LEGISLATIVE COUNCIL

Tuesday 12 November 2013

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The President (The Hon. Donald Thomas Harwin) took the chair at 2.30 p.m.

The President read the Prayers.

The PRESIDENT: I acknowledge the Gadigal clan of the Eora nation and its elders and thank them for their custodianship of this land.

ASSENT TO BILLS

Assent to the following bills was reported:

Coal Mine Health and Safety Amendment (Validation) Bill 2013
Industrial Relations Amendment (Industrial Court) Bill 2013
Companion Animals Amendment Bill 2013
Crimes (Domestic and Personal Violence) Amendment Bill 2013

ADMINISTRATION OF THE GOVERNMENT OF THE STATE

The PRESIDENT: I report the receipt of the following message from the Honourable Thomas Frederick Bathurst, His Excellency the Lieutenant-Governor:

T Bathurst — Office of the Governor
LIEUTENANT-GOVERNOR — Sydney 2000

The Honourable Thomas Frederick Bathurst, Lieutenant-Governor of the State of New South Wales, has the honour to inform the Legislative Council that, consequent on the Governor of New South Wales, Professor Marie Bashir, being absent from the State, he has assumed the administration of the Government of the State.

Sunday 3 November 2013

ADMINISTRATION OF THE GOVERNMENT OF THE STATE

The PRESIDENT: I report the receipt of the following message from Her Excellency the Governor:

Marie Bashir — Office of the Governor
GOVERNOR — Sydney 2000

Professor Marie Bashir, Governor of New South Wales, has the honour to inform the Legislative Council that she has re-assumed the administration of the Government of the State.

Tuesday 12 November 2013

GOVERNMENT SECTOR EMPLOYMENT LEGISLATION AMENDMENT 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.

Motion by the Hon. Michael Gallacher 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.

SENATE VACANCY

Resignation of Senator Robert John Carr

The PRESIDENT: On Tuesday 29 October 2013 a message was reported from the Governor transmitting a despatch received from the President of the Senate notifying that a vacancy has happened in the representation of the State of New South Wales in the Senate through the resignation of the Hon. Bob Carr on 24 October 2013. The despatch from the President of the Senate noted that, "The resignation was expressed as applying in respect of the senator's current term, which concludes on 30 June 2014, and also to the new term to which he was elected at the recent half-Senate election, commencing on 1 July 2014."

On Tuesday 29 October 2013 a further message was reported from the Legislative Assembly, advising that it had resolved to meet with the Legislative Council for the purpose of sitting and voting together to choose a person to hold the place in the Senate rendered vacant by the resignation of Senator the Hon. Bob Carr, and requesting that the Legislative Council fix a time and place for the joint sitting. Consideration of the message stands an order of the day for today.

On 30 October 2013 the Clerk of the Parliaments and the Clerk of the Legislative Assembly, on behalf of myself and the Speaker, sought urgent legal advice from the Crown Solicitor as to whether there is any impediment to the Parliament of New South Wales filling not only the current casual vacancy in the Senate but also the vacancy for the six-year term starting on 1 July 2014 at the one joint sitting or whether the two vacancies should be dealt with separately. I table the advice of the Crown Solicitor, dated 1 November 2013, together with the relevant instructions from the Clerks.

Documents tabled.

PHILIPPINES TYPHOON DISASTER

The PRESIDENT: I inform the House that, on behalf of members of the Legislative Council, I have sent a message of condolence to the Consul General of the Philippines expressing sympathies and condolences to the relatives and friends who have suffered the loss of loved ones during the floods caused by Typhoon Haiyan.

Members and officers of the House stood in their places as a mark of respect.

MR TREVOR McDONALD, SUBEDITOR, PARLIAMENTARY REPORTING STAFF

The PRESIDENT: It is with the deepest regret that I have to inform the House of the death of Trevor McDonald, who passed away from a diabetes-related illness on Saturday 9 November 2013. Trevor served the Parliamentary Reporting Service, or Hansard as we know it, in the New South Wales Parliament for a total of 22 years, from March 1984 until October 1990 and again from March 1998 until his passing. He was promoted to the position of Senior Reporter in July 2011 and to the temporary position of Subeditor in August 2013. Trevor had extensive court reporting experience, having commenced his career as a court reporter in July 1975. While Trevor worked in all jurisdictions, the majority of his work was done in the Supreme Court, where he worked with Justice Roden. Trevor worked as a court reporter in Hong Kong from October 1990 until March 1998.

Trevor was a highly valued member of the Hansard team for a total of 22 years and he will be sorely missed by his colleagues. In particular he will be missed for his wide general knowledge and sense of humour. Trevor is survived by his wife, Jan; his children, Amanda and Matthew; and his grandchildren, Annalise, Zachary and Mia. I welcome Matthew into the President's Gallery today for this tribute to Trevor. On behalf of the House I extend to Trevor's family the deepest sympathies of the Legislative Council for their loss sustained.

Members and officers of the House stood in their places as a mark of respect.

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

LIBERATION OF GRENADA

Motion by the Hon. Dr PETER PHELPS agreed to:

That this House:

(1) Notes that 25 October 2013 was the thirtieth anniversary of the start of Operation Urgent Fury, the liberation of Grenada by the armed forces of the United States and the Regional Security System.

(2) Remembers the courage and conviction of the former long-serving Governor-General, the late Sir Paul Scoon, GCMG, GCVO, OBE, who requested intervention to save his nation from a Communist dictatorship, and who died in Grenada only last month.

(3) Notes that, since 1983 Grenada has been a parliamentary democracy and remains to this day a valued member of the Commonwealth.

(4) Sends its best wishes to Prime Minister Keith Mitchell, members of the Grenada Parliament, and all Grenadians on this thirtieth anniversary of their liberation from Communist dictatorship.

SELECT COMMITTEE ON GREYHOUND RACING IN NEW SOUTH WALES

Extension of Reporting Date

Motion by Dr JOHN KAYE, on behalf of the Hon. Robert Borsak, agreed to:

That the reporting date for the Select Committee on Greyhound Racing in New South Wales be extended to Friday 28 March 2014.

RACIAL AND CULTURAL DISCRIMINATION

Motion by the Hon. MARIE FICARRA agreed to:

That this House notes:

(1) A joint open letter from concerned community leaders in New South Wales to the New South Wales community condemning the recent violent and anti-Semitic attack on a Jewish family in Sydney's eastern suburbs published in Sydney media.

(2) That the letter states that:

(a) violence, and violence that is motivated by racial, cultural or religious hatred is abhorrent to us and unacceptable in our diverse society;

(b) they commend the bystanders and others who acted with civic responsibility and courage, and came to the aid of the victims; and

(c) an attack like the one that has taken place also attacks our overall way of life, therefore such incidents—while generally isolated in our society—need to be taken very seriously and need to be used by all of us to demonstrate commitment to Australia's predominantly successful multicultural model.

(3) That those who have co-signed the letter include:

(a) Maha Abdo, OAM, Executive Officer, United Muslim Women Association Inc;

(b) Sam Almaliki, Senior Manager for Community Engagement, Cricket Australia;

(c) Madenia Abdurahman, President, Together For Humanity Foundation;

(d) Sam Chu, President, Australian Chinese Community Association;

(e) Reverend Bill Crews, Founder and Chief Executive Officer, Exodus Foundation;

(f) Samier Dandan, President, Lebanese Muslim Association;

(g) Peter Doukas, Chair, Ethnic Communities' Council NSW;

(h) Mark Franklin, Executive Officer, Ethnic Communities' Council NSW;

(i) David Hynes, President, Australian Baseball Federation;

(j) Rabbi Zalman Kastel, National Director, Together For Humanity Foundation;

(k) Allan Lee, Chair, Australian Chinese Charities Foundation;

(l) Reverend Dr Patrick J McInerney, Director, Columban Mission Institute;

(m) Pino Migliorino, President, Federation of Ethnic Communities Councils of Australia;

(n) Cav. Felice Montrone, OAM, Secretary General for Australia, Confederation of Italians in the World;

(o) John Petropolous, President, Australian Hellenic Council;

(p) Paul Powers, Chief Executive Officer, Refugee Council of Australia;

(q) Pete Shmigel, Director, Australian Federation of Ukrainian Organisations;

(r) Dave Smith, Chief Executive Officer, Australian Rugby League Commission;

(s) Dr Yadu Singh, President, Indian Australian Association of NSW Inc;

(t) Albert Vella, President, NSW Federation of Community Language Schools; and

(u) David Gallop, Chief Executive Officer, Football Federation of Australia.

LEGISLATION REVIEW COMMITTEE

Report

The Hon. Dr Peter Phelps tabled a report entitled, "Legislation Review Digest No. 48/55", dated 12 November 2013.

Ordered to be printed on motion by the Hon. Dr Peter Phelps.

TABLED PAPERS NOT ORDERED TO BE PRINTED

The Hon. John Ajaka tabled, pursuant to Standing Order 59, a list of all papers tabled in the previous month and not ordered to be printed.

AUDITOR-GENERAL'S REPORT

Report

The Clerk announced the receipt, pursuant to the Public Finance and Audit Act 1983, of the Auditor-General's Financial Audits Report, "Volume Four 2013—Focusing on Electricity", dated November 2013, received out of session and authorised to be printed on 4 November 2013.

SYDNEY METROPOLITAN BUS CONTRACTS

Production of Documents: Return to Order

The Clerk tabled, pursuant to resolution of the House of Thursday 17 October 2013, documents relating to an order for papers regarding bus contracts received on Thursday 31 October 2013 from the Director General of the Department of Premier and Cabinet, together with an indexed list of the documents.

Production of Documents: Claim of Privilege

The Clerk tabled a return identifying those of the documents that are claimed to be privileged and should not be tabled or made public. The Clerk advised that pursuant to standing orders the documents are available for inspection by members of the Legislative Council only.

NSW HEALTH LABOUR EXPENSES CAP

Production of Documents: Return to Order

The Clerk tabled, pursuant to resolution of the House of Thursday 17 October 2013, documents relating to an order for papers regarding NSW Health labour expenses cap received on Thursday 31 October 2013 from the Director General of the Department of Premier and Cabinet, together with an indexed list of the documents.

Production of Documents: Claim of Privilege

The Clerk tabled a return identifying those of the documents that are claimed to be privileged and should not be tabled or made public. The Clerk advised that pursuant to standing orders the documents are available for inspection by members of the Legislative Council only.

GOVERNMENT EXECUTIVE APPOINTMENTS

Production of Documents: Return to Order

The Clerk tabled, pursuant to resolution of the House of Thursday 24 October 2013, documents relating to an order for papers regarding executive appointments received on Thursday 7 November 2013 from the Director General of the Department of Premier and Cabinet, together with an indexed list of the documents.

Production of Documents: Claim of Privilege

The Clerk tabled a return identifying those of the documents that are claimed to be privileged and should not be tabled or made public. The Clerk advised that pursuant to standing orders the documents are available for inspection by members of the Legislative Council only.

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 **Reverend the Hon. Fred Nile**.

BUSINESS OF THE HOUSE

Withdrawal of Business

Private Members' Business item No. 1594 outside the Order of Precedence withdrawn by the Hon. Jan Barham.

BUSINESS OF THE HOUSE

Postponement of Business

General Business Order of the Day No. 1 postponed on motion by the Hon. Duncan Gay and set down as an order of the day for a future day.

SPECIAL ADJOURNMENT

Motion by the Hon. Duncan Gay agreed to:

That this House at its rising today do adjourn until Wednesday 13 November 2013 at 10.00 a.m.

NATIVE VEGETATION ACT 2003: DISALLOWANCE OF NATIVE VEGETATION REGULATION 2013

The PRESIDENT: Order! Pursuant to standing orders the question is: That Business of the House Notice of Motion No. 1 proceed as Business of the House.

Question resolved in the affirmative.

Motion by Dr Mehreen Faruqi agreed to:

That the matter proceed forthwith.

Dr MEHREEN FARUQI [3.10 p.m.]: I move:

That, under section 41 of the Interpretation Act 1987 this House disallows the Native Vegetation Regulation 2013, published on the NSW Legislation website on 19 September 2013.

I move this disallowance of the Native Vegetation Regulation 2013 for one primary reason: it will not improve or even maintain environmental outcomes. The Native Vegetation Regulation is intended to facilitate the operation of the Native Vegetation Act 2003 and improve environmental outcomes, but the revised 2013 regulation does not do so; it does far worse than the one it replaces. The Native Vegetation Act was enacted to regulate the way we manage native vegetation in New South Wales. The main aims of the Act are to provide for, encourage and promote the management of native vegetation on a regional basis, to prevent broadscale clearing, to protect native vegetation of high conservation value, to improve the condition of existing native vegetation, and to encourage the revegetation and rehabilitation of land. Most importantly, all these objectives have to be met in accordance with the principles of ecologically sustainable development—a concept, unfortunately, becoming increasingly alien to the O'Farrell Government.

The application of the Native Vegetation Regulation and the robust methodology for assessing environmental outcomes underpin the integrity of the Native Vegetation Act. When the Native Vegetation Regulation 2013 was published, we parliamentarians were faced with one crucial question: Will it continue to support the Native Vegetation Act 2003 in stabilising and improving the extent of native vegetation in New South Wales? Sadly, the evaluation of The Greens and peak non-government and community environmental groups across New South Wales is that this revised regulation will weaken the laws that brought broadscale land clearing throughout New South Wales to a relative halt. By weakening this regulation, large areas of native vegetation will be put at risk from unsustainable clearing, leading to destruction and fragmentation of invaluable habitat.

In the two centuries of land clearing in New South Wales we have seen the extinction of species and loss of wetlands; many ecological communities are now endangered and many species are threatened. We have to allow recovery of the ecosystem and native bushland by learning from our past mistakes and strengthening regulation, not watering it down in the guise of improving outcomes for landholders and farmers. Most farmers understand that native vegetation provides essential environmental, social and economic benefits. Most farmers know that biodiversity makes good environmental and business sense: the New South Wales Office of Environment and Heritage cites many reasons for this. Native vegetation controls erosion through protecting soils and river banks, and improves water quality and availability. Farms with good native vegetation coverage can improve land value, increase production outcomes and reduce operating costs.

More specifically, native vegetation leads to increased crop yields, improved pasture growth, health benefits to stock, and reduced stress and morbidity. Of course, a wealth of evidence tells us that native forests and vegetation are critical habitat for our flora and fauna, threatened ecological communities and threatened species. Additionally, native vegetation is an effective form of mitigating global warming and reducing atmospheric carbon levels as it provides sinks for carbon dioxide. Broadscale land clearing will release the stored carbon from vegetation and soil and exacerbate climate change. The revised 2013 Native Vegetation Regulation will not deliver effective functioning of the Native Vegetation Act for the environment or landholders. I will outline some specific reasons why this is the case.

First is a significant change in the extension of the types of routine agricultural management activities [RAMAs]. Routine agricultural management activities are activities that landholders can undertake to maintain their properties without formal approval. Routine agricultural management activities are appropriate for small-scale and very low-risk activities. However, the 2013 regulation provides for an unacceptable expansion in routine agricultural management activities without requiring regulatory oversight, other than self-regulatory assessment codes. The revised regulation provides no additional environmental benefits. The new routine agricultural management activities include clearing invasive native species, thinning native vegetation, clearing paddock trees and clearing for environmental works using self-assessable codes. There is high potential for accidental or deliberate clearing of land, including endangered ecological communities. Exempting these clearing activities from approval under routine agricultural management activities cannot ensure they improve or maintain environmental outcomes, which are the cornerstone of the Native Vegetation Act.

In particular, clearing of invasive native species has the potential to negatively impact large areas as the risks are based on the condition and location of vegetation. Removal of any requirements to report and keep records, except a very rough scale of satellite imagery, will reduce capacity for adaptive management as no meaningful data will be collected. Thinning of native vegetation requires considerable skill and expertise and is complex because it requires knowledge of whether the vegetation is listed as one able to be thinned or is in the right stem density et cetera. Thinning of trees and shrubs that may not be ecologically endangered but may be habitat for threatened species can have a large negative impact on the ecosystem.

The requirement to assess for threatened species no longer applies. Correct diagnosis and identification of threatened species and ecologically endangered communities require specialist advice and expertise. Self-assessment by landholders who have not been trained or have no specialist advice could result in loss of habitat and change soil conditions over the longer term. Landholders could be exposed to thousands of dollars in fines. Paddock trees and small clumps can be vital habitat for native wildlife and provide corridors and connectivity for fauna. Isolated paddock trees are important in breaking up larger areas of cropping that offer no other habitat for life. Endangered ecological communities exist as components of small isolated clumps, and allowing their clearing will pose a significant threat to this invaluable biodiversity.

Climate change is a threat to biodiversity and is likely to affect species and ecosystems in new ways and at rates that have not been affected previously. Under this scenario, paddock trees and small clumps will provide the survival mechanism, shelter, connectivity and protection of our native animals. The Government has changed the regulation with the supposed purpose of streamlining the process and cutting red tape for farmers. Where is the evidence to suggest that the current process, which has more oversight and involvement of experts, is unduly restricting clearing of invasive species? For example, according to the 2011 New South Wales State of the Environment Report, from 2006 to 2010 almost 2.5 million hectares of invasive native species were approved to be cleared under property vegetation plans. That is more than 5 per cent of the total land area covered by the Native Vegetation Act.

This level of approval in five years does not suggest unnecessary or undue restrictions. Expanding routine agricultural management activities will lead to deliberate or accidental clearing of endangered ecological communities. The cumulative impacts of hundreds of instances of small clearings can be especially damaging for the environment. Given the degraded state of the environment of New South Wales, these patches can represent the last remnants of protection for native fauna. Self-assessable codes can now be used for clearing of invasive native species at paddock scale with nil to minimal disturbance to soil or ground cover and they could be cleared by chaining, slashing or roping. Determining whether a particular native species is growing in an invasive manner is not necessarily a simple matter and the effect of the self-assessable code could be to open up large areas of native species to clearing at paddock scale using chains. This proposition is extremely damaging for our environment.

Another key concern with the codes is the potential for landholders to apply the codes multiple times on the same property. By contrast, property management plans remain current for 15 years, ensuring that progressive removal of native vegetation does not occur across a property. The loophole of the expanded routine agricultural management activities system combined with self-assessable codes means, at best, an increase in inadvertent ecological losses due to incorrect classification and, at worst, deliberate misuse for widespread clearing. The 2013 regulation has also reduced oversight in scientific input. For example, part 6, division 3, clause 37 now means that the Minister for the Environment is no longer required to consult with the Natural Resources Commission in relation to the declaration of a species of native vegetation as a feral species. Once the State Government has abolished the Natural Resources Advisory Council, the multi-stakeholder, the Natural Resources Commission is still a vital scientific knowledge base that should be consulted in the first instance.

The expanded routine agricultural management activities and self-assessable codes have a high chance of failure, not only because the risk is being offloaded from the Government to individual landholders but also because they will be largely unregulated with no reporting requirements. Once the native vegetation is removed, the impact can sometimes be irreversible and no amount of fines can repair the damage. There is also very little money put aside to resource either landholders or catchment management authorities, which are now integrated into local land services. This will not enable them to effectively undertake the tasks that will be allocated to them under the new regulation. During the budget estimates process, the Minister for the Environment confirmed the capacity building budget to be $275,000. This is not adequate for building the capacity of thousands of landholders to use self-assessable codes.

In summary, the revised Native Vegetation Regulation 2013 is inconsistent with the Native Vegetation Act 2003, which was introduced to protect what little native vegetation remains on private land in New South Wales. Since 1788, 61 per cent of the original native vegetation of New South Wales has been cleared, thinned or significantly disturbed, most of which has occurred in the past 50 years. A healthy environment, economy and farming sector depend on strong biodiversity outcomes. By allowing increased land clearing, the Government is reducing biodiversity connectivity and undermining the future prosperity of farmers and landholders. The O'Farrell Government is attacking the environment on many fronts. Since the Department of Environment was downgraded to an office to be carefully managed under the Premier's department, we have seen the watering down of environmental protections on marine parks, in national parks

where trials of hunting, logging and grazing are starting in wilderness areas that are being opened up for horseriding, by burning biomass for fuel, and the planned removal of ecologically sustainable development from our planning laws.

This regulation is just the latest in this laundry list of the weakening of environmental regulation and protections. This regulation has been issued under the shadow of the comprehensive overhaul of all environmental legislation. It could be deduced from the record of this Government that the outcome of the review of the Native Vegetation Act and the Threatened Species Conservation Act, announced by Deputy Premier Andrew Stoner earlier this year, could lead to further weakening of this important environmental legislative framework. The risks we face under the revised native vegetation regulations are unacceptable as unregulated and unmonitored thinning and clearing of native vegetation will be allowed. Hundreds of thousands of hectares may be at risk of irreversible damage.

We are obliged to make decisions which comply with ecologically sustainable development principles of biodiversity conservation, especially the precautionary principle, which compels us to avoid serious or irreversible environmental damage. Once the harm is done, it will be too late to ameliorate the problem. We must not return to the unenviable days of massive land clearing. I urge the Parliament to disallow the Native Vegetation Regulation 2013. I am advised that if this 2013 regulation is disallowed we will revert to the stronger 2005 regulation until 2014. This will allow the Government plenty of time to get this right and ensure that the native vegetation regulations are further strengthened and more resources are allocated to ensure compliance and capacity building to truly deliver for the environment, our economy and our farmers. I commend the disallowance motion to the House.

The Hon. TREVOR KHAN [3.25 p.m.]: I note that the true colours of The Greens are finally exposed. They do not like farmers. They do not care about jobs in regional New South Wales. They are only interested in the election in Summer Hill and perhaps Balmain. It is a perfect example of catering to the latte-sipping set of central Sydney. That is the shame of this disallowance motion. It has nothing to do with good environmental management and everything to do with crass electioneering, because that is the only thing of which The Greens are capable. Sadly, we know that after Lee Rhiannon spent her time wandering around the Liverpool plains sucking up—

Mr David Shoebridge: Point of order: The honourable member may be having a preselection battle, but he should still address his comments to the chair and not scream at the corner.

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

The Hon. TREVOR KHAN: Sadly, what we face from these characters who describe themselves as green is a pathetic attempt to interfere with good environmental management in New South Wales. The Native Vegetation Regulation 2013 was made following extensive consultation with stakeholders. We know the extent of that consultation. We know how long it has taken to bring forward good, effective environmental regulations. This consultation has ensured that the regulation can enable a balance to be struck between environmental protection and efficient agricultural management, which would be unknown to The Greens. They are only interested in ensuring that agricultural management is completely destroyed in New South Wales. We have listened to the concerns of the environmental groups and I can say that there is extraordinary misinformation and speculation being whipped up about these regulations.

The PRESIDENT: Order! Members who have not spoken and who are interjecting extensively are disruptive and out of order. They will have an opportunity to make a contribution to the debate.

The Hon. TREVOR KHAN: Let us be clear. The new regulation is not about unrestricted clearing of native vegetation. The centrepiece of the new regulation is the development of self-assessable codes that will allow farmers to carry out common clearing activities provided that they operate consistently with the environmental standards that are set out in the codes. Let us be clear: this will allow farmers to carry out common clearing activities provided that they operate consistently with the environmental standards set out in the codes—nothing more and nothing less. This would include routine agricultural management practices such as removing isolated paddock trees and managing invasive native species, all of which currently require a property vegetation plan and approval. This process has been demonstrated time and again to be cumbersome and time consuming. Catchment management authorities and soon the local land services will be available to provide extension services to farmers who use the codes. The codes have the potential to substantially reduce unnecessary red tape and support sensible land management activities.

Once again we note that The Greens have no concept of sensible land management activities. All they want to do is lock up land. All they want to do is destroy the farmers of New South Wales. The significant legal instrument we are discussing will not be implemented without stakeholder and community consultation. The new regulation also addresses the concerns of other sectors of the regulated communities, such as local government and the private native forestry industry. This disallowance motion is an attempt to stop a better process from being implemented. The Native Vegetation Act was introduced under the Labor Government as part of a package of measures that the then Government said would "deliver genuine improvements to natural resource management in New South Wales" and "give greater certainty to farmers and industry". In addition, it would remove "a lot of process and bureaucracy" to focus better on results and performance, end broadscale clearing, maintain productive landscapes and provide for practicality and flexibility.

For the past seven years we have had a system that was meant to move us away from the argy-bargy style of conflict to a professional, outcomes based approach. It is clear that that has not happened. We need to engage the farming community, most of whom want to do the right thing. The making of the Native Vegetation Regulation 2013 is the first stage in a much broader look at the policy framework to manage our important natural assets. It is time for the debate to move on. For these reasons, the Government opposes this motion and for these reasons, The Greens should be thoroughly ashamed of themselves.

The Hon. LUKE FOLEY (Leader of the Opposition) [3.31 p.m.]: Less than a decade ago, New South Wales had one of the worst records for land clearing in the world. In 2004 Australia sat behind only Indonesia, Bolivia, the Congo and Brazil in the rate at which native vegetation was being bulldozed. Most of the clearing in Australia was occurring in Queensland and New South Wales. The former Labor Government introduced the Native Vegetation Act 2003 to deal with the problem of broadscale land clearing in New South Wales. Prior to the introduction of that Act, New South Wales was losing much of its remnant bushland, in the wheat belt in particular. Although the exact size of the clearing was not known, it was in the realm of 100,000 hectares each year. Often the reason for clearing was the conversion of grazing land into cropping land. The environmental impacts of clearing were immense because the places in which it was occurring were already highly cleared landscapes and biodiversity was clinging to remnant bushland for survival.

Mr Scot MacDonald: Point of order: This disallowance motion relates to the Native Vegetation Regulation. The Hon. Luke Foley is referring to the Native Vegetation Act.

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

The Hon. LUKE FOLEY: Because of its impact, land clearing in New South Wales and Queensland was tagged as being perhaps the greatest threat to biodiversity in Australia. The Scientific Committee has reported that 22 mammal, 56 bird, 12 reptile, four amphibian and more than 140 plant species listed as threatened in New South Wales have been adversely affected by land clearing. Figures from the Federal Department of the Environment show that for every 100 hectares of woodland cleared the habitat of 1,000 to 2,000 birds is permanently destroyed and in some ecosystems up to 200 reptiles will be killed per hectare cleared.

Labor's laws led to massive decreases in land clearing. Reducing the amount of land clearing also had a significant impact on Australia's greenhouse gas emissions. How? Trees store carbon in their trunks, roots and leaves. When land is cleared, the vegetation is usually bulldozed and burnt, which releases the store of carbon into the atmosphere. Thanks to the land clearing reforms of the mid-2000s in New South Wales and Queensland, Australia was able to meet its Kyoto targets due to the heavy greenhouse savings delivered by reducing the clearing of our land.

A majority of farmers value their environment and are able to use the New South Wales native vegetation laws to their advantage. The system put in place by the former Labor Government encouraged land owners to formulate a plan for their land, access funding to protect native vegetation on their properties and, at the same time, gain a better understanding of what environmental assets their area contains. Property values are known to be higher on land where native vegetation has been retained. Pockets of native vegetation are also known to lessen water losses and provide habitat for the natural predators of farm pests. Once these plans for land belonging to individual farmers—called property vegetation plans—were established, clear areas were set aside for cropping, grazing and environmental protection. The plans were developed with expert support, and everyone knew where they stood.

The laws were also very careful to create a category of clearing called routine agricultural management activities. These activities included the sorts of things a landholder needs to do, such as build fences, dams,

windmills, bores, stockyards and farm roads. A landholder needed no permission to carry out clearing for these activities. This is only fair and sensible. The Native Vegetation Regulation 2013 is a step backwards as it undermines the integrity of the good laws that struck the balance between property owners' rights and their need to increase the economic productivity of their land with the community's expectation that the environment would not be undermined in the pursuit of private benefit and that the environmental assets on which we all rely would be protected.

I want to focus on a couple of key concerns about the new regulations. The types of clearing included in the category of routine agricultural management activities have been significantly expanded to include clearing invasive native species, thinning native vegetation, clearing paddock trees and clearing for environmental works. This huge expansion of the activities permissible without consent or consultation will lead to the deliberate or accidental clearing of important remnant bushlands, including endangered ecological communities and threatened species. The new activities included in the list of routine agricultural management activities are a completely different category from what was planned when the legislation was designed.

The activities now include large-scale clearing, which farmers do not have the expertise to adequately self-assess for ecological importance. Furthermore, paddock trees, which are those lone gums one sees in the middle of cleared paddocks, are incredibly ecologically important. They are refuges for birds, in particular, as they navigate the challenges of agricultural landscapes and the lack of places for them to sit, nest and hide. Another negative aspect of the new regulation is the change to the regrowth date provision. This relates to the date on which the land was last cleared. Under the old regulation, anything that had been regrowing since 1 January 1990 was declared protected regrowth because it was deemed to have high biodiversity values. In the Western Division this date was 1 January 1983. Under the new regulation, a farmer can apply to move this to 1 January 1950, or 1 January 1943 in the Western Division.

We live in a State that has a severe history of clearing. Bush that has been regenerating and improving since 1990 is worthy of environmental protection. The bar should not be lowered so that only bush that has been untouched for 63 years is worthy of protection. It is appropriate to mention here Labor's continued opposition to the abolition of catchment management authorities. When Labor introduced the Native Vegetation Act in 2003, the creation of catchment management authorities was an essential part of the reform. The catchment management authorities were local organisations led by local people that provided both expertise and resources to help communities manage their land in ways that increased productivity while also protecting the environment.

The people of New South Wales support rural communities as they adjust to changing conditions in the market at home and abroad. Rural communities face environmental challenges brought about by drought, as well as the impact of long years of soil, river and land degradation and the increasing impacts of climate change. The people of New South Wales legitimately expect that resources should provide social, economic and environmental positives for local communities and the State as a whole. The changes enacted by this Government to replace catchment management authorities with local land services threaten the integrity and effectiveness of the native vegetation reforms that New South Wales Labor delivered in the early years of this century. The Native Vegetation Regulation 2013 threatens to further undermine the efficacy of the Native Vegetation Act and with it the future of rural New South Wales. For these reasons the Opposition supports the disallowance motion moved by Dr Mehreen Faruqi.

Mr SCOT MacDONALD [3.40 p.m.]: I oppose the disallowance motion moved by Dr Mehreen Faruqi and wish to pick up on the remarks made by the Hon. Trevor Khan. The thing that stands out the most to me is that The Greens member who moved this disallowance motion and the Hon. Luke Foley, the previous speaker from the Labor Party, really come from inner-city Sydney. What really stands out to me from the comments made by those members who have spoken is that they have very little interaction with the farming community. About a year ago I had the privilege of joining NSW Farmers at a meeting held in Moree on this topic. I then went to two regional information sessions, at Tenterfield and Inverell, but I did not see a single Labor Party member or Greens member there.

In all my travels in my part of the world—northern New South Wales—I have never seen Labor or Greens members present when these things are discussed. I think the commentary which we have heard today is interesting. It is theoretical; it is not grounded in reality. At those meetings I attended, whether they were NSW Farmers meetings or regional information sessions, not one farmer got up and said, "We want to go back to the days of clearing land with D6 bulldozers, chains and balls." Moree is one of the areas which has been most impacted.

The Hon. Jeremy Buckingham: It is a bit late in Moree.

Mr SCOT MacDONALD: It is not too late in Moree. As I said, these farmers do not want to go back to the days of broadscale land clearing with balls and chains. What they want, and they said this very clearly, is common sense. In September 2011 the Minister for the Environment, Robyn Parker, delivered on an election mandate to review these regulations, and later the Act. This was a promise we made before coming into office, and a promise about which we were very vocal. We were elected with a landslide majority. This is very much a heartland issue for members on this side of the Chamber—to review those regulations and the Act.

The regulations, as I say, were uppermost in the minds of the people I spoke to at Tenterfield, Moree, Inverell and other places. They are common-sense regulations that go to issues such as isolated paddock trees and invasive species coming back onto their properties. People do not want open slather; they just want the mechanisms to deal with these issues simply and quickly. The review focused on cutting red tape, improving service delivery, clarifying and removing ambiguity, improving transparency and maintaining the environmental standards set by the Native Vegetation Act.

Wherever I went, everybody was on board with that. What they were cranky about was the confusion around this. They were getting mixed messages from, say, the catchment management authority compared to other government agencies. The new Local Land Services [LLS] will bring everybody in house to advise from not only a productivity perspective but also a catchment management authority perspective. The regulations are very much about simple common sense. Farmers will be able to deal with them without compromising the environment and without compromising the Native Vegetation Act, which some people in this debate seem to want to speak on rather than the regulation.

Mr David Shoebridge: You are challenging the ruling of the President again.

Mr SCOT MacDONALD: Thank you, Mr David Shoebridge. This is an important step forward for regional New South Wales. It is common-sense regulation. It was out in the public arena for a long time. As I say, there were a lot of public meetings and a lot of submissions made. I do not think The Greens or the Australian Labor Party contributed to that in any meaningful way. Now they stand up and say, after these regulations have been brought in, that they are all wrong. They are not making a meaningful contribution and their performance should be condemned for what it is—that is, an appeal to the voters of the inner city. Those voters are obviously well-meaning and take an environmental perspective. The previous speakers have shown very little understanding of what happens on the ground in regional New South Wales. We oppose the disallowance motion.

The Hon. JEREMY BUCKINGHAM [3.45 p.m.]: I speak in debate on the disallowance motion moved by my colleague Dr Mehreen Faruqi and commence by quoting an important poem by Dorothea Mackellar:

I love a sunburnt country,
A land of sweeping plains,
Of ragged mountain ranges,
Of droughts and flooding rains.
I love her far horizons,
I love her jewel-sea,
Her beauty and her terror—
The wide brown land for me!

A stark white ring-barked forest
All tragic to the moon,
The sapphire-misted mountains,
The hot gold hush of noon.
Green tangle of the brushes,
Where lithe lianas coil,
And orchids deck the tree-tops
And ferns the warm dark soil.

In the context of this debate the key part of that beautiful poem is the first line of the second stanza, which says "A stark white ring-barked forest". This poem was written at the turn of the last century. In my contribution I will put in context the reality of native vegetation management in this State—that is, we have a lot of legacy issues in New South Wales and Australia when it comes to how we manage native vegetation. The first Australians, the Aboriginal people, had a complex management regime for native vegetation, maintaining, through firestick farming, huge expanses of grassland and woodland.

They made an important contribution to the management of our ecology and various habitats. After white settlement, principally after the gold rush, once the explorers had travelled over the mountains and into western New South Wales things began to change. Change is constant in life, and change is constant in ecology. The importance of the poem by Dorothea Mackellar is that it shows that we started changing the landscape from very early on—we started ring-barking forests. After the 1850s, once the mining industry had collapsed, the former miners went to work ring-barking forests. They did that for a long time.

The Hon. Dr Peter Phelps: Did they do it for fun? Or did they do it to create arable land?

The Hon. JEREMY BUCKINGHAM: They thought at the time that that was the best practice—that opening up the land for agriculture was a good thing; and it certainly was.

The Hon. Dr Peter Phelps: So you admit that it was.

The Hon. JEREMY BUCKINGHAM: Of course it was. There is no doubt about it. But they did not have the knowledge that we have now, and that is what we should be basing our management on: science and knowledge.

The Hon. Melinda Pavey: That is what we are doing.

The Hon. JEREMY BUCKINGHAM: No, it is not.

The Hon. Melinda Pavey: It is.

The Hon. JEREMY BUCKINGHAM: Our assessment and our knowledge of the state of our native vegetation in this State are poor. I direct members to the latest State of the Environment report, something that I read routinely.

The Hon. Dr Peter Phelps: Who was that done by?

The Hon. JEREMY BUCKINGHAM: That was done by your Government and published in 2012. The State of the Environment report 2011 says that, excluding invasive native scrub, only 22,930 hectares of vegetation in this State have regenerated in the five years between 2006 and 2011. I do not accept that. I put on record my belief that an enormous ecological restoration is happening in parts of this State. We should be honest about that. Huge parts of this State that were traditionally large sheep stations in the southern, central and northern tablelands are restoring and our assessment of it is very poor. The truth of the matter is that restoration is occurring in those areas. I fly from Orange to Sydney every week and as I look south from Oberon down to Crookwell, where there used to be goldmining—

The Hon. Dr Peter Phelps: You see wind farms.

The Hon. JEREMY BUCKINGHAM: There is one wind farm, as a matter of fact.

The Hon. Dr Peter Phelps: Not at Crookwell there isn't. There are 16 of them.

The Hon. JEREMY BUCKINGHAM: Mr Deputy-President, the hectoring from Government members is making it difficult for me to make my contribution. I ask you to ask the Hon. Dr Peter Phelps to stop. The point is that restoration is occurring in certain areas. Huge parts of the State are being transformed as the vegetation is regrowing just through the process of life itself. Our changing attitude is also transforming the State. Our legacy of miners, soldier settlers and the automation of agriculture resulted in a lot of clearing and made New South Wales a powerhouse of global agriculture,something The Greens do not regret. Damage was done to habitat by fragmentation and the introduction of weeds and we probably went too far in some areas, but it was not done with malign intent. It was just what was thought acceptable at the time and we do not apportion blame to anyone. It was done in good faith at the time without the knowledge that we have now. We now know that we went too far.

The Native Vegetation Act was a massive step in the right direction to ensure the protection of our habitats and threatened species. Since that time some people have said that this will be a big step backwards. I hope it is not. I have read the Lane report and some elements of the regulations have some merit. Others cause

me grave concern. They include the self-assessable codes and the fact that Local Land Services does not have the resources to help farmers skill up to undertake those self-assessments. I am also concerned about the expansion of the definition of routine agricultural management activities.

The reality is that very little native vegetation clearing is going on now. In my 20 years living in western New South Wales I have never seen it. I do not believe that thousands of farmers wish to go out and clear native vegetation, nor do I believe that the majority of farmers will do the wrong thing. I think the current system is not broken. The figures show that 2.9 million hectares of native vegetation was approved for clearing under property vegetation plans from 2006 to 2011. How much got cleared? Only 10,000 hectares in those five years and that is very little. This regulation is unnecessary because there is not a big demand for clearing. The system is working as it is. The farmers to whom I have spoken in the eastern part of the sheep and wheat belt are working constructively with their catchment management authorities. They are not demanding to clear native vegetation because the grain-growing areas with productive soil and the right rainfall have already been cleared by the Aboriginals, the Chinese miners and the soldier settlers. Further areas were cleared from the 1840s through to the 1880s when we were really opening up the country.

We must assess the historical and ecological reality of our vegetation. It is rubbish for the Office of Environment and Heritage to put out a paper saying that only 20,000 hectares of vegetation in this State has regenerated from 2006 to 2011. Far more vegetation is there and I acknowledge that. We should stop the war over native vegetation, and members opposite should stop perpetuating it for their preselection. It is a disgrace that when announcing this legislation the Deputy Premier said that we will have another review. The Government is not serious about it because it is not even giving these regulations a chance to operate. We must end the war over native vegetation, do a proper assessment and let the system operate as it is because it is working.

DEPUTY-PRESIDENT (The Hon. Paul Green): I acknowledge in the President's Gallery one of the most awesome daughters a father could ever expect, Emma Grace Green, and her kindred spirit, Eliza Becker.

Mr DAVID SHOEBRIDGE [3.55 p.m.]: I support the motion moved by my colleague Dr Mehreen Faruqi and congratulate her on her attempt to stand up for sensible and balanced regulation of native vegetation clearing. It is a tragic fact that since the arrival of the First Fleet in 1788 some 61 per cent of the native vegetation of New South Wales has been cleared, thinned or significantly disturbed. The great bulk of that clearing has happened in the past 50 years with the increased capacity to clear broadscale native vegetation through mechanisation, which has caused entire ecosystems to be lost forever. There used to be wonderful cedar forests all the way from Newcastle and up through the Hunter Valley but they were entirely cleared in only the first 40 years of colonial invasion and colonisation of the Hunter Valley. Even with the best environmental regulation those cedar forests will never grow back because they have lost their critical mass and cannot regenerate. That is why proactive laws and regulations to save our native vegetation are essential.

Good native vegetation laws are wins for the environment and farming and rural communities because they produce a healthy environment, a positive economy and because modern farming depends on strong biodiversity outcomes. Our most significant concern with this new raft of native vegetation regulation is the unacceptable expansion of the routine agricultural management activities that should require appropriate oversight. Those new routine agricultural management activities include clearing invasive native species, thinning of native vegetation, clearing of invasive native plants, clearing of paddock trees and clearing for environmental works. That expansion has significant problems including the serious potential for accidental or, in a minority of cases, the deliberate clearing of endangered ecological communities.

In relation to the clearing of paddock trees, report after report has gone to this Government and the former Government showing that paddock trees are under serious threat right across New South Wales. If nothing is done the best evidence is that the current generation of paddock trees will be our last generation of paddock trees. Without the strong protection of the essential role played by paddock trees, the hollows and crucial habitat for native species within land that otherwise has been cleared for grazing will be entirely lost. Paddock trees break up large areas of monocropping and allow for some biodiversity in our farmlands. They provide protection from weather and predators as well as safe sites for roosting and breeding. If we allow destruction of the paddock trees on a self-assessment process under amended routine agricultural management activities [RAMAs], it will be a significant step backwards for native vegetation protection in New South Wales. It is the self-assessment angle that is the problem.

Pursuant to sessional orders business interrupted at 4.00 p.m. for questions.

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

QUESTIONS WITHOUT NOTICE

BLUE MOUNTAINS BUSHFIRES

The Hon. LUKE FOLEY: My question is directed to the Minister for Police and Emergency Services. Given the removal of Federal short-term assistance to families affected by bushfires in the Blue Mountains, what steps has the New South Wales Government taken to plug that funding gap and ensure that no families are disadvantaged?

The Hon. Peter Primrose: Good question.

The Hon. MICHAEL GALLACHER: It is a very good question indeed. Members of the Blue Mountains communities know firsthand the response of this Government, particularly its response on the ground since the fateful fire that took more than 200 homes in the Blue Mountains only a matter of weeks ago. So much has been done by the Government so far—particularly the first tranche of the asbestos removal problem, which is a continuing problem for the Blue Mountains communities, and the Government's immediate implementation of recovery control under the direction of the former Rural Fire Service Commissioner, Phil Koperberg, to ensure that all government facilities were in place on the ground in Springwood, North Richmond and Lithgow. There also was significant contribution from the Government with regard to human resources and access to non-government agencies that were involved in the recovery.

It was quite a significant response from the Government, but it is a continuing response. We have all seen recent reports in relation to the Federal Government's changes to disaster relief payments. There is no doubt that it should be clarified in the House that the payment identified is the Australian Government Disaster Recovery Payment, which is known as the AGDRP. The payment is activated entirely at the discretion of the Commonwealth Government and it is an assistance measure that is provided in addition to the help provided through the Natural Disaster Relief and Recovery Arrangements, in which of course the Federal Government plays an incredibly active and partnership role with State governments.

The Natural Disaster Relief and Recovery Arrangements payments are jointly funded between the Commonwealth and the States. Under the Natural Disaster Relief and Recovery Arrangements, the New South Wales Government operates the Natural Disaster Relief Scheme. The New South Wales Government has been extensively involved on the ground from senior levels of bureaucracy working with local communities and being there continuously to, of course, the local member of Parliament, Roza Sage, who has been actively campaigning and supporting those local communities.

The Hon. Walt Secord: That is misleading.

The Hon. MICHAEL GALLACHER: That is unfair. I must say that one only has to start speaking to Roza Sage about the impact of the bushfires on her community when the conversation is broken by virtue of the fact that she becomes emotional about the significant physical loss to the community and social impact that the fires have had, as well as their economic effect. She is very much across the concerns of that community and is an incredibly strong advocate who ensures that the Government's response continues. I thank the Leader of the Opposition for his question because it again affords me an opportunity to thank all those involved in the recovery and relief effort, particularly our recovery team that is being led by a former Minister, Phil Koperberg, who is well known in the Blue Mountains community—someone who we believe was the right person at the right time for a community that was looking for support.

PARRAMATTA MOTORCYCLE RESPONSE TEAM

The Hon. CHARLIE LYNN: My question is directed to the Minister for Police and Emergency Services. Will he update the House regarding the new Parramatta Motorcycle Response Team?

The Hon. MICHAEL GALLACHER: I thank the Hon. Charlie Lynn for his question. Based on the highly successful central business district Motorcycle Response Team [MRT], a Parramatta branch was launched on 12 September. The Parramatta Motorcycle Response Team, with its distinctive blue and yellow bikes, is working to improve pedestrian safety and traffic flow at busy intersections in the Parramatta central business district and on major arterial roads in Western Sydney. Some of the major roads to be patrolled by the new team include James Ruse Drive, Victoria Road, Parramatta Road, the Cumberland Highway and the Great Western Highway.

The team's mobility will mean that officers will be able to respond quickly if there is a crash and help to render first aid, as well as divert traffic near the scene. They also can help out with major events in the area, such as during a recent Western Sydney Wanderers soccer match at Parramatta Stadium. Above all else, they are first and foremost members of the NSW Police Force and can respond as police officers, when required. At the end of October 2013 the new six-member team had conducted more than 4,500 random breath tests, issued more than 2,200 infringement notices, 1,000 cautions—for the information of those who think it is all about infringement notices—and moved on more than 1,000 vehicles.

As we know, Parramatta is a very busy city centre in its own right. Sadly, that is reflected in its traffic statistics. Over the past five years in the Parramatta central business district there have been more than 3,000 vehicle crashes, four pedestrian deaths and 196 persons injured, both pedestrians and vehicle occupants. The new team will work closely with the Transport Management Centre to help to address this problem. Officers will focus on intersection choking, pedestrian offences and vehicles running red lights. The team can move around as and when traffic snarls or accidents occur. The Parramatta Motorcycle Response Team mirrors the work done by the successful Sydney's central business district team, which has played a significant role in reducing both pedestrian and overall crashes in the Sydney central business district.

In the last 12 months there has been a 20 per cent overall reduction in crashes and a 30 per cent reduction in pedestrian crashes in the areas patrolled by the central business district Sydney Motorcycle Response Team. The Government is hopeful that the new Parramatta Motorcycle Response Team will achieve similar improvements for Western Sydney. I look forward to updating the House with further details of the Parramatta Motorcycle Response Team.

BLUE MOUNTAINS BUSHFIRES

The Hon. ADAM SEARLE: My question is directed to the Minister for Police and Emergency Services. Is he aware that the Government-sponsored centralised demolition, removal and disposal of debris and hazardous waste following the Victorian Black Saturday bushfires was hailed as the best post-bushfire government initiative? Will the New South Wales Government implement a government-sponsored, centralised clean-up in the Blue Mountains, based on the Victorian post-bushfire clean-up model?

The Hon. MICHAEL GALLACHER: I thank the Deputy Leader of the Opposition for his question. The Treasurer, Mike Baird, was very quick to travel to the Blue Mountains region to assure the community about the Government's economic contribution to assisting in recovery. It is refreshing to see a Treasurer such as Mike Baird who is prepared to get away from the demands of Treasury and the demands of dealing with the State's economy to respond at a personal level and make the decision to travel to areas such as Western Sydney, but not limited to Western Sydney, to ensure that those communities understand available assistance.

The Hon. Mick Veitch: What about Wagga Wagga? Your bloke is running against Daryl Maguire.

The Hon. MICHAEL GALLACHER: Mike Baird loves all communities. Unlike some members of the Opposition, he does not play favourites. I assure the Deputy Leader of the Opposition that ongoing dialogue between me and the Treasurer will result in very positive outcomes, not just for the Blue Mountains community but indeed for the wider New South Wales community that learns lessons from other States, such as Victoria and Queensland. This Government listens to the experience of others. Instead of trying to reinvent the wheel, this Government learns where there is an opportunity for New South Wales to adopt some other practices. Members can be assured that, with Mike Baird at the reins, New South Wales has someone who is fiscally responsible as well as emotionally and personally committed to the people of this State.

ILLEGAL TOBACCO

Reverend the Hon. FRED NILE: I ask the Minister for Police and Emergency Services a question without notice. Is the Government aware that KPMG estimates that 1,433 tonnes of illegal tobacco has entered Australia in the past 12 months, up 154 per cent, and also calculates that illegal tobacco now comprises 13.3 per cent of Australian sales, close to the market share enjoyed by the world's biggest manufacturer, Imperial Tobacco? Is the Government aware also that the Australian Crime Commission reported that organised crime was involved in the importation of illegal tobacco? What are the Government's plans to control the growth of illegal tobacco, which completely undermines the current warning labels on legal cigarette packets and threatens the health of New South Wales citizens?

The Hon. MICHAEL GALLACHER: That is a very good question indeed. The member asks what the State Government is doing to ensure that this issue is given the primacy that it deserves. It has been evident that over the past couple of years we significantly prosecuted the case, albeit unsuccessfully, for a greater focus by the former Federal Labor Government on our borders, because if it is guns it could easily be drugs, if it is drugs it could easily be some other illegal substance, or in this case, as the member has rightly identified, tobacco. It could well be steroids, it could well be growth hormones or it could well be precursors for some other substances.

The member should take some comfort in the knowledge that the Abbott-led Federal Government has recognised that money needs to be injected into Customs to protect our maritime nation. We are a maritime nation; invariably, 99 per cent of all cargo comes in through our ports, as opposed to our airports. The quantity of tobacco that the member spoke of is equivalent to 20 shipping containers full of illegal tobacco coming into this country and making its way onto the streets. I am encouraged by the messages of support and the language I hear from the new Federal Government about its commitment to a greater focus on protecting our borders to ensure the detection of illegal tobacco, handguns, drugs or some other product being smuggled into this country.

Reverend the Hon. FRED NILE: I ask a supplementary question. What is this Government doing as well?

The Hon. MICHAEL GALLACHER: I thank the honourable member for his supplementary question. Rest assured that policing agencies not only in New South Wales but also around the country are very aware of the criminal trafficking of tobacco into this country, in the same way that other items are being trafficked into the country. In respect of seizures by police, I will seek advice from the NSW Police Force in relation to its events, arrests or seizures over the past few years. Many of these activities are undertaken in tandem with Customs and the Australian Federal Police. So, whilst the illegal tobacco may come into New South Wales, it might well be destined for some other part of the country. But I will seek advice in relation to the specifics and the excellent work being done by police in that area.

MOLONGLO RIVER BRIDGE

The Hon. MATTHEW MASON-COX: My question is directed to the Minister for Roads and Ports. Will the Minister inform the House of Government funding towards upgrading the Molonglo River bridge at the mighty Captains Flat?

The Hon. DUNCAN GAY: I thank the honourable member for his question. I note that he is someone from Queanbeyan who actually cares for the community.

The Hon. Dr Peter Phelps: I do, too.

The Hon. DUNCAN GAY: Did I hear another voice?

The Hon. Dr Peter Phelps: I do, too.

The Hon. DUNCAN GAY: And Peter, of course. Last Thursday the member for Monaro, John Barilaro, and I had the pleasure of announcing $600,000 in Government funding to help upgrade the bridge over the Molonglo River at Captains Flat, near Queanbeyan. We were joined at Captains Flat by the Mayor of Palerang Council, Pete Harrison, Councillor Peter Marshall, General Manager Peter Bascomb and Council Director of Works Gordon Cunningham. The bridge over the Molonglo River forms part of an important transport and freight link for the people and businesses of Captains Flat and surrounding areas. The structure is owned and managed by Palerang Council. In April this year the existing bridge was found to be structurally deficient for bearing the weight of freight trucks operating at general mass limits. To ensure continued safety, Palerang Council was forced to immediately impose a five-tonne vehicle weight limit for the bridge.

After urgent remedial works, the weight limit was lifted to 20 tonnes, albeit even this is insignificant for most trucks—notably livestock crates—required to service farms in the area. To access local properties, the majority of trucks are forced to take lengthy and therefore costly detour routes via Miners Road and Rossi Road. The $1 million upgrade—of which Palerang Council is contributing $400,000—will provide a two-lane timber bridge and will significantly reduce future maintenance costs. The council will undertake the upgrade works. As someone said to me at a gathering of the South East Australian Transport Strategy group on Thursday night, it is great to finally have a local member who delivers critical infrastructure upgrades for his region, a local member who cares more for his community than for his career.

The Hon. Greg Donnelly: Point of order: I draw on the document "Selected Presidents' Rulings", with which all members are familiar. It very specifically says—

The PRESIDENT: Order! The honourable member should come to the point as quickly as possible.

The Hon. Greg Donnelly: I refer to a distinguished ruling of President the Hon. Don Harwin:

> When answering a question a Minister must not cast reflections on any other member.

That ruling has been made six times by you, Mr President.

The Hon. DUNCAN GAY: To the point of order: My comment was that the local community had finally got a good member. It is up to the honourable member to tell me upon whom I am casting aspersions.

The Hon. Greg Donnelly: To the point of order—

The PRESIDENT: Order! I have heard sufficient on the point of order. The Minister and the member will resume their seats. There is no point of order. The Minister has the call.

The Hon. DUNCAN GAY: Weather permitting, the upgrade works are expected to be completed by June next year. The project is yet another great example of the O'Farrell-Stoner Government partnering with local councils to deliver much-needed infrastructure upgrades in the bush.

The Hon. Steve Whan: I would say it is a rare example.

The Hon. DUNCAN GAY: You would not be on the losers lounge if you had done this in the first place.

GUJARAT NRE ILLAWARRA COALMINES

Mr DAVID SHOEBRIDGE: My question is directed to the Minister for the Illawarra. What steps has the Minister taken to ensure that the 500 workers from the Illawarra who are employed by Gujarat NRE will receive their full wages and entitlements given the financial failings of their employer?

The Hon. JOHN AJAKA: I thank the honourable member for this excellent question. I have met with a number of the stakeholders, including the directors of Gujarat, as well as the directors of Jindal Steel and Power, which has now taken over the major shareholding. As I understand and am informed, Jindal is currently paying all workers the moneys that are due to them in salaries as each week comes about, and in fact paid them two weeks to cover the first week and the second week. As I also understand, Jindal is currently negotiating with the union and the workers in relation to past payments and entitlements of employees in order to enter into satisfactory arrangements.

I have been informed that the workers and the union representing them are pleased with the fact that those negotiations are taking place. It is very clear that this Government is always concerned about any loss of jobs or non-payment of entitlements. The Minister for Resources and Energy, the Hon. Chris Hartcher, has made it very clear to the directors of Gujarat NRE and Jindal that this Government's first priority is to ensure the employees receive their proper entitlements and will continue to do so. However, a priority is to ensure that workers maintain their employment through continued operations of the mine, which this Government is also considering.

POLICE TRANSPORT COMMAND

The Hon. PENNY SHARPE: My question without notice is directed to the Minister for Police and Emergency Services. Are the 45 police officers added recently to the Police Transport Command permanent additions to the command or seconded from other commands?

The Hon. MICHAEL GALLACHER: I thank the member for her question. I will check the details in relation to each specific officer and report back to the House.

DON'T DIS MY ABILITY

The Hon. GREG PEARCE: My question is addressed to the Minister for Ageing, and Minister for Disability Services. Will the Minister update the House on what the New South Wales Government is doing on social media for the Don't DIS My ABILITY campaign?

The Hon. JOHN AJAKA: I thank the member for his question. People with disability have a high uptake of social media. Currently the Don't DIS my ABILITY campaign has followers from more than 170 countries and a community of more than 20,000 people connected on our Facebook and Twitter pages. Facebook and Twitter provide the Don't DIS my ABILITY campaign opportunities to engage with our audience in real time. Using social media, the campaign can make public announcements and deliver updated news daily.

Social media, while embraced by people of all ages, has been particularly useful to connect the Don't DIS my ABILITY campaign key messages with an audience not normally interested in disability issues. As members know already, the overall campaign goal is to raise community awareness of disability issues. Through social media advertising and a digital marketing plan we are able to engage people who are not normally aware of disability issues. In 2012 our Facebook and Twitter community grew to more than 11,000 followers in November and December, many of whom had never engaged with the Don't DIS my ABILITY campaign or disability sector.

Last Thursday I had the pleasure of launching the Don't DIS my ABILITY campaign at the Qantas Domestic Flight Terminal and was joined by a number of Don't DIS my ABILITY ambassadors who shared travel stories and their dreams of future travel. Qantas is a major sponsor of the 2013 Don't DIS my ABILITY campaign. Travel is a vital form of social participation and recent improvements across the transport industry are helping to make it easier for everyone to access and enjoy travel. Whether for leisure or work, transport accessibility improvements enable people with disability to travel more frequently. Interestingly, those opposite are more interested in a little scaremongering and playing games than listening to these great measures. It is an absolute shame that they do not have the interest of people with disability.

In 2012 people with disability made an estimated 17 million domestic and international flights—a number set to grow in the years ahead. While many people are able to travel independently, those with disability are more likely to travel with others—family, friends or carers. Businesses and industries can benefit significantly by adopting more inclusive practices and making their services and premises more accessible to all. Through awareness campaigns such as Don't DIS my ABILITY and sponsorship partnerships with corporations such as Qantas, the New South Wales Government hopes to reduce the barriers to participation for people with a disability in all areas of the community, including travel. I urge all members of Parliament, particularly those opposite, to get involved in the campaign this year and visit the website *www.dontdismyability.com.au* to read a copy of "Made You Look", the official campaign magazine.

DISABILITY SERVICES COMPLAINTS DATA

The Hon. JAN BARHAM: My question without notice is directed to the Minister for Ageing, and Minister for Disability Services. Will the Minister provide information about complaints data on Department of Ageing, Disability and Home Care services and non-government disability services for the past five years? Will the Minister provide the House with an update on general trends in disability service complaints? To what degree does historical complaints data inform service delivery, provision and procurement?

The Hon. JOHN AJAKA: I thank the member for that incredibly extensive question, which obviously requires quite a bit of historical research to be undertaken to provide all of that information. I will report back to the member in relation to the historical aspects. But let me assure the member that the Department of Ageing, Disability and Home Care takes very seriously all aspects relating to any complaints. It is a pity that those opposite do not take these matters seriously and do not stop interjecting. They do not seem to have any interest in any aspect relating to people with disability. That is why I thank the member for her question; she has a real interest. As I was saying, the Department of Ageing, Disability and Home Care takes very seriously any issues—

The Hon. Sophie Cotsis: Show it to my family.

The Hon. JOHN AJAKA: Is the Hon. Sophie Cotsis finished?

The Hon. Sophie Cotsis: You've got an issue.

The Hon. JOHN AJAKA: Obviously, she has not finished. As I was saying earlier, the Department of Ageing, Disability and Home Care takes very seriously any complaints regarding people with disabilities, whether made by people with disabilities, their family members, their carers or any of the non-government sectors. As those opposite are well aware, a number of organisations assist the Department of Ageing, Disability and Home Care and me as Minister regarding any complaint, whether that is the Ombudsman's Office or through the Official Visitors Program, which has extensive awareness of what is going on and ensures that any complaints are brought to my attention, as do also, of course, the advocacy groups that are funded extensively by our Government to ensure any complaints regarding people with disabilities are brought to our attention.

RURAL CRIME

The Hon. MICK VEITCH: My question without notice is directed to the Minister for Police and Emergency Services. What is the Minister's response to concerns raised last week at the Rural Crime Investigators Conference in Mudgee about potential threats to regional biosecurity and the growing incidence of rural arson, stock theft and trespass?

The Hon. MICHAEL GALLACHER: I thank the member for his question. I would be the first to say that clearly that was an operational matter.

The Hon. Mick Veitch: It was a conference. Are they operational conferences now?

The Hon. MICHAEL GALLACHER: It may have been an in-confidence conference. Not only police but also the farming industry and most fair-minded people would be concerned about the effect of those matters on agriculture in New South Wales. It is of great concern to us.

The Hon. Mick Veitch: Stock theft.

The Hon. MICHAEL GALLACHER: Stock theft, as the member continues to raise as an issue, is quite a legitimate issue. It is not something that hits the daily digest of the Sydney metropolitan media, but at the end of the day it is as important to those people in those communities as is theft of any other property in the metropolitan area. For many of those people, stock is their livelihood. Biosecurity is an ongoing issue not only to the agricultural industry; police generally are concerned about biosecurity.

The Hon. Duncan Gay: What about Mick's security?

The Hon. MICHAEL GALLACHER: I am not sure about his numbers. I will give him another pat on the back to help him. The Labor Party is getting rid of another representative of Country Labor. He is the first Labor Party person who lives west of the Blue Mountains to ask me a biosecurity question. So far as he is concerned he is doing his bit, but his comrades think his time is up. We need to support the Hon. Mick Veitch so that he can stay in this House.

The Hon. Mick Veitch: You haven't helped at all. Just answer the question.

The Hon. MICHAEL GALLACHER: I have answered it. Most importantly, be assured that police, like those in our rural communities who understand rural crime, understand the issues and are discussing strategies by which to deal with them. In fairness, since their meeting I have not been briefed about anything new in that regard.

The Hon. Mick Veitch: I will give you the press release.

The Hon. MICHAEL GALLACHER: That is lovely. I will have another copy of that. I will look at it. If there is anything further that I can add to my answer to the question of the Hon. Mick Veitch, I am more than happy to do so.

COMMUNITY AWARENESS IN POLICING PROGRAM

The Hon. NIALL BLAIR: My question without notice is directed to the Minister for Police and Emergency Services. Will the Minister inform the House about the most recent Community Awareness in Policing Program?

The Hon. MICHAEL GALLACHER: I thank the honourable member for his question. Imagine what it is like to be a police officer in this State. Imagine being confronted with a crime in progress or an armed individual, albeit in a simulated and controlled environment, and having to make a split-second decision about what to do and how to respond, or trying to keep control of a police car at high speed, or taking part in simulated weapons training. Participants in the Community Awareness in Policing Program [CAPP] are afforded that rare opportunity in this highly successful and sought-after program, which was run by the NSW Police Force for the ninth time in October. Launched in 2010 by Commissioner of Police Andrew Scipione, the program provides a unique insight into the realities that are faced by police in their daily work. The program is open to prominent community leaders such as civic or religious leaders, business leaders, academics and cultural identities.

Some 21 participants took part in the October program. Over the course of three days they were exposed to the diverse areas of work that the NSW Police Force is involved in. They visited a number of specialist policing units, including the Public Order and Riot Squad, Marine Area Command, Forensic Services Group, Major Events and Incidents Group. They also attended the NSW Police Academy in Goulburn and the Sydney Police Centre. Participants experienced hands-on aspects of police work, including driver training, search and rescue, disaster victim identification, criminal identification and weapons training. They were not just watching behind perspex to see how it was done. The participants were given suits and uniforms to enable their full participation, and they had the opportunity to interact with police officers of all ranks.

There were demonstrations from the Tactical Operations Unit, Counter Terrorism and Special Tactics, the Dog Unit and Ballistics. Participants in the October program included the Chief Executive Officer of the Mental Health Commission, print and television journalists, the President of New South Wales Council of Civil Liberties, senior executives from the New South Wales public service, including the Department of Attorney General and Justice, NSW Treasury, Corrective Services, the Chief Executive Officer of the NRMA and heads of cultural associations, including the Chief Executive Officer of the Muslim Women Association. Policing is a difficult profession. It is rewarding, but challenging. The NSW Police Force is also a diverse and highly trained organisation, covering not only special duties but also specialist units of expertise.

The program gives participants an insight into what our police do and why they do it. The idea is that participants will also take their experience and insights back to the community they represent. Those who criticise cops and make judgement calls from their comfy leather armchairs might know, after completing the course, what we are talking about. The worthwhile aim of the program is to strengthen relationships between the force and the community. It is one of the great ways that the NSW Police Force actively engages with the community. The Community Awareness in Policing Program will return in 2014. I look forward to updating the House about its continuing success.

FIREARMS SEIZURE

The Hon. ROBERT BORSAK: My question without notice is addressed to the Minister for Police and Emergency Services. Is the Minister aware of claims by the Leader of the Opposition that most firearms seized by police were stolen from legitimate gun owners? Is this claim supported by official police statistics? If not, will the Minister provide the correct figures?

The Hon. MICHAEL GALLACHER: Police do an excellent job of taking firearms off our streets. It is a bit rich for Opposition members to continue to make sweeping statements that the guns on our streets are coming from a domestic market. They are referring to shootings that occur in the wider community when they try to draw these tenuous links. As Strike Force Maxworthy has revealed, Glock pistols are the gun of choice of those who participate in these targeted drive-by shootings, and they were the gun of choice well before I became the Minister. Some of the drive-by shootings in which these handguns were used occurred under the watch of the former Labor Government. Hundreds of Glock pistols are being coming in through our ports and being distributed in the community. It is dangerous for Opposition members to commentate on something about which they know absolutely nothing. Their comments suggest, by extension, that the weapons of law-abiding shooters are not secured and that they are to blame for the number of guns on our streets.

The overwhelming concern of police is the importation of these guns, but not just through Sydney or through the mail. Honourable members may remember that a year and a half ago I indicated to the House that guns were being sent through Australia Post because people involved in organised crime had bought Australia Post franchises in the southern parts of the metropolitan Sydney area. It is a dangerous leap for Opposition members to suggest that the gun crime we are experiencing on our streets is a direct result of the guns being taken from the domestic market. There is no doubt that some guns will come from the domestic market, but to suggest that the majority are coming from the domestic market—

Police are doing an outstanding job seizing guns in the domestic market. Quite rightly, the police are focused on ensuring that people who have guns in the domestic market will have them taken out of their control if they do not have a firearms licence. For some time Opposition members have spoken about the links between guns and the targeted drive-by shootings that have been occurring for more than 10 years. Senior members of the NSW Police Force say that the gun of choice used by many self-appointed gangsters is a handgun because it can be concealed, yet the majority of guns being stolen from the domestic market are rifles. When we hear about a gun being brandished or used in a public place, sadly it is invariably a handgun. Many handguns have their serial numbers removed, which is a ploy by those involved in criminal syndicates to reduce the likelihood of police being able to identify the firearm. Sadly for those who cling to this notion that it is somehow another example of the domestic market— [*Time expired*.]

NORTHERN BEACHES STORAGE PROJECT

The Hon. WALT SECORD: My question without notice is directed to the Minister for Roads and Ports, representing the Minister for Finance and Services. In light of Beachwatch's announcement this morning that it is unsafe to swim or surf at all 35 northern Sydney beaches, will the Government admit that the $70 million, 18 million-litre northern beaches storage project built to respond to wastewater overflows into local waterways during heavy rain, which was opened by the Minister for Finance and Services on 16 September, has failed?

The Hon. DUNCAN GAY: I thank the honourable member for his question. My recollection is that the project was designed during his term in government. He was either with the Premier at the time or had deserted the Premier to go to greener pastures in Canberra. He is a fair-weather friend. He is just a little disappointed. Whatever the honourable member does, we know that he will be undeterred. I will refer this question to my colleague the Minister for Finance and Services to get a detailed answer.

ANZAC BRIDGE

The Hon. SARAH MITCHELL: My question without notice is directed to the Minister for Roads and Ports. Will the Minister update the House on the maintenance upgrade of the Anzac Bridge?

The Hon. Walt Secord: That is a hard-hitting question.

The Hon. DUNCAN GAY: Cynicism from the Opposition is just what I would expect on something as important as this. On Monday 11 November we officially marked Remembrance Day, a day to remember loved ones who have died or suffered in wars or defence conflicts. It is a day to solemnly commemorate the thousands of men and women who gave their lives for this country. Anzac Day remains one of the most important national occasions for both Australia and New Zealand. It is fitting that, on Anzac Day, we can honour the story of that battle and other conflicts. Last Friday the Premier announced the completion of the $67 million Anzac Bridge maintenance upgrade, which was celebrated with a special commemoration. Returned services guests unveiled a set of refreshed commemorative plaques to honour the memory of soldiers of the Australian and New Zealand Army Corps. The Anzac Bridge is the longest cable-stayed bridge in Australia and a major Sydney road artery, carrying eight lanes of traffic and hundreds of pedestrians and cyclists each day.

Now considered a modern icon of our growing city, the bridge opened to traffic in 1995 and features two bronze statues of Anzacs to preserve the memory of our fallen soldiers. The newly refreshed commemoratives plaques aim to educate visitors about the history of the Anzac tradition and the construction of this magnificent bridge. The plaques are the final instalment in the two-year maintenance project to upgrade the bridge stay cables to prevent weather-induced vibration, to improve maintenance access to hard-to-reach parts of the bridge, to improve pedestrian safety with new fencing and to improve views from the bridge. The Anzac Bridge is a Sydney icon and has proved to be a vital part of the road network, connecting the central business district with the inner west and the M4 motorway. The significant maintenance carried out by the Bridge Solutions Alliance team on the Anzac Bridge will ensure Sydney's modern icon continues to perform well into the future. This is the type of critical maintenance investment that our State needs to ensure that our road networks serve the people of New South Wales now and into the future.

BOGAN SHIRE WATER SUPPLY

The Hon. ROBERT BROWN: My question without notice is directed to the Minister for Roads and Ports, representing the Minister for Regional Infrastructure and Services. What assistance is the Government

providing to the Bogan Shire Council in its effort to build a 2,000 megalitre water storage facility near Nyngan to improve water supplies in extreme drought—such as the one that might be just around the corner—by providing improved security of supply and more efficient storage?

The Hon. DUNCAN GAY: I thank the honourable member for his question. It is an important question and I will refer it to the Minister for an answer. The one thing I know is that the Mayor of Nyngan, Councillor Ray Donald, will not rest until his community gets the services that it needs and deserves. He is a great mayor, a great president of the Local Government Association and a great bloke, as honourable members acknowledge.

QUEANBEYAN HOME AND COMMUNITY CARE CENTRE

The Hon. STEVE WHAN: My question without notice is directed to the Minister for Ageing, and Minister for Disability Services. Has he approved Queanbeyan City Council's proposal to convert the Queanbeyan Home and Community Care centre into office space for the council? Given that the State Government provided at least 40 per cent of the capital funding for the centre, what action is he taking to ensure that the Queanbeyan community does not lose this vital community asset?

The Hon. JOHN AJAKA: I thank the honourable member for the question. I am happy to say that I am not aware of my providing consent to convert the Queanbeyan centre into office space. Services provided under the Community Care Supports Program are generally low level in hours and intensity. People with a disability are provided with basic maintenance and support so that they are able to remain in their own homes. Services include domestic assistance, personal care, transport, social support, case management, nursing, allied health, home modifications and home maintenance. A range of providers receive funding to provide services. These include government agencies, large non-government providers, local government, mult-iservice outlets—

The Hon. Amanda Fazio: Point of order: My point of order is relevance. The Minister was asked what he was doing to get back the amount of money that the State Government put into the building, the use of which is being transferred. It was not about how the program that was previously housed in the building.

The Hon. Dr Peter Phelps: To the point of order: The Minister is clearly providing background information that may provide further illumination as to why or why not Queanbeyan City Council may or may not have done something that it is alleged to have done.

The PRESIDENT: Order! If in fact the Minister was giving the background information that the Hon. Peter Phelps describes, it was not immediately apparent. Therefore, I encourage the Minister to come quickly to the point if he has further information to provide.

The Hon. JOHN AJAKA: I have a little more information to provide. Prior to 1 July 2012 Community Care Services recipients across all age groups were provided for through the joint New South Wales and Commonwealth funded Home and Community Care Program. Meals on Wheels refers to commercially prepared meals and their delivery through the Meals on Wheels model. It is a service model that relies heavily on volunteers. Meals on Wheels services were traditionally funded under the Health and Community Care program.

The Hon. Steve Whan: Point of order: My point of order is relevance.

The PRESIDENT: Order! I have the gist of the point of order. I uphold the point of order. Does the Minister wish to add anything?

The Hon. JOHN AJAKA: No, Mr President.

SUPPORTED LIVING FUND

The Hon. CATHERINE CUSACK: My question without notice is directed to the Minister for Ageing, and Minister for Disability Services. Will the Minister update the House on how the Supported Living Fund is being used?

The Hon. JOHN AJAKA: I thank the honourable member for her question. The aim of the Supported Living Fund is for people with disabilities to succeed in living independently in their own homes by providing

individuals aged between 18 and 64 years of age with an average of $50,000 per person. The New South Wales Government recognises the individual differences, circumstances and, indeed, aspirations of people with disabilities. This funding ensures that we are able to assist in providing support for different activities as an individual's needs change. In September I informed the House of two friends who have used their payments from the Supported Living Fund to move into their own apartment at Chatswood, sharing with another flatmate who does not have a disability. In the past year the Supported Living Fund has enabled them to develop and enjoy a very active and interesting social life, which they have never been able to enjoy previously.

There are other instances of individuals who have moved into homes of their own, through private purchase, rental or community housing, with the support they need to live independently purchased from the package provided under the Supported Living Fund. One boy's parents reported that once a package was approved for their son, the decision to purchase a home for him to live in was clear. They found a lovely manageable property within a couple of minutes' walk from their home, and he is now living independently, surrounded and supported by the community that he is used to. A great feature of the Supported Living Fund is that it is portable throughout New South Wales, and that people can have their funding administered by the provider of their choice.

The funds can be used to pay for personal care, independent living skills training, support to participate in recreational and social activities, or to extend a person's informal support network. The support can include minor home modifications to increase accessibility or the specialist equipment people may need in their homes, such as hoists or technical aids. Support can be provided out of standard business hours or during weekends. A total of 300 packages were funded under Stronger Together 2 for allocation over a three-year period between 2011-12 and 2013-14. The full cost of the packages is $60 million over five years, and 50 extra packages were added to the Supported Living Fund in late 2012.

A total of 379 packages have now been allocated across New South Wales, with some packages targeted specifically at Aboriginal people and people from culturally and linguistically diverse [CALD] backgrounds. As part of the most recent funding allocation, Ageing, Disability and Home Care [ADHC] partnered with Carers NSW to conduct information sessions at 13 different locations around New South Wales to assist people to apply, and to give them information about the Supported Living Fund and how the funding can be used. A total of 433 people—including people with disabilities, their families, friends and disability staff—attended the sessions. The feedback was overwhelmingly positive.

The sessions have also created opportunities for new conversations within families. For example, one family highlighted that it was able to establish realistic goals that are achievable, regardless of whether or not funding is received. The Supported Living Fund is also helping people prepare for the National Disability Insurance Scheme. A 62-year-old carer from the Hunter region with two adult children with disabilities has reported that participating in the Supported Living Fund process greatly assisted his children's readiness for and transition to the scheme this year. Although still in its early days, the Supported Living Fund has been a great success. It is helping people with disability achieve greater independence and enjoy more choice; and it is showing the way that disability services will be provided in the future.

COAL SEAM GAS MINING IN WATER CATCHMENT AREAS

The Hon. JEREMY BUCKINGHAM: My question without notice is to the Minister for Roads and Ports, representing the Minister for Resources and Energy. Today the Government imposed, in its words, "a hold on coal seam gas activities" in Sydney's water catchments. The Government has implemented a hold on the exploration for and extraction of natural gas from coal seams—otherwise known as CSG—in the special zone within Sydney's drinking water catchments effective immediately. Will the Government apply this moratorium to other drinking water catchments in New South Wales?

The Hon. DUNCAN GAY: We have to give The Greens remedial listening and remedial reading lessons. Quite clearly the announcement did not cover all catchments; it covers drinking water catchment areas. The Greens want no mining in New South Wales. If we have no coal seam gas mining and no mining—

The Hon. Jeremy Buckingham: It is natural gas from coal seams. Get it right.

The PRESIDENT: Order! I call Hon. Jeremy Buckingham to order.

The Hon. DUNCAN GAY: The Hon. Jeremy Buckingham should stay calm. Perhaps he should take a green tablet, or maybe a red tablet today. If we had no mining in any of the catchments in New South Wales—

and no coal seam gas or natural gas, as Hon. Walt Secord likes to call it—then we would have no mining and no coal seam gas mining anywhere in New South Wales. The Hon. Jeremy Buckingham is being sneaky and tricky. He has taken orders from his dear leader and he is being deceptive in the House. That is the way The Greens operate. If we had no mining in any of the catchments in New South Wales then we would have none anywhere in New South Wales because, as most people know, virtually everywhere in New South Wales there is a water catchment. This is a sneaky, conniving way for The Greens—who hate mining and who hate wealth—to stop mining. The announcement by the Minister for Resources and Energy was not about what the Hon. Jeremy Buckingham said it was about. It was a proper announcement about waiting for the scientific results.

DROUGHT ASSISTANCE

The Hon. AMANDA FAZIO: My question without notice is to the Minister for Roads and Ports, representing the Minister for Primary Industries. Given that members of The Nationals are publicly backing the call of the NSW Farmers Association for the Government to restore drought assistance measures—with the member for Northern Tablelands, Adam Marshall, stating recently, "I would like to see fodder transport subsidies and low-interest loans offered, which in the past have been part and parcel of drought support measures"—will the Government reverse its decision to axe assistance measures such as stock and fodder transport subsidies and give drought-stricken farmers the financial help they desperately need?

The Hon. Steve Whan: Hear, hear!

The Hon. DUNCAN GAY: It is interesting to note that, over on the losers' lounge, the former Minister for Primary Industries says, "Hear, hear!". The list of assistance measure for farmers in New South Wales that he removed is so long that I could not possibly read it within the time I have to answer this question. It is also interesting that when the honourable member—

The Hon. Amanda Fazio: Point of order: My point of order relates to relevance. I would like an answer from the Minister about the actions of his Government. I did not ask him for a rundown of history. I ask you to draw the Minister back to the question.

The PRESIDENT: Order! I remind the Minister that responding to interjections is out of order when answering a question.

The Hon. DUNCAN GAY: If we are going somewhere then we have to know where we have come from. We are going in the right direction and we know where those opposite came from. We know why the former Minister for Primary Industries is now sitting opposite on the losers' lounge; and it is not because he did a good job when he was a Minister. It is interesting that the question quoted a member of The Nationals and Liberal Party country members and referred to the work they are doing sticking up for farmers in New South Wales. It is a sad indictment that there was no mention of the Labor Party or the failed rump of the Labor Party, the Country Labor faction—because it is on the way out.

Our members care for their communities. That is why they are raising these points of concern—points of concern that have not been lost on the Government; neither have they been lost on the Minister. This is a bright Minister who understands local communities. She has been listening to the NSW Farmers Association and she has been listening to farmers across New South Wales. The former Minister for Primary Industries sits over there on the losers' lounge—

The Hon. Michael Gallacher: And forever will be.

The Hon. DUNCAN GAY: He will be on that side of the Chamber for a long time. Last Thursday I had to go to Queanbeyan to announce a project to fix up the bridge that he could not fix.

The Hon. AMANDA FAZIO: I ask a supplementary question. Will the Minister elucidate his answer in reference to his statement, "We are going in the right direction." Does that mean that the member for Northern Tablelands, Adam Marshall, is going in the wrong direction?

The Hon. Dr Peter Phelps: Point of order: That is a new question.

The PRESIDENT: Order! There was argument and it was a new question. The member is correct. The question fails on a number of counts.

MULTI-AGENCY EMERGENCY MANAGEMENT

The Hon. NATASHA MACLAREN-JONES: My question is directed to the Minister for Police and Emergency Services. Will the Minister inform the House of the status of multi-agency emergency management training in New South Wales?

The Hon. MICHAEL GALLACHER: The Ministry for Police and Emergency Services provides funds and manages the conduct of a range of multi-agency training and capability development activities. These activities are intended to bring together personnel from all agencies with a role in New South Wales emergency management arrangements. This training is designed to develop and enhance the capacity and capability of all agencies to work together during an emergency. The ministry's multi-agency training framework was established in 1990 and currently offers a suite of eight training courses delivered and assessed by regional emergency management officers employed by the NSW Police Force. In the past twelve months significant improvements have been made to the quality of the training, including the successful delivery of 100 training courses to more than 1,650 participants and development of the eLearning Strategy.

The strategy is designed to have more flexibility and a greater reach for participants to engage in training as they will be able to access short, web-based modules at any time from any computer terminal. The modules will provide the essential information students need before attending face-to-face training, freeing up the classroom time for interactive scenario-based activities and providing the practical opportunity for members of different agencies to work together. The first online product, Emergency Management Overview, is nearing completion and a further range of products covering welfare services, emergency risk management, and recovery and community engagement are under development.

In 2012-13 the Ministry for Police and Emergency Services undertook a strategic evaluation of the multi-agency emergency management training courses that it manages and examined whether the courses provided the best combination of required skills and knowledge and whether the modes of delivery and methods of assessment were appropriate. More than 500 stakeholders were consulted in the emergency management sector. The stakeholders ranged from members of the State Emergency Management Committee to representatives from organisations that utilise the Ministry for Police and Emergency Services emergency management training courses and participants who have taken part in the training programs in the past.

The results of the evaluation confirmed the value of the training provided by the ministry and recommended a number of improvements, many of which are now being implemented. Implementation of the new skilling is well underway and the revised courses have been scheduled for delivery in 2013-14. These improvements are designed to better equip emergency services workers to prepare for, prevent, respond to and recover from emergencies in New South Wales. I thank all those involved in the development of these courses.

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

Questions without notice concluded.

Pursuant to resolution Government Business proceeded with.

BUSINESS OF THE HOUSE

Suspension of Standing and Sessional Orders: Order of Business

Motion by the Hon. Duncan Gay agreed to:

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Government Business Order of the Day No. 1 relating to a vacancy in the representation of the State in the Senate be called on forthwith.

Order of Business

Motion by the Hon. Duncan Gay agreed to:

That Government Business Order of the Day No. 1 be called on forthwith.

SENATE VACANCY

Joint Sitting

Motion by the Hon. Duncan Gay agreed to:

That this House agrees to meet the Legislative Assembly for the purpose of sitting and voting together to choose a person to hold the place in the Senate rendered vacant by the resignation of Senator the Hon. Bob Carr in the Legislative Council Chamber on Wednesday 13 November 2013 at 3.45 p.m.

Message forwarded to the Legislative Assembly advising it of the resolution.

BUSINESS OF THE HOUSE

Notice of Motion

The Hon. Michael Gallacher, by leave under Standing Order No. 71, gave notice of a motion relating to Wear Orange Wednesday.

NATIVE VEGETATION ACT 2003: DISALLOWANCE OF NATIVE VEGETATION REGULATION 2013

Debate resumed from an earlier hour.

Mr DAVID SHOEBRIDGE [5.07 p.m.]: As I was saying before debate was interrupted, a primary concern about the changes to the regulation is the self-assessment for routine agricultural management activities, particularly those relating to the removal of paddock trees. The Government has received a number of reports on this matter. One report was by Philip Gibbons and Miles Boak to the southern directorate of the NSW National Parks and Wildlife Service and was entitled, "The importance of paddock trees for regional conservation in agricultural landscapes." They noted that paddock trees are essential for a variety of reasons and stated at page 2:

Isolated trees and small patches of trees–paddock trees–perform a number of ecosystem services:

- *they provide habitat to a range of fauna in the Riverina Highlands, including several species listed on the NSW Threatened Species Conservation Act and species acknowledged to be in decline throughout the wheat-sheep belt;*
- *these trees contribute to the viability of wildlife populations in agricultural landscapes by maintaining connectivity between larger patches of remnant vegetation;*
- *they contribute to salinity mitigation;*
- *in riparian areas they are important for mitigating erosion;*
- *they help recycle nutrients leached beyond the pasture root zone;*
- *they provide shade to stock and are an important component of the visual landscape.*

The authors go on to state:

Tree-cover within grazed and cultivated paddocks in the Riverina Highlands will gradually diminish unless there are changes to land use practices. This is because paddock trees will senesce with time - often accelerated by factors associated with dieback - and will not be replaced because recruitment does not typically occur in these environments. Estimates of annual mortality among paddock trees suggest that this resource may be lost within 40 years.

I note that this report was produced in 2000. One of the Government's responses to this, with strong support from environment groups and farmers who were concerned about what they were seeing, was the Native Vegetation Act 2003 and the regulations underpinning that Act. One of the core parts of the regulations was the protection of paddock trees, and they noted the types of factors to which the report refers. I will deal with one of the other findings of this paper about the land use practices that were threatening paddock trees. The report states:

Under present land-use practices, tree cover provided by isolated and small clumps of trees (paddock trees) in grazed or cultivated paddocks within the Riverina Highlands will be lost over time.

> There are three reasons for this:
>
> (1) These trees have a maximum life-span of around 500 years … and will therefore naturally senesce with time.
>
> (2) Premature mortality among paddock trees - or dieback - often occurs as a result of factors including salinity …, the interaction between increased nutrient loads and insect attack …, soil compaction …, altered flooding regimes …, and windthrow.
>
> (3) Such trees are cleared for a number of purposes such as plantation establishment, firewood collection and some forms of cultivation.

I note that the third factor is one that will rise again if we allow self-assessment of routine agricultural management activities for the clearing of paddock trees. The authors noted this and went on to state:

> The loss of paddock trees has been measured at 2.5-11% per annum in different agricultural landscapes in Australia … At this rate, the paddock-tree resource will be lost in a period of 9-40 years.

They go on to note:

> There is a general absence of eucalypt regeneration in cultivated or intensively grazed landscapes …, so paddock trees are not replaced when they are lost. This scenario has given rise to the description of paddock trees as 'the living dead'.

One of my primary concerns about the changes to the native vegetation laws is that we have a regime that has gone a significant way towards protecting paddock trees. But with self-assessment of routine agricultural management activities and for the removal and clearing of paddock trees, our concerns are that the paddock trees again will be classified as the living dead whereas they provide such an important resource not only for the environment but also for the agricultural production in rural lands in New South Wales. I commend the motion moved by my colleague Dr Mehreen Faruqi to the House.

The Hon. RICK COLLESS [5.12 p.m.]: I strongly oppose the motion moved by Dr Mehreen Faruqi. For the information of members who support the motion, particularly The Greens, I do not enter this debate without some qualifications as a conservationist. From 1971 until I was elected to this House I spent all my working life as a professional conservationist. For many years I worked for the Soil Conservation Service as a district soil conservationist and I also worked on developing conservation farming programs for farmers. I believe that gives me some considerable authority to speak about the issue of conservation. When I was a district soil conservationist, one of my programs in my district was a vegetation management program that gave farmers a lead on how to better manage vegetation resources on their properties.

I would go out to the properties and give them advice on where they could and could not clear and took into account a whole range of aspects such as soil types, slope, vegetation types and many other factors. The previous Government introduced State Environmental Planning Policy [SEPP] 46. Prior to that, I received approximately 20 phone calls a month from farmers about native vegetation issues. As soon as State Environmental Planning Policy 46 hit the deck, I received not one more phone call because I, as a professional soil conservationist, had been turned into a regulatory officer, a tree policeman, and the farming community switched off straightaway. The previous Government turned advisory officers, who were helping farmers by giving them good advice, into policemen.

In relation to clearing in New South Wales, one of the requirements of the war service land settlement schemes was that the landholders clear their land. When farmers took up the land they had to clear so much of it every year. They did that in good faith. As the Leader of the Opposition stated in his speech, much of that clearing occurred between 1943 and 1950. Much of the land that was cleared during that period has regenerated, but not as natural habitat. It has regenerated with what is now known as invasive native species. I would like to take Dr Mehreen Faruqi to some of those places and show her a paddock where there are millions of trees.

Dr John Kaye: We are worried you are a con man.

The Hon. RICK COLLESS: I wish The Greens would listen. In those paddocks there are millions of small trees growing very closely together with no groundcover underneath them—not one skerrick—and that land is now subjected to soil erosion. The excessive number of trees is what we refer to as invasive native species. This Government is trying to assist farmers to be able to better manage invasive native species so that they can control the growth of those species and allow the land to regenerate to a better balanced vegetation program.

Mr David Shoebridge: They can manage it under the current regulation. Self-assessment is the problem.

The Hon. RICK COLLESS: They cannot do it now: That is the problem. They cannot do it now without a long-winded and very detailed and very intensive assessment process, which slows down the whole process and increases the threat of soil erosion occurring in those areas. Dr Mehreen Faruqi mentioned that New South Wales farmers would benefit from retaining the old regulation. Let us see what New South Wales farmers have been putting on Twitter over the past hour or so. I will quote some of the comments, all of which have been made by New South Wales farmers: "The system is clearly broken costing farmers and communities and leading to perverse environmental outcomes every day"; "Native Veg Act 2003 is broken. No balance. Regs are the first step in the right direction to start to recognise farmers environmental credibility"; "We invite Mehreen Faruqi to come out and visit our farms to see what is really happening on the ground and environmental outcomes that are happening"; "Self-assessable codes make perfect sense.

They allow farmers to farm while still achieving environmental outcomes"; "Farmers understand and manage their land better than anyone. Why is your party"—which refers to The Greens—"moving a motion to stop them"; "Very disappointed to see Greens NSW bringing disallowance motion on native vegetation regulation. Farmers need respect and trust". That is what the farmers of New South Wales are saying as this debate is occurring. Mr David Shoebridge stated during his speech that cedar forests have disappeared from the Hunter Valley. Cedar forests existed from Kiama right through to the North Coast, and much of that has been cleared. However, I can tell him from experience that cedar forests still exist in the Hunter Valley. My family owned a property in the Hunter Valley and I have ridden through cedar forests. I have seen cedar trees that are larger than twice the diameter of the centre table of this House. Those types of resources and forests are still there. I have ridden on horseback through them.

The Hon. Dr Peter Phelps: You are not suggesting The Greens might be fibbing about this?

The Hon. RICK COLLESS: I do not think The Greens ever bothered to go out into some of those areas and see what is happening out there in the field. In relation to paddock trees, in western areas of New South Wales such as Moree, where large-scale farming operations occur, farmers are now using planting equipment that is 40 metres wide. This equipment runs on tram tracks. This is part of the conservation work developed years ago in which I was involved. Instead of running tractors round and round paddocks and compacting the soil, tractors run on the same 40-metre wide tracks year in and year out. All of their equipment is 40 metres wide—not only planters but all other equipment they use. If a single paddock tree is 30 metres from one edge of that equipment, the farmer cannot get his machinery past that tree; he would have to do a big loop round it. These machines are satellite controlled: the operators do not steer them; they simply monitor them.

When the machine gets to the end of the row the operator disconnects the global positioning system, turns the machine around, switches the system back on again, and it again travels a perfectly straight row. Paddock trees will be removed from that straight row. That is the single paddock tree that farmers will be able to remove under this self-assessable code to enhance their farming operations and reduce red tape. The changes to be made by this regulation make a lot of sense. The self-assessable codes are in the consultation and construction process. Extensive consultation has been going on with farmers and advisers. We will get the model right. The package will be right. When the codes are gazetted, farmers will know what they can and cannot do. Red tape will be removed. Issues raised in the Lane report will be addressed. That The Greens have decided to disallow this regulation is very disappointing, because this regulation is a big step forward for better environmental management on New South Wales farms.

Mr David Shoebridge: No.

The Hon. RICK COLLESS: Yes, it is. I did that sort of work for many years; I have worked in that field professionally. I oppose the disallowance motion moved by Dr Mehreen Faruqi.

Reverend the Hon. FRED NILE [5.22 p.m.]: The Christian Democratic Party opposes this disallowance motion. We have been involved in the debate over the native vegetation legislation since it was first introduced in the upper House. We had been working very closely with farmers and were lobbied extensively right across New South Wales by farmers who opposed the original native vegetation bill, which we opposed on that occasion. We moved 40 amendments to the bill to try to remove all of its harsh elements, because The Greens-Australian Labor Party bill was unfair, discriminatory, dictatorial and totalitarian. It was a good example of green tape strangling farmers' operations. Though we moved each of those 40 amendments one

by one, they were defeated; we failed to remove the harsh elements from the bill. We hope this regulation will stand and the disallowance motion is defeated. At least the regulation will address some of the harsh elements of the Native Vegetation Act that have put a very heavy load on the shoulders of our farmers.

The Hon. PAUL GREEN [5.23 p.m.]: I too speak on behalf of the Christian Democratic Party. We do not support the motion to disallow the Native Vegetation Regulation 2013. I have seen some of the implications of the native vegetation law. While it is great to look after the environment, and I totally agree that we are meant to be good stewards of the environment, we also need to be aware when we are writing law that there are mums and dads at grassroot level who are hoping to put houses on blocks and farm their land. Because some provisions of the native vegetation law are excessively strict, they have been forced to spend thousands and thousands of dollars on studies. In other instances, land has been sterilised that could have been put to alternative uses.

When talking about native vegetation, I constantly say in this Chamber that farmers and land managers are most responsible in looking after their lands because much of their livelihood depends upon the land. They know the routine of the land. Farmers know when to sow the soil, when it will give its best harvest, and when to allow the soil to rest. They know when to add soil conditioners. These people know their land completely. Regulations that basically tie their hands and prevent them from managing their land are not good. We have a long way to go on native vegetation regulation; we need to reform the legislation and basically give the people of New South Wales a fair go. We will not be supporting the disallowance motion.

Dr JOHN KAYE [5.25 p.m.]: I speak briefly in support of the motion to disallow the Native Vegetation Regulation 2013 moved by my colleague Dr Mehreen Faruqi. It is fascinating to listen to the debate in this Chamber. It is fairly clear that farmers and the environment have become, in almost equal measure, cannon fodder in The Nationals ideological war on native vegetation legislation and on native vegetation itself. This is how it works: The Nationals creates the myth that there is some kind of problem out there, that farmers are tied up in green tape. In fact, they have worked hard to promote the myth. I congratulate The Nationals and the right-wing of the Liberal Party, which have been out there promoting this myth. They have done a brilliant job.

That reminds me of the work they have done on wind turbines and the work they have done on the carbon price. It is a credit to their political skills that they have got the myth to the stage where they have been able to manufacture a crisis and take it to the point where they have got the Minister for the Environment—who is probably better than all of this—running this kind of war. The Coalition parties use their constituency to generate a political issue—to justify their own existence. The Nationals was facing almost annihilation; it lost some of its key seats on the coast as it was reduced to a rump. It needed an issue; but it could not find one. So it manufactured one.

There is one thing you can say about The Nationals: they are not really worried about facts. As long as they can get a good story out, away they go, so much so that I now suspect that they believe their own propaganda; they have become victims of their own propaganda—as they did with the wind turbines. I think there are on the other side of the Chamber members who genuinely believe that chickens lay eggs without yolks because of wind turbines. I think there are on the other side of the Chamber those who genuinely believe that the 20 billion tonnes of carbon dioxide that humans put into the atmosphere every year will have no impact on the environment. I feel sorry for them. They have been so captured by their own mythology, so captured by the political campaigns they have run, that they have convinced themselves.

Of course, that is very dangerous because it leads them to do silly things. In this case, the regulations that they are trying to push through are extremely dangerous. This matter would be quite funny, almost textbook funny, if it were not for the fact that there are real victims—farmers who have been whipped into a frenzy about native vegetation legislation and regulation and the supposed green tape that ties them up when they are trying to carry out their productive activities. The other victim of course is the environment itself and, as a consequence, all of us who lose out when the commonly held natural environment is destroyed. This regulation, it has been claimed, is about cutting green tape. Of course, one person's cutting of green tape is another person's destruction of sensible regulation.

The reality is that sensible and important regulation that protects crucial parts of the environment on farms will be destroyed by this regulation, and it is important that we disallow it. In particular, under the self-regulatory mechanisms—the routine agricultural management activities—native vegetation clearing activities will be extended, which the self-regulatory approach was never designed to cover. Self-regulation

simply does not work when it comes to serious threats to the environment, such as native vegetation thinning and removal of paddock trees, which have been mentioned already. Certainly, if this regulation is not disallowed, native vegetation loss will flow to native fauna habitat. Clearly, some farms experience tension in maintaining habitat and productive capacity.

Current regulations create an assessment mechanism where both issues can be resolved. The Hon. Rick Colless talked about paddock trees and where broad planting equipment used, as he asserts, along the same track each year —I presume also harvesting equipment—protects soil quality and integrity. If that is the case, the existing regulation provides the mechanism for the farmer or farm owner to seek clearance. The problem is that no other set of eyes or hands are protecting the paddock trees. Despite the ridiculous and deeply inaccurate accusations of some members of The Nationals which, no doubt, will play out well with their constituencies, I have spent time in paddocks across New South Wales and Victoria.

The Hon. Rick Colless: Where?

Dr JOHN KAYE: In western New South Wales and on the seaboard. I have sat—perhaps the Hon. Rick Colless should join me—and watched the birds fly in and out of paddock trees.

The Hon. Rick Colless: I have.

Dr JOHN KAYE: The member says he has. He must be deeply insensitive to the environment because if he had done that he would understand the importance of paddock trees to sustaining bird life, particularly migratory bird life. Resting places are important, especially where hundreds of hectares have been cleared and just a few trees remain to provide opportunities for birds to roost and rest. Removing paddock trees without a regulatory set of eyes will send many birds closer to extinction. This revised regulation is a practice run for The Nationals: If they get away with it, the next step will be a wholesale attack on the legislation. It is time this Chamber took a stand not just for the environment, but also for farmers, many of whom are heartily sick of The Nationals using and abusing them as cannon fodder in an ideological war. The sole objective of The Nationals is to create a crisis to make them relevant again. If The Nationals want to be relevant, they should work to improve environmental management. Better management, better understanding and better education for on-farm native vegetation opportunities are always needed.

We all need to better understand how it works, but not by slashing regulations and discarding important issues, such as thinning native vegetation and removing paddock trees leaving little in Australia and New South Wales. Not only is that in the worst interests of the environment; it also is in the worst interests of the productive capacity of those farms. Make no mistake: if this regulation goes through, native vegetation will be cleared and the productive capacity of farms will be undermined. I cannot work out why but I am accused of being anti-food production. If I am anti-food production, something is badly wrong in understanding what makes a good and productive farm because they have native vegetation. Good and productive farms understand ecosystem services and the importance of native vegetation. Ending this war that The Nationals are stirring up, getting a better understanding and dialogue of the importance of native vegetation is in the best interests of the environment and food and fibre production in New South Wales. I commend the disallowance motion to the House.

Dr MEHREEN FARUQI [5.35 p.m.], in reply: I stand proudly on behalf of The Greens as the mover of this disallowance motion because it protects the interests of our environment and our farmers. Unlike what Mr Scot MacDonald, the Hon. Rick Colless and the Hon. Trevor Khan would have us believe, much of my environmental work has been done outside Sydney around Port Macquarie and Taree working with farmers, landholders, catchment management authorities and Landcare to make sure that our land and our biodiversity remain protected. I grew up in Pakistan, a country whose economy is based almost completely around agriculture.

So, although I love living in the inner city, I do know a thing or two about agriculture, land management and conservation. Native vegetation is critical for supporting biodiversity ecosystems. Land clearing is one of the main causes of last century's major decline in native vegetation leading to habitat fragmentation, loss of biodiversity, soil erosion, and poor water quality in rivers and streams. With climate change posing further profound threats to native vegetation, weakening land clearing laws clearly is a step in the wrong direction, especially since proposed laws open up some land clearing without formal approval and with self-assessment only.

Clearing without appropriate guidance and resources will lead to further irreversible loss of native vegetation and environmental degradation. The view of those on the other side of the Chamber that the State is tied up in some kind of green or red tape and farmers are not being given the right to farm their land is really ill

informed. Primary producers do not support that view because they have learned how farming and native ecological systems can coexist. Many farmers recognise that productivity can be increased by protecting and enhancing native vegetation. They know that good native vegetation coverage can improve land value production outcomes and reduce operating costs. The 2005 regulation supports and guides farmers in this pursuit. But the revised Native Vegetation Regulation 2013 has problems, especially with the extension of routine agricultural management activities to include the clearing of invasive species, thinning native vegetation, and clearing paddock trees and small clumps using self-assessable codes without formal approval and with no assistance, monitoring or reporting.

As I highlighted earlier, this regulation has the very real potential of allowing large-scale clearing, putting the landholder—the farmer—and the environment at very high risk. The Government has suggested that spot fire monitoring through satellite imagery is sufficient to identify illegal actions. Spot fire can capture large instances of clearing, but is unlikely to detect breaches of proposed clearing under self-assessment codes, such as the many instances of removing paddock trees and small-scale clearing of endangered ecological communities. The Greens support strong environmental protection that also protects farmers and improves their lands. The Greens support the retention of the current 2005 regulation, which is based on sound scientific evidence and long-term environmental conservation.

In addition, it is important to build community capacity by involving communities and farmers in decision-making. Adequately resourcing organisations, such as catchment management authorities, Landcare and our Local Land Services to support and provide advice to landholders in integrated property management planning will lead to catchment-wide benefits for land, vegetation, biodiversity and water. Savings in administration costs and reduction in so-called green or red tape, or whatever one wants to call it, should not be achieved at the expense of environmental, social and economic benefits provided by native vegetation.

We cannot afford to lose any more biodiversity ecosystems. Of course problems are encountered when implementing regulation, but some of the problems experienced in the Native Vegetation Regulation 2005 are related to poor understanding rather than any substantive issues. The independent facilitator's report on native vegetation regulation review found that poor awareness of clearing provisions under the current regulation results in perceived rather than real obstacles to property management. Why not address this issue rather than watering down the regulation? By disallowing the 2013 regulation, we will revert back to stronger 2005 regulations. I commend the disallowance motion to the House.

Question—That the motion be agreed to—put.

The House divided.

Ayes, 19

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

Noes, 22

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

Question resolved in the negative.

Motion negatived.

SITTING SCHEDULE 2014

Motion, by leave, by the Hon. Duncan Gay agreed to:

(1) That, unless otherwise ordered, the days of meeting of the House in 2014 be as follows:

Budget sittings:

March 4, 5, 6, 18, 19, 20, 25, 26, 27
May 6, 7, 8, 13, 14, 15, 27, 28, 29
June 3, 4, 5, 17, 18, 19, (reserve days 24, 25, 26)

Spring sittings:

August 12, 13, 14,
September 9, 10, 11, 16, 17, 18
October 14, 15, 16, 21, 22, 23
November 11, 12, 13, 18, 19, 20, (reserve days 25, 26, 27)

(2) That, unless otherwise ordered, the initial hearings by General Purpose Standing Committees in the inquiry into the budget estimates and related papers for 2014-15 take place during the weeks commencing 18 August and 25 August.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 2 to 6 postponed on motion by the Hon. John Ajaka and set down as orders of the day for a later hour.

MINING AMENDMENT (DEVELOPMENT CONSENT) BILL 2013

Second Reading

Debate resumed from 30 October 2013.

The Hon. STEVE WHAN [5.50 p.m.]: We began the debate on the Mining Amendment (Development Consent) Bill 2013 last week. I am pleased that we did not conclude debate then because it has provided me with an opportunity to address some of the issues that are being raised. It has provided me with an opportunity to delve into an extremely interesting situation that could have serious consequences for employment in the Orange region if it is not resolved. The situation could be critical to whether or not the Opposition should support this legislation. The Mining Amendment (Development Consent) Bill 2013 aims to rectify conditions in a mining lease that are currently the subject of a court action. As I understand it, it is quite unusual for the Government to introduce retrospective legislation while a court case is in progress.

The Hon. John Ajaka: I am pretty sure the Wran Government did it.

The Hon. STEVE WHAN: I said it is quite unusual; I did not say it is not ever done. My memory is that, generally, retrospective legislation occurs after a court case. People on the other side of the Chamber are citing examples from the Wran Government. I was fairly young then so I cannot remember it. The Mining Amendment (Development Consent) Bill aims to fix an issue that has arisen that has become the basis for court action. This has come about because of a long-running series of disputes between two companies, Gold and Copper Resources and Newcrest Mining, which runs the Cadia mine near Orange. The companies have had a series of long-running dispute over titles, exploration leases, access and the potential sharing of technology. There have been a number of court cases involving these two companies.

The current action relates to land on which Newcrest has a freshwater dam, part of its conveyor, sediment ponds and some other facilities. Gold and Copper Resources claims that development on that land is illegal. It claims that it had an exploration licence over the land prior to Newcrest being granted the lease. Its action suggests that the lease is not valid in this case because it does not allow the activities mentioned. This comes back to the fact that there are two types of mining leases: a minerals lease, which allows for extraction and mining purposes such as the construction of roads, dams and mining infrastructure; and a mining purposes lease, which permits only mining. In a briefing, the Government advised:

> Although the Act makes clear that a mining lease for minerals permits the carrying out of mining purposes, it is not explicit about what constitutes "appropriate development consent" for a mining lease for minerals. This issue has been raised in court proceedings …
>
> There are currently 994 mining leases for minerals in New South Wales, 356 of which are for coal. The court proceedings have the potential to bring into question a large majority of these titles.

The advice that the Government has received confirms that there is a risk of that happening. The Opposition's information on this has to be taken on trust from the Government. We hope we are justified in doing that. It is understood that this bill is necessary because of the challenge by Gold and Copper Resources for the land being used by Cadia mine and for the facilities that I mentioned earlier. The challenge suggests that the land leased for mining purposes does not allow for a tailings dam and other associated infrastructure. If successful, the challenge would invalidate the use that the land is being put to at the moment. Clearly, that would have a direct impact on jobs in the area.

Brian Locke from Gold and Copper Resources has indicated that he does not believe that, if his company were to be successful in this action, it would have an impact. However, Newcrest, to which I have also spoken, disagrees, as does the Mayor of Orange, Councillor John Davis. He has urged the Opposition to support this legislation. The Minerals Council has also urged the Opposition to support this legislation. It believes that if the court action is successful it will have a direct impact on jobs in the Orange area and on other leases around New South Wales. It should be noted that both Gold and Copper Resources and Newcrest are members of the Minerals Council. Members might have noted that Gold and Copper Resources has run a full-page advertisement in today's *Daily Telegraph* that implies corruption. It says that the lease was allocated when Eddie Obeid was the Minister. It seems to me that there are two quite different arguments here. Gold and Copper Resources can argue about the original exploration licence, but that is quite different from the grant of a mining lease.

The Hon. John Ajaka: Point of order: I am having difficulty hearing the Hon. Steve Whan due to continued interjections from those opposite.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! I uphold the point of order. Members should refrain from speaking until they take their rightful place on the speakers' list.

The Hon. STEVE WHAN: It seems to me that there are two different arguments here. My understanding of the process—which I think is reasonable—is that to gain a mining lease a project has to have gone through full planning assessment and been approved by the planning Minister. The mining lease is granted by the mining Minister only after the planning Minister has approved the development.

The Hon. Dr Peter Phelps: That would have been Frank, wouldn't it?

The Hon. STEVE WHAN: No, I think it was before that time. The issue here is that, once a development has been approved by the planning Minister, having gone through the proper processes under the Environmental Planning and Assessment Act, it is unheard of for a mining Minister to exercise discretion about whether or not to issue the lease. The lease is issued with the conditions that were set out in the planning approval. In this case that should mean that the development that has occurred on the site, including the uses to which the site has been put, would have had approval by the planning Minister prior to the lease being issued. If that is so, the question of whether the type of mining lease issued is correct for the approved project is only technical and is not relevant to the ownership of the original exploration licence for the site.

If it was the intention in the planning approval to allow those activities to occur it seems appropriate that the lease should reflect that. It is reasonable to support this legislation on that basis, because it is simply endorsing a use of land that was already approved by the planning Minister. It does not go to the question that Gold and Copper Resources has raised about who had an exploration licence in an area. That has been the subject of other legal actions it has had against Newcrest. Presumably, if there is a legitimate question about whether the lease is infringing on a pre-existing exploration licence permit, that should not be affected by clarifying the technical issue of the meaning of this type of lease.

To me the key issue through all of this has been jobs in Orange. Approximately 1,500 jobs are directly involved in the Cadia Valley mine, and that is significant for the Orange area. It would be a massive blow to the economy of the area and to the families involved if that mine were forced to cease operations. I note claims that then the mine might not have to close if the court case is successful and that arrangements could be made to keep the mine going. But with that sort of uncertainty I am not willing to put at risk the jobs of those who work there. Labor has made a number of statements in the past couple of weeks about jobs in the Central West, where a large number of manufacturing-related jobs have been lost. We have said that this Government has not acted strongly enough to address that. It would be totally hypocritical for us to vote against legislation designed to secure jobs in the Central West—we will not do that.

Over many years the Newcrest Mining Limited mine in the Cadia Valley has had consistent support from Labor governments. I remember the very positive announcements made about the mine during the time of the Carr Government and the very strong support the then Premier gave to the development of the mine and to jobs in the Central West which were a result of the mine. I have no doubt that the decisions taken at the time reflected the fact that the Government was a strong supporter of the mine. This mine went through the proper approval processes. As I understand it, and I have run this by the department, the leases reflect the approvals that were given in the planning process.

The Hon. Jeremy Buckingham: No, they do not; that is why we are introducing the bill.

The Hon. STEVE WHAN: I note the interjection. This bill was introduced because the definition of the two different types of mining leases in the legislation is in question. What is not in question is the approval given by the planning department. I do think that is an absolutely critical distinction to point out. We are not talking about something that did not go through a transparent process. It went through a development process that was consistent with the planning laws of the day. I have read in the media clips of a number of arguments that these two companies are having. I am not going to express a view on any of those. In this case the Opposition is willing to support the Government and, as I said, to an extent trust what the Government is telling us. The Government's advice is that if this legislation is not passed then this court case could result in this mine ceasing operations and a lot of people becoming unemployed. That is not a cost the Opposition is willing to countenance. In this case we are willing to support what I still believe is fairly unusual legislation.

The Hon. PAUL GREEN [6.02 p.m.]: On behalf of the Christian Democratic Party I speak to the Mining Amendment (Development Consent) Bill 2013. I am never happy to support retrospective legislation. We must be open and transparent about legislation, and going back over previous ground—which could be seen as moving the goalposts—is very serious. I know we have done it on a few occasions, and we may end up doing so again with Crown land leases. So we cannot say that it will never occur. Today we again find ourselves in the situation where we will vote on retrospective legislation. I note that the words of the Hon. Steve Whan were weighted towards the concern this Chamber has for the jobs of those in the mining sector. I note that in his considered contribution he was trying to make sure that we get the right result in this complicated situation.

The Mining Act 1992 is responsible for the regulation of mining activities on land in New South Wales. The Mining Act provides for two types of mining leases: a mining lease for minerals, which allows for extraction and mining purposes, such as the construction of a road or a dam; and a mining lease for mining purposes, which permits mining purposes only. The concept of a mining lease for mining purposes was only introduced in March 1997 as a result of amendments contained in the Mining Legislation Amendment Act 1996. For mining leases to be granted under the terms of the Act, "appropriate development consent" under the Environmental Planning and Assessment Act 1979 must be in place. While the Act makes it clear that, once granted, a mining lease for minerals permits the carrying out of mining purposes, it is not explicit as to what constitutes "appropriate development consent" for a mining lease for minerals.

This issue has been raised in court proceedings in which two mining leases for minerals are being challenged. The court proceedings have the potential to bring into question most, if not all, of these titles—leading to further legal challenges, which will destabilise the industry and affect current and future investment, jobs, exports and royalties across New South Wales. This is because most development consents for new mines that lead to the granting of a mining lease for minerals generally include as part of the proposed development an area of extraction and associated broader areas where related mining purposes are undertaken.

There are currently 994 mining leases for minerals in New South Wales, 356 of which are for coal. Of these, 305 have been granted since the amendments commenced in 1997. While the issue in the main arises as a result of the introduction of a second type of lease into the Act, the court proceedings still have the potential to also cast doubt on the validity of leases granted before this date. Subject to the outcome of the court proceedings, most, if not all, operating mines in New South Wales may be affected by concerns about the validity of their leases. It would also create unnecessary red tape for industry by effectively requiring any future mining projects to obtain a patchwork of different mining leases for one development consent area.

The bill will ensure that a development consent that only approves mining purposes can be "appropriate development consent" for the grant of a mining lease for minerals. The amendments will apply to previous, existing and future titles. The amendments will not affect the requirement to obtain development consent or other planning approval for exploration, mining or mining purposes. This means that if a miner wishes to conduct extraction activities under a mining lease for minerals, and the miner does not have development

consent to do so on the land that is the subject of the lease, then the miner will have to obtain a planning consent that permits that extraction activity. These changes will protect the integrity of the mining titles regime in New South Wales, maintain investor confidence and ensure that mining operations can continue as usual.

These are very complicated issues. There are two questions arising in this situation. I have thrown the issues around with different colleagues and tried to work out how we can get a fair outcome. One of the questions is: How do we give the two leases being contested natural justice and an opportunity to have their day before the independent umpire? The question remains, and I would like the Minister to answer this: Could those two leases be extracted from this particular bill and be dealt with independently such that they could still seek natural justice from the independent umpire? In that way we could continue to protect other mining leases and ensure that the leases not being contested in court are granted the proper definitions and can continue to operate.

At the end of the day we think natural justice should come into this—there is a case for that. I would like to hear how the Government will deal with that. It is appropriate that the Government place on record why that will not undergo the processes of the independent umpire. The Christian Democratic Party thinks there are arguments for and against this bill, but in this place we have to make decisions that are in the best interests of the people of New South Wales. Mums, dads, kids and others depend on their jobs to be able to pay their bills at the end of the week and to keep their dreams alive. Like the Government and the Opposition, we have erred on the side of jobs continuity and some certainty for the people of Orange. After the closure of Electrolux the last thing we want is another jobs loss disaster. The Christian Democratic Party will support the bill.

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [6.10 p.m.], on behalf of the Hon. Duncan Gay, in reply: I thank all members for their contributions to the debate. The Mining Amendment (Development Consent) Bill 2013 amends the Mining Act by clarifying the requirement for appropriate development consent before a mining lease is granted. Let me be clear that this is a systemic issue. The purpose of the bill is to preserve the integrity of the entire mining titles regime in New South Wales. If left unaddressed this issue could call into question the validity of hundreds of mining leases in this State. Industry needs certainty and the minimisation of sovereign risk. Any prudent government would take steps to address a risk of this magnitude. Inaction could destabilise the mining title regime, which could have dire economic impacts, particularly in regional New South Wales.

I will provide just one example of the economic benefits that are at stake if we stand idle on this issue. Newcrest's Cadia Valley Operations is one of the largest private employers in the Central West region of the State. It has a direct local workforce of around 1,300 people including 78 apprentices and eight graduates. It has contributed approximately $147 million in mining royalties to the State over the past five years. To date Newcrest has invested $4 billion and committed further investment of more than $1 billion into these operations. To reiterate: This is but one example of the economic benefits that are at stake. Scores of other mining leases could be called into question if we do not act. If these leases were challenged, thousands of mostly regional jobs and significant investment would be at risk.

To put this in context: Minerals production was valued at more than $20 billion in 2010-11 with full-time direct mining employment of more than 43,000 people and private new capital investment in mining amounting to $4.4 billion. By making these amendments the bill avoids doubt as to whether a development consent approving mining purposes can be "appropriate development consent" for the grant of a mining lease for minerals. This bill is the result of careful consideration about the best path forward for everyone—industry and the community.

I am informed that the bill has the support of Orange City Council and the Minerals Council. I state again that if a holder of a mining lease for minerals wants to undertake extraction activities on the land the subject of the lease and that person does not hold a development consent authorising the undertaking of these extraction activities, that person must seek permission to do so. The bill makes this clear. The bill ensures that the mining industry, which is so critical to the ongoing strength and development of our economy, can continue business as usual on the bedrock of a secure and robust titles framework. I commend the bill to the House.

The Hon. Jeremy Buckingham: "Business as usual in New South Wales", that's the quote to take home. Nothing has changed since Eddie Obeid.

The Hon. John Ajaka: Point of order: It is outrageous that the Hon. Jeremy Buckingham would imply that I am Eddie Obeid. I demand that he withdraw it and apologise.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! The Hon. Jeremy Buckingham, the Minister has taken exception to your implication. Will you withdraw the imputation?

The Hon. Jeremy Buckingham: If the Minister has taken offence that I implied that this Government—

The Hon. Dr Peter Phelps: Just withdraw it.

The Hon. Jeremy Buckingham: I am clarifying what I am withdrawing.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! The Minister believes that you suggested he was Eddie Obeid.

The Hon. Jeremy Buckingham: To the point of order: I do not understand why I should withdraw that. Why is that an offence? To the extent that there was any implication that the Minister was corrupt, I withdraw.

The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner): Order! If you were able to say that you would withdraw it if the Minister was corrupt as has been found to be the case with Mr Obeid by the Independent Commission Against Corruption that probably would be acceptable.

The Hon. Jeremy Buckingham: As you have put it, Madam Deputy-President, I withdraw it.

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

The House divided.

Ayes, 33

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

Noes, 5

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

Question resolved in the affirmative.

Motion agreed to.

Bill read a second time.

Third Reading

Motion by the Hon. John Ajaka, on behalf of the Hon. Duncan Gay, agreed to:

That this bill be now read a third time.

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

[*The Deputy-President (The Hon. Jennifer Gardiner) left the chair at 6.26 p.m. The House resumed at 8.00 p.m.*]

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT AMENDMENT BILL 2013

Second Reading

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [8.00 p.m.], on behalf of the Hon. Duncan Gay: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to introduce the Building and Construction Industry Security of Payment Amendment Bill 2013. The purpose of the bill is to introduce reforms that will provide greater protection for subcontractors and promote cash flow and transparency in the contracting chain.

Over the three financial years up to 2011-12, insolvencies in the New South Wales construction industry have accounted for at least 50 per cent of insolvencies across all States and Territories.

One in every two construction companies that enter into external administration were from New South Wales.

Over the past two financial years, more than 2,000 construction companies have entered into external administration. The effects and impact of insolvency in the construction industry are not confined to the failed company. The effects are felt by a score of other parties, in particular unsecured creditors further along the contract chain.

These unsecured creditors are more often than not small businesses, ill equipped to deal with a delay in payment, let alone non-payment of money owed.

When a building company is placed into administration, it typically leaves unpaid debts to significant numbers of subcontractors and other creditors. The Australian Securities and Investment Commission estimates that each year, insolvencies result in the loss of hundreds of millions of dollars to unsecured creditors in the form of unpaid debts. These unpaid debts in turn place other businesses at risk, with often devastating results throughout the contracting chain, particularly at the subcontractor level.

These statistics include the failure of contractors engaged by government agencies to construct housing, roads and other significant capital works.

In an industry that provides employment for more than 300,000 people and generates wealth and opportunities for many more in other sectors of the New South Wales economy, this Government recognises that the impact of insolvency particularly on small business needs to be addressed.

In August 2012, the New South Wales Government established the Independent Inquiry into Construction Industry Insolvency, chaired by Bruce Collins, QC. The inquiry was asked to consider the cause and extent of insolvency and provide options to Government on how to better safeguard the interests of subcontractors.

The final report of the inquiry acknowledged that the issues are complex and have been considered by all States and Territories over many years.

The inquiry made 44 recommendations to reform the industry, providing a clear case for government action in a number of key areas. The Government responded to each of those recommendations in April this year and over the coming 18 months will implement a number of reforms.

The Government's reform package addresses issues relating to the causes and impacts of insolvency through:

- strengthening the existing legislative framework;
- establishing a retention trust scheme for subcontractors;
- reforms to government construction procurement, including empowering the NSW Procurement Board as the peak policy-making body for all government construction projects from 1 July 2013 onwards; and
- an education campaign to improve the business and financial management skills of small business operators.

The reforms have been developed with a clear understanding of the contribution of the building and construction industry to employment and growth, and that the industry has only relatively recently shown some signs of recovery.

The New South Wales Government's response, strikes a balance between providing greater protection for subcontractors and ensuring that additional regulatory and administrative costs to business are minimised.

This bill represents the first phase of the reforms announced by the New South Wales Government.

Since the introduction of the Building and Construction Industry Security of Payment Act 1999 in New South Wales, each State and Territory has enacted its own legislation dealing with the security of payment issue. While there are some jurisdictional differences, legislation in each State and Territory borrows from New South Wales by establishing a statutory right to progress payments and an adjudication system to resolve disputes.

While it is widely agreed within the industry that the Act has provided greater protection for subcontractors, the Government recognises that stakeholders have expressed concerns about how the Act operates in certain areas.

That is why a comprehensive review of the operation of the Act will be undertaken in 2015. The review will consider other amendments to the Act recommended by the inquiry for which the Government has provided in-principle support. As part of that review, the provisions of this bill will also be assessed.

We know that despite best intentions and hard work, businesses fail. This will continue to be the case in all industries. In putting forward the amendments in this bill, this Government is acting decisively to better protect small businesses from unfair payment practices and enhance the flow of cash through the contracting chain. The effect of this will be to reduce financial stress on subcontractors many of whom can wait for more than three months after the completion of their work, to be paid.

The aim of this bill goes directly to the original objective of the Act.

On the introduction of the Building and Construction Industry Security of Payment Act into this Parliament in 1999, the then Minister referred to the main objective of the bill as being to reform payment behaviour in the industry by creating fair and balanced standards for construction payments and speed up payments, by removing incentives to delay.

The Building and Construction Industry Security of Payment Amendment Bill 2013 maintains this focus on fairness and promoting cash flow within the contracting chain. The proposed amendments will work to reduce the financial stress that delayed payment places on builders, particularly subcontractors.

The Government acknowledges that the majority of the industry does the right thing.

However the inquiry found that "subcontractor payment cycles are unacceptably long, and that the common practice is late, delayed or reduced payments to subcontractors which are pushing increased financial pressure down the contracting chain and contributing to the financial stress upon subcontractors and increasing the risk of insolvency."

The inquiry found that while some subcontractors that provided labour intensive services may be able to negotiate a payment cycle of 14 days, this was clearly an exception. Payment of subcontractors could extend to 90 or more days after the work was completed, with the inquiry estimating that the average payment term was somewhere between 45 and 60 days.

Some of the worst examples about delayed payment practices heard by the inquiry, involved standard payment terms of between 90 and 120 days after the work was completed by the subcontractor. This is clearly unacceptable and it is at this end of the market where the prompt payment provisions of this bill are particularly targeted and will have the greatest effect.

The inquiry also identified a critical need for effective financial disclosures between parties to a construction contract, in particular the disclosure of payments to subcontractors.

Allegations of head contractors swearing false statutory declarations in relation to their payment obligations to subcontractors are longstanding. This bill, through the supporting statement provisions, will bring new accountability to the sector. New enforcement powers and substantial penalties for non-compliance send a clear message to those in the industry who would provide false information or misleading information in relation to payments owed to subcontractors.

Throughout the course of the inquiry and following the release of the Government's response to its recommendations, industry has been engaged and consulted on all the key issues. Each of the peak organisations that formed part of the Inquiry's Industry Reference Group, was directly consulted on the draft bill throughout June and July.

In response to concerns about the potential impact of the reforms in this bill on small business in the residential sector, the Minister undertook to conduct additional consultation with industry during August. As a result of this consultation, the bill provides a limited exemption targeting small businesses operating in the residential sector.

The Act has always excluded construction contracts for residential building work, as defined in the Home Building Act 1989, where the principal, in this case a consumer, resides or proposes to reside in the premises where the work is undertaken. However contracts between the head contractor and subcontractors working on those premises have always been covered by the Act.

The exemption under the Act that currently applies to a residential contract between a head contractor and consumer is extended for the purposes of proposed section 11. This means that the amendments will not apply to a residential contract that is connected to the contract between the consumer and head contractor—referred to in the bill as the main contract.

This limited exemption does not apply to other work that may be described as residential such as high-rise apartments and other commercial developments in the sector.

Due to the existing exemption under the Act, the supporting statement provisions do not apply to a residential contract between a head contractor and consumer.

The Housing Industry Association and Master Builders Association support this exemption and have consistently provided constructive support during consultation.

The residential sector, however, continues to experience a high number of insolvencies. The collapse of a number of home builders since October 2011 has left consumers and subcontractors substantially out of pocket. The exemption will be assessed as part of the scheduled 2015 review of the Act or earlier should the need arise.

The definitions in section 4 of the bill reflect the existing roles of industry participants. The principal, or client, typically engages a head contractor to oversee and manage the construction process, who in turn engages subcontractors to undertake specific elements of the project. The Collins inquiry confirmed that through this contracting model, subcontractors undertake the vast majority of construction work.

The definitions of principal and head contractor in the bill, are linked through what is termed the main contract. A head contractor is defined as the person who is to carry out construction work or supply related goods and services for the principal under a construction contract—the main contract—and for whom construction work is to be carried out or related goods and services supplied under a construction contract as part of or incidental to the work or goods and services carried out or supplied under the main contract.

A subcontractor is defined as a person who is to carry out construction work or supply related goods and services under a construction contract otherwise than as head contractor.

The bill recognises that there are situations where a principal may engage a subcontractor directly. In circumstances for example where a small-scale residential "spec builder" engages subcontractors directly, there is no head contractor. The builder is the principal. The bill does not fashion a role for any participant, but rather sets obligations for parties when and where they exist in a construction contract.

Amendments to section 11 of the Act set out the prompt payment provisions.

Proposed section 11 (1) provides that subject to this section and any other law, a progress payment to be made under a construction contract is payable in accordance with the applicable terms of the contract. This ensures that parties to a contract may continue to negotiate terms that apply to the process of assessing a payment claim made under a construction contract.

Proposed section 11 (1A) of the bill stipulates that a progress payment to be made by a principal to a head contractor becomes due and payable on the date occurring 15 business days after a payment claim is made under part 3 of the Act.

Proposed section 11 (1B) stipulates that a progress payment to be made to a subcontractor becomes due and payable on the date occurring 30 business days after a payment claim is made under part 3 of the Act. This provision applies to contracts between a head contractor and subcontractor as well as contracts between subcontractors, and subcontractors and suppliers.

These maximum payment periods are the safety net for both head contractors and subcontractors.

A construction contract may of course provide for payment on an earlier date than these maximum payment periods.

These prompt payment provisions are designed to start the faster flow of cash from the top of the contracting chain.

Consistent with the exemption I have already described, section 11 (1C) of the bill retains the existing due and payable provisions for construction contracts connected to an exempt residential contract.

There are no changes in this bill to part 3 of the Act, which sets out the procedure for recovering progress payments, including how a payment claim is to be made.

Proposed section 11 (8) voids any provision in a construction contract that provides for payment of a progress payment later than the maximum payment periods set out in subsections (1A) and (1B).

Under existing and ongoing provisions of the Act, interest is payable on the unpaid amount of a progress payment that has become due and payable.

To questions as to what impact or cost these changes may have on the capacity of parties to a construction contract to verify payment claims and related administrative practices, I would draw attention to similar provisions that have been operating in Queensland since 2004 under that State's security of payment legislation, without adverse effect.

The bill also removes the existing requirement under section 13 (2) (c) that a payment claim include a statement that it is a claim being made under the Act. The inquiry found that this requirement was one of the factors that had led to an underutilisation of the Act by subcontractors and should be abolished. Many subcontractors are reluctant to include such a statement in their payment claims to head contractors as it may be viewed as a signal of a possible dispute. The statement was made a requirement under the principal Act to ensure that respondents to claims were made aware of their obligations should a dispute arise. However the Act is now in its fourteenth year of operation and is generally well understood by industry. An education campaign will communicate the reforms to industry.

In its final report, the inquiry noted the almost universal support from those that provided evidence, for the introduction of prompt payment provisions and the removal of the wording requirement for a payment claim.

The exemption provided for in the bill means that this change will not apply to construction contracts connected with an exempt residential construction contract.

Proposed section 13 (7) introduces a new requirement for head contractors. A payment claim submitted by a head contractor to a principal must be accompanied by a supporting statement that includes a declaration that all subcontractors and suppliers engaged by the head contractor, if any, have been paid all amounts that have become due and payable in relation to the construction work concerned.

This legal requirement will, in effect, replace the standard contractual requirement for a statutory declaration that includes a statement that all subcontractors have been paid what is due and owing to them be provided by the head contractor to the principal with a payment claim.

This obligation to provide a supporting statement to a principal will rest only with the head contractor—that is, the entity that has a contractual relationship with the principal and engages another party or parties to perform part of the work on that project.

The provision addresses a key finding of the inquiry that statutory declarations made by head contractors under the Oaths Act for the purpose of securing a progress payment from a client are often false, not enforced and frequently amended to convey the appearance that what was due and owing to a subcontractor was no longer an amount owed by the head contractor.

There are practical advantages in establishing a legal requirement under the Act rather than police officers having the primary responsibility of investigating claims of falsely sworn statutory declarations under the Oaths Act.

Authorised officers from agencies such as the Department of Finance and Services will have powers to investigate and prosecute breaches of the provisions relating to supporting statements.

There will be a maximum penalty of $22,000 for not complying with section 13 (7).

Proposed section 13 (8) creates a separate offence for knowingly providing a supporting statement that is false or misleading. A maximum penalty of $22,000 or three months imprisonment or both will apply.

These provisions introduce an element of transparency into payment practices that operate in the industry and provide a clear incentive for head contractors to pay subcontractors what is due and payable. The supporting statement requirement simply provides that a head contractor declare they have paid subcontractors what they are owed under contract. The requirement does not bring forward or create a new obligation to pay subcontractors. If at the time a head contractor makes a payment claim to a principal under a construction contract an amount is owed to a subcontractor or supplier, then the provisions require the head contractor to confirm that these payments have been made.

The provisions do not introduce any requirements or obligations on the principal. The payment of progress or other payments to a head contractor by a principal remain determined by the terms of the contract and, if they apply, the prompt payment provisions of this bill.

Proposed sections 36-36B set out matters relating to the investigation of compliance with supporting statement provisions dealing with documents produced in an investigation and ensuring that any information provided is handled appropriately by authorised officers.

The director general may appoint a public service employee—an authorised officer—for the purpose of investigating compliance with the supporting statement provisions. An authorised officer may request in writing that a head contractor or someone who is or was employed or engaged by a head contractor provide information and all documents relating to the payment of subcontractors by or on behalf of the head contractor in respect of specified construction work.

It will be an offence to refuse or fail to comply with a request for information from an authorised officer or knowingly provide false or material information. A maximum penalty of $22,000 or three months imprisonment or both will apply.

The New South Wales Civil Contractors Federation has acknowledged the value and need for these provisions.

The regulations will provide the detail of what information is required to be provided by the head contractor in that supporting statement and will be subject to further industry consultation. Consideration will be given as to how to capture information relating to any instances of non-payment of subcontractors not directly engaged by the head contractor. The regulations may also consider the need to consolidate supporting statement requirements with existing legal obligations relating to payroll tax, workers compensation and employee remuneration.

I can also foreshadow that the Department of Finance and Services, which is committed to encouraging voluntary compliance with this bill, will work with industry groups to focus its compliance efforts towards the "bad apples" in the construction industry. The department will publish guidance about how to comply with these provisions, and give examples of what it as the regulator considers breaches the law, and what practices comply with the law.

As part of the second phase of reforms, the Minister will release a consultation paper on the proposed model for a statutory retention trust to protect subcontractors' cash retention, another key reform for the building and construction industry. That paper includes the proposal that the administration of the scheme as well as initiatives to improve the New South Wales construction industry's compliance with security of payment laws are to be funded through interest earned by the trust fund.

This work would include:

- informing and educating construction industry businesses, business advisors and workers about their rights and obligations under security of payment laws;
- enhancing compliance with security of payment laws, including funding strategic enforcement initiatives; and
- monitoring, researching and developing policies associated with security of payment for contractors generally.

Continuing with the terms of the bill, schedule 2, part 5 provides that these changes will not apply to contracts entered into before the commencement of the amendments.

The amendments contained in this bill are part of the broader reform agenda outlined earlier and have been the subject of considerable industry consultation. Since being sworn in, the Minister for Finance undertook to consult further with industry. Minor changes were made to the early consultation draft of the bill in response to feedback on the definitions in the original draft bill. These changes provide greater clarity, particularly in relation to the definition of a head contractor.

The exemption targeting small businesses operating in the residential sector will be reviewed within 18 months. There have been calls to exclude all residential work from this bill. However to do so would leave the thousands of small business subcontractors operating in this sector, without the protection afforded to other parts of the industry. The Government is acting through this bill and other reform measures, to protect small businesses across the industry.

> The Government released the final report of the inquiry on 28 January 2013 for public consultation. As part of this consultation process, meetings were held with members of the Inquiry's Industry Reference Group to discuss the key reform themes arising from the final report and 63 submissions were received.
>
> The provisions of this bill are supported by a broad cross section of the industry and have the strong backing of subcontractors, the Master Builders Association and the largest peak organisation representing small business—the NSW Business Chamber.
>
> It is understandable that parts of the industry have expressed their disappointment at being portrayed as rogues in the media.
>
> I am sure that all members of the House appreciate the outstanding contributions made by the vast majority of men and women employed in the industry. It is a hard industry to succeed in, and those that do, have contributed in a lasting way to our built environment.
>
> And we know that the continuing difficult economic environment in which the industry continues to operate, has played a role in the failure of many businesses. In this respect, the Government's approach to reform is measured and balanced, recognising that heavy handed regulation would in many respects simply add further cost to doing business in this sector.
>
> The O'Farrell-Stoner Government remains committed to providing a better deal for small businesses in the construction sector.
>
> Our reforms are comprehensive, balanced and focused on those areas where we can and should influence behaviour.
>
> However there is only so much State governments can do in this area.
>
> Corporations law, insolvency and bankruptcy are matters regulated by the Federal Government. The final report of the independent inquiry noted that there is more that can and should be done at the Federal level.
>
> The inquiry heard from too many builders about the problem of phoenixing—the deliberate liquidation of a company to avoid liabilities such as tax, employee wages and debts to other businesses and continuation of trade under another trading entity.
>
> In a 2012 report for the Fair Work Ombudsman, PricewaterhouseCoopers estimated that the overall cost to the economy of illegal phoenixing in the industry of building companies was between $1.78 and $3.19 billion.
>
> These companies leave a massive trail of debts and are the same companies underbidding and under cutting legitimate business at tender, perpetuating a cycle of failure, debt and loss.
>
> Existing laws on matters relating to illegal phoenixing, insolvent trading and the legal obligations of directors under the Corporations Act must be better enforced by the Federal regulators.
>
> The Government recognises the need to ensure that industry is informed as to the nature and scope of the changes and has sufficient time to make the necessary arrangements to ensure compliance with the new requirements.
>
> As part of the overall response to the recommendations of the Collins inquiry, an Industry Advisory Group has been established to ensure continued effective industry engagement. Comprised of key industry peak organisations including the Housing Industry Association, Civil Contractors Federation, Master Builders Association, the Australian Constructors Association, the Construction Forestry Mining and Energy Union as well as the Small Business Commissioner and the Insurance Council of Australia, the advisory group will assist in communicating the changes and reforms to industry and also develop an education campaign focussing on the financial and business management skills of small business.
>
> The Department of Finance and Services will develop information and compliance fact sheets and online resources to assist industry in this regard.
>
> In summary, this bill provides for fairer payment terms for subcontractors, will hold head contractors to account for the statements they make about payments to subcontractors and will make it simpler and easier for subcontractors to utilise the Act.

I commend the bill to the House.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [8.03 p.m.]: On behalf of the Opposition I lead in debate on the Building and Construction Security of Payments Amendment Bill 2013. The Opposition will support the bill. We think the bill is good, as far as it goes. The bill emerges from the Inquiry into Construction Industry Insolvency in New South Wales, commissioned by this Government and conducted by Mr Bruce Collins, QC, in August 2012, in the wake of a number of collapses or insolvencies in the construction industry in New South Wales. There was an unfortunate domino effect in that there were a number of failures of significant players in the building and construction industry in this State. Failures in the building and construction industry in New South Wales are not new. The boom and bust history of the industry has seen operators come and go. It is a competitive industry where margins are often tight and there is very strong competition. The Collins inquiry noted:

> The industry recorded the highest number of insolvencies of any defined industry for the financial year 2011/12, a total of 1,113 or 24.7% of external administrations reported to ASIC across New South Wales …

That is an extraordinary number of failed businesses—which are usually small businesses—in a short time. In that financial year, some notable companies failed: Kell and Rigby, a very old company, in February 2012;

St Hilliers, another reputable building company in Sydney, in May 2012; Hastie Group, also in May 2012; Reed Constructions, the beneficiary of a significant amount of government work, particularly on Central Coast projects; and Southern Cross Constructions. Even Leighton Holdings reported an after tax loss of $409 million for the 2010-11 financial year. Opposition members recognise that the economic activity of the building and construction industry is important not only for New South Wales and Australia but also for employees and their families who depend on that industry for their work and wellbeing.

I will not repeat the debate that occurred in the other place. It canvassed a range of factors that contributed to the difficulties experienced by the industry. As I outlined earlier, in the wake of those collapses, the Government established the Inquiry into Construction Industry Insolvency in New South Wales, headed by Mr Bruce Collins, QC. The terms of reference were broad, and the inquiry made 44 recommendations. At the time, it seemed that the Government was of a mind to accommodate many recommendations, even those that might have proved difficult.

On 18 April the former Minister for Finance, the Hon. Greg Pearce, MLC, issued a press release headed, "Government Acts on Building Insolvencies" in which he outlined the Government's response to the inquiry. I will not recite it in detail, but it indicated that head contractors would be required to pay subcontractors progress payments within 30 days rather than the long payment cycles of 45 to 60 days. To further ensure that subcontractors would receive prompt payment, the former Minister also announced that the Government would be introducing legislative changes to improve payment practices. Key reforms included establishing a cash retention trust scheme for subcontractors. The Minister stated:

> … New South Wales will become the first state to set up a trust fund scheme administered by the Office of the Small Business Commissioner to protect retention sums.

This is not the first inquiry into the building and construction industry nor is it the first attempt by governments to deal with difficulties in the industry. In 1997 the Carr Government passed the Contractors Debts Act. In 1999 the Carr Government enacted the Building and Construction Industry Security of Payment Act 1999. The bill before the House tonight is to amend and improve that legislation. That legislation introduced, for the first time, such concepts as statutory rights for contractors and subcontractors to avail themselves of progress payments. Provision was made regarding the suspension of work for non-payment. The legislation also made provision for the appointment of adjudicators to hear claims and introduced interest on late payments.

From all reports the Act had a certain amount of success. But conditions have since worsened in the industry. As far as I have been able to ascertain from the construction unions and others involved heavily in the industry, including on the contractor side, unscrupulous players have found ways around the legislation. As I understand it, the legislation requires certain formulas to be used in certain documents for its provisions to operate and of course those offering work have been able to procure it from those who need it by avoiding those terms. The Labor Opposition also engaged constructively in this space previously when it offered its Small Business Commissioner and small business protection legislation.

The Hon. Matthew Mason-Cox: We do remember that with great interest.

The Hon. ADAM SEARLE: I acknowledge that interjection. At the time of the announcement of the Collins inquiry I indicated that while we supported the objects—

The Hon. Matthew Mason-Cox: It was a road to Damascus moment, wasn't it?

The Hon. ADAM SEARLE: No, it was not. We supported the inquiry but we noted that there was a bill before the House which, if the Government had joined with us in enacting, would have given small businesses—including subcontractors in the building and construction industry—new unfair contract protection rights. That would have been very useful in helping them avoid the exploitation which they are suffering at present in the industry and which, as we understand it, the provisions of the amendment bill now before the House are designed to ameliorate.

I note that while the Collins inquiry itself recommended statutory trusts, it was not clear from the terms of its recommendation exactly how that would operate. The intention seemed to be that legislation would be required to mandate the establishment of trusts by head contractors. The Government in its announcement said that, under its version, when it implemented the Collins inquiry recommendations it would have a trust fund scheme administered by the Office of the Small Business Commissioner. That of course is something that we provided for in our small business protection legislation, along with the facility to have protective codes of practice enacted for certain industries.

It was a good bill, and if the Government had joined with us in August 2012 it could have been enacted. Of course it is a matter of history that the Government did not support the legislation, and its own legislation did not provide those same rights or protections for small businesses in the construction industry. We note that this flagship reform proposed by the Collins inquiry is missing from the legislation before the House. I note that in the Minister's second reading speech in the other place—and I assume in the second reading speech of the Parliamentary Secretary which was incorporated in *Hansard*—the Government has at least flagged that this is the first phase of reform flowing from the Collins report and that there will be others, although no time frame has been specified.

As the shadow Minister for Finance in the other place asked during the second reading debate, I ask the Government to provide an update on where this recommendation is up to. The Opposition has circulated an amendment directed at this reform proposal. We do not seek to make it mandatory or prescriptive of any form. The amendment we propose is facilitative; it provides that the Government may by regulation create these statutory trusts and that the trusts may either provide for a head contractor to establish the fund or for the fund to be established and operated by the Office of the Small Business Commissioner, as was proposed by the Hon. Greg Pearce when he was the Minister for Finance and Services.

As we see it, the amendment we propose is not in conflict with stated government policy. It is really directed to providing that facility to the Government of the day to, in a gentle way, encourage it to follow through on the path that it has indicated. As I say, we do not oppose the bill. My understanding is that the construction unions also do not oppose the bill. I understand that other players in the industry do not oppose the bill as far as it goes. As I indicated, the bill contains ameliorative provisions designed to assist payments and cash flow in the industry and to provide some increased protection for subcontractors, one of which is claims by head contractors.

Currently the law requires that a payment claim by a head contractor under a contract must state that it is made in accordance with the Act. The bill proposes to remove this requirement so that claimants, including subcontractors, are no longer required to include these words. As I understand it, those with work to offer have in a sense coerced subcontractors into not using that form of words; and so the subcontractors are no longer able to avail themselves of the protection of the legislation

Dr John Kaye: And there is the fear of litigation.

The Hon. ADAM SEARLE: And there is a fear of litigation. Of course without the protection of the security of payment legislation there is the fear of litigation because that is the only course of action left—to sue under common law contracts—rather than the helpful legislative arrangement that has worked with some effect to date. In effect, a progress claim which identifies construction work to which the claim relates and the amount that is due will be treated as a valid payment claim for the purposes of the Act. Currently there is no requirement for a payment claim made in accordance with the Act to be accompanied by a statutory declaration or other statement as to the payment of workers and subcontractors.

The proposed amendments to the Act will prevent a head contractor from serving a payment claim on the principal unless the claim is accompanied by a supporting statement in a prescribed form, which includes a declaration to the effect that all subcontractors, if any, have been paid all amounts that have become due and payable in relation to the construction work concerned. Further, a head contractor will not be able to serve a payment claim on a principal with a supporting statement that is known by the head contractor to be false or misleading. The Act introduces penalties for not providing a supporting statement or for making false or misleading statements as to the payment of subcontractors. We see that as a very important measure. The introduced reforms include: authorised officers that are defined in the bill will be appointed to investigate the head contractor's compliance with the requirements regarding supporting statements.

Authorised officers will have the power to require a head contractor or a relevant associated person to provide documents that relate to the payment of subcontractors, if any, and supporting statements that have been made. Progress payments are important because they relate to cash flow of contractors and subcontractors, and there are provisions that relate to the due date for the payment of progress payments. Currently that is defined as the date on which the payment becomes due and payable in accordance with the terms of the contract, or in the absence of any express provision, 10 business days after a payment claim is made in relation to the payment. That will be changed to provide for progress payments that are claimed by a head contractor to be made 15 business days after a payment claim is made. For progress payments claimed by a subcontractor that are due from a head contractor, the due date for payment will be 30 days after a payment claim is made, or an earlier date provided in accordance with the terms of the contract.

For progress payments claimed under a construction contract that is connected with an exempt residential building contract, which is a contract for residential building work on such part of premises as the party for whom the work is carried out resides in or proposes to reside in, the due date for payment will be the due date on which the payment becomes due and payable in accordance with the terms of the contract or, in the absence of any express provision, 10 business days after a payment claim is made in relation to the payment. As we see it, these are sensible provisions. Subcontractors and employees of contractors and their families will welcome these provisions. But they do fall significantly short of the recommendations made in the Collins inquiry and the pronouncements of the previous Minister for Finance and Services the Hon. Greg Pearce. Some 44 recommendations were made by the Collins inquiry, and I think about 38 of them relate to legislative change. This bill encapsulates only three or four of them, from memory, which means a significant body of work remains outstanding.

The Hon. Matthew Mason-Cox: It is a journey.

The Hon. ADAM SEARLE: It is a journey. I acknowledge that interjection and I am encouraged by those words from the Parliamentary Secretary. I note that the journey so far, as indicated by this bill, has taken some five months. While not wishing to be critical, this represents a very small step on a long journey. I understand that many conversations are going on about how to best achieve the objectives of the Collins inquiry. Knowing what I apprehend would be significant resistance from vested interests in the industry, not all of whom would welcome such reforms, I encourage the Government to get on with it and to bring forward further proposals.

As I indicated, in the spirit of constructive engagement we have circulated a single set of amendments that are designed to permit the Government to implement the Collins inquiry recommendations relating to construction trusts. If taken, it would be a significant step and would move the industry a long way forward in addressing the problems identified times without number for generation after generation. That is important not only for this industry, which has a large economic impact on our State, and small businesses but also for families and communities in Sydney and throughout New South Wales.

Members opposite will be mindful that when these various companies got into difficulty and ceased to trade it did not only incommode private persons but also impeded the implementation of a number of government contracts, including Armidale courthouse. The Opposition thinks it is important that these reforms be put in place to reduce as much as possible the chances of future difficulties that leave workers and their families swinging in the breeze without payment and financially exposed. We support the bill but we suggest what we see as a significant improvement. We encourage the Government to follow through on its rhetoric to date.

The Hon. PAUL GREEN [8.21 p.m.]: The object of the Building and Construction Industry Security of Payment Amendment Bill 2013 is to amend the Building and Construction Industry Security of Payment Act 1999 with respect to repayments to be made under construction contracts, including timing of and other requirements for those payments. The bill aims to provide greater protection for subcontractors and improve cash flow and transparency.

During my time as mayor of the Shoalhaven we had a couple of awkward situations in which contractors claimed that subcontractors had been paid when they had not. The contractors then went broke and the subcontractors came to council to pay the bill. It was not fair for ratepayers to pay twice for the work that was assigned to the major contractors but it meant that the poor old subcontractors had to walk away without their cash and with nothing to pay their workers. They were left high and dry. It was tragic that many subcontractors went broke after their cash flow was compromised and it had a ripple effect on jobs in the area that relied on their businesses. The major contractors had signed affidavits saying that they had paid their subcontractors, which was disgusting.

The Government advises that over the past two financial years more than 1,000 construction companies have entered into external administration in New South Wales. Businesses that provide a great deal of work to many families are going bust due to delayed payments. Figures from the Australian Bureau of Statistics and the Housing Industry Association show that the combined value of the New South Wales building and construction industry is almost $40 billion. It has long been reported that it is common for 80 to 90 per cent of the total work value on many building construction projects to be performed by subcontractors.

In August 2012 Bruce Collins, QC, chaired the Independent Inquiry into Construction Industry Insolvency. The inquiry was established with terms of reference to: assess the extent and cause of insolvency in

the construction industry; consider payment practices affecting subcontractors as well as existing protections for subcontractors and the impacts of insolvency on subcontractors; and consider legislative or other policy responses that could be taken to minimise the incidence and impact of insolvency in the building industry. In response to the inquiry's findings the Building and Construction Industry Security of Payment Amendment Bill 2013 includes: changes to due dates for making progress payments; the removal of requirements for statements that a payment claim is made under the principal Act; the requirement for a payment claim to be accompanied by a supporting statement; investigation of compliance with provisions regarding supporting statements; savings and transitional provisions, and other amendments.

A key finding of the Collins inquiry was that payments to subcontractors were consistently late, delayed or reduced with payment cycles being unacceptably long and ranging from anywhere between 14 to 120 days. I note that the local public hospital in the Shoalhaven had issues with paying its staff for services—not even the New South Wales Government was delivering. I hope that laws such as this will also require the government to pay its bills on time. In an effort to ensure prompt cash flow down the contracting chain, prompt payment provisions will be introduced requiring head contract payment terms to be no more than 15 business days and subcontract payment terms to be no more than 30 business days. Longer payment terms will be void.

The Collins inquiry also found that subcontractors were reluctant to submit claims under the primary Act due to perceived risks that they would not be awarded future work. To address this issue, payment claims will no longer have to include a statement to the effect that they are made under the Act in order to attract the operation of the Act. In the Shoalhaven we found that subcontractors who had not been paid did everything possible to find the money to pay their employees. They ran the risk of losing their houses because they could not say anything or bite the hand that fed them. They were in a catch 22: They had not been paid but if they went against the head contractor they would not get work in future. In regional and rural areas decent contracts are few and far between and many subcontractors would not complain about non-payment for fear of losing future work. They would rather starve, let unmanageable bills pile up and experience stress, depression and anxiety than challenge head contractors to keep their word and pay them.

It is important to note that the amendments in the bill still will not apply to construction contracts for the carrying out of residential building work on such part of any premises as the party for whom the work is carried out resides in or proposes to reside in—that is, domestic residential consumer contracts. Once again, we experienced that situation in the Shoalhaven with social housing. The subcontractors were not paid and so they did not finish the building. The people who needed the housing were put out because they had not received what they had been promised. That debacle carried on for about 18 months but after coming to office this Government resolved the situation.

In cases of residential consumer contracts a statement to the effect that a claim is made under the Act will still be required in order to attract the operation of the Act. This will ensure that those operating in the home building sector cannot be taken by surprise. In response to allegations of the widespread submission of false statutory declarations with payment claims the bill introduces new offences and penalties. It will be an offence for a head contractor to submit a payment claim without a "supporting statement", attracting a maximum penalty of $22,000. That statement will need to indicate that it relates to the payment claim and include a declaration that all subcontractors and suppliers have been paid amounts due to them. The form of the supporting statement will be prescribed by the regulations to the Act. In one cheeky case in the Shoalhaven the head contractor declared that he had gone bust and then he or someone he knew started a new company and began operating again.

Dr John Kaye: It is called phoenixing.

The Hon. PAUL GREEN: I acknowledge the interjection of Dr John Kaye. They were phoenixing, and it was appalling.

Dr John Kaye: Oh yes—revolting.

The Hon. PAUL GREEN: No standards whatsoever. Furthermore, a head contractor that serves a payment claim with a supporting statement, knowing that statement to be false—and we have had cases of that—or misleading in a material particular in the particular circumstances, will commit an offence that will be punishable by a maximum penalty of $22,000, three months imprisonment, or both. I do not think it is the monetary penalty that head contractors are worried about because they always seem to be able to find cash when they need it: But when subcontractors need it, it is nowhere to be found. I am encouraged to think that sending someone to jail might send a stronger message to unscrupulous contractors who are not doing the right thing by subcontractors, or even to both the contractors and subcontractors depending on the circumstances.

The Government has indicated a clear intention to strengthen the existing legislative framework of the Act through a series of reforms. The Christian Democratic Party strongly agrees with this significant step towards providing greater protection for subcontractors. However, we also agree that further amendments are required, and we will examine those reforms. The Deputy Leader of the Opposition has foreshadowed moving an amendment. The Christian Democratic Party will endorse that initiative on this occasion. The Christian Democratic Party commends the bill to the House.

Dr JOHN KAYE [8.30 p.m.]: On behalf of The Greens I join in debate on the Building Construction Industry Security of Payment Amendment Bill 2013. Like the Labor Opposition and the Christian Democratic Party, The Greens will not oppose the legislation. We see it as one small step being taken to address a major problem. We understand that 50 per cent of insolvencies in New South Wales concern the building industry. Each year there are a thousand building companies that submit to external administration. That takes a terrible toll not only on subcontractors but also on subcontractors' employees—the building workers across New South Wales—who end up without payment because the subcontractor goes bankrupt. In too many cases the subcontractor becomes bankrupt because the head contractor refuses to hand over the money. Time and time again in the building industry we see head contractors siphoning off money, not paying money that was paid to them, causing bankruptcies and business failures among subcontractors, and causing building workers to end up being out of pocket and in many cases becoming deeply impecunious.

It is interesting that the O'Farrell Government is addressing this serious problem. It is a serious problem of economics in the construction industry, it is a serious human problem for the owners of the subcontracting companies, and it is a serious human problem for the employees of subcontractors. The harsh reality is that prior to the introduction of the Federal Government's WorkChoices legislation, there was capacity for workers to secure payment out of the head contractor. With the introduction of John Howard's WorkChoices that capacity disappeared. Unfortunately, almost a decade later we are trying to fix the problem from the other end. It is a shame that we cannot go back to the pre-WorkChoices days.

The Hon. Adam Searle: In many senses.

Dr JOHN KAYE: I accept and agree wholeheartedly with the interjection made by the Deputy Leader of the Opposition. In this particular matter, it is significant because WorkChoices leaves employees unprotected. It is significant in terms of addressing the greatest single problem of insolvency in the industry—protecting the rights of employees and the contractors.

The Hon. Dr Peter Phelps: What days would you like to go back to, John?

Dr JOHN KAYE: The days before the Hon. Dr Peter Phelps was in Parliament.

The Hon. Dr Peter Phelps: Perhaps 1922 Bolshevism?

DEPUTY-PRESIDENT (The Hon. Trevor Khan): Order!

Dr JOHN KAYE: The days before the Hon. Dr Peter Phelps had a voice in this place. Thank you, Mr Deputy-President. I appreciate your intervention. It is a shame that we cannot go back to the provisions applying before WorkChoices that gave employees in the building industry the capacity to recover money owed to them from the head contractor. This legislation goes a very small way towards addressing that by trying to reduce the number of insolvencies by implementing four key provisions. The first provision is setting hard targets and hard deadlines on progress payments to be made by the principal to the head contractor and to the subcontractors within 30 days. That does not apply in the case of residential construction, but certainly in the case of non-residential construction it will be an important step forward that will stop head contractors and principals holding on to money that they should be paying.

The second provision, which at first sounds kind of strange but when we delve into it makes sense, is that claimants will no longer need to state that their progress payment claims are being made under the principal Act. I understand the reason this acted as a barrier to claimants making payment claims is that as soon as they said, "I am making this claim under the principal Act", that flagged the likelihood of litigation. The likelihood of litigation all too often resulted in the matter becoming quite unnecessarily acrimonious and many subcontractors were rightfully afraid of retribution from the head contractor or the principal if they made a fuss. By naming the Act, there was a risk of that being interpreted as an intention to go to court.

The third provision is that all payment claims from the head contractor to the principal must be accompanied by a supporting statement that includes a declaration that subcontracts have been paid. Severe penalties will apply to those who do not do so, or who make a false or misleading statement. The fourth provision is the creation of an office of an authorised person who will be able to require a head contractor to release information and papers relating to compliance with claims for payment, in particular those relating to the payment of subcontractors. The amendments are relatively minor. As the Deputy Leader of the Opposition pointed out, they go some way, but only a small way, towards addressing the findings of the inquiry by Bruce Collins, QC, which is known as the Independent Inquiry into Construction Industry Insolvency.

This legislation is a beginning and clearly this is a journey that hopefully leads to a situation in which employees—workers in the building industry—will be protected and will not be left to the mercy of subcontractors, head contractors and principals who withhold payment: They will be paid a fair day's wage for a fair day's work. There can be nothing more annoying, as employees of Gujarat NRE discovered recently, than doing a good day's work and then not being paid. It represents a breakdown in a social contract between employer and employee. It is entirely appropriate in those circumstances for the State to intervene to provide employees with the protection of the law. We are not actually doing that with this legislation. We are trying to protect them indirectly.

What the O'Farrell Government is doing instead is trying to protect subcontractors so that they do not become bankrupt. This legislation represents a step in the right direction because at least it gives some degree of increased likelihood that employees in the building construction industry will be paid. The Greens will watch with great interest the progress of the Minister for Finance and Services, Andrew Constance, towards the other recommendations of the Collins inquiry. Hopefully, those recommendations will be implemented. I note that the Deputy Leader of the Opposition foreshadowed amendments to create a trust fund for payments. That is not only a recommendation of the Collins inquiry but something that the Minister foreshadowed in his second reading speech he was interested in doing, as incorporated in the record of this House. The Greens strongly support that.

The Greens will support the Opposition's amendment. We think that creates a better opportunity for employees in the industry to be paid eventually. That is a step in the right direction. It is probably one of the more sensible things that can be done to increase the likelihood of employees being paid. It is one of the most sensible steps forward, and The Greens strongly support it. That being said, although we are disappointed that the bill does not go further, and disappointed that the bill does not reinstate the rights of employees to recover lost wages and other benefits directly out of the principal of the head contractor where there is a failure to pay, we support the legislation before the House and will support the proposed amendment.

The Hon. SOPHIE COTSIS [8.39 p.m.]: I strongly support providing contractors and subcontractors with confidence that they will be paid for the work that they do. Having confidence that you will be paid is important for two reasons: it means that people go to work knowing they will be paid; and it means that people are not out-of-pocket for work they have done and can spend their time on new work rather than chase payment for past jobs. The construction industry builds our State's economy. On a personal note, my dad is a tradesman—he is a painter. He has been doing this work for 50 years. He is a self-employed contractor who owns his own business. Construction depends on how well the economy is doing. As the daughter of a tradesman I have firsthand experience of how difficult it was, many times over the past 30 to 35 years, when my dad was not paid for his work. That has been very difficult for our family.

Some of my father's colleagues in this industry have gone bankrupt, or have had to mortgage their homes. This takes a huge toll on the family. As the daughter of a tradesman, I have experienced a number of occasions when the major contractor does not pay the subcontractor, or does not pay for all the work that has been done. For the small operators, good luck trying to get any payment; they do not have the resources or the money to resort to the courts to get payment. They have to keep working, honouring commitments to do work and chasing new work—in effect, invoicing themselves into buying jobs to keep securing work. As my colleague the Deputy Leader of the Opposition stated, the Government has done the right thing; however, we needed earlier action on this issue.

The construction industry builds our State's economy, yet it is the industry that has the highest number of insolvencies, with almost one-quarter of internal administrations reported to the Australian Securities and Investments Commission in 2011-12 coming from the construction industry. In recent years there have been a number of significant failures in the construction industry: Kell and Rigby in February 2012, St Hilliers in May 2012, the Hastie Group in May 2012, and Reed Constructions and Southern Cross Constructions. I note that

there have been many efforts to improve the security of payment available to contractors and subcontractors. The Carr Government introduced the Contractors Debts Act in 1997, and the Building and Construction Industry Security of Payment Act in 1999.

The Building and Construction Industry Security of Payment Act 1999 introduced new statutory rights for contractors and subcontractors to avail themselves of progress payments. The Building and Construction Industry Security of Payment Act 1999 also made provisions regarding the suspension of work for non-payment, and the appointment of adjudicators to hear claims, interest on late payments and similar things. The bill addresses several issues that will assist payments and cash flow in the industry. The proposed amendments to the Act will prevent a head contractor from serving a payment claim on the principal unless the claim is accompanied by a supporting statement in a prescribed form, which includes a declaration to the effect that all subcontractors, if any, have been paid all amounts that have become due and payable in relation to the construction work concerned.

Currently, the law requires that a payment claim by a head contractor under a contract must state that it is made in accordance with the Act. The bill proposes to remove this requirement so that claimants are no longer required to include these words. Instead, all such claims must comply with the Act. In effect, a progress claim that identifies construction work to which the claim relates and the amount that is due will be treated as a valid payment claim for the purposes of the Act. Currently, there is no requirement for a payment claim made in accordance with the Act to be accompanied by a statutory declaration or other statement as to the payment of workers and subcontractors. Further, a head contractor cannot serve a payment claim on the principal with a supporting statement that is known by the head contractor to be false or misleading.

The bill introduces penalties for not providing a supporting statement or for making false or misleading statements as to the payment of subcontractors. Authorised officers that are defined in the bill will be appointed to investigate the head contractor's compliance with the requirements regarding supporting statements. Authorised officers will have the power to require a head contractor or a relevant associated person to provide documents that relate to the payment of subcontractors, if any, and supporting statements that have been made. Progress payments are important because they relate to cash flow of contractors and subcontractors, and there are provisions that relate to the due date for the payment of progress payments.

Currently, the due date is defined as the date on which the payment becomes due and payable in accordance with the terms of the contract or, if there is no express provision, 10 business days after a payment claim is made in relation to the payment. This will be changed to provide for progress payments that are claimed by a head contractor to be made 15 business days after a payment claim is made. For progress payments claimed by a subcontractor that are due from a head contractor, the due date for payment will be 30 days after a payment claim is made, or an earlier date provided in accordance with the terms of the contract. For progress payments claimed under a construction contract that is connected with an exempt residential building contract, or that is a contract for residential building work on such part of premises as the party for whom the work is carried out resides in or proposes to reside in, the due date for payment will be the due date on which the payment becomes due and payable in accordance with the terms of the contract, or, if there is no express provision about the matter, 10 business days after a payment claim is made in relation to the payment.

While these provisions will go some way to improving the situation for contractors, subcontractors and their families, there is more to do. I will continue to work with the shadow Treasurer and shadow Minister for Finance, Michael Daley, and the Deputy Leader of the Opposition in this place, the Hon. Adam Searle, to ensure that the Government continues to monitor this industry and review legislation. We will be talking to contractors and subcontractors as time goes on. People who do the right thing—who get up and go to work in good faith—ought to be able to do so knowing that they will be paid for their work, and paid in a timely way. I note the comments of my colleague in the other place the shadow Treasurer and shadow Minister for Finance, and support his call for more to be done to improve the security of payments in the construction industry.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [8.47 p.m.], on behalf of the Hon. Duncan Gay, in reply: I thank all honourable members for their contributions to this debate. They certainly were impassioned. I did not expect such a bevy of speakers on this important bill, but I was very pleased to hear their contributions. Someone like the Hon. Walt Secord might suggest that some members were labouring under a misconception that they were being paid by the second for their contributions. I would not suggest that for a moment, because theirs were comprehensive and passionate contributions. One should remember that this bill is part of a package of reforms that have been instituted and will continue to be instituted by this Government over the coming months. Indeed it is a journey, as I mentioned earlier to the shadow Minister.

This bill forms part of the overall response to the recommendations of the Collins inquiry. I note, in particular, that an industry advisory group has been established to ensure continued effective industry engagement. The advisory group will communicate the changes and reforms to industry, and is currently developing an education campaign that focuses on lifting the financial and business management skills of small business. Stakeholders also are encouraged to comment on the Government's preferred statutory retain trust scheme for subcontractors. In that regard, it is important to note that the Minister will soon release—in fact, in a number of days—a consultation paper setting out the proposed model and seeking feedback on specific issues.

I note in that regard that the Opposition has put forward some amendments that pre-empt that discussion paper, and indeed that consultation. We will consider those in detail in Committee of the Whole. Another important reform that the Government will implement is a trial of project bank accounts on government construction contracts where government agencies will pay head contractors and contractors simultaneously from a trust account. Indeed, as part of these reforms to financial assessment processes, contractors engaged by the Government will be subject to more comprehensive and more frequent financial assessments. Given the track record of the industry and the impact of that directly on the Government's processes and projects, that is a good initiative.

Just like those proposed in this bill, these other reforms also will be developed with industry consultation and input. No doubt Deputy-President (The Hon. Trevor Khan) remembers attending the Civil Contractors Federation awards last Friday night when a number of impressive businesses received a range of awards for excellence. Their response certainly was one of anticipation for the Government's planned reforms. I am pleased to announce those reforms in the form of this bill. As I mentioned, the Opposition's amendments pre-empt the consultation process and the Government's discussion paper. I am happy to address that in the Committee of the Whole. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 and 2 agreed to.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [8.53 p.m.]: I move Opposition amendment No. 1 on sheet C2013-171B:

No. 1 Page 4, schedule 1. Insert after line 21:

[5] Section 12A

Insert after section 12:

12A Trust account requirements for retention money

(1) The regulations may make provision for or with respect to requiring retention money to be held in trust for the subcontractor entitled to the money and requiring the head contractor who holds retention money to pay the money into a trust account (a ***retention money trust account***) established and operated in accordance with the regulations.

(2) The regulations may provide for the trust account into which retention money is to be paid to be a trust account established with a financial institution by the head contractor or a trust account established and operated by the Small Business Commissioner.

(3) Without limitation, the regulations under this section may include provision for or with respect to the following:

(a) the procedures to be followed in connection with the authorisation of payments out of a retention money trust account,

(b) the keeping of records in connection with the operation of a retention money trust account and the inspection of those records by the Small Business Commissioner,

(c) the resolution of disputes in connection with the operation of a retention money trust account.

(4) A regulation may create an offence punishable by a penalty not exceeding 200 penalty units for any failure to comply with the requirements of the regulations under this section.

(5) In this section, ***retention money*** means money retained by a head contractor out of money payable by the head contractor to a subcontractor under a construction contract, as security for the performance of obligations of the subcontractor under the contract.

As foreshadowed in my second reading contribution, the Opposition seeks to provide a mechanism in the legislation to facilitate the implementation by government of the recommendation of the Collins inquiry and the announcement of former finance Minister, the Hon. Greg Pearce, for the creation of retention money trust accounts or statutory trusts for the holding and dispersal of money to all persons owed money under a construction contract. I note the contribution in reply of the Parliamentary Secretary and his indication that the Government is but days away from releasing further details of these proposed reforms and, I understand from his comments, the proposed form of the construction trust. Although the Parliamentary Secretary has suggested that the Opposition has pre-empted this initiative, its amendment does not seek to prescribe or mandate any specific form of a trust. It merely provides the legislative power for the Government to promulgate regulations making provision with respect to requiring retention money to be held in trust for the subcontractor entitled to the money.

The regulations may also make provision for whether the trust account is established with a financial institution and operated by the head contractor, as I understand the Collins inquiry recommended, or is established and operated by the small business commissioner, which I understand is the Government's preferred model, as announced by the former finance Minister. Of course, other details in subclause (3) flesh that out a little. Again, the amendment simply is a facilitative provision giving the Government the power to implement its preferred model when it lights upon it after consultation. The amendment also creates the power in the law to make a regulation creating an offence punishable by a penalty not exceeding 200 penalty units for failing to comply with the requirements of the regulation. We believe that is necessary to provide some stick to the carrot. Of course, the amendment contains also the definition of "retention money". We believe this amendment supports the Government's announced course of action and invite it and other members of the House to join with us to make this issue truly non-partisan.

The Hon. PAUL GREEN [8.56 p.m.]: The Christian Democratic Party acknowledges the Deputy Leader of the Opposition's contribution and trusts very much in his eloquent speech to the Opposition's amendment. We have noted already that crossbench members in particular will support this amendment.

Dr JOHN KAYE [8.56 p.m.]: This amendment takes another step towards addressing the problems associated with insolvency in the construction industry by providing greater protection for workers in that industry. The amendment does not compel the Minister to do anything; it gives the Minister power to set up a trust fund and to compel head contractors to pay into that trust fund. That makes sense, although I note the Parliamentary Secretary observed in his reply that an announcement would be made shortly, which is not inconsistent with the passage of this amendment. In fact, this amendment will enable the Government to make its announcement using this amendment to the legislation. To that extent The Greens support the amendment.

The Hon. PAUL GREEN [8.57 p.m.]: In response to that comment and reflecting on our situation in the Shoalhaven, we had business take retention money and pay a bond, to which council was very much entitled, to fix up the mess a contractor made, yet subcontractors were trying to get that money from council as payment because the head contractor did not do right by them. If the Government is to have a bond or some mechanism for retaining money, it had better make sure it is enough to fix up the mess as well as to pay subcontractors.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [8.58 p.m.]: It is quite extraordinary how quickly this Government can move at times. I am pleased to report that the consultation paper is now on the web. I refer members to *www.finance.nsw.gov.au*. This Government is moving with great speed.

The Hon. Adam Searle: It was a matter of days and now it's here.

The Hon. MATTHEW MASON-COX: It is here. No doubt, this is a journey and the Government is keen to ensure that it gets these reforms right. That is why it is important to take a little time with this consultation paper to ensure that we engage the stakeholders and get this right. As the shadow Minister said, significant business important to the civil construction industry rides on the back of these reforms. The Government has to get these reforms right. We do not want to create cash-flow problems in this industry, which is one of the endemic problems that cause stress for contractors and subcontractors.

Opposition members are jumping the gun for all of those reasons. As per the proposed model, the scheme will be administered by the Small Business Commissioner. All stakeholders are strongly encouraged to comment on the model as outlined in the discussion paper. The Government intends to legislate for this model in 2014. As a result, this amendment is not necessary. The amendment is arbitrary in nature as it states that the Government may do this or may do that. Before the Government acts it will fully consult with industry. That is the way it should be. For these reasons the Government will not be supporting the amendment.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [9.00 p.m.]: I remind the House and honourable members that the Government has disclosed the course of action it will adopt. Unless the Parliamentary Secretary is informing the House of something different, the Government has indicated it will have a statutory trust arrangement, which will be administered by the Office of the Small Business Commissioner. This was the pronouncement of the Hon. Greg Pearce, the former Minister for Finance, which was reiterated by the Government in this debate.

We understand the subject of consultation and further discussion will be the precise form and content of those statutory arrangements or requirements, not whether they will have them or not. This provision is not prescriptive. It is not mandatory. It does not suggest any particular form or content. Once the Government has consulted with industry and settled upon the form and content the amendment merely provides the mechanism by which it will swiftly and seamlessly implement the model through the promulgation of necessary regulations, which, of course, may be reviewed by either House under the Subordinate Legislation Act.

The Hon. Niall Blair: Section 44.

The Hon. ADAM SEARLE: I acknowledge that interjection. Of course, if the Government strikes the right balance, it will not. We do not believe this amendment will do any harm to the Government's agenda. It provides the necessary legislative framework for the Government to deliver when it is ready. We urge the amendment upon the House.

Question—That Opposition amendment No. 1 [C2013-171B] be agreed to—put.

The Committee divided.

Ayes, 23

Ms Barham	Mr Green	Mr Shoebridge
Mr Borsak	Dr Kaye	Mr Veitch
Mr Brown	Mr Moselmane	Ms Westwood
Mr Buckingham	Reverend Nile	Mr Whan
Ms Cotsis	Mr Primrose	Mr Wong
Mr Donnelly	Mr Searle	*Tellers,*
Dr Faruqi	Mr Secord	Ms Fazio
Mr Foley	Ms Sharpe	Ms Voltz

Noes, 18

Mr Ajaka	Mr Harwin	Mrs Pavey
Mr Blair	Mr Khan	Mr Pearce
Mr Clarke	Mr Lynn	
Ms Cusack	Mr MacDonald	
Ms Ficarra	Mrs Maclaren-Jones	*Tellers,*
Mr Gallacher	Mr Mason-Cox	Mr Colless
Mr Gay	Mrs Mitchell	Dr Phelps

Question resolved in the affirmative.

Opposition amendment No. 1 [C2013-171B] agreed to.

Schedule 1 as amended agreed to.

Title agreed to.

Bill reported from Committee with amendment.

Adoption of Report

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

That the report be adopted.

Report adopted.

Third Reading

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

That this bill be now read a third time.

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

BOARD OF STUDIES, TEACHING AND EDUCATIONAL STANDARDS BILL 2013

EDUCATION AMENDMENT (NON-GOVERNMENT SCHOOL FUNDING) BILL 2013

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 2013

Bills received from the Legislative Assembly.

Leave granted for procedural matters to be dealt with on one motion without formality.

Motion by the Hon. Matthew Mason-Cox agreed to:

That the bills be read a first time and printed, standing orders be suspended on contingent notice for remaining stages and the second readings of the bills be set down as orders of the day for a later hour.

Bills read a first time and ordered to be printed.

Second readings set down as orders of the day for a later hour.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 9 postponed on motion by the Hon. Matthew Mason-Cox and set down as an order of the day for a later hour.

RESIDENTIAL (LAND LEASE) COMMUNITIES BILL 2013

Second Reading

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [9.15 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

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

Leave granted.

I am pleased to introduce the Residential (Land Lease) Communities Bill 2013.

This bill makes good on the Government's pre-election commitment to improve the governance of residential parks.

I would like to acknowledge from the outset the work done by my colleague the member for Albury who laid the groundwork for this reform package when in opposition.

The bill repeals and replaces the Residential Parks Act 1998, following a comprehensive review of that Act which the Government has conducted over the last two years.

The review found that the current law is seen as confusing, cumbersome and creating unnecessary conflict between residents and operators.

As a result the Government has totally rewritten the law, including providing a more suitable title.

Residential land lease communities represents a more appropriate title given the increasing community feel of parks and the permanency of the residents.

Changing the title and the language used in the legislation better reflects the modern arrangements found in these places today.

Residential land lease communities have become a very important part of the housing mix, particularly in regional and rural areas especially along the coast.

They provide an attractive and affordable lifestyle choice, especially for many retirees.

The first step the Government took in its review was to amend the law in 2011 to establish a register of all the residential communities in the State.

As a result, we now know that there are close to 500 residential communities across New South Wales with more than 33,000 permanent residents.

When I visit residential communities, one thing that particularly strikes me is the strong sense of community among the residents and the informal networks of support they provide to each other.

The legislative proposals contained in the bill will reinforce this model of community living.

Appropriate consumer protection safeguards in the existing Act will be kept and expanded upon.

There are a large number of reforms which will benefit home owners. Equally, there are changes to the law that address some of the main concerns of operators.

This bill is a fair and balanced package of reforms.

This bill has been developed following considerable consultation with residents, operators and other interested parties.

Details of the review were directly mailed to operators and resident representatives for each residential park listed on the register.

There were two formal rounds of public consultation, firstly with the release of a discussion paper in November 2011 and then with the release of a draft bill in April of this year.

Well over 2,000 submissions were received during the course of the review.

This was a tremendous response and is an indication of the widespread level of knowledge and interest in these important reforms.

Every single submission received, however big or small, has been carefully considered and given equal weight.

In addition, my office held a series of roundtable meetings with key stakeholder representatives to discuss the issues and options in more detail.

These meetings were valuable and robust, while those present did not agree on everything, I was pleased to see consensus reached in a range of different areas.

Since becoming the Minister for Fair Trading, I have been pleased to visit many residential communities across the State to hear firsthand the issues of concern to residents and operators.

Many of my colleagues on this side of the House have done the same by visiting communities in their electorates and making representations to me on behalf of their constituents.

All of this feedback has played a role in shaping the final bill, and I am proud of our wide-ranging consultation.

Following our extended consultation period, the Government has taken on board the concerns raised and amended some sections of the bill.

Changes have also been made to the bill to address any unintended consequences that have been identified in comments.

Some residents who had their say on the bill raised the issues of the introduction of voluntary sharing arrangements; provisions regarding rights of additional occupants under the age 55; the introduction of special levies for community improvements; and perceived changes to the termination provisions.

All four of these issues have been addressed by refinements made to the consultation draft bill.

I now turn to the provisions of the bill.

The objects of the bill are to improve the governance of residential communities; set out particular rights and obligations of operators and home owners; enable prospective home owners to make informed choices; establish procedures for resolving disputes between operators and home owners; protect home owners from bullying, intimidation and unfair business practices; and encourage the continued growth and viability of residential communities in the State.

The bill includes a range of new terms to be consistent with the new title and the shift away from the tenancy laws.

For example, the bill uses terms such as residential communities, home owners, site fees, operators, homes and community rules.

The outdated language of caravan parks, moveable dwellings, relocatable homes and rent is gone.

The bill makes it much clearer who is and who is not meant to be covered by the legislation.

The exemptions are more specific to arrangements found in this industry and include holiday lettings, long-term casuals, itinerant workers and full-time employees.

As I mentioned earlier, the establishment of a register in 2011 by the Liberal-Nationals Government has been a useful source of statistical data and been very helpful with communication during the review.

Provisions relating to the register in the current Act have largely been carried across into the bill.

However, under the bill the information from the register that is publicly available is to be expanded to include the name of each community operator and details of any enforcement or disciplinary action taken against them.

The addition of these details should help to improve accountability and transparency.

A number of important reforms are contained in part 4 of the bill.

The bill will require operators to provide a disclosure statement at least 14 days before a site agreement can be entered into.

The disclosure statement will draw attention to the key aspects of the agreement.

Disclosure statements work well in other sectors, such as the retirement village industry.

The bill maintains a cooling-off period once an agreement is signed for up to 14 days.

These two measures should ensure that people take their time to consider if the terms of an agreement are right for them and do not feel rushed or pressured into signing up on the spot.

One area over which arguments in residential communities are not uncommon is the boundary lines between sites, given there are no fences.

To address this issue, the bill will require the dimensions of each site to be specified in the site agreement.

Part 5 of the bill deals with the basic rights and responsibilities of home owners and operators.

This covers such matters as mail facilities, the maintenance of trees and access to sites by the operator, service providers and emergency vehicles.

The bill recognises that the dilapidation of older homes in communities is becoming an increasing problem and gives more practical options for how these situations can be resolved.

The intention is to encourage home owners to repair the home and stay in the community rather than lose their home.

The bill will require operators to be reasonable when considering a request from a home owner to have an additional occupant.

Another provision that attracted attention when we released the consultation draft bill is the introduction of special levies for community upgrades.

If, for example, the residents of a residential community which does not have a swimming pool would like to have one, they can agree to fund it by paying a special levy.

They can also negotiate for the operator to make a contribution to the fund given the benefits they would receive from such projects.

Under the bill the idea of a special levy could originate from either the home owners or the operator.

Importantly, the bill will require at least 75 per cent of home owners to agree with the proposal as well as the operator's consent before a special levy can be brought in.

Furthermore, the bill will require the money to be held in trust until the upgrade is completed and refunded to home owners if for some reason the work does not go ahead.

These provisions will ensure that special levies only occur where there is widespread support within the community.

Mandatory education for new operators was one of the three key parts of our election commitment.

I am pleased to be able to say that the bill delivers on that commitment.

Within 30 days of becoming an operator an education briefing will need to be undertaken.

The content of the mandatory education will be developed by the Commissioner for Fair Trading in consultation with key stakeholders.

This reform will ensure that new operators understand the law and their responsibilities and develop the necessary skills to fulfil their role.

The difficult burden of challenging excessive site fee increases is one of the major issues for home owners with the current law.

These disputes account for the bulk of the tribunal's workload in this area.

Looking at ways to simplify the process was one of the three key parts of our election commitment.

The new collective approach to site fee increases in the bill delivers on that commitment.

If an operator wants to increase the site fees by notice they will need to give all home owners notice at the same time.

This will not be able to occur more than once per year.

Under the bill the home owners can object to the increase if at least 25 per cent of them do not agree that the increase is warranted.

The matter then goes to compulsory mediation.

Should mediation fail, a collective application can then be made to the tribunal.

The bill has simplified the factors for the tribunal to consider in such cases to relieve a lot of the evidentiary burden from home owners.

This new collective approach should help to reduce the number of disputes over site fee increases and make them easier and quicker to resolve where they do occur.

The bill clarifies that a home owner can only be required to pay usage charges for utilities if the use is separately measured or metered and the operator gives the home owner an itemised account.

Operators will no longer be able to use site fees to cover any outstanding utility payments.

This will enable home owners to access financial assistance services if they fall behind with their utility bills.

Under the bill, operators will be able to charge a fee for late or dishonoured payments, but these fees cannot exceed the amount that could have been charged if the service was supplied directly by the local utility service provider.

The bill will require operators to give receipts for utility payments and includes a range of new powers for the tribunal to resolve disputes over utilities.

Community rules are an important feature of residential community living.

They deal with such matters as pets, landscaping, parking, rubbish disposal and internal road speed limits.

The bill requires community rules to be fair, reasonable and clearly expressed.

There is a rebuttable presumption in the bill that a community rule is not fair and reasonable if it does not apply uniformly to all residents.

Under the bill the Commissioner for Fair Trading will be able to develop and publish a set of model rules.

This will be done in consultation with key stakeholder groups and I would hope that the model rules will be widely adopted.

Rather than the "big stick" approach of a termination notice for a breach of community rules, the bill instead allows a "notice to comply" to be issued by an operator.

The tribunal is to be given broad order-making powers to deal with the situation where a person continues to breach a community rule.

The bill recognises the important role residents committees can play in a residential community.

The bill sets out in some detail how a residents committee can be established and elected.

The bill ensures operators cannot try to deter committees from being formed by requiring incorporation or mandating insurance.

Another important change in this part of the bill is that external representative organisations, or a local residents association, will have a right of reasonable access to each community to consult with residents.

Part 10 of the bill includes a simpler and more effective process for home owners wishing to sell their homes on site.

The bill gives all home owners a right to sell and to place a for sale sign in or on the home.

The bill provides significant penalties on any operator who seeks to interfere or hinder a sale.

The current system of assigning existing leases upon the sale of a home was seen as complex and confusing.

The bill replaces this process with an obligation on the operator to enter into a new site agreement with the purchaser, unless it would be reasonable to refuse.

The site fees under the new agreement must be no greater than the current fees payable for the site or the fees payable for comparable sites within the community.

Proposed section 110 provides for voluntary sharing arrangements between residents and operators when they so choose.

This has been designed to encourage investment, improve viability and take pressure off rising rents.

Following extensive consultation with stakeholders, the bill now provides more protection to existing residents, more flexibility and choice to all parties and better distinguishes between the differing circumstances in which such arrangements may be offered.

Where an existing home owner is selling on-site, the buyer will have the option of a voluntary sharing arrangement provision in their agreement or not.

It will be entirely up to the purchaser to decide which agreement they sign, and a new disclosure statement will be included.

Part 10 of the bill also increases the level of consumer protection where an operator acts as a selling agent.

A selling agency agreement will need to be entered into and any monies received under that agreement will be required to be held in trust until the sale is completed.

The termination provisions in part 11 of the bill largely reflect the status quo of the existing Act.

However, there have been a number of improvements to increase the security of tenure and protection for home owners.

The bill removes the principal place of residence test and clarifies that an agreement does not end in most cases until the completion of the sale of the home.

This ensures that home owners who pass away or need to leave for some other reason do not lose the right to sell on-site.

The bill imposes a new obligation on operators who intend to close a community to take reasonable steps to help find another site elsewhere for all displaced residents.

Compensation to residents in the event of closure or relocation has also been improved in the bill.

For instance, one of the new factors for the tribunal to consider in deciding how much compensation to award to the resident is the current on-site market value of the home, determined as if the termination were not to occur.

There are a range of other changes in the bill to improve the compensation provisions as a result of termination or relocation.

The bill makes it clear that the home owner is to be compensated for both loss or residency and relocation.

Whether the home owner chooses to relocate the home elsewhere will be up to them.

The bill recognises that this may not be possible or desirable and that they may prefer or have no choice but to walk away from the home.

Compensation is to be payable under the bill no matter what they decide.

The existing law only provides compensation if the home owner keeps the home.

Disputes between home owners and operators, or among the residents themselves, will arise from time to time.

Currently such disputes can only be taken to the tribunal.

The bill recognises internal voluntary arrangements for dispute resolution.

Another key reform area in this bill is the system of mediation as an alternative to the adversarial tribunal process.

An application for mediation will be able to be made to NSW Fair Trading regarding any dispute involving home owners and operators.

> The bill clearly sets out the functions of a mediator, who may be a public servant or a person with appropriate expertise or experience appointed by the commissioner.
>
> Agreements reached at mediation will be able to be turned into enforceable orders.
>
> While mediation will be voluntary for disputes other than about site fee increases over time I would hope that mediation will reduce the number of disputes going to the tribunal.
>
> The main feature of part 13 is the stepped series of sanctions the commissioner can impose where disciplinary action is warranted.
>
> This will include warnings, written undertakings, required training courses or prohibiting a person from being involved in the management of a community for a specified period.
>
> Any such action will be reviewable through the Administrative Decisions Tribunal.
>
> These sanctions, together with the Rules of Conduct set out in schedule 1, form the basis of a negative licensing system.
>
> Looking at ways to licence operators was one of the three key issues identified in our election commitment.
>
> Part 14 of the bill deals with a small number of miscellaneous matters including the regulation-making powers and the service of notices.
>
> The bill recognises practical methods of service including email and direct delivery to a mailbox.
>
> A statutory five-year review has been inserted into the bill to ensure that the legislation continues to meet the policy objectives.
>
> In conclusion, this is an important piece of legislation that affects the lives of many people across the State.
>
> Simplifying and redrafting the law into plain English should serve home owners and operators well into the future.
>
> The introduction of this bill is a further demonstration of the New South Wales Liberal-Nationals Government meeting its election commitments, and working to make New South Wales number one again.

I commend the bill to the House.

The Hon. SOPHIE COTSIS [9.15 p.m.]: I lead for the Opposition in debate on the Residential (Land Lease) Communities Bill 2013. I acknowledge my colleague the Hon. Tania Mihailuk, the shadow Minister for Fair Trading, who has carriage of this bill and who has done a very good job in talking to its many stakeholders and listening to their views. This bill repeals the Residential Parks Act 1998, which was introduced by the Carr Labor Government. That Act outlined the rights and obligations of park owners and residents, established legislative protection for residents and established procedures for resolving disputes between park operators and residents.

The Opposition is concerned that, in repealing the Residential Parks Act 1998, the Residential (Land Lease) Communities Bill 2013 fails to strike a fair balance between the interests of park operators and park residents. Accordingly, I wish to detail the Opposition's concerns, and I foreshadow that the Opposition will seek to amend this bill to address some of those concerns. At the end of my speech in the second reading debate, I will also move that this bill be referred to a committee of inquiry.

The genesis of the present bill lies in a discussion paper released by the Government in November 2011 entitled "Improving the Governance of Residential Parks." More than a year later, in April 2013, the Government released for public comment a draft version of the present bill. The public did indeed comment. The Government received more than 2,000 submissions, demonstrating the extent to which it had been out of touch with community expectations. While the Government has modified the bill in response to these submissions, it has not fully addressed the concerns that have been raised in the community.

The Opposition has undertaken extensive consultation with those affected by this bill. As I indicated, that consultation has been led by my colleague the member for Bankstown, the shadow Minister for Fair Trading. In January this year, I met with park residents in Port Stephens to hear their concerns. As the duty member for the Port Stephens electorate, I was very concerned and quite shocked to see more than 200 park residents attending that meeting. In July the Opposition met representatives of the Park Residents Association of Port Stephens and of other residential parks in Salamander Bay. I understand that, with the shadow Minister, my colleague the Hon. Mick Veitch also attended that meeting.

The Opposition has also met with representatives of the Affiliated Park Residents Association of New South Wales, the Park and Village Service and other groups of residents who will be affected by this

bill. I acknowledge on the record the very hard work of these groups. They are tirelessly working for and are committed to their members. They have been very strong advocates for this sector. I am waiting to hear what the Government's position on our amendments will be, but I do not hold much hope that it will support them.

A key concern that has been raised about this bill is the attempt to completely rewrite the existing laws regarding residential communities. The bill includes six objectives. They are: to improve the governance of residential communities; to set out the rights and obligations of operators of residential communities and home owners in residential communities; to enable prospective home owners to make informed choices; to establish procedures for resolving disputes between operators and home owners; to protect home owners from bullying, intimidation and unfair business practices; and to encourage the growth of residential communities across New South Wales.

However, the bill omits the objective found in the current Act of providing legislative protection for residents. This omission is significant. As the bill removes the objective of providing legislative protection for residents it can be said that the bill shifts the balance too far in favour of the interests of park owners and operators. The Opposition is also concerned by clause 110 of the bill, which relates to voluntary sharing arrangements. As detailed in clause 110 (2), a voluntary sharing arrangement is any provision under which the home owner agrees to one or more of the following:

> (a) to pay a specified entry fee to the operator, on entry into the agreement or in any other manner specified in the agreement,
>
> (b) to pay deferred site fees to the operator, being site fees the payment of which is deferred in a manner specified in the agreement,
>
> (c) to pay a specified sale amount to the operator if the home is sold by the home owner, with that sale amount being either (but not both) of the following:
>
> (i) a specified share of the capital gain in respect of the home,
>
> (ii) a specified on-site premium of the total sale price of the home as determined in the agreement,
>
> (d) to pay a specified exit fee to the operator, being a fixed fee (not of a kind referred to in paragraph (c)) that is payable if the home is sold or removed from the site.

Clause 110 (7) of the bill defines "capital gain" as:

> … any increase between the amount that the home owner paid for the home and the amount that the purchaser paid for the home. Site fees and any fees or charges payable under the site agreement are not to be included in the calculation of the capital gain.

The effect of these provisions will be that home owners who spend money on improving their homes may be significantly disadvantaged as the gain is calculated solely by subtracting the purchase price from the sale price of the residential property. These provisions will permit entry fees, exit fees and deferred site fees, and will place no limit on capital gain or site premiums. They simply provide an opportunity for operators to secure a share of the home owner's capital. Current home owners will be subject to the new voluntary sharing provisions upon signing their new lease or by renewing an existing agreement. There is significant concern that residents will be pressured into sharing arrangements.

New residents will have little option but to agree to one or more of the terms found in clause 110 (2) if they want to enter a residential community. The effect of these provisions will be to disadvantage residents, forcing them into agreements that will be voluntary in name only. Clause 109 (2) (b) also shifts the emphasis of the bill too far in favour of park operators. Clause 109 (2) (b) would allow an operator to refuse to enter into a new site agreement if the prospective purchaser of a home did not agree to the terms of the agreement offered by the operator. Clauses 109 (5), 109 (6) and 111 (4) refer to increases in site fees as determined by fair market value upon residents entering into a new agreement with park operators.

Generally, under clauses 70 to 75, the Consumer, Trader and Tenancy Tribunal is empowered to make orders concerning increases in site fees. References to fair market value in subsequent parts of the bill, which refer to the parties coming to an agreement, are inherently inequitable. This is because operators are the only party determining terms. Unless an increase for the entire community has occurred, the site fee for a new

agreement should be the same as it was under the previous arrangement for that site. Operators should not be able to increase site fees on a whim for individual residents where an operator's refusal is used as an ultimatum if a resident disagrees. Clause 65 (2) of the bill states:

> (2) A site agreement may provide that site fees payable under it may be increased in accordance with either of the following procedures:
>
> (a) at specified intervals (or on specified dates) by a fixed method, which may be either:
>
> (i) by fixed amounts, or
>
> (ii) by a fixed calculation (for example, in proportion to variations in the Consumer Price Index or in the age pension),

The Opposition strongly objects to linking increases in the age pension to increases in site fees as provided for by this bill. As the shadow Minister for Housing, I have spoken many times about the Government's appalling policy of gouging the age pension increases provided by the former Federal Labor Government from pensioners living in public housing. This bill shows that the Government is callous and out of touch. There is simply no other way to explain the Government's belief that it is appropriate to stick its hand into the pockets of pensioners every time they receive an increase in their modest assistance. I ask the Parliamentary Secretary to answer the following question: If a supplement is provided to pensioners, will this be viewed as income? Will park operators then have a right to take part of that in rent?

I also note concerns about the dual role that many residential communities play as tourism operations. Many residential communities, such as those in Port Stephens, are located within tourist areas. Tourism provides operators with an important revenue stream, while also contributing to increases in operating costs for residential communities. However, under the bill residents will have to meet the burden of these increased site fees. The Government completely failed to grapple with this issue when preparing the bill. Under clause 73 (4) the Consumer, Trader and Tenancy Tribunal cannot make an order:

> … that would result in an increase lower than that needed to cover any actual or projected increase (established to the satisfaction of the Tribunal) in the outgoings and operating expenses for the community …

This provision could result in significant site fee increases for residents. While a park operator will enjoy the benefit of revenue from tourist activities, the operating expenses of such activities can be used to satisfy clause 73 (4). Clause 73 (4) does not require the Consumer, Trader and Tenancy Tribunal to consider what, if any, proportion of the increased expenses is due to tourism. If clause 73 (4) were not in the bill, it would allow the full and proper application of clause 74 (1) (j), which states that the tribunal may consider:

> … whether the increase is fair and equitable in the operation of the community …

Clause 74 (1) (j) would be limited by clause 74 (2), which allows the Consumer Trader and Tenancy Tribunal to disregard clause 74 matters in relation to an application under clause 73. Further, clause 74 (1) (b) makes reference to the words "or projected". Projected costs for residents that may never eventuate should not be taken into account as a consideration by the Consumer, Trader and Tenancy Tribunal when determining what an excessive fee increase is. In this regard, the bill defies common sense. Residents should pay only for the actual increases in expenses for their residential community, not projected increases.

Under the current legislative framework, a single owner within a residential park has the ability to challenge a proposed site fee increase. Clause 69 (2) of the bill will make it a requirement that 25 per cent of owners within a residential park must collectively oppose a site fee increase. After consultation with relevant community groups, the Opposition believes that the figure of 10 per cent would provide a more reasonable threshold to balance collective and individual interests. I will be moving an amendment covering this matter. Clause 140 (2) (a) and clause 141 (3) state that compensation must be paid "in advance" if a home is being relocated due to the termination of a residential agreement by an operator.

However, there are different provisions relating to compensation. Clause 140 (2) (a) provides one set of provisions if a home owner is relocated to another community. Clause 141 (3) provides another set of provisions if there is not a relocation to another community. Clause 140 operates if relocation is the result of an operator terminating a site agreement for closure, change of use or if an operator requires a home owner to relocate. Clause 135, which deals with the relocation of a home owner by agreement, and clause 136, which deals with a relocation by the operator's request, do not contain compensation provisions. The Opposition supports

compensation being made available to residents in order to lessen the burden and inconvenience they face if they have to find a new home. We believe that the compensation measures in clauses 140 and 141 should also apply to clauses 135 and 136.

Clauses 50 and 51 refer to payment of special levies by residents that could be used for community upgrades. Under clause 51 (1) home owners are required to pay for park infrastructure if 75 per cent of home owners agree to the special resolution. The responsibility of paying for park infrastructure should reside solely with the park operators. Within the current provisions of the bill, park residents can resolve to improve their infrastructure at their own expense and still be hit by increased site fees due to higher operating expenses for operators. Clause 124 would apply when an operator terminates a residential agreement because of the closure of a park. This clause does not include similar provisions to those in clause 125 (2) (a) and (b).

The provisions in clause 125 (2) (a) and (b) ensure that the Consumer, Trader and Tenancy Tribunal can provide proper oversight if an operator terminates a resident's agreement due to park closure or a change in the use of the park under the Environmental Planning and Assessment Act. Including provisions similar to clause 125 (2) (a) and (b) in clause 124 would give park residents a wider safety net in the unfortunate event that their park is closed. The Park and Village Service has raised concerns about clause 127 (1) and (3). It has noted that there is the potential for confusion with the added "note" in proposed clause 127 (1) on termination for a lack of authority and clause 125 (4) (b) on termination in relation to the use of the site clause. Section 18 of the Residential Parks Act 1998 avoids the confusion in clause 127 (1). It provides:

> ... that the park owner warrants that there is no legal impediment (of which the park owner had or ought reasonably to have had knowledge at the time of entering into the agreement) to occupation of the residential premises as a residence for the period of the tenancy.

Further, the Park and Village Service has made strong representations that clause 127 offers far weaker protection for park residents when contrasted with the current Residential Parks Act. Sections 18 and 104 of the current Act adequately protect the interests of park residents in the unfortunate instance of termination. However, clause 127 (1) and (3) is not as effective in protecting residents' interests. The Opposition thanks the many residents who have taken the time to make submissions to the Government or contacted the Opposition regarding the bill. We also thank the organisations that have examined the bill and offered their views on how it can be improved. In particular I acknowledge the advocacy of the Affiliated Residential Park Residents Association, the Park and Village Service, the Tenants Union of NSW and the Port Stephens Park Residents Association.

As I indicated at the outset, I acknowledge the efforts by my colleague the shadow Minister for Fair Trading. She has rigorously examined this bill and developed practical and positive proposals to improve it. The Opposition will move a number of amendments that I hope the Government and crossbench members will support because they are important to strengthen protections. The bill is far from perfect. It removes protections that residents currently enjoy and tips the balance too far in favour of park operators. Before I conclude, I move:

> That the question be amended by omitting all words after "That" and inserting instead:
>
> "this bill be referred to General Purpose Standing Committee No. 5 for inquiry and report and in particular:
>
> (a) the impact of proposed fees, levies and compensation arrangements on residents; and
>
> (b) any other related matters."

The Hon. JAN BARHAM [9.35 p.m.]: As The Greens spokesperson on housing, I lead in debate on the Residential (Land Lease) Communities Bill 2013. It is important to recognise that despite the fact that this bill falls within the portfolio of the Minister for Fair Trading it will have significant implications for the future supply and affordability of housing in residential parks or, as they will be called under this legislation, residential communities. As will be shown from my contribution, that will include caravans. Mobile and manufactured homes are a crucial part of the affordable housing mix and all members should keep that fact in mind when considering the merits and limitations of the bill. I also point out that the bill is not only about owners but also about tenants within these parks. That seems to be have been missed in the bill which is focused on home owners.

I acknowledge at the outset that the bill includes a number of provisions that are an improvement on the current state of affairs in the residential parks sector. These include a requirement for new operators to complete some form of education program, along with rules of conduct for operators and sanctions for non-compliance

that can include being banned from operating in a particular community or in any community in New South Wales. The bill also introduces disclosure requirements and a cooling-off period to help ensure that prospective home owners make an informed choice before committing to live in a residential community and it attempts to develop a community-orientated, mediation-focused approach to dealing with disputes over site fee increases.

However, I indicate that The Greens view the bill in its current form as lacking the necessary legislative protections for home owners and residents who choose to live in these residential communities. The Greens will present amendments to address the risk to security of tenure and the future financial security of community residents. I will elaborate on some of these general areas of concern during this debate and I will have more to say about specific issues in Committee. I will now comment on the process through which this significantly flawed bill has come to us.

While the broader review of the residential parks legislation was ongoing the Government took the positive step of introducing a register of residential parks for the Residential Parks Amendment (Register) Bill 2011. That was an important step forward. The profile of residential parks developed by NSW Fair Trading based on the register highlights the size of the sector and the potential impact of the changes that we are considering. As at April 2013 there were 486 parks including caravan parks, manufactured home estates and other forms of residential communities on the residential parks register that housed 33,660 permanent residents on 22,511 residential sites.

On almost 20,000 of those sites, the residents own their own home and pay ongoing site fees to the park operator while the remaining 3,000 sites involve long-term rentals of the dwelling. As well as the tens of thousands of people who live permanently in parks, NSW Fair Trading figures indicate that more than 39,000 sites were used for non-permanent occupancy, including uses for tourism and itinerant workers. The introduction of a register at least gives us some information about just how many people are housed within this sector and how many operators there are, but the safeguards for home owners and tenants and the maintenance of standards for park operators still are lacking.

In late 2011 the Government commenced a review of the existing Residential Parks Act 1998, which will be repealed by the current bill. The discussion paper of the Minister for Fair Trading entitled "Improving the governance of residential parks" canvassed a range of issues about the current legislative framework and sought input about the best ways to ensure the future health of this sector and the protection and wellbeing of people who live in residential parks. Following that review, a consultation draft of the bill before the House was released in April 2013 for public comment. I just say that, in principle, this process is good for its openness in presenting drafts and consultation opportunities for the community to be able to comment.

Since the release of the consultation draft bill, I along with other members of this Parliament have been contacted by many individual residents and some residents associations. I have received copies of the submissions they sent in relation to the draft bill. I understand that approximately 1,300 submissions on the draft bill were received, although no report on the consultation or list of submissions has been published. That is a disappointment. There is room for improvement in consultation by government.

The Hon. Michael Gallacher: When does the gold star go out?

The Hon. JAN BARHAM: When the Government engages in good consultation. I have received letters and emails expressing grave concerns and asking for help to address some of the concerns. On 24 July I attended a forum in Port Stephens along with the Hon. Mick Veitch and the member for Bankstown, Tania Mihailuk, to hear the concerns of about 100 residents that park residents and their communities would be at risk from some of the proposed changes. Importantly, many of the residents expressed concern not only about the contents of the bill but also about the process by which it had been developed, and in particular about their experience of not having an opportunity to engage in the consultation process that was reported to have taken place in developing this new legislative framework.

Since first receiving those messages I have attempted to find out more about the extent to which park residents were able to have their voices heard in the Government's consultation process. To my disappointment, my requests for clarification and information of the Minister, which I sent to him in August, were answered only last week with what I can only describe as a cursory and dismissive response. What has become apparent to me is that the Government's engagement with stakeholders representing park residents has been perceived by many who have contacted me as largely being limited to a single organisation, the Affiliated Residential Park Residents Association, which is better known as ARPRA. The association receives funding to carry out surveys and conduct forums and it has been represented in roundtable discussions.

The Affiliated Residential Park Residents Association is a peak organisation whose local affiliates represent thousands of park residents in total across many parts of the State, particularly in coastal regions. The association's position as a key stakeholder cannot be disputed, and its membership deserves to have input in this legislation: But many more thousands of residents are not members of the Affiliated Residential Park Residents Association, and I am concerned that they have not been given adequate opportunity to contribute to the development of this bill. This is particularly concerning, given that some perceptions of the bill appear to differ markedly between stakeholder groups.

When the Government is directing policies and legislation that directly affect the everyday lives of a group of people and the financial investment they have made in their homes, it is incumbent on it to ensure that all those people are given an opportunity to engage in the process to receive clear and ongoing information, participate in discussions and express their concerns. Unfortunately, the reports I have heard, even from those who have been involved in some parts of the consultation that took place, is that it tended to be very one directional, with residents given information briefings rather than a genuine opportunity for participation in developing this new framework. It appears that when State and Federal governments engage in so-called consultation—although I have not noticed it so much with local government—they do not understand the process of consultation that involves participation.

This is when problems often occur and why there is very often hostility from community groups that do not feel they have been adequately heard but continue to read in the paper or hear in electronic media that they have been consulted and the Government has undertaken extensive consultation. That is not what people expect from a solid democratic process. They expect to be respectfully engaged, informed, and to feel that there is participation. If they have experienced those processes at least at the end of the procedure they come out of it feeling that it has been respectful. But as a result of an inadequate consultation process, we have before us a bill that lacks some key legislative protections that are necessary for home owners and residents. Instead the bill provides opportunities for park owners and operators to benefit financially from the changed arrangements at the direct expense of home owners security of tenure and potentially their financial security.

The shift begins with the objects of the Act. The objects of the existing Residential Parks Act include "to establish legislative protection for residents". In the bill currently before the House, the closest equivalent is to protect home owners from bullying, intimidation and unfair business practices—a significant narrowing of the scope of protection to only the most unconscionable behaviour. At the same time the bill introduces in its objects "to encourage the continued growth and viability of residential communities in the State". I do not expect anyone would dispute that ensuring residential communities remain viable is an important object, but I am concerned that this object appears to serve as a rationale for weakening some protections for residents and opening new financial opportunities for operators. That rationale needs to be examined in the context of the development and current status of the sector.

As I noted earlier, we need to bear in mind the importance of residential parks as a form of affordable housing that meets the needs of tens of thousands of people across the State. There is no doubt that if we look back to the 1990s and the early 2000s we find that the sector was under extreme pressure and that there was an alarming number of park closures. A St Vincent de Paul Society social justice report notes that the number of caravan parks in the Sydney region declined from 164 in 2000 to 74 in 2007, with similar declines in many regional areas. This in turn restricted the supply of park accommodation and put pressure on affordability for residents. For example, the same report noted the average takings from accommodation per park in the Sydney region almost doubled in one year from $143,071 in the June 2006 quarter to $256,320 in the June 2007 quarter. However, as well as park closures, there has been a reduction in the availability of sites for permanent occupancy within parks that continue operating.

A 2002 report by the Park and Village Service noted that those changes were occurring as parks were sold off for redevelopment due to increased land values, gentrified for manufactured homes, upgraded for tourism and lost due to a range of other issues. Importantly the report found that housing for the most disadvantaged residents was being hardest hit, including home owners who faced homelessness unless they could find a new site and afford to relocate. In the past decade the number of park closures has been low and instead the sector has been regarded as unviable. The recent trend for corporate investors to target parks as a lucrative profit-making opportunity is a reality.

In my own experience, the profit-making opportunities of residential parks have been extended to include profiteering from Crown reserves—something I am concerned will extend even further under the bill before the House. In recent years there have been a number of areas where Crown parks, which were managed

by councils, have been replaced by managers and the parks have been taken over by an entity that has been installed by the Crown. The focus has been to upgrade the park and, in effect, take advantage of tourism and move away from long-term residential living. In relation to the important role of parks, many have opposed the upgrade on a number of grounds, primarily the loss of permanent sites; the alienation of public access to areas, particularly foreshores; and the lack of adherence to principles of environment management, including the dedication of buffers to foreshores and the management of native vegetation and removal of trees without approval. This is a sad indictment when we are talking about Crown land.

Against the impressive profit margins and the prospect of further gentrification of the parks sector, we need to consider the people who are likely to become home owners in residential communities. In a survey of approximately 5,000 residents conducted by the Affiliated Residential Park Residents Association during the review of the Residential Parks Act, more than 90 per cent indicated they were aged 55 or older and were on a pension. When we talk about the ongoing viability of this sector, we need to consider its continued capacity to provide affordable secure housing to people who are, by and large, older and overwhelmingly on fixed incomes and whose investment in their home is likely to be their only asset. This legislation must protect those home owners from unreasonable increases in site fees or other financial risk and from having their investment in their home undermined by the push to gentrify parks or convert them to tourist resorts. This is where the bill has a number of shortcomings.

The bill's voluntary sharing arrangements allow operators to collect an uncapped portion of the sale price, as well as entry fees, exit fees and deferred site fees. The introduction of these arrangements may affect the value and affordability of homes, which may not adequately be taken into account when site fee increases are disputed, and may create an incentive to increase turnover in home ownership within the community. They also would require home owners and purchasers to make complex evaluations of the financial pros and cons of signing over some part of their homes' future value in exchange for lower site fees.

The bill introduces the risk that site fees could become inflated during the process of homes being sold and new arrangements being negotiated. The removal of the right of a seller to assign their agreement means that at the same time as negotiating the purchase of the home the buyer has to negotiate a new site agreement with the operator. In that situation, the right of the operator to refuse the terms of agreement, combined with the capacity for the new agreement to increase fees based on a loosely defined concept of comparison with similar sites, undermines the capacity to strike a fair deal in the bargaining over the home purchase. It goes against the concept of a community-orientated approach to fee increases.

The handling of disputes over site fee increases is also problematic and leaves home owners at risk. The threshold for owners to dispute an increase is high and prevents reasonable disagreements being resolved, and it is not clear whether home owners may incur extra costs as a result of the compulsory mediation process. The grounds for justifying site fees are problematic, including the fact that they allow operators to rely on a projected increase in their ongoing and on-plan improvements, which may never eventuate. Even worse, the discretion of the tribunal is restricted in this bill so that orders regarding site fee increases must always cover the actual and projected increased outgoing of the operator. This is effectively handing operators a licence to spend more money, safe in the knowledge that it will come back to them and they will always be able to pass on the cost to the home owners.

The termination and compensation provisions, despite some amendments to the consultation draft, remain problematic. I am concerned that under clause 127 there remains a possibility that operators could apply to their local council for a variation to their approval to operate. Under the Local Government Act, this process does not require development consent. It can be done without the need to notify the affected owners and can change a home owner's site to short-term occupancy. They could end up with a termination notice on the grounds that the site is not authorised to be used for a permanent residence. Apart from specific concerns about the way the bill may allow termination notices, I also have broader concerns about the change of use within residential parks.

The ongoing conversion of park sites to short-term use to capitalise on tourism opportunities will restrict the supply of permanent sites, undermine the affordability of this housing sector and put even greater pressure on financially vulnerable people. The loss of capacity of this sector to deliver affordable housing combined with the loss of the value of the home owner's asset, as the potential to on-sell is undermined through changes to the community, are ongoing reasons to proceed carefully with this sector. I conclude by noting the important role that the Park and Village Service [PAVS] has played in advocating for the interests of park

residents across the State. Its submission on the consultation draft and its provision of facts sheets and newsletters for park residents highlighted important shortcomings in the bill, some of which have been amended in the bill before the House.

The Park and Village Service is auspiced under the combined Pensioners and Superannuants Association and is funded by NSW Fair Trading through the Tenants' Advice and Advocacy Program. It has been a vocal group and has provided support and advice. The Park and Village Service was recently advised that its funding will cease on 30 November, which is a great shame considering the changes that are happening. I thank all the residents groups, including the Affiliated Residential Park Residents Association and representatives of the local Affiliated Residential Park Residents Association for their many individual representations and for raising their concerns. I encourage all members of the House to ensure that the final form of the bill offers adequate protection to the people who depend on these residential parks to provide them with an affordable, enjoyable home and the wellbeing they deserve.

The Hon. MICK VEITCH [9.55 p.m.]: I will make a brief contribution to the Residential (Land Lease) Communities Bill 2013. The objects of the bill are:

(a) to improve the governance of residential communities (such as caravan parks and manufactured home estates),

(b) to set out particular rights and obligations of operators of residential communities and home owners in residential communities,

(c) to enable prospective home owners to make informed choices,

(d) to establish procedures for resolving disputes between operators and home owners,

(e) to protect home owners from bullying, intimidation and unfair business practices,

(f) to encourage the continued growth and viability of residential communities in the State.

The Hon. Sophie Cotsis articulated very well the Opposition's concerns in relation to this bill. The member delivered an informative and riveting speech and I commend her for the detail in which she prosecuted our position. The Opposition has met with a number of organisations, including the Park and Village Service. It is unfortunate that an organisation that has advocated exceptionally well on behalf of park residents is being de-funded by the Government. One has to be cynical as to why that has occurred. Organisations that provide advocacy for individuals in our society who may not be able to advocate on their own behalf play a critical role in democracy. It is unfortunate the Park and Village Service is being de-funded at this time.

I also acknowledge the Affiliated Residential Park Residents Association, representatives of which I have met with on several occasions regarding this bill and I have noted their concerns. They also have raised a number of positive aspects in the bill. Those meetings have been informative and valuable to me in forming a position on this bill. I also acknowledge the Port Stephens Park Residents Association. Together with the Hon. Sophie Cotsis and the Hon. Jan Barham, I attended a meeting organised by that group. I expected about 20 or 30 residents to attend, but more than 100 people attended. It was an emotional meeting. Some people in the room were in tears over their concerns about this bill and what it would mean to them and to their family home. That highlighted to me the importance of getting this bill right. All members of this House want to get it right. It will affect the residences of people who have chosen to retire to these parks where, often, they want to entertain their children and grandchildren.

The Port Stephens Park Residents Association has, I think, emailed every member of Parliament. The association raised a number of issues. Importantly, the Port Stephens Park Residents Association provides a view that is very different from that of the Affiliated Residential Park Residents Association, another organisation representing people in residential parks. A mistake often made is that someone making a lot of noise in their advocacy on behalf of people does not necessarily represent all of the people in that particular area. That is the position with park residents. There were a number of concerns expressed about the equity of residents in a home, and issues to do with capital gains. No matter what side you sit on in this debate, you must realise that for those who live in residential parks that is their home, and they really do want us to get this right.

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

The House continued to sit.

The Hon. MICK VEITCH: It is critical that we be mindful of what this legislation is all about. People have made investments in this form of accommodation, and the decisions we make tonight on the amendments

and the bill in general will impact those individuals. We must not lose sight of the fact that the decisions we make tonight will affect the value of these residences. Those who own the parks have invested funds, and their rights also need to be protected. My view is that it is critical that we get it right for park residents. There are some provisions in the bill that concern me and the Opposition, so we will move a number of amendments.

The amendment moved by the Hon. Sophie Cotsis to refer the bill to a committee is a sound way of proceeding. A number of issues need be considered in more detail and in depth, and that can only be done by a committee. A number of people have spoken to me about the submissions they made to the Government on the development of this bill, and it is important that those submissions be made public. People need a focal point for their concerns, and for those reasons we should support referring this bill to a committee for more detailed consideration.

The Hon. PAUL GREEN [10.02 p.m.]: On behalf of the Christian Democratic Party I speak to the Residential (Land Lease) Communities Bill 2013. The bill repeals the Residential Parks Act 1998 and provides for the governance and regulation of residential communities. The term "residential community" is defined in proposed section 4 (1) to mean "an area of land that is comprised of or includes sites on which homes are, or can be, placed, installed or erected for use as residences by individuals, being land that is occupied or made available for occupation by those individuals under an agreement or arrangement in the nature of a tenancy, and includes any common areas made available for use by those individuals under that agreement or arrangement."

The objects of the bill are six in number. They aim to improve the governance of residential communities—which is well overdue; set out the rights and obligations of operators of residential communities and home owners; enable prospective home owners to make informed choices; establish procedures for resolving disputes between operators and home owners; protect home owners from bullying, intimidation and unfair business practices; and encourage the growth of residential communities across New South Wales. The key distinction between the objects of the bill and the previous Act is the omission of the objective to "provide legislative protection for residents", shifting the focus to operators. I note that the Opposition did not oppose this bill in the other place, but that it reserved the right to move amendments to the bill in this place.

The Christian Democratic Party has numerous concerns about the bill. A high proportion of residential communities are located within tourist areas, such as at the residential park at Port Stephens. Tourist operations contribute a significant revenue stream to operators, the downside being that they also contribute to significant increases in operating costs to residential communities. Trying to iron out legislation that is fair and good is always hard when you are listening to different stakeholders telling you what is the best way to go. I think that is rather like the new planning laws; there are many stakeholders.

The Hon. Mick Veitch: And lots of emails.

The Hon. PAUL GREEN: There are thousands of emails. It is always difficult when people hear that you are not totally on board with their ideas, and that there are other thoughts. This is so with this bill. There are people with great ideas and thoughts—very caring thoughts, too, I might add. It is not that anyone is wrong on this bill; it is just a matter of trying to improve the legislation and move the bill forward.

The Hon. Mick Veitch: They are very genuine.

The Hon. PAUL GREEN: Yes, they are genuine. Members are also concerned about vulnerable people. This is a big deal for many of these people. Many call these places their home; and they have been, and will continue to be, in a position where they have to sign what for them will be somewhat confusing documents. That will be particularly so for some who at a certain stage in their life are unable to see as they once could, or cannot process information as well as they once did. For some park residents this will be a really stressful time. But, in saying that, we have been given the bill to move forward as best we can, by way of the amendment that is proposed and other means that we see fit. I noted some of those concerns, and asked the Minister's office to provide me with a response to the concerns being expressed by park residents. I would like to put those on the record.

The first issue raised was about interference in the sale. Karalta Court at Erina was redeveloped by the owner/developer over a number of years, commencing about a decade ago. The Karalta Road Park Home Owners Inc. states that due to the uncertainty surrounding the development at the time, home owners found it difficult to sell their homes on site. They claimed that the operator took advantage of this situation and was able to buy homes at a bargain price and on-sell them later at a much higher price. This was reflective of some of the

concerns. The question I asked was how the bill addressed this issue. The response was that provision in the bill provides more certainty and clarity over the absolute right of home owners to sell their onsite vans; that the bill increases the penalty for an operator who interferes with, or attempts to interfere with, a home owner's right to sell a home—with a penalty of around 100 penalty units, instead of 20. The bill also gives home owners the right to seek compensation through the tribunal if they suffer a loss as a result of the operator's actions or inaction during the sale process.

Another response was that the new rules of conduct will apply to all operators, in accordance with schedule 1 to the bill. Among those new rules will be an obligation on operators not to engage in high-pressure tactics, harassment, or harsh or unconscionable conduct. Significant sanctions may be imposed on any operator who breaches the rules of conduct. The bill is not aimed at park owners. A lot of good park owners are doing the right thing by their residents and by their communities. However, there are unscrupulous operators who, sadly, are trying to make a buck from the most vulnerable. Sad to say, you could never legislate them right out of the picture—though it would be good if we could. This type of bill is meant to slow the flow of that unscrupulous and mischievous behaviour.

The termination provisions in the bill essentially reflect the status quo. Home owners can only be convicted on the limited grounds set out in the bill, with the operator needing to satisfy the Consumer, Trader and Tenancy Tribunal that a termination—eviction—order should be given. The key checks and balances in the existing legislation relating to termination have been retained. These include a requirement for operators to issue notice, protection against retaliatory eviction and tribunal oversight of the process. The bill will not allow "no grounds" notices to be issued to home owners.

The bill also includes a number of improvements to the termination provisions that will benefit home owners, including longer notice periods for certain grounds, provision for a standard termination notice form and a new obligation on operators to assist residents to find alternative sites in the event of a planned closure. Further problems were noted with respect to the relocation provisions. Residents claim that the bill provides for forced relocations and is concerned about compensation following forced relocations. The bill does not provide for forced relocations. Proposed sections 135 and 136 make it clear that relocations can occur only if the home owner agrees to relocate. Where relocation is agreed, the same terms and conditions from the existing site agreement apply to the new site.

If the proposal to relocate comes from the operator, the operator must pay all costs associated with relocating the home. The bill does not prevent compensation above and beyond relocation expenses being negotiated between the parties as an inducement to relocate. The relocation provisions in the bill are substantially the same as the equivalent provisions in the current Act. There is one final issue related to the compensation provisions. Karalta Road Park Home Owners Inc. is concerned about what it sees as the continuing lack of mandatory compensation for the market value of residents' homes when they must be surrendered to the operator. The bill contains a much improved set of compensation provisions.

Operators will be required to compensate home owners for both loss of residency and any relocation expenses. Currently the Act only provides compensation for relocation expenses, not for any other loss. The bill requires compensation to be payable to a home owner following termination no matter what happens to the home. This covers various situations, such as where a home owner chooses to walk away from his or her home, or has no alternative but to do so, decides to sell the home off site or moves the home to another residential community or elsewhere. Currently the Act only contemplates home owners moving their home to another residential park; compensation is not payable if this occurs. Under proposed section 141 (4) (c) the tribunal, in determining the amount of compensation, is to consider the current on-site market value of the home, determined as if the termination were not to occur. To highlight the anxiety of people I read onto the record further correspondence, which states:

> You will have received much detailed information from residents' groups and organisations such as the Parks and Village Service …
>
> On the subject of asset stripping and elder abuse related to redevelopment or forced relocation (by termination provisions and lack of mandatory compensation for the true value of homes surrendered to the operator)—

and further comment is enclosed—

> For six frightening years, due to the "threat" of a redevelopment of our park, we were prisoners of the operator, trapped in devalued homes unsaleable to anyone but the operator …
>
> We would be extremely grateful if you could consider these issues and provide your valuable support once again.
>
> It is merely balance and fairness that we ask for, and recognition of the contribution that home owner residents make in providing their own affordable housing while our Government struggles to address the escalating housing crisis—especially for the elderly on low incomes.

This bill goes a long way towards dealing with issues raised by property owners and residential communities. The bill deals with measures of conflict resolution. We do not want unscrupulous property owners to profit at the expense of residential communities. We want them to be treated fairly. We should remember that some of our parents may end up living in this type of accommodation in their twilight years. Therefore, we should not make a rod for our backs, as we could have the landlord from hell using provisions that may have been endorsed by this Fifty-fifth Parliament. Many people call these places home. Home should be a place of security, safety and love. We must ensure that the owners of these places provide an environment that assists with their wellbeing and helps to make the last years of their lives happy ones. The last thing we want is unscrupulous people asset stripping elderly people, let alone other people living in the parks. That is not the spirit of the bill. I will move one amendment in Committee, but with those comments I commend the bill to the House.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [10.16 p.m.], on behalf of the Hon. John Ajaka, in reply: I thank all honourable members for their heartfelt contributions to the bill. The bill fulfils the Liberal-Nationals election commitment to improve the governance of residential parks in New South Wales. The bill repeals and replaces the Residential Parks Act 1998 with a totally rewritten, simplified, plain English law that reflects the culmination of more than two years of consultation with residents, residents parks associations and operators. I thank those stakeholders who have contributed so comprehensively to this reform over the past two years. It certainly has been a robust process, with vigorous consultation with all those affected.

I thank also the people who have made submissions throughout the Government's reform process and whose insights and ideas have helped shape the laws we see before the House today. As members have heard throughout this debate, the Government's legislative proposals will reinforce this model of community living. Importantly, appropriate consumer protection safeguards in the existing Act have been kept and are being expanded. In all, this bill is a fair and balanced package of reforms that will benefit both residents and operators in this sector for many years to come. I now turn to one of the key issues raised during the debate: the linking of site fee increases to the age pension.

Linking an increase in site fees to an increase in the age pension under this bill is not something new. Such a practice is permitted under the current law, and NSW Fair Trading is aware of a number of residential communities that have agreements in place that tie the site fees to movements in the pension. The Government does not see anything objectionable about the practice. It helps residents by providing certainty about future increases. Finally, I thank the dedicated staff at NSW Fair Trading for their tremendous effort over the past 2½ years. These reforms are the outcome of many thousands of hours of hard work and I acknowledge them and the Minister's staff for their contribution to this important area. It is another feather in the cap of the Minister for Fair Trading, Robbo the good. Accordingly, I commend the bill to the House.

Question—That the amendment of the Hon. Sophie Cotsis be agreed to—put.

The House divided.

Ayes, 18

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

Noes, 22

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

Question resolved in the negative.

Amendment negatived.

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

Motion agreed to.

Bill read a second time.

In Committee

The CHAIR (The Hon. Jennifer Gardiner): There being no objection, I propose to deal with the bill in parts.

The Hon. JAN BARHAM [10.30 p.m.]: I move The Greens amendment No. 1 on sheet C2013-135E:

No. 1 Page 2, clause 3, lines 15 and 16. Omit all words on those lines. Insert instead:

(e) to establish legislative protection for community residents and home owners,

The CHAIR (The Hon. Jennifer Gardiner): Order! It is difficult to hear the Hon. Jan Barham. Members who wish to have private conversations will do so outside the Chamber.

The Hon. JAN BARHAM: This amendment ensures that a key object of the Residential Parks Act 1998 is carried over into the proposed legislation. That object is to establish legislative protection for community residents and home owners. As it stands object (e) of the bill is too narrow in its scope in two ways. It states that the bill only intends to provide protection from bullying, intimidation and unfair business practices and is a legislative framework that governs all aspects of residential community housing. The bill deals not just with the process of purchasing a home and paying site fees, but with the basic responsibilities and rights of people living in their homes, the rules of conduct and the security of their lifestyle. The objects should reflect the breadth of the impact that this legislation will have on the lives of people living in residential communities. At this point I acknowledge the important work done by the community groups representing people living in residential communities.

I attended the Port Stephens Park Residents Association meeting, and I thank the association for raising some of the concerns that the amendment addresses. The Dural Village Residents Committee also highlighted the importance of this change in the bill where its objects exclude the objects of the old Act and, in doing so, residents or people who are not home owners. The bill is concerned with a pre-election commitment to address governance. It seems to have been overlooked that this bill will affect all people living in residential parks, not all of whom are home owners. The object in the current Act is of great importance for people who have been to the tribunal raising concerns about their treatment within a residential park. Having an object in the Act that indicates a need to establish legislative protection for residents has affected how the Consumer, Trader and Tenancy Tribunal—soon to be replaced by the NSW Civil and Administrative Tribunal—enacts the provisions of the legislation. In *Zova v Macquarie Lakeside Village* the tribunal member hearing the case stated:

> It is important to note that one of the objects of the Act is to "establish legislative protection for residents" (section 4A (b) of the Act). The tenor of the speeches introducing the legislation, whilst wishing to ensure a balancing of rights between residents and park owners, regularly mentions the need for protection of residents. Thus, when interpreting provisions in the Act, an interpretation designed to protect residents should be preferred.

Despite good provisions in the new bill that guide better governance, it seems to have missed out key provisions to protect residents. These are people whom members have met when visiting the parks. Some of them are hanging on to the last remnants of their dignity after having it stripped away by the global financial crisis—a residential park is one of the last places they can afford to live. It is a mistake to lose this provision from the legislation. It is in the current Act and should be carried over to the bill. Other objects of the bill recognise matters such as the growth and viability of the residential community, improved governance, dispute resolution and the rights and obligations of both operators and home owners. The protection of home owners and residents must remain a fundamental object of this bill. I commend the amendment to the Committee.

The Hon. SOPHIE COTSIS [10.35 p.m.]: The Opposition supports The Greens amendment No. 1.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [10.36 p.m.]: The Government opposes The Greens amendment No. 1. The object of the existing Act was clear and established for the first time separate legislative protection for residents. The Act has successfully done this for the past 15 years. During consultation with the sector it was found that there was a need to provide clarity around specific issues and that is why one of the new objects of the bill is to ensure that home owners are protected from bullying, intimidation and unfair business practices. That is a more practical and specific objective than those contained in the current Act. The fact that the objects of the bill no longer use the phrase "legislative protection" does not mean that consumers will no longer be protected. There are many legislative protections for home owners throughout the bill.

The Hon. JAN BARHAM [10.37 p.m.]: Again, the Government is speaking about home owners. The Government does not recognise that the bill must recognise residents as they are most vulnerable. The bill has removed a fundamental provision in the objects that protects vulnerable people, the residents. It is sad, and the future will reveal that those are the people who most need this Parliament to protect their interests. The Government has tightened governance through this bill but has left out protection of the most vulnerable, who deserve the most support. That is why I moved the amendment, and I ask members to support it.

Question—That The Greens amendment No. 1 [C2013-135E] be agreed to—put and resolved in the negative.

The Greens amendment No. 1 [C2013-135E] negatived.

Part 1 [Clauses 1 to 4] agreed to.

Parts 2 and 3 [Clauses 5 to 20] agreed to.

The Hon. JAN BARHAM [10.38 p.m.], by leave: I move The Greens amendments Nos 2, 3, 4, 5, 7, 9, 11, 21, 22 and 24 on sheet C2013-135E in globo:

No. 2 Page 12, clause 21. Insert after line 15:

(d) details of the community rules for the community, and

No. 3 Page 21, clause 44. Insert after line 42:

(c) any person under 18 years of age who is in the care of the home owner or the home owner's spouse or de facto partner.

No. 4 Page 21, clause 44, lines 43-46. Omit all words on those lines.

No. 5 Page 23, clause 47, lines 3, 5, 6 and 8. Omit "home owners" and "home owner" wherever occurring. Insert instead "residents" and "resident" respectively.

No. 7 Page 25, clause 55, lines 21-28. Omit all words on those lines. Insert instead:

(1) An operator must, within 30 days after the relevant date:

(a) if the operator is an individual-undertake an education briefing approved by the Commissioner, or

(b) if the operator is not an individual-arrange for a nominated person involved in the day-to-day management of the community to undertake an education briefing approved by the Commissioner.

(2) The **relevant date** is:

(a) for a person who was an operator of a community at the commencement of this section, the date of commencement of this section, or

(b) for any other person, the date the operator's name is inserted in the Register.

No. 9 Page 29, clause 66. Insert after line 26:

(3) A site agreement must not provide that the site fees may be increased more than once in any 12-month period. This is calculated by reference to the day from which the increased site fees are payable.

No. 11 Page 31, clause 69, line 28. Omit "30 days". Insert instead "45 days".

No. 21 Page 50, clause 113. Insert after line 27:

(2) The sale commission (if any) payable under the selling agency agreement must not exceed the maximum commission. A sale commission is not payable to the extent that it exceeds the maximum commission.

No. 22 Page 50, clause 113. Insert after line 38:

maximum commission means 3% of the sale price of the home or, if a maximum commission is prescribed by the regulations, the prescribed maximum commission.

No. 24 Page 60, clause 140, lines 24-27. Omit all words on those lines. Insert instead:

(1) This section applies if, after and in consequence of receiving a termination notice given by an operator, a home owner decides to relocate to another community.

(2) The operator that gives the termination notice is liable:

Amendment No. 2 requires details of the community rules to be included with a disclosure given to a person before they enter into a site agreement. Community rules directly affect the lifestyle of home owners and the nature of the community. Before home owners make a choice about whether or not they want to live in a particular community, they should be fully aware of the rules they would be obliged to follow. This proposed amendment relates to a provision in the bill that is supported as a move to create disclosure. The omission of the rules that govern the way people live should be rectified. The rules are documented. It would require no additional time or effort on the part of operators to include them with disclosure statements, thereby providing valuable information to the prospective residents. This amendment is straightforward and would allow people to make informed decisions. It would reduce the possibility of regrets and disputes arising.

Amendment No. 3 ensures that any child or young person in the care of a home owner or in the care of the home owner's spouse or partner has an automatic right of occupation. The right was removed following the consultation about the draft bill, but The Greens consider it is essential that the automatic occupancy right of people under 18 be reinstated. Without this provision, a person could buy a home, enter into a site agreement and discover later that their child or grandchild was not allowed to live in the community. I understand that the removal of the provision may have resulted from concerns about potential overcrowding of a home and its impact on the community, but to deny families the automatic right to live together is an unreasonable solution.

As I observed during the second reading debate on the bill, some residential communities are occupied mainly by older people and their preference might be for their community to be restricted to retirees or at least have limitations on children living there. This constitutes unlawful age discrimination. I reiterate that these communities remain an important form of affordable housing and may be one of the options to help keep people in secure accommodation. It is inappropriate to deny families the right to occupy a home together. This style of living is important for single parents who, in many circumstances, cannot afford or find appropriately sized accommodation. These living arrangements allow them to feel a connection with the community. It is often a great way for children to engage with other people. I commend this amendment to the Committee.

Amendment No. 4 removes the provision that endorses the possibility of community rules that constitute age discrimination. Rules pertaining to age restriction are supported by some operators, residents and home owners. It is arguable that community rules that impose restrictions on who can live in communities based on their age would constitute unlawful discrimination under the New South Wales and Commonwealth anti-discrimination laws. The bill should not include a provision that is contradictory to those laws. I commend this amendment to the Committee. Amendment No. 5 refers to page 23, clause 47.

Omit "home owners" and "home owner" wherever occurring. Insert instead "residents" and "resident" respectively.

It is the same principle that recognises that not all residents are home owners. Some residents cannot afford to be home owners and are temporary residents. Amendment No. 5 should recognise the people we are dealing with. Amendment No. 5 ensures an operator's obligation to provide appropriate mail facilities, which are essential to all residents of a community not just home owners. In 1998 the Hon. Ian Cohen was able to make an important amendment to the Residential Parks Act. He ensured that people had a mailbox. It is unimaginable that a park owner would take action to restrict people's access to their mail, but that is what was happening in some circumstances. I was aware that that form of manipulation was happening in my home area. It is a sad situation when someone has that power.

People should have their own mailbox, even if it is a temporary arrangement. People have a right to receive their mail and know what is happening otherwise their lives can become chaotic. Amendment No. 7 also addresses the education of operators, which is an important issue. One cannot provide good governance without education. The Greens believe that all operators should be required to undergo education, not just new operators, which is similar to a matter that has been raised in relation to boarding houses. Amendment No. 9

ensures that site fees increased by fixed methods can occur no more than once a year. This restriction already applies under clause 67, which relates to an increase in site fees by notice. The proposed amendment ensures consistency.

For those members who are displeased with the length of time I am taking, I point out I have kept my comments brief. It is an important bill that should not have been rushed. We are talking about people's livelihoods. One of the concerns with this bill is that it lacks a genuine understanding of who these people are. There is lack of recognition that this is about the mail of residents and that their future lives are affected as a result. These vulnerable people are fearful and that is why concerns have been expressed about this bill. Very few members in this House could comprehend that these people live in small premises, often with very little privacy and sometimes under the authority of people who do not always have their best interests at heart. I felt that I would do the House a courtesy by moving the amendments in globo and thereby reducing the time my speech would take. I would appreciate it if that is respected.

Amendment No. 11 allows a longer period for a proportion of the community's home owners to apply for mediation. This is an interesting issue that highlights how many people it takes to achieve appropriate mediation. The bill requires 25 per cent of home owners who receive a fee increase to sign the request for mediation. The Greens and others, including the Labor Party, believe this is too high. I understand that the Opposition will be moving an amendment to lower the threshold. The Greens amendment No. 11 extends the period to apply for mediation from 30 to 45 days. This is an important amendment because it will allow home owners more time to collectively discuss and decide whether they wish to seek mediation.

Amendments Nos 21 and 22 specify a maximum rate of commission for selling agents. The market cannot be relied upon to produce competitive sales commissions throughout the State. Concerns have been raised about this bill and where it will take us. It will create a real estate market in which operators will gain a benefit from people who are perhaps selling their last small property. They will be required to share any capital gain with the owner or operator of a park. The Greens believe that the commission rate should be fixed at 3 per cent.

Amendment No. 24 provides that whenever an operator issues a termination notice to a home owner and the home owner decides to relocate their home they will be entitled to be compensated by the operator for the cost of relocation. The bill does deal with compensation, but it does not apply across the board. I accept that this amendment will not be supported, but members might find that when this legislation is enacted some disgruntled people will be making applications. I hope that when members realise the consequences of this legislation they will accept that it needs to be amended. When a home owner decides to relocate, he or she should be entitled to compensation from the operator for the cost of relocation.

Unamended, clause 140 applies only when a home owner relocates to a community that is operated by a different operator. In most cases that will not be problematic because clause 135 allows the operator to request that the home owner relocate to another site within the same community or to another community belonging to the same operator and the operator will cover the costs of relocation. However, that may cause problems in the regions because an operator may not own a park in the same area or there may not be another park in the same area.

This whole process is very complicated. I want that on the record because people will eventually realise that some home owners will be adversely affected. The operator might make a request under clause 135, but the home owner may decline. The operator will then be able to issue a termination notice where he or she has grounds, and that may also be problematic. Alternatively, the operator may make a request and proceed to issue a termination notice. The home owner may choose to relocate to another community owned by the same operator or the only other option in the area in which they wish to live. In that case they will not be entitled to compensation, and that is not fair. This issue has not been given the careful consideration that it deserves. I have placed this on the record so that people know it has been considered. If people are disadvantaged, the Government will be hearing from them.

The Hon. SOPHIE COTSIS [10.53 p.m.]: The Opposition supports The Greens amendments.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [10.53 p.m.]: The Government opposes each of these amendments. It acknowledges the passionate and comprehensive approach that The Greens have taken to each of these issues, but this bill strikes the appropriate balance.

The Hon. JAN BARHAM [10.54 p.m.]: I thank the Parliamentary Secretary for recognising that these are important issues. It is important that The Greens' concerns are on the record. We will see what transpires over time.

Question—That The Greens amendments Nos 2, 3, 4, 5, 7, 9, 11, 21, 22 and 24 [C2013-135E] be agreed to—put and resolved in the negative.

The Greens amendments Nos 2, 3, 4, 5, 7, 9, 11, 21, 22 and 24 [C2013-135E] negatived.

The Hon. SOPHIE COTSIS [10.55 p.m.], by leave: I move Opposition amendments Nos 1, 2, 7 and 10 on sheet C2013-159A in globo:

No. 1 Page15. Insert after line 18:

29 Legal impediments to occupation as residence

It is a term of every site agreement that the operator of the community warrants that there is no legal impediment (of which the operator had or ought reasonably to have had knowledge at the time of entering into the agreement) to occupation of the residential site as a residence for the period of the agreement.

No. 2 Pages 23 and 24, clauses 50 and 51, line 41 on page 23 to line 42 on page 24. Omit all words on those lines.

No. 7 Page33, clause 74 (1). Insert after line 22:

(f) the costs associated with the expenses of the community and the costs associated with other operations (for example, tourism),

No. 10 Page57, clause 127 (3), lines 10 to 12. Omit "but only if, unknown to the home owner, the residential site was not lawfully useable for the purposes of a residential site when the agreement was entered into".

Opposition amendment No. 2 refers to clauses 50 and 51, which deal with special levies paid by residents that could be used for community upgrades. These clauses require home owners to pay for park infrastructure if 75 per cent of them agree to a special resolution. The Opposition believes that the responsibility of paying for park infrastructure rests solely with the park operator. These provisions are unnecessary. Park residents could resolve to improve the infrastructure at their own expense and still be hit with increased site fees because of higher operating expenses. That is an unfair and inefficient way to improve infrastructure. Opposition amendment No. 7 would allow the Consumer, Trader and Tenancy Tribunal to consider the costs associated with the expenses of the community and the costs associated with operations such as tourism. Many residential parks are in tourist areas and draw additional income from tourism operations. This amendment would allow the tribunal to consider whether an operator is unfairly shifting the costs of tourism operations onto a residential park's long-term residents. Opposition amendment No. 10 omits the following text from clause 127 (3):

> The home owner whose site agreement is terminated under this section is entitled to be paid compensation in accordance with Division 6 but only if, unknown to the home owner, the residential site was not lawfully useable for the purposes of a residential site when the agreement was entered into.

The bill weakens the safety net available to home owners and the Opposition accordingly opposes it.

The Hon. JAN BARHAM [10.59 p.m.]: The Greens support these amendments.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [10.59 p.m.]: We acknowledge the heart-felt approach of the Opposition and The Greens to these amendments, but the Government believes it struck the appropriate balance in the bill. The Government does not support the amendments.

Question—That Opposition amendments Nos. 1, 2, 7 and 10 [C2013-159A] be agreed to—put and resolved in the negative.

Opposition amendments Nos. 1, 2, 7 and 10 [C2013-159A] negatived.

Part 4 [Clauses 21 to 34] agreed to.

The Hon. PAUL GREEN [11.00 p.m.], by leave: I move Christian Democratic Party amendments Nos 1 and 2 on sheet C2013-175 in globo:

No. 1 Page 22, clause 45, line 10. Omit "if it is for a fixed term that has not expired".

No. 2 Page 22, clause 45. Insert after line 14:

(3) The operator must not unreasonably withhold or refuse consent to the assignment of a tenancy agreement

These amendments are simple and fair. If a person owns a property and is halfway through a contract when the park owner is bought out, the new owner will have the opportunity to stay until the expiration of the contract on the same conditions. I commend the amendments to the House.

The Hon. SOPHIE COTSIS [11.01 p.m.]: The Opposition supports the Christian Democratic Party amendments.

The Hon. JAN BARHAM [11.01 p.m.]: The Greens support these amendments, which will ensure that rights are signed across to a new owner.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.01 p.m.]: The Government also supports these sensible amendments.

The Hon. PAUL GREEN [11.02 p.m.]: I would like to take full credit for these amendments, but others brought these concerns to my attention. I thank the Government and all other parties that have endorsed these amendments.

Question—That Christian Democratic Party amendments Nos 1 and 2 [C2013-175] be agreed to—put and resolved in the affirmative.

Christian Democratic Party amendments Nos 1 and 2 [C2013-175] agreed to.

The Hon. JAN BARHAM [11.02 p.m.]: I move The Greens amendment No. 6 on sheet C2013-135E:

No. 6 Page 25. Insert after line 9:

54 Change of use of site

(1) The operator of a community must not make an application for an approval, or an amendment to an approval, under the *Local Government Act 1993* that, if granted, would permit an existing residential site in the community to be occupied for holiday purposes only unless the operator gives notice of the application to the home owner in relation to the site no less than 7 days before making the application.

Maximum penalty: 10 penalty units.

(2) A council must not deal with an application referred to in subsection (1) that relates to an existing residential site in a community unless satisfied that the home owner in relation to the site has been given notice of the application.

This amendment proposes a new section that would require an operator seeking a new or amended approval under the Local Government Act, which would see residential sites become authorised only for short-term purposes, to notify affected home owners. Like my colleague the Hon. Paul Green, I too have had experience in local government. The role local government plays in the approval of residential sites appears to have been left out of this discussion. Indeed, local government is the approval authority under the provisions of the Local Government Act. There is no development application process for determining these sites. Unlike the expectation under the Environmental Planning and Assessment Act, notification does not exist. This means that people do not know what is happening to the land on which their dwelling rests. The complicated nature of this legislation will mean that provisions like this could disadvantage people on those sites—they only have the right to own their dwelling, not the land on which it rests. What happens to the land can be changed and that change could mean conflict with the classification of their site. It is only fair that these people are notified about what is going on.

This amendment, as drafted by parliamentary counsel, proposes that the home owner is notified prior to any application. That notification should be embedded in the bill to allow people to be informed if the

provisions for the site on which they live are being changed such that they would be living in contradiction to the nature of their site. We have seen this happen when plans of management have sought to change the nature of sites from long term to short term. That could be enough to render someone in conflict, which could result in termination. This amendment will ensure that people know what is going on and have a right to comment. It is natural justice. It is the only way to rectify this problem. There are no other provisions in the Local Government Act or in this bill to allow people to know if the owner or operator of the sites were to try to make changes without informing people. I commend this amendment to the House.

The Hon. SOPHIE COTSIS [11.07 p.m.]: The Opposition supports The Greens amendment.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.07 p.m.]: The Government opposes this amendment.

Question—That The Greens amendment No. 6 [C2013-135E] be agreed to—put and resolved in the negative.

The Greens amendment No. 6 [C2013-135E] negatived.

Part 5 [Clauses 35 to 56] as amended agreed to.

The Hon. JAN BARHAM [11.08 p.m.]: I move The Greens amendment No. 8 on sheet C2013-135E:

No. 8 Page 29, clause 65, line 19. Omit "or in the age pension".

This important amendment covers a peculiar issue in the bill. I think there has been a slight misunderstanding about how things might work in practice. This clause is about tying the fee to the age pension, which would be totally unfair and unreasonable. It is impracticable. It might work in circumstances where you have social housing but this is about private operators. It would not be possible to enforce any situation where people would be required to provide their age pension, particularly for partners and couples. It seems to be unworkable, unnecessary and unreasonable.

The Hon. SOPHIE COTSIS [11.10 p.m.]: The Opposition supports this amendment—we have the same amendment. I have already stated my strident opposition to this issue in my second reading speech. This amendment will prevent increases in the age pension being used to justify increases in site fees. I understand that the Parliamentary Secretary did state that some sites have on-site agreements linking increases in rent to the age pension. In effect this bill will legislate that any time the age pension increases there will be a justification for an increase in site fees. This is going to end up with residents, particularly pensioners, falling into arrears. In 12 months to two years' time we will see the devastating results of this. I repeat the question I asked earlier of the Government: If pensioners receive a supplement will that be considered as income?

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.12 p.m.]: The Government does not accept or support this amendment. It is important to note that clause 65 sets out options. The Government is not mandating how an agreement should be reached between the parties. These are options. There are a range of options, which gives a high degree of flexibility to parties to negotiate—that is the way it should be. The reality is that linking an increase in site fees to an increase in the age pension is not something new under this bill. Such a practice is permitted under the current law. New South Wales Fair Trading is aware of a number of residential communities which have agreements in place that tie site fees to movements in the pension. We simply do not see anything objectionable about that. It provides certainty about future increases in rent.

Question—That The Greens amendment No. 8 [C2013-135E] be agreed to—put and resolved in the negative.

The Greens amendment No. 8 [C2013-135E] negatived.

The Hon. SOPHIE COTSIS [11.13 p.m.]: I move Opposition amendment No. 4 on sheet C2013-159A:

No. 4 Page 31, clause 69 (2), line 27. Omit "25%". Insert instead "10%".

This amendment lowers the number of owners within a residential park required to challenge a site fee increase from 25 per cent, as it is currently in the bill, to 10 per cent. This will make it easier for residents to challenge a site fee increase.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.14 p.m.]: The Government opposes this amendment because it believes that the 25 per cent threshold provided in the bill for home owners to collectively challenge a site fee increase is prudent and should not be reduced at this point in time.

Question—That Opposition amendment No. 4 [C2013-159A] be agreed to—put and resolved in the negative.

Opposition amendment No. 4 [C2013-159A] negatived.

The Hon. SOPHIE COTSIS [11.15 p.m.]: I move Opposition amendment No. 5 on sheet C2013-159A:

No. 5 Page 33, clause 73 (4), lines 6 to 9. Omit all words on those lines.

This amendment will omit clause 73 (4) from the bill. Clause 73 (4) provides that the Consumer, Trader and Tenancy Tribunal cannot make an order that would result in fees increasing by an amount lower than that needed to cover any actual or projected increases in the operating expenses of the community.

The Hon. JAN BARHAM [11.16 p.m.]: The Greens support this amendment. This amendment proposes to remove a provision that would prevent the tribunal from making any order that would result in an increase that is lower than that needed to cover the operator's increased outgoings—actual or projected. It seems extraordinary that an operator could present as grounds for an increase in site fees a projection of expenditure. If the operator's outgoings are increasing then clause 74 allows the tribunal to consider this as grounds to justify a fee increase. If these are understandable changes to the financial balance of the community's operation when weighed up with other matters, then one would expect the tribunal to make an order that increases fees in a way that would cover the operator's increased outgoings. It is worth noting that most of the issues that now go to the tribunal—and they have increased by 150 per cent over the past 10 years—have been about increases in site fees. This clause will not make it any better. It is an excessive provision that is weighted in favour of the operator and is unfair to the homeowners. The Greens support this amendment.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.18 p.m.]: The Government opposes this amendment. Again, we believe that the bill strikes the right balance.

Question—That Opposition amendment No. 5 [C2013-159A] be agreed to—put and resolved in the negative.

Opposition amendment No. 5 [C2013-159A] negatived.

The Hon. SOPHIE COTSIS [11.18 p.m.]: I move Opposition amendment No. 6 on sheet C2013-159A:

No. 6 Page 33, clause 74 (1) (b), line 14. Omit “or projected”.

This amendment omits the words "or projected" from clause 74 (1) (b). Clause 74 (1) (b) states that the Consumer, Trader and Tenancy Tribunal may consider actual or projected increases in the operating expenses of a community when considering whether a site fee is excessive. The Opposition believes that this fails a common-sense test that fee increases should be based only on actual increases in operating costs and not projected increases in costs.

The Hon. JAN BARHAM [11.19 p.m.]: The Greens support the Opposition's amendment. This follows on from the issue about whether or not the operator is able to increase fees to the owners.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.19 p.m.]: The Government opposes the amendment.

Question—That Opposition amendment No. 6 [C2013-159A] be agreed to—put and resolved in the negative.

Opposition amendment No. 6 [C2013-159A] negatived.

The Hon. JAN BARHAM [11.20 p.m.], by leave: I move The Greens amendments Nos 14, 15 and 16 on sheet C2013-135E in globo:

No. 14 Page 33, clause 74, lines 17–20. Omit all words on those lines. Insert instead:

(c) any repairs or improvements to the community carried out by the operator since the previous increase (if any),

No. 15 Page 33, clause 74, lines 23–24. Omit all words on those lines.

No. 16 Page 33, clause 74, line 30. Omit "in the operation of the community". Insert instead "in all the circumstances of the case".

These amendments address a number of crucial issues that leave home owners at risk of unreasonable site fees. Figures revealed in an assessment of the annual report data from the Consumer, Trader and Tenancy Tribunal show that 60 per cent to 75 per cent of residents living in these parks are making application to the Consumer, Trader and Tenancy Tribunal about rent increases. The Greens amendment No. 14 removes planned repairs or improvements from the matters that can be considered in relation to site fee increases.

Actual repairs or improvements that are being undertaken are entirely legitimate grounds on which to justify an increase in site fees, but homeowners should not be expected to pay increased fees to cover capital investments that may never eventuate; it would be a very good deal for the operator but not a good deal for the homeowners. Some of these capital investments may not even be affecting the operation of the community at the time that the increase is being considered.

I note that there is strong support for an improvement for a community and that the operator will have the capacity to collect a special levy under clauses 50 and 51 of the bill. If there is inadequate support from homeowners for a levy but operators still want to make further capital investment, they can do so and the expenses can be considered as justification for a subsequent increase in fees. However, to ask homeowners to cover costs in advance on the assumption that they have been accurately estimated and will occur in an anticipated time frame is unfair and unjustified. These provisions deliver security and profitability to the operator by shifting all the costs and risks to the homeowners. In the interests of fairness, they should be removed from the bill. I commend the amendment to the Committee.

The Greens amendment No. 15 removes the value of the land comprising the community as a matter to be considered in site fee increases. The impact of the land value on land tax and rates will already be considered as part of the increased outgoings for the community and therefore this provision is unnecessary. It also risks putting upward pressure on site fees, particularly in many coastal communities where the land might be in a prime location, putting at risk the viability of the community as an affordable housing option. As I have said previously, I have seen that happen. There was a time when a council of which I was a part sought to maintain affordable holiday sites at a council-run caravan park. We were taken on by some of the commercial operators who said we were acting outside our rights to do so in competitive neutrality.

The Hon. Dr Peter Phelps: Did they win?

The Hon. JAN BARHAM: Yes. We were forced to increase our fees. This is where it is unfair: coastal properties that traditionally offered low-income people an affordable place to live or to have a holiday have become the domain of the rich. It is sad and unfair that people cannot afford to go to the beach, to live by the beach or even to have a holiday there. To add other issues by increasing site fees unfairly and without regard to those people is of great concern.

The Greens amendment No. 16 makes it clear that the tribunal should consider all the circumstances of a case when evaluating what is fair and equitable with respect to site fees. The term "in the operation of the community" potentially narrows the scope to focus on the operators with less regard to what is fair and equitable for the homeowners and residents of the community. By omitting "in the operation of the community" and inserting instead "in all the circumstances of the case", which has been the historical way in which the tribunal has considered matters, the amendment would improve the operation of this part of the bill.

The Hon. SOPHIE COTSIS [11.26 p.m.]: The Opposition supports these amendments.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.26 p.m.]: The Greens amendments deal with matters to be considered in relation to excessive increases by the tribunal when making an order under proposed section 73. We think the list of matters that should be considered is appropriate and therefore we will not be accepting any amendment.

Question—That The Greens amendments Nos 14, 15 and 16 [C2013-135E] be agreed to—put and resolved in the negative.

The Greens amendments Nos 14, 15 and 16 [C2013-135E] negatived.

Part 6 [Clauses 57 to 75] agreed to.

Parts 7 to 9 [Clauses 76 to 103] agreed to.

The Hon. SOPHIE COTSIS [11.28 p.m.]: I move Opposition amendment No. 8 on sheet C2013-159A:

No. 8 Pages 48 and 49, clauses 110 and 111, line 14 on Page 48 to line 38 on Page 49. Omit all words on those lines.

This amendment will remove clauses 110 and 111, which concern voluntary sharing agreements. The Opposition opposes these clauses because they would disadvantage residents. The definition of "capital gain" in clause 110 would mean that a homeowner who invested in improving his or her home would be disadvantaged because the gain is calculated solely by subtracting the purchase price from the sale price of the residential property. Further, the voluntary sharing agreement envisaged by the bill will be far from voluntary because the bill will effectively give new residents little option but to agree to the terms of the agreement if they wish to enter the residential community.

The Hon. JAN BARHAM [11.30 p.m.], by leave: I move The Greens amendments Nos 19 and 20 on sheet C2013-135E in globo:

No. 19 Page 48, clause 110, lines 23–27. Omit all words on those lines. Insert instead:

(c) to pay a specified share of the capital gain in respect of the home to the operator if the home is sold by the home owner,

No. 20 Page 48, clause 110, line 40. Omit "sale amount". Insert instead "share of the capital gain".

The Greens have grave concerns about the proposed voluntary sharing arrangements and their impact on homeowners. In submissions sent to my office the proposed capital gains sharing provisions in the draft bill provoked strong objections from residents groups, advocates and individual park residents. I know other offices also received similar representations. Unfortunately, the move was seen as a profiteering money grab by operators to the detriment of homeowners. Many questions were raised about where, how and why this element of the bill came about, because it certainly was never put forward by residents or homeowners. One day it might be interesting to find out exactly whose wonderful idea it was.

The bill before us has opened up even more opportunities for operators to gain a share of homeowners' investments. The post-draft changes removed the caps on capital gains sharing and allowed entry and exit fees to be included in site agreements. The rationale given for these voluntary sharing agreements is that homeowners or prospective buyers will be offered the choice between a rent-only agreement and one with a sharing arrangement, which will offset the sharing arrangement with the prospect of reduced ongoing site fees. The Greens have several concerns about how that will operate.

One issue is that the negotiating position of individual homeowners will tend to be weaker than the operators, who possess full information about the range of site fees and costs. Another is that the system of individual choice of sharing arrangements is somehow supposed to interact with the community-orientated system of site fee increases. It is a confusing process. Our greatest fear is that people entering into an agreement will be disadvantaged and not have the support to understand how it works.

Despite the objects of the bill about protection from bullying, improved governance and lack of coercion, there is an incredible incentive for coercion in this area. Some vulnerable people may go along with an agreement as a result of having nowhere else to go and desperately needing to acquire a premise, or they may simply not fully understand what the agreement means. Trying to work out how it will pan out over time and what the options are will be more complicated than getting a mobile phone agreement. Fundamentally, we are concerned that home buyers will be faced with an overwhelmingly complex and confusing set of choices about balancing reduction in their initial and ongoing fees against giving up a share of the money they will receive years or decades down the track.

We accept that some people will find it attractive to get a reduction in their weekly site fees. It would seem so nice to reduce that weekly outgoing, but it is not a transparent process. It is voluntary but, as I have said, there could be coercion or persons may be desperate to find a place where they believe they can afford to live. They will then be confronted by what could be a confusing situation and that does not serve their interests. The Greens amendment will ensure that the share of the sale price of a home that will go to an operator must be expressed as a portion of the capital gain rather than being expressed as a premium from the total sale price. If this bill is passed it should at least have the restriction offered by our amendments, which are important for two reasons.

The first reason is that it prevents homeowners from facing the risk of losing money on the proceeds of selling their home. Homeowners will at least be able to feel comfortable that they will be giving up only a proportion of the appreciation in the value of their home. As homeowners often invest money in capital improvements to their home they might spend more improving the value of their property than what is realised after its sale once they have to give half of it away to the operator. Many aspects of the provision have an air of unfairness.

Secondly, the amendments are important because allowing operators to share the total sale price creates an incentive for greater turnover in homeownership. Every time a home is sold the operator will get a share of the proceeds. If a home is sold more frequently the operator will reap the profits every time. In the case of an unscrupulous operator there would be an incentive to make life in the community less pleasant and put pressure on homeowners to move on. I wish that did not happen but, unfortunately, experience tells me that it is possible that some operators have power over people and are inclined to engage in that sort of behaviour. Creating such incentives for operators could lead to the intimidation, harassment and bullying that the bill is trying to eradicate.

Many homeowners in residential communities are older people who feel vulnerable and isolated. Choosing to sell up and move on might be all they can do if they feel pressured and unsafe in their home when an operator is trying to move people on. On the other hand, if this sharing agreement is expressed as a share of the capital gain the operator's interest will be in seeing the value of homes in the community continue to rise. Regardless of how often or infrequently a home is sold over a given period the operator would stand to make the same amount from sharing arrangements. This is fairer and less prone to corruption and abuse. I commend the amendments to the Committee.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.37 p.m.]: To clarify the Government's position, despite the sincere comments by the Hon. Jan Barham the Government will not support The Greens amendments.

The CHAIR (The Hon. Jennifer Gardiner): The Hon. Sophie Cotsis has moved Opposition amendment No. 8 and the Hon. Jan Barham has moved The Greens amendments Nos 19 and 20 in globo, which conflict with the Opposition amendment. I propose to put the question on the Opposition amendment first.

Question—That Opposition amendment No. 8 [C2013-159A] be agreed to—put.

The Committee divided.

Ayes, 17

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

Noes, 20

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

Pairs

Mr Foley	Mr Gallacher
Ms Sharpe	Mrs Mitchell

Question resolved in the negative.

Opposition amendment No. 8 [C2013-159A] negatived.

Question—That The Greens amendments Nos 19 and 20 [C2013-135E] be agreed to—put and resolved in the negative.

The Greens amendments Nos 19 and 20 [C2013-135E] negatived.

Part 10 [Clauses 104 to 115] agreed to.

The Hon. SOPHIE COTSIS [11.47 p.m.]: I move Opposition amendment No. 9 on sheet C2013-159A:

No. 9 Page 55, clause 124 (2), lines 13 to 16. Omit all words on those lines. Insert instead:

(2) A termination notice may not be given under this section unless:

(a) the Tribunal has authorised the operator to give a termination notice because of the proposed closure of the residential site, and

(b) if use of the community for the new purpose requires development consent under the *Environmental Planning and Assessment Act 1979*, development consent for the proposed use has been obtained under that Act.

The Opposition's amendment is an improvement on the current provisions in clause 124 (2), which do not include a role for the Consumer, Trader and Tenancy Tribunal [CTTT] and therefore do not allow the tribunal to provide proper oversight in circumstances where a park is closed or subject to changes in use under the Environmental Planning and Assessment Act.

The Hon. JAN BARHAM [11.48 p.m.]: The Greens support the Opposition amendment.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.48 p.m.]: The Government opposes the amendment.

Question—That Opposition amendment No. 9 [C2013-159A] be agreed to—put and resolved in the negative.

Opposition amendment No. 9 [C2013-159A] negatived.

Part 11 [Clauses 116 to 143] agreed to.

Parts 12 and 13 [Clauses 144 to 183] agreed to.

The Hon. JAN BARHAM [11.49 p.m.]: I move The Greens amendment No. 25 on sheet C2013-135E:

No. 25 Page79, clause 187, lines 5–12. Omit all words on those lines. Insert instead:

187 Reviews of Act

(1) The Minister is to undertake reviews of this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The reviews are to be undertaken:

(a) for the first review—as soon as possible after the period of 2 years from the commencement of this Act, and

(b) for subsequent reviews—at intervals of no greater than 5 years.

(3) A report on the outcome of each review is to be tabled in each House of Parliament within 12 months after the end of the period to which the review relates.

This amendment ensures that this new legislation will be subject to initial review two years after commencement and at regular five-yearly intervals afterwards. At present, the bill provides for only a single review after five years. I note that during debate on this bill in the Legislative Assembly, the member for Lake Macquarie, Greg Piper, flagged similar concerns about waiting five years to review the legislation. The member for Lake Macquarie stated:

> … this means that no recommendations from a review could be implemented before a period of six or seven years. Given the very broad scope of these reforms, and the widespread belief among community residents that many provisions may, in practice, play out counter to the intent of the bill, I believe a review after two or three years would be more appropriate. This would ensure unintended or detrimental consequences of the legislation are identified and addressed in [a] timely manner.

The Greens share this concern. That is why it is so important to raise some of those concerns, state them for the record and ensure that people are aware that the concerns were raised during the Committee stage. Importantly, we want to ensure that the laws receive a timely initial review to address problems and concerns that may arise.

The Hon. Duncan Gay: This is a second reading speech, Jan. Come on.

The Hon. JAN BARHAM: No.

The Hon. Duncan Gay: You are speaking in general about the bill, not the amendment.

The Hon. JAN BARHAM: I am speaking about a review of the bill. It is a culmination. It is the last clause in the bill and it is about the important aspect of whether what is being proposed is appropriate. The proposed review should occur two years after the legislative framework takes effect, which will allow corrections to be made within the critical first few years of operation. I accept that the Government is absolutely confident that everything it is doing is going to be hunky-dory, despite all the issues that have been raised. If that is the case, well and good, but I think the Government's confidence will be short-lived. There are too many flaws in this bill. There is too much that puts vulnerable people at risk. Subsequent reviews each year would be fine, but in the first instance two years would be appropriate to ensure the operation of the bill is appropriate. Subsequent reviews at five-yearly intervals are quite reasonable and would ensure the ongoing wellbeing of residential communities, that the viability of the sector is regularly assessed and that the legislation can reasonably be updated, as required. I commend the amendment to the Committee.

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.52 p.m.]: The Government does not support this amendment because five-yearly statutory reviews after the introduction of a new Act are standard practice. Sufficient time needs to be allowed for changes to be implemented and assessed before a comprehensive review can be undertaken. We simply believe that two years is too short a period. Having said that, the Government and NSW Fair Trading will closely monitor the implementation of these reforms and we will take appropriate steps to address any issues that arise ahead of the statutory review.

The Hon. SOPHIE COTSIS [11.53 p.m.]: The Opposition will support this amendment.

Question—That The Greens amendment No. 25 [C2013-135E] be agreed to—put and resolved in the negative.

The Greens amendment No. 25 [C2013-135E] negatived.

Part 14 [Clauses 184 to 187] agreed to.

Schedules 1 to 3 agreed to.

Title agreed to.

Bill reported from Committee with amendments.

Adoption of Report

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

That the report be adopted.

Report adopted.

Third Reading

The Hon. MATTHEW MASON-COX (Parliamentary Secretary) [11.55 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a third time.

Question put.

The House divided.

Ayes, 20

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

Noes, 17

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

Pairs

Mr Gallacher	Mr Foley
Mrs Mitchell	Ms Sharpe

Question resolved in the affirmative.

Motion agreed to.

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

ADJOURNMENT

The Hon. DUNCAN GAY (Minister for Roads and Ports) [12.01 a.m.]: I move:

That this House do now adjourn.

DROUGHT ASSISTANCE

Mr SCOT MacDONALD [12.01 a.m.]: I want to add a personal perspective on the current dry conditions and calls for transport and other subsidies for farmers. In 20 years in the grain feed and agriculture supplies industry in Guyra I bought large quantities of fodder. Our purchases obviously varied from year to year, but they probably peaked in the spring drought of 1994 with sales of several million dollars in the latter half of that year. In those times transport and fodder subsidies were part of the standard Government response to declared droughts. There was always argy-bargy about the commencement of subsidies and the regions they applied to. From what I witnessed they were a poor strategy and of doubtful benefit to farmers.

As someone who was at the pointy end of ordering feed and organising transport I will share some of the consequences of the subsidies. First, freight rates went up—some of it was small. Other operators, but not all, were quite calculating and immediately raised the rates to reflect the government subsidy. I vividly recall

being phoned by a South Australian carrier at home late at night. He was due to ship hay to me that week, and said the rate was going up by $40 a tonne because he had heard the announcement of the subsidy. When I challenged him he said it would not affect the farmer because he was still getting fodder at the normal rate. That was in 1994. The farmer needed the hay and so we did not argue.

My wife and partner in the business reminds me that freight rates quickly inflated and did not seem to return to pre-drought terms when the subsidy stopped. Even when there was not blatant fraud there was a subtle rebalancing of fodder costs to show a higher freight component to yield a higher rebate. All those claims were checked by the Department of Agriculture of the day but I recall very few challenges or adjustments. These subsidies disrupt and inflate the freight and fodder markets. They do not help farmers and I think it is arguable that they delay or distort difficult decisions about pasture management, carrying capacity, stock water plans and farmer finance.

I also have strong memories of farmers coming into my business complaining about the subsidies and their abuse by a small minority. These farmers felt they had planned for drought by conservatively stocking, building up fodder reserves with hay or silage, setting aside funds and building water storages. They were not too pleased to see underprepared, overstocked neighbours hanging on to animals with the assistance of State and Federal governments. It is those forward-thinking producers we need to support. I think the Minister for Primary Industries has got the State's Drought Assistance Package right.

On 30 October Minister Hodgkinson announced a Drought Preparedness and Support Package, which includes a new $20 million Farm Innovative Fund to provide producers with loans at concessional interest rates for in-drought and drought preparedness, replacing the previous Special Conservation Loans Scheme; $4.4 million to fund phase 3 of the Cap and Pipe Bores Program; $6 million of Commonwealth and New South Wales Government funding for the Mallowa Creek Water Supply Project to guarantee stock and water supply for a group of landholders between Moree and Collarenabri to assist landholders in the Bourke, Walgett and Brewarrina local government areas that are currently impacted by drought; the waiver of Livestock, Health and Pest Authority rates; and the deferral of Special Conservation Scheme loans by the Rural Assistance Authority on a case-by-case basis backdated to 1 July 2012.

Droughts are stressful times, but drought-affected industries and communities do not need politically driven, bandaid solutions that potentially do more harm than good. The Government and the Department of Primary Industries have done extensive work on drought preparedness. The Department of Primary Industries website has a range of resources to meet the perennial challenge of our variable climate. The Bureau of Meteorology claims there is a major drought every 18 years. A century ago the 1911-16 drought saw the loss of 19 million sheep and 2 million cattle. That scenario is now unlikely as agriculture prepares for the inevitable dry spells. New South Wales began to back the preparedness strategy when the now Opposition spokesman for Primary Industries was Minister.

The Hon. Steve Whan was signatory to the November 2010 Council of Australian Governments Standing Council on Primary Industries communiqué committing to drought policy reform and the trial of new policies in Western Australia. That trial led to the redirection of support from short-term inefficient subsidies and exceptional circumstances payments reliant on contestable lines on maps to drought preparedness. This strategy had bipartisan support and was backed by State and Federal governments and the National Farmers Federation. It is up to the Opposition spokesman on Primary Industries whether he wants to play politics with drought using his selective memory. The Coalition is getting on with the job of supporting our farmers in a fair, affordable and sustainable framework.

TRIBUTE TO VINCE BULGER, OAM

The Hon. MICK VEITCH [12.06 a.m.]: I advise the House of the sad passing of respected Wiradjuri Elder Vince Bulger, OAM. Uncle Vince was without doubt a wonderful and respected member of the Tumut community; not just the local Indigenous community but the whole community. I was fortunate to have known Uncle Vince all of my life. I would call Uncle Vince a family friend. In recent times I had the pleasure of being entertained by Uncle Vince with his sensational yarns, stories brimming with clever wit and side-splitting humour. Uncle Vince had keen observational skills of people and of the environment. These observations enabled Uncle Vince to craft stories that enthralled children and adults alike.

Uncle Vince was passionate about the Indigenous community as well as the Tumut and Brungle communities. He was a strong and frequent advocate for these communities—communities that he loved. He

was a very persistent advocate—on health issues, on housing issues and on environmental issues. If you did not get his point the first time, you could be rest assured that Uncle Vince would take an opportunity at some time in the future to prosecute his case yet again. Uncle Vince conducted some of the best Welcome to Country ceremonies I have had the privilege to attend. They were always informative and always entertaining.

But for me Uncle Vince's smoking ceremonies were the best one could ever attend. I remember the formal opening ceremony for the second Sheahan Bridge across the Murrumbidgee River. He conducted the smoking ceremony from the back of a ute, driving the full length of the bridge while conducting his ceremony. It was just the best. Uncle Vince used his Welcome to Country and smoking ceremonies as a means to foster reconciliation and to create a greater appreciation of Indigenous culture. For his tireless and constructive reconciliation efforts Uncle Vince was awarded the Medal of the Order of Australia in 2007. It was with a cheeky smile and a twinkle in his eye that Uncle Vince would tell all and sundry that his OAM stood for "old Aboriginal man".

Uncle Vince was born in Yass in 1929 at the Hollywood Mission for Aborigines. He started working very early in his life and by age 14 was working for the *Yass Tribune*. I first remember talking to Uncle Vince as a very young boy. Vince was a ganger on the railways and I was playing on the Tumut to Cootamundra rail line—possibly where I should not have been. Uncle Vince's guidance took me to safety. Uncle Vince was a great fan of cricket and was a regular spectator at Wyangle cricket games. He was a pretty good rugby league player, playing for Gundagai in group 9 and Brungle in the Maher Cup. He played into his forties in the Roddy Shield, a competition based in and around Tumut.

Uncle Vince had an unbelievable capacity for community involvement. He was an example to us all. He was involved with several local service clubs. He conducted discovery walks through Kosciuszko National Park. He took groups of kids into the bush to develop an appreciation of the environment. He was the Aboriginal and Torres Strait Islander Commission councillor for the Binal Billa region. He organised housing for elderly Indigenous people in Tumut and organised a bus from Brungle to Tumut. He was a foundation member of the Tumut Shire Council Aboriginal Liaison Committee. He was heavily involved in the development of the Tumut River Walk project, and I urge all members to do this fantastic walk. Uncle Vince's favourite pastimes included rugby league and cricket. He loved dropping a line into the Tumut River or Blowering Dam. However, most of all, he loved his children, his grandchildren and his great-grandchildren. Fortunately for me, Uncle Vince treated my granddaughters as his own. Uncle Vince has left a legacy that is one to admire. He was a champion bloke. I will miss his friendship, his stories and his humour. Vale, Vince Bulger.

NYMBOIDA AND MACLEAY RIVERS

The Hon. JEREMY BUCKINGHAM [12.11 a.m.]: This evening I make a contribution on my recent trip down the Nymboida and Macleay rivers on the New South Wales mid-North Coast. At the outset, I thank Bernadette O'Sullivan, her family and the Save Our Macleay River group—Arthur Bain, Sally Townley, Bob Palmer, and Carol and John Vernon—for organising the trip. In particular, I thank John Kelly, son of the famous Ray Kelly, one of the most important people in the New South Wales Aboriginal community who mapped sites of significance across New South Wales of the First Peoples of this State and was a respected elder of the Dunghutti people. John Kelly, a proud Dunghutti man, is proud to be Ray's son and has followed in his father's footsteps.

It was an amazing experience for me to spend time with John and to hear his incredible stories of country. I found it a moving experience to spend a day on the Macleay River with him. John Kelly has contributed paintings to this Parliament. Former President Meredith Burgmann accepted a painting from him that now hangs permanently in this place. It was a remarkable experience for me to be at that exact spot, discussing the painting *Bunyip* and what it meant to John and his people. It made me realise the importance of saving the Nymboida and Macleay rivers, which are precious water resources. I have rafted some of the wildest rivers in Tasmania and in my view the Nymboida River is on par with them. The incredible rock gorges, huge orchids, red-bellied black snakes, beautiful water and incredible forests are world class and something we should treasure.

I know all members of this place will recognise the value and beauty of the mid-North Coast and those rivers. In particular, the Nymboida River is famous for whitewater rafting. It is nestled in the World Heritage listed Dorrigo National Park and has exceptional natural beauty. The Nymboida is a tributary of the Clarence River, which is the largest east coast waterway in Australia, extending 400 kilometres from Iluka and Yamba to the edge of the Great Dividing Range. It is important to a region known for agriculture, fishing and tourism. The

Clarence River supports important populations of native freshwater fish, including the eastern freshwater cod, and endangered fish species unique to the Clarence River system—the Australian bass. All this relies on healthy river systems that are threatened by antimony and goldmining.

Anchor Resources, which is 97 per cent Chinese owned and began operations at Wild Cattle Creek in 2011, is reputed to have no antimony mining experience. The exploration is the start of a 1.5 kilometre open-cut antimony and goldmine in steep country in a region that receives about four metres of rainfall a year, making management of any tailings dam extremely difficult and risky. All people oppose antimony and goldmining in that area. In October the Wild on Earth event attracted more than 200 people to a property in Anchor Resources' licensed area and thousands of signatures were gathered on a petition objecting to mining in that region.

The Hon. Dr Peter Phelps: How many of them had jobs?

The Hon. JEREMY BUCKINGHAM: Thirty jobs for three years for a 1.5 kilometre open-cut mine. It is absolutely outrageous. Thousands of people employed in tourism, agriculture and fisheries depend on a clean river system. The Macleay River is an incredible river. I went to the headwaters of the Macleay River at Pee Dee Station to meet the O'Sullivan family, who have been there for 150 years after opening up that country. It was absolutely fantastic to be there with John Kelly and his people who opened up that country to agriculture. We headed down both rivers with communities of paddlers. It was a magnificent experience, heading down the Nymboida River through the rapids and spending the day with 70 people listening to the Dreamtime stories and finding out what had happened since the 1800s. The Macleay River has been damaged by antimony mining. People opposed the reopening of Hillgrove Mine by Bracken Resources at the headwaters of the Macleay River.

WATER USAGE CHARGES

The Hon. WALT SECORD [12.16 a.m.]: As the shadow Minister for water, I will update the House on recent O'Farrell Government decisions. On this occasion I refer to drinking water bills and the impact on the cost of living for New South Wales families. Before the March 2011 State election Barry O'Farrell talked about relieving the cost of living pressures on New South Wales families, but like so many aspects of this Government, there is the pre-election promise and a post-election reality. Electricity, gas, water bills and public housing rents have all increased on Barry O'Farrell's watch. Families are doing it tough and the O'Farrell Government is making it tougher for them. It seems that the O'Farrell Government wants our regional communities to have it the toughest of all. Members will be aware that on 30 October the Labor Opposition asked a question without notice about residential water bills in rural and regional New South Wales.

We asked specifically about the western New South Wales communities of Broken Hill, Menindee, Sunset Strip and Silverton that face an increase of an extra $320 per household because Essential Energy has proposed a 25.7 per cent increase in water prices by July 2018, affecting 10,000 households. We asked whether the O'Farrell Government supported Essential Energy's water and sewerage submission to the Independent Pricing and Regulatory Tribunal. The question was fair, given growing community concern, especially amongst pensioner groups, in western New South Wales about the planned water bill increases. Tex Morton, President of the Broken Hill Pensioners Association, warned that he, like other pensioners, would have to make sacrifices due to the increases. Mr Morton told ABC radio Broken Hill:

> I've got a big lawn at my place; I'll just dig it out.

What a sad indictment on this Government's approach to rural and regional New South Wales—an indictment because the greatest part of the increase will be due to the O'Farrell Government's scrapping a $200 per household water subsidy on 1 July this year. In 2002 the State Government under then Premier Bob Carr and then member for Murray-Darling Mr Peter Black commenced the subsidy to pump water from the Darling River. At that time the subsidy was about $2.1 million a year. Yesterday I spoke to Mr Black about Broken Hill's water supply. We discussed his efforts over the years to secure the long-term water supply for the city—one of his many proud achievements. But Mr Black shares the community's concerns about their ability to pay. Water is very precious to Broken Hill and in the summer time the average daily use is 24 million litres. I note that the 21 June edition of the Broken Hill *Barrier Daily Truth* reports that the current National Party member of Parliament, Mr John Williams, pledged the O'Farrell Government would not dump the current subsidy. The *Barrier Daily Truth* reports that Mr Williams stated:

> They are still committed. There's no intention at all to discontinue the subsidy.

However, Essential Energy tells a different story. Its submission to the Independent Pricing and Regulatory Tribunal is very clear: It has created a price path based on the removal of the subsidy by the O'Farrell

Government. The Government has let the subsidy lapse and thus Essential Energy says it now needs to price its loss into Broken Hill's water bills. Next week on 19 November at 9.00 a.m. the Independent Pricing and Regulatory Tribunal will hold public hearings at the Broken Hill Civic Centre to receive the community's views on the proposed increases.

Elsewhere across the State water bills are also increasing with water and sewerage bills for families in Sydney, the Illawarra and the Blue Mountains rising by an average $72 over the next three years or $134 for an apartment. The Central Coast will have some big price rises: Gosford residents will face a 28 per cent rise in water and sewerage bills, costing an extra $300 over three years; Wyong residents will have a $204 rise; Lower Hunter families face a 19 per cent rise in water bills, costing an average $140 extra if they live in an apartment, or a 10 per cent rise worth $104 if they live in a house.

In other parts of the State families are also facing bills going up by hundreds of dollars a year to pay for new water infrastructure due to a policy change by the O'Farrell Government. Through Primary Industries Minister Katrina Hodgkinson the State Government is now pursuing a policy of full cost recovery in relation to water projects. This means the costs of major building works, such as the pipeline near Goulburn, would be added to domestic bills instead of the State Government chipping in. I am advised 24,000 residents in the Goulburn area could see their bills rise by $226 a year. The local council has advised that residents will get their new bills starting from 1 July 2014.

The local council has said that by 2017-18 water rates will increase from $564 to $790 to cover the cost of construction. There are 300 such water projects proposed in various water authorities across the State, which will affect up to 105 local water authorities. Minister Hodgkinson's policy will increase water bills everywhere. The O'Farrell Government has forgotten that it is the community that owns our State's drinking water; not them. And, thinking that it owns the State's water, the O'Farrell Government is now determined to only provide water infrastructure to the community if it turns a profit. Unfortunately, on a dry continent like Australia, that is a real worry. I thank the House for its consideration.

PREMIER BARRY O'FARRELL

The Hon. ROBERT BROWN [12.21 a.m.]: In what I expect will be my last adjournment speech of the year, and having spent the last few months observing the behaviour of the Premier of the State, I would like tonight to make a prediction. I firmly believe that before the next election this Premier, who will not countenance amendments to any of his legislation and demands total unfettered power—like his colleague in Queensland—will begin to campaign to abolish the upper House. It will be a surprise to no-one that he will blame the minor parties such as the redneck Shooters and Fishers, the holier than thou Christian Democrats or his mates The—obnoxious—Greens. I suspect his paranoia about the Shooters and Fishers Party will see him make us the main target. These shoulders are very broad.

The Hon. Duncan Gay: It will make him very popular.

The Hon. ROBERT BROWN: It may well do. It is a fact that this Premier does not like democracy through minor parties, which he sees as an impediment to his empire building. The Shooters and Fishers Party worked in good faith with the Premier for 14 months believing him to be honourable, trustworthy and a man of his word.

The Hon. Duncan Gay: He still is honourable and trustworthy.

The Hon. ROBERT BROWN: You are entitled to your opinion. The Shooters and Fishers Party committed its support to his Government on the proviso that he would not deliberately poke our constituents in the eye. So what does he do? He gives undertakings and commitments and in the process some of his major legislation passed through this House. Then, out of the blue, he abolishes the Game Council and suspends hunting in State forests, actions which shocked our constituents and, if they are to be believed, most of his colleagues.

The PRESIDENT: Order! The Minister can respond at the end if he wishes.

The Hon. ROBERT BROWN: That unilateral action by the Premier is the sort of thing I would describe to my constituents as a poke in the eye. That move, soon after his legislation to sell the Port of Newcastle passed this Chamber with our support, exposed the O'Farrell Government, in our view, as

untrustworthy. Not unreasonably, we withdrew our unconditional support for this Government. Liberal voters did not elect us to this place and we have no duty to support the Premier simply because he thinks that everyone should or that he is the sole arbiter of what is best for the people of New South Wales. We cannot be accused of obstructing his Government in any way because the upper House simply does its rightful job of examining and improving legislation where possible, and we will play our part. It is called democracy and it has worked well in recent months.

I understand that the Premier is less than impressed by this Chamber exercising its democratic right. Mr O'Farrell is not the first Premier who has not had control of this House. Since 1988, no government has had a majority in the upper House in New South Wales and all have had to work with various minority parties to pass legislation. None of the former governments in the past two decades has had a problem with democracy, but this is a feature that this Premier cannot countenance. I understand that he has a long-term plan to knock us off—politically speaking—and then win a majority in the upper House in the 2015 State election. Unfortunately, his management style of doing nothing—in our view—and his habit of reacting to media criticism and holding that up as a reason for reneging on his promises will not go too far with the public of New South Wales, no matter what he says. He promised to get this State going again.

The people of Miranda were the first to have a chance to express their opinion on how the Premier has performed halfway through his first term, and it was not pretty. There was a 27 per cent swing against the Liberals. Surely it cannot all have been the fault of Mr Annesley. It is unfortunate that this State has a Premier that the Shooters and Fishers Party cannot trust. Democracy is a valuable concept. If Mr O'Farrell wants to go down the path of abolishing the upper House and not be accountable, transparent or honest with the people he deals with, that is up to him. However, he should not believe that the electors are silly.

The electors will see through his charade that the upper House is blocking his legislation and denying his right to govern, and that it is being obstructionist or anything else he can think of. The upper House has a proper role in this democracy that is New South Wales, just as minor parties have a proper role in democracy in this House because their members are elected in the same way as those of the major parties and everyone in the House. I fear Mr O'Farrell may want to go down in history as the Jack Lang of the twenty-first century. I apologise to Jack Lang.

SECULARISM AND FREEDOM OF RELIGION

The Hon. DAVID CLARKE (Parliamentary Secretary) [12.26 a.m.]: According to most authoritative sources, the worldwide persecution of Christians continues to escalate. Last year 105,000 people were killed because of their Christian faith, making Christians the most widely persecuted of any religion according to the Vatican's Observation Commission for Religious Freedom. Violent persecution is not present in most democratic and Western nations. Nevertheless, another danger confronts Christians. It is an escalating campaign by secular elitists to banish any Christian influence from public life. Only yesterday the British newspaper the *Guardian* published news that the British National Secular Society had instructed lawyers to launch a legal challenge to the Christian coronation of future British monarchs so as to remove any religious content from the ceremony. Australia, with its undeniable Judaeo-Christian history and heritage, is not immune from this type of secular campaign.

Tom Frame, former Anglican Bishop to the Australian Defence Force and now Professor of Theology at Charles Sturt University, has described this trend as the rise of an aggressive new breed of secularism in Australia that threatens to drive believers into religious ghettos. Former Senator Lyn Allison, who was the last Federal Parliamentary Leader of the Australian Democrats, spelt out the real goal in a public debate organised by the St James Ethics Centre. She spoke in favour of the proposition that the world would be better off without religion. Despite a clear majority of Australians identifying themselves as Christians, according to the latest census and the preamble to our nation's Constitution that includes the words "humbly relying on the blessing of Almighty God", the airbrushing of Australia's Christian heritage is being pursued by a secularist minority with missionary zeal.

Through its political wing, The Greens—the secular left—would end all Government aid to faith-based schools and would ban opening prayers at local councils and parliamentary sittings. It supports the introduction of so-called religious vilification laws, the effect of which restricts the freedom of citizens to publicly express their religious convictions. The Greens would also restrict religious freedom by removing all religious exemptions in anti-discrimination laws, thus making it a crime for a priest, minister, rabbi or imam to refuse to officiate at a same-sex marriage should such marriages be legalised. Another target of the secular lobby has

been the national education curriculum. Under Labor governments these people were given a free hand to reconstruct the curriculum, particularly in regard to history, civics and citizenship. Any positive references to the Judeo-Christian contribution to Australian society and the importance of western civilisation were to be deleted. These planned changes also involved the deletion of the terms "BC" and "AD" and their replacement with the de-christianised "BCE" and "CE".

Australia's university campuses have not been overlooked by the politically correct bigots as they pack-hunt to put out of action anyone who could affect the public agenda from a Christian perspective. Some will recall the scandal that erupted at the University of Queensland when the student Cardinal Newman Society was reprimanded, threatened with disaffiliation and faced disciplinary proceedings because it organised a stall offering alternative advice to the Student Union's policy of support for free abortion. This was followed in May 2012 by a controversy at Sydney University when the Student Representative Council overturned—but only by a margin of 36 to 34—an earlier ruling of the Clubs and Societies Committee refusing recognition of a new student pro-life club. Later that year the University of New South Wales Student Union refused, on the shonkiest of grounds, to give affiliation to a new pro-life student club, thus effectively barring it from using campus facilities.

Another example of the influence of the secular Left at work came to light in 2011 when it was revealed that Department of Immigration and Citizenship officials had begun to enforce changes made by the Federal Labor Government in 2008 to the Australian Citizenship Ceremonies Code banning the giving of religious books such as Bibles at citizenship ceremonies. As a result of the public outcry at this attack on the religious rights of Australians, the Minister for Immigration and Citizenship, Chris Bowen, was forced to lift the ban. The evidence is clear that the secular Left is ripping away the religious rights of Australians. It is time for Australians of all faiths to reclaim those rights or else, as Professor Tom Frame has warned, aggressive secularism will drive Australians into religious ghettos.

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

Motion agreed to.

The House adjourned at 12.31 a.m. on Wednesday until Wednesday 13 November at 10.00 a.m.