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LEGISLATIVE COUNCIL

Thursday 31 October 2013

The President (The Hon. Donald Thomas Harwin) took the chair at 9.30 a.m.

The President read the Prayers.

RESIDENTIAL (LAND LEASE) COMMUNITIES BILL 2013

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

Motion by the Hon. Michael Gallacher, on behalf of the Hon. John Ajaka, agreed to:

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

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

POLICE INTEGRITY COMMISSION

Report

The President tabled, pursuant to the Police Integrity Commission Act 1996, the Annual Report of the Police Integrity Commission for the year ended 30 June 2013, authorised to be made public this day.

Ordered to be printed on motion by the Hon. Michael Gallacher.

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

MR JOHN WILKINSON, PARLIAMENTARY RESEARCH SERVICE

Motion by the Hon. LYNDIA VOLTZ agreed to:

That this House:

- (1) Notes that Mr John Wilkinson, who is the longest-serving member of the Parliamentary Research Service, commenced employment on 19 July 1993 as a Research Officer.
- (2) Notes that Mr Wilkinson has produced numerous briefing papers on the New South Wales economy and trade, Federal and State financial relations, tourism, small business, agriculture, regional development, commercial fishing, housing, gambling and coal production.
- (3) Congratulates Mr Wilkinson on 20 years of dedicated service to parliamentary research.

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business items Nos 1592 and 1594 outside the Order of Precedence objected to as being taken as formal business.

FESTIVAL OF DIWALI

Motion by the Hon. DAVID CLARKE agreed to:

- (1) That this House notes that:
 - (a) on Friday 25 October 2013 the India Club Inc. held a successful function at Castle Hill to celebrate the Festival of Diwali; and

- (b) those who attended as guests included:
 - (i) the Consul General of India, Mr Arun Goel, and Mrs Goel;
 - (ii) the Mayor of The Hills Shire Council, Councillor Dr Michelle Byrne, and Mr Matthew Fuentes;
 - (iii) the Hon. Philip Ruddock, MP, Federal member for Berowra;
 - (iv) the Hon. David Clarke, MP, Parliamentary Secretary for Justice, and Mrs Clarke;
 - (v) Mr Dominic Perrottet, MP, member for Castle Hill;
 - (vi) Mr David Elliott, MP, member for Baulkham Hills;
 - (vii) Ms Julie Owens, MP, Federal member for Parramatta; and
 - (viii) Dr Geoff Lee, MP, member for Parramatta.
- (2) That this House:
 - (a) commends the India Club Inc. for its organising of this function to celebrate the Festival of Diwali; and
 - (b) extends its greetings to the Indian-Australian community on the occasion of the 2013 Festival of Diwali.

GREEK NATIONAL DAY SEVENTY-THIRD ANNIVERSARY

Motion by the Hon. DAVID CLARKE agreed to:

- (1) That this House notes that:
 - (a) on Monday 28 October 2013 the Greek Orthodox Community of NSW Ltd held a celebratory function at the Greek Orthodox Community Centre, Lakemba, to commemorate the seventy-third Anniversary of Greek National Day, which falls on 28 October each year; and
 - (b) those who attended as guests included:
 - (i) the Very Reverend Father Christodoulou Economou, representing His Eminence Archbishop Stylianos, Primate of the Greek Orthodox Church in Australia, and His Grace Bishop Seraphim of Apollonias;
 - (ii) Senator Arthur Sinodinos, AO, Assistant Treasurer, representing the Hon. Tony Abbott, MP, Prime Minister of Australia;
 - (iii) the Hon. Matt Thistlethwaite, MP, shadow Parliamentary Secretary for Foreign Affairs and shadow Parliamentary Secretary for Immigration, representing the Hon. Bill Shorten, MP, Leader of the Federal Opposition;
 - (iv) the Hon. David Clarke, MLC, Parliamentary Secretary for Justice, representing the Hon. Victor Dominello, MP, Minister for Citizenship and Communities, and Minister for Aboriginal Affairs;
 - (v) Mr John Robertson, MP, Leader of the Opposition, shadow Minister for Western Sydney and shadow Minister for the Illawarra;
 - (vi) the Hon. Sophie Cotsis, MLC, shadow Minister for Local Government, Housing and the Status of Women;
 - (vii) Mr Nickolas Varvaris, MP, Federal member for Barton;
 - (viii) Dr Stavros Kyrimis, Consul General of Greece;
 - (ix) the Hon. John Hatzistergos, former New South Wales Attorney General, and Minister for Justice;
 - (x) Councillor Khal Asfour, Mayor of Bankstown;
 - (xi) Councillor Emmanuel Tsardoulis, Deputy Mayor of Marrickville, representing the Mayor, Councillor Jo Haylen;
 - (xii) Councillor Anthony Andrews, Deputy Mayor of Randwick, representing the Mayor, Councillor Tony Bowen;
 - (xiii) Councillor Esta Paschalidis-Chilas, Canterbury Council;
 - (xiv) Mr Albert Vella, President of the NSW Federation of Community Language Schools;

- (xv) Mr Peter Theofilou, OAM, President of the Inter-Committees Council of the Greek Archdiocese of Australia;
- (xvi) Mr John Kallimanis, Grand President of the Australasian Hellenic Educational Progressive Association for New South Wales and New Zealand;
- (xvii) Mr Sotris Tsouris, President of the Cyprus Community of NSW; and
- (xviii) Mr Jack Passaris, Deputy Chairman of the Ethnic Communities Council of NSW.

(2) That this House:

- (a) acknowledges and commends the Greek Orthodox Community of NSW Ltd, its President, Mr Harry Danalis, and other office-bearers for their continuing service to the Hellenic-Australian community; and
- (b) extends its best wishes to the Greek-Australian community on the occasion of the seventy-third Anniversary of Greek National Day.

AUSTRALIAN SERBIAN FILM FESTIVAL

Motion by the Hon. DAVID CLARKE agreed to:

(1) That this House notes that:

- (a) on Friday 17 October 2013 the thirteenth Annual Australian Serbian Film Festival was launched at the Fox Studios, Moore Park;
- (b) those who attended as guests included:
 - (i) the Consul General of Serbia, Mr Branko Radosevic, who officially opened the festival;
 - (ii) His Grace, the Right Reverend Irinej Dobrijevic, Serbian Orthodox Bishop of Australia and New Zealand;
 - (iii) representatives from the Consulates General of Argentina, Estonia, Germany, Greece, Italy, Japan, China, New Zealand, Poland, Romania and Ecuador;
 - (iv) Reverend Fathers Miodrag Peric and Nemanja Mrdjenovic of the Serbian Orthodox Church, Diocese of Australia and New Zealand;
 - (v) prominent Serbian actress Ms Olga Odanovic and Serbian film reviewer Mr Nenad Dujic;
 - (vi) representatives of various Serbian-Australian community organisations; and
- (c) the thirteenth Annual Australian Serbian Film Festival, which is organised by the Serbian Film Festival Working Committee, a not-for-profit group comprising representatives of various Serbian-Australian community organisations, particularly the Serbian Orthodox Youth Association, chaired by its National Director Mr Peter Kozlina with Ms Angela Ostojic as the Opening Night Co-ordinator, will hold screening programs in all mainland Australian States from 17 October to 17 November 2013.

(2) That this House:

- (a) commends the Serbian Film Festival Working Committee for the occasion of its holding of the thirteenth Annual Australian Serbian Film Festival and its contribution to the cultural life of our State; and
- (b) extends its greetings to the Serbian-Australian community for its ongoing and positive contribution to the State of New South Wales.

PRIVILEGES COMMITTEE

Report: The 2009 Mount Penny Return to Order

The Hon. Trevor Khan, as Chair, tabled report No. 69 entitled, "The 2009 Mount Penny Return to Order", dated October 2013, together with transcripts of evidence, submissions, correspondence and answers to questions on notice.

Report ordered to be printed on motion by the Hon. Trevor Khan.

The Hon. TREVOR KHAN [9.39 a.m.]: I move:

That the House take note of the report.

It was former British Prime Minister Margaret Thatcher's Press Secretary, Sir Bernard Ingram, who once observed:

Many journalists have fallen for the conspiracy theory of government. I do assure you that they would produce more accurate work if they adhered to the cock-up theory.

This inquiry concerned the failure of the Executive Government to provide a full return to order to the House in 2009 in response to the November 2009 Mount Penny order for papers. The political and procedural significance of this failure was immense and led to speculation that there was a deliberate attempt by Mr Ian Macdonald, the former Minister for Mineral Resources and Minister for Primary Industries, or his staff to suppress or destroy documents provided to the Legislative Council in the return to order. This speculation was understandable.

In July 2013 the Independent Commission Against Corruption released its report on the outcomes of Operation Jasper entitled "Investigation into the conduct of Ian Macdonald, Edward Obeid Senior, Moses Obeid and others". Among other matters, the Independent Commission Against Corruption found that Mr Macdonald engaged in corrupt conduct in the creation of the Mount Penny tenement and the reopening of the expression of interest process for the Mount Penny exploration licence. Clearly, Mr Macdonald had an interest in the documents made public as part of the Mount Penny return to order.

In undertaking this inquiry, the committee took evidence from a range of parties, including former Ministers Ian Macdonald and the Hon. Peter Primrose, their former office staff, the Clerk of the Parliaments and Clerk of the Legislative Council, the Director General and General Counsel of the Department of Premier and Cabinet, the Director General of the Department of Trade and Investment, and the key officers of the former Department of Industry and Investment who were primarily responsible for responding to the orders for papers in 2009.

The key finding of the committee is that there was no evidence placed before it that Mr Ian Macdonald, the former Minister for Mineral Resources and Minister for Primary Industries, sought to interfere with the response to the 2009 Mount Penny order for papers. While the committee did not find the evidence of Mr Macdonald reliable or persuasive, the evidence of other more reliable witnesses is that Mr Macdonald did not play a role in responding to the order for papers simply because he did not have time. Mr Macdonald's resignation from office on 15 November 2009, just three days after the 2009 Mount Penny order for papers was made, effectively mitigated against him seeking to influence the documents provided in the return to order by his office or the Department of Industry and Investment.

The committee also found no fault whatsoever in the conduct of the Hon. Peter Primrose or his acting chief of staff in responding to the order for papers. They responded appropriately and fully in the circumstances. Rather, the committee finds that the failure of the Executive Government to comply fully with the 2009 Mount Penny order for papers is to be attributed almost exclusively to administrative failings within the former Department of Industry and Investment. The department lacked appropriate processes and protocols for managing orders for papers and a number of the staff of the department made critical administrative errors in responding to the order for papers. The committee highlights in particular the extremely tight time frame in which the return to order was prepared due to the administrative error in the office of the director general and the failure, once the matter was progressed, to direct the order for papers to the executive director of the area primarily responsible for the majority of documents relevant to Mount Penny.

The committee notes that ultimately these failures were the responsibility of the director general of the department, who failed personally and as director general to respond appropriately to the order for papers. However, there is no evidence that any officer from the Department of Industry and Investment consciously took any action or made any decision in order to restrict the documents provided to the House in 2009. Accordingly, the committee does not believe that any further steps should be taken in relation to the individuals involved. The committee does, however, support in this report a number of proposals to improve the processes for the production of State papers to the Legislative Council. The committee makes a number of recommendations that are applicable to members of the Legislative Council in drafting orders for the production of State papers, to the Department of Premier and Cabinet in coordinating the response to such orders, and to individual government departments and agencies in the provision of State papers.

On behalf of the committee, I thank all individuals and organisations who made a submission to this inquiry or appeared as a witness. The committee notes that all witnesses attended and gave evidence before the committee voluntarily. For many of them, this was clearly a stressful experience. On behalf of the committee,

I also thank the Commissioner of the Independent Commission Against Corruption for his further assistance during the conduct of this inquiry, and the Director General and staff of the Department of Trade and Investment for their responsiveness to this inquiry. Finally, I sincerely thank my fellow members of the committee for their collaborative approach to this difficult but very important matter.

Debate adjourned on motion by the Hon. Trevor Khan and set down as an order of the day for a future day.

AUDITOR-GENERAL'S REPORT

The Clerk announced the receipt, pursuant to the Public Finance and Audit Act 1983, of the Auditor-General's Financial Audit Report, Volume Three 2013 entitled, "Focusing on New South Wales State Finances", dated October 2013, received and authorised to be printed this day.

PETITIONS

Marriage

Petition stating that marriage is a state instituted and ordained by God for the lifelong relationship between a man and a woman to the exclusion of all others and that marriage protects the relationship between parents and their children for the good order of society, and requesting that the House ensure the current legal and religious procedures for the institution of marriage are maintained as a lifelong relationship between a man and a woman to the exclusion of all others for the good order of society, received from the **Hon. Rick Colless**.

BUSINESS OF THE HOUSE

Withdrawal of Business

Private Members' Business item No. 1592 outside the Order of Precedence withdrawn by Dr John Kaye.

BUSINESS OF THE HOUSE

Postponement of Business

Business of the House Notice of Motion No. 1 postponed on motion by the Hon. Mick Veitch and set down as an order of the day for a future day.

SPECIAL ADJOURNMENT

Motion by the Hon. Michael Gallacher agreed to:

That this House at its rising today do adjourn until Tuesday 12 November 2013 at 2.30 p.m.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

Motion by the Hon. LUKE FOLEY agreed to:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 1591 outside the Order of Precedence relating to an order for papers relating to Matthew Daniel, former Director of the Project Delivery Unit in the Department of Planning and Infrastructure, be called on forthwith.

Order of Business

Motion by the Hon. LUKE FOLEY agreed to:

That Private Members' Business item No. 1591 outside the Order of Precedence be called on forthwith.

**MATTHEW DANIEL, FORMER DEPARTMENT OF PLANNING AND INFRASTRUCTURE
EMPLOYEE**

Production of Documents: Order

Motion by the Hon. LUKE FOLEY agreed to:

That, under Standing Order 52, there be laid upon the table of the House within 14 days of the date of passing of this resolution the following documents created since 1 April 2011 in the possession, custody or control of the Department of Planning and Infrastructure relating to Matthew Daniel, former Director of the Project Delivery Unit in the Department of Planning and Infrastructure:

- (a) all sent, received and deleted emails in the email accounts of Matthew Daniel;
- (b) all sent, received and deleted emails in the backup tapes of the email accounts of Matthew Daniel;
- (c) any emails sent or received by Matthew Daniel stored on a network drive or other record-keeping system; and
- (d) any document that records or refers to the production of documents as a result of this order of the House.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Bills

The Hon. PENNY SHARPE [9.57 a.m.]: I move:

- (1) That standing and sessional orders be suspended to allow the introduction, first reading and printing of the Same-Sex Marriage Bill 2013 through all its stages during the present or any one sitting of the House.
- (2) That Private Members' Business in the Order of Precedence relating to the bill be called on forthwith.
- (3) That debate on the bill take precedence of all other business on the *Notice Paper* this day until adjourned or concluded.

Reverend the Hon. FRED NILE [9.58 a.m.]: Normally the Christian Democratic Party would oppose motions that suspend standing and sessional orders that do not follow the traditions or conventions of the House. Normally when a bill is introduced there is a second reading speech and then the debate is adjourned for five sitting days. However, the Christian Democratic Party believes that this important issue should be debated and not delayed any longer. The Christian Democratic Party does not oppose the motion to suspend standing and sessional orders. However, I put on the record that the Christian Democratic Party does not support the bill.

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

Motion agreed to.

CONDUCT OF VISITORS

The PRESIDENT: Order! Before I call the Hon. Penny Sharpe to present the Same-Sex Marriage Bill 2013 I would like to say a couple of things for the benefit of people in the President's gallery and in the public gallery to remind them of the rules. I am sure that they do not need to be reminded, but I will do so anyway. While the bill is being debated, indeed at all times, no audible conversation must take place in the galleries. Applause or any other gestures responding to the proceedings are not permitted. Visitors in the galleries must not converse with members in the Chamber over the bar of the House. The use of mobile telephones, radios, iPads and other electronic equipment that create sound in the Chamber is not permitted. Photographs may not be taken unless permission has been granted. Finally, if visitors are given an instruction by Chamber and support staff or any other parliamentary staff, I ask that they comply with it.

SAME-SEX MARRIAGE BILL 2013

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Penny Sharpe.

Second Reading

The Hon. PENNY SHARPE [9.59 a.m.]: I move:

That this bill be now read a second time.

It is with great pride that I introduce the New South Wales Same-Sex Marriage Bill 2013 on behalf of the NSW Cross Party Marriage Equality Working Group. I am pleased to do so because I believe, as I have always

believed, that equality before the law is a basic right of every citizen that no government or parliament can or should legitimately deny. It is time—it is past time—for our parliaments to remove the last vestiges of discrimination against gay and lesbian citizens. It is past time for our laws to reflect the reality that the residents of New South Wales are entitled to the same rights and are equally valued.

The right to marry is not just about the legal entitlements and responsibilities that recognised partnerships produce. The decision to share one's life, one's future, one's good fortune and one's hard times with someone else is one of the bravest, most challenging and most important decisions that any of us will make. It is an intensely personal and an incredibly significant decision and no Australian should be told by their parliaments or their governments that their choice is less worthy, their commitment is less enduring, their relationship less valid simply because the person they love is of the same gender as they are.

I am one of those citizens whose rights are denied by the current laws on marriage but, Mr President, so are you and so is every member of this Chamber and every person watching this debate because a right denied to some is a right guaranteed to none. To oppose this bill is to accept that it is right for a government or a parliament to arbitrate the reality of individuals' relationships. It has not been so very long since skin colour was a reason some relationships were legally categorised as lesser than others and denied recognition by the State. Indeed, it has not been all that long in historical terms since the cost of marrying denied the vast majority of people access to that legal recognition.

We changed our laws to reflect the reality that it is not acceptable for marriage to be restricted on the grounds of wealth or the colour of one's skin and every survey shows that Australians no longer believe it is acceptable for marriage to be restricted on the grounds of sexuality. It is time—it is past time—for our laws to change to reflect that reality and that is why introducing this bill on behalf of the NSW Cross Party Marriage Equality Working Group is a duty as well as a pleasure. As a parliamentarian it is my responsibility to represent the issues and the values of those who elect me. It is the role of Parliament in a representative democracy to make laws that reflect the wishes and the values of their citizens and it is unquestionable that the majority of Australians want this final piece of legal discrimination to end.

The Federal Parliament has failed to do so. Although the Federal Parliament has taken monumental steps towards equality, marriage equality remains elusive, at least in the short term. The newly elected Federal Government has indicated that action to remove this discrimination is not for it a priority. Unfortunately it is somewhat ironic that it has made it a priority to try to interfere with the right of the Australian Capital Territory to make laws for its own citizens. Like the majority of Australians, I would like the Federal Parliament to catch up to public opinion. However, regardless of whether or not it acts, the New South Wales Parliament has a responsibility of its own to the citizens of this State. I note that this is not unusual. The States have led the way on gay, lesbian, bisexual, transgender and intersex reform for many decades.

If we had waited for Federal Government action, couples in New South Wales would not have had equality until 2009. New South Wales acted a decade earlier. Our Federation has never been tidy. That may be the inevitable by-product of a nation whose Constitution spends more time talking about railway gauges than rights. But tidy or not, it works—so long as we make it work, so long as we do not use the complexities to excuse inaction, so long as we accept our responsibility to act, to represent our citizens and to recognise their rights. And we have a responsibility to act on this matter: to the gay and lesbian citizens of New South Wales, who are part of every community in every electorate across the State; to their families and friends, who are also deeply hurt by the perpetuation of legal discrimination against those they love; to everyone in New South Wales who believes in equality; and to everyone in New South Wales who believes in the importance of marriage. Because it is not the end of discrimination that threatens the role of marriage in our society; it is the continuation of it.

Most people believe that marriage should not be discriminatory. Most people believe that the quality and the importance of relationships are not determined by the gender of the people in them. Most people believe that love is inclusive. Discriminatory laws will not make people change their minds about the validity and value of same-sex relationships. Discriminatory laws will, however, make sure that marriage becomes more and more an archaic, dated institution, reflecting the values of the past, irrelevant to the present and to the choices people make about their futures.

It is a rare thing to see a bill such as this brought before our Parliament via the work of a group of people across the political spectrum. The genesis of this bill was the establishment of the NSW Cross Party Marriage Equality Working Group. This group was established because each member of the working group saw

the need to look to outcomes, rather than just fight the easier fight of putting gay men and lesbians at the centre of the politics of providing rights to same-sex couples. There is no doubt that when the working group was established the objective was to achieve marriage equality at a State level if it could not be achieved at a Commonwealth level.

What became clear very early in the process was that the objective of marriage equality for all couples was not achievable. Nevertheless, what was identified was that the working group could take a step forward towards marriage equality for same sex-couples through State legislation. The announcement of the working group led to a round of meetings with stakeholders and the preparation of the first draft bill. These steps in turn led the Premier to support the establishment of the terms of reference for the same-sex marriage laws inquiry by the social issues committee of this House. I take this opportunity to thank all members of that committee who worked diligently to produce a report that has brought some intellectual rigour to the debate on the constitutional issues surrounding the powers of the States to introduce such legislation as we are now debating. I must also thank all those who made submissions to that inquiry.

None of us should forget that the inquiry received more than 7,000 submissions, a number unrivalled by any other inquiry held in New South Wales. I also wish to thank in particular the various academics who gave evidence before the inquiry. Their evidence was invaluable, not only to the committee but also to the working group. Following the evidence given by academics to the committee, a number of amendments were made to the bill, including the title of the bill. The bill was originally titled in a way that implied it was delivering marriage equality. After advice, the working group now concedes it is not possible at a State level and would have weakened the bill. That is why the bill before us today was changed to being the bill for same-sex marriage. Throughout the entire bill the union being entered into is referred to as a "same-sex marriage". That is because the bill creates a new type of relationship, a type of relationship that avoids encroaching on the field that is covered by the Federal Marriage Act.

In the original draft of the bill, which was the draft that was examined by academics appearing before the committee, there was an attempt to try to include intersex people within the legislation. Unfortunately, it was almost unanimously decided by those academics that the relevant clauses of the first bill diminished the chances of the bill surviving a High Court challenge. These clauses were therefore reluctantly removed from the final draft. There is no doubt that Australia has a long way to go to give equality to all couples. Another area that was identified as a major concern with the first bill related to how that bill dealt with property upon the dissolution of the relationship. In the bill before the House, we have sought to deal with that issue treating a same-sex marriage as a de facto relationship and therefore falling under the jurisdiction of the Family Court of Australia.

These changes were subsequently examined by a constitutional law expert, who has confirmed the bill is robust and has good prospects of resisting a constitutional challenge. Clause 6 of the bill provides for marriage between two people of the same sex following a ceremony before witnesses. Importantly, the bill seeks to create a relationship status known as "same-sex marriage" and not "marriage". As Bret Walker, SC, has pointed out, expressions such as "de facto" and "common law marriage" have long been used to describe a status different from marriage: de jure marriage. In the same way the term "same-sex marriage" that is used in the Same Sex Marriage Bill describes a relationship status that is different from marriage. Bret Walker, SC, stated in an advice dealing with a similar Tasmanian draft bill:

The mere use of the word marriage does not indicate the status is the same. To the contrary, the preceding words, de facto, common law or same-sex, serve to distinguish the status from marriage. The Same-sex Marriage Bill thus does not purport to regulate the status as the Marriage Act. By its terms it creates and regulates a different status. That is so whether the status is described as a civil union or a same-sex marriage, critically it is not described as a marriage.

Clauses 7 to 14 of the bill set down the steps to be taken by the parties in solemnising the relationship. It is fundamental to the bill that the parties undertake a ceremony that establishes the relationship. Unlike a de facto relationship, the same-sex marriage is entered into by a formal and public ceremony before witnesses. It is not created merely by the intention of the parties or by the passage of time; rather a series of formal steps must be performed in order to establish the relationship. Clause 5 of the bill also sets the grounds for eligibility, including the age of the parties, the need for at least one party to be resident in New South Wales and for neither party to be validly married under Commonwealth law. The working group in its deliberations was of the view that it was important to ensure that a State-based marriage law was for the benefit of the citizens of this State.

Additionally, it was important to ensure there was no conflict between State legislation and the Commonwealth Marriage Act—hence the prohibition of entering into a same-sex marriage while being married under Commonwealth legislation. Clearly also it was essential to set down preconditions regarding matters such

as age. Part 4 of the bill deals with dissolution and annulment of the marriage. The precondition to dissolution is the separation of the parties for at least 12 months. This precondition is similar to that adopted under the Commonwealth Family Law Act 1975. The requirement of a period of dissolution is a clear message to the parties that entry into a same-sex marriage is not simply a transient relationship that can be terminated by the actions and intentions of one party.

I will deal at this point with schedule 1.3 to the bill. The bill proposes that proceedings for property adjustment following the end of a same-sex relationship will be dealt with by the Family Court by amending the Property Relationships Act by inserting a new section 5 (1) (a), and also an amendment to section 5 (3) (c) (1). The effect of these amendments will be to equate a same-sex marriage with a de facto relationship for the purposes of proceedings in the Family Court for property adjustment. As all members know, property adjustments between former de facto partners are now dealt with in the Family Court. The amendments proposed in this bill will ensure that former partners in a same-sex marriage will be dealt with in the same way. This overcomes one of the criticisms made of the first draft bill by some academics before the State Same Sex Marriage Law inquiry.

It is important that I deal specifically with one further matter. Clause 11 of the bill has been specifically inserted to make it plain that no religious organisation can be compelled to either marry people of the same sex or make available their places of worship for any such ceremony. The bill explicitly states that religious organisations are exempt from doing so. I should further point out that even without this provision no minister of religion could be forced to perform a same-sex marriage ceremony. Part 5 of the bill provides for a system of registration of same-sex marriage celebrants. Additionally, clause 18 of the bill makes it an offence for any person to solemnise a same-sex marriage who is not authorised to do so, and such authorisation arises by registration under part 5 of the bill. The interaction of these clauses clearly has the effect of ensuring that ministers of religion cannot be forced to perform a same-sex marriage ceremony. The simple fact that they fail to register as a same-sex marriage celebrant makes them incapable of performing such a ceremony.

Much of the public debate surrounding this bill has focused on the legal complexities that come from our Constitution and, indeed, our Federation. We must not be deterred by the fact that this bill raises legal issues. It is hardly unusual for an Australian parliament to pass legislation that is subsequently tested in court. If parliaments refused to legislate in any area that might lead to a court challenge, then laws such as those that stopped the damming of the Franklin River, the introduction of plain packet tobacco legislation and, to give a very recent example of a decision in this place, the law that puts limits on who can donate to political parties, would never have been passed. No parliament can guarantee a court outcome: indeed, that would be fundamentally against the principles that underpin our democracy.

The best any parliament can do is to know that it has a strong and legally sound argument underpinning its legislation, and in this case the cross-party working group has. There is no reason that this bill cannot be passed by the New South Wales Parliament. I have, through the wonders of New South Wales Legislative Council procedures, the privilege of introducing this bill on behalf of the NSW Cross Party Marriage Equality Working Group, but many other people share the credit for it. I thank the members of the NSW Cross Party Marriage Equality Working Group: the Hon. Trevor Khan from The Nationals; the member for Coogee, Bruce Notley-Smith, from the Liberal Party; the former member for Sydney, Clover Moore, followed by Alex Greenwich, for the Independents; and Cate Faerhmann, followed by Mehreen Faruqi for The Greens.

I thank our hardworking staff and the New South Wales Parliamentary Counsel office for drafting and redrafting this bill. Our legal advisers Professor George Williams, Ghassan Kassisieh, Bret Walker and Anna Brown deserve great credit. I thank the members of the Standing Committee on Social Issues for their groundbreaking work and the gay, lesbian, bisexual, transgender and intersex community organisations that have been our fiercest critics but also our greatest supporters. Finally, I thank every same-sex couple in New South Wales and their families and friends who, no matter the outcome of this bill, will not rest until this discrimination is removed once and for all.

There are those who say that the removal of so many practical aspects of discrimination in recent years renders this bill purely symbolic. Even if that were true, it would not make it any less important. A clear statement by our elected representatives that all our citizens are equal, and equally entitled to rights before the law, will never be unimportant. A clear statement by our elected representatives that discrimination is unacceptable will never be insignificant. As far as we have come, there are still people in this State living in fear that admitting their sexuality will bring rejection, bullying, shame and violence. There are still young people in

this State who get up every day hoping that no-one notices and no-one asks whether they are gay, a fag, a poof, a lezzo or a dyke—or much worse terminology is used. For the question is not asked to provide acceptance and love; it is a question that if answered honestly can bring terrifying menace.

There are still people in this State who have hidden from themselves, their families and their friends, often for decades, on the mistaken belief that they are abnormal, perverted or deranged, or that maybe being gay or lesbian will just go away. Even purely symbolic recognition of equality by this Parliament says to those people that the discrimination they suffer is not right, the fear they are made to feel is not justifiable, and the bullying they endure is not their fault. To insist on being treated equally before the law is never purely symbolic. Equality before the law is not a privilege, not an indulgence and not a whim; it is a right for which everyone who supports the principle of equality has a duty to fight.

This bill is for those who support equality—equality for themselves and equality for others. This bill is for same-sex couples who want to be able to celebrate their love and commitment in the same way as their heterosexual friends and families. This bill is for the parents, families and friends of same-sex couples who want to joyfully share in those celebrations and who want to celebrate their own love without the shadow of knowing that people dear to them are unfairly prevented from doing the same. This bill is for the kids of same-sex couples: children living in families where they are wanted, loved and cared for; children who deserve to have their families treated like every other family. The best thing to ensure that children of same-sex couples will thrive is if they do not live beneath a cloud of judgement, assumption and the outright untruths that discrimination breeds.

This bill is for the people who have been forced to try to change by others and who have found that they cannot. And this bill is for those who will never benefit from it—for those for whom taking their own life was easier than being gay or lesbian. This bill is not a silver bullet for discrimination; there is no such thing. Nor is there a shortcut for the long journey that many still face, but it is a step on that journey. It is a step that says our parliaments do not sanction discrimination. It is a step that says the attitudes of intolerance that do so much harm to so many have no place in our Parliament or in our laws. Whether this bill succeeds or fails, I want every person who has struggled simply because of who they are, every person who has suffered simply for loving who they do, to know that there are people in the community who will not accept this discrimination, there are people in our parliaments who will not accept this discrimination, and that together we will not rest until this discrimination is removed for all couples in New South Wales and across Australia. I commend the bill to the House.

The Hon. WALT SECORD [10.19 a.m.]: The Same-Sex Marriage Bill 2013 has been jointly sponsored by members of the NSW Cross Party Marriage Equality Working Group. It has been brought forward by my colleague and shadow Minister for Transport, the Hon. Penny Sharpe. I acknowledge her hard work and commitment to the policy area of marriage equality. The object of the New South Wales bill is to allow for adults of the same sex to enter into a same-sex marriage. It spells out the specific rules for same-sex ceremonies, celebrants for those ceremonies, witnesses, eligibility and interstate recognition of same-sex marriages. It therefore seeks to distinguish this from heterosexual marriage already covered by the Commonwealth's Marriage Act 1961. Proponents of the New South Wales Same-Sex Marriage Bill say it does not overlap with the 1961 Act and it is not a marriage equality bill like the one in the Australian Capital Territory.

With this bill, New South Wales is now the third Australian State or Territory jurisdiction to consider marriage equality or same-sex marriage in the past 18 months. Tasmania was the first. However, that bill was defeated in September 2012 in its Legislative Council by a mere two votes. Then, on 22 October this year, the Australian Capital Territory Legislative Assembly passed the first marriage equality law in Australia. It passed by one vote. The Australian Capital Territory Marriage Equality Bill 2013 is more liberal in its scope than the New South Wales bill which we discuss today. The Australian Capital Territory law permits any two people to marry who cannot now do so under the current Commonwealth law. This is not the case in the proposed New South Wales bill.

The New South Wales bill does not allow for polyamorous relationships or incestuous relationships—despite the claims by some of its opponents. I note that the New South Wales proponents state that their bill is very restrictive and it creates a unique parallel category of same-sex marriage. This is to address some of the concerns about a challenge at the Commonwealth level. It is now time for the New South Wales Parliament—Australia's oldest Parliament—to consider the question of same-sex marriage. I note that in New South Wales, discrimination against same-sex couples has been removed in many areas including de facto relationship recognition, surrogacy, same-sex adoption and age of consent. Many of these reforms were made by previous

State Labor governments, including governments led by Neville Wran, Bob Carr and Kristina Keneally. Therefore, the recognition of same-sex marriage is the next and final step for removal of legal discrimination against same-sex couples in this State.

Members of this Chamber will be well aware of my views on the matter of marriage equality. I gave a detailed speech on 24 May 2012 in response to a previous motion in this Chamber. In short, I will be voting for the New South Wales bill—despite some legally-based concerns. As I have said previously, on human rights grounds, all Australians must be treated fairly and equally. All people should be equal before the law and should be entitled to the same fundamental rights—whether that is race, gender or sexual orientation. Therefore, not having the right to marry restricts a person's full citizenship. I believe allowing same-sex couples the right to marry removes a legal and social discrimination; it supports full and equal citizenship in Australia.

We can no more deny someone's right to enter a union based on his or her gender or sexual orientation than we can on his or her skin colour. And I want to just dwell on that comparison for a moment. This is because restricting marriage on the basis of race is something that Australia did indeed do in the last century. The Northern Territory Ordinance Act 1918, for example, prohibited marriage without the express consent of the State—between an Indigenous woman and a non-Indigenous male. This is something that I am sure we all look back upon as a shameful anachronism of the last century. And yet, it was a piece of legislation that, I am certain, seemed to be justifiable at the time, within the cultural and moral norms of the day; but it is very wrong by anyone's standards today. This is something that we should all bear in mind as we discuss the New South Wales bill. Our cultural and moral norms do indeed shift over time. And they are shifting on the issue of same-sex marriage.

This is not to suggest that legislators should divorce themselves from their own personal beliefs. But it is to suggest that we should constantly seek to be mindful of distinguishing between what is a matter for personal belief, versus what is a matter for the law. And I stress this is a two-way street. Just as I am cautious about the role of personal beliefs in establishing law, I am equally cautious of any attempt for the law to impinge on personal religious beliefs. As I have also said previously, I acknowledge the strongly held personal and spiritual views about same-sex marriage around this Chamber. Many people take the view that a marriage can only be between a man and a woman. This is a view to which they are welcome, and they are welcome to maintain, in both their own personal relationships and in their own spiritual practice. And I strongly argue that religious institutions should never be forced to officiate marriages that they do not wish to sanction.

However, marriage has evolved beyond simply an expression of love or faith. It has evolved in our society with a complex bundle of property, legal and societal rights and privileges. It is these aspects of marriage that have inevitably led to questions on how society confers such status on some individuals, but not on others. Those questions are, in my view, matters for law, as they are primarily questions of equality of treatment. And it is clear that an increasing majority of Australians agree with a change to law relating to same-sex marriage. Depending on the survey, between 52 per cent and 60 per cent of Australians now agree that the institution of marriage should be accessible to same-sex couples. And with younger Australians overwhelmingly supporting the right of same-sex couples to marry, I therefore believe that marriage equality is inevitable in Australia.

Since our last debate in this Chamber on this issue, the number of jurisdictions recognising same-sex marriage has increased from 10 to 13. Since then, New Zealand in April and Britain in July joined a number of other nations including Canada, Sweden, Spain, the Netherlands and Argentina allowing for same-sex marriage. In addition, American President Barack Obama and Vice-President Joe Biden have both indicated their support for gay marriage. Nationally, Federal Labor leader Bill Shorten expressed his support. And in New South Wales, on 19 April this year, the Premier indicated that he supports same-sex marriage, as has New South Wales Opposition Labor leader John Robertson. At a 16 August budget estimates hearing, Premier Barry O'Farrell said:

I just cannot rationalise why I would deny to one section of the community the benefits of a close, loving, caring relationship that so many of us are fortunate to enjoy.

I think the Premier expressed this issue most eloquently. However, this morning, the Premier has abruptly changed his position on marriage equality. In a tiny article on page 13 of the *Sydney Morning Herald*, he now says he is not supporting the New South Wales bill. It seems that the Premier says one thing in the gay media, and to voters in the electorates of Sydney and Coogee, but then says something else in the mainstream media.

While noting my formal support for the bill, I do have reservations about a State- or Territory-based approach. I believe the New South Wales bill may have difficulties in relation to the constitutional question on whether such a law is "inconsistent" in regard to the Commonwealth Marriage Act.

However, I note that there has been a concerted effort to draft this bill with the shadow of a possible High Court challenge in mind. From public comments made by the Federal Attorney-General, George Brandis, the Abbott Government clearly believes a State- or Territory-based law is inconsistent with the Federal Marriage Act, which defines marriage as between a man and a woman. I note that the New South Wales Legislative Council Standing Committee on Social Issues July 2013 report No. 47 entitled "Same Sex Marriage Law in NSW" canvassed this area. It reported that the State had the ability to enact such a law.

But the question as to whether New South Wales has the ability to pass a law is different from whether that law can survive a challenge by the Federal Government in the High Court in relation to "inconsistency". Unfortunately, due to their desire to have a same-sex marriage bill in place in New South Wales, this distinction has been overlooked by many of the proponents of this New South Wales bill. Before 1961 marriage laws were the domain of the various Australian States and Territories. This was transferred to the Federal jurisdiction with the Marriage Act in 1961. Furthermore, in 2004, the Howard Government amended the Marriage Act to clarify marriage and specify that it is between a man and a woman. It also prevented the recognition of overseas same-sex marriages. In this sense, there can be no doubt that the Commonwealth has clearly expressed its intention to exclude the operation of the Marriage Act from same-sex couples. Its intention was crystal clear.

I note that the Same-Sex Marriage Bill in New South Wales is a re-entering of the pre-1961 marriage field. Furthermore, this creates the potential for a challenge to this bill under the inconsistency provisions expressed in section 109 of the Constitution. We have seen the Abbott Government immediately move to challenge the Australian Capital Territory law in the High Court. I have been advised that it filed a 66-page writ of summons within days of the passage of the Australian Capital Territory law. We should expect a similar move to occur with the New South Wales bill if today's legislation is enacted in New South Wales. I understand the High Court could make a decision on the Australian Capital Territory law as early as December.

Constitutional law experts have observed that the narrowness of the New South Wales bill gives it an increased possibility of surviving a High Court challenge and, therefore, a greater chance of survival than does the Australian Capital Territory law. They cite that the New South Wales bill seeks to create and regulate a new status called "same-sex marriage", not to change the existing status of marriage. Proponents of the New South Wales bill say that it does not overlap with the Federal Marriage Act 1961. Their argument is that the New South Wales bill is not in conflict with the Marriage Act but rather a distinct and parallel law. Unfortunately, this area of legal argument will occupy legal scholars and High Court judges. Certainly, if the Australian Capital Territory law is upheld, it may be easier for other States and Territories to legislate for same-sex marriages, despite the views of the Abbott Government.

My point is that it would certainly be preferable to have a national approach on this issue. I would rather see uniform national laws than a patchwork of systems in the various States and Territories of the Commonwealth of Australia. While I understand the Abbott Government's perspective that marriage law is a Commonwealth matter, it may do well to ask itself: Why are State and Territory Governments now seeking to legislate on this issue? The answer lies in the view that the communities we represent have expressed clear support for marriage equality at law. We have not seen this addressed at Federal level nor do we now see any prospect of it being addressed in the foreseeable future. It is inevitable then that these same communities will seek the next-best legal solution, through the Parliaments of their respective State and Territory Governments.

Unfortunately, like our national apology to the Stolen Generation, it will fall to the next Federal Labor Government to enact national marriage equality laws. Regardless of a possible High Court challenge, I maintain the belief that it is important as elected representatives to show our support for the removal of discrimination against a section of the community. We must lead and act. Law needs to correspond to a contemporary sense of justice. I find it extraordinary that in 2013 we are debating whether gay and lesbian couples can marry. Elsewhere, in nations like Russia, there are anti-gay measures. In Serbia in 2010, 1,000 people at a gay rights pride rally were confronted by 6,000 anti-gay rioters who clashed with police.

New South Wales is a mature, contemporary and diverse society and the people of New South Wales deserve to have laws that reflect those views. That is why I am supporting the New South Wales bill, despite my views that it may be inconsistent with the Federal Marriage Act and may fail. The passage of this bill in New South Wales will encourage other States and Territories—and perhaps the Federal Parliament—to allow

same-sex marriage and end this area of discrimination in the law. I take this opportunity to briefly reflect on specific criticisms and aspects of the New South Wales bill. In relation to the dissolution of a same-sex marriage in New South Wales, while Commonwealth law does not recognise same-sex marriage, the fact that a couple are married under the New South Wales bill means they will be treated like de facto couples for the purposes of the Commonwealth law.

Part VII AB of the Family Law Act 1975 deals with financial matters arising out of the breakdown of de facto relationships, including between persons of the same sex. This means such matters would continue to be dealt with by the Family Court. For couples who are not de facto partners for the purpose of Commonwealth law, the New South Wales Property (Relationships) Act 1984 will continue to apply to financial matters arising from any breakdown in the relationship. As for children, the Family Law Act will continue to apply to children of same-sex couples whose parents marry under this bill. In the case of dissolution, any custody matters would be dealt with by the Family Court as they are presently. Therefore, there are no rights at risk through the passing of the New South Wales bill, only rights to be gained.

The institution of marriage is a complex one combining legal, property, family, societal, personal, moral and spiritual dimensions. The bill we discuss today is less complex. It does not concern itself with aspects of marriage other than the legal ones. It concerns itself not with personal beliefs about the institution but with who may access the legal benefit and recognition of the institution. As such, it is not a question of faith but of law—primarily, human rights law. The issue of marriage equality for same-sex couples is about the granting of full citizenship. On this question I find myself asking: Who am I to deny others the right to enjoy the same public recognition of their commitment as I have as a heterosexual male?

We can uphold differing traditions in our families and communities. We can maintain differing faiths within our religions. However, we all deserve the same and equal recognition under Australian law. We should be clear that it is only this last question that this bill concerns itself with. Yes, I would have preferred that New South Wales did not need to take such a legally fraught course of action. I would have preferred an inclusive and consultative national approach on this issue, but failing the Federal Government acting the New South Wales Parliament through a private member's bill has decided to act. Therefore, as a matter of principle and a commitment to this area of human rights, I will be voting for the private member's bill sponsored by my colleague the Hon. Penny Sharpe. I thank the House for its consideration.

Dr MEHREEN FARUQI [10.34 a.m.]: On behalf of The Greens I speak strongly and proudly in support of the Same-Sex Marriage Bill 2013. I begin by acknowledging the gallery full of supporters of the lesbian, gay, bisexual, transgender and intersex community, who have worked hard for many years to advocate for equal rights. I also pay tribute to the work and passion of many others unable to join us today but whose work has been fundamental to removing discrimination in our society. I also acknowledge the work of my colleagues from the Cross Party Parliamentary Working Group on Marriage Equality and those who have worked with us to get this bill here.

Social change is a slow process, but it only happens when courageous people stand up and demand what is right and just. Changing social conditions for our lesbian, gay, bisexual, transgender and intersex community has been hard fought over the last 40 years or so. We have made significant progress against sexual oppression and discrimination. There have been major changes to the law in States and Territories that recognise same-sex relationships, but legal equality is not yet a reality. Our intersex and transgender people still face legal hurdles for recognition and for the right of self-determination. Many jurisdictions allow religious institutions to discriminate against staff and students, including in New South Wales religious schools.

Queensland, Victoria, the Northern Territory and South Australia do not allow same-sex couples to adopt children. While there has been much progress in removing discrimination, we still have some way to go. Today, we can take a step towards redressing some of this. Today we have the privilege and honour of making a change that removes discrimination that denies loving same-sex couples the right to get married. Today, we can make sure that loving same-sex and heterosexual couples in New South Wales have equal value, dignity and respect. Today, we have come together across political party lines to strengthen and support a big step forward for equality in law and in society.

The Greens have had a long history of policies and actions advocating full legal equality regardless of sex, sexuality or gender identity. In 1997, The Greens leader, Senator Christine Milne, when she was leader of the Tasmanian Greens introduced legislation that resulted in decriminalising homosexuality in Tasmania. In 2005 The Greens member of Parliament Nick McKim introduced a marriage equality bill into the Tasmanian

Parliament. This was followed by Senator Lee Rhiannon, who was then a member of The Greens in the New South Wales Parliament, launching The Greens New South Wales bill on same-sex marriage in the same year. It was put on the *Notice Paper* but, unfortunately, was not debated.

I am so very proud to be part of this Greens history of activism for equal rights. However, this movement for removing discrimination and for marriage equality has been a very broad community movement. I pay tribute to all those who have stood up over the years to change the law as well as community attitudes and to move towards a more respectful and fairer society. Across States, parliamentarians from different political parties are working together to make sure that this crucial change in law becomes a reality and same-sex couples have the same legal rights as other loving couples.

Opponents of marriage equality often say, "You can't change the definition of "marriage". Marriage has been the same for thousands of years." Anyone with a history textbook knows this is incorrect. Indeed, the definition and meaning of "marriage" have changed countless times throughout our history, most recently in 2004 with amendments to the Federal Marriage Act by then Attorney-General Phillip Ruddock. These amendments codified "marriage" as meaning "the union of a man and a woman". This is just one of many changes to the institution of marriage. When this country was still a colony, it regulated the marriages of convicts, only allowing the most industrious or sober to marry.

We have also had shameful laws to regulate when and who our nation's Indigenous people could marry, and regulation of miscegenation. In the Northern Territory, for example, the Aboriginal Ordinance 1918 restricted marriages between Indigenous women and non-Indigenous men. Thankfully, we have now changed these laws. These changes have been rightly made to reflect the changing times and the development of views in New South Wales and Australia. When the Federal Marriage Act was first introduced it was without a definition of "marriage". Senator John Gorton argued:

The reason why marriage has not been defined previously in legislation of this kind is because it is rather difficult to do so. Marriage, of course, can mean a number of things. For instance, it can mean a religious ceremony; it can mean a civil ceremony; and it can mean a form of living together. There are several meanings covered by the word "marriage", which are quite different one from the other.

And he, of course, was right. Marriage is a social institution and it changes with society. Human society is coloured with different versions of marriage. For some people it is spiritual, while for others it is completely secular. Marriage has been about property agreements, ending feuds and forging alliances. It is about legal contracts, financial stability or emotional security. It is sometimes forever and sometimes for a couple of days. For many of us lucky ones, it is for love. The truth is that passing this bill does not change the meaning of marriage for anyone. For the people opposed to marriage equality the definition of "marriage" will remain the same; this bill will not affect their marriages.

For those in favour of same-sex couples marrying, and indeed some same-sex couples themselves, this bill will not change the meaning of marriage either. Marriage will remain the largely undefinable, weird and wonderful mess of ideas that it always has been. What will change is that those couples will be granted the same rights to those ideas and the same human rights as are extended to everyone else. Let us make no mistake: when we talk about marriage we are talking about something that the United Nations has declared as a human right in its charter. The marriage equality movement is a human rights movement. I have received several emails over the past few days that make claims that if this bill passes society will somehow descend into chaos. In response, I quote the sobering words of James Baldwin, a gay African American author who passed away in 1987:

But the certainty and monotony with which some will always sound the death knell for society, morality, and faith, just because two adults choose to marry, cannot obscure the reality that we heard virtually the same arguments for almost three hundred years to justify preventing two black people from marrying and then a black man from marrying a white woman.

We are operating in an important moment in parliamentary history. The Greens, of course, will vote in favour of this bill, as we have always voted in favour of steps towards marriage equality and ending discrimination. That will be of no surprise to anyone. But in this important moment our Premier has publicly declared his personal strong support for marriage equality and the Leader of the Opposition, John Robertson, is a proud parent who wants his son to have the same right as his two sisters to marry the person he loves. The Coalition and the Opposition will have conscience votes on this issue.

In poll after poll the public—the people we represent—have provided evidence of community support for same-sex marriage. This support has never been stronger, nor has our ability to act. Only a few weeks ago the report from the inquiry into same-sex marriage law in New South Wales was tabled in Parliament. The

inquiry was the first of its kind in Australia and an important platform on which to inform the debate on marriage equality legislation. This report removed any doubt or obstacles that we can achieve constitutionally valid same-sex marriage in New South Wales. The committee chair, the Hon. Niall Blair, stated plainly:

This report seeks to clarify the law, including in particular the question as to whether New South Wales can legislate on the topic of same sex marriage; there is no doubt it can.

This opinion is derived from submissions from some of the most expert minds in constitutional law in this country. We have never had more legal surety that we as a State can legislate for this change. Questions have been asked about whether this bill will hold up to a High Court challenge. The advice from leading barristers and constitutional experts strongly confirms that it will. The bill has been drafted in a way to allow it to operate concurrently with the Commonwealth Marriage Act 1961. The New South Wales Same-Sex Marriage Bill 2012 regulates the legal status of same-sex marriage and does not infringe on the legal status of marriage. This is exactly the same as de facto marriage, which has a different legal status to marriage. The bill, in its crafting, creates a different but equal legal status of same sex marriage.

This debate is not just about words; it is about feelings, rights, dignity and respect. It is about loving couples enjoying the same equality in law. The people of New South Wales are asking us to act, and now we know we can. So now we must act. The ship has well and truly set sail on this issue. It is going to happen and we should be joining our colleagues in the Australian Capital Territory and in many countries across the world to legalise same-sex marriage—because that is the right thing to do. The world is moving on in relation to this matter. Denmark passed the world's first same-sex marriage bill in 1989 and this month New Jersey became the fourteenth state in the United States of America to do so. In between, countries as diverse as Canada, Spain, New Zealand, South Africa, Brazil and Argentina have embraced same-sex marriage. There is no reason why New South Wales should be laggards, when in the past we have been leaders in removing discrimination.

Some members will have already decided that they will vote against the bill, regardless of the debate. Other members will not be sure. Some members, like me, may have grown up in religious or conservative environments. I grew up in a conservative, patriarchal Pakistani society where homosexuality was hidden, condemned and considered shameful, and lesbian, gay, bisexual, transgender and intersex [LGBTI] people were persecuted, and still are. From a very young age this discrimination did not sit well with me. As I grew older, I had the privilege of meeting and closely working with someone who, despite the social stigma, was an openly transgender person and proud of it. I take a moment to pay tribute to Tufail, who lived in our home in Lahore. He was an amazing cook and the life of the neighbourhood. Tufail passed away a few years ago, but his courage to openly be who he was in a society that vilified and stigmatised sexual variance lives on as an example to all, and especially to me.

Now in my role as a parliamentarian I have the opportunity to do something about such discrimination, and I will. Like The Nationals member of the New Zealand Parliament Maurice Williamson, I also have had people, including friends and family, tell me that by being vocal about same-sex marriage and supporting it I will burn in the fires of hell for eternity, that I will be but fuel for this fire, that I should back off from my support of same-sex marriage, and that people will be praying for my soul. Well thanks, but no thanks. I, like many members here, will stand up for fundamental human rights and against any discrimination, whether it be based on race, religion, occupation, gender, sex, sexuality or gender identity. This piece of legislation does not force anyone to do anything they do not want to do. Recently my colleague the Australian Capital Territory Greens member of the Legislative Assembly Shane Rattenbury expressed similar views:

While this legislation may challenge your personal values, it does not foist anything upon you; your lives aren't changed or intruded upon.

This legislation is simply ending an area of discrimination in the law so that same-sex loving couples are able to do what heterosexual couples can. This is about all families sharing the joy and happiness that many of us take for granted. State-based same-sex marriage is a stepping stone in the march towards ending discrimination faced by lesbian, gay, bisexual, transgender and intersex people. Full Federal marriage equality will be another. But our work will not be done. We still have to ensure that religious schools do not discriminate against young lesbian, gay, bisexual, transgender and intersex people. We still have to prevent the disproportionate rates of mental health issues and suicides in young lesbian, gay, bisexual, transgender and intersex people, and we still have to fix the legal and societal discrimination faced by transgender and intersex people. These are all stepping stones that we must cross together to make our society better and fairer.

Full marriage equality can only be achieved by changing Federal laws, and hopefully that day is coming soon—it is not a question of if, but when. In the meantime, today we have the responsibility of

removing the hurt and sorrow so many in our gay and lesbian communities and their families and friends have suffered and still suffer. By enacting this bill we will be not only removing discrimination but also providing hope and happiness for many who have suffered needlessly. We can lead the way for the Federal Government to follow. As lawmakers for this State, let us join together and do the decent and right thing. By passing this bill we strongly acknowledge the humanity of others and in the process realise our own. I urge members to support this bill, this crucial and important reform. The time for this reform has well and truly come. I commend the bill to the House.

The Hon. NIALL BLAIR [10.49 a.m.]: At the outset I say that I do not believe that our debate today on the Same-Sex Marriage Bill 2013 is a referendum on same-sex marriage or marriage equality. That played out more appropriately when we debated the previous same-sex marriage legislation, which was a much broader bill. The bill before us is much narrower and does not open up the debate to a referendum on whether one believes in marriage equality or the concept of same-sex marriage. As members know, I chaired the inquiry by the Standing Committee on Social Issues into same-sex marriage. As Dr Mehreen Faruqi informed the House, the committee clearly found that the State has the power to pass a bill such as the one we are debating today.

During the committee inquiry I said that we were examining whether we could pass such a bill, not whether we should pass such a bill and that the time would come for us to debate that aspect. That time has come. Upon reflection, I believe I was best suited to chair the inquiry because during the journey I found that I am relatively neutral on the issue of same-sex marriage and marriage equality. I am not intimidated by the issue. I know that the bill, if it were to pass, would not impact directly on my life and my marriage. I understood both sides of the argument. Indeed, during the journey I realised that I may share the view of those who consider that the State should handle the legal side of a union between two people and allow those people to validate or celebrate that legal union in a church or institution as they choose. The view that the State should simply handle the legal side of same-sex marriage was not something I had thought about before the inquiry.

The committee in its inquiry looked at both sides of the argument. I thank all those who made submissions and presented evidence to the committee. I found myself at times agreeing with both sides of the argument, which was an interesting part of the journey I undertook. The committee examined legal difficulties, particularly with the first draft of the bill that was introduced. It is important to know that the intent of the original bill was marriage equality. Following the committee's investigation and legal opinions, the bill was redrafted. The bill before us today is not based on the intent of marriage equality; it is a civil union bill that utilises the term "same-sex marriage". Indeed, it creates a different class, a sub-class, to the original intent of the bill.

I understand the argument about the bill being a stepping stone and the reason for its redrafting. That has had a significant impact on the content and application of the bill before us today. This bill is not inclusive; it contains exclusions. It is also very narrow in its application, and issues about residency and dissolution of the bill itself still remain. That is as a result of the advice given to the committee on the first draft of the bill. As I said, that has perhaps moved the bill away from its original intent. Where does that leave us? As I said, we now have a civil union bill. If this bill were challenged in the High Court I think it would be stronger than the Australian Capital Territory bill. I understand from the evidence presented to the committee that the Australian Capital Territory is on a hiding to nothing in the High Court. The bill before us is potentially stronger, but it is for the High Court to make that decision.

With this bill, I think we have moved away from the original intent. It still raises legal issues. Indeed, more than the legal issues, the application and implementation of the bill will be complicated. I also question the timing. The Australian Capital Territory bill is in the process of being challenged in the High Court. We would be better served by waiting for the High Court's determination and learn lessons from that decision. But that is not the case. Since 2011 we have spent many hours in this place harmonising laws to make them consistent across the States. This bill is inconsistent not with the Commonwealth Marriage Act but with the legislation in the Australian Capital Territory.

The bill raises questions that need to be answered, but I will not go into all the details. I am sure members have read the part of the committee report relating to the legal issues. The committee I chaired found that such law could be passed in New South Wales. Whether we should pass the bill is a difficult question. As I said, I am not pressed either way. However, my decision today is based on the committee's finding that the cleanest—and this has been acknowledged by most contributors to the debate so far—and best way to do this is through the Commonwealth Marriage Act. For that reason I will not be supporting the bill.

The PRESIDENT: Order! A number of visitors in the upper gallery were not present earlier when I read out the rules for people in the visitors' gallery. No audible conversations must take place; there should be no applause, no jeering or any other gestures responding to the proceedings. Visitors to the galleries are not to converse with members in the Chamber, although that is principally an issue for those in the lower gallery. The use of mobile telephones, radios, iPads and other electronic equipment that creates sound in the Chamber is not permitted; and photographs may not be taken unless permission has been granted. Finally, if any members of the Chamber and support staff of the Parliament issue anyone with instructions, they are to comply with them.

The Hon. MARIE FICARRA (Parliamentary Secretary) [10.58 a.m.]: I speak to the Same-Sex Marriage Bill 2013. The school of thought or the lobby pushing for changes to the way society defines marriage in Australia would argue that same-sex marriage does no harm to anyone; hence, as legislators we should legalise it. In 2004 our Federal Parliament, with the support of the major parties, defined "marriage" as "the union of a man and a woman to the exclusion of all others voluntarily entered into for life". This was reaffirmed in early 2010.

Accusations of intolerance or even, sadly, ridicule for the firm Christian family-based beliefs of middle Australia do not help the cause of proponents of same-sex marriage. Such reaction displays the same intolerance and lack of understanding of centuries of firmly held societal beliefs that proponents of same-sex marriage accuse others of displaying when they do not support their cause. Nevertheless, the issue is one where, if the law were to change, I believe it would fundamentally change the face of Australian society. Such an issue should be not just be a conscience vote by a few in this Parliament but a referendum so that all citizens have the opportunity to tell us what they want for the future, especially if it is not part of any election platform declared clearly to voters.

I believe the regular request for same-sex marriage is based on a desire for recognition, a social acceptance of being allowed to marry. However, I cannot agree with the argument of discrimination. After the 2010 Federal election, more than 80 pieces of legislation were amended to protect homosexual rights and entitlements equivalent to those of heterosexuals in areas such as laws of inheritance, tax, employment, superannuation, pensions, aged care, workers compensation, health care, veterans' entitlements, spouse accompaniment on travel and many more areas of financial equality. The only thing that homosexuals do not have at present is marriage; although in some States, including in New South Wales, they can enter their same-sex partnerships into a relationships register, which does provide a form of public recognition.

A bill allowing same-sex marriage was recently passed by the Australian Capital Territory Assembly; as we know, that legislation is currently being challenged by the Federal Government. The majority of our constituents would want this Parliament to wait for the outcome of that legal challenge before passing similar legislation to ensure that we do not squander taxpayers' money and State resources on debating legislation that is doomed to fail federally. It is not lost on Australians that the smallest, least representative Parliament in the nation—the Australian Capital Territory—would be the first to achieve an outcome on something that is not a burning issue for the majority of Australians.

I believe that if the majority of Australians, or mainstream families and individuals, were canvassed about what is important to them, they would tell us that instead of being so consumed by the thousands of emails and other forms of correspondence that we have, and will continue to receive, we should spend our time and their money—taxpayers' money—on ensuring that our parliaments operate smoothly. We should spend more time and consultative legislative efforts on important issues such as the cost of living; planning; the delivery of essential services such as health, transport and education; law and order to make our streets safer; and so on.

It would be ideal if all Australians could have a vote on this issue once and for all. Rather than a favourably worded poll, at the next Federal election let us give them a proper say with all the consequences outlined to electors of what it would mean to have same-sex marriage in Australia; so many would support that right. Give all our multicultural communities a say, give all our faith-based constituents a say, give Western Sydney a say and give regional and rural areas of Australia a say, not just members of the New South Wales Legislative Council that always seems to run these debates.

I will not support this bill. If members of the Government and Opposition say they believe we should not privatise the State's electricity grid without an electoral mandate, then I say to those members that the issue before us today is more significant for the future generational societal changes it will bring upon New

South Wales and warrants political parties taking the issue to the next election. Let us see the Labor Party do that. The irony is that this House conducted a recent inquiry chaired admirably by the Hon. Niall Blair into the legality of State legislation being able to withstand a High Court challenge from the Federal Parliament. The committee found the following:

That New South Wales has the constitutional power to legislate on the subject of marriage; but should New South Wales choose to exercise this power and enact a law for same-sex marriage, the validity of that law could be subject to challenge in the High Court of Australia. If such a challenge occurred it is uncertain what the outcome of the case would be.

Thus same-sex marriage rights for all Australians would be best achieved under Commonwealth legislation. We should remember that the referral from the Premier to the committee in the first place was not to determine whether this Parliament should legislate for same-sex marriage in New South Wales but, rather, whether it was possible and what would happen. Much has been said about what is the position of Premier O'Farrell whose position is basically what I outlined. Even though he personally supports marriage equality, he knows of the grave danger in wasting the resources of this Parliament for something that is futile so he does not support this bill. The Premier released that statement yesterday. Patrick Parkinson, Professor of Law at the University of Sydney, made a pivotal contribution to the discussion in his submission and said:

As we know, the Marriage Act 1961 was established to create a unitary set of rules for marriage across all jurisdictions within Australia. I decided to go back to look at the second reading speech made by Attorney-General Mr Ruddock in 2004. The position was made clear in that speech when he said, "Marriage, according to law in Australia, is the union of a man and a woman to the exclusion of all others, voluntarily entered into for life." Later, he went on to say:

"It is time that those words form the formal definition of marriage in the Marriage Act."

This bill will achieve that result. Including this definition will remove any lingering concerns people may have that the legal definition of marriage may become eroded by time. The reference to the future erosion in the definition of marriage as noted by the Federal Attorney-General at the time who stated:

"The amendments to the Marriage Act contained in this bill will make it absolutely clear that Australia will not recognise same sex marriages entered into under the laws of another country, whatever country that may be."

Attorney-General Ruddock concluded:

"It will provide certainty to all Australians about the meaning of marriage into the future."

In his submission to the inquiry Professor Parkinson also stated:

It is probably not possible, for constitutional reasons, to confer upon same sex couples the status of marriage in New South Wales. This is because there is already a federal law that was intended to create a comprehensive, national uniform law of marriage with which a State-based law would be inconsistent.

Any such law concerning same sex marriage would create a hybrid status, being a kind of "marriage" with its own unique set of rules for limited purposes under the law of NSW, and a de facto relationship in federal law and in the law of other States and Territories. Under some circumstances it may be neither a marriage nor a de facto relationship in federal law. Such a law would create a status that is different from marriage, rather than allowing a different kind of couple the right to marry.

There is a risk that in enacting a "same sex marriage" law in NSW, people may have expectations that cannot possibly be met. Furthermore, the public will be beset with misunderstandings in an area where there is already confusion enough as a result of the current muddled state of the law on relationships in Australia.

Professor Parkinson has put exactly the reasons that the Premier of New South Wales made his statement yesterday, even though he supports marriage equality. Much is made about the 15 to 17 overseas jurisdictions that have legislated for same-sex marriage compared to the more than 180 nations that have not. My point is that Australia and Australians will be the masters of their social destiny. Same-sex marriage fundamentally changes not only the legal definition of marriage, but also the social, educational, economic, legal and religious institutions that service and support marriage, family and children.

In terms of children's welfare, same-sex marriage will result in an increase of donor conception births and surrogacy. That is a fact that has occurred in other jurisdictions. But the gay, lesbian, bisexual, transsexual and intersex lobby continues to advocate for the birth certificates of children adopted by same-sex couples to be changed to record the same-sex couple in place of the biological parents. In fact the NSW Gay and Lesbian Rights Lobby offers online advice about parenting laws in New South Wales under its question and answer section and states, "How do I get a new birth certificate for my child with our names on it"?

In 2011 a Sydney District Court ruled that a man who acted as a sperm donor to a lesbian couple had "no contractual right" to be on the birth certificate of his biological daughter. Other instances like that have occurred. However, three inquiries thus far—the Senate Legal and Constitutional Affairs Inquiry 2011, the Victorian Law Reform Commission 2012 and our own Legislative Assembly inquiry 2012—have recommended that donor-conceived children should have the right to access their biological mother and/or father. The many different types of businesses associated with the wedding industry will be affected by same-sex marriage laws as they have been in the United States of America and Canada.

In September this year photographer Elaine Huguenin was found guilty under the New Mexico Human Rights Act of refusing to provide services to a lesbian couple at their wedding. In Oregon, two weeks after same-sex marriage legislation was passed in October 2012, a local producer of wedding vehicles was forced to shut down after being harangued by the lesbian, gay, bisexual, transgender and intersex lobby for refusing to service a lesbian wedding event. Overseas experience has shown that churches will gain only temporary exemptions from involvement in same-sex marriages at best. In the United Kingdom a lawsuit was launched against a Church of England parish within two weeks of same-sex laws being enacted for refusing a wedding ceremony for two gay men.

Why is the law involved in what, essentially, are personal and private relationships? For centuries the only reason that marriage has been made permanent and exclusive in the eyes of the State is the need to protect the rights and security of children. This includes the protection of their identity. Identity is very important to us all, but especially to children, not only from a psychological point of view but also in terms of status and citizenship. Identity comes from one's parents, a man and a woman; there is no other way possible. I strongly believe that a committed relationship in marriage between a man and a woman is by far the best protection for the identity of the children it produces. With same-sex marriage, it is the adult's needs, desires, hopes and aspirations that become the focus to the exclusion of the rights of children as the centrepiece of our concern and nurturing.

We are seeing situations involving assisted reproductive technologies where two men can engage a woman to carry a pregnancy for them and give up her child at birth. One of the men may be the father of that child, having provided his sperm. Part of the child's identity is with the birth mother, who is not a part of the ongoing relationship in the majority of these instances. All sorts of emotional and physical complications can arise. Children who are part of a gay relationship come from either a previous heterosexual relationship or through technology assistance involving someone else for biological reasons. How about we put children at the centre of our collective concern?

Our society has been based on Judeo-Christian values, institutions and teachings. The history of marriage in our society has a Judeo-Christian origin. The question we now face in a multicultural and multi-religious society is: What sort of relationship should be adopted as an institution for the sake of children? I believe that same-sex marriage is symptomatic of adult-centred reproductive decision-making, but this decision-making should be child-centred. Children also have valid claims, and if at all possible they should be reared by their biological parents within their natural family. It is not always possible but if it is possible, this is what the majority of Australians would like to see.

If not raised by their biological parents, they should know who are their parents and other close biological relatives. Society should not be complicit in depriving children of a mother and a father, or know the identity of their mother and father. Pointing out the deficiencies of traditional marriage and natural families is often used as an argument for same-sex marriage. However, the issue is not whether opposite-sex couples attain the ideals of marriage in relation to fulfilling the needs of their offspring, nor is the issue whether marriage is a perfect institution. It is not. Rather, the issue is whether children in general and society are better off if marriage remains between a man and a woman and I believe they both are.

The Hon. PETER PRIMROSE [11.13 a.m.]: History is never repeated but history does linger. A century ago the Western world was being warned about many evils threatening our way of life. Some fears were economic, some were racially based and some warned of the rise of science, with threatening inventions such as electricity and pedal sewing machines. But at the beginning of 1914, a fateful year, one frightful depravity for a time seemed to dominate all other fears. It corrupted the soul. Both the British and German governments sought to outlaw it.

Cardinal Pompili in New York issued a pastoral letter attacking the scourge and urging the clergy to courageously raise their voices "in defending the sanctity of Christian usages against the dangers threatening

and the overwhelming immorality of the new paganism". He also warned parents that if they did not protect their children from corruption they would be guilty before God of failure in their most sacred duties. Cardinal Cavallari, the successor of the Pope as patriarch of Venice, issued an episcopal letter that condemned the practice as "revolting and disgusting". He said:

Only those persons who have lost all moral sense can endure it. It is the shame of our days. Whoever persists in it commits a sin.

The practice was also subsequently condemned by the Kaiser, the King of Italy, the King of Bavaria and the Queen of England. Many in Australia also expressed outrage. The Anglican Archbishop of Sydney, John Wright, condemned those who practised it as "enemies of the Cross of Christ". The cause of all this anger was, of course, not poverty, unemployment or war. It was not even sexuality. It was a dance, the tango, from Argentina. Physical ailments were also attributed to this social evil. One newspaper of the day stated:

"How is your fallen stomach?" is a form of greeting among smart persons just now, the disease in question being a fashionable ailment, the effect of too much tangoing.

One hundred years later we are here today debating whether two people in love should be able to marry. One hundred years later our demon-haunted world is still terrified by the evils of the tango and the threat it poses to our fragile civilisation. From the voluminous flow of emails, letters and articles that I and all other members have been receiving on the topic, it seems that same-sex marriage would, like tangoing, also be the catalyst for every evil that the human imagination can conjure up. It could, I suppose, be legitimately argued that it may lead to dancing, but this argument did not feature prominently in the emails.

I am heterosexual. I have been married for 33 years. I am not threatened by the idea of same-sex marriage between people who love each other enough to want to make such a commitment. Marriage is not about going to bed with someone; it is about being committed enough to get up with the same person every morning. My marriage will not be diminished if other people commit to loving and caring for each other, and if this is recognised and acknowledged by the law. The only people I feel threatened by are those who email me and tell me that I am sick, wicked and bad, and that my offspring and I will suffer and burn for eternity if I support this bill. These people should get out more and maybe do some more dancing.

The best legal brains in the land have provided all of us with the written advice that an Act in the form of the New South Wales Same-Sex Marriage Bill would be constitutionally valid. The Standing Committee on Social Issues came to the same conclusion. New South Wales has the constitutional power to make laws for same-sex marriage. There is no conflict between an Act in the form of the New South Wales Same-Sex Marriage Bill and the Commonwealth Marriage Act because they operate in different fields. The New South Wales Same-Sex Marriage Bill regulates the legal status of same-sex marriage and does not infringe on the legal status of "marriage". A comparison is de facto marriage, which is also a different legal status to "marriage".

The 2004 Howard Government amendments to the Marriage Act do not prohibit States from recognising same-sex marriage. Of course, the Federal Parliament has the power to make laws for same-sex marriages. Everyone who supports this bill also hopes that one day the Commonwealth will exercise its power to do precisely that, but that is no excuse for not acting now in New South Wales. Should reform occur at the Federal level after it has occurred at a State level, it would be an easy matter for the validity of same-sex marriages to be preserved under that Federal law. I am amazed at the notion that parliaments of any kind would not enact legislation because somehow that could lead to a high court challenge: That is what the High Court is for, to consider challenges to legislation under the Commonwealth constitution.

I have no doubt that when the Commonwealth Government gets around to legislating for marriage equality, those same opponents of this bill will make a High Court challenge on that bill. That reinforces the argument for the Commonwealth enacting any proposed legislation of this kind. It certainly is not an argument for this Parliament to negative the bill. The Tasmanian bill included provisions dealing with financial adjustment and maintenance orders, whereas the New South Wales bill simply amends the New South Wales Property Act to incorporate same-sex marriages as a domestic relationship. As with the Tasmanian bill overlap between Federal and State, financial adjustment and maintenance provisions do not affect the constitutional validity of the New South Wales Same-Sex Marriage Bill.

In practice, the majority of couples that enter into same-sex marriages in New South Wales will be able to access the Federal Family Court system because they meet the criteria of de facto under the Commonwealth Family Law Act. However, the small number that falls outside the Family Law Act provisions will be able to have property settlements dealt by the Supreme Court of New South Wales. It would be open to the Federal

Parliament to amend the Family Law Act to ensure that those couples were able to access the Federal Family Court system. Like other members in this House, I have spoken on this matter many times and made my views well known. I thank the House for the opportunity to speak briefly on this important bill. I support and commend it to the House.

Mr SCOT MacDONALD [11.21 a.m.]: I appreciate the opportunity to make my position clear on the Same-Sex Marriage Bill 2013. I cannot support it. I made my views clear and public when the same-sex motion was considered by this House. I support marriage equality. I do not resile from the concept. I do not believe there is any cogent argument against marriage equality—not religious, cultural, historical, economic, administrative or child development. In essence, it is an argument for human dignity. I cannot accept we stand by while some parts of our community have inferior opportunity and value. As I said in the debate on the motion, I have treasured family members whose choice to live in a same-sex relationship I respect. I will not turn my back on them.

I cannot ignore the fact that marriage is a Commonwealth jurisdiction. As the member who introduced the bill states, there does not seem to be a barrier to this Parliament passing a marriage equality bill, and it may even survive a High Court challenge, but marriage has been a Federal responsibility for more than half a century. I think that is appropriate. To go down the path of divergent laws across the country is just not practical, efficient or desirable. Passing this bill may be a symbolic win and even allow a form of marriage to prevail for a while, but it is ultimately doomed. That is not good governance. That scenario may even set back the progress made towards same-sex marriage. The public quickly tires of bad laws, as we saw with the previous Federal Government.

It was suggested to me to that I keep my head down. The bill was probably going to fail and there was no profit in making a statement. That does not sit well with me. I will not vote for the bill, but as I said on New England ABC radio this morning, I ask my Federal leader and friend, Prime Minister Tony Abbott, to reconsider his position. He went into the Federal election undertaking to maintain the status quo. I respect that. The public is heartily sick of politicians trashing their mandate. Federal elections seem to come around in the blink of an eye and I ask the Prime Minister and his colleagues to reconsider the issue. In the next term of Parliament I trust the Federal members to come to a considered view of marriage equality.

The Hon. TREVOR KHAN [11.23 a.m.]: I do not intend to speak for long on the Same-Sex Marriage Bill 2013. Everyone has known my views on this matter for some time and I will not repeat ad nauseam the statements that I have made previously. The House is debating this bill on the day when the Hawaiian Parliament has passed a law for same-sex marriage in that State. I have kept an eye on Twitter throughout the morning waiting for news that Hawaii had sunk into the sea or disappeared into a new volcano—at this stage there is no bad news, the weather is clear, the island is still there and the inhabitants are surviving. New Zealand passed a similar law not that long ago and, despite the dire warnings, continues to operate and function. The New Zealand dollar seems to be reasonably strong and its citizens continue to come to Bondi to live; all is normal in that country.

I have no doubt that throughout the world we will continue to progress in one way or another on this subject, people will get on with their lives, some more people will be happy and in that sense the world will be a better place. One of the emails received yesterday concerning this bill suggested that the recent bushfires occurred as a direct result of the Hon. Penny Sharpe's bill. One would have to wonder at the logic that forces people to that conclusion. A number of other emails referred to the moral decline of our society, pointing out that this bill is a symptom of that decline. This Parliament must keep in mind the motions it has dealt with in this place and the other place over recent years.

Our society and Government has apologised for the Stolen Generations because the standards we applied in the 1800s and the 1900s and the way we treated Aboriginal people—refusing citizenship and treating them like dogs and animals—were wrong. Apparently apologising for those wrongdoings indicates that society is in some form of moral decline. In the past children were torn from their mothers because their mothers were unmarried or Aboriginal, and their fathers were white. At the time we thought we were doing the best thing for the children, but we have realised the error of our ways and now we apologise for that. We apologise for and recognise our mistakes, but at the same time people tell us society is in moral decline.

Society evolves and changes its values and expectations—we no longer tear those children from the breasts of their mothers because we know it is wrong, and we should have known it was wrong at the time. That is the nature of things. It is not a moral decline, it is an adjustment of values. There is recognition of the rights of

people to have a good and decent life, and for the State not to crush them under some strange perception or moral expectation. It is in that context that this bill is introduced and the struggle for gay and lesbian people to have reasonable rights in this society arises. Lesbian, gay, bisexual, transgender and intersex people will no longer be judged as abominable, unnatural, incapable of showing love or having long and committed relationships, and incapable of caring for children—their own flesh and blood.

We all know that the views put forward in the emails condemning same-sex marriage are abominably wrong; that is what is wrong. It is not, and never can be, that there is something wrong with, gay, lesbian bisexual, transgender and intersex people. That is what this is about. In the end those who push the bill forward will succeed because it is right. We know that Australian citizens understand that. They are good and decent people. That is what will drive an inevitable conclusion to this debate, whether it be with this bill or with another bill in the future. I have considered whether I could have done things differently. Last night, with one of my co-conspirators, the Hon. Penny Sharpe, I talked about that. The conclusion we came to is that we would do nothing differently; we are doing the right thing and we are doing it for good and noble purposes.

Obviously I support the bill. Obviously I will continue to support members of the gay, lesbian, bisexual, transgender and intersex community as best I can. I will go to preselection and when asked what my view is I will tell them that I will continue, if returned to this Parliament, to do the best I can for every decent Australian. Let me conclude by acknowledging that people have different views on this and I accept that. Yesterday I had the opportunity of speaking to a few people who have expressed a different view to mine. The Hon. Rick Colless spoke about the bill. He is good man and a good friend.

I had a long chat with the Hon. Paul Green; he is a good and decent man. I had the opportunity to speak at length with the Hon. Greg Donnelly—who is not here now—a man who passionately believes that I am wrong; and he is a good and decent man. I did not have the chance to speak with Reverend the Hon. Fred Nile, but I know he certainly disagrees with me; but I do know that we worked so well together on the provocation inquiry and that by the end of the year we will achieve a good outcome, not only for women who could be beaten to death by their husbands but also for young gay men who could be killed, with the excuse given as what is described as the gay panic defence. Never has Reverend the Hon. Fred Nile moved away from the need for that law to be changed.

This has been a demonstration that this Chamber is full of good and decent people who are entitled to a diversity of views. We will all come to a conclusion on this in one way or another, but I hope when the debate is over we will continue to show the respect and courtesy to each other that we have been able to show on so many matters such as this. This Chamber is good. I have to say on a private members' day—not a Government business day—this is the sort of thing that we are here to debate; this is the sort of thing that we are entitled to debate; and this is the sort of thing that the public expects us to debate.

I sincerely wish to thank the Premier. Not only has he allowed us a conscience vote, but he has made his position plain. Notwithstanding what was said by the Hon. Walt Secord—because I will tell him he is wrong—Barry O'Farrell has been transparent and consistent in his position on this; and he should be congratulated for being the Premier of a conservative Government that is expressing his view clearly and articulately. It will be that same Premier who this year will push through laws with regard to provocation that will improve the lot of the citizens of New South Wales. Those are matters on which he should be congratulated. This is not a debate that should descend into petty partisan politics, and particularly misleading petty partisan politics. I will support the bill. I thank all members of this House for the way they have progressed this matter to date. I thank them all for contributing to the debate. I look forward to dealing with all of them again in the future.

The Hon. LYNDIA VOLTZ [11.32 a.m.]: It will come as no surprise to members in this Chamber that I also support the Same-Sex Marriage Bill 2013. I will not speak to the substance of the bill, as my parliamentary colleague the Hon. Penny Sharpe has so ably done. I always find these debates difficult because for me they are so straightforward. I see no problem with all people being treated as equals in our society. I find it difficult to make an argument around that issue as I think it is a given. I also have difficulty writing speeches on that issue.

Equally, I always find it difficult, when these questions come up in the Chamber, to resist the temptation of going back to William Blake's book *The Marriage of Heaven and Hell*. I am sure William Blake would have appreciated that I do not resist the temptation, given that that is what *The Marriage of Heaven and Hell* was about. Of course in the composition of Blake's *The Marriage of Heaven and Hell* he aimed to create a

"memorable fancy" in order to reveal the repressive nature of conventional morality and institutional religion in the eighteenth century. It was also a reaction to the Manichean view of Swedenborg's *Heaven and Hell*. I quote from Blake's *The Marriage of Heaven and Hell*:

The ancient Poets animated all sensible objects with Gods or Geniuses, calling them by the names and adorning them with the properties of woods, rivers, mountains, lakes, cities, nations, and whatever their enlarged & numerous senses could perceive.

And particularly they studied the genius of each city & country, placing it under its mental deity;

Till a system was formed, which some took advantage of & enslav'd the vulgar by attempting to realize or abstract the mental deities from their objects: thus began Priesthood;

Choosing forms of worship from poetic tales. And at length they prounc'd that the Gods had order'd such things.

Thus men forgot that All deities reside in the human breast.

It is the last line in particular that is so fundamentally important:

Thus men forgot that All deities reside in the human breast.

It is astounding that today, in the twenty-first century, Blake's words still ring as true today as they did then. It surprises me that members of this Chamber wish to look into the souls of others as religion is a deeply personal thing and can only be defined by the individual. I have heard no objections to same-sex marriage other than on the religious beliefs of some in order to enslave others. If people believe that homosexuality denies them the right to enter heaven or reach moksha, then by all means they should deny themselves that right, as to marry is also a deeply personal thing and only for the individual to define. Their views are as important to me, and I hold them in the greatest respect. But if they interpret moksha as realising their own true nature, or believe that their monotheist god is a good and loving god who wants them to love and pursue happiness, then they should be able to seize their right to marry a partner they love who may just happen to be the same sex as them. Their views are also important to me, and I hold them in the greatest respect.

It is not my job to stand in this Chamber and to look into the souls of others. It is not my job to tell them who to love; and it is not my job to tell them who their family is. It is my job to stand in this Chamber and ensure that every family, whether they are straight or gay, has the same human rights as each other, and the same right to love each other, and the same right to care for each other. Many members have raised the issue of the Constitution or a legal challenge as barriers to this bill; but it is only that. It is the lack of will of members of this Chamber to embrace the bill before the House that creates the barrier. If this House has the will to do so, then it can replace the sadness of some with happiness; it can create equality; it can ensure that all families have the same rights. I cannot fathom what would drive some members of a Parliament to make some people happy and leave others unhappy. But I urge some members in this Chamber to be brave, to take the risk and to try to create happiness for those people who at the moment are denied their right to marry those that they love.

Reverend the Hon. FRED NILE [11.37 a.m.]: On behalf of the Christian Democratic Party I oppose the bill before the House, the Same-Sex Marriage Bill 2013. I am very pleased that the Premier issued a statement concerning this bill in which he states:

While personally being a supporter of marriage equality, I will not be supporting the Same-Sex Marriage Bill being introduced in the New South Wales Parliament. I believe only change enacted by the Federal Parliament can deliver true equality in our marriage laws. I don't want to see a return to the patchwork quilt of marriage laws that existed in this country in the 1950s and earlier.

As highlighted by NSW parliament's all party committee, equal rights for all Australians may only be achieved under commonwealth legislation.

This would also provide for an equal, national system for issues to do with financial obligations, property settlement and the custody of children in the event of marriage breakdown.

That is the end of my quotation of the statement issued by the Premier, and I thank him for making his position clear. Basically, we are debating today whether same-sex marriage should be the subject of a State bill, a New South Wales marriage bill, or whether this issue should be left to the Federal Parliament. The Commonwealth Constitution makes it quite clear that marriage is the province of the Federal Parliament. The Christian Democratic Party opposes the bill for many reasons other than that it is not constitutional. But the key issue of today's debate is the constitutional issue.

I note that in the bill there is an exemption on page 6 to try to placate some of the church concerns: "Ministers of religion are not bound to solemnise same-sex marriages." We are grateful for that exemption,

because there has been an authoritarian approach to this issue that those who oppose it are not tolerated by those who support it. In view of the bill before the lower House dealing with related issues, the question is whether this exemption will be removed in another piece of legislation. The exemption in this bill could be removed by another bill next year. If any churches or ministers take comfort from that exemption, they may find they have been misled. Some members have stated that even though same-sex marriage has become a big issue in New South Wales, as it has in the United States and other Western countries, it is not a big issue in many other nations.

In fact, only 15 of the 196 countries in the world have fully legalised same-sex marriage—that is, only 7 per cent of the world's nations. That means that at this stage 93 per cent of the world does not agree with legalising same-sex marriage. The Christian Democratic Party has many reasons to be concerned about same-sex marriage. It is disappointing that those promoting the bill keep saying that it would have no effect on the institution of marriage. They claim that if we passed a law under which two men or two women could get married that would have no impact on the institution of marriage. Some speakers cannot understand the opposition to this legislation. I cannot understand their inability to see that members of society would be concerned about it. We see it as undermining the institution of marriage. Marriage is a sacred institution. For thousands of years marriage has been between a male and a female.

This is the case in all religions, not just the Christian faith, but in the Muslim religion, the Hindu religion, the Buddhist religion and so on. In those religions marriage is between a male and a female. Those of us who love and believe in marriage want to see it protected. We believe the Same-Sex Marriage Bill undermines the institution of marriage. I have had discussions with those in favour of this legislation. I admit that they cannot understand our concern. Some have argued that by passing this bill we will strengthen the institution of marriage. I find that illogical. I do not agree with or accept it. Returning to whether a State Parliament should pass the legislation, I believe the answer is no. There are many other reasons for our opposition to this legislation. The Christian churches particularly oppose it, because we believe in the institution of marriage. That is why a number of statements on this issue have been issued by church leaders. The new Archbishop of Sydney, Dr Glenn Davies, wrote to all members of the Legislative Council on 30 October, saying:

I write on behalf of the members of the Diocese of Sydney with regard to the Same-Sex Marriage Bill 2013 which I understand is due to be introduced into the Legislative Council. I ask you not to agree to the Bill. My reasons are twofold:

The first is theological. Marriage is an ancient institution, older than human government and therefore ought to be held in great honour by any legislature. In particular, it has served us well as providing the core of family life where a man and a woman commit themselves to an exclusive and permanent one-flesh relationship from which children may be born and nurtured. A same-sex relationship, however this may be recognised in our society, can never be equated to marriage because it lacks the constitutive element of procreation.

My second reason is practical. Since the ACT Government has passed legislation for same-sex marriage, the matter has now been sent by the Federal Government to the High Court for determination as to the constitutionality of such a law. It would therefore be premature for members of the Legislative Council to pass a Bill which may be found to be unconstitutional. If that were the case, it would only bring dishonour upon the members for acting in haste and failing to heed significant legal opinion that such a Bill could be unconstitutional, when prudence and good sense demands a deferral of any consideration of the Bill.

For these two reasons I respectfully request that this Bill be rejected, or at the very least deferred.

Statements have also been supplied by the Catholic Church, particularly the Archdioceses of Sydney. They refer particularly to religious freedom. The Catholic Church believes that religious freedom of the people of New South Wales will be put at risk if the bill is passed. The statement says:

Proponents of same-sex marriage have argued that in the event of marriage being redefined, the Catholic Church and other religious communities will be "protected" or "exempted" from being required by law to perform same-sex marriages. Such proposals fail to understand the immensely powerful role of the law in shaping and regulating our society and our culture. An exemption would only apply to religious celebrants, and would offer no legal protection for the vast majority of Catholics and other citizens of New South Wales with the religious and/or conscientiously held belief that marriage is a union of a man and a woman.

Legislating for same-sex marriage in New South Wales, regardless of exempting clauses, would pose a grave threat to the human rights of religious freedom. It would place at risk the freedom of Catholics and all people in New South Wales who believe that marriage means the complementary love of a man and a woman to express, teach and live publicly by that belief. It would threaten their ability to hold public office and trusted positions in the community, because their belief in marriage would no longer be compatible with the law. Catholics and other faith communities could eventually be compelled to recognise same-sex marriage in their schools, charitable, aged care and adoption services, or suffer the consequences of social and political exclusion.

Dr John Kaye: Point of order: I ask the member to table that document, so that it is available to other members of Parliament.

The PRESIDENT: Order! There are standing orders that relate to the tabling of documents. It is not appropriate that the member ask for the document to be tabled.

Reverend the Hon. FRED NILE: I have no problem sending copies to members. These are some of the considerations that the proponents of the legislation do not take into account. A supplementary statement has been issued by the Life, Marriage and Family Centre of the Catholic Archdiocese of Sydney, dated 30 October 2013, which expands on the previous statement:

The law of the Commonwealth of Australia recognises that marriage is "a union of a man and a woman, to the exclusion of all others, voluntarily entered into for life". The enduring meaning of marriage was reaffirmed last year by Federal Parliament, following inquiries in the Senate and the House of Representatives to which over 293,000 Australians responded.

As members know, the bill in the Federal Parliament was defeated by a large majority of two to one. The statement goes on to say:

The power to make legislation affecting marriage is clearly accorded to the Federal Parliament by section 51 (xxi) of the Constitution. It is unjust for one State to legislate on marriage in the manner which this Bill attempts to do, not only because it does not respect our constitutional framework, but because changing the definition of marriage will affect all Australians, not just the people of New South Wales. If we change the legal meaning of marriage, we change the meaning of marriage for everyone and we lay the ground for the insidious intrusion of the state into schooling and family life. This is socially divisive and is not the proper role of government.

Earlier the Hon. Marie Ficarra gave some examples of what has been happening in some of the states in the United States of America where same-sex marriage legislation has been passed. The legislation there is having a major impact on individuals, as it is in the United Kingdom, often in unexpected ways. I read of one situation where a registrar of marriages, who was a strong Christian, said she could not register a same-sex marriage and she was sacked from her position. Many people say this legislation will not affect them, but when it comes to the crunch people may be surprised at the impact it has on them. The statement continues:

The proposed Bill would establish the principle that marriage is malleable and will continue to be made so in the future, regardless of the protestations to the contrary. If New South Wales were to legislate for same-sex marriage, it will abandon the only principled basis on which it could justify rejecting further demands for the redefinition of marriage. If marriage is not the unique physical and emotional union of a man and a woman that is oriented to the gift of children, it is simply a self-defining union which, logically, cannot be denied to others who desire the "right" to marry and the "right" to have their relationship recognised as a marriage.

The Bill purports to be constitutionally valid by adopting a new verb "*to same-sex marry*" and attempting to distinguish a "*same-sex marriage*" from "*marriage*". But the Bill is clearly an attempt to legislate a new "type" or "category" of marriage, which is philosophically incoherent and fundamentally contradictory to the meaning of marriage under Australian law. It is dishonest for the Bill's proponents to claim that this new category of "same-sex marriage" does not conflict with and fundamentally undermine "marriage" as defined by the *Marriage Act* (CT).

The Bill would send mixed messages about marriage, which are damaging and socially and culturally disruptive. Marriage, the best environment for raising children, is already under strain. Although sadly marriages and families sometimes break down, a stable, loving marriage normally provides the best conditions for raising children by giving them the greatest chance of being loved and raised by their biological mother and father. For the sake of children and to encourage men and women to commit to one another and to their offspring, marriage between a man and a woman has always been given the special recognition and support of the state. We should be doing what we can to support marriage, not undermine its meaning and the significance of mothering and fathering as distinctively beneficial experiences for children.

Rights and entitlements for same-sex couples are now uniform with male-female couples in every substantive way. The argument for "marriage equality" fails to recognise the unique nature of marriage and ignores the obligation that we as adults owe to children. Children are the very group that is most powerless; yet they are the ones with greatest investment in marriage continuing to be understood as the union of a man and a woman, and will be the most greatly affected if marriage is changed.

I can make copies of that statement available to members if they have not seen it. As I said, there are many reasons for opposing the legislation. One reason, which is fundamental to me, is that I believe in the creator; I believe in Almighty God. I believe God is the creator that created us male and female. I believe it was God's creative purpose for planet Earth for the human race to continue through the marriage of a male and a female who then, as the opportunity presented, would conceive children. Traditional marriage between a male and a female is God's creative purpose for planet Earth—that is the natural law and that is the Christian law.

Some members say that Christians and others should not be concerned about this legislation. The so-called marriage between two males is unnatural. Homosexual relations between a male and a male are strongly forbidden in both the *Old Testament* and the *New Testament*—in the *New Testament* particularly by Apostles Paul and Peter and, by implication, by the moral teachings of Jesus Christ. I believe that God's creative purpose for planet Earth—which is a sensitive issue to discuss—is that the basis for the foundation of the family and the continuation of the human race is the institution of marriage. Some members have referred to statements

by Professor Patrick Parkinson, Professor of Law at the University of Sydney. I note other legal opinions from eminent legal practitioners throughout Australia, which all say that a Federal law is the way in which marriage is to be dealt with. Professor Parkinson stated:

It is probably not possible, for constitutional reasons, to confer upon same sex couples the status of marriage in NSW. This is because there is already a federal law that was intended to create a comprehensive, national uniform law of marriage with which a state-based law would be inconsistent.

He goes on to say:

This proposition seems to have been accepted by those who drafted "same sex marriage" Bills in Tasmania and South Australia—

and obviously now here—

While these Bills purport to allow same sex couples to marry, what they actually do is to create a new kind of status, hitherto unknown anywhere else in the world, called a "same sex marriage" as opposed to being simply a "marriage" between same sex partners.

If NSW were to enact a law on same sex marriage it would almost certainly have to follow the same legislative strategy for constitutional reasons. Any such law concerning "same sex marriage" would create a hybrid status, being a kind of "marriage" with its own unique set of rules for limited purposes under the law of NSW.

I know that the drafters of the bill have tried to avoid that but I still believe they have failed. For that reason the bill should be defeated in this House by those who oppose same-sex marriage and by those who believe the State should not pass the law as it is unconstitutional for New South Wales.

Dr JOHN KAYE [11.57 a.m.]: With a great degree of pride and joy I speak in support of the Same-Sex Marriage Bill 2013. I do so because I believe it is a genuine and important step towards marriage equality and it is thus a step towards full equality in our society. It is a small step in some senses and a large step in others; nonetheless, it is a step towards the end of discrimination against people because of the gender of the person they love. This is not just about protecting and enhancing the quality of life of same-sex-attracted couples; it is about the moral strength of our society. It is about whether we can get up in the morning and look at ourselves in the mirror and say that we are a fully tolerant society, that we are a society that fully engages with diversity and that we are a society that does not discriminate against people because of the gender of the person they choose to love.

This is about the underlying strength of a society which is diverse and the underlying strength and capacity of that society to work cooperatively together and to benefit from our diversity, not to excoriate our diversity and not to try to bury our diversity. This legislation is not perfect. The Hon. Niall Blair pointed that out and I agree with that part of his analysis, although I do not agree with his conclusion. The reality for the cross-party working group that brought this legislation to the Chamber is that what can be done here is constrained by the Constitution on one hand and by a Federal Parliament on the other that remains paralysed by the intimidation of a few conservative religious leaders who have been able to put forward a case that has stopped the move towards gender equality, same-sex equality, in marriage in the Federal legislation.

The problem we confront is what to do about this. As a Chamber of people who represent a State of 7.2 million people, do we throw up our hands in horror and say that the Constitution is difficult and the Federal Parliament lacks the courage collectively to resolve this problem, or do we do something? The cross-party working group grappled with that question, and it came forward with imperfect legislation. However, the legislation is an important step forward. I congratulate the members of the cross-party working group. I also congratulate the committee members who have got us to this stage.

I pay tribute to a close friend and political colleague of mine, Ray Goodlass, who was recently the deputy mayor of Wagga Wagga. Ray is a rural and regional New South Wales resident who is out, and proud about being out. He never hid from his constituency that he was a gay man. One of my finest moments in politics—and I have had many of them—was sitting in the offices of the Leeton *Irrigator* with Ray, during a road trip for the 2004 election. Members should bear in mind that it was nine years ago, when this debate was much less mature than it is now. Ray was putting forward to a young journalist at the Leeton *Irrigator* the importance of removing discrimination from the Federal Marriage Act and why it would be a step forward for the Riverina electorate and people living in conservative old Leeton. It was an act of great political courage by Ray, although I am unsure whether he knows that. I think Ray simply believes in doing the right thing.

That was a lesson for me that discrimination is completely and totally intolerable wherever one goes and whenever one is challenged on the issue. Whether one is straight or gay, bisexual, intersexual or transgender, one must stand up and say what needs to be said: discrimination is completely and totally intolerable. It is the courage, conviction and pride of those who have stood up and said they will not tolerate being treated as second-class citizens, and of their friends and other members of the community who will not tolerate discrimination against any member of our community, that has got us here today, and I pay the ultimate tribute to them. As I said, the bill falls short of the ideal of removing all discrimination. It creates a separate institution called same-sex marriage to avoid conflict with the Howard amendment that marriage is between a man and a woman to the exclusion of all others. I suspect that the people who drafted that amendment did not have a strong grip on the reality of even heterosexual marriage. Nonetheless, that is what the law says.

Until the day comes when the Federal Parliament finds its inner strength and says, "We will repeal the Howard amendment and replace it with a non-discriminatory Marriage Act", this bill is necessary. On that happy day I will join other members to repeal this legislation because it will no longer be necessary. Like Premier Barry O'Farrell, I am a firm supporter of this legislation but I believe we should have Federal legislation. Unlike Premier Barry O'Farrell, I do not use that as an excuse for not voting for this legislation. As representatives of a modern, diverse State of 7.2 million people, we should send a clear message to our constituents that discrimination in any form is not acceptable in this State, especially in State instrumentalities and State-sanctioned instrumentalities. A ban on two people marrying each other because of their gender is inherently discriminatory and we should not tolerate it. Indeed, we should take every step possible to eradicate it.

I ask members to allow me a moment of self-indulgence to refer to my favourite moral philosopher, John Rawles, who wrote what I think is the most important book on moral philosophy, *A Theory of Justice*. Professor Rawles, who unfortunately is now dead, suggested that laws should be written to create justice, and the only way to do that is through a thought experiment which he referred to as a "veil of ignorance", that is, laws should be written by people who do not know what or who they will be in society. Laws should be written by people who do not know whether they will be rich; whether they will have a disability; whether they will be black, white, Asian or of any other race; whether their sex attractiveness will be to the opposite sex or to the same sex; and whether they will be intersex, bisexual, transgender or straight.

If laws were written through the veil of ignorance, surely discrimination would disappear. The veil of ignorance and laws that create justice are the codification of empathy that defines why discrimination is not only unfair but also intolerable and unconscionable. In a nation such as Australia laws should be built on justice and discrimination should be brought to an end. If the veil of ignorance were applied to the marriage laws, if all members of this Parliament had the courage to say, "I am writing laws not for straight people or for my own family; I am writing laws that will apply to all", then there would be no question that marriage discrimination would end. The theory of justice is clear on marriage equality. There are no questions, no ifs and buts. We remove discrimination because it is unfair and unjust.

A simple way of looking at it is to put oneself in the shoes of friends of mine who may or may not wish to get married but who have lived together for 29 years. I recently had dinner with these two people, who were near neighbours of mine. As I said, they may or may not want to get married but the absence of a right to get married is an insult to them. It sends a message that this State, this nation, this society devalues them and their relationship. As they pointed out to me and my partner, their relationship has lasted longer than almost any other relationship, including marriages, of any of our mutual friends. It is a loving, committed and beautiful relationship and one I personally enjoy spending time celebrating. Yet they are denied access to a State instrumentality. I am concerned that we codify discrimination in a State instrumentality.

It is one matter that private institutions, such as churches, choose to discriminate; it is another matter when the State discriminates. This is a serious matter that requires urgent action. It is serious because the State is the expression of the collective will of the people who live within it, the community. When a community has determined overwhelmingly that it will no longer tolerate discrimination, it no longer wishes to allow homophobia as a State-based value, we are defying the will of our constituents and our community by allowing it to continue. There are two solutions. The first is full legal equality. That means we must provide access to all individuals and couples who wish to have their relationship State sanctioned, as is now available to opposite sex couples. If two people who love each other wish to make a public expression of that love and have it sanctioned by the State, we should not ask about or judge the gender of those individuals. If we provide that right to any two people, we should provide it to all sets of two people.

The second way to deal with this problem comes specifically from the positions taken by a number of churches in their zealous guarding of their right to determine who should and should not get married. If that view prevails, then there are real questions as to whether the State should continue to be involved in the issue of marriage. Some members have incorrectly asserted that marriage as defined by law is an ancient institution. The first marriage Act in the English-speaking world was called the Clandestine Marriage Act 1753, popularly known as Lord Hardwicke's Act—an epiphanous name if ever I have heard one for somebody who wrote a marriage Act. That Act was the beginning of State involvement in marriage.

The Clandestine Marriage Act 1753 restricted marriage, as was the wont of post-Stuart England, to members of the Church of England, and others who wished to get married had to pretend they were members. That matter was fixed, against massive Whig opposition, by the Tories in 1836 under what became known as the Marriage Act, the first such Act without the word "clandestine" in the title. It created non-religious civil marriage ceremonies in registry offices. In fact, marriage as we know it is not ancient; it dates back to 1836. The religious institution of marriage is ancient; the State-sanctioned institution of marriage is relatively new. We ran a perfectly successful society without the State-sanctioned institution of marriage. If we cannot resolve the conflict between the religious sacrament of marriage, which some religions assert should be only between a man and a woman, and the State-sanctioned partnership relationship, then we should separate the two permanently.

The Hon. Dr Peter Phelps: Hear, hear! Privatised marriage.

Dr JOHN KAYE: I thank the Hon. Dr Peter Phelps for his interjection. This will be the one and only time the Chamber will ever hear me insert the word "privatisation" without a pejorative adjective before it. Churches that argue against this bill are effectively saying, "This is our religious sacrament; don't mess with it." If it is a religious sacrament, perhaps the State should have nothing to do with it. The State should say, "Religious sacraments are beyond our capacity to regulate." Perhaps New South Wales should have a partnership arrangement that provides all of the legal protections of marriage and leave marriage for religions to determine what they want to do with it.

Reverend the Hon. Fred Nile: We have that already.

Dr JOHN KAYE: We do not have that already. If we did, we would be debating a completely separate issue. In a letter I received this morning, Dr Glenn N. Davies, the Anglican Archbishop of Sydney states:

Marriage is an ancient institution, older than human government and therefore ought to be held in great honour by any legislature.

That sentence contains a non-sequitur. Slavery is also an ancient institution, which we certainly do not hold in great honour, so the "therefore" does not follow. He goes on to say that marriage between people of the same sex, "... can never be equated to marriage because it lacks the constitutive element of procreation." Dr Davies would presumably wish to bar people who are physically or emotionally incapable of procreating from marrying, which is a disgraceful statement. He says that if someone cannot have children then the church does not think they should be married.

Reverend the Hon. Fred Nile: He is not saying that at all.

Dr JOHN KAYE: It is written in black and white. He would pressure the Government to amend the Marriage Act so that marriage was not between a man and a woman but between a fertile man and a fertile woman. His argument leads to an absurd, inhuman and unconscionable conclusion, as does denying two people of the same sex the right to be married because they cannot procreate. Reverend the Hon. Fred Nile read onto *Hansard* a letter from the Catholic Archdiocese of Sydney under the hand of Dr Pell which suggested that the legislation for same-sex marriage would threaten the rights of Catholics. That is an extraordinary proposition.

As previous speakers have said in this debate, "If you don't like it, don't do it". This legislation contains no compulsion to marry a couple of the same sex or even for a Catholic clergyman—a priest or a brother—to marry two people of the same sex. I personally have difficulties with proposed section 11 in the bill, which is entitled, "Ministers of religion not bound to solemnise same-sex marriages". If we apply the ultimate test, we would not tolerate a provision in the Marriage Act that said that ministers of religion were not bound to solemnise marriages between people of different races. We should not place same-sex attracted people lowest on the agenda and not provide to them the same rights. We should create complete equality. I recognise the political imperatives of including section 11, but as with all legalised discrimination it should be something that we get rid of.

I will finish by making one observation. This Parliament, nation, neighbourhood and community should never judge the quality and validity of the relationship of two people by the equipment they use to express that relationship. To make such a judgement is fundamentally and profoundly wrong and leads to conclusions that are anti-democratic, anti-human and anti-justice. If we are to make any judgement at all in this Parliament it must be that love is love. It does not matter if one can or cannot share one's clothes with one's partner. The gender of a partner does not matter: we make no judgement on them.

The only judgement we make on people is one that enables them to live the life they want to live and to live it to the fullest. To create any laws that use State instruments to discriminate and create barriers is wrong and unconscionable. It is anti-democratic and this Parliament should have no part of it. We do not just need to pass this legislation. We have a moral obligation to do so that goes beyond our individual beliefs and lifestyles, that respects the best society we can become, and that passes no judgement and believes in its people. I commend the bill to the House.

The Hon. CHARLIE LYNN (Parliamentary Secretary) [12.17 p.m.]: I speak in opposition to the Same-Sex Marriage Bill 2013. For the past few weeks my inbox, and that of all members, has been inundated with emails from both sides of the argument. While I sympathise with the position of those in favour of the bill, as do many other members, I cannot support the bill. Yesterday I received a letter from the Archbishop of Sydney, Dr Glenn Davies, who advised that the bill should not be supported for two key reasons. The first reason is theological. He said:

Marriage is an ancient institution, older than human government and therefore ought to be held in great honour by any legislature. In particular, it has served us well as providing the core of family life where a man and woman commit themselves to an exclusive and permanent one-flesh relationship from which children may be born and nurtured. A same-sex relationship, however this may be recognised in our society, can never be equated to marriage because it lacks the constitutive element of procreation.

In that regard, I do not agree with the interpretation given by Dr John Kaye. The second reason is practical. The letter continues:

Since the ACT Government has passed legislation for same-sex marriage, the matter has now been sent by the Federal Government to the High Court for determination as to the constitutionality of such a law. It would therefore be premature for members of the Legislative Council to pass a Bill which may be found to be unconstitutional. If that were the case, it would only bring dishonour upon the members for acting in haste and failing to heed significant legal opinion that such a Bill could be unconstitutional, when prudence and good sense demands a deferral of any consideration of the Bill.

I also agree with the Premier and the New South Wales Parliament's all-party committee that equal rights for all Australians may be achieved only under Commonwealth legislation, as it would provide for an equal national system on issues such as financial obligations, property settlement and the custody of children in the event of marriage breakdown. For these reasons I oppose the bill.

The Hon. Dr PETER PHELPS [12.20 p.m.]: Earlier the Hon. Niall Blair said that he agrees with both sides of the debate on the Same-Sex Marriage Bill 2013. I take a slightly different view. I disagree with both sides of the debate. I approach this from a fundamental position that the State has no role in either voiding or validating what are essentially private contractual relationships between individuals. The State does not seek to interpose itself when I take out a lease on a vehicle. It may well be called upon to intervene should either party involved in that transaction seek to void the lease or disrupt the leasing arrangement in some way. If something as trivial as a leasing arrangement is considered to be unnecessary for the State to intervene, how much more so than in the personal relationship between two individuals who seek to make a domestic relationship with each other.

My views on this are quite clear and have been set forth in this place previously. I believe marriage should be privatised. What do I mean by that? I mean that the State should effectively have no role in this solemnisation or in anything to do with the formalisation of a marriage contract. That fundamentally is what it is: a marriage contract, and it has been seen to be a contract throughout most of human history. Dr John Kaye was correct: State intervention in the nature of marriage has been a relatively recent phenomenon. For the first 1750-odd years of the Christian era the State did not give a damn about who married whom. It was essentially a private relationship effected through a medium of the church if one wanted a formal occasion or alternatively through established custom or practice if people wished to live together, to cohabit with one another.

Indeed, the State only started to intervene in the matter as a result of a series of messy divorce and property inheritance cases in the middle of the eighteenth century. In other words, the problem the State had with marriage was not marriage per se, it was the dissolution of marriage and the factual relationship in

identifying whether a marriage had taken place in the first place. That is why the State became involved. We live in a different era today. Functional illiteracy has been eliminated from Australian society. People know if they are entering into a contract. We have hundreds of years of established contractual law which can provide for remedies in cases of contracts being entered into unfairly through coercion or duplicity or any other series of events that could result in the voiding of a contract in commercial terms. That principle can just as readily be applied to private marriage contracts today.

The role of the State is not to validate a contract. Its role, in certain circumstances, is to provide courts of law which can provide remedies or specific performance on contracts that are freely entered into by private individuals. That, I contend, is the true role of the State in marriage and in other activities, not merely economic activities. The questions we face today are varied. Can we legislate for marriage? The committee, chaired most ably by the Hon. Niall Blair, has shown that we can legislate for marriage in New South Wales. The key question that flows from it, however, is: Would such legislative enactment be operative if we were to do so? This, I fear, is a much more difficult problem. The first question we came across was: Is there some sort of invalidity through section 109 of the Federal Constitution? In other words, does the Federal Marriage Act cover the field? There are certainly some strong views on this matter. Referring to section 88EA of the Federal Marriage Act, Professor Anne Twomey of the University of Sydney stated:

These provisions suggest an intention to cover the field.

Professor Geoffrey Lindell, in his released review of the proposals by the Tasmanian Government to legislate for same-sex marriage, went into a little more detail. He stated:

It is true that provisions like those contained in s 88EA were not included in relation to the recognition of same-sex marriages solemnised in Australia. However, there are at least three reasons for thinking that a different result was not intended ...

He said that the first one was a complex technical argument about judicial warnings which indicate the need for caution in applying the principle and the related principle of *expressum facit cessare tacitum*. He then stated:

Second, an express provision to that effect as regards same-sex marriages contracted in Australia may have been thought unnecessary from a technical drafting point of view, since such marriages would not be governed in any sense by foreign law. The effectiveness of such unions as marriages is directly determined by the laws passed by the Commonwealth Parliament. In other words, their effectiveness does not depend in any sense on the recognition of a foreign law by the courts in Australia.

Third, and perhaps most importantly, it would seem highly odd that the *Marriage Amendment Act* [2004] would treat both kinds of same-sex unions in a different way. Any difference in the wording for the recognition of both seems to me at least more likely to be explained as a matter of drafting and manner of expression.

I agree with those positions. However, Professor Williams takes a slightly different view, which I read to give it its full justice. Essentially it works on the basis that the 2004 amendments in fact did not cover the field but inadvertently narrowed the field so that the Federal Marriage Act only relates to a marriage between a man and a woman. To give him his due, I will state his opinion in full. Professor Williams stated:

The argument that Federal Parliament has *not* covered the field of same-sex marriage is based upon changes made to the *Marriage Act* in 2004. The Act was amended to make it clear that for its purposes marriage only means:

The union of a man and a woman to the exclusion of all others, voluntarily entered into for life.

The change was championed by Prime Minister John Howard and was intended to remove any possibility of same-sex marriage being recognised under Federal law.

The 2004 changes were effective in limiting the scope of the Federal *Marriage Act*. However, by explicitly and carefully narrowing the scope of that Act to different sex marriage, it also may mean that the Act covers the field only with respect to those types of marriages. This outcome is perverse given the intentions of the Prime Minister, but appears to be the legal consequence of the changes he brought about. Hence, it is arguable that the federal *Marriage Act* covers the field of marriage only in so far as the concept is defined in that Act, that is between "a man and a woman".

Patrick Parkinson from the University of Sydney has something to say about that legal view, and I agree with his view in this regard. He stated:

I respectfully agree with Prof. Williams that such an outcome would be perverse. I respectfully disagree with him that this argument is tenable with respect to the intentions of Parliament in the Marriage Amendment Act 2004.

Professor Williams' argument would require a court to find that it was the intention of Parliament in 2004 that the Marriage Act 1961 should no longer cover the field on the solemnisation of marriages in Australia and that there need no longer be a uniform marriage law for the country. Furthermore, the court would need to find that it was intended that the States should once again have the power to solemnise marriages that fall outside the Federal definition of marriage as "the union of a man and a woman to the exclusion of all others voluntarily entered into for life".

Parkinson continues:

It needs scarcely be said that there is not the slightest possibility of showing that it was the intention of Parliament in 2004 to amend the Marriage Act to abandon having one national law concerning marriage or to leave open to the States the possibility of legislating for same-sex marriage. Nor could it be said to have been the intention of Parliament to allow the States to recognise same-sex marriage contracted in other countries. It is axiomatic that courts seek to discern the intentions of Parliament. Those intentions were clear in 1961. They were clear in 2004. There was intended to be only one law of marriage in Australia, and Parliament has covered the field in determining what relationships may, and may not, be recognised as marriages.

I acknowledge the Hon. Trevor Khan's point in relation to Patrick Parkinson. He goes on to say that State-based marriage laws for same-sex couples may be able to be formulated. However, it then encounters two problems. First, you are not creating marriage equality at this point. The bill creates something that is less than equal. For those members opposite who talk about marriage equality occurring through this bill they are misleading the community as to what this bill is about. It is a fabrication of something that is less than marriage. Secondly, the bill falls back into the same problem that Parkinson himself identified in the argument of Professor Williams and, that is, how close do you get to the line before a marriage is a marriage? How close do you get to this line before what is effectively a marriage between same-sex couples becomes a marriage as would be seen by legislation and convention under the Federal Act, and before it then immediately becomes justiciable as to whether it falls across the line and hence violates section 109?

I am not going to get into that for the simple reason that I am not sitting on the High Court and I am not taking evidentiary proof as to what the substance of a same-sex couple's relationship is. That is something which, ultimately, were this marriage bill to pass the House, would be subject to legal review. That brings us to the next question: Should we? I am ambivalent on this point. I think even if it were to pass I would not wish to bet my house on its chances of surviving a High Court challenge. There is more than a little Federal skin in the game and it has nothing to do with marriage per se. There is a lot of Federal skin in the game because recognition that a State is able to do this gives recognition for a State to imply ownership of those things not explicitly covered by the Federal government in other section 51 powers. What are the other section 51 powers? They are very extensive.

Mr David Shoebridge: Read them.

The Hon. Dr PETER PHELPS: I am going to read them. This is why the Commonwealth Government, whether an Abbot Government or a Gillard Government, will challenge the same Australian Capital Territory laws. The implications that flow from it are substantial for the Federal Government's perceived powers about what it can do and what it will allow the States to do. Other section 51 powers include postal, telegraphic, telephonic, and other like services.

Mr David Shoebridge: And lighthouses.

The Hon. Dr PETER PHELPS: Lighthouses, lightships, beacons and buoys; astronomical and meteorological observations; and naval and military defence of the Commonwealth. Theoretically the State could have a State air force because, as Jackie Kelly's case showed, the Royal Australian Air Force is not covered under the naval or military defence of the Commonwealth. Therefore a New South Wales air force is a possibility. Other section 51 powers include quarantine, which has substantial implications; currency, coinage and legal tender, so we could have our own State currency—10 eddies make a macca and 10 maccas make a roozie perhaps?; weights and measures; naturalisation and aliens; and immigration and emigration.

I have heard remarks from The Greens in relation to morality and justice concerning the denial of rights for same-sex marriages. It presents an interesting question. Would the States then have the right to seek to circumvent Federal immigration and emigration laws that they considered to be unjust, unreasonable, unfair, inhumane, or in violation of United Nations conventions on refugees? Would the States be able to institute immigration and emigration laws for their own States? Those are things with which the Federal Government is intimately concerned. I will not move on to consider matters such as external affairs or relations of the Commonwealth with the Pacific. It shows that the Federal Government will have a stake in the game.

What if this bill were to pass? My reaction would be the same as if the Federal Government were to legislate for same-sex marriage: It would be a resounding "meh", because you know what, I do not care. I do not care what people do with their lives. As long as you do not want me to subsidise it, you can do whatever you like. As long as you are not hurting someone else, do whatever you like. As long as you do not want government funds to do it, do whatever you like. I do not want government in my business, my bank account or my

bedroom. If same-sex marriage were to come in tomorrow, I would not care one bit. It does not devalue my own marriage. It does not revalue my own marriage. It does not do anything to me. The relationships between myself and my wife—who at the current time I am legally allowed to say is my married wife—is completely valueless in terms of any imprimatur that the State would seek to place upon that relationship.

If people want to get married and enter into their own relationships, that is fine. It does not mean a damn to me and I do not seek to impose my moral beliefs on others—economic beliefs perhaps, but not moral beliefs. What is my final position in relation to this matter? My fundamental position is that I do not believe that governments should be in the marriage game in the first place. Private individuals should contract marriage and government should then enforce those contracts or resolve them in relation to the dissolution of those contracts. That is my fundamental point. Governments should recognise, but they should not solemnise. The second point I make is this: If the Government is going to intervene in this matter, should it be at a State or a Federal level? In that regard I believe that if we are going to take the unfortunate step of maintaining this secular monopoly on what is and what is not marriage then it should be done at a Federal level to maintain consistency across the States.

The 1961 Act came about simply because of the problems that were associated with having a multiplicity of jurisdictions. It is the same reason why the 1959 Matrimonial Causes Act came in. One matter that is not contained in the bill that I believe should have been included is tougher rules for divorce. If we are going to talk about marriage then let us talk a little more about divorce. Divorce is quite pertinent to marriage Acts. For that reason, I will not be supporting this bill. I do not believe it should be in the jurisdiction of the States. If it is to be in the jurisdiction of any government entity, then that probably should be the Commonwealth Government. But even in saying that, I do not believe that the Commonwealth Government should have a Marriage Act in the first place.

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [12.40 p.m.]: As members know from my record, I believe in equality for all persons and I am against any form of prejudice, whether it be prejudice based on gender, race, sex or religion. Everyone in New South Wales should have the right to live their life their own way. My belief in this principle has only grown stronger since becoming the Minister for Ageing, and Minister for Disability Services. The other day in this Parliament I moved the National Disability Insurance Scheme (NSW Enabling) Bill 2013. That was one of the most important bills to pass this Chamber, and it was passed in a completely bipartisan way, by all members in this Chamber.

At the core of the National Disability Insurance Scheme is the fundamental principle that all persons with a disability have the right to live their life their way, to live their life as all others are entitled to live. If we believe in marriage equality, then we need a uniform national law that provides legitimacy to same-sex marriage, not patchwork State laws that create inconsistency across Australia. I agree with the Premier's view that same-sex marriage is best dealt with by the Federal Government. As the Premier said:

To be truly equal, same-sex marriages should enjoy the same legal status and recognition as other marriages.

He also stated:

Only a change to the Federal Marriage Act will deliver that equality.

Individual States passing same-sex marriage laws, in my view, will create different classes or tiers of marriage. It is not true marriage equality. As the Australian Capital Territory example has demonstrated, the Federal Government is already mounting in the High Court a challenge to the Territory's recent laws on same-sex marriage. The bill before this House, if passed, will raise the expectations for same-sex couples to be married in New South Wales. However, there is no certainty that if the Same-Sex Marriage Bill 2013 is passed then it will provide a valid and legitimate framework for same-sex marriage in the future, as the bill may be found to be unconstitutional in the High Court. For those reasons, I am unable to support this bill.

Mr DAVID SHOEBRIDGE [12.43 p.m.]: I support the Same-Sex Marriage Bill 2013. I acknowledge and commend the comments of my colleagues Dr Mehreen Faruqi and Dr John Kaye, who have spoken in support of the bill. A number of speakers, particularly from the Coalition, have said they are against any form of discrimination and absolutely support same-sex marriage, but they will not support this bill because it might produce some sort of patchwork quilt type of legislation. If the best argument that those members can mount for opposing this bill is that by passing this law we only remove the discrimination from New South Wales, I think that is a shallow argument. I think in large part it is a somewhat manufactured

argument to find a reason to oppose this bill. If you support the concept of same-sex marriage, and if you are opposed to discrimination in our laws on the basis of someone's sexuality, surely on a conscience vote you should support this legislation.

Yes, I acknowledge this bill will not remove that discrimination from every State and the Territories. But as New South Wales legislators we can remove the discrimination that exists in this State so far as is possible. Members say they support same-sex marriage and oppose discrimination, but they will not support this bill because it will produce inconsistency. I think those arguments are specious and designed to avoid having to confront their own conscience, and confront the fact that this bill is about removing discrimination in New South Wales as far as possible.

The Hon. Marie Ficarra: You are very intolerant. The Greens are always intolerant.

Mr DAVID SHOEBRIDGE: I hear the comment that The Greens are intolerant. I say this: I am proud to be a member of the party that has said that this is not just a matter of conscience; this is a matter of policy. Every Greens member of Parliament is bound by policy to support this legislation; and they will support this kind of legislation if it is brought into this Chamber in New South Wales, and they supported similar legislation when it was brought before the Australian Capital Territory. Every Greens member will support this legislation or similar legislation if it is brought before the Federal Parliament—not as a matter of conscience, but as a matter of policy.

It is an absolute matter of policy as far as I am concerned and as far as my party is concerned that people have a right to marry the person they love regardless of their sexuality. My office has received many emails—both in support of and in opposition to this legislation. Some of those emails have been of a standard type, but some of them have been truly touching personal stories about why members of the community think this legislation is so important for their standing in the community and also to remove discrimination. One email that I and, I know, all members received was received by me on Tuesday this week. The gentleman who sent it says:

I am 38 years old and have been with my partner Christopher for 20 years.

He gives a history of growing up as a young gay man in New South Wales, about the difficulties that he had at school, about being kicked to the ground at school because people had identified him as gay, and about how he had overcome that. Then he says:

I have, as have many, suffered much hurt through my journey as a gay man. To be honest with you none of the violence or verbal abuse compares to the shame and emotional hurt I feel from the perception that the love we hold for each other these 20 years is somehow wrong, immoral or not up to a standard that my country believes it needs to afford us the legal right to marry; that same right that the majority of people around me have. Murderers, rapists, fraudsters, all have the right to marry. Those that have multiple divorces, affairs or abuse their partners all have the right to marry. We don't have that right because we are of the same sex. You can imagine how hearing that we are not worthy makes us feel.

I note and acknowledge that genuine emotional hurt. The failure of their representatives to remove this discrimination from the marriage laws continues the hurt. Many people in the lesbian, gay, bisexual, transgender and intersex community will continue to feel they are second-class citizens; they hurt from the perception that because they love someone of the same sex they do not deserve the same rights as do other members of the community. We cannot ignore that fact. One way in which we can remove some of that hurt—and we can do it today—is by voting in support of this legislation.

I am married. My wife and I have been married for more than 10 years. We were fortunate enough to be married under the Commonwealth Marriage Act. We were married in a church under the Commonwealth Marriage Act. I can tell the House now that expanding membership of the club to include people of the same sex who are married will not in any way diminish my marriage; in fact, it would enrich the institution of the marriage for me. One of the concerns I had about getting married was that it is a discriminatory institution. Even though my wife and I could have the benefit of that State support and State acknowledgement of our relationship, there are arguments for and against marriage. I know that many people think, as the Hon. Dr Peter Phelps said, the State sanction of a relationship means nothing.

There are many people who think that the State sanction of a marriage means nothing, but I think the public ceremony of marriage that comes with the sanction of the State does add something to a relationship: It adds richness and depth to my relationship. I hope that members of the lesbian, gay, bisexual, transgender and intersex community will be given the option to choose. Many of them, including perhaps the gentleman whose

experience I read, will choose not to get married. That choice should be open. You can only choose not to get married if you have the opportunity to get married. I believe that this bill should be supported to provide people with that choice.

I acknowledge the many members of the lesbian, gay, bisexual, transgender and intersex community in the gallery today and the work they have done over the years to get us to the point of having a debate on same-sex marriage. Many of them have been working for more than a decade to support this legislation. One of the people in the gallery, Matt Robertson, is a good friend of mine. At the moment restrictions in the Marriage Act would prevent Matt from getting married because of his choice of partner. The law should step out of the way, and if people want to marry someone of the same sex then the law should allow that to happen. There should be an end to discrimination in marriage. This bill does not do anything novel.

There is international support for same-sex marriage: Argentina, Belgian, Canada, Denmark, France, Iceland, the Netherlands, New Zealand, Norway, Portugal, Spain, South Africa, Sweden, Uruguay and the United Kingdom have supported same-sex marriage. For many members of this Chamber the argument against supporting this bill is an alleged inconsistency and the effect of section 109 of the Constitution, which says that if the States legislate for same-sex marriage that may be inconsistent with the Federal Marriage Act. Many members have read onto the record the advice of Patrick Parkinson. I have a lot of time for Professor Patrick Parkinson. He was my professor in family law when I studied at the University of Sydney. I respect his opinion, but there is no doubt that Professor Parkinson has strong personal beliefs that mean he is inclined towards opposing same-sex marriage. You need to understand that when weighing up the strength of his opinion in this regard.

When the Federal Government moved to make it very clear that the Commonwealth Marriage Act was restricted to being marriage between a man and a woman and that, for the purposes of the Commonwealth Marriage Act, marriage was only between a man and a woman, that gave State parliaments an opportunity to pass legislation about marriage relating to marriage other than between a man and a woman. The Commonwealth has limited its scope under the Marriage Act to legislating for marriage between a man and a woman. In doing so, there is scope for the States to legislate for marriage between members of the same sex. The contrary argument by opponents of this bill is that in the Commonwealth having expressly said that marriage can only be between a man and a woman, the Commonwealth has also evinced an intention to cover the field on marriage and not allow any other State law to operate in relation to marriage. That matter will have to be determined by the High Court. In fact, that matter is before the High Court under the terms of the challenge of the Australian Capital Territory laws.

The High Court will determine whether the Commonwealth law covers the field or if there is room for State and Territory laws to regulate the marriage of people of the same gender. The fact that the law we pass in New South Wales could be challenged should not prevent us from passing this legislation. Any one of the laws we pass could be subject to a constitutional challenge. We may find that laws passed in relation to mining regulation are subject to a constitutional challenge, because they are contrary to Commonwealth environmental laws. We may find that laws passed in relation to the regulation of motor vehicle trading are invalid because they are contrary to Federal competition laws. We often pass laws that have the potential be the subject of a constitutional challenge. That should not stop us from legislating to support laws that we think are appropriate, or indeed essential, to advance the interests of the citizens of New South Wales.

This law does something quite simple: It gets rid of discrimination against citizens of New South Wales. It says people of the same gender can marry. We should not have to pass this law in New South Wales, because the Commonwealth should pass national legislation to remove discriminatory provisions from the Federal Marriage Act. However, it is a political reality that the Commonwealth will not do that in the near future. A new Government and a new Prime Minister have been elected. The Prime Minister is opposed to same-sex marriage. We will get no action from the Commonwealth Parliament for years to come. What can we do? We have a choice between doing what we can as legislators to remove the discrimination we can remove and putting our hands up and saying it is too difficult so we will wait for a future Commonwealth Government to fix it. Surrendering would be a failure for us as legislators. We have a chance with this bill to remove some discrimination from New South Wales.

I commend the work of the Cross Party Working Group on Marriage Equality for bringing this bill to the House. The group consists of Dr Mehreen Faruqi, from The Greens; Alex Greenwich, the Independent member for Sydney; Trevor Khan, from The Nationals who is in the Chamber; Bruce Notley-Smith, the Liberal

member for Coogee; and Penny Sharpe, a Labor member of the Legislative Council. Equal marriage should not be a political issue. Equal marriage should be a political given in New South Wales. I commend this bill to the House.

[The President 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 future day.

QUESTIONS WITHOUT NOTICE

YARALLA ESTATE LIVESTOCK RESCUE

The Hon. LUKE FOLEY: My question is directed to the Minister for Police and Emergency Services. Given the increased need for safe evacuation points for livestock rescued from fire-affected areas such as Bilpin, Bargo and Silverdale, and in light of reports that most parks and showgrounds in nearby locations are currently full, will the Minister investigate whether the now vacant paddocks at Yaralla Estate could be used as a temporary space for those horses?

The Hon. MICHAEL GALLACHER: What a cheeky little question to start question time on the last sitting day of the week. The serious aspect of the question is that the Government is looking at areas that could be made available for the agistment of horses. I visited the North Richmond Centre—coincidentally, arrived with someone I thought was Chris Hartcher from behind, but it was John Robertson. We arrived at the evacuation centre at the same time and spoke to the people there. It was evident from speaking to the locals that they were concerned about where their horses would go. For some people it would be other forms of livestock; people have other pets and livestock. Often, many people in these areas, be it the Blue Mountains, the Windsor-Richmond area and other areas of the State where fire is a particular threat—

The PRESIDENT: Order! I apologise for interrupting the Minister. I remind members that audible conversation is disorderly at all times. If members wish to have a private conversation they should do so outside the Chamber. The Minister will be heard in silence.

The Hon. MICHAEL GALLACHER: Often if people who must decide to leave their properties are not convinced that their livestock, particularly family pets such as dogs and cats, as well as horses, will not be looked after, it could cloud their decision to leave the property in the first place. If they think they will not be in a safe spot they may decide to stay to look after their livestock. We are aware of the problem. The Leader of the Opposition referred to Yaralla. I was a great believer that the police could be at Yaralla, but the member opposite had a different view. The debate relating to Yaralla has now been had.

In relation to any other potential uses, it is important to ensure that wherever horses are agisted in times of emergency there are satisfactory fencing, water and shade. People must also be able to place their horses in stalls as the last thing they want is horses fighting in areas where there are barbed wire fences. Many problems need to be addressed while we find quick emergency solutions. However, it is appropriate for the Government to establish long-term solutions. We want to ensure that when people decide to leave their homes with their animals they will have confidence in the fact that they and their animals will be safe.

SCHOOL ZONE SAFETY

The Hon. SARAH MITCHELL: My question is addressed to the Minister for Police and Emergency Services. Will the Minister provide an update on the enforcement of school zones by the NSW Police Force?

The Hon. MICHAEL GALLACHER: During the school year the Traffic and Highway Patrol Command works with local area commands and local councils to conduct high-visibility school zone operations. For example, police attached to the Botany Bay Traffic and Highway Patrol recently undertook Operation Junior 2, which was a local one-day operation targeting speeding and parking offences in and around local school zones. The operation involved 11 marked cars patrolling school zones in the Redfern, Botany Bay and Eastern Beaches local area commands. A total of 42 infringements were issued, including 18 speeding infringements, 15 infringements for disobeying stop signs in a school zone, one U-turn at traffic

lights in a school zone, three parking infringements and five other school zone infringements. This was a one-day operation in only three local area commands, which highlights why police undertake such operations.

Police regularly see the senseless loss of life that can occur on our roads. They would much rather have everyone obey the rules and issue no infringements than have to attend to the aftermath of a car crash or pedestrian collision. There are additional penalties for motorists committing offences in school zones. For example, drivers exceeding the school zone speed limit by up to 10 kilometres an hour can be fined \$117 and lose two demerit points, while drivers exceeding the school zone speed limit by more than 45 kilometres per hour can expect a \$2,341 fine and the loss of seven demerit points. In a school zone the illegal use of a hand-held mobile phone may mean a \$405 fine and the loss of four demerit points. Last year police issued a total of 2,284 infringements for school zone offences. That figure does not include camera-detected red-light and speeding offences that occurred in school zones.

Coordinated statewide enforcement operations will also be conducted to target school zones, including in January and February when the new school year commences. I draw the attention of members to another situation faced by police when a driver was intercepted while en route to collect his children from school. Lithgow police detected him speeding and drink driving in a school zone at 3.00 p.m. His alcohol reading was 0.186. He was so intoxicated that he almost crashed into the police vehicle as he was parking in front of the school. Thanks to police, he was arrested before he caused an accident and before his children had been collected. Young children often lack awareness when crossing or walking near roads, and all drivers need to take extra care around schools.

BUSHFIRES ASBESTOS REMOVAL

The Hon. HELEN WESTWOOD: My question is directed to the Minister for Police and Emergency Services. Further to my question yesterday about the removal of asbestos from homes destroyed in last week's bushfires, will the Minister now agree to provide a centralised service, such as that provided by the Victorian and Tasmanian governments, to collect and properly dispose of asbestos, given the safety risks and potential costs to households?

The Hon. MICHAEL GALLACHER: Clearly, the Hon. Helen Westwood understands that a discussion is currently underway about the proper process to deal with asbestos risk and that discussion is alive and well in the Blue Mountains. Of course, it can be a risk in any part of the State. I assure the member that emergency services personnel, together with recovery control and Phil Koperberg, are looking at options such as a centralised approach. I hope to be in a position to make a further announcement in the foreseeable future about any recommendations that come from their understanding and decisions.

POLICE FIREARMS

Mr DAVID SHOEBRIDGE: My question is directed to the Minister for Police and Emergency Services. Did a police officer leave his Glock pistol and 15 rounds of ammunition at Mascot McDonald's on 8 April 2013? Given that that is clearly a breach of the safe-keeping requirements under section 39 of the Firearms Act, which is a criminal breach punishable by up to two years imprisonment, will the Minister advise whether a criminal investigation has commenced into this matter.

The Hon. MICHAEL GALLACHER: I will make inquiries of the NSW Police Force in relation to this matter. I assume that Mr David Shoebridge has lodged an inquiry with the police. I assume that it is now the subject of an internal investigation so it would not be appropriate for me to comment at this stage.

WESTCONNEX DELIVERY AUTHORITY

The Hon. NATASHA MACLAREN-JONES: My question is addressed to the Minister for Roads and Ports. Will the Minister update the House on the establishment of the WestConnex Delivery Authority?

The Hon. DUNCAN GAY: I am pleased to inform the House that today this Government took another important step towards delivering WestConnex—Australia's largest urban road project. Sydneysiders have demanded that we build WestConnex as quickly as possible and that is what we intend to do. This morning at an industry briefing for 500 or more global road construction and funding experts, I took the opportunity to thank the team at the Sydney Motorways Project Office and Paul Goldsmith in particular for their work on the

business case. From today the WestConnex Delivery Authority has taken over the management of the construction, financing and management of the \$11.5 billion motorway. I am delighted that Tony Shepherd has agreed to chair the WestConnex Delivery Authority. Apart from his work as President of the Business Council of Australia and the chair of the Federal Government's Commission of Audit, not to mention the Greater Western Sydney Giants, Tony is known as one of Australia's pre-eminent infrastructure experts.

The Hon. Dr Peter Phelps: He has got more gigs than Gonski.

The Hon. DUNCAN GAY: He finishes one of them in March. He has been involved in some of the country's most significant projects, including the Sydney Harbour Tunnel, Melbourne's CityLink, the Walsh Bay redevelopment and the Brisbane Airport Link. All six other board members collectively boast an extraordinary range of skills from global investment banking experience to infrastructure design and construction, and public sector oversight. They include Rod Pearse, who also sits on the board of Infrastructure NSW and chairs Fife Capital. Rod is a former managing director of Boral Construction and previously served as a member of the Council of Australian Governments Reform Council on Cities.

Peter Brecht and Robert Hamilton, both of whom participated in the business case steering committee, bring with them extensive experience in urban development and major construction projects. Peter is the President of the Australian Constructors Association and was previously managing director of Construction Australia for Lend Lease and the managing director of AbiGroup. Robert is a director of Urban Growth New South Wales and has 50 years of experience in the property sector. He co-founded the Mirvac Group in 1972, before retiring as its managing director in 2005.

The Government is thrilled to have the newly appointed Transport for NSW Director General, David Stewart, as part of the team—a person who helped to deliver some of Queensland's largest transport and capital works projects. Roads and Maritime Services chief executive Peter Duncan has had a distinguished career in the New South Wales public service, including as a former deputy director general of the Department of Premier and Cabinet and Peter Regan is the head of Infrastructure Finance at New South Wales Treasury and previously served as vice-president for Projects and Infrastructure Finance at Deutsche Bank in London. The calibre of this board demonstrates the importance both the Federal and State Coalition governments have placed on getting WestConnex up and running. It is the best board for the best road project in Australia. Opposition members are quiet. They must be envious. Those people would not have worked for their paper giants.

The PRESIDENT: Order! It would be helpful if the Deputy Leader of the Government did not goad the Opposition for not being disorderly.

NATIONAL DISABILITY INSURANCE SCHEME

The Hon. JAN BARHAM: My question is directed to the Minister for Disability Services. During budget estimates the Department of Family and Community Services advised that it is participating, along with the National Disability Insurance Scheme, in a joint review concerning the base unit price of assisted self-care activities in the Hunter launch, noting that it is considerably less than equivalent State-based programs. Is there any update on this information? If not, when will the Department of Family and Community Services provide clarification?

The Hon. JOHN AJAKA: The Hunter launch of the National Disability Insurance Scheme has proven that both the State and Federal governments were correct to first launch the scheme at a number of sites. We had to ensure that all appropriate measures were taken before the launch throughout the State and Australia. The bipartisan approach that was shown has delivered many successes and some terrific stories from clients, carers, staff of Ageing, Disability and Home Care and various other community members. The clear theme is that everybody wants to ensure that people with disabilities are receiving the best care from the best people available.

The aim of the launch was to minimise the impact on the lives of people with a disability and support them to achieve their life goals of participating in the economic and social life of the community. In August 2012 the New South Wales and Commonwealth governments agreed to a New South Wales site for the first stage. The full rollout of the National Disability Insurance Scheme launch agreement, which covers the Hunter local government areas of Newcastle, Lake Macquarie and Maitland, commenced on 1 July 2013 and overall will support approximately 10,000 people. The Hunter launch is an opportunity for New South Wales to demonstrate a leadership role.

Mr David Shoebridge: Point of order: The question asked by the Hon. Jan Barham related to base unit pricing which the Minister has not even commenced to address.

The PRESIDENT: Order! The Minister must be generally relevant in his answer.

The Hon. JOHN AJAKA: Once fully rolled out 140,000 people with disabilities will directly benefit from the National Disability Insurance Scheme across New South Wales. Currently approximately 93,000 people with disabilities are supported in the New South Wales specialist disability system. A key factor of the National Disability Insurance Scheme rollout is that not only will there be a substantial increase in total funding from \$2.7 billion to \$6.4 billion a year but also the number of people assisted will increase from 93,000 to 140,000—that is, approximately 50,000 additional people who currently do not receive any disability services. The New South Wales contribution to the Hunter launch is \$550 million from 2013-14 to 2015-16, plus \$35 million over four years from 2013-14. Members opposite, including members on the crossbenches, can take credit for their bipartisan approach to ensuring that we continue this launch throughout New South Wales.

FIRE STATION CLOSURES

The Hon. PETER PRIMROSE: My question is directed to the Minister for Police and Emergency Services. Has the Minister received a submission or brief from his department recommending, proposing or considering the permanent closure of any operating fire stations?

The Hon. MICHAEL GALLACHER: I will take that question on notice.

The Hon. PETER PRIMROSE: I ask a supplementary question. I thank the Minister for his agreement to take the question on notice. I would be grateful if the Minister would consider elucidating by advising whether Mortdale, Merrylands or Ingleburn stations are included.

The PRESIDENT: Order! The Hon. Peter Primrose knows that the question is out of order.

MY CHOICE MATTERS DISABILITY SERVICES

The Hon. MATTHEW MASON-COX: My question is addressed to the Minister for Ageing, and Minister for Disability Services.

The Hon. Mick Veitch: You would do a much better job, Matthew.

The Hon. MATTHEW MASON-COX: Will the Minister update the House on the Consumer Development Fund innovation and its relationship to the National Disability Insurance Scheme?

The Hon. JOHN AJAKA: I note the earlier interjection of the Hon. Mick Veitch that the Hon. Matthew Mason-Cox would make a great Minister. One of the great things about all members on this side of the Chamber is that every one of them would make a great Minister. I have noted these interjections from members opposite for 13 weeks. I am proud to say that every one of my colleagues on this side of the Chamber would be a great Minister. We are a party with enormous talent and I am grateful to be part of that team.

The PRESIDENT: Order! The Minister knows that he is straying from the leave of the question and that he should not respond to interjections.

The Hon. JOHN AJAKA: Now that I have cleared up that issue I will proceed. I have previously informed the House about the New South Wales Government's investment in capacity building through the establishment of My Choice Matters, the NSW Consumer Development Fund. I would now like to tell the House some of the good news that is emerging from the My Choice Matters Getting Started workshops that have been running since May 2013.

The PRESIDENT: Order! I have already reminded members that audible conversation in the Chamber is disorderly. I call the Hon. Sophie Cotsis to order for the first time. I call the Leader of the Opposition to order for the first time. I call the Hon. Penny Sharpe to order for the first time.

The Hon. JOHN AJAKA: My Choice Matters is having a positive impact. We know this because people are telling us how these workshops have started to change their thinking and attitudes. Let me share with

the House two of these stories. The parents of a child shared their realisation that because of fear and anxiety they had been holding back their child with disability from becoming involved in their community. However, they started to see possibilities and opportunities for their child after hearing the stories of people with disability at a My Choice Matters workshop. A person with disability who lives in supported accommodation shared that he or she had connected with another person at one of the workshops and together they are planning how to set up a bowling league with people who do not have a disability. It is exciting to hear how the New South Wales Government's investment is making a difference in the lives of people with disability, their families and carers.

The PRESIDENT: Order! If the Hon. Robert Borsak and the Hon. Jeremy Buckingham wish to have a private conversation they should do so outside the Chamber.

The Hon. JOHN AJAKA: Members might be gracious enough to give me one extra minute as I have lost so much time. To ensure that the early implementation of My Choice Matters is reaching as many people as possible, the workshops have had a broad focus in geography and communities. The message about making choices, speaking out and being in control is going out across New South Wales into metropolitan, rural and remote locations including Dubbo, Bega, Queanbeyan, Wagga Wagga, Albury, Lithgow, Coffs Harbour, Griffith, Taree and Tamworth.

That same message is being communicated to particular communities through targeted workshops including Aboriginal communities in Kempsey and Redfern, south Asian communities in Dundas, culturally and linguistically diverse communities in Parramatta and Newcastle and the Vietnamese community in Marrickville. My Choice Matters is also planning, through partnerships with community organisations, to hold other targeted workshops with the deaf-blind community, parents of young children with disability, the Aboriginal community and people with disability in supported accommodation. [*Extension of time agreed to.*]

Anyone interested in participating in any of the remaining workshops can register online through the My Choice Matters website www.mychoicematters.org.au. I thank members for the extension of time.

MOREE ARTESIAN AQUATIC CENTRE

The Hon. ROBERT BORSAK: My question is directed to the Minister for Ageing, representing the Minister for Local Government. Is it a fact that the costs to the public of using the Moree Artesian Aquatic Centre have recently increased, including a 160 per cent increase, from \$230 to \$604, in the cost of a three-month family pass? Were these increases a result of having to pay board fees and, if not, can the Minister assure the local community that the cost of board fees will not be passed on to users of the centre?

The Hon. Trevor Khan: That's a very detailed question.

The Hon. JOHN AJAKA: I thank the member for the question and note the interjection from the Hon. Trevor Khan that it is a very detailed but excellent question that deserves a detailed and excellent answer. I will refer it to the Minister and get back to the member.

LUCAS HEIGHTS NUCLEAR REACTOR SAFETY

The Hon. WALT SECORD: My question is directed to the Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra, representing the Minister for the Environment, and Minister for Heritage. What steps has the Environment Protection Authority taken to ensure community safety after a break was reported on the Sydney Water sewer line connecting Lucas Heights nuclear reactor to the Cronulla sewage treatment works?

The Hon. JOHN AJAKA: That is an excellent question. I will take it on notice, refer it to the Minister and supply the answer in due course.

STATE EMERGENCY SERVICE HOME EMERGENCY PLAN

The Hon. RICK COLLESS: My question is addressed to the Minister for Police and Emergency Services. Will the Minister inform the House about the online New South Wales State Emergency Service home emergency plan?

The Hon. MICHAEL GALLACHER: I thank the member for this question, which gives me the opportunity to advise the House and the public about a very topical subject. The New South Wales State

Emergency Service home emergency plan is an interactive online tool that households can use to plan for hazards such as floods, storms and tsunamis. It can also include planning for other risk events, such as earthquakes and bushfires, and can be utilised in addition to, and in support of, other emergency planning resources such as the NSW Rural Fire Service bushfire survival plan and the Fire and Rescue NSW home fire safety audit.

The plan asks simple questions about where people live and for whom they may be responsible. Based on their responses, action lists are created showing what can be done before, during and after hazardous events. The home emergency plan then offers users an editable version they can save onto their computers. This version of the plan can then be tailored to suit many situations, including family, households and responsibilities. This means people can create checklists, order actions in relation to priority, create separate plans for different hazards, or include other hazards in the same plan, and develop specific plans for other members of their family who have their own special needs or situations such as children, the elderly or people with disability.

Events such as the terrible bushfires we have been experiencing bring home the importance of being prepared for future emergencies. Planning is essential if we are to protect our families from hazard events and minimise damage to property. Whilst the focus of the State Emergency Service home emergency plan is on preparing for, responding to and recovering from flood, storm and tsunami, there are also references throughout the plan to fire-related services. This information allows people to supplement their emergency plan with fire-related plans for their homes. As I have often said recently, anyone who lives in a bushfire-prone area should prepare a bushfire survival plan. I urge those who have not done so to visit the Rural Fire Service website which has instructions on how to go about this important task. I recommend that all members look at the State Emergency Service website www.seshomeemergencyplan.com.au and work through the checklist in order to prepare their own home emergency plan.

MOREE ARTESIAN AQUATIC CENTRE

The Hon. ROBERT BROWN: My question without notice is directed to the Minister for Ageing, representing the Minister for Local Government. Will the Minister inform the House the total amount of fees paid to each member of the Moree Artesian Aquatic Board, established earlier this year? What benefits, if any, has the community of Moree and customers of the corporation received following the transfer of the facility from a successful council-operated entity to one run by a corporation?

The Hon. JOHN AJAKA: I thank the Hon. Robert Brown for his question. I will refer it to the Minister and come back to him with an answer.

WESTCONNEX MOTORWAY

The Hon. PENNY SHARPE: My question is directed to the Minister for Roads and Ports. In a response to a question without notice two weeks ago in relation to WestConnex the Minister stated:

What we want is proper consultation with community representatives, which is local government, and they are an important part of our consultation.

In light of that statement will the Minister inform the House why he has failed to provide inner-west communities with detailed information about the project, including a cost-benefit analysis or traffic modelling?

The Hon. DUNCAN GAY: For weeks I have been trying to find out where the Opposition gets its questions from. I have suggested that Opposition members need a question time committee and they said they have one.

The Hon. Greg Donnelly: We do.

The Hon. DUNCAN GAY: It is obviously not working that well because the Opposition now relies on the *Sydney Morning Herald*. The *Sydney Morning Herald* got it wrong and the Opposition got it wrong. One can only wonder how the *Sydney Morning Herald* can claim in a headline, "Mayors in the dark over plans for WestConnex", and then two paragraphs later explain that councils are having a briefing with the roads Minister the next day. I do not know how that happens. How can they justify that headline? Something is wrong: either the *Sydney Morning Herald* is wrong or I have hatched a dastardly plan—

The Hon. Walt Secord: The latter.

The Hon. DUNCAN GAY: It could be that the day after the *Sydney Morning Herald* published this report I booked a room—three weeks ago—sent out the invitations and coerced the councillors and their staff to meet me and that great planning Minister Brad Hazzard. I thank the Minister for helping me with the tolling this morning—that was all part of the dastardly plan. It came together and worked a treat. The truth is that the *Sydney Morning Herald* was wrong in the headline and right in the article where it says that we had that consultation. Once again, the Opposition is wrong.

The article did report on how much the Government has already engaged with the 10 key councils along the WestConnex corridor. An unprecedented program of community consultation on WestConnex is being undertaken. It commenced six months ago. As to the key component of urban revitalisation, which will transform suburbs along the WestConnex corridor, senior staff from all 10 councils along the Parramatta Road corridor have been briefed and sessions have been held with councillors from four councils, with more sessions to follow next week. As well as a briefing meeting with me, planning Minister Brad Hazzard and key executives from the project, representatives of all 10 councils, staff, mayors and 50 community participants have been invited to participate in a five-day workshop in early November to develop options for land use and transport along the corridor. I do not know how the *Sydney Morning Herald* did not know about this when the department sent the information to it when it asked for the material.

The results of that workshop will be examined and refined by departmental officials and technical experts before all 10 councils are asked to consider a more robust land use and transport plan early next year. This represents a comprehensive level of community engagement in the very early stages of a 10-year infrastructure program. As the details of WestConnex are confirmed and we move further along, the information is shared with the public. Concept design details for the M4 widening have been released for community consultation and the same process will be followed for each stage of the project. M4 widening community information sessions for residents and stakeholders have been held across Western Sydney, with information also available in nine different languages. Local residents have already received a range of information on the project. In particular, residents have received documentation via letterbox drops outlining the first phase of the project and asking them to visit the website for further information and to provide feedback. [*Time expired.*]

The Hon. PENNY SHARPE: I ask a supplementary question. Will the Minister elucidate his answer as to why he has failed to provide councils along the WestConnex route with detailed information about a cost benefit analysis and traffic modelling, and if not, why not?

The Hon. DUNCAN GAY: Can I suggest that after forming the question committee the Opposition uses its highly paid staff to look on the web? All the information that the Opposition is seeking is publicly available on the WestConnex website. The Hon. Penny Sharpe does nothing more than read the *Sydney Morning Herald*. She is part of the inner-city chattering class and has no idea about Western Sydney. She wants to stop the roads projects and work with The Greens to put a light rail down the middle of Parramatta Road instead of the WestConnex motorway. She wants the people of Western Sydney to cart their groceries and refrigerators and move their houses on a light rail when the trucks are forced out of the suburbs. That is what she wants to do, rather than doing her homework.

The PRESIDENT: Order! The Minister will resume his seat.

The Hon. Steve Whan: Point of order: My point of order is on relevance. To quote a former member of this place, the Minister has not come within a bull's roar of the question. I ask that he be brought back to the leave of the question.

The PRESIDENT: Order! There is no point of order. The Minister was being generally relevant in his answer.

The Hon. DUNCAN GAY: The Hon. Steve Whan supported the Rozelle metro when Labor spent \$500 million and did not lay one inch of rail.

HUNTER VALLEY MINING OPERATIONS

The Hon. JEREMY BUCKINGHAM: My question is directed to the Minister for Roads and Ports, representing the Minister for Resources and Energy. Moolarben Coal is currently forcing Julia and Colin Imrie, landholders in the Upper Hunter Valley, to arbitration. Given that Federal Minister Macfarlane said, "Drillers shouldn't go where farmers don't want them", when will the Government fix the provisions in the Mining Act that allow this to occur?

The Hon. DUNCAN GAY: I will try to ignore the emotive language with which that question is couched, with the use of words such as "forcing", and accept that the member—the member against mining anywhere in New South Wales—is raising a valid concern on behalf of this family. As such, I will undertake to obtain a detailed answer.

DRINK-DRIVING PREVENTION

Mr SCOT MacDONALD: My question is addressed to the Minister for Roads and Ports. Will the Minister update the House on steps that the Government is taking to reduce the incidence of drink-driving?

The Hon. DUNCAN GAY: I thank Mr Scot MacDonald for his important question. The O'Farrell-Stoner Government will introduce legislation next year to make alcohol interlocks mandatory for high-range and repeat drink-drive offenders. High-range drink-driving is where someone is caught driving with a blood alcohol concentration of 0.150 or above. A repeat drink-driver is someone who has committed two drink-driving offences within five years. Alcohol interlocks are electronic devices connected to the ignition of a vehicle that prevent it from starting if the driver has been drinking, providing an effective physical barrier between drinking and driving.

The decision to introduce alcohol interlocks follows a suggestion from NRMA Motoring and Services. Opposition members have gone quiet. The Opposition spokesman has claimed that this was his idea. In fact, we were already developing this policy with the NRMA when he claimed it was his idea. If the Opposition spokesman wants to hop on the bandwagon, we are happy to have him there. We know he has an interest in this area, and his support is most welcome. The NRMA is not very happy that this bloke is claiming its work and its research. He will have to sort that out with the NRMA.

The Hon. Greg Donnelly: Point of order: The Minister is reflecting on a member of the other place and he knows he should not do so.

The PRESIDENT: Order! I was distracted by interjections from the Opposition benches and did not hear the remark. If the Minister was making such a reflection, I would counsel him not to. But I make no judgement about whether the Minister was or was not doing so.

The Hon. DUNCAN GAY: The installation of mandatory alcohol interlocks means drivers who have been convicted of high-range or repeat drink-driving will be physically prevented from drink-driving in the future because the interlock will prevent the vehicle from starting. Road safety experts estimate the introduction of mandatory interlocks will prevent at least 140 alcohol-related crashes, six fatalities and 102 injuries in the first five years alone. We also believe there will be about 500 fewer drink-driving offences per year across the State once mandatory interlocks are introduced. Drink-drivers who are convicted of a second or subsequent offence in a five-year period will also be required to pass a driving knowledge test.

The Government is serious about this issue, and that is why it will introduce additional penalties for drivers who exceed their demerit point limit twice in five years. We will require these drivers to re-sit the Driver Knowledge Test and complete a driver education course. These penalties bring to account drivers who take the greatest risks and put others in serious danger. All high-range and repeat offenders will be required to fit an interlock for a minimum of 12 months, which could see up to 8,000 people a year with interlocks in their vehicle. It will cost offenders about \$2,000 to have the devices fitted to their cars; and frankly, we make no apologies for that. Magistrates will have the power to set longer periods on the interlock if they think it is justified. [*Time expired.*]

SPEED CAMERAS

The Hon. ERNEST WONG: My question is directed to the Minister for Roads and Ports. Further to the Minister's answer last week about speed camera tolerances, will he advise whether there are different tolerance levels for fixed camera devices, mobile speed camera devices and point-to-point camera devices?

The Hon. DUNCAN GAY: We do not confirm or deny that there are tolerances in this State. If there were tolerances in this State—which we cannot confirm or deny—they would not vary from one device to the other. Following the question that I was asked by my friend the Hon. Greg Donnelly across the Chamber—and once we sorted out the difference in language—we discerned that underneath the variations in language there was the kernel of an appropriate question. The question arose not from a press release or policy announcement by us but from an article in a newspaper that the former Premier of New South Wales—

The Hon. Trevor Khan: Which one?

The Hon. DUNCAN GAY: Ms Keneally, the one that Walt deserted, the one that Walt dumped—

The Hon. Greg Donnelly: Point of order: The Minister is misleading the House. His remarks have nothing to do with the question that I asked.

The PRESIDENT: Order! I call the Hon. Greg Donnelly to order for the first time.

The Hon. DUNCAN GAY: The member's question had an element that needed to be looked at. The newspaper article indicated that the former Premier, Walt's former friend—

The Hon. Greg Donnelly: Point of order—

The PRESIDENT: Order! I hope the Hon. Greg Donnelly has a point of order and is not about to make a debating point.

The Hon. Greg Donnelly: The Minister is reflecting on a member on this side of the House. He knows he should not do that. He should desist from doing so.

The PRESIDENT: Order! The Hon. Greg Donnelly will resume his seat. I have the gist of the honourable member's point of order. He is drawing an extremely long bow. The Minister has the call.

The Hon. DUNCAN GAY: The newspaper article indicated that the former Premier was thinking of bringing the so-called tolerances—as the Hon. Greg Donnelly called them—back to zero. The then Deputy Leader of the Opposition, or Leader of The Nationals, who was the shadow Minister for Roads, said, "If they do that, we will reverse it and bring it back to where it is." The fact is that the Labor Government did not do that. Like many other things in New South Wales that they said they would do, they did not do it. Hence, if they did not do it, we do not need to reverse it.

YOUNG PEOPLE WITH DISABILITIES EMPLOYMENT

The Hon. NIAL BLAIR: My question is addressed to the Minister for Ageing, and Minister for Disability Services. Will the Minister update the House on how the Transition to Work program is helping young people with disability get jobs?

The Hon. JOHN AJAKA: I thank the Hon. Niall Blair for his question. As outlined in Goal 14 of the NSW 2021 plan, the New South Wales Government is committed to increasing the participation of people with disability in employment and further education. This includes facilitating smooth transitions between education, employment and retirement, as well as increasing employment opportunities for people with disability. A number of projects and strategies are available that are aimed at increasing the employment opportunities for people with disability, including the Transition to Work program. The Transition to Work program is designed for young people with moderate to high needs who are leaving high school and are unable to immediately access employment or attend TAFE or university because of their support needs.

Transition to Work is a two-year, time-limited program that is tailored to the needs and employment goals of the young person. The program assists young people to develop the necessary skills for employment and/or further education. Transition to Work funding for each participant for 2013-14 consists of \$20,320 per annum. Throughout the 2012-13 year, 1,991 participants were funded in the program. As at 29 October 2013 there were 1,401 funded participants in the Transition to Work program, which includes 2012 school leavers, other new entrants and people continuing from the previous year. People enter and exit Transition to Work at various points during the financial year, resulting in the 2012-13 Transition to Work expenditure of \$28.5 million. In a document entitled, "From Protection to Productivity: An Evaluation of the Transition to Work Program November 2009" it was stated that the Transition to Work program is "a very well designed initiative".

Each year, Transition to Work service providers are asked to report back on the outcomes of their Transition to Work participants. The Transition to Work outcomes data is collected 2½ years post program commencement. This ensures that the data collection captures participants who are approved to extend their program by six months. Since the inception of the Transition to Work program, nearly 1,800 young people from

a total of 3,239—that is, 55 per cent—have entered employment, with employment outcomes trending upwards. The most recent available Transition to Work outcomes are for 2012, reporting on 2009 school leavers. Of the 606 Transition to Work participants who began the program in 2010, being the 2009 school leavers, 64 per cent, or 390 individuals, moved into employment or further education; 353, or 58.3 per cent, to employment; and 37, or 6.1 per cent, to further education.

Goal 14 of the NSW 2021 baseline report is to increase opportunities for people with a disability by providing supports that meet their individual needs in order to realise their potential. The 2012-13 employment target of 62 per cent of the 2009 school leavers achieving employment or further education has already been exceeded. Transition to Work outcomes for 2013 of 2010 school leavers have recently been collected and are in the process of being collated and analysed. This outcomes data should be publicly available by January 2014. This program is another excellent example of bipartisan approaches by former and current Governments.

CARBON TAX REPEAL

Dr JOHN KAYE: My question without notice is directed to the Minister for Roads and Ports, representing the Minister for Resources and Energy. Has the Government commissioned any independent studies of the impacts of the repeal of the Federal Government's carbon price on the average New South Wales electricity bill? If so, will the Minister please release those studies?

The Hon. Dr Peter Phelps: On Halloween we have the zombie of Marxism's past.

The PRESIDENT: Order! I call the Hon. Dr Peter Phelps to order for the first time.

The Hon. DUNCAN GAY: I thank Dr John Kaye for his question. As he would be aware, the carbon tax is a Federal matter and as such the New South Wales Government has not commissioned any such studies. The Independent Pricing and Regulatory Tribunal has estimated that the carbon tax and other green-energy schemes will add around \$330 to a typical household bill for 2013-14.

Dr John Kaye: That is not per bill, it is annually.

The Hon. DUNCAN GAY: The member is correct. This makes the carbon tax one of the major contributors to electricity price rises in New South Wales.

The Hon. Lynda Voltz: What are the other ones, Duncan?

The Hon. DUNCAN GAY: Some of the gold-plated, ruby-encrusted works that those opposite put in place. The Independent Pricing and Regulatory Tribunal has provided a breakdown of the costs of the carbon tax. In order to reduce the impact of rising electricity prices, the New South Wales Government has strongly advocated for the removal of the carbon tax so that customers will not have to pay for the majority of this green impost. The latest pricing report of the Independent Pricing and Regulatory Tribunal states that average regulated prices in New South Wales for 2013-14 will increase by only 1.7 per cent, providing some relief for New South Wales customers. This is thanks to a number of steps the New South Wales Government has taken to deliver better outcomes for energy customers.

These steps include reforming the New South Wales electricity network businesses with more than \$2.5 billion in identified savings, directing the New South Wales network businesses to cap price rises at the consumer price index or below over the next six years, capping electricity company dividends at the forecast levels, commencing a review of competition in New South Wales retail energy markets, increasing the New South Wales Government's low-income household rebate and medical energy rebate, establishing a new family energy rebate, and reducing duplication in Federal and State green schemes. The removal of the carbon tax will build on the relief already offered. Whilst the New South Wales Government supports the development of sustainable energy, it must be at the least cost to the energy customer. It must also not involve schemes that deliver any subsidies to the industry at the expense of the broader community. Further information on the impost of the carbon tax on New South Wales households is available at the Independent Pricing and Regulatory Tribunal website www.ipart.nsw.gov.au.

DROUGHT ASSISTANCE

The Hon. STEVE WHAN: My question is directed to the Minister for Roads and Ports, representing the Minister for Primary Industries. The NSW Farmers Association has today criticised the Government's

north-west New South Wales drought package for failing to include fodder and stock transport subsidies. Will the Government immediately reinstate the 50 per cent fodder and stock transport subsidies that were available under the previous Government and are being demanded by the NSW Farmers Association?

The Hon. DUNCAN GAY: I thank the Hon. Steve Whan for his question. A lot of members of this House have concerns about the drought. I will give the honourable member the benefit of the doubt that he shares those concerns, though some days when he speaks on this issue in this House it is almost as if he approaches the subject with political glee. As honourable members know, conditions remain extremely dry across much of western and north-western New South Wales following an unseasonably warm August. It was a bobtail spring, as most of would know, and the warmest September on record. On Wednesday 30 October the New South Wales Government announced a suite of immediate assistance measures to help primary producers and others in the Bourke, Walgett and Brewarrina local government areas. These measures are backdated to 1 July 2013.

The Hon. Steve Whan: They say things are pretty tough in other areas too.

The Hon. DUNCAN GAY: The member asked a question, I am giving him an answer but he keeps interjecting. These measures are: a waiver on Livestock Health and Pest Authority rates; the deferral of special conservation scheme loans by the Rural Assistance Authority on a case-by-case basis; and the allocation of funding for Walgett Shire Council for the cartage of drinking water to the Grawin opal fields, which are suffering from water shortages. In addition we have announced a new \$20 million farm innovation fund to provide producers with loans at concessional interest rates for in-drought and drought preparedness, replacing the previous special conservation loan scheme.

We have also announced \$4.4 million to fund phase 3 of the popular Cap and Pipe the Bores Program. There is also \$6 million of Commonwealth and New South Wales government funding for the Mallowa Creek water supply project to guarantee stock and water supplies for a group of landholders between Moree and Collarenebri. We will continue to monitor the situation. This announcement follows a visit by a delegation from the Regional Assistance Advisory Committee, led by its chair, David Palmer. I am sure many members know David Palmer, a decent man.

The Hon. Rick Colless: A good man.

The Hon. DUNCAN GAY: Mr Palmer knows the industry and the region. The committee visited a number of regions and towns including Coonamble, Bourke, Weilmoringle, Walgett and Lightning Ridge. During the tour Mr Palmer met with more than 150 landholders, along with the acting general manager of the Rural Assistance Authority, John Newcombe, and Bourke rural financial counsellor Sharon Knight. On their return the committee worked urgently on devising recommendations for assistance measures to deal with this dreadful situation, which has become the basis of the package. They provided feedback from the tour, but this is not finite. They are continuing to monitor the situation and review the assistance needed. It is not something that starts on one day and finishes on the next. It is an issue of great concern to those communities. They are facing the same situation as that faced recently by people in the Blue Mountains. This is no less a disaster to them as it was to the people in the Blue Mountains.

The Hon. STEVE WHAN: I ask the Minister for Roads and Ports a supplementary question. Will the Minister elucidate his answer and inform the House whether in its report to the Government the Regional Assistance Advisory Committee recommended that fodder and stock transport subsidies should be included as part of the drought package?

The Hon. DUNCAN GAY: I believe I addressed that question earlier when I indicated that they came back with an initial range of recommendations, but they will continue to monitor the situation and examine the best additional things—

The Hon. Steve Whan: Is that a yes or a no, Duncan?

The Hon. DUNCAN GAY: It is the answer I gave the member earlier and it is the answer I am giving him now. We have professionals dealing with people in the situation, not a politician sitting on the losers lounge trying to play semantics. We are trying to fix it up.

The Hon. Steve Whan: Semantics? Farmers wouldn't think that was semantics, Duncan. You're out of touch.

Pursuant to sessional orders business interrupted to permit a motion to adjourn the House if desired.

The House continued to sit.

The Hon. MICHAEL GALLACHER: The time for questions has expired. If members have further questions I suggest they place them on notice.

Questions without notice concluded.

Pursuant to sessional orders Government Business proceeded with.

SITTING SCHEDULE 2014

The Hon. Duncan Gay tabled an indicative sitting calendar for 2014.

NOTICES OF MOTIONS

Sitting Schedule 2014

The Hon. Duncan Gay, by leave, gave a notice of motion under Standing Order 71 relating to the 2014 sitting dates.

ADJOURNMENT

The Hon. DUNCAN GAY (Minister for Roads and Ports) [3.34 p.m.]: I move:

That this House do now adjourn.

AUSTRALIAN LIGHT HORSE BATTLE OF BEERSHEBA

Reverend the Hon. FRED NILE [3.34 p.m.]: I wish to give a salute to the 1917 Light Horse victory at Beersheba. A commemorative service organised by the Australian Christian Nation Association was held on Sunday 27 October 2013 to mark the ninety-sixth anniversary of the Australian Light Horse charge at Beersheba, Palestine, on 31 October 1917. About 200 people attended and shared in the service held at Remount Park, Holsworthy, which was led by music from the Blacktown Salvation Army Band. Members of the St George Sutherland Pipe Band played a central role in the ceremony, leading in the A Troop Richmond-Windsor Light Horse—the re-enactment group of horseriders—dressed in traditional Light Horse uniform.

The Deputy Commander of the 5th Brigade Holsworthy, Colonel Nick Roundtree, gave the main address. Other speakers included the member for Hughes, Craig Kelly; Captain Bryce Steep of Red Shield Defence Services; Peter Allen of the NSW Association of Jewish Ex-Servicemen and Women; and Greg Whitehead of the Australian Christian Nation Association. The ceremony concluded with the *Last Post* and a minute's silence, followed by closing remarks, a vote of thanks and a closing prayer, which I gave as the patron and director of the Australian Christian Nation Association.

The capture of Beersheba by Australian, New Zealand and British soldiers is seen as a turning point in the history of World War I. It was vital for the allied forces to capture the heavily fortified town in Gaza, which was held by the Turkish and German forces and defended by more than 1,000 Turkish riflemen, nine machine guns, and two aircraft used for bombing and machine-gun fire. The background to the charge of the Australian Light Horse is contained in some of the diaries of the soldiers who took part. Lieutenant General Sir Harry Chauvel gave orders on the evening of 30 October 1917 to Major General Chaytor's ANZAC Mounted Division to close the Beersheba road at Sakati in order to prevent Turkish reinforcements from entering and also to cut off escape from the town. Once the road was secured Chauvel was to storm Beersheba using Major General Hodgson's Australian Mounted Division.

General Sir Edmund Allenby, who was in charge of the whole expeditionary force, had insisted that Beersheba must be captured on the first day of operations. It meant that the Australian 20th Corps and Chauvel's Desert Mounted Corps had to take part in a night march of more than 40 kilometres. At 3.30 p.m. that day there were only a few hours of daylight remaining and orders were issued for the final phase of the struggle—the

occupation of Beersheba. Lieutenant General Sir Harry Chauvel decided to put Grant's 4th Light Horse Brigade straight at the remaining trenches from the south-east. Chauvel knew that he must take the town before dark in order to secure the wells for Major General Allenby's large force. Private Keddie recorded in a diary:

We began to talk among ourselves saying Beersheba will be taken and us not doing anything when about 5 o'clock our major came and said that Beersheba had not been captured but we were going in.

Lieutenant General Sir Harry Chauvel said:

... it took time to assemble them and push them off.

General Grant gave the order personally to the 12th Light Horse Regiment, saying:

Men you're fighting for water. There's no water between this side of Beersheba and Esani. Use your bayonets as swords. I wish you the best of luck.

Members of the Light Horse were equipped with rifles and they held their bayonets as swords, which would have been more suited to a cavalry-style charge. This was a great victory for the Australian Light Horse. They captured Beersheba in less than an hour, suffering 67 casualties and, sadly, 31 deaths. It was a miraculous feat when they were charging over open ground and under machine gun fire. I visited Beersheba in January this year and saw the battlefield, which is very open and flat. It would have been very good for horse charging but not so good for machine gun fire. I also visited the monument to the Light Horse in the Light Horse Memorial Park near that battlefield. I was very pleased to support this commemoration. I believe interest in Beersheba will grow over the next few years leading up to the 100th anniversary in 2017 and I hope that many people will take part in that commemoration.

GRAINCORP TAKEOVER PROPOSAL

The Hon. NIALL BLAIR [3.38 p.m.]: In April this year American agribusiness giant Archer Daniels Midland made a bid for Australian storage and transport company GrainCorp. If the bid is successful it will cause massive problems for domestic producers and consumers now and into the future. The sale of GrainCorp would take an Australian-based company whose interests are in seeing Australian industry flourish and thrive, and turn it into a US-based company whose interests are in seeing its profit margin increase as quickly as possible. GrainCorp enjoys an extensive reach in the transporting of grain on the southern eastern seaboard. However, GrainCorp would make up a mere 4 per cent stake in the Archer Daniels Midland multinational empire. I for one do not want decisions about practically every issue regarding the transportation and storage of grain on the eastern side of Australia made in a distant American boardroom. I do not want to see this industry swallowed and digested beyond all recognition for the sake of a quick dollar.

Do not get me wrong—foreign investment is a fantastic thing and something that Australia greatly needs. However, foreign investment is not the issue at hand. Although part of Archer Daniels Midland's bid includes a \$300 million investment in infrastructure, that sum is practically matched by GrainCorp's own \$250 million infrastructure investment plan. For a once-off capital expenditure of \$50 million, Archer Daniels Midland will remove \$50 million to \$70 million annually from the Australian economy, sending it back to the US or elsewhere. As members can see, this is not about rejecting foreign investment, this is about rejecting foreign ownership of a company that producers across our State and nation rely on to store and transport their goods.

A decision to reject a takeover of this kind is not without precedent. In 2001 the then Federal Treasurer, Peter Costello, made the decision to reject Shell's takeover bid of the Australian-owned company Woodside Petroleum. After carefully considering the facts, the Treasurer decided that it would not be in Australia's interest to have Woodside Petroleum lose control of the North West Shelf project, Australia's largest developed energy resource. At that time many naysayers and doomsday prophets said that it would spell the end for foreign investment in Australia. The reality proved to be different. In reviewing the past 10 years, we have seen foreign direct investment increase with no noticeable impact from Peter Costello's decision. I implore the current Federal Treasurer, Joe Hockey, to follow the example of his Coalition predecessor and reject the foreign takeover of GrainCorp Limited by Archer Daniels Midlands.

The criterion by which the Treasurer and the Foreign Investment Review Board are to make their decision when considering matters of foreign investment is whether the sale is in the national interest. Let me make some things abundantly clear: To lose control of our food transport and storage is not in the national interest; to lose control of our ports is not in the national interest; to move decision-making in this critical area

off-shore is not in the national interest; and to increase costs to both domestic growers and consumers is not in the national interest. A motion to reject this sale has unanimously passed through the highest levels of The Nationals; from the New South Wales State Conference to the Federal Conference, as well as the New South Wales Nationals Central Council. The rejection of this sale has many strong advocates within The Nationals, such as many of my Federal colleagues including the Hon. Michael McCormack, the Hon. Fiona Nash and the Hon. Barnaby Joyce. Today I add my voice to theirs.

We are a party that looks out for both the producer and the consumer. The sale of this company will only mean a short-term gain and long-term pain for both. It is worth noting that a majority of foreign acquisitions have been approved by the Foreign Investment Review Board and the Treasurer in the past. The case of GrainCorp should be the exception. GrainCorp is too important to the prosperity and security of Australia. We have no choice but to reject this sale. For years we have seen Australian icons sent overseas, including such household names as Fosters, Arnott's and Vegemite. The case of GrainCorp is one where selling our past could cost us so much in the future. I want to see Australian agriculture flourish and harness its full potential, and the best way to do that is to not sell the farm for money to buy food. This critically important company should remain in Australian hands.

SCHOOL BULLYING

The Hon. PENNY SHARPE [3.43 p.m.]: Tonight I will talk about an issue brought to my attention by a young man from Western Sydney who I will call Ben. Ben contacted me last week; he wanted to share with me his concerns about what is happening in schools and to share his experience of being at school. Ben wrote:

Today, I am emailing you about the School system in NSW, and Sydney in particular, and the amount of bullying that goes on in schools.

I suffer from a condition called Asperger's Syndrome. [You] will remember that I [sent you a message] one day with a link to my site, which boasts 1900 posts in a little under 3 months. I created a place to get away from all of the bullying that goes on with people in schools within the Sydney area that suffer from any disability, and even those that don't. We create a welcoming environment away from all the pain, where people can make friends, some that have the same condition.

When we are at school, we are told to simply "ignore the bullies", they will go away. I tried this, it didn't work. Something happened, then something else happened, and it gave them more ammo to give me hell.

I went to High School, in Western Sydney for 3 years (Jan 2007 to Dec 2009) and in that time, I had the worst time of my life. I ended up being sexually assaulted, within the school grounds, by another student, my alleged best friend at the time. When I went to report it, it got out, all over the school. They cheered this kid on, and made him out to be a hero. Let there be no confusion, I was never popular in High School. I was not very high on the chain.

...

When I retaliated, which was rare, I ended up threatening another kid with a pair of scissors. It was the closest object I had, and I was in a Maths class. I ended up getting an afternoon detention for it. I don't feel that we are being hard enough on the students that are causing the problems. Instead, we are punishing the students that are being bullied.

Unfortunately, bullying appears all too commonplace for young people who are different. The National Centre Against Bullying states that a survey of 169 students aged 5 to 17 years identified with autism spectrum disorders in South Australia found that 62 per cent of the students reported that they were bullied once a week or more often. Like Ben, many young people may end up retaliating and find themselves in trouble. Unfortunately, many educational settings and many individuals lack the knowledge or skills to successfully intervene to stop the bullying or work with young people like Ben. In 2008 Dr Trevor Clark, Director, Education and Research, Autism Spectrum Australia, told a parliamentary inquiry:

High-functioning autism/Asperger's children and young people (and their parents) are misunderstood. Although these young people "look normal" in every respect, they may behave in ways that seem immature, rude, defiant, sullen, impertinent, or overly eager, persistent, or eccentric. All too frequently, adults personalise and blame these young people for inappropriate social behaviour, and peers reject, ostracise or bully them.

The impact of this almost universal misunderstanding and isolation on the emotional state of young people with high-functioning autism/Asperger's cannot be underestimated. Most suffer from severe anxiety, social phobia and depression and are at heightened risk of self-harm and suicide.

As a result of the complex nature of the social and emotional challenges faced by this group of 9-14 year olds with HFA and Asperger's Disorder many display challenging behaviours as a response to unsupportive or even aversive conditions in educational and community settings.

Unfortunately these behaviours often lead to school suspension and exclusion.

The number of children with autism spectrum disorders in our schools is increasing. No-one is sure whether this is through better diagnosis or an increased incidence in the community. But what we do know is that with more young people presenting with autism spectrum disorders, we need to better support our schools and teachers so they in turn can better support all young people in our schools. I know educational settings have taken great steps towards additional teacher training and better resourcing. But innovative approaches like Ben's website and forums, where young people can come together and support each other, offer an additional support. Ben created a website for people like him to meet and talk about how life is, share their experiences and support one another.

As Ben says, in a little over three months the forums have had almost 2,000 hits. His online community is a safe place for young people to talk about their experiences in school and life. Ben has utilised technology in a creative way to create a supportive community for young people who may face challenges communicating with their peers. Many of the stories on Ben's forums are sad. But the collaborators treat each other with respect and share their experiences to support each other. No-one can fail to be moved by Ben's story. I told Ben that I would give him a voice in the New South Wales Parliament by telling his story. I thank him for allowing me to share it and for contacting me to tell me of his experience so that, perhaps, we can make life a bit better for someone else.

RACING INDUSTRY AND GAMBLING

Dr JOHN KAYE [3.48 p.m.]: For many Australians, the Melbourne Cup will be their one flutter on the races for the entire year. It is a day when workplaces, families and mates get together and share the thrill of a wager, the fun of watching a race enhanced by a small financial stake and the joy of winning or, more commonly, the minor disappointment of losing. It is a national day of celebration earmarked by social events, fashion and fun. However, many participants in Melbourne Cup celebrations will be blissfully unaware of the harsh reality that the industry plays a major role in the climbing toll of gambling addiction and fails to effectively regulate itself to avoid appalling animal welfare outcomes.

The truth might disturb casual punters and the millions of Australians who will join in the Melbourne Cup festivities. However, the toll on vulnerable gamblers and horses will continue unabated unless the thoroughbred racing industry is forced to address the consequences of its rampant promotion of wagering and the widespread exploitation of horses. According to the University of Sydney, betting on horseracing comprises 14 per cent of total wagering expenditure in Australia, equating to \$2.6 billion annually. While many people placing a bet on the Melbourne Cup are occasional opportunistic gamblers, it would be irresponsible to gloss over the role that the Spring Racing Carnival plays in propagating a culture of gambling and its associated social harms.

The Melbourne Cup plays a role in perpetuating and normalising the \$95 billion that Australians spend each year on gambling. A University of Sydney study found that participation rates for race gambling are significantly higher in young people who are more vulnerable to gambling addiction. Inevitably those of us who question the ethics and practices of the horseracing industry, particularly at the time of the Melbourne Cup, are accused of being un-Australian, wowsers and the fun police. However, conflating a love of socialising, fashion and taking much-needed time out from work with some of the abhorrent industry practices fails to do justice to the problem gambling and significant horse suffering.

The industry itself has admitted that the fate of failed racehorses is a problem. Peter McGauran, Chief Executive Officer of the Australian Racing Board, labels it "an unresolved issue". Significant numbers of failed and injured racehorses exit the racing industry each year, many bouncing from owner to owner only to end up at a knackery to be slaughtered for pet food. Of the 18,000 foals that are born in Australia each year, it has been estimated that 70 per cent will never make it onto the track. Earlier this year, the horrific treatment of horses at a knackery in Laverton, Victoria, was exposed. Horses were being beaten, shot in front of one another and dragged across gravel. One horse, while conscious, had her throat cut and her tail cut off. What happens in New South Wales knackeries is largely unknown. I sincerely hope that the horses here do not have to endure what their race mates had to suffer in Victoria.

However, the lax regulatory arrangements do not offer much assurance that all these horses, some of them once champions, receive a humane death. For the three years or so that some horses have a racing career, their racing and training regime is often marred by injury, illness and deprivation. A high proportion of horses in the racing industry are fed high concentrate diets and denied the opportunity to graze continuously, resulting in 89 per cent of horses experiencing gastric ulcers. More than 75 per cent of thoroughbred racing horses in the

racing industry also experience bleeding in the lungs and windpipe, an exercise-induced pulmonary haemorrhage due to overexertion. The use of solitary confinement and whipping also raises significant concerns about the welfare of horses in the racing industry.

There are better ways to regulate the industry and to define and enforce standards for both marketing and the treatment of horses. Both short- and long-term regulatory reforms will be required if the racing industry is to meet public expectations of the treatment of animals. According to the 2012 annual report of Racing NSW, more than \$1.1 billion of New South Wales TAB wagering sales is placed on New South Wales thoroughbred racing each year, along with a further \$3 billion through other wagering operators. More of this money must be invested in rehabilitation, retraining and rehoming efforts of thoroughbred racehorses. The current model, which sees a significant number of horses discarded once they are no longer turning a profit, is unacceptable.

There is an urgent need for a comprehensive review of the regulatory framework of thoroughbred racing in New South Wales. Having one body that both regulates and promotes the industry creates an inherent conflict of interest in which animal welfare and social responsibility run a poor last behind industry profits and growth. This Melbourne Cup punters should enjoy their flutter but both the horses and problem gamblers are in desperate need of a critical analysis of the long-ignored human and animal welfare costs of this industry.

BATTLE OF BROKEN HEARTS DOCUMENTARY

The Hon. SHAOQUETT MOSELMANE [3.53 p.m.]: Last night I attended the premiere screening of the documentary *Battle of Broken Hearts* in the Parliament Theatre. I congratulate the member for Auburn, Barbara Perry, on hosting the screening of this important documentary, which captures a snapshot of Australia's Asiatic Afghan Muslims as an important chapter in Australian history. It retraces the steps of some of the early Afghan cameleers, many of whom hailed from Afghanistan, Pakistan, Punjab and Turkey but in a typical and deliberate colonial act were all designated as Afghans. *Battle of Broken Hearts* is a documentary about some of Australia's migrants. It records their amazing lives and their years of suffering from the indignation of discrimination and injustice. It is another dark chapter of a white Australia that we find abhorrent today.

History is usually written through the lens of prevailing dominant perspectives and with it come some biases, no matter how sympathetic the author. In many cases the history of people and events is unwritten and forgotten until dedicated individuals step up to tell the story. This fascinating chapter of Australia's history draws focus on the Ghans' suffering, their aspirations, values and humanity, and their contribution to the Australia we live in today. Few people in Australia know about the courage of Afghans traversing some of Australia's most hostile terrain. In fact, if it were not for Burke and Wills, the humble camel and The Ghan, very few would have any knowledge of these early pioneer settlers.

Australians should know that the Burke and Wills expedition was as much their expedition as it was the expedition of Afghan Australians Pashwar and Karachi. Value must be given equally to Burke and Wills and Pashwar and Karachi. All four played a role and all should be equally recognised. The contribution of Pashwar and Karachi must not be undervalued. In an era of heroic exploration, the Muslim Afghan Australians have rarely been given adequate credit for their achievements. However, expedition diaries confirm that several members of this group deserve the status of explorers, and our history books should reflect that in the interests of history and truth.

An important part of Afghan history that is not known to many is the Afghan relationship with Indigenous Australians. The spirituality of these two groups and their social status as oppressed people brought these two Australian peoples, one from across the globe, to partnership and unity in marriage. Muslim cameleers travelled throughout the inland and met many people of Aboriginal nations. They exchanged their skills, knowledge, goods and spirituality, as did the Arabs on the Silk Road trade route throughout Asia, Spain and Europe. Any influences they brought to Australian life were brought in peace. However, peace was not always extended to the Muslim Afghans or to the Turks, Pakistanis, Punjabis and others who were depicted as Ghans. White colonial Australia brought them adversity and discrimination.

The ugly face of Australian nationalism produced an anti-Afghan movement, and the noose around the neck of Afghans began to tighten as regulations and laws were introduced that made their life unbearable. The Afghans' race and colour, like the Asians, made them targets for nationalists and racists, who saw the Afghans as even more alien given their Islamic faith. Even with all the oppression that the Afghans and their descendants suffered, they continued to believe in Islam. Just as Christianity played a significant role in Australian history,

so too did Islam, albeit on a different level. I take this opportunity to congratulate Fadle "Fred" El Harris on his filmmaking contribution and writer-director Kuranda Seyit on bringing the documentary *Battle of Broken Hearts* to life and capturing the contributions and tragic lives of Asiatic Australian Muslims.

In conclusion, I note that, like many others, the Afghans, Turks, Pakistanis, Punjabis and other heroic Australians laid the foundation, in part, for what Australia is today. Their descendants retain strong links with this distinctive heritage. I thank all those like Mr El Harris, Mr Seyit and many fair-minded Australians who objectively reveal Australian history in a manner that enriches our understanding of Australia and its history. In my mind, the documentary is not just a revelation of a chapter of our history but also a powerful message that helps us shape our multicultural, multi-faith Australia. The *Battle of Broken Hearts* documentary also tells us that, contrary to some views, Australia is not a Judeo-Christian country; it is as much Christian, Islamic, Jewish, Buddhist, Hindu, Sikh, Shinto and atheistic. I recommend the documentary to all members and hope that it is screened in schools throughout Australia.

STATE FINANCES

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [3.57 p.m.]: Economically this week has been significant for the O'Farrell-Stoner Government in New South Wales. We have had confirmation of the State's triple-A credit rating. The 2012-13 budget result was announced on Tuesday and the 2012-13 State accounts were announced today. This is an opportune time to reflect on this Government's progress in restoring the fiscal position of this State, an area of consistent failure under the previous Labor Government. Indeed, it is something that should be celebrated in this Chamber more often than it is.

I turn to the State accounts that were released today, which received an unqualified audit from the Auditor-General for the first time in more than a decade. We saw a \$239 million surplus, which is a modest improvement on the estimated \$374 million deficit the Government was expecting. I note in that regard the comments of the Treasurer, which indicate some one-off items, including a significant increase in stamp duty as a result of an improvement in the property market, which is welcome news in New South Wales, as well as the one-off stamp duty component for the long-term leases of the ports.

I note also that the improvement comes from a higher than expected amount of money brought forward by the former Rudd Labor Government, an amount of \$123 million, which the Rudd Government shovelled in the direction of the New South Wales Government as it was being shovelled out of Federal politics by the people of Australia. It is very encouraging that this Government has achieved this surplus earlier than expected. It improves the State's metrics going forward, again bolsters our triple-A rating, which was confirmed last week, adds momentum to continuing recovery in New South Wales's fiscal position and provides additional capacity to invest in vital infrastructure.

Members would be well aware of this Government's strong plans to reinvest in infrastructure in this State. We often saw members opposite fritter away the funds. One need only remember the iconic failure of the Labor Party, the Rozelle metro, the \$500 million *Mary Celeste* of the New South Wales transport system, which was an absolute disgrace and is an indication of Labor's credibility on fiscal management. I note also that there were variations in the budget numbers and the Auditor-General highlighted a few areas in the State accounts where further improvement by this Government is needed. However, I note the comments of the Auditor-General that we have come a long way in the past 12 months since the release of the previous year's State accounts.

I acknowledged at that time, 12 months ago, that there were significant errors. In that time, with the assistance of the Auditor-General, the Government has tried to roll out better financial systems to ensure that directors, chief financial officers and chief executive officers of clusters meet regularly to improve the financial accountability of systems in this State to minimise any errors in the budget. We have seen that hard work come to fruition under the leadership of the Treasurer in this State, which is very pleasing indeed. I note also that the O'Farrell Government has again brought expenses in lower than forecast. This is the third time in a row that this has happened and it is unprecedented in this State over the past 14 years. During the last 10 years of the Labor Government budget expenses blew out every year. If one were to add up that blowout over those 10 years, one would find an accumulated blowout of \$20 billion; New South Wales could have had \$20 billion in its coffers to seriously address its infrastructure problems, which the former Labor Government ignored.

Nonetheless, I am proud to be part of a Government that is meeting the fiscal challenges in New South Wales. In just over 2½ years, under the stewardship of the Treasurer, we have come a long way in restoring the

fiscal position of New South Wales. However, it is still a work in progress. It is not time to celebrate in the way that the shameless previous Labor Government used to celebrate in this Chamber, with Eric Roozendaal talking about green shoots. We still have a lot of work to do. We will continue to do that work and I very much look forward to updating the House on our continued progress in that regard.

BLACKTOWN CHILDCARE SERVICES

The Hon. SOPHIE COTSIS [4.02 p.m.]: Last night more than 300 parents, childcare staff and children rallied outside Blacktown City Council to urge Liberal councillors to reject outright plans to close childcare services in the Blacktown City Council area. Speakers at the rally were members of the United Services Union, Federal members Michelle Rowland and Ed Husic, Blacktown Labor councillors, Unions NSW and parents. Mother after mother spoke passionately about the importance of childcare services in Blacktown. I was in attendance and congratulated the organisers on the rally. I assured all those present that New South Wales Labor would be on their side and encouraged everyone to continue with their campaign.

Liberal Mayor Len Robinson, who ordered the report into the future of the centres, told a council meeting that he did not believe the recommendations went far enough and he wanted to examine the privatisation or closure of all 25 childcare services. He also claimed that these services cost the council \$3 million a year. However, even his own report showed that this statement is false and that the true cost to ratepayers is less than half that amount. We will continue the fight against these closures.

[Time for debate expired.]

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

Motion agreed to.

The House adjourned at 4.04 p.m. until Tuesday 12 November 2013 at 2.30 p.m.
