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LEGISLATIVE COUNCIL

Wednesday 28 May 2014

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

The President read the Prayers.

RACING ADMINISTRATION AMENDMENT (SPORTS BETTING NATIONAL OPERATIONAL MODEL) BILL 2014

Bill received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. Duncan Gay, on behalf of the Hon. Matthew Mason-Cox.

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

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

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

INDEPENDENT COMMISSION AGAINST CORRUPTION

Report

The President tabled, pursuant to the Independent Commission Against Corruption Act 1988, a report entitled "Investigation into the conduct of the Commissioner of the NSW State Emergency Service", dated May 2014 and authorised to be made public this day.

Ordered to be printed on motion by the Hon. Duncan Gay.

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

POLICE ASSOCIATION OF NSW BIENNIAL CONFERENCE 2014

Motion by Reverend the Hon. FRED NILE agreed to:

That this House:

- (a) commends the New South Wales Police Commissioner for the successful 2014 Police Association of New South Wales Biennial Conference from 12 to 15 May 2014 at the Crowne Plaza, Terrigal, which was attended by the Hon. Mike Baird, New South Wales Premier, the Hon. Stuart Ayres, Minister for Police and Emergency Services, Mr John Robertson, MP, Leader of the Opposition, Michael Daley, MP, shadow Minister for Police and Emergency Services and Reverend the Hon. Fred Nile, MLC, Leader of the Christian Democratic Party;
- (b) in particular notes the successful salary agreement which was endorsed by over 80 per cent of New South Wales police officers in their recent ballot; and
- (c) congratulates the New South Wales Police Association executives on all its members being re-elected at the recent elections, including Mr Scott Weber, President; Mr Patrick Gooley, Vice President; Mr Tony King, Treasurer; Oliver Behrens; Michael Aalders; Allanah Anson; Ian Johnstone; Craig Sowinski; Nathan Doyle; Dean Koenig; Brett Henderson-Smith; Mick Connor; Jason Hogan; Robert Dunn; Stephen McDonald; Melissa Cooper; Gerry O'Connor; and Michael Buko.

FINA WORLD YOUTH WATER POLO CHAMPIONSHIPS 2014

Motion by the Hon. MARIE FICARRA agreed to:

(1) That this House notes that:

- (a) the FINA World Youth Water Polo Championship will be held in Turkey between 2 and 10 August 2014;
- (b) those selected to represent Australia include: Josh Zekulich, Jack Bell, Tim Teeves, Angus Lambie, Alex Bogunovich, Lach Pethick, Kieran Mulcahy, Luke Pavillard, James Smith, Chris Perrot, Rhys Holden, Keenan Marsden and Mitch Marsden; and

- (c) the following officials have been selected to accompany the team: Andrew Yanitsas, Head Coach, Mark Salmon, Strength and Conditioning; and Daniel Bartels, Referee.
- (2) That this House congratulates and commends all those selected in the Australian Youth Boys team to compete at the FINA World Youth Championships in Turkey and conveys its best wishes for a successful championship.

SELECT COMMITTEE ON HOME SCHOOLING

Establishment and Membership

Motion by Reverend the Hon. FRED NILE agreed to:

- (1) That a select committee be established to inquire into and report on homeschooling in New South Wales; and in particular:
 - (a) the background of homeschooling including comparison of practices with other jurisdictions in Australia and New Zealand;
 - (b) the current context of homeschooling in New South Wales including:
 - (i) outcomes of homeschooling including in relation to transition to further study and work;
 - (ii) financial costs;
 - (iii) demographics and motivation of parents to homeschool their children;
 - (iv) extent of and reasons for unregistered homeschoolers;
 - (v) characteristics and educational needs of homeschooled children;
 - (vi) comparison of homeschooling to school education including distance education;
 - (c) regulatory framework for homeschooling including:
 - (i) current registration processes and ways of reducing the number of unregistered homeschoolers
 - (ii) training, qualifications and experience of authorised persons;
 - (iii) adherence to delivery of the New South Wales syllabuses;
 - (iv) potential benefits or impediments to children's safety, welfare and wellbeing;
 - (v) appropriateness of the current regulatory regime and ways in which it could be improved.
 - (d) support issues for homeschooling families and barriers to accessing support;
 - (e) representation of homeschoolers within Board of Studies, Teaching and Educational Standards [BoSTES]; and
 - (f) any other related matter.
- (2) That notwithstanding anything to the contrary in the standing orders, the committee consist of seven members comprising:
 - (a) three Government members;
 - (b) two Opposition members; and
 - (c) two crossbench members, being the Hon. Paul Green and Dr John Kaye.
- (3) That the chair of the committee be the Hon. Paul Green and the deputy chair be Dr John Kaye.
- (4) That at any meeting of the committee, any four members of the committee will constitute a quorum.
- (5) That a committee member who is unable to attend a deliberative meeting in person may participate by electronic communication and may move any motion and be counted for the purpose of any quorum or division, provided that:
 - (a) the chair is present in the meeting room;
 - (b) all members are able to speak and hear each other at all times; and
 - (c) a member may not participate by electronic communication in a meeting to consider a draft report.
- (6) That the committee report by the last sitting day in November 2014.

SUICIDE PREVENTION AUSTRALIA 24 HOUR FUN RUN

Motion by the Hon. MARIE FICARRA agreed to:

- (1) That this House notes that:
 - (a) suicide is a leading cause of death for young Australians and is the leading cause of death for males aged 25-44 years and females aged 25-34 years;
 - (b) Suicide Prevention Australia Incorporated [SPA] is the national peak body for the suicide prevention sector and SPA is a not-for-profit organisation representing a broad-based membership of organisations and individuals with a commitment to suicide prevention and that as the backbone organisation of the National Coalition for Suicide Prevention [NCSP] SPA works to prevent suicide by supporting its members to build a stronger suicide prevention sector, developing collaborative partnerships to raise awareness and undertake public education; and advocating for a better policy and funding environment;
 - (c) on Friday 20 June 2014, various athletes and identities will be participating in Plebs, Pros and Personalities 24-hour treadmill run for suicide prevention to raise money and awareness for suicide prevention, those who have already committed to taking part in the run include: Reni Maitua, Sonny Bill Williams, Willie Tonga, Colin Fassnidge, Shannon Ponton, Tim Gilbert, Karl Stefanovic, Chelsea Pitman, Jason Clark, John Sutton, Shaun Kenny Dowell, Anthony Minichello, Greg Inglis, Luke Carroll, Darcy Lussick, Braith Anasta, Jodi Anasta, Jarryd Hayne, Mitchell Pearce, Aaron Woods, Aiden Guerra, Jake Friend, Cory Paterson, Renee Gartner, Kate Hollywood, Bec Wilcock, Mike Whitney, Mario Fenech, Wendall Sailor, Bryan Fletcher; Andrew Johns, Nathan Hindmarsh, Brad Fittler, David Gillespie, Ty Kennelley, Darren Brown, James Segeyaro, Josh Mansour, Isaac John, Eric Grothe Jnr, Mitch Allgood, Josh Reynolds, David Klemmer, Ryan Clark and the Bondi rescue crew, Nash Rawiller, Moses Mbye, Dally Cherry Evans, Jamie Buhner, Justin Horo, Mat Rogers, Chloe Maxwell, Matt Thistlethwaite MP, Michael Daley MP, Nathan Gardiner, Michael Liicha, Legends Football League Girls, and Sydney Kings basketballers;
 - (d) the organisers of the event are Mr Aaron More and Mr Ben Higgs; and
 - (e) the sponsors of the event are FTW, Body Science, NRL: What's your state of mind?, and Canterbury Bankstown Bulldogs.
- (2) That this House congratulates and commends:
 - (a) Suicide Prevention Australia for its outstanding efforts to prevent suicide and raise awareness of this serious issue affecting Australian society;
 - (b) the organisers of the event, Mr Aaron More and Mr Ben Higgs, for their dedication and outstanding service to the community in raising awareness of suicide and funds to help address this serious issue; and
 - (c) sponsors of the event.

NEW SOUTH WALES STATE OF ORIGIN TEAM 2014

Motion by the Hon. MARIE FICARRA agreed to:

- (1) That this House notes that the New South Wales State of Origin team for game 1 has been selected, consisting of: Jarryd Hayne, Brett Morris, Josh Morris, Michael Jennings, Daniel Tupou, Josh Reynolds, Trent Hodkinson, Aaron Woods, Robbie Farah, James Tamou, Ryan Hoffman, Beau Scott, Paul Gallen, Trent Merrin, Anthony Watmough, Luke Lewis; and Tony Williams.
- (2) That this House commends and congratulates those players selected to represent New South Wales in the State of Origin and wishes them well in their first game.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Notices of Motions Nos 2 and 3 postponed on motion by the Hon. Duncan Gay and set down as an order of the day for a later hour.

ROAD TRANSPORT AMENDMENT (ALCOHOL AND DRUG TESTING) BILL 2014

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

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Freight, and Vice-President of the Executive Council) [11.23 a.m.]: I move:

That this bill be now read a second time.

The purpose of this bill is to improve road safety by updating and enhancing some elements of the alcohol and drug testing regimes. In November 2012 we celebrated 30 years of random breath testing [RBT] in New South

Wales and it is estimated that during that time, around 7,000 lives were saved as a result of RBT. Last year, police conducted more than five million breath tests, which resulted in more than 20,000 drivers being charged with drink-driving offences. This extensive enforcement is supported by public education and awareness campaigns, and is reinforced by tough penalties including fines and licence disqualification as well as imprisonment for serious offences.

Police also detect drivers impaired by drugs other than alcohol, and roadside random drug testing commenced in 2007. Last year police conducted nearly 34,000 roadside tests and, as a result, 843 drug-driving charges were laid. The impact of these alcohol and drug programs on road safety has been a massive reduction in trauma from road crashes. Importantly, there is also strong community support for them and an expectation that high-risk drink- and drug-drivers will be caught and penalised. The current drink- and drug-driving offences and testing regimes are well established. The offences and powers that underpin them can be found in the Road Transport Act 2013, with most of the "nuts and bolts" set out in schedule 3 of that Act.

To assist successful prosecution of drink- and drug-drivers, the legislative framework provides for: police powers to test impaired drivers at the roadside; powers to collect breath, oral fluid, urine and blood samples from drivers; technical and evidentiary requirements for hospital staff regarding the collection of samples, including following a crash; requirements for a prescribed laboratory to analyse the samples to provide evidence—for example, a driver's blood alcohol concentration level; and available offences that the offender can be charged with.

Over time the regime has been continually developed and improved to ensure that it is robust and effective; for example, the introduction of mobile RBT in 1987, zero blood alcohol concentration limits for novice drivers introduced in 2004, and roadside random drug testing introduced in 2007. In keeping with this process of continuous improvement, this bill brings forward some further amendments to update and strengthen the current arrangements. The Government has a strong commitment to improving road safety in New South Wales, and this bill maintains the clear message that drink- and drug-driving is unacceptable.

In the development of these amendments, extensive consultation has occurred with NSW Police, the Ministry for Police and Emergency Services, Transport for NSW, the Department of Police and Justice, the NSW Forensic and Analytical Science Service, which is the prescribed laboratory, the NSW Ministry of Health, and the Independent Transport Safety Regulator. I will now outline the amendments proposed in this bill.

The first key element of the bill is a new power to facilitate the collection of blood samples from drivers who are physically unable to submit to breath analysis. The inability may be a result of a medical condition, but often it is because they are too intoxicated to do so. It would apply only to persons who are physically unable—not unwilling—to submit to a breath analysis. Drivers unwilling to provide a sample will continue to be dealt with as having refused a breath analysis. The amendment will permit police to take a driver who has been arrested under the existing provisions following a failed breath test, or who has failed to submit to a breath test, to a hospital or prescribed place for the purpose of obtaining a blood sample instead of a breath sample. The blood sample can then be analysed to determine the person's blood alcohol concentration and whether they should be charged with a prescribed concentration of alcohol offence.

From time to time police have encountered drivers who, having failed their preliminary roadside test, have fallen asleep or passed out or their gross motor skills have become so impaired they are physically unable to submit to the evidential breath analysis undertaken at the police station. Other instances have arisen when a person has suffered a panic attack or a medical emergency that prevents them from supplying a breath sample. Police will, of course, ensure that they receive the necessary, proper medical treatment. But in those instances if the driver cannot provide a breath sample this prevents the collection of evidence required to determine whether they have in fact been driving with a prescribed concentration of alcohol. Remember that these drivers will have already failed or failed to submit a preliminary roadside test.

Under the current law police may charge those drivers with refusing or failing to submit to a breath analysis, which incurs serious penalties equivalent to high-range drink driving. The law provides for a defence in instances where a driver can satisfy the court that they were willing but unable to submit to the breath analysis on medical grounds. The possibility of the defence being exploited can be an issue. Enabling police to obtain a blood sample in lieu of a breath sample provides a suitable alternative to collecting evidence for a drink driving offence when a person is physically unable to submit to the breath analysis. Let me clarify that a person who provides a blood sample under this new provision will not be charged with refusing or failing to provide a breath sample as they provided a blood sample instead of a breath sample.

However, the bill makes it an offence if they get to the hospital and then refuse to provide the blood sample. In those circumstances the bill treats this refusal to provide blood the same as a refusal to provide breath analysis and imposes the same penalties, including licence suspension and disqualification. A similar power already applies with respect to the roadside random drug testing provisions for drivers who are physically unable to provide an oral fluid sample. This amendment reinforces the clear road safety message that drink driving is dangerous and if people drink and drive they will be caught.

The second key element of the bill is to reinforce the power for police to direct drivers to remain at or near the place of testing until the roadside random drug testing process is complete, including the collection of additional samples for laboratory analysis. The bill also makes it an offence for a driver to fail to comply with this direction. When conducting roadside random drug testing, some drivers are leaving the scene after providing an oral fluid sample as requested but before the results become available, which can be several minutes. Unlike random breath testing, it can take a few minutes for the results of a roadside random drug test to be known to police. However, there is no explicit power for police to direct a driver to remain at the scene for the entirety of the process.

Some drivers have left as soon as the initial test has been administered but before the results are known. If the roadside test is negative the driver will be permitted to leave. If it is positive they will be subject to the appropriate next steps, which include providing another sample for further analysis and a 24-hour driving ban. If the further oral fluid analysis returns a positive reading for the presence of drugs the driver will later be charged. Obviously it is more difficult for police to arrest the driver if they have left the scene and also to collect the second sample for analysis within the required two-hour limit to prove that the driver had drugs in their system. The third aspect of the bill is to ensure that under the current law police can conduct a sobriety assessment on a driver if they have a reasonable belief that the driver may be under the influence of a drug but a random breath test is negative for alcohol.

Under existing provisions, police can require a driver who has failed a sobriety assessment to submit to a blood or urine sample to be analysed for the presence of drugs. In that way drivers impaired by drugs can be identified and prosecuted. However, police can conduct a sobriety assessment only where the officer has formed a reasonable belief that the person may be under the influence of a drug on the basis of a person's manner of driving or attempted driving. This limits the applicability of the sobriety assessment as there are situations where a driver may appear to be drug impaired even if the officer did not personally observe the person's manner of driving, for example, at a random breath testing site a driver may be observed to have dilated or constricted pupils, slurred speech, drowsiness or agitated behaviour.

The requirement to have observed the manner of driving also fails to address situations in which drugs can impair judgement and reaction times but not necessarily result in erratic driving. Problems have also arisen at crash scenes when police arrive after the fact and are only able to observe the driver's behaviour rather than the manner of driving or take witness statements regarding the manner of driving prior to the crash. The current requirement that an officer must have witnessed the manner of driving severely limits their ability to conduct a sobriety assessment, which in turn prevents them from properly investigating some impaired drivers. Police are well trained and experienced in dealing with drug-affected individuals, and will often form a belief about drug impairment based on the behaviour or appearance of a person, for example, dilated or constricted pupils, slurred speech, drowsiness or, as I said, agitated behaviour. All of these observations will be recorded to demonstrate the basis of their assessment.

These observations go to formation of the police officer's reasonable belief that the person is affected by drugs. I must make it clear, however, that this proposed amendment does not create a general power for police to conduct sobriety tests on anyone at any time. As with existing powers for conducting sobriety assessments, the additional power is permitted only when an officer has reasonable cause to believe that the person is or was driving a vehicle and after they have conducted a breath test at the roadside to preclude alcohol as the source of impairment. Another amendment updates and improves the process for sample taking in hospitals for drug and alcohol testing. This amendment streamlines the urine sampling process for drug testing to make the process simpler, less cumbersome and less costly, consistent with the Government's commitment to cut red tape.

Currently, a portion of the urine sample is provided to the driver and the other portion is sent for analysis at the prescribed laboratory. However, in reality, most people decline to take their portion, meaning that police have to store the sample until it can be disposed of. Therefore, to be consistent with current blood sampling requirements, the bill removes the requirement for the sampler to take or give the driver a portion of

their urine sample; instead, the entire sample will be stored at the prescribed laboratory for 12 months. Importantly, they will be stored securely and at the correct temperature. As with blood samples, the driver will be provided with a certificate enabling them to identify the sample kept by the laboratory. They can still exercise their right to apply to the laboratory within 12 months for the sample to be sent for independent analysis. Importantly, like blood samples, the urine samples will be stored correctly so that the results of any later tests are accurate and useful for the driver.

Another amendment relates to the analysis of the blood and urine samples for drug and alcohol testing, and the evidence surrounding this process. This bill amends evidence certificates tendered in court to accurately reflect current process in the lab whilst also confirming that samples have been handled and analysed correctly, so that the results are accurate and the driver can be assured that they have not been tampered with.

The Hon. Walt Secord: NCIS Duncan!

The Hon. DUNCAN GAY: We do not need NCIS to know where you have been. Often prescribed laboratories for alcohol and drug testing receive a high volume of samples that need to be analysed. It is therefore necessary to have different steps in the process being completed by different staff members employed by the laboratory while following the prescriptive processes outlined in legislation. Indeed, this method enables secondary testing of samples to double-check the accuracy of the results. Current legislation and evidence certificates suggest that an individual analyst personally completed these steps.

The Act already has a deeming provision that recognises and provides for other staff to perform these steps. However, the wording of the evidence certificates is prescriptive and creates the impression that one person completed every step—this has resulted in a number of requests from legal representatives for additional information regarding first-person statements in the certificates. I assure the House that amending the wording will not alter in any way the process and rigour by which the samples are analysed. The bill updates the prescriptive language for the evidence certificates to accurately reflect processes in a modern laboratory. It also clarifies that there does not need to be a direct supervisory relationship between the senior analyst signing the certificate and the analyst or technical officer who performed the relevant tasks.

By making these changes we also help remove any doubts about the admissibility of certificates from interstate labs that do not use the same form of words as New South Wales. That has been an issue in some cross-border areas. If a drink or drug driving incident occurs in a cross-border area such as Queanbeyan, the person will be taken to the closest hospital—even if it is across the border—and the sample will be analysed by the prescribed laboratory in that State or Territory.

The Hon. Walt Secord: What about the Tweed?

The Hon. DUNCAN GAY: You would be taken across the border. The current legislation already provides that such evidence is admissible if the interstate legislation "substantially corresponds" with the New South Wales legislation. However, there have been some instances in New South Wales in which the results of a laboratory in another State were ruled inadmissible, and a defendant has avoided a drug- or alcohol-related conviction, on the basis that the wording of the interstate certificate is not an exact match with New South Wales. The removal of first-person references in the New South Wales evidence certificate provisions will help address this, as will the creation of a definition of an "interstate analyst" and "interstate sample taker". This will maintain the intention that interstate evidence certificates are admissible in New South Wales if the sample taking, handling and analysing processes substantially correspond with the New South Wales provisions, without getting tied up about the exact wording of the certificates.

Finally, police officers are required to undergo training to conduct breath analysis. After completing this training, they are authorised under delegation by the Commander of the Education and Training Command of the NSW Police Force to conduct breath analysis. Previously, confirmation of the certification of police who have successfully completed the training has been done using an electronic signature. This bill simply confirms those officers have been appropriately certified in accordance with the legislation. Changes to the Marine Safety Act 1998 also provide for consistent amendments to schedule 1, which contains powers and processes to conduct breath, blood and urine testing.

The corresponding rail and passenger alcohol and drug testing schemes are provided in relevant regulations, which also need to be amended to be consistent with this amendment bill. These proposed

amendments improve the current regime and reduce red tape, to ensure that drink and drug driving continue to be effectively deterred on New South Wales roads, and to aid the detection and prosecution of drink and drug drivers in New South Wales. I trust all members will lend their support to the bill. I commend the bill to the House.

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

VISITORS

The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile): I welcome 28 students from the Kiama electorate Senior School Leaders Forum, guests of the member for Kiama, Mr Gareth Ward

DISABILITY INCLUSION BILL 2014

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

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [11.47 a.m.]: I move:

That this bill be now read a second time.

The Government is proud to introduce the Disability Inclusion Bill 2014. This bill will have a meaningful impact on the lives of people with disability, their families and their carers. This is a time of great change. People with disability are now shaping disability services, rather than being the passive recipients of services from governments and other providers. The bill replaces the Disability Services Act 1993 which, for the past 21 years, has provided the main legal foundation in New South Wales for regulating supports, services and funding to people with disability. I note that a former Minister for Community Services who introduced that bill, the Hon. Jim Longley, is in the President's Gallery. He is now the Chief Executive Officer of the Department of Ageing, Disability and Home Care.

Although progressive when introduced, the Disability Services Act no longer sits comfortably with the present-day approach to disability. Recent times have seen a shift towards person-centred disability services, client-directed supports and individualised budgets. In those arrangements the person with disability is firmly at the centre of decision making and is able to exercise choice and control over the nature of their supports and how they are delivered.

This shift in approach is signified by the National Disability Insurance Scheme [NDIS], which represents an historic milestone for people with disability, their families and their carers, not only in New South Wales but also throughout Australia. The NDIS is a significant development for disability support. It will deliver a national system that is focused on the individual needs and choices of people with disability. It is without a doubt an historic step forward. I was proud when New South Wales became the first State to sign up to the scheme through a heads of agreement with the Commonwealth Government in December 2012.

I commend my Government for showing no hesitation in committing to a revolutionary approach to how people with disability are supported to achieve their goals. New South Wales welcomed this long overdue approach that will provide people with disability with something that most Australians take for granted—that is, choice and control in everyday life. When the NDIS is rolled out across New South Wales by 1 July 2018 the responsibility for managing the provision of disability supports will transfer to the National Disability Insurance Agency [NDIA]. The bill recognises the need for far-reaching reform that enhances the everyday lives of people with disability. It does this within the context of the NDIS.

The bill proposes a rights-based inclusion framework that moves us away from historically, highly regulated services. This framework will enable New South Wales to make a smooth transition to the national scheme on 1 July 2018. Some members may question why the bill is being introduced at this stage given that the National Disability Insurance Scheme is still undergoing fine-tuning, with some reviews and negotiations yet to take place. Although the Federal National Disability Insurance Scheme Act, inter-government agreements and

the National Disability Insurance Scheme Rules provide a comprehensive framework and clear focus, it is important that the bill acknowledges the potential for changes or reforms that are yet to be negotiated for the national scheme.

This acknowledgement has been built into the bill, with the inclusion of transitional provisions that will end when the national scheme is fully implemented. In addition, the bill contains a requirement that it be reviewed within four years. This will provide an essential check on whether the bill's objectives are being achieved and whether any adjustments need to be made to take account of reforms introduced by the NDIS. Further, I note that the reforms contained in the bill aim to support and improve on current practice within the government and non-government service sector and so the cost of implementation will be relatively low.

Also of importance is the need for the bill to be consistent with the NDIS. I point out that the bill offers consistency with the national scheme in its intent to provide people with choice and control over their supports—for example, a focus on individualised funding that allows for greater flexibility and facilitates choice and control in support provision. The bill will support people to build their skills and capacity in this area prior to their transition to the NDIS. As members can see, this bill has been designed to provide both consistency and flexibility. It is what New South Wales needs to make a smooth transition to the NDIS.

I stress that it is crucial for the bill to be introduced at this stage and not held off until the final detail of the NDIS is known. This is because one of the bill's functions is to assist in ensuring that the scheme is implemented on schedule and that the people with disability, their families and carers, the Government and service providers are fully prepared for transition. As such, to introduce the bill at a later stage would be counterproductive.

The development of the bill has been informed by the feedback received from an extensive statewide consultation process, which has involved thousands of people across New South Wales. The consultation process began in 2011 with the Living Life My Way consultations that ran until 2012 and gave more than 4,000 individuals the opportunity to share their views on the introduction of self-directed support and individualised budgets. Subsequently, in early 2013 approximately 600 people with disability, their families and carers, service providers and peak representative organisations from across New South Wales attended face-to-face consultations to discuss the review of the Disability Services Act 1993. In addition, 64 written submissions were received. These views were taken into account in developing the new law.

In December 2013 the exposure draft of the Disability Inclusion Bill was released for public comment. More than 90 written submissions on the draft bill were received from people with disability, their families and carers, service providers and other organisations. The feedback received from this broad consultation process indicated a strong need for change and has received careful consideration in the drafting of the bill. On behalf of the Government, I say thank you to those who took the time to share their opinions, thoughts, hopes, suggestions, stories and concerns. We are grateful for this feedback, which has been invaluable in getting the bill right. The feedback showed that people want the new disability law to promote human rights, to support people with disability to exercise choice and control, to clarify the role of the New South Wales Government now and following introduction of the NDIS, to provide safeguards to protect the rights of people with disability and to help make our communities more inclusive.

It gives me great pleasure to advise members that the bill reflects this feedback and the Government has listened to the legitimate concerns and expectations of individuals and organisations across New South Wales. We have delivered a bill that is responsive and that will support individuals and service providers to move from the New South Wales disability system to the national scheme. As I mentioned previously, the bill clarifies the responsibilities of the New South Wales Government during transition to the NDIS and beyond. The bill achieves this through, firstly, legacy provisions and, secondly, transitional provisions.

The legacy provisions will continue to operate after the scheme is operating fully in New South Wales. In short, these provisions include the bill's objects and human rights principles and commit the New South Wales Government to making communities more inclusive for people with disability. The legacy provisions offer direction and clarity about where we are headed in this time of great change and will guide New South Wales in the transition to the NDIS and beyond. Let me make it clear: The NDIS does not, nor should it, alleviate the New South Wales Government from all responsibility towards people with disability. There are some things that will remain an ongoing responsibility of the New South Wales Government and these are contained in the legacy provisions.

The legacy provisions make the bill an instrument of social change. They affirm that people with disability have the same human rights as other people and promote the inclusion of people with disability in the community. I believe that this part of the bill represents the vision for the future for people with disability in New South Wales. The legacy provisions articulate the fact that the New South Wales Government must continue to strive to ensure the wellbeing of people with disability, their families and carers living in the State. As I just mentioned, human rights flow through the legacy provisions, including in the bill's updated definition of "disability" that is based on the social model of disability. This definition aligns with the United Nations Convention on the Rights of Persons with Disabilities ratified by Australia in 2008.

The social model of disability is based on the premise that disability is not inherent in the person but arises from the interaction of a person's impairments with barriers put up by society to full and equal participation. Barriers may include attitudes towards people with disability or may exist in the built environment. I believe that it is not for people with disability to change to accommodate society but it is up to society to change to accommodate people with disability.

People with disability have a right to be included on an equal basis with other citizens. Therefore, I embrace the updated definition of "disability" in the bill that recognises this right. The objectives and principles of the bill strengthen and update the purpose of the legislation. The ultimate purpose of the legislation is to give effect to the human rights and fundamental freedoms of people with disability. The objects set out and emphasise the key themes of the new legislation: social and economic inclusion, choice and control over funding and supports, protection of the rights through safeguards and recognition of human rights. An important goal of the bill is to assist with the transition to the National Disability Insurance Scheme.

The bill has two sets of principles. The first involves general principles that acknowledge the human rights of all people with disability and have been developed with regard to the United Nations convention. The second set of principles recognises the needs of particular groups such as Aboriginal and Torres Strait Islander people with disability, people with disability from culturally and linguistically diverse backgrounds, women with disability and children with disability. The bill recognises that these groups of people often suffer multiple forms of disadvantage and sets out considerations for delivery of supports and services to those groups. The incorporation of the United Nations convention in the definition of "disability" in the objects and principles reflects the New South Wales Government's commitment to the human rights of people with disability in accordance with the highest international standards.

Another theme that flows strongly through the legacy provision is inclusion. All too often people with disability are excluded from meaningful participation in community life due to societal barriers, which includes inaccessibility of the built environment or inaccessibility of information. Such exclusion is a detriment not only to people with disability but also to society as a whole. When people with disability are able to contribute to and be involved in community life we have more inclusive and diverse communities, and that enriches community life for everyone. The legacy provisions promote inclusion by establishing a strong, outcomes-focused approach to whole-of-government strategies.

Part 2 of the bill is dedicated to disability planning. It introduces a requirement for the New South Wales Government to have a four-year State disability inclusion plan that guides whole-of-government approaches to inclusion and provides strategic direction for disability action plans. The National Disability Strategy requires all States to have an implementation plan that captures the State's priorities and actions across government to promote inclusion for people with disability. It is anticipated that this plan will become the State disability inclusion plan while it is in place. Upon expiration of the National Disability Strategy implementation plan it is critical that New South Wales promote community inclusion and improvements in the lives of people with disability living in New South Wales. The bill will ensure this.

Furthermore, the bill strengthens the disability action planning process by extending the requirement for not only New South Wales government departments but also local councils to have disability inclusion action plans. This extension is supported by Local Government NSW and the majority of council submissions received on the draft Disability Inclusion Bill. Sensibly, the bill requires that the State disability inclusion plan and all disability inclusion action plans are developed in consultation with people with disability to ensure that plans are meaningful, relevant, practical and effective. Part 3 of the bill confirms a continuation of the Disability Council NSW. The bill extends the council's role to providing advice on the State disability inclusion plan and disability inclusion action plans. This is a significant reform as it mandates consultation with Disability Council members who can provide invaluable feedback through their lived experience and expertise in disability issues.

The Government is keen to ensure that the extension of the disability inclusion action plan regime to local government does not have an unnecessary impost on local councils. Accordingly, it is developing guidelines and supporting tools to assist local councils to prepare disability inclusion action plans. Notably, most local councils already have disability action plans or have community strategies that incorporate ways to address the needs of people with disability. As such, the majority of local councils are well placed to accommodate this requirement.

I support the 2013 report entitled "Disability planning across local government in New South Wales", commissioned by Local Government NSW together with the Department of Ageing, Disability and Home Care. Encouragingly, the report found that approximately three quarters of local councils in New South Wales consult with people with disability and have community strategic plans that include strategies to address the needs of people with disability. The report also found that approximately one third of local councils have a disability action plan. Lastly, I point out the bill allows for the disability action planning process to be aligned with the strategic planning process of local councils to minimise any administrative burden.

I will discuss the detailed transitional provisions of the bill that will prepare people with disability, their carers and families, service providers and the Government for the full transition to the NDIS. The transitional provisions explain how the New South Wales disability service system will work until the responsibility for funding and the provision of disability services has transferred fully to the Commonwealth National Disability Insurance Agency. The first transitional provisions I will speak about are those contained in part 5 of the bill. Part 5 deals with the provision of supports and services, including those provided directly by the New South Wales Government, and financial assistance for individuals and eligible entities. Part 5 of the bill will operate until the NDIS funds all disability supports and services in New South Wales. This confirms that delivering and funding services and supports will remain a priority of this Government for the next four years. Individuals who can receive funding supports and services under part 5 fall within the bill's target group.

There are three main changes to the target group definition in the current Act. First, in addition to the people covered previously by the target group, it now includes cognitive and neurological impairments; and, secondly, children aged six years and under with developmental delay. The bill states that it is important to consider a reduction in a person's social and self-management skills when making a decision about whether a person needs support in managing their life activities. The changes bring the target group definition further into line with NDIS eligibility requirements. As members are aware, individualised funding is a key feature of NDIS and the bill focuses on individualised funding arrangements, thereby supporting people with disability to exercise greater choice and control over their support arrangements.

The bill allows for individualised funding to be administered in a number of different ways in order to suit individual circumstances. Depending on what option best suits the desires and circumstances of the individual, funding can be provided directly to the person, to a person nominated by the individual, to a plan manager to manage funding in consultation with the individual, or to an organisation to provide services to the individual. The bill maximises the flexibility of these arrangements by permitting funding to be provided in one of these ways or in a combination of these ways.

The bill also allows for the continuation of block funding to eligible service providers until the move to the NDIS is complete. For those members unfamiliar with the term "block funding", it is where the service provider is allocated a set amount of money that is not in the name of the individual service user. Importantly, the funding provisions are drafted to minimise risk and provide protection. The bill allows for conditions to be placed on individual funding arrangements if necessary to minimise risk, for example, from exploitation or abuse where people lack capacity or are vulnerable. The bill also places conditions on funding to eligible organisations that act as quality control mechanisms, safeguarding against poor service and abuse.

The bill recognises that individuals may not always be happy with decisions made about their funding. Accordingly, it provides that there are some decisions that a person can ask the department to review. If after the review the individual is still unhappy, he or she may appeal the decision to the NSW Civil and Administrative Tribunal. Reviewable decisions include decisions about how individualised funding is managed, decisions to impose conditions on individualised funding, decisions to provide financial assistance on behalf of an individual instead of directly to an individual, and decisions to suspend funding. The bill also provides that a decision to terminate funding is reviewable as long as it is not related to the implementation of NDIS arrangements. This will prevent New South Wales from operating a duplicate funding system by allowing funding to be terminated with reasonable notice.

Other important aspects of the bill are the new safeguards that will better protect the rights of people accessing disability supports and services until the NDIS takes over. The bill includes three key safeguards to reduce risk while respecting the individual's right to choose. The need for legal safeguards is supported by the review into prevention of abuse and safeguard mechanisms in ageing, disability and home care, which was undertaken in January 2013. This review recommended the development of a comprehensive safeguard framework that includes appropriate regulatory protections, and practice- and community-based independent mechanisms. The need for legal safeguards was also highlighted in the feedback from consultations on the review of the Disability Services Act 1993.

As I have mentioned previously, all jurisdictions, both State and Commonwealth, are working together to develop a national approach to safeguards designed to protect the rights of NDIS participants. As such, the bill's new safeguards build on current practice and existing systems within the government and non-government service sectors. This approach to safeguards aims to avoid the potential for duplication of national safeguards and any unnecessary expenditure for service providers. Including safeguards in the law will send a clear message about the importance of these requirements and provide better protection for people with disability. Part 4 of the bill contains the first safeguard, which relates to standards for disability services provided or funded by the Government. It provides that disability services must comply with disability service standards determined by the Minister for Disability Services via regulation in order to receive financial assistance. This continues the power of the Minister to create standards and aims to improve the quality and effectiveness of the supports and services.

The bill also allows for the Minister to create special accommodation and service standards via regulation for supported accommodation and centre-based respite. This recognises the relative vulnerability of people living in these arrangements, and promotes the development of high-quality, contemporary models of supported accommodation until transition to the national scheme. Part 5 of the bill contains the second safeguard and provides that government-funded disability service providers must undertake a criminal record check on prospective employees and volunteers who apply to work directly with people with disability. For existing employees and volunteers who work directly with people with disability, an updated criminal record check must be undertaken every four years.

The bill also includes an automatic bar to people who have been convicted of certain offences, for example murder or a prescribed sexual offence under the Crimes Act 1900. The bill also takes into account the fact that the offences may have been committed in a person's youth and that the person may have had a clean criminal record for many years since and may now be a suitable person for employment in the industry. The bill therefore states that, where a person has been convicted of a prescribed offence, excluding prescribed sexual offences, in the past but their criminal record shows no further convictions in the 10 years following the date of the person's release from imprisonment, employers have the discretion to consider them for employment. Legislating employment screening in this way will provide greater protection for people with disability from harm by minimising the risk that they will come into contact with a person who may threaten their safety.

The third safeguard introduces compulsory reporting to the NSW Ombudsman of incidents of serious sexual or physical abuse, neglect or ill-treatment, and fraud in government-provided or government-funded accommodation services and centre-based respite. This enables the Ombudsman to oversee serious complaints, to identify systemic issues, and to make recommendations for practice improvement where appropriate. Oversight by the Ombudsman is expected to improve the systems of residential care and respite services in managing and reporting incidents, and thereby improve the safety and welfare of people with disability. I repeat: The new safeguards build on current practice and existing systems within the government and non-government sectors. As such, the cost of implementation will be relatively low.

It is a time of tremendous change for people with disability, their families, and carers. The National Disability Insurance Scheme signifies the need for far-reaching reform to a more person-centred service system and an inclusive rights-based approach. The bill delivers this and more. It represents the Government's vision for a more inclusive society, outlines its responsibilities during transition to the NDIS and beyond, creates social change, strengthens the rights of people with disability, increases choice and control, and adopts a broader remit than simply enabling disability service provision. I am extremely proud of this bill and I thank the people of New South Wales who have contributed their views, which have been so important in developing this legislation. This bill represents the Government's commitment to people with disability, and I commend it to the House.

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

MUTUAL RECOGNITION (AUTOMATIC LICENSED OCCUPATIONS RECOGNITION) BILL 2014

Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Matthew Mason-Cox.

Second Reading

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [12.17 p.m.]: I move:

That this bill be now read a second time.

I am delighted to introduce the Mutual Recognition (Automatic Licensed Occupations Recognition) Bill 2014, which will enable certain licensed tradesmen and tradeswomen such as electricians to work in their licensed trade in New South Wales on the basis of the licence they hold in their home jurisdiction. In this way an occupational licence will operate like a driver licence. This bill achieves the main goals of the former National Occupational Licensing System policy by providing a power to recognise a licence issued by another jurisdiction as being equivalent to a New South Wales licence and leveraging existing administrative structures to support this objective. This bill proposes a low-cost model that will facilitate labour mobility.

In December 2013 the Council of Australian Governments [COAG] decided not to continue with the National Occupational Licensing System policy. The model set out in this bill makes good on the COAG announcement that States would work to develop alternative options to national licensing. The model set up in this bill enables a variety of occupational licences issued by other jurisdictions, and which have an equivalent in New South Wales, to be prescribed, thereby deeming that licence to be a New South Wales licence for practical purposes. The bill builds on the current mutual recognition policies that have been in place since 1992.

This automatic version of mutual recognition will mean, however, that the holder of a prescribed licence will be able to carry out their trade without registering in, or being required to hold a licence issued by, New South Wales to do so. The licence with which the person has been issued in their principal place of residence will be sufficient to carry out the regulated work. This model supports our tradespeople, particularly our regional communities, and especially those who live near a State or a Territory border.

The Hon. Dr Peter Phelps: Hear, hear! Like Queanbeyan.

The Hon. MATTHEW MASON-COX: Indeed, like Queanbeyan and like the Tweed and communities along the Murray River. It is a very important development for regional New South Wales. The bill will deem a recognised licence issued under the law of another jurisdiction to be the same as an equivalent local licence that is issued in New South Wales, provided the holder of the recognised licence has their principal place of residence in that other jurisdiction. The clear objective is to ensure that the person holding their original licence is able to work under that licence in New South Wales. It is envisaged that these persons who live in border communities and their small businesses will be the main beneficiaries of the policy. If the person moves to New South Wales, they must apply for a New South Wales licence under the general mutual recognition policy that has been in place since 1992. The remainder of the bill contains provisions to support this fundamental principle.

The New South Wales laws apply to the deemed local licence. Disciplinary and enforcement action can be taken against the holder of a deemed local licence in the same circumstances that action can be taken against the holder of a local licence. The same rights of appeal and review will apply in respect of any action as apply in respect of action against a local licence. If a person is disqualified from holding a licence in New South Wales, the person is prohibited from working under a licence issued by another jurisdiction as a deemed local licence in New South Wales. New South Wales law will not be circumvented by this policy. If the person's licence in their home jurisdiction becomes suspended then it is ineffective under this policy because it is no longer current and their recognised licence is no longer in force. If the original licence has a condition, that condition is part of the deemed New South Wales licence under this policy. The bill contains a power for local and interstate licensing authorities to establish a shared register should that be warranted in future.

As you can see, the bill, and its policy, is conceptually simple. The bill contains definitions of "disciplinary action" and "enforcement action" for the purposes of notifying interstate licensing authorities of action taken by New South Wales against the holder of a licence that they have issued. Disciplinary action is

defined to include all the actions that can be taken against the holder of a licence, including cancelling or suspending a licence, imposing conditions on the licence or any disqualification on the holder of the licence. An adverse finding or determination against the licence holder can be made, as a reprimand or caution can be issued. An undertaking can be required from the licence holder and a financial penalty can be imposed as well as any other action that is prescribed. Enforcement action is defined as the prosecution or conviction or the issue of a penalty notice to the holder of the licence for any offence. Other enforcement action can be prescribed in the regulations.

If disciplinary action and enforcement action is taken against the holder of a deemed local licence, the local licensing authority must notify the appropriate interstate licensing authority that issued the recognised licence. A power has been provided to the local licensing authority in New South Wales to record particulars about disciplinary and enforcement action taken in another jurisdiction against the holder of a New South Wales licence. The entry in the register may be made in terms used to describe the action in information that is provided to the local licensing authority. This means that a more fulsome record of relevant information may be kept in the relevant public register of licensees. The deemed local licences will be prescribed in a regulation, and the regulation-making power is broad enough to support the objectives of the bill.

In the first instance, it is proposed that Queensland electrical mechanics and Australian Capital Territory unrestricted electricians will be deemed to be equivalent to the New South Wales qualified supervisor certificate holder, electrical wiring. Queensland has already recognised the New South Wales licence as being equivalent in its Electrical Safety Act and Regulations. In the case of the Australian Capital Territory, the population is so small and the economy so integrated with New South Wales that early recognition is entirely sensible. The Minister is required to review the Act after five years to determine whether the policy objectives remain valid and to establish whether the terms of the legislation remain appropriate for achieving those objectives. The report of the review is to be tabled in each House of Parliament within the following 12 months.

The main driver of this policy is a red tape reduction commitment to small business and to improve the economic conditions of regional communities, especially those close to State and Territory borders, thereby reducing their costs. It will no longer be necessary for specified occupations to hold two licences to do the same work on the Gold Coast and in Tweed Heads, for example, or places like Queanbeyan and the Australian Capital Territory. I know the member for Monaro will be grateful for that, as he is licensed in the building profession. The regulation that will accompany this bill will list the name of the deemed local licence against the relevant New South Wales licence. It is intended to ensure that the arrangements are reciprocated, so that in general New South Wales people obtain the identical benefit that will be extended to deemed licensees. Jurisdictions, especially those on the east coast, are committed to achieving this goal.

The policy had its gestation in the efforts to improve the operation of the mutual recognition policies and the now abandoned National Occupational Licensing System policy. While the national licensing policy proposal was on foot, decision regulation impact statements were commissioned and published for public consultation. In relation to the refrigeration and air-conditioning occupations, the decision regulation impact statement demonstrated that the greatest net benefit—more than \$16.5 million in net present value—would be obtained for New South Wales by abandoning its duplicative licence in favour of the Commonwealth licence. This bill delivers that benefit by repealing the requirement for a New South Wales refrigeration and air-conditioning licence. Forthwith, New South Wales refrigeration mechanics will require a single licence for their work—and that can only be a good thing. They will no longer need two refrigeration licences to do the same work. The Australian Refrigeration Council, which administers the licence on the Commonwealth's behalf, has a free public register that allows for searches to be undertaken for licensed refrigeration and air-conditioning mechanics by either name or location.

The bill provides for the restricted electrical licence that refrigeration and air-conditioning mechanics require to disconnect and reconnect their fixed electrical equipment. All electrical licensing is administered by the States and this restricted electrical licence makes New South Wales nationally consistent in its approach. Repealing this New South Wales requirement means that a barrier will be removed. That in itself improves the viability of local and regional communities by cutting costs, and relying on a single and uniform regulatory control. I am pleased to bring to the attention of the House the fact that the bill goes further in removing red tape. New South Wales is the only jurisdiction that has mandatory continuing professional development for residential builders and swimming pool builders. The Independent Pricing and Regulatory Tribunal [IPART] has estimated that the burden on these very small businesses is about \$8.1 million per annum—that means each and every year. When this requirement is removed, New South Wales builders will be treated the same as other residential builders in Australia.

The Australian Consumer Law, the Home Building Act and commercial incentives will motivate and require builders to build well. The Australian Consumer Law provides for consumer guarantees. A builder is obliged to guarantee that their services are provided with due care and skill. This means that they must use an acceptable level of skill or technical knowledge when providing the services and take all necessary care to avoid loss or damage when providing those services. The services provided must achieve the consumer's stated purpose and the services must be of sufficient quality to achieve the desired results. A mandatory education requirement for builders and swimming pool builders is no longer necessary, as since 1 January 2011 the Australian Consumer Law has both assured and required that consumers get the right outcomes.

The proposed legislative amendments are common-sense proposals that will streamline the regulatory landscape. One licence and not two will be sufficient; the consumer protection laws and not additional requirements will ensure that licensed occupations are held to account for the services they provide. The leadership of New South Wales in relation to these reforms is indicative of the Government's commitment to remove redundant and duplicative regulatory requirements. The Australian Capital Territory is waiting to see the New South Wales model, so that it can prepare similar legislation, and once the architecture of the arrangements is settled New South Wales will be able to enter into negotiations with Victoria.

When the provisions in the bill become operational, New South Wales and Queensland electricians will be able to work in either jurisdiction, as I have explained. In addition, once the bill commences, New South Wales will be in a position to extend the automatic mutual recognition provisions for plumbers, drainers and gasfitters in concert with Queensland. As agreed by the Council of Australian Governments, it is the role of governments to continue to create the conditions for business to evolve and grow, adapt and compete, and thereby assist workers to develop the skills they need to adjust to new opportunities. These preconditions are essential to improve the efficiency of the enterprises which employ regulated occupations. Accordingly, 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.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Orders of the Day Nos 1 to 8 postponed on motion by the Hon. Matthew Mason-Cox.

HOME BUILDING AMENDMENT BILL 2014

Second Reading

Debate resumed from 27 May 2014.

Dr JOHN KAYE [12.31 p.m.]: On behalf of The Greens I address the Home Building Amendment Bill 2014. I state at the outset that we have serious concerns about the impacts this bill will have on home owners and on people who are purchasing homes from developers. The objective of the Home Building Act is to protect consumers. For many people the purchase of a house, a home unit or a unit in a development is the largest investment they will make in their lives, and for many it is the only investment they will make in their lives. For every purchaser it is an expression of who they are; it is a place to live their lives, it is a place to raise their families, it is a place to be, it is a place to call home.

Protections for consumers against the dodgy work of a small number of builders are essential. At the same time, the Home Building Act tries to avoid imposing onerous burdens on builders. There are good public policy reasons for not unnecessarily imposing imposts on builders. Situations in which builders were unnecessarily burdened by unreasonable requirements would lead to a loss of employment in the industry and would have impacts on the affordability of housing, which would pass on to the owners and, in the case of renters, would mean that the owners of rental accommodation would likely increase the rent. It is very clear that we need to have a system that is not unnecessarily burdensome on builders. But, at the same time, the fundamental objective of the Act is to provide protections against a variety of opportunities for unscrupulous builders to rip off customers by cutting corners and by delivering poor-quality outcomes.

We have heard lots of stories, and have seen them in the media, about the absolute tragedy of people who strive to purchase their first home; they are very excited, it is their dream home and they get into their dream home and it turns into a nightmare. Any legislation that deals with home building should balance those two objectives. The question is: did the succession of Fair Trading Ministers who had their hands on this legislation get that balance right? If we go to the second reading speech of the Minister who introduced this legislation in the lower House, it is pretty clear that the intent was nothing to do with protecting consumers; the intent was very strongly focused on advantaging the construction industry. The first four paragraphs of the Minister's speech were all about the construction industry. Consumers ran a very poor third in the Minister's second reading speech.

It is clear that the bill reduces the burden on builders, but does the bill maintain or improve consumer protection? The answer is no. There are benefits to consumers in the bill and there are also benefits to the construction industry, but there are a number of benefits for the developers and for the construction industry that are won at the expense of home owners. The Owners Corporation Network has undertaken a comprehensive analysis of the legislation and it concludes:

The only benefits to consumers in the bill are those that also benefit the construction industry.

That is a class of win-win that should be pursued. The Owners Corporation Network goes on to observe:

Consumers are the losers in all contentious issues.

Wherever there is an opportunity to advantage the construction industry at the expense of consumers, that advantage has been taken. There are a number of key issues. Who should bear the cost of fixing defective building work? Clearly, it should be the builder. This bill is largely about who bears the cost of fixing defective building work and the clear principle is that it should be the builder. There are three good reasons why the builder should bear that cost. The first is a matter of justice. It is simply unfair to impose on somebody who purchases a home the cost of rectifying defective building work when that defective building work was not their fault. The second reason why the burden should fall on the construction industry is quality control. The risk of having to fix defective work is a discipline on the industry that creates far better quality control. The third reason is that it is in the interests of the building industry itself to take responsibility, because where it takes responsibility for repairing defective work it creates confidence and it will encourage investment.

The problem is that this bill shifts a large amount of the onus of repair onto consumers with clear consequences for the industry and for consumers. However, the bill contains a number of uncontentious issues—these are the win-win outcomes that were identified by the Owners Corporation Network. The first issue is the creation of a single date for the completion of a strata construction. A single date envisaged in the bill is the date on which the occupation certificate is issued. By creating a single date rather than the multiple dates that exist currently, the bill creates clarity for a win-win situation: the builders will know when their liability ends and the home owners will know when they can take action.

In new section 48E the type of rectification orders that Fair Trading inspectors can issue has been broadened, and that will have a salutary effect. There are three main areas of concern in the legislation. The first is the issue of the definition of "major defects", the second is the changes to the professional instructions defence and the third is the focus on the original builder carrying out repairs to any building defects. In each of those cases the balance has been tipped against the consumer and is in favour of the builder. For that reason The Greens cannot support the legislation. I will speak briefly now about each of those three areas.

The first area concerns major defects. In 2011 this Parliament passed changes to the Home Building Act, which changed the previous seven-year warranty to two separate warranties—one for six years for structural defects and another for two years for the remaining smaller defects. That change was opposed by The Greens and Labor for good reason. It has created a litigation nightmare over what is a structural defect and what is a non-structural defect. If there is a problem with building defects it is not because of home owners; it is because there are builders out there who complete constructions in a defective fashion. It is the construction industry that is responsible for building defects and the construction industry should bear the blame, not consumers. It is deeply unfair of the construction industry to make life harder for home owners.

This bill deepens the unfairness of the six-year, two-year structure introduced in 2011. It is not about less litigation, as claimed—if that were the case we would go back to the single seven-year warranty period—it is about favours for the construction industry. The six-year warranty period for structural defects has now been changed to a six-year warranty period for major defects. The bill creates a much smaller class of damage for

which the six-year warranty period exists. Under the bill, many defects that are currently under warranty for six years will be under warranty for only two years—many of those defects will be undetectable in the first two years. It will lead to more litigation specifically because home owners will go straight to court in the two-year period to get legal remedies. They will either go to court within the two-year period or they will lose the opportunity to do so; therefore they will have less incentive to negotiate so they are more likely to go to court.

New section 18E (4) (b) creates a two-part test to get access to the six-year warranty period. The first part of the test is whether the damage is to a major element. A major element is defined as a "load-bearing component of a building that is essential to the stability of the building", a fire system or waterproofing. The second component of the test in new section 18E (4) (a) is whether the defect will cause or is likely to cause the inability to inhabit or use the building, or part of the building, for its intended purpose; or whether it will cause the destruction of the building or part of the building or a threat of collapse of the building or part of the building. This is a much narrower definition than the existing definition. The previous definition was about physical damage. "Physical damage" has disappeared and been replaced by "destruction of the building or part of the building".

The test to go beyond the two-year warranty period to take action is much narrower and more stringent. There are examples of major damage but the structure is still inhabitable, for example, cracking that occurs which causes severe damage to non-structural cladding. If that is not detected within two years it is not a serious defect. It becomes the responsibility of the owner, not the builder. Even though the first part of the test includes fire safety and waterproofing, which sounds good, it is unlikely to pass the second part of the test, for example, water seeping into the roof cavity that stains the ceilings but does not make the building uninhabitable or unsuitable for its intended use. The second part of the test is weakened in another way.

What was "preventing continued practical use of a building or part of it" has become "inability to inhabit or use the building or any part of the building". It is a significantly narrower gateway to access the warranty after the two-year period has expired. The builders and developers will argue that the building can continue to be inhabited even if it is no longer useful for the intended purpose and therefore the six-year test does not apply. The second area of concern for The Greens is the defence of builders relying on instructions from a home owner's expert, an architect or an engineer. Section 18F of the Act creates an offence for breach of a statutory warranty for builders if the defect comes about because the home owner issued an instruction in writing to the builder and the builder opposed the change.

New section 18F changes that and extends the defence so that builders can rely on the written instruction of an independent expert engaged by the home owner provided that independent expert is independent of the builder. It is simply naïve to believe that new section 18F, under which it will be a defence to rely on instructions from the home owner's expert, will not be exploited, especially in the case of the development of a multi-unit residence. Imagine if a \$2 shelf company is established by the owner and the builder—in this case the owner is the developer. That company sits between the developer and the builder. It can get expert engineering and architectural advice that will go to a lower building standard design, lower quality materials and poorer standards of construction.

But that \$2 shelf company is not owned by the developer or the builder. When a defect becomes clear and the new owner of the structure recognises that there is a problem they cannot sue the developer or the builder; they must go to the shelf company and, through the shelf company, to the experts. At the least it creates a confused line of responsibility. It removes what exists at present, which is a clear defence—but only if the instruction is in writing by the owner and the owner takes on responsibility. It is fairly clear that developers will use the blurred line of defence and blurred outcome to escape responsibility. It is an invitation to the dodgy end of the industry to act in an even more dodgy way.

My third concern is the way the Home Building Amendment Bill focuses the building defect dispute resolution process onto defects being physically repaired by the original builder rather than by the original builder taking financial responsibility. There are two examples within the legislation. Owners are required to provide the original builder with reasonable access to perform repairs. The second example is that the legislation requires courts and tribunals to give preference to repairs by the responsible party, that is, the original builder, rather than imposing a financial cost on the original builder to pay for repairs.

This is the cheapest outcome for builders. It is cheaper for them to repair defects than to pay someone else to repair them, but it is the least satisfactory outcome for consumers. It is unlikely that a home owner will want a builder to come back to their house or unit to repair defects because it was the builder who caused the

problem in the first place. Home owners will have already lost confidence in the builder because of the defects. This provision compounds the bad experience. It stops home owners from escaping from the nightmare of dodgy builders. Secondly, this pushes home owners back into the hands of dodgy builders. Dodgy builders are unlikely to be enthusiastic about repairing damage they caused, yet home owners will be caught with builders who will apply the least effort to repair the defects.

Thirdly, some of the builders who cause the defects in the first place are unlikely to have the expertise to make quality repairs. In some cases repairing building defects requires experience and expertise that goes way beyond that of a simple construction company. In some cases that kind of repair, particularly a structural repair, requires a high degree of expertise. At the very least, owners should be able to claim if repairs are not adequate, even if the original warranty period has expired. We are concerned that builders will be able to escape from the costs of fixing their dodgy work simply by dragging out the repair work until the warranty period has expired and walking away, leaving the home owner with responsibility for repairing work that was not their fault in the first place.

The Home Building Act is a fine balancing act. It requires the capacity to balance between the purchasers, the home owners, and the developers and builders. Keeping that balance right is a tricky act. There is no simple way of doing it. Our serious concern with the legislation is that, like the 2011 legislation, which was rushed through the Parliament by the previous Minister for Fair Trading, Mr Anthony Roberts, it tilts the favour back to the construction industry at the expense of home owners.

I fully expect that if this legislation goes through unamended it will create nightmares for too many home owners and too many people purchasing units and homes who will not be able to get defects rectified. I understand that the Australian Labor Party, the Opposition, has tabled a number of amendments which go to addressing all of the concerns I have raised. I thank the Owners Corporation Network for its analysis of this legislation. The Home Building Act and this bill are extremely complex. The Owners Corporation Network did an extremely fine job of going through the legislation and identifying its concerns. I thank the network for its work and acknowledge that I have relied on it to analyse this bill. The Greens do not believe the bill should be supported in its current form.

The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile): I welcome to the public gallery student leaders from public schools in New South Wales.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [12.51 p.m.], in reply: I thank all members for their contributions to debate on the Home Building Amendment Bill 2014 and for raising their concerns. I particularly place on the record my appreciation for the thoughtful contribution from the Hon. Paul Green who was very supportive of the bill. I thought his comments were particularly insightful. As members have acknowledged, the bill is a balancing act. It balances a package of reforms that assists home owners and builders alike by providing industry with red tape reduction where possible to support growth and investment, without sacrificing fundamental consumer protections. I note that the views of those opposite similarly support the measures in the bill enhancing consumer rights and simplifying the regulatory framework for the home building industry. These measures include increased penalty provisions, allowing custodial sentences for second and subsequent offences for unlicensed contracting and for not providing home warranty insurance.

These provisions, as well as the ability to refuse a licence if the applicant was involved in the management of a company that had been wound up in the past three years, strengthen the licensing regime. A strong and robust licensing system benefits not only consumers but also the hardworking subcontractors and tradies who are often also the victims of insolvent builders. The Government has worked hard to support the vital growth of the industry. Reducing red tape for industry—making it easier for them to get on with the job—supports the Government's infrastructure drive to make New South Wales number one again. I know members opposite applaud us for all those initiatives. The reforms were subject to extensive stakeholder consultation, including the public release of a discussion paper, a position paper, round-tables with key stakeholders and expert working groups on the most significant reforms. In addition, targeted consultation was undertaken with key stakeholders on the draft bill itself. It has been an exhaustive process.

I now turn to the matters raised by the Opposition and the crossbench members. Reform of the definition of "structural defect" is long overdue. The significant time and money spent by parties on disputes must be reduced. More consistent court and tribunal decisions must be assured. This reform will deliver cost savings for home owners, builders and the Home Warranty Insurance Fund. The bill replaces "structural defect" with a new concept of a "major defect" for the six-year statutory warranty period. To provide further certainty,

the definition will be moved from the regulation into the Act. A new two-step test will be introduced to determine whether a problem is a "major defect". The first step is whether the defect is in a "major element" of the building. Major elements will include structural load-bearing elements, but for the first time fire safety systems and waterproofing are also expressly included. This is an important step.

The second step considers the severity of the consequences of the defect, such as where it causes, or is likely to cause a building to be uninhabitable or unusable, the destruction of the building, or the threat of collapse of the building. It is important that only defects that significantly affect the use and structural integrity of the building are caught by this second step. That is why terms like "physical damage" have not been included in the definition, as the objective for this reform was to provide greater clarity. A scratch on a wall could be interpreted as being physical damage. Clearly that is not a defect that would take time to appear or which should be considered a major defect.

Our advice is that the current drafting in the bill will achieve the intended policy intent that any significant defects in fire safety systems and waterproofing will have the benefit of the six-year warranty period. To ensure that the concept of major defects can be refined if needed in the future, the bill provides a regulation-making power to prescribe other major elements or major defects. In keeping with the open and transparent consultative approach to the development of this bill, we will continue to consult with our stakeholders in developing any regulations.

Those opposite also raised amendments to the proposed defence for builders who reasonably rely on written instructions from an owner or a professional acting on behalf of the owner, who is independent of the builder. It is reasonable for a builder to rely on instructions provided to them by a professional, such as an architect or engineer, who is engaged by a home owner. It is unreasonable to require a builder to second-guess the expertise of these agents when they do not have the same level of expertise or qualifications. I would have thought that was self-evident. This amendment will not apply in respect of contracts entered into before the commencement of the amendment.

The Act as it is currently drafted already has in place many protections for consumers who may be the innocent victims of unscrupulous developers. In the Act the developer is equally responsible for the statutory warranties as if they carried out the building work themselves. Therefore, if the developer engaged the professional or the professional had been a close associate of the developer within the past three years, the developer could not rely on that advice as a defence in a claim for a breach of the statutory warranties. I think consumers are looking for those protections.

I now turn to owner-builder disclosure requirements. The provisions in the bill which create requirements for certain information about owner-builder work on a property are enhancements of already existing requirements for a conspicuous note on a contract for sale concerning owner-builder work. Conveyancers and lawyers are therefore already well aware of this requirement, and the proposals in the bill are merely enhancements to this current requirement. While consideration was given to requiring the inclusion of additional information in the consumer warning, this was rejected due to this expertise. Conveyancers and lawyers will of course be assisted by the public register of insurance certificates which will also be established.

Whenever new legislation is commenced, Fair Trading engages in a comprehensive and targeted education and information campaign to ensure that all stakeholders and interested parties are fully informed of their rights and responsibilities. To this end stakeholders such as the Law Society of NSW and the Australian Institute of Conveyancers are provided with all necessary assistance and information in educating and informing their members. Information and advice is also made publicly available on the Fair Trading website.

There were a number of comments in respect of the proposed completion date for strata schemes. All possible options that could assist owner corporations and lot owners to easily discover the completion date of building work for their building were explored in the development of this amendment. No stone was left unturned. The main aim was to establish a point closest to the time period when the majority of the scheme would be sold, owners would be moving in, and the owners corporation established. This would be the most likely time that owners would identify defects in the construction of the strata scheme.

The date of registration of the strata plan was quickly rejected as this is done well before the building can be properly used for its intended purpose and occupied by residents. The bill provides that the occupation certificate issued must be one that allows the occupation and use of the building. This ensures that it is provided at a time when the work has been truly completed. This amendment will greatly improve the ability of owners

corporations in determining the warranty periods for their building. It will enhance certainty across the industry. This bill provides amendments which will enhance existing protections for consumers. The homeowners of New South Wales will benefit from reduced risks in undertaking such a big investment as building a home or undertaking major renovations.

Finally, I make special mention of my two predecessors, the Hon. Stuart Ayres and the Hon. Anthony Roberts, who both contributed significantly to these important reforms in their respective times as Minister for Fair Trading. I now figuratively stand upon their collective shoulders and report to the House that the view is magnificent. I thank the officers of NSW Fair Trading for all their hard work in developing these important reforms to home building in New South Wales. I again thank honourable members for their contributions to this debate. I intend to deal with a number of the amendments proposed by the Opposition in the Committee of the Whole. Again I thank all those, including the key stakeholders, who have contributed over the past couple of years to the important development of this bill. Accordingly, I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

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

[The Assistant-President (Reverend the Hon. Fred Nile) left the chair at 1.01 p.m. The House resumed at 2.30 p.m.]

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

QUESTIONS WITHOUT NOTICE

FEDERAL DISABILITY DISCRIMINATION COMMISSIONER

The Hon. LUKE FOLEY: My question is directed to the Minister for Ageing, and Minister for Disability Services. What has the Minister done to take up the concerns of New South Wales disability groups about the abolition of the position of Federal Disability Discrimination Commissioner Graeme Innes?

The Hon. JOHN AJAKA: I have met with Graeme Innes on a number of occasions to discuss these issues. I have also raised these issues with the Federal Government. The decision to remove the position of Disability Discrimination Commissioner on the retirement of Graeme Innes was made by our Federal counterparts. Graeme Innes has been Australia's Disability Discrimination Commissioner at a time of great change in the sector. He has held the position since 2005 and in this time much work has been done to advance the rights of people with disability by all Australian governments.

Every member is aware of the National Disability Insurance Scheme [NDIS] but fewer would be aware of the National Disability Strategy 2010-2020 or the Disability (Access to Premises—Buildings) Standards 2010. The National Disability Strategy is a commitment to a national approach to support people with disability in a way that maximises their individual potential and allows participation as equal citizens in Australian society. The development of the National Disability Strategy is the first time in Australia's history that all governments have committed to a unified—

The Hon. Amanda Fazio: Point of order: My point of order is relevance. The question to the Minister was about his advocating on behalf of New South Wales disability groups regarding the abolition of the Federal Disability Discrimination Commissioner, not his plans for national disability strategies.

The PRESIDENT: Order! It was not immediately apparent where the Minister's answer was going, but I am prepared to extend him a little latitude. I request that the Minister demonstrate how his answer is generally relevant to the question he was asked.

The Hon. JOHN AJAKA: The development of the National Disability Strategy is the first time in Australia's history that all governments have committed to a unified national approach to improving the lives of people with disability, their families and carers, and to providing leadership for a community shift in attitude. That is why I will continue to take the argument to the Federal Government in relation to this issue.

BOATING AND FISHING INFRASTRUCTURE FUND

The Hon. MELINDA PAVEY: My question is directed to the Minister for Roads and Freight. Will the Minister update the House on the recently announced Boating and Fishing Infrastructure Fund?

The Hon. Robert Brown: Good question.

The Hon. DUNCAN GAY: It is a good question. I thank the honourable member for that question.

The Hon. Greg Donnelly: Your office wrote it.

The Hon. DUNCAN GAY: What happened in your time does not necessarily happen in our time. On Monday the Minister for Primary Industries, Katrina Hodgkinson, and that hardworking member for Rockdale, John Flowers, announced a \$5 million boost for boating and fishing infrastructure in and around Botany Bay. I particularly pay tribute to the fishermen's friends the Hon. Robert Brown and the Hon. Robert Borsak.

The Hon. Greg Donnelly: It is a lozenge.

The Hon. DUNCAN GAY: In this case it was a terrific lozenge. Along with the Minister I thank them for their support and encouragement in this important area. The Port Botany Boating and Fishing Infrastructure Program has been established in recognition of the increase in—

The Hon. Steve Whan: Have you cleaned up the oil spill yet?

The Hon. DUNCAN GAY: Last time you talked about that you were in the wrong harbour. As I was saying, the Port Botany Boating and Fishing Infrastructure Program has been established in recognition of the increase in popularity of boating and fishing in this area. The new program will see the construction of two offshore artificial reefs off Botany Bay to provide fishing opportunities similar to the successful reefs off the south headland of Sydney Harbour. Other initiatives include the construction of a fishing platform to provide a safe all-weather location for fishing in Botany Bay.

The PRESIDENT: Order! Opposition members who wish to conduct private conversations should leave the Chamber or do so quietly so that they are not audible.

The Hon. DUNCAN GAY: Frankly, they should leave the Chamber; they are of no use to the people of the State while they are in the Chamber. They have not done anything in here. They leave it to John Flowers and fishermen's friends. Nothing happened when those opposite were in Government and they are not interested in anything now. Other initiatives include the construction of a fishing platform to provide a safe all-weather location for fishing in Botany Bay. Under the program the New South Wales Liberal-Nationals Government is looking at opportunities to provide additional boating access to Botany Bay.

The proven success of the state-of-the-art facility on Foreshore Road, which reaches capacity during peak periods, indicates that additional facilities are required. The popularity of Botany Bay for boating and fishing activities is hardly surprising given its proximity to densely populated areas of Sydney, its protected boat launching facilities and its safe deep water access to offshore waters. In 2002 approximately \$4.1 million of recreational licence fee revenue was used to buy out commercial fishing in Botany Bay. Since then various developments in and around the port have impacted on boating and fishing opportunities within the bay.

The PRESIDENT: Order! I again ask Opposition members to conduct their conversations quietly.

The Hon. DUNCAN GAY: These include the construction of a third container terminal. [*Time expired.*]

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

The PRESIDENT: Order! I call the Hon. Penny Sharpe to order for the first time.

The Hon. DUNCAN GAY: I was talking about the various developments in and around the port that have impacted on boating and fishing opportunities within Botany Bay, including the construction of a third

container terminal, the desalination plant and pipelines crossing the bay. In addition, there has been a significant increase in ship movements. The Government recognises the importance of Botany Bay not only as a successful working port but also as a fishing and boating haven. That is why it has established this new program. Combined these new boating and fishing infrastructure projects will reconfirm Botany Bay as one of the State's premier boating and fishing locations. Transport for NSW will continue to work closely with Roads and Maritime Services and the Department of Primary Industries to develop these initiatives and to engage with the stakeholders.

This is another example of the Government's supporting the more than one million recreational anglers in this State and enhancing the boating experience for the estimated two million people who go boating along the State's coastline and on its rivers, lakes and estuaries. The fishing community is grateful for the advocacy undertaken on this issue, particularly by the Hon. Robert Brown and the Hon. Robert Borsak. The last time we were talking about this issue was in the car park near the third terminal at Port Botany. It is great to be able to bring this project a step closer to realisation. I look forward to working closely with recreational anglers, boating enthusiasts and honourable members on these important projects.

FEDERAL BUDGET AND PENSIONER CONCESSIONS

The Hon. ADAM SEARLE: I direct my question to the Minister for Ageing, and Minister for Disability Services. What contingency plans is the Government putting in place to ensure that the Federal Government's cuts to council rates, car registration and transport fare concessions do not adversely affect the cost of living for pensioners?

The Hon. JOHN AJAKA: Earlier today—and as I indicated yesterday would happen—the Treasurer, the Minister for Local Government and I met with various stakeholders about this issue. As I also indicated to the House yesterday—

The PRESIDENT: Order! I call the Hon. Sophie Cotsis to order for the first time.

The Hon. JOHN AJAKA: —this Government is sending and will continue to send a strong message to the Federal Government that these cuts to seniors' concessions—

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

The Hon. JOHN AJAKA: —are unacceptable and unjustified. There is no basis whatsoever to put our seniors through this.

The PRESIDENT: Order! I call the Hon. Amanda Fazio to order for the first time.

The Hon. JOHN AJAKA: I announce to members of this honourable House that the meeting today was most successful.

The Hon. Luke Foley: Honourable members of this House.

The Hon. JOHN AJAKA: I thank the Leader of the Opposition for his assistance. Interjections from members who are not being honourable sometimes make it difficult to remember that. A strategy has been implemented with the support of all stakeholders. We will continue to work together and to have one united voice in sending a strong message to the Federal Government.

The PRESIDENT: Order! I call the Hon. Shaoquett Moselmane to order for the first time.

The Hon. JOHN AJAKA: The message is simple: We want the concessions reinstated; we want the cuts to be revoked. We have made it very clear that our seniors should not pay the price for the waste and mismanagement of the Federal Labor Government. As I also said yesterday, but members opposite seem to have forgotten, this Government will maintain its commitment—

The PRESIDENT: Order! I call the Hon. Peter Primrose to order for the first time. I call the Hon. Walt Secord to order for the first time.

The Hon. JOHN AJAKA: —and will provide \$807 million this financial year to fund all of the concessions. Sadly, the Federal Government has cut \$107 million. This Government will still provide—

The Hon. Penny Sharpe: Point of order: I thank the Minister for his answer so far, but it is irrelevant. The Opposition wants to know what contingency plans he is making if we do not get the money from the Federal Government.

The PRESIDENT: Order! The Minister is being generally relevant.

The Hon. JOHN AJAKA: As I indicated earlier, the New South Wales Government will maintain its \$807 million worth of concessions for seniors. Let us consider those two figures. This Government's concessions cost \$807 million a year and the Federal Government provided \$107 million. We do not want to lose \$1 of that \$107 million. Seniors have a right to that \$107 million, and that is why this Government will continue to insist that the Federal Government reinstate that funding. As I said, there is no justification for that cut.

STATE EMERGENCY SERVICE DEPUTY COMMISSIONER TARA MCCARTHY

Mr DAVID SHOEBRIDGE: I direct my question to the Minister for Ageing, and Minister for Disability Services, representing the Minister for Police and Emergency Services. Given today's Independent Commission Against Corruption [ICAC] finding that former State Emergency Service Deputy Commissioner McCarthy was corruptly dismissed in reprisal for raising perfectly valid concerns about waste, mismanagement and potential corruption, when will the Government offer this brave whistleblower her job back?

The Hon. JOHN AJAKA: Of course, it should be remembered that the NSW State Emergency Service [SES] is a fundamental part of our emergency service response. The Government supports the thousands of State Emergency Service volunteers and the work they do for the community. The Independent Commission Against Corruption has tabled its report concerning the NSW State Emergency Service commissioner. It found that Commissioner Kear engaged in corrupt conduct by deliberately failing to investigate properly allegations against Deputy Commissioner Pearce and by dismissing Deputy Commissioner McCarthy substantially in reprisal for her making allegations about the conduct of Deputy Commissioner Pearce.

I note the recommendation that the Minister for Police and Emergency Services take action against Commissioner Kear. I am advised that the Minister has instructed the Ministry for Police and Emergency Services to obtain Crown Solicitor's advice on what options and procedures are required to be followed in respect of ICAC's recommendations. I am also informed that the commissioner is now on leave and that ICAC has recommended that action be taken against him. The Minister for Police and Emergency Services and this Government are well aware that this is a serious matter and the Minister will continue to take advice on the issues raised in the report and the courses of action available to him. In the meantime, Mr Jim Smith continues as acting Commissioner of the NSW State Emergency Service and he has the Minister's full support.

Mr DAVID SHOEBRIDGE: I ask a supplementary question. Will the Minister elucidate his answer by telling the House what consideration this Government is giving to reinstating this whistleblower, who should never have been dismissed, not only terminating the commissioner?

The Hon. JOHN AJAKA: I have been informed that Ms McCarthy has settled litigation relating to her termination of employment on a confidential basis. Therefore, I am unable to provide further comment on these matters.

ILLAWARRA ECONOMIC DEVELOPMENT

The Hon. TREVOR KHAN: I address my question to the Minister for the Illawarra. Will the Minister update the House on the opportunities for economic development in Wollongong?

The Hon. JOHN AJAKA: Last Friday I had the honour of hosting a delegation to the Illawarra region led by representatives from the Consulate General of the People's Republic of China, which included representatives of some of the world's leading banks. Thanks to this Liberal-Nationals Government, New South Wales and the Illawarra are open for business. The Illawarra has much to offer potential international investors. This was a great opportunity for the Government and the private sector to showcase the region's investment opportunities and industry capabilities to the delegation. As this Government transforms New South Wales it will continue to encourage visits by delegations like last week's so that the region and the State continue to grow.

The Illawarra is a major economic driver and is the third largest regional economy in New South Wales. I was pleased to tell the delegation of the Illawarra's diverse economy, which has significant tourism opportunities and, of course, emerging growth sectors such as information and communications technology and knowledge services. It has a skilled workforce and, of course, the world-class University of Wollongong. The economic benefit that international investment brings for residents and businesses could be substantial, and I am sure that the delegation saw the potential of the Illawarra.

This visit is a sign of things to come for the Illawarra. It is clear that Wollongong and the Illawarra are well placed to offer innovative and pioneering sites for financial service businesses. The delegation was briefed by Destination Wollongong on the region's tourism features and assets. I am advised that the Chinese investment profile in Australia is changing. Chinese investors have moved away from concentrating their investment in the mining sector. This change in focus presents enormous opportunities for a region such as the Illawarra.

As part of the central business district tour the delegation saw current major private and public sector developments occurring in the city. After the tour Wollongong City Council and I hosted a regional stakeholder lunch, where I had the opportunity to speak to many of the delegates about the region's industry capabilities and economic development opportunities. Presentations featured specific information on each of the region's four local government areas—Wollongong, Shellharbour, Kiama and Shoalhaven—so that members of the delegation could get a feel for the investment opportunities of the Illawarra region.

The PRESIDENT: Order! I call the Hon. Lynda Voltz to order for the first time.

The Hon. JOHN AJAKA: I was able to highlight the prospectus that Advantage Wollongong has put together. The prospectus contains a snapshot of the regions' office and industrial property markets, key industries, key advantages and current developments. It is a fantastic resource for anyone looking to invest and do business in the Illawarra. The visit concluded with a tour of Port Kembla's inner-harbour and outer-harbour precincts, hosted by NSW Ports. I am proud to be part of a Government that is transforming New South Wales and the Illawarra. This Government is driving investment in key growth areas, so that New South Wales never again sinks to the depths of economic despair that those opposite presided over during their 16 years of waste and mismanagement.

RESIDENTIAL PARKS LEGISLATION

Ms JAN BARHAM: My question is directed to the Minister for Fair Trading. Noting that the *Sun Herald* reported on 25 May 2014 that evidence at the Independent Commission Against Corruption has revealed that a prominent residential park owner and former president of the Caravan and Camping Industry Association donated to the campaign of former Liberal Minister Chris Hartcher and hosted a campaign fundraiser in his home, and noting the strong concerns about the lack of transparency in the review process leading to last year's introduction of new residential parks legislation, will the Government now make public all submissions, correspondence and records relating to the "Review of the Residential Parks Act 1998" and the consultation on the draft Residential (Land Lease) Communities Bill 2013, as previously requested?

The Hon. MATTHEW MASON-COX: I thank the member for her question, although it is not a question I expected her to ask. I expected that question from the Labor Party, on its past form. Normally Ms Jan Barham is a person who plants flowers and does not throw stones, but on this occasion I am pleased to address the question. Before the last election this Government committed to improving the governance of residential parks and reforming the Residential Parks Act 1998. Unlike those opposite, we have delivered on that commitment. We have had a comprehensive, two-year review which included extensive consultation with all stakeholders, as the member would be aware. The Residential (Land Lease) Communities Act 2013 received assent from the Governor on 20 November 2013.

The law is balanced and fair. It ensures that vulnerable residents are protected, whilst at the same time it ensures that residential community accommodation options are allowed to grow into the future. The new Act is the result of a thorough consultation process with residents, park operators and representative groups. Upon the Government commencing the review of the Residential Parks Act, the Affiliated Residential Park Residents Association, which is referred to in the article the member cited, sought and received funding to undertake a project in relation to this review. The project was funded from the Rental Bonds Board's grants program with an amount of \$91,458, plus goods and services tax. GST is 10 per cent, for those opposite. The project involved consultation with residents about the Residential Parks Act review, which included holding regional forums and surveys. New South Wales received the final report on the project in accordance with funding guidelines, and this report was subsequently accepted by the Rental Bond Board.

The Hon. Walt Secord: I reckon the Minister doesn't pay any tax.

The PRESIDENT: Order! I call the Hon. Walt Secord to order for the second time.

The Hon. MATTHEW MASON-COX: For the benefit of the Hon. Walt Secord, a copy of the report can be found on the Affiliated Residential Park Residents Association's website. At all times this grant was subject to the department's usual processes and the nature, purpose and outcome were openly communicated. The consultation process undertaken by the Government in developing these laws was unprecedented. In November 2011 consultation was conducted on the discussion paper entitled "Improving the governance of residential parks". More than 740 written submissions were received in response to that discussion paper and a further 130 people took part in NSW Fair Trading's online survey. Consultation on the draft bill was conducted in April 2013, and more than 1,300 submissions were received in response. In addition, a number of round-table discussions were held with key stakeholders, allowing them to air issues and suggest improvements and changes. At all times an open dialogue with stakeholders was kept in place by the Government.

Indeed, the new Act is a win for both residents and industry. It introduces a range of changes designed to overcome problems with the current law. Whilst I will not dwell on those changes, I turn to the site fee increases mentioned in the article. The Government has introduced an easier, fairer and more community-based approach to dispute resolution around site fee increases. The approach ensures that all residents receive any notice of increase at the same time, allowing for collective action against an increase if necessary. Under the current legislation each resident is individually required to take their matter to the tribunal. This provides for a much lower-cost option for all residents. [*Time expired.*]

Ms JAN BARHAM: I ask a supplementary question. Will the Minister elucidate why the submissions are not being released, which was the question?

The Hon. MATTHEW MASON-COX: As I said, the report is on the website. The report goes through the detail of a range of the consultations conducted in this area. The reality is that regulations in this space are being developed at this time.

WOMEN'S REFUGES

The Hon. SOPHIE COTSIS: My question is directed to the Minister for Fair Trading, representing the Minister for Women. On 24 May the Minister for Family and Community Services said in the *Sydney Morning Herald*:

Women's refuges provide an important crisis response.

Will the Minister guarantee that no women's refuges will be forced to close as a result of the Government's Going Home Staying Home reform program?

The Hon. MATTHEW MASON-COX: I thank the honourable member for that detailed question. I will take it to the Minister and report back the response in due course.

STATE ECONOMY

The Hon. DAVID CLARKE: My question is directed to the Minister for Fair Trading, representing the Treasurer. Will the Minister update the House on the New South Wales economy?

The Hon. MATTHEW MASON-COX: I know the health of the New South Wales economy is of great importance to the honourable member, as it is to all honourable members of this place. When I heard the question I had a sense of déjà vu. I remembered the Hon. Eric Roozendaal and the many times he answered this question in this place.

The Hon. Greg Donnelly: Green shoots.

The Hon. MATTHEW MASON-COX: Green shoots, indeed. Dare I say, that was the answer we received time and again. However, the Hon. Erica Roozendaal forgot to water the green shoots.

The Hon. Lynda Voltz: Point of order: The question to the Minister for Fair Trading, we assume in his portfolio responsibility, was for an update on the New South Wales economy. The Minister is being completely irrelevant to the question.

The PRESIDENT: Order! The Minister should not respond to interjections and should stick to the question asked.

The Hon. Greg Donnelly: That was disorderly.

The PRESIDENT: Order! It is a bit rich for Opposition members to lecture the Minister when he was responding to an Opposition interjection.

The Hon. MATTHEW MASON-COX: As I was saying, there is a stark contrast with the incoming Coalition Government. The green shoots of yesterday, which were poisoned by those opposite, have seen some new regrowth under this Government. The economy is starting to get back on track, and the economic statistics bear that out. Let me re-educate those opposite. The economic growth in New South Wales is the strongest growth of all States on a quarterly and an annual basis.

The Hon. Steve Whan: No, it's not.

The PRESIDENT: Order! I call the Hon. Steve Whan to order for the first time.

The Hon. MATTHEW MASON-COX: The member for Monaro—the former member for Monaro—

The Hon. Mick Veitch: There is the prediction!

The Hon. MATTHEW MASON-COX: That is wishful thinking. In the December quarter 2013 the growth in gross State product was 1.8 per cent. That compares very well with other States. Under Labor, New South Wales had the slowest growth for a decade and that, essentially, has been the retardant to growth in this State. Business confidence in this State has grown for the past nine consecutive months. That is a magnificent result for New South Wales. We have seen confidence growing across all sectors and it is the longest spate of continued growth in this State for years. This is the sort of result we see when business starts to believe the Government in charge of this State has a plan to benefit the citizens of this State. In New South Wales we have a plan: We have NSW 2021. I encourage those opposite to look at the important—

The PRESIDENT: Order! I call the Hon. Lynda Voltz to order for the second time. I call the Hon. Mick Veitch to order for the first time. I call the Hon. Amanda Fazio to order for the second time.

The Hon. Lynda Voltz: Point of order: My point of order relates to relevance. Questions may be put to Ministers relating to public affairs with which the Minister is officially connected, to proceedings pending in the House or to any matter of administration for which the Minister is responsible. The Minister was asked a question in his capacity as the Minister for Fair Trading and the Minister has not been relevant once to his portfolio during his answer.

The Hon. Duncan Gay: To the point of order: The Minister for Fair Trading represents the Treasurer in this House.

The Hon. Lynda Voltz: To the point of order: The Minister was not asked a question in his capacity as representing anyone; he was asked a question in his capacity as the Minister for Fair Trading.

The Hon. MATTHEW MASON-COX: To the point of order: The question states, "My question is directed to the Minister for Fair Trading, representing the Treasurer".

The PRESIDENT: Order! Opposition members will come to order. They are skating on thin ice. I remind the Hon. Amanda Fazio that she is on two calls to order. Often members make mistakes when they ask a question and describe a portfolio title. The Chair always extends some latitude. The Minister clearly has responsibility for representing the Treasurer in this Chamber. The question was in order. The answer was certainly in order.

SYDNEY SECOND AIRPORT SITE

The Hon. ROBERT BORSAK: My question without notice is directed to the Minister for Roads and Freight, representing the Minister for Regional Infrastructure and Services. What efforts is the Minister making to ensure that if a second major airport is built in Sydney country people will not be forced to land at Bankstown, Newcastle, Canberra or the second Sydney airport rather than at Kingsford Smith airport, as they do currently?

The Hon. DUNCAN GAY: That is a great question. We should not rely on The Greens for air travel because Mr Jeremy Buckingham went overseas, took all his entourage, travelled to North America and did not even knock off the carbon content—no offsets at all. The Hon. Robert Borsak is talking to a member of a political party that represents regional New South Wales and I can guarantee absolutely that we will be digging in our RMs to make sure that the regional flights stay at Kingsford Smith airport. I know our Liberal colleagues will be supporting that just as strongly. If people had to rely on those opposite they would be walking to Sydney.

CHINESE RESTAURANTS AND MINISTER FOR FAIR TRADING

The Hon. ERNEST WONG: My question without notice is directed to the Minister for Fair Trading. Yesterday, in response to a question without notice, the Minister suggested that I should join him and public health officials to visit Chinese restaurants in Chinatown. On what evidence did the Minister base that statement, which suggests Chinese restaurants are not meeting statutory health standards? Will the Minister now apologise to Chinese restaurant owners across the State?

The Hon. MATTHEW MASON-COX: Another member of this place has a glass jaw. I asked the Hon. Ernest Wong whether he would like to join me in identifying those traders at Paddy's Markets that he had asked about in a previous question and whether he would like me to come along with a group from Fair Trading. We have a wonderful program called My Place, which involves Fair Trading inspectors informing people about their rights.

The Hon. Ernest Wong: Point of order: The point of order relates to relevance. I asked specifically for the factual evidence on which the Minister based his statement.

The PRESIDENT: Order! The Minister is being generally relevant to the question.

The Hon. MATTHEW MASON-COX: As I was saying, we had a discussion yesterday about the Hon. Ernest Wong joining me and some officials from Fair Trading. I said that if he believes there are people at Paddy's Markets who are in breach of the law we will get some officers from Fair Trading out there to conduct an inspection and ensure that people are aware of their rights and responsibilities. In a similar vein, if there are other people—

The Hon. Lynda Voltz: Point of order: The Minister is now debating the question. The Hon. Ernest Wong made a statement, which is a direct quote from *Hansard*, and the Minister is now debating that statement. I ask you to bring him back to the leave of the question.

The PRESIDENT: Order! The Minister was not debating the question. The Minister was putting his answer in context by referring to the answer he gave yesterday. However, he was not getting to the directly relevant part of the member's question very quickly. I note that more than half of the Minister's time has elapsed.

The Hon. MATTHEW MASON-COX: The Hon. Ernest Wong drew that inference, and I certainly did not intend that inference to be drawn from what I said. I know many people who run wonderful restaurants across the community and of course they are aware of their responsibilities and their rights. Members opposite are inferring poor behaviour, and they are a disgrace. They should think very hard about the words they use in this place because people understand their rights and responsibilities. The Hon. Ernest Wong should think very carefully about drawing such a poor inference.

RURAL AND REGIONAL ROADS

The Hon. JENNIFER GARDINER: My question without notice is addressed to the Minister for Roads and Freight. Will the Minister update the House on the progress of roadworks in the west of New South Wales?

The Hon. Luke Foley: Don't worry, Matthew. It was only two daily Chinese papers that you featured in—and a couple of TV channels.

The Hon. DUNCAN GAY: I thank the member for her question, although I had trouble hearing it because of the interjections from the Leader of the Opposition, who is more interested in Chinese restaurants than in western New South Wales. Go figure—that is the Labor Party. That sums up those opposite; they are inner-city trendoids. The former member for Monaro, who is sitting on the losers lounge, will be very soon the former member for Monaro not sitting on the losers lounge.

The Hon. Lynda Voltz: Point of order: My point of order relates to relevance. The Minister was asked about roads in western New South Wales and he has in no way addressed that issue. Instead, he has hurled insults at members across the Chamber.

The PRESIDENT: Order! I counsel all Ministers, as I have done frequently, not to respond to interjections. The Minister has the call.

The Hon. DUNCAN GAY: I will try to behave, but members opposite will have to stop interjecting. The Government has embarked on an historic program of road and bridge works in western New South Wales. For example, in 2011 on the Newell Highway near Peak Hill the road surface was replaced at two sections to provide a quieter surface for motorists and reduced noise from vehicles. This work cost \$2 million. Likewise, at the cost of \$2.2 million, the Government resurfaced four kilometres of the Newell Highway about 30 kilometres north of Moree. This work was successfully completed in July of 2011. That probably helps The Greens when they walk by.

In September 2011 we completed a \$2.8 million widening of the Kamilaroi Highway west of Wee Waa, as well as a \$2 million widening and sealing of the Gwydir Highway east of Moree. In the same year on the Mitchell Highway we completed a \$3.8 million project to strengthen 1.8 kilometres of the pavement east of Orange. In May of 2012 we completed resurfacing of Cudal Road near Canowindra at a cost of \$2.5 million, while between May and November we delivered an extra three overtaking lanes on the Newell Highway between Narrabri and Moree. That helped people when The Greens were out there—

The Hon. Rick Colless: They don't go anywhere.

The Hon. DUNCAN GAY: They are out there in the press, waiting for the solar panels on the roof to kick the thing into gear. People queued up for kilometres behind them, and they have to get around them. It is a road safety issue. It is a safety issue for regional New South Wales. The Greens create that problem in our areas. The latter is part of a broader \$20 million funding program to provide 11 additional passing lanes on the Newell Highway. While on the subject of the Newell Highway, in October 2012 the Government completed the repair of two kilometres of overtaking lanes and a 1.5 kilometre section of the highway north of Gilgandra, while in December we completed a \$2.5 million widening of the Mitchell Highway at a well-known blackspot west of Bathurst at Rocks Hill.

In the same month a new bridge over the Bogan River east of Bourke was completed at a cost of \$7.6 million, while \$3.4 million was spent on widening and improving drainage on the Mid-Western Highway at Fitzgeralds Mount. In April 2013, \$2.5 million was spent on widening and strengthening the Newell Highway north of West Wyalong. Are members getting the picture? A lot of money is being spent in regional New South Wales, catching up after 16 years of neglect. That is why members opposite are sitting on the losers lounge.

COASTAL COUNCIL

The Hon. ROBERT BROWN: My question without notice is directed to the Minister for Fair Trading, representing the Minister for the Environment. Is it true that the Minister is considering the reintroduction of a coastal council, first set up by the Greiner Government and later abolished by a Labor Government? When does he expect to have it set up and what will it do?

The Hon. MATTHEW MASON-COX: I thank the member for his detailed question. Naturally I am best advised to refer the question to the Minister, seek an answer and come back and advise the House in due course.

MURWILLUMBAH MOTOR REGISTRY

The Hon. WALT SECORD: My question without notice is directed to the Minister for Roads and Freight. Given that a circular dated 15 May from the Chief Executive of Roads and Maritime Services, Peter

Duncan, advised motor registry network staff that they would be moving to Service NSW one-stop shops on 1 July, how many staff at the Murwillumbah office on the North Coast will be the subject of forced redundancies?

The Hon. DUNCAN GAY: The language used by the member indicates that he has already pre-written a press release. As the member is waving a piece of paper, one needs no further evidence than that. That means, whatever I say, the Hon. Walt Secord has already written something that will be wrong. In that case, I have nothing to add.

PENRITH ELECTORATE DISABILITY ACCOMMODATION

The Hon. CATHERINE CUSACK: My question is addressed to the Minister for Ageing, and Minister for Disability Services. Will the Minister update the House on disability accommodation in the Penrith electorate?

The PRESIDENT: Order! I remind the Hon. Walt Secord that he is on two calls to order.

The Hon. JOHN AJAKA: Last week I was pleased to announce the start of work on an accommodation project for people with disabilities who currently live at the Cherrywood Village large residential centre in Western Sydney. Also attending was the local member and Minister for Police and Emergency Services, Minister for Sport and Recreation, and Minister Assisting the Premier on Western Sydney, the Hon. Stuart Ayres, as well as the Federal member for Lindsay, Fiona Scott, MP. The New South Wales Government has funded \$13.2 million towards the Penrith project to help provide a home with improved living spaces and conditions for the residents. This is a significant milestone for the residents of Cherrywood Village, their families and carers.

Moving people with disability out of large residential centres and into smaller group homes is a key priority for the New South Wales Government. As a government we believe people with a disability should be able to enjoy a quality of life that is available to other New South Wales citizens, including opportunities to live in a home within the broader community. Often that means moving from large hospital-like settings into a smaller, more homely environment. The New South Wales Government has allocated \$159 million to replace 14 small and large residential centres across the State with contemporary community accommodation by June 2018. The project at Penrith was a partnership between the New South Wales Government and the Australian Foundation for Disability, which will provide accommodation for a total of 40 residents.

This is great news for the Penrith community, encompassing and including people with disability. The project will deliver 10 villas, four apartments and one group home across six sites at Penrith. The properties will range in size from two bedrooms to four bedrooms. Residents will live with friends of their choice, and will be able to participate more fully in everyday life, including shopping, preparing meals, catching public transport and, most importantly, spending time with family and friends. Staff will live on site and provide 24-hour care to support residents and help them with their daily routines. The new homes at Penrith are scheduled to be completed by the end of 2016.

The residents of the Cherrywood Village large residential centre have been actively involved in planning their move to Penrith for several years, and I was delighted to have them participate in the sod turning celebration. More than 20 of the 40 residents were present to assist with the sod turning. The Penrith community has always been supportive of the Cherrywood residents, and the New South Wales Government will continue to assist in their transition to their independent living arrangements.

MINISTER FOR ROADS AND FREIGHT AND MR MARK VAILE

Mr JEREMY BUCKINGHAM: My question without notice is directed to the Minister for Roads and Freight. When the Minister met with Mr Mark Vaile, the chairman of Whitehaven Coal—in his words—"on many, many occasions" and discussed the Maules Creek coal project, did he take the time to discuss the illegal political donations made by the Tinkler Group to the Coalition?

The Hon. DUNCAN GAY: Frankly, I do not believe that question warrants an answer. It is simply a disgusting question. If Mr Jeremy Buckingham has any facts and he wants to make an allegation he should make it. Make it, cobber.

Mr Jeremy Buckingham: It's a statement of fact. You took the dough.

The Hon. DUNCAN GAY: Mr Jeremy Buckingham should sit still for a moment.

The PRESIDENT: Order! Mr Jeremy Buckingham has asked the question. He should listen to the answer.

The Hon. DUNCAN GAY: He does not like the answer. He is trying to make a slur where there is no slur to be made; he is pretty inept at doing so. As I indicated earlier, this question does not warrant or deserve a response, nor will I give one.

ORANGE GROVE SHOPPING CENTRE AND LIVERPOOL SERVICE NSW

The Hon. LYNDIA VOLTZ: My question is directed to the Minister for Ageing, and Minister for Disability Services. What discussions has the Minister had with the Gazal family in relation to the State Government's recent decision to select the Orange Grove Megacentra as the location for the Liverpool Service NSW centre?

The Hon. JOHN AJAKA: I refer to my previous answers.

NSW CIVIC AND ADMINISTRATIVE TRIBUNAL

The Hon. GREG PEARCE: My question is addressed to the Minister for Fair Trading. Will the Minister inform members how this Government is helping consumers and small businesses in New South Wales get better access to low-cost dispute resolutions?

The Hon. MATTHEW MASON-COX: It is about time we got a serious question in this place, rather than the smear and innuendo from those opposite. On 9 May 2014 the Government introduced a new regulation increasing the value of a dispute that a consumer or a small business can take to the NSW Civil and Administrative Tribunal. The new regulation, which came into effect on 9 May 2014, increases the maximum value of claims that can be brought to the tribunal from \$30,000 to \$40,000. This is a good result for consumers in New South Wales. It aligns the maximum claim amount with provisions in the Australian Consumer Law that apply protections to most transactions involving goods and services with a value of up to \$40,000. The Consumer Claims Act 1998 allows consumers and small businesses that have suffered detriment in relation to the supply of goods and services to apply to the tribunal for a remedy. The tribunal provides a low-cost dispute resolution service that consumers can access without professional assistance.

In addition to issuing an order for money to be paid, the tribunal can assist consumers in the following ways. It can give an order for goods or services to be provided, an order to fix or replace faulty goods, an order for a refund and the goods to be returned or even an order that money owed does not have to be repaid. NSW Fair Trading is the first port of call for consumers who cannot resolve their disputes. During the current financial year NSW Fair Trading received 356 complaints for goods or services valued between \$30,000 and \$40,000. The types of goods or services subject to complaint include: travel and tourism, funeral services, financial insurance services, jewellery, hardware and building supplies, home entertainment systems, and computer software system and design. If NSW Fair Trading is unable to assist those consumers then their next avenue for redress is the tribunal. By increasing the maximum claim amount, complaints that Fair Trading currently receives that are valued between \$30,000 and \$40,000 will be able to proceed to the tribunal. Used motor vehicles will also be subject to the new \$40,000 limit, which is a big win for consumers who often buy used vehicles with a value greater than \$30,000.

The Hon. Steve Whan: I wouldn't buy one from you.

The Hon. MATTHEW MASON-COX: The new limit of \$40,000 will apply only to goods and services bought after 9 May 2014. Indeed, the former member for Monaro might find himself selling cars before too long. The tribunal will continue to provide the New South Wales public with access to justice that is quick, accessible, economic and effective. Information on how to apply to the tribunal can be found at www.ncap.nsw.gov.au and anybody wanting information or assistance on a dispute may call Fair Trading on 13 32 20 or visit the website at www.fairtrading.nsw.gov.au. I will repeat that website many times in this place because it is where a lot of very useful services are provided. Dare I say that our customer service area receives more than one million phone calls a year because Fair Trading cares and is only too ready to help.

LEARD STATE FOREST AND MAULES CREEK COALMINE

Dr MEHREEN FARUQI: My question is directed to Minister for Fair Trading, representing the Minister for the Environment. Today major clearing of the Leard State Forest commenced to make way for the destructive Maules Creek coalmine. Minister, why did the Government alter the approval of Whitehaven Coal to allow clearing of the forest—including endangered ecological communities—during the winter months, when it is well known that many threatened species are much more vulnerable?

The Hon. MATTHEW MASON-COX: I thank Dr Mehreen Faruqi for her very detailed question, which I will take on notice and refer to the Minister for the Environment, who no doubt will give a comprehensive answer. I will pass that answer to the member in due course.

SWANSEA MINE SUBSIDENCE

The Hon. STEVE WHAN: My question is directed to the Minister for Roads and Freight, representing the Minister for Resources and Energy. What action is the Government taking to ensure that home owners in Swansea who are affected by two sinkholes—thought to be the result of a disused mine tunnel—are receiving the help they need?

The Hon. DUNCAN GAY: I thank the member for this question, which is especially important for home owners in Swansea whose properties have been affected by subsidence because of the mines. The Hon. Steve Whan described quite accurately this appalling situation, which is not one for which blame can be apportioned. Buildings have been built on an old mining site. There is a Mine Subsidence Board office in the area. Yesterday I spoke to the member for Swansea, Mr Garry Edwards, who is concerned about the circumstance and is trying to do whatever he can. This question is technically outside my portfolio but because it is important I will certainly take it on notice and get a detailed answer.

OPAL ELECTRONIC TICKETING SYSTEM

The Hon. SARAH MITCHELL: My question is addressed to the Minister for Roads and Freight, representing the Minister for Transport. Will the Minister update the House on the rollout of the Opal card?

The Hon. Lynda Voltz: They love that up at Gunnedah. They will use it a lot up there, won't they?

The Hon. Sarah Mitchell: I use it in Sydney.

The Hon. DUNCAN GAY: A lot of people use it in Sydney. It is interesting that, although the shadow Minister for Transport is in the Legislative Council, there has been not one question about the Opal card. I wonder why. It is because it is good news. It is great news. I am sure that Opposition members and people in the public gallery have an Opal card. They are happy people. I invite them to hold up their Opal cards—and there they are. I am absolutely delighted to update the House on the fantastic response we have had to Opal electronic ticketing on public transport.

The Hon. Lynda Voltz: We are waiting to see your card.

The Hon. DUNCAN GAY: Is the Hon. Penny Sharpe on two calls?

The Hon. Penny Sharpe: No, I am on zero.

The Hon. DUNCAN GAY: You might move up.

The PRESIDENT: Order! The Minister should be careful or he will be called to order.

The Hon. DUNCAN GAY: Opal is changing the way that we experience public transport. Opal customers are no longer standing in queues on a Monday morning, or fumbling for coins to buy a ticket. Unlike with periodic paper tickets, Opal customers are no longer paying for travel they do not actually use. As of last week, more than 250,000 Opal cards have been registered. Is it not a disgrace? You said it would not work and look how it has gone. You are Whingeing Wendy when it comes to transport in New South Wales.

The Hon. Lynda Voltz: Point of order: My point of order relates to relevance. The Minister should return to the leave of the question and address his remarks through the Chair.

The PRESIDENT: Order! The Hon. Penny Sharpe was making so much noise I could not hear the Minister. I uphold the point of order.

The Hon. DUNCAN GAY: To think that when we came to government we had to settle the court case left by Labor's botched attempt at electronic ticketing. Had Labor introduced ticketing in time for the Sydney 2000 Olympics—like it said it would—it would have changed public transport in this city. But, as we know, its legacy was an abysmal failure. Labor mucked up the Tcard contract and left this Government with a court case to resolve—plus a \$100 million bill. The only changes Labor ever made to public transport in this State were to cut services. Labor let the network decay to a standard that was embarrassing and left customers stranded on stations. Labor failed to deliver one new Waratah train, wasted \$500 million on the Rozelle metro and left a smorgasbord of transport plans with glossy brochures with Walt Secord's name all over them.

Opal is now available on all Sydney trains and New South Wales train link intercity services, and all Sydney ferry services and the rollout is continuing on a number of bus routes across the city. As well as the added convenience, Opal is cheaper for the overwhelming majority of customers—we estimate it would be more than 90 per cent of customers—and the rollout continues. More buses will come online soon. We are seeing about 10,000 Opal cards registered every week and the rollout is continuing at a pace on bus services to cover the entire bus fleet by the end of the year and light rail by 2015. [*Time expired.*]

Reluctant as I am, I have to indicate that question time has expired. If members have further questions, they should place them on notice.

Questions without notice concluded.

**CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT (INFORMATION SHARING)
BILL 2014**

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2014

Bills received from the Legislative Assembly.

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

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

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

Bills read a first time and ordered to be printed.

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

EDUCATION AMENDMENT (GOVERNMENT SCHOOLS) BILL 2014

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

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [3.33 p.m.]: I move:

That this bill be now read a second time.

Education in New South Wales is a complex and important undertaking. New South Wales has a unique education environment of nearly 3,100 government, Catholic and independent schools serving the needs of over one million school students. As everyone is aware, school education is for the majority of students their most significant opportunity for providing access to lifelong economic and personal success and satisfaction. For some students it is their only opportunity to realise life opportunities not afforded their parents and families. Universal provision of school education is the responsibility of government schools. They remain the centrepiece of New South Wales education. All three New South Wales education sectors—government,

Catholic and independent—provide schooling of the highest quality and the overall quality of New South Wales schooling is predicated on the complementary interaction of our schooling sectors. But while it is appropriate to recognise and celebrate the achievements of New South Wales schools and New South Wales students we must also remain committed to improvement.

This Liberal-Nationals Government places education reform at the heart of its priorities. Our reforms have been targeted at necessary improvements and we have moved swiftly to introduce much-needed change. We introduced Great Teaching, Inspired Learning, a program of action that will raise the quality of New South Wales teaching. We have introduced strategies to support students who live outside metropolitan areas in rural and remote New South Wales to provide them with the support often taken for granted by students and parents in urban New South Wales. We have taken necessary and long overdue steps to allow school communities and principals to make local decisions in the interests of their communities because we trust that they know and understand the needs of their school better than a centralised bureaucracy.

On 13 November last year this New South Wales Liberal-Nationals Government legislated to merge the Board of Studies NSW with the NSW Institute of Teachers to create a new entity—the New South Wales Board of Studies, Teaching and Educational Standards. The board brings together in one agency the three pillars of education—teacher quality, school curriculum and student assessment. It delivers on its charter in relation to these essential education areas in the interests and to the benefit of all New South Wales schools, teachers, students and their parents, whether they are in government, Catholic or independent schools. But while we reform, streamline and create opportunity we have a clear responsibility, an obligation, to provide education of the highest quality and to make sure, as far as possible, that this education is delivered in every school regardless of sector or location.

This is not a responsibility that this Government or the Minister for Education takes lightly. This legislation is about providing that assurance. In 1990 the Board of Studies NSW was established as the New South Wales curriculum authority with the additional and crucial responsibility for the registration of non-government schools. This role had previously been undertaken by government school inspectors. It was a Liberal-Nationals Government, in establishing the Board of Studies in 1990, that determined that this essential task should be the responsibility of an independent agency. As the only education institution in New South Wales whose remit requires it to work explicitly across school sectors, the Board of Studies, and now the new board, is uniquely situated to assure New South Wales parents of the quality of school education their children receive.

Since 1990 the Board of Studies and now the new board have provided support to Catholic and independent schools in meeting their responsibility regarding school registration requirements. School registration is the Government's means of assuring compliance with the New South Wales Education Act. Parents and the community have realistic expectations that this should occur. It is the aim and intent of the board to assist and support schools in the registration process. The board's role in school registration is not about the heavy hand of government nor unnecessary regulation for regulation's sake. We are utterly opposed to a pointless bureaucratic process. In relation to school registration, the New South Wales Education Act states that government schools "will comply with similar requirements to those required for the registration of non-government schools". However, there is currently no independent process for verifying compliance with the Act and no external process available to provide an assurance that government schools meet the minimum requirements for non-government schools to be registered under the Education Act.

It is now time to establish a means of ensuring compliance with the Act for the government school sector. This new section is designed to allow for this while explicitly recognising the unique responsibilities of the government school sector and the rigorous and extensive quality assurance processes that the Department of Education and Communities already imposes on its own schools. The proposed changes specifically recognise that the Department of Education and Communities is singly responsible for the universal provision of schooling and that the Department of Education and Communities' own internal governance arrangement reflects its awareness of its obligations for quality universal provision of education. Section 27 of the Education Act will be amended to include the following clause:

- (3) The Board is, with the assistance of the Department, to provide advice to the Minister on the compliance by government schools with similar requirements to those required for the registration of non-government schools.

This bill is the next logical step in assuring high-quality schooling for all New South Wales students. The bill amends the similar requirement provisions in section 27 of the Act to allow the Minister for Education to be

satisfied with government school compliance with those requirements. The existing registration and associate accreditation requirements for government schools are currently met by the system processes of the Department of Education and Communities. In effect, these requirements constitute minimum requirements for operating a school in New South Wales. These include: teaching staff experience and qualifications and the associated quality of teaching; adequacy of educational facilities; satisfactory premises and buildings; a safe and supportive environment for students; and the school curriculum and associated record of achievements of students. As a consequence of this amendment to the Act the Department of Education and Communities will provide the board with information on the systems and processes for meeting annual agreed standards.

The independent process the board will use to review government school compliance with the registration requirements will be similar to that which currently occurs in relation to the Catholic systemic school sector. A new committee will be created to review information submitted by the Department of Education and Communities and report to the board. A similar committee already exists to govern the registration and accreditation of non-government schools. The departmental processes for monitoring compliance will involve an online compliance monitoring tool that will help school principals to easily and efficiently provide the department with evidence that their school meets the standards. It will allow schools to monitor practice, attach evidence as appropriate and attest to compliance with the requirements for registration and accreditation.

The material provided by the Department of Education and Communities will include information on: how its schools meet the minimum requirements, for example, available policies and procedures that reflect the requirements; its internal system of monitoring and reporting on compliance with the requirements; a process for improvement where there are concerns about compliance; a process for rectification of non-compliance; and data and information on a specific area or domain nominated for more in-depth review by DEC. I must also emphasise that the terms of reference for the Government Schools Registration Committee will not include providing advice for the closure of government schools. The provisions of section 28 of the Education Act in relation to the closure of government schools will remain unchanged.

It will not involve government schools being registered for a defined period of time. The Department of Education and Communities will work closely with the board to establish transparent quality assurance processes. These arrangements will only apply to government schools established under the Education Act 1990. They will not apply to TAFE colleges or other non-school providers that present candidates for the Record of School Achievement or the Higher School Certificate. The latter are catered for under other statutory arrangements.

These changes to the Act are supported by the three education sectors and key New South Wales education stakeholders. They are supported because they provide an additional level of external oversight to our larger schooling system while reflecting and supporting the unique roles and responsibilities of government school education. The Government has the balance right. This new legislation is the next step in this Government's commitment to make sure that every school in every community provides the education that parents expect. I commend the bill to the House.

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

MURWILLUMBAH MOTOR REGISTRY

Personal Explanation

The Hon. WALT SECORD, by leave: I wish to make a personal explanation. Earlier during question time the Minister for Roads and Freight misrepresented me. I was holding the menacing RMS circular and not a press release as he stated.

The Hon. John Ajaka: Leave withdrawn.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! Leave is withdrawn. The member will resume his seat.

Leave withdrawn.

HOME BUILDING AMENDMENT BILL 2014**In Committee****Clauses 1 and 2 agreed to.**

The Hon. LYNDIA VOLTZ [3.46 p.m.]: I move Opposition amendment No. 1 on sheet C2014-043C:

No. 1 Page 3, schedule 1. Insert after line 16:

[5] Section 3B (6)

Insert after section 3B (5):

- (6) Despite subsection (2) and any other provision of this Act, residential building work (*rectification work*) done by a person by way of rectification of residential building work (the *original work*) already done by the person under a contract constitutes residential building work done under the contract. Where the person attends the site for the rectification work more than one year after what would otherwise be the date of completion of the original work, the date of completion of the part of the original work the subject of the rectification work only is deemed to be the last date that the person attends the site to carry out the rectification work.

The amendment proposes an addition to section 3B to provide a different completion date for work repaired by a contractor returning to a site more than one year after the original completion of that work. That avoids warranty period related unfairness resulting from the amending legislation clarifying that a contractor's repair of its work is considered part of the original contract and is covered by the home warranty insurance for the original work. The shadow Minister will comment further on the proposed amendment.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [3.48 p.m.]: As my colleague indicated, where a person attends a site for rectification work more than one year after what would otherwise be the completion date for the original work the date of the completion of that part of the original work subject to the rectification work should be deemed to be the last date that the contractor actually attends the site to carry out the work. The bill requires an amendment to new section 3C so that the strata plan registration date or strata plan subdivision registration date becomes the date of completion for the owners corporation. By using those dates the correct completion date cannot be hidden from the owners corporations and strata plans will not be created well after the commencement of the relevant warranty period, which would make it almost impossible for owners corporations to seek remedies through statutory warranty insurance. The important part of this amendment ensures that contractors are accountable for the adequacy of their repairs and that the home warranty insurance does not expire before the failure of inadequate repairs becomes evident.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [3.50 p.m.]: The Government does not support this amendment. It is impractical and unviable. Indeed, it creates different dates of completion for certain elements of building work that would cause significant practical difficulties. I note in particular that there would be a rolling exposure for builders under the statutory warranty scheme. There would also be disputes and confusion over which part of the building element was a rectification, and therefore subject to a later completion date, and which was the original building work. It would create massive uncertainty about the time for which builders are liable to warrant their work and would increase the cost of building. When proceedings commence regarding statutory warranties within the warranty period and rectification work is carried out as part of that, those rectifications must be completed satisfactorily. Consumers are within their rights to continue to take action with regard to that aspect of the work if it has not rectified the defect, and that is as it should be.

Dr JOHN KAYE [3.51 p.m.]: As I understand it, this amendment deals with the lack of clarity about the completion of rectification work and therefore about when the warranty period expires. This important amendment closes a loophole that if left unclosed would allow contractors doing rectification work to draw it out and hence invalidate the warranty period. Therefore, The Greens support the amendment.

Question—That Opposition amendment No. 1 [C2014-043C] be agreed to—put.

The Committee divided.

Ayes, 16

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

Noes, 19

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

Pairs

Ms Fazio	Mr Harwin
Mr Veitch	Mr Lynn
Mr Whan	Mr MacDonald

Question resolved in the negative.

Opposition amendment No. 1 [C2014-043A] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.00 p.m.], by leave: I move Opposition amendments Nos 2 and 3 on sheet C2014-043C in globo:

No. 2 Page 4, schedule 1 [5]. Insert after line 4:

- (5) When a construction certificate is issued for residential building work to which this section applies:
 - (a) the developer of the strata scheme must lodge a notification of that fact, in the form approved under the *Real Property Act 1900*, in the Registrar-General's office, and
 - (b) the Registrar-General is to make an appropriate recording of the notification in the folio of the Register comprising the common property.

No. 3 Page 4, schedule 1 [5]. Insert after line 7:

developer of a strata scheme means the person who, under the *Strata Schemes Management Act 1996*, is:

- (a) the original owner in relation to the strata scheme, or
- (b) a person, other than the original owner, who is the owner of a development lot within the strata plan.

Opposition amendment No. 2 will add a requirement to note the dates of each occupation certificate that authorises the occupation and use of a building within a strata scheme on the registered strata plan. That is designed to avoid the possibility of owners being caught out due to the date of an interim certificate that was not, for some reason, noted on the relevant registered strata plan or strata plan subdivision. Amendment No. 3 is consequential, in that amendment No. 2 utilises the concept of the developer of the strata scheme and amendment No. 3 provides a definition of what is intended by that term. The amendments are to be inserted in new section 3C, which is created by the amendment bill. These amendments are about ensuring the integrity of the construction certificates so that time runs in an appropriate fashion to protect the owners and occupiers.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [4.02 p.m.]: The Government does not support Opposition amendments Nos 2 and 3. There appears to be some confusion here. The construction certificate is generally issued at the beginning of the building process, as the Hon. Adam Searle would be aware.

It allows construction to commence on a building. We believe it is an appropriate marker as it does not provide any information to assist in determining when completion occurred. The member may be referring to an occupation certificate, but in any event the Government does not support the amendments. Amendment No. 3 is consequential to amendment No. 2, as the member outlined. Naturally that falls within the purview of the first amendment. I note that section 3A of the Act provides a comprehensive definition of "developer" for the purposes of the entire Act. This definition was amended in 2011 to strengthen its coverage. It is now much more robust than the proposed amendment.

Question—That Opposition amendments Nos 2 and 3 [C2014-043C] be agreed to—put and resolved in the negative.

Opposition amendments Nos 2 and 3 [C2014-043C] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.04 p.m.], by leave: I move Opposition amendments Nos 4 to 6 on sheet C2014-043C in globo:

No. 4 Page 4, schedule 1 [10], lines 34–36. Omit all words on those lines. Insert instead:

[10] Section 7 Form of contracts (other than small jobs and non-consumer work)

Insert before section 7 (1A):

Note. Section 7AAA applies to contracts for small jobs and non-consumer work.

No. 5 Page 5, schedule 1 [12], lines 9–16. Omit all words on those lines. Insert instead:

(8) This section does not apply to:

- (a) a contract that is subordinate to a principal contract to do residential building work (for example, if the contract concerned is a contract between a licensed builder and a licensed subcontractor), or
- (b) a contract made between a licensed builder doing work on premises that the licensed builder owns and a licensed contractor,
- (c) a contract for the doing of specialist work that is not also residential building work.

No. 6 Page 5, schedule 1 [13], lines 17–26. Omit all words on those lines.

The amendments contained in the bill reflect the existing position by incorporating existing exemptions in the regulation into the Act. The prescribed contract sum amount, however, is being raised to \$20,000. In our view, it is appropriate to continue exempting these types of contracts from the long-form contract requirements. However, we think these types of contracts should be subject to the short-form contract requirements. There is no need to include any of the consumer disclosures in contracts between licensed builders and licensed contractors. However, not having any formal contractual requirements is poor public policy which may condone hand-shake contracts possibly prone to tax avoidance and illegal work issues. They may also facilitate poor business practice in the construction industry, which could complicate fee disputes on such contracts while also making it difficult for successors in title or consumers to pursue rights against parties responsible for defective work.

Applying short-form contract requirements to all contracts avoids these issues without creating any unnecessary red tape. In particular, amendment No. 4 includes a note that section 7AAA applies to contracts for small jobs and non-consumer work. We believe this is an important extension. There are definitional changes provided in amendment No. 5 and omissions in amendment No. 6. These amendments are consistent with the scheme of the amending bill but they are designed to improve it for consumers.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [4.06 p.m.]: On the face of it, the purpose of these amendments is not abundantly clear to the Government. They appear to seek to extend the form of contracts to non-consumer work. I note that these amendments are about consumer protection legislation. This legislation does not seek to regulate the commercial relationship between contractors. In that regard, other laws provide for the relationship between the principal contractor and the subcontractor. On that basis, the Government will not support Opposition amendments Nos 4 to 6.

Question—That Opposition amendments Nos 4 to 6 [C2014-043C] be agreed to—put and resolved in the negative.

Opposition amendments Nos 4 to 6 [C2014-043C] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.07 p.m.]: I move Opposition amendment No. 7 on sheet C2014-043C:

No. 7 Pages 10 and 11, schedule 1 [29], line 39 on page 10 to line 18 on page 11. Omit all words on those lines. Insert instead:

(3) The regulations may prescribe defects in a dwelling that are not (despite any other provision of this section) a major defect.

(4) In this section:

major defect means:

(a) a defect in a major element of a dwelling that causes or is likely to cause:

(i) the inability to inhabit or continue the practical use of the dwelling (or part of the dwelling) for its intended purpose, or

(ii) the destruction of or physical damage to the dwelling or any part of the dwelling (other than physical damage that is merely cosmetic or that would be adequately repaired in the normal course of reasonably expected building maintenance), or

(iii) a threat of collapse of the dwelling or any part of the dwelling, or

(b) a defect in a fire safety system or waterproofing measure that affects its adequacy as a fire safety system or waterproofing measure, or

(c) a defect of a kind that is prescribed by the regulations as a major defect.

Note. The definition of *major defect* also applies for the purposes of section 103B (Period of cover).

major element of a dwelling means:

(a) an internal or external load-bearing component of a dwelling that is essential to the stability of the dwelling, or any part of it (including but not limited to foundations and footings, floors, walls, roofs, columns and beams), or

(b) any other element that is prescribed by the regulations as a major element of a dwelling.

The intention of this amendment is to ensure that consumers can hold landowners, developers or builders to account if there is any breach of any statutory warranty. The Opposition has serious concerns about the proposed provisions to change the definition of "structural defect" contained in section 18E (1) (b) of the Act, which will seriously and detrimentally affect rights. For example, item [28] proposes to remove "structural defects" and amend the provision to include "major defect in residential building work". Item [29] proposes a two-step test to determine whether a defect is a major defect. First, it must be a major element to satisfy the threshold of "major defect". "Major element" is defined as:

an internal or external load-bearing component of a building that is essential to the stability of the building, or any part of it (including but not limited to foundations and footings, floors, walls, roofs, columns and beams), or

a fire safety system, or waterproofing, or any other element that is prescribed by the regulations as a major element of a building.

If a defect fails in the first instance the statutory warranty would be limited to two years instead of six years, under section 1E of the home building legislation. To be eligible for the six-year warranty a defect must meet the threshold of major defect in item [29], which provides:

(a) a defect in a major element of a building that is attributable to defective design, defective or faulty workmanship, defective materials, or a failure to comply with the structural performance requirements of the National Construction Code (or any combination of these), and that causes, or is likely to cause:

(i) the inability to inhabit or use the building (or part of the building) for its intended purpose, or

(ii) the destruction of the building or any part of the building, or

(iii) a threat of collapse of the building or any part of the building, or

(b) a defect of a kind that is prescribed by the regulations as a major defect.

Furthermore, item [29] allows for the prescription of what may not be a major defect by regulation. In our view, the provision does not clearly define "major defect". The intention of the Opposition amendment is to provide

certainty for home owners and owners corporations that major defects that arise in their properties will be covered by the six-year statutory warranty. In February this year the shadow Minister in the other place called on the Government to guarantee that fire safety and waterproofing defects in new buildings would be covered by the six-year warranty, specifying that fire safety and waterproofing defects satisfy the first stage of the two-stage test that makes them defects in a major element, not major defects.

We are of the view that there is nothing to ensure that these important defects meet the second stage of the test; we believe that is a significant flaw in the bill overall. We think the legislation must clarify that fire safety and waterproofing defects are major defects and not simply major elements in order to address any areas of uncertainty that may arise. We believe the terminology in the bill is misleading and deceptive and encourages the assumption that a major defined element will have a six-year warranty cover, which is not necessarily the case. Should the major defect not meet the second stage of the test, only a two-year warranty provision will apply.

Under the current two-step test the focus will be on trying to determine the criteria for major defects. Fire safety and waterproofing defects may take longer than two years to arise, and in many cases they do. For example, if a waterproofing measure were to arise in a new strata complex three years from the date of completion and it caused physical damage to the building but did not meet the stringent criteria for a major defect now provided in the bill, the statutory warranty would not apply. This would severely reduce the responsibility of builders and developers for defects, so that in most cases owners would be required to pay for any necessary repairs themselves.

Under the second stage of the major defect test the criterion, which is by far the most often satisfied criterion, has been changed in the Government's draft bill. The definition "a defect that is likely to cause the destruction of, or physical damage to, a building or part of a building" has been changed to "a defect that is likely to cause the destruction of a building or part of a building". Not having the distinction of "physical damage" is by far the biggest advantaging of developers that we see in this legislation. We believe it would constitute a serious setback for owners if the legislation were enacted in this current form, as very few defects would be left with a six-year warranty. That may well have been the intention and would represent a significant narrowing of the scope of consumer rights in a way that has not been disclosed as openly as it ought to have been in this legislation and in the Government's pronouncements.

The Opposition does not want home owners or owners corporations to be trapped in costly litigation disputes over defective works in buildings. The priority during such disputes must be to rectify or repair any damage to the building because, obviously, the quicker it is repaired the less expensive those repairs will be and the less inconvenience there will be to people's quality of life. We believe fire safety and waterproofing are serious issues. To remove any doubt, these measures should be clearly defined within the bill as major defects. This can be achieved only through the amendment of the bill we have proposed to remove any uncertainty.

The proposed amendment reinserts the existing "continuing practical use" terminology instead of narrowing it to "use", as is currently in the bill; it reinserts the physical damage concept; it clarifies that fire safety and waterproofing defects are major defects, to address the discrete areas of uncertainty that have been raised with the current bill; and it replaces references to "building" with references to "dwelling". On our reading of the bill, the Government proposes to make the changes in the bill retrospective, except for proceedings commenced or insurance claims already made prior to the commencement of the amendment. If that reading is correct, that would wipe out the current defect rights of thousands of owners who may not know that they have defects or who may now be aware of those defects but may not have taken action to have them rectified by the builders or to take any actions, such as litigation, to have those matters addressed. In our view, that would represent an unwarranted confiscation of those valuable consumer rights.

Given the seriousness of taking away people's legal rights, we believe that is a matter that should have been more openly identified by the Government in dialogue around this legislation. We raise it in this context in good faith to try to improve the bill before the Committee. As I indicated, the rights contained in this bill affect thousands of people in this city and across the State. It is no small matter if there is an unintended confiscation of people's valuable consumer legal rights and we will not be party to that. Of all the 15 amendments the Opposition is proposing in this debate I believe that amendment No. 7 is the most significant and I urge all members in this House, particularly members on the crossbench, to give earnest consideration to protecting consumer rights in this important regard.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [4.15 p.m.]: The Government does not support Opposition amendment No. 7. We agree that fire safety and waterproofing are important elements of

a building and we acknowledge the Opposition's concerns in that regard. The advice I have received is that the current drafting of the bill will achieve the intended policy intent that any significant defects in fire safety systems and waterproofing will have the benefit of the six-year warranty period. I note the Opposition's amendment replaces the word "building" with "dwelling". The word "dwelling" is defined in the legislation as including all residential buildings, people's homes and where they live. However, it can also include structures such as cabanas, sheds, non-habitable shelters and fences. It is not the intention of the amendment to provide the extended warranty period of six years to those types of structures. It is, therefore, inappropriate to use the word "dwelling" in place of "building".

In regard to the removal of the attribution test, I note that attributing the defect to defective design, defective or faulty workmanship, defective materials or a failure to comply with structural performance requirements of the National Construction Code maintains the existing terminology and parameters established by the current legislation. There is no proposal to extend this as it creates more certainty around the whole provision. In regard to the inclusion of the term "physical damage", I note that the term exists in the current definition of "structural defect" and it is one of the reasons the existing definition requires clarification. It is a nebulous term that could refer to very minor damage, which would defeat the policy intention of only having major defects having the benefit of the six-year warranty.

In regard to the inclusion of fire safety and waterproofing as major defects, I note that fire safety and waterproofing systems are now being specifically included as being a component of a building under the definition of a "major element". However, currently, they are not specifically included and, therefore, theoretically, they are not worthy of the six-year warranty period under the current provisions of the Act. The bill specifically includes these as major elements of a building, making it very clear that they are worthy of that six-year warranty period. In that sense, we believe there is an enhancement of consumer protection in those aspects of the bill.

I note that the bill contains a regulation-making power to prescribe major defects. The Government will continue its consultation with stakeholders in that regard, should it be proved necessary to prescribe other major defects. I also note that there has been extensive consultation in relation to these provisions of the bill. As the Deputy Leader of the Opposition states, they are important provisions in relation to the interpretation of this bill and in ensuring clarity and certainty in the building industry. I believe all stakeholders agree that clarity and certainty are critical. We need to avoid unnecessary litigation and ensure that all players in the industry have certainty moving forward. On that basis, we will not be supporting the amendment.

Dr JOHN KAYE [4.19 p.m.]: The Greens strongly support the amendment moved by the Opposition. It fixes three critical issues associated with new section 18E (4). The three key fixes are the following. In respect of what constitutes a major defect, one possible test is the inability to inhabit or use the building or part of the building for its intended purpose. The amendment inserts the word "practical", so it is an inability to inhabit or continue the practical use of the dwelling, or part of the dwelling, for its intended purpose. Inserting the word "practical" makes the test for whether a building is inhabitable or useable more meaningful. One could always argue that even if a building has damp or water flowing into it, or the building has defects that make it deeply unsightly or, for example, make the floors uneven, it is still available for use but not available for practical use. Inserting the word "practical" will make it easier for home owners to access the six-year warranty period.

The second problem that the amendment fixes is new section 1818E (4) (a) (ii), which includes the possibility of physical damage: the destruction of or physical damage to the dwelling or any part of the dwelling. Using the word "destruction", which is contained in the bill, effectively means that the building must be at the point of collapse or has collapsed before that part of the test is passed. Including "physical damage"—I do not accept the argument that it is not defined—enables buildings that are physically damaged to pass the major defects test. The Minister in his response questioned what is physical damage and said that it could be a relatively minor or cosmetic matter. The Minister should have continued reading because the Opposition's amendment states:

... the destruction of or physical damage to the dwelling or any part of the dwelling (other than physical damage that is merely cosmetic or that would be adequately repaired in the normal course of reasonably expected building maintenance) ...

The material in brackets knocks out minor physical damage and focuses on major physical damage. Without including physical damage, in effect the building must be at the point of falling down or have fallen down or be absolutely uninhabitable before a major defect occurred. The third issue that the Opposition's amendment fixes relates to fire safety and water protection systems. The bill defines "fire safety" and "waterproofing" as major elements. However, to be covered by the six-year warranty period, the first part of the test must show that the major element had a defect.

New section 18E (4) (a) provides that a major element—that is, a waterproofing system or a fire safety system—must be likely to cause the inability to inhabit or use the building, the destruction of the building or any part of the building, or a threat of collapse of the building or any part of the building. Those tests are so narrow that there is no protection for fire safety or waterproofing. For example, a building that has a structural defect that allows water to penetrate into the roof cavity would not be captured by the Government's bill. However, it would be captured under the Opposition's amendment, which deals with fire safety and waterproofing as two separate elements. New section 18E (4) (b) states:

... a defect in a fire safety system or waterproofing measure that affects its adequacy as a fire safety system or waterproofing measure ...

That means that any defect in the waterproofing—for example, that allows water to enter the ceiling cavity—would be a major defect. Indeed, it is. Those of us who have experienced water in the ceiling cavity know how devastating that can be. It should be a major defect and rectifiable. It is appropriate that there be a six-year warranty period for identification and rectification of waterproofing systems because often the defects show up later. As we head into an El Niño period and we may not see a heavy downpour for two or three years it is totally appropriate that waterproofing systems have a longer warranty period and be dealt with as a major defect. This matter is important. If the Government's legislation goes through unamended—that is, without Labor's rewording of subsections (3) and (4) of section 18E—people who purchase a home unit and use that home unit but the use is not practical, that is, the use is unpleasant, will not be captured by the six-year warranty period.

They may have physical damage that is not necessarily a form of destruction; they may have a waterproofing system that does not work as a waterproofing system and water penetrates into the building; or they may have a fire safety system that does not work as a fire safety system. However, they will not have access to the six-year warranty period. That is shifting a lot of the burden for faulty work away from the perpetrator of that faulty work—the builder or the developer—and wholly and solely onto the owner of the building. That is entirely unfair. It is entirely inappropriate and it will leave consumers without the necessary protection. I strongly commend this serious and important amendment to the Committee. I urge the Government to reconsider its opposition to the amendment.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.26 p.m.]: I thank the Minister for Fair Trading and Dr John Kaye for their contributions. We think the Government's bill in its current form in this respect is clearly designed to severely reduce the responsibility of builders and developers for defects so that in most cases owners will have to bear the burden of repairs themselves. We think it is entirely fair and reasonable that we have redefined "major defects" and "major elements" and how those concepts interact in the legislation. So we urge members to look favourably on Opposition amendment No. 7.

Question—That Opposition amendment No. 7 [C2014-043C] be agreed to—put.

The Committee divided.

Ayes, 17

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

Noes, 20

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

Pairs

Ms Fazio	Mr Lynn
Mr Foley	Mr MacDonald

Question resolved in the negative.

Opposition amendment No. 7 [C2014-043C] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.35 p.m.]: I move Opposition amendment No. 8 on sheet C2014-043C:

No. 8 Pages 11 and 12, schedule 1 [30], line 19 on page 11 to line 8 on page 12. Omit all words on those lines.

This amendment deals with the bill at pages 11 and 12 and affects item [30], new section 18F, and the creation of new defences. The bill proposes a significant amendment to the Home Building Act by introducing a professional reliance defence. If this were to be enacted it is likely, in our view, that builders, landowners or developers as potential defendants to a cause of action could exploit the provision to avoid their obligations under section 18C of the Act. Section 18F of the Act states:

... it is a defence for the defendant to prove that the deficiencies of which the plaintiff complains arise from instructions given by the person for whom the work was done contrary to the advice in writing of the defendant or person who did the work.

The substantial difference is that new section 18F (1) (b) proposes as a defence:

- (b) reasonable reliance by the defendant on instructions given by a person who is a relevant professional acting for the person for whom the work was contracted to be done and who is independent of the defendant, being instructions given in writing before the work was done or confirmed in writing after the work was done.

It is deemed that the developer is someone for whom the work is done and no reference is made to for whom the work was contracted. Therefore, in our view there is potential for this provision to be exploited under contract structuring arrangements. Both developers and builders will have a collective incentive to cut costs in order to avoid liability for defects. There are often arrangements where the interests of the developer and builder overlap and they could set up contractual arrangements to avoid liability for their decisions. If this provision were to be enacted there could be loopholes to the advantage of developers. For example, a developer may enter into an arrangement with a \$2 shelf company, which also enters into an arrangement with the builder. The scenario would be more likely in the event that the developer is also the builder. As is the case for many new strata complexes, both developer and builder could consult the shelf company for professional advice, thereby potentially avoiding their statutory obligations under the Act. The intention should be to make sure the legislation focuses on rectification-based solutions and dealing swiftly with rectification.

The CHAIR (The Hon. Jennifer Gardiner): Order! Members will come to order. I am having difficulty hearing the Deputy Leader of the Opposition.

The Hon. ADAM SEARLE: We think the new provision, as it is envisaged in the bill, will create multi-party layers for disputes, which, if it is an unintended consequence of the new section, should be rectified in accordance with our helpful and well thought-out amendment. In instances where developers and builders work together on a project at times they have a collective interest to pursue the most cost-effective designs. I am not suggesting that that is always a bad thing but in some cases the focus is only on cutting costs and limiting liability for defects, resulting from those deliberate cost-cutting exercises. The provision may have the unintended consequence of facilitating that form of activity. Current section 18F in the home building legislation does not contain that loophole. Therefore, we believe the provision in the bill should be omitted and that original section 18F should remain in place. That is the effect of Opposition amendment No. 8, which we urge all members to support.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [4.39 p.m.]: This amendment is not supported by the Government. The current defence applies only to written instructions of the owner. In practice, the owner often appoints an expert, such as an architect, who gives instructions to the builder on the owner's behalf. The bill recognises this reality and provides certainty to all parties. If there is a defect that is the result of the builder carrying out instructions by an owner's professional—for example, the owner's architect or engineer—currently the builder may be liable for that loss. The drafting is intended to provide the builder with a defence in these circumstances. This is because it is not reasonable for the builder to be able to second-guess the specialised knowledge of professionals with expert knowledge that the builder does not possess.

The Opposition has raised the possibility of the builder and developer colluding to create a shelf company that provides independent advice to the builder to attempt to circumvent the requirements and obtain a

defence. In our view, this simply would not succeed. The advice is that the builder and developer would be linked as close associates and would also be unable to show that the relevant professional had been engaged by the home owner. For all these reasons the Government opposes the amendment.

Dr JOHN KAYE [4.40 p.m.]: The Greens support Opposition amendment No. 8 for the reasons outlined in my contribution to the second reading debate. The current defence applies if a builder is operating under the instructions of the owner. Extending that to advice from a so-called "independent expert" muddies the waters. On behalf of The Greens during the second reading debate I highlighted concerns about the establishment of shelf companies that could be used to pass responsibility from the developer and the builder—

Mr David Shoebridge: Developers would never do that; they are nice people. The Government believes them.

Dr JOHN KAYE: Mr Shoebridge tells us that developers would never do that, but hypothetically they might do it and this bill creates an opportunity—indeed, an invitation—for them to do so. It would be wrong to leave the bill the way it is because it creates an opportunity for a \$2 company to be set up between the developer and the owner specifically to employ experts who would provide instructions to the builder—instructions about cutting corners on materials, design and building construction practices. All these would bring down the costs to the developer and increase his profitability, but in the end the eventual owner would pay the price. To leave the legislation unamended would be to invite corruption into the industry. I strongly support the amendment.

Question—That Opposition amendment No. 8 [C2014-043C] be agreed to—put.

The Committee divided.

Ayes, 17

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

Noes, 20

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

Pairs

Ms Fazio	Mr Lynn
Mr Foley	Mr MacDonald

Question resolved in the negative.

Opposition amendment No. 8 [C2014-043C] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [4.49 p.m.]: I move Opposition amendment No. 9 on sheet C2014-043C:

No. 9 Page 11, schedule 1 [30]. Insert after line 43:

- (4) The defendant cannot rely on this section if:
- (a) the plaintiff has the benefit of the statutory warranty as a result of section 18C, or
 - (b) the defendant has not in relation to a particular defect provided the plaintiff with a copy of the advice in writing, instructions in writing or confirmation of instructions in writing that the defendant relies on within 6 months of the defendant being given in writing the information reasonably necessary to put the defendant on notice as to the nature and circumstances of the relevant defect or the consequences of the defect, or
 - (c) the Defendant has at any time been a close associate of the person for whom the work was contracted to be done or the owner of the land at the time that the work was done.

I foreshadowed in my advocacy for the previous Opposition amendment, No. 8, an alternative amendment. As the House is not minded to remove entirely the new formulation of section 18F the Opposition proposes additional words be added to the new provision that will minimise unpleasant surprises for owners and ensure that defendants do not sit upon their potential defences until it is too late for owners to take effective steps to test a defence or, if appropriate, to join relevant third parties at an early stage in proceedings.

The Opposition has moved amendment No. 9. It contains a careful set of provisions and a new subsection (4) that provides that a defendant cannot rely on new section 18F if the plaintiff has the benefit of the statutory warranty as a result of new section 18C or the defendant has not, in relation to a particular defect, provided the plaintiff with a copy of the advice or instructions or confirmation of instructions in writing that the defendant relies upon within six months of the defendant being given in writing the information reasonably necessary to put the defendant on notice. Members can read the rest of the provisions in Opposition amendment No. 9. The Opposition believes in that circumstance if the defendant has at any time been a close associate of the person for whom the work was contracted to be done or the owner of the land at the time the work was done it is—

Mr David Shoebridge: It is the passion.

The Hon. ADAM SEARLE: I acknowledge the interjection—there is passion everywhere in this debate. As the House has voted to maintain new section 18F, it should be limited and qualified in the way in which the Opposition proposes.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [4.52 p.m.]: Opposition amendment No. 9 is not supported by the Government. The current section 18F defence operates in the same way as the amendment in the bill proposes—that is, if a builder provides written advice to the owner and the owner insists that the work be performed in a way that is contrary to that advice then the builder can use that as a defence in proceedings for a breach of the statutory warranties. That would seem to be the natural course of things. The amendment uses this existing defence mechanism but extends it to written instructions from an owner's independent professional. That is appropriate in the circumstances.

Dr JOHN KAYE [4.54 p.m.]: Opposition amendment No. 9 is a far second best to Opposition amendment No. 8. It does not provide protection against the kind of rotting I referred to when the Committee was debating the previous amendment. It provides some additional protections but they are minor in nature. It is better than nothing but it does not resolve the key concerns that The Greens have about new section 18F.

Question—That Opposition amendment No. 9 [C2014-043C] be agreed to—put.

The Committee divided.

Ayes, 17

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

Noes, 20

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

Pairs

Mr Fazio	Mr Lynn
Mr Foley	Mr MacDonald

Question resolved in the negative.

Opposition amendment No. 9 [C2014-043C] negatived.

[Interruption]

The Hon. Duncan Gay: We are sitting until 10.00 p.m. because you are full of it.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.00 p.m.]: The gratuitous abuse from the Leader of the Government does the Government no credit. The sitting hours of this House are entirely a matter for the Government. I place on record that I do not appreciate being abused on the floor of this Chamber by the Leader of the Government, who is a very bad-tempered person.

The Hon. Duncan Gay: Point of order: I take exception to those comments. The Deputy Leader of the Opposition was not abused. I asked the honourable member how many more amendments there were because he is preventing me from attending a meeting with Centroc by moving amendments that have no chance of being agreed to.

The CHAIR (The Hon. Jennifer Gardiner): There is no point of order. The Deputy Leader of the Opposition has the call.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.01 p.m.]: I move Opposition amendment No. 10 on sheet C2014-043C:

No. 10 Page 22, schedule 1 [62], line 26. Insert "except where the claimant objects on a reasonable basis" after "outcome".

This amendment deals with new schedule 1 [62] in section 48MA, "Rectification of defective work is preferred outcome in proceedings". The Opposition supports the intention behind the proposal, but there may be some circumstances in which we do not think it would be appropriate to impose a rectification resolution upon an owner. The Opposition supports the general policy that rectification orders are appropriate rather than money orders or anything else. However, there must be some circumstances in which that is neither appropriate nor the best outcome. Rather than prescribing all of those circumstances rigidly, we should provide a test of reasonableness in the circumstances of the particular case. I urge honourable members to look favourably upon this perhaps lonely amendment.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [5.03 p.m.]: That was a valiant effort on the part of the Deputy Leader of the Opposition. This amendment simply is not required and the Government therefore does not support it. The clause as drafted merely requires the court or tribunal to have regard to—I emphasise "have regard to"—the principle that rectification of the defective work by the responsible party is the preferred outcome in any proceedings. The clause does not seek to bind the court or tribunal in any other manner or to require it to take any other specific action. It is open to the court or tribunal to determine other outcomes. That is the way it should be and the flexibility is maintained for those reasons.

Question—That Opposition amendment No. 10 [C2014-043C] be agreed to—put and resolved in the negative.

Opposition amendment No. 10 [C2014-043C] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.04 p.m.], by leave: I move Opposition amendments Nos 11 to 13 on sheet C2014-043C in globo:

No. 11 Page 25, schedule 1 [87], lines 13–22. Omit all words on those lines. Insert instead:

- (2) A person who is the owner of land in relation to which an owner-builder permit was issued must not enter into a contract for the sale of the land unless the contract includes:
 - (a) the consumer warning required by this section, and
 - (b) the contractor details required by this section in an annexure to the contract.

Maximum penalty: 1,000 penalty units in the case of a corporation and 200 penalty units in any other case.

- (3) The **consumer warning** required by this section is a conspicuous note stating that:
- (a) an owner-builder permit was issued in relation to the land (specifying the date on which it was issued), and
 - (b) work done under an owner-builder permit is not required to be insured under this Act unless the work was done by a contractor to the owner-builder, and
 - (c) the annexures to the contract of sale include contractor details for the work done by a contractor to the owner-builder.
- (4) The **contractor details** required by this section are details of the parts of the owner-builder work that were done by a person holding a contractor licence and (in respect of each such person) their name, contractor licence number, details of the work that the person did and the total amount paid to the person for that work.

No. 12 Page 25, schedule 1 [87], line 23. Insert "and contractor details" after "consumer warning".

No. 13 Page 25, schedule 1 [87], line 32. Insert "and contractor details" after "consumer warning".

These amendments ensure that the contract for sale contains an annexure clearly specifying the parts of the owner-builder work that were carried out by a person holding a contractor licence, the name and contractor number of each person holding a contractor licence, the details of the work the person carried out, and the amount paid. This would make it clear that if the amount paid to a contractor exceeded \$20,000 the owner-builder would need to apply for statutory warranty insurance. The Opposition believes it is important that homebuyers are given all the necessary information when they purchase a property. If information in relation to the permit and details of work undertaken by the owner-builder are not provided and specified in the contract prior to completion the person may exit the contract. This again goes to the notion of consumer protection, particularly the definition of "consumer warning", and the contractor details required to be provided after the contractor warning. The Opposition wants to provide that little bit of extra reassurance for consumers in this area.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [5.06 p.m.]: The Government believes these amendments are superfluous. The purpose of the requirement for a consumer warning is to place any potential purchaser of a property on alert as to insurance issues. Owner-builders will still be required to warrant the work under the statutory warranty as the head or principal builder on the project. As the head or principal builder on the project, the owner-builder must also warrant any work undertaken by subcontractors.

As I said, including the details of the licensees who worked on the project is superfluous because the subsequent owner will commence proceedings only for a breach of statutory warranty against the owner-builder. Overwhelmingly, potential purchasers use either legal practitioners or licensed conveyancers to handle property matters because they are well versed in them and are able to highlight any issues. There are concerns about the current complexity and length of the contract for the sale of land and this amendment would only increase the size of the contract. The proposed establishment of a public register of home warranty insurance contracts will aid licensed conveyancers and legal practitioners in determining the insurance issues with regard to a property. For these reasons the amendments are unnecessary.

Question—That Opposition amendments Nos 11 to 13 [C2014-043C] be agreed to—put.

The Committee divided.

Ayes, 17

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

Noes, 20

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

Pairs

Mr Foley
Ms Voltz

Mr Lynn
Mr MacDonald

Question resolved in the negative.

Opposition amendment Nos 11 to 13 [C2014-043A] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.14 p.m.]: I move Opposition amendment No. 14 on sheet C2014-043C:

No. 14 Page 28, schedule 1. Insert after line 39:

[103] Section 103BB (6)

Omit the subsection. Insert instead:

- (6) Complying with the duty to mitigate loss under section 18BA (3) (a) or commencing proceedings within time for the enforcement of the statutory warranty is diligent pursuit of the enforcement of a statutory warranty for the purposes of this section. The regulations can make further provision for or with respect to what constitutes or does not constitute diligent pursuit of the enforcement of a statutory warranty for the purposes of this section.

This amendment clarifies how the diligent pursuit requirement for making a delayed insurance claim can be met. The bill as drafted by the Government appears to have overlooked this important clarification. This amendment makes sure that complying with the duty to mitigate loss under section 18BA (3) (a) does constitute diligent pursuit of the enforcement of a statutory warranty. It also provides the regulation-making power so that what does not constitute diligent pursuit of enforcement of a statutory warranty for the purpose of this section can be added by regulation over time. It is a small but important amendment. It appears the draftsmen or those providing instructions to the draftsmen have overlooked this. It means the notion of what constitutes the diligent pursuit requirement may become the subject of controversy or uncertainty and could give rise to practical problems. This amendment provides another handy solution.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [5.16 p.m.]: I applaud the Opposition for its motives in this regard. I note that this aspect will be dealt with specifically in the regulation. The issues the member has outlined will be more than adequately provided for in that regulation.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.17 p.m.]: I thank the Minister for that clarification. We will press the amendment for more abundant caution, but I note the assurances given by the Minister on behalf of the Government that these matters will be attended to in the drafting of the regulations that will accompany this legislation.

Question—That Opposition amendment No. 14 [C2014-043A] be agreed to—put and resolved in the negative.

Opposition amendment No. 14 [C2014-043A] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.17 p.m.]: I move Opposition amendment No. 15 on sheet C2014-043C:

No. 15 Page 43, schedule 1. Insert after line 8:

[127] Schedule 4, clause 109 Proceedings for breach of statutory warranties

Insert "except residential building work comprising the construction of a new building within a strata scheme (within the meaning of the Strata Schemes Management Act 1996) where the date that the relevant strata plan or strata plan of subdivision was registered was prior to 1 January 2014" after "the amendment".

This amendment addresses a difficulty for owners corporations in the 2011 legislation transitional provisions for whether work is subject to the old seven-year warranty or the new two-year and six-year warranties. Pursuant to schedule 4 [109] of the Act, whether an owner has a seven-year warranty or a two-year and a six-year warranty depends upon whether the relevant building contract was entered into by 1 February 2012.

Owners corporations typically do not receive building contracts. Even in the unusual circumstances that the owners corporation has the building contract, the date on the building contract may not reflect the date that the contract was legally entered into. We believe this issue has left a potential hole in the legislation, which may cause substantial angst and injustice if not remedied. As it is, we believe a large number of owners corporations will not know whether the relevant building contract for them was entered into by 1 February 2012. Consequently, those owners corporations will not know whether they have a seven-year warranty or a two- and six-year warranty from their builder and developer.

The Opposition's amendment inserts the words "except residential building work comprising the construction of a new building within a strata scheme (within the meaning of the Strata Schemes Management Act 1996) where the date that the relevant strata plan or strata plan of subdivision was registered was prior to 1 January 2014" after the words "the amendment". We believe that is an important clarification in the legislation to make it clear which of the warranty schemes applies.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [5.20 p.m.]: The Government considers that the amendments in 2011 settle this. We do not believe there is any confusion in this regard and that to accept the amendments proposed by the Opposition would infuse more uncertainty and would not clarify the issue.

Question—That Opposition amendment No. 15 [C2014-043C] be agreed to—put and resolved in the negative.

Opposition amendment No. 15 [C2014-043C] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.21 p.m.]: I move Opposition amendment No. 16 on sheet C2014-043C:

No. 16 Page 45, schedule 1 [128], lines 32–34. Omit all words on those lines.

This amendment deals with the non-completion of claims and delayed claims. The bill proposes to remove the inappropriate restriction on owners being able to make a delayed home warranty insurance claim for incomplete work. Currently, if an owner has a dispute with a contractor and the contractor does not complete the work for whatever reason, the owner will have to sue the contractor to judgement and then bankrupt or wind up the contractor, perhaps after an appeal by the contractor, and then lodge an insurance claim within 12 months of the contractor's last work on site, otherwise the owner has no cover for loss or damage arising from non-completion of the work. The long-overdue removal of this restriction on non-complete work insurance claims should be retrospective as we believe the restriction should never have been in place and that the deletion of those words achieves that appropriate retrospectivity.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [5.22 p.m.]: The Government does not support this amendment. I note that contracts of insurance for home warranty insurance were priced and issued on the basis that non-completion claims could not be made as delayed claims. I am advised that it would not be possible to amend retrospectively such contracts of insurance where the insurer was not provided with the opportunity to appropriately assess its level of liability and be able to appropriately price the product as a result.

Question—That Opposition amendment No. 16 [C2014-043C] be agreed to—put and resolved in the negative.

Opposition amendment No. 16 [C2014-043C] negatived.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.23 p.m.]: I move Opposition amendment No. 17 on sheet C2014-043C:

No. 17 Page 47. Insert after line 10:

Schedule 2 Amendment of Home Building Regulation 2004

Clause 56 Losses indemnified

Insert "or a developer who did the work (for the purposes of section 18C of the Act)" after "contractor" in clause 56 (3) (e).

Owners corporations are often forced to sue developers that are deemed to have done work to protect the insurer's subrogation rights. We refer, in particular, to clause 58A of the Home Building Regulation 2004 and the relevant transition provisions, which retrospectively include such a clause in all policies. This amendment allows owners to claim their reasonable costs of pursuing the developer from the insurer, in addition to the current allowance for the reasonable costs of pursuing the contractor. We urge members to give the amendment favourable consideration.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [5.24 p.m.]: The Opposition amendment is not supported by the Government. Section 18C provides that a developer who carries out building work is required to be a licensed builder and is responsible for attaching a contract of insurance to any contract for sale of the property. The Government cannot accept the amendment.

Question—That Opposition amendment No. 17 [C2014-043C] be agreed to—put and resolved in the negative.

Opposition amendment No. 17 [C2014-043C] negatived.

Schedule 1 agreed to.

Schedules 2 and 3 agreed to.

Title agreed to.

Bill reported from Committee without amendment.

Adoption of Report

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

That the report be adopted.

Report adopted.

Third Reading

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

That this bill be now read a third time.

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

CRIMES AMENDMENT (STRANGULATION) BILL 2014

Second Reading

The Hon. DAVID CLARKE (Parliamentary Secretary) [5.28 p.m.], on behalf of the Hon. John Ajaka:
I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Crimes Amendment (Strangulation) Bill 2014.

The bill amends the Crimes Act 1900 to introduce an additional strangulation offence in New South Wales and to simplify and modernise the existing offence of strangulation under the Crimes Act.

Strangulation is a potentially fatal act, which causes significant physical and psychological trauma to victims. It is prevalent in domestic violence incidents. The use of strangulation in this context is a recognised indicator of the risk of further harm to victims of domestic violence, including homicide.

The Government gives the highest priority to the safety of victims of domestic violence. The Department of Police and Justice leads the Domestic Violence Justice Strategy, bringing together justice agencies to ensure a coordinated approach, with high standards of service to victims and a strong emphasis on holding perpetrators accountable for this appalling crime. The Minister for Women has also recently announced the "It Stops Here" domestic framework for reform, which will improve the way government and non-government services work together to secure the safety of victims and their children.

The Director of Public Prosecutions [DPP] has raised concerns with government as to the adequacy of the current provisions concerning strangulation in section 37 of the Crimes Act. The DPP identified two obstacles under the current provisions in appropriately charging and prosecuting strangulation.

Firstly, section 37 has limited application in many domestic violence cases because it requires an intention to commit a separate indictable offence, such as sexual assault or robbery. Where the assault itself is the act of strangulation or choking, section 37 in its current form cannot apply.

Secondly, more serious assault charges such as assault occasioning actual or grievous bodily harm are difficult to establish because they rely on proof of particular bodily harm. However, many people who survive strangulation have minimal visible external injuries, despite the seriousness of the offence.

An insidious aspect of strangulation incidents is the significant fear and psychological damage that can be inflicted on a victim without any physical injuries being apparent. Regardless of an actual loss of consciousness, assaults of this nature which involve the exercise of extreme psychological control can be terrifying to the victim. The trauma suffered by a victim of strangulation can be invisible, yet both devastating and long term.

As a result of the shortcomings of the current strangulation provision in the Crimes Act, 70 per cent of domestic violence assaults involving strangulation are charged as common assault in New South Wales. Common assault attracts a maximum penalty of two years imprisonment. Statistics obtained from the Bureau of Crime Statistics and Research show that the average prison term for domestic violence assault involving strangulation is six months.

These penalties do not reflect the seriousness of behaviour which can induce unconsciousness within 10 seconds, and death within four to five minutes.

In response to these shortcomings, the Government proposes to expand the application of section 37 of the Act by creating a new simple offence of strangulation. The provision will also retain an aggravated form of the offence, which is an updated form of the existing section 37. It will apply where the offence is accompanied by an intent to commit a separate indictable offence.

A similar two-tiered approach to strangulation offences is provided by the Crimes Act in the Australian Capital Territory.

The Government has undertaken targeted consultation with those who apply, prosecute and defend these offences. Comments on the new offences were sought from the Director of Public Prosecutions, Public Defenders, the NSW Police Force and the Legal Aid Commission. All stakeholders supported an amendment to section 37 to create a simple offence of strangulation, and to retain an aggravated form of strangulation involving intent to commit another indictable offence.

We are confident that the bill is a considered and appropriate response to the shortcomings in the present legislation. Dealing with these offences with revised and simplified offence provisions will lead to more sentences being imposed on offenders which reflect the seriousness of domestic violence and the long-term impact of this particular behaviour. Further, more accurate records of these type of offences will be kept, and awareness of this type of offending raised in the legal and medical fields. Legislative recognition of this type of offending may ultimately assist domestic violence victims in reporting this often hidden form of abuse.

I now turn to the substantive provisions of the bill:

Item [1] of schedule 1 repeals the current section 37 offence and replaces it with two separate offences.

The first offence is the proposed section 37 (1). It is a new offence that will apply if a person intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and where the person is reckless as to rendering the other person unconscious, insensible or incapable of resistance. This offence will therefore apply to the offender who may not have an intention to kill but simply an intention to overpower.

This phrase "incapable of resistance" is part of the current strangulation provision. It is retained in the new provisions, and emphasises that actual unconsciousness is not a requisite element of the offence. This addresses the domestic violence scenario where a victim is placed in a state of such fear by the offender's actions that he or she is incapable of resisting the offender. It avoids the evidentiary difficulty of proving a lack of consciousness when the only prosecution witness may be the person who was unconscious.

The new provision under section 37 (1) (a) requires an intentional act on behalf of the offender. This reflects both the seriousness of the offence and ensures that unintentional acts where transient or inadvertent suffocation may occur—for example, during a sporting activity such as wrestling or judo—are not covered. It is not intended to capture such behaviour where both participants have freely entered into the activity and the strangulation is an accidental and unintended incident of that activity.

However, intention as to the outcome of the act of strangulation is not required under section 37 (1) (b); the offence will be established where an offender is reckless as to whether or not a victim is rendered insensible, unconscious or incapable of resistance as a result of the offender's actions.

Any attempt to commit the offence under section 37 (1) may be dealt with under section 344A of the Act. That section provides that a person who attempts to commit an offence under the Act for which a penalty is provided is liable to the same penalty. This means that a person who attempts to choke the victim but is stopped in the act may be liable for prosecution and subject on conviction to the same maximum penalty as had the act been completed.

Importantly, unlike the existing section 37, the proposed basic offence does not require proof of an intention to commit any other offence. The act of strangulation alone will be sufficient.

The new offence carries a maximum penalty of 10 years imprisonment. This is consistent with the Crimes Acts of other Australian jurisdictions, which also make a distinction between assault occasioning bodily harm and strangulation, the latter of which attracts higher penalties. It is also consistent with the distinction in the Act between the seriousness of strangulation and other forms of assault. In particular, the Act makes a clear distinction between the seriousness of assaulting a person with intent to commit a serious indictable offence, attracting a maximum penalty of five years imprisonment, and strangling a person with intent to commit an indictable offence, attracting a maximum penalty of 25 years imprisonment.

The second offence is in the proposed section 37 (2). It does not substantively change the existing offence under section 37 of the Act, but simplifies that offence in a manner and with language consistent with the language of the new simple offence. Section 37 (2) will apply if a person chokes, suffocates or strangles another person so as to render the other person insensible, unconscious or incapable of resistance, and does so with the intention of enabling himself or herself to commit, or assisting any other person to commit, another indictable offence.

As with the simple offence, an attempt to commit the offence, that is, where someone tries and fails to choke, suffocate or strangle a victim to commit another indictable offence is covered by the general attempt provision of section 344A of the Act.

The aggravated offence carries a maximum penalty of 25 years imprisonment, consistent with the existing penalty in section 37.

Subsection 37 (3) provides that "another indictable offence" in section 37 (2) means an indictable offence other than an offence against this section. This makes clear that the act itself of choking, suffocation or strangulation will not constitute the other indictable offence which is sought to be committed. Two steps will be required for proof of the aggravated offence: the act of strangulation, and the intent to commit a separate offence. An example would be where an offender strangles a victim for the purpose of then sexually assaulting them. This definition reflects, but adds greater clarity to, the reference in the current section 37 to "an indictable offence". It reflects the existing application of the offence.

Recklessness as to the outcome of the strangulation is not expressly provided in the aggravated offence because the offence already incorporates a clear intention attached to the outcome of the strangulation, that is, the commission of another indictable offence.

Schedule 2 of the bill makes consequential amendments.

Item [1] of schedule 2 provides that the simple offence be included in table 1 of schedule 1 to the Criminal Procedure Act 1986 (indictable offences that are to be dealt with summarily unless prosecutor or person charged elects otherwise). If tried summarily in the Local Court a maximum penalty of two years imprisonment will therefore apply to the simple offence. An aggravated offence under the new proposed section 37 (2) will continue to be dealt with on a strictly indictable basis.

Item [2] of schedule 2 amends the Criminal Procedure Regulation 2010 to replace the reference to the current section 37 as a category 2 personal violence offence, for the purpose of eligibility assessment for the forum sentencing program, with the new aggravated offence in section 37 (2).

Item [3] of schedule 2 replaces the reference to the current section 37 offence with reference to the new section 37 (2) provision in the definition of sexual offences referred to in section 7 (4) of the Criminal Records Act 1991.

Providing offences that will enable appropriate charging and sentencing of strangulation will recognise the seriousness of this type of violence.

The bill sends a clear message that acts of violence involving strangulation will be met with appropriately strict penalties. It represents another important part of this Government's continuing support for victims of domestic violence in this State.

I commend the bill to the House.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [5.29 p.m.]: I lead for the Opposition in debate on the Crimes Amendment (Strangulation) Bill 2014. The Opposition does not oppose the bill, although I note that the shadow Attorney General, Mr Paul Lynch, MP, raised in his contribution in the debate in the other place matters about which he sought responses from the Attorney General.

The Hon. Trevor Khan: He just can't be made happy.

The Hon. ADAM SEARLE: I acknowledge that interjection. I do not agree. On this occasion, having carefully perused the speech in reply by the Attorney General in the other place, it is quite clear that the Attorney General did not address the concerns raised by the shadow Attorney General. People can read *Hansard* and form their own views about these matters. The objects of the bill are:

- (a) To create a new offence that will apply if a person intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance while being reckless as to whether the other person is rendered unconscious, insensible or incapable of resistance,
- (b) To simplify and modernise an existing offence that applies if a person chokes, suffocates or strangles another person with intent to enable himself or herself to commit, or to assist another person to commit, another indictable offence.

The law concerning attempts to choke is contained in section 37 of the Crimes Act, which provides:

Whosoever:

by any means attempts to choke, suffocate or strangle any person, or

by any means calculated to choke, suffocate or strangle, attempts to render any person insensible, unconscious or incapable of resistance,

with intent in any such case to enable himself or herself or another person to commit, or with intent in any such case to assist any person in committing, an indictable offence, shall be liable to imprisonment for 25 years.

The Government presents this bill as necessary because of a perceived gap in the law pointed out by the Director of Public Prosecutions [DPP], which means that many attempts to strangle are prosecuted only as common assaults under section 61 of the Crimes Act, with a maximum penalty of two years imprisonment as opposed to a maximum penalty of 25 years imprisonment under section 37. This is said to be a particular issue in instances of domestic violence. Section 37 creates an offence that involves attempting to choke, suffocate or strangle with intent to commit another offence. Absent the requisite intent in relation to the other offence, there is no offence under section 37. When the assault is the choking and no further intent or offence is involved, no offence is established under section 37, which is why those matters presumably are prosecuted as common assaults under section 61.

The argument in support of this legislation is that the seriousness of attempts to choke that do not involve actual or grievous bodily harm, and which would therefore be dealt with by provisions other than section 61, are not reflected by the penalties currently available under section 61. The solution proposed by this bill is to modernise the wording of new section 37 by retaining its current maximum penalty, which becomes new section 37 (2), and introducing a new offence with a maximum penalty of 10 years imprisonment, which is new section 37 (1). New section 37 (2) remains strictly indictable. The offence under section 37 (1) is included in schedule 1 to the Criminal Procedure Act; because of that, in some cases—perhaps even the majority of cases—it may be dealt with summarily in the Local Court.

New section 37 (2) requires proof of an intent to commit another indictable offence, thus maintaining the structure of the current provision. New section 37 (1) makes it an offence if a person intentionally chokes, suffocates or strangles someone so as to make the victim unconscious, insensible or incapable of resistance. Clearly, this will not include every attempt to strangle currently dealt with under section 61, but with the increased penalty we do not think it ought to in any case. As the Attorney General in the other place noted in his second reading speech, both new sections interact with section 344A of the Crimes Act so that attempts are also criminalised. I note that the Attorney General in the other place advised that the Government directed consultation to the Director of Public Prosecutions, the Public Defenders Office, the NSW Police Force and the NSW Legal Aid Commission. I would like the Government to confirm that all four agencies supported the provisions in this bill.

While we do not oppose the bill, the inclusion of new section 37 (1) as a table 1 offence means that such matters may be dealt with summarily by a magistrate in the Local Court. If that is the case, the maximum penalty that may be imposed is only two years imprisonment, which is precisely the same maximum penalty as for common assault under section 61. Of course, the restriction on section 61 is the main argument presented as the justification for introducing new section 37 (1). So it is a curiosity that that restriction on the level of penalty available presently to section 61 prosecutions leads to this bill, but a key feature of this new bill is similarly restricted to that two-year limit. It is an oddity if that is the Government's true motivation in bringing this legislation forward.

The Opposition is not sure how many offences under new section 37 (1) would be serious enough to justify proceedings by way of indictment and thus not restricted to the maximum penalty of two years imprisonment. Provisions for this already exist and carry significantly higher penalties than two years imprisonment. The Bar Association, at least in its communications with the Opposition, appears not to have been consulted on the bill but it has raised a number of concerns, which were raised by the shadow Attorney General in the other place. The Attorney General did respond. I think the matter will arise in this debate and the Parliamentary Secretary will be called upon to provide a response as to whether new section 37 (1) requires the offender to intentionally choke, suffocate or strangle another person or whether the legislation requires change. I understand that the Parliamentary Secretary has a firm view about these matters on advice, and I look forward to him putting that on the record.

The second concern raised by the shadow Attorney General in the other place is that the consent of the person being choked, suffocated or strangled would be a defence to the offence under new section 37 (1). The third concern is that, bearing in mind the maximum penalty of 25 years, the new section 37 (2) offence should be limited to cases where there is an intention to commit a serious indictable offence; it would not be appropriate to apply to a case where the choking, suffocating or strangling was done merely with the intent of facilitating a further assault such as a punch. In any case, we do not oppose the legislation presented by the Government, although we would like its response to the matters raised.

Mr DAVID SHOEBRIDGE [5.37 p.m.]: On behalf of The Greens I speak to the Crimes Amendment (Strangulation) Bill 2014. This bill amends section 37 of the Crimes Act, which currently makes it an offence to attempt to choke, suffocate or strangle a person. Currently, the mental element required is that the person intended to commit an indictable offence. Schedule 1 [1] repeals the current section 37 and replaces it with a new provision that contains two separate offences relating to choking, suffocation and strangulation. For the basic offence, a person is guilty if they intentionally choke, suffocate or strangle another person to render them unconscious or incapable of resistance and is reckless as to rendering them unconscious or incapable of resistance. The penalty for the basic offence is a maximum incarceration period of 10 years.

The aggravated offence is contained in new section 37 (2) and is made out if the person chokes, suffocates or strangles another person so as to render them unconscious, insensible or incapable of resistance and that they do so with the intention of committing another indictable offence. That aggravated offence carries a maximum penalty of 25 years imprisonment. As the Attorney General noted in his second reading speech, the background to the bill arises from concerns raised by the Director of Public Prosecutions [DPP] about the operation of current section 37, which was resulting in many cases of strangulation being dealt with only as common assaults.

A common assault charge has a much lesser maximum sentence of only two years. They were being dealt with as the lesser offence of common assaults because of the difficulty of proving intention. This was despite the fact that many of the instances of strangulation that were proceeding as common assaults were clearly intended to intimidate the victim and some amounted to serious assaults that, in fact, rendered the victim unconscious. It was the level of offending that most ordinary people would have thought was a more serious offence than a standard common assault.

The Greens support the Crimes Amendment (Strangulation) Bill 2014 and note the work that has gone into updating this offence following feedback from the Director of Public Prosecutions. The Greens are concerned that there has not been full consultation with some of the usual stakeholders—such as the Law Society of New South Wales and the NSW Bar Association—and a broader discussion paper on the bill. However, we endorse the comments that the Attorney General made in his second reading speech regarding the high priority that needs to be given for the protection, in particular, of victims of domestic violence.

Research shows that strangulation is common in many domestic violence cases, to the extent that it is considered an indicator of the risk of further harm and an indicator of substantial escalation of violence in domestic settings. Strangulation is of itself a very serious form of violence. The bill has come about to address concerns that the current offence was not applicable in most cases of domestic violence because it required the intention to commit a separate indictable offence. It is also intended that though strangulation could properly be considered actual or grievous bodily harm, insofar as these offences rely on physical proof of the harm caused, they are difficult or indeed often impossible to prove in most strangulation cases. Often the suffocation prevents the victim from breathing but does not leave the kind of physical evidence that would allow a charge of grievous bodily harm to be maintained.

To consider strangulation as mere assault fails to recognise the seriousness of the offence and the impact it has on the victim. To allow victims who have been strangled, particularly in a domestic setting, to see the perpetrator charged and convicted only of common assault does not address the gravity of the offence. Particularly in the context of domestic violence, strangulation and choking are sadly very pervasive. Indeed, they reflect the exertion of power by the perpetrator as against the victim. In fact, strangulation is so much a characteristic of domestic violence that the United States of America has established a Training Institute on Strangulation Prevention, specifically tasked with "providing training and technical assistance to family violence professionals throughout the world on Domestic Violence and Sexual Assault Strangulation Crimes". A paper from the training institute states:

Strangulation is, in fact, one of the best predictors for the subsequent homicide of victims of domestic violence. One study showed that "the odds of becoming an attempted homicide increased by about seven-fold for women who had been strangled by their partner" (Journal of Emergency Medicine, 2008). Victims may have no visible injuries whatsoever, yet because of underlying brain damage due to the lack of oxygen during the strangulation assault, they may have serious internal injuries or die days, even weeks later.

The Greens note that under section 344A of the Crimes Act it will be an offence to attempt to commit any of the new offences under section 37. Whilst I note strong general support for the bill, I note also that my office has received a number of concerns from the Bar Association regarding this bill. The first concern is the aggravated offence does not specify that it must be committed "intentionally", though the basic offence rather strangely does. The Greens accept the validity of that position of the Bar Association that if someone is to be convicted of an offence which carries a maximum sentence of 25 years each of the elements must have been committed intentionally by the perpetrator. I foreshadow that during the Committee stage The Greens will move an amendment that inserts the requirement of intention.

Secondly, it is not explicit that the consent of the person being choked would be a defence to the basic offence. In discussions with the Government regarding the absence of a specific defence of consent, we have been advised that it intends the general common law to apply in this case where consent would be considered to be a defence to the more basic offence. I hope that that matter is clarified by the Parliamentary Secretary in reply. However, it is because of that The Greens will be moving an amendment to put in place that specific defence. The third concern of the Bar Association is that the aggravated offence may be overly punitive applying to cases where the strangulation is committed with the intention to enable the commission of an indictable offence, but that indictable offence may be a relatively modest defence, such as a further assault like a punch.

The Greens note the concerns of the Bar Association in that regard. However, given the strong evidence—particularly from the institute that I referred to earlier—as to the co-relation between strangling offences, serious domestic violence, and the escalation of violence, including escalation potentially to homicide, The Greens believe the severity proposed for the aggravated offence is, in fact, warranted. It is with those comments and minor qualifications that The Greens indicate our support for the bill. We will discuss further the issue of intention during the Committee stage.

The Hon. Dr PETER PHELPS [5.46 p.m.]: I want to put two concerns on the record—although I am fairly certain I know the answers to them. Given that these questions were not, in my view, addressed adequately during the second reading debate in the Legislative Assembly, I would appreciate it if the Parliamentary Secretary in reply answered my questions in relation to this proposed amendment bill. My first question concerns the nature of consent, as referred to by Mr David Shoebridge. Will the Parliamentary Secretary clarify whether the common law defence of consent, as it is understood in relation to specifically cases dealing with sporting activity, will still apply in this case?

There are also questions about consent in cases involving sadomasochism, but I will not go into that. Consent can be rendered null and void in cases of maiming, but in this instance one would have to ask, "Has a maim occurred during strangulation during sadomasochistic horseplay in sexual activity?" I will put that to one side because my interest does not lie in sadomasochistic sex; my interest lies more in the sport of judo. Judo has a recognised class of strangulation techniques, known as shimewaza, that are carried out with the intention—unless the person taps out and effectively surrenders the contest—of effectively strangling to unconsciousness the person being strangled.

Judo contests take place under medical supervision. My concern has been, and would be much alleviated by an assurance from the Parliamentary Secretary, that consent to a recognised sporting technique in a combat sport—for example, judo or mixed martial arts—as it is currently conducted in Australia would amount to a defence. My concern is that this will not end up as a strict liability offence for strangulation to unconsciousness where the people concerned are consensually, either implicitly or explicitly, engaged in a sporting activity that has strangulation to unconsciousness as part of its recognised techniques.

Reverend the Hon. FRED NILE [5.49 p.m.]: On behalf of the Christian Democratic Party I am pleased to support the Crimes Amendment (Strangulation) Bill 2014. This bill does two things. First, it creates a new offence that will apply if a person intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance while being reckless as to whether the other person is rendered unconscious, insensible or incapable of resistance. Secondly, it simplifies and modernises an existing offence that applies if a person chokes, suffocates or strangles another person with intent to enable himself or herself to commit, or to assist another person to commit, another indictable offence.

The first object of the bill relates to straightforward strangulation. The second object relates to the purpose of achieving something else—for example, to rape a woman who is being strangled. This bill arose from concerns expressed by the Director of Public Prosecution about the adequacy of the current strangulation

provisions in section 37 of the Crimes Act. He identified numerous cases of strangulation, some involving acts of intimidation and others involving serious assault resulting in unconsciousness. Time and again the courts dealt with these cases as merely matters of common assault. One might ask: What is the problem with that? The problem is that the normal sentence for common assault was, on average, six months imprisonment whereas the sentence should have been much longer for such a serious offence.

It has been stated previously that cases of strangulation are often related to domestic violence situations. The bill proposes that the crime of strangulation be dealt with as two offences. As a result of the shortcomings of the current strangulation provisions in the Crimes Act, 70 per cent of domestic violence assaults involving strangulation are classed as common assault in New South Wales, an offence that attracts a maximum penalty of only two years imprisonment. Statistics obtained from the Bureau of Crime Statistics and Research show that, despite that maximum period of two years, the average period of imprisonment for domestic violence assaults involving strangulation is only six months. That is why something must be done to ensure the law reflects the seriousness of the offence and to provide appropriate punishment.

The bill repeals the current section 37 offence and replaces it with two separate offences. The first offence is a new offence created under new section 37 (1) and will apply if a person intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance and is reckless as to rendering the other person unconscious, insensible or incapable of resistance. This offence will apply to the offender who may not have an intention to kill but simply an intention to overpower, in the majority of cases, a woman.

The second offence under new section 37 (2) does not substantially change the existing offence in section 37 of the Act but simplifies that offence in a manner and with language consistent with the language of the new simple offence. New section 37 (2) will apply if a person chokes, suffocates or strangles another person so as to render the other person insensible, unconscious or incapable of resistance, and does so with the intention of enabling himself or herself to commit, or assist any other person to commit, another indictable offence, quite often with the intention of raping the woman who is being strangled. This will be of great assistance in dealing with cases of domestic violence that involve strangulation without the intention of murdering the woman at that time. However, statistics have shown that often early strangulation will lead to the male strangling the woman and taking her life. The Christian Democratic Party is pleased to support the Crimes Amendment (Strangulation) Bill 2014.

The Hon. RICK COLLESS [5.55 p.m.]: I add my support to the Crimes Amendment (Strangulation) Bill 2014. This bill introduces a new offence of strangulation into the Crimes Act and modernises the language of the existing strangulation offence in section 37 of the Act. The bill expands the application of the current strangulation offence in section 37 of the Crimes Act by creating a new simple offence of strangulation. The provision retains an aggravated form of the offence, which is an updated and simplified form of existing section 37. The aggravated offence applies where the act of strangulation is accompanied by an intent to commit a separate indictable offence.

Prosecution of strangulation under the new provision will not require proof of any intent to commit another offence, as is the case under the current Crimes Act. The removal of this additional element will make cases of assault by strangulation, choking or suffocation easier to prosecute and to prove. However, statistics indicate that 70 per cent of domestic violence assaults involving strangulation are dealt with as common assault in the Local Court. The new simple offence will apply only if an offender intends to choke, suffocate or strangle his or her victim. The offence will apply to an offender who does so with the aim of causing the victim to become unconscious, insensible or incapable of resistance. As with the current strangulation provision in section 37 of the Crimes Act, actual unconsciousness is not required. This responds to the domestic violence scenario where a victim's will is overborne and is placed in a state of such fear by the offender's actions.

The need for the actions of the perpetrator to be intentional reflects the seriousness of the offence. The provision is not aimed at unintentional acts where accidental suffocation may occur—for example, in some vigorous sporting activities such as wrestling or football. The legislation does not criminalise such behaviour that takes place in the usual course of a sporting contest. This offence does not require any intention to kill the victim through strangulation nor will it require that the offender intends to render the victim unconscious. The provision is broader than that and will apply to the offender whose intention is to overpower his or her victim.

The provisions will apply even where the victim remains conscious throughout an episode of strangulation or choking. A perpetrator who uses choking or strangulation as a tactic—typical in the power

dynamic common in serious and escalating domestic violence scenarios—will be caught under the new provision. The provisions will apply where the victim does not suffer any visible or ongoing injury. An insidious aspect of strangulation or choking, particularly in the domestic violence context, is the lack of any visible or ongoing physical injury that results from the incident. However, at a minimum, victims of strangulation suffer significant trauma by the terrifying experience of being choked. They may also suffer additional long-term physical, psychological and neurological trauma.

The modernised aggravated offence will occur if a perpetrator chokes, suffocates or strangles another person with the intention of enabling himself or herself to commit, or assisting any other person to commit, another indictable offence. It is not necessary to spell out that the act of choking, suffocation or strangulation, or its outcome, be intentional or reckless where the act is carried out for the specified purpose of the commission of another offence. By its very nature this form of offending will be intentional. Any attempt to commit either the simple or the aggravated strangulation offence will be prosecuted under the general attempt provision of the Crimes Act. This means that a person who attempts to choke the victim but is stopped in the act—for example, if they are interrupted—may be liable for prosecution and subject on conviction to the same maximum penalty as had the act been completed.

Under present law, acts of strangulation that are not accompanied by either external physical injury or by the commission of another serious offence will simply be prosecuted as common assault in the Local Court. Common assault carries a maximum penalty of two years jail. A maximum penalty of 10 years imprisonment will apply to the new offence. The aggravated offence carries a maximum of 25 years jail. The maximum penalty for the aggravated offence is the same as the current strangulation offence. I commend the bill to the House.

The Hon. PAUL GREEN [5.59 p.m.]: I speak on behalf of the Christian Democratic Party in debate on the Crimes Amendment (Strangulation) Bill 2014. This is a concise bill that makes a small number of changes to the Crimes Act 1900 by expanding and simplifying existing provisions in the Act in relation to acts involving choking suffocation or strangulation. Quite simply, schedule 1 [1] to the bill amends the Crimes Act to repeal the existing strangulation offence in section 37 and replaces it with two separate offences. For the sake of time, I note that the separate offences have been covered by other members during this debate.

The Christian Democratic Party had some initial concerns about the bill causing legal complications for good Samaritans who use, for example, a headlock to restrain someone committing armed robbery and strangle them in the process. The Christian Democratic Party did not want to discourage people from intervening in such cases, although we understand that the law would say to stay away from those situations and that you are not being heroic if you are putting your life in danger. Our legal advice assured us that common law principles of self-defence and an appropriate level of force and restraint still apply.

The Ortnier-Unity Family Violence Center produced a highly referenced document indicating that 23 per cent to 68 per cent of women victims of domestic violence have experienced at least one strangulation assault by a male partner during their lifetime and 33 per cent to 47.3 per cent of women report that their partner had tried to strangle them in the past year. Strangulation can be a recurring form of violence and abuse in women's lives. Strangulation can have substantial physical effects such as dizziness, nausea, sore throat, voice changes, throat and neck injuries, breathing problems, swallowing problems, ringing in the ears and vision change. Neurologically it can cause eyelid droop, facial droop, left- or right-side weaknesses, loss of sensation, loss of memory and paralysis. Psychologically it can cause post-traumatic stress disorder, depression, suicidal ideations and insomnia. They are some of the health effects.

The higher the number of strangulation attempts the higher the number of adverse health conditions experienced by victims. Compared with other forms of physical violence strangulation often leaves no marks or any other external evidence on the skin. In a study of police records of 300 strangulation cases 50 per cent of victims did not have any visible injury and in 35 per cent of cases the injuries were too minor for the police to photograph. The difficulty in detecting strangulation is a challenge for law enforcement and medical professionals, which makes it a particularly useful means of intimidation and harm for an abuser.

Strangulation is a significant risk factor for homicide or attempted homicide of women by their male intimates. A study in Chicago of 57 women killed by a male partner in 1995 to 1996 found that 53 per cent of victims had experienced strangulation in the preceding year and 18 per cent of victims had been killed by strangulation. In another study of women victims it was found that 45 per cent of attempted homicide victims

and 43 per cent of homicide victims had been strangled in the past year by their male partner as compared with 10 per cent of the victims who were abused but were neither a homicide nor attempted homicide victim. Strangulation may indicate ongoing patterns of severe violence in the lives of women victims.

In a study of women who came to a Chicago hospital for any health-related reason and had experienced domestic violence in the past year, 210 women were interviewed twice and, of the 68 women whose partners had tried to strangle them in the year before the initial interview, 65 per cent reported in the follow-up interview that they had experienced a severe incident in the period after the initial interview—that is, an incident resulting in permanent injury, internal injury, head injury, broken bones, threat or attack with a weapon, completely "beaten up", strangled or burned. Strangulation might not be the only method of abuse during individual assaults. In a study of women victims who had experienced strangulation 88 per cent of them had also experienced physical, verbal or sexual abuse in the same incident.

In a large proportion of strangulation assaults children are present during the assault. In the earlier study mentioned of police records of 300 strangulation cases children witnessed the strangulation assault in at least 41 per cent of the cases. This number is likely to be under-reported because the victim might be reluctant to report that the child was present or because the police might have failed to document the presence of children in some cases. While these statistics are from the United States of America there is no reason to believe the problem does not occur in New South Wales. The Christian Democratic Party has been reassured by legal advice that good Samaritans restraining perpetrators of crime will not fall foul of this bill if it becomes law. Given the overwhelming community concern about domestic violence, the Christian Democratic Party supports the bill and commends it to the House.

The Hon. DAVID CLARKE (Parliamentary Secretary) [6.05 p.m.], in reply: I thank members for their contributions to debate on the Crimes Amendment (Strangulation) Bill 2014. The Hon. Adam Searle raised questions relating to penalties. The position is that with regard to the lesser offence the prosecution or person charged can elect to have the matter dealt with on indictment thus enabling higher penalties to apply. With regard to the aggravated offence it is one that is strictly indictable. I hope that answers the member's question.

The Hon. Dr Peter Phelps raised the issue of choking or strangulation as part of an approved technique of submission in sports such as judo or mixed martial arts and whether the new offence criminalises participation in such sports. Like any form of assault, an assault that involves strangulation or choking with consent will not necessarily be criminalised. Generally the law does not criminalise acts in sports that are done in legitimate pursuit of the objects of the game and which occur during play in accordance with the rules of the game. Sports where particular methods of submission involving the temporary restriction of breathing of an opponent are permitted are regulated by the NSW Combat Sports Authority. This body has oversight of both professional and amateur combat sports in New South Wales. A court will decide on a case-by-case basis whether it should intervene to punish a participant where the act has gone beyond the rules of the sport or where there has been no consent.

With regard to whether the new offence criminalises strangulation during consensual sexual activity, the answer is: not necessarily. The simple offence provision is, like other forms of assault, subject to the common law defence of consent. That defence may apply to consensual acts that take place during sexual activity. A court will consider the particular facts before deciding whether any act of choking or suffocation in the context of sexual activity has occurred with the consent of all participants or whether it goes beyond consent or has taken place without consent.

This bill amends the Crimes Act 1900 to introduce an additional offence of strangulation in New South Wales and to simplify and modernise the existing strangulation offence. The bill is a considered and appropriate response to the shortcomings in the present legislation, particularly in the context of domestic violence. Dealing with these offences with revised and simplified offence provisions will lead to more sentences being imposed on offenders that reflect the seriousness of domestic violence and the long-term impact of this particular behaviour. Legislative recognition of this type of offending may ultimately assist domestic violence victims to report abuse and seek protection against this often hidden form of abuse. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

In Committee

Clauses 1 and 2 agreed to.

Mr DAVID SHOEBRIDGE [6.10 p.m.]: I move Greens amendment No. 1 on sheet C2014-038:

No. 1 Page 3, schedule 1 [1], proposed section 37 (2) (a). Insert "intentionally" before "chokes".

The bill proposes to insert new section 37, which provides:

- (1) A person is guilty of an offence if the person:
 - (a) intentionally chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and
 - (b) is reckless as to rendering the other person unconscious, insensible or incapable of resistance.

Maximum penalty: imprisonment for 10 years.

Intention to choke is a necessary element of that more basic offence. However, new section 37 (2) puts the aggravated offence in the following terms:

- (2) A person is guilty of an offence if the person:
 - (a) chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance, and
 - (b) does so with the intention of enabling himself or herself to commit, or assisting any other person to commit, another indictable offence.

Maximum penalty: imprisonment for 25 years.

Peculiarly, the aggravated offence does not require intention with regard to choking, suffocation or strangulation. It requires intention only for the second element of the aggravated offence, being the intention to enable the person himself or herself, or to assist another person, to commit another indictable offence. The Bar Association has provided a briefing note to all parties raising a number of concerns about the bill. It states:

... the proposed s 37(1)(a) requires the offender to 'intentionally' choke, suffocate or strangle another person. However, the significantly more serious offence under s 37(2) does not require such intention ... All that is required is an intention to commit another indictable offence. There is no apparent reason for deleting the word 'intentionally' in s 37(2)(a). It should be brought into line with s 37(1)(a).

The Bar Association has raised other concerns, but they have been addressed already in debate. What has not been addressed or grappled with is why the Government is proposing to remove that part of the offence, being to choke, strangle or suffocate the victim. The existing law requires intention or recklessness for that element of the offence. Section 37 requires an attempt to suffocate or choke, or recklessness as to suffocation or choking. The Attorney General said in the second reading speech that the aggravated offence did not represent an attempt to change the existing law. In fact, it does; it removes the element of intention from the key part of the aggravated offence, which is the strangling, choking or suffocation. Given that it carries such a severe maximum penalty of 25 years imprisonment, The Greens believe that intention must be an element of both parts of the offence—that is, the mens rea should be established for the suffocation and the choking and for the intention to commit a further indictable offence. It is for those reasons that The Greens move this amendment.

The Hon. DAVID CLARKE (Parliamentary Secretary) [6.14 p.m.]: The Government does not support the amendment because it is not necessary. The new aggravated offence is committed if a perpetrator carries out the act of choking, suffocating or strangling another person with the intention of enabling himself or herself to commit or to assist any other person to commit another indictable offence. As with the existing offence, the act of choking and so on will be deliberate because it is directed at a specific purpose: the commission of another offence. The connection of the act and choking and the intent to commit the indictable offence is as it is under the Act. A scenario in which a victim is choked by accident for the purpose of enabling the commission of another offence is inconceivable.

It goes without saying that the act of choking under the aggravated offence will be an intentional one. The key element under the new aggravated offence is the intent to commit a further indictable offence. Again,

this is the same as the existing offence. The intention of this legislation is not to weaken the existing offence or to make it harder to prove. Rather, by couching the offence in simple, modern language it is intended to make it easier for everyone to understand and for courts and the police to apply.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [6.15 p.m.]: I thank both Mr David Shoebridge and the Parliamentary Secretary for their comments on this amendment. During the debate I have had an opportunity to look at section 37 and to compare it with new section 37 (2). It appears to me that they are in essentially the same form. While requiring an intent to commit the indictable offence, the current section does not require an intent in relation to choking, suffocating or strangulation.

Mr David Shoebridge: It says "attempts ... or by any means calculated to".

The Hon. ADAM SEARLE: It does not include the word "intentionally" in the way that the amendment foreshadows. That part of the new offence that is analogous to existing section 37 is essentially in the same form. The intention must be to commit or enable another person to commit another indictable offence. New section 37, subsections (1) and (2), require an intention, but directed to different activities. That being the case and given the Government's stated intention not to change new section 37 (2)—that is, to replicate the current provision but include new section 37 (1)—the Opposition does not see the need to insert the word "intentionally" before the word "choke" in the way proposed by The Greens. For that reason the Opposition will not support the amendment.

Mr DAVID SHOEBRIDGE [6.17 p.m.]: For the record, section 37 provides:

Whosoever:

by any means attempts to choke suffocate or strangle any person, or

by any means calculated to choke suffocate or strangle, attempts to render any person insensible unconscious or incapable of resistance,

with intent in any such case to enable himself or herself or another person to commit, or with intent in any such case to assist any person in committing, an indictable offence,

shall be liable to imprisonment for 25 years.

The first element of the offence that must be established is that the person attempted to choke, suffocate or strangle any person. It requires intention to be established. The other way of establishing that first element of the offence in the existing law is for the prosecution to prove that the person by any means calculated to choke, suffocate or strangle.

If a person engages in an activity that is calculated to choke, suffocate or strangle there is the requirement for the element of intention. This differentiates the first two ways of proving the first element of the offence. The second element of the offence under the existing law is that the person must have intent in such a case to commit, or assist another person to commit, an indictable offence. Intention is required in the first element of the offence, both in attempting to choke or suffocate and in carrying out acts that are calculated to choke or suffocate. Intention is also required in the second element of the offence to enable that person or to assist another person to commit an indictable offence.

That is a far cry from the Government's new section 37 (2) that establishes two elements to find a person guilty of an offence. The first of these is if the person chokes, suffocates or strangles another person so as to render the other person unconscious, insensible or incapable of resistance. There is no requirement of intention—no requirement for it to be calculated or for the intention to be to choke or to suffocate. The Parliamentary Secretary acknowledged that in his speech in reply, when in summary he said the circumstances where a person is accidentally choked for the purpose of committing a further offence are inconceivable. That proves the point. It is a complicated world and all manner of factual circumstances come before the courts in disparate sets of circumstances. If accidental choking or strangling were committed as part of an intentional act to commit another indictable offence, even if there was no mens rea for the choking or strangling, this more serious offence carrying a maximum penalty of 25 years would be established.

The Hon. Dr Peter Phelps: But that is the current situation, David.

Mr DAVID SHOEBRIDGE: I note the interjection but I disagree with it for the reasons I have given. The current law requires intention to choke, suffocate or strangle. There is the requirement for intention in the second element—that is, it was done in furtherance of committing an indictable offence. That is the current law. The change in this bill will remove the intention from the first element.

The Hon. Dr Peter Phelps: That's your interpretation of it.

Mr DAVID SHOEBRIDGE: That is my interpretation. It is also the Bar Association's interpretation and, indeed, the Parliamentary Secretary's interpretation. The Government's answer is that it is far fetched that these circumstances will ever occur and because it is far fetched there will be no amendment. I think that is a poor response as it potentially places a significant flaw in what is otherwise a good piece of legislation. It is for those reasons that I commend the amendment to the House.

Question—That The Greens amendment No. 1 [C2014-038] be agreed to—put and resolved in the negative.

The Greens amendment No. 1 [C2014-038] negatived.

Schedule 1 agreed to.

Schedule 2 agreed to.

Title agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. David Clarke agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. David Clarke agreed to:

That this bill be now read a third time.

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

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

RACING ADMINISTRATION AMENDMENT (SPORTS BETTING NATIONAL OPERATIONAL MODEL) BILL 2014

Second Reading

The Hon. DUNCAN GAY (Minister for Roads and Freight, and Vice-President of the Executive Council) [8.00 p.m.], on behalf of the Hon. Matthew Mason-Cox: 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 Government is pleased to introduce the Racing Administration Amendment (Sports Betting National Operational Model) Bill 2014. The bill's object is to regulate betting on sporting events in line with the National Policy on Match-Fixing in Sport agreed to by all Australian sports Ministers in June 2011. As part of the national policy, the same Ministers agreed to a national operational model for sports betting in September 2011. This bill implements that operational model. The model augments new match-fixing penalties and offences introduced by the New South Wales Government in August 2012. A maximum penalty of 10 years imprisonment applies for anyone found to have engaged in or facilitated conduct that corrupts the outcome of an event. The offences are based on a list of match-fixing behaviours endorsed nationally by the Standing Council on Law and Justice.

The operational model regulates the interaction between sporting organisations, betting service providers, and relevant State and Territory regulators in relation to integrity agreements and baseline requirements for betting on sporting events. The model was

developed in consultation with State and Territory gambling regulators, a number of major betting service providers and major sporting organisations. Based on the Victorian regulatory model administered by the Victorian Commission for Gambling and Liquor Regulation, the operational model provides a framework for betting service providers to enter into integrity agreements with sports controlling bodies and contains the following key features: first, integrity measures used to prevent, investigate and assist in the prosecution of match fixing or corrupt behaviour; secondly, financial return to the sport; and, thirdly, information-sharing arrangements.

Under the model, sports controlling bodies also have a veto right on the type of betting that occurs, or whether any betting occurs at all, in respect of their sport. Importantly, this bill establishes a workable and appropriate framework to strengthen the capacity of sporting bodies to recognise and manage integrity risks associated with the betting that takes place on their sport. It also enables sporting bodies to receive a share of the revenues that accrue from approved betting, recognising both the value of the sporting product itself and the integrity-related costs incurred by sporting bodies as a direct result of evolving sports betting markets. These mechanisms will help to strengthen public confidence in the integrity of the sporting contests themselves, as well as the associated betting that occurs on these events.

I turn now to the main details of the bill. New section 1 changes the name of the principal Act from the Racing Administration Act to the Betting and Racing Act. This change was initiated by Parliamentary Counsel on the basis that it more accurately reflects the subject matter of the principal Act. New section 17B authorises the Minister for Sport and Recreation to prescribe, by order published in the *Gazette*, a person or body as a sports controlling body for a sporting event. A regulation-making power is included to allow an approval process to be prescribed, including but not limited to the making of applications, the provision of information and the prescription of fees. It is proposed that a process for mutual recognition of interstate sports controlling bodies be included in the regulations. The Minister for Sport and Recreation will have the administrative responsibility for this area.

New section 18 restates the existing provisions of the Racing Administration Act in relation to the power of the Minister for Tourism, Major Events, Hospitality and Racing to prescribe an event or class of events as a declared betting event. A provision has been added to require an application to be made to the Minister before making such a declaration by a licensed bookmaker who holds a declared betting event authority under the Act or by a licensee under the Totalizator Act 1997—that is, the TAB. The requirement for an application for new bet types reflects current practice and provides a necessary structure for the implementation of the operational model and the involvement of sports controlling bodies in the process. New section 18 (5) allows the Minister to remove a previously approved sporting event as a declared betting event upon application by the sports controlling body for the event. This provision gives effect to the sports controlling body's right of veto over betting on its sport, which is a key component of the national operational model. However, the Minister will have discretion to not approve the request if he considers that it is not in the public interest.

New section 18A directly follows the above application process and requires that a new sporting event may be prescribed by the Minister only in cases where a sports controlling body has been approved for the sporting event if an integrity agreement is in place between the applicant and the sports controlling body, and the sports controlling body does not oppose the making of the order. The proposed new section outlines the essential requirements of the integrity agreement, which include an outline of the measures used to prevent, investigate and assist in the prosecution of any match-fixing or corrupt behaviour; provision of financial return to the sport; information-sharing arrangements; and a consultation process for applications for new sporting events and bet types. A key feature of the bill, like the operational model and the Victorian regime, is that the details of the integrity agreement, including financial arrangements, are determined not by government but by the parties to the agreement. While the bill contains measures that actively bring the parties to the negotiating table, the outcome of the negotiations is left to the parties. It is considered that the parties are in the best position to reach agreement on these commercial matters at arm's-length from government.

In circumstances where there is no approved sports controlling body for a sporting event, new section 18B requires the applicant to consult with key people or bodies involved in the administration of the event and convey their views to the Minister for consideration prior to making an order. An offence provision is included in new section 18C prohibiting betting service providers, whether in New South Wales or elsewhere, from offering a betting service in relation to a sporting event unless an integrity agreement is in place with the sports controlling body for the event. The offence is based on a similar offence applying in Victoria under its Gambling Regulation Act 2003. Consistent with the Victorian offence, the proposed New South Wales offence has extraterritorial application and does not apply in the following circumstances: where there is no sports controlling body for the sporting event; to sporting events held wholly outside the State; or during the six-month period following the approval of a new sports controlling body for an event.

The last exclusion provides betting service providers with a six-month transition period within which to reach an integrity agreement with a newly approved sports controlling body. The maximum penalty for the offence is a fine of \$11,000 for a corporation, or a fine of \$5,500 or 12 months imprisonment, or both, for an individual. The penalty is consistent with those prescribed for similar offences in the Racing Administration Act 1998 and the Unlawful Gambling Act 2009. The offence provision provides further impetus to bring betting service providers and sports controlling bodies to the negotiating table to discuss and agree on integrity issues.

New section 19 essentially restates the existing provisions of the Act allowing the Minister to authorise licensed bookmakers to take bets on declared betting events. An offence provision is included to prevent a bookmaker from accepting or making a bet on a declared betting event unless they are licensed and hold a declared betting event authority. Any conditions to which the authority is subject must also be adhered to. The remainder of the bill contains matters of a transitional nature, including preserving declared betting events and declared betting event authorities in force prior to the amending Act, and consequential amendments to related Acts, including the Greyhound Racing Act 2009, Harness Racing Act 2009, Thoroughbred Racing Act 1996 and Unlawful Gambling Act 1998.

In summary, this bill is an illustration of the Government's commitment to promoting integrity in sport and the regulation of associated sports betting. Sport has long been regarded as an integral part of Australian life. Australians are entitled to expect that the sports they watch or participate in are played honestly and in accordance with the ideals of fair play and good sportsmanship. Similarly, punters are entitled to expect that the sporting events upon which they wager money will be openly contested and free

of manipulation. The bill is designed to give the public an increased level of confidence that these expectations will be met. A key aim of the National Policy on Match-Fixing in Sport, upon which this bill is based, is to maximise public confidence in the integrity of sport and to ensure a level playing field.

The Government has already demonstrated its commitment to promoting a viable and successful racing industry through its successful race fields legislation. The principle that betting service providers should pay for the privilege of using racing information as a platform for their business applies equally to sport. The measures in this bill uphold that principle and demonstrate a similar commitment to promoting the integrity and sustainable development of sport in this State. I commend the bill to the House.

The Hon. STEVE WHAN [8.01 p.m.]: The Opposition supports the Racing Administration Amendment (Sports Betting National Operational Model) Bill 2014. The object of the bill is to regulate betting on sporting events in line with the National Policy on Match Fixing in Sport agreed by Australian sports Ministers in June 2011. The national policy represents a commitment by the Commonwealth and State and Territory governments to work together to address inappropriate and fraudulent sports betting and match-fixing activities with the aim of protecting the integrity of sport. The foreword of the National Policy on Match-Fixing in Sport states:

This policy provides the platform for collaboration, and will be underpinned by legislation, regulation, codes of conduct and industry standards. It is recognised that Australia will best deal with the threat of match-fixing only if there is co-operation and goodwill between governments, sports organisations and the betting industry.

The bill is essentially based on model national legislation. It includes some sensible measures to try to ensure match fixing or corruption does not occur in sport. It prescribes a relationship between a body that offers betting on a sporting event and the controlling body of the sport. The body seeking to have an event prescribed as a declared betting event or who seeks a new type of bet in relation to such an event will have to enter into an integrity agreement with the sports controlling body or, if there is no controlling body, consult with the key person or bodies involved in the administration of the event.

It will require betting service providers to be licensed and to enter into integrity agreements with the sports controlling body for a sporting event before being permitted to offer betting services in relation to the sporting event. It will specify matters that must be addressed in integrity agreements. It will permit the sports controlling body to prevent a sporting event being prescribed as a declared betting event, to prevent new types of bets being permitted and to apply to have existing types of bets prohibited in respect of a sporting event that has been prescribed as a declared betting event.

These are sensible measures. All members would want to enjoy sporting contests free of any suggestion of match fixing but, unfortunately, we have seen examples of match fixing in sport. Indeed, only in the last week there were suggestions of match fixing in cricket—somewhat worrying to all who support that sport. Over the past year a number of soccer players from Victoria were accused of involvement in match fixing and unfortunately a rugby league player was accused of being involved in a spot-fixing event. All those things are not only detrimental to the competitiveness of sport but also detrimental to the enjoyment of the people who watch sport and watch it for the contest it brings. I hope we live in a society where people who choose to make bets on sporting events can do so knowing that their bet is fair and legitimate; that it has not been tampered with by other people. It is the hope of every person who watches sporting events that every contest is a legitimate reflection of the skills and effort being put in by those on the field.

I sought advice from the Office of Liquor, Gaming and Racing and the Minister has advised me that the penalties in the bill are in line with the penalties put in place by the other States and Territories. I thank his office for providing that information. I understand that Queensland has introduced this model while Victoria has put in place a model that predates the Federal legislation. As with all national template or model legislation, we hope that all the legislation is consistent so that each State and Territory is handling the challenges in the same way. It is important legislation, which reflects the commitment of all levels of government in Australia to a fair atmosphere for competition in sport and betting.

I have spoken previously in this place about the promotion of betting, which does not come under the leave of this bill. However, a number of members have expressed concerns in this place previously about the promotion of betting at times and during games that could influence young viewers, in particular, to think sport is about placing a bet rather than being out on a field, competing and participating in healthy, physical activity. I reiterate that we should examine this area closely in the future to ensure that we send the right message about participation in sport and activity, rather than sport being overshadowed by the commercial imperatives of betting operators or being twisted by some people who might want to make illegal profits out of rigging sporting

events. The Opposition endorses the bill and looks forward to its being enacted and becoming something that does its bit to prevent illegal activities such as match fixing. It is the sort of thing that we should all endeavour to eliminate from our sporting contests.

Dr JOHN KAYE [8.09 p.m.]: On behalf of The Greens I will address the Racing Administration Amendment (Sports Betting National Operational Model) Bill 2014. I say at the outset that The Greens do not oppose this bill. The Greens support any legislation that stops match fixing and interrupts the challenge to integrity that betting has brought to various sporting codes around New South Wales. The model, as the Hon. Steve Whan pointed out, is the implementation of national operational model legislation and will be mirrored in all States that are signatories to the agreement, which is all States and Territories. I acknowledge that the new Minister for Gaming and Racing is in the gallery. I welcome him to the portfolio. I wish him the best of luck. He has taken on a portfolio that has huge social consequences. I know he will give it his best. We will not always agree—

The Hon. Steve Whan: You will not often agree.

Dr JOHN KAYE: I have been corrected by the shadow Minister. It is possible that we will never agree, but that does not matter. I know the Minister will do his best to bring integrity to all these endeavours and, in particular, to sports gambling.

The Hon. Rick Colless: You do not like cricket, John. Do you like rugby?

Dr JOHN KAYE: In acknowledging the interjection of the Deputy Government Whip, I note that he is in the House and not watching the game of origins—or whatever he would like to call it. This is a serious matter. The integrity threat to sporting events from wagering on those events—and particularly from exotic wagering on those events—has the potential to destroy those sporting codes, corrupt those involved and send a dreadful message to young people who look up to those sporting events and those involved in them. Interrupting the integrity challenge, corruption and match fixing of those events is a critical activity for all governments. There is cross-party support for those measures in this bill. It creates the opportunity to recognise sports controlling bodies in relation to sporting events and to require betting service providers to enter into integrity agreements with sports controlling bodies. The bill specifies the matters that should be taken into account in those integrity agreements and those matters seem to be relatively sensible. New section 18A (3) states:

- (a) set out the measures that will be used to prevent, investigate and assist in the prosecution of any match fixing or other corrupt behaviour related to betting on the sporting event, and
- (b) provide for funding to go to the sports controlling body for the purposes of implementing some or all of those measures (unless the sports controlling body does not want any such funding), and
- (c) provide for the sharing of information between the sports controlling body and the applicant, and
- (d) provide for a consultation process that ensures that the applicant will, if the sports controlling body is the sports controlling body for a particular sporting event, consult with the sports controlling body before making any application under section 18 (4) in respect of the sporting event.

I am not sure I understand fully what paragraph (d) means, but paragraphs (a), (b) and (c) sound sensible. It includes revenue and information sharing. The bill empowers the sports controlling bodies to prevent sporting events being prescribed as declared sporting events to prevent new bet types being permitted and to apply to have existing types of bets prohibited. The bill creates the offence, based on the similar offence in Victoria, of prohibiting sports betting providers, whether in New South Wales or elsewhere—I understand that we have jurisdictional power to do that—from offering a betting service on a sporting event unless an integrity agreement is in place with the sports controlling body for the event. It means that the integrity agreements become compulsory at the risk of committing an offence.

The model creates integrity agreements and a process, and to that extent The Greens support the bill. The Greens have four areas of concern that we would like the Minister to address in his speech in reply. The first is that the model seems to be almost entirely self-regulated. The integrity agreement exists between the sports controlling body and the betting service providers. As we understand the bill, there is no opportunity for the Minister to step in and order certain activities or matters to be considered or dealt with in that agreement. There is no opportunity for the Minister to step in and say the agreement is inadequate or not sufficiently comprehensive. There is no opportunity for the Minister to instruct a sports controlling body to have tighter provisions on the sorts of integrity measures that are within the agreement. That seems to be a lost opportunity.

While it is clear that many sports controlling bodies will be actively focused on eliminating and interrupting corruption and match fixing within their codes some may not be quite as enthusiastic as the public would like. I would like the Minister in his speech in reply to address the question as to why it is purely a self-regulatory model and why there were not opportunities created for the Minister to step in.

The second matter of concern is the confidentiality of the integrity agreements. The Greens have been told that the integrity agreements will be deemed to be commercial in confidence and not available to the public. That raises concerns for us, particularly where we are dealing with matters relating to the issue of integrity and match fixing. Having some components of those agreements in the public domain will create a degree of accountability around the measures contained within those agreements and will enable the public to have some degree of confidence that genuine agreements are being reached that will genuinely work to interrupt the corrupt activity.

The Greens accept that there may be matters that are genuinely commercial in confidence, particularly those that relate to the financial relationship between the sports controlling bodies and the betting service providers. That is a sensible outcome. There are arguments for some of those financial matters possibly being kept commercial in confidence. There are other matters for which that is not so. Therefore, to have the entire agreement hidden from public scrutiny creates opportunities for agreements to be reached that are not in the interest of the community. The Greens ask the Minister: Why is the entire agreement confidential? Why can some of the aspects of the agreements not be placed in the public domain?

The third issue concerns the revenue streams that go from the betting service providers to the sports controlling bodies. We understand it is reasonable that the sports controlling bodies receive some revenue in respect of the costs of implementing the integrity agreements but revenue that goes beyond that increases the dependency of the sporting codes on betting revenue. We know wagering in racing codes, which are not covered by this bill, is a major source of revenue for those codes and has implications for the operation of those codes. A number of members in this Chamber, including you, Mr Deputy-President, participated in an inquiry into greyhound racing. One of the problems with greyhound racing has been the nature of the revenue stream.

It is clear that a great deal of wagering has driven the codes involved. We do not want to see the same thing happening with sporting events. It would be deeply undesirable if sporting events were increasingly shaped to meet the needs of bookmakers, the TAB and other betting service providers. It would be far healthier if those codes were to survive on turnstile takings and other revenue. Revenue raised from gambling brings with it the risks that the codes will become addicted to it and will design their events to maximise it. The Greens would like the Minister to address that issue.

The final issue relates to sponsorship and funding of sporting codes by betting service providers. The Greens would like the Minister to address the problem that could arise when a sport's controlling body is negotiating an integrity agreement with a betting service provider while the body and participants in it are receiving funding, sponsorship or advertising revenue from the betting service provider. That would create a biased negotiating table because the betting service provider might have financial influence over the controlling body, and that would make it difficult to negotiate a genuine integrity agreement. The Greens would like the Minister to address how that should be handled. Has the Minister given any thought to banning such sponsorship or advertising by a betting serving provider involving the participants in controlling bodies? Having expressed those concerns, The Greens do not oppose this legislation.

Reverend the Hon. FRED NILE [8.21 p.m.]: On behalf of the Christian Democratic Party I am pleased to support the Racing Administration Amendment (Sports Betting National Operational Model) Bill 2014, but with some reservations about its operation. This bill amends the Racing Administration Act 1998 to regulate betting on sporting events in line with the national policy on match fixing in sport. The bill regulates the interaction between sporting organisations and betting service providers. It also provides a framework for integrity agreements and outlines baseline requirements for betting on sporting events. The Christian Democratic Party supports the purpose of the legislation but questions whether it will eliminate match fixing in sport. I do not think it will.

The measures included in the bill are based on the national operational model for sports betting as agreed to by all Australian sports Ministers in September 2011. The model is part of the national policy on match fixing in sport agreed to by those same Ministers in June 2011. The bill recognises sports controlling bodies in relation to sporting events; requires betting service producers to enter into integrity agreements with sports controlling bodies; specifies the matters that must be addressed in integrity agreements; empowers sports

controlling bodies to prevent a sporting event being prescribed as a declared betting event, to prevent new betting types being permitted, and to apply to have existing betting types prohibited. The bill also includes an offence based on a similar offence in Victoria prohibiting sports betting providers, whether in New South Wales or elsewhere, from offering a betting service on a sporting event unless an integrity agreement is in place with the controlling body for the event.

The question is: Will the bill prevent match fixing? I do not believe it will even though it uses impressive terminology to describe integrity agreements. Those agreements are between the sporting organisation and the sports betting providers. The legislation provides that a betting service cannot be provided on an event if an integrity agreement is not in place with the event's controlling body. I assume that the integrity agreement will state that there should not be any match fixing or illegal activity and that the controlling body and the betting providers will cooperate to ensure that it does not occur. I do not believe there is any requirement for that to happen even though, as I said, there might be an impressively titled integrity agreement.

A number of provisions should be added to the legislation. It should be made clear that sporting organisations have the right to reject an integrity agreement. A sport's controlling body should not be required to accept betting, whether it be on a game of soccer, rugby league or rugby union, a cricket match or any other sporting event. The bill appears to provide that sporting organisations will be expected automatically to sign an integrity agreement with sports betting providers. If that is the intention, sporting organisations will be locked into the source of the bets. Sporting organisations should have a right to reject an integrity agreement. They should not be required to sign an agreement if they do not support betting on their events, whether it be a cricket match, a game of rugby union or rugby league, or anything else.

Illegal betting will obviously occur, but it should be an offence for any organisation to take bets on an event if the sport's controlling body does not want such bets to be taken. Where there is betting there is match fixing and corruption. As night follows day, if betting is allowed there will be criminal activity. There is a great deal of corruption because of the amount of sports betting opportunities that already exist. Betting has been refined to such an extent that punters can bet on whether there will be a no ball, who will score the first try or how quickly it will happen. It is not a matter simply of betting on who will win a game; we now have betting on the small details. As a result there is a temptation to rig a game by getting the players to cooperate and those involved make a massive profit.

DEPUTY-PRESIDENT (The Hon. Trevor Khan): Order! There is too much audible conversation in the Chamber. Members should listen to Reverend the Hon. Fred Nile in silence.

Reverend the Hon. FRED NILE: If I were the Premier I would ban all betting on sport in New South Wales. There is no need for it. We should ensure that sport remains clean in this State. The Legislation Review Digest report on the bill states:

The Committee notes that the Bill introduces new offences and penalties including a \$5,500 fine or imprisonment for 12 months, or both, for offering a betting service in relation to a sporting event without an integrity agreement being in place.

That is a positive move. It continues:

Nonetheless, this penalty aligns with penalties for similar offences under the *Racing Administration Act 1998* and the *Unlawful Gambling Act 2009*; and the provisions further the intention of the Bill which is to ensure sport is played honestly and fairly; and that sporting events on which punters wager money are openly contested and free of manipulation.

The question is: If you allow betting on sport, will the sport be played honestly and fairly, and will the sporting event on which punters wager money be contested openly and free from manipulation? I draw the attention of the House to some recent events. An *ABC News* report headlined "Police uncover alleged multi-million-dollar soccer match-fixing ring in Victorian Premier League" said:

Victorian police have smashed an alleged multi-million-dollar international match-fixing ring involving a Victorian Premier League (VPL) football team.

Police have arrested 10 people associated with the Southern Stars Football Club after executing search warrants across Melbourne.

The 10 people arrested include nine players and the head coach of the club, which plays in the state-based competition.

Police say many of the players are from the United Kingdom and were playing in Victoria during the northern off-season.

Authorities have so far identified more than \$2 million in betting winnings from the syndicate and all of those arrested are expected to face match-fixing charges, with a maximum penalty of 10 years in prison.

That is just the tip of the iceberg, so to speak. I note also a report in the *Age* concerning the alleged ability of a soccer referee to work in cooperation with people involved in betting to yield large profits. The report, dated 17 September 2013, states:

Some in the crowd thought the international referee had lost his marbles—or at the very least the pea from his whistle.

What else could explain why he refused to call time on the game, which was now creeping into the 98th minute?

At the end of the scheduled 90 minutes referee Ibrahim Chaibou ordered a further six minutes of injury time.

The score at that stage had Nigeria leading Argentina 4-0 in the 2011 exhibition match and yet there was a flood of money still hitting the bookies for another goal.

Obviously the referee had agreed that there would be another goal, but it had not come so he had to keep the game going until that goal was scored. It did not matter that the match had gone beyond its set time. The report continues:

When the score didn't change in the extra six minutes Chaibou refused to blow full-time and allowed the game to continue.

...

Argentina scored from the penalty leaving a score line of 4-1 and the well-informed punters millions richer.

It was that simple: Just have the referee in your pocket and you can achieve million-dollar profits. It goes on:

Now investigators are looking at the five international games refereed by Chaibou where there were late punting surges and bizarre results.

This report gives an indication of how easily sports betting can be rorted. On 16 September 2013 ABC radio broadcast an interview with investigative reporter Declan Hill, who has been studying and writing about the global growth in match fixing for more than a decade. He has written a book entitled *The Fix*, which has been published in 20 languages. I recommend that all members of Parliament read that book—I hope there is a copy in the Parliamentary Library. Mr Hill, who lives in Canada, said the sums of money outlaid on sports betting are beyond comprehension and Australia is now being targeted by match fixers. Which sports are being targeted? Who is being bribed and making the profits? It is already happening, according to Mr Hill, who claims that hundreds of billions of dollars are being made from match fixing. He said:

There's one estimate, which I have not seen substantiated, but over a trillion.

This is an evil business. Obviously, if players can be bribed and money is unlimited, there will be corruption. Ideally, there should be no legal or illegal betting on sport. There must be strict controls for integrity agreements that this bill will establish. The Christian Democratic Party believes these agreements must be voluntary and no sport should be forced into an agreement to allow legal betting on that sport. We support the bill, but recognise that it will not stop match fixing.

The Hon. DUNCAN GAY (Minister for Roads and Freight, and Vice-President of the Executive Council) [8.35 p.m.], in reply: I thank the Hon. Steve Whan, Reverend the Hon. Fred Nile and Dr John Kaye for their contributions to debate on the Racing Administration Amendment (Sports Betting National Operational Model) Bill 2014. The Hon. Steve Whan raised gambling promotion. The promotion of betting is regulated through the Racing Administration Regulation, which prohibits several types of gambling promotion. This extends to sponsorship. Beyond that, the regulation of television advertising standards is a matter for the Commonwealth through the Australian Communications and Media Authority.

Dr Kaye raised several issues. The first was confidentiality of agreements. New section 18 provides that any sports betting provider must apply to the Minister for approval of bet types. This must be done in the specified manner and form. The Office of Liquor, Gaming and Racing will be tasked with receiving these applications. Applications will be accompanied by integrity agreements. These documents will not be public, but a list will be made available so that there is confidence in the bets offered and the integrity agreements are entirely commercial. The Government will not participate in that negotiation. If there is agreement with the parties that will meet the needs of the sports controlling body and therefore the aims as outlined. It should be remembered, however, that the Minister retains the power under new section 18B (3) to refuse to approve a bet type if it is not in the public interest.

Dr Kaye talked about revenue going to sports bodies under the integrity agreements. Whilst the Government recognises that there is always interest in revenue, it is premature to speculate on government interfering in the revenue generated for sports. The sports controlling bodies are just that—controlling bodies—and will be better placed to make appropriate decisions about where this revenue goes. Reverend the Hon. Fred Nile spoke about his concerns, particularly in relation to agreements. The sports controlling bodies retain the right to decline an agreement, and betting in those circumstances would then not be lawful. Contrary to suggestions, there is no automatic agreement; agreement must be reached by negotiation. It takes two parties to come to that agreement and if it is not signed off by both parties there will not be an agreement.

I thank members for their contributions to the debate. As previously stated, the bill underscores the Government's commitment to promoting integrity in sport and the regulation of associated sports betting. The bill implements the national policy on match fixing in sport, which aims to maximise public confidence in the integrity of sport and to ensure a level playing field. It does that through establishing a workable and appropriate framework to strengthen the capacity of sporting bodies to recognise and manage integrity risks associated with the betting that takes place on their sport. These measures are integral to promoting the sustainable development of sport in this State. Reverend the Hon. Fred Nile spoke about an "evil business" If ever there was someone who could take on evil wherever it exists, it is the new Minister for Hospitality, Gaming and Racing.

All Ministers will go through this at some stage but I acknowledge that this is a very special day for the Minister because this is his first bill to go through the House. I am doubly proud that I have carriage of his first bill through this place because five years ago I spoke to a well-respected police inspector and convinced him to serve his region in a different capacity. That police inspector was Troy Grant, who is now a Minister in this Government. He delivered the Indigenous Police Recruiting Our Way [IPROWD] training program, amongst other things, to the Police Force. He had a distinguished career in the NSW Police Force and he is a distinguished person in his area. I congratulate the Minister; it is a very special day for him. I thank members for their support and their constructive comments. I commend the bill to the House.

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

Motion agreed to.

Bill read a second time.

Leave granted to proceed to the third reading of the bill forthwith.

Third Reading

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

That this bill be now read a third time.

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

TRADE AND INVESTMENT CLUSTER GOVERNANCE (AMENDMENT AND REPEAL) BILL 2014

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

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

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

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

CRIMES (DOMESTIC AND PERSONAL VIOLENCE) AMENDMENT (INFORMATION SHARING) BILL 2014

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [8.46 p.m.]: I move:

That this bill be now read a second time.

In May 2013 this Parliament passed the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act. That Act provided for the sharing of information by government agencies and non-government

domestic violence support services in cases where domestic violence victims came into contact with the justice system. These provisions were not commenced as the department was preparing information management protocols to supplement the legislative provisions. In February this year the Government released "It Stops Here", a comprehensive response to the problem of domestic violence in New South Wales. These reforms will introduce new referral pathways for domestic violence victims to ensure that they receive services in a more coordinated and efficient way.

The amendments to the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013 build on the existing provisions of the Act to support the Government's domestic and family violence reforms and increase the safety of victims at the same time as facilitating their access to domestic violence support services, regardless of how they come into contact with the system. Service providers will be able to use new tools specifically designed to assess domestic and family violence risk of harm. The increased sharing of information between services will assist to improve the safety of victims and to reduce the stress and trauma of victims having to navigate a complex service system and having to repeat their story a number of times.

Domestic violence is a crime. It is also a multifaceted issue that requires a coordinated and integrated response from services in the areas of policing, justice, health, welfare, child protection and victim support. The bill provides a framework for government agencies and non-government support services to work in partnership and exchange information in order to prevent domestic violence-related deaths, illness or injury. Several inquiries have been undertaken in recent years to review the effectiveness of the government response to domestic and family violence in New South Wales. These include inquiries undertaken by the Legislative Council Standing Committee on Social Issues in 2012, the Auditor-General in 2011, and the New South Wales Law Reform Commission and Australian Law Reform Commission in 2010.

These inquiries recommended the development of more integrated government responses, ongoing and responsive collaboration, and improved information sharing in cases of domestic and family violence in order to keep victims safe and to hold perpetrators accountable. The domestic violence reforms establish a central referral point that will receive referrals from agencies including the Police Force and the Local Court under the framework. The central referral point will be an electronic platform that receives and processes referrals. It will pass on information to local coordination points in the victim's local area. The local coordination point will contact the victim, seeking consent to provide domestic violence support services and for further sharing of information.

I now turn to the specific provisions of the bill. Item [2] in schedule 1 contains a number of definitions to be used in the proposed part. This includes definitions for the "central referral point" and "local coordination point". The central referral point is defined as the Secretary of the Department of Police and Justice. In practice, this function will be delegated to Victim Services within the department, as it will be responsible for managing the functions of the central referral point. A local coordination point means a support agency or non-government support services nominated by the Minister. Generally, it is proposed that this role will be carried out by Women's Domestic Violence Court Advocacy Services. These are non-government organisations that provide domestic violence support to victims in 28 Local Court areas across New South Wales.

Item [4] in schedule 1 inserts two new divisions into the proposed part. New division 2 deals with general dealings with information. New section 98C contains a definition of "contact purposes", which involves seeking the consent of a primary person to the provision of domestic violence services to the primary person, and to further dealings with the information in relation to the provision of such services. New section 98D permits an agency to disclose personal information and health information to the central referral point, or a local coordination point, for contact purposes. The agency can do so if it believes on reasonable grounds that a person is subject to a domestic violence threat. This is defined as a "threat to the life, health or safety of a person that occurs because of the commission or possible commission of a domestic violence offence". The disclosure may occur only with the consent of that person.

Under this section, personal information and health information about a person that the agency believes to be a cause of the threat may also be disclosed. No consent is required from that person. The information management protocols will outline the types of information that would be disclosed under the framework. New section 98E permits the Local Court to disclose personal information and health information to the central referral point for contact purposes unless the primary person expressly objects. The consent of the associated respondent is not required. Under the framework, a primary person is the person for whose protection an apprehended violence order is sought or made, or the person who is alleged to be the victim of a domestic violence offence. A person who an agency considers to be subject to a domestic violence threat is also taken to be a primary person.

An associated respondent is, in relation to a primary person, the person against whom the apprehended domestic violence order is sought or made—the person who has been charged with the domestic violence offence. Any person that an agency reasonably believes is a cause of a threat to a threatened person is also taken to be an associated respondent. This provision will allow the Local Court to provide information when an application for an apprehended domestic violence order or an interim or final ADVO has been made. This referral will be made unless the primary person expressly objects to the disclosure. New section 98F permits the central referral point to collect information that is disclosed to it in accordance with new sections 98D and 98E or by the NSW Police Force for contact purposes. The central referral point will therefore be able to receive information where the police have sought an ADVO or have laid charges for a domestic violence offence, as well as where police officers consider that there is a threat to an alleged victim due to domestic violence but they do not seek an order or to charge a person in relation to it.

Under new section 98F (2), the central referral point will be able to pass on the information it receives through these referrals to a local coordination point so that it can contact the alleged victim. Under new section 98G, a local coordination point will be able to collect the information that is disclosed to it under the framework. New section 98H permits a support agency to collect information that is disclosed to it as outlined in the section. A support agency may use any information that it is authorised to collect under the new division for contact purposes without the consent of the primary person or any associated respondent, or to provide domestic violence support services to the primary person with the primary person's consent only.

New section 98H reproduces the substance of requirements in relation to the sharing of information currently in section 98C of the existing Act. It provides for agencies that offer domestic violence support to collect information from a number of sources, including the central referral point, a local coordination point, other support agencies, non-government support services and the NSW Police Force. Support agencies can use this information for contact purposes and to provide domestic violence support services.

Support agencies may disclose information to other support agencies and non-government support services to allow the other agency or organisation to provide support services if the primary person consents to the disclosure and it is reasonably necessary to disclose the information for the provision of those services. New section 98J requires agencies to comply with protocols made by the Attorney General if the agency deals with information under the new division. The Act already provides that the protocols may contain recommended privacy standards for non-government support services and may prohibit the disclosure of information to services that do not adopt those standards. New section 98L provides that the regulations may prescribe additional circumstances in which an agency may deal with personal information or health information under this framework. The Privacy Commissioner will need to be consulted in the development of any such regulation.

New division 3 deals with dealings where there is a serious threat. New section 98M sets out circumstances in which an agency may share personal information or health information about a person without the consent of the person if the agency believes the person is at serious threat in relation to domestic violence. An agency may rely on this provision if it believes on reasonable grounds that, first, the dealing is necessary to prevent or lessen a domestic violence threat to the person or any other person; secondly, the threat is a serious threat; and, thirdly, it is unreasonable or impractical to obtain the person's consent, or the person has been asked to consent and has refused to do so. This new section reproduces the existing substance of section 98D in the current Act. However, it extends the exception to allow dealings with information even when the person has refused consent.

The effect of this change is that, while it will be necessary to seek consent where it is reasonable and practical to do so, agencies will be able to share information in spite of a refusal of consent if they consider that it is necessary to do so to lessen or prevent a "serious domestic violence threat" as defined in the Act. New section 98M will provide a basis for the sharing of information for safety action meetings, where an agency reasonably believes a person is subject to a serious threat and the person has refused consent, or it is unreasonable or impractical to obtain the person's consent to the proposed dealing. New section 98M authorises agencies to share information where it is necessary to prevent or lessen a serious threat to the life, health or safety of a person. Therefore, agencies will be able to take a broad range of actions as long as they are considered to be necessary to achieve that purpose.

Item [6] in schedule 1 provides that the part is to be reviewed after two years from commencement, and a report on the outcome of the review will be tabled in Parliament. This will provide an opportunity to consider whether any change to the legislative framework might be required. The Government's domestic violence reforms represent a significant step forward in managing the provision of services to victims of domestic

violence in New South Wales. Central to this approach is the need for better coordination between those agencies and organisations providing support services to victims and to overcome barriers to the sharing of information in appropriate circumstances. These amendments provide a firm basis for this to occur. I commend the bill to the House.

The Hon. ADAM SEARLE (Deputy Leader of the Opposition) [9.00 p.m.]: I lead for the Opposition on the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2014. The Opposition supports this bill as it supported the predecessor bill, now an Act, debated in this place last year. It is unfortunate that this bill has been introduced with such haste. Only yesterday it went through all the remaining stages in the Legislative Assembly and it has unexpectedly come on in the Legislative Council tonight. I know even the Minister for Ageing who unexpectedly has had carriage of this bill in this place was as much taken by surprise by the advent of the bill in this place as we were.

The Hon. Dr Peter Phelps: A pleasant surprise.

The Hon. ADAM SEARLE: Debating these matters is always pleasant.

The Hon. Dr Peter Phelps: Like winning \$5 on the scratchies.

The Hon. ADAM SEARLE: I wouldn't go that far. The objects of this bill are:

- (a) to permit dealings with information about a *primary person* (being a person who is (or is alleged to be) subject to, or threatened by, domestic violence) and any *associated respondent* (being a person who is (or is alleged to be) the perpetrator of the violence or the cause of the threat) without the consent of the primary person or associated respondent, but only to seek the primary person's consent:
 - (i) to the provision of domestic violence support services to the primary person, or
 - (ii) to further dealings with the information in relation to the provision of such services,
- (b) to permit dealings with information about a primary person and any associated respondent without the consent of the associated respondent for the purposes of providing domestic violence support services to the primary person,
- (c) to set out the circumstances in which an agency may deal with information about a person without the person's consent where the agency believes domestic violence poses a serious threat to the life, health or safety of any person.

Both the Attorney General in the Legislative Assembly yesterday and the Minister for Ageing tonight have indicated that this bill builds on the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013 passed last year. Members may be interested to note that although that legislation was passed last year and assented to on 27 May—its birthday was yesterday—in fact it has never been brought into force or effect. Yet we are now amending the legislation, not building on it as the Government has blithely suggested; gutting and rewriting it in substantial part would be much closer to the mark. That suggests there were serious issues to deal with in the way in which the legislation had been drafted.

I note the Attorney General and the Minister for Ageing spoke blithely about the need to develop protocols which, of course, will be the driver of how information is gathered, shared and used. It staggers belief that agencies of government that have carriage of this matter were not able to resolve that over the course of the last year and that such a substantial rewriting of this important legislation is required. That earlier legislation inserted part 13A into the Crimes (Domestic and Personal Violence) Act 2007, which facilitated the collection, use and disclosure of personal information and health information by agencies that provide domestic violence support services.

This bill makes a number of changes. It takes a little bit of working through both this bill and the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Act 2013. Section 98A contains a series of definitions and this bill omits the definition of "support agency" and reformulates it to include definitions of "central referral point", "domestic violence threat", "local co-ordination point" and "privacy legislation", which are important concepts in the legislation. It also removes section 98C which deals with how personal and health information is gathered and used by support agencies. It rewrites in new section 98D, which related to dealings where there was a serious threat to life, health and safety. Section 98E which dealt with domestic violence information management protocols is renumbered as new section 98O with new subsections (4) and (5) added.

The bill also inserts new sections 98C all the way through to 98N, and then inserts new sections 98P and 98Q. New section 98P is very important because it provides the power of delegation. The central referral

point for the collection of information in this bill is the Secretary of the Department of Police and Justice. New section 98P provides that the Secretary of the Department of Police and Justice may delegate the exercise of any function of the secretary under that part to: any member of staff of that department, or any person, or any class of persons, authorised by the regulations.

The Attorney General in the Legislative Assembly yesterday and the Minister tonight have indicated that it is the Victims Services Section of what used to be the Attorney General and Justice department that will deal with it. The legislation refers to the Department of Police and Justice, which is a most regrettable development in this State. It is the department which deals with the administration of the courts system as well as Juvenile Justice and the prison system and I do not think the police should necessarily be in charge of all of them. I know that the Attorney General now is the head of the cluster, given that the previous Minister for Police is not any longer with us in that sense, but I do note that the Attorney General at the recent bench and bar dinner stated to a number of persons that "Attorney General" would be put back into the name of the agency. I think that is a very important step, if it is to happen. It has not happened yet and may never do so under this Government.

As I indicated there are some substantially new parts in this bill when compared with the Act which has not yet been brought into effect. In large part it is simply rewriting what was already in the legislation. For example, new section 98D deals with disclosure of information by all agencies in the case of threat. I will not repeat it, but it re-enacts in substantial part what was section 98C. For example, new section 98D (3) is almost exactly the same as section 98C (6) (a) in the current Act. New section 98E relates to disclosure by the Local Court of information in certain circumstances. New section 98F provides for the central referral point for the collection of personal and health information being the secretary of the department I mentioned.

New section 98G provides for the creation of local coordination points for the collection of personal and health information in accordance with the legislation. They are new in the sense that they were not in the previous legislation but, as the Attorney General and the Minister have noted, section 98H—support agencies—in this bill substantially re-enacts the former section 98C, in particular subsection (2) of the unproclaimed legislation. Why there was a need to rewrite the provision relating to domestic violence support services collecting personal and health information about alleged victims and perpetrators is unclear.

Former section 98D, which provided that an agency may collect, use or disclose personal or health information about a person without the person's consent if the agency believes on reasonable grounds that it is necessary to prevent or lessen a serious threat to the life, health or safety of the person or of another person and the threat relates to the commission or possible commission of a domestic violence offence is proposed to be repealed in this bill but is, in fact, re-enacted in substantially the same terms on page 6 of the bill in new sections 98M and 98N.

Again we have, on the one hand, repeal and, on the other hand, a substantial re-enactment but rewritten in slightly different language, the reasons for which are not readily apparent. As I indicated, section 98E, which is now new section 98O, has two new subsections added. Section 98E dealt with domestic violence information management protocols and provided for the Minister to be able to make those protocols. This bill would permit the Minister, by order, to nominate particular support agencies or non-government services to be local coordination points for the purposes of the part and provides for any such order under that section to be published in the *Gazette*. As indicated, the bill also contains a new section 98P, which provides that the secretary of the department may delegate his functions to another officer of the department.

New section 98Q provides that as soon as possible after two years of commencement of the part the Minister is to review the part to determine whether the policy objectives remain valid and whether the terms of the part remain appropriate for securing those objectives. A report on the outcome of the review is to be tabled in each House of Parliament within 12 months of the end of two years. While there are some new provisions in the bill, which are welcome, it really is a case of gutting, rewriting and re-enacting existing provisions in new terms, and not necessarily in better terms either.

Obviously the Government has sat on this legislation for just over a year, not having brought it into force and effect, and now finds it necessary to rewrite it in substantial part. Obviously it found there were significant difficulties with the way in which the legislation was originally cast by the Parliament. Perhaps it is a little unfair but it would be good if the Minister could respond and provide the House with some reasoning behind the Government's actions and why it has taken so long to reach this point. I note the Attorney said it was because of the time necessary to develop these protocols but that does not explain the substantial rewriting of the legislation.

What was wrong with the legislation in its previous iteration other than the omission of concepts such as the central referral point, local collection points and the like? Key provisions, such as sections 98C, 98D and 98E, essentially remain in the legislation, although cast in slightly different terms. I look forward to an explanation from the Minister in reply or from the Government at some point. It was clear from debating the previous iteration of the legislation last year that the genesis of the legislation was recommendation 15 of report No. 46 of the Standing Committee on Social Issues entitled "Domestic violence trends and issues in NSW". Recommendation 15 stated:

That the NSW Government introduce legislative amendments to Parliament to enable the sharing of information between agencies about individuals in respect of domestic violence, with appropriate privacy protections, and that the amendments be supported by appropriate memoranda of understanding between agencies about how and in what circumstances information is to be shared.

During debate on the earlier 2013 legislation the former Attorney referred to that report in his second reading speech. He also referred to the New South Wales Government's Domestic Violence Justice Strategy, the Domestic Violence Intervention Court Model and recommendations made by the New South Wales Auditor-General—I note that the current Attorney and the Minister for Ageing and Minister for Disability Services also referred to the Auditor-General's report—and recommendations made by the Australian and New South Wales law reform commissions. The bipartisan and unanimous report of the Standing Committee on Social Issues is an important resource and the Opposition reiterates its invitation, as issued last year, to the Attorney and the Government to respond to the committee's report about domestic violence proactive support services, including the yellow card.

I note that the Minister in the debate tonight and the Attorney yesterday in the other place referred to the Government's response to domestic violence in New South Wales entitled "It Stops Here" launched in February, which was said to provide new referral pathways for domestic violence victims to ensure that they receive services in a more coordinated and efficient way. I remind members that while this legislation and its predecessor are welcome, by themselves they are not sufficient to really address domestic violence. For this legislation to work we reiterate, as we indicated last year, that the Government also needs to adopt recommendations Nos 42, 43, 44 and 45 of the standing committee's report, which reflect the important role of domestic violence liaison officers and the need to strengthen and expand that role. If the Government is serious about addressing domestic violence issues, we said last year and repeat now that it also needs to implement or at least sensibly respond to the report's recommendations Nos 3, 7, 18, 29, 30, 31, 35, 40, 73 and 80, among many others. Implementing all of those recommendations requires extra resources.

The November 2012 New South Wales Domestic Violence Justice Strategy launched by the Government had not one extra dollar of new funding allocated to it and no effective time line for implementation. We said last year that the rhetoric of the Government needed to be matched by the investment of hard cash in this important area of social and public policy if it was to achieve any results. We say the same thing about the "It Stops Here" strategy launched in February. New hard investment needs to be found if we are to properly address the scourge of domestic violence in our society. It is not a new statistic but it is a disturbing one that in our country one woman every week is killed by her current or former intimate domestic partner.

In conclusion I say this: over the summer alcohol-fuelled violence electrified our society and galvanised this Parliament into coming back early and enacting laws to deal with what was seen to be a very pressing problem to do with law and order and the social fabric of our society. We did respond to that and we did act but the scourge of domestic violence and the toll it is taking on our partners, our sisters, our mothers and our daughters at the cost of one woman's life every week should be seen as a national disgrace. It should galvanise every member of this Chamber and the other place to bring to bear all the creative thoughts and all the resources we can muster to address that law and order problem, which is far greater than those others that led this Parliament to act swiftly and resolutely.

Perhaps that is because those other issues are slightly easier to deal with than domestic violence, which is so close, so personal and so difficult and until very recent times has been utterly taboo, to the point where people have looked the other way because it has been so hard. Those days are behind us. We are a lot better equipped emotionally and socially to now begin to address these very pressing issues. It is a national disaster that is befalling our society. This bill is a necessary but small step in the right direction. The Opposition wholeheartedly supports this bill as we did its predecessor. We would like an explanation as to why the Government found it necessary to rewrite the bill but that will not distract the Opposition from the support it gives to the central concepts. This should be the beginning of an ongoing conversation between members,

parties and the Houses of this Parliament to develop a strategy to deal with this national societal crisis of domestic violence because it is too harmful and too disastrous. In years to come members should be rightly blamed if they have not made this area of public and social policy a matter of first priority.

The Hon. NIALL BLAIR [9.20 p.m.]: I support the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2014. At the outset I will respond to some of the comments made by the Deputy Leader of the Opposition. I agree that the area of domestic violence is a national shame. I was the chair of the Standing Committee on Social Issues that developed the 2012 report "Domestic violence trends and issues in NSW". That report contained the recommendation that led to the bill before the House tonight. Whether it is regarded as a rewrite or not the bill is the result of work done by the social issues committee. Throughout the year-long inquiry it was clear that in New South Wales and Australia domestic violence was a serious issue.

It could be said that New South Wales was at least 10 years behind jurisdictions such as Victoria in the way that government addressed the issue of domestic violence. As the Hon. Adam Searle stated, it is not just government that needs to look at this issue. It is something that every person needs to look at within their families, sporting clubs, workplaces, and government agencies. The community must come together and condemn domestic violence and ask, "What are we going to do to rid society of this scourge?" It is not just about intimate partners; domestic violence occurs between siblings, between parents and children and against the elderly. It must be discussed and we must do everything we can do to address the issue. Tonight members are doing their part. I agree it is not a silver bullet. The report contained a number of different recommendations. There are many things that need to be done and this is just one of them.

It is significant that while a good majority of our State and the rest of the country are focused on a sporting event tonight members are here doing what we are elected to do—enact legislation and policy that changes culture and will have a positive impact on the people who elected us to this place. Members will look back at their careers with the knowledge that this bill saved lives. The agencies that come into contact with those who are vulnerable and victims of domestic violence, or even those who are the perpetrators of domestic violence, will have the ability to share information for the protection of people impacted by domestic violence.

It will impact on those who are victims but also flow on to the children and families that witness the violence. Children may go on to become perpetrators themselves as a result of what they have been exposed to in their households. I commend the Deputy Leader of the Opposition for raising the broader issue that we all must take responsibility. I commend the Government for taking action and addressing recommendation 15 in the report from the Standing Committee on Social Issues.

I will take a moment to reflect that in New South Wales now police officers can issue on the spot apprehended domestic violence orders. That was a recommendation that resulted from the inquiry led by the social issues committee and another measure in a multilayered approach to protect victims of domestic violence. It is one part but a necessary part and something that all members will look back upon and be proud to say that while a good part of the country might have been focused on something else tonight they were in this place doing what they could through government agencies to protect those who may be impacted by the issue of domestic violence.

I have said in previous debates, including the debate at the time of tabling the report, that I commend the members of the social issues committee on the work they did on domestic violence: the Hon. Helen Westwood, the Hon. Greg Donnelly, the Hon. Catherine Cusack, the Hon. Natasha Maclaren-Jones and a former member of this place, Ms Cate Faehrmann. I thank the secretariat and the staff involved with the development of that report: Rachel Simpson, who was in charge at the time, and her fantastic support staff; Merrin Thompson; and Miriam Cullen, who is now lecturing in Europe as a result of some of the outstanding exposure her work for the committee received. I commend the secretariat and other members of the committee and thank the Attorney General for introducing this bill. I say once again this is why we are here. Members are here to protect those that need to be protected through good legislation, policy and setting a culture in which change can thrive. I commend the bill to the House.

Mr DAVID SHOEBRIDGE [9.27 p.m.]: I will make an initial contribution to the Crimes (Domestic and Personal Violence) Amendment (Information Sharing) Bill 2014 on behalf of The Greens. I make this contribution having only been in possession of a copy of the bill for slightly less than 24 hours. The contribution made by the Deputy Leader of the Opposition was also somewhat constrained because there has not been the ability to engage with extremely important stakeholders such as Women's Legal Services and Wirringa Baiya Aboriginal Women's Legal Centre. Both of those organisations have previously made very important

contributions to the committee from which much of the thought behind this bill originated. They contributed to the earlier version of this bill that came before the House one year ago today. My colleague Dr Mehreen Faruqi will make a further contribution to this debate at another time, hopefully with the benefit of detailed consultation with those essential stakeholders. All members should undertake that consultation before they vote one way or another on this bill.

The overview of the bill states that the bill provides for three basic things: First, it permits dealings with information about what is defined as a "primary person", which is a person who is or is alleged to be subject to or threatened by domestic violence and any associated respondent being a person who is or is alleged to be the perpetrator of the violence or the cause of the threat without the consent of the primary person or associated respondent but only to seek the primary person's consent, first, to the provision of domestic violence support services to the primary person or, secondly, to further dealings with the information in relation to the provision of those services.

The second object of the bill is to permit dealings with information about the primary person—that is, the person who is or is alleged to be subject to a domestic violence threat—and any associated respondent without the consent of the associated respondent for the purposes of providing domestic violence support services to the primary person. Finally, the bill sets out the circumstances in which an agency may deal with information about a person without the person's consent where the agency believes domestic violence poses a serious threat to the life, health or safety of any person. It is that third element that is most controversial. It was that element in the 2013 bill that created real difficulties. The Greens will be seeking substantial guidance from stakeholders on that point before adopting a final position on this legislation.

This bill allows not only for the sharing of information with the consent of the alleged victim of domestic violence and free from concerns about the privacy of the alleged perpetrator but also for the sharing of information about the victim and the alleged perpetrator even in circumstances in which the victim does not give consent—in fact, when the victim expressly requests that the information not be shared. In doing so, this bill establishes a new regime by providing for a central referral point and safety action meetings. Much of how these central referral points and safety action meetings operate will be determined not by the legislation but by protocols that we have been told the Government will introduce in due course. We not seen a draft set of protocols.

The Hon. Adam Searle: It has been only a year.

Mr DAVID SHOEBRIDGE: I note the Deputy Leader of the Opposition's interjection. Despite it being more than a year since the previous bill was passed there does not seem to have been much meaningful work on the development of those protocols. No draft protocols have been taken to stakeholders or provided to members of this House. However, the Attorney General stated yesterday in his second reading speech in the other place:

The domestic violence reforms establish a central referral point, which will receive referrals from agencies, including the NSW Police Force and the local court, under the framework. The central referral point will be an electronic platform which receives and processes referrals and passes on information to local coordination points in the victim's local area. The local coordination point will contact the victim seeking consent in order to provide domestic violence support services and for further sharing of information. As part of the domestic violence reforms a new risk assessment tool has been developed. This will be used by agencies that come into contact with victims of domestic violence to assess the level of threat experienced by the victim to determine the appropriate support response.

That central referral point is proposed to be established under new section 98F, which allows for the central referral point to collect personal and health information. I understand from the Attorney General's contribution that an electronic database will be created in the office of the Secretary of the Department of Attorney General and Justice. How that will operate in practice is not known. How the information will be provided from the central referral point to the local coordination point also is not known. Will it be provided to specific service providers at the local coordination point or to some central referral person at the local coordination point? How it will operate in practice is important because messages about a safety threat may well contain deeply personal information. The Greens want to know how the Government will protect that information when it is transmitted from the central agency to the local coordination point. The other aspect of these reforms is the establishment of safety action meetings. The Attorney General stated in the other place:

These are designed to coordinate an integrated agency response for victims identified as subject to serious threat in relation to domestic violence. These meetings will bring together representatives from key government agencies and non-government agencies that provide services to victims experiencing domestic and family violence in the local area. These safety action meetings will develop and implement multi-action safety action plans for victims.

That is the sum total of the detail that has been provided to the Parliament. It is likely that the safety action meetings will involve officers from the Department of Family and Community Services, members of the Police Force and potentially non-government service providers. Again, The Greens want further detail from the Government. We want the Government to put some meat on the bones about how the meetings will work in practice. One of the two most substantive provisions in the legislation is in new section 98D, which as the Deputy Leader of the Opposition noted largely mirrors the existing provision. That new section provides for the disclosure of information by agencies in the case of threat. It states:

- (1) This section applies if an agency believes on reasonable grounds that a person (the threatened person) is subject to a domestic violence threat.
- (2) The agency may disclose personal information and health information about the threatened person and any person that the agency reasonably believes is a cause of the threat (the threatening person) to the central referral point or a local co-ordination point for contact purposes.
- (3) Any such disclosure requires the consent of the threatened person. No consent is required from the threatening person.
- (4) In such a case:
 - (a) the threatened person is taken, for the purposes of this Division, to be a primary person, and
 - (b) the threatening person is taken, for the purposes of this Division, to be an associated respondent.

That provision, which allows for the sharing of information only with the consent of the threatened person, is relatively non-controversial and is almost wholly embraced by the agencies that made submissions to the Standing Committee on Social Issues and about the 2013 bill. The more contentious provision is new section 98M, which deals with serious domestic violence threats and which provides:

- (1) In this section:
dealing with information means the collection, use or disclosure of the information.
- (2) An agency may, despite the privacy legislation, deal with information about a person without the consent of the person if the agency believes on reasonable grounds that:
 - (a) the particular dealing is necessary to prevent or lessen a domestic violence threat to the person or any other person, and
 - (b) the threat is a serious threat, and
 - (c) the person has refused to give consent or it is unreasonable or impractical to obtain the person's consent.

In that regard I note that the contribution of my former colleague the Hon. Cate Faehrmann to this House when speaking to the 2013 bill. She referred to the very strong reservations voiced by both the Women's Legal Service NSW and the Wirringa Baiya Aboriginal Legal Centre. She also referred to correspondence received from a Sydney-based domestic violence service solicitor and stated:

While we support efforts made to improve the system's responsiveness to disclosures of family violence, we believe information sharing is a very complex issue and requires careful consideration, particularly regarding the many and potentially serious implications of such information sharing. We are not convinced that the Bill is providing a solution that meets a distinct and articulated problem or that the benefits in information sharing without consent outweigh the risk. Our experience tells us that it is unlikely to achieve its intended benefits for many victims of domestic violence and it has inherent safety and breach of privacy risks which are not adequately addressed when consent is dispensed with. Further, many women may be reluctant to report domestic violence to police as a result.

It is that reluctance that may operate if a woman, who has been the subject of domestic violence, is concerned about going to a service provider, a shelter or an agency to seek protection. She could be told that, having sought protection, the provider, the shelter or an agency may provide all the information it collected on her to the NSW Police Force, without her consent, in order for a criminal prosecution to be mounted against the violent perpetrator. There are many conceivable circumstances where that might deter women from taking a first step to seek protection.

Another concern raised by the Women's Legal Service was that sharing information without consent may lead to the sharing of inaccurate personal information about the alleged victim, and that information being circulated to the NSW Police Force and support agencies. In that regard I note that the supplementary submission by the Women's Legal Service to the Standing Committee on Social Issues identified, in particular, statements to the police are prone to error. The service said in its submission:

... there are many instances where a woman in calmer circumstances might provide a more thought-through statement to include a pattern of previous abuse or to recall the details of the incident, in particular dates and times. This evidence is often critical in hearing and the subject of cross-examination regarding credibility.

In other words, a half-thought-out, emotional concern disclosure made when a woman is under extreme emotional pressure ends up being presented to the police and recorded in police records. If there is a criminal trial, that partial, emotional disclosure that has not been carefully thought through can be used against the woman in the course of cross-examination. Her credibility can be torn apart because key facts she would have included, had she been given the opportunity to make a careful statement when not in the throes of domestic violence, are often missed. Far from protecting women, this kind of rapid, non-consensual sharing of information can leave women with less protection. If the matter comes to court the initial partial disclosure, having being passed through the agencies, forms part of the police record which can destroy her credibility.

The Wirringa Baiya Aboriginal Legal Service noted that Aboriginal women are particularly sensitive and concerned about information they provide being shared with other agencies without their consent. Cate Faehrmann, in her second reading contribution on the 2013 bill, spoke of what Ms Martin, the solicitor from Wirringa Baiya Aboriginal Legal Service, said in a letter to her office:

... this susceptibility emanated from the "long sad history of government agencies controlling their lives". It is important for members to hear what Ms Martin wrote and for the Government to consider supporting a couple of my amendments that address this issue. Ms Martin said:

The Aboriginal population is small and community networks and links are tight, especially in rural communities. There is a significant risk that information about an Aboriginal woman victim could be given to a service that has worked [or is] known to the victim and/or the alleged perpetrator. This will cause embarrassment and shame to the victim with other people knowing her business, and potentially create a risk for her if the worker is a friend, family or kin of the perpetrator. We are thus concerned that these amendments will create a further disincentive for Aboriginal Women to seek assistance from police.

That is deeply concerning and we intend to continue to consult with stakeholders on this matter. I have not heard this concern addressed by either the second reading speech or the contribution from Government members to this bill in this House. I note that we are having this discussion on a night when the State of Origin match is being played. Many women in both New South Wales and Queensland hope their team wins, not because they love rugby league but because they are concerned about the potential for violence by an angry spouse who has consumed alcohol. We should be mindful of the real impact of domestic violence when we pass such legislation. It has been said that one woman a week loses her life to domestic violence.

There was a rapid response to the tragic loss of a few lives from alcohol-fuelled violence in public but not the same rapid commitment of money and legislation to deal with domestic violence. In fact, as we are having this debate and listening to Government members' concerns about domestic violence the Government is introducing Going Home Staying Home reforms.

The Hon. Sophie Cotsis: And it is closing down the refuges.

Mr DAVID SHOEBRIDGE: We know that half a dozen women's refuges within a five-kilometre radius of this place will be shut down as a result of those reforms. In particular, some crucial women-only services are being shut because they will not meet the tender process for the Going Home Staying Home reforms. One example, Detour House Inc., is in the electorate of Balmain, where it has been operating for 30 years. The member for Balmain, Jamie Parker, said:

Detour provides care for women and girls who have experienced drug and alcohol dependency. It offers supported accommodation to young women aged 13 to 17 who are homeless or at risk of homelessness, but the organisation's Young People's Refuge for girls at Leichhardt has been forced to tender on the basis it offers services for both males and females aged 12 to 25. The known and inherent dangers of putting at-risk girls and boys together—given the history of sexual abuse in institutional settings—is being shamefully ignored.

While we are considering this legislation, we know the Royal Commission into Institutional Responses to Child Sexual Abuse is looking at these very issues and saying, "Do not repeat the mistakes of the past." What do we get? We get programs from this Government that repeat the exact mistakes of the past. Today the Federal Government, of the same political colour as the State Government, cut \$7 million from the royal commission, which is doing crucial work. Mr Parker also said:

Other services under threat include the Stepping Out Housing Program based in Leichhardt, which opened in 1986. Stepping Out works with women and women with children who are homeless and survivors of childhood sexual abuse.

Because this service deals only with women it is not meeting tendering processes. Going Home Staying Home reforms are deeply destructive of these kinds of services. Mr Parker said B Miles Women's Foundation,

Women's and Girls' Emergency Centre and others are also at risk. This bill is one small part of dealing with domestic violence. My colleagues will have further contributions on it. It is one thing to say things about domestic violence; it is another thing to put in place money and services.

Debate adjourned on motion by Mr David Shoebridge and set down as an order of the day for a future day.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2014

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [9.47 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The *Statute Law (Miscellaneous Provisions) Bill 2014* continues the statute law revision program, which has been in place for the past 30 years. Bills of this kind are an effective method for making minor policy changes, repealing redundant legislation and maintaining the quality of the New South Wales statute book.

Schedule 1 to the bill contains policy changes of a minor and non-controversial nature to 22 Acts and two Regulations that are too inconsequential to warrant the introduction of a separate amending bill. I will describe some of the amendments to give honourable members an indication of the kinds of amendments that are included in this schedule.

Schedule 1 amends the *Animal Diseases and Animal Pests (Emergency Outbreaks) Act 1991* to enable permits to be issued authorising activities that would otherwise be prohibited by a quarantine order under that Act. This amendment is in line with existing provisions in the Act that allow permits to be issued authorising activities that would otherwise contravene controls over infected or infested places and vehicles, restricted areas and control areas. It will enable operational responsiveness and flexibility, which are critical in effectively managing emergency animal disease and pest outbreaks.

The *Contracts Review Act 1980* is amended to ensure that a court can grant relief from unjust contracts to a community, precinct or neighbourhood association in a community title scheme, just as a court can currently do in the case of owners corporations for strata schemes.

Schedule 1 also amends the *National Parks and Wildlife Act 1974* to explicitly enable conditions to be imposed on an authority to harm animals, fell trees or pick native plants. An existing defence to conviction for an offence against the Act is that the conduct constituting the offence was done under an authority. The amendments will require a defendant relying on this defence to also show that the conduct was consistent with any conditions of the authority.

Amendments to the *Ombudsman Act 1974* and its Regulation deal with the requirements for non-government agencies that provide substitute residential care for children to report to the Ombudsman on allegations about and convictions for reportable conduct involving children. These amendments arise from advice of the Solicitor General that the expression "substitute residential care for children" is very broad. The amendments will ensure that the reporting requirements will focus on reportable conduct of employees who are employed in the agency in child-related work. This group of employees are those for whom Working with Children Checks are or will be required under the *Child Protection (Working with Children) Act 2012*.

The amendments to the *Ombudsman Act 1974* will also ensure that Regulations can make further refinements identifying the particular non-government agencies (or employees in those agencies) providing substitute residential care for children to which the reporting requirements apply.

Schedule 1 amends the *Pawnbrokers and Second-hand Dealers Act 1996* to make it an offence for a pawnbroker to enter into an agreement for the pawning of goods if the agreement states that a special fee or charge for the redemption of the goods must be paid. This is consistent with the current law under the Act, which makes it an offence for a pawnbroker to impose or accept such a fee or charge.

The last schedule 1 matter I will mention is the amendments to the *Residential Tenancies Act 2010*. Those amendments will clarify the right of a tenant to terminate a fixed-term tenancy agreement early, without paying compensation to the landlord, on the grounds that the landlord did not disclose a proposed sale before entering into the agreement. In particular, it will be made clear that the tenant may exercise the right on those grounds only if the Act required the landlord to make the disclosure before entering into the agreement, for example, because a contract of sale had been prepared.

The amendments to the *Residential Tenancies Act 2010* will also enable an online rental bond service to be established, enabling tenants to electronically deposit rental bonds directly with the Commissioner for Fair Trading. Currently, rental bonds are paid by tenants to landlords or agents who pass them on to the Commissioner, using predominantly paper-based forms.

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

Schedule 3 makes certain of the consequential and other minor amendments related to the enactment of the *Government Sector Employment Act 2013* that are contained in the *Government Sector Employment Legislation Amendment Bill 2013* (currently in this place). The amendments do not include the main amendments in that bill relating to the alignment of employment arrangements for senior executives in the New South Wales Health Service, Police Force and Transport Service with the new employment arrangements for senior executives in the Public Service.

Schedule 5 repeals 5 redundant Acts and superfluous or redundant provisions of 2 other Acts.

Schedule 6 contains general savings, transitional and other provisions.

These include provisions dealing with the effect of amendments on amending provisions, and savings clauses for the repealed Acts and provisions.

The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts and statutory instruments concerned or at the end of the schedule concerned.

I am sure that honourable members will appreciate the straightforward and non-controversial nature of the provisions contained in the bill. However, if any amendment causes concern or requires clarification, it should be brought to my attention. If necessary, I will arrange for government staff to provide additional information on the matters raised. If any particular matter of concern cannot be resolved and is likely to delay the passage of the bill, the Government is prepared to consider withdrawing the matter from the bill.

I commend the bill to the House.

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

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 11 postponed on motion by the Hon. John Ajaka and set down as an order of the day for a later hour.

LAW ENFORCEMENT (POWERS AND RESPONSIBILITIES) AMENDMENT BILL 2014

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [9.51 p.m.]: I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Law Enforcement (Powers and Responsibilities) Amendment Bill 2014. The purpose of this bill is to amend the Law Enforcement (Powers and Responsibilities) Act 2002 to ensure that police have clear and effective powers to do their job protecting the community. This bill is an important part of the New South Wales Government's commitment to making the very difficult job of policing easier for the men and women of the NSW Police Force. The bill implements recommendations made by two reports regarding the statutory review of the Law Enforcement (Powers and Responsibilities) Act.

The first report, prepared by former Minister for Police the Hon. Paul Whelan, and former shadow Attorney General Mr Andrew Tink, dealt with parts 9 and 15 of the Act. The second report dealing with the balance of the Law Enforcement (Powers and Responsibilities) Act was a statutory review completed by the former Department of Attorney General and Justice, as it then was, and the Ministry for Police and Emergency Services. The amendments in this bill will strike the right balance between ensuring that police can do their job safely and efficiently while providing appropriate safeguards for members of the community when dealing with police.

I will now outline the key features of the bill. Schedule 1 to the bill contains amendments to part 9 of the Law Enforcement (Powers and Responsibilities) Act recommended by Mr Whelan and Mr Tink. Part 9 provides safeguards for suspects who are in the company of police for investigation and questioning in relation to an offence. The safeguards include the right to communicate with a friend, relative or lawyer and the maximum investigation period. Items [1] to [5] of schedule 1 will amend sections 109 to 111 of the Law Enforcement (Powers and Responsibilities) Act to clarify that there are two categories of people to whom the part 9 safeguards apply, being detained persons and protected suspects. A "detained person" is someone who is not free to leave the company of police. They are under arrest.

A "protected suspect" is a person who is voluntarily in police company. The term "protected suspect" will mean a person who is in the company of a police officer for the purpose of participating in an investigative procedure in connection with an offence if the police officer believes there is sufficient evidence that the person has committed the offence and the person has been informed that they are entitled to leave at will. Item [6] creates new section 112A, which will ensure that the part 9 safeguards can be applied during the execution of a search warrant in the field. Currently, police have to freeze the search warrant and take a suspect back to the police station to have a custody manager administer the part 9 rights. Operational police advise that this is time consuming and impractical for both the person involved and police.

New section 112A makes special provision for the administration of part 9 rights to detained persons and protected suspects at the scene of a search warrant. It provides that a police officer at the scene who is independent of the investigation and not searching can exercise the functions of the custody manager. This role may be undertaken, for example, by the independent officer at the search. The provision allows for the custody record required under part 9 to be recorded as part of a video recording of the execution of the warrant. Part 9 imposes certain obligations on the custody manager to facilitate communication between the accused and a friend, relative or other support person.

New section 112A (2) (b) provides that these requirements need not be complied with if the officer acting as custody manager holds a reasonable suspicion that doing so may result in bodily injury to any person. This test, which is broader than the one applied to the communication obligations at a police station, reflects the fact that search warrants are conducted in the field and therefore pose a higher potential risk to the safety of officers and others and is a less controlled environment.

Items [9] to [15] of schedule 1 amend division 2 of part 9, which restricts the period during which a person can be detained for investigation. These limitations will only apply to detained persons and not protected suspects as they are free to leave at any time. The amendments do not alter the requirement in section 115 that the initial investigation period end at a time that is reasonable in all the circumstances. However, the maximum initial investigation period is extended from four to six hours. Police can seek an extension of the initial period by obtaining a detention warrant from an authorised justice.

Currently an extension is limited to eight hours; however, the bill will change this to six hours so the total possible investigation period remains at 12 hours. Under sections 116 and 118 of the Law Enforcement (Powers and Responsibilities) Act all relevant circumstances of the case must be taken into account when determining what is a reasonable time for the initial investigation period and whether a detention warrant should be granted. The bill will amend these provisions to require that any period the person spent as a protected suspect be taken into account as part of these circumstances.

Items [17] and [19] of schedule 1 amend division 3 of part 9 to apply all of the safeguards contained in that division to protected suspects as well as detained persons. Item [18] will provide for the summary of part 9 rights which must be given to detained persons and protected suspects to be prescribed by way of regulation. Schedule 2 of the bill contains reforms to part 15 of the Law Enforcement (Powers and Responsibilities) Act recommended by Mr Whelan and Mr Tink. This includes remaking section 201, which sets out information police must provide to a person when exercising police powers. The section has been amended repeatedly over the years and has become complex and difficult for police to apply. The bill restructures and greatly simplifies what police must apply in the field.

New section 202 maintains the requirement that when exercising a power police provide their name and place of duty, evidence that they are a police officer, unless they are in uniform, and the reason for the exercise of the power. Police will be required to provide this information as soon as reasonably practicable unless they are giving a direction, requirement or request to a single person in which case the information must be provided beforehand. These amendments do not substantially shift the existing time frames that apply to these powers but provide a much simpler regime for police to comply with. New section 203 consolidates the existing warnings that police must give when issuing a direction, requirement or request that a person is required to comply with by law. A single warning will now be given.

New section 204A states that if a police officer fails to provide their name and/or their place of duty when exercising a power as required by the provisions, the failure will not render the exercise of the power or anything resulting from it invalid. This provision will not, however, apply to such a failure if it relates to a direction, requirement or request to a single person. Further, it will not apply if the officer fails to provide this information after being asked for it.

Police will still be expected to provide their name and place of duty when exercising the relevant powers covered by the provisions. New section 204A is only intended to act as a safety net for inadvertent breaches of this requirement. To ensure that a proper assessment of the impact of these reforms is made, item [15] of schedule 2 will add a provision requiring the Ombudsman to scrutinise police compliance with the name and place of duty obligations for 12 months after commencement of the provisions. The Ombudsman will report back to the Government on this issue and the report will be tabled in Parliament. Items [2] to [14] of schedule 2 make consequential and other minor amendments resulting from the reforms to part 15.

Schedule 3 to the bill implements recommendations made by the statutory review of the Law Enforcement (Powers and Responsibilities) Act 2002. Items [1] and [14] clarify that a search under the Act can include searching a person's mouth. Items [1], [3] and [26] clarify how the protections that apply to searches operate in relation to transgender people by replicating relevant provisions from the Crimes (Forensic Procedures) Act 2000 that police will be familiar with. Items [4] to [13] and [18] amend a number of provisions to replace the term "request" with "requirement" wherever the provision contains a request that must be complied with by law. The Act currently uses the terms interchangeably, which has caused confusion. The review recommended using "requirement" where the person must comply. Items [15] and [16] clarify that a search of a person in lawful custody can be carried out immediately before or during transportation to or from a place of detention. There was uncertainty about whether a person could be searched before they were put in a police van. This amendment clarifies that they can and will assist in addressing issues raised by the Deputy State Coroner in the matter of Jason Plum.

Items [17] and [19] will restructure the search powers contained in the Act as recommended by the statutory review. The existing definitions of "ordinary search" and "frisk search" will be combined into one consolidated search power set out in proposed section 30 at item [21]. Item [22] retains the existing test in section 31 for conducting a strip search in the field but amends the test applicable at a police station in accordance with a recommendation of the Ombudsman. Item [24]

amends section 32 to make clear that police can delegate their search power to another person in order to comply with the requirement that searches be conducted by a person of the same sex. Item [23] removes superfluous references to persons other than police conducting searches in a number of provisions as they are unnecessary. Item [25] clarifies that police can ask questions during a search but only if they relate to issues of personal safety associated with the search.

Items [27] and [28] contain amendments to section 33 relating to strip searches, including clarifying that a person of the opposite sex can be present during a strip search if the person being searched gives their consent. Further, they restrict the grounds on which a person aged between 10 and 18 years or who has impaired intellectual functioning can be strip searched. Item [29] creates new section 34A, which will provide for consensual searches. Before conducting such a search police will have to ask the person for consent and provide certain information to them. The provision ensures police have explicit power to search a person in accordance with the consent provided.

Item [30] aligns the considerations for an authorised officer issuing a notice to produce documents with those of the officer applying for the notice. Items [31] to [36] amend sections 82 to 84 to allow police to exercise powers to preserve the scene at premises where a domestic violence offence has occurred. Police will be able to remain at a dwelling and exercise some preservation powers if they reasonably suspect such an offence has occurred at the dwelling and it is reasonably necessary to preserve evidence of the offence. Items [37] to [41] make amendments to provisions governing crime scene powers, including extending the powers a police officer can exercise prior to the issue of a crime scene warrant to include certain non-intrusive investigation powers, and extending the period during which crime scene powers can be exercised from three to four hours, and six hours in prescribed rural areas.

Items [44] and [45] make amendments to clarify that anything police can do with consent must be done with informed consent. Items [42] and [43] make amendments to the provisions governing crime scene warrants, including allowing a person to seek a review of the grounds on which a warrant was issued. Items [46] and [47] amend the provisions relating to in-car video to, amongst other things, remove the prohibition on admitting evidence of conversations recorded after a person's arrest. This amendment follows a suggested review of the provisions in a decision of the Court of Criminal Appeal. The amendment does not alter the existing requirements as to admissibility of admissions made by the accused but allows a recording, if it happens to be made by in-car video, to be admitted where it presently cannot.

Item [49] provides the Commissioner of Police with discretion to order the destruction of photographs, fingerprints and palm prints taken in relation to an offence. Items [50] to [54] make minor amendments to vehicle and traffic powers in the Law Enforcement (Powers and Responsibilities) Act 2002. Those powers will be moved to the Road Transport Act 2013 so that all powers of this type are located in one place. Schedule 4 contains amendments to the Law Enforcement (Powers and Responsibilities) Regulation with regard to record-keeping requirements, inspection of records and forms. Schedule 5 makes consequential amendments to a number of other pieces of legislation which are needed as a result of the reforms contained in the bill. I thank the Hon. Paul Whelan and Mr Andrew Tink for their effort in preparing their review reports. The recommendations they made and the reforms contained in this bill will greatly assist the Police Force in undertaking its very important work protecting the community. 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.

TRADE AND INVESTMENT CLUSTER GOVERNANCE (AMENDMENT AND REPEAL) BILL 2014

Second Reading

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [9.53 p.m.], on behalf of the Hon. Duncan Gay: I move:

That this bill be now read a second time.

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

Leave granted.

The Trade and Investment Cluster Governance (Amendment and Repeal) Bill 2014 is a package of changes to entities within the trade and investment cluster which will decrease the number of separate statutory bodies in the cluster and create savings from reduced operational, financial reporting and audit costs. The changes will benefit the delivery of services by the trade and investment cluster. In most cases the changes to be made are to back-office organisation. The aim is to improve efficiency.

Improving and streamlining the organisation of the public sector has been a priority for this Government. In 2011 public sector agencies were aggregated into nine clusters. The clusters bring together a group of entities and allow similar and complementary government services to be coordinated more effectively within the broad policy area of a particular cluster. Establishing appropriate governance arrangements for the functions and activities undertaken by public entities is critical to the delivery of high-quality performance in the New South Wales public sector. Well-considered and fit-for-purpose governance arrangements provide a foundation for effective and efficient management of public sector entities.

In 2012 the New South Wales Commission of Audit delivered its interim report on public sector management. Recommendation No. 2 of that report required each cluster to review the number of entities it contained. Immediate steps were to be taken to group or merge entities where appropriate and abolish entities if they no longer serve a purpose. In 2013 NSW Trade and Investment reviewed existing governance structure arrangements and accountability. A number of entities were identified that could be abolished or absorbed into larger bodies. This bill represents an important step in implementing a more streamlined model of cluster governance.

Significant annual reporting and audit costs are associated with each stand-alone entity. Accordingly, each entity must continue to demonstrate a compelling reason to exist as a separate statutory body that outweighs its cost. Trade and Investment has been proactive in reviewing the bodies within the cluster to identify opportunities to reduce the number of entities. In some cases it has been determined that a body's statutory functions no longer need to be performed by the New South Wales Government. In other cases it was determined that although there is a need to retain statutory functions a separate statutory body is no longer needed to perform them.

I will now provide a brief overview of each significant element of the bill. Part 2 of the bill dissolves the Chipping Norton Lake Authority and repeals the Chipping Norton Lake Authority Act 1977. The authority was tasked with the responsibility of restoring a six-kilometre length of the Georges River and landscaping the area into parkland and building recreational facilities based around the river and an artificial lake system. The environmental restoration of the affected parts of the Georges River has been completed by the authority.

The land formerly owned by the Chipping Norton Lake Authority has been progressively declared as Crown land under the Crown Lands Act 1989, with the relevant local council acting as the reserve trust manager. As the remainder of the authority's powers and functions now duplicate those of the local councils, there is no longer any need for a separate statutory authority. The authority's remaining funds will be transferred to the Public Reserves Management Fund.

Part 3 of the bill dissolves the New South Wales Dairy Industry Conference and repeals the Dairy Industry Act 2000. Recent resignations, changes in membership and other developments have left the Dairy Industry Conference without a quorum and unable to perform its legislated functions, including consulting with the Food Authority in relation to the Dairy Food Safety Scheme. The Dairy Industry Conference controls a private wholly owned subsidiary corporation known as DICONF Management Pty Limited, which was established and funded through an agreement with the Food Authority and the then Minister for Primary Industries.

Funds currently held by DICONF will be consolidated with funds held by the Department of Primary Industries following the wind up of Milk Marketing and will be used for the benefit of the dairy industry in consultation with that industry. A dairy industry consultative committee, in line with those for food safety schemes in other industry sectors, will be established under the Food Regulation 2010 to replace the Dairy Industry Conference's industry consultation function.

Part 4 of the bill abolishes the Lake Illawarra Authority and repeals the Lake Illawarra Authority Act 1987. The authority was the subject of a review and public consultation in 2012 that was undertaken under the supervision of the then Parliamentary Secretary for Natural Resources, the member for Dubbo. The review found the authority had achieved its primary objective to improve the environment of Lake Illawarra. Similar to the Chipping Norton Lake Authority, it was recommended that further development of the area be managed by local councils to avoid duplicated functions. Most of the authority's landholdings, assets and functions have been progressively transferred to local government and other key agencies. Remaining assets and liabilities are to be transferred to the Crown.

The Ministerial Corporation for Industry was created under the State Development and Assistance Act 1966 to promote establishment, expansion or development of industries primarily by undertaking a project management role. Part 5 of the bill dissolves the Ministerial Corporation for Industry. The department has been primarily responsible for managing projects entered into in the name of the ministerial corporation since 2010. Most legacy projects are now completed or being administered under various departmental schemes. The ministerial corporation's sole remaining landholding is currently in the process of being sold. As the Ministerial Corporation for Industry is no longer required, the State Development and Assistance Act 1966 will be repealed. The balance of funds standing to the credit of the fund established under that Act will be transferred to the Consolidated Fund.

The two entities established under the Poultry Meat Industry Act 1986 were also the subject of a recent review and public consultation. The Act regulates the relationship between contract growers and processors of poultry meat. The Poultry Meat Industry Committee and the Poultry Meat Industry Advisory Group are established under the Act to perform functions relating to contractual arrangements in the industry. The review recommended a move away from State-based regulation of the poultry meat industry towards a model overseen by the Australian Competition and Consumer Commission. This will put the New South Wales poultry meat industry on an equivalent footing with industry in Victoria and Queensland. Accordingly, part 6 of the bill dissolves the committee and advisory group and repeals the Act.

Part 7 contains general provisions applying to the transfer of assets, rights and liabilities to ensure a smooth transition period as the operations of dissolved entities are wound up. This part also provides that no compensation is payable by the State as a result of this bill. There are two schedules to the bill that absorb two entities, being Screen NSW and the Homebush Motor Racing Authority, into the Department of Trade and Investment and Destination NSW respectively. Both of these statutory bodies already have strong administrative links with the larger entities. Schedule 1 amends the Film and Television Office Act 1988 to dissolve the NSW Film and Television Office and its board, which is now operating as Screen NSW.

Most of the operational functions, including funding and investment in the New South Wales film and television industry under the Act, will be transferred to the Secretary of the Department of Trade and Investment and performed by Screen NSW as an office of the department. An expert advisory function will be retained through the creation of a new ministerially appointed advisory committee to advise the Minister. The NSW Film and Television Office account will be abolished and Screen NSW will be funded from the department's appropriation.

Schedule 2 transfers the functions, powers, assets, rights and liabilities of the Homebush Motor Racing Authority to Destination NSW. Destination NSW will continue to organise an annual V8 motor race at Homebush under the Homebush Motor Racing (Sydney 400) Act 2008. This bill makes logical changes to improve efficiency and effectiveness and consolidate the operations of the trade and investment cluster. It meets the Government's commitment to reduce the amount of legislation in this State and get the most value for taxpayers' money. The bill will ensure that the department's compliance and financial reporting obligations can be done more efficiently and at less cost to the taxpayer. 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 later hour.

ADVOCATE FOR CHILDREN AND YOUNG PEOPLE BILL 2014**Second Reading**

The Hon. CATHERINE CUSACK [9.54 p.m.], on behalf of the Hon. Matthew Mason-Cox: I move:

That this bill be now read a second time.

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

Leave granted.

I speak in support of the Advocate for Children and Young People Bill 2014. The New South Wales Government cares deeply about children and young people and wants to make sure that their challenges and opportunities are addressed effectively through consultation with communities and strong advocacy. Only by listening to children and young people, and consulting with the key groups with whom they engage, can we ensure that the work we do for them actually makes a positive difference to their lives. Although the Commission for Children and Young People provides advocacy mechanisms for our State's younger citizens, I believe there are opportunities to strengthen the advocacy model to ensure the voices of disenfranchised, and vulnerable children and young people are being heard and addressed by the New South Wales Government.

That is why last year, following the transfer of the Working With Children Check function from the commission to the Children's Guardian, I authorised the most extensive community consultations on advocacy for children and young people since the commission was established over 14 years ago. These consultations involved the appointment of two youth ambassadors to guide and oversee the consultation process; the release of a discussion paper for public comment; community round tables for children and young people in Cabramatta and Wollongong; a non-government organisation round table at which 40 agencies were represented; and classroom consultations held in 34 schools across metropolitan, regional and rural New South Wales and in each of the school sectors. Responses were received from more than 900 children and young people.

The key messages from the consultations were as follows: children and young people should have a say on the matters that affect their lives; children and young people from all walks of life should be encouraged and assisted to speak for themselves in ways that suit the individual child or young person; an advocate for children and young people is needed to promote the voices of children and young people, and to stand up for their interests; children and young people want respect from adults and see a strong role for adults and experts in helping make their lives better.

Further key messages include: an advocate should have a strong focus on enhancing the lives of all children and young people, and a particular focus on vulnerable and disadvantaged young people; strong advocacy for children and young people means being solely focussed on improving the wellbeing of children and young people, and therefore should be independent of other agendas; strong advocacy for children and young people should be underpinned by an understanding of the lives of children and young people and the role of Government, and so needs to be supported by sound policy, relevant research and analysis; and an advocate must work with others to make a difference, ensuring there is coordinated action to tackle the issues that affect children and young people across agency and sector boundaries.

This legislation reflects the abovementioned messages and creates an independent statutory office of the Advocate for Children and Young People to represent the needs and interests of children and young people in New South Wales. The New South Wales Government is therefore committed to having a strong advocate for children and young people whose job is to stand up for the rights and interests of children and young people, and to ensure that the voices of children and young people are heard by the Government and by the whole community. The key features of this independent role mirror those of the Commission for Children and Young People. The important oversight role of the Parliamentary Joint Committee on Children and Young People is retained, and the Governor may remove the advocate from office only for incompetence, incapacity or misbehaviour.

As the name suggests, the new advocate will have a clearer advocacy role than the Commission for Children and Young People, which was also responsible for regulation of the Working With Children Check until that function was transferred to the New South Wales Children's Guardian in June 2013. The legislation provides an overarching function that the advocate must "advocate for and promote the safety, welfare and well-being of children and young people". The legislation also gives the advocate the critically important role of promoting the participation of children and young people in the making of decisions that affect their lives. This strengthened advocacy role will be supported by clearer requirements for the advocate to engage with a wide range of children and young people across New South Wales, and to work collaboratively with the many agencies inside and outside Government that are also committed to improving the lives of children and young people in New South Wales.

The legislation extends the advocate's remit to people aged from 0 to 24 years and brings together the Office of the Advocate and the New South Wales Youth Advisory Council. This will enhance effective advocacy for children and youth by clarifying responsibility within Government for work on youth matters and work on matters concerning young people; providing a structure for working collaboratively on agreed priorities; combining resources to maximise effective advocacy for children and youth; providing a clear point of contact for independent advice on child and youth-related matters for Government and non-government agencies in New South Wales; and recognising the important transitions for young people as they move through schooling and into further education, training or work.

The Youth Advisory Council will retain all of its existing functions and will continue to provide direct advice to the Minister on matters of concern to young people. In addition, the Youth Advisory Council will be an important source of advice to the advocate, and the Youth Advisory Council, in turn, will benefit from closer connections with the advocate, including access to the advocate's networks in the non-government sector. The advocate will act as a facilitator for the Youth Advisory Council by liaising with agencies across government to raise issues and potentially implement Youth Advisory Council recommendations.

The legislation retains many of the features and functions of the Commission for Children and Young People, including the conduct of special inquiries; making recommendations to government and non-government agencies on policies and services affecting children; conducting and monitoring research into issues affecting children and young people; and giving priority to the interests and needs of disadvantaged children and young people. The stakeholder consultations undertaken last year identified that a key role for the advocate should be working to ensure better coordination of policies and programs at the systemic, cross-government level to deliver the best possible outcomes for children and young people in New South Wales. The legislation therefore requires the advocate to prepare, in consultation with the Minister and the wider community, a three-year strategic plan for children and young people in the State. Following Government approval of the plan, the advocate will be responsible for monitoring its implementation.

A number of functions of the Commission for Children and Young People will no longer be specifically required of the advocate. The advocate will not have a specific function of monitoring trends in complaints made by or on behalf of children. It is the Ombudsman's role to monitor trends in complaints and it is the advocate's role to provide a systemic approach that ensures children and young people are heard, that they have their views understood and that they are able to bring issues of concern to them. The advocate and the Ombudsman should be working together on child friendly complaints standards and this role sits comfortably within the advocate's broader functions of promoting the participation of children in the making of decisions that affect their lives, and promoting and monitoring the overall safety, welfare and wellbeing of children and young people in the community.

The advocate will not have a specific role in conducting, promoting and monitoring training on issues affecting children or in conducting, promoting and monitoring public awareness activities affecting children. Those specific roles are subsumed under the new overarching function that the advocate will advocate for and promote the safety, welfare and wellbeing of children and young people. There will be no requirement for an expert advisory committee to be appointed to advise the advocate across the range of his functions. The advocate's work needs to be informed and shaped by a wider range of experts and stakeholders than can be represented on one expert advisory committee, and a range of mechanisms are needed to obtain this input and advice.

The legislation enables the advocate to establish dedicated, project-specific advisory committees as required and includes strengthened provisions requiring the advocate, in exercising his or her functions, to consult with children and young people from diverse backgrounds, relevant experts, government agencies and non-government organisations. This is a strong model for advocacy for children and young people in contemporary New South Wales. By having the Government work collaboratively with the wider community, we can be assured that the voices of young people are being heard. I commend the bill to the House.

The Hon. SOPHIE COTSIS [9.55 p.m.]: On behalf of the Opposition I speak in debate on the Advocate for Children and Young People Bill 2014, which will repeal the Commission for Children and Young People Act 1998 and the Youth Advisory Council Act 1989. The bill creates and provides for the functions of a statutory office of the Advocate for Children and Young People. While I note at the outset that the New South Wales Opposition will not oppose the bill, I know that the hardworking shadow Minister for Volunteering and Youth, Tania Mihailuk, has asked the Minister in the other place to clarify that the new position of advocate will be properly staffed and better resourced, and that there will be an expansion of staff and an increase to the budget because of these changes. The shadow Minister has asked the Minister to provide a guarantee that there will not be a cut in the number of staff employed by the new office, nor in the annual budget allocation.

The role of the Advocate for Children and Young People has been an acting position for 13 months and we expect the Minister to immediately begin the process of interviewing and appointing a permanent advocate. In this bill the function of the office has expanded to include 0 to 24 year olds, whereas in the Act that is being repealed the remit of the advocate was only for 0 to 18 year olds. In November 2013 the NSW Commission for Children and Young People released a report on public consultations on strengthening advocacy for children and young people in New South Wales. The report concluded:

Community consultations confirmed the need for an advocate.

Children and young people have a strong desire to speak up for themselves.

An advocate for children and young people should be free to offer advice on what are seen to be children's best interests.

Advocacy should be underpinned by comprehensive research and policy analysis.

Advocacy should take a coordinated approach to action with various relevant government and non-government organisations to address issues affecting children and young people.

The Opposition acknowledges the recommendations presented in the report. Children and young people face unique challenges, and they require a platform from which their voices can be heard. It was recognition of the need for the interests of children to be represented that led the former Carr Labor Government to introduce the Commission for Children and Young People Act 1998, which established and defined the functions of the Commissioner for Children. In his second reading speech the Minister said that he:

... authorised the most extensive community consultations on advocacy for children and young people—

and that—

responses were received from more than 900 children and young people.

It should be noted that while the consultations were widely welcomed, the report did not involve the participation of young people aged between 17 and 25 years. These are the same young people who will be most affected by the bill. The Advocate for Children and Young People Bill 2014 primarily combines the functions from the two existing Acts. The key functions of the existing role of the commissioner will be retained by the advocate. Part 3, sections 14 and 15, will extend the remit of the advocate to include all persons aged 0 to 25 years by changing the term "children" to "children and young people" in all instances. The Opposition acknowledges the need for continual assessment and improvement of the way that children and young people have their interests represented. Of course, this was previously reflected by the former Labor Government introducing specific reporting standards for the Commission for Children and Young People under the previous Act.

I note that a previous function of the Commission for Children and Young People was to oversee Working With Children Checks. This function was transferred to the Office of the Children's Guardian through the Child Protection (Working with Children) Act 2012. Following Justice Wood's 2008 inquiry into child protection services in New South Wales, responsibility for children's deaths was moved from the children's commissioner to the NSW Ombudsman. The commissioner retained a position as one of the three statutory appointed members of the Child Death Review Team, along with the convenor, the NSW Ombudsman, and the Community and Disability Services Commissioner. The shadow Minister asked the Minister to clarify whether the Advocate for Children and Young People will assume the commissioner's role as one of the three statutory members of the Child Death Review Team.

I understand that with those two principal changes over the past three or four years the role of the commissioner has, for some time, been purely focused on advocacy and policy. In many respects, that is a natural progression and the role is now purely an advocate position. I will now address specific proposed sections of the bill. Part 6, section 32, provides that the reporting requirements and mandatory reporting inclusion functions of the commissioner are maintained for the new advocate. Within four months of 30 June each year the advocate will be required to prepare and furnish to the Presiding Officers of both Houses a report on the advocate's operations for the year.

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

The House continued to sit.

The Hon. SOPHIE COTSIS: Under proposed section 32 (2), the report must specify a range of evaluations and descriptions of activities that took place in that year, various recommendations for changes to the law and a description of any request made by the advocate to conduct a special inquiry that may not have been approved by the Minister. I note that the advocate may also furnish a special report on any particular issue or general function relating to the advocate's functions. Part 7 of the bill continues to enable the formation of the parliamentary joint Committee on Children and Young People as it functioned previously under the Commission for Children and Young People Act 1998. As per section 38 (1), membership of the joint committee will continue to comprise three members of the Legislative Council and four members of the Legislative Assembly.

Under part 3, proposed section 15 (1) (h), the advocate will be required to draft a three-year strategic plan for children and young people in New South Wales. That is one of the specific changes to the role, and I understand it is welcomed by the industry. Part 4 will govern the membership and functions of the Youth Advisory Council. I note that the provisions for membership of the Youth Advisory Council in the bill and in the Act are identical, although the bill proposes that the council reflect the diversity of young people in New South Wales—a welcome provision. The functions of the Youth Advisory Council are also virtually identical to the previous Act, although the Youth Advisory Council will have the power to advise both the Minister and the advocate as per proposed section 22 (1) (a). I note for the record that there are two additional functions to the council. Proposed section 22 (3) of the bill states:

The Council must work cooperatively with the Advocate in exercising its functions.

Proposed section 23 will enable the advocate to establish and disband advisory committees as he or she considers appropriate. The shadow Minister in the other place said at the outset that the New South Wales Opposition will not oppose this bill. The Advocate for Children and Young People will be empowered to consult on behalf of children and young people up to the age of 25 years. Largely, the existing functions of the

commissioner and the Youth Advisory Council have been retained. However, some of the feedback the shadow Minister has received is that there is some discontent among 18- to 25-year-old representatives who perhaps appear not to have been consulted for their input into the report in order to strengthen advocacy for children and young people in New South Wales.

The Police Citizens Youth Clubs [PCYC] previously raised concerns, including the fact that there are already many advocates for young people in the 18- to 25-year age bracket and that the position of the advocate should not be "a parliamentary plaything". The chief executive officer, Chris Gardener, stated in an opinion piece in the *Sydney Morning Herald* in January that the advocate:

... should be appointed to visit, listen to and strengthen kids and communities trying to tackle intractable problems, to influence Ministers and department heads behind the scene, and to report to a parliamentary committee on service improvements, international best practice and, most importantly, his or her own performance and effectiveness.

I note also that the Youth Action and Policy Association of NSW [YAPA] is broadly supportive of the provisions of this bill. I thank Mr Eamon Flanagan, Director of Policy and Advocacy, for his consultation on this bill. I reiterate the Opposition's concerns that, now that the advocate's functions have been expanded, we hope the department will be well resourced and well staffed. Currently, the commission has at least 10 policy staff. I hope and expect that no-one will lose their position as a result of the passing of this legislation and the repeal of two Acts. If anything, this provides the Minister with an opportunity to expand the positions that the advocate will have, given that their functions have been expanded to encompass a larger and much broader age group, the 18- to 25-year age group.

As indicated by the PCYC and many other youth organisations, many advocates across the State work closely with government and also with the not-for-profit sector in supporting young people. It is important that the advocate is able to work closely with those organisations in the interests of young people. As the shadow Minister for Youth has raised previously, the commissioner's role has been carried out by a person acting in that position for about 13 months. I appreciate that part of the reason for that may be the report released by the commission last year on how to move forward with the role of the commission. We will support the new advocate role, but I hope the Minister will quickly advertise for and seek and interview appropriate candidates for the position, and ensure that that position is established as soon as is practicably possible. 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.

ADJOURNMENT

The Hon. DUNCAN GAY (Minister for Roads and Freight, and Vice-President of the Executive Council) [10.08 p.m.]: I move:

That this House do now adjourn.

TRIBUTE TO LEX WATSON

DECRIMINALISATION OF HOMOSEXUALITY THIRTIETH ANNIVERSARY

The Hon. PENNY SHARPE [10.08 p.m.]: This Friday the New South Wales Parliament will host a very important event. The Pride History Group, Inner City Legal Centre, the AIDS Council of New South Wales [ACON] and the New South Wales Gay and Lesbian Rights Lobby [GLRL] will celebrate the thirtieth anniversary of the decriminalisation of homosexuality and the recent passage of a bill ending the gay panic defence. The event will also pay homage to gay rights advocate Lex Watson, who passed away earlier this month. In 30 years gay, lesbian, bisexual, transgender and intersex [GLBTI] law reform has come a very long way from the first gay and lesbian community organisations, the first Mardi Gras protest in 1978 and the first steps of reform through the decriminalisation of homosexual acts in 1984.

Tonight I place on record my appreciation of the work of activist and passionate advocate Lex Watson. From recent history we know that Parliaments do not make progress on GLBTI law reform without the GLBTI community and our allies making the case for equality, doing the research, being prepared to lobby whoever needs lobbying, never giving up, never taking no for an answer, and—perhaps most importantly—being prepared to make a great deal of fuss until the law is changed. The GLBTI groups are essential in the push

for reform but of course there are individuals who lead the charge. Lex Watson was one of those people. For those who seek equality for all our citizens, New South Wales owes Lex Watson a great deal of thanks. Robert French from the Pride History Group has eloquently described Lex Watson's contribution to law reform as part of the obituary he wrote for Lex, drawn from interviews with Lex over many years. I place on record an edited version of Robert's work. Robert wrote:

For many of his generation and beyond, Lex Watson was the face of gay activism in Sydney. He was a foundation member of the Campaign Against Moral Persecution (CAMP), the organiser of the first gay rights demonstration in Australia, a long time passionate advocate of homosexual law reform and of anti-discrimination legislation, a pioneer AIDS activist, and in later years, a keen advocate for the preservation of gay community history. His was a courageous life of towering achievement.

Lex won a scholarship to the University of Western Australia where he went in 1960. Two years later Lex moved to the Government Department at Sydney University. It was there that he was to work for the remainder of his academic life teaching Australian politics to hundreds of students, many of whom became academics and political activists themselves.

The homosexual law reforms in Britain in 1967 sparked his interest and he became involved with reform here in Australia because "it was needed and therefore you did it". He was in Canberra in 1970 on the weekend of the formation of the ACT Homosexual Law Reform Society and joined up immediately.

In September 1970 the Campaign Against Moral Persecution (CAMP), the first openly homosexual group in Australia, was formed. Lex became a foundation member, and in early 1972, along with Sue Wills, became a Co-president of CAMP.

Lex was credited with making the organization political, and it was Lex who organised the first-ever gay demonstration in Australia outside Liberal Party headquarters in Ash Street, Sydney, in October 1971.

One of the major achievements of CAMP under Lex and Sue was their endeavours to highlight the dangers of aversion therapy and psycho-surgery as then practised against women and homosexuals. That homosexual people then began to cease consulting practitioners for a "cure" for their sexual orientation was a triumph for their work in CAMP.

Lex continued his activism and advocacy through newspaper articles in the gay press. In 1976 he, memorably and courageously, appeared on the ABC Monday Conference program in Mt. Isa. Some of the audience were hostile, one member even pouring a bottle of sewage over Lex's head. Lex maintained his composure throughout and won over the audience.

With the assistance of fellow academic and activist Craig Johnston in 1980, Lex approached Barry Unsworth of the New South Wales Trades & Labor Council after the Sydney University Staff Union had passed an anti-discrimination motion in relation to gays and lesbians.

Unsworth was receptive and had a similar motion passed in the Council. The move was the beginning of Gay Rights Lobby (GRL) and a new concerted push for homosexual law reform in NSW, which saw several attempts at reform over four years, as well as support for a bill to incorporate homosexuality under the terms of the Anti-Discrimination Act.

Lex, in a dispute over tactics and his administrative style, fell out with GRL but that did not stop him and his fellow activists continuing to work together. After the police raid on Club 80 in 1983, it was Lex who suggested that community activists sign statutory declarations admitting to having committed buggery and to present them to the Vice Squad seeking arrest. Lex was one of the first to present but the police had been forewarned by the Government and refused to make arrests.

He was a member of a delegation to Premier Wran in May 1984 on the morning of the introduction of his Private Members bill to repeal the "buggery" provisions of the NSW Crimes Act.

Lex attempted to persuade the Premier to introduce an equal age of consent clause and when he refused, he then argued for the inclusion of protections for persons between the ages of 16 and 18 years that Wran enthusiastically agreed to. A new clause was typed onto the printed bill when it reached the floor of the Legislative Assembly that day. The meeting showed Lex the strategic activist at his finest.

In 1982, the Chameleons social group had crowned him "Empress of Sydney", the first time someone from outside the "drag" industry had been so recognised. He was chuffed, and proud of this his only appearance in "drag" sporting a black velvet strapless gown. He wore the gown to the "Gay Embassy" ...

Lex became alerted to the problem of HIV/AIDS in 1982. He, and others, set up the AIDS Action Committee which, following later Federal Government funding, morphed into the AIDS Council of New South Wales (ACON) of which Lex became the first President.

I am about to run out of time. I seek leave to have the remainder of my speech incorporated in *Hansard*.

Leave granted.

As Bill Bowtell, a political advisor to the Federal Government, has recently said of Lex at this time: 'It was our immense good fortune that you were there, straight out of the decriminalisation campaign, to take up the struggle on what was, unbelievably, a matter of genuine life and death. Your temper, and temperament, and relentless, focused energy, was really a critical factor in bringing together the people and disparate groups around a sensible and attainable (and attained and exceeded) set of political goals and objectives on AIDS'.

In 2011, Sydney Mardi Gras awarded Lex and Sue Wills their GLBTI Community Hero Award marking the 40th anniversary of the formal foundation of CAMP.

Post retirement from Sydney University, Lex became involved in the Pride History Group, Sydney's gay and lesbian history group.

He was President at the time that he died, assisting in the organization of a history conference, set for this coming November, on homosexual law reforms, his major life's work. It is sad that he will not be there. The Conference will be dedicated to his memory.

As one activist said to him before he died, "Your courage, persistence, intellect, and no nonsense stropiness against injustice and poor thinking has pushed us forward to a better future".

That activist was right. Vale Lex Watson.

CHRISTIAN DEMOCRATIC PARTY

The Hon. PAUL GREEN [10.13 p.m.]: I want to reflect on my past three years in Parliament. Two days ago, 26 May, was the anniversary of my inaugural speech. Looking back, I want to place on the record the difference that the Christian Democratic Party has made for the people of New South Wales over the past few years. One of the key focuses of the Christian Democratic Party is to look after the family. We believe the family is the foundation stone of society, so for us it is important to ensure that we protect and look after our families and their communities. Families are affected by just about every bill we pass, or do not pass—whether through job creation and security, workplace safety, cost of living, the environment, education, health care, and so on. I will take a few minutes to reflect on some of the ways that the Christian Democratic Party has helped families in the past few years.

In 2011 the Christian Democratic Party worked with the Government to ensure that 110,000 solar rebate contracts across New South Wales would not be compromised by the O'Farrell Government's reducing the rebate. To his credit, Mr O'Farrell backed off on that occasion. In 2012 the Christian Democratic Party sought to protect the precious few days, one of which is Boxing Day, that families have together without the obligation of work. When the Retail Trading Amendment Bill 2012 was presented to us, the Christian Democratic Party met with a number of stakeholders, and took their concerns to the Minister and the Premier. Many expressed their concern that allowing retailers to open their businesses on Boxing Day would impact on the few opportunities that many families and friends can spend together without having to go to work.

In 2012 the Christian Democratic Party helped to stop the funding freeze on private schools, which would have impacted immensely on the outcomes and operation of private schools and independent schools across New South Wales. When the Victims Rights and Support Bill 2013 was presented to the upper House, the Christian Democratic Party proposed amendments that would allow young victims of abuse to be compensated and receive necessary counselling services, regardless of the age they were in a position to disclose their sexual abuse as a child. Those amendments were passed with the unanimous support of the House. In 2013 the Christian Democratic Party helped secure funding for the Bravehearts Keep Safe curriculum for every public school—that is, more than 1,770 schools in New South Wales. That has the potential to significantly cut child sexual assault, helping to make New South Wales the safest place in Australia to raise a child. In 2013 the Christian Democratic Party moved amendments to the Small Business Commissioner Bill 2013, giving small businesses a fair go—particularly where big businesses are bullying small businesses out of commercial competitive opportunities by avoiding tribunal mediation. Attendance at these mediation sessions is now compulsory.

Also in 2013, the Christian Democratic Party made amendments to the Residential (Land Lease) Communities Bill 2013, which helps residents buying into a residential community, ensuring that a contract is fully expired before new terms can be agreed to with the landlord, making it a fair playing field for both the landlord and the tenant. Last year we also dealt with the Same-Sex Marriage Bill 2013, which was defeated by a vote of 21:20 in this Chamber. The debate was respectful and passionate. The Christian Democratic Party was able to state its position yet again and advocate for traditional family values in marriage. In 2013 the Christian Democratic Party was again pressed to the wall emotionally when we took part in the debate over the Rights of the Terminally Ill Bill 2013. The bill was defeated by a vote of 23:13, following a very sensitive debate.

The economic credentials of the Christian Democratic Party include helping to protect the State's triple-A rating by agreeing to the leasing of Port Kembla, Port Botany and Port Newcastle. These leasings will not only contribute to revitalising New South Wales infrastructure but also bring economic growth to

Wollongong, Sydney, Newcastle and greater New South Wales, and therefore help to keep food on the tables of countless families and communities across New South Wales for years to come. It will provide funds for investment in major infrastructure such as the Pacific Highway and the Princes Highway. Between attending parliamentary functions for different causes in the community, meeting with constituents and stakeholders about proposed legislation, sitting in the President's chair, and chairing committees and inquiries, it has been a challenging yet rewarding experience for me, and I look forward to continuing onwards and upwards, working to improve the quality of life of the people and families of New South Wales.

I conclude that we are all political instruments in this Chamber orchestra and when we play together there is no sweeter sound to the ears of any living person. It has been my pleasure, and a great honour, to serve the Christian Democratic Party and to play a small part in this political orchestra over the past three years, and I look forward to playing my part in the next movement.

SOUTHERN YOUTH AND FAMILY SERVICES ASSOCIATION

The Hon. GREG PEARCE [10.18 p.m.]: I draw the attention of the House to correspondence I have received from the Southern Youth and Family Services Association Inc. I encountered the organisation in my time as Minister for the Illawarra and also when I had responsibility for part of the Housing portfolio. It does some very important work in the Illawarra in relation to homelessness, specialised youth services and other services that their constituents require. The public housing task involves a great deal of difficulty, including dealing with the homeless, youths and the other services that are required by the very many people who these days need help. That job is beyond the capacity of this Government, or any government. That is why it is so important that government does partner with the community sector and works to improve the housing stock. Some of that stock is inappropriate, but there is a need in particular to link services to ensure that those with many needs are assisted.

The Southern Youth and Family Services Youth Foyer project is one that has great merit. Quite rightly, Southern Youth and Family Services is concerned at the current status of funding. The service was, in the past, funded through the National Partnership Agreement on Homelessness. This is a service that I certainly commend. I visited it and saw it in action. It does a number of very important things. First of all, the service was able, through a community organisation, to utilise existing public housing that was inappropriate—it was aged and deteriorating. However, the service was able to raise funds and, together with public funding, it created housing that is acceptable and conducive to helping particularly homeless youth to gain the skills they need to live in the community and to obtain employment. Unemployment, particularly in areas like the Illawarra, especially for youth, is a major problem that often accompanies homelessness and the need for other services.

The Commonwealth has changed its funding mix. That is appropriate; it needs to happen from time to time. We need to see real attention focused on the whole question of funding. The tendency over the past decade or more has been to move to shorter term funding. That increases the pressure on community organisations to continually apply and reapply for their funding. There has been an emphasis on increased competitiveness, which is a matter of philosophy that I guess I agree with. But an improved service delivery must accompany that increase in competition. Of course, one of the key things we have to address is a problem that exists right across our entire system, that is, the crossover between Commonwealth and State funding and Commonwealth and State obligations. This is certainly a matter that needs to be addressed in relation to the issue of homelessness and affordable housing.

I particularly raise this issue today, and I will certainly raise it with the current Minister, because the Southern Youth and Family Services Youth Foyer is a remarkable model. It integrates services, and it gives young people the certainty of having a home to go to and provides them with the skills and support necessary to move them out of public housing. That should be an objective of our whole system: to give people a hand up and to move them out of the system. It should not be a place where people end up but, rather, a transitional place. Accordingly, I am very pleased to recommend the service and encourage members to have a look at the service themselves.

MULTICULTURALISM

The Hon. ERNEST WONG [10.23 p.m.]: Today is my first anniversary as a member of the Legislative Council. I take this opportunity to thank all the members of this House for their support throughout the year. I survived. In Australia the rights we have as a citizen to an education, to freely assemble, to celebrate

cultural festivities, to have our religion and traditions tolerated rather than forcefully suppressed, and to organise into groups that promote and foster the support of a culture, underpin a richly interwoven fabric of Australian society, that is, multiculturalism, which has been in my heart throughout my political life.

Multiculturalism has been an official policy in several Western nations since the 1970s, for reasons that have varied from country to country. One reason is that many of the great cities of the Western world are increasingly made of a mosaic of cultures. Canada was the first country to adopt multiculturalism in 1971, followed in 1973 by Australia, where it is maintained today. Since World War II, approximately seven million immigrants from over 150 countries have settled in Australia, and collectively speak approximately 260 languages. The White Australia policy was quietly dismantled by various changes to the immigration policy. As I said, the full political introduction of official policies of multiculturalism was not until 1973.

However, multiculturalism has not always been music to the ears of many politicians. The election of John Howard's Liberal-Nationals Coalition Government in 1996 was a major watershed for Australian multiculturalism. Howard had long been a critic of multiculturalism, releasing his One Australia policy in the late 1980s. Now, in 2014, we are once again experiencing the backward movement of such a significant policy of Australia by the Liberal-Nationals Coalition Federal Government trying to scrap the protection of ethnic communities against racial bigotry comments in public. Multiculturalism was an original political concept and policy devised to respond to the increasing ethno-cultural diversity of Australian society. By the late 1970s there was a growing acceptance of broader expressions of cultural diversity or multiculturalism within Australian society.

The struggle against racism and the encouragement of multiculturalism in Australia still require a moderate change in attitudes and behaviour. Racism is a social construct, not a scientific one. Together with legislation, the benefits of migration to Australia and tolerance and acceptance need to be taught and emphasised, first and foremost, within the education system. It should be a responsibility of all educational establishments, including those with few or no ethnic minority pupils, to foster the sharing of different stories and experiences, religions, foods, music, clothing, drama, painting, poetry and, in particular, the value and morality underlying the various cultures. The sharing of different knowledge and behaviours, as well as learning to understand and accept and appreciate cultural differences, needs to be a large part of the Australian school curriculum.

Research has shown there are limitless benefits to multiculturalism in the curriculum, so much in fact that its absence can prove to be a hindrance to students. We need to instil in our children from a very early age not to fear and despise but to admire and respect. Multiculturalism is important because it dilutes and dissipates the divisiveness of ignorance. It is important because it encourages dialogue, often between radically different cultures that have radically different perspectives. It is important because it softens the indifference of tolerance and embraces it with the genuine humanity of acceptance. It is a bridge between the divide of tolerance and acceptance. By accepting difference with goodwill, Australia's social and cultural diversity is strengthened and enriched and paves the way for future generations.

We are great believers that Australian multiculturalism is one of our nation's greatest success stories and is the pillar of our national identity. It enriches Australia economically, socially, culturally and politically. No doubt some of us feel a sense of lost ethnic identity as the cultural representation within our community becomes more and more diverse, but humans are migratory animals. Unfailingly, history continues to demonstrate our search for a more harmonious life in times of political, climatic, pandemic or discriminatory upheaval, and Australia succeeds in providing that lifestyle. It is incumbent on us to exploit the best of all of our differences for the benefit of as many of us as possible and, by so doing, establish a climate of trust within the community rather than one of suspicion.

A true conception of multiculturalism must begin by breaking down the false opposition between unity and difference, between solidarity and diversity, or, as it is most frequently formulated in social and political theory, between universalism and particularism. Multiculturalism is an exercise in dealing with the realities of pervasive and increasing diversity in contemporary societies; it is a response beyond politics to diversity that seeks to articulate the social conditions under which difference can be incorporated and order achieved from diversity. [*Time expired.*]

FEDERAL BUDGET

Mr DAVID SHOEBRIDGE [10.28 p.m.]: Tony Abbott's budget is the most brutal and regressive in memory. It is only his first. Assuming he serves his whole term, that means another two budgets just like it. It is

hard to imagine what our country would look like after three of them. The media has been covering the budget nonstop for the past two weeks, with billions of dollars cut from Health, Education and the Environment. Yet there are still appalling stories coming out each day about more programs that have been cut, more jobs that will be lost, and more promises that have been broken. Yesterday there were reports that the Asbestos Safety and Eradication Agency had been cut. Today there were reports that money was slashed from the Royal Commission into Institutional Responses to Childhood Sexual Abuse to fund Abbott's politically motivated pink batts inquiry. Tomorrow we may hear about ABC journalists losing their jobs, and the day after that we will see more cuts and job losses confirmed.

Anyone who has had even a cursory flick through the budget papers knows that every page has cuts like these that together will affect millions of people and tear apart the fabric of what is a fair society. I will take the limited time available to describe some of the less publicised but equally mean-spirited cuts in this budget. Tony Abbott has axed the National Partnership Agreement on Preventive Health to pull \$368 million out of programs that reduce lifestyle-related chronic disease despite the fact that these diseases place the largest burden on our healthcare system and that investing in prevention will substantially lower the risk to public health in the future.

The Abbott Government is cutting the Australian Animal Welfare Strategy to save \$3.3 million over three years. That is in addition to the \$2.3 million cut from the live animal exports improved animal welfare program. In addition, \$87.1 million in direct funding to the arts will be cut despite the fact that the arts contribute around \$86 billion per year to gross domestic product and directly employ more than 500,000 people. Compared to industries like mining, which receives far greater subsidies, the arts punch well above their weight.

Tony Abbott has cut \$1 billion from local councils. That means cuts to Meals on Wheels, roads and pedestrian access in local neighbourhoods. Tony Abbott has cut the Commonwealth Human Rights Education Program to save \$1.8 million. Human rights are not high on Tony's agenda. He has ripped \$9.5 million from the Indigenous Languages Support program. Not funding this program will mean that we may well lose some Aboriginal languages forever. Tony Abbott has cut \$239 million from the general Indigenous Affairs budget. Abbott thinks our First People have it too good in this country. Tony Abbott has cut legal aid funding by \$15 million next year alone. That will cripple Legal Aid NSW, which currently receives 73 per cent of its funding from the Federal Government. He has cut \$2.8 million from the Great Barrier Reef Marine Park Authority despite the Government's own approvals to dump mine tailings on the reef, which mean it is under greater pressure than ever.

Tony Abbott has slashed the National Landcare Program, ripping \$483.8 million from a program that repairs and protects our beautiful country. Tony Abbott has cut \$4 million from the Tasmanian Forest Reserve Tourism component of the Tasmanian Forests Agreement Implementation Package on the grounds that he does not believe more forests should be protected. He has cut \$7.6 billion from international development assistance. One of the richest countries on the planet is cutting programs that feed starving children and give the desperately poor access to clean water. He has ended the National Partnership Agreement on Improving Public Hospital Services for a saving of \$201 million. He attacks public hospitals because he simply does not believe in them.

Funding to the Partners in Recovery program is cut by \$53.8 million, further reducing support for people with a severe and persistent mental illness. Abbott has axed the anti-smoking National Tobacco Campaign to save \$2.9 million after taking thousands from big tobacco to get elected. "What a guy", they say. The Abbott Government has pulled \$914.6 million out of the Tools for Your Trade program, leaving apprentices across the country struggling on very modest wages to buy the tools they need for training. He has cut \$1.3 billion from the Australian Renewable Energy Agency, effectively robbing our future. The Australian Research Council has been cut by \$74.9 million, meaning thousands of university research programs will be unviable and a further \$146 million taken from research by the CSIRO. Science is an obstacle to Tony's political plans.

These cuts are all in addition to cuts to family benefit payments, the unemployment safety net, the Pharmaceutical Benefits Scheme, the Medicare co-payment and the estimated \$80 billion being ripped out of health and education. The Greens NSW join with those across the country in saying we need to stop this budget. Tony Abbott wants to change the country but right now most Australians want to change the Government. It is time to bust his budget and make him an historic half-term Tony.

WOMEN IN PARLIAMENT

The Hon. CHARLIE LYNN (Parliamentary Secretary) [10.33 p.m.]: I congratulate my parliamentary colleague the Hon. Catherine Cusack on her appointment as chairwoman of the Commonwealth Women's

Parliamentary Steering Committee and on her report on the lack of women in Parliament. I regard her report as timely in view of recent debates on the need for democratic reform within our major political parties. I share her concerns over the fact that Australia is currently ranked forty-seventh among Commonwealth countries in its representation of women members of Parliament. This is reflected in today's statistics, which show that the number of female politicians in Australia has fallen from 254 in 2010 to 239 in 2014. In New South Wales only 23.7 per cent of members of Parliament are women. In Queensland the figures are even worse where the proportion is just 21.3 per cent. Within the New South Wales Coalition the proportion of women in Parliament is worse again, with just 19 per cent of women represented in the Liberal Party and 19.2 per cent in The Nationals.

The Hon. Catherine Cusack has identified three key issues that contribute to the continuing decline of women in Parliament. Her first broadside is directed towards the media for their portrayal of female politicians—particularly commentators who are often more concerned with hairstyle, fashion choices or the size of their bums rather than their intellectual and leadership abilities. She also identifies the current pathways to preselection as the most formidable barrier women face in their quest to enter Parliament. Obstacles in these pathways are invisible but well established by existing factional brotherhoods.

The province I represent in south-western Sydney is a good example. The province covers 13 electorates from Auburn to Granville to Wollondilly. Labor holds seven of these electorates. Two of these are represented by women. The Liberal Party holds the remaining six seats, none of which are represented by women. I represent the area as a Liberal member of the Legislative Council, which means we have seven male members and no female representation. This is not reflective of the population of approximately 1.5 million people, which includes around 750,000 women. The area has the most diverse cultural mix in Australia and the strongest population growth in the country. It is regarded as the economic engine room of our nation.

Throughout the south-west Sydney province women are represented at the highest levels of academia, business, the professions and sport. In fact, they are represented in every discipline except politics. It is not that we lack diversity, talent, motivation and ambition within our female membership. One of our outstanding Liberal Party members is a refugee from the war in Vietnam, Dai Le. Dai lived in refugee camps with her mother and two sisters for four years in two foreign countries before arriving in Australia with nothing but the clothes she wore. Since then she has mastered our language, obtained a university degree, raised a family and worked for our national broadcaster in both radio and television. She joined the Liberal Party so she could be a voice for her Asian community in south-western Sydney.

The current mayor of Camden, Councillor Lara Symkowiak, was elected as Camden's first Liberal mayor and is the youngest person to ever hold the position. Lara has impeccable qualifications, which include a Bachelor of Commerce, a Bachelor of International Studies and a Master's degree in Secondary Education. I know that both Dai Le and Lara Symkowiak have aspirations to enter State or Federal politics. So I was more than surprised that neither they nor any other talented young women of similar calibre nominated for my Legislative Council position, which I will vacate at the end of my term in March 2015. In fact, I am absolutely perplexed as to how a position that commands a six-figure salary with a secure eight-year tenure could attract only one applicant, apparently an unknown tradesman with an invisible history in the Liberal Party.

If the Liberal Party continues with a preselection system that discourages talented females from even applying to represent it in Parliament, we risk becoming a white-bread Anglo party of unrepresentative political hacks. Recent public exposure of shady practices within our male-dominated political system has created a high level of public cynicism. There is now an urgent need for change within the preselection processes of both major political parties in New South Wales. Such change needs to include democratic and transparent systems that encourage the extraordinary talent we have among 50 per cent of the population who are unfairly represented in this Parliament. Once again, I congratulate the Hon. Catherine Cusack on her strong advocacy of the need for a more balanced representation of women in our State and Federal parliaments and I can only hope the major political parties heed her message.

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

Motion agreed to.

The House adjourned at 10.38 p.m. until Thursday 29 May 2014 at 9.30 a.m.
