1 amends the *Public Finance and Audit Act 1983* by requiring the Audit Office to be reviewed by the Public Accounts Committee 4 yearly, rather than 3 yearly as is currently the case. This amendment gives effect to that Committee's recommendation in a report on the 2009 review of the Audit Office to align the frequency of these reviews with the 4 year term of the Legislative Assembly.

Schedule 1 amends the *Residential Tenancies Act 1998* to enable proceedings for an offence relating to a rental bond to be commenced within 3 years after the commission of the offence or the termination of the residential tenancy agreement, whichever is the later. This Act generally prevents proceedings for an offence being brought more than 3 years after the offence is committed. However, an offence relating to a rental bond, such as the landlord's failure to deposit the bond with NSW Fair Trading at the outset of the tenancy, may not come to light until more than 3 years after it is committed (for example, when the tenant claims the bond after terminating the tenancy).

Schedule 1 also amends the *Special Commissions of Inquiry Act 1983*. These amendments will make the eligibility criteria for appointment as a Commissioner for a Special Commission of Inquiry similar to the eligibility criteria for appointment as a Commissioner for a standing commission, such as the Crime Commission, ICAC and the Police Integrity Commission. As a result, the range of persons who may be appointed as a Commissioner will generally be broader, enabling a person to be appointed who holds, has held or is qualified to hold judicial office in Australia or who is an Australian lawyer of 7 years' standing. Currently, appointments are generally limited to New South Wales judges or Australian lawyers of 7 years' standing.

Finally, in relation to schedule 1, I mention an amendment to the *Water Management Act 2000*. The amendment enables the Minister for Primary Industries to amend an access licence held by the Commonwealth or the State, by increasing the shares in a water source or management area that are held under the licence, in order to give effect to a Commonwealth or State agreement and where the licence is to form part of the Commonwealth's environmental water holdings or is to be used for environmental purposes. This proposal is in line with the Minister's existing powers to grant an access licence to the Commonwealth or State in order to give effect to such an agreement.

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

Schedule 3 repeals a number of Acts and provisions of Acts and instruments that are redundant.

Schedule 4 contains general savings, transitional and other provisions. These include provisions dealing with the effect of amendments on amending provisions and a power to make regulations for savings or transitional matters if necessary.

> The various amendments made by the bill are explained in detail in explanatory notes set out beneath the amendments to each of the Acts and statutory instruments concerned or at the beginning of the schedule concerned.
>
> I am sure that Honourable Members will appreciate the straightforward and non-controversial nature of the provisions contained in the bill. However, if any amendment causes concern or requires clarification, it should be brought to my attention. If necessary, I will arrange for Government officers to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the bill, the Government is prepared to consider withdrawing the matter from the bill.
>
> I commend the bill to the House.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [12.37 p.m.]: I lead for the Opposition on the Statute Law (Miscellaneous Provisions) Bill (No. 2) 2012. The Opposition does not oppose the bill. Periodically the Attorney General introduces legislation that continues statute law revision to ensure that the statute law of this State remains relevant and up to date. The objects of this bill are to make minor amendments to various Acts and to a regulation as contained in schedule 1; to amend certain other Acts and instruments for the purposes of effecting statute law revision contained in schedule 2; to repeal certain Acts and provisions of Acts and instruments as contained in schedule 3; and to make other provisions of a consequential or merely ancillary nature as provided for in schedule 4. It is the type of omnibus bill regularly introduced by governments. Rather than moving a plethora of individual amending bills, it is a more efficient and sensible way to proceed. The convention is that only non-controversial propositions are included in bills such as this.

As the shadow Attorney did in the other place, I mention three particular aspects of the bill. Schedule 1.9 amends the Independent Commission Against Corruption Act so that the total number of years for which a person may be an assistant commissioner of the Independent Commission Against Corruption is nine years instead of seven. We do not oppose that amendment, but the shadow Attorney in the other place asked for an explanation of the rationale. Having reviewed the *Hansard* of the proceedings in the other place, I note that Minister Hazzard, who replied on behalf of the Attorney, afforded no such explanation. I asked the Parliamentary Secretary to come clean and explain what is behind this change, if is he able to. We do not oppose it, but we are not sure about the rationale. Schedule 1.10 amends the Library Act.

Members will remember last year's marathon spinning of wheels. This newly elected Government had such a full agenda that we spent at least a week debating the Library Amendment Bill, not only in this place but also in the other place. There was a conga line of new members who could not wait to get to the dispatch box to speak passionately about their favourite childhood books and how much their local library meant to them. However, in the Government's reformist zeal it rushed that bill into Parliament and obviously forgot some things that must now be addressed. That is extraordinary and it says much about its competence.

Schedule 1.6 amends the Crime Commission Act, which is also scarcely believable given that this House and the other House dealt with legislation to put the Crime Commission on a new footing. It must be a record to have an amendment moved so quickly after a bill has been passed dealing with the same subject matter. These amendments relate to the Crime Commission providing information to the Police Integrity Commission about criminal asset recovery action. The Opposition finds it extraordinary that that part of the bill was not correct in the first place. The unseemly and publicly conducted conflict between the Crime Commission and the Police Integrity Commission about criminal asset recovery is notorious and involved detours to the Supreme Court and significant media coverage.

I understand that it also involved a report delivered by the Inspector of the Police Integrity Commission, Peter Moss, QC, who recommended that prosecutions be launched arising out of the Police Integrity Commission action. Criminal asset recovery action was also the subject of recommendations made following the Patten inquiry, which were the only substantive inquiry recommendations rejected by the Government in enacting the Crime Commission Act. The bill also expressly undid Supreme Court Justice Peter Hall's decisions in the case of Cook. In that context it is extraordinary that the Government could not get the bill right in the first place and that it has had to rush through another amendment so quickly. With those gentle chidings, the Opposition does not oppose the bill.

The Hon. DAVID CLARKE (Parliamentary Secretary) [12.42 p.m.], in reply: I thank the Hon. Adam Searle for his contribution to this debate. The honourable member has raised a couple of issues and he has gently chided the Government and asked it to come clean. This is a clean government. The amendments in this bill speak for themselves: they are very clear and there is no need for any further amplification. That is why the Government has introduced them in the way that it has. The amendment that the Government will move in Committee relates to an objection raised by the Shooters and Fishers Party to an amendment to the Security

Industry Act 1997 passed in the other place. Because these bills are non-partisan and supported by agreement the Government will move the amendment in acknowledgement that the Shooters and Fishers Party is a very important party in this Chamber. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 to 3 agreed to.

The Hon. CATE FAEHRMANN [12.48 p.m.]: I move The Greens amendment as circulated:

Page 13, schedule 1.14, lines 1 to 22. Omit all words on those lines.

The Animal Welfare League has concerns about this part of the legislation and, in accordance with the custom in this place, we deal these types of bills differently. I hope the Government and the Opposition will support this amendment.

The Hon. DAVID CLARKE (Parliamentary Secretary) [12.49 p.m.]: For the same reason that the Government has agreed to move an amendment to remove an amendment passed in the other place objected to by the Shooters and Fishers Party, it will also agree to this amendment. These bills are non-partisan and uncontroversial and the Government therefore supports the amendment.

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

The Greens amendment agreed to.

The Hon. DAVID CLARKE (Parliamentary Secretary) [12.50 p.m.]: I move Government amendment No. 1 on sheet C2012-138:

No. 1 Pages 15 and 16, schedule 1.18, line 9 on page 15 to line 20 on page 16. Omit all words on those lines.

The Statute Law (Miscellaneous Provisions) Bill (No 2) 2012 is one of those types of bills that comes before us regularly. The purpose of such a bill is to make minor, non-controversial amendments to a whole array of pieces of legislation, to put them in one bill and also to repeal redundant legislation. They are meant to be non-controversial and have across-the-board agreement from everybody in the Chamber. Through some crossed lines of communication the Shooters and Fishers Party has an objection to one amendment that was moved and carried in the Legislative Assembly to the Security Industry Act 1997. As this bill is meant to be non-controversial the Government is moving this amendment to remove the earlier amendment carried in the Legislative Assembly.

The Hon. ROBERT BROWN [12.51 p.m.]: On behalf of the Shooters and Fishers Party I apologise for the need for this amendment. The Shooters and Fishers Party and the Government communicated the concerns, as with The Greens concerns about the last amendment, but unfortunately we did not quite reach agreement. Our objection is that section 1.18 of schedule 1 to the bill and the amendment in it to section 48 of the Security Industry Act inserted a new subsection that provided that the regulations may apply, adopt or incorporate any publication as in force at a particular time or from time to time.

The Shooters and Fishers Party have recently had problems with guidelines, circulars or memos being sent out by the Firearms Registry, which is akin to the security industry, requiring the recipients to sign for receipt of them and accept them as a guideline. Yet at the same time the documents state quite clearly that they are guidelines and have no force of law and are not to be relied upon. The Shooters and Fishers Party felt that something similar moved as an amendment in this bill could have the same effect in the security industry—therefore giving official status under the regulation to any sort of communication. So the Shooters and Fishers Party asked the Government to move an amendment to delete the provision.

Question—That Government amendment No. 1 [C2012-138] be agreed to—put and resolved in the affirmative.

Government amendment No. 1 [C2012-138] agreed to.

Schedule 1 as amended agreed to.

Schedules 2 to 4 agreed to.

Title agreed to.

Bill reported from Committee with amendments.

Adoption of Report

Motion by the Hon. David Clarke, on behalf of the Hon. Michael Gallacher, agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. David Clarke, on behalf of the Hon. Michael Gallacher, agreed to:

That this bill be now read a third time.

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

BIOFUELS FURTHER AMENDMENT BILL 2012

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Ports) [12.56 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Biofuels Further Amendment bill 2012 introduces a number of important changes to improve the administration and enforcement of the Biofuels Act 2007.

The bill will clarify the way in which exemptions from the minimum biofuel requirements can be granted, varied or revoked.

The bill will also increase the maximum penalties for key offences and clarify the powers of investigators in administering and enforcing the Act and the Biofuels Regulation 2007.

The Biofuels Act 2007 establishes minimum biofuel requirements for petrol and diesel fuel sold by volume fuel sellers in New South Wales.

This is part of the Government's commitment to working to achieve a secure, renewable and sustainable energy future.

A key part of this vision is regional development—including the creation of jobs in regional New South Wales.

The Act defines a volume fuel seller as certain primary wholesalers and major retailers who operate or control more than 20 service stations in New South Wales.

The minimum ethanol requirement imposes an obligation on all volume fuel sellers to ensure that ethanol makes up at least 6 per cent of the total volume of petrol they sell, or deliver for sale, in New South Wales.

The minimum biodiesel requirement imposes an obligation on volume fuel sellers to ensure that biodiesel makes up at least 2 per cent of all diesel fuel they sell, or deliver for sale, in New South Wales.

The Government is committed to the 6 per cent ethanol mandate and the 2 per cent biodiesel mandate. The bill will not make any changes to these mandates.

However, the Government recognises that achieving both mandates will be challenging for volume fuel sellers in the short to medium term.

Earlier this year, the Independent Pricing and Regulatory Tribunal provided its report on "Ethanol supply and demand in New South Wales".

IPART found that while there is sufficient supply in New South Wales to meet the 6 per cent ethanol mandate, there will not be sufficient demand to achieve it.

The reality is that volume fuel sellers can influence, but not control, the product choices of their customers. As such a fair, workable and enforceable framework for granting exemptions to the mandate is required.

By workable, I mean a framework that enables exemptions to be granted where required, while still driving companies to meet the 6 per cent mandate in the future.

The Biofuels Act left to us by Labor is unworkable.

Administrative changes have already been made to deal with exemption applications to make the process more transparent.

These interim changes include an update on market conditions for ethanol and biodiesel, and make it clear that companies must submit a business plan with an application.

It also requires that the Expert Panel, in providing advice on exemption applications, considers whether a volume fuel seller has demonstrated that it has genuinely taken all reasonable actions to meet the minimum biofuel requirement.

But there are more fundamental changes needed to ensure the exemption framework in the Act is fair, workable and enforceable. This bill sets out a number of amendments that the Government is proposing.

Business plans are a major tool to drive and monitor a company's progress towards achieving the mandated target.

The Government currently requires volume fuel sellers to develop and submit business plans with exemption applications.

The business plan must set out the steps that will be taken by the company to increase the proportion of biofuel sold and the milestones for delivering these steps.

The bill makes important changes to ensure that these business plans will be implemented by volume fuel sellers over the short and medium term. Conditions may be imposed, as part of an exemption, which require particular actions to be undertaken during the period of the exemption or beyond it.

Providing for conditions to apply beyond the term of an exemption will also enable the Government to drive longer term activities such as infrastructure projects or marketing strategies.

The Act and Regulations currently provide that the Minister may grant an exemption from the minimum biofuels mandate on one of three grounds. These include:

- compliance with the mandate is uneconomic;
- compliance may result in a risk to public health or safety; or
- other extraordinary circumstances exist.

This bill includes an additional ground on which an exemption can be granted.

With this change it will be possible to grant an exemption from the mandate if a volume fuel seller has taken, is taking or will take all reasonable steps to comply with the relevant minimum biofuel requirement.

This is to align the Ministerial power to grant an exemption with the defence that is available to a volume fuel seller in a prosecution for failing to meet the mandate.

The amendments also clarify that an exemption can be granted on the basis that one or more of the grounds for the exemption, together or separately, justify the exemption.

Market conditions can change at any time. As such circumstances may arise during a reporting period which means a volume fuel seller is unable to comply with the mandate.

The way the Act currently operates means that a company in this situation would have little choice but to stop selling fuel altogether. Continuing to operate would mean that it would be in breach of the law and liable to prosecution.

Suspension of fuel supplies can severely disrupt fuel markets, adversely affecting small businesses and a great many motorists.

To deal with this situation, the bill makes it clear that an exemption can be varied in appropriate circumstances.

The bill also makes it clear that an exemption can be granted for a specified period. It is intended that exemptions will be granted for no longer than three years.

The bill provides that exemptions granted for a specified period will be able to be granted before, during, or after that period.

This is a far more streamlined exemptions framework compared to that currently in place in the Act.

An exemption to the mandate can be granted in full or in part.

If a partial exemption is granted it means the volume fuel seller in effect has to meet a revised mandate. For example, in the case of ethanol, a partial exemption of 2 per cent means a volume fuel seller has to meet a revised mandate of 4 per cent.

The amendments make it clear, in the case of an exemption granted in advance for a number of quarters, that different partial exemptions can be set for each quarter.

This will ensure that the Government can impose realistic targets by requiring volume fuel sellers to plan for and take all reasonable steps to meet their revised mandate.

Through these mechanisms, the Government will be able to drive real progress to meeting the biofuel mandates.

As I have noted already, the Act currently provides for exemptions to be granted subject to conditions. Conditions can also be imposed on a volume fuel seller as part of their registration. However, the Act does not make it an offence to breach such conditions. The bill will correct this serious omission and make conditions enforceable.

The Act establishes an Expert Panel which provides advice to me on matters such as suspension of mandates and exemptions. In its current form, the Expert Panel is comprised entirely of public servants.

To provide a greater depth of industry-specific advice to support analysis of these increasingly important issues, the bill provides for up to three persons with recent industry experience or expertise to be appointed as members of the Expert Panel.

The appointment of industry members to the Panel will be carried out in due course and will go through the standard Government appointment processes of Cabinet. Further, the bill sets out the constitution and procedure of the Expert Panel.

To ensure the policy objectives of the Act can be achieved it is important that the Minister and the Department have effective powers to enforce compliance with the Act and the power to seek appropriate penalties in the event of non—compliance.

The bill will give the Biofuels Act more "teeth" to encourage compliance.

Currently, for example, the maximum penalty for a first offence of failing to comply with a minimum biofuels requirement is only 100 penalty units—that is just $11,000.

The bill will increase maximum penalties to a level that is more appropriate for dealings with major corporations. The maximum penalty for a first offence will be increased to 500 penalty units or $55,000. The maximum penalty for a second or subsequent offence will be increased to 5,000 penalty units or $550,000.

The bill will also strengthen the powers of investigators appointed under the Act.

The bill provides that investigators will now have the power to require a person who supplies a volume fuel seller with ethanol, biodiesel, petrol, or diesel fuel to produce certain information, records and evidence and to inspect their premises.

In addition, an investigator conducting an investigation of premises under the Act will now have the power to take samples of ethanol, biodiesel, petrol, or diesel fuel during that investigation.

The bill makes a number of other minor changes to the Act and the associated Regulation.

Taken together these amendments will ensure that the objectives of the Act are better able to be delivered.

The ethanol industry in this State currently comprises only one producer.

But that one producer, the Manildra Group, is an important regional employer, which adds significant value to the grain produced by our farmers, and is a major exporter.

Ethanol is a very important product for Manildra. It is made from the low grade starch residue that remains after vital gluten and high-grade starch are produced.

A viable market for ethanol ensures that all of the value is extracted from every grain of processed wheat.

Retention of the 6 per cent ethanol mandate will support continued regional production and encourage other ethanol producers to enter the market.

The biodiesel industry in this State also currently comprises only one producer, with one major project in the early stages of development.

Local biodiesel production is not sufficient to support even the current two percent biodiesel mandate so we are reliant on imports from interstate and overseas.

For this reason, the Government decided in December 2011 to suspend the scheduled increase in the biodiesel mandate from two percent to five percent.

I am now pleased to report that National Biodiesel Limited has signed a lease with Port Kembla Port Corporation for a site for its 280 million litre per year soy biodiesel plant.

When operational, this development will provide more than enough biodiesel to support the increased 5 per cent mandate.

Importantly, it will also provide a new industry in Port Kembla, new opportunities for New South Wales farmers to grow soybeans as feedstock, and up to 800,000 tonnes per year of high quality soybean meal livestock and poultry feed.

The development of the project will be monitored and the mandate will be increased to five percent as soon as it can be supported by the increase in local production from this development.

In summary, this bill makes a number of important changes to the Biofuels Act that will enable the Government to more effectively manage longer-term progress toward the biofuels mandates imposed by the Act.

These changes will ensure that progress is driven in a way that is transparent and fair to all stakeholders.

I commend the bill to the House.

[*Deputy-President (The Hon. Paul Green) left the chair at 12.57 p.m. The House resumed at 2.30 p.m.*]

Pursuant to sessional orders business interrupted at 2.30 p.m. for questions.

Item of business set down as an order of the day for a later hour.

DISTINGUISHED VISITORS

The PRESIDENT: I acknowledge the presence in the public gallery of Senator Sarah Hanson-Young and her daughter Cora.

QUESTIONS WITHOUT NOTICE

CHILD SEXUAL ABUSE

The Hon. ADAM SEARLE: I direct my question to the Minister for Police and Emergency Services. In light of the Minister's answer yesterday in relation to the whistleblower status of Detective Chief Inspector Peter Fox, what action has the Minister taken to investigate allegations of threats against him?

The Hon. MICHAEL GALLACHER: Those matters have been referred to the relevant authorities for investigation. Only a few minutes ago the Commissioner of Police and I concluded a press conference in which we spoke about this very issue. The good news is that as recently as today Detective Fox has been spoken to by the Commissioner of Police. The NSW Police Force has actioned those complaints. In addition to the Margaret Cunneen special commission of inquiry, which was announced by the Premier, an internal investigation also is taking place.

PRINCES HIGHWAY UPGRADE

The Hon. JOHN AJAKA: I address my question to the Minister for Roads and Ports. Will the Minister update the House on the Foxground and Berry bypasses planned for the Princes Highway?

The Hon. DUNCAN GAY: It is obvious that the Government is getting on with the job of improving road infrastructure in the Illawarra.

The Hon. Dr Peter Phelps: Making New South Wales number one again.

The Hon. DUNCAN GAY: We do not want to give away money like the member for Keira who earlier today wanted to give away funding—but we will talk about that later. These are communities along the Princes Highway that those opposite turned their backs on for 16 years.

The PRESIDENT: Order! I am finding it very difficult to hear the Minister's answer.

The Hon. DUNCAN GAY: Our major projects not only are improving safety but also are boosting the local economy by providing jobs. Stage two of the Princes Highway upgrade, the Foxground and Berry bypass, is the most significant transport infrastructure investment on the South Coast. The Foxground and Berry bypass will provide two lanes in each direction for 11.6 kilometres between Toolijooa Road and Schofields Lane.

Investment in infrastructure is central to the future prosperity and growth of the Illawarra. But let us remember that this important stage two upgrade cannot be completed by 2017-18 without the completion of the ports transaction.

The Hon. Walt Secord: Point of order: The Minister is referring to the Ports Assets (Authorised Transactions) Bill, which is currently before the House.

The PRESIDENT: Order! To the extent that the Minister has named the legislation, I do not believe he is anticipating debate. There is no point of order.

The Hon. DUNCAN GAY: The money to be unlocked from the Port Kembla and Port Botany leases will enable the entire Foxground and Berry bypass—worth over $500 million—to be delivered under one major contract which will ensure that the benefit to road users and the local community is delivered at the earliest opportunity. I am delighted to inform the House that today, by releasing a detailed 3D animation of the project, Illawarra residents have been given a first look at the Foxground and Berry bypass. The new animation gives residents a picture of how the upgraded stretch of the highway will look once work is finished and provides both northbound and southbound flyovers of the route. The President and the Hon. Paul Green should check out the route as an alternative way home.

The Hon. Steve Whan: I do not think they drive past there, do they?

The Hon. DUNCAN GAY: Yes, they both do. The videos give the community a clear picture of how safety will be improved for pedestrians. Other features of the proposed upgrade include improved flood immunity and wildlife highway crossings. The Government wants community feedback about these plans to see whether they can be improved even further. The timing could not be better. I am delighted to inform the House that the New South Wales Government has also released the environmental assessment for the project for public consultation and comment. We are urging residents to comment on the plans. We want to encourage them to visit the project displays at locations in Berry, Kiama, Gerringong, Nowra, Shoalhaven and Wollongong. Those opposite might want to visit the project display and learn what it looks like when one gets on with the job, as opposed to announcing it over and over again and failing to lift a single shovel. [*Time expired.*]

THOMPSON SQUARE, WINDSOR

The Hon. PETER PRIMROSE: I direct my question to the Minister for Roads and Ports. Given the historic significance of Thompson Square, Windsor, and the petition of more than 12,000 signatures tabled in the other place earlier today, what discussions have taken place between the Minister, the Minister for Heritage and their respective departments about the concerns of local residents as to the future of this site?

The Hon. Greg Donnelly: What a good question.

The Hon. DUNCAN GAY: What an appropriate question on an important day. Today marks another important milestone in the life of the Windsor Bridge project because from today the communities of north-western Sydney can take a close look at the environmental impact statement for the new Windsor Bridge. It would be unfamiliar to those opposite but this is what it looks like when one is getting on with the job of delivering something, as opposed to announcing projects over and over again without doing anything.

The Hon. Steve Whan: Point of order: My point of order relates to relevance. The Minister was specifically asked about discussions between him, the Minister for Heritage, their respective departments and local residents relating to this site. The Minister should be brought back to the leave of the question.

The PRESIDENT: Order! There is no point of order.

The Hon. Dr Peter Phelps: That is the trouble: you are all about discussions and not about doing anything.

The Hon. DUNCAN GAY: Is it not interesting that those opposite are now pretending they have no interest and no DNA in this bridge. This bridge was first announced by Labor in 2008—that is right, those opposite announced this bridge. At that time the Hon. Eric Roozendaal promised in a press release that construction on the new Windsor Bridge would commence in 2009. It seems as though it is not just the ownership of cars he has forgotten; he has forgotten to deliver the bridge. The former member for Riverstone,

Mr John Aquilina, said he was "delivering road infrastructure in Sydney's west". There is also a statement in *Hansard* by the long-forgotten Iemma Government in which it promised to deliver $25 million to build a new bridge. Those opposite are now trying to prevent that project from happening.

Today Ryan Park announced to the almost 100 people assembled outside Parliament House that he would fight this project tooth and nail, and those people believed him. The O'Farrell Government is committed to this project. The environmental impact study is new and will be on public exhibition until 17 December. I encourage all members to visit one of the seven project display locations in areas including Windsor, Richmond, Blacktown and the central business district, or they can attend one of the shopping centre display days or even go online and learn what the process of delivering the project—or any project—involves.

When it comes to weighing up factors like heritage, urban design, traffic and transport issues and environmental factors, I think we have the balance right on this one. The Windsor Bridge replacement project includes increasing the amount of usable parkland within Thompson Square. The new design has lowered the southern approach road—this is after the design put up by Labor—to bring it further in line with the historic precinct. The change means that the road will be no higher than the ground floor levels of the heritage buildings along Old Bridge Street. I understand that a small section of the community has lingering concerns about the chosen proposal. That is unfortunate, and we are trying to address it. We respect their views. However, I can assure them and the rest of the community— [*Time expired.*]

The Hon. PETER PRIMROSE: I ask a supplementary question. Will the Minister elucidate his answer by detailing the dates on which he met with the Minister for the Environment, and Minister for Heritage regarding Thompson Square?

The Hon. DUNCAN GAY: I thank the member for asking me to elucidate my answer. As I said, I understand that some sections of the community are concerned, or continue to have concerns, and we respect those concerns. We have already made major changes to this precinct. Frankly, after completion of the bridge, this precinct will be in a better condition historically and for the community than it has been for the past 100 years. That does not mean that we have everything right at this stage. We are still willing to listen and to take on proper concerns within this area. That is why we have gone out to community consultation. That is why my department has engaged the heritage area along the way, and that is why I have spoken to people from that group who are opposed to it.

In my office I have spoken to a couple of my long-term friends who are opposed to the proposal. We agreed to disagree. Their only belief is that there should not be a bridge. The bulk of the community believes that there should be a bridge. We are trying to ensure that we protect the historic environment while providing this new important link. We will continue to try to do the best by that community. We are not out there like the member for Keira, who was giving away $1 billion that had already been given away by the Leader of the Opposition. That money had already been pledged to the Pacific Highway and to other roads. We were not out there denying that our fingerprints were all over this bridge. Members opposite put the project in place and now they are in denial. They were in Cabinet when that happened. [*Time expired*].

The PRESIDENT: Order! I call the Minister for Roads and Ports to order for the first time.

ENVIRONMENTAL DEFENDERS OFFICE

The Hon. ROBERT BROWN: My question without notice is directed to the Minister for Police and Emergency Services, representing the Attorney General. Will the Minister confirm that the Environmental Defenders Office ran 95 community workshops in the past three years, mostly in rural and regional areas? What was the subject matter discussed at each of those 95 community workshops? How many people attended each conference? What was the total cost of running the workshops, including venue hire, staff wages, motor vehicle expenses and accommodation expenses?

The Hon. MICHAEL GALLACHER: I thank the member for his question. As requested, I will seek an answer from the Attorney General.

COMPULSORY THIRD PARTY INSURANCE PREMIUMS

The Hon. MATTHEW MASON-COX: My question without notice is addressed to the Minister for Finance and Services. Will the Minister explain the medium-term factors behind increases in green slip prices?

The Hon. GREG PEARCE: I thank the member for that important question. Members would remember that I have previously spoken in this House about some of the short-term pressures on prices of compulsory third party green slips, such as the record low bond yield currently being experienced. In addition to this immediate and ongoing price pressure, a number of medium-term influences have been appearing over the past few years and also show no sign of changing in the near future. These include increases in claims frequency and propensity to claim, increasing legal representation in claims, an increasing number of cases receiving awards for care and domestic assistance, and a growing number of claims seeking exemption from the alternative dispute resolution services established under the Act and commencing legal proceedings.

Claims frequency, which is the number of claims as a proportion of all registered vehicles, and claim propensity, which is the number of claims as a proportion of all road accident casualties, have both been increasing steadily in the past few years. This means that despite the good news that road casualties are generally declining, more people are claiming for injuries. The increase in the number of claims being lodged has been accompanied by a significant increase in certain payment types. An increasing number of minor injury claims are receiving payment for care and domestic assistance, including gratuitous assistance that may have been provided by friends or family members.

Care payments are now almost as big a proportion of the claim costs paid to those with non-catastrophic injuries as are medical and rehabilitation costs, growing from 4 per cent to 12 per cent of total claims payments over the past 10 years. This is also putting increasing pressure on green slip prices. Legal representation of smaller claims appears to have been associated with these climbing scheme costs in recent years. Current indications are that the number of compulsory third party claims for minor injuries that involve legal representation have increased significantly since 2008, in contrast to more serious injury claims and those without legal representation.

Associated with this is an increasing trend for claims to be exempted from the independent dispute resolution services, most often on the basis of disputed liability. Such cases typically commence legal proceedings and are associated with higher costs and a longer time to settlement, although few such cases actually proceed to a court hearing. In essence, this means that at the time that insurers have their lowest ever return on capital, which I have previously spoken about, they have an emerging need to increase their premiums to meet the increasing numbers and costs of claims.

The New South Wales Government is concerned to address the cost for vehicle owners and to make New South Wales a more competitive State to do business. That is why I have directed the Motor Accidents Authority to undertake an extensive review of green slip pricing, to look in detail at cost drivers and friction points, to compare the way our scheme operates with other jurisdictions around Australia and overseas, and to suggest initiatives that could help contain green slip prices, reduce price volatility and ensure that the scheme runs as efficiently as possible. I will be speaking more on this subject in the future.

MINING ROYALTIES

The Hon. JEREMY BUCKINGHAM: My question is directed to the Minister for Roads and Ports, representing the Minister for Primary Industries. Research by the Australia Institute—

The Hon. Dr Peter Phelps: The Australia Institute.

The PRESIDENT: Order! It is grossly discourteous for members to interject when other members are asking questions. Members will cease interjecting. The Hon. Jeremy Buckingham may recommence asking his question.

The Hon. JEREMY BUCKINGHAM: My question is directed to the Minister for Roads and Ports, representing the Minister for Primary Industries. Research by the Australia Institute has shown that Australia's rural sector lost $14.9 billion in potential export income in 2010-11 due to the mining boom's inflationary impact on the Australian dollar. Given the Government's forecast of a 70 per cent increase in royalties, largely from increased coal exports, has the Government done any analysis of the likely economic loss in the New South Wales rural sector from these expansion plans for coalmines?

The Hon. Dr Peter Phelps: The Greens hate success, don't they?

The Hon. DUNCAN GAY: I thank the member for his interjection. I know it is disorderly to respond to interjections but, frankly, The Greens do hate success. They look forward to people being disappointed.

The Hon. Dr Peter Phelps: They live in caves.

The Hon. DUNCAN GAY: Well, living in caves. It is hard to understand that foreign accent, but sometimes I get what he says. I am unaware of the particular organisation to which the member referred; I certainly hope that it would be a substantial organisation.

The Hon. Matthew Mason-Cox: A substantial left-wing one.

The Hon. DUNCAN GAY: I am told that it might be substantially left-wing. I am disappointed to hear that because last week there were denials of any connection to left-wing organisations and in particular North Korea. I accept that. I am not one to go back; having accepted and apologised for likening The Greens to a right-wing or left-wing North Korean conspiracy, I have stepped away from that.

The Hon. Walt Secord: Pyongyang.

The Hon. DUNCAN GAY: I did not get that far last night, and I will not push my luck. I am on a call at the moment, so despite the encouragement to step over the line I will not do that.

The Hon. Mick Veitch: Go on! You can have an extra one.

The Hon. DUNCAN GAY: As tempting as it is, it is not the end of the week and I want to stay here a few more days and deal with Jeremy slowly. I will take the question on notice.

SURF RESCUE EMERGENCY RESPONSE SYSTEM

The Hon. STEVE WHAN: My question is directed to the Minister for Police and Emergency Services. On Sunday—

The PRESIDENT: Order! The member will cease asking his question. I will invite him to recommence his question shortly. Having specifically asked members not to interject when another member is asking a question, two members have interjected. I call the Hon. Melinda Pavey to order for the first time. I call the Hon. Dr Peter Phelps to order for the first time.

The Hon. STEVE WHAN: Minister, on Sunday a man tragically drowned after falling off the rocks at Little Bay, in Sydney. The 000 number was called at 9.00 a.m., yet ambulance crews took more than 35 minutes to come to his rescue. During question time today in the other place the Minister for Health said:

> Under the [Government's] policy any person falling into the ocean is considered a rescue and is the responsibility of Police.

Given that surf lifesavers were only five minutes from the accident site, why were they not notified of the incident?

The Hon. MICHAEL GALLACHER: I thank the member for a serious question on a very serious issue. I say on behalf of us all that we extend our sympathies to the family and friends of the fisherman who died after being washed off the rocks at Little Bay on 11 November 2012. I am advised that, sadly, he was not wearing a life jacket when the incident occurred. Be that as it may, for the information of the member, I have today asked for a report from the NSW Police Force relating to this event. This is a matter on which we need an answer quickly. I do not want to be basing a response on what I am hearing in media circles. I think it is more appropriate that I await the report from police. I would like to receive that report quickly and be able to report back to the member and to the House.

NATIONAL SES WEEK

The Hon. MELINDA PAVEY: My question is directed to the Minister for Police and Emergency Services. Could the Minister advise the House on this week's events for National SES Week?

The Hon. MICHAEL GALLACHER: I thank the member for her question. I know how much all members, along with the wider community, appreciate the great work of not just our own New South Wales State Emergency Service but all of Australia's State emergency services. Our respect and appreciation is due to the many dedicated people who choose—in circumstances that involve discomfort, hard slog and, at times, great

personal risk—to pitch in and help others in times of natural disaster. National SES Week is a celebration of the dedication and commitment of these thousands of men and women who selflessly volunteer their time and energy to their State or Territory emergency service. All this week, from 12 to 18 November, State Emergency Service units around the country will be holding events to celebrate all that is great about their volunteers.

Earlier today I had the pleasure of taking part in the launch of festivities in Martin Place. As I said then, during the terrible floods last summer I witnessed firsthand the dedicated volunteers of the New South Wales State Emergency Service. They filled sandbags, issued safety warnings, evacuated residents in harm's way, tarped roofs and did whatever was needed to help their community and the communities of others as floodwaters rose around them. It has been a most challenging year for these volunteers; and they have not only risen to the occasion but also gone above and beyond in the work they have done and in the help they have provided to a grateful public.

As part of this week's celebrations, specially laminated State Emergency Service trucks have been touring New South Wales, stopping in 28 towns and cities from Albury to Casino, Broken Hill and Newcastle where residents lined up to sign their message of thanks on the truck. It was called the "SES Truck Load of Thanks" tour, and it covered more than 3,500 kilometres across the State and visited many of the towns in the south, north and west that were devastated by the floods earlier this year. The final destination saw the tour finishing up in Martin Place today, where Sydneysiders were encouraged to sign the trucks to show their support of all State Emergency Service volunteers. The crowd loved it, and those trucks were covered with thousands of thank-you notes, including mine.

The New South Wales State Emergency Service has around 10,000 volunteers across the State from all walks of life. Volunteers range in age from 16 years all the way up to 80. It may surprise members to hear that, according to NRMA Insurance research, the principal supporters of our State Emergency Service, one in 10 people in New South Wales have called the New South Wales State Emergency Service for help during severe weather. If people ever find themselves needing emergency help due to a flood or a storm they should grab their phone and call the New South Wales State Emergency Service on 132 500, which will connect them to their nearest unit.

The State Emergency Service will send out some fantastic people in bright orange gear and people will soon find out why its motto is "The worst in nature, the best in us." In honour of those distinctive uniforms, today is "Wear Orange Wednesday"—or WOW Day—when the public is encouraged to wear orange to show their support for the New South Wales State Emergency Service volunteers. As I said earlier today at the launch, and I am sure members here will proudly join me in saying to these fine volunteers: we, the State of New South Wales, thank them for their courage, their enthusiasm and their commitment in protecting the people of this fine State.

GREENHOUSE GAS EMISSIONS

The Hon. CATE FAEHRMANN: My question is directed to the Minister for Roads and Ports. What percentage of the State's greenhouse gas emissions is attributed to transport?

The Hon. DUNCAN GAY: I am sure that is in the annual report.

ROAD RULES

The Hon. AMANDA FAZIO: My question is directed to the Minister for Police and Emergency Services. In light of the inability of the Minister for Roads and Ports to explain the proper procedures for exiting a roundabout yesterday during question time, will the Minister now ask the NSW Police Force to refrain from issuing fines until this matter has been clarified?

The Hon. Dr Peter Phelps: Point of order: As the first part of the question contained argument and is out of order and the second part of the question follows on from the first, I ask that the question be ruled out of order.

The Hon. Amanda Fazio: To the point of order: The question did not contain argument; it contained a statement of fact about an answer given by the Minister for Roads and Ports yesterday during question time.

The PRESIDENT: Order! Statements of fact should not be included in questions unless they are strictly necessary to render the question intelligible and can be authenticated. I am not able to authenticate whether the member's statement is correct.

The Hon. Duncan Gay: It is not correct.

The PRESIDENT: Order! Therefore I rule the question out of order. The member may ask the question later in question time without the statement of fact in it.

FIREFIGHTING AIRCRAFT

The Hon. JENNIFER GARDINER: My question without notice is addressed to the Minister for Police and Emergency Services. Given that firefighting aircraft such as the popular air-cranes have given key support to firefighters in past years, can the Minister update the House on the aerial resources being provided for the 2012-13 fire season?

The Hon. MICHAEL GALLACHER: I thank the honourable member for her question. The NSW Rural Fire Service is continuing to contract aerial firefighting resources in support of its ground-based firefighters. To assist firefighting operations for the 2012-13 bushfire season, the first of the Erickson Air-Cranes commenced its contract with the Rural Fire Service on 1 November. On 2 November I was pleased to welcome the arrival of air-crane "Malcolm" when I attended its official launch at Sydney Olympic Park. Not only is Malcolm the first air-crane for New South Wales this year, it is the first to arrive in Australia this season and will be on daily standby until January 2013. A second Ericson Air-Crane, "Camille", will commence its contract with the Rural Fire Service on 1 December 2012 and will be on standby until 22 February 2013. Contingent on bushfire activity, both air-cranes may be extended if needed.

These well-known air-cranes are a vital investment in protecting lives and property in New South Wales—an investment this Government has no hesitation in making. The cost of having the air-cranes based in New South Wales is jointly met by the State and Commonwealth governments. This arrangement allows us to share major resources across State borders. For instance, if New South Wales experiences a severe fire season and other States can spare their air-cranes, we will be able to use them in New South Wales. During this bushfire season the Rural Fire Service will have a total of 26 aircraft available, including both fixed-wing water bombers and helicopters of various sizes. The Rural Fire Service owns one light helicopter, which will be utilised both for fire fighting and assisting with hazard reduction activities. Depending on the severity of bushfires this season, the Rural Fire Service will also be supported by another 50 aircraft operators on the "call when needed" list, with approval given for more than 100 aircraft.

While the first of the two air-cranes supporting New South Wales firefighters will be located at Bankstown, they can be deployed across New South Wales wherever required. As Commissioner Fitzsimmons has said, these massive air-cranes and other aircraft are a huge asset in our firefighting arsenal. The air-cranes are brought to Australia each year because of their huge water-carrying capacity. They can drop a lot of water very accurately in a very short space of time, helping firefighters to control flames and protect homes and other assets under threat. Recent fires have demonstrated how firefighters working with aircraft can successfully protect homes and, more importantly, people. On one day at the end of October, the Rural Fire Service was fighting 64 fires with nearly 500 firefighters and 53 aircraft deployed. While these assets are a major support to firefighters on the ground, it is our volunteers who are the real heroes in putting out fires. I am sure all members will join in expressing gratitude for the invaluable contribution and expertise of the Rural Fire Service volunteers and members, who work closely with the aircraft operators to help protect our State from bushfires and grass fires.

GRAFFITI HOTLINE

The Hon. PAUL GREEN: My question without notice is addressed to the Minister for Police and Emergency Services, representing the Attorney General. When was the New South Wales graffiti hotline established and how many calls has it received this year? What budget is allocated to this service and is the data showing the hotline to be effective?

The Hon. MICHAEL GALLACHER: I will seek an answer from the Attorney General and report back to the House as quickly as possible.

ROAD RULES

The Hon. AMANDA FAZIO: My question is directed to the Minister for Police and Emergency Services. The New South Wales Roads and Maritime Services website states that when exiting a roundabout

whether one is turning left, right or going straight ahead one must always indicate a left turn just before exiting unless it is not practical to do so, whereas yesterday the Hon. Duncan Gay stated, "As people approach a roundabout, if they are turning left they will indicate that they are turning left; if they are turning right they will indicate that they are turning right; if they are going straight ahead they will drive straight ahead very carefully." Given those statements, and given also the inability of the Minister for Roads and Ports during question time yesterday to explain the proper procedures for exiting a roundabout, will the Minister ask New South Wales police to refrain from issuing fines until this matter has been clarified?

The Hon. MICHAEL GALLACHER: I think the Hon. Duncan Gay answered that question very well yesterday. It is clear to me that the Hon. Amanda Fazio is having trouble understanding that very detailed answer.

The Hon. Steve Whan: Point of order: My point of order relates to relevance. The Minister was asked specifically what action he would take as police Minister—

The PRESIDENT: Order! There is no point of order. The Hon. Steve Whan will resume his seat.

The Hon. MICHAEL GALLACHER: I again make the point that the Hon. Duncan Gay answered the question quite sufficiently yesterday. It is fair to say that the Hon. Amanda Fazio is having trouble understanding the rules. I am very happy to pass on her details to the highway patrol and ensure that she gets the answer she seeks.

The Hon. Amanda Fazio: Point of order: My point of order is in two parts. Firstly, it is not appropriate for the Minister when asked a serious question about road safety matters to start impugning the reputation of the member who asked the question.

The PRESIDENT: Order! The Hon. Amanda Fazio knows that that is a debating point. What is the second point?

The Hon. Amanda Fazio: I take offence at his impugning my driving ability. My second point relates to relevance. The Minister was asked a series of questions about a lack of understanding in the community as demonstrated by the Minister for Roads and Ports and he has failed to address that.

The PRESIDENT: Order! The member has taken an omnibus point of order. With regard to the additional points raised by the member, there is no point of order. None of the words used by the Minister were offensive, and the member was making a debating point.

COLEAMBALLY RICE MILL

The Hon. DAVID CLARKE: My question is directed to the Minister for Roads and Ports. Can the Minister update the House on the reopening of the Coleambally rice mill and the related matter of stamp duty exemptions on the purchase of new truck trailers in New South Wales?

The Hon. DUNCAN GAY: I would have thought that such a question might have been asked by the only remaining Country Labor member in this Chamber. Members who saw me on television recently would have heard me speak of good news for regional New South Wales. I acknowledge the New South Wales Farmers Association representatives in the gallery today. Two weeks ago I was honoured to reopen the Coleambally rice mill following an invitation by the chairman of SunRice, Gerry Lawson. An amount of $2.3 million will be invested by SunRice to reactivate the mill, leading to the creation of nearly 30 new jobs in Coleambally. This is very important news after what The Greens and the former Government did to southern New South Wales. Preserving such an investment will require certainty about future water allocations—a matter that State and Federal Labor has failed to grasp.

The PRESIDENT: Order! If the Hon. Jeremy Buckingham and the Hon. Dr Peter Phelps want to have a conversation, they should do so outside the Chamber.

The Hon. DUNCAN GAY: Despite the denial, every time a backroom deal about water is done between Labor and The Greens the confidence and fabric of regional communities are further undermined. Without sensible allocations they cannot sustain a productive irrigation area. Likewise, without efficient freight networks they cannot get their produce from paddock to port at the least cost.

The PRESIDENT: Order! I call the Hon. Jeremy Buckingham to order for the first time.

The Hon. DUNCAN GAY: That is why the New South Wales Government has delivered record funding in the last two State budgets for transport infrastructure and services, including more than $10 billion for roads, $277 million over the next five years to maintain and upgrade grain rail lines, and an additional $135 million for the Bridges for the Bush program. To help service the road freight needs of the Coleambally rice mill, I was delighted to approve a proposal from Deniliquin freighters to operate a custom-built road train comprising a tri-axle drive prime mover—for those opposite that means three axles under the guard—the first of its type in New South Wales.

In fact, I have a picture of one such vehicle. The Hon. Walt Secord can have it to hang on his wall; I am told it will be more appropriate than some of the material that adorns his walls at the moment. The innovative truck design by owner Russell Tait allows the transport of containerised rice on approved routes from the mills at Coleambally and Deniliquin to the rail head at Tocumwal. The rice is then exported to the Pacific region and Papua New Guinea. The road train will be permitted to carry up to 86 tonnes at general mass limits and 88 tonnes at concessional mass limits. The increased masses allow many freighters to achieve up to a 20 per cent increase in payload for each road trip.

As stated by Gerry Lawson, SunRice would like to acknowledge the important role that the State Government has played in improving the efficient movement of rice for export by instigating new road limit approvals. This will allow the maximised use of the Coleambally to Tocumwal rail terminal road leg. Recently, the Minister for Finances introduced a new law abolishing the requirement for New South Wales-based transport operators to pay stamp duty on the purchase of new truck trailers. [*Time expired.*]

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

The Hon. DUNCAN GAY: I thank the honourable member for his further question. What I am about to advise is important. The good Minister for Finance and Services is an absolute legend in regional New South Wales; I hear a special style of RM Williams boot with rubber soles is being created just for him. Recently, he introduced a new law abolishing the requirement of New South Wales-based transport operators to pay stamp duty on the purchase of new truck trailers. New South Wales will no longer be losing vital registration revenue and renewals to neighbouring States such as Queensland and Victoria.

I invite members opposite to look at the photograph I referred to earlier. I was pleased that Russell Tait had taken up this excellent reform. The rig is fitted with yellow and black New South Wales plates. There will be operators all over this State who will want to come back and do business in New South Wales. Under Labor, the money went to the other States while the trucks continued to travel our roads. We got nothing out of it. We put a business plan to our excellent Treasurer, who understands what a proper business plan is all about. He is not a Treasurer who loses registration. Truck operators are now coming back to register their trailers in New South Wales and that is because we have abolished the tax. How good is that? That is good common sense—something that those opposite just could not achieve.

LOWER HUNTER WATER PLAN

The Hon. MARIE FICARRA: My question is directed to the Minister for Finance and Services. Will the Minister inform the House on the current status of the development of the Lower Hunter Water Plan?

The Hon. GREG PEARCE: The Lower Hunter Water Plan is the O'Farrell Government's key strategic plan to ensure that the people of the Hunter region have reliable water supplies to meet demand in the region due to population growth and activity by business and industry. The Lower Hunter Water Plan will so identify ways that we can provide water security for the region during drought. That is why, in August 2011, this Government determined to create a comprehensive, robust, cost-effective, whole-of-government plan to ensure that water security.

The development of the plan is being led by the Metropolitan Water Directorate within the Department of Finance and Services with a project team based in the Hunter and staffed by people who live in the region. It is also being developed in close association with key agencies and also Hunter Water. The process reflects the national urban water planning principles adopted by all Australian governments under the Council of Australian Governments. Work to date has included establishing an independent water advisory panel, reviewing water

source and demand forecasting models, and identifying a broad list of potential options drawn from categories such as stormwater and waste water recycling, water efficiency measures, surplus water sources, groundwater sources, desalination and inter-regional water transfers.

We have now started work on the second phase of the development of the plan. The most important aspect of phase two is the extensive community consultation program through which the people of the Lower Hunter can have their voices heard on key issues concerning their water supply issues. To this end, on Monday I launched a new website on which the local community can be involved in the development of the Lower Hunter Water Plan. The new Have Your Say website will incorporate a number of online forums, information sheets, a calendar of events and news items. Participants can comment on the plan and keep up to date on developments. I am sure that website will display some lovely photographs. The website is available to the public at *www.haveyoursay.nsw.gov.au/lowerhunterwaterplan*. Later this year and throughout 2013 the Lower Hunter Water Plan will conduct a series of community and stakeholder engagement workshops on aspects of the plan. The workshops will be held at a number of locations in the Lower Hunter region and will be attended by community representatives, technical experts and other key stakeholders.

The first series of workshops starting in early December will focus on community priorities and values relating to the water plan. These workshops will also provide the community with an outline of how the plan will be developed with their input. When we established the Lower Hunter Water Plan process last year, I gave a specific commitment that the community would be at the centre of the process. I am pleased to be able to deliver on that commitment. Hunter residents can have confidence the plan will not only provide long-term water security for the region but will also reflect their views and values. At this stage of the plans of development, a wide range of water management options are still under consideration. As I have said repeatedly over the past few months, nothing is off the table except for the Tillegra Dam. Once we have completed the technical assessments and community engagement process, the Lower Hunter Water Plan team will develop a discussion paper for comment and then will move to finalise the draft plan.

POLICE TASER USE

Mr DAVID SHOEBRIDGE: My question without notice is directed to the Minister for Police and Emergency Services. Given today's damning findings by the New South Wales Coroner concerning police taser use in the lead-up to the death of Roberto Curti, what will the Minister do to ensure that not only will the junior police who were present on the night be held to account for these abuses but so too will those senior officers who sent them out with inadequate training and a lethal weapon?

The Hon. MICHAEL GALLACHER: Firstly I express sympathy to the family of the deceased, not just on behalf of the Government but on behalf of all fair-minded people who were saddened by the footage of the incident relating to the death of Roberto Curti on 18 March earlier this year. I congratulate the Coroner on the expeditious way in which she conducted this investigation. It was important for the family of the deceased, for the community and, equally, for the police that this matter was examined. I put on the record my congratulations to the NSW Police Force critical incident team that conducted this investigation, which formed the basis of the Coroner's investigation into this matter. In fact, the Coroner has herself congratulated the NSW Police Force critical investigation team for the professional way in which it conducted the inquiry. The Coroner has made a number of recommendations with regard to the use of tasers and specific aspects of this incident. Of course, the recommendation relating to standard operational procedures will, together with the extensive work recently completed by the Ombudsman, form the basis of the New South Wales Police Force's response to both questions.

In relation to the disciplinary or criminal investigative aspects to which I assume the honourable member is referring, which are the basis of the Coroner's recommendations Nos 1 and 2, I understand that the Commissioner of Police has spoken to the Commissioner of the Police Integrity Commission in that regard as recently as today. The Police Integrity Commission will not automatically respond to the commissioner by telling him whether it is conducting an investigation. However, the Coroner has made her views very clear about the quality of the evidence and the discrepancies in the evidence and has detailed her concerns about the answers given during the coronial inquiry by members of the New South Wales Police Force. Of course, these matters will now be the subject of at least a departmental investigation as well as an investigation by the Police Integrity Commission should it decide to conduct an inquiry on the evidence that will no doubt be presented to it by the Coroner. I do not intend to provide a running commentary on this matter because it should now be investigated by the relevant authorities, and I understand that that process has begun.

The Commissioner of Police has today accepted other recommendations about training police officers to deal with mental health-related incidents. The commissioner has also accepted recommendations about the police radio network, which is known as VKG. All the recommendations, apart from those relating to the role of the Police Integrity Commission, have been accepted by the NSW Police Force today. The Parliament and the community can expect a response from the NSW Police Force in due course. It will also respond to the Ombudsman's lengthy recommendation about tasers.

Mr DAVID SHOEBRIDGE: I have a supplementary question. Will the Minister elucidate his answer by explaining what action apart from disciplinary measures will be taken in response to the recommendations made by the Coroner? What will the Minister do to ensure that the people further up the chain of command who sent junior officers out with inadequate training and a lethal weapon are held to account and that we do not catch only the junior officers?

The Hon. MICHAEL GALLACHER: I refer the honourable member to the independent assessment recently conducted by the Ombudsman into standard operational procedures. I draw his attention in particular to the Ombudsman's finding that compliance with standard operational procedures is well over 80 per cent. He should acknowledge that the New South Wales Police Force is probably the only police force in the nation and one of very few in the Western World that at the insistence of the commissioner—it was not imposed by an external authority—has implemented video and audio applications that are activated at the moment a taser is triggered. That video and audio information, along with the critical investigation done by the New South Wales Police Force, is the basis upon which the Ombudsman has been able to conduct his inquiry.

I doubt that that level of accountability will be available in any other police jurisdictions until they adopt what the Ombudsman has referred to as world-class operational procedures. If individual officers do not comply with the existing standard operational procedures, then they will be subject to the scrutiny of their own video and audio recordings. Of course, the Ombudsman and the Police Integrity Commission also provide oversight. Just once I would love to hear The Greens congratulate the New South Wales Police Force on implementing a standard of accountability and transparency that no other police force in this country or elsewhere in the world has implemented.

PUBLIC TRANSPORT TICKETING SYSTEM

The Hon. PENNY SHARPE: I direct my question to the Minister for Roads and Ports, representing the Minister for Transport. In light of reports yesterday that the algorithm used for the Sydney public transport ticketing system was cracked by a group of university students, will he guarantee that the Opal Card will not be compromised?

The Hon. DUNCAN GAY: I worry that one day a member opposite will ask me a question that I do not want to answer. There they were tweeting away and working out the algorithm and they bowled the ball right onto the middle stump for me to drive away. For 16 years members opposite could not deliver a coordinated public transport ticketing system in this State. Now they want to criticise a Minister who is doing things. The best Minister for Transport—

The Hon. Penny Sharpe: Point of order: The question was directed to the Minister in his capacity as the Minister representing the Minister for Transport. My point of order relates to relevance. The question did not ask for the history of integrated ticketing in this State; it asked about the security—

The PRESIDENT: Order! There is no point of order.

The Hon. DUNCAN GAY: Members know that I am a fan of the Minister for Transport. She is an outstanding Minister. I read the transcript of a recent budget estimates hearing and I noted the shadow Minister's attempt to trick the good Minister for Transport. She got nowhere; the Minister for Transport destroyed her. She is now sneaking back—

The Hon. Steve Whan: Point of order: My point of order relates to relevance. The question was specifically about a security threat to the transport system; it was not about budget estimates hearings. Mr President, I ask you to bring the Minister back to the leave of the question.

The PRESIDENT: Order! The Minister is starting to stray from the substance of the question. The Minister should address the question.

The Hon. DUNCAN GAY: I apologise; I was led astray by the outstanding work of the Minister for Transport. I will take on notice whatever parts of the question I have not answered and provide a detailed response.

ALCOHOL-RELATED CRIME AND ANTISOCIAL BEHAVIOUR

The Hon. NATASHA MACLAREN-JONES: I direct my question to the Minister for Police and Emergency Services. Will the Minister update the House on what the Government and the NSW Police Force are doing to curb alcohol-related crime and antisocial behaviour in Kings Cross and other entertainment areas in inner Sydney?

The Hon. Lynda Voltz: Point of order: The question is pre-emptive; it seeks to anticipate discussion on an item of business that is currently before the House.

The PRESIDENT: Order! I uphold the point of order.

COOGEE BEACH POLLUTION INCIDENT

The Hon. WALT SECORD: I direct my question to the Minister for Finance and Services. Given that the Minister is responsible for Sydney Water, will he tell the House what steps the Government has taken to investigate a 16 October incident involving white paint being dumped into a stormwater drain at Coogee and being flushed on to the north end of Coogee Beach?

The Hon. GREG PEARCE: Of course, as with any assertion made by the Hon. Walt Secord one must check the facts.

The Hon. Walt Secord: Point of order: I seek leave to table a photograph taken by residents—

The PRESIDENT: Order! The honourable member has sought leave to table a photograph. Is leave granted?

Leave not granted.

The PRESIDENT: Does the Minister have anything further to add?

The Hon. GREG PEARCE: No.

PUBLIC SCHOOL ENROLMENTS

Reverend the Hon. FRED NILE: My question is directed to the Minister for Roads and Ports, representing the Minister for Education. Is the Government aware that overcrowding in public schools is now at crisis point? David Hope, convenor for the Northern Sydney Regional Council of Parents and Citizens Associations, who represents 150 school parents and citizens associations said that there has been a 23 per cent increase in student numbers in the past six years in the 26 worst-affected North Shore schools. Is the Government aware that some inner primary schools almost doubled their enrolments between 2006 and 2011, with 19 public primary schools at full enrolment right now? Can the Government meet the demand of education for the new school year in 2013? What strategies are being implemented to meet such a need in future years?

The Hon. DUNCAN GAY: I will take the detail of the honourable member's question to the Minister for Education. In general terms, if we go back five years from today we can calculate the number of births; that was well and truly in the former Government's tenure. The former Government knew the number of births and did absolutely nothing about it. This Government has inherited a mess in education and other areas because the former Government did nothing. I will refer this important question to the Minister for Education and get a detailed answer.

The Hon. MICHAEL GALLACHER: I suggest that if members have further questions they place them on notice.

PUBLIC HOUSING

The Hon. GREG PEARCE: On 18 October 2012 the Hon. Jan Barham asked me a question about the relocation of single public housing tenants occupying family sized homes. The Minister for Community Services has provided the following response:

> Since 2011, Housing NSW has been working with a number of single people occupying four- and five-bedroom properties and encouraging them to relocate to smaller accommodation when a suitable home becomes available.
>
> No tenants have been forced to relocate as part of this process.
>
> Given the shortage of larger homes and the commensurately long waiting times for social housing, particularly for larger homes suitable for families with children, the New South Wales Government is investigating longer term policy options to address under-occupancy to improve services and lives for vulnerable families.

Questions without notice concluded.

TABLING OF PAPERS

The Hon. Greg Pearce tabled the following papers:

1. Annual Reports (Statutory Bodies) Act 1984—Reports for year ended 30 June 2012:

   New South Wales Institute of Sport
   Sporting Injuries Committee
   State Transit Authority of New South Wales
   Sydney Ferries
   Sydney Olympic Park Authority
   Venues NSW
   Workers' Compensation (Dust Diseases) Board

2. Annual Reports (Statutory Bodies) Act 1984 and State Owned Corporations Act 1989—Report of State Water Corporation for year ended 30 June 2012

3. Food Act 2003—Report of NSW Food Authority entitled "Review of Fast-food Labelling Requirements ("Fast Choices")", dated November 2012

4. Mental Health Act 1990—Report of Mental Health Review Tribunal for year ended 30 June 2012

Ordered to be printed on motion by the Hon. Greg Pearce.

COOGEE BEACH POLLUTION INCIDENT

Personal Explanation

The Hon. WALT SECORD, by leave: I wish to make a personal explanation. Earlier in question time I sought leave to table a copy of a photograph taken by Coogee residents on 16 October. It served as a basis of a question without notice.

Leave withdrawn.

The PRESIDENT: Order! I remind members that personal explanations are an opportunity for them to indicate how they have been misrepresented and to correct the record.

FORESTRY BILL 2012

Third Reading

Motion by the Hon. Duncan Gay 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.

BIOFUELS FURTHER AMENDMENT BILL 2012

Second Reading

Debate resumed from an earlier hour.

The Hon. STEVE WHAN [3.34 p.m.]: The Opposition supports the Biofuels Further Amendment Bill 2012. I have circulated an amendment to which I will refer later. As members of Parliament and many members in the community know, the former Labor Government introduced the Biofuels Act in an attempt to ensure that motorists in New South Wales had E10 available as the main non-premium product. It would produce benefits for farmers around New South Wales. When the former Government introduced the legislation that was designed to mandate levels of E10 ethanol and biofuels in the fuel supply for New South Wales, it received bipartisan support from the former Opposition. It was designed to ensure that farmers in New South Wales had another product for their wheat, that ethanol would be produced in New South Wales to reduce our reliance on imported oils and that we would gain environmental benefits from the use of ethanol. Ethanol plays a strong role in the reduction of particulate pollutants in Sydney. A number of positive benefits were to be gained from the Biofuels Act introduced by the former Government.

Along the way there have been some changes, with some deferral of targets because it was important to ensure that we geared for the capacity to supply the ethanol in New South Wales and that we achieved it by domestic production, not imported production. On the basis of the previous Act, the New South Wales industry geared up and invested a significant amount of money—some hundreds of millions of dollars—into expanding its production of ethanol as a by-product to the production of starch and wheat proteins that are exported to countries around the world, including the United States of America. Unfortunately, when it came to office the Government backflipped on its pre-election promises.

Earlier in this session of Parliament the Biofuels Amendment Bill permanently removed the phase-out of normal unleaded fuel, which has made it almost impossible for the mandated 6 per cent to be achieved. At the time members of the Opposition, including me, said that the Government did not need to move legislation to delay the phase-out of fuel; it could easily do it by regulation. Under that legislation the Government permanently ruled out the phase-out of unleaded fuel and made it almost impossible to reach the 6 per cent margin. What did that do to the industry in New South Wales?

First, it meant that the Manildra Group's massive investment of several hundred million dollars was wasted. Most of the equipment it purchased is still sitting on the docks because it cannot be used as the demand increases are not there. Second, it threw into doubt 80 to 90 jobs at its plant in Bomaderry near Nowra because of this Government's change of policy, which was not flagged to industry and not discussed with industry. It was simply a knee-jerk reaction to publicity at the time. The Australian Labor Party at the time advocated delaying the phase-out of unleaded fuel until the vehicle fleet was in a better situation but not actually deleting, as this Government did, the achievement of the mandate. This Government's legislation was a major blow to industry and it did not just impact on the ethanol plant at Manildra—we get some ethanol from sugarcane from the north and from Queensland. It is an important part of the production of ethanol.

The Hon. Dr Peter Phelps: And from Brazil.

The Hon. STEVE WHAN: The Government Whip is interjecting "and from Brazil". Australia has the capacity to supply ethanol production. Indeed, some of the targets in the previous legislation were delayed to enable the capacity to build and keep up with that supply. Australia is now exporting ethanol at a loss because the Government changed the timetable. By changing the legislation it permanently ruled out, rather than delayed—which would have been more appropriate—the phase-out of unleaded fuel and making E10 the standard fuel. This happens in other countries—for example in California E10 fuel is the standard non-premium fuel—and it is used in motor vehicles and marine motors.

[*Interruption*]

The constant interjections by the Government Whip demonstrate why the Government has backflipped on commitments made before the election, and some members of The Nationals would be disappointed about that. Some members of The Nationals were strong supporters of the ethanol mandate—they have indicated so in speeches made in this place—but some members of the Liberal Party are determined to undermine the farmers and producers of New South Wales in their ability to use ethanol. As I said earlier, the flow-on effects meant

that many of Manildra's other operations in New South Wales were put in jeopardy, including plants in other parts of New South Wales and a very important wheat protein export industry to businesses in the United States. This is a shame not only for the company but, more importantly, also for the farmers and those who work in this industry in New South Wales. The Biofuels Further Amendment Bill 2012 is an attempt to help the industry and, importantly, to give stronger enforcement powers to government authorities to ensure that the industry meets the requirements set out in the legislation. The object of the bill is to make amendments to the Biofuels Act 2007 as follows:

(a) to make clear how exemptions from the minimum biofuel requirements under the Act are to be applied for, granted varied and revoked,

(b) to increase the maximum penalties for certain offences under the Act and Regulation,

(c) to clarify the powers of investigators in administering and enforcing the Act and Regulation,

(d) to modify the constitution and procedure of the Expert Panel under the Act,

(e) to provide that proceedings for an offence against the Act or the Regulation must be commenced within 2 years of the date of the alleged offence, and

(f) to make other amendments of a minor, savings or transitional nature.

The Opposition supports these legislative proposals to the extent that they make it more practical for government to enforce those requirements left in the Biofuels Act 2007, but more needs to be done. I am concerned that under the current E10 requirements many companies are putting only 9 per cent ethanol, not 10 per cent, into their fuel. I previously circulated an amendment proposing to raise the minimum from 9 per cent to 9.5 per cent. I have received a letter from Woolworths stating that it is not possible to do that because its margin of error is 0.86 per cent. Essentially Woolworths cannot be sure that the fuel is mixed at 10 per cent or thereabouts. I would like to receive more information on that because I do not necessarily accept that. In fact, I would be a bit worried if the people who mix the fuel for Woolworths were mixing the drugs at a local chemist—

Dr John Kaye: That is a really silly statement.

The Hon. STEVE WHAN: I acknowledge the interjection from The Greens. Dr John Kaye has been a long opponent of any sort of biofuels mandate in New South Wales.

Dr John Kaye: That is not true.

The Hon. STEVE WHAN: He consistently speaks against it. He often cloaks his opposition by saying we should not be doing things for companies that make political donation—that demonstrates the hypocrisy of The Greens in this place. The Greens believe that because someone has made a political donation nothing should be done that is in any way favourable for that company, even if it is favourable for the rest of society, including farmers and the environment. It also reduces our dependence on fossil fuels and imported fuel. They are all important objectives for this State. I do not accept that a margin of error of 0.86 per cent should be accepted as reasonable.

If E10 is advertised people should be given E10. I recently saw an interesting news report on a commercial television channel about the frequency of E10 with a 9 per cent rating. In fuel with 10 per cent ethanol the octane rating is closer to that of premium fuel. As I said earlier, I circulated an amendment to make the minimum ethanol rating 9.5 per cent. Unfortunately, I have received an indication via the company involved that it has been advised by the Government that were such an amendment successfully passed in this place the legislation would not be dealt with until February. That is not acceptable. I will not be proceeding with my circulated amendment—

Dr John Kaye: It would not have got through anyway.

The Hon. STEVE WHAN: I note the interjection of Dr John Kaye. Presumably my amendment would not have passed because The Greens would not have supported it.

Dr John Kaye: Absolutely not.

The Hon. STEVE WHAN: On the one hand, The Greens tell us that they believe in alternative energy and want to reduce reliance on fossil fuels, yet, on the other hand, they campaign against ethanol. What

hypocrisy by The Greens party that they want to entrench the domination of the major fuel importers in the New South Wales fuel industry. The Greens are unwilling to support a renewable source of biofuel for New South Wales or the mandate of particular levels of biofuels in this State, yet they claim to represent the environment. Labor supports the bill to the extent that it goes to this issue.

However, I turn now to comments made by some Government members during debate on this bill. The bill was given to us with no notice, but we knew something was coming because the industry was talking about it. The bill was introduced in the other place and passed within an hour. Not surprisingly, the shadow Minister representing me in the other place did not make a lengthy speech; he had only just received a copy of the bill. Unfortunately, the member for Kiama, Mr Gareth Ward, in his own very short contribution to the debate, sought to suggest that Labor did not support the legislation. He said:

> I will have to relay to my constituents that New South Wales Labor, including the one Country Labor member opposite, clearly does not support biofuels and wants this legislation to fall over.

The people of Bomaderry do not want to see that sort of behaviour from their local member. He happily voted with the Government to rip the guts out of biofuels—

The Hon. Matthew Mason-Cox: Point of order: The Hon. Steve Whan is casting aspersions on a member of the other place. The member should not do that.

The Hon. STEVE WHAN: To the point of order: The member in the other place talked about who was supporting the bill, and I am dealing with that as part of my contribution to the debate. If I cannot respond to accusations about the Labor Party in relation to this bill, it is yet another example of the Government trying to stifle criticism and debate.

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! Members would be well aware that it is out of order for them to make imputations about any member of the other place. The member in the other place was speaking about the Labor Party; the Hon. Steve Whan is speaking about the member in the other place. I ask the Hon. Steve Whan to confine his remarks to the leave of the bill and to refrain from making further comments that may impugn a member of the other place.

The Hon. STEVE WHAN: I am not making a personal imputation against a member in the other place.

The Hon. Matthew Mason-Cox: You are.

The Hon. STEVE WHAN: What I am doing is dealing with the debate on this legislation.

The Hon. Duncan Gay: Point of order: The member has gone beyond the leave of the bill and is now canvassing your ruling, which was clear. Under the standing orders, it is inappropriate to canvas a ruling made by the Presiding Officer.

The Hon. STEVE WHAN: To the point of order: In no way was I canvassing your ruling. I completely reject that. Indeed, I noted your ruling and was about to talk about the debate on this legislation in the other place. Frankly, the Government's attempt to cover up and stifle discussion is becoming outrageous.

The Hon. Lynda Voltz: To the point of order—

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! I have heard enough on the point of order. I ask the Hon. Steve Whan to refrain from commenting on my ruling and to continue with his speech.

The Hon. STEVE WHAN: As I said, the Labor Party supports this bill. Indeed, Labor members in the other place indicated their support for the bill. As the bill was dealt with within a short time frame, the Labor spokesman in the other place did not make a full contribution to the debate. However, he certainly did not say that Labor opposed the bill. For a Government member to suggest that Labor opposed this bill was a misrepresentation of the position. History shows that the local member voted for the Biofuels Amendment Bill 2012, which deleted the provision that enabled the Government to phase out regular unleaded petrol and ensure that E10 became the standard fuel in New South Wales, which would have achieved the 6 per cent mandated percentage of biofuels in New South Wales.

At that time I explained to the House that the legislation was unnecessary as the Government and the Minister had the power, by regulation, to defer and set a different timetable for phasing out regular unleaded petrol. The Government should have done that as it would have continued the commitment and the industry would have developed. At present the industry employs about 90 people directly and hundreds of people indirectly around New South Wales to produce a product that enhances revenue for farmers from their grains and provides benefits to the rural sector.

As I said, the use of biofuels reduces our dependence on foreign oil imports and particulate emissions from vehicles in New South Wales, along with a number of other benefits. It is disgraceful that a Government member in the other place made a false accusation about Labor's support for the bill when one considers that it was the former Labor Government that introduced the Biofuels Bill 2007 to establish this. For a member of Parliament to make false statements in the other place, when that member, who represents Bomaderry—

The Hon. Catherine Cusack: Point of order: On two occasions you directed the member, in the clearest terms possible, to cease making imputations against another member of Parliament. The Hon. Steve Whan is entitled to debate the arguments for and against this bill, but to continue to make aspersions and imputations is outrageous and is canvassing your ruling. I ask you to call him to order.

The Hon. Lynda Voltz: To the point of order: I refer you to Standing Order 91 (3), Rules of Debate, which states, "… all imputations of improper motives". Time and time again, whenever a Government member is criticised, members opposite say that a member has been impugned. The standing orders clearly relate to imputations of improper motives. That is not what the Hon. Steve Whan is doing in his contribution to the debate. However, that is what members opposite are implying.

The Hon. Catherine Cusack: To the point of order: The imputation that the Hon. Steve Whan is making is clear. He has repeatedly described the member for Kiama as "disgraceful" and he has repeatedly claimed that the member is deliberately misleading his community. If that is not an imputation of impropriety, I do not know what your definition is.

The Hon. Lynda Voltz: Further to the point of order: Again, the standing order is clear.

The Hon. Catherine Cusack: It may raise the standard.

The Hon. Lynda Voltz: I love the way that this is the place for you to get up—

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! The Hon. Lynda Voltz will direct her comments through the Chair.

The Hon. Lynda Voltz: The standing order clearly states "an imputation of improper motives". The Hon. Steve Whan has not made any imputation of an improper motive. If members opposite do not understand what that is, I suggest they get a dictionary.

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! I have already made a ruling on this issue. I advise the Hon. Steve Whan to confine his remarks to the leave of the bill. The member is reflecting on a member of the other House. During the debate in the other place that member referred to the political party in his argument. If the Hon. Steve Whan wishes to refer to that debate, I suggest that he also refer to a political party rather than to an individual.

The Hon. STEVE WHAN: The point is clear: New South Wales has a series of initiatives designed to produce great benefits for many people, particularly those in our rural sector, which were initiated by the former Labor Government. No doubt we are proud of those initiatives. They were introduced with the support of the Opposition and The Nationals, in particular. The Coalition went to the election with a commitment to retain the provisions of the 2007 bill, but it has reneged on that commitment. The Biofuels Amendment Bill 2012 took away that commitment. Now, with the Biofuels Further Amendment Bill 2012, the Government is trying in a small way to rectify the damage it did to investor confidence in that industry. We cannot deny that investor confidence was damaged. We know that there are millions of dollars of machinery sitting on a dock because it is not now viable to install it.

The Hon. Dr Peter Phelps: Why not?

The Hon. STEVE WHAN: Because the industry does not have the mandate in place so it will not be producing as much ethanol.

The Hon. Dr Peter Phelps: When did it ever need the mandate? Under your Government, every month for 60 months your Minister signed off on the failure to meet it.

The Hon. STEVE WHAN: The Government Whip does the Government no service in arguing against the biofuel industry in New South Wales. In supporting this legislation, I make it clear that Labor is proud of its role in introducing the mandates in the Biofuels Bill 2007. We remain proud of that and we remain strong supporters of the biofuels industry. I find it offensive that a Liberal member in the other place, in trying to score political points, told lies about Labor's lack of support for this industry. The truth is that Labor has been responsible for this, and for the member for Kiama to say otherwise simply is not correct. For the Government yesterday in debate on another bill and today on this bill to attempt to rule out of order any comment that is critical of it shows how sensitive the Government is on these things. It would be interesting if the Government applied that principle when Government members sought to attack the previous Government.

The hypocrisy of the interjections from the Government side is quite amazing. I circulated an amendment which sought to raise the minimum content of ethanol. It would at least have assisted in securing the employment of staff at Manildra's plant in Bomaderry. It is incredibly disappointing that so-called advocates for the industry were not able to be in the party room to convince the Government—or apparently even raise the matter with the Government—that it should support a measure along those lines. Government members here and in the other place beat their chests about the publicity, but their efforts are very poor when it comes to following through and doing something to support the industry. I now have a message that if I were successful in having my amendment carried the Government would then sit on the bill until February. Unfortunately, the industry simply cannot afford that. It needs a measure in place to allow enforceability. It is therefore with regret that I will not be proceeding with my amendment.

Dr JOHN KAYE [4.01 p.m.]: On behalf of The Greens I speak on the Biofuels Further Amendment Bill 2012. The Greens do not oppose this legislation. However, as I have done on three occasions in speaking to legislation in this Chamber, I raise serious concerns about the way the policy on biofuels is being implemented in New South Wales. The Hon. Steve Whan said that The Greens are anti-ethanol. I suspect that the problem is that the Labor Opposition, probably along with the Coalition and certainly together with the Christian Democratic Party, has not been capable of understanding what is a nuisance position on ethanol.

The Hon. Catherine Cusack: He is smearing everybody. Just ignore him.

Dr JOHN KAYE: I am?

The Hon. Catherine Cusack: No. Steve Whan is smearing everybody. Just ignore him.

Dr JOHN KAYE: The reality of ethanol policy is that it is not only donations-driven; it is also bad policy driven by donations. It is not that there is anything inherently wrong with ethanol. It is just that if there is going to be a transformation to sustainable liquid fuels for transport—and indeed there should be—that transition should occur carefully and cost effectively and in a way that guarantees maximisation of the economic advantages not just for motorists but for the State of New South Wales. It should not create a monopoly provider of ethanol. It should guarantee a degree of competition in the marketplace for the provision of ethanol, and it should guarantee that the fuels that we produce represent a cost-effective reduction in greenhouse gas emissions, a cost-effective improvement in air quality and a cost-effective contribution to reducing this State's reliance on imported liquid transport fuels.

It is demonstrably true that the way ethanol policy is being implemented in New South Wales, with the motivations for its implementation in New South Wales and with the structure of the market that is being created in New South Wales, does not fulfil those simple public policy objectives. Members can say that is an anti-ethanol position if they like. No doubt the Hon. Paul Green—who is insistent on speaking after me so that he can respond to what I say, and good luck to him—

The Hon. Matthew Mason-Cox: He will carve you up, John.

Dr JOHN KAYE: I acknowledge the interjection of the Hon. Matthew Mason-Cox. Let history be the judge of that. But whatever is said in this Chamber, the harsh economic reality cannot be changed by smooth words, personal innuendo or any false accusations that might be made in this Chamber. The harsh economic reality is that billions of dollars are going into a monopoly ethanol industry in New South Wales.

The Hon. Steve Whan: It is not a monopoly. You are wrong. Where does United come into this?

Dr JOHN KAYE: The member had his chance.

The Hon. Steve Whan: You are wrong.

Dr JOHN KAYE: Mr Assistant-President, the previous speaker—who is, it would be fair to say, an enthusiast for Manildra—

The Hon. Steve Whan: For ethanol actually.

Dr JOHN KAYE: I say for Manildra. The member said that my position was that because donations had been given therefore we should not favour a donor. That is not my position at all. My position is as follows—and it is a nuanced difference, so the member who spoke before me should listen carefully—we should not do favours for an industry because it has given donations. The order is important here. A substantial reality of the ethanol industry in New South Wales is the huge donations from Manildra. Over the past 10 years Manildra has donated $644,000 to the Liberal Party, $420,000 to The Nationals and a whopping $979,000 to the Labor Party. In return, New South Wales legislation has been written that creates a near monopoly outcome for Manildra.

The Hon. Steve Whan: Manildra is not a monopoly.

Dr JOHN KAYE: In New South Wales there is one substantial manufacturer of ethanol, and that is Manildra.

The Hon. Steve Whan: That is not the only place it is coming from.

Dr JOHN KAYE: In New South Wales there is only one substantial producer of bioethanol, and that is Manildra. That provider has been granted access to a massive market. To require 60 per cent of the volume of liquid fuels to be ethanol, through E10, effectively gives that one provider a near monopoly grip on the liquid fuels that go into every vehicle that will not use premium unleaded petrol.

The Hon. Steve Whan: So you would rather it came from foreign fossil fuel companies? Is that what you want?

Dr JOHN KAYE: Mr Assistant-President—

The Hon. Steve Whan: You're just letting your—

Dr JOHN KAYE: Mr Assistant-President, it is difficult to address the House when someone is constantly talking at you.

The Hon. Steve Whan: As you did when I was speaking.

Dr JOHN KAYE: I did not. Mr Assistant-President—

The Hon. Steve Whan: You did. You are a hypocrite, John.

Dr JOHN KAYE: That I take objection to.

The Hon. Matthew Mason-Cox: It's a statement of fact.

The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile): Order! Dr John Kaye has the call, and I ask members to allow the member to continue his speech without interruption.

Dr JOHN KAYE: Thank you, Mr Assistant-President. The considerable problem is that there is evidence before this House that this is a policy that is in deep trouble. The 2007 legislation had to be amended in 2009 and again in 2010, and amended twice in this year, 2012. It seems that, on average, once a year there has to be a substantial rewrite of the legislation because it has just been poorly thought out. It was written under former Minister Tony Kelly, who clearly was a great enthusiast and who was clearly mindful of the massive amounts of money flowing into his party from Manildra.

The Hon. Steve Whan: Point of order: The member has on a couple of occasions attempted to attribute motivation for this legislation to donations that have been made. As a member of the Labor Party I find that offensive. I suspect that The Nationals too would find it offensive to hear it claimed that their motivation is donations. I ask that the member be ordered to withdraw those comments.

The Hon. Duncan Gay: To the point of order: I also find it offensive to members of The Nationals. I find it offensive to Tony Kelly, who had a true, genuine passion—

Dr JOHN KAYE: After all the things you say about Lee Rhiannon. You are absolutely out of court, mate.

The Hon. Duncan Gay: Tony Kelly had an absolute belief in regional New South Wales.

Dr JOHN KAYE: You are taking up my time, so sit down.

The Hon. Duncan Gay: If you will not let me finish my point of order it will take a lot longer. There are a lot of things that one can say about members but in this instance the people who worked on this legislation genuinely believed in regional New South Wales. To try to link it with any other matter or make any other implication is just appalling.

Dr JOHN KAYE: To the point of order: There is no point of order. I did not imply anything against anybody. I did not cast aspersions—

The Hon. Steve Whan: You did so.

Dr JOHN KAYE: Oh shut up. I did not cast aspersions against any member.

The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile): Order! Members will restrain their language.

Dr JOHN KAYE: I did not cast an aspersion against any current member of this Chamber. The standing orders say that there must be no imputation of improper motives against a member. I did not make such imputations. I spoke about a former member and that is perfectly within standing orders.

The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile): Order! There is no point of order.

Dr JOHN KAYE: The problem is that this policy was introduced in a hurry in order to appease Manildra and it has been a failure ever since. The 6 per cent mandate is completely unachievable, so much so that the Government had to back off from the ban on regular unleaded petrol. It recognised that doing so would cause great injustice to a number of consumers. Of course, the 6 per cent mandate itself is unachievable and if it were enforced would result in an almost complete disappearance of regular unleaded petrol. This legislation is yet another attempt to clear up some of the problems that emerged with the original legislation. The reality is that the original legislation created problems that need to be tidied up, in particular, issues to do with the exemption.

To the credit of the current Minister, Chris Hartcher, he has recognised the current exemption regime is effectively retrospective. There is an element of a gamble for any company or provider of liquid fuels that recognises it is not capable of fulfilling its obligations under the legislation: They have to apply retrospectively for an exemption. I have some problems with that, as Mr Hartcher clearly does. He recognises that that is not going to work. This bill makes it prospective rather than retrospective and the provider has to get a future exemption where the business plan shows there is a problem. That is a rational step forward in a policy mess and policy catastrophe zone.

In fact, when we read between the lines of the bill it appears the Minister for Resources and Energy is more rational on some of these matters than some of his Nationals colleagues. It appears that he knows some of the problems that are emerging. He does not want to do this but he has been forced into it by his Nationals colleagues. It would be fun to be a fly on the wall in Cabinet to hear some of The Nationals members speaking with the same enthusiasm for Manildra and bioethanol as was displayed by the Opposition spokesperson slogging it out with some of the more economically rational within Cabinet who recognise the problems that have been pointed out by Treasury officials and people within the Department of Resources and Energy.

The Hon. Duncan Gay: It is a dream you will never realise.

Dr JOHN KAYE: I suspect for the Minister it is a nightmare that he has to live with on a weekly basis whenever the subject of ethanol comes up.

The Hon. Duncan Gay: Doing good things for the State of New South Wales is no nightmare.

Dr JOHN KAYE: Because the ethanol policy still exists it is clear that the Minister and his faction within Cabinet are winning. What is not true is that this is a good thing for the people of New South Wales. What would be a good thing for the people of New South Wales would be an independent inquiry that looked very carefully at ethanol. It might say that this is the only way it can be implemented; it might say that creating a monopoly of production is the wrong way to go and creating market dominance by one provider is not a good thing; and, regardless of whether Manildra is a major donor to the Coalition parties and to Labor, it is not a good thing to do.

What has never happened in the area of bioethanol policy is any attempt to get some independent science and independent thinking. When that happened outside New South Wales we saw that the Productivity Commission was extremely clear in its report, as was the Australian Competition and Consumer Commission [ACCC]. Both raised severe doubts about ethanol policy in New South Wales and indeed around Australia. But of course the Manildra boosters in this Parliament choose to ignore that. No doubt the Hon. Paul Green will get up and put his hand on his heart and say, "This is about jobs." We have ceased to dig holes in the ground and fill them in again. We recognise that if we are stimulating jobs using government funding we should do it in the most cost-effective way. When we force consumers to pay more for something we want to make sure that we are achieving the greatest number of jobs and the greatest environmental benefit per dollar spent. There is no evidence that that is true for bioethanol. There is no evidence that this policy achieves that.

I have no doubt that over the next 20 years bioethanol will play an extremely important role in the development of liquid transport fuels in New South Wales and throughout Australia. It is even possible that the bioethanol process based on wheat starch will be an important contributor. What I know for sure, and what everybody ought to understand, is that if we do this in such a way that we encourage the development of a monopoly, no matter how friendly that monopoly is to the major parties—

The Hon. Steve Whan: What is the biorefinery in Dalby?

Dr JOHN KAYE: The last time I looked Dalby was in Queensland. I am talking about New South Wales.

The Hon. Catherine Cusack: Point of order: The Hon. Steve Whan is continually badgering and interjecting. Dr John Kaye listened to him in silence and he is entitled to be heard in silence.

The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile): Order! If members on one side of the House disagree with the speech of a member on the other side they should respond to the comments in the speech of the next member from their side rather than by constant interjection.

Dr JOHN KAYE: This legislation is not unalloyed good. There are other problems with the bill before the House. It increases the penalties if suppliers do not comply, particularly if volume sellers do not comply. This legislation in the hands of a Minister who is more enthusiastic for bioethanol and for this particular model of bioethanol than the current Minister for Resources and Energy could become a tool against those volume suppliers who are unable to reach their targets. It is very clear that by increasing the penalties, this legislation will once again favour Manildra. Once again it is a gift to Manildra. I have no doubt that because the current Minister has a more nuanced view of these matters than his National Party colleagues, and that the Labor Party seems to have, he will not use that tool. However, he might not be the Minister forever and, heaven help us, the portfolio might fall into the hands of the agrarian socialists. Then members should watch this space for a policy run purely to benefit Manildra and a few large wheat growers and to the disbenefit not only of transport in New South Wales but of individuals across the State.

I find some of the arguments coming from the Labor Party singularly facile. The idea that we have a dichotomous world in which we can either hand everything over to a monopoly in Manildra or alternatively stick with the current imported fuel supply shows a singular lack of imagination and a lack of grip on the energy

economy in New South Wales. It also shows a lack of ability to foresee alternative approaches. One of the key steps this Government should have taken when it came to power was to review the legislation independently and work out whether there were better ways of making a transition away from imported petroleum fuels.

That never happened. The Nationals won the screaming match in Cabinet and what came out the other end was a continuation of Tony Kelly and Labor's policy, a continuation down the route of making consumers pay more for a policy that is not scientifically founded. What we have seen in the debate in the upper House today has been the Coalition and Labor falling over themselves to say who loves Manildra more. No doubt after the Hon. Paul Green has finished excoriating me he will join in the love fest and show that he loves Manildra more. It is shameful that policy is being driven out of Manildra and that we are not looking at the ways of maximising the environmental benefits, the ways of achieving outcomes, not just for motorists and not just for agriculture but also for the distributors of fuel.

One group of small businesspeople are being completely ignored in the rush to get the love of Manildra: the people who transport the fuel and distribute the fuel. They are not a natural constituency for The Greens and I doubt whether any of them would ever vote for The Greens, but all of us in this Chamber profess a commitment to supporting small business. This policy was implemented in a way and with such speed that the uncertainty created by an unworkable policy has been punishing to that group of businesspeople. Many of those individuals own a relatively small number of trucks. Almost all of them are leveraged to the hilt with the bank, and those people are suffering because of this policy. Is it time we took a step back and considered this policy rationally and without the malign influence of campaign donations?

The Hon. PAUL GREEN [4.21 p.m.]: The Biofuel Further Amendment Bill 2012 makes amendments to the Biofuels Act 2007 and Biofuels Regulation 2007. It does so by making clear how exemptions from the minimum biofuel requirements under the Act are to be applied for, granted, varied and revoked. It increases the maximum penalties for certain offences under the Act and Regulation; it clarifies the powers of investigators in administering and enforcing the Act and regulation; it modifies the constitution and the procedure of the expert panel under the Act; and it provides that proceedings under the Act or Regulation must be commenced within two years of the date of the alleged offence; and, finally, it makes other amendments of a minor, savings or transitional nature.

In essence, the Biofuels Act 2007 establishes the minimum biofuel requirement for petrol and diesel fuel sold by volume sellers, certain primary wholesalers and major retailers, in particular, who supply more than 20 service stations. This bill does this by imposing minimum biofuel requirements on primary petrol wholesalers to ensure that ethanol makes up at least 6 per cent of all petrol sold in New South Wales or for delivery in New South Wales and that biodiesel makes up at least 2 per cent of all diesel fuel sold in New South Wales or for delivery in New South Wales. I note that the Government is committed to the 6 per cent ethanol mandate and the 2 per cent biodiesel mandate. The Christian Democratic Party commends the Government. While the bill will not make any changes to these mandates, clause 7 specifies reasonable steps for compliance and volumetric biofuel requirements. I note that the clause uses the terminology:

> ... taking of all reasonable actions on a continuum basis to ensure that all E10 sold by the volume fuel sellers contains at least 9 per cent ethanol.

Again, this is a welcome move by the Government: to specify a minimum percentage of ethanol in E10 fuel. But that is where things get a little unclear for consumers and producers. From the producers' point of view there is a huge difference between 9 per cent and 10 per cent. If we use ballpark figures and say that the average person using E10 filling a 50 litre tank uses 9 per cent ethanol fuel blend that would equate to 4.5 litres of ethanol. With 10 per cent ethanol blended fuel there would be half a litre more of ethanol, five litres. Half a litre does not sound like much but with thousands of people using E10 that adds up to a lot of extra ethanol. That extra ethanol requires extra infrastructure, extra storage, extra production and extra jobs to maintain the whole operation. As noted by the member for Kiama in the other place, companies such as Manildra need the job security that the bill provides. The bill is a welcome step to right past wrongs. A lot of money, time, jobs, blood, sweat and tears were put into the ethanol investment and infrastructure with the promise of ethanol mandating. The bill is a welcome step to ensure that mandate will be followed.

Dr John Kaye: Who promised it?

The Hon. Dr Peter Phelps: It was legislated, passed by Parliament. Did you not notice that?

The Hon. PAUL GREEN: A quote from the *Bible* from the Book of Leviticus 19:35 says, "Do not use dishonest standards when measuring lengths, weight or quantity." The Christian Democratic Party, like The

Greens from memory, has a firm belief in truth in labelling, as do other members of the Chamber. Consumers deserve to know exactly what they are buying. E10 should be E10, not E9 or E9.5 or E6, as some fuels have been measured to be at some stage. While it is not enough, we accept that the bill is a further step in the right direction.

I will address some issues and comment on Dr Kaye's contribution. I am happy that The Greens are not opposed to the bill. That is a good start. Dr Kaye mentioned donations driving policy. I clearly state that, as far as I am aware, the Christian Democratic Party has had no donations from Manildra. For the Christian Democratic Party, this policy is about justice: it is justice driven. A mandate was given and it should be followed. In our view, job security is what is driving this policy. It is part of a world view that we need to invest in renewable energy. Full food crops obviously should not be used. Those who have been to Manildra and observed the process know that ethanol is taken out of the very last possible products of the food chain. As noted, Manildra does have a commercial interest to maximise profit, like any business in Australia, and that is a right it is able to chase.

The Hon. Steve Whan: Wind farm companies do that too.

The Hon. PAUL GREEN: Yes. Everyone who is trying to capitalise on their investment does that. It would be unwise not to. Is that my concern? No, it is not. Generally, the Christian Democratic Party has a heart for the people of New South Wales. They have a right to a job. All the monopolies in Australia have a plethora of people holding down jobs. Are those people interested whether they work for a monopoly? I do not think so. Most of those people are thinking about how they are going to pay their power bill, how they are going to put fuel in their car, how they are going to get their kids to school, how they are going to move through life knowing that their quality of life will not be compromised because they are looking for a job or trying to get money to pay the bills. That is the real world.

Over 300 people work for Manildra down south. I am led to believe there are about 1,500 across the State. It goes further, because Manildra does work globally with their protein market across the State. The United States has approximately 40 per cent of that market, feeding a lot of mouths, with many families involved. Many mums and dads are working their tush off for the great Australian dream: to enjoy a quality of life of their choosing; to be able to live, be happy and have the finance to put food on the table, pay the bills and have a little bit more to spend on those things that they like in life. When we consider this we understand the argument about monopolies.

Last week I met a couple at church. When we had a cup of coffee later I found that one of them worked at Manildra. I did not know the guy from a bar of soap at that time. Guess what? This young man had married his beautiful bride about one month or six weeks earlier. He told me that they are about to realise their dream of buying a home. They are about to sign the most important contract they will ever sign. How will they pay for their home? They will pay for it by working hard to fulfil their dream. Manildra has spent hundreds of millions of dollars to comply with the mandate and to follow the legislative directions that have been provided. It is simple justice that the rules of engagement be honoured, and that is what this legislation will achieve. That is all Mr Honan is asking for—a fair and just playing field.

Dr John Kaye: You do not really believe that.

The Hon. PAUL GREEN: I acknowledge that interjection. I also acknowledge that I am a former mayor of Shoalhaven and I know that the 300 Manildra employees are real people who have families and dreams. Manildra has done a great deal for the South Coast, including providing rail services. In fact, those services would not exist if it were not for Manildra. The company's environmental practices are also second to none. As Dr Kaye said, the company employs people in distribution and transport in New South Wales, Australia and the wider world. We are not talking about the impact only on those employed by the company on the South Coast.

If this biofuel company were involved in motor vehicle manufacture it would attract Commonwealth funding support to maintain employment. What is wrong with honouring commitments about renewable energy targets and mandates? Manildra employs 90 people directly involved in the production of ethanol and 300 others. It employs 1,500 people across New South Wales and many more across the globe. Those jobs will be maintained because this Government has made a courageous decision to honour the ethanol mandate. We must ensure that members of the public know what they are buying—if they believe they are buying E10 that should be what they are buying. I commend the bill to the House.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [4.33 p.m.], in reply: I thank all honourable members for their contributions to the debate and, in the end, their support. The Biofuels Amendment Bill 2012 introduces a number of important changes to improve the administration and enforcement of the Biofuels Act 2007. The bill clarifies the way in which exemptions from the minimum biofuel requirements can be granted, varied or revoked. It also increases the maximum penalties for key offences and clarifies the powers of investigators in administering and enforcing the Act and the Biofuels Regulation 2007. The Government is committed to the 6 per cent ethanol mandate and the 2 per cent biodiesel mandate, and this legislation will not make any changes to them. The mandates will continue to support the development of the local ethanol and biodiesel industries. We all agree that that is good for local jobs and for the New South Wales economy.

Why are these legislative amendments necessary? They are necessary because they will improve the enforcement of the Biofuels Act. They will also align longer term conditional exemptions with volume fuel sellers' business plans. They will increase maximum penalties for certain offences and clarify the powers of investigators. The Act does not provide for an offence if a condition of an exemption is breached, which means that companies cannot be held to account for delivery of their business plans. This legislation clarifies that and that is why it is important. The amendments will make a big difference to the legislation's effectiveness and they should have been included when it was first introduced.

Members have indicated that motorists are reluctant to purchase fuels with 10 per cent ethanol. They are reluctant to do so for a number of reasons. For instance, older vehicles, boats and other equipment require ethanol-free fuel. Some community members and mechanics also think that it damages engines and that it is less efficient than regular unleaded petrol. In addition, given that ethanol-blended fuel is only several cents cheaper than regular unleaded fuel, they may not see it as cost-effective. Business plan requirements will help to provide the community with more accurate information about the benefits of biofuels and combat these urban myths.

Will the mandate be achieved if the amendments are not enacted? The Government is committed to moving towards the 6 per cent ethanol mandate. At the moment the market is not buying ethanol-blended fuel at the rate it should be. If the legislation is not amended, achieving industry compliance with the minimum biofuels requirement or mandate could be difficult. It poses the very real risk of the Government's policy not being effective. At the same time, the bill takes account of the reality that volume sellers do not control the product choices of their customers as they would like to think they do. These measures mean that the Government will be better able to ensure that volume fuel sellers have an appropriate business plan in place and that they implement it. That addresses the concerns raised by the young church member who spoke to the Hon. Paul Green last weekend and who is about to purchase a house.

A fair, workable and enforceable framework is necessary. By "workable", I mean a framework that enables exemptions to be granted where required while still driving companies to meet the 6 per cent mandate. Dr John Kaye is right about one thing: the Biofuels Act left to the Coalition by the Labor Government was unworkable and did not achieve what it was designed to achieve and what must be achieved. Administrative changes have already been made to deal with exemption applications to make the process more transparent and to give it more teeth so that we encourage sellers to achieve the 6 per cent mandate.

The biofuel mandate established by the Biofuels Act continues to support the growth of the biofuels industry without removing consumer choice. This bill makes a number of important changes to the Act that will enable the Government to more effectively manage longer term progress to meet the biofuels mandate. These changes will ensure that progress is driven in a way that is transparent and fair to all stakeholders. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 and 2 agreed to.

Dr JOHN KAYE [4.41 p.m.]: I move The Greens amendment No. 1 on sheet C2012-148B:

No. 1 Page 6, schedule 1 [15], proposed section 24 (1) (c), line 34. Insert "and do not receive any direct income or other benefits from the manufacture of biofuels (whether through employment, shares or otherwise)" after "industry".

Section 24 of the Biofuels Act 2007 creates an expert panel comprising a number of heads of departments. The function of that expert panel is to provide advice to the Minister on a number of matters, including proposals referred to the panel by the Minister for the granting of an exemption from or the suspension of the operation of a minimum biofuel requirement or such other matters in connection with the operation of the Act as may be referred to the expert panel by the Minister. In short, the members of the expert panel are the brains of the biofuel policy. As I outlined earlier, this policy is in desperate need of some brains. As it currently operates, the expert panel comprises a number of department heads. Item [14] of new section 24 in schedule 1 to the bill nominates them as follows:

> (a) the Director-General of the Department of Trade and Investment, Regional Infrastructure and Services or the Director-General's nominee,
>
> (a1) an officer of the Department of Trade and Investment, Regional Infrastructure and Services with expertise in regional industry development nominated by the Director-General of the Department,
>
> (a2) the Chief Executive of the Office of Environment and Heritage or the Chief Executive's nominee,
>
> (a3) the Director-General of the Department of Primary Industries or the Director-General's nominee,
>
> (a4) the Commissioner for Fair Trading or the Commissioner's nominee,
>
> (a5) the Director-General of the Department of Finance and Services or the Director-General's nominee,

That is a good array of talented and presumably intelligent people with strong policy knowledge in their portfolio areas. However, this bill recognises that missing from that expert panel are people who have direct on-the-ground industry experience. The bill proposes to insert at item [15] new section 24 (1) (c) as follows:

> (c) up to 3 persons appointed by the Minister who have recent experience or expertise in the petroleum or biofuels industry.

That of itself is eminently supportable as it brings to the expert panel people who have direct on-the-ground industry knowledge who understand the constraints and difficulties faced by various players in the industry and who will ensure that the advice given is at least influenced by those who have a perspective of the industry. However, the problem is: Who will be those three persons? I do not think the current Minister would do this but a subsequent Minister might seek to appoint three people who come directly from Manildra. That would give three of the nine members a direct commercial connection to the monopoly manufacturer of bioethanol in New South Wales. The Greens believe that such an expert panel would be strongly biased towards an industry that is directly receiving a near monopoly on fuel supply in New South Wales—an industry to which this Parliament is granting a huge licence through this legislation.

The Greens propose to amend the legislation to ensure that people on the panel do not receive any direct income or other benefit from the manufacture of biofuels, whether it be through employment, shares or otherwise. The Greens want to ensure that the expert panel has a degree of independence from the biofuels manufacturing industry. This will ensure that the expert advice given to the Minister is not being written specifically to assist Manildra but rather takes into account a broader range of views within the industry. This is an important amendment to maintain the independence and capacity of the advisory panel to give advice that is not necessarily just focused on the best interests of Manildra but on the best interests of the industry as a whole and the people of New South Wales. I commend the amendment to the Committee.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [4.45 p.m.]: The Government does not support these amendments.

Dr John Kaye: I moved only one amendment.

The Hon. DUNCAN GAY: Yes, I know. I am happy to address both The Greens amendments at the same time. The Greens amendments propose additional unnecessary requirements on the way in which the expert panel operates. The pecuniary interest provisions for the expert panel set out in the bill and the Government's guidelines for serving on committees and panels are robust and together will ensure that when a member has declared a pecuniary interest that that person can provide advice and expertise for the consideration of the panel but cannot participate in any deliberation or decision-making. In practice, the chair of the expert panel will require members to disclose any pecuniary interest immediately following their appointment.

As Dr John Kaye said, the amendments proposed in the bill will enable the Minister to appoint up to three independent members to the expert panel. They will be appointed based on merit and their appointments will follow the standard government appointment processes approved by Cabinet. These members will be

industry experts with recent experience or expertise in the petroleum or biofuels industries. The current structure of the expert panel incorporates balanced public service expertise governing energy, economic, environmental, regional development, primary industry and consumer issues. The independent members will be able to provide balanced and realistic information on what can be expected of volume fuel sellers. I am sure that the community expects that expertise to be on the panel. I believe that the checks and balances that are listed and have worked for some time are perfectly adequate.

The Hon. PAUL GREEN [4.48 p.m.]: Given the Minister's explanation, the Christian Democratic Party does not support the amendments.

The Hon. STEVE WHAN [4.48 p.m.]: The Opposition does not support The Greens amendment. Dr John Kaye's comments are an indication of the inability of The Greens to view this industry in a balanced way, as they seek to exclude people involved in the manufacture of biofuels but allow three people from Shell or BP to be appointed to a panel. That is a grand indication of the bias of The Greens. The Greens do not accept that the Dolby plant, which supplies United, which in turn supplies a number of service stations in New South Wales, is a competitor in this industry. If this industry had a certain structure we might not see the investment or number of projects proposed by other companies in New South Wales and in other Australian States. Once again The Greens are focusing on an anti-Manildra campaign and are incapable of seeing the broader industry benefits.

Dr John Kaye repeated his offensive insinuations about the reasoning behind this legislation and the Australian Labor Party's support for this industry. Before I met anyone from Manildra or heard about its donations to political parties I was a proud supporter of ethanol. I have been using E10 in my cars for many years. At one stage I was a regular customer at the only two stations that provided E10 in the Monaro area, both of which received their ethanol supplies from Queensland.

Dr JOHN KAYE [4.50 p.m.]: It is absurd to suggest that The Greens amendment will mean there will be three people from Shell, other refineries or other importers of fuel. The Hon. Steve Whan knows there are other players in this industry, including motorists, volume fuel sellers, distributors and petrol stations. A variety of other players are deeply and profoundly impacted by the E10 policy but not all of them are totally opposed to ethanol. Some might well take the same position as The Greens—namely, that there is nothing inherently wrong with ethanol but the way the policy has been implemented has created unnecessary hardship that is not justified by hard science and hard economics. It also is absurd to suggest that stopping Manildra from dominating the independent experts appointed to the expert panel will somehow create an extra layer of bureaucracy. As I said earlier, I do not think the current Minister would do it but a subsequent Minister might stack the expert panel with supporters of or people who work for Manildra and that would take away the independence of those experts. I commend The Greens amendment to the Committee.

The Hon. STEVE WHAN [4.51 p.m.]: Dr John Kaye just argued against his own amendment. He said it was absurd to suggest that there might be three people from a petrol company such as BP, but it also is absurd to suggest that any government would appoint three people from Manildra. It is absurd to single out one group, rather than going with the broader policy of declaration of pecuniary interests. The amendment refers to those who "do not receive any direct income or other benefits from the manufacture of biofuels". Why only biofuels? The amendment is absurd and one group should not be singled out.

Reverend the Hon. FRED NILE [4.51 p.m.]: The Christian Democratic Party does not support the amendment. However, I am puzzled by the criticism of Manildra as a monopoly. I thought we lived in a free society. Any enterprise can start up an ethanol plant. In other States different companies are doing it right now, for example, in Queensland, but no-one else has done it in New South Wales. Over the years Manildra, as a company operating with no monopoly and open to competition, has invested over $1 billion in this State.

Dr JOHN KAYE [4.52 p.m.]: For the benefit of Reverend the Hon. Fred Nile, a monopoly is a single and sole provider; a monopoly is not necessarily someone who is granted a monopoly licence. Monopolies often exist because of barriers to entry which can be created, for example, by large investment costs. It often happens in industry—and it seems to be true in the New South Wales ethanol industry—that once one entity has made a large investment and created a large manufacturing plant it is hard to break into the market. Monopolies are not created, for example, by the monopolies created by licence in Elizabethan England—

Reverend the Hon. Fred Nile: It is not a monopoly.

Dr JOHN KAYE: It is a monopoly; a monopoly is a sole provider. Manildra is the only provider of ethanol in New South Wales.

The Hon. Steve Whan: No, it is not.

Dr JOHN KAYE: Sorry, that was a slip of the tongue. Manildra is the only producer of ethanol on a large scale in New South Wales. There are probably some small producers in the State. Under the current policy settings it is unlikely that any other large-scale producer could break in and compete with Manildra in that market. Manildra has a lock-hold not only on feed stock but also on the market with its production chains. Because of the way in which the legislation has operated over the past five years, Manildra has more or less seized a monopoly—

Reverend the Hon. Fred Nile: Not more or less; it is a monopoly.

Dr JOHN KAYE: If Reverend the Hon. Fred Nile can name another producer of ethanol in New South Wales that comes close to Manildra I will retract my comment. In New South Wales there is no such producer of ethanol of that magnitude. There are two manufacturers in Queensland but they compete across borders to bring in fuel—

The Hon. Duncan Gay: So now it is a crime to be a big employer in New South Wales?

Dr JOHN KAYE: I am ceaselessly amazed at the way in which intelligent debate is destroyed in this Chamber by ridiculous remarks such as that just made by the Leader of the Government. It is an absurd remark to transfer a concern about the creation of a monopoly and failed policy into being hostile to employment.

The Hon. Duncan Gay: You are.

Dr JOHN KAYE: That level of debasement of debate ends up with lowest common denominator policy, such as the one currently being debated. Unless we can have a sensible and intelligent debate about how we will break down Manildra's dominant position in the market and its monopoly production position in New South Wales, we will continue with a failed biofuels policy. This amendment—which I think we are debating—is one step towards achieving that. If Coalition members were serious about not allowing biofuels policy to continue to be run by the monopoly producer and dominant supplier of biofuels in New South Wales they would support this amendment.

Question—That The Greens amendment No. 1 [C2012-148B] be agreed to—put.

The Committee divided.

Ayes, 5

Ms Barham
Ms Faehrmann
Dr Kaye
Tellers,
Mr Buckingham
Mr Shoebridge

Noes, 30

Mr Ajaka	Mr Green	Mr Secord
Mr Blair	Mr Khan	Ms Sharpe
Mr Borsak	Mr Lynn	Mr Veitch
Mr Brown	Mr MacDonald	Ms Voltz
Mr Clarke	Mr Mason-Cox	Ms Westwood
Ms Cotsis	Mrs Mitchell	Mr Whan
Ms Cusack	Mr Moselmane	
Mr Donnelly	Reverend Nile	
Ms Fazio	Mrs Pavey	*Tellers,*
Ms Ficarra	Mr Primrose	Mr Colless
Mr Gay	Mr Searle	Dr Phelps

Question resolved in the negative.

The Greens amendment No. 1 [C2012-148B] negatived.

Dr JOHN KAYE [5.04 p.m.]: I move The Greens amendment No. 2 on sheet C2012-148B:

No. 2 Page 10, schedule 1 [21], proposed clause 6 (6) of schedule 2, lines 22 and 23. Omit all words on those lines.

Item [21] of schedule 1 creates the disclosure of pecuniary interest provisions for the expert panel, and they largely operate as most pecuniary interest provisions operate. I draw the attention of members to subclause (6), which states:

A contravention of this clause does not invalidate any decision of the Expert Panel.

"This clause" refers to pecuniary interests including the requirement on a member to disclose the nature of an interest in any matter; and if the member has disclosed that interest the member must not, unless the Minister or the expert panel otherwise determines, be present during the deliberations of the expert panel with respect to the matter or take part in any decision of the expert panel with respect to the matter. The Greens are concerned that the expert panel may make a decision when the provisions of the clause have not operated appropriately, for example, when a member failed to disclose the nature of an interest or did not disclose an interest and was not appropriately excluded from deliberations of the panel with respect to the matter in which the member had an interest.

We are concerned that if subclause (6) is allowed to stand it will be impossible to overturn a decision that was made with input from a member of the panel who had a specific pecuniary interest. Therefore, it is important that subclause (6) is deleted so that when a decision of the expert panel is in contravention of the pecuniary interest clauses the matter can be invalidated and begun again. This is a crucial component of ensuring that pecuniary interests on the panel are taken seriously and do not have an impact on the outcome. I commend the amendment to the Committee.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [5.07 p.m.]: Unlike some occasions, I think Dr John Kaye is genuinely trying to fix something that he thinks is wrong. My concern is that, in fixing it, he will make it even worse. The pecuniary interest provisions set out in the bill and in our guidelines for serving on expert panels are robust, as I have said before. Together, they will ensure that where a member has declared a pecuniary interest the person can provide advice and expertise for the panel's consideration but cannot participate in any deliberation or decision making. So in practice the chair of the expert panel will require members to disclose any pecuniary interests immediately following their appointment.

Subclause (6) in schedule 1, which Dr John Kaye wants to remove, states that a contravention of this clause does not invalidate any decision of the expert panel. If that provision is removed, effectively that will negate any decision made by the expert panel. The removal of the provision means that if anything is found on the pecuniary interests register a decision that may not be connected to that pecuniary interest may be negated. That will create uncertainty in the biofuels industry. Frankly, at the moment the industry could do without uncertainty. It has been through a fairly tough time.

Members must also be aware that between five and eight persons are on the expert panel. The chances of an inappropriate decision being made because of a small, and I would think accidental, clash of interests in this area are negligible. The five to eight people on the panel will bring a balanced view to the panel's decisions and, as I indicated, provide another check. The biofuels industry has invested a lot of skin in this industry and is employing a lot of people in regional New South Wales, some at Manildra near Orange and some at Bomaderry on the South Coast.

The amendment would lead to more uncertainty in the market and more doubt about achieving the 6 per cent mandate. Removal of the provision would put in place retrospectivity in decisions, at a time when the Government is trying to instil confidence in consumers, industry and communities. Though I have spoken against the amendment that the member has proposed, and understand the philosophy behind the amendment and that he genuinely believes this is an inappropriate provision to be in the Act, frankly removal of the provision would be much worse than any of his concerns about the provision.

The Hon. STEVE WHAN [5.11 p.m.]: The Opposition will not support the amendment. We agree that there need to be very strong pecuniary interest guidelines in place, and that it is critical that suitable declarations

are made. My understanding of the way this measure works is that the legislation imposes an obligation that the Minister is not to grant an exemption from minimum biofuel requirements unless the proposed exemption has been referred to the expert panel and the Minister has considered any advice of the panel on the proposed exemption. Similarly, the Minister may not vary or revoke an exemption unless the proposed variation or revocation has been referred to the expert panel and the Minister has considered any advice of the panel on the proposed variation or revocation.

While there is a step between the advice and the decision, my concern is that if the amendment is carried there could be circumstances in which exemptions suddenly become invalid. For example, an exemption from the minimum requirements given to a company would be invalidated and that company would then be regarded as having breached the law because its exemption has been invalidated retrospectively. That is my concern about the amendment. I do not think it is practical because of that consequence. While I believe the pecuniary interest guidelines need to be strong, I think the amendment could cause quite serious problems.

The Hon. PAUL GREEN [5.12 p.m.]: The Christian Democratic Party opposes the amendment.

Dr JOHN KAYE [5.12 p.m.]: I appreciate the input of both the Government and the Opposition on this matter. I understand the Deputy Leader of the Government to be saying that the effect of the removal of subclause (6) could be that a contravention of the clause could potentially invalidate any decision, or all decisions, of the expert panel, regardless of whether or not that decision is one in which there was a conflict of interest.

The Hon. Duncan Gay: Yes.

Dr JOHN KAYE: If that were the case, I would instantly withdraw the amendment, because it would make the entire expert panel unworkable. It would mean that if an error were made—for example, in a declaration of interest with respect to one matter—all other matters could become invalid.

The Hon. Duncan Gay: That is my advice.

Dr JOHN KAYE: I do not understand why that would be the case because the provisions would not be saying that in a positive sense; we are just removing that particular subclause. I understand what the Minister is saying, and that is of concern. The matter raised by the Hon. Steve Whan is also of concern. I agree with what he is saying. He is saying that if advice were given, and on that advice exemption were granted, and sometime subsequently the advice were found to be inappropriately obtained and there was a contravention of the clause, the exemption would be invalid. That company would unwittingly have been breaking the law. Given both those pieces of advice—and I do not fully understand the Government's piece of advice, but I do understand the Opposition's piece of advice—the arguments made by the Government and the Opposition raise in my mind serious concerns about this amendment. Therefore, I seek leave to withdraw the amendment.

The CHAIR (The Hon. Jennifer Gardiner): Is there any objection to the member withdrawing his amendment?

The Hon. DUNCAN GAY (Minister for Roads and Ports) [5.14 p.m.]: Can I seek clarification?

Dr JOHN KAYE [5.15 p.m.]: I retract my seeking to withdraw the amendment to hear what the Deputy Leader of the Government has to say.

The Hon. DUNCAN GAY (Minister for Roads and Ports) [5.15 p.m.]: A note in front of me indicates "negate any decision made previously by the expert panel". A further note that I have been handed indicates that is only the case where pecuniary interest is involved. So the advice in the one note is closer to the member's interpretation than the advice in the other note. I thought it important, given that the member was seeking to withdraw his amendment, to say that whilst we have real concerns they are not immediate concerns.

Dr JOHN KAYE [5.15 p.m.]: I appreciate the Minister clarifying that I had misunderstood what he said and that he was in fact saying that the amendment could risk invalidating the specific decision that was made. That removes my concern with respect to the first matter. However, I hear what the Opposition is saying about this.

The Hon. Steve Whan: That was just my interpretation, because I do not have any briefing.

Dr JOHN KAYE: The Hon. Steve Whan said it with such certainty.

The Hon. Steve Whan: It seems to me that that is the way it would work.

Dr JOHN KAYE: Given the doubt that has been created with respect to this amendment, and the fact that I would not be seeking to hamstring decisions made by the panel with respect to exemptions, I seek leave to withdraw the amendment.

Leave granted.

The Greens amendment No. 2 [C2012-149B] withdrawn.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. Duncan Gay agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. Duncan Gay agreed to:

That this bill be now read a third time.

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

BAIL AMENDMENT (ENFORCEMENT CONDITIONS) BILL 2012

Message received from the Legislative Assembly returning the bill without amendment.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 7 postponed on motion by the Hon. Matthew Mason-Cox.

LOCAL GOVERNMENT AMENDMENT (CONDUCT) BILL 2012

In Committee

Clauses 1 and 2 agreed to.

Mr DAVID SHOEBRIDGE [5.23 p.m.]: I move The Greens amendment No. 1 on sheet C2012-142A:

No. 1 Page 8, schedule 1, proposed section 440I. Insert after line 17:

(4) Before determining to take disciplinary action in respect of misconduct serious enough to warrant the making of an order under subsection (2) (g) or (h), the Director-General must afford the councillor a reasonable opportunity to be heard in person by the Director-General as to whether the councillor has engaged in misconduct.

I note that the Government proposes to move an amendment that appears on sheet C2012-144B, which would insert a new section 440O relating to self-incrimination. I indicate that following discussions with the United Services Union, the Government and the Minister's office, The Greens will support that amendment. As I understand it from communications with the union that amendment also has the union's support and I think it will have the support of the Shooters and Fishers Party, which has taken an active interest in this matter. That will give some protection against self-incrimination by those councillors and officers who have been forced to hand over material under the coercive powers proposed in this regime.

The Hon. Matthew Mason-Cox: Are you not pursuing your amendment No. 2?

Mr DAVID SHOEBRIDGE: I am not pursuing my amendment No. 2 on the basis of the commitment from the Government to move its amendment No. 1, which commitment I understand I have.

The Hon. Matthew Mason-Cox: Yes.

Mr DAVID SHOEBRIDGE: The regime proposed by the Government in this bill will in large part be underpinned by some regulations and further guidelines and circulars, which will give some flesh to the arrangement. I thank the Minister's office for circulating what I understand is an advance draft of those guidelines, which has removed some concerns that The Greens have about the potential for unfair processes and a lack of natural justice under the new regime that will be put in place. The regime set up through this bill effectively removes most oversight of councillors who are alleged to have misbehaved or otherwise require disciplinary action. It effectively gives the role of determining whether a complaint will be considered, how it will be considered, and any disciplinary action that needs to be taken to the director general or his or her delegate.

The director general can do a number of things if he or she determines that a complaint has been made and a councillor has engaged in misconduct. In most instances there first needs to be a departmental report or at least a report from the Ombudsman or the Independent Commission Against Corruption. Then the director general has to determine whether disciplinary action is warranted. This is all contained in proposed section 440I. If the director general forms the view that disciplinary action is warranted the director general can take one or more of the following actions: counsel the councillor; reprimand the councillor; by order direct the councillor to cease engaging in the misconduct—for example, leave the Liberal Party; by order direct the councillor to apologise for the misconduct in a manner specified in the order; by order direct the councillor to undertake training; or by order direct the councillor to participate in mediation.

Then we come to the very serious power that has been granted to the director general: by order to suspend the councillor from civic office for a period not exceeding three months and suspend the councillor's right to be paid any fee or remuneration during a period of suspension not exceeding three months. There does not seem to be a specific prohibition on multiple suspensions. I would be interested to hear the Government's response to the question of multiple suspensions. It may be that a councillor has to go through the whole process again before there is another suspension.

The concern The Greens have is that when a complaint initially is made it might look relatively trivial to the councillor or the officer against whom it is made. The councillor or the officer might engage with it to a modest degree. The director general, after having considered it, might form the view that it was significantly more serious than the councillor had originally thought. The director general may well form the view that it is appropriate to suspend the councillor and/or withdraw the stipend during any suspension. In those circumstances, The Greens are of the view that the councillor should be put on clear notice of that and there should be additional safeguards and checks before we have a bureaucrat suspending an elected representative. The director general—a noble person, I am sure; a senior officer—is still an employed bureaucrat of the State Government and we need to have careful safeguards before a bureaucrat can suspend an elected representative. The Greens amendment inserts a new subsection 4 in section 440I as follows:

> Before determining to take disciplinary action in respect of misconduct serious enough to warrant the making of an order under subsection (2) (g) or (h)—

those are the subsections that allow for the suspension from office and suspension of pay—

> the director general must afford the councillor a reasonable opportunity to be heard in person by the director general as to whether the councillor has engaged in misconduct.

In other words, if the investigation goes to a certain extent and the director general is forming the view that, yes, this is a councillor whom he may well suspend he is obliged to elevate the seriousness of it, put the councillor on notice and say, "This misconduct is potentially serious enough for you to be suspended", and then give the councillor a right to be heard and to make representations in person. One would hope the provision would be extremely rarely used, but it would have two benefits. First, it would have the benefit of providing natural justice: councillors, elected representatives who face suspension at the hands of a bureaucrat, have a right to be heard before being suspended.

The Hon. Dr Peter Phelps: How long is a reasonable opportunity, though?

The CHAIR (The Hon. Jennifer Gardiner): Order! This is not a question and answer session. Mr David Shoebridge has the call.

Mr DAVID SHOEBRIDGE: The question of what is a reasonable opportunity, which some people might think is an issue, is really a matter for the director general to determine. The reason is there is a reasonable opportunity to ensure there is a degree of flexibility in the process to allow the director general in certain circumstances to say, "I have heard all your submissions. Why not turn up Tuesday week, have a go and see what you have to say for yourself?" In other more complicated situations there might be a necessity for the director general to say, "This is all very complex. There is a great deal of evidence. We have all these witness statements that have been given. Here are the statements. Have a look at the evidence and I will hear from you in four to six weeks time."

Depending on the nature of the evidence and the nature of the complaint, allocating a strict time frame would not be useful and would not deal with the multiplicity of concerns. Anyone who knows the processes that have to be undertaken by the director general, an Independent Commission Against Corruption referral, or an Ombudsman's referral, knows that it takes many months—the Independent Commission Against Corruption can take years—to issue a report. An Ombudsman's report can start in 2008 and only surface in 2012. The thought that a couple more weeks or a month would add anything meaningful to the period of the investigation is mistaken.

The amendment gives natural justice to councillors who potentially are facing suspension. In some councils the suspension of a single councillor can fundamentally change the political dynamics and fundamentally change the balance of power in a council and could, for a period, defeat the will of the people who had elected a mix of councillors. For example, if a councillor on Botany Council was suspended it would fundamentally change the political make-up of Botany Council. Suspension of a councillor would fundamentally change Ku-ring-gai Council. The example of Botany shows how removing a single councillor in a democratically responsive area such as Botany can fundamentally change the dynamics on council.

The amendment would provide natural justice for councillors and allow for a quicker and more direct summary process when the director general is not considering one of the more severe penalties. If it was going down a path towards a reprimand or a direction to apologise, fewer departmental, councillor and council resources would be required to deal with the complaint. With a more direct summary process the matter could be dealt with quickly. While there is an outstanding complaint there is a great deal of uncertainty on the council and a great deal of uncertainty about the councillor. Not every complaint will be meritorious and not every complaint will be made out. Complaints that can be dealt with quickly and summarily should be dealt with quickly and summarily. Dividing the more serious from the less serious would assist in doing that. For those reasons we commend the amendment to the Committee and look forward to receiving the support of other parties in this Chamber.

The Hon. SOPHIE COTSIS [5.35 p.m.]: The Labor Opposition supports The Greens amendment.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [5.36 p.m.]: I congratulate the shadow Minister on her brevity which at this hour of the day is welcome. The Government opposes the amendment. We believe it is simply unnecessary for such a specific provision to be inserted. The process of affording to a councillor a reasonable opportunity to be heard in the course of an investigation and prior to the imposition of a sanction or a penalty is a requirement of the rules of procedural fairness. It is worth noting that it is a standard procedure that all councillors are afforded procedural fairness through a show cause process prior to suspension and any non-compliance with the principle of procedural fairness would give grounds to challenge the director general's decision in an action for judicial review. I note in that regard that it should be borne in

mind that any disciplinary action taken by the director general under section 440I is appealable to the Local Government Pecuniary Interest and Disciplinary Tribunal under section 440L. Accordingly, the Government opposes the amendment.

Mr DAVID SHOEBRIDGE [5.37 p.m.]: Of course a right to be heard on the initial show cause letter is quite distinct from what is being proposed by the amendment. Yes, there is show cause; there is an initial response, and one would hope in most circumstances that would resolve the matter with an outcome from the director general. In serious cases where the councillor may then face suspension surely a reasonable opportunity to be heard in person and make representations directly is required. If a councillor is to lose his or her office and, more importantly, the local community is to lose its representative at the behest of or determination by a bureaucrat, a response by letter is inadequate. I commend the amendment to the Committee.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [5.39 p.m.]: In relation to the rules of procedural fairness, it is worthwhile putting a couple of pertinent facts on the record. As I mentioned, the proposed new procedures will require at the outset of the investigation process that the conduct reviewer provide a written notice of investigation to the persons being investigated informing them, among other things, of the substance of the allegations against them and giving them an opportunity to respond. Prior to preparing a draft report the conduct reviewer must give persons being investigated an opportunity to address them in person. And when they have completed their inquiries and considered any written and oral submissions the conduct reviewer must prepare a draft report and provide the person being investigated with an opportunity to comment on it and to consider the comments of the person investigated. The person being investigated will have a further opportunity to address the council prior to any sanction being imposed. As members can see, the requirements are onerous and deal with all the issues raised by the member.

Mr DAVID SHOEBRIDGE [5.41 p.m.]: I thank the Parliamentary Secretary for reading that information onto the record. I indicated earlier that I had received that communication from the Minister's office and that it allayed some of The Greens' concerns. I think the department has taken on board some of the natural justice considerations in what most likely will be a circular rather than a legislative requirement. That legislative requirement would in no way derogate from the circular requirement; in fact, it would simply give legislative teeth to it. It would ensure that six months or 12 months down the track—when perhaps we have a new Minister after this Minister moves on to bigger and brighter things—we have that statutory protection if serious action is taken.

Question—That The Greens amendment No. 1 [C2012-142A] be agreed to—put and resolved in the negative.

The Greens amendment No. 1 [C2012-142A] negatived.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [5.43 p.m.]: I move Government amendment No. 1 on sheet C2012-144B:

No. 1 Page 11, schedule 1 [12]. Insert after line 10:

440O Self-incrimination

(1) This section applies where, under section 440H, the Director-General directs a natural person to provide any information or produce any document for the purposes of an investigation.

(2) A person is not excused from complying with the direction on the ground that the information or document might incriminate the person or make the person liable to a penalty.

(3) If the information or document tends to incriminate the person and the person objects to providing the information or producing the document at the time, the fact of the direction or the information or document itself (if produced) may not be used in any criminal proceedings against the person (except in proceedings for an offence relating to the failure to produce a document or information or the production of a document or information that is false or misleading).

(4) Despite any such objection, the information or document may be used in connection with an investigation and the taking of disciplinary action against the person under this Division and is admissible in proceedings under this Act relating to misconduct.

I note the comments made by Mr David Shoebridge about this matter. This amendment is designed to limit the powers to undertake investigations to the department and to prohibit councils from using this authority.

The Hon. SOPHIE COTSIS [5.44 p.m.]: The Opposition supports this important amendment. During the second reading debate I acknowledged the assistance of the office of the Minister for Local Government in providing the Opposition with information and addressing the many issues that I raised. I also acknowledged its work with the United Services Union on this very important amendment. Many concerns have been raised about individuals being asked to provide information and in the process risking incriminating themselves. I also referred to the merits of this amendment, but I will not repeat those comments.

I commended the efforts of the United Services Union, whose coverage includes the 55,000 hardworking local government employees, and congratulated it on the approach it has taken and the due diligence that it has exercised not only on this bill but also on the numerous other bills that have been introduced dealing with the local government sector. I congratulate the officials, delegates and staff on the sensible and practical approach that they have taken to the many issues confronting the sector. A number of reviews are underway and they are understandably causing uncertainty and insecurity, particularly given the statements being made by Liberal or Liberal-leaning mayors about cutting jobs and outsourcing services. There is angst in the local government workforce about the possible outcomes of those reviews, but I will not continue along those lines.

The Hon. Matthew Mason-Cox: Save it for another time.

The Hon. SOPHIE COTSIS: I will. The Minister's office has made a commitment to engage in discussions with relevant stakeholders about the regulation. I also sought advice about the appeals process as it relates to councillors and I have been provided with the relevant information. Provisions dealing with those issues are in the code of conduct and the Local Government Act and I am happy to have further discussions with the Minister and his office about that issue. I hope that the many issues I raised during the second reading debate will be addressed.

The Hon. PAUL GREEN [5.46 p.m.]: The Christian Democratic Party supports the amendment. Like the Hon. Sophie Cotsis, I will refer to my contribution to the second reading debate. I acknowledged that reform of the local government sector is an ongoing process and that it is far from complete. I also acknowledged that we now have a Minister who is prepared to listen and who is working—

The Hon. Sophie Cotsis: I did not say that.

The Hon. PAUL GREEN: No, I am referring to what I said in my second reading contribution. The Minister is working with all stakeholders for the good of local government, and that is a credit to this Government.

Mr DAVID SHOEBRIDGE [5.47 p.m.]: As I indicated, The Greens support the Government's amendment. It is the result of ongoing discussions between the local government sector, the United Services Union and the Government. I understand that members of the Shooters and Fishers Party have cast their eyes over it, but I do not know whether the Hon. Paul Green saw its various iterations. Of course, it has also been examined by my office and probably by members of the Opposition.

Different formulas have been proposed to deal with the privilege against self-incrimination. The new regime allows the director general to compel people to produce documents, witness statements and evidence. That compulsion power is important if we are to get to the truth of allegations of misconduct and potentially misfeasance in public office. When people are compelled to produce documents, those documents can be used to address internal disciplinary issues. However, whenever we override the right not to incriminate ourselves in statute we must also provide statutory protections. Once the documents are produced for a specific public purpose—in this case the good administration of local government—we must ensure that they are then not used against the people who provided them in criminal penalty or civil proceedings. The United Services Union and The Greens raised that concern given the extensive investigative powers.

The Government's amendment provides that if someone is compelled to provide a document or a statement it can be used for disciplinary proceedings. If the situation involves corruption or misconduct the documents that make that clear can be used to make a finding of corruption or misconduct and action can be taken against the person involved. However, those documents and the fact that they have been produced cannot be used in criminal proceedings because to do so would be to override the fundamental right to silence and not to incriminate oneself. That is one of the golden threads that runs through the criminal justice system that we inherited from the United Kingdom.

This amendment almost gets the balance right. It is not as clear as we might have hoped because, for example, it does not adopt the same right of privilege as that found in the Independent Commission Against Corruption Act, the Police Integrity Commission Act and the Crime Commission Act. An off-the-shelf self-incrimination protection clause has been incorporated in those Acts and in other New South Wales legislation. However, this amendment achieves the same outcome in that it provides that a document or statement can be used in disciplinary proceedings but not in other circumstances. I commend the Government for engaging in consultation and discussions. I believe that this amendment achieves the right balance and The Greens are happy to support it.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [5.50 p.m.]: I thank all members for their hearty support for this amendment. I note that the Minister for Local Government is in the President's Gallery, and I thank him for his attendance, which shows his commitment to ensuring that consultation is the hallmark of how this Government does business. I am proud to be a member of a reformist O'Farrell-Stoner Government. I am sure that the reformist zeal of this Minister will continue and we will see other significant reforms to local government over time, but when instituting reform in this State one always needs to bring along stakeholders. I particularly thank the Hon. Sophie Cotsis for her kind remarks in rightfully congratulating the Minister. I also thank the Hon. Paul Green.

Question—That Government amendment No. 1 [C2012-144B] be agreed to—put and resolved in the affirmative.

Government amendment No. 1 [C2012-144B] agreed to.

Mr DAVID SHOEBRIDGE [5.51 p.m.]: I move The Greens amendment No. 3 on sheet C2012-142A:

No. 3 Page 12, schedule 1 [20], line 11. Omit all words on that line. Insert instead: Insert "or, without lawful or reasonable excuse, fails to comply with such a direction given to the person under section 440H" after "the direction".

This amendment amends new section 661, which allows for sanctions to be imposed for a failure to comply with certain directions. It means that if someone, for example, is directed to produce a document within 12 days by the director general he or she is compelled to comply. Under the existing section 661 the only defence is if a person has a lawful excuse not to produce the document. "Lawful excuse" has a particular narrow legal meaning and normally means that there is a legal restriction on someone doing so.

For example, if a direction were given to a member of the Crime Commission to produce certain documents and those documents were protected by the statutory secrecy provisions in the Crime Commission the member could say, "I have a lawful excuse not to produce them because I am protected by the secrecy provisions in the Crimes Act." That would prevent that person from being prosecuted for failing to comply with the direction. Equally, if a direction were given to one of the administration workers on the front desk to produce a certain document which that person did not have in his or her possession but knew it was out the back, and if that administration officer said to the manager, "I have been asked to get this document. Can you give it to me?" and the manager said, "I will not give it to you" the administration officer would not have the lawful power to compel the production of the document and could respond by saying, "I could not produce it because the manager would not give it to me" and that would be a lawful excuse.

But there are other circumstances in which we would not want to see people being criminally penalised for a failure to comply with a direction and that is where they may not have a lawful excuse but they have a reasonable excuse. The classic case is someone who has a direction to produce a document, provide a statement or a response within, say, 14 days, and five days into that is taken to hospital with acute appendicitis and is in hospital for three weeks. The Government Whip is making faces but such circumstances happen day-in, day-out in the real world and we want to work out how the legislation will work in the real world. That person in hospital clearly would not be in a position to respond to the direction and surely that should be a defence to a criminal prosecution for a failure to comply with a direction. That person would have a reasonable excuse, which is a standard term applied in most other statutes in New South Wales.

Another example is if people are required to produce a statement within 14 days, their spouse dies and they are caught up in the funeral and grieving processes and are not in a position, one would think, to comply with the direction. They would not have a lawful excuse, as there would be no legal impediment to their producing the document or the statement, but most surely they would have a reasonable excuse. That should be a defence in the law and it should be made clear. This amendment seeks to fix up an unintended hole in the legislation. The Greens amendment will provide a degree of humanity and common sense in the law.

The Hon. SOPHIE COTSIS [5.55 p.m.]: The Labor Opposition supports The Greens amendment.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [5.55 p.m.]: The Government does not support this amendment because the protections contemplated by it are already built into the investigative processes. In addition, the provision applies to a range of powers of compulsion exercisable under the Local Government Act, not just those that will apply to misconduct. New section 661 uses the words "lawful excuse". It is considered that expanding the defence by including "reasonable excuse" potentially provides a device by which people could obstruct or delay investigative and other processes. In the Government's view the existing protections that allow a lawful excuse are sufficient.

The Hon. PAUL GREEN [5.56 p.m.]: The Christian Democratic Party has heard the concerns of Mr David Shoebridge. They generate some concern in me as well. There should be an opportunity for discretion to be exercised. I have heard the Parliamentary Secretary comment on this amendment, but I also note the Minister's presence in the Chamber, and encourage him to take those comments on board. The Christian Democratic Party supports the Government's position.

Mr DAVID SHOEBRIDGE [5.56 p.m.]: In relation to this matter we do not want to have only one protection, being a prosecutorial discretion.

The Hon. Dr Peter Phelps: Why not?

Mr DAVID SHOEBRIDGE: Because it is very clear. This would probably be a police matter and when the Director of Public Prosecutions gets together a brief of evidence the usual test that is applied is: Is there sufficient evidence to successfully obtain a prosecution? Are there any successful defences that can be applied? Prosecutors and police use that test day-in, day-out and it is only in highly unusual circumstances that they go outside the law, and we do not want them to go outside the law. We want them to look at law, which sometimes can be harsh and mean and produce pretty tough consequences for people who have enormous personal consequences that we might understand on a personal level, but police and courts are required to enforce the law as it is written. We want them to enforce the law and we want the law to be clear.

We want police to go to the law and say, "I think there is a reasonable excuse in this case and therefore I am not going to proceed with the prosecution." We want them to go beyond the narrow ambit of whether there was a kind of legal impediment. The fact that new section 661 applies to a number of other offences of failure to comply with directions or notices only goes to show that this amendment has even more merit. It is difficult to know of any circumstance where someone has a reasonable excuse—and it is a term well-known to the law—but we would still want to have on the statute book the ability to have people prosecuted without their being able to mount a defence.

This is only a modest ask. It is consistent with the intent of this legislation, which is not to make unmeritorious prosecutions and not to see people facing criminal penalties when there are circumstances outside their power that fully excuse their breach of the law in a particular circumstance. Relying on police discretion is a poor and uncertain outcome. The view of the Parliamentary Secretary that somehow this would be picked up in the investigatory discretion is misconceived; it has nothing to do with the investigatory discretion. The discretion would come into place only well after the investigation had occurred and, at best, would be exercised by prosecutorial authority such as police and not by the director general.

Question—That The Greens amendment No. 3 [C2012-142A] be agreed to—put.

The Committee divided.

Ayes, 17

Mr Buckingham	Mr Primrose	Ms Voltz
Ms Cotsis	Mr Searle	Ms Westwood
Mr Donnelly	Mr Secord	Mr Whan
Ms Fazio	Ms Sharpe	*Tellers,*
Dr Kaye	Mr Shoebridge	Ms Barham
Mr Moselmane	Mr Veitch	Ms Faehrmann

Noes, 20

Mr Ajaka	Mr Gay	Mrs Mitchell
Mr Blair	Mr Green	Reverend Nile
Mr Borsak	Mr Harwin	Mrs Pavey
Mr Brown	Mr Khan	Mr Pearce
Mr Clarke	Mr Lynn	*Tellers,*
Ms Ficarra	Mr MacDonald	Mr Colless
Mr Gallacher	Mr Mason-Cox	Dr Phelps

Pairs

Mr Foley	Ms Cusack
Mr Roozendaal	Mrs Maclaren-Jones

Question resolved in the negative.

The Greens amendment No. 3 [C2012-142A] negatived.

Schedule 1 agreed to.

Title agreed to.

Bill reported from Committee with amendment.

Adoption of Report

Motion by the Hon. Matthew Mason-Cox, on behalf of the Hon. Greg Pearce, agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. Matthew Mason-Cox, on behalf of the Hon. Greg Pearce, agreed to:

That this bill be now read a third time.

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

ROAD TRANSPORT (GENERAL) AMENDMENT (PRIVATE CAR PARKS) BILL 2012

Message received from the Legislative Assembly returning the bill without amendment.

LIQUOR AMENDMENT (KINGS CROSS PLAN OF MANAGEMENT) BILL 2012

Second Reading

Debate resumed from 25 October 2012.

The Hon. DAVID CLARKE (Parliamentary Secretary) [6.11 p.m.], in reply: I thank members for their contributions to debate on the Liquor Amendment (Kings Cross Plan of Management) Bill 2012. This bill demonstrates the resolve of the New South Wales Liberal-Nationals Government to take strong action to tackle alcohol-related violence and antisocial behaviour in Kings Cross. The clear message is that the community expects licensed venues to be run safely and in a responsible manner. This bill focuses on effective measures to reduce the risk of harm from the sale and consumption of alcohol in the Kings Cross precinct, and it complements other action that the Government is taking to make the Cross a safer place for residents and visitors while laying the groundwork for further reforms to come which will promote individual responsibility and a greater variety of venues.

I will now respond to points made by members. Dealing with the availability of regulations, I point out that a draft of the regulations has now been made available to members. Those regulations are consistent with the announcements that have been made by the Government in recent months. They have been informed by the lessons learnt through the operation of the Precinct Liquor Accord and the process under which it was proposed to impose conditions on Kings Cross licensed venues. Submissions made by venue operators under this process have been taken into consideration in determining conditions to be imposed by regulation. The content of the regulations has also been informed by experience from the violent venues process and the operation of conditions imposed by liquor regulators in recent years.

Other information to inform the development of the regulations includes the outcomes of the audit of late trading venues in Kings Cross conducted during July. The bill allows conditions to be applied to all licensed premises within the Kings Cross precinct or to a specified class of licensed premises or to specified licensed premises. The focus of the announcements made by the Government so far has been on late trading venues as these are in the highest risk category. There are conditions in the proposed regulation that will apply to late trading licensed venues. However, it is also necessary to apply conditions to other licensed venues to ensure that restrictions are not undermined. The final form of the prescribed conditions has also taken account of the different risk profiles of a variety of business styles operating in different types of licensed premises.

The proposed licence conditions in the regulation include existing requirements to prevent entry to venues by outlaw motorcycle gang members, as well as clearance of street litter and promotion of late night transport and fail-to-leave provisions of the liquor laws. The regulation also includes new conditions consistent with measures announced by the Government on 15 August 2012. These relate to the preservation of crime scenes, maintenance of incident registers, cease liquor supply 60 minutes prior to closing, drink restrictions, engagement of responsible service of alcohol marshals, bans on glass containers and operation of closed-circuit television systems. I deal now with variations to original proposed conditions. There are some variations to the conditions announced on 15 August to take account of issues raised since that time.

The proposed requirement to cease selling or supplying liquor 60 minutes before trading ceases will apply only to licences that trade beyond 2.00 a.m. on Saturday and Sunday morning, rather than licences that trade beyond midnight as was originally proposed. This recognises that it may be unreasonable to limit access to alcohol to midnight should the venue's authorised trading hours extend to 1.00 a.m. as this could unduly affect legitimate social events such as a restaurant meal. This condition will still apply to all full hotel licences in the Kings Cross precinct as all these licences trade after 2.00 a.m. The regulation will also prevent 24-hour trading venues from selling or supplying liquor between 4.00 a.m. and 5.00 a.m. on Saturday and Sunday. The original proposal that responsible service of alcohol marshals be engaged from 11.00 p.m. on Fridays and Saturdays will now apply from midnight to avoid an undue burden on licensed venues that do not trade beyond this time.

This requirement has also been amended so that only one responsible service of alcohol marshal is required for restaurants able to sell liquor without meals, as well as for theatres and karaoke premises, as these are lower risk venues. Hotels, registered clubs and nightclubs will still require two responsible service of alcohol marshals. These variations take into account the fact that the Kings Cross precinct has been expanded since the 15 August announcement and now contains low risk businesses. I turn now to exemptions. The regulation will enable the director general to exempt a certain venue or classes of venues from certain conditions. Exemptions can be sought by all types of venues to the prohibition on glass containers after midnight and to drink restrictions, while an exemption to the closed-circuit television requirement can be sought by restaurants. Such exemptions can be made only on a conditional basis.

The director general will need to be satisfied that, first, the exemption is unlikely to result in an increase in the level of alcohol-related violence or antisocial behaviour or other alcohol-related harm in the Kings Cross precinct; and, secondly, alternative measures are in place on the premises which will be effective in reducing the risk of alcohol-related violence or antisocial behaviour. Exemptions may apply in relation to a specified part of licensed premises. Other exemptions have not been permitted at this stage as there are concerns about a flood of exemption requests, frustrating the commencement of the new measures. This issue will be closely monitored.

As for the imposition of conditions generally, the director general will continue to be able to utilise existing powers in the liquor laws to impose conditions on licensed venues in Kings Cross on a case-by-case basis, as can be done now. However, blanket determinations for Kings Cross will be achieved via the regulation-making powers in this bill. The bill will therefore reduce the capacity for litigation that can compromise the Government's efforts to reduce alcohol-related violence and antisocial behaviour in Kings Cross.

The introduction of linked identity scanners was raised during the debate. I am advised that the Department of Premier and Cabinet is convening a task group involving senior representatives from relevant agencies, including the Privacy Commissioner, which is examining issues around the introduction of identity scanners. This task group will report back early in the new year. Its advice will inform the final arrangements applying to identity scanners in licensed venues. Questions were also raised regarding the Government's trial of a sobering up centre in Kings Cross. The task group is examining issues relating to the introduction of sobering up centres, and the advice of this group will be considered in finalising the arrangements under which sobering up centres will operate.

Issues were raised regarding transport. I advise that the provision of buses rather than trains for late-night travel in Kings Cross responds to the needs of customers who require safe and reliable public transport in the early morning hours. There are a number of reasons why late-night buses from Kings Cross are preferable to trains. Firstly, the capacity of bus services better matches the demand for public transport services leaving Kings Cross late at night on weekends with higher frequency bus services providing more options for customers. Buses also provide direct connections with the broader NightRide bus network, which customers can then use to travel home throughout Sydney. People are not dropped off at underground stations with minimal supervision. The new late-night bus services are all one-way services which means that customers can safely leave Kings Cross without providing a means for troublemakers to get to Kings Cross late at night. Finally buses provide a safer environment for customers as every service is monitored by a security guard and passengers are visible at all times. These services will be closely monitored over the coming months.

Questions were raised about exemptions from the liquor licence freeze. The bill provides an exemption from the liquor freeze in Kings Cross for small venues. The Government's view is that the presence of large venues in Kings Cross contributes to the current alcohol-related problems by encouraging large crowds of drinkers into single venues. This creates issues for venue operators who must control and supervise hundreds of patrons while preventing incidents that can quickly escalate into violence in crowded spaces. Concerns have also been raised about a lack of diversity in venues which results in particular types of patrons being attracted to the precinct while discouraging others in the community. Allowing small bars and other small venues into Kings Cross will encourage a broader range of drinking environments without the problems associated with large crowds of patrons in confined spaces. It also will allow the Kings Cross precinct to cater for a wider range of patrons.

The regulation will allow small venues to apply to trade until 2.00 a.m. although any approval for extended trading past midnight will be subject to the usual regulatory controls applying under the Liquor Act. These include the preparation of a community impact statement to inform a decision on an application for extended trading. The Independent Liquor and Gaming Authority also will need to be satisfied that responsible service of alcohol practices are in place and that an extended trading period will not result in the frequent undue disturbance of the quiet and good order of the neighbourhood. In keeping with the aim of encouraging this different business model for industry, small venues will be exempted from conditions relating to the sale of certain drinks and the requirement for a responsible service of alcohol marshal. The condition requiring operation of closed-circuit television on the premises will be extended only to small venues where there is a history of alcohol-related violence or an incident has occurred involving an act of violence or injury to a person on the premises.

With regard to the status of the Kings Cross Plan of Management, the Government is currently negotiating with the City of Sydney regarding the overall Plan of Management for Kings Cross. Development of the plan requires a careful approach involving a range of government agencies and ongoing discussions with the council. It is expected that the plan will be finalised and released by the end of this year. In the meantime the Government has implemented a number of measures that need to be in place quickly to ensure they operate over the busy summer period. These measures, such as increases in bus availability and service, police operations and liquor licensing reforms, are solely the responsibility of the Government and it is appropriate that they be progressed now.

I turn now to alcohol sales data. One of the measures that will apply to the Kings Cross precinct will allow the Director General of NSW Trade and Investment to obtain liquor sales data from nominated Kings Cross licensees. This will not be a mandatory requirement imposed on all Kings Cross venues. The collection of sales data will relate only to the night-time trade from 8.00 p.m. onwards for those venues that have been notified in writing by the director general. The collection of this data will not undermine the commercial-in-confidence nature of this type of information for venues. The data will not be published or publicly released and it will not be accessible to a venue's competitors. This reflects the secrecy provisions of

the liquor and gaming machines laws that contain safeguards that generally prohibit the release of information by the director general or others exercising statutory functions. The data will inform the development of public policies and guide enforcement efforts to improve the safety and amenity of Kings Cross.

This measure will complement the range of local data that is currently collected including alcohol-related crime, hospital admissions and incident data. The collection of liquor sales data from licensees is nothing new in New South Wales. Up until a 1997 High Court decision, all liquor licensees were required to submit an annual return of the value of their liquor purchases, which was used to calculate the venue's liquor license fee that was payable to the Government.

I would now like to turn to The Greens proposed amendments. I note that The Greens have signalled that they will move an amendment to delete proposed section 116A (2) (g), which provides that conditions to be imposed by regulation can include a requirement to exclude a specified class of person from a licensed venue in Kings Cross. The Government will not be supporting this amendment. As was noted during the debate, the provision is aimed at excluding outlaw motorcycle gang members from licensed venues in Kings Cross. To suggest that the Government would use this regulation-making power to exclude persons of Aboriginal, Torres Strait Islander or Pacific Islander descent or any other racial background for that matter is offensive. The provision confirms that the existing ban on bikie colours already imposed on 58 pubs, clubs and restaurants in Kings Cross can continue. This ban on bikie colours assists the efforts of the police to keep the Kings Cross precinct safe. It also gives licensees legal force to refuse entry to gang members seeking to take over their venue and intimidate staff and patrons.

The Greens have also signalled that they will move an amendment to increase the patron capacity limit of small venues from 60 to 120 persons. The Government will not be supporting that amendment. The bill limits a small venue to a patron capacity of 60 persons as these venues are exempted from the liquor freeze in Kings Cross. A limit of 60 persons is appropriate for a new licensed venue in Kings Cross that would otherwise not be allowable because of the freeze. The 60-patron limit takes account of the high density of venues and the number of large venues already operating in Kings Cross which result in high numbers of patrons at peak times. The new small venue provisions will help to create a different and low-risk business model for the industry. I make it clear that the bill will not prevent larger bars being established outside Kings Cross, nor will the new small venue provisions reduce the patron numbers of existing licensed venues in Kings Cross or elsewhere. I now deal with The Greens amendment No. 3, relating to section 364 (1). The Greens amendment, to provide that the director general's decision to grant an exemption or otherwise is reviewable, is not supported.

In concluding I note that Kings Cross is one of the most densely populated areas in New South Wales, with 20,000 residents concentrated in a suburb of just 1.4 square kilometres. On Friday and Saturday nights the number of people in Kings Cross doubles to around 40,000, with an additional 20,000 visitors arriving from locations all over Sydney and New South Wales. City of Sydney survey data indicates that most of these visitors are aged under 35 years, that there are more men than women, and that the proportion of men increases as the night progresses. Kings Cross stands alone in New South Wales in its density of late-night businesses including licensed premises. That is why the Government is developing a Plan of Management for Kings Cross and this legislation is a key component of that plan. I commend the bill to the House. I seek leave to table the Liquor Amendment (Kings Cross) Regulation 2012.

Leave granted.

Document tabled.

[*Deputy-President (The Hon. Paul Green) left the chair at 6.30 p.m. The House resumed at 8.00 p.m.*]

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

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 and 2 agreed to.

Dr JOHN KAYE [8.01 p.m.]: I move The Greens amendment No. 1 on sheet C2012-158:

No. 1 Page 4, schedule 1 [6], line 11. Omit "60". Insert instead "120".

The bill as currently drafted defines a "small venue" in proposed section 47AA (2) as being one where no more than 60 patrons may be lawfully on the premises at any one time under the licence conditions for the premises or any relevant consent for the premises under the Environmental Planning and Assessment Act 1979. This is a departure from the existing situation where a "small bar" has been defined as one where no more than 120 patrons may be on the premises. This is a matter of substantial political interest. On 17 July the *Sydney Morning Herald* reported the Minister for Tourism, Major Events, Hospitality and Racing, George Souris, as making the following comments in relation to small venues:

> "It was hoped by Clover Moore that those smaller venues would attract more passive people, nicer people drinking chardonnay and they would fill up these lovely lanes across the CBD," Mr Souris said.
>
> "Well, they filled up the lovely lanes in Kings Cross; they focused on where the obvious attraction was."
>
> The proliferation of small bars was "one of the contributors" to the problem of alcohol-related violence, he believed.
>
> "Not entirely, but to some extent, that really has been a failure of policy—the proliferation of small licences in the concentrated way that they have occurred," Mr Souris said.

Mr Souris was saying that small bars—in those days bars where no more than 120 patrons could be on the premises—had proliferated. He made two assertions: firstly, that small bars had proliferated and, secondly, that they had contributed to violence. On both counts Mr Souris was entirely wrong. In fact, in the Kings Cross precinct there were five small bars out of a total of 58 small bars across the entire City of Sydney local government area. It is untrue to say that there was a proliferation of small bars. I understand that three of those five bars were not in central Kings Cross but were further north, so it was hardly a proliferation.

Then the Minister implied that the proliferation of small bars was one of the contributors to the problem of alcohol-related violence in Kings Cross. He is 100 per cent wrong on that. The Bureau of Crime Statistics and Research data shows very clearly that the determinants in liquor-serving venues relate to factors such as the quality and type of alcohol served, adherence to responsible service of alcohol, the trading hours and, importantly, patron numbers and patron demography. Clearly smaller bars offer an opportunity for better surveillance of consumers within those bars. They offer the opportunity to ensure that the focus of the bar is not on the consumption of alcohol. Consumption of alcohol is an adjunct to a night out, not the focus of a night out in a small bar.

Small bars offer a real opportunity for the transformation of the drinking culture in Australia. It is not a panacea and clearly small bars should not be seen as such. They are an opportunity to provide alcohol-related entertainment which involves far less violence and far less likelihood of violence. Clearly Mr Souris is singing the same tune as the Australian Hotels Association. The association is clearly threatened by small bars. The association's members make a lot of money out of people's heavy drinking and from serving a lot of alcohol to a large number of people. If small bars were to be successful and become a significant player in entertainment venues such as Kings Cross the Australian Hotels Association members' profits would be threatened and they would be seeking to undermine small bars.

This legislation attempts to reduce the definition of a "small bar" from one in which there may be no more than 120 patrons to one with no more than 60 patrons. The City of Sydney's development control plans [DCPs], which were the determinant instrument until now, define a "small bar" in the following terms:

> A small bar would need to satisfy the requirements of the City of Sydney's Late Night Trading Premises DCP 2007: Category B – Low Impact Premises i.e. premises with a capacity for 120 patrons or less (including outside areas) and for which the primary purpose is the sale of liquor for consumption on the premises.

That is, they are not off-licences; they do not sell packaged alcohol. So there is currently a City of Sydney definition of "small bars", which is 120 patrons. That figure is significant. Mr Martin O'Sullivan, the President of the NSW Small Bar Association—which is not a group of lawyers of my stature but the body that represents small bars—said that small bars would be financially unviable if the definition of a "small bar" was 60 patrons as most catered for between 80 and 90 patrons. Clearly what is going on here is an attempt to get at the small bars.

Mr O'Sullivan's evidence is that if we limit small bars to 60 or fewer patrons they will not be financially viable. That effectively means that this legislation will remove any opportunity for small bars to become a significant component of the solutions to alcohol-related violence in Kings Cross. For that reason we are moving our amendment No. 1 on sheet C2012-158, which changes the definition of "small bar" from not

more than 60 patrons to not more than 120 patrons, to be consistent with the City of Sydney development control plan, to be consistent with the financial viability criteria described by Mr O'Sullivan, and to give small bars the chance to succeed and to become a significant component of the solutions.

By allowing small bars to succeed, this legislation will offer a transformation of Kings Cross from a destination where partygoers go primarily for the purposes of the consumption of alcohol to a venue for a night of entertainment where alcohol is part of that entertainment—and nobody is saying we should stop people enjoying a drink. The problem is the drinking culture that surrounds the large, noisy, densely populated bars that have become associated with heavy drinking and dangerous drinking activities. We have to offer an alternative to that, and small bars are an alternative. The legislation as introduced by the Government will not offer a solution for small bars. Therefore, The Greens commend our amendment to the Committee and hope that it will give serious consideration to amending the definition of "small bar" to not more than 120 patrons.

The Hon. DAVID CLARKE (Parliamentary Secretary) [8.11 p.m.]: The Government does not support The Greens amendment No. 1. As already mentioned, the bill limits a small venue to a patron capacity of 60 persons as these venues are exempted from the liquor freeze in Kings Cross. Currently no bars can be established in Kings Cross no matter what their size. Sixty persons is an appropriate patron limit for a new licensed venue in Kings Cross that would otherwise not be allowable because of the freeze. This limit takes account of the high density of venues and the number of large venues already operating in Kings Cross. The bill will not prevent larger bars being established outside Kings Cross and it will not reduce the patron numbers of existing licensed venues anywhere in New South Wales. The small venue provisions are a targeted measure applying to the Kings Cross freeze area, which will help to create a different and low-risk business model for the industry.

The Hon. STEVE WHAN [8.12 p.m.]: I acknowledge that it is reasonable to have a debate about the number of patrons that constitute the definition of "small bars". Obviously one cannot pluck a number out of the air and say that is ideal; there will be pros and cons. I acknowledge some of the arguments that Dr John Kaye has put forward in relation to 120 patrons being the number set by the City of Sydney. Currently we do not have a definition of "small bar" in State law. As a first step in finding a solution to the problems in Kings Cross the Opposition thinks it is reasonable to put this limit of 60 patrons in place in an area where there is currently a freeze on the issuing of new liquor licences and it will provide an opportunity for new premises to open.

I suspect that in the future we will need to have a broader debate about the definition of "small bars" for the rest of New South Wales. Perhaps when we do that we will have the opportunity to see whether the limit of 60 patrons has been appropriate in Kings Cross and is appropriate to be applied elsewhere. I can see that there may be a strong argument for the limit being higher, but the Opposition supports the Government on this issue. In relation to the conditions of the freeze that is being extended by the Government, I hope that for the City of Sydney and for pubs in the Kings Cross area there will be scope for the freeze to accommodate people who, for instance, are renovating or changing existing premises or licences, or people who have licences that are in abeyance because the premises currently cannot be used. Those issues have been raised with me. I hope that there will be enough flexibility to deal with those sorts of issues. The Opposition does not support The Greens' amendment.

Dr JOHN KAYE [8.14 p.m.]: I thank the Government and the Opposition for their contributions to the debate on this amendment. I probably did not state it clearly enough, but I understand that this is about allowing the development of new bars in the Kings Cross precinct and that the legislation, as it stands, would allow new small bars with a limit of 60 patrons to be developed. My concern with a limit of 60 patrons is that it is a nonsense to talk about developing small bars with that limit. Mr Martin O'Sullivan, who is a representative of small bars, makes it absolutely clear that bars are not financially viable when limited to 60 patrons. We are creating the fiction that new small bars would be allowed to be developed in the Kings Cross region when in fact they will not because they will not be financially viable. According to Mr O'Sullivan's evidence bars need about 80 to 90 patrons to be viable.

I think this is significant and that we should wait to see what happens for the following reasons. If we say small bars are allowed to develop but they cannot develop to accommodate more than 60 patrons there will be no new small bars because nobody will invest in a small bar in Kings Cross. That means Kings Cross remains ossified as a venue that is almost entirely dominated by large venues. We know that large venues, particularly the kinds of large venues that currently exist in Kings Cross, are associated with dangerous drinking activities. Because of their density, their noise and their structure these large venues encourage and effectively promote

adverse drinking activities. The idea of lifting the freeze in Kings Cross on small bars was to begin the process of taking Kings Cross away from the dominance of the large licensed outlets. With the definition limited to 60 patrons that simply will not happen and we will be stuck where we are now.

The Hon. Dr Peter Phelps: Why did it happen in Victoria then?

Dr JOHN KAYE: The Opposition Whip asks: Why did it happen in Victoria? Why did small bars limited to fewer than 60 patrons proliferate in Victoria? It is hard to make comparisons between Victoria as a general entity and Kings Cross as a micro-entity because land values are different and because—and I say this as somebody who grew up in Victoria—the geography of the city of Melbourne is different to the geography of the city of Sydney. In Victoria there are more back lanes, the real estate values in those back lanes tend to be lower and there tends to be a lower entry barrier for small bars. The advice given to us publicly by Mr O'Sullivan is that this will not work.

The Hon. Dr Peter Phelps: He might have an interest.

Dr JOHN KAYE: Of course he has an interest, but so does everybody else in there—such as the Australian Hotels Association. The Australian Hotels Association has been leading the charge against the small bars. The reality is that without this amendment this legislation will be ineffective in transforming the culture of Kings Cross.

Question—That The Greens amendment No. 1 [C2012-158] be agreed to—put and resolved in the negative.

The Greens amendment No. 1 [C2012-158] negatived.

Dr JOHN KAYE [8.18 p.m.]: I move Greens amendment No. 1 on sheet C2012-146:

No. 1 Page 5, schedule 1 [8], proposed section 116A, lines 25-28. Omit all words on those lines.

This amendment relates to proposed section 116A (2) (g). Section 116A relates to the regulatory controls for licensed premises in Kings Cross and it facilitates regulations that can prescribe conditions to which a licence relating to premises situated in Kings Cross is subject. In subclause (2) (g) one of the conditions that the regulations may have is to require the exclusion from licensed premises of persons of a specified class, including persons who are wearing any clothing or article displaying the name of or other matter associated with a particular organisation. It is clearly what is in the mind of this Government. We knew what it had in mind when the Parliamentary Secretary kindly tabled the Liquor Amendment (Kings Cross) Regulation 2012, which is a draft regulation that signals the Government's intent under the regulation-making power in new section 116A. New section 53K in schedule 1 of the draft regulation refers to the exclusion of persons from subject premises, and states:

> The licensee of subject premises must not permit any person to enter the premises, or to remain on the premises, if the person is wearing or carrying any clothing, jewellery or accessory displaying:
>
> (a) the name of any of the following motorcycle-related organisations:
>
> (i) Bandidos
>
> (ii) Black Uhlans
>
> (iii) Coffin Cheaters
>
> (iv) Comancheros

The list continues alphabetically all the way down to "Scorpions".

The Hon. Rick Colless: The Greens.

Dr JOHN KAYE: I acknowledge that interjection from the Hon. Rick Colless. It does not include The Greens, although I strongly suspect it was going through the mind of the Government Whip. I will park that comment for a minute and get back to it. It is clear that the Government's intention with respect to this provision in new section 116A is to exclude not just bikies but also anybody who is wearing bikie paraphernalia. For example, if somebody happened to buy and wear a Comancheros T-shirt that person would be excluded. That

highlights that this is not exclusion on the grounds of criminal behaviour; it is purely exclusion on the grounds of association with an organisation that has an association with criminal behaviour. The association is as flimsy as wearing an item of apparel that bears its name. It is an insult to the idea of civil liberties, which includes the right to express oneself and to wear clothes as one sees fit.

But the bill is about more than that. It goes to the very helpful interjection—as they so often are—from the Deputy Government Whip, the Hon. Rick Colless, with respect to The Greens. It is clear that under new section 53K and new section 116A the Government's intention is to discriminate against bikie gangs. Passing this legislation creates the regulating power that would allow any nature of discrimination not on the basis of criminal record or criminal activity, but on the basis of membership of a specified class identified in the regulation. That specified class could be anything—it is not limited to the wearing of apparel but it clearly includes the wearing of apparel. It could include a Nationals T-shirt; it could include a Labor Party cap.

The Hon. Steve Whan: It could include your tie, Rick.

Dr JOHN KAYE: It could include the Hon. Rick Colless' tie. It creates a serious regulation-making power that is powerful and discriminatory and runs counter to the idea of freedom of expression. Yes, if somebody has committed a criminal offence, is in the process of committing a criminal offence, or enters and clearly demonstrates an intention to commit a criminal offence then there is a solid argument. But the regulating power allows the exclusion of a class of persons. For example, the Australian Hotels Association may seek to exclude members of the Women's Christian Temperance Union who may wish to enter premises and proselytise against the excessive consumption of alcohol. That would be empowered under this legislation. It may wish to exclude the Hare Krishna. It allows an array of discriminatory activity. It is a step too far.

If the Government wants to impose on civil liberties it will need to be far more specific than giving itself a general discriminatory power under new section 116A. The Greens have moved an amendment that will delete new section 116A (2) (g) and remove the regulation-making power to exclude persons on the basis of the class to which they belong. We think that is an important civil liberties statement—which I would have thought the Liberal Party, which is supposedly an organisation of liberal values, would find it troublesome not to support. Therefore, The Greens commend the amendment to the Chamber.

The Hon. DAVID CLARKE (Parliamentary Secretary) [8.25 p.m.]: The Government has indicated previously and again makes it clear that it does not support this amendment by The Greens. The amendment would delete new section 116A (2) (g) from the Liquor Act, which makes it clear that conditions imposed by regulation can include a requirement to exclude a specified class of person from a licensed venue in Kings Cross. I reiterate what I said earlier: This provision supports measures to exclude outlaw motorcycle gang members from licensed venues in Kings Cross. That is what this Government wants to do. The honourable member acknowledged this during the debate. This Government is trying to do something about criminal behaviour in the Cross. The bill is not going to be used to target particular racial groups or impose dress standards on all patrons.

Licensees already have a common law right under the Liquor Act to restrict access to licensed premises through the application of dress codes. Many licensees adopt dress codes to ensure that the clothing worn by patrons reflects the standard and tone of the venue. Licensees are subject to the requirements of the Anti-Discrimination Act when deciding to restrict access to their premises. Some venues already use dress code safeguards to ban bikie clothing, accessories and colours. This provision confirms that the existing ban on bikie colours already imposed on 58 pubs, clubs and restaurants in Kings Cross can continue. This ban on bikie colours assists police efforts to help keep the Kings Cross precinct safe. This is what the bill is about. It also gives licensees legal force to refuse entry to gang members seeking to take over their venue and to intimidate staff and patrons. Who could argue against that?

The Hon. Dr Peter Phelps: The Greens could.

The Hon. DAVID CLARKE: The Greens could and The Greens do. It is an important regulatory tool in reducing crime in the Cross. The Government is opposed to the amendment; we are intent on reducing crime in the Cross.

The Hon. STEVE WHAN [8.27 p.m.]: The Opposition agrees with the efforts to try to stop colours from being worn into venues in the Cross. While some of the points that The Greens made—

The Hon. Rick Colless: Does that include The Greens' colours?

The Hon. STEVE WHAN: Members should not joke about that; it does not help. Had we not seen the regulations, we might be more worried. But once we have the regulations in front of us we can see that they are quite specific in saying that the provision applies to motorcycle-related organisations. I assume someone who happened to be wearing a T-shirt that said "Highway 61" but was not related to the motorcycle organisation would not be excluded from the premises. That is just good sense, and we hope that would be the case. We need to examine future regulations and ensure they will not be abused. Even though I have many suspicions about this Government and I do not trust it in a lot of areas, I do not think that even it would stoop to banning patrons wearing The Greens' T-shirts or ones bearing Country Labor's logo when they visit the Cross.

The Hon. Dr Peter Phelps: Does Country Labor have a logo?

The Hon. STEVE WHAN: Yes, we do. The Opposition is happy to join the Government in opposing the amendment. I am not familiar with some of the organisations on the list.

The Hon. Dr Peter Phelps: So you say.

The Hon. STEVE WHAN: I invite the Parliamentary Whip to give us a description of the logo of the organisation named in new section 53K (a) (xiii). Perhaps he would like to enlighten us about that. In all seriousness—because this is an important issue—the Opposition strongly supports keeping motorcycle gang colours out of venues in the Cross because they have been shown to cause law and order problems in the area. Some of The Greens' points might have been relevant had we not seen the regulation, but we now have the regulation before us and it reassures us of the limited nature of the bill in this respect.

Reverend the Hon. FRED NILE [8.30 p.m.]: The Christian Democratic Party does not support The Greens amendment. We believe new section 116A (2) (g) is very specific. It does not ban people from visiting Kings Cross; it only requires the exclusion from licensed premises of persons of a specified class, et cetera, who are wearing any clothing or article displaying the name of a particular organisation. The provision is clearly aimed at bikie gangs. It may also encompass some related gangs but it certainly would not include the Australian Women's Christian Temperance Union that is for sure.

Dr John Kaye: How do you know that?

Reverend the Hon. FRED NILE: Because its members are not usually blamed for violent acts in Kings Cross. The Christian Democratic Party supports the bill.

Dr JOHN KAYE [8.31 p.m.]: As I said at the outset, The Greens accept that this is not aimed at the Australian Women's Christian Temperance Union, the Hare Krishnas or any other organisation. That is not what is in the mind of the Government.

Reverend the Hon. Fred Nile: You raised it.

Dr JOHN KAYE: I raised it by saying that was not what was in the mind of the Government. If I did not say that before I am saying it now. I fully accept that is not what is in the mind of the Government.

The Hon. Rick Colless: Then why did you say it?

Dr JOHN KAYE: If the Hon. Rick Colless had listened to the argument he would probably understand. He lacks patience.

The Hon. Rick Colless: Your argument doesn't make sense.

Dr JOHN KAYE: If the Hon. Rick Colless tried a bit harder he might understand what I am saying. The issue is not what is in the mind of this Government or what would be in the mind of the Opposition should it be elected to government; the issue is that the legislation we write should be proof against any form of tyranny.

The Hon. Dr Peter Phelps: All legislation is tyranny.

Dr JOHN KAYE: I am advised that I should acknowledge that interjection. As much as possible we should not allow legislation to create an opportunity for unknown future governments to behave in an adverse

fashion. Reverend the Hon. Fred Nile misquoted the legislation, although not deliberately. He said it "requires the exclusion from licensed premises of persons of a specified class, et cetera, who are wearing any clothing or article displaying the name of a particular organisation". He missed out the important words "including persons". The material in brackets in new section 116A (2) (g) is an example of legislation that could give the Crown the right to discriminate against any class of person. That power should not be created. If the Government is serious about bikie gangs perhaps we should have an argument in this Chamber about them but to extend a provision to any class of persons is a bridge too far. The Greens commend the amendment to the Committee.

Question—That The Greens amendment No. 1 [C2012-146] be agreed to—put.

The Committee divided.

Ayes, 5

Ms Barham
Mr Buckingham
Dr Kaye
Tellers,
Ms Faehrmann
Mr Shoebridge

Noes, 28

Mr Ajaka	Mr MacDonald	Mr Secord
Mr Blair	Mrs Maclaren-Jones	Ms Sharpe
Mr Clarke	Mr Mason-Cox	Mr Veitch
Ms Cotsis	Mrs Mitchell	Ms Voltz
Ms Cusack	Mr Moselmane	Ms Westwood
Mr Donnelly	Reverend Nile	Mr Whan
Ms Fazio	Mrs Pavey	
Mr Green	Mr Pearce	*Tellers,*
Mr Khan	Mr Primrose	Mr Colless
Mr Lynn	Mr Searle	Dr Phelps

Question resolved in the negative.

The Greens amendment No. 1 [C2012-146] negatived.

Schedule 1 agreed to.

Schedules 2 and 3 agreed to.

Dr JOHN KAYE [8.43 p.m.]: I move The Greens amendment No. 1 on sheet C2012-161:

No. 1 Page 12. Insert after line 8:

Schedule 4 Amendment of Gaming and Liquor Administration Act 2007 No 91

Section 36A Review by Authority of certain decisions by Director-General under gaming and liquor legislation

Insert after paragraph (a) of the definition of ***reviewable decision*** in section 36A (1):

(a1) a decision of the Director-General to grant an exemption, or to refuse to grant an exemption, from any of the conditions prescribed by the regulations under section 116A of the *Liquor Act 2007* (being an exemption that the Director-General is authorised to grant under those regulations), or

This amendment relates to the regulation-making power created in proposed section 116A and, in particular, proposed subsection (4), which states:

> The regulations may authorise the Director-General to exempt the licensee of any premises situated in the Kings Cross precinct from any of the conditions prescribed by the regulations under this section.

The issue is not the proposed section—The Greens understand the arguments for exemptions—but that decisions made by the director general will not be in any way appealable or challengeable. The director general's power to exempt the licensee of any premise in Kings Cross will be prescribed in the regulation and any such determination will be final; that is, there will be no right of review. Section 36A of the Gaming and Liquor Administration Act provides a long list of decisions made by the director general that are reviewable by the Administrative Decisions Tribunal. The exemption determinations provided for in proposed section 116A (4) will not be reviewable.

The director general will have unlimited and unique powers that will not be subject to any merit or process review. Of course, we are suggesting that the administrative decision-maker is not infallible. The concern is that an aggrieved party has no capacity to lodge an appeal. For that reason The Greens wish to amend the provision dealing with section 36A of the Gaming and Liquor Administration Act to allow a party aggrieved by a determination of the director general to seek a review by the Administrative Decisions Tribunal. It is a fair way to ensure procedural justice and it recognises that with the best will in the world the director general is not infallible and mistakes can be made. The amendment simply provides some degree of procedural fairness. I commend the amendment to the Committee.

Reverend the Hon. FRED NILE [8.48 p.m.]: The Christian Democratic Party understands Dr John Kaye's reasons for moving this amendment. We sympathise with the proposition that the director general's determination might on occasion need to be reviewed. However, we are also very concerned that any review process could be exploited by the owners or licensees of various premises to prevent conditions being applied, which would completely undermine the legislation. I ask the Government to examine this issue to establish whether the legislation can be finetuned to provide for determinations to be reviewed. The Christian Democratic Party does not support the amendment but would like the Parliamentary Secretary to indicate whether the Government is prepared to consider finetuning the legislation.

The Hon. STEVE WHAN [8.49 p.m.]: The Opposition supports The Greens amendment. A number of issues have been raised with me since the second reading debate, and this amendment involves one of them. Concerns have been raised about the potential for this to be a one-size-fits-all solution for Kings Cross. The regulations deal with that in that they differentiate between venues which are open late and which trade all night and venues which are open until 1.00 a.m.—for example, restaurants and similar establishments. The Government dealt with one of those concerns in the regulations.

However, concern exists over the lack of an appeal mechanism that is separate from review of the legislation in a year or two. The expectation of the owner of a business that a decision taken by a director general can be independently reviewed, if the owner thinks the decision is unfair, is reasonable. As the legislation stands, it will place a lot of power into the hands of the director general to take decisions that will directly impact upon businesses in Kings Cross. While the Opposition supports the Government's measure to overcome problems in Kings Cross, we believe it is entirely reasonable for a decision to be able to be reviewed in common with so many other decisions that are reviewable in Government legislation; otherwise, the director general may be regarded as a tsar of Kings Cross. While I do not cavil at any decisions made by the director general in recent times, I cannot be sure that will always be the case. It seems reasonable to provide a mechanism for review of a decision.

The Australian Hotels Association, a couple of owners and people involved in the Kings Cross Liquor Accord raised this issue with me directly. They believe it is unfair for this legislation to be passed without including in it capacity for decisions made by the director general to be reviewed. On behalf of the Opposition I express my appreciation of The Greens moving this amendment. Earlier the capacity for review of this legislation was mentioned and the Committee received an indication that a capacity for review exists. It seems appropriate for the legislation to be reviewed after 12 months but before two years following its commencement to assess its effectiveness.

The results of a review could go one of two ways: firstly, some regulations may not be necessary or, secondly, the legislation may need to be tougher. Licensees would have to take the risk of an adverse outcome from a review. The issue was raised with me by the Australian Hotels Association, which believes that the legislation should include a built-in capacity for review. Although the Opposition will not move an amendment to include a provision for review or an appeal mechanism, I ask the Parliamentary Secretary to address the issue of potential timeframes for future review of the bill.

The Hon. DAVID CLARKE (Parliamentary Secretary) [8.52 p.m.]: The Greens amendment seeks to provide that a decision of the director general in relation to granting an exemption is reviewable. The amendment is

not supported by the Government. The scheme as announced does not provide for review of a director general's decision because the Government is committed to implementing significant measures to curtail alcohol-related violence in Kings Cross. The reason for rejection of the amendment is that the Government does not want its reforms to be frustrated by litigation that is fuelled by an intention to defeat the merits of the scheme.

Clause 53P of the regulation provides an appropriate framework for considering applications for exemptions in circumstances in which the applicant has a commitment to managing alcohol-related harm. I specifically take into account the comments made by Reverend the Hon. Fred Nile and his question. I make the point very strenuously that the Government has indicated that the scheme will be reviewed after a period of operation to enable finetuning to take place and to address any issues that arise, including the issue of reviewable decisions. The review will include everything. I make it very clear that it will include a review of reviewable decisions.

In response to the matter raised by the Opposition relating to review within a period of 12 months or two years, I make the point that the legislation may require finetuning before 12 months has elapsed. The Government will finetune the legislation when the legislation requires it. If the Government sees the operation of the legislation going off the rails which may be resolved by some tweaking of parts of the legislation a review may well be undertaken before 12 months or two years have elapsed.

The Hon. Steve Whan: What is the maximum time within which a review would take place?

The Hon. DAVID CLARKE: The Opposition asks me to state a maximum time within which a review may take place. In the end result I believe time will tell that the Government has acted correctly in not putting a time limit on review of the legislation. It may well be that a review is undertaken before 12 months or two years have elapsed.

The Hon. Trevor Khan: You have convinced me, David.

The Hon. DAVID CLARKE: I am sure that most people are convinced, but The Greens never will be convinced. The Greens always want to set the bar higher, and then higher and higher still. That is just the way The Greens operate. They know of no other way to act. The fact of the matter is that the Government will be monitoring this scheme. As the Opposition stated, the scheduled five-year general review of the Liquor Act will occur in 2013 and everything will be examined automatically at that stage. However, it may well be that the Government will tweak the operation of the legislation earlier than 2013. In direct response to the point raised by Reverend the Hon. Fred Nile, everything will be reviewed, including the issue of reviewable decisions.

Reverend the Hon. Fred Nile: Good.

The Hon. DAVID CLARKE: It will not be restricted.

Mr DAVID SHOEBRIDGE [8.55 p.m.]: I strongly support the amendment moved by my colleague Dr John Kaye. This Government has a tendency towards taking away oversight and independent reviews. I thought this Government did that only for injured workers. On one level, it is marginally comforting to see that this Government not only will take away review rights from injured workers but also will take away review rights from publicans. Any class of persons potentially can have its review rights under the hammer with this Government. If the Government is convinced that the director general will make meritorious decisions the Government should be willing to have those decisions tested by administrative review, which is all that is being suggested by this amendment. If the Government stands by the director general's decisions and thinks the decisions have merit, the Government should be prepared to defend those decisions in a reasonably cost-effective and time-effective review process through a tribunal.

The Hon. STEVE WHAN [8.56 p.m.]: I note the comment made by the Parliamentary Secretary that the overall Act will be reviewed in 2013. I would like to be able to walk out of this Chamber thinking that a commitment to reviewing the legislation in 2013 is safeguarded, but I am not sure that the Parliamentary Secretary has made that commitment. I accept the position adopted by the Parliamentary Secretary that the legislation will be reviewed if the need for change is manifested earlier. It is entirely reasonable that appeal provisions be reviewed at that time, but I also think it is reasonable in relation to this type of legislation to have a commitment to a review occurring before expiry of a stipulated period. That is not an unreasonable proposition.

As I stated earlier, review of a director general's decision can go either way. I also think it is not unreasonable for individuals and individual businesses that are affected by decisions to be able to have the

decision reviewed. The decision will not be made by someone who has been elected but, rather, by an appointed official. While we may think the official is a good administrator, a process should be provided to enable people to have that official's decisions reviewed.

Dr JOHN KAYE [8.58 p.m.]: I thank members for their contributions. I also thank the Opposition for its support as well as for the cogent arguments it has advanced. In response to the issues raised by Reverend the Hon. Fred Nile, I point out that The Greens are enthusiastic about this legislation. We hope it works. Like every member of this Chamber, The Greens are committed to reducing alcohol-related violence in Kings Cross. That could happen in a variety of ways and there are a variety of views on how it should happen, but every member who participates in this debate has a commitment to achieving that outcome. It is not the intention of The Greens in relation to this amendment, nor would it be its effect, to subvert or undermine this legislation or its impact. The Administrative Decisions Tribunal is not a frivolous body and is not like administrative review bodies in some jurisdictions where matters can remain unresolved for years on end.

This is purely a matter of enabling a decision to be appealed against, and we should bear in mind that the decision will remain in effect while the outcome of the appeal is determined. For example, if a venue is denied the right to operate for longer hours that denial will remain in place until the Administrative Decisions Tribunal has made its decision. Nothing in an appeal to the Administrative Appeals Tribunal freezes the decisions of the director general and they will remain in place. Like Reverend the Hon. Fred Nile, I share a concern about creating opportunities for litigious individuals and enterprises to tie up matters in courts.

Reverend the Hon. Fred Nile: That has already been happening.

Dr JOHN KAYE: But this will not be like that because this will not seek an injunction against a decision, but a decision will stand while it is reviewed. I am concerned that if a review of the outcomes occurs in 2013 or 2014, the director general will make two or three years of decisions that are not reviewable. The director general inevitably will make some mistakes that will stand until the legislation is reviewed or possibly longer.

Reverend the Hon. Fred Nile: Or sooner.

Dr JOHN KAYE: Possibly sooner, possibly not. The Parliamentary Secretary did not make a commitment to anything before 2013, with all due respect, and it was not clear that this particular provision would emerge from any such review. I take what the Parliamentary Secretary said as a compliment to The Greens, "The Greens are never satisfied. The Greens always wish to set the bar higher." I hope every member of this Chamber seeks to set the bar higher and higher, and seeks to improve matters as much as we can. The Greens want to set the bar high on reviewable decisions rather than hand over unlimited and unreviewable powers to the director general. We want to see those powers tempered by the capacity for the Administrative Decisions Tribunal to review those powers. We commend the amendment to the Committee.

The Hon. DAVID CLARKE (Parliamentary Secretary) [9.02 p.m.]: I cannot let some remarks pass without comment. Dr John Kaye said The Greens just tried to scuttle the provisions in the Government's legislation dealing with bikie gangs and then had the gall to say that they are not trying to undermine anything. The five members of The Greens were sitting on one side of the Chamber while all other members were sitting on the other side of the Chamber, but they tell us with a straight face that they are not trying to undermine this legislation. The Greens tried to slash this legislation by deleting provisions dealing with bikie gangs. It is rather cute of The Greens to say that it is not trying to undermine the bill. I repeat what I said earlier: The Government will keep this legislation under constant review, including the reviewable decisions. Even the five-year review of the Liquor Act, which is coming up in 2013, is informed by submissions that are received. The Government believes that the future will show that it has acted correctly. This legislation is necessary; people are crying out for it.

Question—That The Greens amendment No. 1 [C2012-161] be agreed to—put.

The Committee divided.

Ayes, 17

Mr Buckingham	Mr Moselmane	Ms Voltz
Ms Cotsis	Mr Primrose	Ms Westwood
Mr Donnelly	Mr Searle	Mr Whan
Ms Faehrmann	Mr Secord	*Tellers,*
Ms Fazio	Ms Sharpe	Ms Barham
Dr Kaye	Mr Veitch	Mr Shoebridge

Noes, 20

Mr Ajaka	Mr Gay	Mrs Mitchell
Mr Blair	Mr Green	Reverend Nile
Mr Borsak	Mr Khan	Mrs Pavey
Mr Brown	Mr Lynn	Mr Pearce
Mr Clarke	Mr MacDonald	*Tellers,*
Ms Cusack	Mrs Maclaren-Jones	Mr Colless
Mr Gallacher	Mr Mason-Cox	Dr Phelps

Pairs

Mr Foley	Ms Ficarra
Mr Roozendaal	Mr Harwin

Question resolved in the negative.

The Greens amendment No. 1 [C2012-161] negatived.

Title agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. David Clarke, on behalf of the Hon. Michael Gallacher, agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. David Clarke, on behalf of the Hon. Michael Gallacher, agreed to:

That this bill be now read a third time.

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

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL 2012

Second Reading

The Hon. GREG PEARCE (Minister for Finance and Services, and Minister for the Illawarra) [9.14 p.m.]: I move:

That this bill be now read a second time.

I am pleased to introduce the Environmental Planning and Assessment Amendment Bill 2012. Members are well aware that the Government is working on new planning legislation. This bill is an interim but essential measure to address two significant areas of past policy neglect—housing supply and building certification, including the accreditation of certifiers. The Government needs to act now and not wait for the new planning legislation. Nevertheless, the proposals in this bill are consistent with the policy direction set out in the green paper.

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! Members who wish to conduct private conversations should do so outside the Chamber. The Minister will be heard in silence.

The Hon. GREG PEARCE: After reaching record lows under the former Government, housing production continues to perform below target. These reforms will remove unnecessary impediments and serve to assist in boosting supply. As members would be aware, this bill was introduced into the other place in October

by the Minister for Planning and Infrastructure. Following the introduction of the bill in the Legislative Assembly, the Minister engaged in consultation with a number of community and stakeholder groups, as well as local councils—who had expressed concern about some aspects of the bill relating to development control plans and heritage conservation. During these consultations the Government received recommendations on amendments from the Christian Democratic Party, The Greens, and the City of Sydney.

The Government's approach to planning has consistently been open, transparent, and consultative—and this has been reflected in its engagement on this bill. The Minister thanks those groups and individuals who have engaged with the Government on this legislation and have contributed constructively to the debate. In response to the issues raised during the Government's consultations, I foreshadow a number of amendments to the bill that the Government will move in Committee. I now turn to the important provisions in the bill. Local environmental plans and State environmental planning policies zone land. They contain the principal development standards relating to things like height and floor space ratio. They identify heritage items and heritage conservation areas. They also contain broad aims and objectives that seek to guide in general terms how development is to be carried out.

Councils have always been able to provide additional guidance through development control plans. The problem is that some councils no longer consider them as providing guidance. They seek to apply the provisions of their development control plans inflexibly and seem unwilling to consider alternative solutions for achieving the objects of the particular provisions. The other problem is that in recent years development control plans have grown and become ever more complex and prescriptive, making it harder for projects to comply with the controls. Taken together these changes have led to greater complexity, greater prescription and greater inflexibility. The bill will redress the imbalance and ensure that consent authorities will be able to continue assessing development against their existing development control plans but must adopt a more flexible performance-based approach.

The bill makes it clear that development control plans are guidelines, not statutory instruments. As guidelines they should be given less status than local environmental plans and State environmental planning policies in the development assessment process. The bill provides that provisions in development control plans are of no effect to the extent that they are the same or substantially the same or are inconsistent or incompatible with the provisions of a local environmental plan or a State environmental planning policy. The bill also makes it clear that development control plans implement planning instruments rather than the other way around. As the remainder of the speech is in the same terms as that delivered in the other place, I seek leave to incorporate the remainder of the second reading speech in *Hansard*.

Leave granted.

The bill provides that where a development application does not comply with a standard the consent authority must apply the development control plan flexibly and allow alternative solutions to address those aspects of the development.

Under the new provisions the consent authority may consider the provisions of the development control plans only in connection with the assessment of the particular application.

These changes are also not an opportunity for councils to delay the preparation of their standard instrument local environmental plans or to seek to at this stage include unnecessary development controls in those plans.

Further work will be done in this area—now is not the time to be requiring councils to redraft their development control plans—the Government plans more comprehensive reform in this area in its forthcoming white paper.

Bushfire risk is often reduced very quickly as an urban release area develops but the bushfire maps are not amended until sometime later, triggering the need for unnecessary assessment and approvals.

The bill will enable streamlined assessment and approvals in urban release areas by allowing the Rural Fire Service to update the bushfire-prone land maps.

Bushfire planning will also be able to be addressed strategically by enabling an assessment of bushfire risk to be undertaken at the subdivision stage, removing the need to reassess bushfire issues for subsequent development applications. Any subsequent approval for the site will consider any conditions imposed at the subdivision stage.

The bill amends the provisions in the Threatened Species Conservation Act relating to biodiversity certification in Sydney's growth centres.

Under the biodiversity certification provisions that apply elsewhere in the State, an approving authority is not required to consider the likely impact of the proposal on biodiversity values within the biodiversity certified land, and avoids duplicating the strategic assessment already done.

These provisions do not currently apply to biodiversity certified land in the north-west and south-west growth centres. The bill will ensure that biodiversity certification provisions apply consistently to the growth centres. The bill also clarifies that biodiversity certification applies to certified land in the growth centres irrespective of which environmental planning instruments apply.

The bill also includes some amendments to the existing uncommenced paper subdivisions provisions in the Environmental Planning and Assessment Act.

The paper subdivision provisions will provide a way to overcome barriers of fragmented ownership and lack of infrastructure and enable landowners to work together with an appropriate authority to fund the provision of infrastructure and unlock the potential of the land.

The bill includes a minor amendment to facilitate the move towards more code-based assessment.

The amendment will ensure that development contributions and levies can be imposed regardless of whether approval is given by a development consent or a complying development certificate.

I now turn to the second area of policy reform, building certification.

The bill contains measures developed after wide consultation to provide greater consumer protection, improve private certification and more effectively deal with complaints.

The bill implements the following reforms.

It provides additional protection for consumers by mandating written contracts for certification work.

It introduces provisions that allow the Building Professionals Board to require an accredited certifier to undertake an examination and to allow the board to vary existing conditions, impose new conditions or to suspend or cancel accreditation in response to that test.

It introduces new provisions to expressly require the Building Professionals Board and the Administrative Decisions Tribunal to consider previous disciplinary actions when imposing penalties for unsatisfactory professional conduct or professional misconduct.

It also provides for greater powers for councils to better recover the costs of issuing orders under the Environmental Planning and Assessment Act.

Part of the challenge facing building certification is how to ensure suitably qualified professionals design, install and certify critical elements of building work particularly in more complex buildings. Compliance certificates can be relied upon by certifying authorities when issuing other certificates like construction certificates and occupation certificates.

The bill will enable compliance certificates to be issued by a person or a class of person prescribed by the regulations, like architects and land surveyors, who have been involved in the design of the building.

The bill will also amend the Building Professionals Act to enable prescribed persons to certify both the design and installation of building systems.

This will reduce building costs, recognising the highly specialist nature of the work being certified, and ensuring designers and installers take appropriate responsibility for the work they perform.

This bill is only part of the reforms to certification and accreditation.

The Minister for Planning and Infrastructure has indicated that the white paper will bring forward additional measures in this area.

Making planning content available online goes hand in hand with the Government's aim of increasing the levels of transparency and fostering greater public confidence in the planning system.

The State cannot overrule the Federal copyright legislation but the bill expands the regulation-making power for a statutory copyright indemnity for all types of information published by councils during all planning processes and encourages councils to make all relevant documents publicly available to the community.

The proposals in this bill move to address two pressing policy problems—those problems were identified by the housing taskforce and the Building Professionals Board.

For those reasons I commend this bill to the House.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [9.20 p.m.]: The object of the Environmental Planning and Assessment Amendment Bill 2012 is to amend the Environmental Planning and Assessment Act 1979 and other Acts to remove impediments to the supply of housing and to make other miscellaneous changes. In order to remove these so-called impediments to the supply of housing, in somewhat Orwellian language, the bill states:

(a) clarifies the purpose, status and content of development control plans and how they are to be taken into account during the development assessment process,

(b) enables the regulations to exclude certain residential development in bushfire prone land from the special consultation and development requirements of the NSW Rural Fire Service,

(c) authorises the Commissioner of the New South Wales Rural Fire Service to review and revise the designation of land on a bushfire prone land map for an area at any time after the map is certified,

(d) specifies development plan costs that may be recovered from owners affected by subdivision orders relating to "paper subdivisions" and makes other amendments relating to the amendment and repeal of such orders and related development plans, and

(e) clarifies the provisions relating to biocertification of planning instruments in Sydney's growth centres to ensure they apply to all environmental planning instruments …

Effectively this will water down the nature and role of development control plans, which have been developed by councils over the years to supplement—not to replace or interfere with—planning instruments such as local environmental plans [LEPs] and State environmental planning policies [SEPPs] on particular issues and concerns. Whilst not binding, development control plans are the result of extensive community consultation and reflect community consensus on particular local development issues ranging from heritage and waste management to issues such as setbacks, overshadowing, et cetera.

The O'Farrell Government made a contract with the people of New South Wales on coming to office after the March 2011 election. The stated intention was to return planning powers to the community. Development control plans, unlike other planning instruments such as local environmental plans, are made entirely by local councils in consultation with local communities; they are not subject to approval, redesign or interference from government planning agencies. They do not have the effects stated in the second reading speeches either in this Chamber or in the other place, to which I will refer in due course. If development control plans are being used in the way the Ministers have described I would have expected a number of juicy case studies to have featured in those speeches. The Minister's speech has been incorporated in this Chamber but from my perusal of the second reading speech made in the other place I see no such recitation of examples as to why this needs to occur.

The Government has argued that overzealous applications of development control plans or the inappropriate use of them by councils is interfering with developments such as the provision of housing. But onerous development control plans—whether onerous because of their design or use—can already by revoked or amended by the relevant Minister under section 74F of the Act. So the evil that this part of the legislation is said to be designed to remedy can be dealt with by the toolboxes already in the legislation. Local councils and various stakeholders are united in their opposition to this legislation, which will disable the role of development control plans.

This is an unnecessary and pre-emptive rush to make changes to our planning system when a major review has already been embarked on by the Government. Submissions have now closed for the green paper. The white paper, which is due out in December, will be open for consultation over the Christmas and New Year period and is expected to close in January or February, with the view that a comprehensive review of the planning system will be before this Parliament early next year. Why is the Government in such a rush to push a significant piece of legislation through this Parliament when our planning system is already under comprehensive review? The Government has not been forthcoming with an adequate answer.

As I said earlier, when elected the Government said it would return planning decisions to local communities. It was very careful not to say that it was going to return it to local councils. The Minister and the Government take great virtue from saying that they want to involve the community at the strategic level—namely, they want to front-end load communities in the development of planning instruments. But that is exactly what happens with development control plans. From my experience on local councils, they do not interfere with or replace local environmental plans. Typically, they are a part of the planning system which they supplement by addressing matters not usually dealt with in local environmental plans. For example, in the Blue Mountains the local environmental plan is unusually detailed compared with other State planning instruments. Over time, because most of those incidental matters have already been addressed, the Blue Mountains City Council has had less recourse to development control plans.

In other areas local development plans fill in gaps on issues such as how much a proposed house will overshadow someone's windows, balcony, garden or pool, or whether trees can be removed and things of that incidental nature. That is not to say they are unimportant—far from it. Indeed, the allegations against the development control plans used by the Government as the foundation for this legislation are not factually correct. Councils usually keep development control plans as simple as possible. From my 13 years of experience

on a local council, development control plans usually become more prescriptive because of the poor design standards of development proposals before councils. The Government is using a sledge hammer to crack a nut, as it were, but there are more effective ways to achieve this supposed objective. This proposal will undermine and water down the use of development control plans. It also will facilitate inappropriate development.

Development control plans are not new; they are a fundamental part of the planning process. Consent authorities are required to take them into account under section 79C of the Environmental Planning and Assessment Act. It is simply not the case that over time development control plans have usurped local environmental plans. As I indicated earlier, the Minister already has powers under section 74F. That is not to say that government should play no role in overseeing this form of planning, particularly in relation to matters of regional or State significance. This is a ridiculous overreaction by the Government to remove anything that can get in the way of development proposals.

If, as the Ministers in both Houses have said, a development control plan is too prescriptive, too onerous or misused, the Minister for Planning and Infrastructure, who is seated behind the President's chair, has the power to amend, revoke or change it to fit the necessary purpose. The fact that the Minister has not been able to provide examples shows that this is a furphy. This straw person has been created to justify unwarranted changes to this State's planning regime and to muzzle the voices of local communities that, through consultation with council, have expressed the need for development control plans that supplement existing planning laws. These parts of the planning system need to be retained because they are important and are fundamental to development planning in the State. Again, no rationale has been provided for why local communities should have their voices watered down.

The Hon. Dr Peter Phelps: The voices will be heard.

The Hon. ADAM SEARLE: The voices will not be heard because this is a clear example of where voices are heard. If, for example, a local community or a local council has developed—

Mr David Shoebridge: Point of order: The Hon. Adam Searle is attempting to make a contribution to the debate but he is being repeatedly attacked by the Government Whip, which is slowing down the process. The interjections are disorderly.

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! Thank you for coaching me, Mr Shoebridge. I am reminded that interjections are disorderly at all times. I ask the Government Whip to refrain from interjecting.

The Hon. ADAM SEARLE: The stated aim of this legislation, in part at least, is to remove impediments to the supply of housing but, interestingly, as far as I can see, these issues were not canvassed in the recent green paper on the New South Wales planning system reform. Now before this House fundamental changes are being proposed regarding development control plans without any adequate consultation with local communities around this State. As I also indicated earlier, the Orwellian phrase that the current bill's aim of clarifying the purpose, status and content of development control plans would mean, on my reading of the bill, that under section 74C (5) developers will be able to ignore the controls in development control plans if the plan unreasonably restricts development.

Maximum entitlements under development control plans, such as the height, size and setback of buildings would become, as of right, entitlements rather than maximum allowable possibilities, thus removing any assessment of the impact of the development. More alarming are the proposals under section 79C (3A) that councils would be required to be flexible in allowing development that breaches a development control plan and, importantly, the ability of councils to take into account the cumulative effect of a type or style of development in our locality would be effectively neutralised.

If this bill is enacted in its current form, local communities around this State that have taken the time to consult and participate in policy formulation to develop local development control plans suitable for their areas will lose the protection measures that were developed and specifically tailored by local communities for local communities. This proposal is undemocratic, retrograde and completely contrary to the Minister's and the Government's stated aim of encouraging more public involvement in the development of local planning instruments. It is almost as though they do not really believe their own rhetoric and that their stated intention before the election to return decision-making to local communities was only an election slogan.

The Hon. Dr Peter Phelps: This is the man who said there were no Marxists in the Labor Party anymore.

The Hon. ADAM SEARLE: To correct the member, I said that I was never a Marxist.

The Hon. Dr Peter Phelps: You said there were no Marxists in the Labor Party.

The Hon. ADAM SEARLE: If the member checks the *Hansard* he will find that is simply not correct.

The Hon. Dr Peter Phelps: I did.

The Hon. ADAM SEARLE: We on this side of the House have come to know and love the constant rewriting of inconvenient history from the Government Whip. The simple facts are that development control plans are an important and useful part of the planning system. They fulfil an important and necessary function. Justice McClelland, formerly the Chief Justice of the Land and Environment Court and now the Chief Judge at Common Law in the Supreme Court—

The Hon. Catherine Cusack: A very good Labor man.

The Hon. ADAM SEARLE: He is a very good judge. In the landmark case *Stockland Development Pty Ltd v Manly Council* Justice McClelland stated:

> A development control plan is a detailed planning document which reflects a council's expectation for parts of its area, which may be a large area or confined to an individual site.

He said further:

> The provisions of a development control plan must be consistent with the provisions of any relevant local environmental plan.

I pause to add that it cannot be used to override the express terms of a local environmental plan which, although often developed by local communities and councils, is subject to formal approval by Executive Government and, therefore, made as a form of delegated legislation. Justice McClelland said quite clearly that development control plans simply cannot interfere with their operation. For example, it cannot be a concern to a zoning document because the Government must approve. His Honour also said:

> ... a development control plan may operate to confine the intensity of development otherwise permitted by a local environmental plan.

Councillors are elected for that very reason: to make those particular local decisions for their local community. Justice McClelland also stated:

> A development control plan adopted after consultation with interested persons, including the affected community, will be given significantly more weight than one adopted with little or no community consultation.

The nature and quality of the consultation and public involvement in developing these plans is given great weight in the planning system, quite appropriately. The Chief Judge, as he then was, went on to say:

> A development control plan which has been consistently applied by a council will be given significantly greater weight than one which has only been selectively applied.
>
> A development control plan which can be demonstrated, either inherently or perhaps by the passing of time, to bring about an inappropriate planning solution, especially an outcome which conflicts with other policy outcomes adopted at a State, regional or local level, will be given less weight than a development control plan which provides a sensible planning outcome consistent with other policies.

That is consistent also with local environmental plans and the like. Before dismissing a fundamental part of planning in this State, this House should give careful consideration to the wording of the bill to understand what really is proposed, otherwise we will compound past errors and mistakes regarding other forms enacted to this State's planning laws and systems. I could go on, but I believe that encapsulates the concerns we have on this side of the House. We do not support the legislation. Although the bill contains some useful parts, as I indicated earlier, we on this side of the House regard it as being fundamentally flawed. It should not be passed at this time.

The measures contained in the bill should be part and parcel of the more comprehensive planning reforms the Government currently is considering through the green paper, white paper and legislative proposals flowing through to the early part of next year. This bill is pre-emptive and unnecessary. It is destructive of local

confidence in planning because, as the Minister and the Government have said repeatedly, "We want to get more people involved" but in the next breath they trash development control plans that have been developed with that same local input.

Mr DAVID SHOEBRIDGE [9.38 p.m.]: On behalf of The Greens I speak in the debate on the Environmental Planning and Assessment Amendment Bill 2012. The Greens will not support this bill, although we recognise some of its elements are positive—I shall deal with them in due course. The primary concern in the bill, as drafted, is the attack upon development control plans. These plans are some of the most important environmental planning instruments in the State. Often after hundreds or thousands of hours of community consultation, frequently involving two or three iterations, councils seek to adopt their development control plans.

Normally a meeting is held to determine general principles, to seek submissions from the community and exhibit a draft to the community. The community then makes the submissions on the draft and the council then meets for further reports. A council meeting is then held at which many community members attend. Those submissions are taken on board, amendments are made and after hundreds of hours of work we then get closely grained development controls that reflect a strong community consensus position, not always 100 per cent approval, about the type of planning controls that should be in place and how they will produce the desired future characteristics for their particular community.

I served two terms as a councillor on Woollahra Council and I saw the enormous community support for development control plans that were in place in my community. In the precinct where I live, the Woollahra Heritage Conservation Area has enormous community acceptance. It protects some of the beautiful streetscapes of Victorian terraces, Victorian semi-detached houses and important colonial buildings. Across the road is the Paddington Heritage Conservation Area, which is probably the premier heritage conservation area in the country and one of the largest intact Victorian heritage precincts in the world.

The Hon. Catherine Cusack: It's beautiful.

Mr DAVID SHOEBRIDGE: I note the interjection by the Hon. Catherine Cusack. It is beautiful and it is protected by a detailed and careful development control plan. I note that the mayor of Woollahra and Councillor Cavanagh from Woollahra Municipal Council are present in the gallery.

The Hon. Catherine Cusack: And the Minister for Planning.

Mr DAVID SHOEBRIDGE: Yes, and the Minister for Planning, but I am talking about Woollahra at the moment. When we were colleagues on council I often disagreed with them on planning matters. But on council we tended to agree on the importance of development planning controls. The Paddington Heritage Conservation Area control, the Woollahra Heritage Conservation Area control and the Watsons Bay Heritage Conservation Area control are wonderful development control plans with enormous community support, which fundamentally protect the heritage fabric in that part of Sydney. I give that personal experience as a small snapshot of the important work that development control plans do across the State.

We see heritage conservation areas in places such as Castlecrag and throughout the inner west. We see development control plans that are designed to protect coastal communities and provide appropriate coastal development in areas like Byron Bay. We see residential development control plans in areas of western Sydney that put in place clear, desired future streetscape characteristics which produce the appropriate balance between housing stock and green open space and between housing stock and private open space. Development control plans are probably the most important instrument to produce development outcomes that will be accepted by the community on which the development will be imposed.

As this bill was originally drafted it largely would have gutted development control plans. The bill has been introduced mid-way through a lengthy consultation process that the Government is undertaking on planning. I have no criticism at all about the length of that process. It is an enormously complex task of reviewing and reforming the planning laws in New South Wales. Anyone who has engaged with the planning laws knows that they need reform. They potentially have too many layers and they are overly complex and there are too many opportunities within that complexity for developers to drive large trucks through the planning laws. We saw examples of that in the previous administration with the notorious part 3A, which effectively put entirely inappropriate discretionary outs in planning instruments and allowed individual developers to negotiate the planning controls on a case-by-case basis with bureaucrats and politicians in this Government. It was an appalling set of circumstances.

The Hon. Catherine Cusack: No, the previous Government.

Mr DAVID SHOEBRIDGE: When I say "this Government" I mean the New South Wales Government. I note that it was the prior administration. I accept that one of the first things the current administration did was to introduce legislation to remove part 3A. Unfortunately, it introduced part 4, which in large part replicates the controls in part 3A: it allowed heritage and other important controls to be overrun. But it did make one important distinction. It removed the ability to have large and inappropriate residential developments imposed on communities through part 3A. I accept that that was a significant improvement. The Minister has determined that those decisions that are residual part 3A decisions and new part 4 decisions will not be determined by a politician. All members would recognise the potential for corruption in terms of potential windfall gains when development approvals are decided by politicians. As we have seen in the past week at the Independent Commission Against Corruption hearings, there is a potential for corruption when politicians are basically handing out largesse.

The Hon. Melinda Pavey: What party was it?

Mr DAVID SHOEBRIDGE: Labor politicians in the previous administration handed out largesse in corrupting, discretionary decisions that should have no place in good government. What does that mean? It means that we need prescriptive controls. We need clear development controls that so far as possible are not the subject of open discretions and general negotiations. Development control plans, in large part, achieve that in the planning system. Therefore, amendments that water down development control plans and allow developers to negotiate solutions that are, on the face of it, not compliant with development control plans open up new areas of discretion and new potentials for corruption. They do that at the same time as they water down these important planning controls, which, as I said, have enormous community acceptance.

The Government introduced this bill in the middle of that planning review. I accept that the planning review will be lengthy and that there is pressure on the Government, particularly from the development industry, to provide further opportunities for development. The Government should resist that pressure and it should not impose foreign elements in the planning system as a partial and, in this case, inappropriate solution to what requires fundamental reform and broad community acceptance through the review process. I will speak more to the particulars of the changes in development control plans when the bill goes into the Committee stage.

One element of concern was proposed new section 74C (5) (c), which provided that, to the extent a development control plan had the practical effect of preventing or unreasonably restricting development that is otherwise permissible under a local environment plan and complies with the development standards, the development control plan was to have no effect. I note that the Government has engaged in good faith negotiations with a number of stakeholders in local government and in the Parliament. I note that the Government has circulated an amendment which will delete subsection (c). That is a substantial step forward for this legislation. I commend the array of community groups who have sought to have their voices heard and communicate with the Government about their concerns. I will list some of the community groups that have made representations to my office and to the Minister. The Glebe Society made a short but clear submission in correspondence of 6 November 2012, which stated:

> The Environmental Planning and Assessment Amendment Bill recently passed by the lower House will render development control plans ineffective if enacted. These plans are essential to preserve our heritage, to protect the amenity of residents, to preserve the character of historic areas and to protect our environment.

The Federation of Willoughby Progress Associations, an incorporated entity, in its correspondence of 9 November, stated, among other things:

> In Willoughby Council there are 12 heritage conservation areas, including the internationally recognised Griffin conservation area in Castlecrag. These and other highly valued heritage conservation areas across the State are listed in local environment plans but are dependent on development control plans that have been developed in close consultation with local communities to provide the detailed guidelines and controls that protect the unique character, streetscapes and natural features of these heritage conservation areas.
>
> The Federation has worked closely with Willoughby City Council since the 1990s in developing and upholding these DCPs and we are proud of the significant enhancement of our urban character and community cohesion that our heritage conservation areas have forged over the past two decades.

The association then states that it is dismayed at a number of proposed changes in the bill as initially drafted. The Australia International Council on Monuments and Sites [ICOMOS] in its letter dated 13 November 2012 stated:

> Australia ICOMOS recognises the need for planning changes and has previously expressed its support to the Government's planning system review through its submissions to the issues paper and green paper.

Further:

> The current bill has the potential to lead to major impacts on the heritage significance of heritage conservation areas throughout the State. It would almost certainly result in development that overscales existing streetscapes in heritage conservation areas and would lead to the demolition of contributory buildings.

The Australia International Council on Monuments and Sites then makes further detailed submissions about its concerns. The Stringybark Creek Residents' Association Inc., in correspondence dated 13 November 2012, made this point:

> We believe it is totally inappropriate for the Government to be making changes to the Environmental Planning and Assessment Act while it is in the process of a major review of the NSW planning legislation and preparing the white paper for community consultation.

Further:

> One of the core objectives in the green paper was improved community consultation and this flies in the face of that objective. How can the community have faith in the proposed new planning system when the Government passes a bill through the Parliament prior to the white paper being released.

Communication from the Hunters Hill Trust also made it clear that it was deeply concerned about these changes and questioned whether promises made by the Government prior to the election were being honoured through this proposed legislation. Residents and Shopkeepers for Appropriate Development, in its communication dated 6 November 2012, stated:

> We can see no justification for this amendment at this time and ask you to reject it in its entirety.

The Willoughby District Historical Society Inc. president, Paul Storm, stated in correspondence dated 9 November 2012:

> I have been personally involved with heritage conservation issues in Willoughby city over the past 20 years and am a member of the Willoughby City Council's heritage advisory committee. It was not until a fellow member of our society briefed our management committee at yesterday's meeting on the content and implications of the Environmental Planning and Assessment Amendment Bill 2012 that we became aware that the Government's proposals have grave implications for the 246 heritage items and 12 heritage conservation items in Willoughby city.

Mr Storm then details those concerns. I note as well that the Paddington Society in my local area made strong representations, which were reported in the *Sydney Morning Herald*, about concerns it had about the impact of this bill on heritage conservation areas, particularly the Paddington Heritage Conservation Area. A number of councils have passed motions outlining an extraordinary depth of concern over the proposed amendments. Those councils include Byron, Woollahra, Eurobodalla, the City of Sydney and Canada Bay. Eurobodalla Shire Council passed a motion to set out in correspondence its clear concern with the bill. Many members in this Chamber would have received that correspondence. The council stated:

> ... seeks your support in ensuring that the Government does not proceed with those aspects of the Environmental Planning and Assessment Amendment Bill 2012 that limit and restrict development control plans and that such be considered as a matter of urgency.

There is widespread concern in the community. I note that the Government, in part, noted their concerns and the amendment I spoke of earlier is part of that response. I note that the Government has proposed further amendments which remove some of the more offensive elements in proposed new section 79C (3A). It will remove provisions that expressly say that development control plans will be given less weight and significance than is given to environmental planning instruments; it will include an amendment that addresses some of the concerns we have about the proposed new section 79C (3A) (c) and deleting entirely the proposed new subsection (3A) (e), which would have prohibited councils raising concerns with the precedent value of decisions they made in development control plans. I commend the Government for engaging in consultation and communication which will improve the bill. There is still substantial concern about the retention of section 79C (3A) (b). That part of the bill states:

> (b) if those provisions set standards with respect to an aspect of the development and the development application complies with those standards—is not to require more onerous standards with respect to that aspect of the development, and

It is expressed in planning language and means that if the development control plan has a maximum height control or minimum setback control, which sets out a box shape for most developments, then the developers,

whether a private individual or a large development company, can build to that maximum box size regardless of the impact on neighbours. As it is currently understood, those controls are maximums and they are not as of right. It is the maximum amount one can build. In respect to the principles of view sharing and the precedent set in the Tenacity case, that amendment will have a significant impact upon the area I live in and the council that I was elected to serve for eight years.

The right to a view of Sydney Harbour or a prominent district view is often a highly contested right. Time after time local councils in harbour-side areas or other areas with prominent district views will require developers to reduce the height, increase the setback, or change the bulk, shape and scale of the development to well below the maximum entitlements in development control plans in order to fairly share the view. In that way a development does not inappropriately entirely block the view of the landholder behind or to the side. Those view-sharing principles are set out in case law in a case called Tenacity. This bill will change that case law and effectively wipe it out as a precedent in New South Wales law. There will be no ability for councils to impose changes if developers have submitted a proposal that fits within that basic box of height, setbacks and floor space ratio.

That will pose a significant ongoing and real problem not just in the area where I live but in many areas across New South Wales. There are other aspects about the "deemed to satisfy" provision that cause concern. If the height is compliant with the development control plan it will, for example, not allow councils to reduce the height of the development in order to allow sunlight into a neighbour's kitchen or onto a pool or on an array of solar panels that a neighbour may have spent $10,000 to $13,000 installing. It will not allow councils to reduce the bulk and scale of a development so that a neighbour does not have an unreasonable sense of enclosure.

So long as developments comply with the maximum controls there will be no ability for council to require changes. It is a matter of real concern. No development control plan has been adopted with this statutory interpretation in mind. No development control plan has been adopted where this will work on the ground. If this bill becomes law it will cause substantial ongoing concerns, loss of amenity and loss of environmental outcomes. I note the changes the Government has made and I acknowledge that it has participated in good faith negotiations. I hope the Government has its ear open to further amendments when the reality of these changes becomes apparent in the coming weeks and months.

The change to increase oversight of private certifiers is supported. There is some concern about the expansion of the class of private certifiers. I welcome the well-considered changes concerning clarity about copyright. That is something that councils have been waiting for a long time in relation to distributing plans to neighbours. There are also substantial concerns about the changes that require government to do land valuations. I will speak to those changes in Committee. The Greens have strong reservations about this bill.

The Hon. SOPHIE COTSIS [9.58 p.m.]: I am pleased to speak this evening on the Environmental Planning and Assessment Amendment Bill 2012. As my colleague the Hon. Adam Searle has announced, the Opposition will vehemently oppose this bill for reasons I will outline. To put it succinctly, this bill is another example of the Government not honouring its election promises. I read the second reading speech given by the Minister for Planning and Infrastructure, and Minister Assisting the Premier on Infrastructure NSW. I am astounded that the Minister said that one of the reasons for this bill was to assist in boosting the housing supply. That is a joke. Firstly, the Government does not have a housing Minister or a housing plan. Where is the Government's housing plan? It does not have one.

This Government has overseen the lowest housing starts in 50 years. This Government's Treasurer cannot add up and has bungled the State's budget by a billion dollars. The Government has bungled its regional relocation grants: it said thousands of people would take advantage of the grants and be moving from the city to the country, yet only a few hundred have taken up its offer. These bungles have occurred because there are no plans to underpin these thought bubbles. Further, the Government wants to bundle $400 million of bad debt onto local councils to build infrastructure, such as roads and sewerage, that is the responsibility of the State Government.

Pursuant to sessional orders business interrupted to permit a motion to adjourn the House if desired.

The House continued to sit.

The Hon. SOPHIE COTSIS: Prior to and after the election the Coalition made a lot of promises about returning power back to the people.

The Hon. Dr Peter Phelps: And making New South Wales number one again.

The Hon. SOPHIE COTSIS: Well, it is not number one.

The Hon. Dr Peter Phelps: It is on its way.

The Hon. SOPHIE COTSIS: It is not. Your Government is nearly two years into its term of office and is nowhere near achieving that stated aim. In particular, the Coalition said that it would rid the State of part 3A provisions of the planning legislation and return planning powers back to the councils and the communities they represent. The Premier said in his Contract with NSW—a contract that is dead and buried—in March 2011:

> We will give planning powers back to the community.

At the same time, the Coalition's planning policy said:

> The NSW Liberals and Nationals are committed to return local planning powers to local communities through their councils.

However, as we now know, the Minister's planning green paper, released just recently, does not do this; it removes development consent from councils. The Minister has brought forward this bill, which also removes the people from the planning process through a number of administrative changes to various aspects of the planning system—changes that take power from the people and the councils that they have elected. I met many councillors at the Local Government Conference in Dubbo at the end of October. Those councillors, including Liberal and Nationals councillors, bagged the Government's proposals. Its changes, if agreed to, will restrict the application of development control plans to development decisions.

Development control plans have been around for a while; they are not new. Consent authorities are required to take development control plans into consideration under section 79C of the Environmental Planning and Assessment Act. Development control plans are a fundamental part of planning, yet the Minister says they unfairly impinge upon people. He cannot have it each and every way; he cannot walk on both sides of the street. One day the Government is saying it is giving planning controls back to the people; then it says no, that through their councillors the people have too much say, and the Government will curb their involvement in the planning process.

In 1979 the New South Wales Parliament passed what experts said was the finest piece of environmental planning legislation in the country. However, from around the mid 1980s governments of all political persuasions have made changes to that legislation, on uninformed bases and without any understanding of the unintended consequences of their actions. This bill is another example of fiddling by this Government, especially before its own planning inquiry is completed. The Minister said in his second reading speech that while the Government is working on new planning legislation it could not wait for its own review to be completed before making changes to the planning process by amending the legislation. Furthermore, the Government believes that by fiddling with the role of development control plans it will overcome the housing supply shortfall in this State. We will see about that.

We do know that the amendments proposed by this bill will remove the people even further from, not closer to, the planning process and shift the powers of the planning process completely to the side of big interests. These concerns are being expressed by many in the community—in emails that all members, including Government members, have received. We have received emails, telephone calls and letters about this proposal. At the Local Government Conference many representations were made to me by Liberal and Nationals members about these proposals.

The Hon. Melinda Pavey: Name them.

The Hon. SOPHIE COTSIS: Chatham house rules.

The Hon. Catherine Cusack: It is "rule", by the way. There is no "s"—there is only one rule.

The Hon. SOPHIE COTSIS: I thank the Hon. Catherine Cusack for that correction. The Better Planning Network from Lane Cove has written to all members of the Legislative Council outlining its concerns. In particular, it was seeking that debate on this bill be deferred to allow for proper consideration as part of the current planning system review. Of course, the bill will not be deferred. Concerns have been raised by members

of the Hunters Hill Trust. As it rightly says, the Coalition was elected on a platform of removal of the part 3A planning process, which took planning control away from local communities. The trust members go on to say that these wide-ranging changes to the planning process make part 3A look mild by comparison. The Willoughby District Historical Society also has written to me and many others expressing concern that this bill was introduced by the Government:

> … without any community consultation whatsoever, contrary to its 'Contract with NSW' to *'return planning powers to the community'* …

The society is particularly concerned that the proposed amendments will render development control plans worthless in protecting heritage conservation areas in this State from "insensitive, inappropriate development". The Stringy Bark Creek Residents Association, also of Lane Cove, has written to members expressing its concerns about the fact that the bill is being debated before the planning white paper is released next month. The association says that the bill reduces some of the protections that apply in development control plans and that it merits community consultation. The association notes that one of the core objectives in the green paper is improved community consultation, and that this bill flies in the face of that objective. The association asks:

> How can the community have faith in the proposed new planning system when the Government passes a bill through Parliament prior to the white paper being released?

That is what everybody is asking: Why is this bill being debated at this stage? Why not wait until the white paper is released? It is obvious that the Government is not taking those concerns and what the community thinks into consideration. I should not be surprised that the Minister for Planning and Infrastructure is not aware of existing provisions in the Act to control absurd planning requirements of some councils. Obviously, he is unaware that under section 74F of the Act overly onerous development control plans already can be revoked or amended by him as Minister.

Debate adjourned on motion by the Hon. Sophie Cotsis and set down as an order of the day for a future day.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Precedence of Business

Motion by the Hon. Duncan Gay agreed to:

That standing and sessional orders be suspended to allow the moving of a motion forthwith relating to the conduct of business of the House.

Precedence of Business

Motion by the Hon. Duncan Gay agreed to:

That on Thursday 15 November 2012 Government business take precedence of private members' business.

ADJOURNMENT

The Hon. DUNCAN GAY (Minister for Roads and Ports) [10.08 p.m.]: I move:

That this House do now adjourn.

DEEPAVALI FESTIVAL COMMITTEE OF NSW

The Hon. AMANDA FAZIO [10.08 p.m.]: Last night I had the pleasure of being the parliamentary host of the inaugural Interfaith Conference of the Deepavali Festival Committee of NSW, which was held in the Jubilee Room. I would like to acknowledge the participation of the following people at last night's event: Councillor Raj Datta, Chairperson; Jagdish Chawla, Vice President; Nirmal Paul, Vice President; K. G. Bascaran, General Secretary; and executive committee members Sri Ganeshawaran, Prem Misra, G. Veerasingham and B. Gupta of the Deepavali Festival Committee of NSW; Mr Herman Roborgh, representing the Most Reverend Anthony Fisher, OP, Bishop of Parramatta Catholic Diocesan; Reverend Sridharananda Ji of the Vedanta Centre of Sydney; Venerable Miao You, Secretary, Board of Directors for Nan Tien Institute; Ms Maha Abdul, Manager, Muslim Women's Association; Mr Jeremy Jones, AM, People of

Australia Ambassador 2012; Mr Arvinder Singh Ranga, Indian Consulate, representing Mr Arun K. Goel, Consul General; and the Hon. Barbara Perry, shadow Minister for Ageing, shadow Minister for Disability Services, shadow Minister for Mental Health, and shadow Minister for Heritage.

Apologies were received from Archbishop Peter Jensen from the Sydney Diocese of the Anglican Church. I thank also the Hon. Helen Westwood, the Hon. Marie Ficarra and the Hon. David Clarke for attending the event. No doubt we all appreciate that Australia—and New South Wales, in particular—provides the environmental freedom for cultural, educational and religious diversity in harmony, within a democratic, institutional framework based on mutual respect for our respective heritage, along with acceptance of our differences.

Because we do have these freedoms it is important to encourage others in the community to acknowledge and embrace them. One positive way to achieve this is to promote interfaith harmony. I believe that interfaith harmony means we should work to create and foster a spirit of generous consideration among people who profess and practise different faiths; unite people in the bonds of eternal human relations, friendship, good fellowship, cooperation, harmony and mutual understanding; discourage violence in all its forms and manifestations; engage government and non-government organisations in promoting peaceful co-existence throughout the world; assist and help in building a strong base for a just, moral and social order; encourage mutual respect of all faiths, ideologies and shades of opinion; and build bridges of understanding between different religious faiths.

I would like to outline a little bit of the history of the Deepavali Festival Committee of NSW. In 2003 the committee introduced the celebration of Deepavali at the Parliament of New South Wales with a view to promoting multiculturalism and the notion of unity in diversity in New South Wales and Australia. As an acknowledgement of the success of this celebration in promoting community harmony and mutual respect, in 2007 the Government of New South Wales approved the installation of a plaque in Parliament House to commemorate the event. As a further acknowledgement of the contribution of this celebration, in 2011 the O'Farrell Government adopted the celebration as a State celebration.

The Deepavali Festival Committee of NSW takes pride in the fact that when in 2010-11 many leaders in Europe and United Kingdom proclaimed multiculturalism to be a failure, the Premier of New South Wales, the Hon. Kristina Keneally, announced that New South Wales had developed the world model of multiculturalism and that the whole world could learn from it. Migrants from various countries and backgrounds have been migrating to Australia for many years. It may be unrealistic to expect that all migrants, regardless of their backgrounds and heritage, would have the same understanding of and respect for all democratic institutions upon arrival. The continuous promotion of multiculturalism can only promote the notions of Australia's unity in diversity.

The committee sees the objective of the interfaith conference as being to promote mutual understanding and respect, social cohesion, principles of multiculturalism and values pertaining to Australia's unity in diversity. The Deepavali Festival Committee of NSW believes multiculturalism inherently reflects the following notions of humanism: accepting that regardless of our historical background or country of origin, we have equal rights and responsibilities, believing in the brotherhood of mankind in the same way as we believe in the fatherhood of God; and believing that if God created this world, all humans were created equal and that all have the same rights to life and all deserve the same opportunities of life including opportunities for education and health.

The Deepavali Festival Committee of NSW believes that, despite our diversity of heritage, as Australians it is our responsibility to work together to make Australia an increasingly more prosperous nation for all Australians where all Australians are united with aspirations for promoting democracy, equal opportunity, social equity and equality for all in the community; united with their resolve to act against any discrimination or exploitation on any ground such as class, accent, race, sex, religion and national origin; and united to define an Australian not by appearance, origin or date of arrival but by beliefs in ideals such as liberty, equality and a fair go.

The Deepavali Festival Committee of NSW believes in the notions that a human's real nature is divine, the aim of human life is to realise this divine nature and the essence of all religions is in agreement. Last night the speakers were inspirational and they had the common theme of respect, harmony and the connotations of light across all religions. I thank the Deepavali Festival Committee of NSW for this wonderful initiative and thank the many people who demonstrated their commitment to interfaith harmony by attending the event. I particularly thank all the members of the multicultural media who were present. They ranged across the radio,

television and print media. I hope that this will become an annual event that will help to promote understanding, respect and interfaith harmony. Once again I thank the people who organised last night's event and, most importantly, the people who attended to show their support for interfaith harmony.

ILLEGAL DRUGS

The Hon. PAUL GREEN [10.13 p.m.]: Tonight I speak about the dangers associated with illicit drug use and the potential harm associated with what I believe is a misdirected call to decriminalise drugs. I note that today on ABCNews24 the United States Drug Control Policy Director, Gil Kerlikowske, outlined in Canberra the approach of the United States to drug policy. He described a number of policy positions that the United States Administration is taking on the problem of drug abuse. Most importantly, he made a couple of observations which deserve repeating. He said that drug legalisation is not "a silver bullet" and that "a quick and simplistic answer is the wrong answer". Unfortunately, this type of advice has not been heeded.

I refer to a recent controversial report by a research group called Australia21, which seems to promote the silver bullet theory. A number of researchers have spoken up and objected to the group's findings as a form of cherry-picking. The report, dated 9 September 2012, was misleadingly titled "The prohibition of illicit drugs is killing and criminalising our children and we are letting it happen". At this point I note the absurd lack of reasoning in the title of this report. The researchers are actually saying that it is not the drugs that are dangerous but rather the law that is doing all the killing. This is a ridiculous notion which seems to state that if drugs are legalised the drugs—which are generally made in backyard toilet laboratories—will somehow become magically safe overnight. This thinking requires a fantastic leap of faith but at the same time it is ideologically dangerous and naive.

The Australia21 report praises countries such as Portugal with claims that although illicit drugs were decriminalised there in 2001 "drug use has not substantially increased, while problematic drug use and mortality from drug use has fallen substantially". We should ask: Is this true? According to comments by Portuguese medico Dr Manuel Pinto Coelho published in *VoxPoint*, the reality is quite different. The article states:

> Dr Coelho is President of the Association for a Drug Free Portugal. He said: "The so-called 'resounding success' of the decriminalisation of use and possession of drugs in Portugal is a seriously distorted projection of reality—only possible due to an absurd campaign of manipulation of Portuguese drug policy facts and figures.
>
> Dr Coelho says the percentage of people who have experimented with drugs increased by 4.2% from 2001 to 2007. Between these years, there was a 215% increase in cocaine abuse. Drug abuse among the 20-24 age group doubled. A 2006 report found Portugal to be the European country with the highest rate of consistent drug users and IV heroin dependents after Luxembourg.
>
> There has been a sharp rise in drug-related murders (40%—World Drug Report 2009). Use of every drug has risen. [Portugal has] the highest increase of drug related deaths—45% between 2006 and 2007. This teaches us that drug policies which facilitate drug use are the worst way to reduce drug slavery.
>
> ... if one walks alone through any crowded street in Lisbon's Bairro Alto, you are likely to be approached by individuals with hashish, cocaine and other drugs, even in broad daylight," he says. "Such daring characters did not exist in places like these five years ago. There is a growing sense of fearlessness in selling small quantities of drugs, since most police officers think it is not worth their attention.

Jo Baxter from Drug Free Australia is also critical of the Australia21 report. She points out that Australia's "tough on drugs" strategy saw illicit drug use drop significantly between 2000 and 2006. She further states:

> The 'harm minimisation' policy has left a train wreck in families and communities. It has failed to prioritise prevention and has spent costly resources on drug maintenance programs, rather than helping people to recover from drug addiction.
>
> Australia has among the highest cannabis and amphetamine use rates in the Asia Pacific. Our policies need to be based on prevention, recovery-based treatment and rehabilitation. How can this be achieved if illicit drugs are approved through legalisation?

Time does not permit me to present the vast scientific literature linking so-called soft drugs such as marijuana with schizophrenia, other mental illnesses, crime and train wreckages of ruined families and lives. Needless to say, these sorts of studies should put proponents of drug legalisation to shame. In this case there is overwhelming evidence that drugs kill kids, not the law. The Australia21 report is naive at best and dangerously blinkered.

NATIONAL SES WEEK

The Hon. NATASHA MACLAREN-JONES [10.18 p.m.]: This evening I speak about the national State Emergency Service Awareness Week, which is being held this year from 12 to 18 November, with today

being Wear Orange Wednesday—WOW—Day. State Emergency Service Awareness Week is an opportunity for all of us to honour the hard work and dedication of the 40,000 volunteers nationally across Australia for their efforts during natural disasters and emergencies. During the past 12 months in New South Wales State Emergency Service volunteers have helped more than 20,000 people. For example, they provided emergency rescue and support during the floods that swept across New South Wales, they assisted with storm preparation and they responded to other emergencies.

In New South Wales we have 228 units and around 10,000 volunteers across the State ranging in age from 16 to 80 and from diverse backgrounds who regularly commit their time and energy volunteering to assist their communities in so many ways—from putting tarpaulins on roofs, filling sandbags, evacuating residents stranded by rising floodwaters, clearing fallen trees, freeing road accident victims, and educating the community, particularly schoolchildren, about storm and flood safety to assisting police in search and rescue operations. The reality is that without the valuable support, dedication and hard work of these outstanding volunteers in difficult times many people would suffer. The New South Wales Government has allocated $19 million to the State Emergency Service in this year's budget as part of a $96 million strategic disaster readiness package over the next five years to assist the service to prepare for, prevent and respond to flood and storm events.

While the majority of State Emergency Service activity involves flood and storm operations, the service also provides the majority of general rescue efforts in rural parts of the State. This includes road accident rescue, vertical rescue, bush search and rescue, evidence searches, both metropolitan and rural, and other forms of specialist rescue that may be required due to local threats. Volunteers in a number of isolated communities have been trained as community first responders by the Ambulance Service of New South Wales. The service's trained rescuers also support the full-time emergency services during major disasters. In my local area the Warringah Pittwater State Emergency Service works closely with councils and other community groups on a range of community education activities, in addition to providing first aid and rescue technique training to personnel.

The State Emergency Service was formed in April 1955, following disastrous floods that caused loss of life and significant damage to properties across New South Wales. The Government of the day recognised the need for a body of trained and coordinated volunteers with good local knowledge who would be available at short notice to help the community during such disasters. Later the same year, in response to concerns about the threat of nuclear war during the Cold War years, the Government decided that there was a need for a civil defence organisation in the event of a nuclear attack. In September 1955 the State Emergency Service and the Civil Defence Organisation merged under the leadership of Major General Ivan Dougherty. The new organisation was known as Civil Defence. In 1972 the State Emergency Service and Civil Defence Act was passed. It remained in force until 1989, when it was replaced by the State Emergency Service Act, thereby providing statutory protection to the volunteers.

The New South Wales State Emergency Service has established a community partnership framework to enhance community engagement, education, preparedness and recovery programs, as well as supporting volunteer development and funding community engagement resources. This week the New South Wales State Emergency Service in conjunction with NRMA Insurance is undertaking a road trip around the State, driving three specially laminated State Emergency Service trucks over a total of 3,500 kilometres to recognise the valuable contribution that State Emergency Service volunteers have made to their communities. The trucks are visiting Albury, Bankstown, Bathurst, Bourke, Broken Hill, Canberra, Casino, Cobar, Coffs Harbour, Cronulla, Culcairn, Dubbo, Forbes, Grafton, Goulburn, Holbrook, Hornsby, Inverell, Lithgow, Moree, Narrabri, Newcastle, Orange, Parramatta, Queanbeyan, Sydney at lunchtime today, Wagga Wagga and Wollongong. I am sure all members of this House will join me in congratulating the State Emergency Service and thanking it for the outstanding work it does to protect our communities and our homes.

GOVERNMENT PERFORMANCE

The Hon. PETER PRIMROSE [10.23 p.m.]: As the parliamentary year is in its last few weeks I thought it appropriate to review a number of the achievements of Premier Barry O'Farrell and this Liberal-Nationals Government. Let us start with education. The Government has achieved a $1.7 billion cut to public, Catholic and independent schools and TAFE colleges. Some 12,800 jobs have been cut from public schools and TAFE. TAFE fees are up 9.5 per cent and subsidies for non-vocational courses have been eliminated. The Higher School Certificate advice line has been scrapped. Cleaning hours have been cut back in 601 schools, with south-west Sydney hardest hit. There has been an $8.7 million cut to the Board of Studies,

including 85 staff. Special needs funding was cut at 272 schools from the beginning of term three this year. Labor's program to replace school demountable buildings has been axed. The program to replace unflued heaters in schools has been scaled back, and preschool hours have been cut to 15 hours a week at public preschools.

Let us look at some of Premier O'Farrell's achievements in health. Some $3 billion has been cut from Health overall, with $2.2 billion in cuts to services and hospital budgets and $775 million in staffing cuts. Some 3,600 health workers are set to lose their jobs, including nursing assistants, administrative staff, cleaners, radiographers, physiotherapists, caseworkers and other specialists. Ambulance night crews have been pulled off duty in Liverpool and on the Central Coast without being replaced. In the area of community services $500 million has been cut over four years, including funding for child sexual assault and domestic violence programs, and 968 jobs have been cut from the Department of Family and Community Services. Non-government organisation funding cuts have been made in the areas of cystic fibrosis, Visioncare, the Liverpool Women's Resource Centre and in many other areas. An increase in public housing rents for pensioners is effectively a cut to the Federal Government's carbon assistance package.

In the area of police and emergency services, the Liberal-Nationals Government in New South Wales has made severe cuts to police death and disability protections; the September intake at Goulburn Police Academy was cancelled due to cost cutting; $64 million has been cut from Fire and Rescue NSW; 300 firefighters have been cut from the New South Wales fire brigades; 120 firefighters have been cut from the Rural Fire Service; and up to eight fire stations are expected to close each day. In the areas of courts and justice, 881 job cuts have been made in courts and prisons. Grafton, Parramatta, Berrima and Kirkconnell jails have been closed. Some $5.5 million has been slashed from graffiti prevention programs.

The Youth Drug and Alcohol Court has shut at all locations—Campbelltown, Parramatta and Bidura—and program offices have closed at Surry Hills, Blacktown and Liverpool. Funding has been slashed for the Community Compliance and Monitoring Group, which is responsible for monitoring serious violent and sex offenders. Some $9 million has been cut from the offender rehabilitation program, which is designed to help offenders resettle in the community and to reduce the risk of reoffending. There has been a $7.6 million cut to the supervision of offenders in the community program; $2.7 million has been cut from the Community Based Services Program, which supervises young offenders on community-based sentences and supports young people seeking bail; and $3.9 million has been cut from Juvenile Custodial Services, which provides counselling and intervention to address young offenders at risk of reoffending.

In regional New South Wales 300 jobs have been cut from 13 Department of Primary Industries offices; the Cronulla Fisheries Research Centre has been shut; 11 out of 31 jobs have been cut at the Forest Science Centre; and a $260 million funding cut has been made to regional industries since the Government took office. Many other cuts have been made, including the axing of the Illawarra Advantage Fund. If I had more time I could run through and outline other achievements of this Government in slashing environment and water utilities, services for women, industrial relations, the Community Building Partnership, sport and many other areas, but I am sure we will return to that at another time.

ENVIRONMENTAL DEFENDERS OFFICE

The Hon. CATE FAEHRMANN [10.28 p.m.]: Tonight I defend the Environmental Defender's Office of New South Wales. Our environment and the communities who want to protect it are about to lose a champion they simply cannot do without. After nearly 30 years of helping communities across New South Wales understand and use the law to protect their local neighbourhoods and local environments, the Environmental Defender's Office in New South Wales is facing an unprecedented threat to its survival. The Environmental Defender's Office is the latest casualty of right-wing members of Parliament and the *Australian* newspaper's relentless anti-environment crusade, and its funding is now in jeopardy. It is unfair and unjustified.

If the Environmental Defender's Office is forced to shut its doors the community will lose its only source of accessible, independent, expert, public interest legal advice on planning and environment matters. Vested interests are lobbying the New South Wales Attorney General to stop funding for the Environmental Defender's Office under a review of legal assistance services. The NSW Minerals Council is routinely quoted in articles in the *Australian* attacking the Environmental Defender's Office.

At the same time, the major source of the Environmental Defender's Office annual funding, which comes from the Public Purpose Fund of the Law Society of New South Wales, has been cut. Without the Environmental Defender's Office local communities will not stand a chance when confronted with well-resourced miners and developers wanting to trample on their interests. Yet, right-wing forces have

suggested there is something inappropriate and sinister in a government providing funds for a legal service that defends a public interest in this way. There is not. If the Government were to follow its own rhetoric and commitments to the public, it would understand that providing the Environmental Defender's Office with financial and political security should be a top priority. Introducing its Planning Green Paper on its website the Department of Planning and Infrastructure says:

> The NSW Government is creating a planning system for the 21st century. A planning system focussed on the public interest. A planning system that places people and their choices at the heart of planning decisions about their future. In order to be at the heart of the planning decisions, the public needs to be informed. They need to understand the planning system they have to participate in. They need to understand their rights. And, when absolutely necessary, they need to be able to afford legal representatives that can defend their rights.

That is what the Environmental Defender's Office provides. It publishes fact sheets and holds workshops so that people, local communities and conservation organisations understand the various laws that deal with planning and the environment. It is the only accessible and affordable specialist environmental law service in the State that can represent local community interests when litigation is required. Successive governments have understood this. The Environmental Defender's Office has received multipartisan support for all its years of operations until now. The damaging financial uncertainty currently facing the Environmental Defender's Office makes it extremely difficult, if not impossible, to maintain a strong, independent Environmental Defender's Office, one that can offer ongoing help to its clients and serve the wider community while operating free from the politics of the day. The Environmental Defender's Office says that if the funding from the Public Purpose Fund is not restored and public funding affirmed it will be decimated, if not destroyed, in the New Year.

The Environmental Defender's Office warns that if the current situation goes unchanged it will have to lay off most of its highly professional and tireless staff early in the New Year. This means we will lose legal experts on issues such as native vegetation, water plans, coal seam gas, mining, private conservation and local planning. It will be forced to dramatically scale back or shut down popular community services which include a free advice hot line, community workshops—mostly in rural and regional areas—a Lismore office, fact sheets, guides and handbooks, and law and policy reform submissions. It means it will no longer be able to assist with court cases that have represented the public's interests in the past challenging open-cut coal mines such as Anvil Hill, power station approvals in the Hunter Valley, inappropriate urban development such as at Catherine Hill Bay, South West Rocks, Sandon Point and Barangaroo, and defended Aboriginal heritage and countless threatened species, including whales, grey nurse sharks, koalas, southern blue fin tuna and flying-foxes.

I highlight one of the many cases the Environmental Defender's Office has run which achieved stronger protection for local communities and local environments to protect the drinking water supply for the people of Sydney. On behalf of the Blue Mountains Conservation Society the Environmental Defender's Office ran civil enforcement proceedings in the Land and Environment Court of New South Wales against Delta Electricity under the Protection of the Environment Operations Act 1997 for water pollution into the Coxs River, which is part of Sydney's drinking water supply.

The litigation ran for over two and a half years and was finally settled out of court by the parties in October 2011. As a result of the proceedings Delta admitted that it had discharged waste waters containing pollutants between May 2007 and August 2011. Delta was forced to apply to the Environment Protection Authority for a variation on its licence to specify the maximum concentration levels for copper, zinc, aluminium, boron, fluoride, arsenic, salt and nickel and a condition on its licence to require treatment of cooling tower blow down water from Wallerawang Power Station. The Environmental Defender's Office defended the quality of our drinking water against a polluter.

Surely the Government can see that this is important work that deserves its support. The Environmental Defender's Office needs the Government to make clear its strong and unambiguous support for the Environmental Defender's Office's public funding. Without the Environmental Defender's Office local communities will find it much harder to participate in the planning and environment system. If the O'Farrell Government allows the Environmental Defender's Office to close it will go down as a dark stain on this Government and on this State's proud history of supporting those who stand up for communities and the environment. It is a disgraceful act. The Government needs to come out and support this public interest environmental law organisation before it closes.

NEWCASTLE ROAD TRANSPORT AWARENESS DAY

The Hon. JOHN AJAKA (Parliamentary Secretary) [10.33 p.m.]: The Newcastle Road Transport Awareness Day was held at Newcastle Foreshore Park on Sunday 4 November 2012. It was a pleasure to

represent the Premier and the Minister for Roads with Tim Owen, the member for Newcastle, at the largest transport industry event outside of the Sydney Metropolitan area. I travelled from Casula to Newcastle in a B-double truck with Mr Rod Hannifey, a road transport and road safety advocate. Fortunately, I did not drive; Mr Hannifey did. Mr Hannifey started work in the road transport industry at the age of 15, driving his first road train at 16 and qualifying for his semi licence at 17, and later B-double fuel tankers.

In 1999 Mr Hannifey launched "Truckies Top Ten Tips", which is featured in newspapers, magazines and has been the basis of radio ads. In 2000 Mr Hannifey won the Natroad Professional Driver of the Year award and one year later became a member of the National Road Transport Commission Rest Area Advisory Panel. Mr Hannifey has been a long-time advocate of road safety and I was pleased to accept his invitation to join him for the truck drive from Prestons up to Newcastle, where we later met the convoy and attended the Newcastle Road Transport Awareness Day.

The group responsible for the Newcastle and Hunter Region Road Transport Awareness Day was formed in 1994 by individuals within the local transport industry and is directed by the Road Transport Forum. Over the years the participation, support and sponsors for the event grew significantly. Members of the transport industry also became increasingly involved with all aspects of the event. The first Newcastle Road Transport Awareness Day was held with a small number of trucks on display; however, this has now grown significantly to include a large convoy of trucks. Furthermore, due to its constant success throughout the years the Newcastle road transport awareness team has generously raised funds for the Westpac Rescue Helicopter Service, which is the official beneficiary of the day.

The Newcastle road transport awareness group now represents more than 200 transport operators and industry participants within the region. The ultimate purpose of the annual awareness day is to promote truck and transport safety to the public and regional community. Its goal is to promote awareness of the transport industry and generate a greater understanding of its purpose in the community. Although the event is mainly focused on safety, it is also a great opportunity for employees, regulators and suppliers in the industry to meet and network in a casual environment. It is also a day of entertainment for thousands of attendees who benefit from the opportunity to meet people within the industry and become aware of the safety issues.

I commend Mr Rod Hannifey for being a tireless advocate for road safety. I also commend the Newcastle road transport awareness team for each year putting together this important event which assists our citizens to recognise the importance of road and transport safety. I congratulate Mr Hannifey on providing me with the opportunity to meet the road safety officers within Roads and Maritime Services and other officers to discuss issues related to improving road safety in the community.

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

Motion agreed to.

The House adjourned at 10.35 p.m. until Thursday 15 November 2012 at 9.30 a.m.