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# LEGISLATIVE COUNCIL

Tuesday 19 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.

## ADMINISTRATION OF THE GOVERNMENT OF THE STATE

**The PRESIDENT:** I report the receipt of the following message from His Excellency the Lieutenant-Governor:

T Bathurst  
Lieutenant-Governor

Office of the 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.

Monday 18 November 2013

## BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT AMENDMENT BILL 2013

### RESIDENTIAL (LAND LEASE) COMMUNITIES BILL 2013

### COMBAT SPORTS BILL 2013

### CIVIL AND ADMINISTRATIVE TRIBUNAL AMENDMENT BILL 2013

Messages received from the Legislative Assembly agreeing to the Legislative Council's amendments.

## BUSINESS OF THE HOUSE

### Formal Business Notices of Motions

**Private Members' Business item No. 1638** outside the Order of Precedence objected to as being taken as formal business.

## LEGISLATION REVIEW COMMITTEE

### Report

**The Hon. Dr Peter Phelps** tabled a report entitled, "Legislation Review Digest No. 49/55", dated 19 November 2013.

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

## GENERAL PURPOSE STANDING COMMITTEE NO. 5

### Government Response to Report

**The Clerk** announced the receipt, pursuant to standing orders, of the Government's response to report No. 37 entitled, "Management of Public Land in New South Wales", tabled 15 May 2013, received out of session and authorised to be printed this day.

**GENERAL PURPOSE STANDING COMMITTEE NO. 4****Government Response to Report**

**The Clerk** announced the receipt, pursuant to standing orders, of the Government's response to report No. 27 entitled, "The Use of Cannabis for Medical Purposes", tabled 15 May 2013, received out of session and authorised to be printed on 15 November 2013.

**BUSINESS OF THE HOUSE****Postponement of Business**

**Government Business Orders of the Day Nos 1 and 2 postponed on motion by the Hon. Duncan Gay and set down as orders of the day for a later hour.**

**SELECT COMMITTEE ON SOCIAL, PUBLIC AND AFFORDABLE HOUSING****Membership**

**The PRESIDENT:** Order! I inform the House that on 17 November 2013 the Clerk received advice from the Leader of the Opposition that the Hon. Peter Primrose had been nominated as the additional Opposition member on the Select Committee on Social, Public and Affordable Housing.

**GENERAL PURPOSE STANDING COMMITTEE NO. 5****Reference: Causes and Management of Wambelong Fire**

**The Hon. ROBERT BROWN:** I inform the House that pursuant to the resolution of the House relating to the establishment of general purpose standing committees on 14 November 2013 General Purpose Standing Committee No. 5 resolved to adopt the following terms of reference:

That General Purpose Standing Committee No. 5 inquire into and report on the causes and management of the Wambelong fire within and adjacent to the Warrumbungle National Park in January 2013 and, in particular:

- (a) the bushfire management plan objectives for the affected area;
- (b) the activities of National Parks and Wildlife Service officers in the national park in the week preceding the fire;
- (c) the significance of a small fire in a camping area within the national park, and actions taken by the National Parks and Wildlife Service before the declaration of the fire under section 44 of the Rural Fires Act 1997;
- (d) actions taken by the National Parks and Wildlife Service following the ensuing conflagration and timing of the section 44 declaration;
- (e) the extent of property damage within and adjacent to the fire;
- (f) the details and effectiveness of the National Parks and Wildlife Service restoration plans for the national park and private infrastructure, including the timeliness of communication and assistance offered by the National Parks and Wildlife Service to affected private property owners;
- (g) the details and effectiveness of dispute resolution processes with respect to restitution of private property infrastructure damaged as a result of the fire; and
- (h) any other related matter.

**SPECIAL ADJOURNMENT****Motion by the Hon. Duncan Gay agreed to:**

That this House at its rising today do adjourn until Wednesday 20 November 2013 at 10.00 a.m.

**BUSINESS OF THE HOUSE****Suspension of Standing and Sessional Orders: Order of Business****Motion by the Hon. Luke Foley agreed to:**

That standing and sessional orders be suspended to allow a motion to be moved forthwith that Private Members' Business item No. 1635 outside the Order of Precedence relating to an amendment to an order for papers regarding Mr Matthew Daniel be called on forthwith.

**Order of Business****Motion by the Hon. Luke Foley agreed to:**

That Private Members' Business item No. 1635 outside the Order of Precedence be called on forthwith.

**MATTHEW DANIEL, FORMER DEPARTMENT OF PLANNING AND INFRASTRUCTURE  
EMPLOYEE****Production of Documents: Order****Motion by the Hon. Luke Foley agreed to:**

That the resolution of the House of 31 October 2013 under Standing Order 52, as amended, that there be laid upon the table of the House within 21 days of the date of passing of the resolution certain documents relating to Matthew Daniel, be further amended by inserting at the end:

- (2) That this order of the House excludes any emails that relate only to communications of a family, marital or medical nature.

**CROWN LANDS AMENDMENT (MULTIPLE LAND USE) BILL 2013****Second Reading****Debate resumed from 30 October 2013.**

**The Hon. MICK VEITCH** [2.46 p.m.]: I lead for the Opposition on the Crown Lands Amendment (Multiple Land Use) Bill 2013. The objects of the bill are to amend the Crown Lands Act 1989 as follows:

- (a) to provide that a secondary interest (a lease, licence, permit, easement or right-of-way) can be granted in respect of Crown land that is reserved for a public purpose (a *Crown reserve*) so long as use and occupation of the land under the secondary interest would not be likely to materially harm the use and occupation of the land for the public purpose for which it is reserved,
- (b) to authorise the Minister or a reserve trust to validate the grant of a secondary interest over a Crown reserve by making such changes to the secondary interest as may be necessary to ensure that it was validly granted,
- (c) to require notice to be given to the Minister or a reserve trust before the validity of a secondary interest over a Crown reserve can be challenged in court proceedings.

From the outset I indicate that in my view there have been some constructive meetings with the Minister's office. Tara Black is quite keen to see how this bill progresses; apparently it is her first bill and she has a degree of interest in how the upper House works. It is fair to say that we work a bit differently in this House to the way in which the lower House works. The Opposition has some concerns about the bill as it currently stands and I foreshadow that we will move amendments to the bill in the Committee stage. This bill was presented to the Opposition as containing innocuous and minor amendments, but it appears they are far from that.

People have raised concerns with the Opposition about travelling stock reserves and why they were originally included. We have asked the Minister's office whether the change will lead to a change in the disposal process for travelling stock reserves. In the event of disposal, where will the proceeds from the disposal of travelling stock reserves go? It would be outstanding if the Minister were able to clarify that in his reply. The ministerial powers in new section 34AA (3) have also caused some concerns for a number of organisations that have been in touch with the Opposition as well as with members of the crossbench. In particular new section 34AA (3) states:

- (3) For the avoidance of doubt:
- (a) the purpose for which a secondary interest is granted need not be a public purpose and need not be ancillary or incidental to the reserved purpose.

Some organisations have expressed concern to the Opposition about how that relates to the Crown Lands Act and the Opposition will raise a number of issues that it hopes the Minister will address in his reply. The other concern relates to material harm. In discussions with the Minister's office the Opposition raised concerns about material harm and there is a very good reason for that: a legal concept has not been defined. My understanding is that the word "material" has been defined and the word "harm" has been defined, but the phrase "material harm" is yet to be actively tested legally.

In discussions with the Minister's office I requested that in the second reading speech in this place the Minister provide more detail and guidance on how the Government expects "material harm" to be applied. I note that the Minister in his second reading speech in this place gave a degree of detail on material harm and gave examples, such as a fence or water storage being included in a grazing lease. I foreshadow that the Opposition will move amendments in Committee to provide more guidance on material harm because although the second reading speech provided guidance, it did not go far enough. It is crucial that whoever is in government is not set-up to face another lengthy court case in the future.

It is critical that the bill provides guidance. It may well be that the matter will go to court anyway, but legal practitioners need more clarity and guidance because they will spend some time dissecting the meaning of material harm. I have received emails and correspondence from solicitors and barristers detailing their concerns about "material harm" being used as a phrase within this bill. The Opposition also raised concerns about the dispute process whereby the Minister has up to six months. I foreshadow an amendment around that process as it relates to new arrangements beyond this bill. We propose the period be three months not six months for any new arrangements. I will make some general comments regarding the legislation and the process applied to it. It is unfair and untrue to say that we have not met with the Minister's office. We have had several meetings with the Minister's office and they were constructive meetings. However, it would appear from public comments by the Minister in recent days that he did not know they were constructive meetings. I find that rather unfortunate.

Certainly this morning's meeting was very constructive. There is a degree of cynicism in the community about this bill, certainly as it relates to Aboriginal land claims. It has been put to the Labor Opposition that one of the consequences of this bill would be to reduce the number of land claims in New South Wales. The Opposition has had four meetings with the New South Wales Aboriginal Land Council about this bill. The council has a number of concerns that it has raised with the Minister's office, crossbench members and us. I understand some crossbench members have amendments arising from those meetings. Some environmentalists have suggested that this bill would lead to grazing in national parks. I suggest the Minister provide some clarity as to whether that is the case. Issues have been raised about current legal proceedings and I shall read onto *Hansard* an email I received from Kim Ostinga, Friends of King Edward Park Incorporated in Newcastle, who stated:

The members of FOKEP are appalled to think that the Minister is not satisfied with S 34A of the CLA which already gives him the authority to declare a special purpose that is not compatible or consistent with the dedication of Crown Land if he is satisfied that it is in the Public Interest and has been Gazetted before Parliament. To replace this, on the most spurious grounds, with the freedom to individually, and independently allow any purpose which he considers will "do no material harm" (a term that remains to be defined at law) is frankly frightening.

All members of the Labor Party in the upper House and I think all members of this Chamber received correspondence from J. B. Owens, who is acting on behalf of the Talus matter in the Supreme Court. In that correspondence Mr Owens stated:

The Bill now places the Talus Case in limbo as the full implications of this extraordinary legislation emerge. There is a real risk the new laws will effectively undermine the case.

Sections 34AA (1), (3) and (4)—working with item [7] Schedule 8 (1), (2), (3), (4) and (5)—of the new Bill may very well cure all previously invalid leases (regardless of the reason for the invalidity).

It is true that s35A of the new Bill should not apply to their case. But that section is merely a **procedural** section: it will allow a legal challenge to proceed if already filed. But what is the benefit of this procedural section if the substantive provisions mentioned in the preceding paragraph undermine their legal arguments?

The Opposition has always said that it could not support the bill in its current form, but that it would seek to discuss further amendments with members and would give consideration to supporting the bill if it were amended. I foreshadow that the Opposition will move a number of amendments in Committee and depending on the result of the amendments the Opposition would give consideration to supporting the bill at the third reading stage. The Minister's second reading in this place was more detailed and contained more clarity than the second reading speech given in the lower House. There may well be a lesson for a number of people in that regard.

I know that the Hon. Duncan Gay has extensive knowledge of Crown lands in New South Wales and would want to ensure that the second reading speech in this place provided the guidance and clarification that was, perhaps, lacking from the one given in the lower House.

The Hon. Duncan Gay has detailed "material harm" in quite clear terms and that has provided a degree of surety to a number of organisations to whom we have circulated the second reading speech. However, more needs to be done to clarify the meaning of material harm as a phrase in this legislation. I believe that at some future stage there will be another court case that will try to determine the meaning of "material harm" and I think that may be a lengthy process as well. Also, a campaign was run around this bill late last week. Crossbench members may have received similar emails to the ones that Opposition members received. In a radio interview a lower House member admitted that he had not read the bill, which was interesting. I will not do in that particular member.

**The Hon. Dr Peter Phelps:** Lower House members can read, can they?

**The Hon. MICK VEITCH:** I acknowledge the interjection from the honourable Government Whip. I make a suggestion to lower House members of Parliament on all sides: If they are going to make public comment about a bill it would not hurt to actually know what is in the bill before they do so. I reserve any further comments until the Committee stage. I have sent my appreciation to the Minister's office for the meeting this morning and for the other meetings. I thought they had been constructive. We put our position and foreshadowed a number of amendments. The public campaign was rather unfortunate. A number of not-for-profit organisations that are concerned about the campaign have been in touch with Opposition members.

I have spoken to the Minister's office about this matter. Also, caravan parks are concerned about the legislation and what it means for them. It is important that the Minister provide some clarity in his speech in reply for those groups, particularly caravan park operators and not-for-profit organisations. Other organisations that were alarmed by the campaign run last week are now wondering whether they have some sort of lease. The Opposition reserves the right to support or oppose the bill pending the outcome of the Committee stage and what happens to the amendments moved by the Opposition.

**The Hon. ROBERT BROWN** [2.59 p.m.]: It seems to me that the Government has ingeniously and unnecessarily created a crisis over the Goomallee claim to justify the bill before the House. Crown lands legislation is important legislation governing the management of public assets, not a political football to be used at the whim of a government—which seemingly thinks there is a pot of money to be made—or to criticise any party that tries to improve the bill. When this bill was first flagged by the Government we sought, and continue to seek, an honest appraisal of what it does and not some spin to suit the Government's purposes. Indeed, the Government may need to be more forthright about such issues in future. The Shooters and Fishers Party understands there is a problem with the Goomallee claim that needs to be clarified. From the advice we have thus far been given it is our understanding that the Government's claim that approximately 7,000 other community groups using Crown land are at serious risk without this bill is not necessarily true. Perhaps we can be polite and call it an exaggeration.

I do not think that either side of the Chamber is comfortable with the Minister requiring unfettered and unchallengeable retrospective powers, and nor would anyone else who has a lease on Crown land. I note that a review of Crown lands has been completed but that the report is two months overdue. The Shooters and Fishers Party would like to see that report. I would have thought that it would have been prudent to have members see the report before making further decisions about the use of Crown land. I understand that it is urgent because we are nearing the end of the parliamentary session. The Shooters and Fishers Party accepts the Government's argument that this needs to be sorted out and sorted out properly.

To allay some of the concerns it has, the Shooters and Fishers Party will support some, although not many, of amendments that will be moved in Committee. We will support the bill subject to those amendments being adopted. As I said at the outset of my brief contribution to this debate, I am disappointed that the Government has gone out of its way to manufacture a crisis. The Opposition and the Shooters and Fishers Party have received numerous texts and emails from people whom I regard as constituents, such as shooting range managers and grazing leaseholders. They all seemed to be of the opinion that the Shooters and Fishers Party and the Opposition were going to interfere with their legal right to continue to operate on those leases. I have not been able to do so to date, but I assure all of those people that that was never our intention. The intention is to ensure that this bill does what it is supposed to do and nothing more.

Scare campaigns cause harm and panic and upset people because they do not know what will happen. When an issue such as this comes before the House and the Government runs a campaign perhaps it should be wary of crying wolf too many times because the people of this State are not as gullible as the Government believes. Subject to two or three amendments being supported in Committee, the Shooters and Fishers Party will support the amended bill.

**The Hon. TREVOR KHAN** [3.03 p.m.]: I support the Crown Lands Amendment (Multiple Land Use) Bill 2013. The object of this bill is to amend the Crown Lands Act 1989 as follows: First, to provide that a secondary interest such as a licence, lease, permit, easement or right of way can be granted in respect of Crown land that is reserved for a public purpose, as long as the use and occupation of the land under the secondary interest would not be likely to materially harm the use and occupation of the land for the public purpose for which it is reserved; and secondly, to authorise the Minister, or a reserve trust, to validate the grant of a secondary interest over a Crown reserve by making such changes to the secondary interest as may be necessary to ensure that it is validly granted.

The third object of the bill is to provide that notice be given to the Minister, or to the reserve trust, before the validity of a secondary interest over a Crown reserve can be challenged in court proceedings. Unlike members opposite, the New South Wales Government is committed to strengthening our communities. By introducing this bill the Government is providing certainty for communities, businesses, farmers and Aboriginal land councils relating to the lawful use of Crown land and enabling the economic and social value of the Crown estate to be maximised. The bill provides certainty to thousands of graziers across the State.

**The Hon. Penny Sharpe:** It is better when you give your own speeches.

**The Hon. TREVOR KHAN:** It is interesting that those opposite find some humour in this matter. It is sad that they cannot apply their minds to a matter as important as this but instead want to engage in fanciful and foolish jokes: Sad indeed. The New South Wales Government has identified more than 4,000 grazing licences that may be affected by the Goomallee decision. Labor members clearly fail to comprehend the situation at hand. They are playing political games with the livelihood of thousands of farmers across this State who deserve better than a Labor-Greens scare campaign. Many of those affected farmers have been operating on Crown reserves for generations, and this bill simply confirms those existing leases.

For generations farmers have been granted access to Crown reserves for grazing. This arrangement helps both farmers and New South Wales taxpayers because it allows farmers to feed their stock and it ensures the maintenance of Crown reserves, an otherwise costly exercise. In many instances grazing helps local communities by maintaining local showgrounds, reserves and travelling stock routes. It is clear that the Opposition is not concerned about the interests of farmers and those communities. For instance, the member for Cessnock, Clayton Barr, in a letter to the *Maitland Mercury* dated 7 November, acknowledged that grazing was at risk due to Labor's political games. He stated:

Grazing on Crown land is the only thing at jeopardy here.

It shows his lack of concern for the rural communities of New South Wales. There are 33 grazing licences in the Cessnock area alone, and it is disappointing that they are not supported by the local Labor member. This Government has been inundated with support for the bill from graziers across the State. A farming family in Broken Hill stated:

As graziers are already operating under diminishing margins and battling with drought yet again, the uncertainty that the Goomallee case adds to our lives and business enterprise is enormous. We require certainty for our rights to graze. Australian agriculture must be protected.

A farmer from Glen Innes stated:

Regretfully, we have the Labor Party which continues to lack common sense and has contempt for everyone else who tries to get ahead in this world.

A farmer from Moruya stated:

I have a lease over some land in Moruya, New South Wales, and it is land locked by my land so I think removing my licence would be a very stupid idea.

Clearly, that comment was directed at the member for Cessnock in the other place. Unlike those opposite, the O'Farrell-Stoner Government recognises the needs of our farmers and the necessity to provide the industry with

the security it needs. The agricultural economy is worth \$12 billion to the State every year and employs 40,000 farmers, many of whom depend on grazing that occurs on Crown reserves. The obvious unholy alliance between The Greens and Labor is alive and well. Unsurprisingly, The Greens and Labor have been caught out spinning a web of lies and deceit to the people of New South Wales, with outlandish claims of "increased power to the Minister". New South Wales Labor was thrown out of government for telling such lies to the public. Clearly it has not learnt its lesson from March 2011. The bill does not provide any new powers for the Minister to approve commercial development on Crown reserves. Those powers have been in place in their current form since 1989. The bill is intended to confirm existing lease arrangements. If the bill is unsuccessful, the Minister will have to revoke thousands of existing secondary tenures, publish individual gazettal notices—

**The Hon. Steve Whan:** Well, why hasn't he done that?

**The Hon. TREVOR KHAN:** —adding new purposes to all the affected reserves, and then reissue all the secondary leases, licences and permits. I will tell the member why the Minister has not done that: It would impose significant financial and resource burdens on the Government. It is estimated that the cost of the process would be in the vicinity of \$4 million and that it would take up to three years to issue the tenures alone. Local councils, which often manage the Crown reserves, would also need additional resources to cope with their responsibilities. It is clear that Labor members do not care about regional communities. If they did then they would speak up and support this State's graziers, community groups and businesses. The bill provides stability and certainty for thousands of community groups, like Marine Rescue at Byron, Ballina, Coffs Harbour, Clarence, Narooma and Wyong; the Rural Fire Service sheds across the State; bodies such as the Coonabarabran Showground; scouts halls in places such as Guyra, Glen Innes and Leeton; and shooting and recreational sports clubs, including those at Cessnock. A church group in the Northern Tablelands electorate that holds a grazing licence over a Crown reserve has written to its local member of Parliament stating:

We thank you and your Coalition colleagues for pursuing this matter and trust crossbench members will not seek to destabilise the grazing sector by obstructing the intent of the bill.

The New South Wales Liberals and Nationals recognise the important contributions that those organisations make to our local communities and local economies across the State. The Government calls on Labor and the crossbench members to support the thousands of community groups, local businesses and farmers operating under secondary tenures by supporting this bill. I commend the bill to the House.

**The Hon. PAUL GREEN** [3.13 p.m.]: I speak on behalf of the Christian Democratic Party on the Crown Lands Amendment (Multiple Land Use) Bill 2013. This bill amends the Crown Lands Act 1989 to ensure that both existing and future secondary tenures over Crown reserves are valid provided that they are not causing or are likely to cause "material harm" to the primary purpose of the reserve. This supports the important multiple-use principle in the Crown Lands Act that Crown land should be used for multiple community and economic purposes. Crown land that has been set aside for a public purpose is generally referred to as a Crown reserve. I understand that there are about 35,000 Crown reserves in the State.

These reserves contain much of the State's natural, cultural and open space— for example: local parks, heritage sites, community halls, nature reserves, showgrounds, caravan parks and travelling stock routes. The Government has explained to us and to stakeholders the importance of this bill: that a New South Wales Court of Appeal decision of 9 November 2012, known as the Goomallee claim, means that up to 7,000 community and commercial facilities operating under secondary tenures on Crown land may be considered legally invalid. Examples of the kinds of facilities mentioned in that context included the Country Women's Association. Who would want to move them off Crown lands?

**The Hon. Robert Brown:** Who would be game?

**The Hon. PAUL GREEN:** Who would be game to take on the Country Women's Association? What good folk they are. Other examples are the men's sheds, another great bunch of guys and some girls. Others are the Rural Fire Service, Marine Rescue facilities, surf lifesaving clubs, preschools, the very important recreational sporting clubs, as well as kiosks and graziers. I understand that the Opposition has acknowledged that there is a need to address the uncertainty that tenure holders face with regard to the potential invalidity of their leases. The Crown Solicitor has advised the Government that this simple legislative amendment is the most efficient and practical way to resolve this significant and far-reaching issue. The alternative would be to revoke each individual tenure, amend the relevant reserve purpose and then reissue that tenure.

This burdensome and expensive process could cost the New South Wales Government around \$4 million and take up to three years to complete. In addition, local councils that have issued secondary tenures

over Crown reserves would need to undertake a similar process at their own cost. That alternative approach would be administratively complex and would detrimentally affect the viability of those thousands of community groups and local businesses that are operating under these tenure arrangements. The Christian Democratic Party shares the Government's view that that is not acceptable. The bill validates existing secondary tenures on Crown reserves that are not causing material harm to the primary purpose of the reserve.

Importantly, the bill supports the multiple-use principle in the Crown Lands Act 1989 that, where appropriate, Crown land should be used for multiple community and economic purposes. Some tenancies over Crown land reserves are issued by the Crown Lands Division, through the Minister, while other tenancies are issued by reserve trusts, many of which are managed by councils. The Christian Democratic Party understands that this bill is retrospective in nature. It further understands that the Government believes that without a retrospective clause there will be unnecessary uncertainty and economic disruption for communities and businesses across the State and significant financial and resource costs would be imposed on the Government.

I note the concerns of stakeholders about the definition of "material harm", which were articulated very well by the Hon. Mick Veitch. The NSW Aboriginal Land Council states that the "material harm" test needs to be an objective test that does not rely on the Minister's opinion. The council believes there must be criteria for material harm prescribed in the bill and that they must be used by the Minister to assess whether the use or occupation of the Crown reserve pursuant to a secondary interest would materially harm its use or occupation for the reserve purpose. We are pleased that the Government will be considering amendments to the definition of "material harm" in response to considerable stakeholder feedback.

The process involved in the determination of material harm is substantial. The bill requires parties to provide the Minister with notice of alleged invalidity before questioning validity in court. The purpose of this notice is to inform the Minister of concerns about material harm that is occurring and to enable this to be addressed appropriately if possible. By definition, the person who is concerned about the harm has the opportunity to raise their concerns. The level of detail that they provide will depend on the circumstances and the nature of the issues. The nature of the action to be taken at this point will depend on the specific circumstances. On one hand, the Minister could decide to cancel the licence.

Alternatively, if the Minister concludes the tenure conditions are not adequate then they could be amended. It is obvious that would need to occur in consultation with all affected parties, including the tenure holders and anyone suffering harm or to whom the principles of procedural fairness may apply. Lastly, it is also open to the Minister to waive the notice period and to allow the challenge to proceed immediately. To the extent that material harm to a reserve could affect a land council's rights to claim the land, it is likely that the land council would have procedural fairness rights under this process. Bearing in mind the existing notification requirements, the common law rules of procedural fairness that will apply and the large number of potential factual scenarios, inflexible procedural requirements will not be helpful.

The proposed notice requirements also do not unreasonably interfere with the judicial process. Alternative dispute resolution is commonly accepted as a more efficient way of resolving disputes than litigation. In many courts this is required before a matter proceeds to hearing. These provisions simply require parties to seek to resolve disputes about the validity of tenures on Crown lands before the issues are questioned in litigation. I understand that as an important stakeholder the New South Wales Aboriginal Land Council was consulted on this matter three times by Crown lands officials prior to the bill being introduced into Parliament. I further understand that the Minister has met with the New South Wales Aboriginal Land Council personally. The bill expressly provides that the savings and transitional provisions in item [7] do not affect any decision of a court made before the commencement of new section 34AA. The bill will not affect land claims made before 9 November 2012, and that is a very important point.

The New South Wales Aboriginal Land Council's offer to continue the grazing licence or to provide an option to purchase was appreciated and considered before the Government decided to exempt all existing claims prior to 9 November 2012 from the proposed approach. While the council's offer clearly assists in addressing the Government's concerns, it does not provide certainty in the medium to longer term to the large number of potentially affected tenure holders. This is why a legislative solution that applies from the date of the decision is appropriate.

I have also received correspondence from a number of stakeholders, including councils such as Forbes Shire Council. Mayor Ron Penny expressed his support for the bill and said that a number of affected tenures operate within the Forbes shire, that they had been in place for many years and that they provided important

services to his local community. The Regional Organisation of Councils has also requested that the Christian Democratic Party support the bill. It goes without saying that the fact that many of these agreements have been in place for many years is in the spirit of this legislation. The bill aims to get things right within the legal framework because many tenures were issued on the understanding that the affected parties qualified to be on those lands. The Christian Democratic Party understands that the Government has been reviewing the management of Crown land since June 2012. We concur with the Shooters and Fishers Party that we should have a Crown lands review sooner rather than later. It would be helpful in handling many Crown land issues in New South Wales.

I was disappointed that Deputy Premier Stoner sent a letter to 152 councils stating that the bill was before the upper House, "but unfortunately Labor, The Greens and the crossbenchers have indicated that they will continue to oppose the bill, despite not having proposed any amendments". The non-government parties have a right to take the time they need to scrutinise all bills, to have stakeholder meetings and to talk with people to ensure that at the end of the day we have the best bill and the best outcomes for the people of New South Wales. We have that right and we reserve the right to ask questions to ensure that all stakeholders are heard and that they can have confidence that we have done our best to consider their concerns. They may not get the outcome they are hoping for, but they have a right to have their concerns considered in the formation of legislation. There were a lot of nervous councils because many licences were in conflict with the reserve purpose of public recreation and were therefore invalid.

In the Shoalhaven region there are public toilets and storage facilities on such sites, along with Marine Rescue NSW offices and operational areas. The Mollymook Surf Life Saving Club, the Shoalhaven Heads Surf Life Saving Club and the Nowra Culburra Beach Surf Life Saving Club have facilities on Crown lands. Many councils worry that if we do not deal with this issue their right to occupy the land will be challenged at a later date. We reserved the right to negotiate with all parties and the Government. Tara from the Minister's office and other staff worked well with us to ensure that all voices were heard and that everyone was made aware of the concerns raised by other parties. The Christian Democratic Party will support some of the foreshadowed amendments but not all of them. At the end of the process, the bill will pass the House once we have amended it so that we deliver the best outcome and a stronger bill.

**The Hon. JEREMY BUCKINGHAM** [3.25 p.m.]: The Greens oppose the Crown Lands Amendment (Multiple Land Use) Bill 2013 as it stands. Although the bill is framed as a response to the Goomallee decision, there are much broader implications arising from it for Crown reserve management than the Minister has admitted. As the Hon. Paul Green said, this is important legislation. There is a requirement for the Government to act, but there is also a requirement for us as lawmakers to consult widely and to consider the implications of the bill. The Greens have been doing that in a responsible way.

The Government had to respond to the Goomallee decision in some form. However, the bill is excessive and overreaching in addressing the invalidation of grazing leases after Goomallee. The bill gives unnecessary and significant executive discretion to the Minister to manage Crown reserves without sufficient oversight. Significantly, it unreasonably does away with the existing process for allowing multiple purposes under the Crown Lands Act, which is a fundamental departure from the Act's existing formulation and protections. Further, the bill contains retrospective provisions that prejudice Aboriginal land claims submitted after 9 November 2012. These claims should be dealt with in a more equitable manner. The Greens will move amendments to address these deficiencies and seek Labor and crossbench support.

Crown land comprises about 42 per cent of the State, which includes national parks, State forests, schools, hospitals, sporting fields and conservation areas. Crown reserves are those Crown lands set aside on behalf of the community for a wide range of public purposes, including environmental and heritage protection, recreation and sport, open space, community halls and special events. The Minister has power to reserve Crown land for public purposes in accordance with part 5 division 3 of the Crown Lands Act, which sets out the public consultation notification processes for reservation of land as a Crown reserve. There are approximately 35,000 Crown reserves in New South Wales, which is about 4 per cent of the State. Travelling stock routes cover some 500,000 hectares, which is nearly 6 per cent of the State. That is a sizeable land area that will be affected by the provisions of the bill.

The Greens will certainly be watching how the Minister implements this legislation to ensure that those important environmental areas, the travelling stock routes—one of the most important biodiversity corridors in the State—and those Crown reserves, some of which are the most valuable lands managed by the State, are managed appropriately and remain managed in the public interest and not for private interests. The Minister

already has considerable powers in relation to dealing with Crown reserves in the Crown Lands Act. Leases, licences, permits, easements and rights of way can be granted over these reserves by the Crown Lands Division, by the Minister or by reserve trusts pursuant to section 34A of the Crown Lands Act. This grant of use is termed a "relevant interest" and requires the Minister to consult the agency or body managing the reserve.

If the relevant interest is for a purpose other than the declared purpose of the reserve the Minister is to publish in the *Government Gazette* the purposes for which the Crown reserve is to be used. Importantly, section 34A provides that the Minister is not to grant the relevant interest unless it is in the public interest and there is due regard to the principles of Crown land management. These are important constraints on the Minister's power, which will be done away with by this bill. The importance of these constraints was highlighted in the 2012 case of Goomallee where the court found that a grazing licence granted over a parcel of Crown land reserved for the purpose of public recreation was unlawful as the licence was not for the same purpose of the reserve or in furtherance of or incidental to the purpose of the reserve and that, therefore, the secondary use was invalid. This therefore meant that the land in question was claimable Crown land for the purpose of the Aboriginal Land Rights Act 1983.

The Government claims that this bill is a direct response to this decision. But the fact that it goes beyond this and pre-empts the Crown lands review makes me suspect that the Government has motives beyond just protecting men's sheds and that, in fact, this is enabling legislation for a whole new regime of Crown reserve management in this State. This bill amends the Crown Lands Act by inserting a new section 34AA, which allows the Minister to grant a lease, licence or permit over Crown reserves even where the secondary interest may not be incidental or ancillary to the declared purpose of the Crown reserve. This is a severe departure from the existing requirements in the Act for the granting of secondary interests. The Government claims to have done this to ensure that existing and future secondary tenures over Crown reserves are valid, provided they are not causing or likely to cause material harm to the primary purpose of the reserve. The bill does this by introducing a new subjective test in section 34AA (2), which allows the Minister to grant a secondary interest when he or she is of the opinion it would not be likely to materially harm the reserved purpose.

The purported justification for this is to validate secondary tenures on Crown reserves, many of which may be invalid for a range of reasons, including incompatibility of purpose, non-existent leases or administrative procedural errors. We looked at Labor's amendments to define the material harm that should be prescribed in the Act. We will certainly be supporting amendments of that type. Section 34AA (3) (a) explicitly states that the secondary interest does not have to be for a public purpose and need not be ancillary or incidental to the reserved purpose. Further, section 34AA (3) (b) explicitly overrides the existing test of inconsistency, which, to paraphrase, states that the fact that the secondary interest may be inconsistent or incompatible with the reserved purpose does not necessarily equate to material harm. Goodbye incompatible land uses. It sounds like the Minister is taking advice from the coal seam gas industry and the developer lobby and is buying into the myth of co-existence. Farmers have not bought it with coal seam gas so why should the public accept it with Crown reserves? We certainly believe that this opens the door for abuse and opens the door for the opportunity—

**The Hon. Duncan Gay:** You're a very cynical young man.

**The Hon. JEREMY BUCKINGHAM:** I am. I don't trust you.

**The Hon. Duncan Gay:** The feeling is mutual.

**The Hon. JEREMY BUCKINGHAM:** Thank you. I think it certainly opens the door to property developers because, who knows, a few condominiums, a few villa units on a Crown reserve somewhere on the North Coast certainly would be incompatible but now allowable. We might just be giving the Government all the rope it needs to go and do the business up there on the North Coast on all the caravan parks.

Section 34AA (3) (c) explicitly provides that grazing will not amount to material harm for Crown land reserved for public recreation or future public requirements. Section 34AA (4) and the savings and transitional provisions provided in schedule 8 allow the Minister to retrospectively validate the grant of leases and licences for a secondary interest that would otherwise have been invalid. This is a departure from the normal practice of a bill commencing on the date of assent and it will have serious ramifications for Aboriginal land claims, which I will discuss later.

Section 35A prevents a court challenge to the validity of a secondary interest on any grounds, not just incompatibility of purpose, unless six months notice is given to the Minister. This effectively allows the

Minister to rectify or cure invalidity of the secondary interest tenure in order for it to satisfy the material harm test and to ensure the secondary interest is a lawful use or occupation of the Crown land. The justification for this severe departure from the existing requirements of the Act is essentially the Government's ineptitude in administering the Crown Lands Act. The Government claims it would have to publish thousands of gazettal notices adding new purposes to all the affected reserves and it would have to revoke and reissue thousands of secondary leases, licences and permits if the bill is not passed.

While The Greens are sympathetic to this, there are more suitable solutions that do not override the existing protections of the Crown Lands Act or unjustly extinguish lawful Aboriginal land claims. These solutions are reflected in our amendments. Further, while the Government claims there are no other suitable administrative solutions as these "would create unnecessary uncertainty and economic disruption for communities" the Government is being somewhat disingenuous in this regard. Users of Crown reserves are not about to be suddenly kicked off Crown reserves since the Goomallee decision. It has been more than a year since the decision and there has not been a rush of land claims nor has there been an exodus of secondary users of the Crown reserves.

The Greens certainly were not cowed by the pretty feeble and concocted campaign that the Government led to try to shepherd this bill through. We certainly thought that the concerns about the bill outweighed that scare campaign run by the Government about all those not-for-profit organisations that were suddenly about to be closed although they were clearly compatible with the purpose of the reserve—surf lifesaving clubs, kiosks, public toilets. There is no dispute and no claim that they are not compatible and, lamentably, they have been used cynically by the Government to try to get its bill through. I have lost my spot.

**The Hon. Duncan Gay:** You've lost the plot.

**The Hon. JEREMY BUCKINGHAM:** I lost the spot, mate. You have lost the plot. It is worth mentioning that the Government could have sought to remedy the situation in a more refined and constrained manner rather than in the bill's current form. For example, the Government could introduce a bill with a schedule that lists the reserves and/or secondary interests the Government seeks to validate, thereby allowing public scrutiny of the proposed validations. The Government could have just listed these by schedule.

**The Hon. Dr Peter Phelps:** But you wouldn't have supported that either.

**The Hon. JEREMY BUCKINGHAM:** Yes we would have, absolutely. I acknowledge the interjection of the Hon. Dr Peter Phelps that we would not have supported it. We certainly would have supported it and it is certainly open to the Government to do that. If the Government lists these in a schedule we will consider them and the community can have a look at them. Undoubtedly the majority of those would be uncontroversial.

**The Hon. Dr Peter Phelps:** You still would have opposed it.

**The Hon. JEREMY BUCKINGHAM:** No. As an instrument the Government could have done that. We would have supported that and it would have been up to the community to have a look at which reserves they are at issue with and to have their say. Undoubtedly the vast majority of grazing leases would have been non-controversial and would have gone through without any debate whatsoever. The Government could seek to have such interests validated by regulation, thereby giving the Parliament an opportunity to disallow controversial or conflicted use of Crown reserves or, alternatively, there could have been a sunset clause to limit the bill's operation so that the Minister's discretion to validate secondary interest does not last in perpetuity.

**The Hon. Dr Peter Phelps:** Four thousand regulations.

**The Hon. JEREMY BUCKINGHAM:** These methods would be a transparent and accountable form of validation. Just list them by regulation. The Government knows where they all are so it should just list them. There has been little or no consultation with the New South Wales Aboriginal Land Council as key stakeholders affected by this bill. There were assurances by the department that the New South Wales Aboriginal Land Council would be able to make submissions and see a copy of the bill before it went to Parliament. Instead, we have seen a distinctly inadequate publicising of the bill. There has been no ministerial press release to announce the bill or its intentions. Compare this lack of fanfare with the September announcement of the Cemeteries and Crematoria Bill 2013, which is undergoing public consultation, exhibiting a draft exposure bill, and being debated this month.

Why is this bill being pushed through before the Crown lands review is delivered? The review was announced in June 2012 and was meant to have delivered a final report by 2013. Where is the report and what is the outcome of the review? The review is meant to address the overall management of Crown lands, including legislation, financial management, governance, and business structures. The bill introduces a worryingly new material harm test for the granting of secondary interests over Crown reserves. The material harm test is completely new and is not reflected in case law regarding Crown law reserves. No definition of "material harm" is provided, which means the Minister's power to grant the licence is entirely subjective. That is an enormous risk to governance and potentially to corruption.

Its interpretation will be left entirely to the discretion of the Minister and make it near impossible to challenge a Minister's decision. This fundamentally overrides the public interest requirement that exists in the Crown Lands Act. There is no dispute resolution procedure in the bill, despite this being mentioned by the Minister in his second reading speech. The bill does not provide mechanisms for persons who wish to prevent harmful activities from occurring to make an application to the Minister or to make submissions to the Minister regarding the alleged harm. This shows a disjunct between the Minister's speech and the drafting of the bill. So why does the Minister misrepresent the bill in this regard? Is he trying to placate legitimate concerns that the bill gives too much discretion to the Minister?

Without the checks and balances that currently exist in the Crown Lands Act for the granting of secondary uses, this bill is clearly a radical departure from the current system. Also of concern is the element of retrospectivity. We have considerable concerns regarding the bill's retrospective impact. The Legislation Review Committee also noted concerns in this regard. Existing tenures will be subject to a blanket retrospective validation. Although the Minister in his second reading speech said that safeguards will be put in place to ensure that tenures that are materially harming or could materially harm the reserve purpose will be able to be identified, there are no such safeguards in the bill. Appropriate safeguards need to be implemented in order to determine tenures that are likely to cause material harm before they are validated *carte blanche*.

Of particular relevance, this retrospectivity affects Aboriginal land claims lodged on Crown reserves after the Goomallee decision on 9 November 2012. The Minister's office indicated that 462 land claims have been lodged since 9 November 2012, approximately 100 of which have secondary interests that may be affected by the bill. Of these 100 claims, we are told that approximately 18 are likely to involve secondary interests which could be inconsistent with the reserve purpose and technically open to claim based on Goomallee. If the Government is to push ahead with the bill it should respect those claims and have the bill commence on the date of its assent, rather than act retrospectively. The Greens will address that in amendments.

The requirement in the proposed section 35A that a party give six months notice before challenging the validity of the interest in court proceedings is unacceptable and an invasive fettering of the judicial process. The Crown Lands Act already provides for multiple uses of Crown reserves. While the Deputy Premier correctly identified that the principle of Crown land management in section 11 (d) of the Crown Lands Act promotes multiple uses of Crown land, this is already adequately provided in the Act. The Deputy Premier appears to be misconstruing the importance of section 11 (d), which, when read in the context of the Act, clearly allows for multiple uses of a Crown reserve so long as the use is consistent with the reserved purpose. As stated in the Goomallee case:

Except insofar as a statute otherwise provides, the use of reserved or dedicated public land for a purpose which is not properly related to the purpose of the reservation or dedication is beyond power and unlawful.

If there is a conflict of purpose, provisions in section 34A, 112A and 121A set out detailed mechanisms for how the Minister can grant leases for purposes other than a reserve's declared purpose. Section 34A (2) (b) provides:

... if the Crown reserve is to be used or occupied under the relevant interest for any purpose other than the declared purpose (as defined in section 112A) of the reserve—the Minister is to specify by notice published in the Gazette, the purposes for which the Crown reserve is to be used or occupied under the relevant interest ...

Further, section 121A explicitly provides that the Minister may authorise a reserve to be used for an additional purpose so long as this use is compatible with the declared purpose, consistent with the principles of Crown land management and in the public interest. This important addition to the Crown Lands Act did not exist before 2005. The Crown Lands Legislation Amendment Bill was introduced by Labor in 2005 to specifically address this issue. At that time the Hon. Graham West said that the amendments were introduced to provide greater flexibility for Crown land managers to meet the changing needs of the community. He said:

The Minister will also be able to authorise additional uses for a reserve, outside a plan of management, provided the Minister is satisfied the use is compatible with the existing purpose, consistent with the principles of Crown land management and in the public interest.

That is sensible. These are important constraints on the exercise of the Minister's power, which the Deputy Premier is seeking to do away with. What are the principles of Crown land management that the Deputy Premier wants to avoid? There are other principles in section 11 that the Deputy Premier does not mention, including the principles of environmental protection, conservation of natural resources, public use and enjoyment, and land and resources sustained in perpetuity. The bill's material harm test would do away with those principles and instead give the Minister a wholesale discretion to grant uses of Crown reserves behind closed doors. This bill's provisions, therefore, defeat the whole purpose of publicly gazetting Crown lands and bypass the sensible and protective constraints provided by the Act.

Why then is the Minister inventing an untried, subjective and brand-new material harm test when a mechanism already exists for multiple uses for multiple purposes? It is disgraceful that the Deputy Premier has made so many claims about the Goomallee decision, throwing in doubt a number of secondary Crown reserve uses—using Country Women's Association halls, Meals on Wheels kitchens, and men's sheds—as a vehicle to get legislation through. The Greens have concerns about the bill, and we will try to ameliorate them in Committee.

**The Hon. STEVE WHAN** [3.45 p.m.]: I support the comments of my colleague the Hon. Mick Veitch on this legislation. The Crown Lands Amendment (Multiple Land Use) Bill 2013 has been introduced as a result of the Goomallee case. Unfortunately, the bill has been accompanied by an appalling campaign by the Deputy Premier, some of which was repeated earlier by the Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra. Who was speaking earlier?

**The Hon. Lynda Voltz**: The Hon. Trevor Khan.

**The Hon. STEVE WHAN**: Sorry, the Hon. Trevor Khan.

**The Hon. Duncan Gay**: Do you want to start again? Do you want us to wipe this and give you a second chance?

**The Hon. STEVE WHAN**: It is all right. Earlier the Hon. Trevor Khan gave a speech which was obviously written in one of the more fiery moments in the office of the Deputy Premier. The scare campaign in rural New South Wales has been appalling. The Goomallee case was conducted in November 2012. The Hon. Jeremy Buckingham highlighted that it was some time ago. This bill was second read in September 2013. If the bill is as urgent and as pressing as the Government has sought to scare landholders into thinking it is, why was the bill not introduced at the beginning of this year, rather than in September 2013? If this threatens grazing leases, why has the Opposition not been made aware of a single case that threatens grazing leases in New South Wales? We have not seen that because much of the Government's scare campaign has been simply about scoring political points. The action taken by the Government is outrageous.

The Christian Democratic Party was rightly offended by being included in generic press releases and letters which said that Opposition and crossbench members were going to oppose this legislation and put under threat thousands of leases around New South Wales as that was never true. The Opposition has never disputed the need to introduce legislation to deal with the court decision. The Opposition, the Christian Democratic Party and the Shooters and Fishers Party have said that the legislation needed to do what the Minister said it would do and no more. That is why there has been debate about this matter. The appropriate role of the upper House is to discuss those questions in the Parliament and move amendments to legislation where seen fit, which is what has happened. The Deputy Premier should probably have been grateful that people were scrutinising his bill closely to ascertain whether he was overplaying his hand in relation to this legislation.

Letters have been sent by the Deputy Premier and members representing electorates in the lower House to organisations such as the Nimmitabel Country Club, Rural Fire Service groups and Country Women's Association groups that suggested their leases are under threat. My reading of the decision of the court is quite different from that of the Deputy Premier. In part the decision stated that "activities were objectively not compatible with the reservation of the land for public recreation". It was referring to a grazing lease and not about not-for-profit clubs or community organisations that are occupying Crown leases. They were amongst the many people written to by this Government in what can only be described as a disgusting misuse of taxpayers' funds to run a political scare campaign.

**The Hon. Duncan Gay**: Oh, settle. Overstatement.

**The Hon. STEVE WHAN:** The Minister said it is an overstatement. Have members ever seen a government that has used taxpayers' funds to write letters to members of the public which absolutely mislead them about a court case?

**The Hon. Duncan Gay:** Point of order: He asked me a question that I do not have time to answer. It would take me hours to detail how many times the former Government did that.

**DEPUTY-PRESIDENT (The Hon. Paul Green):** Order! There is no point of order.

**The Hon. STEVE WHAN:** The Minister's disorderly conduct shows how sensitive he is to the misleading of the people of New South Wales. As I understand it, letters were sent to 4,000 grazing leaseholders which wrongly stated that Opposition and crossbench members would oppose this legislation and that if the legislation did not pass their grazing leases could be taken away from them. That is patently untrue given the fact that not one action has been taken since then. Farmers such as David Litchfield in the Monaro electorate and Gratton Wilson both contacted our office because they were concerned to receive the letter. One gentleman was concerned that his phone calls to his local member were not returned when he sought an explanation.

Those people deserve to be told the truth because this Government introduced legislation which many organisations believed went too far, as did the Opposition. The Opposition obtained legal advice from other organisations that suggested that they also were concerned about the definitions put in this legislation by the Government. The Hon. Mick Veitch was correct when he said that the material harm test needs to be defined. If it was left undefined in the legislation the Government could have had incredible scope to define later on what material harm to these leases meant. It would have had the ability to allow a whole string of uses on land which had not been envisaged in the past. The Aboriginal Land Council expressed its concern to many members and that also deserves to be addressed.

At every stage the Opposition has agreed that the decision by the court needs to be clarified by the Parliament and that when the legislation reflected an appropriate action to rectify that decision, as per the amendments foreshadowed by the Hon. Mick Veitch, the Opposition would support the legislation. That is why the Opposition and the Shooters and Fishers Party have continued to talk to the Government. The Shooters and Fishers Party was upset because the Government wrote to shooting clubs and told them that their leases were under threat as a result of the actions of the Shooters and Fishers Party. Minister, that is a great way to go about negotiating with the crossbenchers. The Hon. Trevor Khan quoted a letter from a farmer who quite rightly said, "Removing my licence would be a stupid idea." It certainly would. The Government scared that farmer into thinking that would happen. The Government ran a scare campaign by sending out lies to the people of New South Wales, which was a disgraceful use of taxpayer's funds.

**The Hon. JAN BARHAM** [3.55 p.m.]: I speak to the Crown Lands Amendment (Multiple Land Use) Bill 2013. As the Hon. Jeremy Buckingham has already indicated The Greens have no choice but to oppose this bill.

**The Hon. Dr Peter Phelps:** There is always a choice.

**The Hon. JAN BARHAM:** No choice. My contribution will focus on the impact of the bill on the Aboriginal Land Rights Act, although its implications are much broader and in reality deserve more critical evaluation than has been afforded. There is no doubt that the Government needs to respond to the decision of the New South Wales Court of Appeal in *Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council (Goomallee Claim) (2012)* but it is unfortunate that the Government has not waited for the conclusion of a similar case, *New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act (Limbri)* before moving ahead with this bill. It is also questionable to move ahead with this bill before the completion of the Crown Lands Review, which was due in July 2013. There is still no word of when it will be coming forward, which is of great concern.

It is clear that the concept of material harm will be an important component of the review and recommendations, and it appears that this bill is unnecessarily broad. The Goomallee decision unveiled a critical inconsistency in Crown reserve practice. The response to Goomallee and Limbri of the New South Wales Aboriginal Land Council and local Aboriginal land councils across New South Wales was expected and an impact on land claims under the Aboriginal Land Rights Act anticipated. The Goomallee case found that a grazing lease issued over Crown land reserved from sale for the purpose of public recreation was not a lawful use or occupation, the implication being that the land will become claimable under section 36 of the Aboriginal Land Rights Act.

In the lead judgement Justice Basten held the power to grant licences on Crown land reserved for public recreation is limited to leases where the purpose is consistent with the purpose of the overarching reservation. Due to its inherent need for fencing and private nature, grazing leases were considered incompatible with public recreation purposes within the context of the Crown Lands Act. As such, the grazing licence in this instance is not a lawful use or occupation of land claimed under section 36 of the Aboriginal Land Rights Act. I acknowledge the Deputy Premier has indicated that this bill is not primarily designed to frustrate land claims. However, The Greens are concerned that in a small number of circumstances Crown land reservation, leasing and management decisions may be made with the ancillary purpose of preventing Aboriginal land claims over particular parcels of high-value land.

New South Wales already has a backlog of approximately 25,785 land claims in New South Wales. Local Aboriginal land councils face significant challenges in successfully making claims under the Aboriginal Land Rights Act. The Greens will be greatly alarmed, as would many members of this Chamber, if the issuing of grazing licences is being used as a strategic land management practice to keep certain Crown reserves outside the ambit of the Aboriginal Land Rights Act. I mention this because a very small minority of contributions from members in the lower House employ a type of rhetoric that advertently and inadvertently causes the transfer of Crown land to Aboriginal land councils as the economic demise fixes inland interests.

These antiquated fears about Aboriginal ownership of land are severely estranged from what I have witnessed in my home area. In many cases Aboriginal land councils want to leverage land uses for economic development, not automatically lock out existing uses. I am sure Reverend the Hon. Fred Nile, who historically has made a number of important contributions to the Aboriginal Land Rights Act, is aware of the number of economic success stories associated with local land council land management. Recently I had the pleasure of discussing the bill with Glen Rennie, the chief Executive Officer of Purfleet-Taree Local Aboriginal Land Council. Glen wrote to me as follows:

I believe that the greatest majority of Aboriginal persons would be willing to negotiate the protection and rights of Non-Aboriginal persons continued access to any properties that might be affected by the Goomalee court case. **I know in my own case I had commenced a co-operative approach to co-managing properties that were/are of interest to both Lands and PTLALC rather than the previous litigious avenue that has been costly to both parties. These discussions were commenced with the intent to agree on an amicable way forward. I was shocked when the discussions ceased and the reason given was the review of the Crown Lands Act.**

**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

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### KINGS CROSS ALCOHOL-RELATED VIOLENCE

**The Hon. LUKE FOLEY:** My question is directed to the Leader of the Government. Given that the Commissioner of Police, Andrew Scipione, has commented that, "We've had great success in the use of lockout provisions and there's no reason why I wouldn't think they'd be just as successful if they were applied in the Cross", will the Government adopt the Labor Opposition's plan to introduce pub lockouts throughout Kings Cross and the Sydney central business district?

**The Hon. MICHAEL GALLACHER:** To assist the honourable member, I direct his attention to the outstanding and comprehensive answer given by the Premier in the other House on this very issue not so long ago. It is fair to say that the Government—

**The Hon. Steve Whan:** You can't just incorporate his answer.

**The Hon. MICHAEL GALLACHER:** Do you want me to just incorporate my answer in *Hansard*?

**The Hon. Steve Whan:** No, I am saying you can't.

**The Hon. MICHAEL GALLACHER:** I can. I can refer him to it. I can do whatever I like in relation to answering. What I can also do is take the opportunity again to reflect on the outstanding work and cooperative approach that the Government has taken to the problems of Kings Cross. There is no doubt that the approach we have taken involves many aspects of government, be it the Minister for Hospitality and Racing,

George Souris, and his responsibilities in relation to Liquor, Gaming and Racing, the NSW Police Force and Transport for NSW. In addition, the Premier has taken a significant leadership role on this issue. With respect to this newly hatched idea, I ask members to reflect on the fact that one of the initiatives that the Government successfully introduced was the trial period of sobering up centres. Some members of this Chamber did not support them; they were not prepared to give them a try.

**The Hon. Duncan Gay:** Who were they?

**The Hon. MICHAEL GALLACHER:** People need to reflect on their own consciences and the position they take in this House. As the Government continues with many options, it is about ensuring that we take a rigorous approach to the Kings Cross area, although it is not limited to Kings Cross. I ask the Leader of the Opposition, while he reflects on questions asked in this House, to also reflect on the answer given by George Souris in the Legislative Assembly about the overall impact of violence having decreased around the State, not just limited to one or two areas where there has been a proactive strategy undertaken by police.

I can be clear about the approach taken by the Government. It is about creating a safer environment. It is one that is workable and recognises that the city of Sydney is an international city, so it has different challenges in respect of policing, tourism and employment. Many aspects come into play. I suggest that for a comprehensive answer on lockouts, last drinks or shots, as raised by the Leader of the Opposition in his press release on the weekend, he might seek advice on what is currently in place in New South Wales and find that many of the things being talked about are already happening.

### OUTLAW MOTORCYCLE GANG BROTHERS FOR LIFE

**The Hon. CHARLIE LYNN:** My question is addressed to the Minister for Police and Emergency Services. Will the Minister inform the House about the recent police investigation into the Brothers for Life gang?

**The Hon. MICHAEL GALLACHER:** I thank the member for his question and congratulate police on their operational work. This question gives me an opportunity to update the House because I am sure all members are interested in this matter. As a number of cases are currently before the courts there is a limit to what I can say about the specifics of the investigation. Be that as it may, whilst the gang goes by the name Brothers for Life it appears that the group is failing to live by what one would assume is the spirit behind its name. It seems that, for whatever reason, there has been a rift in the gang and members have been violently warring with each other for at least the past 12 months.

I am advised that Brothers for Life was formed originally by one of the State's most notorious and violent criminals, who is currently serving a long sentence for murder and other crimes in the Goulburn Supermax prison. Police say that the gang's violent feud has resulted in a number of shootings, killing two members and leaving others seriously wounded. It also saw the horrific shooting of an innocent 13-year-old girl who reportedly was shot in the back with a shotgun. As part of their investigations, police conducted raids on five homes and two businesses in Sydney's south-west and in the Illawarra. During the raids police arrested 10 members of the Brothers for Life gang. Those gang members have been charged with serious offences relating to a number of shootings, including the shooting deaths of other gang members.

I am advised that another associate of the gang was arrested following a police pursuit on the night of 9 November and a further gang member was arrested last Thursday in relation to a shooting at Bankstown recently. He was charged with numerous offences, including three counts of attempted murder. Police have taken serious steps to dismantle the Brothers for Life gang and bring an end to its violent internal conflict. Police continue to target the criminal activities of members of this gang and investigate a number of incidents. Last Friday police seized an SKS semiautomatic assault rifle believed to be linked to the Brothers for Life group from a property in the Liverpool area.

Officers located the SKS semiautomatic assault rifle with a modified pistol grip and a 30-round magazine in the backyard of the property. The weapon has been seized by police and will undergo forensic and ballistic examination to determine whether it is linked to any crimes. An amount of cash also was seized. A man believed to have links to the Brothers for Life group was home at the time and inquiries into him and other gang members are continuing. Last Saturday the New South Wales police attached to Strike Force Maloney arrested and charged another gang associate in relation to a shooting at a nightclub car park in Rydalmere earlier this year.

The Middle Eastern Organised Crime Squad established Strike Force Maloney to investigate the Rydalmere shooting, which occurred in Bridge Street on Tuesday 1 May 2013. About 8.30 p.m. last Saturday detectives arrested a man at Sydney International Airport as he was about to board a flight bound for Germany. Instead of leaving the country, the Brothers for Life associate was charged with several offences, including shooting with intent to murder, discharging a firearm with intent to inflict grievous bodily harm, assaulting with intent to rob and possessing a prohibited firearm. The Deputy Commissioner of Police, Nick Kaldas, has stated that the recent arrests send a clear message to any remaining Brothers for Life gang members. He said:

... if you're involved with this group, if you continue committing the criminal acts that you've been committing, you can expect no respite and no let-up from police. We're focused and we are coming [after you].

The Government will be supporting the police every step of the way in its efforts to put an end to these acts of serious violence and other gang-related crime. Once again the officers of the NSW Police Force have shown their tenacity, skill and determination by arresting some of the State's most violent and dangerous individuals and bringing them to justice.

### BLUE MOUNTAINS BUSHFIRES

**The Hon. ADAM SEARLE:** My question is directed to the Minister for Police and Emergency Services. Given that today the Blue Mountains bushfire recovery coordinator, Mr Phil Koperberg, said that no clean-up work would commence for another week or so and it has been weeks since the Blue Mountains bushfires, why is it taking so long to get contractors on the ground to clean blocks and remove waste, including asbestos?

**The Hon. MICHAEL GALLACHER:** Mr Koperberg is ably skilled to decide what needs to occur. I have not spoken to Mr Koperberg today. As members of the Opposition would be the first to remind me, it is an operational decision he has made in relation to the clean-up. I will seek advice from him in that regard. Mr Koperberg has the best interests of the community at heart in his role as bushfire recovery coordinator. The decisions that Mr Koperberg makes in that regard are well placed.

### DISABILITY RESIDENTIAL CENTRES

**The Hon. JAN BARHAM:** My question is directed to the Minister for Ageing, and Minister for Disability Services. Will the Minister inform the House what consultation, evaluation and assessment processes will be undertaken prior to the planned closure of the Stockton Centre and other large residential centres? In particular, what processes will be put in place to ensure that the wellbeing and quality of life of all current residents is improved as a result of the closure of these centres?

**The Hon. JOHN AJAKA:** I thank the honourable member for her question. I am well aware of the concerns that have been raised in relation to large residential centres. In 1998 the then Minister for Disability Services, the Hon. Faye Lo Po', announced that the New South Wales Government is committed to redevelopment of all government operated and funded large residential centres by 2010. Since the Minister's announcement, that position has been maintained by each and every Minister for Disability Services: the Hon. Carmel Tebbutt, the Hon. John Della Bosca, the Hon. Kristina Keneally, the Hon. Paul Lynch, the Hon. Peter Primrose, the Hon. Andrew Constance and now me as the current Minister.

This commitment was made to ensure that the residents have an accommodation option that meets contemporary standards for community living and provides for the same rights and opportunities as any other member of the public. In 2006 the then Labor Government, through Stronger Together, committed to continuing the program of redeveloping large residential centres by allocating \$23 million of funding. Since the New South Wales Government's announcement in 1998, 18 large residential centres, both government and non-government operated, have been redeveloped and approximately 560 residents have successfully moved into homes in the community. This was after extensive consultation during that process.

In 2011 Stronger Together 2 committed to redeveloping the 20 remaining large residential centres by 2018, with funding being released based on an assessment of each centre's business case that deemed it suitable for progression. The final three large residential centres in the Hunter region include Stockton, which was raised by the honourable member. It is currently undergoing the planning phases of redevelopment and seeking the appropriate funding. I have had the opportunity, along with Ageing, Disability and Homecare staff, to consult

with the families of the residents of Stockton. I have met with them on one occasion and will be meeting with them again over the next two weeks. What is occurring today is that this Government is committed to ensuring that the residents of Stockton have all the appropriate care and facilities that they are entitled to.

**The Hon. Greg Donnelly:** It is operational.

**The Hon. JOHN AJAKA:** No, it is not operational; it is more than that. The Government and I are concerned to ensure that no residents of Stockton have any concerns, apprehensions, fears or discomfort whatsoever regarding their placement. The residents are entitled and deserving of the best care that is available. The Government and I, as the Minister, will ensure that. I will continue to meet with them. The planning will continue. The redevelopment will continue as the then Labor Government in 1998 deemed was necessary. What is sad—*[Time expired.]*

### HEAVY VEHICLE SAFETY

**The Hon. MELINDA PAVEY:** My question is directed to the Minister for Roads and Ports. Will the Minister update the House on efforts to make the heavy vehicle industry safer?

**The Hon. Luke Foley:** Now stay off your phone today, Melinda—he might want a supplementary question.

**The Hon. Melinda Pavey:** It says, "No supplementary questions".

**The Hon. DUNCAN GAY:** I thank the honourable member for her important question and possible supplementary question. The tragic crash on Mona Vale Road that claimed the lives of two motorists and injured several others exposed systemic maintenance problems in parts of the nation's trucking fleet. An examination of the petrol tanker involved in the crash led police and Roads and Maritime Services to conduct a wideranging audit of Cootes Transport. The audit uncovered an alarming number of mechanical defects including, unbelievably, a lack of brakes on some fuel tankers. As the Minister responsible for New South Wales roads that carry 60 per cent of the national road freight task I was compelled to act swiftly, in partnership with my colleague the Minister for Police and Emergency Services. Immediately after the crash Roads and Maritime Services and police intercepted and inspected 310 Cootes Transport trucks. They issued 244 defects, 85 of which were major. Ten vehicles were grounded.

Over the ensuing few days major defect rates in the Cootes fuel tanker fleet were also uncovered in Victoria and Queensland. It was clear we were facing a problem of national significance that would require a national solution. On 8 October I wrote to the chair of the newly established National Heavy Vehicle Regulator, Bruce Baird, calling for a review into the effectiveness of the National Heavy Vehicle Accreditation Scheme, with a focus on maintenance management. I was particularly concerned with transport operators having the ability to select their own maintenance auditors and, therefore, only paper audits being conducted. The Minister for Transport, Gladys Berejiklian, and I also wrote to the chief executive of the National Transport Commission calling for a scheduled review of heavy vehicle inspection regimes to be brought forward to this financial year.

Finally, the Minister for the Environment, Robyn Parker, and I wrote to the Deputy Prime Minister seeking his consideration to accelerate the adoption of electronic stability control for trucks that carry dangerous goods such as petrol and gas. This was based on a recommendation contained in a 2009 New South Wales Coroner's report. I am delighted to inform the House that New South Wales took all these recommendations to the Standing Council on Transport and Infrastructure last Friday and in a show of bipartisan support all of the recommendations were agreed to by the Standing Council on Transport and Infrastructure Ministers. Every State and Territory supported us in this, which is pretty damn good. Industry associations—such as the Australian Trucking Association, NatRoad and the Livestock and Bulk Carriers Association—were also totally supportive of these initiatives. The National Heavy Vehicle Regulator and the National Transport Commission will now work together to coordinate the reviews of both the National Heavy Vehicle Accreditation Scheme and the vehicle inspection regimes.

### SURVEILLANCE DEVICES POLICE REPORTING COMPLIANCE

**Mr DAVID SHOEBRIDGE:** My question is directed to the Minister for Police and Emergency Services. Given the repeated critical reports from the NSW Ombudsman, the most recent in June 2013, that

show that New South Wales Police are routinely breaching their reporting requirements under section 44 of the Surveillance Devices Act, a breach that carries a maximum criminal penalty of 12 months imprisonment, what has the Minister done to ensure that New South Wales police change their practices to comply with the reporting law?

**The Hon. MICHAEL GALLACHER:** I have been satisfied with the police overall in relation to surveillance. I understand that there are some concerns in regard to them but, in terms of the specific aspects that the member has raised, I will take the question on notice and report back to the House on the aspects that have been identified. It is a serious question because surveillance is an extremely important part of police operational work. It is a much-needed resource to enable them to deal with organised crime. If there are concerns in relation to surveillance, as have been raised in the past, then they have to be taken seriously and addressed. As I have indicated, the concerns identified relate to compliance with administrative procedures, rather than to major breaches of the Act. In the main, I am satisfied with the approach that police take, but I will look at whether I need to report back to the House on concerns about major breaches in addition to those purely administrative concerns.

**Mr DAVID SHOEBRIDGE:** I ask a supplementary question. Will the Minister elucidate his response, particularly on how he can be generally satisfied with the police response when the Ombudsman found "for all 276 files, section 44 of the Act was not complied with as the reports were not provided to the Attorney General or the relevant eligible judge"?

**The Hon. MICHAEL GALLACHER:** As I have indicated, my understanding is that the concerns are primarily administrative and that concerns regarding ongoing responsibilities in respect of those matters are normally dealt with by way of consultation between the commissioner and the Ombudsman. Overwhelmingly, the use of surveillance devices and the techniques of police have not been open to major criticism. As I have indicated, the Commissioner of Police and the NSW Police Force will always take on board any matters that the Ombudsman raises with them in relation to these reports.

**Mr David Shoebridge:** A 100 per cent failure to report.

**The Hon. MICHAEL GALLACHER:** As I have indicated, the commissioner will always take these matters on board and discuss with the Ombudsman an appropriate way to address them. But I again make the point that we are talking about administrative aspects of the legislation, as opposed to some major breach of the legislation that would erode public confidence in the police use of surveillance techniques—which I am sure some would love to actually be able to achieve.

### CREATIVE AGEING STRATEGIES

**The Hon. MATTHEW MASON-COX:** My question is directed 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 to support creative activities and cultural opportunities for older people?

**The Hon. JOHN AJAKA:** I thank the honourable member for his question. One of the key actions of the NSW Ageing Strategy is that the New South Wales Government "support creative activities and access to cultural opportunities for older people". Arts and recreational services offer an avenue to facilitate participation and engagement of older people living in the community. The arts provide a safe, non-intimidating environment for older people to socially connect and achieve a sense of mastery, control and achievement in their lives. The arts and recreational services provide a positive environment for inter-generational activities to take place, fostering mutual respect and skills exchange between older and younger people.

The known effects of arts and health for older people are numerous. The arts assist with skill-building, leading to employability. Holistically, the arts improve overall physicality, which maintains cardiac function, fitness and brain health, social engagement and a general sense of wellbeing and belonging. The 5th Annual International Arts and Health Conference was held in Sydney between 12 and 14 November. The conference presented the best international and national practice and innovative arts and health programs, effective health promotion and prevention campaigns, methods of project evaluation and scientific research. Day one of the conference was dedicated to Creative Ageing and was sponsored by the Department of Family and Community Services via the NSW Office for Ageing. The conference and key speakers, particularly the international speakers, provided expert opinion and advice to inform further development of the creative ageing components of the living active lives project.

Further to this, the NSW Office for Ageing convened a creative ageing forum the day after the conference to further utilise the expertise of the international speakers who were in town for the conference. I had the honour of opening the forum. The aim of the forum was to stimulate discussion about creative ageing in New South Wales to inform policy development within the NSW Ageing Strategy and the NSW Creative Ageing policy framework. The forum, the first of its kind in New South Wales, was facilitated by Kathryn Greiner, chair of the Ministerial Advisory Committee on Ageing [MACA]. Forum participants of the day included international speakers David Cutler, a director from the Baring Foundation; Dominic Campbell, a United Kingdom artistic director and producer, Ireland; and Clive Parkinson, the director of Arts for Health, Manchester Metropolitan University, United Kingdom.

Local speakers included Margret Meagher, the executive director of Arts and Health Australia, and Kim Spinks, the manager of strategic initiatives, Arts NSW. Stakeholders present at the forum included: Arts NSW, NSW Health, NSW Arts industry representatives, local and international experts, Ministerial Advisory Committee on Ageing members, community-based organisations and representatives from academia. The forum comprised a panel-led discussion exploring the intersection between Arts and Health programs, and strategies for older people. The afternoon was dedicated to an applied policy discussion around arts and its impact on the health of older people. One of the key themes that emerged from the forum was the importance of an integrated whole-of-government approach in the development of social policy that supports older peoples' increased participation in creative activities and access to cultural opportunities.

The Office for Ageing, Arts NSW and NSW Health policy makers will convene in the next few weeks to review some of the key recommendations from the forum. They will ensure that any social policy regarding older people's participation in creative activities and access to cultural opportunities sits within the draft National Arts and Health Framework considered by Federal Health Ministers on 8 November, that is, the Discussion Paper: Framing the future—developing an arts and cultural policy for New South Wales and the New South Wales Ageing Strategy. In addition, for those who may not know, the Ministerial Advisory Committee on Ageing supports us to achieve health and productive ageing outcomes. [*Time expired.*]

#### HUNTER BARIATRIC SURGERY FUNDING

**The Hon. ROBERT BORSAK:** My question without notice is directed to the Minister for Police and Emergency Services, representing the Minister for Health. Is it a fact that a national study has shown the Hunter region has one of the worst obesity rates in New South Wales but that specialists in bariatric surgery say the region is not getting its fair share of publicly funded weight loss operations? What is the Government doing to address claims by specialists that government funding of bariatric surgery is not being allocated to the regions of highest need?

**The Hon. MICHAEL GALLACHER:** This is a serious question. I will refer it to the Minister for Health and seek a response.

#### WINDSOR BRIDGE REPLACEMENT PROJECT

**The Hon. PETER PRIMROSE:** My question is directed to the Minister for Roads and Ports. In light of the fact that the Government's proposed Windsor bridge replacement project is still awaiting final planning approval, why has Roads and Maritime Services already signed agreements with eight contractors in relation to the project?

**The Hon. Melinda Pavey:** We are trying to get the States moving.

**The Hon. DUNCAN GAY:** That is a good response. That is the usual procedure in those circumstances. We want to get going. All those are dependent on planning approval and we are waiting for that planning approval. That is the standard procedure that happened when Labor was in government.

**The Hon. PETER PRIMROSE:** I ask a supplementary question. Will the Minister elucidate and outline which current projects awaiting planning have a similar process in place?

**The PRESIDENT:** Order! That is a new question and it is therefore out of order.

#### POOL SAFETY

**The Hon. SOPHIE COTSIS:** My question is addressed to the Minister for Ageing, and Minister for Disability Services, representing the Minister for Local Government. Last month the Government acknowledged

that it had mishandled the introduction of the swimming pool register and had to grant a three-week extension for pool owners to register. Given that extension expires today, what date has the Government set for local councils to begin to penalise pool owners who have failed to comply?

**The Hon. Dr Peter Phelps:** Point of order: The question clearly contains argument and should be ruled out of order.

**The PRESIDENT:** Order! The question did contain argument, but I will allow it to be re-asked later without the argument.

### WHITE RIBBON DAY

**The Hon. SARAH MITCHELL:** My question is directed to the Minister for Police and Emergency Services. Will the Minister inform the House how the NSW Police Force will support White Ribbon Day on 25 November?

**The Hon. MICHAEL GALLACHER:** I thank the honourable member for her question. As members may know, White Ribbon Day celebrates the culmination of the annual campaign and global recognition of the International Day for the Elimination of Violence against Women, with the community encouraged to wear a symbolic white ribbon on 25 November. White Ribbon Day also signals the start of the 16 Days of Activism to Stop Violence against Women, which ends on Human Rights Day, 10 December. The NSW Police Force and its members are active supporters of White Ribbon Day and will place white ribbons on all their marked vehicles to display their commitment to ending violence against women and to draw public attention to this important cause.

This year white ribbon stickers are being placed on specialist police service vehicles and operational vehicles, including helicopters, armoured trucks, horse floats, jetskis, rescue trucks and general duties vehicles in the lead-up to White Ribbon Day—but they will not be on undercover vehicles. This process commenced with a ceremony held at the Aviation Support Branch at Bankstown Airport on 14 November. White ribbons are being displayed on marked police vehicles between 14 November and 10 December 2013. A range of events will also occur across the State, with support and assistance from police local area commands. Events including family fun days, information stalls and training have been scheduled by police and community groups.

On 25 November, for instance, police from the Botany Bay Local Area Command will have a stall promoting awareness of White Ribbon Day and violence against women at Westfield Eastgardens. Between 25 November and 10 December police from Redfern, Surry Hills, Kings Cross and Sydney City local area commands will post materials to their Facebook site. Tackling the scourge of domestic violence is a priority for Government and the NSW Police Force. In 2012 police responded to approximately 140,000 domestic violence-related incidents across the State. Currently approximately 40 per cent of calls to police are related to domestic and family violence. In addition, the cost of domestic violence is estimated at \$4.5 billion a year in New South Wales. In 2012 Bureau of Crime Statistics and Research records showed that there were 23,917 apprehended domestic violence orders issued by the local court.

The NSW Police Force employs a range of strategies to tackle domestic violence and actively supports numerous government initiatives. The NSW Police Force has specially trained domestic violence liaison officers in local area commands across New South Wales. The NSW Police Force actively supports strategies to reduce domestic violence. Concrete measures taken by the Government include: the It Stops Here strategy to improve agencies' response to domestic violence; and the Domestic Violence Justice Strategy, which aims to drive a consistent criminal justice response to domestic violence with measures to improve police evidence gathering, court efficiency, victim support and offender management. New powers for police to issue and serve provisional apprehended domestic violence orders, or ADVOs, will commence in the near future.

These reforms will help provide immediate protection for victims of domestic violence and will reduce court delays that arise when provisional apprehended domestic violence orders papers are unable to be served by police. Critically, the reforms will also have the effect of removing defendants from a potentially volatile situation, and allowing victims to remain at home. Perhaps most importantly, the reforms will help reinforce to defendants who may be detained and taken to a police station just how serious the legal system considers the issuing of apprehended domestic violence orders. I commend the work of the NSW Police Force in tackling domestic violence and ask that members use the opportunity of White Ribbon Day to draw attention to this important issue.

### LIVE PEST ANIMALS TRANSPORTATION

**The Hon. ROBERT BROWN:** My question without notice is directed to the Minister for Roads and Ports, representing the Minister for Primary Industries. Is it an offence to transport live pest animals within New South Wales or across State borders? Is the Minister aware of claims by a group called Sydney Fox Rescue that it is getting some of its foxes from Animal Liberation in Victoria? Is the Minister aware that Sydney Fox Rescue claim to rescue, tame and ultimately rehome young foxes as family pets, and thereby "reduce wild fox numbers over time" because they "believe foxes deserve to live happy, fulfilling lives free from immeasurable harm caused by baiting, shooting and trapping"? What is the Government going to do about the illegal transportation of these feral animals by Sydney Fox Rescue?

**The Hon. DUNCAN GAY:** I suspect this is an operational matter. I do not know whether it is illegal, but it should be. The honourable member indicates that it is illegal. You cannot believe the attitude of some of those opposite. What sort of a vacuum do they live in? Have they seen the damage feral animals do to domestic livestock, lambs in the paddocks and chickens, in rural and regional areas?

**The Hon. Luke Foley:** Fox in the henhouse.

**The Hon. DUNCAN GAY:** Fox in the henhouse is a worry. I suspect that The Greens, who pretend to care for farmers, would support this rescue. I recently heard about the new vehicle The Greens are using. They have recently upgraded to the new "pious"—I'm sorry, Prius—the one with the extra seats. The Greens have two factions, so one of each needs to sit in a different section. The Greens made a warranty claim on the air conditioning. Apparently they drive with the windows down; they do not use the air conditioning because that would be offensive to the environment.

**The Hon. Robert Brown:** Point of order: My point of order is relevance. My question related to foxes, not geese.

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

**The Hon. DUNCAN GAY:** It is a valid point of order. I will leave thoughts on The Greens, but I note that the Hon. Jeremy Buckingham was redder in the face than he is normally because he was in the koala suit sitting in the back. I will get an answer to the question.

### HAWKESBURY RIVER RESCUE

**The Hon. GREG DONNELLY:** My question without notice is directed to the Minister for Police and Emergency Services. Will the Minister guarantee ongoing funding for the Hawkesbury River Rescue so that the service can continue to provide a volunteer-based rescue service on the Hawkesbury River?

**The Hon. MICHAEL GALLACHER:** This has been an ongoing issue for quite a number of years. A considerable amount of consultation is still being finalised in relation to this matter, but there is a question of rescue accreditation that I am sure the member would be aware of. Decisions in relation to rescue accreditation, be it in the Hawkesbury or in any other place in the State, are not made by members of Parliament or by the Minister; decisions are made by the State Rescue Board. We do not fund the Hawkesbury River group. I do not believe we have a funding agreement with them, but as an ongoing process the State Rescue Board looks at these various agencies in the Hawkesbury and anywhere else in relation to their accreditation. When decisions are made in that regard, announcements will be made.

### GRAIN HARVEST MANAGEMENT SCHEME

**The Hon. RICK COLLESS:** My question is directed to the Minister for Roads and Ports. Will the Minister update the House on measures to improve freight productivity in the grain transport task during the harvest season?

**The Hon. DUNCAN GAY:** Should I help them out and tell them that we did not sell GrainCorp? Grain is one of the State's most important agricultural products. The New South Wales grain crop is valued at nearly \$4 billion for 2012-13—

**The Hon. Jeremy Buckingham:** How much?

**The Hon. Duncan Gay:** At \$4 billion.

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

**The Hon. DUNCAN GAY:** The industry employs more than 10,000 people, people who would lose their jobs under a government run by The Greens. Last month I launched the Grain Harvest Management Scheme to improve freight productivity in the grain transport task over the peak harvest season. This is another practical measure introduced by the New South Wales Liberals and Nationals Government to improve lives in rural and regional communities. It is delivering real efficiency gains to farmers and operators. This initiative has been put together following extensive consultation across regional associations of councils, individual councils, organisations and key industry groups.

We have responded to the feedback from farmers, transport operators and grain handlers. The result is a smart, safe scheme that is already delivering tangible benefits to the road network and supply chain. I am delighted with the response so far, with more than 45 councils from Moree Plains to Berrigan and from Bourke to Gunnedah signing up to participate in the new scheme. I thank the mayors, councillors and general managers of those councils for their valuable support of this vital road productivity initiative. The grain harvest is in full swing in the northern parts of New South Wales and moving south into the Central West, with high volumes being delivered to local grain handling facilities, while operations in the central and southern parts of the State will ramp up over the coming weeks.

I look forward to councils in southern New South Wales following the lead of their northern neighbours and getting on board with the new scheme. The new scheme is also proving popular with industry. Early data collected by Transport for NSW shows strong participation rates amongst transport operators. The scheme allows an additional 5 per cent increase above general mass limits for eligible vehicles from farm to the first practicable receival site. The scheme commenced on 15 October and runs until the completion of the summer rice harvest at the end of May 2014. The scheme is being administered by Transport for NSW, which will undertake a full review following the completion of the harvest.

#### COAL SEAM GAS MINING

**The Hon. JEREMY BUCKINGHAM:** My question is directed to the Minister for Roads and Ports, representing the Minister for Resources and Energy. Recently on *Q&A* the Chief Executive Officer of Santos, David Knox, stated that coal seam gas company Santos "would not go onto properties where landholders do not want them". In light of this statement, reflecting the same view as Tony Abbott and Ian Macfarlane, will the Government legislate to give landholders the right to say no, and will the Government address the arbitration provisions?

**The Hon. DUNCAN GAY:** I thank the honourable member for his question. It is one of detail and, as usual, I find it hard to take what he tells me as true. I need to check the validity of what he has told me and I will obtain a detailed answer from the Minister.

#### ST GEORGE ILLAWARRA DRAGONS

**The Hon. LYNDA VOLTZ:** My question is directed to the Minister for the Illawarra. What action is the Minister taking to support the Illawarra community's campaign calling on the St George Illawarra Dragons to reverse its decision to slash the number of home games to be played at WIN Stadium during the 2014 season?

**The Hon. JOHN AJAKA:** I thank the honourable member for that fabulous question. Everyone in this Chamber knows what a passionate St George Illawarra Dragons supporter I am and how I have had a connection with the club for more than 50 years.

**The PRESIDENT:** Order! I remind members that interjections are disorderly at all times.

**The Hon. JOHN AJAKA:** It is a great question and I would love those opposite to give me an opportunity to answer it. There is probably only one other person with a greater connection with the St George Illawarra Dragons and that is you, Mr President.

**The Hon. Mick Veitch:** Point of order: Crawling is unparliamentary and I ask that the Minister ceases to do that.

**The PRESIDENT:** Order! The Minister will resume his seat until I have given my ruling. There is no point of order.

**The Hon. JOHN AJAKA:** Those opposite may not know that your grandfather, Mr President, was the very first point scorer for the St George Dragons in 1921. I do not think anyone in this House has a better connection with the club than you, Mr President. Clearly, I am disappointed with the announcement made by the club. As members know, the club has 12 games.

**The PRESIDENT:** Order! Members will cease interjecting. I cannot hear this very important answer.

**The Hon. JOHN AJAKA:** In the past it would split those games into six games at the Illawarra stadium and six games at Jubilee Oval at Kogarah. The club has announced that it will play four games at Illawarra and four at Kogarah, and it will split the other four games and play two at ANZ Stadium and two at Allianz Stadium. I have spoken to Peter Doust, the Chief Executive Officer of the club, who has assured me that there will be continued support for the Illawarra. The St George Illawarra Dragons makes a substantial commitment to the people of the Illawarra through a number of substantial community programs, not the least of which is the junior rugby league program, as well as other community programs. The players also make a substantial contribution to the community.

Only recently I had the honour of meeting with Josh Dugan and Bronson Harrison when we attended a group home at Albion Park where they presented one of the residents of that home, Rod—a person with disabilities—with a signed jersey. It was one of Rod's wishes to meet the players and obtain a signed jersey. The club has assured me that it will continue to support the Illawarra. Members opposite should remember that the St George Illawarra Dragons is a business, and as a business it has the right to present its business plan for the best returns for the club, to ensure the growth and survival of the club and to ensure that it can continue to give its commitment to the area, and this is what the club is proposing. It is not for me as the Minister for the Illawarra to tell the club how to run its business.

#### RAINBOW CLUB AUSTRALIA

**The Hon. DAVID CLARKE:** My question is directed to the Minister for Ageing, and Minister for Disability Services. Will the Minister update the House on the opportunities available for children who have a disability to take part in swimming activities?

**The Hon. JOHN AJAKA:** Swimming is an important and valuable skill for all Australians and for children in particular. Regular swimming lessons provide physical and emotional benefits to those who participate in this recreation activity by helping to build muscle control and strength, and boosting self-confidence and social skills. In 1969 Mr Ron Siddons, a New South Wales lifeguard, noticed that children with disabilities were not participating in traditional swimming classes and parents were struggling to teach their children to swim. Recognising this struggle, Mr Siddons created the Rainbow Club at a local pool in Cronulla. The Rainbow Club is an association where swimming teachers, parents and children who have disabilities come together to teach and learn swimming skills.

A 30-minute lesson is provided to each child on a weekly basis. The lessons are adapted to build upon the strengths and abilities of each child, allowing that child to progress at his or her own pace. From humble beginnings, the Rainbow Club has continued to grow and flourish. I am pleased to report to the House that today there are 14 rainbow clubs operating in New South Wales, supporting 379 children who would not have access to swimming lessons without the important work of this unique association. The success and achievements of the Rainbow Club were formally recognised in 2013 with the Auswim award for the most significant contribution to water safety, with a focus on an under-represented group. This is a magnificent achievement, and I am sure members will join me in congratulating the Rainbow Club board and executive.

The Rainbow Club has existed since 1969. Between 1969 and 2011 the Rainbow Club has grown because of fundraising and generous donations from the community. In the 2012-13 financial year the Rainbow Club raised almost \$230,000 from fundraising activities and donations, and has built a strong network of sponsors and friends. The Rainbow Club continues to identify the need to build pathways for children who have disabilities to access mainstream services, and has begun to explore partnerships with traditional swimming schools. I am pleased to announce that this year the Young Women's Christian Association formally took carriage of the Rainbow Club swimming program at two of its pools in Sydney. This means that children who

have disabilities can go to their swimming lessons at the local pool just like their brothers, sisters and friends, and it enables the Rainbow Club to focus its resources on bringing swimming to other children in New South Wales.

Recognising an opportunity to support and build the capacity of a valuable community association, I am pleased to report that in 2012 the New South Wales Government, through the Department of Ageing, Disability and Home Care, provided a one-off grant of \$250,000 to the Rainbow Club. This funding is being used to continue the work to build transitional pathways for children into mainstream services and to strengthen the operations of existing and new rainbow clubs across New South Wales. Most rainbow clubs have an active waiting list for places as families seek the chance for their children to participate in an activity that most of us take for granted and can enjoy with our families at the beach or at the pool. I am confident that with the support of the New South Wales Government the Rainbow Club will continue to grow and develop its swimming programs and activities, and become an integral part of the disability support system that will be available under the National Disability Insurance Scheme.

### CONTAINER DEPOSIT SCHEME

**Dr MEHREEN FARUQI:** My question is addressed to the Minister for Ageing, and Minister for Disability Services, representing the Minister for the Environment. Given that 40 jurisdictions around the world, including South Australia, have container deposit schemes that have been shown to be successful in reducing litter, improving the environment and creating jobs, and given that there is overwhelming public support in New South Wales in favour of the scheme, will the Government act to enact a container deposit scheme in New South Wales?

**The Hon. JOHN AJAKA:** As the member's question seeks specific answers, I will refer the question to the Minister and seek a relevant answer.

### BUSHFIRE RISK MANAGEMENT

**The Hon. TREVOR KHAN:** My question is directed to the Minister for Police and Emergency Services. Given the recent bushfire emergencies experienced in New South Wales, will the Minister outline the latest initiatives available to assist New South Wales communities to be bushfire ready?

**The Hon. MICHAEL GALLACHER:** In recent weeks we have seen the devastation that bushfires can bring for individuals and entire communities. I am sure there is no doubt in anyone's mind how important it is to be prepared with a plan of action in the event of a bushfire threat. That plan and taking decisive action can make the difference in surviving a bushfire. I am pleased to inform the House of the introduction of the NSW Rural Fire Service's My Fire Plan smartphone application, which puts bushfire safety information at the fingertips of the phone user. The My Fire Plan app is available through the Apple App and Google Play stores, and is free of charge. The app provides general preparation advice, including steps to take around the home, along with fill-in plans that will help the user make the decision to stay and defend a prepared property, or leave early.

The My Fire Plan app gives the user the ability to share their plan with family and friends, and to print it. The My Fire Plan app complements the existing Bush Fire Survival Plan, which is available from fire control centres or from the Rural Fire Service website. Putting together a plan is easy to do, and the importance of doing so cannot be overstated. The My Fire Plan app is another excellent tool that has been made available to help with the process and to give people vital safety information. Time and time again throughout the season we are reminded of the importance of being able to refer to a survival plan that has been prepared in a considered way before an emergency, rather than during the stress of an emergency.

Clearly, people are getting the message to plan ahead, and this has been borne out in the results of the evaluation of last season's Prepare Act Survive campaign. During the period of the campaign more than 68,000 bush fire survival plans were downloaded from the Rural Fire Service website, in addition to thousands that were handed out by brigades across the State. Research shows that 71 per cent of people who had a Bush Fire Survival Plan had completed it—that is up from 50 per cent at the end of the 2011-12 bushfire season—and the level of preparedness and confidence was at its highest level. I congratulate the NSW Rural Fire Service on its My Fire Plan application—the latest addition to a number of other tools including the Fires Near Me smartphone app and the Rural Fire Service website to increase the community's awareness of and readiness for bushfire risk.

I remind members that the free My Fire Plan app is available through the Apple App and Google Play stores, and can be accessed by searching for Bush Fire Survival Plan or My Fire Plan. As members would agree, all of our emergency services did an outstanding job during the recent fire emergencies. The community can be assured that, as the bushfire season continues, our firefighters, both salaried and volunteers, stand at the ready to protect life and property. I congratulate them and thank them for their commitment and hard work. I urge people living in bushfire-prone areas to make full use of these tools and make a plan. It is not too late. We have a long, hot summer ahead of us.

### ST GEORGE ILLAWARRA DRAGONS

**The Hon. LYNDA VOLTZ:** My question is addressed to the Minister for the Illawarra. In light of the Minister's previous answer, as the St George Illawarra Dragons club has announced that it will not play games at Wollongong stadium, will the Minister support that as part of its business plan?

**The Hon. Dr Peter Phelps:** Point of order: Clearly the question is hypothetical and, therefore, should be ruled out of order.

**The Hon. Lynda Voltz:** To the point of order: The Minister referred to the St George Illawarra Dragons club business plan in his earlier answer. Therefore the question is in order.

**The DEPUTY-PRESIDENT (The Hon. Jennifer Gardiner):** Order! The question is hypothetical and therefore it is out of order.

### BOATING SAFETY

**Mr SCOT MacDONALD:** My question without notice is directed to the Minister for Roads and Ports. Will the Minister update the House on initiatives to encourage the use of life jackets in New South Wales?

**The Hon. DUNCAN GAY:** Some 1.8 million people in New South Wales go boating each year. That is a lot of people out on the water. Sadly, many of them are still not getting into the habit of putting on a life jacket every time they go out—in the same way we all remember to apply sunscreen. Earlier this month the New South Wales Government launched a new life jacket awareness campaign for the boating season. The campaign is all about saving lives; it is that simple. It is about saving lives through promoting safe and responsible boating behaviour.

Accidents can happen suddenly and to anyone, so we need to continue to educate people about the benefits of wearing a lifejacket. This summer's advertising campaign drives home the message that a lifejacket cannot save a person unless they wear it. It repeats the tragic statistic that over the past 10 years nine out of 10 people who drowned while boating in New South Wales were not wearing a lifejacket. I draw the attention of the House to the weekend rescue of a rock fisherman off Vacluse in Sydney. It was a day's rock fishing that could have ended as tragically as many others have ended. But in this case the rock fisherman was wearing a lifejacket and was winched to safety after 20 minutes in the water. Rescuers estimated he had been swept about 400 metres offshore and, despite cuts and hypothermia, he survived the ordeal to send a strong message to the boating public. He held up his lifejacket for the news cameras and said, "Please wear the lifejacket when you're fishing—no matter what."

The same message is conveyed in the Government's new water safety campaign, which promotes the new generation of slim-fitting lifejackets rather than the old big and bulky Mae West lifejackets. A key component of the campaign will be the lifejacket vehicle that will visit popular boat ramps across the State showcasing the new generation lifejackets and encouraging people to exchange their old lifejackets for new ones. It is the first time the Government has ever done anything like this and, more importantly, it will be a great way to get the message to people as they head into the water. To support the campaign, boating safety officers and the Marine Area Command will be out in force ensuring that boaters are wearing their lifejackets when they should be. A zero-tolerance approach will be implemented this summer and the message is clear: Wear your lifejacket. This week we are filming the new campaign with a very special talent that members will see very soon.

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

### **BLUE MOUNTAINS BUSHFIRES**

**The Hon. MICHAEL GALLACHER:** Earlier in question time the Deputy Leader of the Opposition asked me a question about the clean-up in the Blue Mountains. Very productive discussions with insurance companies regarding the clean-up and removal of debris are well underway following an announcement last Thursday. Insurers are keen to work with the Government to do so quickly and efficiently. Arrangements are being finalised now with insurers with regard to how the work will proceed and we expect the clean-up to commence very shortly.

### **TOBACCO OUTLETS**

**The Hon. MICHAEL GALLACHER:** On 15 October 2013 Reverend the Hon. Fred Nile asked me a question regarding tobacco outlet laws. The Minister for Health has provided the following response:

I refer the honourable member to the response provided to Question on Notice LA4722.

### **WINDSOR BRIDGE REPLACEMENT PROJECT**

**The Hon. DUNCAN GAY:** Earlier in question time the Hon. Peter Primrose asked me a question about Windsor Bridge. Roads and Maritime Services has started a procurement process using the alliance delivery method, which allows for early contractor involvement to help in the project's design process. The contractor will proceed to the construction stage only if planning approval is granted. Should planning approval not be granted, provisions exist to terminate the contract. Management of contracts in this way enables projects to proceed more effectively once approved while still providing flexibility to terminate if approval is not granted. It is about getting on with the job.

### **SOUTH COAST TRAIN TIMETABLES**

**The Hon. DUNCAN GAY:** On 15 October 2013 Dr Mehreen Faruqi asked a question about cuts to services on the South Coast and southern train lines. The Minister for Transport has provided the following response:

I am advised:

The timetable has introduced an extra 149 services a week on the Illawarra Line. Improved stopping patterns also mean less crowding and more seats, especially for longer distance journeys. Customers travelling from stations further from the city, such as Mordiallie, receive improved journey times during the peak.

In order to improve South Coast Line journey times and better match services to where they are needed, some smaller stations, including Stanwell Park, are receiving fewer direct services to the city. The new timetable now extends the local Port Kembla service to Waterfall. This hourly service improves connections between local centres and schools, and connects customers at Stanwell Park with intercity services at Helensburgh and suburban services at Waterfall.

**Questions without notice concluded.**

**Pursuant to resolution Government Business proceed with.**

### **SKILLS BOARD BILL 2013**

**Message received from the Legislative Assembly agreeing to the Legislative Council amendment.**

### **CROWN LANDS AMENDMENT (MULTIPLE LAND USE) BILL 2013**

#### **Second Reading**

**Debate resumed from an earlier hour.**

**The Hon. JAN BARHAM** [5.05 p.m.]: The letter I was quoting before debate was interrupted for questions without notice continues:

It is my belief that the current attempt by the Coalition to allow the poor or unlawful management of the Crown's lands to continue by the amending of an Act is ill thought and not in the interest of the NSW, rather it is a knee jerk reaction that will not foster goodwill amongst the first Australians.

The bill before the House is excessive and overreaching in its effort to address the challenges to the Crown Land Act regime posed by the Goomallee decision; in fact, it goes far beyond attempting to cure the problems raised by the Goomallee and Limbri cases. The Deputy Premier claims that the interests of Meals on Wheels, men's sheds, Country Women's Association groups, libraries and community centres are under threat from the decision of the Court of Appeal in Goomallee. The reality is that the vast majority of secondary interests are consistent with existing reserve purposes. The threat to fine community organisations using Crown land comes from increasing licence fees for some approved uses, which is putting at risk many community functions. Councils sometimes have to pay four to seven times the licence fee.

The long-awaited review of Crown lands could resolve those issues by addressing the interpretation of "public purpose", how the land is maintained, how the Government can change the goalposts with regard to Crown land management, and the responsibilities of reserve trust managers such as boards, trusts or local government authorities, who then bear the heavy financial burden of managing the land. They are the things that are seriously concerning many communities. In many cases Crown land managers or reserve trusts have done the right thing and complied with the requirements of the Crown Lands Act. As a result, the secondary licences or multiple uses that the Deputy Premier has listed would be consistent with or ancillary to reserves established for public recreation or future public purposes.

To suggest that our critical social and community services are under threat because of the Goomallee case is truly stretching the truth. In many circumstances when uses were seen to be at odds with the primary purposes they could be resolved or negotiated with Aboriginal groups. This bill has gone too far in addressing whether those uses are at odds and whether they need to be dealt with in this way. New section 35A is particularly troubling in the context of Aboriginal land claims. It fetters the rights of litigants to challenge the validity of any licence or lease over a Crown reserve. It does this by preventing legal proceedings from going ahead until the Minister has been given six months in which to consider the claim of invalidity.

During that six months the Minister will have ample opportunity to assess any material harm caused by the secondary interest. A Minister or his or her delegate would probably seek to resolve the invalidity, thereby putting an end to court proceedings. That would be particularly disadvantageous to the New South Wales Aboriginal Land Council and local Aboriginal land councils. This bill allows a Minister essentially to extinguish an Aboriginal Land Rights Act claim by rendering a secondary interest valid, thereby denying a land council the opportunity to have a court determine the validity of a claim. I seek leave to incorporate into *Hansard* the advice on the bill provided by the NSW Law Society.

**Leave not granted.**

**The Hon. Duncan Gay:** It is a public document.

**The Hon. JAN BARHAM:** The Law Society of New South Wales undertook a review and its Indigenous Issues Committee made the following important points:

- (1) *Goomallee* did not make any new law. It simply applied a long line of cases which provide that reserves are a restriction on the use of land, and that interests cannot be granted that are not for or ancillary to the reserve purpose. It is unclear to the Committee why interests might have been issued contrary to that well established principle.
- (2) Given the issue appears to be one whereby the Department of Lands has acted contrary to its own legislation, Aboriginal people should not be disadvantaged by it ...
- (3) The Committee notes that the licence at issue in *Goomallee* was issued on 20 June 2002. The *Crown Lands Act* 1989 ... has since already been amended to incorporate procedures to allow the Minister administering the CLA to add additional purposes of the reserve (s 121A ...) and to allow for leases and licences to be issued for purposes other than the reserve purpose (s 34A ...). Those provisions provide ample flexibility to allow for additional purposes to be added to the reserve and for a broad range of interests to be granted. They have been in existence since 2005. It is unclear to the Committee why they have not been utilised.

The committee expressed concern about other aspects, including retrospective validation, which is of major concern. The committee stated:

Clause 7 of Schedule 8 of the Bill proposes to validate interests since the *Goomallee* decision. Given the *Goomallee* decision only confirmed the existing law, the justification for that approach is difficult to follow. The effect of such a measure would be to retrospectively impair the rights of Aboriginal people in relation to land claims lodged after that date. The Committee believes that Aboriginal Land Councils are entitled to rely on the law as it exists when making land claims under the ALRA. The Committee is of the view that the validation provision should only take effect from the date of assent. More specifically, the Committee submits that the validation of any "existing secondary interests" pursuant to the Bill should only affect land claims made after the date of assent.

The committee refers to the validation being limited to current interests and also to the notice of challenge to validity. I may return to the Law Society's review later. In contrast to concerns raised about the Minister's role, a local community group that challenges the validity of secondary interest is initiating legal proceedings only to address use of land with no real implication with regard to ownership. Even where the court found invalidity in a case, the Minister could still use the Crown Lands Act to re-purpose the land. In the case of an unsuccessful Aboriginal land claim achieved through the courts, the land is no longer vested in the Crown so there can be no re-purposing by the Minister. New section 35A gives the Minister responsible for Crown lands excessive and inappropriate discretion to impede the objectives of the Aboriginal Land Rights Act. Given that, The Greens will move amendments to exclude the application of new section 35A from legal proceedings relating to Aboriginal land claims.

It is acknowledged that the Government makes some provision to limit the retrospectivity of the bill. Schedule 1 [7] seeks to validate existing secondary interests in Crown reserves. It states that decisions made by the court before the commencement of new section 34AA, such as Goomallee and Limbri, are not affected by this legislation. Any land claim made by the New South Wales Aboriginal Land Council or a local Aboriginal land council before 9 November 2012 will not be affected by the legislation. This means that any claims submitted to the registrar consistent with section 36 (4) before 9 November 2012 will be assessed under the Crown Lands Act as it stood prior to this legislation being enacted and according to the principles delivered in the Goomallee case.

I am glad that the Government openly admits and acknowledges concerns about retrospectivity. The Legislation Review Committee also noted the retrospectivity element and its impact on Aboriginal land claims made after 9 November 2012 but before the enactment of this legislation. Under the last Government we debated a number of bills that could be termed special legislation or retrospective legislation designed to address what it perceived as unfavourable judicial decisions. Despite the savings provisions covering existing claims and upholding the decision of the court in the Goomallee case, some land claims received after 9 November 2012 up to the present day may be adversely affected by this bill.

According to the Deputy Premier's office, more than 462 Aboriginal Land Rights Act claims were received after 9 November 2012, and approximately 100 of them overlap with secondary tenures. In many cases the secondary tenure will be compatible with the reserve purpose. This means that the Goomallee situation does not automatically arise. However, The Greens have received advice that approximately 18 Aboriginal land rights claims have been identified in which there may be a question about the compatibility of the secondary interest and the overarching reserves. This would have the implication that the secondary interest is not a lawful use or occupation and characterised as claimable Crown land. Due to the bill's disproportionately prejudicial impact on rights conferred by the Aboriginal Land Rights Act and the adverse outcome for the objectives of the Aboriginal Land Rights Act, The Greens cannot support the Crown Lands Amendment (Multiple Land Use) Bill 2013.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [5.15 p.m.] in reply: I thank all members for their mixed contributions, some helpful, some not so helpful, some weird, some wacky but all interesting in their own way. The bill is designed to ensure that community groups, local businesses and farmers have ongoing certainty that the leases and licences that underpin their operations will be validated unless they are causing material harm to the reserve purpose. This includes tenures issued to community groups such as Country Women's Association groups, scout groups, surf clubs and commercial operations such as grazing, caravan parks, kiosks and marinas.

The New South Wales Government supports our community and sporting groups as well as local businesses and the agricultural sector. The Government is committed to ensuring the ongoing operation of thousands of existing tenures issued to those groups. Recently the NRMA wrote to the Deputy Premier supporting the bill. The association operates two holiday parks under secondary tenures in regional New South Wales at which it employs between 70 and 100 staff and hosts approximately 22,000 guests each year. The ongoing operation of these parks is critical for those regional economies and the thousands of people who look forward to their annual pilgrimage up and down the coast, as we will be soon.

As members have said, a vast array of multiple-use facilities are on Crown reserves, from marine rescue facilities to Country Women's Association halls to caravan parks that provide services and amenities for New South Wales residents and enhance our communities and the economy. It is the focus of this bill to ensure that Crown reserves are used for the benefit of New South Wales. The shadow Minister and others have been helpful in the passage of the bill to this stage—that is the way the upper House works; we talk and we work—

and the Deputy Premier's staff have been terrific. I thank all members who have taken the time to contribute to the debate and to raise matters that have been acceptable to both the Government and them, particularly in respect of the definition of "material harm". If it were easy, the previous Government would have done it. However, it had to wait for a grown-up government to take control and to bring something forward. We believe these groups add to rather than harm the utility of our Crown reserves. This view will be reflected when the Minister considers the conditions in respect of material harm to the primary purpose of the reserve.

The conditions include, first, the proportion of the area of the Crown reserve that may be affected by the secondary interest. This consideration allows for recognition that some activities such as mobile phone towers may not be relevant to the reserve purpose but their footprint does not generate material harm and they provide an essential public service. Secondly, if the activities to be conducted pursuant to the secondary interest are intermittent, the frequency and duration of the impacts will be considered. This takes into account many of our great community functions that are temporarily provided on Crown reserves. Thirdly, the Minister will consider the degree of permanence of likely harm and, in particular, whether the harm is irreversible. This recognises that some activities such as grazing can be undertaken without frustrating the long-term purpose of the reserve. Fourthly, the Minister will consider the current condition of the reserve. This will allow recognition that the original reserve purpose may not be current or that it has been frustrated by adjacent development such as a waste depot now on the urban fringe.

Fifthly, the Minister will consider the geographical, environmental and social context of the Crown reserve. This will allow for the Crown reserve and the tenure to be examined in the context of adjacent land uses and environmental and social contexts like the historical and social significance of the tenure. This captures the legacy and contribution of some tenures such as surf clubs and other long-standing community and sporting associations. Sixthly, the Minister will consider the transparency and use of new section 34AA (4) powers. Given the vast diversity of history of some tenures, new section 34AA (4) allows the Minister to make some variations to the tenure arrangements to ensure that the ongoing activities do not cause material harm. To ensure that this mechanism is used appropriately, I confirm that the Government proposes to implement an oversight and annual reporting process.

While the application and primary focus of this proposed section will be cases of existing tenures, the Government will work closely on and monitor and report on validation of newly granted tenures. In addition, delegations will be restricted to senior officers to ensure that both the primary power to grant tenure and the power to validate are exercised appropriately. The contributions of some members deserve special mention. The Hon. Jeremy Buckingham pretends he is a friend of the farmer and, as I have noted many times, if one were to look inside the cuddly Koala suit that he is prone to wearing one would find someone who really does not like farmers or farming in this State.

**The Hon. Jeremy Buckingham:** Point of order: The member is casting aspersions on my good character and misrepresenting me and my views about the farming community of New South Wales. I take offence. Mr Deputy-President, the Minister has clearly identified me and misrepresented me and I ask you to direct him withdraw that statement.

**DEPUTY-PRESIDENT (The Hon. Trevor Khan):** Order! There is no point of order.

**The Hon. DUNCAN GAY:** I contend that anyone who supported farming would support grazing in these areas, and the member clearly does not. He and his friend the Hon. Steve Whan—who is not in the Chamber but who spends a large part of his time on the losers lounge—voted to disallow the regulation that fixed native vegetation issues. These members say they support farmers, but their track record in this place demonstrates the opposite.

**The Hon. Jeremy Buckingham:** You fixed native vegetation?

**The Hon. DUNCAN GAY:** Yes. Those regulations did much more to fix it than the member and his friends in the Labor Party achieved. The Hon. Jeremy Buckingham and the Hon. Steve Whan—besties forever. The Hon. Jan Barham referred to three issues raised by the Law Society. The Government has addressed those questions outside the House. However, because they have been raised in this place I will have to address them in detail on the record. I apologise to members for having to do so. First, the Law Society stated that the Goomallee case did not make new law. One of the key principles of Crown land management in section 11 of the Act is that, where appropriate, multiple use of Crown land should be encouraged. Over a long period the Crown Land's Department, under a series of Ministers, has in good faith sought to promote that principle where multiple uses could coexist with the primary reserve purpose.

The department considered that it was arguable that leases or licences could be granted in relation to Crown land if they were not inconsistent with the reserve purpose. This was clearly rejected by the Court of Appeal. The Government supports the existing principle that multiple use of Crown land should be encouraged where appropriate. In the Government's view the reserve purpose should determine what can occur on the land. If multiple activities can occur without causing material harm to the reserve purpose, that is consistent with principles of multiple use and is appropriate.

The second point raised by the Law Society is that Aboriginal people should not be disadvantaged by the Department of Lands acting contrary to its own legislation. This bill is seeking to provide certainty for thousands of tenures and associated activities. The need for this certainty was accepted by the member for Marrickville on 15 October 2013 when she acknowledged in the other place that this issue requires the difficult balancing of a range of competing interests as recognised in Legislation Review Committee digest No. 44/55. The types of activity under consideration could have been approved or regularised using other mechanisms in the Crown Lands Act. It is consistent with existing Crown land principles for secondary interests to occur on Crown lands where this can take place without causing material harm to the reserve purpose.

The Law Society also stated that there are provisions, for example new 34A and new section 121A, that provide ample flexibility for the management of Crown land. This is correct. The fact that the same outcomes could have been achieved lawfully if a different process had been adopted supports the Government's decision to validate those tenures. The existing mechanisms cannot be used to validate tenures effectively and hence cannot provide the required certainty. Accordingly, a legislative response is the only response available. I thank all members for their contributions and I commend the bill to the House.

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

**The House divided.**

**Ayes, 27**

Mr Borsak	Mr MacDonald	Ms Sharpe
Mr Brown	Mr Mason-Cox	Mr Veitch
Mr Clarke	Mrs Mitchell	Ms Voltz
Ms Cotsis	Mr Moselmane	Mr Whan
Ms Cusack	Reverend Nile	Mr Wong
Mr Donnelly	Mrs Pavey	
Miss Gardiner	Mr Pearce	
Mr Gay	Mr Primrose	<i>Tellers,</i>
Mr Green	Mr Searle	Mr Colless
Mr Lynn	Mr Secord	Dr Phelps

**Noes, 5**

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

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**Clauses 1 and 2 agreed to.**

**The Hon. MICK VEITCH** [5.37 p.m.]: I move Opposition amendment No. 1 on sheet C2013-160C:

No. 1 Page 3, schedule 1 [2], line 22. Insert "be in the public interest and would" after "would".

The aim of this straightforward amendment is to ensure that decisions of the Minister will be taken in the public interest, and provide some clarification of the framework on which the Minister would make those decisions.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [5.38 p.m.]: The Government supports the amendment for the reasons given earlier. I will not heap more praise on the member; I have already praised him. It is a valid amendment, and the Government supports it.

**The Hon. PAUL GREEN** [5.38 p.m.]: This is a classic example of all parties working together. The bill took so long to process because we wanted to ensure we achieved the right outcomes. The Christian Democratic Party, like the Hon. "Duncan the Good", agrees with the amendment.

**The Hon. ROBERT BROWN** [5.39 p.m.]: The Shooters and Fishers Party agrees with the amendment, as it will several others. I put on record our appreciation of the Minister's office negotiating in good faith with the Opposition, the Shooters and Fishers Party and the Christian Democratic Party.

**The Hon. JEREMY BUCKINGHAM** [5.39 p.m.]: The Greens will support the amendment. The Greens will support any public interest test.

**Question—That Opposition amendment No. 1 [C2013-160C] be agreed to—put and resolved in the affirmative.**

**Opposition amendment No. 1 [C2013-160C] agreed to.**

**The Hon. MICK VEITCH** [5.40 p.m.]: I move Opposition amendment No. 2 on sheet C2013-160C:

No. 2 Page 3, schedule 1 [2]. Insert after line 23:

- (3) Without limitation, the following considerations are relevant to the question of whether the use or occupation of a Crown reserve pursuant to a secondary interest would not be likely to materially harm its use or occupation for the reserved purpose:
  - (a) the proportion of the area of the Crown reserve that may be affected by the secondary interest,
  - (b) if the activities to be conducted pursuant to the secondary interest will be intermittent, the frequency and duration of the impacts of those activities,
  - (c) the degree of permanence of likely harm and in particular whether that harm is irreversible,
  - (d) the current condition of the Crown reserve,
  - (e) the geographical, environmental and social context of the Crown reserve,
  - (f) such other considerations as may be prescribed by the regulations.

This is the most substantial of our amendments. It relates to material harm and strengthens statements made by the Minister in his second reading speech. It provides more guidance and clarity around material harm. There is a real risk that material harm standing undefined in the bill will lead to further litigation to determine what it is. This amendment is straightforward, and I commend the amendment to the Committee.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [5.40 p.m.]: The Government supports the amendment, as I indicated in my reply to the second reading debate and my very careful comments, for the obvious reason that ministerial comment during a second reading speech can be used in any determination. Those comments were meant to reflect this amendment.

**The Hon. PAUL GREEN** [5.41 p.m.]: The Christian Democratic Party also supports this amendment. This is legal-proofing the bill and the definition of "material harm" is part of making the bill watertight if challenged.

**The Hon. JEREMY BUCKINGHAM** [5.41 p.m.]: The Greens support this amendment moved by the Opposition. It is the reason we did not move our amendment No. 1. We were very concerned about the lack of definition of "material harm" from the outset. We were also concerned about the subjective nature of the consideration of the material harm test. The criteria included in this amendment are reasonable and will give some surety to the community that there will be good guidelines for consideration of what harm may be, especially the provisions in 3 (c) looking at the degree of permanence of likely harm. That is an important criterion, and The Greens support the amendment.

**Question—That Opposition amendment No. 2 [C2013-160C] be agreed to—put and resolved in the affirmative.**

**Opposition amendment No. 2 [C2013-160C] agreed to.**

**The Hon. MICK VEITCH** [5.43 p.m.], by leave: I move Opposition amendments Nos 3 and 4 on sheet C2013-160C in globo:

No. 3 Page 3, schedule 1 [2], line 38. Omit "can validate". Insert instead "may, by order published in the Gazette (a *validation order*), validate".

No. 4 Page 3, schedule 1 [2]. Insert after line 41:

(5) Sections 40 and 41 of the *Interpretation Act 1987* apply to a validation order in the same way as they apply to a statutory rule within the meaning of that Act.

These amendments are to provide transparency and accountability around decisions to be made by the Minister from this date. They do not cover all existing leases but ensure that any future ministerial discretion is placed in the *Government Gazette* as a disallowable instrument under the Interpretation Act. We feel that provides a fair degree of accountability for the public of New South Wales to ascertain what the Minister is doing with some leases. We do not envisage a substantial number once the bill as amended has been adopted, but these amendments provide the degree of transparency most people in New South Wales seek with regard to the use of ministerial power in this bill.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [5.44 p.m.]: Kumbaya is finished. The Government opposes these amendments, which are about validation. The member indicated he did not believe that there would be a substantial number, but I am informed that this would require gazettal of individual validation orders and would create a significant time, resource and administrative burden as there are up to 7,000 secondary interests requiring validation. I am not sure how that could be described as not substantial. We also oppose Opposition amendment No. 4 because it would allow the validation orders to be disallowed, which would create inappropriate uncertainty and put validation orders back into the area of political decision-making. We have seen how willing The Greens are to act in grazing areas at the drop of a hat.

**The Hon. ROBERT BROWN** [5.45 p.m.]: The Shooters and Fishers Party does not support these two amendments. We tend to agree with the Minister's observation about them. The Hon. Mick Veitch's arguments are sound, but these amendments are not necessary, given the way the bill is drafted.

**The Hon. PAUL GREEN** [5.46 p.m.]: Likewise the Christian Democratic Party will not support these amendments. One reason that has been noted by the Government is that the cost of the resource and the administrative burden would be shifted to local government in many cases. Who is going to pay the bill? We do not want to go down that track; we believe the Government is right. The Minister said that amendment No. 4 would politicise decisions, and the last thing we want is political argument in the process. Things are slow enough without sticking in our noses. We will let them validate orders.

**The Hon. JEREMY BUCKINGHAM** [5.47 p.m.]: The Greens believe these are very important amendments. Far from being a political argument and that being bad, these amendments are about accountability. I understand these amendments would operate on agreements going forward rather than the previous 7,000 or so, which may have been issued for invalid uses. Rather than politicising this, these amendments create accountability and transparency. There should be a way for the Parliament to represent concerns of constituents through these amendments being incorporated and making provision for the House to have a debate on a disallowance motion. That would give the community some surety that there was a backstop if a lease were granted over which there was a concern, and that the Parliament would have oversight. The operation of the Act would be politicised by giving far too much power to the Minister without oversight. For those reasons The Greens support these amendments.

**Question—That Opposition amendments Nos 3 and 4 [C2013-160C] be agreed to—put.**

**The Committee divided.**

**Ayes, 16**

Ms Barham  
Mr Buckingham  
Ms Cotsis  
Mr Donnelly  
Dr Faruqi  
Dr Kaye

Mr Primrose  
Mr Searle  
Mr Secord  
Ms Sharpe  
Mr Shoebridge  
Mr Veitch

Mr Whan  
Mr Wong  
*Tellers,*  
Mr Moselmane  
Ms Voltz

**Noes, 19**

Mr Ajaka	Mr Green	Reverend Nile
Mr Borsak	Mr Khan	Mrs Pavey
Mr Brown	Mr Lynn	Mr Pearce
Mr Clarke	Mr MacDonald	
Ms Cusack	Mrs Maclaren-Jones	<i>Tellers,</i>
Mr Gallacher	Mr Mason-Cox	Mr Colless
Mr Gay	Mrs Mitchell	Dr Phelps

**Pairs**

Ms Fazio	Mr Blair
Mr Foley	Ms Ficarra
Ms Westwood	Mr Harwin

**Question resolved in the negative.**

**Opposition amendments Nos 3 and 4 [C2013-160C] negatived.**

**The Hon. JEREMY BUCKINGHAM** [5.57 p.m.]: I move The Greens amendment No. 2 on sheet C2013-130F:

No. 2 Pages 3 and 4, schedule 1 [2], line 42 on page 3 to line 3 on page 4. Omit all words on those lines. Insert instead:

- (5) When a secondary interest is validated under this section, the secondary interest is taken to have been validly granted from the date of validation (but not before that date).

In effect, this amendment removes retrospective validation. Currently the bill provides that where a secondary tenure is validated by the Minister or a reserve trust the validation is taken to be, in effect, from the date of the original grant. In one sense the bill is trying to extend as much coverage as possible to secondary tenures that are inconsistent with the reserve purpose. As The Greens have highlighted, this bill is a significant overreach of power and it may have some unforeseen impacts on historical and future legal rights. It may even have unforeseen impacts on personal injury cases—we simply do not know. For this reason governments rarely employ the ad hoc use of retrospective cancellation or validation—although I note that the Government is getting a bit of a taste for retrospectivity. I suggest that a more conservative and cautious approach would be to ensure that the secondary tenure is valid only from the date of the validation. I commend the amendment to the Committee.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [5.59 p.m.]: The Government opposes The Greens amendment No. 2. We will also oppose The Greens amendment No. 3. The amendment defeats the purpose of the bill. It will create uncertainty because it does not allow validation in all circumstances. Indeed, I am surprised that it was drawn up as an amendment because it pretty much negates the bill. It should not have been an amendment.

**Question—That The Greens amendment No. 2 [C2013-130F] be agreed to—put and resolved in the negative.**

**The Greens amendment No. 2 [C2013-130F] negatived.**

**The Hon. JEREMY BUCKINGHAM** [6.00 p.m.]: I move The Greens amendment No. 3 on sheet C2013-130F:

No. 3 Page 4, schedule 1 [2]. Insert after line 3:

- (6) The validation of a secondary interest by the Minister under this section does not affect any land claim (within the meaning of the Aboriginal Land Rights Act 1983) or any proceedings under the Native Title (New South Wales) Act 1994 whether made or commenced before or after the secondary interest is validated, and for the purposes of any such land claim or proceedings the secondary interest is deemed not to have been validated under this section.

This amendment prevents the extinguishment of Aboriginal land claims. As noted during the second reading debate, The Greens are concerned about how the Minister may use the new power to validate secondary

interests over Crown land which, but for this bill, would be unlawful. The unlawful nature of these secondary interests means that Crown reserves potentially would be open to Aboriginal land claims. Considering the past injustices done to Indigenous Australians and the remedial nature of land rights legislation, this amendment is necessary to protect those rights from otherwise oppressive and unjustified extinguishment. I commend the amendment to the Committee.

**Question—That The Greens amendment No. 3 [C2013-130F] be agreed to—put and resolved in the negative.**

**The Greens amendment No. 3 [C2013-130F] negatived.**

**The Hon. JEREMY BUCKINGHAM** [6.01 p.m.], by leave: I move The Greens amendments Nos 4 and 7 on sheet C2013-130F in globo:

No. 4 Page 4, schedule 1 [4], line 9. Omit "**Section 35A**". Insert instead "**Sections 35A and 35B**".

No. 7 Page 4, schedule 1 [4]. Insert after line 28:

**35B Public register of validated secondary interests**

- (1) The Minister is to maintain a register of the secondary interests validated by the Minister or a reserve trust pursuant to section 34AA.
- (2) The register is to contain the following information in respect of each validated secondary interest:
  - (a) a description of the nature of the secondary interest and details of its grant (including the purpose for which it was granted, the date of its grant, the identity of the person to whom it was granted and the terms and conditions on which it was granted),
  - (b) information sufficient to identify the Crown reserve in respect of which the secondary interest was granted (including the reserve ID, title reference and gazettal date),
  - (c) details of the changes made to validate the secondary interest,
  - (d) details of the assessment made in connection with the validation of the secondary interest that use or occupation of the Crown reserve pursuant to the secondary interest as validated would not be likely to materially harm its use or occupation for the reserve purpose.
- (3) The contents of the register are to be publicly available free of charge on the website of the Department.

These amendments are crucial to improving the bill. They provide for the establishment of a public register and detail the secondary interests validated by the Minister pursuant to section 34AA. We believe this is essential to allow public oversight and scrutiny of the Minister's power to validate secondary interests retrospectively. They will ensure that the Minister is held accountable and can justify the application of the material harm test, so amended with the criteria. The register will be publicly available on the department's website and provide all the details of the reserves and secondary interests so the public can identify precisely the nature of the validation.

The register will also show the Minister's assessment of the material harm test so the public can understand the Minister's reasoning. This will provide public confidence in the exercise of the Minister's power and negate any accusations that the Minister is acting improperly or behind closed doors. We hope the Government has considered the amendments and sees them as beneficial to the operation of the management of Crown reserves. If supported, they will give confidence to the community that the Minister is acting in the public interest and allowing scrutiny of his decisions. I commend the amendments to the Committee.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [6.03 p.m.]: The Government opposes these amendments. We have looked at them. I am pleased to say that the Government is open to scrutiny, but we believe—

**The Hon. Walt Secord:** Just not this stuff.

**The Hon. DUNCAN GAY:** Not this sort of scrutiny, because there are significant privacy issues involved in publishing the details of individual tenancies. However, the Government is committed to transparency and will, as undertaken, publish in the NSW Trade and Investment annual report the number of times the amendment is relied on for future tenancies. We have listened.

**The Hon. MICK VEITCH** [6.04 p.m.]: The Opposition will support these amendments. As the Opposition's amendments were defeated, these amendments would appear to be the next option for us to support. For the reasons articulated by the Hon. Jeremy Buckingham, the Opposition will support the amendments.

**The Hon. JEREMY BUCKINGHAM** [6.04 p.m.]: With regard to the Minister's contribution, an annual report that simply lists the number of times the power has been used by the Minister does not give me the confidence I need—

**The Hon. Dr Peter Phelps:** You're voting against the bill in toto.

**The Hon. JEREMY BUCKINGHAM:** It certainly does not. It further diminishes my confidence.

**The Hon. Duncan Gay:** It is minus seven.

**The Hon. JEREMY BUCKINGHAM:** It is about that. It is certainly in the negative territory. A person reading the annual report will simply see 42 validations. What does that mean?

**The Hon. Trevor Khan:** There are 42.

**The Hon. JEREMY BUCKINGHAM:** That is right, but what does that mean? Where were they? That information is of little use to the community. And this is community land. The public interest should come before—

**The Hon. Dr Peter Phelps:** No it's not; it's government land. It's Crown land.

**The Hon. JEREMY BUCKINGHAM:** Who is the Crown? If we have to convince members opposite that this is a public reserve and not just freehold land that the Government will sell off, the Government should support these amendments, which are reasonable. They simply provide a description of the nature of secondary interests information sufficient to identify the Crown reserve in respect of which the secondary interest was granted—in other words, where the reserve is located—even if people want to know where the reserve is and the details of the changes. We think it is reasonable to support these amendments to give people confidence that the Government is doing the right thing and acting in the public interest. I commend the amendments to the Committee.

**Question—That The Greens amendments Nos 4 and 7 [C2013-130F] be agreed to—put.**

**The Committee divided.**

#### **Ayes, 16**

Mr Buckingham	Mr Primrose	Mr Whan
Ms Cotsis	Mr Secord	Mr Wong
Mr Donnelly	Ms Sharpe	
Mr Foley	Mr Shoebridge	<i>Tellers,</i>
Dr Kaye	Mr Veitch	Ms Barham
Mr Moselmane	Ms Voltz	Dr Faruqi

#### **Noes, 19**

Mr Ajaka	Mr Green	Reverend Nile
Mr Borsak	Mr Khan	Mrs Pavey
Mr Brown	Mr Lynn	Mr Pearce
Mr Clarke	Mr MacDonald	
Ms Cusack	Mrs Maclaren-Jones	<i>Tellers,</i>
Mr Gallacher	Mr Mason-Cox	Mr Colless
Mr Gay	Mrs Mitchell	Dr Phelps

#### **Pairs**

Ms Fazio	Mr Blair
Mr Searle	Ms Ficarra
Ms Westwood	Mr Harwin

**Question resolved in the negative.**

**The Greens amendments Nos 4 and 7 [C2013-130F] negatived.**

**The Hon. JEREMY BUCKINGHAM** [6.15 p.m.], by leave: I move The Greens amendments Nos 5 and 8 on sheet C2013-130F:

No. 5 Page 4, schedule 1 [4]. Insert after line 16:

- (2) This section does not apply to a question in legal proceedings that arises in connection with a land claim (within the meaning of the Aboriginal Land Rights Act 1983) or proceedings under the Native Title (New South Wales) Act 1994.

No. 8 Page 5, schedule 1 [7], lines 24–27. Omit all words on those lines. Insert instead:

- (7) This clause does not affect any land claim (within the meaning of the *Aboriginal Land Rights Act 1983*) or proceedings under the *Native Title (New South Wales) Act 1994* made or commenced before the date of assent to the *Crown Lands Amendment (Multiple Land Use) Act 2013*.

Amendment No. 5 prevents validation from extinguishing Aboriginal land claims. As noted in The Greens contribution to the second reading debate, we are very concerned about that capacity within the bill and think it is something that this amendment addresses. Clearly paragraph (2) is of enormous concern to the Aboriginal Land Council, which has been lobbying furiously on this issue. Amendment No. 8 is of enormous importance and provides that the legislation should operate from the date of its assent. The Greens acknowledge that the Government has not tried to alter the outcome of the decision in Goomallee and any claims submitted before the date of judgement—that is, 9 November 2012. The Greens believe that a more appropriate date would be the date of assent, and the Aboriginal Land Council agrees.

The impact and operation of the powers to validate secondary interests should not take effect until the bill is passed. The Government may suggest that Aboriginal land councils that made claims after 9 November 2012 are using Goomallee opportunistically and would be denied such a right. The question is: How can we distinguish between claims that the Government labels "opportunistic" and those that were made without the knowledge of Goomallee? We believe that these amendments empower land councils, which The Greens and other members in the community support, to ensure we do not prejudice their rights in our deliberations. I commend the amendments to the Committee.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [6.17 p.m.]: The Government does not support The Greens amendments Nos 5 and 8. Amendment No. 5 is very similar to some of the earlier amendments moved by The Greens and defeats the purpose of the bill. It will create uncertainty because it does not allow validation in all circumstances, which is the same argument the Government used earlier. Amendment No. 8 is different and means that an additional 110 land claims since the date of the Goomallee decision would be successful, including approximately 50 grazing licences. I have not used the opportunistic comments used by the Hon. Jeremy Buckingham. However, they could equally be applied.

**Question—That The Greens amendments Nos 5 and 8 [C2013-130F] be agreed to—put and resolved in the negative.**

**The Greens amendments Nos 5 and 8 [C2013-130F] negatived.**

**The Hon. MICK VEITCH** [6.19 p.m.], by leave: I move: Opposition amendments Nos 5 and 6 on sheet C2013-106C in globo:

No. 5 Page 4, schedule 1 [4], line 17. Omit "6 months". Insert instead "3 months".

No. 6 Page 5, schedule 1 [7]. Insert after line 36:

**Period of notice for challenge to existing secondary interests**

The prescribed period of notice under section 35A in respect of a lease, licence, permit, easement or right-of-way in force immediately before the commencement of that section is 6 months (despite section 35A (2)).

There has been discussion and I have made some public comment about the six-month period in the bill. The amendments are similar to those proposed by The Greens, who were seeking 28 days. Following discussion with

the Minister's office, the Opposition has decided that 28 days is too short and six months is too long. We believe that three months is a workable position for the Minister to administer the legislation. I commend these sensible amendments to the Committee.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [6.20 p.m.]: Kumbaya has descended upon the land again in a moment of serendipity. The Government agrees with the amendments. They are sensible amendments and this is a sensible outcome.

**The Hon. ROBERT BROWN** [6.20 p.m.]: We agree with the Kumbaya comments, and the two amendments.

**The Hon. PAUL GREEN** [6.20 p.m.]: It is infectious. I am very fond of *Kumbaya*—Kumbaya, my Lord, kumbaya—but in the name of expediency I will not bore members with the remaining words of the song. I once again thank the Minister's staff for bringing these amendments for the common good.

**The Hon. Trevor Khan**: And the Minister.

**The Hon. PAUL GREEN**: And the Minister.

**The Hon. JEREMY BUCKINGHAM** [6.21 p.m.]: The Greens support the Opposition's amendments. We had similar amendments, but for a period of 28 days. After consideration and in discussion with our erstwhile colleague the Hon. Mick Veitch we agree that three months is the appropriate time. We too thank the Minister for considering the amendments. We support both the amendments.

**Question—That Opposition amendments Nos 5 and 6 [C2013-160C] be agreed to—put and resolved in the affirmative.**

**Opposition amendments Nos 5 and 6 [C2013-160C] agreed to.**

**Schedule 1 as amended agreed to.**

**The Hon. JEREMY BUCKINGHAM** [6.22 p.m.]: I move The Greens amendment No. 9 on sheet C2013-130F:

No. 9 Page 5, schedule 1 [7]. Insert after line 36:

**Sunset of amendments**

- (1) The amendments made by the Crown Lands Amendment (Multiple Land Use) Act 2013 cease to operate 2 years after the date of assent to that Act and this Act then applies as if those amendments had not been made.
- (2) Subclause (1) does not affect the validity of a secondary interest granted or validated before the amendments referred to in that subclause cease to operate.

These are the sunset clause provisions that are essential to this bill. We accept that the Government had to respond to Goomallee in some way. We outlined in our contribution to the second reading debate and in our amendments that the Government could have employed many mechanisms, but some aspects of the bill can be justified. However, The Greens cannot accept such a radical departure from Crown lands management in perpetuity. That is the key element. Even if one accepts the premise that the Government had to act and needs to get its house in order in terms of the management of Crown lands, we believe that this departure does not have to be for eternity, as it were. The amendments state:

- (1) The amendments made by the Crown Lands Amendment (Multiple Land Use) Act 2013 cease to operate 2 years after the date of assent to that Act and this Act then applies as if those amendments had not been made.
- (2) Subclause (1) does not affect the validity of a secondary interest granted or validated before the amendments referred to in that subclause cease to operate.

This allows the Government to do what is necessary, to validate those uses, get its house in order, build certainty for the Country Women's Association halls, surf life saving clubs and graziers that have been stirred up, and then introduce the sunset clause. Two years is an appropriate time in which to do that. We believe it is perfectly reasonable to place this amendment before the Committee. I hope honourable members and the Government will give it consideration and support it.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [6.24 p.m.]: The Greens member indicates that he does not want this to operate in perpetuity. He has removed certainty in perpetuity and put in place uncertainty in perpetuity. This would create future inequities and dual administrative processes in perpetuity. It is contrary to the Government's goals of reducing red tape and streamlining administration.

**Question—That The Greens amendment No. 9 [C2013-130F] be agreed to—put and resolved in the negative.**

**The Greens amendment No. 9 [C2013-130F] negatived.**

**Title agreed to.**

**Bill reported from Committee with amendments.**

### **Adoption of Report**

**Motion by the Hon. Duncan Gay agreed to:**

That the report be adopted.

**Report adopted.**

### **Third Reading**

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [6.26 p.m.]: I move:

That this bill be now read a third time.

**The Hon. MICK VEITCH** [6.26 p.m.]: During my contribution to the second reading debate I indicated that the Opposition would not be able to support the bill in the form in which it was, and that the Opposition reserved its position on the bill pending the Committee stage and the amendments that came out of it. In light of the amendments that have been adopted, I indicate that the Opposition will support the amended bill.

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

**The House divided.**

### **Ayes, 29**

Mr Borsak  
Mr Brown  
Mr Clarke  
Ms Cotsis  
Ms Cusack  
Mr Donnelly  
Mr Foley  
Miss Gardiner  
Mr Gay  
Mr Green

Mr Khan  
Mr Lynn  
Mr MacDonald  
Mrs Maclaren-Jones  
Mr Mason-Cox  
Mr Moselmane  
Reverend Nile  
Mrs Pavey  
Mr Pearce  
Mr Primrose

Mr Searle  
Mr Secord  
Ms Sharpe  
Mr Veitch  
Ms Voltz  
Mr Whan  
Mr Wong  
*Tellers,*  
Mr Colless  
Dr Phelps

### **Noes, 5**

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

**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.**

*[The Deputy-President (The Hon. Sarah Mitchell) left the chair at 6.35 p.m. The House resumed at 8.00 p.m.]*

**BUSINESS OF THE HOUSE****Postponement of Business**

**Government Business Orders of the Day Nos 4 and 5 postponed on motion by the Hon. David Clarke and set down as orders of the day for a later hour.**

**LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT (ARREST WITHOUT WARRANT) BILL 2013****Second Reading**

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [8.01 p.m.], on behalf of the Hon. Michael Gallacher: I move:

That this bill be now read a second time.

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

**Leave granted.**

The purpose of this bill is to amend the Law Enforcement (Powers and Responsibilities) Act 2002 to ensure police have clear, simple and effective powers of arrest to protect the community.

The Law Enforcement (Powers and Responsibilities) Act governs the day-to-day interactions of over 16,000 police with the people of New South Wales. It is critical police that have the powers they need to get on with their job and keep the community safe.

Three weeks ago, former Police Minister the Hon. Paul Whelan and former Shadow Attorney General Mr Andrew Tink were asked to provide the Government with urgent advice to finalise the statutory review of the Law Enforcement (Powers and Responsibilities) Act.

They were asked to give immediate priority to addressing police concerns with section 99 of the Act, which sets out police powers to arrest without a warrant. Police have raised concerns that section 99 is complex and difficult to apply. This has resulted in offenders escaping conviction and at times large police payouts for wrongful arrests, even where the arrest is made by a police officer in good faith.

Concerns with section 99 were also raised in a recent decision by Judge Conlon of the District Court. In his judgement, Judge Conlon argued section 99 was in urgent need of amendment. He stated:

The community would be entitled to be concerned that the provisions of this section do not take account of the extreme variables that confront police officers in dealing with aggressive, violent situations, especially when persons are under the influence of drugs and alcohol.

Judge Conlon went on to state:

This section needs to be re-legislated by persons who have a realistic appreciation of the many volatile situations in which it is desirable for arrest to be affected by police officers.

Mr Tink and Mr Whelan considered all these problems and challenges in preparing their report on section 99.

As part of their review, Mr Tink and Mr Whelan met with senior members of the NSW Police Force, the Ministry for Police and Emergency Services and the Department of Attorney General and Justice. Their discussions included senior operational police to ensure the proposed changes would deliver improvements at the front line of community policing.

The reviewers considered police powers to arrest without a warrant in all other Australian jurisdictions, as well as in the United Kingdom.

Their considerations were also influenced by a 2012 Bureau of Crime Statistics and Research report on the effect of arrest and imprisonment on crime. The report assessed the extent to which the probability of arrest, the probability of imprisonment and imprisonment duration impact on crime rates.

Importantly, the Bureau of Crime Statistics and Research report found the biggest deterrent to criminals is the risk of arrest.

Mr Tink and Mr Whelan have now delivered their report and the New South Wales Government considers their recommendations provide a common sense way forward on this matter. The reforms they propose, and which are outlined in this bill, can give the community confidence police will have the powers they need to keep the peace across the communities of New South Wales.

The Government is pleased to say these reforms have the full support of the NSW Police Commissioner, Mr Andrew Scipione.

There are a number of important things to note about the proposed amendments to section 99.

The bill will clarify that police can arrest without a warrant for any offence they reasonably suspect a person is committing or has committed. The reviewers found that poor drafting had resulted in differing interpretations on this matter, with some suggestions that police could only arrest without a warrant for an offence committed in the past if it was a serious indictable offence. New section 99 (1) (a) makes it abundantly clear the police can arrest without a warrant for any offence, whether in the act of being committed or having been committed in the past.

Having formed a reasonable suspicion that an offence is being or has been committed, under new section 99 (1) (b) a police officer can place a person under arrest if satisfied it is reasonably necessary to do so for one of the reasons set out in the section.

New section 99 (1) (b) replicates and simplifies the existing reasons for arrest contained in section 99 (3) of the Act. It also introduces new reasons to arrest without a warrant that better reflect the circumstances in which police are called on to act in order to keep the community safe.

Crucially, the bill gives police the power to arrest without a warrant to preserve the safety and welfare of any person, and not only the person arrested. This issue was raised by Judge Conlon and the Government agrees that police should have the power to arrest without a warrant if a person other than the offender is at risk. This could include victims of domestic violence, ambulance officers who attend the scenes of assaults and violent confrontations, as well as innocent bystanders.

A similar power exists in Victoria, Queensland and Western Australia.

New section 99 also gives police the power to arrest because of the nature and seriousness of the offence. This gives police the certainty to act swiftly in the case of serious crimes, without having to consider whether any other reason to arrest without a warrant exists.

Under an amended section 99, police will be able to arrest a suspected offender without a warrant if the person's identification cannot be readily ascertained by other means or if the officer suspects on reasonable grounds the identity information supplied is false.

The realities of everyday policing are also reflected by the inclusion of a power to arrest without warrant a suspected offender who is fleeing from police or the scene of a crime and to obtain property in the possession of the person that is connected with the offence.

Further, the amended section 99 clarifies that a police officer may arrest a person without a warrant if directed to do so by another police officer who has reason to lawfully arrest that person. A similar provision exists in the Victorian Crimes Act. The reviewers agreed with the NSW Police Force that this would be a valuable inclusion in the context of large and complex policing operations.

Section 99 will also be amended to make clear to the arresting police officer that an arrest may be discontinued and the person released without requiring the suspect be brought before an authorised officer. This may occur where inquiries reveal the reasons for arrest no longer exist or if police decide it is more appropriate to deal with the matter in some other manner, for example by issuing a caution, penalty notice or court attendance notice.

Finally, section 99 will be amended to make clear that a person who is lawfully arrested under this section may be detained for the purpose of an investigation in accordance with part 9 of the Act. This amendment is intended to remove uncertainty about whether a person who is otherwise lawfully arrested can be detained for questioning under part 9.

The Government thanks the reviewers, Mr Andrew Tink and the Hon. Paul Whelan, for their outstanding efforts in bringing this complex and challenging issue to such a speedy resolution. They have done a great service, not only to the NSW Police Force but also to the people of New South Wales who will be the ultimate beneficiaries of giving police clearer and more effective powers to keep communities safe.

The job of frontline police is already hard enough without having to deal with legal loopholes. We want to uncuff the police so that they can handcuff criminals.

Mr Tink and Mr Whelan are continuing their review of the Law Enforcement (Powers and Responsibilities) Act, including particular concerns regarding section 201 and part 9. They will provide a further report before the end of 2013, with legislation to be introduced in 2014.

I commend the bill to the House.

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [8.02 p.m.]: I lead for the Opposition on the Law Enforcement (Powers and Responsibilities) Amendment (Arrest without Warrant) Bill 2013. The Opposition does not oppose the bill, although it has been prepared without proper consultation or public review. I note that the shadow Attorney in the other place raised serious concerns about whether the bill is technically adequate, particularly regarding amendments proposed by the Bar Association and the connection between the bill and the provisions of the Bail Act, a point made in representations to the Opposition by the Public Interest Advocacy Centre. The overview of the bill states that its object is "to amend the Law Enforcement (Powers and Responsibilities) Act 2002 to extend police powers of arrest without warrant". The claim made in the overview that the bill will "extend police powers of arrest" has been echoed in a media statement that refers to police powers being strengthened.

However, a proper examination reveals that the details of the bill clearly do not match this overhyped rhetoric. It seems to be about clarifying what is already the law rather than creating new law. When the Law Enforcement (Powers and Responsibilities) Act was first introduced in 2002 it resulted from a process envisaged by the Wood royal commission of inquiry into police. It consisted largely of a codification of common law and legislative provisions and there were no particularly novel propositions in that legislation. If it is flawed—as some tabloid commentary asserts—those flaws well and truly predate the legislative efforts at codification.

The record of the 2002 parliamentary debate on the Law Enforcement (Powers and Responsibilities) Bill indicates that the Opposition, led by Andrew Tink, did not oppose it. Amendments were moved, but as far as the Opposition can determine they related to the issues that arise in this bill or in the report that Mr Tink recently co-authored. The major opposition to the 2002 bill came in this place from The Greens and, indeed, from former member the Hon. Richard Jones, and their amendments were voted down by the Government and Opposition together. It is worth pointing out that although some of the comments made by the Coalition suggest longstanding and resolute Coalition opposition to the Law Enforcement (Powers and Responsibilities) Act that is not the case. I now turn to how this bill came to be before the House. The New South Wales Bar Association, in a letter sent to the Premier, stated:

We remain concerned, though, about the process of developing amendments to the Law Enforcement (Powers and Responsibilities) Act outside the usual departmental mechanism. With all due respects to Mr Tink and Mr Whelan, it is unusual that the government would bypass the expert advice that is available to it through, for instance, the Criminal Law Review Division of the Attorney General's Department. The Association was not consulted about the current bill and has offered to provide assistance to the government with the remainder of the review of the Law Enforcement (Powers and Responsibilities) Act.

I note that the Bar Association does not have any major concerns about the content of the bill, although it offers suggestions about some possible amendments. However, its point about how the bill was developed is well made. The Criminal Law Review Division of the Department of Attorney General and Justice is the expert criminal law advisory part of that department. Obviously, governments of the day are free to seek advice elsewhere but, whatever the product of such a request, one would think that input would be sought from the usual channels and from all stakeholders in the criminal justice system, not only those interested in prosecutions.

**The Hon. Trevor Khan:** If my memory serves me well, they did not like the way we approached the issue of provocation.

**The Hon. ADAM SEARLE:** I acknowledge that; but that was a somewhat different situation, because we provided the opportunity for persons and stakeholders to appear before the committee.

**The Hon. Trevor Khan:** And we know how they responded to that.

**The Hon. ADAM SEARLE:** We do. However, they had the right to be heard and we sought their advice and input. It was a very useful process. A similar point is made somewhat more forcefully by the NSW Council for Civil Liberties, which wrote to all members of Parliament. I need not detain the House by quoting from that correspondence, but I note that a number of those concerns have also been raised in correspondence I received this afternoon from the Combined Community Legal Centres. The Public Interest Advocacy Centre also has proposed that there be public consultation on this bill, something that has not occurred to date. One comment on this process that has been made a number of times is that there is no objective test to justify an arrest given the removal of the words "reasonable grounds to suspect". The Opposition does not necessarily accept that, given the provisions of new section 99 (1) (a), which requires that a police officer suspect "on reasonable grounds that the person is committing or has committed an offence". That proposed section is drafted to require it as a precondition of every arrest.

Extending the power to arrest without warrant to all previous offences, not only indictable offences, also appears to the Opposition to be no different from what is already contained in section 99 (2). The issue of identity in new section 99 (1) (b) (iii) would in many cases already be covered in new section 99 (3) (a). We note that there are already 40 separate pieces of legislation on the statute book allowing authorities to demand that identification be provided, with criminal sanctions to deal with any failure to do so. There are of course other concerns. One is that the proposed provision about establishing identity may give police and indeed others a mistaken impression that they have the power to arrest to establish a person's identity. That misconception is one that may be more widely abroad in connection with this bill—that is, that this bill gives that additional ground for arrest. However, that is not what the bill says; and unless it is somewhere else in another provision police and others simply do not have the power to arrest to establish a person's identity. Lest it be said that this

is a hypothetical or fanciful suggestion, the Premier in the other place acknowledged that there had been some 378 claims for wrongful arrest over the five years until April 2012. If the average settlement over the past 12 months has been more than \$75,000, it must be said that at least some members of the NSW Police Force may not fully understand the current law and their powers under it. It would be more than ironic if the present attempt to clarify the law in fact led to further confusion.

**Mr David Shoebridge:** There would be something that rhymes with ironic, Adam.

**The Hon. ADAM SEARLE:** I acknowledge that interjection and I will look forward to the honourable member elucidating that point in his contribution. Another point that has been raised is that the powers of arrest in the bill differ markedly from the powers of arrest in the Bail Act that will come into force next year. I ask the Parliamentary Secretary when he replies on behalf of the Government to address the concern that has been raised with the Opposition by the Public Interest Advocacy Centre and perhaps others. The Public Interest Advocacy Centre has said that the conflict is between the proposed section 99 and section 77 (3) of the Bail Act 2013. The reply provided by the Parliamentary Secretary, the member for Tweed, in the other place did not appear to deal squarely with this matter.

**The Hon. Trevor Khan:** Surely not?

**The Hon. ADAM SEARLE:** I acknowledge that interjection. I am equally astounded, but it is true according to *Hansard*. The Government has an opportunity to respond to that matter in this debate. The shadow Attorney General also sought a response from the Government to the two technical amendments proposed by the Bar Association. The first is that new section 99 (1) (b) be amended to read:

The police officer is satisfied on reasonable grounds that the arrest is necessary for one or more of the following reasons...

I acknowledge that the Parliamentary Secretary addressed that issue in his reply in the other place. It reflects what I said earlier that even on the current drafting there must be reasonable grounds as a precondition of every arrest. As such, that amendment may not be necessary. Although the Opposition does not have a definitive view on it, it is not proposing to move that amendment. However, the Bar Association also suggested that proposed section 99 (2) be amended to read:

A police officer may arrest a person without warrant if directed to do so by a police officer who may lawfully arrest the person pursuant to subsection (1).

That would address the possibility that the protection intended by the bill with regard to arrest in certain circumstances may not extend to the situation in which an officer is directed by another officer to make the arrest. The Bar Association's suggestion appears to be a purely technical amendment designed to address any uncertainties. The Parliamentary Secretary did not address that proposition in the other place. The Opposition will move an amendment that addresses the substance of the Bar Association's proposed amendment. It will be interesting to hear the Government's response to that proposition. If that is not done in the speech in reply we will address it in the Committee stage.

**Mr DAVID SHOEBRIDGE** [8.13 p.m.]: The Greens oppose the Government's Law Enforcement (Powers and Responsibilities) Amendment (Arrest without Warrant) Bill 2013.

**The Hon. Trevor Khan:** Sorry, what was that?

**Mr DAVID SHOEBRIDGE:** In case there is any confusion on the part of Government members, The Greens oppose this legislation. This is another example of law reform on the run being delivered to the drum beat of the editorial pages of the *Daily Telegraph* rather than sensible, considered law reform which addresses the needs of police and which makes arrest powers clearer for police and citizens alike. Police powers are set out in section 99 of the Law Enforcement (Powers and Responsibilities) Act, which this bill seeks to amend. Section 99 specifies:

- (1) A police officer may, without a warrant, arrest a person if:
  - (a) the person is in the act of committing an offence under any Act or statutory instrument, or
  - (b) the person has just committed any such offence, or
  - (c) the person has committed a serious indictable offence for which the person has not been tried.

- (2) A police officer may, without a warrant, arrest a person if the police suspects on reasonable grounds that the person has committed an offence against any Act or statutory instrument.
- (3) A police officer must not arrest a person for the purpose of taking proceedings for an offence against the person unless the police officer suspects on reasonable grounds that it is necessary to arrest the person to achieve one or more of the following purposes:
  - (a) to ensure the appearance of the person before a court in respect of the offence,
  - (b) to prevent a repetition or continuation of the offence or the commission of another offence,
  - (c) to prevent the concealment, loss or destruction of evidence relating to the offence,
  - (d) to prevent harassment of, or interference with, a person who may be required to give evidence in proceedings in respect of the offence,
  - (e) to prevent the fabrication of evidence in respect of the offence,
  - (f) to preserve the safety or welfare of the person.
- (4) A police officer who arrests a person under this section must, as soon as is reasonably practicable, take the person, and any property found on the person, before an authorised officer to be dealt with according to law.

When that legislation was introduced in 2002 it represented a substantial simplification and codification of the law as it relates to police powers. Prior to that many of those provisions had been contained in the common law—judge-made law—which was hard to access, and a number of differing statutes scattered across the then New South Wales legislative mess. The codification of the powers in section 99 of the Law Enforcement (Powers and Responsibilities) Act 2002 was a substantial simplification. Had police been properly trained, it would have allowed for a far greater understanding by police of what was required to make a lawful arrest and the reasonable restraints that were placed on them before they could make a lawful arrest.

That legislation strikes a balance between necessary police powers—that is, the power to uphold the law, to protect people from imminent violence, to protect the legal process in the gathering of evidence and the protection of evidence—and the right of the general public to be free from arbitrary arrest and detention. The proposed changes in this bill shift the balance markedly towards police and place vulnerable community members, in particular, at risk of police exercising arrest powers arbitrarily. In fact, one would think the bill was designed to allow for the police to exercise arbitrary arrest powers. The bill proposes to replace section 99 with a longer list of considerations and substantially lowers the bar for what is required before arresting a person. New section 99 of the bill provides:

- (1) A police officer may, without a warrant, arrest a person if:
  - (a) the police officer suspects on reasonable grounds that the person is committing or has committed an offence, and
  - (b) the police officer is satisfied that the arrest is reasonably necessary for any one or more of the following reasons:
    - (i) to stop the person committing or repeating the offence or committing another offence,
    - (ii) to stop the person fleeing from a police officer or from the location of the offence,
    - (iii) to enable inquiries to be made to establish the person's identity if it cannot be readily established or if the police officer suspects on reasonable grounds that identity information provided is false,
    - (iv) to ensure that the person appears before a court in relation to the offence,
    - (v) to obtain property in the possession of the person that is connected with the offence,
    - (vi) to preserve evidence of the offence or prevent the fabrication of evidence,
    - (vii) to prevent the harassment of, or interference with, any person who may give evidence in relation to the offence,
    - (viii) to protect the safety or welfare of any person (including the person arrested),
    - (ix) because of the nature and seriousness of the offence.

The proposed changes would mean police could arrest a person if they personally think to do so is reasonably necessary considering the nature and seriousness of the offence. This appears to require a two-step process of

assessing the possible offences involved and then what "reasonably necessary" would mean in the circumstances. The proposed changes do not simplify the law for police or improve the clarity of the Law Enforcement (Powers and Responsibilities) Act; in fact, they complicate the law in this area. It most definitely provides a new and unstructured discretionary power for police to exercise if they wish to do so. This legislation will be a legal minefield in the coming years and will inevitably cause a great deal of legal uncertainty on our streets and in our courts about police arrest powers. This is a mess waiting to happen.

The Whelan-Tink review, which was purportedly independent, was concocted by this Government to come up with a review of the Law Enforcement (Powers and Responsibilities) Act. One cannot help but think that the decision to hand to Whelan and Tink a review with such a short time frame and narrow remit of consultation effectively shows that the Government wanted to get a result. One should never have an inquiry unless one knows the outcome and the results that one wants. This is a classic case of the Government getting people to conduct an inquiry and to get the result it wanted in the first place. It is extraordinary that the only input the Whelan-Tink review sought on whether or not the current rules struck the right balance was from police, in the eyes solely of the police and a small number of government agencies.

The report shows that not only do police have a poor understanding of their existing powers—and that is abundantly clear in reports on submissions contained in the Whelan-Tink review which I find extraordinary—but also the Government allowed this review to be undertaken without consulting lawyers, academics or law reform and civil liberties groups. It is no wonder that such a one-eyed consultation has recommended increased police powers when the only people asked were police. We do not support this legislation. The Greens will continue to speak out about law-making such as this as it reduces civil liberties by steadily increasing police powers while removing the checks and balances necessary on the exercise of those powers in a free society. Good police do not need bad laws. Good police do not need laws like this to support them in doing their work to keep the community safe and to bring criminals to justice.

This expansion of powers will make it easier for officers to arrest people, even if they have no intention of charging them with an offence. If passed, this law will encourage poor policing, with reduced incentives for officers to engage in skilled investigations to gather a brief for the purpose of an arrest. The report that recommended these changes is the result of a hopelessly biased consultation process, in which even in the Government's contributions seemed to acknowledge a failure to consult with important stakeholders including lawyers, academics, law reform groups and civil liberties groups, which would put a different and essential perspective to that of the Government. Instead we have had consultation with police and a small number of people in government agencies.

Police powers in the existing Law Enforcement (Powers and Responsibilities) Act are not overly complicated but it does appear that police do not fully understand them. Surely this should be the issue that the Government chases before rushing to yet more confusing laws and further law reform. The solution to the police not understanding their existing arrest powers is not to expand police arrest powers so that the current misuse of powers can be rendered legal; the solution would be to support and educate officers in the proper execution of their duties. For example, existing police powers already include a power to arrest persons to prevent a breach of the peace—that would be to prevent someone about to endanger the property or the safety of a person.

It is clear from the Whelan-Tink report that the police are clumsily arguing that they do not have the power to arrest troublemakers to prevent injury to people or to property. As a result of that we have this proposed amendment to section 99 (1) (viii). This is plainly a result of gross ignorance. The existing power to prevent a breach of the peace, if properly exercised, is more than enough to protect persons and property from any imminent threat. How is it that senior officers of the NSW Police Force are not aware of that existing power? Is it wilful blindness? Is it intended to create an inflammatory response from Whelan and Tink? It is remarkable that senior police do not seem to understand their basic powers.

**The Hon. Dr Peter Phelps:** What about the magistracy?

**Mr DAVID SHOEBRIDGE:** Indeed, the District Court judge in an obiter comment in proceedings in Wollongong also appeared comprehensively to fail to understand the police powers available to protect people and property from imminent threat. Other reforms to increase police powers such as removing the right to silence have produced the ridiculous position of having lawyers effectively running away from police stations to protect their clients' rights. The Government's proposal, together with other reforms to increase police powers, is producing a new generation of police with poor investigative skills, who are unable to obtain a conviction unless they force a confession from a suspect.

This is the twenty-first century, despite what the Coalition seems to believe, and we need a smart and adaptive police force with the skills to investigate and prevent serious organised crime, not a police force focused on squeezing confessions from minor criminals. I note that the Law Society of New South Wales and the New South Wales Council for Civil Liberties have written to the Parliament expressing serious concerns about this proposed legislation. The Council for Civil Liberties recommends the following:

1. The passage of this bill through the New South Wales parliament should be delayed to allow:
  - 1.1. Crucial input from the wider community and informed stakeholders to the hasty and limited review of S99.
  - 1.2. Provision of specific examples as evidence to substantiate police claims that the current Act contains significant loopholes (as distinct from clarity issues) which advantage criminals and undermine the effectiveness of police to protect the public.
  - 1.3. Considered examination by all stakeholders and the community of the proposed amendments extending lawful reasons for police powers of warrantless arrest to assess their implications and whether they are necessary, appropriate and proportionate.

The Law Society raised a number of concerns including the weakening of the safeguards in the Law Enforcement (Powers and Responsibilities) Act, the characterisation of section 99 safeguards as "loopholes", the strength of existing powers and more. In particular the Law Society considers the implication of the amendment to new section 99 1(b) as:

The Committees are concerned that proposed amendment to s 99 of LEPR appears to remove the objective reasonable grounds test. The Committees' understanding of the proposed amendment is that if a police officer were satisfied that an arrest was reasonably necessary then the arrest would be lawful, even if under the circumstances it was objectively unreasonable. The Committees submit that if this reading is correct, then there is effectively no limitation on what constitutes what is reasonably necessary. This proposed amendment requires clarification.

The Greens go further and say that this proposed amendment should not become law. In addition, the expansion of the power for police to arrest persons to stop them fleeing from a police officer, regardless of their reason for doing so, is not tied even to a suspicion that they have committed an offence. It is therefore likely to lead to increased friction between police and vulnerable community members. The idea seems to be that if someone runs he or she is guilty. There are a great number of other explanations for seeking to avoid police that are consistent with innocence, which include prior poor dealings with police, including many migrants from other countries where police are brutal, arbitrary and genuinely to be feared for their power. Anecdotal evidence suggests the reasons many police prosecutions fail is that police do not respect the modest protections contained in the law, which require them to advise arrested persons of their name and rank and the reason for the arrest. This amendment does nothing to address this basic practical failing by the NSW Police Force. I note that Alastair McEwin, Director of Community Legal Centres NSW, communicated with my office and a number of other offices today. Mr McEwin said in part:

For laws that have such an impact on the community there needs to be more input sought by the Government than just from the Police Force and government departments, as outlined in the Premier's speech in Parliament. This helps to maintain integrity and credibility for police action in the community. David Porter, a senior solicitor at the Redfern Legal Centre, who specialises in complaints about police conduct, said the proposed law would encourage poor policing and discourage the need for police to conduct more skilled investigations.

Mr McEwin quotes Mr Porter in the correspondence:

Under the bill, police officers will be able to arrest someone when they have no intention of taking them to court for the offence. Even if they only want to give them a \$100 fine they will be able to hold them in custody for hours. By continuing to lower the bar for the exercise of police powers, the Government is effectively ushering in a generation of police who do not have daily experience of the skilled investigation that is needed to catch the criminal organisations the people of New South Wales are actually worried about.

Mr McEwin said further:

As noted in the Legislative Assembly, the Premier acknowledged 378 claims against the police for wrongful arrest in the five years until April 2012. If the average settlement over the last 12 months has been over \$75,000 then clearly at least some police do not fully understand the current law.

Mr McEwin said that police training and not new laws is the answer. In fact, it seems that the failure by police to comply with the basic elements in section 99 of the Law Enforcement (Powers and Responsibilities) Act was one of the core motivations that prompted this legislation. In the case that appears to have been used by the Government to justify this legislation it was argued that the arresting police failed to establish a reason

for the arrest, and failed to tell the person involved why he was being arrested. Competent police should at least be able to explain to citizens why they are being arrested. Why are we suggesting that that is an unreasonable requirement on police? If someone is being arrested then surely police can explain to that person why they are being arrested. It is remarkable that so much of the commentary has failed to understand that the essential failing by police to tell someone why they were being arrested was really the root cause of the problem.

The safeguards currently contained in section 99 of the Law Enforcement (Powers and Responsibilities) Act in relation to arrest, and more generally in section 201 of the Act which the Government has its eyes on as well, specify that when a police officer is exercising his or her powers they must provide the following as soon as is practicable to do so: evidence that the police officer is a police officer—unless the police officer is in uniform, in which case it has already been provided; the name of the police officer and his or her place of duty; and the reason for the exercise of the power. These provisions are hardly onerous or overly complicated. They fall well short of mandating policing by consent or community policing models.

These are the main safeguards contained in the Law Enforcement (Powers and Responsibilities) Act to protect the community. They only operate effectively if the balance is not further tipped away from the community in favour of ever greater police powers with ever lower levels of scrutiny. I note again that The Greens will be opposing the bill. We have an amendment, which I will address in the Committee stage, that will go some way to putting a consultation process in place consistent with the representation from the Law Society of NSW. I look forward to discussion of that amendment and no doubt the wholehearted support of the Government and the Parliamentary Secretary at that time.

**The Hon. TREVOR KHAN** [8.32 p.m.]: I make a contribution to debate on the Law Enforcement (Powers and Responsibilities) Amendment (Arrest without Warrant) Bill 2013. The object of the bill is to amend the Law Enforcement (Powers and Responsibilities) Act 2002 to extend police powers of arrest without warrant. The revised powers of arrest are modelled on the Police Powers and Responsibilities Act 2000 of Queensland. Now that may cause some alarm but on this occasion it should not. Section 99 (1) of the Law Enforcement (Powers and Responsibilities) Act currently provides that a police officer may arrest a person without a warrant if the person is committing an offence, has just committed an offence or has previously committed a serious indictable offence for which the person has not been tried.

Section 99 (2) states that a police officer may, without a warrant, arrest a person if the police officer suspects on reasonable grounds that the person has committed an offence. Section 99 (3) prohibits the use of police powers of arrest without warrant unless the police officer suspects on reasonable grounds that the arrest is necessary for any one or more enumerated reasons, including to ensure the appearance of the arrested person before a court, to prevent a continuation of the offence or the commission of another offence, to prevent interference with evidence, to protect witnesses or to preserve the safety or welfare of the arrested person.

Schedule 1 item [1] of the bill repeals section 99 and replaces it with a provision that allows a police officer to arrest a person without a warrant if the police officer suspects on reasonable grounds that the person is committing or has committed an offence and if the police officer is satisfied the arrest is reasonably necessary for any one or more enumerated reasons. The substituted section does not purport to limit the power of arrest for previous offences to serious indictable offences. The substituted section extends the reasons for arrest without warrant to include additional reasons in line with section 365 of the Police Powers and Responsibilities Act 2000 of Queensland. Those additional reasons include to stop the person fleeing, to make inquiries to establish the identity of the person, to obtain property in the possession of the person connected with the offence, to preserve the safety or welfare of any person or because of the nature and seriousness of the offence.

A police officer is also empowered to arrest a person without a warrant if directed to do so by another police officer who may lawfully arrest the person. Additionally, the substituted section makes it clear that a person lawfully arrested without a warrant may be detained by any police officer for the purpose of investigating whether the person committed the offence for which the person has been arrested. Schedule 1 [2] clarifies that a police officer may discontinue an arrest at any time despite the requirement that the arrested person be taken, as soon as is reasonably practicable, before an authorised officer to be dealt with according to law. I now make a few points about the position adopted by The Greens on this bill. The Greens commonly take the position that there must be some conspiracy involved in any actions taken by any government of any political colour.

**The Hon. Michael Gallacher:** Especially when you are involved with cops.

**The Hon. TREVOR KHAN:** That is certainly right, particularly when police are involved there must be some nefarious practice going on. Members well know that for many years the powers under section 99 of the Law Enforcement (Powers and Responsibilities) Act have been an issue. The bill seeks to clarify those powers. The Government has called upon two esteemed former parliamentarians of different political colours to assist it in coming to a conclusion. It should be clear that The Greens are pointing to the assistance of the Council for Civil Liberties. We saw the persuasive capacities of the Council for Civil Liberties, I must say not, in the select committee inquiry into provocation. At that inquiry Mr David Shoebridge, who was a member of the committee, was confronted by the Council for Civil Liberties saying that the committee was incapable of coming to a conclusion.

The council contended that everything had to be sent to the Law Reform Commission for consideration, rather than the committee or the Parliament coming to a conclusion. The Council for Civil Liberties' typical way out of everything is to wring its hands and say that everything has to go to the Law Reform Commission. That is a pathetic and brainless response and, sadly, it ill behoves The Greens to seemingly kowtow to what the Council for Civil Liberties says. It is a sad reflection on the intelligence of Mr David Shoebridge that he seeks to adopt its mindless language on these matters. This sound bill justifiably not only has the support of the Government but also, it would appear, largely the support of the Opposition. I commend the bill to the House.

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [8.39 p.m.], on behalf of the Hon. Michael Gallacher, in reply: I thank members for their contributions to debate on the Law Enforcement (Powers and Responsibilities) Amendment (Arrest without Warrant) Bill 2013. The bill will ensure that police have clear, simple and effective powers of arrest without a warrant in order to keep our communities safe. The amendments will address concerns of police that the current provisions are complex and difficult to apply. The amendments will simplify the existing reasons for arrest without a warrant and will remove uncertainty and ambiguity.

The bill also introduces new reasons that reflect the reality of operational policing and the extreme variables that police confront daily on our streets and in our neighbourhoods. The bill ensures that police can arrest a suspected offender without a warrant, to preserve the safety and welfare of any person, not only the person arrested. It also gives police the certainty they need to act swiftly and arrest without a warrant in the case of serious crimes. Similar provisions exist in other Australian jurisdictions. The bill introduces changes recommended by former police Minister the Hon. Paul Whelan and former shadow Attorney General Mr Andrew Tink following discussions with senior operational police. The reforms are supported by the New South Wales Commissioner of Police, Mr Andrew Scipione.

In response to comments made by the Hon. Adam Searle, section 99 of the Law Enforcement (Powers and Responsibilities) Act and section 77 of the Bail Act 2013 will generally apply to different situations and, therefore, their interaction will rarely need to be considered. Section 99 of the Law Enforcement (Powers and Responsibilities) Act is the general power to arrest for a suspected offence and it is triggered by the suspected commission of an offence. The permitted purposes for arrest under section 99 reflect the fact that it generally applies where an offence is suspected and proceedings are not yet on foot. Section 77 of the Bail Act, however, applies to circumstances where proceedings are already on foot and is a response to the suspected failure or threatened failure to comply with bail. It sets out options for police in responding to such a failure and considerations they are to take into account in formulating this response. The provision is intended to provide clear guidance to police in order to assist them in responding to breaches of bail.

These reforms follow on from the Law Reform Commission's recommendations in its review of bail laws. If the two sections have to be considered together, for example, where a person is on bail for an offence and is suspected of committing a further offence, it is expected that police will be able to apply the considerations contained in the two sections appropriately in the circumstances. The New South Wales Government is committed to providing the NSW Police Force with the powers it needs to do its job. This bill is a much-needed step in that direction. Mr Whelan and Mr Tink are continuing their review and the Government will introduce further reforms in the 2014 spring session. This is an outstanding bill and I commend it to the House.

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

**The House divided.**

**Ayes, 32**

Mr Ajaka	Mr Gay	Mr Pearce
Mr Borsak	Mr Green	Mr Primrose
Mr Brown	Mr Khan	Mr Searle
Mr Clarke	Mr Lynn	Mr Secord
Mr Colless	Mr MacDonald	Ms Sharpe
Ms Cotsis	Mrs Maclaren-Jones	Mr Veitch
Ms Cusack	Mr Mason-Cox	Mr Whan
Mr Donnelly	Mrs Mitchell	Mr Wong
Mr Foley	Mr Moselmane	<i>Tellers,</i>
Mr Gallacher	Reverend Nile	Dr Phelps
Miss Gardiner	Mrs Pavey	Ms Voltz

**Noes, 5**

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

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**Clause 1 agreed to.**

**Mr DAVID SHOEBRIDGE** [8.52 p.m.]: I move The Greens amendment No. 1 on sheet C2013-177A:

No. 1 Page 2, clause 2, lines 5 and 6. Omit all words on those lines. Insert instead:

**2 Commencement**

- (1) This Act commences on the date of assent to this Act, except as provided by subsection (2).
- (2) Schedule 1 commences on a day to be appointed by proclamation, being a day that is not earlier than 15 sitting days of each House of Parliament after the report required by section 3 is tabled in each House.

**3 Report by Law Reform Commission**

- (1) The Minister is to refer this Act to the Law Reform Commission for inquiry and report to the Minister on the question of the need, if any, for the amendments to be made by this Act and the implications of those amendments.
- (2) The Minister is to table the Law Reform Commission's report in each House of Parliament within 28 days after being provided with the report.

This amendment would, if successful, put some actual rigor into the consideration of these proposed amendments to the Law Enforcement (Powers and Responsibilities) Act. One of the least credible arguments that the Hon. Trevor Khan has presented in this House was when he compared The Greens amendments with a proposition that was put to the Legislative Council Select Committee on the Partial Defence of Provocation when it held its inquiry. If I follow the argument of the Hon. Trevor Khan correctly, he was saying that the New South Wales Council for Civil Liberties made a representation to the Legislative Council Select Committee on the Partial Defence of Provocation which said, "The select committee should not continue its proceedings into this, taking public submissions, holding public hearings and hearing from all the parties and then proceed to make decision about a proposal for law reform; the select committee should refer it off to the Australian Law Reform Commission."

I agreed with the Hon. Trevor Khan in that process that indeed the rigorous, open, public inquiry that the select committee was holding—which invited all comers to make submissions and ultimately resulted, I think, in an excellent unanimous recommendation for the reform of provocation—was an entirely proper and appropriate process. In those circumstances I did not support the recommendation of the New South Wales Council for Civil Liberties that the issue be referred to the Australian Law Reform Commission. It is beyond the pale and remarkable that anyone would seek to compare the process the select committee went through—the public access to submissions received, the invitation for submissions from all sides of the debate, the public hearings and the evidence that the committee took, and the process that the committee members from across the political spectrum undertook to come up with some consensus recommendations for reform—to the behind closed doors inquiry that Whelan and Tink undertook.

I think that has been called the "Tink and the nod" inquiry. There was no public hearing and no invitation for submissions. No evidence was taken. No balanced consideration was given. They phoned up a couple of people in the police and tapped on the shoulder a couple of officers in the Department of Attorney General and Justice and the NSW Police Force. Then they came up with a set of very one-sided laws that greatly expand arrest powers. It is not right to compare those two processes. I think just going through the process of describing those two inquiries shows how specious the argument of the Hon. Trevor Khan was in that regard. It is for that reason that The Greens are moving this amendment. It would allow for the Australian Law Reform Commission to go through and look at this legislation—to look at whether the amendments being proposed by this bill are reasonable or necessary at all. What better place, apart from that wonderful select committee, would there be to consider these kinds of amendments. The Australian Law Reform Commission is in fact the premier place to consider this.

**The Hon. Dr Peter Phelps:** How about the Parliament of New South Wales.

**Mr DAVID SHOEBRIDGE:** I acknowledge the interjection from the Government Whip—this is another intellectual contribution he has made to this debate. It shows just how little rigor there is in the Parliament when it comes to these kinds of law reform matters. This legislation has been rushed through the Parliament. It has almost unanimous support amongst the major parties. The major parties are joining together to support it; and subject it to little, if any, scrutiny. I think this contribution and the contribution of Jamie Parker, my colleague in the other place, are the only contributions that have seriously critiqued this bill. Time and again this Parliament fails to rigorously review requests from police, requests from the Minister for Police and Emergency Services, and requests from the editorial pages of the tabloid newspapers to greatly increase police powers and to, in the same breath, seriously attack civil liberties. This Parliament does not even pretend to want to engage in that process of seriously critiquing laws. Again it has failed to do so in this debate, I think. That is why I commend to the House The Greens amendment to refer this bill to the Australian Law Reform Commission.

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [8.57 p.m.]: The Opposition will not be supporting The Greens amendment. It is quite an innovative proposal to derail the legislation before the House. Notwithstanding the idea that the Australian Law Reform Commission should look at this area, a matter on which I have no objection, I do not think the Australian Law Reform Commission has sufficient resources to be able to do so, other than perhaps by the end of next year or possibly even after that.

**The Hon. Trevor Khan:** We saw that on the issue of provocation.

**The Hon. ADAM SEARLE:** I acknowledge that interjection. Provocation was an issue ripe for consideration by a body such as the Australian Law Reform Commission. However, as its chairman, the former Justice Wood, indicated to us it was simply not resourced to do so. I fear that this would fall into the same category. That is not to say that we should rush into making bad law, but it seems to us that the concerns about this bill expressed by The Greens are misplaced. We do not see the same vice in it that they do. We take comfort from the fact that the New South Wales Bar Association and its Criminal Law Committee—which is full of very experienced practitioners in this field, including on the defence side—have not expressed any concerns about the substance of the bill or the policy that informs it. Their only suggestions were to make two very technical amendments, one of which the Opposition will move in this place. We are not troubled by the substance of the legislation. We do not see the need to delay its commencement pending a Law Reform Commission review, and we do not think the Law Reform Commission is adequately resourced to respond to this amendment in a timely way. For all those reasons, we will not be supporting the amendment.

**Reverend the Hon. FRED NILE** [8.59 p.m.]: The Christian Democratic Party will not support the amendment. As the Deputy Leader of the Opposition said, the amendment is a clever way of ensuring that the

bill does not proceed in this House. Referring it to the Law Reform Commission is simply a device. It is important that the bill proceed in its original format and not be watered down by The Greens in the way they have suggested. It is vital that the bill be passed. We must remember that Judge Conlon argued that section 99 was in urgent need of amendment. He said:

The community would be entitled to be concerned that the provisions of this section do not take account of the extreme variables that confront police officers in dealing with aggressive, violent situations, especially when persons are under the influence of drugs and alcohol.

...

This section needs to be re-legislated by persons who have a realistic appreciation of the many volatile situations in which it is desirable for arrest to be effected by police officers.

That is why we cannot accept The Greens amendment. In a simple way of explaining this, the bill will assist front-line police by removing legal complexities; it seeks to uncuff the police so they can handcuff the criminals. I have raised this issue a number of times during question time. From my contact with police officers and the Police Association, I know that they need the additional powers this bill will provide. So we reject The Greens amendment.

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [9.01 p.m.]: The Government opposes the amendment, and it opposes derailment of the Law Enforcement (Powers and Responsibilities) Amendment (Arrest without Warrant) Bill 2013. The Greens have moved an amendment that would defer the commencement of the bill until the Law Reform Commission has inquired into and reported on the need for these changes and their implications. The amendments come at the end of a lengthy statutory review of the Law Enforcement (Powers and Responsibilities) Act. That statutory review was conducted jointly by the Department of Attorney General and Justice, and police. At its commencement, key stakeholders were invited to make submissions to the review, and an advertisement was placed on the Department of Attorney General and Justice website calling for submissions from the public. A large number of submissions were received, including submissions from the Shopfront Youth Legal Centre, Community Legal Centres NSW and the Law Society of New South Wales.

At the commencement of their review of section 99 of the Act, Andrew Tink and the Hon. Paul Whelan were provided with information regarding the issues raised as part of the statutory review and copies of the substantive submissions received. The deliberations of the reviewers were also informed by discussions with representatives of the NSW Police Force, the Ministry for Police and Emergency Services and the Department of Attorney General and Justice. Contrary to assertions by some, the reviewers did meet with officers of Criminal Law Review from the Department of Attorney General and Justice. The Government considers that there is nothing to be achieved by undertaking another review and further delaying giving New South Wales police clear, simple and effective powers to protect the community. As I said, the Government opposes the amendment.

**Mr DAVID SHOEBRIDGE** [9.03 p.m.]: As I understand it, the principal reason the Labor Opposition opposes the amendment is concern that the Law Reform Commission has adequate resources, and that inadequate resourcing of the Law Reform Commission means there would be a delay. The answer to that argument is that it is always open to the Attorney General to adequately resource the Law Reform Commission to undertake a prompt review of these arrest powers. Indeed, if the amendment were successful and the Attorney General wanted a prompt review, it is within his hands to properly resource the Law Reform Commission to undertake that review. It is not a substantive reason to oppose the amendment.

The Parliamentary Secretary said "Don't worry, Mr Whelan and Mr Tink had access to submissions from a variety of civil organisations." However, their report makes no reference to the submissions. What did they do—bury them? Forget to open them? Were they given an email they could not access? There is no reference to them. There is no evidence that they considered anything other than submissions from the police and from a small group of bureaucrats in the Attorney General's department. If they were provided with other submissions then I have even less respect for their report because if they were provided with those other submissions they clearly did not read them. This was a one-eyed review from the start. We are proposing a balanced review by the Law Reform Commission. I commend the amendment to the Committee.

**Question—That The Greens amendment No. 1 [C2013-177A] be agreed to—put and resolved in the negative.**

**The Greens amendment No. 1 [C2013-177A] negatived.**

**Clause 2 agreed to.**

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [9.06 p.m.]: I move Opposition amendment No. 1 on sheet C2013-180:

No. 1 Page 3, schedule 1 [1], proposed section 99 (2), lines 30–33. Omit all words on those lines. Insert instead:

- (2) A police officer may also arrest a person without a warrant if directed to do so by another police officer who may lawfully arrest the person under subsection (1)

The amendment goes to the Bar Association's second suggestion to improve the drafting of new section 99 (2) to make it clear that a police officer may also arrest a person without a warrant if directed to do so by another police officer who may lawfully arrest the person under subsection (1). The thinking behind this proposal is to ensure clarity in the amended legislation. In that spirit we offer the amendment to the Committee.

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [9.06 p.m.]: The Opposition's amendment is not supported. The amendment is technical rather than substantive. As currently drafted, new section 99 (2) makes it abundantly clear that a police officer may arrest a person without a warrant if directed to do so by another officer. The police officer making the direction must not do so unless they have reason to lawfully arrest the person. This is an important new provision that reflects the reality of day-to-day policing, particularly in the context of large and complex operations.

**Mr DAVID SHOEBRIDGE** [9.07 p.m.]: On behalf of The Greens, it is difficult to support the Opposition's amendment because I do not think it makes it any clearer than the Government's initial draft. In large part, we adopt the rationale—it is a peculiar thing for me to say—of the Parliamentary Secretary.

**Reverend the Hon. FRED NILE** [9.07 p.m.]: The Christian Democratic Party does not support the amendment. Again, it could be a delay factor when police need to be able to act promptly and to make a decision without having to involve another police officer. There may be only one police officer on the scene and he should have the ability to carry out his duties.

**The Hon. ADAM SEARLE** (Deputy Leader of the Opposition) [9.08 p.m.]: The Opposition presses the amendment. We want to ensure that there is no suggestion that an officer who is directed by another officer must work out independently whether they should make the arrest. We want to clarify that the officer could be directed to do so, but we have raised the matter for the Committee's consideration. Be it on the Government's head if this proves to be troublesome in the future.

**Question—That Opposition amendment No. 1 [C2013-180] be agreed to—put and resolved in the negative.**

**Opposition amendment No. 1 [C2013-180] negatived.**

**Schedule 1 agreed to.**

**Title agreed to.**

**Bill reported from Committee without amendment.**

**Adoption of Report**

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

That the report be adopted.

**Report adopted.**

**Third Reading**

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

That this bill be now read a third time.

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

**SURVEILLANCE DEVICES AMENDMENT (MUTUAL RECOGNITION) 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.**

**Question—That the bill be considered an urgent bill—put and resolved in the affirmative.**

**Declaration of urgency agreed to.**

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

**BUSINESS OF THE HOUSE****Postponement of Business**

**Government Business Orders of the Day Nos 7 to 13 postponed on motion by the Hon. Duncan Gay and set down as orders of the day for a later hour.**

**PETROLEUM (ONSHORE) AMENDMENT BILL 2013****Second Reading**

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [9.14 p.m.]: I move:

That this bill be now read a second time.

The Petroleum (Onshore) Act 1991 provides the regulatory framework for the responsible exploration and extraction of petroleum products in New South Wales. The Petroleum (Onshore) Amendment Bill 2013 strengthens and clarifies the compliance and enforcement framework of the Act. The bill also strengthens landholder rights, establishes a framework for the release of environmental information and enables codes of practice to be established by regulation. Security of gas supply is essential for a vibrant economy and maintaining the high standard of living we enjoy in this State. We know that New South Wales has extensive reserves of coal seam gas.

These reserves have been estimated at 511 billion cubic metres, which is enough gas to provide more than a million homes with energy for more than a century. At the same time the way in which the exploration for and production of petroleum products is carried out is critically important. Exploration and production must be done in a way that ensures the health and safety of the community and the protection of the environment. The Government has already developed the most rigorous obligations in Australia to ensure that the petroleum industry meets these expectations. Today we are ensuring that the petroleum industry will be held accountable if it does not meet its obligations, particularly its environmental obligations. Importantly, we are also ensuring that the rights of landholders are appropriately strengthened.

Members may recall that stakeholders concerns were raised following the passage of the bill through the other House in June this year. In response to those concerns the Government was clear that the bill would only proceed when a broad consensus was reached. The Land and Water Commissioner was given the task of bringing together all stakeholders to work on the development of the bill. The commissioner arranged briefings and discussions with the six key representative groups of landholders. These included NSW Farmers, the NSW Irrigators Council, Cotton Australia, the NSW Wine Industry Association, the Australian Petroleum Production and Exploration Association and the Hunter Thoroughbred Industry Breeders Association.

The stakeholder engagement process took place over a six-month period. That was six months of examining the bill and its proposals in detail, and working constructively together to develop solutions and improvements to the bill. The process, which was overseen by the Land and Water Commissioner, allowed stakeholders to voice concerns and work together to develop the improvements that will be addressed in Government amendments to the bill. It is important to note that the process was a success because the stakeholders recognise that the bill contains significant benefits and protections for landholders. Those benefits and protections need to be brought into law.

The consensus that the Land and Water Commissioner has facilitated has been reached on several bases. The first basis is that the Government will move amendments to the bill to reflect the clarifications and

improvements identified by the stakeholders. I will outline these important changes in a moment. The second basis is that the stakeholders will have another opportunity as part of the review of the Petroleum (Onshore) Act to consider the arbitration framework in the Act. This will give stakeholders the opportunity to see how the proposals before the House work in practice. The review was committed to as part of the Government's response to this Chamber's inquiry into coal seam gas.

Third, the commissioner will continue to facilitate discussions between the Government and the landholding stakeholder groups on the issue of landholder liability. These discussions will consider the scope of the landholder immunity that currently exists in the Petroleum (Onshore) Act. I take this opportunity to thank the Land and Water Commissioner, Mr Jock Laurie, for his work in facilitating this consensus and to thank the participating stakeholder groups. These groups are NSW Farmers, Cotton Australia, NSW Wine Industry Association, NSW Irrigators Council, the Hunter Thoroughbred Industry Breeders Association, which was also representing the NSW Thoroughbred Breeders Association, and the Australian Petroleum Production and Exploration Association. I understand that some discussions were robust, but ultimately productive. The outcomes are clear evidence of this.

I return now to the matters that will be addressed through the Government amendments. The first issue of concern to stakeholders was clarifying what could be done under an environmental assessment permit. There were concerns that this permit would provide a backdoor for titleholders to explore for or even produce petroleum products. That is simply not the case. An environment assessment permit cannot be used to construct pilot gas wells. This permit only allows environmental monitoring, including regional baseline monitoring and data collection. This includes activities like carrying out flora or fauna studies, or water monitoring. This information needs to be collected in order to understand the impacts of a proposed activity as part of the environmental assessment process.

In order to make it clear what cannot be done under an environmental assessment permit, a note will be included in the Act to clarify that a permit does not allow prospecting or mining. Further, a permit applicant will be required to seek the landholder's consent to go onto the land before applying for a permit. As well, to underscore how important it is to comply with permit conditions, the penalty for not complying will increase from the proposed five penalty units to 2,000 penalty units. In addition, the Government is preparing a policy that provides clarification of the circumstances in which permits will be granted. The permit provisions will not be commenced until that policy is ready. This will provide all those involved with a clear understanding of what a permit allows and how the process will work.

A second issue related to the arbitration provisions in the Act. Currently a landholder cannot have legal representation in an access arrangement arbitration unless all the parties and the arbitrator agree. The Premier announced at the NSW Farmers conference in July that all parties to an arbitration should have the right to legal representation. The Premier also announced that the only exception would be if a landholder decided he or she did not wish to have legal representation. In this case none of the parties will be able to have legal representation. These changes will help to ensure balance is maintained between the parties during arbitration.

A third concern related to seismic surveys on public roads. Currently, the Act requires the consent of adjacent landholders in certain circumstances before seismic surveys can be carried out on these roads. The bill proposed to remove the need to obtain this consent given the short term and low impact nature of the activity. For the purpose of seismic surveys, government amendments will define "roads" to ensure that so-called paper roads are excluded. These are Crown roads that appear on maps but in reality are not used, and in many instances have not even been constructed. In practice those roads often look as though they are part of a landholder's property.

While not to be included in legislation, it has been agreed that those wishing to conduct a seismic survey must give notice to affected landholders. Notice must allow sufficient time for landholders to prepare, for example, to move stock if necessary. This requirement will become a condition of approval for a survey. A regulation-making power for making a Code of Practice for Land Access was also included in the bill. Government amendments include a new, broader code-making power. This will enable additional codes to be prescribed by regulation to be complied with by all titleholders. This is a more robust and effective way of imposing these requirements on titleholders. Before the Code of Practice for Land Access is prescribed in regulation, it will be released for public consultation. This consultation period will start this week for four weeks. To give all stakeholders a chance to consider these amendments debate will be adjourned on this bill until a later date.

I will now address the broader legislative basis that ensures landholders are not disadvantaged when making access arrangements with titleholders. Land access arrangements provide for the circumstances in which titleholders can access land and undertake exploration. They set conditions for how and when access is to occur, and the types of activities and work that are to take place. These arrangements clearly recognise the rights of landholders to conduct their activities free from unreasonable interference or disturbance. Mandatory requirements in the Code of Practice for Land Access will become mandatory clauses in an access agreement. To provide flexibility in what are essentially private arrangements, the bill provides that, if both parties agree, they can opt out of the mandatory requirements.

These amendments will ensure appropriate minimum standards for access arrangements. They will also provide the necessary flexibility to tailor an arrangement to suit individual circumstances. Landholders will retain the ability to stop titleholders from entering their property where there is a breach of the requirements of an access arrangement. These provisions were decided by stakeholders before the recent stakeholder negotiations. They demonstrate clearly what can be achieved when parties with different interests are prepared to come to the table and reach workable agreements. The Act already provides for reimbursement for a landholder seeking initial advice before negotiating an access arrangement. But a landholder may need access to further legal advice in the course of making the arrangement.

The amendments in the bill meet this need by providing for the titleholder to meet the landholder's reasonable legal costs in negotiating and making an access arrangement. This obligation will apply to a landholder's costs from the point where negotiations are initiated, up to the making of the arrangement, or when an arbitrator is appointed when agreement is not reached. The obligation will now be a statutory requirement and must be included in an access arrangement. Failure to pay the costs will be deemed a breach of an access arrangement, where one has been made, and landholders will be able to deny titleholders access to their land. These changes will provide reassurance to landholders when negotiating access arrangements. They will know that they can obtain legal advice to help ensure an outcome that is in their best interests.

The community has expressed a particular need for environmental information so that it can better understand the significance of any proposed or ongoing activity. I note that the Act already has provisions for the release of information generally. The amendments in the bill provide for additional provisions to release environmental information. The amendments will enable the department, at its discretion, to make this information publicly available as soon as it is received. However, in practice, it is intended that the department will readily release it. A claim can be made not to release the information because it could cause substantial commercial disadvantage. However, the director general will have the power to override this, if the information is considered to be in the public interest.

At the beginning I mentioned that one of the aims of the amendments is to hold the petroleum titleholder accountable if it does not meet its obligations. The bill strengthens and extends the compliance and enforcement provisions in the Act. The key power for ensuring immediate compliance with the requirements of the Act is the ability to issue a direction. The Petroleum (Onshore) Act currently has very limited powers for directions to be given. The bill extends and strengthens these direction powers considerably in keeping with the greater powers in the Mining Act. It does this by expanding the range of issues for which directions can be given. The bill proposes that directions can be issued for any adverse impact, or risk of one, that petroleum industry activities may have on any aspect of the environment.

As well, directions can be issued to conserve the environment or to prevent, control or mitigate any harm to it. They also can be issued to rehabilitate land or water that is, or could be, affected by activities under the title. In bringing direction provisions across from the Mining Act, one change will be made to both Acts. Currently under the Mining Act, before a direction can be given prior notice must be given of the proposed direction. However, under the Water Management Act 2000, the Mine Health and Safety Act 2004 and the Protection of the Environment Act 1997 no such notice is required. Therefore, the amendments specify that prior notice of a direction is no longer required in the Mining Act or the Petroleum (Onshore) Act unless the direction relates to the suspension of operations. At the same time titleholders have been given the right to challenge the merits of a direction in court under both Acts.

However, there is an exception when the direction relates to the suspension of operations. Currently under the Petroleum (Onshore) Act, the Minister can suspend operations for certain contraventions after having given written notice and allowing the titleholder to make representations. Amendments will align the Mining Act and the Petroleum (Onshore) Act so that in the case of suspensions both Acts provide for written notice and titleholder representations. Together, the amendments on directions are a robust means of ensuring prompt

industry compliance while giving titleholders a fair process by which to seek review. Audits provide information on compliance with all title obligations. Auditing petroleum operations and records is an effective means of ensuring that the industry is complying with requirements. It also enables an assessment of how activities on the title can be improved to protect the environment. Therefore, the bill provides for audits by incorporating the voluntary and mandatory audit provisions of the Mining Act.

Amendments also are proposed to inspectors' powers. Inspection provisions in the Petroleum (Onshore) Act are limited. They are not considered sufficiently robust to provide inspectors with the statutory backing they need for their work. Inspectors must have sufficient powers by which to carry out their work effectively and to ensure compliance. Therefore, existing provisions will be replaced by far more extensive provisions of the Mining Act. Inspectors will have greater powers by which to obtain information and to gather a much wider range of material for an investigation. For instance, inspectors will be able to enter premises to obtain evidence. However, they must obtain the permission of the occupier or obtain a search warrant to enter a residence.

Inspectors also will be able to require answers from a person whom they reasonably suspect of knowing about an offence. A corporation can be required to nominate a representative to answer questions, and those will bind the corporation. The legislation also will provide for circumstances when not answering questions or furnishing records is not an offence. It also will include the circumstances in which answers are not admissible in criminal proceedings. The legislation backs up these strong inspectors' powers with offences for failing to comply with requirements without lawful excuse or for wilful delay or obstruction. The strongest penalties possible will be imposed in those circumstances. For corporations the penalty will be \$1.1 million and for individuals \$220,000.

Industry must know that compliance is not a choice. By amending the Act to provide for new inspectors' powers, much more thorough investigations will be able to be conducted. This will help to build sound evidence around offences and to develop effective cases when a prosecution is appropriate. It also will contribute to industry compliance. Currently, the Petroleum (Onshore) Act does not provide for offences for all acts of non-compliance. This issue is being rectified through amendments that bring the offence provisions of the Act into line with those of the Mining Act. New offences include failure to comply with requirements for royalty returns and failing to make a royalty payment. They also include failure to comply with audit provisions.

For the first time, strict liability offences will be introduced for providing false or misleading information or records. However, a person will have the defence of honest and reasonable mistake available to them. The bill also introduces continuing offences and penalties that are consistent with the Mining Act. This means that for each day a titleholder continues in breach, a further penalty amount is imposed. The bill goes further in introducing offence provisions. The Act is limited in its offence provisions for corporations. New provisions will be introduced for the assessment of directors' liabilities. The provisions will be consistent with the New South Wales Miscellaneous Act Amendment (Directors' Liability) Act 2011.

The amendments also include increases in penalties in line with those that apply under the Mining Act. Some penalties were increased in the 2012 amendments to the Petroleum (Onshore) Act and changes are not proposed for those. When a direction is not complied with, penalties will increase to a maximum of 10,000 penalty units, or \$1.1 million. This will be a powerful deterrent to non-compliance for any member of the petroleum industry. Strong penalties also will be imposed for the offences of failing to comply with requirements without lawful excuse or for wilful delay or obstruction of an inspector. For corporations, the penalty will be \$1.1 million and for individuals the penalty will be \$220,000.

The bill also extends the time for commencing proceedings for an offence under both the Mining Act and the Petroleum (Onshore) Act. This will be three years from the date of the offence or the date on which evidence of the alleged offence came to the attention of an officer. In the case of indictable offences, there will continue to be no time limit for the commencement of proceedings. In addition to the new offences, the amendments also expand the range of orders that a court can make when proceedings are on foot or an offence is proved. So far I have focused on the amendments in the bill to improve industry compliance with regulatory requirements.

The bill contains a proposal for a different sort of suspension from that which I discussed earlier. Currently, at a titleholder's request, the Minister can suspend conditions of a title for up to six months. The Minister also can be asked to vary a work program under a title. Industry has requested greater flexibility regarding work program obligations to allow for time to deal with community and landholder access issues. To meet this need the bill proposes that the Minister has the power to suspend a condition of title, at the titleholder's request, for longer than six months.

**The Hon. Jeremy Buckingham:** Longer than six months now. That is new.

**The Hon. DUNCAN GAY:** This bill is just one aspect of the work being done by this Government to build community confidence and provide certainty for industry. Not only do we expect industry to operate in accordance with best practice, we also expect that the industry is regulated in accordance with best practice. To achieve this, NSW Trade and Investment is building a clearer and more robust compliance and enforcement practice to fully implement the bill's provisions. This task involves a complete overhaul and modernisation of the department's compliance and enforcement policies, processes and procedures. The amendments in the bill provide for a much stronger regulatory framework for the petroleum industry in New South Wales. When interested people understand the clarifications and changes that have been incorporated, it is hoped that they will realise that this is a good outcome.

**The Hon. Jeremy Buckingham:** It is a shocking outcome and you know it. This is an old speech. You should have got the new and amended version.

**DEPUTY-PRESIDENT (The Hon. Trevor Khan):** Order! If the Hon. Jeremy Buckingham continues to interject he will be called to order.

**The Hon. DUNCAN GAY:** It is a package of many measures that largely reflect the wishes of landholders to have a greater say. In totality, this is a win for landholders. They will have clearer and more effective protections than exist now. It is far better to move on these now, together with a code, than wait for the proposed review of the Act, which may not see further change before 2015. The amendments will contribute to sound environmental management and ensure appropriate compliance and enforcement measures are available. They will help balance the rights of landholders and titleholders. They strongly support this State's claim that it has the most rigorous industry requirements in the country for petroleum activities. To give all stakeholders a chance to consider these amendments, debate on this bill will be adjourned until a later date. I commend the bill to the House.

**Debate adjourned on motion by the Hon. Lynda Voltz and set down as an order of the day for a future day.**

## **CASINO CONTROL AMENDMENT (BARANGAROO RESTRICTED GAMING FACILITY) BILL 2013**

### **Second Reading**

**The Hon. MICHAEL GALLACHER** (Minister for Police and Emergency Services, Minister for the Hunter, and Vice-President of the Executive Council) [9.43 p.m.]: I move:

That this bill be now read a second time.

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

### **Leave granted.**

In October 2012 the Government announced that it received an unsolicited proposal from Crown Limited to develop a unique six star hotel with VIP gaming facilities to be located at Barangaroo South.

In accordance with the unsolicited proposal process and following rigorous independent analysis the Government has agreed to accept the proposal from Crown Limited.

This bill introduces the necessary legislation to enable the Independent Liquor and Gaming Authority to grant a restricted gaming licence at Barangaroo South.

The bill provides that the Barangaroo restricted gaming facility will be situated on the site identified in the map tabled by or on behalf of the Minister in the Legislative Assembly on the day the bill is introduced. I hereby table that map.

Additionally, the bill requires that a restricted gaming licence if issued must contain certain conditions. The bill will also allow the responsible Minister to issue directions to the authority in relation to the terms and conditions of a restricted gaming licence.

For the benefit of the House and for additional transparency, I lay before the House proposed draft ministerial directions that, subject to the passage of this bill, I intend to issue to the Independent Liquor and Gaming Authority.

### **Investment**

The proposed Crown Sydney Hotel Resort will be a world-class tourist offering helping Sydney compete with other global destinations and become a landmark attraction for millions of international and domestic visitors.

It is estimated that the construction phase of the project will employ approximately 1,300 people. The proposed project costs spread over the construction period of 2014 to 2018 will be approximately \$1.3 billion.

Following the commencement of operations, the proposed Crown Sydney Hotel Resort facility will employ approximately 1,250 people and by 2025 is estimated to contribute an additional \$442 million in 2012 values per annum net impact on the gross State product.

As the first six star-rated resort in New South Wales, the Crown Sydney Hotel Resort will be instrumental in attracting tourists from around the world to Sydney, especially those from the growing Asia-Pacific region.

In 2013 there were nearly 2.9 million overnight international visitors to New South Wales, which is approximately 51 per cent of all international visits to Australia. This was worth a total of \$6.5 billion to the New South Wales economy. This Government is committed to achieving its ambitious target to double overnight visitor expenditure by 2020.

The proposal put forward by Crown will assist in achieving key action items outlined in the independent Visitor Economy Taskforce report. This includes delivering additional accommodation capacity in Sydney and addressing the skills and labour shortage in the tourism industry.

The development of Barangaroo, including the addition of the proposed Sydney Crown Hotel Resort, presents a unique opportunity to attract a higher percentage of these visitors, providing a direct economic benefit to the people of New South Wales.

### **Barangaroo Restricted Gaming Facility**

The bill proposes the minimum necessary amendments to the existing Casino Control Act 1992 by creating a special type of restricted gaming licence. Only one such licence may be issued by the Independent Liquor and Gaming Authority [ILGA] and it must be located in Barangaroo South with a maximum area of 20,000 square metres.

The restricted gaming licence is set apart from the existing casino licence because gaming cannot commence before 15 November 2019, poker machines cannot be played in the Barangaroo restricted gaming facility, minimum bet limits must apply to all games, and only members and guests may participate.

### **Up-front Fee and Duty**

The New South Wales Government will receive a \$100 million up-front fee in the event the authority grants a restricted gaming facility licence.

Crown Limited has also guaranteed that over the first 15 years of full operation New South Wales will receive from the Crown Sydney Hotel Resort at least \$1 billion in gaming taxes, including the \$100 million licence fee, from the operation of its gaming facility.

### **Minimum Bet Limits**

The Barangaroo restricted gaming facility, the Crown Sydney Hotel Resort, will be required to have minimum bet limits for all games. The minimum bet limits will be commensurate with those expected of a VIP facility.

The bill sets these limits at \$30 for baccarat, \$20 for blackjack and \$25 for roulette and also allows the authority, in accordance with the process contained in the licence, to determine higher limits.

For other types of games not specified in the bill the authority can approve appropriate limits in accordance with the process contained in the licence, taking into consideration the type of game and the limits in place at other VIP facilities.

The bill requires that the authority publish any decision made in relation to minimum bet limits on its website.

### **No Poker Machines**

The bill prohibits the Barangaroo restricted gaming facility from operating poker machines. The bill also amends the Gaming Machines Act 2001 to include a provision that would prevent the authority from authorising poker machines or any other gaming machine elsewhere in the hotel facility. For example, if a hotel licence was issued under the Liquor Act 2007 anywhere in the remaining 80 per cent of the building's floor plan, the authority would be prevented from authorising gaming machines in that hotel.

The Productivity Commission has recently reviewed the social and economic impacts of gambling in Australia and concluded that less than 1 per cent of Australians—between 80,000 and 160,000 adults—suffers significant problems from gambling. In New South Wales the prevalence rate is 0.8 per cent. This rate is among the lowest in Australia.

Most of the harm from problem gambling comes from poker machines, which will not be permitted on the new premises.

Crown Limited has made a commitment to provide responsible gaming support services at the Crown Sydney Hotel Resort. This commitment will form a condition of the proposed restricted gaming licence and Crown Limited has signed a memorandum of understanding with Mission Australia in relation to these services.

The tax rate for the Barangaroo restricted gaming facility also includes a 2 per cent contribution to the Responsible Gambling Fund. The Responsible Gambling Fund provides grants to counselling and support services throughout New South Wales as well as the 24-hour, seven-day a week gambling helpline service.

Gambling Help services operate at more than 200 locations across the State providing free confidential and effective counselling and support to problem gamblers and their families.

In the 2012-13 State budget, funding to problem gambling counselling and support services was increased to a record \$10.6 million and in 2013-14, the first year of the new funding round, funding increased to \$10.7 million.

Over the four years of the new funding round 2013-14 to 2016-17, the New South Wales Government has committed to spend up to \$48 million supporting the delivery of these important services.

Despite the record funding provided in the latest funding round, the additional tax stream from the proposed Crown Sydney Hotel Resort will provide a greater pool of funding for future services, enabling the fund to provide an increased level of service across New South Wales.

#### **Gaming Limited to Members and Guests**

The bill requires that the operator of the Barangaroo restricted gaming facility only allow gaming to be conducted by members of the facility, members' guests or guests of management in accordance with the conditions that will be set out in the restricted gaming licence.

Any licence granted will include a condition that ensures that the authority will be able to conduct audits and ensure that the requirements for the membership and guest policies are being met.

In relation to New South Wales residents who may wish to participate in gaming at the facility and who cannot demonstrate that they have VIP membership status at other similar casinos, there will be a minimum 24-hour cooling-off period before their application for membership can be approved in accordance with the membership policy.

The operator must also review a person's membership at least annually to ensure that that person's membership continues to meet the requirements.

#### **Smoking**

The bill exempts the Barangaroo restricted gaming facility from the Smoke-free Environment Act 2000 for the gaming areas only. This puts the facility on similar footing with The Star, which also permits smoking in specific areas of the VIP rooms at the casino.

However, the bill requires the authority to impose conditions in the restricted gaming licence that the operator of the facility must install international best practice air quality equipment and that the operator must appoint an independent expert to test the equipment quarterly. The independent person must report annually to the Minister for Health on the results of those tests. The Minister for Health must table each annual report as soon as practicable in both Houses of Parliament.

Additionally, it is to be a further condition of the licence that the operator will also be required to provide copies of the quarterly reports to nominated health and safety representatives of employees.

Every 10 years an independent expert must be engaged to provide a review and advice on whether the air quality technology should be upgraded to ensure that it remains equal to international best practice. Where required, upgrades must be implemented.

#### **Conclusion**

In summary, the proposed amendments to the Act will facilitate the introduction of a high-quality tourist resort in the Barangaroo district, combining world-class accommodation and tourist activities with a highly regulated members-only gaming facility.

I commend the bill to the House. I seek leave to table the Barangaroo restricted gaming facility site map as a requirement under the bill.

**Leave granted.**

**Document tabled.**

I seek leave to table the draft "Ministerial Directions and VIP Gaming Licence under Section 5 of the Casino control Act 1992", proposed to be issued to the Independent Liquor and Gaming Authority in the interests of transparency and for the benefit of the House.

**Leave granted.**

**Document tabled.**

**The Hon. STEVE WHAN** [9.44 p.m.]: The Opposition supports the Casino Control Amendment (Barangaroo Restricted Gaming Facility) Bill 2013. Barangaroo will eventually become another iconic Sydney location. As a result of Labor's Barangaroo initiatives, a stark expanse of concrete wharf will be transformed into parklands, bays and headlands available for everyone to enjoy. It will be a thriving new part of Sydney that

will attract residents, tourists and businesses. Labor is very proud of its history in creating iconic sections of Sydney, even though those projects often have been accompanied by criticism and controversy. The recent anniversary of the Sydney Opera House reminded us of the vitriolic criticism by conservative politicians and some members of the public to the building that is now Sydney's symbol. The Wran Government heard similar, if shorter term, criticism of its Darling Harbour project. I take the view that Sydney's new developments should not just be bland structures; they should take their place with pride and they should show off our city as a vibrant and innovative place.

**The Hon. Dr Peter Phelps:** Isn't your city the city of Queanbeyan?

**The Hon. STEVE WHAN:** Our State capital city, for those opposite who might be confused. We probably will not get a Barangaroo in Queanbeyan. The member might not have noticed but Queanbeyan does not have a sea adjacent.

**DEPUTY-PRESIDENT (The Hon. Trevor Khan):** Order! The Hon. Steve Whan will not respond to interjections.

**The Hon. STEVE WHAN:** Barangaroo has a chance to play a major part in the life of Sydney and New South Wales residents, but it will also play a part in putting Sydney back on top of the list as a destination for international tourists. Labor has always seen a major international hotel in an iconic and striking building as a key part of Barangaroo. A key part of the project was getting that iconic international hotel building in a prominent position on the site. That has governed much of Labor's thinking on this bill and on the project overall. As members should be aware, Lend Lease won the right to develop Barangaroo after an open public tender process.

As the developer, Lend Lease has control over the people it makes arrangements with to build a hotel on the site. Following the expressions of interest process that was advertised internationally—and I understand produced no interest—Lend Lease made an exclusive arrangement with Crown Limited. Crown Limited put forward a proposal that included a casino to help make the finances of the six-star hotel work. The proponent made it clear that without the casino the project would not proceed. Labor's objective in this has always been to get the quality of building and hotel that will do justice to the vision for Barangaroo. The casino is a means to that end. That is why we have not advocated an open tender for a second casino licence. We are not interested in a second or even a third or fourth casino somewhere else in Sydney because we would not get the development that was envisaged for Barangaroo.

When the proposal for this project was first put forward Labor outlined some concerns and asked that certain conditions be met before giving its support for the proposal. Initially in Labor's media release of 19 October 2012 those conditions stipulated that there must be no intrusion on public land at Barangaroo, that the State's policy of having only one casino licence until 2019 had to remain in place, and that there must be no poker machines, that is, it would be a high roller casino. Labor also demanded a fair return for the people of New South Wales and later a transparent public process. Altogether, Labor required five non-negotiable conditions in order to give support to the Government in this process. Since then Labor has closely monitored the process and has at times demanded more information from the Government and proponents.

The Government's announcement in the bill meets the criteria that Labor has set. This bill is followed by a casino licence, which we also need to scrutinise, as well as a development approval process. That has been assisted by the Government tabling the Minister's directions on this, which are the basis for the licence. Labor welcomes the very strong partnerships and agreements that Crown has reached with a number of community bodies. In particular, I highlight the strong role that United Voice, the union representing the people who will mostly work at this establishment, has played in the development of this project.

They are strongly supporting this proposal based on agreements that they have reached on employment, training and working conditions. Crown has also reached agreement with the National Centre of Indigenous Excellence at Redfern, with which it is a project partner. Crown will be establishing two training colleges to help young people move into rewarding hospitality industry jobs. As shadow Minister for Tourism and Major Events I know that this area of employment has huge potential to expand and to continue to provide rewarding careers for many people in our State. It is an area that is too often overlooked and even demeaned by people who want to attack projects like this. In fact, people can have fantastic careers in the hospitality industry which provides income for their families and which has a strong input into our economy.

There is no doubt that this project, including the casino, will play a major part in attracting tourists from Asia, including high-roller gamblers. The six-star hotel will also be a key element in the accommodation offerings for the redeveloped Darling Harbour Convention Centre. The Labor Party has taken a consistent position on Barangaroo and has made it clear that it would not agree to a proposal that alienated public land. We were disappointed that the O'Farrell Government insisted that the hotel be moved from what I thought was a stunning location on a pier projecting into the harbour to another site that reduced the amount of open space available to the public. Nevertheless, the current concept does meet Labor's requirements in terms of creating open space for the public to enjoy.

This project will create public parklands, open space and spectacular harbour-side locations. We must be absolutely clear that none of that would have happened if it were not for the Barangaroo concept and the financing that will be generated by development on the rest of the site. It is fantasy to suggest that constructing buildings on this site is alienating public space. Without buildings on the Barangaroo site we would have a stark concrete wharf that would be of no use to the people of New South Wales—unless we were to have another Catholic Youth Day. We could hold a big rally there, but that would not produce ongoing revenue for the people of New South Wales or jobs in the area.

I will deal in more detail with some of the conditions that I referred to earlier and some of the criticisms. I have heard The Greens' comments about this process, but many of them indicate that they do not accept reality. It is denying reality to suggest that we could have achieved an iconic building at Barangaroo by going out to public tender for a second casino licence for Sydney. Crown has an agreement with Lend Lease that gives it the right to develop the site. A public tender for a second casino licence in Sydney, if that is what we want, would simply allow one to be built in Macquarie Street rather than at Barangaroo. To say that this has not been the subject of an open process is to deny the fact that Lend Lease won the right to develop the site in an open tender process; it won the right to develop a six-star hotel on that land.

Not allowing governments to consider unsolicited proposals submitted by private companies to build projects in New South Wales would limit the State's ability to implement their ideas and to benefit from their investment. I encourage the Government to keep considering unsolicited proposals for projects that would benefit New South Wales because that is one way of harnessing people's ideas. Of course, due process should always be followed. As long as the process is open and transparent, that should satisfy the people of New South Wales that everything is fair.

We have heard criticism that this project will alienate public land. When the concept was originally proposed, Labor opposed it because the casino would be built in an area that was reserved as parkland. As a result of Labor's strong opposition to that proposal and discussions with the proponents, the development has been moved and the open space has been preserved. I have heard The Greens say that the gambling revenue that will be generated will be dirty money. The Greens have suggested that we should be embarrassed to use the money generated by gambling—particularly this gambling—to fund our schools and hospitals.

**Dr John Kaye:** I never said that and you know it. You have totally twisted my words.

**The Hon. STEVE WHAN:** The Greens spokesman is denying that, but he was on television saying it was dirty money.

**Dr John Kaye:** Point of order: The member is not telling the truth; that is not what I said. He is misleading the House.

**DEPUTY-PRESIDENT (The Hon. Trevor Khan):** Order! There is no point of order. The member will have the opportunity to contribute to the debate in due course. He should not do so by taking a point of order.

**The Hon. STEVE WHAN:** The Greens will have the opportunity to express their views on this bill, and no doubt they will. We will yet again hear the high and mighty pious comments that we have heard in the media and the accusations of dirty deals done by Labor and the rest of the crossbench, which the honourable member now seems to have forgotten. The Greens were reported in the media as suggesting that we should not be using this money to fund schools and hospitals.

**Dr John Kaye:** I never said that.

**The Hon. STEVE WHAN:** The member will have the chance to respond, and when he does so he can try to explain his position and the comments he made on the ABC news and ABC radio.

**The Hon. Lynda Voltz:** Point of order: It is impossible for the member to deliver his speech with the constant interjections from Dr John Kaye. I ask that the member be called to order.

**DEPUTY-PRESIDENT (The Hon. Trevor Khan):** Order! I note the point of order. Dr Kaye knows that he is coming close to being called to order.

**The Hon. STEVE WHAN:** I thank my colleague for her defence. Some people may disagree with gambling in principle, and I respect that position. However, gambling contributes \$1.9 billion to this State's budget. If The Greens believe that we should not collect gambling revenue then they should tell us where else we can find it. That is a hell of a lot of money and it funds services in New South Wales. The simple fact is that State governments in Australia do not have many choices when it comes to raising revenue. As members know, we are reliant on the Federal Government for tax revenue. We cannot simply click our fingers and replace the \$1.9 billion, and rising, that we are collecting in gaming revenue.

The Greens suggest that gaming revenue is somehow not worthy of collection in New South Wales. We could mount a very strong argument against collecting stamp duty, payroll tax and all the other taxes if we wanted a pure and simple tax system. Unfortunately, State governments do not have that luxury and gaming revenue is a key part of the revenue mix for New South Wales. The gaming revenue generated by this project will be significant. In its first 15 years of operation, Crown has guaranteed a minimum annual revenue stream of about \$66 million for the Government. That is a very strong offer.

That would allow the Government to employ at least 700 teachers. It will make a significant contribution to services in New South Wales and it does not include the estimated flow-on from direct and indirect employment and increasing gross State product. The estimates produced by the Government assessment process include direct and indirect employment of between 2,300 and 3,300 people, an increase in gross State product of approximately \$638 million, an increase in export income of \$513 million, and up-front payments and revenue for the taxpayers of New South Wales.

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

**The House continued to sit.**

**The Hon. STEVE WHAN:** Contrary to what some have said, this project is not only about getting a casino for Sydney. The casino is part of a package that will include a six-star hotel which will be a major tourism asset and which will place Sydney on the map as a destination in South-East Asia. Singapore, Shanghai and Hong Kong are rapidly developing tourism and convention hot-spots, and they have more to offer to the high end of the market than Sydney does. The State cannot continue to rely on the natural beauty of Sydney Harbour and New South Wales' other natural attractions to maintain the State as a top tourist destination. We must keep working to ensure we maintain that position. When Labor envisaged the Barangaroo project the aim was to retain tourism numbers. Airport access remains an important issue and a decision must be made in the not too distant future about a second airport for Sydney. Other tourism options in the region must be considered in forward planning.

The Labor Party proposed a ban on poker machines, and that has been incorporated in the bill. This is a VIP gaming venue. I have visited casinos in Macau and Singapore to see what they are doing. Like the proposed casino at Barangaroo, the Singapore casino I visited operates a membership-based system. From the feedback I received it seems to be working very well. Those casinos are delivering benefits for their local communities. One of the things I liked about them is that they were not obvious; they were part of major developments and gambling was not shoved a person's face as they walked through the door. VIP gaming is a specialised area and the limits proposed in this legislation are consistent with those imposed on the Crown casino in Melbourne and in other VIP gaming facilities. I am satisfied that the provisions in the bill will ensure that those standards and limits are maintained in the long term.

Labor's second condition entailed a fair rate of return for New South Wales. I have spoken about licence fees and gaming tax revenues, and they seem to represent a fair return from this type of facility. I have also referred to the development not encroaching on land set aside for public use. The resort will be built on the

north-west corner of Barangaroo South in the Lend Lease commercial precinct and it will not encroach on Barangaroo Central. Public space comprises approximately 52 per cent of the site, which was noted in the approved concept plan. Mr Paul Keating has been a key part of this project and I take his opinion seriously. Mr Keating has had a strong influence on Labor's thinking in this area. He was a strong advocate for the coves and the naturalistic headland. He did not always have support for those elements, but it looks as though it will be a spectacular area. He was an advocate for the hotel being built over water, which I agree was a fantastic idea. Mr Keating has indicated that he believes that this proposal meets the open space planning requirements.

The bill locks in the exclusivity of Echo's licence until 2019. The terms of the gaming licence have been made public through the tabling of the Minister's directions in this place, which demonstrates the Government's commitment to an open process. The proponents of the Barangaroo project have entered into agreements with harm minimisation providers. They have signed a memorandum of understanding with Mission Australia to cover the provision of responsible gaming support services at the Crown Sydney Hotel Resort. That will enable that important work to be done and those services to be provided by Mission Australia from day one.

The fact that this is a high-roller casino means that it will attract a very different clientele from the clientele seen on the main gaming floor at The Star, and the design will reflect that difference. Those who have seen these facilities will know there are different levels of high-roller rooms. Some rooms operate with different minimum bets and different up-front amounts. That is an important part of Crown's offering and it demonstrates that it understands the market well. It is a market that will benefit Sydney if it can attract high-rollers and have them leave their money behind.

Importantly, Crown has agreed to provide indigenous employment programs. It has also made a commitment to establish training colleges in Penrith and Redfern. I will be proposing an amendment on behalf of the Opposition to lock those training commitments into the bill. All other commitments are locked in and an amendment should have been circulated to that effect earlier today. The training colleges in Penrith and Redfern are important because they will ensure that people are being trained for the hospitality industry generally. Those facilities will be located in parts of Sydney that need skills-based training facilities. Graduates will be able to enter the industry at the ground floor and pursue a rewarding career for life if they so choose. These facilities will provide a major boost to the tourism sector.

In conclusion I will return to the comments I made at the beginning of my contribution to this debate: Labor is proud of Barangaroo; it is a Labor project. It is proceeding now because, as it did in the 1950s with the Opera House and with Darling Harbour when the Wran Government was in power, Labor had a vision of something that would enhance Sydney for many years. It will be a wonderful, vibrant place that international guests and locals will want to visit. The Labor Party had a vision of a precinct design that would generate jobs, provide opportunities to live in the centre of Sydney and reduce commuting, which in itself is a good planning objective for many people. Most importantly, this area will become a place for recreation like Mrs Macquarie's Chair and Darling Harbour.

Thousands and thousands of Sydneysiders gather at those venues to enjoy themselves and this region will also become a magnet for international tourism. It will offer convention facilities and wonderful entertainment at Darling Harbour with links to The Star casino on the other side of the bay. It will attract international acclaim. Sydney must continue to project itself as the top tourism destination in South-East Asia if it wants to reap the benefits that are associated with people visiting the State. Unless we do, we will not be able to reap the benefits from those who visit our fabulous State. Once they are in Sydney we then can work on trying to make them visit other parts of our State. We need to acknowledge that for most international tourism Sydney is the first destination stop. We must maintain Sydney as the number-one stop to make sure tourists begin their journeys here and then see the rest of New South Wales. Labor endorses this bill and looks forward to seeing an iconic development at Barangaroo that makes us proud.

**Dr JOHN KAYE** [10.10 p.m.]: On behalf of The Greens, I indicate that we will strongly oppose the Casino Control Amendment (Barangaroo Restricted Gaming Facility) Bill 2013. We do so because this bill came to this House through an exceptionally unhealthy process. A rich and powerful gambling tycoon had every possible door opened for him to break a longstanding one-casino-only policy for New South Wales. The process was conducted behind closed doors with no public engagement and no opportunity for the public to influence the outcome or have any say over the future of gambling in New South Wales. We oppose this bill because it creates an exceptionally bad outcome. A second casino will be yet another flagship for high-stakes gambling;

yet another adverse role model for young people who are vulnerable to being captured into the web of dangerous gambling. This outcome will open the floodgates to money laundering. The dark side of casinos is the pressure it places on regulatory institutions and State governments. This is happening in a State that struggles to deal with the pressures of corruption.

We will be opposing this bill not just because of what it represents but because of what it does to New South Wales. From the public statements of the Opposition and the Christian Democratic Party I take it that this bill will be passed. The Greens will present some amendments to try to remove some of the rough edges. It is worth going back 20 months to February 2012 when James Packer, the chair of Crown Casino, floats the idea of a second casino for Sydney at Barangaroo. Instantly, Mr Barry O'Farrell, the Premier of New South Wales, jumps on board. I remember vividly the Sunday afternoon that occurred: I was on a kayak when I received a call from a newspaper asking for my response. I was shocked that Mr O'Farrell had immediately danced to the tune played by Mr Packer less than one year after an election at which breaking a two-decade consensus on one casino only in New South Wales had not been mentioned. Not a single mention was made of a second casino in Sydney. Not a single mention was made of the idea that Sydney would become the first city in Australia to have more than one casino.

**The Hon. Dr Peter Phelps:** It's not the first State. What about Tasmania? Oh, that's right, The Greens are in power in Tasmania, aren't they?

**Dr JOHN KAYE:** Mr President, I was cautioned, quite correctly, by the person in the chair when I interjected. I wonder whether I could be extended the same courtesy with respect to the Government Whip.

**The PRESIDENT:** Order! Dr John Kaye has the call.

**Dr JOHN KAYE:** On the same day Mr Packer floated the idea of a casino at Barangaroo—to make it absolutely clear with respect to the previous speaker's contribution—not a single mention was made of a casino at Barangaroo prior to that moment. Instantly, the Premier jumps on board with enthusiasm touting a supposed \$1 billion benefit, which has never been justified to the people of New South Wales. After February 2012 the O'Farrell Government opens up the unsolicited proposals process arguing that this was a unique proposal. It is extremely difficult for the people of New South Wales to understand why a second casino is a unique piece of intellectual property, why it is such a great idea and why it is a unique and special proposal that deserves to be treated as an unsolicited proposal. Indeed, in August 2012 the *Sydney Morning Herald* uncovered the watering down of the unsolicited proposals process to specifically allow Mr Packer's casino proposal to go through an uncontested assessment.

Changes were rushed through on 17 August, just one week after Mr Barry O'Farrell met with Mr James Packer to discuss the casino proposal. The Working with Government guidelines, an integral part of the unsolicited proposals process, had been watered down to remove the requirement to seek an independent evaluation. The proposal sailed through stage one. In stage two a rearguard action by Echo, the owners of The Star casino, forced Mr O'Farrell to open up the process to turn it from a one-horse race to a 1.5 horse race. It was an embarrassing moment for the O'Farrell Government where it was caught out saying it was a unique proposal when Echo suggested it had an equally valid proposal right next door. What was lost in the propaganda wars between Echo and Crown was space for the debate that there should not be an additional casino. The zero additional investment in casino case was never heard.

At no time throughout stage one or stage two was anyone under any illusion that the outcome was a done deal, locked up tight, not the least because of the conflicts of interest that surrounded the stage two proposal. Deloitte became the commercial adviser in the stage two proposal, but it also was part of a multinational network of accountancy companies, of which one was an auditor to one of James Packer's joint venture companies in Asia. Deloitte claims no conflict of interest because of the separating wall; nonetheless it is part of the same multinational company that on one hand was doing auditing functions for a James Packer Crown Casino joint venture in Asia while on the other hand was giving advice to the unsolicited proposals process. David Murray, the assessor for stage two, turns out to have hosted a Liberal Party fundraiser—demonstrating a preference for the Liberal Party. The people of New South Wales would question whether it would be likely for a man who had shown a preference for the Liberal Party to embarrass its Premier after Mr O'Farrell had nailed his colours to the wall supporting a second casino.

Most seriously in all of this is that no opportunity was provided for public input. The process did not hear, nor did it want to, what the community felt about a second casino. No opportunity and no information

about the process were provided until after each of the stages was completed. Nobody had any idea what was happening inside stage two; it was locked up tight until after Mr Murray had delivered his final-unappealable verdict—the very opposite of an open and accountable process. The Hon. Steve Whan referred to the process as open and accountable; I fail to see what aspect of this process could possibly be called open and accountable. Indeed, it is interesting to contrast this process to what happened in New York.

About the same time a proposal was promoted by Governor Andrew Cuomo that the five existing New York casinos be joined by between four and seven new casinos. The same arguments advanced by Governor Cuomo were used by Premier Barry O'Farrell: it was for jobs, money and revenue but by a very different process. It is telling to examine that process. Andrew Cuomo decided that a referendum and, hence, a public debate with public information was the best way to do it. That referendum was won by 57 per cent after the casino lobby and its astroturf organisations, including the pressure group New York Jobs Now, which, of course, is financed by the gambling industry, won the argument.

Nonetheless, New York had the argument about additional casinos; not so in New South Wales where the community is treated with complete and utter contempt. That had consequences for the veracity of the independent testing of propositions. For example, one of the propositions which has been advanced by both Labor and the Coalition is that without a second casino there would not be a high-end development of Barangaroo. The problem with that proposition is seen if you go to Crown's site and have a good look at the advice that Crown itself lodged as part of its stage two bid; it includes advice from Jones Lang LaSalle, the international real estate company. On page 3 of that advice, in appendix 1 (b), at section 1.5, Alternative Development Scenario for Barangaroo, Jones Lang LaSalle says:

In the absence of Crown Sydney, a 5-star (Australian standard) branded hotel is the alternative development scenario for Barangaroo given the attributes of the overall project, the harbour-side location and limited availability of alternative 5-star development sites in the Sydney CBD.

The development of a 5-star hotel at Barangaroo is likely to generate a low return on capital given the high construction cost and relatively low revenue per available room [RevPAR] environment which persists in Sydney.

This is a key point, which the Hon. Steve Whan would profit from listening to:

However, there are other factors which may support the construction of a 5-star hotel at Barangaroo, including current investor-operator appetite to gain a foothold in Sydney's luxury accommodation market, particularly from Asian owner-operator groups.

Despite the likelihood of low development returns, some investors may be willing to proceed with developing a 5-star hotel given that Sydney is widely regarded as the most strategically important location for first time entrants to Australia (investors and operators) and an essential requirement when establishing a presence in the Asia Pacific region.

The report goes on to say:

The very long hold periods ... of some Asian family companies and owner operator groups may further mitigate any immediate concerns regarding the likely low development returns with few opportunities to acquire established 5-star assets in Sydney with the benefit of vacant possession ...

Consequently, we expect that a 5-star (Australian standard) hotel development at Barangaroo may attract investment from offshore groups.

That is what is said by Jones Lang LaSalle, Crown's own real estate consultants. That is part of the bid. The bid said very clearly there were opportunities for a 5-star hotel. It is simply wrong to say a high-end luxury facility could not have been built there without a casino. There is no serious independent testing of the independent returns, and no serious independent testing of the downside consequences. This is not only a bad process; it was a done deal. It shut out the community, ignored the costs and consequences of another casino, and did not attempt to assess in any way what a casino would do to Sydney. It undermined, yet again, community confidence in New South Wales having a level playing field. It is the very opposite of openness and accountability. It is the very opposite of the basic concepts of how a good democracy should operate. It is a process that was twisted and turned to give one wealthy and very powerful gambling tycoon what he wanted. It is a measure of how little this Government has learnt from Labor's years and the corruption surrounding Labor's years in government.

**The Hon. Steve Whan:** That is disgraceful.

**The Hon. Sophie Cotsis:** How disgusting.

**Dr JOHN KAYE:** "How disgusting". Have you heard of a guy called Eddie Obeid? Have you heard of Ian Macdonald? Do not try to tell me there was not corruption during Labor's years. The outcome itself is

equally appalling. I want to talk briefly about corruption pressures that additional casinos place on jurisdictions—State jurisdictions. The United States has been through a casino building boom; and each and every State where there have been additional casinos has seen corruption pressures.

**The PRESIDENT:** Order! I apologise to the honourable member. If the Hon. Sophie Cotsis, the Hon. Steve Whan and the Hon. Dr Peter Phelps want to have a private conversation, they should do so outside the Chamber.

**Dr JOHN KAYE:** I quote just one example. In Alabama in 2010, 11 individuals, including four Alabama State senators, were indicted on corruption charges relating to influencing pro-gambling legislation:

Specifically, as charged in the indictment, Mr McGregor and Mr Gilley (who own gaming and racing interests) employed lobbyists, in a full-scale campaign to bribe and coerce State legislators and others into supporting pro-gambling legislation that they favoured ... they are charged with having offered huge sums of money and other benefits in exchange for the legislators' votes.

It is not just in Alabama; it is across all of the States where there are casinos, including Arizona, Louisiana, Nevada, Missouri, Pennsylvania, West Virginia, Indiana and in particular New Jersey. Each of those has had significant corruption problems. In fact, a study by Douglas Walker from the College of Charleston, in Charleston, South Carolina, found:

... evidence that predicted casino adoptions Granger cause—

That is to say, "statistically cause"—

corruption convictions. This finding is suggestive of a scenario of regulatory capture and may help explain why state-level gaming regulatory agencies have a history of softening gaming regulations after the introduction of casinos.

In a subsequent paper, Walker and a co-worker found:

... there are enormous rent seeking opportunities for public officials, and the potential for regulatory capture. The casino industry or sympathetic politicians push to ease the regulatory burden. In doing so, our empirical analysis suggests that there are some corrupt activities that occur in the process.

But there is not just the corruption of State officials. There is also the flow of money laundering into the State—money that comes out of corrupt purposes in other countries. People might say, "The Greens are being naive." I quote from the Australian Transaction Reports and Analysis Centre report entitled "Money laundering in Australia 2011":

Casino VIP rooms and high-stakes gambling ... offer exclusive access to high-stakes gaming tables to Australian and overseas players ... High-stakes gaming is vulnerable to abuse because it is common for players to gamble with large volumes of cash, the source and ultimate ownership of which may not be readily discernible.

The centre goes on to say that casino-based tourism and junkets are:

... recognised nationally and internationally as being potentially susceptible to money laundering. ... Common risks include people carrying large amounts of cash into or out of countries, junket operators moving large sums electronically between casinos or to other jurisdictions, and layers of obscurity around the source and ownership of money on junket tours—players may elect to have junket representatives purchase and cash-in casino chips ...

The centre concludes:

This can restrict the venue's ability to conduct effective customer due diligence on individual junket players.

And it is not just the Australian regulator who is identifying that. Testimony before the United States-China Economic and Security Review Commission at hearings in Macau and Hong Kong held on 27 June 2013 from A. G. Burnett, Chair of the Nevada State Gaming Control Board, linked the money laundering to organised crime. A cable from the United States Consular Office in Hong Kong to the United States State Department released on Wikileaks describes how the process works, stating the "phenomenal success" of the Macao casinos is based on "a formula that facilitates if not encourages money laundering". David Asher called Macau "a cesspool" of financial crimes, and went on to say gambling in Macau "has been accompanied by widespread corruption, organised crime and money laundering". That is what we are opening ourselves up to here in New South Wales.

**The Hon. Steve Whan:** We've already got a casino.

**Dr JOHN KAYE:** I take the interjection. The honourable member did not hear what I said before: the more casinos, the more corruption; the more high-roller rooms, the more pressure for money laundering. The final issue I wish to raise is the glamorising of gambling that high-end casinos will bring to New South Wales. This casino will be the flagship to high-stakes gambling. It will be telling young people that high-stakes gambling is glamorous: it is associated with high levels of wealth, it is associated with being surrounded by glamorous women in glamorous settings. It is going to be much more difficult to tell young Australians not to get caught in the web of self-destruction that gambling can become.

Imagine the opening night of the casino. High-stakes gamblers splashing money around will send this image. It is amazing that the churches have been absolutely silent on this. They spend any amount of time campaigning against same-sex marriage, which has no victims, but they struggle to raise a whimper when it comes to a proposal that will do real harm to young people in New South Wales. This is a casino that will inflict damage on young people; it will inflict damage on people who will work there. I will have more to say about the issue of smoking when some of the amendments come up for discussion. But I make the observation that this casino has not been debated by the people of New South Wales. It was not taken to the last election.

The process under which the unsolicited proposal was accepted was closed. No information was available before the decisions were made and there was no opportunity for public input. The decision was made behind closed doors by Liberal Party insiders with no opportunity for the people of New South Wales to express their concerns. In contrast to the process that was run by Andrew Cuomo in New York, if this legislation is approved this evening we will have reached a shameful stage in our democracy. The Greens oppose the legislation and will vote against it.

**The Hon. SOPHIE COTSIS** [10.29 p.m.]: Labor has a proud legacy of building the iconic sights around Sydney's harbour. Labor Governments conceived and started the Sydney Opera House and redeveloped Darling Harbour, King Street Wharf and a number of other areas. Labor is proud of the work it did in government to develop and approve plans for the creation of Barangaroo. We are proud to support this project as part of Labor's legacy. A key element of the Barangaroo project is the placement of an iconic hotel at the site. When one looks around the world at major tourist destinations, it is clear that iconic hotels play an instrumental role in attracting visitors. Dubai has the Burj Al Arab and Singapore has the Marina Bay Sands. There is simply no excuse for Sydney to fall behind when it has the best harbour in the world.

The world is increasingly mobile and the rise of Asia's middle class represents a golden opportunity for our State's tourism industry to get involved and encourage Asian tourists to visit Australia. If we are timid and fail to make investments that expand our tourism industry and attract new visitors, we will fall behind in the fierce competition for the global tourist dollar. This proposal meets Labor's vision for Barangaroo, Sydney Harbour and the future of the New South Wales tourism and hotel industry. However, Labor does not believe it should be waved through without rigorous scrutiny. I acknowledge the work of our shadow Minister Steve Whan and other Opposition members who have applied a rigorous regime. I understand they have spoken to the stakeholders about a number of points and have ensured that a rigorous and transparent process is in place.

I commend our shadow Minister for his work to promote jobs in the tourism industry. As members know, I spent many years working in the hospitality and services industry. I know firsthand the importance of overseas investment dollars. I worked at Sydney airport 20 years ago and, since that time, I have seen it undergo many changes. But our tourists also have changed. At that time tourists came from Japan and Korea. Now they also come from China. China is an important market for us. I have emphasised in this place and to community groups and others that it is important for us to engage and build relationships with Asia, particularly China. This could be done by learning its language and its culture. It is important to understand the Chinese market to build a business relationship.

I am excited about the new opportunities that this new resort presents for New South Wales, particularly Sydney, and those young people who wish to enter the hospitality and tourism industry. Whilst working in the hospitality and services industry a colleague and I worked with the union to change the perception of hospitality workers through their achieving better qualifications and skills. Hospitality workers need to be skilled up because it is an important profession and tourism is one of the fastest growing industries in Australia, particularly in Sydney.

One of my colleagues stated earlier that Labor's support for this project will be forthcoming only if the following conditions are met: First, there must be no intrusion onto public land at Barangaroo. Secondly, the

State's policy of having only one casino licence until 2019 must remain in place. Thirdly, there must be no poker machines. Fourthly, the people of New South Wales must receive a fair return from the casino. Fifthly, the public process for the approval of the project must be transparent. The Opposition has closely monitored the developments. It has engaged with affected stakeholders and sorted out a diverse range of views. The Opposition is satisfied that the process surrounding the project meets the conditions that it has set.

Under this bill gaming will not be authorised until November 2019. Minimum bet limits will apply; poker machines will not be lawful in the gaming facility; Keno games cannot be approved for the gaming facility; and only members and guests may participate in gaming. I note that the bill provides that smoking will be permitted only on the basis that international best practice standards apply for air quality equipment that is installed and that it be maintained with regular testing and repairs. I recognise that this is an important condition so that hospitality workers can work in a healthy workplace. These provisions concerning smoking exemptions will be consistent with the proposed Crown venue and the existing Star casino.

I commend all those involved—the proponents and Crown—for the work they have done, especially their efforts to reach out to the community. One of the partners of the project is the National Centre of Indigenous Excellence in Redfern. I reiterate that this partnership will be important, particularly for young Indigenous workers who will have a fantastic opportunity to work at this facility, whether they are chefs or work in other parts of the casino. I also commend the Penrith Panthers, Mission Australia, South Sydney Rabbitohs, the Australian Rugby League Commission and the relevant unions for their involvement.

A couple of days ago Crown Resorts Limited proposed a \$60 million philanthropic fund for the arts in New South Wales. The fund will be divided as follows: Firstly, \$30 million will come from Crown Resorts Limited as part of its corporate social responsibility and the additional \$30 million will be privately donated by the Packer family. This is an enormous contribution to arts and culture funding. I have had a number of phone calls from smaller theatre groups who are keen to put in their applications so I am steering them in the right direction to ensure that they apply through the proper process. This is a fantastic opportunity for Sydney. There will be thousands of workers at the hotel and Barangaroo when it is complete.

I have a concern, which I have raised in the Parliament and when I have spoken to housing tenants at Millers Point and Dawes Point, about affordable housing and low-cost rental accommodation for those workers. Not all of those workers will earn six-figure salaries. As we know, many hospitality workers travel from the Central Coast or Western Sydney to do their shifts during the week and at weekends. If we are to ensure that young people pursue a career in hospitality or tourism, it is important to maintain affordable housing around the city. I will pursue this concern and will report to the Parliament on what I propose.

The proposed Crown Sydney Hotel Resort is expected to contribute greatly to the New South Wales economy. In its first full year of operation, direct and indirect employment is estimated to increase by between 2,300 and 3,300, with 1,250 direct jobs after construction. Gross State product is estimated to increase by \$638 million. Export income is estimated to increase by \$513 million. Crown will make an up-front payment of \$100 million to the New South Wales Government upon the issue of the VIP gaming licence. Crown will also deliver a very significant increase in gaming tax revenue for New South Wales taxpayers. I understand the total of licence fees plus gaming taxes paid by Crown over the first 15 years of full operation must exceed \$1 billion.

As I mentioned about the partnership with the National Centre of Indigenous Excellence in Redfern, Crown was the first company to sign the Australian Employment Covenant in 2009. Crown has won numerous awards for its Indigenous employment programs. As project partners, the National Centre of Indigenous Excellence, United Voice, Souths Cares, Penrith Panthers Group and the Australian Rugby League Commission will work to deliver Indigenous employment programs for the hospitality areas of the resort, including pre-employment and traineeships with local schools. That is a fantastic initiative. I applaud Crown and its partners, because this is very important for young people, particularly young Indigenous people. The training colleges will be in Penrith and Redfern. Crown currently trains its own employees and operates a major in-house training college at Crown Melbourne.

It is intended that this model will be replicated in Sydney, with training colleges to be established in Penrith, at the Penrith Panthers proposed community centre, and in Redfern, at the National Centre of Indigenous Excellence. The training college in Penrith will allow Crown to provide long-term jobs and employment opportunities to the residents of the western suburbs and Blue Mountains. The college will work with local TAFEs and schools to provide an extensive apprenticeship and schools-based traineeship program.

I support these initiatives and will be monitoring these programs over the short to medium term. The second training college will be established at the National Centre of Indigenous Excellence in Redfern to train Indigenous Australians from the inner city and throughout New South Wales.

This is an exciting opportunity for tourism growth, despite what The Greens say. Sydney is an international city and Labor is pro-jobs, pro-growth, pro-investment and pro-tourism. There is a tough and rigorous process to many of these initiatives and projects, but we must have an eye to the future. We have to make sure that following generations have the opportunities for jobs and to get involved in new and emerging industries. That is why I am very excited about this project. There will be new ways of doing things and working with the emergence of new technology. Tourism and hospitality workers will have new ways of doing things, which is very exciting. I hope that the skills and qualifications young people learn are transferable to other sectors of the tourism and hospitality industry.

Crown Sydney Hotel Resort will provide a major boost to the State's tourism sector by helping New South Wales to become more competitive with domestic and international tourist destinations and to compete for major domestic and international events. It will assist New South Wales to attract a greater share of Asia's booming tourism market, attract high net worth tourists, increase visitor spend and provide a strategic addition to the stock of hotel accommodation in Sydney. These developments will complement what we are trying to do in promoting exhibitions and conventions.

Government members, including the Minister for Tourism, Major Events, Hospitality and Racing, understand the importance of Sydney as a key convention and exhibition destination. A few years after Darling Harbour opened and the exhibition halls were up and running I did a few shifts there when I worked for Spotless Catering. It was very exciting because it was the first time that we had had exhibitions in the middle of Sydney, such as a boat show and a car show. This resort will also offer a fantastic opportunity. Given the work done to satisfy the rigorous scrutiny that Labor has demanded of this project—and we will continue to monitor it—I am pleased to support it. I commend the bill to the House.

**Reverend the Hon. FRED NILE** [10.47 p.m.]: The Crown Control Amendment (Barangaroo Restricted Gaming Facility) Bill 2013 provides for the licensing and regulation of the Barangaroo restricted gaming facility to be located at Barangaroo South. What is this Crown resort? I have made some inquiries and am very impressed with the agreements signed with a number of Christian organisations to provide support through counselling and other provisions. One such organisation is the Salvation Army, which has signed a partnership agreement with Crown. The agreement commits Crown and its employees to work closely to improve the lives of homeless and disadvantaged Australians. The Salvation Army will be the first partnership of Crown Resorts Foundation, which has been set up to support a number of charitable organisations. As members know, the Salvation Army is one of Australia's most effective charitable organisations. The Salvation Army is excited by the new opportunities this agreement provides. Major Brendan Knottle, the Salvation Army representative, said:

We are very grateful to our loyal sponsors and value our longstanding partnership with Crown without whom our Night Watch program would not exist. We believe that together we can make a significant difference in the lives of those who find themselves in vulnerable and potentially critical situations.

Mission Australia, which grew out of city missions established in New South Wales more than 100 years ago, has also agreed to become a project partner with Crown in building the Crown Sydney Hotel Resort. The memorandum of understanding signed by Crown and Mission Australia outlines their commitment to working together to provide responsible gaming support services at the proposed Crown Sydney Hotel Resort in line with its existing resorts in Melbourne and Perth. The memorandum of understanding also seeks to establish a program for Crown employees to contribute, volunteer and assist their local community through participation in suitable Mission Australia programs.

Unions in New South Wales have also been engaged in lengthy discussions with Crown Resorts. In particular, United Voice NSW has signed a memorandum of understanding with Crown Resorts because its members will be working at the Crown Sydney Hotel Resort. As a project partner Crown will consult and work with United Voice NSW to deliver the project and develop workforce planning and training. Crown Resorts has learnt how to operate luxury facilities such as Crown Sydney Hotel Resort and to deliver six-star service and a happy and harmonious workforce. Crown's positive relationship with its employees and unions over the years has been critical to its success and a crucial part of its corporate strategy.

As members well know, the New South Wales Government has entered into a binding agreement with Crown Resorts Limited to develop a VIP-restricted gaming facility at Barangaroo, following the completion of

negotiations under stage 3 of the unsolicited proposals policy. The independent assessment committee found that the Crown project would result in an estimated 1,250 additional jobs after construction, increased international tourism and an increase in gross State product of \$442 million per annum by 2025. Pleasingly, the bill specifies that gaming at the facility may not commence before 15 November 2019, the playing of poker machines is not lawful at the facility, and only members and guests may participate in gaming at the card tables.

The bill also provides that smoking will be permitted at the Barangaroo restricted gaming facility provided that international best practice standard air quality equipment is installed, which is to be regularly inspected and maintained to ensure that the health of employees is not impacted. An air curtain will separate the patron playing at the card table from the employee in charge of the game. I wanted to understand, for instance, the effect of the gaming tables, the poker machines being banned and the smoking situation at Barangaroo so I inspected the Crown Resort Melbourne. In fact, my associate Paul and I travelled separately to Melbourne. We met with Mr Packer and Crown Resorts management in order to be fully informed as to exactly what they had in mind.

As other members have said, the original plan was for the Crown Sydney Hotel Resort to be built over the water. This would have made it a significant tourist attraction. However, the resort will be built on the available land at Barangaroo because of the community backlash. This will cause crowding of the facilities already there. The Christian Democratic Party was also concerned that persons with a gambling addiction should get Christian counselling. That is why we are pleased that Crown Resorts has made this agreement with both the Salvation Army and Mission Australia. An essential part of this legislation is the ban on poker machines. There will be only card games, which I understand Asian gamblers prefer. We already have hundreds of casinos in New South Wales.

The public should understand that the number of poker machines in the clubs and hotels in this State make them mini casinos—some clubs have as many as 1,500 poker machines. In order to be classified as a casino a resort must have poker machines. There will be no poker machines at the Crown Sydney Hotel Resort. As I have said, there will be gaming tables. That is why the Crown Sydney Hotel Resort is termed a restricted gaming facility. The Christian Democratic Party is pleased that the legislation has a total prohibition on poker machines. But that prohibition needs to be watertight so that there can be no suggestion of a change to the legislation in the future if Crown Resorts finds itself in financial trouble and needs to increase its income. The memorandum of understanding between Mission Australia and Crown Resorts is very detailed. I will briefly refer to it.

Mission Australia is a leading charity and community service organisation, having helped change the lives of individuals and families in need for almost 150 years. Crown Resorts Limited has proposed the development of a world-class, six-star hotel at Barangaroo South in Sydney. Crown intends to engage Mission Australia to provide responsible gaming support services for the Crown Sydney Hotel Resort and also to provide other support services for Crown at its existing resorts in Melbourne and Perth. Following the signing of the memorandum of understanding, Crown and Mission Australia will work together to agree on the detail of the responsible gaming support services to be provided at the Crown Sydney Hotel Resort. Some of those services will be delivered by Mission Australia and others will be delivered by Crown with guidance from Mission Australia. It is envisaged that, once agreed, the services will be the subject of a formal services agreement to commence operation at or prior to the commencement of operations of the proposed Crown Sydney Hotel Resort. Paragraph 4 of the memorandum of understanding states:

Responsible gaming support services currently proposed to be provided at Crown Sydney Hotel Resort include the following:

- responsible gaming, training and education for Crown employees;
- provision of a 24/7, multi-lingual responsible gaming counselling service;
- conduct of a self-exclusion program;
- the creation of dedicated responsible gaming roles at the Crown Sydney Hotel Resort for staff trained and experienced in Crown's responsible gaming programs and services and having experience in VIP gaming facilities, who will ensure 24/7 coverage of the entirety of the VIP gaming facilities at the Crown Sydney Hotel Resort;
- access to a variety of responsible gaming and related information available in selected languages aligned to those of the customers of the Crown Sydney Hotel Resort;
- a Responsible Gambling Code of Conduct to which Crown and its staff at the Crown Sydney Hotel Resort would commit and adhere; and
- the conduct of an employee assistance program.

Paragraph 5 states:

Further, Crown and MA will also work together to agree other services which MA will provide to Crown for Crown's existing resorts in Melbourne and Perth. It is envisaged that, once agreed, those services will be the subject of a formal services agreement, to commence operation immediately.

Paragraph 6 states:

The other support services currently proposed to be provided at Crown's Melbourne and Perth resorts include the following ...

As they are not relevant I will not go through them in detail. Paragraph 7 states:

All services will be provided at no cost to the end users.

Paragraph 8 states:

This MOU will continue for a period of two years or until the services agreements are finalised and signed, whichever is the earlier. However, either party may terminate this MOU immediately in the event that Crown notifies MA that the Crown Sydney Hotel Resort will not proceed.

That is a signed and sealed agreement between Mission Australia and Crown Resorts under the name of Crown Limited. Because of our concern about the impact of gambling in New South Wales we have spoken to the Premier, who has given an in-principle agreement to conducting an inquiry into the social impact of gambling and related matters. I am anxious that a committee be established, and we have drafted terms of reference for the inquiry as follows:

That the [committee] inquire into and report on the negative social impact of gambling on individuals and families in NSW, and in particular:

- (1) The adequacy and effectiveness of public health measures to reduce risk across the spectrum of gambling harm, including:

**The PRESIDENT:** Order! Members will maintain the civility requested of them by various occupants of the chair throughout the evening. Reverend the Hon. Fred Nile will be heard in silence.

**Reverend the Hon. FRED NILE:** I repeat:

- (1) The adequacy and effectiveness of public health measures to reduce risk across the spectrum of gambling harm, including:
  - (a) design and accessibility of electronic gaming machines and other forms of gambling and the assessment of new and emerging gambling products and services;
  - (b) regulation of the number and location of electronic gaming machines and the availability of high intensity machines;
  - (c) pre-commitment technology, bet limits, prize limits, and age restrictions;
  - (d) access to cash and credit in and around gambling venues, and the form and delivery of cash prizes;
  - (e) training and actions of gambling industry staff to curb problems caused by gambling;
  - (f) regulation of telephone and internet gambling services in Australia and overseas;
  - (g) regulation of gambling advertising;
  - (h) provision of warning measures and education including school-based programs, and measures to reduce the exposure of children and young people to gambling activity.
- (2) The adequacy and effectiveness of problem gambling help services and programs, including service standards, qualifications of counsellors, and funding.
- (3) The need for a better evidence base to respond to public health issues, including the effectiveness of prevention, early intervention strategies, chaplaincy services, counselling and treatment services, allocation of public funds to particular services, and as a basis for future policy direction.
- (4) The social impact of exemptions and exceptions to state and federal laws and policies relating to gambling industries.
- (5) The effectiveness of strategies and models for consumer protection and responses to problem gambling in other jurisdictions in Australia and overseas.

We invite the Government, the Opposition and The Greens to support the establishment of that inquiry. It is important that we have a thorough investigation. I know that a Government task force is looking into some of those issues but that is not adequate; an independent efficient and effective inquiry must be conducted by the upper House. They are some of the propositions that we want to put before the House and the Government, and we hope that all members will support the inquiry. We will continue to investigate the whole project before we formulate our final response.

**Mr DAVID SHOEBRIDGE** [11.05 p.m.]: I support the contribution made by Dr John Kaye on behalf of The Greens in opposing the Casino Control Amendment (Barangaroo Restricted Gaming Facility) Bill 2013, a bill whose sole purpose is to build a fresh casino in New South Wales and to give one of the most senior mates in Australian business and political circles, Mr Packer, access to prime public real estate on the edge of Sydney Harbour solely for the purpose of building a casino. I have watched this debate up close and seen the way that every other party in this Parliament has sold its principles—to the extent that the Coalition came to this issue with principles, which is questionable. The parties have at least asserted that they have a principled position in relation to gambling, particularly the Christian Democratic Party, whose representatives have said time and time again in this House that they strongly oppose gambling, the expansion of poker machines and the opening of gambling outlets. But we have just heard Reverend the Hon. Fred Nile indicate that he supports this casino at Barangaroo. It has been genuinely revolting to see this debate up close.

This bill has only one purpose: to ensure that some prime public land on the harbour at Barangaroo is handed over to a casino for a billionaire. That is an appalling outcome. Barangaroo is 22 hectares of public land. It is an extraordinary opportunity for Sydney to provide development broadly in the public interest. It is an opportunity to provide parklands for recreational purposes and for a genuine connection between the western part of the central business district and the harbour. Now the principal development on that site will be a casino run by James Packer. It is extraordinary. How did we reach this point where the building footprint on Barangaroo just grows and grows and the public parkland shrinks and shrinks? The original winning design has been whittled back time and time again, and each time we have seen the public losing out and the developers benefiting from larger and larger floor space ratios.

How has this happened? It has happened because Barangaroo is continuing under Labor's old, corrupted part 3A laws. We do not hear so much as a whisper about it from the Minister for Planning and Infrastructure. We do not hear so much as a whisper about it from the Premier. The only reason the plans can continue to be amended with minimal community input and the only reason we see this appalling proposal to develop this carbuncle of a casino smack bang in the middle of this 22 hectares of public land is that, parallel to the grossly corrupted process which has seen the Casino Control Amendment (Barangaroo Restricted Gaming Facility) Bill 2013 brought into this House, we have had the corrupted planning process of part 3A. These two grubby parts of New South Wales politics have come together to ensure that the public interest is sold out in Barangaroo.

There are so many elements of this bill that are offensive that it almost seems as though we should not pull out particular elements to emphasise. But I would have to say that the new section 89A, which provides that the Smoke-free Environment Act 2000 does not apply to or in respect of the Barangaroo restricted gaming facility, highlights just how little regard this Government has for the public interest. Far from the proposition that Reverend the Hon. Fred Nile was putting, that there will be a small part of the high roller room where smoking will be allowed, this bill allows smoking over the entire facility from the ground floor all the way through. The bill says:

The Smoke-free Environment Act 2000 does not apply to or in respect of the Barangaroo restricted gaming facility on and from 15 November 2019.

What is the Barangaroo restricted gaming facility? Let us go to the definition. In clause 2 of the bill, which inserts new section 3 into the Act, it says:

**Barangaroo restricted gaming facility** means premises:

- (a) situated or proposed to be situated on that part of Barangaroo (within the meaning of the Barangaroo Delivery Authority Act 2009) identified as the site of the Barangaroo restricted gaming facility on the Barangaroo Restricted Gaming Facility Site Map ...

So it is the whole of the facility. It goes on to say:

- (b) defined for the time being under section 19A.

I turn now to new section 19A. I have heard an array of uninformed interjections saying that this applies only to the high rollers room.

**The PRESIDENT:** Order! If the honourable member wishes to respond to interjections then I will allow them, but I am trying my very best to stop them. I would advise the honourable member to plough on.

**Mr DAVID SHOEBRIDGE:** The boundaries of the Barangaroo restricted gaming facility are set out in new section 19A, which says:

- (1) The boundaries of the Barangaroo restricted gaming facility are to be defined initially by being specified in the restricted gaming licence for the facility.
- (2) The boundaries of the Barangaroo restricted gaming facility may be redefined by the Authority ...

So what do we know? We know that the Barangaroo restricted gaming facility is the whole of the premises. That is the effect of new section 89A. Of course those supporting the bill are not interested in actually looking into it and critiquing it. I understand that my colleague Dr John Kaye will move some amendments to ensure the stated intent of that new section, which is to limit those carcinogens to the high roller gaming room. Even if it were limited to that, the sad truth of the matter is that workers in that facility will be exposed to known carcinogens and a very elevated risk of getting cancer all in order to give Kerry Packer's son some additional profits for his casino. It is truly revolting to see the Labor Party supporting legislation that will expose workers to known carcinogens just to fatten up the profits of a billionaire gaming operator.

**The PRESIDENT:** Order! The Hon. Steve Whan and the Hon. Sophie Cotsis have had their opportunity to speak in the debate on this bill. They were heard in silence and they should extend that same courtesy to other speakers in this debate.

**Mr DAVID SHOEBRIDGE:** The idea of the air curtain somehow saving workers has been proven to be untrue. To mention just one technical study, in the summer of 2005 the American Society of Heating, Refrigerating and Air-Conditioning Engineers provided a technical report entitled, "Controlling Tobacco Smoke Pollution". It looked at whether or not ventilation technology such as air curtains can ever be used to remove the risk of second-hand tobacco smoke. The report said:

The conclusion is that ventilation technology cannot possibly achieve acceptable indoor air quality in the presence of smoking, leaving smoking bans as the only alternative.

That has been ignored. The best technical advice has been ignored by those who are willing to expose working people to the risk of cancer in order to provide a more profitable casino to a billionaire gaming operator. This behaviour is genuinely disgraceful. As if that were not enough, we can also look at clause 28 of the bill, which proposes a new section 74 (5) of the Casino Control Act. The Casino Control Act section 74 prohibits the provision of credit at casino facilities for the obvious reason that if you allow people to go into debt at the premises to participate in additional gambling then you are making an appalling situation of gambling addiction even worse. We could see people face the prospect of losing their house with credit card advances and credit advances at the facility itself. There is a good public policy reason behind the prohibition of credit at casinos. But, ignoring all that good public policy, the new section 74 (5) reads:

- (5) Despite any other provision of this section, the holder of a restricted gaming licence—

Let us read there, Mr Packer—

may, in the case of a person who is not ordinarily resident in Australia, extend any form of credit to the person to enable the person to participate in:

- (a) a premium player arrangement, or—

And I do not know what that arrangement is. It is not clear from the bill and it does not appear to be defined in the bill.

- (b) a junket within the meaning of section 76 that is approved by the Authority.

It seems the rationale behind this is that somehow it is good public policy to allow people who are not ordinarily resident in Australia to beggar themselves through access to credit at the facility and that somehow it is more morally acceptable to allow people who are not ordinarily resident in Australia to access credit. But if they were ordinarily resident in Australia then somehow their moral scruples will say that that should not happen. There should be a blanket prohibition on the provision of credit at any casino facility. I am yet to see any argument put up by the Government as to why that restriction should be reduced in this way at the Barangaroo facility. This is an appalling bill that has come out of, as I think Dr John Kaye made clear in his contribution, a deeply corrupted process that at all times favoured Mr Packer's interests to get this casino built. When that is added to the fact that the building itself will be approved through Labor's corrupted part 3A we see the New South Wales public again being sold down the river by this Government, just as they were sold down the river for the 16 years of the Labor Government.

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [11.19 p.m.], in reply: I thank members for their contributions to debate on this bill. As previously said, the Government is pleased to introduce this bill to facilitate the introduction of a world-class tourist resort in the Barangaroo district. The Government has taken steps to restrict the proposed gaming operations to cater for predominantly international and interstate gaming tourists. The proposed facility differs from Star casino because it will not allow poker machines or low-level bets and will be a membership-only facility.

The development of the proposed resort at Barangaroo South presents a unique opportunity for the State, creating and supporting jobs in the construction industry during the initial construction phase, and in the hospitality industry upon completion. The proposed Crown Sydney Hotel Resort will also bring significant economic benefits to New South Wales through increased tourism and taxation revenue, and will become a vibrant centrepiece of the Barangaroo South precinct, creating a destination for residents and all types of tourists to enjoy in Sydney. I commend the bill to the House.

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

**The House divided.**

**Ayes, 27**

Mr Ajaka	Mr Gay	Mr Secord
Mr Borsak	Mr Khan	Ms Sharpe
Mr Brown	Mr Lynn	Mr Veitch
Mr Clarke	Mr MacDonald	Mr Whan
Mr Colless	Mrs Maclaren-Jones	Mr Wong
Ms Cotsis	Mr Mason-Cox	
Ms Cusack	Mr Moselmane	
Mr Donnelly	Mrs Pavey	<i>Tellers,</i>
Mr Foley	Mr Primrose	Dr Phelps
Miss Gardiner	Mr Searle	Ms Voltz

**Noes, 7**

Ms Barham  
Mr Buckingham  
Dr Faruqi  
Mr Green  
Mr Shoebridge  
*Tellers,*  
Dr Kaye  
Reverend Nile

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**Consideration in Committee set down as an order of the day for a later hour.**

**ADJOURNMENT**

**The Hon. DUNCAN GAY** (Minister for Roads and Ports) [11.29 p.m.]: I move:

That this House do now adjourn.

**PHILIPPINES TYPHOON DISASTER**

**The Hon. PAUL GREEN** [11.29 p.m.]: I dedicate this contribution to my daughter and her friend Eliza Becker, who came to the Parliament last week for work experience. They volunteered in my office and did

a great job putting this adjournment speech together. The recent typhoon in the Philippines has killed thousands of people and left thousands more injured, homeless and pleading for help. As members are aware, typhoons are tropical storms that occur in the north-western region of the Pacific Ocean and they are ranked in categories from one to five. This typhoon was listed as category five and its wake of destruction left no-one in doubt that it was the most severe type of tropical storm.

The recent Philippines typhoon, which was named Haiyan, was one of the strongest tropical cyclones to make landfall. Typhoon Haiyan was formed from an area of low pressure and on 8 November 2013, with wind speeds of up to 315 kilometres per hour, it devastated the Philippines. In less than 12 hours 11.10 inches of rain fell during the horrific storm. Approximately 11 million people were affected. Now people are becoming desperate and stories are emerging of armed robbers invading homes and taking food. Survivors who are desperate for food and medical supplies have ransacked aid convoys and gangs have been seen stealing consumer goods from small businesses. Governments and humanitarian groups are making every effort to get aid to the cities the typhoon ripped through. The United Nations has launched a \$300 million appeal that will go towards food, health, sanitation, shelter, and debris removal. ABC South-East Asia correspondent Zoe Daniel has described scenes of destruction. She said:

Even to walk down the road is extremely difficult. You're climbing over cars and buses that have been tossed by the wind and swept in by the storm surge.

There are still bodies littering the sides of the roads that have not been collected. People are sheltering under whatever they can find. There's a real sense of frustration among people because they don't have enough food, they don't have enough water.

The United States is sending aircraft carriers stocked with relief supplies and Britain is sending a navy warship with equipment to make drinking water from seawater. More than 2,000 Red Cross workers are in the Philippines to help people who have been affected, but demands on supplies are huge and there is fear that aid is not reaching the people who need it most. My daughter's friend has family in the Philippines whom they have been unable to contact. We can only imagine the suffering people are experiencing while they do not know if their families are okay. That is just one example of how people from countries outside the Philippines are affected and saddened by the tragic event. Our heartfelt prayers are with Eliza's family and all others who have been affected by Typhoon Haiyan.

Although there is nothing we could have done to stop the typhoon from occurring, we can help by donating money to relief organisations such as the Australian Red Cross, World Vision Australia and Oxfam Australia—just to name a few that are doing a fantastic job helping the suffering people of the Philippines. Tragedies like this will always occur in the world, but out of suffering and misery can flow great good, love, charity, aid and help. Our thoughts and prayers are with everyone who has been affected by Typhoon Haiyan. In conclusion, I thank my daughter Emma and her friend Eliza Becker for the contribution they made to my office last week and for writing this speech.

Last week in the House was tough in different ways, but I will remember for a lifetime the way in which my daughter responded to one of those situations. I thank the Nowra Christian School for its help in raising two fine students who are a credit to their school, to their communities and, most of all, to their families. I thank Dr Garry Gannell, the principal of Nowra Christian School, and his wife, Elizabeth, for the contribution they have made to the students and teachers. There is no doubt that Dr Gannell's leadership and mentorship will serve the students and teachers well into the future. He has left a great legacy through his teaching career.

### **CANNABIS USE FOR MEDICAL PURPOSES**

**Dr JOHN KAYE** [11.34 p.m.]: The Minister for Health, Jillian Skinner, has taken the politically expedient path of rejecting the unanimous findings of the upper House committee that the terminally ill be allowed to possess and use small quantities of crude cannabis. After an extensive inquiry, General Purpose Standing Committee No. 4 recommended in May that people dying from diseases such as cancer and end-stage HIV and their carers be exempted from prosecution for possession of a very small amount of crude cannabis. The committee reached that conclusion after taking extensive evidence, including from those who had benefited from the use of raw cannabis to deal with pain and nausea associated with HIV and cancer.

While just 15 grams of cannabis for a patient and 15 grams for the carer would hardly turn them into a two-person drug cartel, the evidence showed clear benefits for some who would otherwise have to go without or break the law. Even though the police and the conservative anti-cannabis professionals were predictably hostile, every member of the committee was persuaded that our duty was to focus on the possibility of providing some

relief for those who were nearing the end of their lives. The committee broadly represented the body of New South Wales politics: two Coalition members, including a conservative Liberal; two Labor members; one Shooters and Fishers Party member; and one member of The Greens. The unanimous finding gave hope that for once this State's decision-makers would do something unexpected and find the collective courage to confront the hysteria that surrounds any mention of cannabis.

Instead, the O'Farrell Government has taken the politically expedient path. The Minister's response, tabled last Friday, will leave thousands of terminally ill patients with the awful choice of either breaking the law or suffering unnecessary pain and nausea in the last few months of their lives. This is a victory for cannabis hysteria made possible by the O'Farrell Government's cowardly failure to stand up to it. The opportunity to help cancer sufferers cope in the last few months of their lives has been squandered by a government that was more concerned about avoiding a minor backlash from anti-cannabis fanatics. The upper House committee carefully confined its recommendations to people with terminal illness or end-stage HIV. Despite the committee targeting those with little time to live, health Minister Skinner rejected the findings, arguing that cannabis can be a harmful drug with a number of health impacts.

The Minister studiously ignored the reality that people who would be eligible for an exemption from prosecution for possessing small amounts of cannabis are dying. Long-term health impacts are irrelevant to those who have only a few months to live. The argument that allowing patients wracked with nausea and pain to access cannabis will somehow glamorise the drug is similarly absurd. The committee was mindful of so-called leakage issues. The proposed register of authorised cannabis patients and carers would divert cannabis out of the recreational market. If anything, the committee's recommendations would have reduced the amount of cannabis available for illegal users.

The committee did not go down the Californian pathway of cannabis dispensaries as a surrogate for decriminalisation. While there is much to be said for following the example of a growing number of jurisdictions around the world in moving cannabis out of the hands of organised crime, the committee was focused on the needs of the dying. The Minister's response also exploited the New South Wales Pain Management Plan 2012-2016 to distract attention from the need for a broader range of palliatives for the dying. The O'Farrell Government's pain initiatives are a welcome innovation, but they cannot be used as an excuse to abandon patients for whom conventional pain management is not working. Minister Skinner did accept the committee's recommendation to support pharmaceutical products manufactured from cannabis as a raw material.

No-one would stand in the way of codeine as a treatment for post-operative pain just because it is made from opium. Similarly, there is no credible argument against products like the sprays and tinctures that have no perceptible psychoactive effects. This aspect of the report is uncontroversial and required no political courage to act on. End-stage cancer patients and those whose HIV has transitioned to full AIDS are another set of victims of the war on drugs. Rationality takes a back seat when politicians are confronted with the need to stand up to radio shock jocks and to explain why they have taken the humane path. This was an opportunity for the O'Farrell Government, with the backing of all political groups in the Parliament, to take a stand for a humane outcome. It is a shame that the O'Farrell Government proved itself to be more focused on the opinion polls and talkback radio than on the needs of the terminally ill. The Greens will continue to advocate for sensible evidence-based drug law reforms. We will work to ensure that people suffering from illnesses such as cancer and AIDS are not denied access to essential palliatives such as medicinal cannabis.

### WINSTON CHURCHILL MEMORIAL TRUST FELLOWSHIP

**The Hon. MELINDA PAVEY** (Parliamentary Secretary) [11.39 p.m.]: The Winston Churchill Memorial Trust was established in 1965 after the death of Sir Winston Churchill. The trust was formed with the principal objective of perpetuating and honouring Sir Winston's memory by the awarding of memorial fellowships to be known as Churchill fellowships. The aim of the trust is to provide an opportunity for Australians to travel overseas to conduct research in their chosen field that is not readily done in Australia. One hundred and nine Australians were awarded Churchill fellowships for 2013. As the Parliamentary Secretary for Regional Health in New South Wales, I acknowledge that two of those recipients—David Hughes and Buck Reed—work for NSW Health in rural and regional New South Wales, and I have come to know and admire their work. We are extremely fortunate to have such dedicated, committed and enthusiastic healthcare professionals providing truly outstanding contributions to our regional communities.

David is a clinical nurse specialist who has been working in men's health for the past 10 years on the North Coast. I first met him two years ago at Casino Beef Week, where he was at the prostate cancer health

stand. He has a no-nonsense, practical approach to men's health and speaks a language that men understand and respect. His ability to connect with men has been the trademark of his success in developing and implementing target programs, such as Building Better Dads, for approximately 500 blokes on the North Coast and individually focused prostate cancer support and care coordination services to the community. Since 2004, David has been involved in direct service provision to men diagnosed with prostate cancer and their families, with more than 200 clients referred annually from the Northern New South Wales Local Health District. Because of the age of the population on the North Coast, the area has one of the highest rates of prostate cancer in the State.

Prostate cancer is the fourth leading cause of death among Australian males and is the most commonly diagnosed cancer in Australia, excluding non-melanoma skin cancers. Many thousands of Australian men are diagnosed with elevated prostate-specific antigens every year. From that point on, their journey through therapy and recovery is an ad hoc process that often has unnecessary adverse outcomes and varies from person to person. David and many of his medical colleagues believe that a comprehensive and formalised support system is needed to ensure that men and their families receive optimum care to manage and overcome their prostate-related issues. He has developed a uniquely Australian model that has caught the attention of the Movember Foundation, which is keen to develop a "Virtual Dave" as the voice for prostate support nationally, featuring a community focus with a strong interpersonal approach working within a multidisciplinary team that manages the process from diagnosis with long-term support.

David will be heading to four centres in the United States, which are universally regarded as the premier centres in the world for nurse education in the field of prostate cancer. There he will compare interventions and learn management protocols and processes to inform and guide the development of more comprehensive evidence-based nurse-led services locally and nationally, which will benefit the broader nursing and medical community and, more importantly, their patients.

Buck Reed is only the third paramedic from New South Wales to receive a Churchill fellowship since they began in 1965 and is the first recipient from a regional area. The fellowship will enable him to travel to the United States and Canada for six weeks to study the most developed models in the world of community paramedicine. Buck is based at Boggabri and has researched international practices associated with community-based paramedicine and documented a model of care known as Paramedic Connect. The concept of community paramedicine is one of the most revolutionary ideas to develop in paramedic practice. Models in Australia, Canada, and the United States are finding this a robust and adaptive model for addressing health service inequity and access in both rural and underserved metropolitan populations.

Community paramedicine is a flexible tool for using paramedics to solve a range of unique problems in the health of the community. It is a model of care that is reliant on collaboration between ambulance paramedics and local health stakeholders that creates a framework for paramedics to more effectively engage with their communities and use their extensive knowledge and skills to contribute to the health of those communities. Having a cost-effective, stable and productive paramedic presence in rural areas in the future will rely on significant redesign and evolution of the paramedic role to match the needs of rural and remote populations. Paramedics are incredibly well trained and are adaptive and committed health professionals. They will be key to the future of effective rural health service delivery. This is an exciting time in the evolution of paramedic practice, especially in rural areas. It is this type of innovation that needs to be embraced and seen as a logical evolution for paramedics.

Buck certainly was instrumental in ensuring that the Paramedic Connect Program resulted in the New South Wales Ambulance signing up with the Hunter New England Local Health District so that the communities of Boggabri, Baraba and Ashford now have an extra extension to their health service delivery with local paramedics being able, through this coordination, to work in the local multipurpose service centres or to deliver community health. It is an exciting initiative that has been very much driven by the energy of Buck Reed. He certainly is a worthy recipient of the Winston Churchill Memorial Trust Fellowship.

## CANNABIS USE FOR MEDICAL PURPOSES

**The Hon. LUKE FOLEY** (Leader of the Opposition) [11.44 p.m.]: One year ago this week I successfully moved in this place for an inquiry to examine the efficacy and safety of cannabis for medical purposes. That inquiry reported in May and the Government delivered its formal response to the House last Friday. I did not serve on the inquiry, but I followed its proceedings with great interest. I was delighted that the

members of that committee, representing five political parties, sought and achieved unanimity. Members resisted the urge to grandstand or to push the boat out too far, preferring to find consensus where it was possible and leave the report and its recommendations there.

I thought that was very wise. I thought that it established the necessary political cover for a conservative government to proceed with reform in this area. I regret that the Labor Government 10 years ago did not proceed when it was given an expert report recommending the limited use of cannabis for medical purposes. I refer to the expert report by Professor Wayne Hall, the chair of the Working Party on the Use of Cannabis for Medical Purposes. There are now two substantial documents presented to the Government of New South Wales that I believe present a very strong case for reform in this area and for the highly regulated and very limited provision of cannabis to a very restricted group of patients for whom other medical treatments have proved to be ineffective.

The committee inquiry recommended unanimously that the Government amend legislation to allow the medical use of cannabis by patients with terminal illness and those who have moved from HIV infection to AIDS. Two of the principal researchers in this area, Dr Alex Wodak and Professor Laurence Mather, have written to me in the past couple of days in light of the response of the Minister for Health on behalf of the Government last Friday afternoon. I think they rebut many of the claims made by the Minister for Health in her response tabled in this House today. They demonstrate that scientific evidence that cannabis works for some conditions is now overwhelming.

The United States Institute of Medicine in 1999, the United Kingdom Select Committee on Science and Technology in 2001, together with the working party in New South Wales that I referred to earlier, have accepted that the evidence was strong. In 2009 a committee of the American Medical Association reviewed the evidence and recommended rescheduling cannabinoid-based medicines to allow their legal prescription in the United States of America. Almost a dozen countries now allow the use of cannabis for medicinal purposes. That includes 20 States with more than half the population of the United States of America. I draw the attention of honourable members to comments made by former Prime Minister John Howard in 2003 where he said:

I am totally opposed to the decriminalisation of marijuana and I remain very strongly opposed to that.

But you are dealing here with the relief of pain and suffering and essentially where people's quality of life has already been not only severely degraded but also potentially threatened.

And in those circumstances it seems to me to be a proper human reaction to say if somebody who could be dying of cancer, whose pain could be relieved by marijuana, then I'm all in favour of it.

I agree with the Hon. John Howard on this matter.

### **QUEANBEYAN AGED CARE AND DISABILITY SERVICES**

**The Hon. STEVE WHAN** [11.49 p.m.]: Tonight I express concern about the transition in Queanbeyan of aged care, disability and respite services provided under contract by Queanbeyan City Council to community-based providers, and generally not for profit. Over the past few weeks I have asked two questions about this issue in this place but, unfortunately, I have not received reasonable answers. I have a number of concerns about the transition. For some years Queanbeyan City Council received grants to provide services from State and Federal governments through Home and Community Care, the Department of Health and Ageing, State Home and Community Care funding, State disability funding, State community transport funding and respite funding, all up totalling more than \$3 million per annum. For many years the council has provided some fantastic services. For a long time it provided a community transport service that was the envy of many areas, a fabulous Home and Community Care centre, and many services above and beyond the call of duty.

I acknowledge that in doing so Queanbeyan City Council provided a significant subsidy from ratepayers' funds of an estimated \$1.8 million a year. Council decided that it does not want to provide that level of subsidy in the future and it has given up the contracts, which have now gone to private providers. I am now receiving many complaints from people in the community about the much lower level of service that has resulted, not through the fault of the community providers but as a result of the disappearance of the subsidy. Fewer services are now available. Most worryingly, those services are located in different areas of Queanbeyan where people feel less comfortable and the provision of services such as outings on community transport buses has been reduced.

I am particularly concerned that council is in the process of converting the Home and Community Care centre to council office space. That centre was constructed with 40 per cent funding from the State Government.

At this stage, as I understand it, the State Government has not been in contact with Queanbeyan City Council to say whether it wants that money returned or, more importantly, whether it can negotiate a way of continuing some sort of permanent facility for clients of Home and Community Care services. One of the important things about the centre—and I am sure I am not the only one who has been there—is that it was a fabulous facility with tables and chairs, facilities for serving food and a garden outside. It was a place which made users feel very comfortable and it was a place for them to go to regularly every week when they attended services in the area—a place which they felt was a home away from home. The problem now is that they will go to different facilities funded by different providers. They will not have a single service facility to which they can go where they feel comfortable, and I believe that is a real tragedy.

There has been investment in the facility, which was owned by council and which would have cost money to maintain, but I think most ratepayers in Queanbeyan would agree that that was reasonable expenditure of ratepayer funds for services for the people of Queanbeyan. I do not necessarily agree with council's view that this is not an area in which it should be involved. Sixty years ago it probably was not an area in which any government was involved, yet governments started to take on those functions. It is something that I felt required discussion with the Queanbeyan community, but many decisions were made in closed sessions of council with limited community consultation. The transition to the new service providers proved to be quite traumatic for many of the families involved, including on occasions requests for information that sailed pretty close to the wind when it came to people's privacy.

In the 10 years that I have represented the area in one way or another it has not been my practice to criticise local councils because I felt that a working relationship was better. I raise this issue reluctantly tonight, but I do so because I have received strong feedback from service users in the aged and disability area in Queanbeyan about the decline in service levels. I also think that the State Government has a role to play in ensuring that Queanbeyan has a Home and Community Care facility for everyone to use. I call on the State Government to take an active interest in this matter and to try to achieve a better solution for the people of Queanbeyan.

#### TRIBUTE TO OVORU INDIKI

**The Hon. CHARLIE LYNN** (Parliamentary Secretary) [11.54 p.m.]: Tonight in the New South Wales Parliament I pay tribute to Mr Ovoru Indiki, who passed away peacefully in the village of Naduri near the Kokoda Trail on 15 November. Ovoru was a respected chief of Naduri village, which is about halfway along the Kokoda Trail. I believe he would have been in his early sixties when I first met him in 1991, however it is difficult to substantiate his exact age because of the lack of records in Papua New Guinea at the time of his birth. He would, therefore, have been in his late eighties or early nineties when he died. Ovoru was a teenager when war came to Papua New Guinea with the bombing of Port Moresby in 1942. Like many Papuans at the time he did not understand what was happening and he fled back to the safety of his village high in the jungle-clad Owen Stanley Ranges. It was a long trek and he recalled to me that he was very frightened at the time.

When the war came to the Owen Stanley Ranges he was indentured by the Australian administration to help carry supplies forward to the Australian troops fighting on the Kokoda Trail. On the return journey Ovoru and his fellow Papuans often came across wounded Australian soldiers who could struggle no further—many of them lying face down in the mud. Ovoru and his friends would always stop, build a stretcher out of bush material and carry the wounded digger back to the medics at Ower's Corner. It was a slow and tortuous journey that took up to three weeks over some of the most inhospitable terrain on the planet. During these journeys they shared their meagre rations of rice with the stranger and slept either side of him at night to keep him warm. Hundreds of our diggers survived as a direct result of their support and sacrifice. They were immortalised in the poem *Fuzzy-Wuzzy Angels* composed by Sapper Bert Beros whilst recuperating in the Sogeri field hospital "at the bottom of the track".

After the war Ovoru was appointed village constable at Naduri under Australia's colonial regime. In 1975 Papua New Guinea achieved independence from Australia and Ovoru Indiki was awarded an Independence Medal for services to his village. To our great shame Ovoru, along with approximately 56,000 wartime carriers indentured to support the Australian war effort in Papua New Guinea from 1942 to 1945, have never been formally recognised by the Australian Government. We were hopeful that this wrong might have been rectified in 2010, but Ovoru and his people were shamelessly conned by a slick public relations stunt perpetrated by the Australian Government. A select few were issued with a medallion to provide a few photo opportunities designed to placate those agitating for official recognition of their service. When the medal

was first announced we were duped into believing their service as wartime carriers had finally been recognised. It took some time before we were able to examine the small print and realise it was not a medal with any official status; it was a medallion with no status. For those who are not clear about the difference I should explain that a medal is something earned and awarded under our official honours and awards system. A medallion is something which is distributed in a Wheaties packet as a promotional gimmick and which does not have any official status.

Notwithstanding this shameful con, Ovoru Indiki's presence in his native village of Naduri symbolised the service and sacrifice of his Koiari and Orokaiva villagers to the thousands of trekkers who had the good fortune to meet him and thank him. Ovoru always had the presence of a chief. I recall when we brought him to Sydney and pushed him around the city in a wheelchair that every now and then he would beckon us to stop and he would stare at a building, a bus or a ferry at Circular Quay, the Harbour Bridge or the Sydney Opera House. I wondered how he was processing the wonders of a modern and bustling city. That night he told me, through his son, Andy, that his grandfather had told him that somewhere in the world there must be a great city and he hoped that one day Ovoru would get to see it. He smiled when he said, "Now I am here." He also told me that when he went back to his village he would tell the kids that if they worked hard at school some day they might get to come to Sydney. My meetings with Ovoru over the years, and the awe and respect accorded to him by visiting trekkers, have certainly helped me keep things in perspective.

Ovoru is survived by six sons, Nelson, Mark, Jeffery, Ade, Andy and Gilbert, two daughters, Beatrice and Maliyn, 22 grandchildren and 12 great grandchildren. The world is a little poorer for his passing but Ovoru Indiki can now rest in peace knowing that his service and sacrifice, and that of his Koiari and Orokaiva people, will never be forgotten. I pledge that we will continue to seek official recognition of the Papuan wartime carriers who helped us so selflessly in our darkest hour of need. I hope that one day in remote villages most Australians will never see a shining silver medal with a ribbon in combined Australian and Papua New Guinea national colours will take pride of place in a traditional hut once inhabited by a wartime carrier. It is the least we can do to honour Ovoru's legacy and that of his people.

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

**Motion agreed to.**

**The House adjourned at 11.59 p.m. until Wednesday 20 November 2013 at 10.00 a.m.**

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