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LEGISLATIVE COUNCIL

Tuesday 14 October 2014

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

The President read the Prayers.

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

ASSENT TO BILLS

Assent to the following bills was reported:

Courts Legislation Amendment (Broadcasting Judgments) Bill 2014
 Drug Court Legislation Amendment Bill 2014
 Passenger Transport Bill 2014
 Snowy Hydro Corporatisation Amendment (Snowy Advisory Committee) Bill 2013
 Water Management Amendment Bill 2014
 Road Transport Amendment (Alcohol and Drug Testing) Bill 2014
 City of Sydney Amendment (Elections) Bill 2014
 Mutual Recognition (Automatic Licensed Occupations Recognition) Bill 2014
 Bail Amendment Bill 2014
 Mining Amendment (Small-Scale Title Compensation) Bill 2014

ADMINISTRATION OF THE GOVERNMENT OF THE STATE

The PRESIDENT: I report receipt of the following message from the Hon. Thomas Frederick Bathurst, AC, Lieutenant-Governor of the State of New South Wales:

T Bathurst
 LIEUTENANT-GOVERNOR

Office of the Governor
 Sydney 2000

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

Thursday, 25 September 2014

ADMINISTRATION OF THE GOVERNMENT OF THE STATE

The PRESIDENT: I report receipt of the following message from Her Excellency Professor Dame Marie Bashir, AD, CVO, former Governor of the State of New South Wales:

Marie Bashir
 GOVERNOR

Office of the Governor
 Sydney 2000

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

Friday, 26 September 2014

GOVERNOR OF NEW SOUTH WALES

The PRESIDENT: I report receipt of the following message from His Excellency General the Honourable David Hurley, AC, DSC (Retd), Governor of the State of New South Wales:

David Hurley
 GOVERNOR

Office of the Governor
 Sydney 2000

General David Hurley has the honour to inform the Legislative Council that Her Majesty the Queen has been graciously pleased, by Commission under her Royal Sign Manual and the Public Seal of the State of New South Wales, bearing date at St James's the eighth day of May 2014, to appoint him to be the Governor in and over the State of New South Wales in the Commonwealth of

Australia; and that this day he took the Oath of Allegiance and the Official and Judicial Oath before the Honourable Thomas Bathurst, Chief Justice of the Supreme Court of New South Wales, and assumed the administration of the Government of the State accordingly.

Thursday, 2 October 2014

Motion by the Hon. Duncan Gay agreed to:

That the following Address be adopted and presented by the Whole House to the Governor in reply to His Excellency's message communicating the fact of his assumption of the administration of the Government of the State:

To His Excellency General the Honourable David Hurley, AC, DSC (Retd), Governor of the State of New South Wales in the Commonwealth of Australia.

MAY IT PLEASE YOUR EXCELLENCY—

We, the members of the Legislative Council, in Parliament assembled, desire to express our thanks for Your Excellency's message informing us of your assumption of the administration of the Government of the State by virtue of a Commission from Her Most Gracious Majesty appointing you Governor.

We offer Your Excellency our sincere congratulations on your appointment by Her Majesty, confident that your administration will reflect the distinction and devotion to duty already displayed in your services to the State in other fields.

MENTAL HEALTH COMMISSION

Report

The President tabled, pursuant to the Mental Health Commission Act 2012, a report of the Mental Health Commission entitled "Living well: Putting people at the centre of mental health reform in NSW: A report", dated October 2014, received out of session and authorised to be made public on 8 October 2014.

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

INDEPENDENT COMMISSION AGAINST CORRUPTION

Reports

The President tabled, pursuant to the Independent Commission Against Corruption Act 1988, the following reports of the Independent Commission Against Corruption:

- (1) "Investigation into the conduct of a RailCorp manager and a Housing NSW employee", dated October 2014, received out of session and authorised to be made public on 13 October 2014.
- (2) "Investigation into concerns that Sydney Local Health District engaged consultants at the Yaralla Estate because of political donations and links to the Liberal Party", dated October 2014, received out of session and authorised to be made public on 13 October 2014.

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

REGISTER OF DISCLOSURES BY MEMBERS

The President tabled, pursuant to the Constitution (Disclosures by Members) Regulation 1983, a copy of the Register of Disclosures by Members of the Legislative Council for the period 1 July 2013 to 30 June 2014, as furnished by the Clerk.

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

CENTENARY OF FIRST WORLD WAR

The PRESIDENT: In mid-October 1914, as the volunteers of the Australian Imperial Force were gathering at Albany awaiting a date to set sail for their great adventure in defence of empire, the Western Front was already alight with mortal combat. On both sides of the great globe there was a race to the sea—but how different they were. On the Western Front, as it was coming to be called, both protagonists were engaged in a titanic race to the sea—Germany anxious to seize the Channel ports and separate England from its European allies, and the Allied Powers desperate to prevent that.

On the other side of the world, thousands of young men were rushing to Albany in Western Australia to join the adventure of the Australian Imperial Force and to seek battle and adventure alongside their empire allies. In the north, as they approached the coast, men were tired and exhausted and starting to realise what a terrible war this was as they lost comrades, endured hardship and faced death. They knew what war was all about. In the south they were still bright of eye and sturdy of limb, full of flowing comradeship and eager for adventure. They had no idea what war was all about. That was north and south, but what of east and west?

At almost the same time, to the east, in far distant Constantinople—ancient capital of the far-flung Ottoman Empire—a weak sultan and a scheming war Minister were, in conjunction with their German advisers, planning a naval assault upon the Russian ports of the Black Sea, which they would launch on 28 October, bringing that fading empire into a war. That war would destroy it utterly and, in a move that resonates so dreadfully today, would bring about the end of the last recognised caliphate. That would be the work of a Turkish Military Attaché in Sofia, Bulgaria, who in the last days of October prepared for his return to Turkey and his date with destiny. He was Lieutenant-Colonel Mustafa Kemal.

In the still innocent west, in Pittsburg, Pennsylvania, Samuel Harden Church, President of the Carnegie Institute, produced the first great American response to the war. His tract, published in London in October and entitled "The American Verdict on the War", came into being as a response to a manifesto issued by 93 German intellectuals—including 13 Nobel laureates—seeking to justify Germany's invasion of Belgium and its role in precipitating the carnage. For the first time, an influential American voice was raised arguing that that great nation could not stand idly by when confronted with the moral challenge inherent in the defence of liberty. North and south, east and west, none was to be spared its share of this unfolding calamity. Lest we forget.

DISTINGUISHED VISITORS

The PRESIDENT: I welcome into my gallery Mr Peter Topura, Director—Procedures, Autonomous Region of Bougainville House of Representatives, who is here on secondment as part of the twinning program between the Bougainville and New South Wales parliaments.

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

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business item No. 2006 outside the Order of Precedence objected to as being taken as formal business.

EORA ACTION PLAN

Motion by the Hon. LYNDA VOLTZ, on behalf of the Hon. AMANDA FAZIO, agreed to:

- (1) That this House notes that:
 - (a) Indigenous Australians face an unacceptable risk of contracting HIV-AIDS and that a different approach is required to tackle this problem;
 - (b) in some remote Aboriginal communities, almost half of young women and a third of young men are infected with either chlamydia, gonorrhoea or trichomonas and the risk of HIV transmission is significantly increased in the presence of an existing sexually transmitted infection; and
 - (c) the number of new HIV cases attributable to injecting drug use is 12 times higher in Aboriginal and Torres Strait Islander populations and more women and heterosexuals are affected by HIV and more Indigenous gay men are engaging in high-risk behaviour.
- (2) That this House commends the development of the Eora Action Plan, which was launched at the opening of the International Indigenous Pre-Conference on HIV and AIDS in Sydney.
- (3) That this House notes that the Eora Action Plan sets targets that go above and beyond Australia's newly released national strategies for blood-borne viruses and sexually transmissible infections and that the plan aims to:
 - (a) reduce new HIV infections by 50 per cent;
 - (b) eliminate all mother-to-child transmissions;

- (c) ensure antiretroviral treatments are available and accessible and correctly utilised by 80 per cent of Indigenous Australians;
 - (d) ensure a 50 per cent reduction in other sexually transmitted infections; and
 - (e) reduce rates of sharing injecting equipment by 80 per cent.
- (4) That this House calls on the Government to support the Eora Action Plan and to work with all organisations involved in HIV prevention and in partnership with Aboriginal and Torres Strait Islander peoples and communities to achieve these goals.

WRITTEN PORTRAITS AWARDS

Motion by the Hon. LYNDIA VOLTZ, on behalf of the Hon. AMANDA FAZIO, agreed to:

- (1) That this House notes that:
- (a) the third Written Portraits Awards were held on Wednesday 10 September 2014 at the Dendy Opera Quays Cinema Complex;
 - (b) Written Portraits is a national annual writing competition that showcases young Australian writing talent and provides a creative platform for the expression of inner feelings and emotions associated with being a teenager;
 - (c) the competition was launched in 2012 during the National Year of Reading to inspire and motivate young people to explore their writing skills, and to support the need to tackle falling literacy standards in Australia;
 - (d) the competition was initiated by Renata Cooper, the philanthropic Chief Executive of Forming Circles, an ethical investment company; and
 - (e) this year the sponsors were: Forming Circles—creating social and ethical investment success stories; Edval Timetables; Ivvy—Wired Realtime; Buzz Web Media; 12 Below creative agency; and Green Olive Press which publishes the anthologies.
- (2) That this House acknowledges that the competition is continuing to create opportunities for young Australian writers to be published and that in the past two years the competition has been a great success with increasing numbers of students across Australia participating and the judging panel noting that entries were inspired and expressive, displaying an array of strength, imagination and storytelling that exceeded all expectations.
- (3) That this House further notes that:
- (a) in 2014 the theme for the competition was "People, Places and Things that Inspire Me";
 - (b) the winners for the two categories of 13-15 years and 16-18 years for Written Portraits 2014 were Abbey Zito and Cassandra Haywood, who won \$500 for themselves and \$5,000 for their schools to go towards their literacy programs;
 - (c) at the awards ceremony, two books were launched, the anthology *Written Portraits 2014: People, Places and Things that Inspire Me* and *Spellcaster Chronicles: Book 1* by the winners of the 2013 "Book Deal", Isobel and Josephine Crnkovic; and
 - (d) the ceremony was well attended, with special guest speakers including award-winning illustrator-director Simon Rippingale who most recently directed *A Cautionary Tail*, a short animated film featuring Cate Blanchett and Barry Otto, and acclaimed author Joanne Fedler who has written nine books including an international best seller, and has sold over 600,000 copies.
- (4) That this House commends Renata Cooper for establishing Written Portraits and congratulates all those associated with the Written Portraits project including communications manager Shelly Smith.

MULTICULTURAL AND INDIGENOUS MEDIA AWARDS

Motion by the Hon. LYNDIA VOLTZ, on behalf of the Hon. AMANDA FAZIO, agreed to:

- (1) That this House notes that:
- (a) the third Multicultural and Indigenous Media Awards Presentation Dinner was held on Wednesday 10 September 2014 at New South Wales Parliament with over 145 representatives from multicultural and Indigenous media outlets, joined by many members of Parliament, community representatives and distinguished consular representatives to recognise and celebrate the achievements of multicultural and Indigenous media;
 - (b) the third annual Multicultural Media Awards, now proudly re-named the Multicultural and Indigenous Media Awards, celebrates the achievements of remarkable people in multicultural and Indigenous media and was established by the Hon. Shaoquett Moselmane, MLC;

- (c) the night was made extra special with the presence of the former Premier and former Foreign Minister the Hon. Bob Carr who spoke of the ability of multicultural and Indigenous journalists to bring news to every household like never before and to break down social and cultural barriers as well as prejudices faced by new and Indigenous Australians alike;
 - (d) multicultural media and Indigenous media are not only a wonderful and effective tool for dissemination of information, but also empower migrant and Indigenous communities;
 - (e) the evening was hosted by Pino Migliorino, Managing Director Cultural Perspectives Group, and the Welcome to Country was given by the Hon. Linda Burney, MP, Deputy Leader of the Opposition;
 - (f) the following representatives of the diplomatic corps were in attendance:
 - (i) His Excellency Mr Avinder Singh Ranga, Consul General of India;
 - (ii) His Excellency Mr George Bitar Ghanem, Consul General of Lebanon;
 - (iii) His Excellency Mr Li Huaxin, Consul General of the People's Republic of China in Sydney;
 - (iv) His Excellency Mr Marford Angeles, Consul of the Republic of the Philippines;
 - (v) Mr Deng Cong, Vice Consul of the People's Republic of China in Sydney; and
 - (vi) Mrs Niki Panagiotou, Vice Consul of the Consulate General of Greece.
 - (g) the following members of the New South Wales Parliament also attended:
 - (i) the Hon. John Robertson, MP, Leader of the Opposition;
 - (ii) the Hon. Amanda Fazio, MLC, Opposition Whip;
 - (iii) the Hon. Peter Primrose, MLC, shadow Special Minister of State;
 - (iv) the Hon. Michael Daley, MP, shadow Treasurer;
 - (v) Mr Ron Hoenig MP, shadow Minister for Energy; and
 - (vi) Mr Guy Zangari MP, shadow Minister for Citizenship and Multicultural Affairs.
 - (h) the judging panel comprised: Ms Majida Abboud-Saab, former executive producer SBS Arabic Radio; Ms Mykaela Saunders, lecturer University of Sydney; and Dr Zoran Becvarovski, surgeon, St George Private Hospital; and
 - (i) the sponsors for the awards were: Arab Bank Australia, ATax Partners, Chartered Practicing Accountants, Mitry Lawyers and Transway Logistics International.
- (2) This House congratulates the winners of the 2014 Awards, including:
- (a) Malarndirri McCarthy, NITV, and Kumud Merani, SBS Radio Hindi Language Program, Journalists of the Year;
 - (b) Romeo Cayabyab, *The Filipino Australian*, and Freedy Handa, *The Indian Telegraph*, Photographers of the Year;
 - (c) Maja Jovic, Neos Kosmos and Geoff Bagnall, *National Indigenous Times*, News Reporting;
 - (d) Mr Gerry Georgatos, *The Stringer*, and Dr Woolombi Waters, *National Indigenous Times*, Editorial Reporting;
 - (e) Miss Lok Hei [Feemi] Lai, *Sing Tao Daily*, Coverage of Community Affairs;
 - (f) Mohamad Taha, Australian Broadcasting Corporation, Online News Coverage; and
 - (g) Mr Paolo Rajo, La Fiamma, MIMA Hall of Fame for 30 Years of Service.

PAKISTAN INDEPENDENCE DAY

Motion by the Hon. LYNDIA VOLTZ, on behalf of the Hon. AMANDA FAZIO, agreed to:

- (1) That this House notes that:
 - (a) on Sunday 24 August 2014, the Pakistan Association of Australia [PAA] held a very successful celebration of the sixty-eighth Pakistan Independence Day at Fairfield Showgrounds at Prairiewood;
 - (b) the celebration reflected the true colours of Pakistan in regards to culture, history, literature and the arts;

- (c) a cultural delegation from Pakistan lead by world famous singer Sanam Marvi performed during the day; and
 - (d) the Cultural Minister of Pakistan the Hon. Sharmeeela Faruqi, MP, also attended along with many members of the Federal and New South Wales parliaments and representatives of the diplomatic corps.
- (2) That this House congratulates the PAA, including the President Mr Shahid Iqbal and the Secretary Dr Syed M Abbas Rizvi, on organising this successful event and on working to bring communities together.

CHALDEAN NATIONAL CONGRESS

Motion by the Hon. LYNDA VOLTZ, on behalf of the Hon. AMANDA FAZIO, agreed to:

- (1) That this House notes that:
- (a) the Chaldean National Congress Inc. held a fundraising dinner at the Lantana Reception Hall at Bonnyrigg on Sunday 24 August 2014;
 - (b) the Chaldean National Congress is a non-government organisation that was established on 29 April 2002 with the sole purpose of monitoring and reporting to the international community on the injustice and persecution of Chaldean Christians in their homeland of Iraq;
 - (c) the Chaldean National Congress believes that democracy is the highest model to build civilised societies since democracy establishes justice, freedom and promotes humanitarian principles;
 - (d) at present, hundreds of thousands of Christian minorities have fled their homeland due to the civil unrest and have gone to the neighbouring state of Kurdistan in order to avoid any further persecution due to their Christian beliefs; and
 - (e) the fundraising dinner was very successful and was attended by many political and religious leaders from Christian and Muslim faiths including:
 - (i) the Hon. Chris Bowen, MP;
 - (ii) the Hon. Philip Ruddock, MP;
 - (iii) Mr Guy Zangari, MP;
 - (iv) Mr Nick Lalich, MP;
 - (v) the Hon. Shaoquett Moselmane, MLC;
 - (vi) the Hon. Amanda Fazio, MLC;
 - (vii) the Hon. David Clarke, MLC;
 - (viii) Mr Tony Issa, MP; and
 - (ix) Mr Andy Rohan, MP.
- (2) That this House congratulates the Chaldean National Congress in Australia and New Zealand on its efforts to support Chaldean Christians who are suffering persecution because of their religious beliefs.

EID MILAN CELEBRATION

Motion by the Hon. LYNDA VOLTZ, on behalf of the Hon. AMANDA FAZIO, agreed to:

- (1) That this House notes that:
- (a) on 5 August 2014, the Pakistan Association of Australia [PAA] held its ninth Eid Milan Celebration at New South Wales Parliament which was hosted by the Hon. Shaoquett Moselmane, MLC;
 - (b) Eid marks the end of the Holy month of Ramadan and is celebrated in a joyous fashion; and
 - (c) present at the Eid Milan celebration were:
 - (i) Mr Shahid Iqbal, President of the PAA;
 - (ii) Dr Syed Rizvi, Secretary PAA;
 - (iii) His Excellency Mr Abdul Aziz Uqaili, Consul General of Pakistan in Sydney;
 - (iv) Mr Shifaat Kaleem, Consul, Consulate General of Pakistan in Sydney;
 - (v) the Hon. Victor Dominello, MP, Minister for Citizenship and Communities;

- (vi) the Hon. John Robertson, MP, Leader of the Opposition;
 - (vii) the Hon. Linda Burney, MP, Deputy Leader of the Opposition;
 - (viii) Dr Andrew McDonald, MP, shadow Minister for Health;
 - (ix) the Hon. Barbara Perry, MP, shadow Minister for Ageing and Disability Services;
 - (x) the Hon. Paul Lynch, MP, shadow Attorney General;
 - (xi) Ms Melanie Gibbons, MP, member for Menai;
 - (xii) Dr Mehreen Faruqi, MLC;
 - (xiii) the Hon. Amanda Fazio, MLC; and
 - (xiv) the Hon. Shaoquett Moselmane, MLC.
- (2) That this House congratulates the PAA on holding its annual Eid Milan celebration at Parliament and for its support of multiculturalism and a harmonious society in New South Wales.

GLOBAL CANTONESE ASSOCIATION OF AUSTRALIA

Motion by the Hon. LYNDIA VOLTZ, on behalf of the Hon. AMANDA FAZIO, agreed to:

- (1) That this House notes that:
- (a) on 9 September 2014 at the Sydney Town Hall, the Global Cantonese Association of Australia [GCAA] held an inaugural gala attended by around 700 people;
 - (b) the GCAA is a non-profit, non-governmental organisation established by Australian Chinese who love their home country and their country of residence and citizenship;
 - (c) members of the group encompass ethnic Chinese philanthropists, professionals, intellectuals, community leaders and people from all walks of life in the Australian Chinese community;
 - (d) the mission of the GCAA is to strengthen economic, education and cultural ties through networking and cooperation;
 - (e) the GCAA intends to act as a platform to promote social harmony and the development of public welfare in Australia, China and internationally through long-term friendship networks; and
 - (f) in attendance at the gala were many interstate and international dignitaries including:
 - (i) His Excellency Li Hua Xin, Consul General of the People's Republic of China in Sydney;
 - (ii) Mr Li Ziliu, President of the Global Cantonese Association of the Cantonese;
 - (iii) Mr Wang Guo Giang, the Hon. Chairman and Principal President of the Federation of Hong Kong Guangdong Community Organisations;
 - (iv) Ms Jenny Hong, founding President of GCAA;
 - (v) Mr Nick Varvaris, MP, representing the Prime Minister;
 - (vi) Mr Matt Thistlethwaite, MP, representing the Leader of the Federal Opposition;
 - (vii) Ms Michelle Rowland, MP, Federal shadow Minister for Citizenship;
 - (viii) Mr Mark Coure, MP, representing the Premier;
 - (ix) the Hon. John Robertson, MP, Leader of the Opposition;
 - (x) the Hon. Amanda Fazio, MLC;
 - (xi) Mr Jonathan O'Dea, MP;
 - (xii) the Hon. Helen Sham-Ho, OAM; and
 - (xiii) Dr Peter Wong.
- (2) This House congratulates the GCAA on holding a very successful inaugural gala and wishes it well in its future activities.

BUSINESS OF THE HOUSE**Formal Business Notices of Motions**

Private Members' Business item No. 2022 outside the Order of Precedence objected to as being taken as formal business.

WORLD TOURISM DAY**Motion by Ms JAN BARHAM agreed to:**

- (1) That this House notes that:
 - (a) 27 September 2014 is World Tourism Day, an annual celebration to highlight tourism's social, political and economic value;
 - (b) the theme for this year's World Tourism Day is Tourism and Community Development, focusing on the ability of tourism to empower people and provide them with skills to achieve change in their local communities; and
 - (c) responsible tourism involves businesses making their product, business and environment more responsible and sustainable.
- (2) That this House acknowledges the many entrants from all over New South Wales who entered this year's Tourism Awards, including Cape Byron State Conservation, winner of a Silver Award for Tourist Attractions on the North Coast, and Arakwal Dolphin Dreaming Cape Byron, the winner of the Indigenous Tourism Award for the North Coast.
- (3) That this House thanks the many individuals and organisations across New South Wales who have contributed to and participated in tourism over this last year.

BUSINESS OF THE HOUSE**Formal Business Notices of Motions**

Private Members' Business items Nos 2006, 2030, 2032 and 2034 outside the Order of Precedence objected to as being taken as formal business.

TABLED PAPERS NOT ORDERED TO BE PRINTED

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

INDEPENDENT TRANSPORT SAFETY REGULATOR**Report**

The Hon. Matthew Mason-Cox tabled the report of the Independent Transport Safety Regulator entitled "Implementation of the NSW Government's Response to the Final Report of the Special Commission of Inquiry into the Waterfall Accident: Reporting period April 2013 to March 2014", dated October 2014.

Ordered to be printed on motion by the Hon. Matthew Mason-Cox.

LEGISLATION REVIEW COMMITTEE**Report**

The Hon. Dr Peter Phelps tabled the report entitled "Legislation Review Digest 62/55", dated 14 October 2014.

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

JOINT SELECT COMMITTEE ON SENTENCING OF CHILD SEXUAL ASSAULT OFFENDERS**Report: Every Sentence Tells a Story—Report on Sentencing of Child Sexual Assault Offenders**

The Hon. Melinda Pavey tabled report No. 1/55 entitled "Every Sentence Tells a Story—Report on Sentencing of Child Sexual Assault Offenders", dated October 2014, together with transcripts of evidence, tabled documents, correspondence and answers to questions taken on notice.

Reported ordered to be printed on motion by the Hon. Melinda Pavey.

The Hon. MELINDA PAVEY (Parliamentary Secretary) [2.48 p.m.]: I move:

That the House take note of the report.

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

COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Report: Review of the 2012-2013 Annual Reports of the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption

The Clerk announced the receipt, pursuant to the Independent Commission Against Corruption Act 1988, of report No. 5/55 entitled "Review of the 2012-2013 Annual Reports of the Independent Commission Against Corruption and the Inspector of the Independent Commission Against Corruption", dated September 2014, received out of session and authorised to be printed on 22 September 2014.

Reverend the Hon. FRED NILE [2.50 p.m.]: I move:

That the House take note of the report.

This is a very important report from the Committee on the Independent Commission Against Corruption. For the first time, the committee examined both the Independent Commission Against Corruption report and the Independent Commission Against Corruption Inspector's annual report, which are combined in one report. The committee considered the recommendation from Mr Robert McClelland that there be consideration of combining the Independent Commission Against Corruption and the Police Integrity Commission. As a result of lengthy consideration, the committee's recommendation in its report is that the Government maintain the existing integrity framework in relation to public sector and police corruption with the Independent Commission Against Corruption and the Police Integrity Commission as discrete agencies continuing to perform their current functions.

The committee pressed to have information from both the ICAC and the Director of Public Prosecutions concerning prosecutions or lack of prosecutions and received a detailed report, which indicated in regard to a number of persons the outcome was simply a statement beside a name "insufficient evidence to prosecute". That raises the question of information that the ICAC gains from its inquiry that often because of the various procedures for ICAC inquiries cannot be used in a criminal prosecution. It is a matter that the Committee on the Independent Commission Against Corruption will consider further. In due course I assume the Government will have to give some consideration as to how it can have a system where evidence gained at an ICAC inquiry can be used in a prosecution.

Debate adjourned on motion by Reverend the Hon. Fred Nile and set down as an order of the day for future day.

GENERAL PURPOSE STANDING COMMITTEE NO. 3

Government Response to Report

The Clerk announced the receipt, pursuant to standing orders, of the Government's response to report No. 30 entitled "Tourism in local communities", tabled on 6 March 2014, received out of session and authorised to be printed this day.

SELECT COMMITTEE ON GREYHOUND RACING IN NEW SOUTH WALES

Government Response to Report

The Clerk announced the receipt, pursuant to standing orders, of the Government's response to the report entitled "Greyhound racing in New South Wales: First Report", tabled on 28 March 2014, received out of session and authorised to be printed this day.

GENERAL PRACTITIONER MEDICARE CO-PAYMENT**Production of Documents: Return to Order**

The Clerk tabled, pursuant to resolution of 11 September 2014, documents relating to an order for papers regarding the Medicare co-payment, received on 25 September 2014 from the Acting Secretary of the Department of Premier and Cabinet, together with an indexed list of the documents.

Production of Documents: Claim of Privilege

The Clerk tabled a return identifying documents for which privilege is claimed and which are available only to members.

VIP GAMING MANAGEMENT AGREEMENT**Production of Documents: Return to Order**

The Clerk tabled, pursuant to resolution of 18 September 2014, a document relating to an order for papers regarding the VIP Gaming Management Agreement, received on 2 October 2014 from the Acting Secretary of the Department of Premier and Cabinet, together with an index identifying the document.

Production of Documents: Claim of Privilege

The Clerk advised members that the document, the subject of the order of the House of 18 September 2014, and a claim of privilege over the document are considered privileged and are available only to members.

Production of Documents: Dispute of Claim of Privilege

The PRESIDENT: I report to the House that on 13 October 2014 the Clerk received written correspondence from Dr John Kaye disputing the validity of a claim of privilege on certain parts of the document lodged with the Clerk on 2 October 2014 relating to the VIP Gaming Management Agreement. Pursuant to standing orders, the Hon. Keith Mason, a retired Supreme Court judge, was appointed as an independent legal arbiter to evaluate and report as to the validity of the claim of privilege. The Clerk has released the disputed document and the claim of privilege to Mr Mason.

VISITORS

The PRESIDENT: I welcome to the public gallery community services students from Nirimba TAFE who are here under a program being run by Parliamentary Education. We hope you are enjoying your visit to Parliament House today.

BUSINESS OF THE HOUSE**Withdrawal of Business**

Private Members' Business item No. 2034 outside the Order of Precedence withdrawn by Dr John Kaye.

BUSINESS OF THE HOUSE**Postponement of Business**

Business of the House Notice of Motion No. 1 postponed on motion by Mr Jeremy Buckingham and set down as an order of the day for a future day.

Government Business Orders of the Day Nos 1 to 7 postponed on motion by the Hon. Duncan Gay and set down as an order of the day for a later hour.

BUSINESS OF THE HOUSE**Suspension of Standing and Sessional Orders: Precedence of Business****Motion by the Hon. Duncan Gay agreed to:**

That standing and sessional orders be suspended to allow the moving of a motion forthwith relating to the conduct of business of the House.

Precedence of Business**Motion by the Hon. Duncan Gay agreed to:**

That Government business take precedence of debate on committee reports and budget estimates this day.

SELECT COMMITTEE ON THE PLANNING PROCESS IN NEWCASTLE AND THE BROADER HUNTER REGION**Membership**

The PRESIDENT: I inform the House that the Clerk has received advice from the Leader of the Opposition regarding nominations for membership of the Select Committee on the Planning Process in Newcastle and the Broader Hunter Region as follows:

Opposition members: Mr Donnelly
 Ms Voltz

MINE SUBSIDENCE COMPENSATION AMENDMENT BILL 2014**Second Reading**

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [3.15 p.m.]: I move:

That this bill be now read a second time.

The Mine Subsidence Compensation Amendment Bill 2014 makes very useful amendments to the Mine Subsidence Compensation Act 1961. These amendments will secure the ongoing viability of the Mine Subsidence Compensation Scheme. They will also improve and clarify the operation of the Act more generally. The Mine Subsidence Compensation Act establishes a compensation scheme for damage arising from subsidence caused by underground coalmines. The scheme provides for compensation for works to prevent or mitigate subsidence-related damage to buildings and surface improvements. It provides for compensation to repair such damage or to replace the damaged improvement.

This compensation scheme is administered by the Mine Subsidence Board and is funded by a levy on coalmine owners. New South Wales is one of only a few places in the world to have legislated such a compensation scheme. In other jurisdictions compensation for subsidence-related damage is available only by taking court action. Despite the worthy aims of the Act there is room to clarify and improve its operation. Many of its provisions were drafted over 50 years ago and they are out of step with contemporary drafting practice. For this reason a considerable amount of case law in this area has been produced. Section 12A is a good example of this. It provides compensation for works to prevent or mitigate damage anticipated to arise from subsidence.

Section 12A was considered by the High Court in 2011. The court held that compensation was payable for anticipated damage even though the subsidence itself had not yet occurred. Previously, the established position was that compensation for such works was payable only if the subsidence had actually occurred. The High Court's decision has the potential to destabilise the compensation scheme. There are a large number of properties that could now make such a claim because in theory they may be damaged by future subsidence, but in many cases the works would be unnecessary because the subsidence may never occur or, even if it does occur, the damage may be much less than predicted.

The board is well placed to make such an assessment. However, it has little control over these works because section 12A enables reimbursement for works already undertaken. It was never intended that the compensation scheme be used to fund such low-risk works on such a large scale. There has not been a rush of these claims since the High Court decision; however, the door remains open for such claims, which will seriously threaten the viability of the compensation scheme. The bill addresses this risk and clarifies that compensation under section 12A is available only for expenses incurred after the subsidence has commenced. Section 13A already empowers the board to fund or undertake works to prevent or mitigate damage in these circumstances. The bill makes several other amendments to clarify the criteria for compensation under section 12A. Currently, compensation under this provision turns on whether the damage is "reasonably anticipated".

The bill replaces this with a more-likely-than-not test. This test is clearer and more consistent with other legislation and supported by a body of case law. The bill also gives the board discretion to refuse a claim for preventative works if the costs are disproportionate to those of repairing or replacing the damaged improvement. This amendment is directed at securing the ongoing viability of the compensation scheme. Importantly, it will not prevent a person from claiming compensation if actual damage occurs.

To safeguard the interests of claimants, the bill also enlarges existing merit review rights for section 12A claims. As I noted, section 13A empowers the board to award funding for preventative works before subsidence has occurred. The bill proposes amendments to provide greater certainty and transparency about how section 13A operates. The bill introduces a formal application pathway for funding under that section. It also clarifies the criteria for deciding an application for funding under that section. In short, the board may approve an application for funding under section 13A if subsidence has not commenced, the expenditure will result in a net benefit to the fund, and there are special circumstances that justify funding before subsidence has commenced. The bill also amends section 13A to require the board to give effect to any policy declared by the Minister. This will provide further clarity about how applications for funding under that section will be decided. The bill also amends section 12B to enable persons who apply for funding under section 13A to seek merits review in the Land and Environment Court.

The bill clarifies a number of provisions relating to board approvals and compliance certificates. There are 21 mine subsidence districts across the State, which are areas vulnerable to subsidence from coalmines. The board's approval is required to build or alter an improvement or to subdivide land in these areas. This ensures that improvements are built with subsidence in mind. Subdividing land or building improvements in breach of this requirement can pose a public safety risk. At present, the maximum penalty for breaching this requirement is only 20 penalty units, or \$2,200. The bill will introduce a two-tier offence provision that distinguishes between individuals and corporations. Maximum penalties will be increased to 100 penalty units for individuals and 500 penalty units for corporations.

There is now a mismatch between approval periods under the Mine Subsidence Compensation Act and the Environmental Planning and Assessment Act. The board can issue an approval for up to two years at a time only. In contrast, an approval under the Environmental Planning and Assessment Act is valid for up to five years. This bill will enable the board to issue an approval for a period of between two and five years. These amendments will drive consistency between these two approval periods. This will increase certainty for developers and boost investment confidence in areas vulnerable to subsidence, such as the Newcastle central business district.

Sometimes improvements or subdivisions are made without the board's approval. In these circumstances, a claim for compensation is barred. However, due to a drafting oversight, the bar applies only to a section 12 claim for damage. The bar does not apply to a claim for preventative or mitigative works. In 2012, the New South Wales Supreme Court observed the need to amend the Act to rectify this anomaly. The bill makes clear that any claims for compensation are barred if they relate to an improvement or subdivision made in a mine subsidence district without board approval. Currently the bar can be lifted only if a person obtains a compliance certificate from the board. In broad terms, a compliance certificate operates as a retrospective approval of an improvement or subdivision. The test for granting a compliance certificate is cumbersome and impracticable for the board to apply.

In addition, compliance certificates can be used only by sophisticated entities to deliberately circumvent the approval requirements. The bill addresses both issues: It simplifies the test for granting a certificate and it imposes sensible restrictions on issuing compliance certificates. In summary, this bill aims to secure the ongoing viability of the compensation scheme and to clarify the operation of the Act. The

amendments will remove some current uncertainties that can make administration of the Act difficult for all involved. The amendments will ensure that the legislation remains relevant and that the important work of the board can continue. I commend the bill to the House.

The Hon. STEVE WHAN [3.23 p.m.]: I welcome the Minister's second reading speech on the Mine Subsidence Compensation Amendment Bill 2014. Because the legislation was amended in the other place the Minister was required to read the entire speech. As the Minister said, this legislation arises from a High Court case involving action taken to avoid subsidence that sets a concerning precedent for this and future governments. The Opposition supports the bill because it is a sensible response to that case. It makes amendments to the Mine Subsidence Compensation Act 1961, which provides that the Mine Subsidence Board will not pay a claim for compensation from the Mine Subsidence Compensation Fund relating to preventative or mitigative work carried out or proposed to be carried out before the relevant subsidence occurs. That does not mean that approval cannot be granted to undertake work in anticipation of subsidence. Members will understand how important such work is when we consider the case at issue.

The 2011 High Court case involved Jemena Gas Networks (NSW) Ltd and the Mine Subsidence Board. Jemena, which owns the gas pipeline between Moomba and Sydney, undertook work on the pipeline once it became aware that coalmining operations would occur beneath it. It was predicted that the planned coalmining work would cause subsidence and damage to the pipeline unless preventative work was undertaken. Jemena did that work and then claimed compensation from the Mine Subsidence Board. The board refused to provide compensation, claiming that the subsidence had not occurred before Jemena incurred the expense of undertaking the mitigation work. The High Court of Australia held that the claim could be made before subsidence commenced if it were reasonably anticipated. It further stated that the principal bill provided for compensation for preventative and mitigating works to slow subsidence but not for claimants whose property faces simultaneous subsidence and damage.

Members can appreciate both sides of the argument. It would be a major problem if the Moomba gas pipeline were damaged or cracked as a result of mine subsidence. Therefore, it would be entirely reasonable for Jemena to undertake work to ensure that that did not happen. However, I think we would all agree that it would be reasonable to expect that before people who had property or assets under which mining was occurring took action they would seek the approval of the Mine Subsidence Board. It would not be reasonable for people to undertake work and then to submit the bill to the board.

This legislation provides that approval can be sought to undertake work in areas where mine subsidence might cause damage. I am sure members would agree that Jemena Gas Networks was correct in acting to ensure that its pipeline was not damaged. Damage to the pipeline would be a major problem for everybody who uses gas. I understand that the work undertaken involved digging around the pipeline and inserting material that would stabilise it and ensure that it did not crack. That was significant work. However, it established a precedent that anyone who had infrastructure or assets above an area in which there could be mine subsidence could take action and send the bill to the Mine Subsidence Board. Members would agree that that would not be the most sensible approach to such work.

The bill amends the Act to provide that compensation paid through the Mine Subsidence Compensation Fund will not be paid in advance of any damage occurring—that is, for preventative work—without the approval of the board. The Government is proposing changes because of the Jemena Gas Networks case. The Minister in his second reading speech in the other place stated that a large number of property owners could make claims because, in theory, their properties may be damaged by future subsidence. However, in many situations this may not be necessary mitigation work. Thus the bill intends to make compensation claims relevant to the actual subsidence when it occurs.

Section 12A of the Act, which the Minister mentioned at some length in his second reading speech, was never intended to be used for landholders to be reimbursed for mitigation works already undertaken on such a large scale for comparatively minor subsidence issues. Section 13A provides for the Mine Subsidence Board [MSB] to undertake mitigation measures to prevent or mitigate damages in circumstances where it is expected that this will occur. Through this process landholders will approach the Mine Subsidence Board before rather than after subsidence issues occur. This process will develop a more-likely-than-not test, which gives the board discretion to refuse a claim for preventative works if the costs are disproportionate to those of repairing or replacing the damaged property improvements.

There are 21 mine subsidence districts across New South Wales which are vulnerable to coalmine subsidence. MSB approval is required to build, alter or subdivide in these areas. The Act is crafted in this way to

ensure that subsidence is kept in mind for development and subdivision. Currently, there is a mismatch between MSB approvals and Environmental Planning and Assessment Act approvals. Amendments to the Act will allow for five-year approvals respectively for consumer and developer confidence. Furthermore, some improvements or subdivisions that are established do not have the board's approval. In these situations compensation will not be provided. Other amendments reflect this. As I said, the bill does not rule out pre-emptive action being taken but does require that there is consultation and approval by the board. The Labor Party believes this is quite reasonable.

Mine subsidence is a particularly difficult issue in coalmining areas. We are aware of significant subsidence from old mines, particularly in the Hunter region. Anybody who follows the issue will be aware of cases involving families who have been negatively affected by mine subsidence. There are also cases in which the Mine Subsidence Board has been considered to be fairly harsh in its decisions about compensation. However, we understand that the board must be very careful about the expenditure of funds collected from industry and kept for compensation purposes. I believe there have been cases where the Mine Subsidence Board has been slow to deal with people's claims. During estimates hearings I asked questions about cases where families still have not received satisfactory assistance for problems that occurred as a result of mines that are often long closed.

We are aware of high-profile areas in the Hunter and Newcastle regions and other mining areas in New South Wales where mine subsidence has affected developments. In some cases holes have appeared in front of family homes, including one case involving a family in the Newcastle area where the value of their block of land essentially diminished to zero. In such cases I hope the Mine Subsidence Board will be generous and not take a hardline approach when dealing with affected people. The cases affecting families are very different from those involving major corporations that can work with the Mine Subsidence Board to identify in advance the impacts of coalmining. I know from experience with mines in New South Wales that new operations are required to undertake very careful planning for where subsidence is likely to occur as a result of mining activities. Companies can show on their plans for mines the surface areas where subsidence is likely to happen as a result of underground mining. It is entirely reasonable for corporations and owners to discuss these issues with the Mine Subsidence Board at an early stage.

In the other place the Government foreshadowed a number of amendments to the legislation, which the Minister dealt with in his second reading speech. These amendments streamline some of the provisions for how compensation is decided. As I understand it, the Minister will be given more involvement in the process in some circumstances. These amendments seem sensible to the Opposition. The Opposition will support the bill, noting that mine subsidence remains a serious issue for many communities affected by underground mining. We acknowledge that mining is a very valuable employer in those areas. Predictions of our energy needs continue to show that mining will be required for some time to come.

Mr Jeremy Buckingham: Has the Opposition ever voted against one of these mining bills?

The Hon. STEVE WHAN: It seems entirely sensible to me that this legislation is dealing with the impacts of mine subsidence to ensure that we consult with people about works being undertaken to avoid the impacts of mine subsidence. This issue is dealt with quite comprehensively in planning for environmental approvals for mining. I have visited some open-cut mines and at the only underground mine I visited I looked at plans for the future expansion of longwall mining, which showed the surface impact of subsidence in advance from the company's modelling. That means people can plan a mine to avoid any substantial impact on infrastructure. There has been discussion about dealing in advance with the impact of subsidence on railways and roads, and sensible planning that any administration would undertake to combat this. The Opposition endorses the bill.

Reverend the Hon. FRED NILE [3.36 p.m.]: On behalf of the Christian Democratic Party I speak to the Mine Subsidence Compensation Amendment Bill 2014. The bill was introduced in May this year by the Minister for Resources and Energy, the Hon. Anthony Roberts. This is a relatively short piece of legislation, which principally makes amendments to the Mine Substance Compensation Act 1961. The first of these changes is to provide that the Mine Subsidence Board is not to pay out a claim for compensation from the Mine Subsidence Compensation Fund relating to preventative or mitigating expenses incurred or proposed before the relevant subsidence occurs. This is to overrule the High Court decision in the 2011 case of *Jemena Gas Networks (NSW) Limited v Mine Subsidence Board*.

In that case the High Court ruled, following Jemena's submission, that the company should receive compensation where there had been damage to gas pipelines as projected by the company—in other words,

engineering consultants had predicted that planned coalmining under the gas pipelines could damage the pipelines if mining went ahead. The company had been advised that it should carry out mitigating works to ensure the pipelines were not damaged, which it did. It then asked the Mine Subsidence Board for a refund of the costs of those works, but the board refused to comply. However, the High Court upheld the application that a claim could be made under the scheme even before the subsidence had commenced as long as it was reasonably anticipated the subsidence would occur.

The High Court reasoned that the board's interpretation of the law would mean that an owner faced with slow subsidence would be able to claim compensation for preventative and mitigative works, but that an owner faced with simultaneous subsidence and damage would not. This result could not have been the intention of the Parliament. Therefore, the High Court's expanded interpretation of section 12A of the principal Act is now the law that governs the payment of compensation from the scheme.

The Government has introduced legislation that appears to overrule the High Court's decision that the board must not make a payment from the Mining Subsidence Compensation Fund for a claim for any preventative or mitigative expense incurred or proposed before the relevant subsidence occurs. It appears that Jemena Gas Networks (NSW) Limited believed it had no option other than to carry out that preventative work. The question is: Who should pay for it? As often happens in this House, legislation is introduced that is clearly intended to overrule a High Court or Supreme Court decision in New South Wales. The bill raises an important issue of concern. A provision of the bill states that the board may reject a claim for preventative or mitigative expenses if it is of the opinion that the expenses claimed are disproportionate to the reasonably expected total expense of repairing or replacing the improvements or household or other effects concerned.

The Government should make it clear that this legislation is not intended to overrule the High Court decision and that in some circumstances a claim for compensation can be made for preventative or mitigative expenses. The bill makes it clear that the board must notify claimants of its decisions relating to claims for compensation and the reasons for those decisions. The bill includes a provision to clarify the operational provisions relating to board approvals and certificates of compliance and other matters. There does not appear to be a provision in the bill that addresses the situation where someone anticipates a problem with mine subsidence and, as a good corporate body, takes action to reduce the damage to a building or even a pipeline. I will be interested to hear the Government argue that the main purpose of this bill is not to overrule a High Court decision.

Mr JEREMY BUCKINGHAM [3.42 p.m.]: I vehemently oppose the Mine Subsidence Compensation Amendment Bill 2014. This bill is a missed opportunity. According to the Minister's second reading speech, the amendment seeks to "secure the ongoing viability of the Mine Subsidence Compensation Scheme and improve and clarify the operation of the Act more generally". That is no doubt a good intention, but the bill does not do that. The Greens agree that the scheme could be improved and we support a number of elements in the bill. However, we believe a more significant review of the operation of the Act and the Mine Compensation Board is required.

I foreshadow that The Greens will move a number of amendments, first, to try to improve the independence of the Mine Subsidence Board and to broaden its skills base. Secondly, The Greens amendments will remove the ability of the board to waive interest on late payments by collieries into the fund. Thirdly, The Greens amendments will allow for claims to be made to compensate for environmental impacts, including damage to rivers, creeks and other waterways, and damage to vegetation. I note that in his contribution the Hon. Steve Whan failed to mention the environment and to recognise that mine subsidence impacts not only infrastructure, houses and communities but also the environment in a significant way.

The Hon. Dr Peter Phelps: You want to compensate trees, do you?

Mr JEREMY BUCKINGHAM: We would like to compensate, potentially, the waterways that feed the water catchment of the city of Sydney where there are major long wall mines operating underneath them. Who is going to compensate the people of Sydney if the Avon Dam fails? Who is going to compensate the people of Sydney if their water catchment fails because BHP's long wall coalmine continues to destroy those water resources? I note that neither Government nor Opposition members mentioned the environment in their contributions, and I am not surprised.

The Greens recognise the final amendments would likely increase the premiums required to be paid by collieries into the fund, but it is important to recognise the true cost of this form of destructive mining. Those

costs should be paid by the mining industry, not the public through the loss of natural resources and amenity. Unlike the Hon. Steve Whan, who only looked at the mine and the model of the damage done by the mine, I have visited the Waratah Rivulet. Any member of any political persuasion who visited the rivulet would be shocked at the destruction that long wall mining is visiting upon the environment of the Illawarra plateau. The Waratah Rivulet is cracked and bubbling methane. It is oxidising and destroying the water quality and quantity—

The Hon. Dr Peter Phelps: You and your bubbling methane.

Mr JEREMY BUCKINGHAM: It is bubbling methane—a sure sign that something is going wrong.

The Hon. Steve Whan: Or there's coal underground.

Mr JEREMY BUCKINGHAM: Or there is coal underground, certainly. But not cracks that travel 200 metres down into the ground, not the escarpment collapsing, not rock ledges smashed to pieces that have existed for hundreds of thousands of years and improve the water quality and sustain the environment of those areas. I saw Peabody Energy in the special catchment areas of Sydney pumping epoxy foam deep underground trying to Spakfilla the environment after the long wall mining had destroyed the area and collapsed the environment. The key element of this bill is that it is in response to a 2011 High Court decision.

Jemena Gas Networks (NSW) Limited, the owner of gas pipelines between Moomba and Sydney, was made aware that coalmining would take place under certain parts of its pipeline infrastructure. Expert consultants predicted that the planned coalmining would cause subsidence that would damage a pipeline unless preventative or mitigative works were carried out. Consequently, Jemena caused these works to be carried out, excavating the pipeline, decoupling it from the soil and carrying out associated filling. That was quite reasonable. But when Jemena claimed compensation for the works the Mine Subsidence Board refused to pay the claim as the subsidence had not occurred before the expense of the works was incurred.

The High Court agreed with Jemena that a claim could be made under this scheme even before the subsidence had commenced, so long as it was reasonably anticipated that the subsidence would commence. The High Court reasoned that the board's interpretation of the law would mean that an owner faced with slow subsidence would be able to claim compensation for preventative and mitigative works, but an owner faced with simultaneous subsidence and damage would not. While The Greens have our own concerns about the increasing reliance on gas and coal as an energy source and the need to move to renewable energy, it is clearly not acceptable that essential infrastructure—

[Interruption]

Not if you go with coal seam gas, Steve. It is clearly not acceptable that essential infrastructure—

The Hon. Steve Whan: It is decreasing.

Mr JEREMY BUCKINGHAM: If you read the business—

DEPUTY-PRESIDENT (The Hon. Trevor Khan): Order! The Hon. Steve Whan will cease interjecting. Mr Jeremy Buckingham will confine his remarks to the leave of the bill and not respond to interjections.

Mr JEREMY BUCKINGHAM: While The Greens have our own concerns about the increasing reliance on gas and coal as an energy source and the rapid need to move to renewable energy, it is clearly not acceptable that essential infrastructure such as gas pipelines and electricity networks is put at risk from subsidence without an adequate regime to protect against simultaneous failure. While we recognise that the amendments proposed in the bill allow the board to authorise and fund this sort of preventative work, the provisions could cause unnecessary delay, which would continue to put infrastructure at risk.

The proposed rules will create uncertainty for infrastructure owners and house owners. First, the criterion for compensation is weakened from a consideration that damage from subsidence is "reasonably anticipated" to its being "more likely than not". The board is also able to refuse a claim if the costs are disproportionate to those of repairing the damage or replacement. While this seems reasonable on the surface,

the impact of damage to a road, water main or gas pipeline is more than just a cost of replacement or repair; it is about the impact on the community, the risk of injury and, for an infrastructure provider, potentially the cost of failing to deliver services to users.

The new rules are likely to leave property owners in a position where they will end up forking out payments up-front to minimise risk to an acceptable level for the public. They cannot tolerate a risk of "reasonably anticipated" when it comes to infrastructure they are operating. No-one in this House would tolerate Roads and Maritime Services or a local council failing to do preventive works if it reasonably anticipated a road or road infrastructure was in danger of failing, but that is what this amendment is asking owners to do. If an infrastructure owner or operator plans on waiting for a response from the Mine Subsidence Board, even with the safeguard of a merit review right for these claims, the definitions will make it difficult for a court to take a different position.

It is important that Parliament takes steps to deal with the significant social, economic and ecological costs of coalmining, in particular the impact of long wall coalmining. The communities on the southern, Central Coast and Hunter coalfields know well the impact of subsidence on their properties. Long wall coalmining is now recognised as a key threatening act under the Threatened Species Conservation Act—that great Act—having been responsible for cracking the Cataract River. Members should be informed about the location of the Cataract River, because it supplies Sydney's drinking water. Rivers and creeks in the Hunter Valley have also been badly impacted. More recently, the Sugarloaf incident showed the damage that subsidence can cause to our conservation areas that have been mined underground. I will talk more about that impact later when I move The Greens' amendments.

The damage is known, but still governments are considering allowing even more long wall mining in even more precarious places, such as the no-ifs, no-buts, guaranteed Wallarah 2 coalmine. The Wallarah 2 coal proposal is a classic example. This is a project mired in the grubby politics of mining and the relationship between mining and the major political parties. Originally supported under Labor, it became famous for former Premier O'Farrell's red-shirted speech in an effort to win the Central Coast seats at the last election. But after coming to government, the Coalition did a backflip and is supporting a project that risks water supplies on the Central Coast. Of course, Labor did a backflip too and now opposes the mine.

The Hon. Steve Whan: Actually we ruled it out before the election.

Mr JEREMY BUCKINGHAM: Did you?

The Hon. Steve Whan: Yes.

Mr JEREMY BUCKINGHAM: Well done. It is now a matter of history that four out of five—

DEPUTY-PRESIDENT (The Hon. Trevor Khan): Order! Although a point of order has not been taken, I remind Mr Jeremy Buckingham to confine his remarks to the bill before the House. He is beginning to stray from the long title of the bill.

Mr JEREMY BUCKINGHAM: I will take a moment to inform the House about the review report of the Planning Assessment Commission [PAC] into the Wallarah coal project—an underground coalmine with significant potential for mining subsidence—from earlier this year. The PAC noted a number of major pieces of infrastructure that could be impacted by subsidence, including the M1 motorway and bridges, two 330-kilovolt transmission lines and 29 towers, eight bridges and local roads, and 755 other built structures and 245 residences, all for a coalmine—

The Hon. Dr Peter Phelps: Four calling birds, three French hens, two turtle doves and a partridge in a pear tree.

Mr JEREMY BUCKINGHAM: That is right. If the M1 falls into a hole in the ground who will pay for that? The commission noted its concerns about the large number of houses that could be impacted and the fairness of the current scheme as operated by the board. It also noted that many submissions addressed the issue, including that board staff and not independent people assessed most claims. The report stated:

In that context the Commission notes the substantial difference between key features of compensation schemes usually prescribed in consent conditions under the planning legislation (i.e. independent assessment, independent multi-layered dispute resolution processes, etc.) and the statutory scheme administered by the MSB which lacks such features. In large part the criticisms of the MSB-administered scheme provided to the Commission during this review appeared to stem from this lack of formal independence in the MSB scheme.

I ask members in this place and the Government to take seriously the concerns noted by the community and published by the Planning Assessment Commission. The changes proposed in the bill do not address the broad concerns about the operations of the board that further constrain its ability to address the potential loss from the impact of subsidence. The Greens are calling for a broader review of the Act. At this time it is appropriate to turn to the issue of the Newcastle central business district [CBD] renewal. I raised these questions in debate about the status of the Mine Subsidence Task Force announced by Labor in 2011 to respond to subsidence issues in the Newcastle CBD. Media from earlier this year suggests that the functioning of this task force has all but stalled. I have heard that The Greens candidate for the Newcastle by-election, Michael Osborne—he is a great candidate—was well received—

The Hon. Steve Whan: I've heard nothing about him.

Mr JEREMY BUCKINGHAM: The people of Newcastle know about him. He was well received at a recent Property Council candidate forum, where he talked about the need to invest in the grouting program to support a renewable program for the Newcastle CBD, making sure that the renewal of Newcastle occurs. The Property Council joined with The Greens to ensure that the subsidence that has occurred, and that may occur in the future, is paid for by the miners and not by developers, the community and taxpayers. There is an opportunity potentially to use the leasing fees from the Newcastle port to reinvest in Newcastle and to ensure that sustainable and appropriate development is supported; to establish a rolling fund that will allow grouting of old mine workings to be filled up-front by a State-sponsored program, where moneys could be recovered as development occurs. The council has already identified priority sites at the western end of the CBD. The Greens support the proposal in the bill to increase the time that certificates of currency are valid under the scheme.

It makes little sense that a development approval can be granted for five years while additional applications will need to be made to the MSB because those approvals last for only two years. This is especially the case in areas of historical mining, where changes to the risk profile are unlikely. I would be interested to hear from the Government about the future of the task force and how these issues can be resolved in the interests of the Newcastle community. In conclusion, The Greens will move a number of excellent amendments in Committee but generally we do not support the bill. A broader review of the functioning of the scheme and the board is required. If the Government is concerned about the ongoing viability of the scheme due to an increase in claims for mitigation measures, then the proper response is to increase the cost to mine operators to ensure that there is sufficient money for compensation.

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [3.57 p.m.], in reply: I thank members for their contributions to the debate. The purpose of the Mine Subsidence Compensation Amendment Bill 2014 is to secure the ongoing viability of the compensation scheme and improve and clarify the operation of the Act more generally. The bill makes a number of amendments to the Mine Subsidence Compensation Amendment Act 1961. Importantly, it clarifies that a claim for compensation under section 12A is available only for expenses incurred after subsidence has commenced. The bill also makes other changes to section 12A to clarify the criteria for compensation under this provision.

The bill will enlarge existing merit review rights and require the board to provide a claimant with reasons for its decision. It also amends section 13A to provide clarity and transparency about how a person can apply for funding for works to prevent or mitigate before subsidence has occurred. It will also enable the board to issue an approval for an improvement for up to five years, in line with the duration of a development approval under the planning legislation. The bill will simplify the test for granting a compliance certificate and provide appropriate safeguards to ensure that the compliance certificate scheme is not abused. The amendments will bring much-needed clarity to the operation of this unique compensation scheme.

I turn to the concerns raised by Reverend the Hon. Fred Nile. As the Minister made clear in his second reading speech in the other place, the bill will not force landholders to stand by and wait for subsidence to occur before they can take action. This is because section 38 already empowers the board to fund works to prevent or mitigate damage in these circumstances. The bill also makes further improvements to section 13A through which landholders and infrastructure owners can make applications for funding for mitigation works. The amendments will make the process around such applications clearer and more transparent, and also make such applications subject to merit review by the Land and Environment Court should an applicant be dissatisfied with the outcome.

In regards to the issues raised by The Greens, the Mining Act already makes provision for compensation for environmental damage. Under the Act environmental damage from mine subsidence would be

viewed as compensable loss. This means that affected landholders are entitled for compensation for such loss. This bill will help secure the ongoing viability of the compensation scheme, a scheme that has existed for more than 50 years. It will ensure that the legislation remains relevant and that the important work of the board can continue. 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.

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

QUESTIONS WITHOUT NOTICE

ALBERT "TIBBY" COTTER WALKWAY

The Hon. LUKE FOLEY: My question is directed to the Minister for Roads and Freight. What studies and consultations, if any, were undertaken regarding the precise location of the Tibby Cotter Bridge over Anzac Parade before construction commenced?

The Hon. DUNCAN GAY: Extensive consultations and studies took place before a decision was made about the precise location of the Tibby Cotter Bridge. The Heritage Commission and the Centennial Park and Moore Park Trust carefully took into consideration the appropriate location for the best flow of pedestrian traffic between the major venues. Members will note that the location is exactly halfway between the Sydney Cricket Ground and what used to be known as the old Sports Stadium that is now called Allianz Stadium. It is also coincidentally located to minimise the effect on a number of mature Morton Bay fig trees. A responsible government looks after all facets.

[Interruption]

The Hon. DUNCAN GAY: I am a renaissance man in many regards, the trees—

The Hon. Dr Peter Phelps: By renaissance you mean like Cesare Borgia?

The Hon. DUNCAN GAY: I do.

The PRESIDENT: Order! The Government Whip and the Deputy Government Whip will keep conversations to an absolute minimum during the Minister's answer.

The Hon. DUNCAN GAY: As I indicated earlier, extensive studies and consultations were undertaken and the outcome will be outstanding.

HUNTER REGION

The Hon. GREG PEARCE: My question is addressed to the Minister for Roads and Freight. Will the Minister update the House on how the New South Wales Liberal-Nationals Government is delivering for businesses and communities in the Hunter?

The Hon. DUNCAN GAY: I am delighted to answer this great question. I was a tad confused because I heard the Labor Party in the community delivering some new commitments. If they are making new commitments to an area one would expect some research and consultation—a little bit like the earlier question of the Leader of the Opposition. The newly reinvigorated Labor Party came back to attack Newcastle and went back to its old box of tricks, like a dog returning to its own vomit, to the Walt Secord tried and true glossy brochure. If they have no ideas they go back to a glossy brochure. Whenever we read a glossy brochure we will find a whole lot of unfunded, unbelievable promises.

The Hon. Steve Whan: Point of order: My point of order is that the Minister is quoting from a document. I ask that he be directed to table that document for the information of the House so its accuracy can be verified.

The PRESIDENT: The Hon. Steve Whan will resume his seat. There is a time and place for what he is proposing.

The Hon. DUNCAN GAY: We are a little confused because we were hoping for something new, but there is nothing new. The Labor Party is making the same promises that it made six years ago and did not fulfil. When I read the document I could have sworn I had seen Labor promise to deliver projects like the Newcastle Inner City Bypass, the duplication of the Tourle Street Bridge, the remediation of the Adamstown level crossing and the Lake Macquarie Interchange. How predictable—the Opposition is making exactly the same announcements made by the former Government. If the former Government was believable the same promises would not have to be made by members opposite in opposition because they would have delivered on their promises. This slothful mob is now making the same promises it made when in government. The difference this time is that they cannot afford to pay for them. When in government they had a few bob and if willing they could have fulfilled their promises, but this time they do not have a penny to bless themselves with. The Labor Party is making promises everywhere. Every community will get a community centre and an exhibition centre except Newcastle—

The PRESIDENT: Order! I warn Opposition frontbenchers for the last time.

ALBERT "TIBBY" COTTER WALKWAY

The Hon. ADAM SEARLE: My question is directed to the Minister for Roads and Freight. Why was the \$25 million Tibby Cotter Bridge not put to tender?

The Hon. DUNCAN GAY: The Tibby Cotter Bridge went through the proper processes within the powers of Roads and Maritime Services, and because of the time we needed to deliver it before the World Cup that was the process we decided upon.

[Interruption]

It is about delivery. You would not know about delivery.

HOME CARE SERVICE OF NSW

The Hon. SARAH MITCHELL: My question is addressed to the Minister for Ageing, and Minister for Disability Services. Will the Minister update the House on plans for the Home Care Service of NSW?

The Hon. JOHN AJAKA: Last month I was pleased to announce the next phase of New South Wales' implementation of the National Disability Insurance Scheme [NDIS]. The Government is about to start the process of transitioning the Home Care Service of NSW into the non-government sector, ensuring the sustainability of these vital services that are provided to some of our community's most vulnerable. As the House is aware, the New South Wales Government is proud to have been the first to sign an agreement with the former Labor Federal Government to deliver the National Disability Insurance Scheme in accordance with the wishes of people with disabilities, their families and carers.

As honourable members are also aware, part of providing choice and control for people with disability means that the New South Wales Government will transfer its services to the non-government sector, and that includes the Home Care Service. The transition of the Home Care Service will be the first step in this process, which is being undertaken to ensure the long-term sustainability of the service in the best interests of clients. Alongside the need to prepare for the National Disability Insurance Scheme, the reforms being undertaken to aged care by the Commonwealth also make this transition a priority.

This is a Government determined to protect vulnerable members of our community. It is therefore vital that the Home Care Service is able to continue to provide quality supports to older people and people with disability across New South Wales as these changes occur. It is critical through the transition process that we make every effort to ensure that Home Care is preserved and is able to continue to deliver the reliable and quality services that it has for more than 70 years. I am pleased to inform the House that the Government's

announcement about the future of Home Care has been warmly welcomed by United Voice, the union responsible for the large majority of the Home Care workforce. Mel Gatfield, Assistant Secretary of United Voice, stated that the government announcement "provides great comfort for home care workers and their clients in this time of flux in home care".

After the transition to the non-government sector Home Care will be well placed to continue delivering excellent supports that help people with disability to live in their own homes. Current Home Care Service workers will be supported through this change so that they can continue to provide the dedicated quality services they deliver each and every day to their clients. The full transition of Home Care is expected to be completed by the middle of next year. The New South Wales Government will continue to work with staff and key unions and I confirm that I have met with them on a number of occasions so that we continue to support workers and clients throughout this transition.

We have put in place the National Disability Insurance Scheme (NSW Enabling) Act to protect the entitlements of workers and their conditions. The Government will provide for the continuity of employment terms and conditions while strengthening the protections for employees under the Commonwealth Fair Work Act 2009. United Voice, with whom I was pleased to meet on a number of occasions, stated:

Today's announcement by Minister Ajaka is welcomed by the thousands of families and workers who have been concerned about what the future of their home care will look like.

There is a very good understanding between all parties of the size of the task we face. We are working together to find common ground on how staff can best transition to the new service provider. We will continue to build upon these positive and productive meetings with representatives from the workers and the unions and continue to work through the key issues as they progress. I am proud that this transition is moving forward. The priority for this Government is to ensure that services continue to be delivered for people with disabilities without disruption or any reduction in the quality of services.

FORESTRY OPERATIONS AND PROTECTION OF NATIVE SPECIES

Mr DAVID SHOEBRIDGE: My question without notice is directed to the Hon. Duncan Gay, representing the Minister for Primary Industries. Noting the destruction of wombat burrows in Glenbog State Forest as a result of forestry operations earlier this year that resulted in a number of wombats being buried alive, can the Minister advise what protections are in place for non-endangered native animals in logging operations across the State, including wombats, kangaroos, wallabies and sugar gliders?

The Hon. DUNCAN GAY: I am unaware of the situation that the honourable member talks about but certainly I will take the question on notice and obtain a detailed answer. I have to say that the thought of accidentally burying wombats alive is a little far-fetched to me. Wombats have the best burrowing mechanisms that I have seen.

Mr David Shoebridge: You know nothing.

The Hon. DUNCAN GAY: I would probably join an exclusive club that you would head up if that was the case. From my observation of wombats over a number of years their ability to burrow and come out of situations is exemplary.

ALBERT "TIBBY" COTTER WALKWAY

The Hon. PENNY SHARPE: My question without notice is directed to the Minister for Roads and Freight. Will the Minister confirm which projects have had their budgets reallocated to fund the Tibby Cotter Bridge?

The Hon. DUNCAN GAY: It is going to be a great bridge and I know all on our side are pretty supportive of this. I am surprised to see that the Labor Party somehow has withdrawn support for the Tibby Cotter Bridge and for a pedestrian crossing that will enable people to walk through our great city. As the people of Sydney use it to attend the Cricket World Cup in the early part of next year I might remind them that the Labor Party opposed its construction. A newspaper article inferred that funding for the Albert "Tibby" Cotter Walkway project was redirected from other projects, including safety upgrades on the Pacific Highway. It is not unusual for funding to be redirected from projects where time frames have moved due to extended consultation, planning approvals—

The Hon. Penny Sharpe: I thought the Pacific Highway was a major priority.

The Hon. DUNCAN GAY: Do you want an answer or do you want to prattle on like an idiot?

The Hon. Walt Secord: There is only one idiot speaking at the moment.

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

The Hon. DUNCAN GAY: It is not unusual for funding to be redirected from projects where time frames have moved due to extended consultation, planning approvals, property acquisitions or design changes. A program of safety improvement work was developed as part of the Pacific Highway upgrade to provide interim safety improvements on sections of the highway where full duplication was being planned. Whilst most of the funding from both the Australian and New South Wales governments was directed to upgrading the highway to a four-lane divided road, there was a need to address road safety and traffic issues on sections of the existing two-lane highway where upgrades were yet to be fully funded.

Now funding is available. We got rid of Albo; Albo has gone and the Pacific Highway funding is there. Those upgrades were going to be undertaken because these roads were not going to be built. They are now going to be built. The other money has come from the Windsor Bridge budget. I would love to be building the Windsor Bridge, but The Greens, the Labor Party and their mates are against the community of Windsor who want the bridge.

The Hon. Trevor Khan: Shame.

The Hon. DUNCAN GAY: Shame on you—exactly. That money is not being used for that project this year so we can use it elsewhere.

The PRESIDENT: Order! I call Mr David Shoebridge to order for the first time.

The Hon. DUNCAN GAY: That is how we move money around if a project is not happening at that time. The subheading in that article was pretty loose with the truth. No road safety upgrades have been delayed because of the Tibby Cotter Bridge. It was a pretty lazy bit of journalism from that periodical, which is something we see more and more these days.

MONEY STUFF CHALLENGE

Mr SCOT MacDONALD: My question is addressed to the Minister for Fair Trading. Will the Minister update the House on how the New South Wales Government, through NSW Fair Trading, is promoting consumer awareness amongst school students?

The Hon. MATTHEW MASON-COX: I thank the honourable member for the question and it will be a pleasure to update the House. On Friday last week I attended the fourteenth annual Money Stuff Challenge at the Powerhouse Museum. The Money Stuff Challenge is an important event. Those opposite may recall the former Treasurer Eric Roozendaal referring to the budget process as "money stuff".

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

The Hon. MATTHEW MASON-COX: For these students it is important.

The PRESIDENT: Order! I call the Hon. Penny Sharpe to order for the second time. If the member continues to interject she will be directed to leave the Chamber.

The Hon. MATTHEW MASON-COX: It is important that members opposite listen to this education—

The PRESIDENT: Order! The President requires no assistance. The Minister will continue with his answer.

The Hon. MATTHEW MASON-COX: The Money Stuff Challenge was the fourteenth annual program that Fair Trading has run. It is a successful program that engages students across this State. We saw

some wonderful contributions from students here in Sydney and in regional and country New South Wales. They responded to this program, which is promoted in schools across the State. Wonderful teachers get involved encouraging, generally, commerce classes to put a submission to Fair Trading about consumer rights. The presentations focused on areas of concern to the students and subjects that they wish to learn about within their educational institution.

There were a few thousand entries from across the State and approximately 300 students present at the Powerhouse Museum. Those students made presentations on a range of subjects, including an insightful look at scamming, basic consumer rights and other issues in the community concerning Australian consumer law. It was pleasing to see the wide range of entries from students in regional areas and from Indigenous students. Michaela Taylor, a high school student from the Australian Christian College in Marsden Park, took out the major category for Metropolitan NSW. Ms Taylor's entry was a hand-drawn animation about money management, highlighting important consumer messages for young people.

The entry won based on its ability to deliver a simple and relevant consumer message to young people in a format that is both clear and appealing to a youth audience. Catherine Yao was awarded the top prize in the Regional NSW category. Ms Yao impressed judges with an engaging short film about phishing scams. For the benefit of those opposite, it is not about going fishing. It concerns scams occurring in the New South Wales market. Those students will pass on the information that they have uncovered through this program to their relatives and other students. NSW Fair Trading was pleased to award the winning students with a plaque, certificate and a cash prize of up to \$1,000 for the school and \$250 for themselves. Fair Trading will continue that program next year.

BIODIVERSITY LEGISLATION REVIEW

Dr MEHREEN FARUQI: My question without notice is directed to the Minister for Fair Trading, representing the Minister for the Environment. Given that there were more than 400 submissions to the biodiversity legislation review will the Government commit to publicly releasing both the draft and final reports from the committee to the public?

The Hon. MATTHEW MASON-COX: I thank the member for her question. As it is of some detail I will refer it to the relevant Minister for an answer and report back in due course.

HOME CARE SERVICE OF NSW

The Hon. PETER PRIMROSE: My question without notice is directed to the Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra. In light of the Minister's earlier answer on the impending tender process for New South Wales Home Care will he advise the House whether he, his ministerial staff or anyone in his department has met with or spoken to Serco or Bupa?

The Hon. JOHN AJAKA: I thank the honourable member for his question. I do not recall using the term "tender process" in my last answer. We are looking at the transitioning of Home Care. I personally have not met with Serco, and I am not aware of anyone from my office meeting with Serco. I will take the question on notice in relation to my department, which has over 13,000 employees, and I will come back to the member in relation to that portion of the question.

The Hon. PETER PRIMROSE: I ask a supplementary question. I thank the Minister for his response and offer to come back in relation to Serco. Will the Minister indicate whether he will come back in relation to Bupa, which was part of my original question?

The Hon. JOHN AJAKA: The answer I gave in relation to Serco applies to Bupa. I have not met with them and I do not believe that anyone from my office has met with them. I will take the question on notice in relation to the department.

ROADS AND FREIGHT INFRASTRUCTURE

The Hon. CATHERINE CUSACK: My question is directed to the Minister for Roads and Freight. Will the Minister update the House on roads and freight infrastructure planning and investment in New South Wales?

The Hon. DUNCAN GAY: That is the sort of question that I should have been asked by the former shadow Minister. We waited but nothing happened. I thank the member for the question.

The Hon. Greg Donnelly: Point of order: The Minister is misleading the House. The Minister knows he was asked numerous questions by the shadow Minister with regard to roads issues.

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

The Hon. DUNCAN GAY: Prior to the 2011 State election the New South Wales Liberals and Nationals said we would develop and implement a long-term master plan and freight and port strategy to help guide future road and rail infrastructure investment in this great State. Unlike those opposite when we make a promise we honour it. Under Labor there was no such thing as an integrated transport or freight plan for the State. It was based on self-serving and short-term political brinkmanship—things that Sussex Street excels in. Along with the State infrastructure strategy these plans have underpinned historic levels of investment in roads and freight transport infrastructure.

Since April 2011 the Government has committed more than \$20 billion to fast track major infrastructure upgrades that should have been planned and delivered by Labor a decade ago. Labor is now pathetically putting them into glossy brochures and re-announcing them. Coming to office in early 2011 was like taking over a business on the brink of bankruptcy: no money, no plans and a demoralised public service operating in silos. This Government has committed billions of dollars to fast track major upgrades to the Pacific, Princes, Great Western, Newell, Oxley, New England, Cobb and Silver City highways.

For the Pacific Highway alone it has committed an extra \$2 billion in funding to help offset New South Wales Labor's gutting of the project in the 2008 mini budget. That is the Eric Roozendaal budget that saw Opposition members proudly sitting behind him and applauding him for gutting the Pacific Highway. It was a shameful moment for all of those opposite. Federal Labor then abolished the 80:20 funding split in 2011 and those opposite supported that as well. Each day of the week more than 1,700 people work on the duplication of the highway. Before the Coalition came to office WestConnex, NorthConnex, completing the Newcastle inner-city bypass, upgrading Western Sydney growth roads, easing Sydney's congestion by fixing notorious pinch points, building the Queanbeyan bypass and fixing country roads were not even on the Labor Party's radar. Under Bridges for the Bush this Government has invested more than \$200 million to upgrade—

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

The Hon. DUNCAN GAY: —or to replace bridges at 17 key freight bottlenecks across country New South Wales, including the Kapooka Bridge on the Olympic Highway near Wagga Wagga. It is not only roads; the New South Wales Government has also committed more than \$277 million— [*Time expired.*]

WATER ALLOCATIONS

The Hon. ROBERT BORSAK: I direct my question to the Minister for Roads and Freight, representing the Minister for Natural Resources, Lands and Water. Is the Minister aware of concerns expressed by locals about the recent listing of the Gwydir wetlands in the Murray-Darling Basin Authority's annual watering priority, which means irrigators in the catchment will receive none of their water allocations and much of the water left in the system will go to environmental flows? What local input was involved in this decision and are the locals wrong in claiming that they are seeing a move away from local- or State-driven strategies to Canberra-based decisions?

The Hon. DUNCAN GAY: I thank the honourable member for his question and I know about the friendships that he has in that area of the State and his concerns. However, I am not aware of the facts that he put to the House. I am more than happy to convey them to the Minister for Natural Resources, Lands and Water to obtain a detailed answer.

HOME CARE SERVICE OF NSW

The Hon. MICK VEITCH: I direct my question to the Minister for Ageing, and Minister for Disability Services. In light of his earlier answer about the Home Care Service of NSW, is he or the Treasurer leading the sell-off negotiations?

The Hon. JOHN AJAKA: I do not accept the term "sell-off", and the honourable member knows better than to use it. The transition of the Home Care Service involves a number of procedures. The member is well aware that the enabling Act requires both the Minister for Disabilities Services and the Treasurer to sign off on any such transition. This matter is being addressed by me as the Minister for Disability Services and by the Treasurer, and that is as it should be. We work together as part of a government, which members opposite failed to do when they were in office. I am proud to work with my Treasurer, the Hon. Andrew Constance, and I am fortunate that he is a former Minister for Disability Services and knows the portfolio well. Of course, that is of great assistance to me and it is why we are able to work together so well.

INTERNATIONAL WHITE CANE DAY 2014

The Hon. NATASHA MACLAREN-JONES: I direct my question to the Minister for Ageing, and Minister for Disability Services. Will the Minister update the House on the Guides Dogs NSW "Have cane, am able to work" employer awareness campaign for International White Cane Day 2014?

The Hon. JOHN AJAKA: Earlier today I was honoured to launch the Guide Dogs NSW "Have cane, am able to work" employer awareness campaign, which coincides with tomorrow's International White Cane Day 2014. Also present from this Chamber were the Hon. Duncan Gay, the Hon. Luke Foley and the Hon. Jan Barham, and a large number of members from the other place. It was an excellent bipartisan attendance by members. International White Cane Day is a hugely successful annual campaign with the goal of generating awareness of the importance of the white cane and its role in aiding mobility and creating independence for people with vision loss. The Government has continued to support this day and its objectives since its inception in New South Wales almost 60 years ago.

This year the campaign aims to increase the number of people with vision loss participating in the workforce. It also aims to strengthen and build the capacity of employers to provide further employment opportunities for people who are vision impaired. To support this year's launch, Guide Dogs NSW has developed an employers' guide that highlights the benefits of employing someone who is vision impaired and dispels common myths and misconceptions about accessibility and productivity in the workplace. The guide will be promoted to more than 5,000 New South Wales and Australian Capital Territory members of the Australian Human Resources Institute and distributed to Sydney Business Chamber members. The Government is proud to have been involved in this initiative by funding and printing the guides to help the organisation to build awareness and to produce better outcomes for people who are vision impaired and who want to get into the workforce.

Some businesses may initially question how someone with no or low vision can do the job advertised; that is, how they would read emails or find their way to work. Questions may also arise about whether changes need to be made to the workplace and, if so, the costs involved. This guide was created to alleviate concerns, to highlight the benefits of employing someone who is blind or vision impaired and to provide solutions to common concerns. These jobseekers are loyal and an inspiration to workforces. All they need is an opportunity. I hope this guide will better inform employers about the abilities of people who are blind or vision impaired and the range of supports and techniques they can use to be productive employees. The Government acknowledges the critical role of employment opportunities in fostering independence and a sense of community value by recognising that the disability is not inherent in the person but rather arises from the society, norms, practices and institutions that produce barriers to inclusion.

A huge milestone was achieved on 14 August when the Disability Inclusion Bill was passed by this Parliament. That legislation reinforces the responsibility of both the State Government and local government to support the inclusion of people with disability in our communities. The New South Wales Disability Inclusion Plan will now use an updated definition of "disability" that aligns with the definition used in the United Nations Convention on the Rights of Persons with Disabilities. Employment is one area that will be addressed. Today's event is an example of how that can be done and how we can build awareness about employing people with disability and including them by focusing on their abilities. I was pleased to help raise awareness today for Guide Dogs NSW on White Cane Day. I encourage all members to speak to their local stakeholders about how we can all include people with disability in our workplaces. I thank all honourable members who attended the launch and the Hon. Duncan Gay for his participation in the panel and for answering questions.

The Hon. Duncan Gay: And Sally-Anne.

The Hon. JOHN AJAKA: Yes. Of course, she is the Hon. Duncan Gay's executive assistant.

FATHER MITKO MITREV

The Hon. ROBERT BROWN: My detailed and complex question is directed to the Minister for Ageing, representing the Attorney General. Is the Attorney General aware of a recent article in the *St George and Sutherland Shire Leader* relating to the Office of the Director of Public Prosecutions considering charging a Rockdale priest after a Supreme Court judge found he had given false evidence in *His Eminence Petar, the Diocesan Bishop of the Macedonian Orthodox Dioceses of Australia and New Zealand v Kotevich*, in which it was found that Father Mitko Mitrev specifically prepared a parish register for use in those proceedings that the judge described as "a farrago of fact, falsity and fabrication"? Given that Father Mitrev admitted that his evidence was false, will the Attorney General now formally refer this issue to the Director of Public Prosecutions for investigation? [*Time expired.*]

The Hon. JOHN AJAKA: I am aware of the *St George and Sutherland Shire Leader* article. As it is a very detailed question, I will refer it to the Attorney General and obtain a detailed response for the honourable member.

ILLAWARRA SHOALHAVEN LOCAL HEALTH DISTRICT

The Hon. WALT SECORD: I direct my question to the Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra, representing the Minister for Health. In his dual roles as the Minister for the Illawarra and Minister representing the Minister for Health, will he tell the House what is the Government's response to community concerns about NSW Health's modelling projecting that 38,500 additional patients will present to Illawarra and Shoalhaven hospital emergency departments as a result of the Federal Government's \$7 general practitioner tax?

The Hon. JOHN AJAKA: As the honourable member is aware, the Federal Government's proposal for a general practitioner [GP] co-payment is exactly that—a proposal. Modelling of the Federal budget proposal regarding a GP co-payment has not been undertaken by the New South Wales Ministry of Health as no legislation has been introduced. In the meantime, the Government remains committed to ensuring that patients continue to receive the right treatment in the right setting at the right time. The New South Wales Government has announced that there will be no co-payment for emergency department patients.

I take this opportunity to state that I am proud that this Government is delivering better health and hospital services for the people of New South Wales. It is no secret that the Hon. Jillian Skinner is a brilliant Minister for Health. She did the hard work in opposition so that the New South Wales Liberals and Nationals could take a bold plan to fix the health system to the March 2011 election. In government that is exactly what the Minister has delivered.

I remind the House of some of the relevant facts relating to the Illawarra: \$106 million for Wollongong Hospital and new car parks at both Shoalhaven and Wollongong hospitals. That expenditure is in addition to the \$400 million for Westmead Hospital, \$300 million for Gosford Hospital and \$321 million for Blacktown and Mount Druitt hospitals. In regional New South Wales the Government has invested a record \$1.7 billion in more than 90 new developments and upgrades to hospitals and health services. In addition, the Government has delivered a succession of record health budgets to fund growth in services. This has enabled the Government to admit almost 170,000 more patients to hospitals since the election. Hospitals have conducted more than 17,000 elective surgeries since March 2011, with 99 per cent on-time performance for elective surgery.

The Hon. Walt Secord: Point of order: My point of order relates to relevance. The Minister has spoken about Blacktown, elective surgery and everything but the Illawarra and Shoalhaven hospitals and emergency departments.

The PRESIDENT: Order! I uphold the point of order. If the Minister has anything to add, he has some time to do so.

The Hon. JOHN AJAKA: Thank you.

The PRESIDENT: The Minister has concluded his answer.

NATIONAL INDIGENOUS CONSUMER STRATEGY

The Hon. CHARLIE LYNN: My question is addressed to the Minister for Fair Trading. Will the Minister update the House on his recent visit to Tamworth to launch the National Indigenous Consumer Strategy as part of the Fair Trading My Place program?

The Hon. MATTHEW MASON-COX: I thank the Hon. Charlie Lynn for that very good question. I know the members opposite are pleased to hear about the My Place program that is run by NSW Fair Trading. Last Wednesday we visited Tamworth with the local member, Kevin Anderson—he is an excellent local member. The My Place program is being well received by the local community. The program focuses on community outreach. Under the program NSW Fair Trading meets with traders and a range of stakeholders to give them an opportunity to understand their rights and responsibilities under legislation that it administers. We also met a range of consumers, so it was a successful trip. The local member does an excellent job, as seen when walking down the main street of Tamworth. He was stopped by every second person saying, "Good day, Kevin, how are you?" Everybody knows him. He told me he even busks on the main street during the Tamworth Country Music Festival. The local member is well known and is likely to have a big win in Tamworth come March next year.

As part of the visit I went to the Salvation Army's big depot in Tamworth, which provides a range of services to the local community. These services include the No Interest Loan Scheme, a successful service run with financial counselling services. Both these services are funded by NSW Fair Trading. I was pleased to present a cheque for \$30,000 to the centre's manager, Tony Devlin. He does a wonderful job with his team of about a dozen people who provide a suite of services for the most vulnerable in the community. We heard from some beneficiaries of those loans who outlined the significant impact the loans had on their lives. It was pleasing to hear about this scheme firsthand.

NSW Fair Trading is pleased to fund this scheme from the interest on rental bonds which we also look after on behalf of tenants and landlords of this State. This amounts to \$1.1 billion administered by NSW Fair Trading and the interest on that—about \$58 million a year—goes into these types of schemes. I also visited Kings Smash Repairs to talk about concerns in relation to the legislation to be introduced on 1 December. Members opposite will be interested to know about motor trader associations' understanding of their new responsibilities coming in under the new legislation and their response to the inquiry, which the Government is looking at now.

I then launched the National Indigenous Consumer Strategy action plan at Calrossy Anglican School in front of a few hundred local high school students. The National Indigenous Consumer Strategy is an important program that New South Wales has led on behalf of the other States. It looks at Indigenous consumer affairs and informs Indigenous communities about their rights and responsibilities under legislation administered by NSW Fair Trading and other legislation. We will continue to focus our efforts in relation to these Indigenous communities. We have published a number of pamphlets and other useful information which will, no doubt, be of great benefit to those communities in the future. I look forward to rolling out the next part of the My Place program and reporting on that in due course. [*Time expired.*]

HOME CARE SERVICE OF NSW

Ms JAN BARHAM: My question without notice is directed to the Minister for Ageing, and Minister for Disability Services. Given that the Home Care Service of NSW is a statutory body with its objects and functions defined in legislation to ensure it provides services to the State's most vulnerable people, how will the New South Wales Government ensure that the necessary quality services continue to be provided to this group when it is transferred to the non-government sector? What oversight will the Government have to monitor the service's performance of its functions after July 2015?

The Hon. JOHN AJAKA: I thank the honourable member for her question. The New South Wales Government recognises the vital role that homecare plays in the provision of in-home support and service provision to older people and people with disability who need assistance with daily living. Most Home Care Service clients are over the age of 65 years or 50 years for Aboriginal clients. They are the responsibility of the Commonwealth Government, before and after the transition. An open competitive process will be undertaken to select the new owner of Home Care Services.

This transfer to the non-government sector is taking place in the context of both the National Disability Insurance Scheme [NDIS] and Commonwealth changes to how aged care services will be provided in the future.

It also reinforces the New South Wales Government's commitment to the implementation of the NDIS and the Commonwealth aged care reforms. Key considerations in selecting a new service provider will be the ability to maintain continuity of service and care to clients, and to maintain Home Care Services' operations and workforce. To the extent that clients continue to be the responsibility of the State, the New South Wales Government will monitor performance of non-government organisations consistent with current procedures until the full implementation of the NDIS.

SOCIAL HOUSING WAITING LIST

The Hon. SOPHIE COTSIS: My question without notice is directed to the Minister for Ageing, representing the Minister for Family and Community Services. In September 2013 the Government committed to releasing details of the public housing waiting list in the interests of transparency. Thirteen months later, why is the 2014 information still not publicly available?

The Hon. JOHN AJAKA: The audacity of members opposite asking a question of that nature—members who never properly published a waiting list. Those opposite ensured that the criteria of any waiting list, whether to do with public housing or health, changed from year to year to ensure that we never obtained a real figure. What a shock it was when we came into government and finally found out the truth about waiting lists for public housing and hospitals, and we saw the true picture about the black hole in the budget and the \$5 billion those opposite never bothered to tell anybody about. Yet the Hon. Sophie Cotsis asks a question like that. I am proud of this Government. We are a transparent government and we continue to give the correct figures. Those opposite continue to scaremonger. We are being transparent and we will continue to do so.

The Hon. SOPHIE COTSIS: I ask the Minister a supplementary question. Will the Minister elucidate when the Government will release the 2014 figures regarding the waiting list, as promised?

The Hon. JOHN AJAKA: When they are released.

LOCAL GOVERNMENT INFRASTRUCTURE

The Hon. DAVID CLARKE: My question is directed to the Minister for Roads and Freight, representing the Minister for Local Government. Will the Minister update the House on what the Liberal-Nationals Government is doing to address the local government infrastructure backlog?

The Hon. DUNCAN GAY: What an absolutely excellent question. I am pleased to inform the House that today the Minister for Local Government has announced an additional 31 successful projects that will be equal to a total value of \$148 million under round three of the Local Infrastructure Renewal Scheme [LIRS]. Unsurprisingly, this scheme was introduced by the New South Wales Liberal-Nationals Government, a government that has committed an historic \$1.55 billion to council roads since April 2011—

The PRESIDENT: Order! There is far too much chatter on both sides of the Chamber. I am having difficulty hearing the Minister.

The Hon. DUNCAN GAY: —and a government that has had to address the shocking \$7 billion infrastructure backlog left behind by Labor. Labor did very little for councils and vital community infrastructure and services. One only has to take a look at the increase in money we have given to councils for local roads—for example, in Wyong, which has had an increase of 13.7 per cent—

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

The Hon. DUNCAN GAY: —in Greater Hume, which has had an increase of 27.1 per cent, and in Port Macquarie, which has had an increase of 118 per cent—to realise that the former Labor Government's performance was shameful. The Local Infrastructure Renewal Scheme has enabled nearly \$1 billion worth of investment to be unlocked for 168 individual projects across the State.

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

The Hon. DUNCAN GAY: Rounds one and two of the scheme allowed rotting timber bridges to be replaced with new, safer bridges; they allowed unsafe roads to be repaired; and they allowed community

infrastructure—including seawalls, stormwater and sewerage systems, water treatment plants, libraries, playgrounds, sports fields and airports—across New South Wales to be rebuilt to be fit for the future. The strong response by councils to this scheme proves how dire the backlog in infrastructure projects had become under the litany of failed policies by Labor.

Round three of this scheme will provide funding to 31 important infrastructure projects across 31 councils. These include fixing high-risk footpaths in Ashfield and supplying town water and fire protection to towns on the outskirts of Dubbo. The New South Wales Government has committed \$120 million to rounds one, two and three of this project. It has recently committed an extra \$37.5 million from the State's dedicated infrastructure fund, Restart NSW, to a new works program called Fixing Country Roads—something those opposite would never have because they have got no ticker, no idea and no plans for the future. That is why the Hon. Steve Whan is sitting on the losers lounge until he falls off it at the State election when he contests the seat of Monaro and when he once again will be the world's biggest loser.

The Hon. Lynda Voltz: Point of order: The Minister's remarks are hardly relevant to the question he was asked.

The PRESIDENT: Order! I think the Minister has concluded his remarks. In any event, his time has expired.

SURROGACY LAWS

Reverend the Hon. FRED NILE: I ask the Minister for Roads and Freight, representing the Premier, a question without notice. Is the Government aware that the Prime Minister has commented in a newspaper article that surrogacy is a matter properly left to the State Government? In light of the recent report on international surrogacy as "the new front line in human trafficking", will the Minister report on how the Government will protect the children that are caught up in international surrogacy scandals?

The Hon. DUNCAN GAY: I thank the member for his question. I, and I am sure all members are, am concerned about the stories relating to surrogacy coming out of two areas. I suspect that if there are problems in those two areas there are problems in other areas. Reverend the Hon. Fred Nile is correct. I noticed in the press that the Prime Minister indicated that surrogacy laws are for the State Government. I will refer the question to the Premier and obtain an answer.

LAKELANDS PUBLIC SCHOOL SCHOOL ZONE FLASHING LIGHTS

The Hon. GREG DONNELLY: My question without notice is directed to the Minister for Roads and Freight. Is the Minister aware that parents at Lakelands Public School in Dapto are concerned that new school zone flashing lights have been installed behind trees, where they cannot be seen by motorists? Will the Minister now immediately direct his department to fix the situation?

The Hon. DUNCAN GAY: No, I was not aware of that situation. The local member has not drawn the matter to my attention, but I appreciate the Hon. Greg Donnelly doing so on her behalf. I will get our people to look at it.

The Hon. Greg Donnelly: Point of order: The Minister is improperly reflecting upon—

The Hon. Catherine Cusack: Point of order—

The PRESIDENT: Order! The Hon. Catherine Cusack will resume her seat. I am listening to a point of order.

The Hon. Greg Donnelly: As I was saying, the Minister is improperly reflecting upon a member of the other place in respect of an issue that has been brought to attention.

The PRESIDENT: Order! The Hon. Greg Donnelly will resume his seat. Nothing in the Minister's comments was a reflection on another member. Does the Minister have anything further to add?

The Hon. DUNCAN GAY: I had not finished my answer. The concerns raised by the Hon. Greg Donnelly are proper concerns that we certainly need to look at—and we will.

NSW DISABILITY INDUSTRY INNOVATION AWARDS 2014

The Hon. NIALL BLAIR: My question is directed to the Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra. Will the Minister update the House on what the New South Wales Government is doing to support innovation within the non-government disability sector?

The Hon. JOHN AJAKA: As we move towards the full implementation of the National Disability Insurance Scheme [NDIS] we are in an exciting period of change for people with disability, their families and carers. The NDIS will bring choice and control to people with disability through the enhanced delivery of person-centred care and flexible support options. The New South Wales Government is actively supporting the transformation of the disability sector and a culture of innovation.

To acknowledge the work of disability service providers, last week I was pleased to present the NSW Disability Industry Innovation Awards. Delivered in collaboration with National Disability Services, the awards seek to recognise organisations and individuals who are reshaping service delivery in order to impact and make a tangible difference in the lives of people with disability. The shadow Minister, Barbara Perry, was also in attendance.

It is deeply encouraging to see the continued dedication and innovation that is being showcased by both individuals and organisations that work tirelessly to provide high-quality services for people with disabilities. The 2014 Disability Innovation Awards ceremony was held on Wednesday 8 October and recognised the achievements of 16 finalists and nine winners. Approximately 80 nominations were received for the 2014 awards, and the quality of these nominations reflect the growing trend of organisations and individuals who are actively embracing change by implementing innovative approaches to improve the lives of people with disabilities.

At the ceremony I was honoured to present the Minister's Award for Excellence, which was jointly awarded to two organisations that have embraced the spirit of innovation and are leading the way in the delivery of person-centred services in New South Wales. The first joint winner was the NSW Council for Intellectual Disability for its delivery of the My Choice Matters project. This project is one of the first large-scale capacity building initiatives in New South Wales that is focused on empowering people with disabilities to get the most out of the person-centred supports under the NDIS. The council was also successful in winning the People's Choice award category.

The second joint winner was Northcott in recognition of its Feel the Vibe expo. The expo provided the opportunity for people with disabilities to talk about their relationships, seek out information about community supports and resources, and start conversations about sexuality in an open and safe environment. Northcott was also successful as the winner of the Innovation in Lifespan Approaches to Supporting People with Disability, their Families and Carers award. The winners of the remaining award categories were: Martin Wren of Nova Employment, who won the Leadership in Promoting Inclusion award; the Flagstaff Group for Excellence in Regional Innovation; the Australian Foundation for Disability for Excellence in Workforce Development; Life Without Barriers for Excellence in Business Development and Change Management; and Sharon Everson from the Deaf Society NSW for distinguished service.

As we move towards the full implementation of the National Disability Insurance Scheme, the continuation of the innovative practice that has been demonstrated by individuals and organisations through the 2014 innovation awards is more important than ever. By the sector continuing to translate creative ideas into practice, it is ensuring that we can continue to meet the changing needs of people with disabilities, their families and their carers into the future, and also ensuring a seamless transition to the NDIS. It was an honour to present these awards and talk with the winners about their individual journeys. I encourage disability services statewide to consider the innovation demonstrated by these winners and be inspired by their initiative.

The Hon. DUNCAN GAY: The time for questions has expired. If members have further questions I suggest they put them on notice.

ALBERT "TIBBY" COTTER WALKWAY

The Hon. DUNCAN GAY: Earlier the Deputy Leader of the Opposition asked me a question regarding Albert (Tibby) Cotter bridge. In part, I indicated that we had a project with a short-time window for completion in time for the 2015 Cricket World Cup. The Albert "Tibby" Cotter bridge had been a long-held

priority going back more than a decade. The project did not go to tender as we were able to utilise an already established alliance team that had been selected to undertake the construction of the Windsor bridge. The team was unable to continue with the project as a result of delays and planning challenges through the court system.

As a result, we were able to fast-track the development of the Albert "Tibby" Cotter bridge to meet the time requirements. The alliance is also delivering aspects of the city CBD access strategy. This novation of the tendered alliance meets all probity requirements. As an alliance, Roads and Maritime Services is working closely with Lend Lease, using all available resources to deliver another great project for Sydney in an extremely timely fashion.

Questions without notice concluded.

MINE SUBSIDENCE COMPENSATION AMENDMENT BILL 2014

In Committee

The CHAIR (The Hon. Jennifer Gardiner): If there is no objection, the Committee will deal with the bill as a whole.

Mr JEREMY BUCKINGHAM [5.06 p.m.], by leave: I move The Greens amendments Nos 1 and 2 on sheet C2014-052D in globo:

No. 1 Control and direction of Board

Page 3, schedule 1. Insert after line 5:

[2] Section 5 Appointment and constitution of the Board

Omit "shall be subject in all respects" from section 5 (1A).

Insert instead "is not subject in any respect".

No. 2 Constitution of Board

Page 3, schedule 1. Insert after line 5:

[2] Section 5 Appointment and constitution of the Board

Omit section 5 (2). Insert instead:

(2) The Board consists of:

- (a) the Director-General or a member of staff of the Department nominated by the Director-General, and
- (b) a member of staff of the New South Wales Public Works division of the Office of Finance and Services appointed by the Minister administering the *Public Works and Procurement Act 1912* being a person who is, or is qualified to be, a member of Engineers Australia, and
- (c) the following persons appointed by the Governor:
 - (i) a person nominated by the Minister (who is to be the independent chairperson of the Board), being a person who has not had any contract or arrangement with a proprietor of a colliery holding during the period of 5 years preceding the person's appointment,
 - (ii) a person nominated by the Minister, being a person who the Minister is satisfied has appropriate expertise in geology and geotechnical engineering,
 - (iii) a person nominated by the Minister, being a person who the Minister is satisfied has appropriate expertise in ecology and natural resource management,
 - (iv) a person nominated by the Minister to represent the owners of improvements situated within mine subsidence districts (other than improvements used in connection with the extraction of coal or shale),

- (v) a person nominated by the Valuer-General, being a person who the Valuer-General is satisfied has expertise in the determination of land values, and
- (vi) a person nominated by the Association of Mining Related Councils, being a person that the Association is satisfied will represent the interests of local Government.

(2AA) If a person has entered into any contract or arrangement with a proprietor of a colliery holding that remains in force, that person is ineligible for appointment under subsection (2) (c) (ii)-(vi).

[3] **Section 5 (2A)**

Omit "subsection (2) (c) (i), (ii), (iii) or (iv)".

Insert instead "subsection (2) (c) (v) or (vi)".

[4] **Section 5 (9A)**

Insert after section 5 (9):

(9A) A member of the Board referred to in subsection (2) (c) vacates office if the member enters into any contract or arrangement with a proprietor of a colliery holding.

[5] **Section 5 (13)**

Insert after section 5 (12):

(13) **Transitional**

Each person who holds office as a member of the Board under subsection (2) immediately before its substitution by the *Mine Subsidence Compensation Amendment Act 2014*:

- (a) ceases to hold office as such a member on that substitution, and
- (b) is not entitled to any remuneration or compensation because of the loss of that office.

These amendments seek to increase the independence of the Mine Subsidence Board [MSB] and broaden the skills base of that board. Section 5 of the Act deals with the appointment and constitution of the Mine Subsidence Board. Currently, the board in all its actions is "subject in all respects to the control and direction of the Minister". The Greens are of the view that this may unreasonably constrain the independence of the board and we are seeking to reverse the situation through our amendments. The Greens are also proposing that the Minister be able to nominate an independent chairperson of the board and that this person be required to have not had any contract or arrangement with a proprietor of a colliery during the preceding five years.

The Greens are not casting any aspersions on the current members of the board, but the issue of the board's independence has been raised in a number of forums. The amendments will also change the membership of the board to broaden its skills base. The Greens are proposing that the board include individuals with expertise in geology and geotechnical engineering, ecology and natural resource management.

The Hon. Dr Peter Phelps: It's a rort for the NCC.

Mr JEREMY BUCKINGHAM: The Hon. Dr Peter Phelps would be shocked to have a geologist and someone with expertise in geotechnical engineering on a Mine Subsidence Board. The Greens are not Luddites; we love technology, we love information, we love expertise and we are early adopters. I bet a member of The Greens will get the first Tesla S.

Ms Jan Barham: Which Green?

Mr JEREMY BUCKINGHAM: Probably me. We believe that we should adopt that technology and expertise. It would certainly improve the board. We also believe that the board should have a person representing owners of improvements, a nominee of the Valuer-General and a nominee of the Association of Mining Relating Councils. The Greens feel that these changes will go a long way to improving the independence of the board and the confidence of those who engage with the board. Therefore, I commend the amendments to the Committee.

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [5.09 p.m.]: The Government opposes The Greens amendments Nos 1 and 2. In relation to

amendment No. 1, given the extensive functions of the board it is appropriate that the Minister retains oversight. Further, although the power is expressed in broad terms it is subject to inherent limitations. For example, the power would not enable the Minister to direct the board to approve or reject a particular application. It is common for statutory bodies to be subject to ministerial control and direction. Other statutory bodies subject to ministerial control and direction include the Mining Competence Board, Destinations NSW and the Cemeteries Agency.

In relation to amendment No. 2, many of the new board positions proposed in the amendments are unnecessary. They are substantively the same as existing positions. For example, it is unnecessary to require a member to have expertise in geology and geotechnical engineering. This skillset is already captured by the requirement for a board member with appropriate expertise in coalmine operations. As with all technical matters, the board seeks and can obtain expert advice on land valuation, to give another example. It is also unnecessary to disqualify board members if they have any contracts or arrangements with colliery proprietors. Board members are already subject to requirements under the Government's Boards and Committees Guidelines, including in relation to conflicts of interest.

The Hon. STEVE WHAN [5.10 p.m.]: I have a quaint idea that in a democracy we elect members of Parliament to make decisions on behalf of people and that Ministers are appointed to govern things. In that case, they should be able to exercise their role as a Minister over authorities like this board, so I do not agree with the amendments.

Mr Jeremy Buckingham: What about the Planning Assessment Commission?

The Hon. STEVE WHAN: In relation to the interjection, I think that governments and elected members should take responsibility for planning decisions. We are elected to represent the people of New South Wales and we should take that responsibility. The Labor Party does not support The Greens amendments Nos 1 and 2. The board already has a broad cross-section of experience, which I suspect is exactly the same as it had when I was the Minister so I am happy with it.

Mr JEREMY BUCKINGHAM [5.11 p.m.]: I am concerned that in the Minister's response he relied on a requirement for a member of the board just to have some expertise in coalmining. That does not mean that a member of the board will have geological or geotechnical expertise. Someone like Nathan Tinkler might know how to buy, sell or start-up a coalmine and be an expert in the business side of coalmining but he is not necessarily an expert in geology and the impacts of subsidence. It would be of enormous benefit to have someone on a board who understands the nature of geology, the impact of longwall coalmining and knows what a goaf is. If we hand back powers to the Minister he should know what a goaf is. Do members opposite know what a goaf is, which is a very important part of longwall coalmining? I believe that having someone on the board with geotechnical expertise is very important.

If the Government approves coalmines such as Dendrobium which undermine the drinking water catchment of a few million people in Sydney, it should be done with eyes wide open to the potential impacts. Once a water catchment is destroyed it cannot be made good. It would be an advantage and eminently sensible to have someone with geotechnical expertise on a board who can foresee such impacts. I am disappointed that the Government and the Opposition do not agree with our amendments.

Question—That The Greens amendments Nos 1 and 2 [C2014-052D] be agreed to—put and resolved in the negative.

The Greens amendments Nos 1 and 2 [C2014-052D] negatived.

Mr JEREMY BUCKINGHAM [5.13 p.m.]: I move The Greens amendment No. 3 on sheet C2014-052D:

No. 3 **Interest on unpaid contributions**

Page 3, schedule 1. Insert after line 5:

[2] **Section 11 Contributions to be paid by colliery proprietors to Fund**

Omit section 11 (5).

The Act allows the board to waive interest for late payments to the scheme by collieries. It is unclear why that is needed and when or how often it is used. If the intention is to underpin the sustainability of the system as was

stated by the Minister in his second reading speech, why should interest for late payment be waived? Why should interest on late payments be waived for some of the world's largest corporations like BHP if we are trying to underpin and entrench the sustainability of this system? The Greens propose that that provision be removed from the Act. Surely the Government's intention is to ensure the fund's sustainability. That would be improved by removing the board's capacity to waive interest and ensuring that a penalty is imposed for late payment.

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [5.15 p.m.]: The Government does not support The Greens amendment No. 3. The power to determine the interest payable by a colliery holder lies with the board. It is therefore appropriate that the board retains the power to waive interest in any particular case if there is good cause for doing so.

Question—That The Greens amendment No. 3 [C2014-052D] be agreed to—put and resolved in the negative.

The Greens amendment No. 3 [C2014-052D] negatived.

Mr JEREMY BUCKINGHAM [5.15 p.m.]: I move The Greens amendment No. 4 on sheet C2014-052D:

No. 4 **Claims for environmental damage**

Page 3, schedule 1. Insert after line 43:

[5] Section 12AA

Insert after section 12A:

12AA Claims for environmental damage arising out of subsidence

- (1) Claims may be made under this Act for payment from the Fund for compensation for environmental damage to land that arises from subsidence, except where the subsidence is due to operations carried on by the owner of the land.
- (2) A claim under subsection (1) must:
 - (a) be lodged with the Secretary of the Board (in a form approved by the Board) within three months after the day on which the extent of the environmental damage to which the claim relates became apparent to the claimant or, if some other time within which such a claim may be lodged is prescribed by the regulations, within that prescribed time, and
 - (b) specify the location of the land, a description of the environmental damage and the amount claimed, and
 - (c) contain such other particulars as may be prescribed.
- (3) The provisions of section 12 (2) (b) and (5) apply, with all necessary changes, to and in respect of claims and payments under this section in the same manner as they apply to and in respect of notifications and payments under section 12.
- (4) In this section, *environmental damage* to land includes:
 - (a) damage to rivers, creeks and other waterways that run through the land, and
 - (b) damage to trees or other vegetation on the land.

[6] Section 12B Appeals

Omit "or 12A". Insert instead ", 12A or 12AA".

Currently the fund allows payments only for certain types of damage and, in the The Greens opinion, this does not include environmental damage. In our erudite opinion it is a key failing of the bill. The Greens amendment will allow a private landholder, council or other public entity to claim compensation for damage to the environment. It is vital that the true cost of mining is reflected in our laws and often it is the environment that faces the greatest cost. Again and again we see the business model of mining underpinned by externalising its waste and damage. I believe in a user-pays system; if they use it, they should pay. If they damage the environment they should pay—if they bust it they should buy it. As we have seen in a number of instances in New South Wales in very recent times, that has been the case.

As mentioned in my contribution to the second reading debate, longwall mining is listed as a key threatening process in the Threatened Species Conservation Act and for good reason. The NSW Scientific Committee lists impacts of subsidence to include, among other things, cracking of valley floors and creek lines with subsequent effects on surface and groundwater hydrology, decreased ability of slopes and escarpments, contamination of groundwater by acid drainage and deterioration of water quality due to reduction in dissolved oxygen and to increased salinity, iron oxide, manganese and electrical conductivity.

We know that subsidence has had disastrous impacts on water catchments, landholders and the environment and this has been demonstrated by Peabody Energy's longwall mining under the Waratah rivulet on the Illawarra Plateau, which caused massive cracks and made the water disappear or flow back polluted with iron oxide. I was distressed to witness Peabody Energy's efforts to fix the smashed rock bars in the Waratah rivulet. When I visited the site I saw the impacts of massive boulders of sandstone having dropped from the edge of the escarpment into the valley. The rock walls that hold back the water and create lagoons and drought refuges and aerate the water had been cracked. Peabody Energy set up large pumps and was basically pumping—

The Hon. Trevor Khan: Point of order: The member is not speaking to the amendment. Rather, he is taking us on a walk down memory lane, which is more suitable for a second reading debate. He should address his comments to the amendment.

Mr JEREMY BUCKINGHAM: To the point of order: The amendment relates to the environment. The Hon. Trevor Khan may not be au fait with the environment but the amendment is about the impact on the environment. I was giving an example of the impact of mine subsidence on the environment.

The CHAIR (The Hon. Jennifer Gardiner): Order! I remind Mr Jeremy Buckingham that the Committee is dealing with an amendment relating to claims for environmental damage. He should speak to that topic.

Mr JEREMY BUCKINGHAM: I witnessed considerable environmental damage for which I think Peabody should have been forced to pay and the Mine Subsidence Board [MSB] should have the powers to require that company to pay. We believe that the efforts of these bodies to self-regulate and remediate were very poor. Pumping those rock bars full of foam that would not last and that would do nothing to fix geology that had taken billions of years to create and just weeks to destroy was pathetic. The MSB should have powers to ensure that the environment is protected and that those who are busted are made to pay.

Another example of the impact of mine subsidence on the environment that the amendment addresses is Glencore Xstrata's failed subsidence repair job in the Sugarloaf State Conservation Area in the Lower Hunter. There were claims that the company had been mining in the conservation area for more than 18 months without meeting all its approval conditions. That is another example where the MSB should have powers to ensure environmental damage is paid for. The Greens amendment would address BHP Billiton Illawarra Coal's longwall mining in the Lake Cordeaux area of Sydney's water catchment area, which has caused vegetation to die, dried creeks beds, gaping cracks, water contamination and subsidence.

Thirlmere Lakes is an ecological catastrophe that is clearly caused by associated longwall mining. The lakes have disappeared and this is of enormous concern to communities down there. The Greens amendment seeks to deal with that environmental damage and we hope that the Government acknowledges that and recognises that if companies are destroying and damaging the environment, the principle of user pays should apply. I hope that the Government supports the amendment.

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [5.22 p.m.]: The Government does not support the amendment. The Mining Act already makes provision for compensation for environmental damage. Under the Mining Act environmental damage from subsidence is a loss for which compensation can be claimed. This means that affected landholders are entitled to seek compensation from colliery holders for any such damage. Importantly, there is also a framework in place to ensure that environmental impacts from subsidence are minimised and rehabilitated.

The environmental impacts of subsidence are carefully assessed as part of the development approval process under the Environmental Planning and Assessment Act. As part of this, outcome-based requirements are

imposed for sensitive surface features, including environmental features. Proponents must submit an extraction plan that describes how these requirements will be met. Compliance with these requirements is enforced by the Department of Planning and Environment and the Division of Resources and Energy. In addition, mining lease holders are generally required, as a condition of their authority, to rehabilitate any land on title that is affected by subsidence. Compliance with this requirement is supported by government step-in powers and a security deposit.

The Hon. STEVE WHAN [5.23 p.m.]: People listening to this debate may have gained the impression that this is the only legislation that governs damage from mining and may agree with the comments of Mr Jeremy Buckingham. However, this is not the only legislation that governs mining in New South Wales; it is a small part of it. As the Minister just mentioned, it is important to note that a mine is approved with conditions under the planning legislation. It is granted a licence to operate in an area subject to particular planning conditions that include the results of environmental impact statements and extensive work to try to determine the impacts of the mine. In all cases mine owners must put aside money that goes into a separate fund for rehabilitation, as well as money that goes into the Mine Subsidence Compensation Fund.

To extend mine subsidence compensation into the broader environmental impacts of mines would make the subsidence compensation fund completely unworkable. It would not have the money in it to be able to do that. The way The Greens have structured the amendment does not even define who would be able to make a claim for subsidence in a mine. It would leave it open to anybody anywhere to make a claim, whether or not it was their land, whether or not they were affected, whether or not a group had an interest in the impacted land and whether or not it was a catchment authority. One would not know because it is not defined in the amendment. It is not a serious amendment because it does not reflect anything that would work practically in the real world. People should understand that a series of environmental conditions are placed on mines. If those conditions are breached there are other avenues for government and landholders to receive compensation or rectification for any damage that might have happened. That is not something that is appropriately put into mine subsidence compensation legislation.

Mr JEREMY BUCKINGHAM [5.26 p.m.]: The Hon. Steve Whan belled the cat when he said that if mines had to pay for potential environmental damage caused by mining there would not be enough money in the fund. The key point is that communities across New South Wales are up in arms because environmental impact statements routinely underestimate or downplay the damage of longwall and other mining, conditions of consent do not deal with the impacts and the security deposits do not adequately cover the costs of the environmental damage, which in some cases is irreparable in geological time frames.

An escarpment that is smashed or a river that is destroyed cannot be completely rehabilitated or remediated. That is evident from what I saw in the Waratah rivulet, a beautiful part of the world with rock bars 200 metres across and 300 metres wide, where millions of tonnes of rock were smashed to pieces of sandstone because of subsidence. I am sure that the environmental impact statement for Peabody did not say, "We will destroy the Waratah rivulet. We will be mining under there and those rock bars and the escarpment will be destroyed." The security deposits go no way towards dealing with the costs that will be borne across many generations. If the scheme cannot afford it, then the scheme is broken. We need to make sure that miners are paying. We can foresee this damage and these impacts, which are intergenerational. The Hon. Steve Whan is correct. There is not enough money in the scheme and The Greens believe that the amendment goes a long way to rectifying that.

The Hon. STEVE WHAN [5.28 p.m.]: That is a spectacular misrepresentation of the point I made. Earlier in his contribution Mr Jeremy Buckingham said that he wanted Peabody to be made to pay for damage it caused. Putting it in this legislation means that the specific mine, which may or may not have caused damage, will not pay for it because the mine subsidence fund comes equally from a lot of different parts of industry. It does not come specifically from the miner who caused the problem. It is better to pursue compensation or rectification of environmental damage through existing legislation that gives the Government, the Environment Protection Authority and other authorities the power to pursue rectification or compensation for damage. No-one in this place is saying that miners who cause damage to the environment should be able to get away with it scot-free. The Opposition is saying that this is not the appropriate bill to achieve that end.

Question—That The Greens amendment No. 4 [C2014-052D] be agreed to—put.

The Committee divided.

Ayes, 5

Ms Barham
Mr Buckingham
Dr Kaye

Tellers,
Dr Faruqi
Mr Shoebridge

Noes, 29

Mr Ajaka
Mr Blair
Mr Clarke
Ms Cotsis
Ms Cusack
Mr Donnelly
Ms Ficarra
Mr Gay
Mr Green
Mr Khan

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

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

Question resolved in the negative.

The Greens amendment No. 4 [C2014-052D] negatived.

Title agreed to.

Question—That this bill as read be agreed to—put and resolved in the affirmative.

Bill as read agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. John Ajaka agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. John Ajaka agreed to:

That this bill be now read a third time.

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

WATER INDUSTRY COMPETITION AMENDMENT (REVIEW) BILL 2014**Second Reading**

The Hon. DUNCAN GAY (Minister for Roads and Freight, and Vice-President of the Executive Council) [5.40 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.

I am pleased to introduce the Water Industry Competition Amendment (Review) Bill 2014.

The Water Industry Competition Act—or WIC Act—commenced in 2008. Through a licensing regime and a third party access regime, the Act facilitates new market entrants, and regulates their activities in order to protect public health, consumers and the environment.

The bill before us is the outcome of a comprehensive review of the Water Industry Competition Act that has involved extensive stakeholder consultation. It seeks to address current regulatory gaps, improve customer protection, cut red tape and remove unwarranted barriers to entry.

The bill narrows the scope of the current licensing regime to focus on those higher-risk schemes that warrant expert regulatory oversight. It removes duplication with the Local Government Act and addresses an important regulatory gap relating to metropolitan councils.

Many metropolitan councils are currently operating recycling and stormwater reuse schemes that are not subject to any regulatory oversight. This creates risks to water quality and public health.

The bill mitigates these risks by bringing metropolitan councils into the Water Industry Competition Act framework.

Importantly, the bill significantly strengthens the last resort arrangements to ensure essential services are maintained in the unlikely event that either a retailer or an operator fails.

While the current Act includes provisions dealing with the failure of a retailer, there are no such provisions to deal with the failure of a licensed scheme operator.

The bill addresses this gap—and provides a flexible framework to enable a last resort provider to recover its costs.

The bill adds a new clause to remedy the absence of objects in the current Act.

The key objects now include:

- the protection of public health and safety, the environment and the interests of consumers—including in the longer term; and
- the facilitation of competition with a view to encouraging innovation and improved efficiency.

The objects clause refers explicitly to longer-term considerations.

Experience in other markets has shown that short-term approaches can impose inefficient costs in the longer term, and have adverse impacts for consumers, the broader community, and the environment.

The new objects clause also includes the aim of "facilitating the efficient, reliable and sustainable provision of water and sewerage services, having regard for financial, environmental and social considerations".

This "triple bottom line" approach is vital given the nature of the water industry and its potential for significant public health, environmental and social impacts.

The bill also includes a new test as to the suitability of parties seeking a licence or approval. This brings the Act into line with similar legislation, and will ensure that approvals and licences are only granted to appropriate entities.

In addition to the current requirement that applicants have the technical, financial and organisational capacity to undertake the proposed activities, the bill requires consideration of the degree to which an applicant relies on the capacity of contractors and subcontractors, whether those arrangements are suitable, and whether additional conditions are needed to address any issues arising.

This is a new requirement that will enable regulators to consider whether business models pose any risks in relation to the effective and efficient administration and enforcement of the Act, and impose any additional conditions considered necessary.

It is in the interests of all parties that companies entering the water market are reliable and robust—not "two dollar companies" that may be unwilling to make the ongoing investments needed to maintain their assets and comply with all applicable standards.

For public water utilities who may be appointed as last resort providers, granting approvals and licences to such companies could increase the risk they will need to step in to maintain services to customers.

For private entities operating in the market, community acceptance of alternative providers would be eroded.

And most importantly for consumers, the need to protect public health and maintain essential services underscores the importance of only granting approvals and licences to suitable corporations.

I now turn to the proposed repeal of section 10 (4) (d) of the Water Industry Competition Act, an element of the bill that has received a great deal of attention.

While the bill does remove the existing requirement in section 10 (4) (d) to source sufficient water other than from a public water utility, it is incorrect to suggest that the reform will enable Water Industry Competition Act licensees to simply become water re-sellers. In fact, the bill explicitly provides that this cannot occur.

Under the proposed reforms, services can only be provided by Water Industry Competition Act retailers when there is new infrastructure to deliver services.

This requirement is consistent with the original policy intent of the Act to encourage new investment in water infrastructure. It also ensures that we do not see a market develop that would provide an incentive for retailers to increase sales in order to increase profits.

The whole notion that the amendments to the Act are opening the door for water re-sellers shows a distinct lack of understanding of the urban water market.

Due to the small margins in the urban water market—retail margins in the electricity sector are around three times higher—there is little incentive to act as a re-seller, even if it was allowed.

In addition, the pricing principles set out in the Water Industry Competition Act require consistency with postage stamp pricing, meaning that private providers cannot undercut the public water utilities.

The claims that the amendments represent a step towards privatisation of water assets are similarly unfounded.

If privatisation was the objective, we would be seeking to stymie rather than facilitate competition with existing utilities.

During debate in the other place, a number of misleading statements were made about the consequences of repealing this provision.

The Government rejects those assertions.

We have specifically adopted a market model that is designed to protect water efficiency improvements, and does not incorporate full retail contestability. We have done this despite calls by some stakeholders that all limits on competition should be lifted.

Concern was also expressed that private operators will be able to purchase large amounts of water from public utilities and on-sell it to retail customers for a significant profit. This is based on a misconception that private entrants can get a discount if they buy in "bulk" from Sydney Water.

In fact, all customers who buy drinking water from Sydney Water pay the same price per kilolitre—there is no discount for buying "in bulk". Under the Independent Pricing and Regulatory Tribunal [IPART] Act, Sydney Water and Hunter Water cannot legally sell water for less than the price set by IPART, unless the Treasurer grants approval—and the Treasurer has never done so.

Similarly, if a new entrant was to use the Water Industry Competition Act's access regime to enter into a water supply agreement with another water authority—rather than just buying water direct from Sydney Water—there are provisions to ensure that access prices are in line with IPART's pricing determinations and "postage stamp pricing".

Provisions will also be retained to prevent a new entrant from undercutting Sydney Water. These were included in 2011 to ensure that all in Sydney Water's area of operations contribute fairly to the cost of infrastructure that secures our water supply.

In short, you cannot get a discount for buying in "bulk".

It is also wrong to suggest—as several did in the other place—that private licensees will be able to charge whatever they like, to the detriment of households across New South Wales. In fact, the bill makes a number of changes designed to boost customer protection.

For example, it introduces a new test whereby IPART must not grant construction approval unless satisfied that a proposed greenfield or infill development—called a "category A scheme" in the bill—will not have significant adverse financial implications for residential and small commercial customers. IPART must also be satisfied that the scheme is financially viable.

This turns the current licensing principle in section 7 of the Act into a concrete test that the proponent must meet before approval can be granted. In addition, for customers of such schemes, contract terms will be prescribed in the regulation to ensure customer interests are protected.

The bill also requires new information to be included in planning certificates to notify purchasers if a property will be serviced by a Water Industry Competition Act licensee. In this way, buyers can find out about water and sewerage charges up-front.

Licensees will be required to publish their prices, and customers must be notified at least six months in advance of any increase.

IPART must also be notified of any price variation, and licensees cannot lawfully recover the new charges if they have not given the required notice.

If a private licensee is charging high prices for their services—and the customer has the option of switching back to a public water utility—they will be able to "vote with their feet" and change supplier. In these circumstances, private licensees will have a strong incentive to conduct their business in a way that does not turn customers away.

If the customer does not have the option of switching supplier, the Minister may issue a monopoly supply declaration under section 51 of the current Act, and request IPART to determine the price to be charged.

The Minister also has power to impose licence conditions on retailers to protect the interests of customers. For example, the Minister could impose conditions if licensees were considered to be "price gouging".

Another view expressed in the other place is that consumers will be "left high and dry" as private companies do whatever they want.

Customers will not be left high and dry under these reforms.

However, they could be if the bill is not passed—and the proposed reforms to licensing, scheme approval and last resort arrangements are not strengthened. Customers—and the broader community—could also be adversely affected if metropolitan councils continue to go unregulated.

Concern was also expressed that the reforms will jeopardise water quality. This too is unwarranted.

The Government is very conscious of the need to ensure that infrastructure is built to appropriate standards and is appropriately maintained over time. The bill includes a number of provisions to do just that.

It greatly strengthens the approval process for schemes to ensure that, before construction, scheme designs accord with national water quality guidelines.

This includes a new requirement that scheme designs are signed off by an independent auditor to give confidence all schemes will meet relevant standards.

Licensees will be subject to the same water quality requirements as public water utilities.

As with the current Act, the quality of water produced by a scheme must be rigorously tested after construction and commissioning—and before commercial operation can begin. Again, this involves checking by an independent auditor that the water complies with relevant public health requirements.

It was suggested in the other place, that—if the bill is passed—private operators will be able to purchase water from Sydney Water or another authority, instead of being required to put "reservoirs and other water harvesting vehicles" in place on a new development site.

A few facts are in order.

The current situation—with section 10 (4) (d) in place—is that every Water Industry Competition Act licensed scheme providing services to new greenfield and infill developments is sourcing drinking water as a large customer of Sydney Water. None of them have opted to invest in their own supply of drinking water since that would be hugely costly and inefficient.

Instead, they are recycling effluent and providing it back to customers for non-potable use through dual reticulation schemes. In some instances, they are also harvesting stormwater—but none have installed large reservoirs.

Section 10 (4) (d) says nothing about investments of this sort—it simply refers to sourcing water other than from a public water utility. It does not say what kind of water, or how much is sufficient, or whether the water should be from a new source—and the current regulations are also silent on these matters.

Those opposed to the bill have suggested that the Government thinks there will not be future droughts—hence our willingness to remove section 10 (4) (d). They even went so far as to suggest that Sydney would run out of water if there is a future drought as severe as the millennium drought.

This suggestion is both wrong and irresponsible.

The Government has a robust plan in place to make sure Sydney never runs out of water, and it is wrong to suggest that the reforms before us pose any risks to water security.

The licensing principles retained under this bill include having regard for "the promotion of policies set out in any prescribed water policy document".

The Government's Metropolitan Water Plan is such a policy document. It identifies the optimal portfolio of supply and demand measures to ensure Sydney can meet its water needs, both during drought and for the longer term.

For example, the operating rules for the desalination plant were set out in the 2010 Metropolitan Water Plan, and are given effect through conditions imposed on the Water Industry Competition Act licences held by Sydney Desalination Plant Pty Ltd.

In addition, the current Water Industry Competition (General) Regulation empowers the Minister to impose drought restrictions on both public water utility customers and customers of Water Industry Competition Act licensees. This will not change under the reforms.

The Government is acutely aware of the drought affecting many parts of New South Wales.

We support investment in infrastructure that promotes drought resilience. That is why we want to ensure that requirements are imposed in an effective way—one that cannot easily be avoided, as can the current requirement—and in a way that applies both to public and private utilities.

Placing requirements on private utilities that are not also imposed on public utilities makes it even harder for private utilities to get a foothold in the market.

Experience has shown that when they do, they bring with them innovative and sustainable solutions.

If they do not succeed in entering the market, the section 10 (4) (d) objective of encouraging private investment in alternative water sources *will not be realised*. Business as usual will prevail—and that means public utilities delivering services in what are generally conventional, centralised ways.

There is a range of reasons why private water utilities currently find it difficult to compete with the large public utilities.

The Government acknowledges this and is examining these issues, particularly in connection with their impact on housing supply.

However, many of these matters are outside the scope of the Water Industry Competition Act and cannot be addressed by these reforms.

I note finally the suggestions that removing section 10 (4) (d) is part of a wider plan to "fatten up Sydney Water for sale". This assertion makes no sense.

The removal of section 10 (4) (d) is designed to facilitate competition by creating a more level playing field, allowing new entrants to compete more effectively with incumbent utilities like Sydney Water.

If we wanted to shore up Sydney Water's business, we would be seeking to stymie competition rather than facilitate it. We would be retaining section 10 (4) (d)—making it harder for new entrants to compete—rather than removing it.

Most importantly, the bill makes important and long overdue changes to ensure that the Water Industry Competition Act can effectively protect public health and consumers, while removing unnecessary red tape.

I commend the bill to the House.

The Hon. PETER PRIMROSE [5.41 p.m.]: I lead for the Labor Opposition in debate on the Water Industry Competition Amendment (Review) Bill 2014. This bill is the precursor to the main event: the privatisation by the Baird Government of our public water utilities. Like all privatisations, in the end consumers will pay more. A key objective of Labor's 2006 Water Industry Competition Act was to ease pressure on drinking water supplies by promoting the development of alternative sources of water such as recycling and stormwater harvesting. To quote the long title, it was "an Act to encourage competition in relation to the supply of water and the provision of sewerage services and to facilitate the development of infrastructure for the production and reticulation of recycled water".

During its time in office, the State Labor Government extensively promoted water saving measures. In 2005 it established the Water and Energy Savings Fund to promote water and energy saving initiatives throughout the State. It allocated \$43 million to 79 projects, saving an estimated 12 billion litres of water every year through a diverse range of recycling, water efficiency, stormwater harvesting and groundwater projects. In 2010 greater Sydney was using the same amount of water that it had used in the early 1970s despite having 1.3 million more people. Put another way, Sydney's total water consumption fell from 506 litres per person a day in 1990-91 to 314 litres per person a day in 2009-10. In 2009-10 alone, 35.8 billion litres of water was recycled in Sydney Water's area of operations. Over the previous 15 years, Sydney Water had gone from using 6.2 billion litres of recycled water in wastewater treatment plants to 16.3 billion litres a year.

To ensure that this commitment to recycling continued to grow, the 2006 Act encouraged the development of these alternative sources of water. The Labor Party understood in 2006, and understands today, that good water policy is much more than simply trying to find ways to make markets work more efficiently. It must be seen as more than an issue of pricing. Good water policy must be seen in the context of preserving a resource that will inevitably fluctuate in supply over decades. Section 10 (4) (d) of the Act provides that the Minister must not grant a licence to supply water unless he or she is satisfied that if such a licence is granted "sufficient quantities of the water supplied by the licensee will have been obtained otherwise than from a public water utility". This meant that the licensee could not simply purchase drinking water from public utilities and on-sell it to retail customers. The objective was to ensure that new entrants contribute a "new commercial source of water" to "ensure that existing water resources are not compromised through the introduction of competition".

Central Park on Broadway is a good example of a water project developed under section 10 (4) (d). It will save close to one million litres of drinking water every day by recycling water that will then be used for activities such as flushing toilets, car washing and irrigating the 170-metre vertical garden. In Rosehill a licensed scheme is now providing three billion litres of recycled water every year to industry and agriculture, and this will soon rise to seven billion litres a year. This saves our drinking water supply by identifying and utilising water other than from our public water utility, which is exactly what the 2006 Act intended.

The Baird Government now proposes in this bill to repeal that key section of the 2006 Act with the sole stated objective of creating a so-called level playing field that allows new entrants to compete with public

utilities for the right to service industrial and larger commercial customers without developing alternative water sources. In other words, they can simply buy it from Sydney Water, Hunter Water or another catchment authority. This will probably significantly reduce the chances of converting these customers to alternative supplies such as recycled water or harvested stormwater, which would ease demand on potable water supplies. As Elizabeth Farrelly wrote recently in the *Sydney Morning Herald*:

Just as we head into another El Niño, the Baird Government proposes to remove water efficiency requirements from utilities. This is the latest in a string of bizarre moves from our various conservative governments; squeeze the poor, pamper the rich, preserve graft in financial services, undermine renewables, trumpet cheaper energy—and water? Mate. Don't worry about it.

Perversely, the Minister's second reading speech notes that the 2006 Act was "developed in the midst of drought". True enough. In 2006 our dam supply of water for Sydney was around 30 per cent. If the Government had not been transferring water from the Shoalhaven and if water restrictions had not been in place, Sydney's water supply would have been down to single figures. However, the Minister's comment seems to suggest that in 2014 New South Wales is not in drought, or that drought is some kind of rare event. This is especially concerning coming from someone who is also the Minister for Western NSW. Today, around three-quarters of this State is in drought and the Bureau of Meteorology forecasts that there is a 50:50 chance we are moving into another El Niño event. That is why we must maintain the core requirement in section 10 (4) (d) of the 2006 Act.

The Government argues that the BASIX and Green Star schemes, along with the Protection of the Environment Operations Act 1997, will be sufficient to support investment in recycling. However, none of these instruments specifically targets the development of new water sources—they are targeted at consumption or rainwater tanks. Recycling has always been considered an essential component of Sydney's and the Hunter's water strategy. It is also proposed to allow new entrants to provide retail services—billing and metering—to residential and small commercial customers in new greenfield and infill developments if these services are provided in connection with a scheme licensed under the Water Industry Competition Act.

The result of these changes will be to move away from regulation designed to promote alternative sources of water towards a system of retail competition. Infrastructure developed by private sector operators will be able simply to deliver water derived from public utilities rather than from recycling or stormwater harvesting. This has serious implications for water conservation and drought security. The core question that remains unanswered by the Urban Water Regulation Review Position Paper and the Water Industry Competition Amendment (Review) Bill 2014, which arose from it, is: What is the public good in introducing this legislation? Again, to quote Elizabeth Farrelly:

First, the Independent Pricing and Regulatory Tribunal recommended the scrapping of Sydney's water usage and efficiency targets. Then, within days, Water Minister Kevin Humphries introduced a bill to relieve water and sewerage utilities from their existing obligations to use recycled water. This is madness.

Jeff Angel from the Total Environment Centre makes the point that removing Sydney Water's conservation targets, while at the same time allowing it to sell more water to private operators and boost profits, is simply a bid "to increase its attractiveness to potential buyers": reduce staff, fatten it up, and then sell it. No compelling case has been made that any change to water competition legislation is required or that increasing private investment is either necessary or desirable without the provisions in the 2006 legislation. There is no evidence that privatisation reduces costs to consumers or increases innovation in service provision and delivery. Water is a natural monopoly, thus for-profit providers have only two ways to make money: cut costs or increase fees. Both of these are deleterious for customers and for citizens.

These proposed changes to the 2006 Act are clearly a stalking horse for privatisation of public water utilities. The Baird Government has made one thing crystal clear: It not only likes privatisation but cites it as the solution to virtually every issue facing the State. There are multiple ways to privatise an industry or utility: sell off assets, contract or outsource services, or introduce competition. This bill will privatise water in New South Wales by stealth through facilitating competition in a way that is advantageous for for-profit providers. Extending competition for billing and metering services to residential and small commercial customers in already developed areas, including those serviced by Sydney Water and Hunter Water, will open the way to privatisation of existing retailers. The Government's position paper that preceded the bill did not preclude ultimately allowing new entrants to compete for retail services in these areas, stating only that it will not occur "at this stage" and that the Government considers that more "analysis and consultation would be required".

Adoption of such a "vertically disaggregated" model in the energy industry has encouraged retailers to promote increased sales at the expense of demand management. This is not an entirely new direction for the

New South Wales Liberals and Nationals, of course. What is already happening at Sydney Water and Hunter Water has a familiar ring to it. Under the Baird Government, Sydney Water is not customer focused; it is profit focused. It is all about paying the maximum dividends to the Liberal Government. Sydney Water's annual report shows that it made a massive after-tax profit in 2012-13 of \$415 million. That is \$48 million higher than in 2011-12. This was because of the higher income it got from water sales and service charges. Sydney Water paid the New South Wales Liberal-Nationals Government a record dividend of \$368 million in 2012-13. The Auditor-General found that 24 per cent of all the money that Sydney Water receives from its customers is now paid out as dividends and taxes.

While it has been increasing profits, Sydney Water has had to cut its staff and put up its domestic water prices. You cannot blame Sydney Water for this any more than you can blame cattle for being fattened up in a field before they are sold off. The Baird Government is cutting staff and services at Sydney Water, and increasing how much profit it makes. All this is to make it more appealing to potential buyers when the Government announces that it will be put up for sale and privatised. Internal documents show that in late 2012 the Government hired consultant firm Farrier Swier to find ways to increase private involvement in Sydney Water's wastewater plants with an estimated value of around \$5 billion, such as those at Bondi, Malabar, North Head and Cronulla.

The same thing is taking place in the Hunter. Premier Mike Baird has failed to rule out the further privatisation of Hunter Water assets. It is already being privatised by stealth. So-called non-core assets are being sold. In June 2014 the Government announced that the maintenance and operation of Hunter Water's 25 treatment plants will be outsourced for at least eight years to multinational company Veolia under a \$279 million contract. This privatisation follows the State Government's decision earlier this year to sell Hunter Water's Honeysuckle head office building with a 10-year leaseback. Some of the proceeds of the sale of the Hunter Water headquarters will go towards the Burwood Beach Wastewater Treatment Works. As always, a great slice of Hunter Water's profits will not stay in the Hunter but end up in consolidated revenue in Sydney, just like the proceeds from the sale of the Port of Newcastle. The Baird Government is also weighing up the potential divestment—in other words, privatisation—of the Kooragang Island recycled water plant project.

Most recently, at the beginning of August Hunter Water announced that it was selling its subsidiary Hunter Water Australia, which had been created in 1998 to provide water treatment, engineering, surveying and laboratory services. It developed to become an international success. What reasons were given for this sale? It is because the Baird Government had just outsourced to Veolia the work it had done previously to maintain and operate Hunter Water's treatment plants. To quote Hunter Water General Manager Kim Wood:

Not only is the contract the largest ever signed by Hunter Water, but it is also the first time the business has taken the operation of its treatment plants to tender.

This was the first time Hunter Water had taken the operation of its treatment plants to tender, having previously done the work itself through its 100 per cent owned subsidiary Hunter Water Australia. Now it is selling off an integral part of its own operations. As I said, this is privatisation by stealth. Not only will it mean higher prices for Hunter Water consumers in the end but also it has meant job losses. On top of the massive losses of manufacturing jobs in the Hunter caused by the State Government's refusal to give bus, train or shipping contracts to New South Wales employers and the decimation of TAFE, job losses in Hunter Water are damaging the entire Hunter community.

It is also unlikely that the private sector water licences will have the same environmental reporting, energy use and waste management requirements as currently imposed on Sydney Water and Hunter Water. This could—and, understandably, consequently does—give rise to demands by both Sydney Water and Hunter Water to have their requirements removed. Under this level playing field argument, the Minister will likely acquiesce. Remember this is the same Minister who announced that he would scrap the Sydney Catchment Authority, which was specifically established by the Carr Government in 1998 as an essential stand-alone authority to protect the drinking water supply catchment for the people of Sydney, the Illawarra and the Blue Mountains. While it is envisaged that the Environmental Planning and Assessment Act will work in concert with this bill, it is of concern that the bill is silent on this issue. This is a missed opportunity, especially given that environmental protection remains one of its stated aims.

In particular, the question remains as to whether new entrants to the market will, under this legislation, be self-assessors when it comes to environmental impact and risk. Without more stringent penalties for environmental damage the bill runs the risk of failing to protect our natural environment and our water resources. As with the public health and safety penalties, this legislation must ensure that the onus of proof is on

the private supplier and not on the public agency. I will return to this point later, but a reasonable bill would specifically require that any new entrants to the market are not self-assessors for the purposes of environmental impact under the Environmental Planning and Assessment Act.

As a consequence of the way water is delivered to consumers, regardless of whether there are multiple retailers in New South Wales, no consumer will, in reality, be able to choose their providers. Therefore, any argument about competition leading to lower prices is negated. In addition, if IPART continues to set prices either for wholesale water or for both wholesale and retail, then private water companies will have an incentive to either drive prices up or reduce costs in areas such as maintenance and quality control if the specific requirements of the 2006 Act are removed by this bill.

If pricing arrangements are made independent of IPART through long-term contracts between a private licensee and a public authority such as Sydney Water, the outcomes become even more perverse. Prices will be set according to long-term contracts. This might be cheaper in the short term, but when we return to conditions of severe drought, as we inevitably will, and severe water restrictions are imposed, Sydney will face the prospect of a multiplicity of prices and a variety of restrictions for the provision of water depending on which area of Sydney people live and who is supplying their water. As I said, good water policy has to be seen in the context of preserving a resource that will inevitably fluctuate in supply over decades. Regardless of where people live in greater Sydney they should pay the same amount for their water and be subject to whatever restrictions are applied to protect that supply.

In the United States of America—arguably a jurisdiction in favour of privatisation and with the most favourable conditions for privatised services—most water services remain publicly delivered. Only 6 per cent to 8 per cent of water services in the United States are delivered through for-profit contracts. Many jurisdictions in the United States have, in fact, remunicipalised their water utilities and services primarily as a consequence of water quality issues. The Opposition is concerned that protections in the 2006 Act concerning the provision of water services for people in need, including people living in remote areas and those experiencing financial hardship, will be weakened by this bill. Water is an essential service and it is imperative that any and all suppliers and operators of water services are required to provide those services for the entire New South Wales community. A reasonable bill would ensure that the provisions relating to social programs for the supply of water remain unchanged from the 2006 Act.

We have concerns regarding providers of last resort. Providers of last resort are those public utilities that are required to step in should there be a failure of service delivery or of infrastructure. That a provider of last resort must be a public water utility is in and of itself appropriate, but that consumers of a failed entity may be required to participate in cost recovery is problematic. The requirement that a public utility is required to step in means that it is the citizens of New South Wales who will inevitably provide some element of cost recovery. As one of the most significant issues with private investment in public projects is the defraying of risk from the private entity, it is imperative that any legislation ensure that risk is borne by the entity making the profit. As the bill stands some consumers will, in effect, have to pay twice for the failure of a private company.

A reasonable bill would have required that the provisions related to providers of last resort ensure the burden of cost recovery will not fall on customers and that any public utilities required to step in should there be a failure would have adequate opportunity to pursue costs from failed entities. While the bill currently provides some protections for consumers with regards to the granting of retail licences in that consumers must elect to switch to another provider and must have a contract with them, and that any alternative provider of water services must already be supplying services such as recycled water or sewerage to the connected property, the Opposition shares the concerns of some stakeholders that changes to retail licensing might give rise to a proliferation of small retail suppliers with little or no experience in the water industry simply managing the on-selling of water.

Further, while the proposed increase in penalties is welcome, the Opposition has grave concerns about the requirements that must be satisfied in order to secure these penalties. Specifically, new section 20M requires that the prosecution must prove that the infrastructure was operated without the required approval or licence or in contravention of the licensing conditions, that the act was intentional and that the operation of the infrastructure caused high-impact or wide-scale actual or potential harm to the health and safety of human beings. The multiple limbs of the offence suggest that it will be impossible to grapple with, except in the case of the most severe failure. Any reasonable bill would replace the "ands" with "ors", and delete new section 2 altogether. The onus in new section 20M should be reversed so that it lies with the provider and not with those making the claim that a health or safety breach has taken place.

In addition, the requirement that these allegations form part of an initial notice to appear or an application is problematic as this precludes the capacity to address these issues should they arise in the course of any proceedings. Moreover, given that agriculture, fisheries and forestry are parts of the New South Wales economy, it seems an oversight not to include protections for potential damage to those industries and any others that might be impacted by failures in water quality or service provision. It is unconscionable for any legislation designed to enable for-profit providers to make money by selling a publicly held resource back to the public not to contain stringent regulations to ensure that any breaches that may occur are adequately penalised. This Government—Premier Baird, in particular—has made it clear that it is an active advocate of privatisation. This bill is not good water policy. Privatising Sydney Water and Hunter Water is not good water policy. We oppose the bill.

The Hon. GREG PEARCE [6.06 p.m.]: I support the Water Industry Competition Amendment (Review) Bill 2014. As the former portfolio Minister for both Sydney Water and Hunter Water I have some firm views on the direction of the much-needed reform, which did not happen under the former Labor Government. This Government has spent a considerable amount of time on reform in this area. I drove reform to work practices, we attempted to eliminate waste, we initiated the desalination plant transaction—which freed up more than \$2 billion and made the first contribution to our asset renewal through the Restart Infrastructure Fund—and we drove down the price increases that had become rampant under the former Labor Government. I made submissions to the Independent Pricing and Regulatory Tribunal [IPART] to ensure that prices were controlled.

However, one of the things I did not do as portfolio Minister—contrary to some reports in the media—was make appointments of directors of those two companies; those appointments were made by the shareholding Ministers at the time. This bill shows that the Government is listening to both industry and stakeholders and is developing a vibrant and dynamic water industry—one that will attract new entrants and create more opportunities. The bill is the result of an extensive process of engagement with a broad range of private and public water infrastructure providers.

A key element of the reforms before the House today is the removal of section 10 (4) (d) of the existing Water Industry Competition Act, which requires new entrants into the market to obtain some water from sources other than a public water utility. This has led some people mischievously to suggest—and we just heard some of it—that removing section 10 (4) (d) would somehow allow Sydney Water to sell more water and make more money and be a more attractive proposition for future sale. I can assure the House that there are no plans to privatise Sydney Water. In fact, if one wanted to shore up Sydney Water's business one would seek to stymie competition rather than facilitate it. Of course, we continuously hear negativity and smear campaigns from members opposite.

The removal of section 10 (4) (d) is designed to facilitate competition by creating a more level playing field, allowing new entrants to compete effectively with public water utilities such as Sydney Water and Hunter Water. The way to make money in the water sector is to earn a return on assets included in the regulated asset base. This is a regulated business. By contrast, retail margins in the sector are slim. By removing section 10 (4) (d) and creating a more level playing field, we increase the ability of new entrants to service new developments. When they do, new assets are held privately and do not form part of the public water utility's regulated asset base. In other words, the public water utility is not able to earn a return on such assets.

This demonstrates that removing section 10 (4) (d) is not about preparing public utilities for sale. On the contrary; as the new objects clause in the amended bill makes clear, the Government wants to facilitate competition with a view to encouraging innovation and improved efficiency. However, we do propose other changes in the bill to prevent a shift to full retail contestability—a model which was introduced into the national electricity market, but has been acknowledged as having an adverse impact on energy efficiency.

Dr John Kaye: Did you say an adverse impact on energy efficiency?

The Hon. GREG PEARCE: Yes. I will talk to Dr John Kaye about it separately later. Full retail contestability is not considered appropriate for water—a resource that is severely impacted by our climatic conditions, often constrained within our natural and man-made landscapes, and very costly to move around. The changes in this bill are designed to mitigate the risks that such a fully contestable model can entail. The Government wants to preserve the enormous water efficiency gains realised in recent decades, and particularly in the first three years of our term, and has selected a market model that we consider best supports this.

Again, this is not about protecting Sydney Water. If we wanted to boost its business we would seek to promote water consumption—that is where Sydney Water charges for its services—but that poses risks for

drought security and is not in the short or longer term interests of consumers or the environment. We acknowledge a concern raised by stakeholders that removing section 10 (4) (d) could result in less investment in recycled water. However, we do not think recent discussion on this issue has been well informed. On another occasion I would be happy to talk about the recent performance of recycled water assets. It is a difficult area.

An examination of schemes licensed to date strongly suggests that factors other than section 10 (4) (d) have driven investment in recycled water schemes. These factors include the desire to develop land in areas remote from existing sewage treatment plants, compliance with BASIX [Building Sustainability Index] water savings targets in new developments, and the green star rating for commercial buildings. Based on experience to date, if private entrants are allowed to compete with incumbent utilities they will invest in innovative approaches for reasons other than section 10 (4) (d). The irony is that in the legal situation that currently exists, private entrants could readily avoid section 10 (4) (d) by opting for conventional sewage disposal with no recycling. Clearly, a new approach is necessary.

To this end, the Government will examine options to better align schemes—those proposed by both public utilities and private utilities—with integrated approaches to water cycle management. There is no conspiracy. The Government simply wishes to ensure the regulatory framework governing the water sector is equitable and supports the ability of new entrants to provide innovative and competitive solutions in development areas. I commend the bill to the House.

Reverend the Hon. FRED NILE [6.13 p.m.]: On behalf of the Christian Democratic Party I speak on the Water Industry Competition Amendment (Review) Bill 2014. The bill establishes an access regime to enable new entrants to access existing water and sewerage infrastructure and a licensing regime to ensure that private providers of water, including recycled water, and sewerage services protect public health, the environment and consumers. I am pleased that the Government has included in the bill a set of objectives that makes clear the purpose of the legislation. That is a positive feature of this bill. The bill addresses the lack of an objectives clause in the current Act. Building on the licensing principles set out in section 7 of the Act, the new clause includes as objectives the facilitation of competition with a view to encourage innovation and improved efficiency, and the provision of efficient, reliable and sustainable water and sewerage services, having regard to financial, environmental and social considerations.

Another important objective is better protection of public health and safety, the environment and the interests of consumers, including in the longer term. Those objects are set out in schedule 1 to the bill. The new object in section 2A (e) is the facilitation of competition in the water industry with a view to encouraging innovation and improved efficiency in the industry. Similar to what happened with the old Telecom and Telstra, in this case Sydney Water has provided the water and sewerage systems in the Sydney area and Hunter Water has done the same in the Hunter Valley. It raises a question about private operators having access to existing structures, including piping, et cetera. As happened with Telstra employees, Sydney Water employees feel that somehow they will be exploited by new private operators who enter the scheme.

The only benefit with any privatisation is that consumers benefit in terms of lower prices. We will have to watch closely to ensure that that happens; we do not want to see water prices for consumers increase as a result of this bill. Many consumers already struggle to pay their electricity bills and they should not have to struggle to pay their water bills. I am thinking of pensioners and others on limited incomes who are hit by some of these developments. On the positive side, the bill will cut red tape by narrowing the current licensing regime to focus on utility schemes, bulk water and sewerage facilities and other prescribed infrastructure. The bill will provide for entity-wide licensing and a separate scheme approval process. It will also bring metropolitan council schemes that meet these thresholds under the Water Industry Competition Act. Apparently at the moment such schemes are outside the Act.

The bill will remove barriers to entry for the private sector, including the current requirement for new entrants to source sufficient water other than from public water utilities. As I said, the bill will strengthen customer protections and will increase penalties so that they are commensurate with the types of activities being regulated to include review and appeal provisions. We will have to carefully monitor the operation of the legislation to ensure that it fulfils the objectives that have been included in the Act so that consumers will benefit from this legislation. So we support the bill, even with our concerns about the future.

Dr JOHN KAYE [6.19 p.m.]: On behalf of The Greens I address the Water Industry Competition Amendment (Review) Bill 2014. I say from the outset that The Greens will be firmly opposing the bill. This bill takes a bad piece of law, the Water Industry Competition Act, and makes it even worse than it was before. This

legislation turns a dangerous pro-privatisation law into an even more dangerous pro-privatisation law. Lest I be accused of a conspiracy theory at this point, there are many ways to privatise a public utility. The first is to sell off the utility. The Hon. Greg Pearce missed this point. The second is to outsource or to pass to the private sector parts of the activities of that public utility. In this case, the Water Industry Competition Act operated largely by allowing competition in at the greenfield end—at the new development end. Private sector providers took over provision from Sydney Water and squeezed out Sydney Water, which is also true of Hunter Water. In effect, private providers are being allowed to nibble away at the edges of Sydney Water and Hunter Water.

It is not privatisation necessarily in a sense of selling off the asset, but it is privatisation in the sense of allowing the private sector to move in on, compete with and take business from the public sector provider. This legislation makes matters even worse by dropping even some of the minor barriers that are left to private sector competition. The Act commenced in 2008. About 10 schemes are licensed under the Act, two of which are non-potable recycled water and sewerage services to residential areas on the outskirts of Sydney. The Water Industry Competition Act was introduced during the height of the millennium drought in 2006 when the argument was that there was a need for innovative water services and that only the private sector and competition would bring that about.

To be absolutely clear about that, that should have been seen by the then Minister for Water Utilities, David Campbell, and his successor Minister for Water, Nathan Rees, as an admission of their failure to manage public sector water providers to create competition and innovation. I have worked in public sector utilities that have been some of the most innovative in the world because there was good management with the right political objective set for those organisations. Any failure of Sydney Water or Hunter Water to innovate was purely about the political directions that were set and the management of those institutions. There is no inherent reason why public sector providers cannot create the same level of innovation, water efficiency and water recycling as a private sector provider.

It is popular in the neoliberal century in which we live to scoff at those ideas and say, "Of course the public sector cannot do that." I am yet to see anybody prove that. I have plenty of counter examples of engineering-based utilities that have produced some of the world's leading solutions. In fact, Telstra is probably the best example where privatisation reduced the capacity of that organisation to innovate and it was turned into just another money grabbing utility with very little interest in providing innovative solutions to its consumers.

The Water Industry Competition Amendment (Review) Bill 2014 removes the requirement of new entrants to source sufficient water, other than from a public utility. That means that this bill will create a new generation of private sector competition for public sector providers of water, sewerage and drainage services simply by being the new billing agencies, by buying water from Sydney Water or Hunter Water and perhaps building a few pipes and then selling that water. People say that type of competition is a good thing. I will be clear and say that there is no competition as far as the consumer is concerned. If people live in a greenfield development—for example, at Catherine Hill—Hunter Water will not provide the water; it will be provided by a private sector provider and they will have no choice. That is fixed and set. There is no retail competition or retail capacity for individuals to choose a separate provider. Any supposed benefits to the market do not exist under the Water Industry Competition Act or under what is essentially a natural monopoly of water provision.

This bill drops that requirement. The only effect that this will have is to further delete the capacity of Sydney Water to be a comprehensive water agency. What happens next is that some of these fly-by-night operators go bankrupt and under the providers of last resort conditions in this legislation Sydney Water or Hunter Water will pick up dodgy schemes and will be forced to operate them. This bill has nothing good in it for the public sector and for the community. This bill is based purely on the idea that making life easier for private providers competing against the public sector will somehow or other deliver an improved outcome in respect of water efficiency and billing, for which there is no evidence. There is counter evidence that suggests if this goes ahead it will make it harder for Sydney Water to manage this State through the next drought. And make no mistake, when the next drought comes it is likely to be quite severe. Having a diverse set of profit-making water utilities whose incentive is to sell more water, not to conserve water, operating in the network will make it harder for us to manage Warragamba and the other storages as we go into extended periods of reduced rainfall.

This bill is the exact opposite of what it claims to be. This is not a bill about water efficiency or about improving customer outcomes; it is about servicing the big end of town that wants to get into a lucrative natural monopoly which will be exercised by the private sector at the expense of the environment, water management and consumers. The Greens gave some thought to try to amend this bill to take out some of our concerns and it is simply not possible to do so. Nothing in this legislation points in a direction of helping customers deal with

bills, reduce their water consumption and improve water recycling. New South Wales has an appalling track record of water recycling. Of the 18 or so large water utilities in Australia, New South Wales has four of the six worst performers in water recycling. The Water Industry Competition Act has not helped that. It is time for us to refocus our utilities on reducing customer usage of water and on increasing water recycling. The Greens do not support this legislation and will be voting against it.

The Hon. DUNCAN GAY (Minister for Roads and Freight, and Vice-President of the Executive Council) [6.28 p.m.], in reply: I thank honourable members for their contributions to the debate. As honourable members have heard, the Water Industry Competition Amendment (Review) Bill 2014 will strengthen and streamline the Water Industry Competition Act 2006. The bill will narrow the scope of the current licensing regime to cut unnecessary red tape and focus on regulating those schemes that pose the greatest risk to public health and consumers. Lower risk schemes will continue to be regulated under other more appropriate frameworks. This will reduce unwarranted costs and remove barriers to the development of new low-risk schemes.

The bill addresses an important regulatory gap by bringing current unregulated metropolitan council schemes into the Water Industry Competition Act framework. The bill creates a hierarchy of parties from whom a last resort provider's cost can be recovered. Under this new approach costs will be recovered first from the failed licensee and the infrastructure owners. If there are still outstanding costs the Independent Pricing and Regulatory Tribunal can approve a modest increase in charges payable by the customers of the failed licence. Finally, if there are still costs outstanding the bill provides for an industry contribution scheme that would spread the costs widely and thus mitigate impacts on any one utility or group of customers.

I now turn to some of the specific issues raised by members. The Hon. Peter Primrose expressed concern about the proposal to repeal section 10 (4) (d). That provision requires licensees who are authorised to supply water to obtain sufficient quantities of water other than from public water utilities. Public water utilities are not subject to the same requirement. The current provision therefore creates an unlevel playing field in which new entrants are at a competitive disadvantage compared with other public utilities.

While the bill removes section 10 (4) (d), it includes new provisions that will honour the original policy intent that new entrants should bring new investment to the market. This is achieved by requiring retailers to provide services to small retail customers only in connection with a scheme approved under the Act. This approach has been adopted to manage the risks associated with introducing greater competition into the water market, particularly the risks for water efficiency programs that could arise under a full retail contestability model. This is the model that underpins the electricity market, a market in which retailers can supply services to customers without having made any investment in physical infrastructure.

While the Government has considered the option of full retail contestability it has chosen not to adopt that model and that position is reflected in a number of provisions in the bill. These provisions, including sections 9, 17, 20F and 20Z, would need to be amended if a different market model were to be considered in the future. Full retail contestability has not been adopted in any urban water market, here or overseas, of which the Government is aware. Adopting such a model in New South Wales could put at risk the significant and valuable water efficiencies that have been achieved over the past decade. Risks could arise because under a full retail contestability model retailers have an incentive to increase sales in order to increase profits. In addition, retailers are not responsible for the upstream effects of rising demand such as needing to invest in additional capacity. The costs of such investment are ultimately borne by customers.

There is no evidence that adopting full retail contestability in the water market would deliver benefits large enough to outweigh these risks and associated implementation costs. Eroding the enormous water efficiency improvements made in recent years would be a costly and inefficient outcome with adverse implications for drought resilience—outcomes that would run counter to the newly inserted objects of the Act. We have also heard concern expressed that the removal of section 10 (4) (d) is part of a conspiracy to sell Sydney Water. This is just nonsense.

As the member for Barwon in the other place said, the removal of section 10 (4) (d) is designed to facilitate competition by allowing new entrants to get a foothold in the market and compete with utilities such as Sydney Water and Hunter Water. If we wished to privatise the public utilities we would not be introducing amendments designed to facilitate competition. A close reading of this bill shows that there is no privatisation conspiracy here. On the contrary, the bill makes a number of changes designed to put new entrants on a more level footing with their public counterparts.

For example, the bill introduces new deeming provisions which confer on private utilities the benefit of provisions already available to Sydney Water and Hunter Water. Under these new provisions landowners will be deemed to enter into a contract with a private utility whose infrastructure services the land. These new deeming provisions are balanced by a range of other new measures to protect consumer interests. Again these amendments are designed to create a more level playing field and facilitate, rather than stymie, competition while also protecting public health and consumer interests.

Another element of the conspiracy theory relates to a recent Independent Pricing and Regulatory Tribunal [IPART] issues paper which suggested that the water efficiency target in the Sydney Water operating licence could be removed. I note that IPART is an independent entity and that its issues paper is just that—an issues paper. It does not represent a New South Wales Government position. I again remind members of the Government's decision not to adopt full retail contestability—a decision informed by a desire to protect, rather than erode, water efficiency, which we recognise is a key part of plans to secure our water needs at least cost to the community and the environment.

As can be seen in both the Metropolitan Water Plan and the Lower Hunter Water Plan, water efficiency is and will remain a major element of the portfolio of measures that will secure the water needs of our major metropolitan regions both for the longer term and in drought. The Hon. Peter Primrose also suggested that under these reforms Water Industry Competition Act licensees can simply become water resellers and that, frankly, is also wrong. In fact, the bill explicitly provides that this cannot occur. Under the proposed reforms a Water Industry Competition Act retailer can only provide services to small retail customers in connection with a scheme approved under that Act. This includes any larger customers connected to a network servicing small retail customers. In other words, there must be investment in new infrastructure consistent with the original policy intent of encouraging new investment in water infrastructure.

Water Industry Competition Act retailers will not be allowed simply to cherry-pick small retail customers from existing utilities and provide retail services to them without there being investment in new infrastructure. This is what happens in the electricity market where retailers can provide services without any investment in new infrastructure. The Government has decided not to adopt the electricity sector market model due to concern that it could encourage retailers to increase sales in order to increase profits. This could push up demand and water bills while negatively impacting water security. The Government does not want this to happen, which is contrary to the argument put by the Hon. Peter Primrose and Dr John Kaye.

In relation to industrial and larger commercial customers, a Water Industry Competition Act retail licence will no longer be required to provide services exclusively to such customers. However, providing services to such customers would require private entrants to enter into an access agreement with Sydney Water or Hunter Water unless they wish to provide services entirely through infrastructure that is not owned by the public water utilities. No-one has used the Water Industry Competition Act access regime to date; that is, no private entity has sought to become a reseller of the services physically provided by public water utilities.

There is very little money to be made in this area due to the small retail margins in the urban water sector. Retail margins in the electricity sector are around three times higher than in the urban water sector. In addition, the pricing principles set out in the Water Industry Competition Act access regime require consistency with postage stamp pricing, meaning that private providers cannot undercut the public water utilities. The Hon. Peter Primrose suggests that the only way to succeed is to cut services or to increase prices. The fact is that new entrants are implementing innovative projects such as that at Central Park. They are helping to change the way that large public water utilities do business. As a result of these new entrants public water utilities are considering new options for providing services, including decentralised options that reuse rather than simply dispose of sewage.

Central Park was not built in response to section 10 (4) (d) but because the proponent wished to provide an innovative, sustainable option. The Hon. Peter Primrose and Dr John Kaye have expressed concern that the removal of section 10 (4) (d) will undermine investment in recycled water. As the member for Barwon said in the other place the discussion around this issue has not been well informed. I am sure it did not help the situation. An examination of schemes licensed to date strongly suggests that factors other than section 10 (4) (d) have driven investment in recycled water schemes. Those factors include the desire to develop land in areas remote from existing sewage treatment plants, compliance with building sustainability index targets and the Green Star rating scheme for commercial buildings. Analysis of these factors is set out in the better regulation statement that has been prepared in connection with this bill.

Ironically, the current legal situation is that private utilities could readily avoid section 10 (4) (d) by opting for conventional sewage disposal with no recycling component. This is just one of the shortcomings of the current provision. Another is that the provision refers to water sourced otherwise than from a public water utility. It does not refer to new infrastructure or new water consistent with the policy intent underpinning the provision. This means that as the market diversifies new entrants could meet the current test through supply agreements with other private parties rather than through investment in new infrastructure. I have previously stated that public water utilities are not subject to the licensing requirements of the Water Industry Competition Act and therefore section 10 (4) (d) does not apply to them. The reality is that if private utilities are subject to numerous requirements that are not imposed on public water utilities the private water utilities will struggle to compete.

Developers may choose to work with public water utilities as, for a range of reasons, they are often able to offer more attractive terms. If that happens the objective underpinning the requirement on private utilities will not be achieved. Clearly a new approach is required; one that is effective, well targeted and can apply equally to public and private utilities. To this end the Government will examine options to better align proposed schemes, both public and private, with integrated approaches to water cycle management. This will help ensure that each scheme, be it public or private, is well conceived and supports efficient outcomes consistent with the newly inserted object of facilitating the efficient, reliable and sustainable provision of water and sewerage services having regard for financial, environmental and social considerations. I commend the bill to the House.

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

The House divided.

Ayes, 20

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

Noes, 17

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

Pairs

Mr Clarke	Ms Fazio
Mrs Maclaren-Jones	Ms Westwood

Question 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 agreed to:

That this bill be now read a third time.

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

[The President left the chair at 6.50 p.m. The House resumed at 8.15 p.m.]

CRIMES (HIGH RISK OFFENDERS) AMENDMENT BILL 2014**CRIMES LEGISLATION AMENDMENT 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. 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.

**CHILD PROTECTION (OFFENDERS REGISTRATION) AMENDMENT (STATUTORY REVIEW)
BILL 2014****Second Reading**

Debate resumed from 10 September 2014.

The Hon. LYNDA VOLTZ [8.18 p.m.]: The Child Protection (Offenders Registration) Amendment (Statutory Review) Bill 2014 makes various amendments to the Child Protection (Offenders Registration) Act 2000 as a result of a statutory review under section 26 of that Act. The proposed changes include expanding the classes of registrable offences to include manslaughter of a child; wounding or grievous bodily harm of a child under 10 years of age and abduction of a child; increasing the time in which child protection registration orders can be made; specifying matters that a court must take into account before making such an order; requiring the Commissioner of Police to be notified when a registrable person who is a forensic patient is given regular unsupervised leave from detention; updating the relevant personal information that must be reported by a registrable person; and clarifying the types of contact with children that a registrable person must report.

The proposed changes also include standardising the period in which reports must be made; extending reporting obligations if a registrable person fails to comply with the obligations; increasing the penalty and providing a defence in respect of offences relating to attempting to change a registrable person's name without the approval of the Commissioner of Police; updating the list of scheduled agencies to account for changes to the government sector; collating provisions that deal exclusively with corresponding registrable persons; and making other minor statute law revision amendments, including savings and transitional provisions consequential on the proposed amendments. The shadow Minister has already spoken on this important legislation and the Opposition will support it. I look forward to its passage through the House.

Mr DAVID SHOEBRIDGE [8.21 p.m.]: I speak for The Greens on the Child Protection (Offenders Registration) Amendment (Statutory Review) Bill 2014. This bill makes changes to the overall framework relating to the monitoring of convicted child sex offenders. Schedule 1 item [1] inserts objects into the Act for the first time, which are in proposed section 2A. The objects are to protect children, to ensure the early detection of offences by recidivist offenders and to monitor and manage registrable persons. Schedule 1 items [2] to [8] expand the definition of "class 2 registrable offences" to include the manslaughter of a child, the wounding or causing grievous bodily harm with intent to a child under 10 years old, and child abduction in circumstances in which the offender has never had parental responsibility for the child. This means that those offenders will be included in the reporting obligations of the register and will be potentially the subject of orders made under the Act.

Schedule 1 [17] increases the time in which a child protection registration order can be made from 21 to 60 days after the conclusion of criminal proceedings. Schedule 1 [19] gives a non-exhaustive list of factors that the court must consider when determining whether a person poses a risk to the lives or sexual safety of children. It includes such matters as the seriousness of the offence, the age of the person when the offence was committed, the age of the victim, the seriousness of any other offences and the impact on the person of the order.

compared with the likelihood that they may commit a registrable offence. Schedule 1, items [22] and [23] require notice to the Commissioner of Police when a registrable person is permitted to be absent from a place where they are being detained under the Mental Health (Forensic Provisions) Act 1990.

Schedule 1 [27] provides detailed clarification about the contact with children that must be reported by a registrable person. It expands this from the current details—being the names and dates of birth of any children who reside in the same household as that in which the person generally resides or with whom the person has regular unsupervised contact—to include broader circumstances such as details of each child the person has had contact with if the registrable person was caring for the child, staying at any house where the child was present, exchanging contact details with the child or attempting to befriend the child. Contact with the child is defined broadly to include physical, oral or written communication. For those under 18 years of age, the sentencing court has discretion to modify the reporting obligations that will carry through until they turn 18, unless the court decides that that regime is not appropriate.

Schedule 1, items [31] and [33] reduce from 14 to seven days the time in which a registrable person must report a change in circumstances or a change in their personal information. Schedule 1 [40] creates a defence of having a reasonable excuse for the offence of applying to change the name of a registrable person without approval from the Commissioner of Police. Schedule 1 [41], which has drawn much of the Government's attention, increases the penalty for applying for a change of name by or on behalf of a registrable person from five penalty units to 500 penalty units or five years imprisonment, or both. The offence is no longer to be automatically tried summarily. The background to this bill is a much-delayed review of the legislation by the Minister as required by the original Act. A discussion paper was circulated in 2013 to stakeholders, with a number of submissions being made in response—I think 23 submissions were made. It is of note that this kind of limited consultation falls well below the standard of full public and open consultation that would be desirable when such important provisions are being reviewed in accordance with the statutory requirement.

Two Acts in New South Wales work together to establish a child protection register and create orders that control the conduct of people on the register who allegedly continue to pose a danger to children. These Acts are the Child Protection (Offenders Registration) Act 2000 and the Child Protection (Offenders Prohibition Orders) Act 2004. A brief examination of the Acts shows the first provides that registrable persons must register with police and provide information, and the second allows the court to make orders restricting the conduct of registrable persons. The Child Protection (Offenders Registration) Act 2000 provides for two classes of offences. Class 1 offences include the murder of a child and sexual intercourse with a child. Those are the more serious offences. Class 2 offences, although extraordinarily serious, are in this context only of a lesser severity. They include acts of indecency, possession of child pornography, kidnapping of a child, filming a child for indecent purposes and grooming offences.

As I said, the changes to this scheme came after a review by the Government that identified a number of oversights and necessary amendments to the legislative scheme. In particular, I note the inclusion in the revised Act of objects to guide the application of the scheme. In fact, it was a rather peculiar aspect of the statutory review that the review was said to be into whether the Act was appropriately furthering the objects of the Act in circumstances where there were no objects of the Act. I think this created some significant difficulties for those undertaking the statutory review, but they responded in part by requiring the insertion of objects into the Act. This seemed to be an appropriate response to that term of reference. As I indicated in debate on the previous legislation on this subject, the Child Protection Legislation Amendment (Offenders Registration And Prohibition Orders) Bill 2013, The Greens will always monitor the operation of schemes that propose wide discretion for police or courts to place substantial and ongoing burdens on individuals who have been convicted and done their time in jail and so faced the penalty that society placed on the crimes for which they were convicted.

In saying that, it is important that there be a balance between protecting the community, particularly children, and the need for recognisable limits within that balance on the extent of any arbitrary power that can be exercised over registrable persons. This is about getting the balance right between protecting children—who must always be a first-order priority for any government—and protecting civil liberties and essential aspects of the criminal justice system, which has set penalties for the commission of crimes. The amendments proposed in this bill flow from the recommendations of the ministerial review that has been undertaken. The increase in the penalties for unauthorised requests for name changes was one of the recommendations of the review.

I note that the penalty increased from five penalty units—just on \$550—to 500 penalty units and/or five years imprisonment. That is unquestionably a tough and, according to one view of it, excessive penalty for

that offence. However, I note that it is intended to bring the penalty in line with the penalties for failing to comply with other reporting obligations or providing false information under the Act. It is only in that internal context that there can be some merit to that very substantial penalty being proposed in the legislation. Therefore, it is only in that quite specific context that we do not oppose what would otherwise be considered a somewhat draconian increase in penalties.

Many of the submissions provided for the review urged the need for separate provisions for those under 18, and in particular for consideration of offences where the offender is under 18 and the victim is of a similar age. In reports particularly focused on the Aboriginal community the Auditor-General has asked for a deeper consideration by Parliament of those circumstances of peer-to-peer consensual sex where the offender and the victim are under 18 but their ages are extremely close—two years or less between the two individuals. Many of the submissions in the review picked up some of those concerns. They caution that young people should be excluded from automatic registration under the Act and that instead the court should be granted a discretionary power to make an order for registration where that is appropriate.

To this end, it is noted that the new criteria that must be considered when determining whether to make a registration order include the age of the person at the time the offence was committed and the age of the victim at that time. A discretion is also created regarding reporting requirements for young offenders in circumstances where the court is satisfied that there is no increased risk to children. These measures go some small way towards addressing the concerns of stakeholders in this regard, which The Greens share. The Greens will closely review the operation of this Act. I ask the Minister to indicate in his speech in reply what, if any, consideration has been given to those submissions and what, if any, consideration has been given to the Auditor-General's earlier report last year that raised issues in relation to peer-to-peer consensual sexual relations.

I note that The Shopfront Youth Legal Centre's submission to the review recommends that the legislation be amended to ensure that registration obligations apply for young people only when a conviction has been recorded. On my reading of the bill, it appears that the registration requirements kick in wherever a conviction has been found proven, regardless of whether a conviction has been recorded. I ask the Government to explain why it has chosen not to implement the recommendations of The Shopfront Youth Legal Centre that would provide that where a section 10 order is granted in relation to an offence for a juvenile, for example, the reporting obligations would not kick in. That seems a fairer and more rational approach to the reporting obligations, noting that if the court has determined a section 10 order in relation to an offence for a juvenile there would be serious questions about the efficacy of the registration obligations in those circumstances.

The Shopfront further recommends appeal and review rights to allow registrable persons to apply to the Administrative Decisions Tribunal—now the NSW Civil and Administrative Tribunal [NCAT]—to be removed from the register or to be exempt from reporting where special circumstances can be proven to exist. It is disappointing that this change has not been included in the legislation. I also note that the Law Society submission to the review identifies that because offenders are not always notified of their reporting obligations by the sentencing court there might be circumstances in which they could fail to comply with their obligations without knowing they were under such obligations. Given the extraordinarily large penalty proposed in relation to a breach of the prohibition on name change, I would be interested to know what avenues the Government is proposing to use to notify registrable persons of their obligations and to ensure that they understand their obligations under the Act.

It is not only in the interests of registrable persons that they understand their obligations under the Act and therefore do not find themselves unwittingly the subject of quite substantial criminal penalties. More importantly, if the obligations on registrable persons are clearly explained in the first place and they comply with them that furthers the child protection obligations under the Act. The Law Society submission also suggests improving the ease of reporting through measures including, potentially, a secure internet site that registrable persons could log onto and record any change in their details. I hope that the Government will advise what steps it has taken to improve the ease of reporting and help with compliance, which would be of particular assistance in remote regional and rural locations in this State.

On any view of it, this is a difficult area of public policy: balancing the competing public interests of protecting vulnerable children—and by vulnerable children I mean all children—and ensuring that individuals' civil liberties are respected in our society. It is not always an easy call to know when the balance is right. The bill contains elements that give The Greens some concerns—for example, the particularly high penalties—but, on balance, we will support the bill because when we weigh up those two interests we err on the side of ensuring that our children are protected.

The Hon. SARAH MITCHELL [8.36 p.m.]: I speak in support of the Child Protection (Offenders Registration) Amendment (Statutory Review) Bill 2014. The Statutory Review of the Child Protection (Offenders Registration) Act 2000 found that it is appropriate for securing its objectives. The Act targets the early detection of offences by recidivist child sex offenders by providing a framework in which to monitor registrable persons and their compliance with reporting requirements. The Government listened to the views of stakeholders and our recommendations strike the right balance between encouraging compliance with reporting and effective monitoring. Given that the Child Protection Register is an effective tool for police to monitor offenders in the community, it is important that we make it as simple as possible for police to do their job. Currently, a registrable person must report different changes within varied time frames, from seven days to 14 days and in some cases 28 days. A number of proposed changes will streamline these time frames.

The bill increases the time frame for police to make an application for a child protection registration order from 21 days to within 60 days of the person being sentenced. This will improve the ability to make an order should matters come to light that warrant an application. The bill also provides that a registrable person must report any changes to their personal information to police within seven days of that change occurring, with some exceptions. Under new section 11 a registrable person will be required to report to police changes to information—such as where they live, where they work and the car they drive—within seven days. Provisions are also included in the bill for registrable persons to report changes to police within seven days if they are out of the State, they return to New South Wales if they have been interstate or overseas, and any changes to their intention not to leave New South Wales. The exemption allowing notification within 24 hours for any urgent travel will continue if the required details are submitted. The proposed changes will allow police to track the interstate or overseas movements of child sex offenders in a timely way.

In regard to forensic patients, a registrable person in detention or in government custody for more than seven days will also be required to report their personal information to the Commissioner of Police within the same time frame. As mentioned earlier, some exceptions to the seven days time frame will remain. One exception is for urgent travel and another exception is when a registrable person intends to change the place where they generally reside. The time frame for reporting this information will continue to be 14 days. The third exemption is that registrable persons will be required to report within 24 hours details of children who reside in the same household as them or children they have regular unsupervised contact with. This provision has not changed in order to ensure that appropriate safeguards remain for children who may live with someone on the register. I am pleased that this bill demonstrates the Government's commitment to protecting children as it ensures that police will have the timely information they need. I commend the bill to the House.

Reverend the Hon. FRED NILE [8.39 p.m.]: On behalf of the Christian Democratic Party I am pleased to speak in support of the Child Protection (Offenders Registration) Amendment (Statutory Review) Bill 2014. When the legislation establishing the New South Wales Child Protection Register was introduced in 2000 the Ombudsman was required to review its operation. That review was completed in May 2005 and the report was tabled in Parliament in November 2007. The Ombudsman concluded that the Act had been largely successful in implementing its aims. During the Ombudsman's review the Act was amended and the Child Protection (Offenders Prohibition Orders) Act 2004 was enacted, thereby allowing orders to be made by the Local Court to restrict the behaviour of persons registered under the Act. The bill we are debating today also came out of the review.

This bill strengthens the operation of the register through a range of provisions, including expanding the classes of registrable offences, increasing the length of child protection registration orders, improving notifications of registrable persons and extending reporting obligations for failure to comply. I have served on the joint select committee that has dealt with the sentencing of child sexual assault offenders. The committee spent considerable time considering the Child Protection Register. We were pleased that the witnesses who gave evidence concerning the New South Wales Child Protection Register were in favour of its current operation. The only issue still being debated is the level of accessibility to the Child Protection Register.

I raised the issue of what is happening in Western Australia. As members may know, the public information access provisions concerning sexual offenders that operate in Western Australia are different from those in the New South Wales system. Amendments to the Western Australian Community Protection (Offender Reporting) Act 2004, enacted in October 2012, provide for the public disclosure of information held on the Western Australian Sex Offender Register on a community protection website. The website enables any member of the public to access photographs and certain information on Western Australia's most dangerous and

high-risk sexual offenders. The joint select committee found that that website allows parents and guardians to make inquiries of Western Australian police about any person who has unsupervised contact with their child or children. The website provides three tiers of information access to:

ensure that families and the public have information on known sex offenders which will assist with the protection and safety of children and the community. The community protection website does not publish the photograph, personal details or release any information of an offender who is under the age of 18 years.

We should be looking seriously at introducing that model in New South Wales. It would put a lot of parents' minds at rest to know whether a person on the Child Protection Register lives in their street or even next-door. The Christian Democratic Party supports the bill's provisions, such as expanding the classes of registrable offences to include manslaughter of a child, wounding or grievous bodily harm of a child under 10 years of age and abduction of a child.

The bill will increase the time in which child protection registration orders can be made, specify matters that a court must take into account before making such an order, require the Commissioner of Police to be notified when a registrable person who is a forensic patient is given regular unsupervised leave from detention, and update the relevant personal information that must be reported by a registrable person. It is necessary to clarify the types of contact with a child that a registrable person must report. The bill will standardise the periods in which reports must be made, extend the reporting obligations if a registrable person fails to comply with the obligations, increase the penalties and provide a defence in respect of offences relating to attempting to change a registrable person's name without the approval of the Commissioner of Police. The bill also provides for updating the list of scheduled agencies to account for changes to the government sector. It contains provisions that deal exclusively with corresponding registrable persons, and other savings and transitional provisions consequential on the proposed amendments. The Minister in his second reading speech said:

In summary, the Child Protection (Offenders Registration) Amendment (Statutory Review) Bill includes the following amendments. New objects have been inserted which set out the key purposes of the Act: to protect children from serious harm, including physical and psychological harm caused by physical or sexual assault; to ensure the early detection of offenders by recidivist child sex offenders; to monitor persons who are registrable persons; and to ensure that registrable persons comply with this Act.

The Minister then gave further details. I emphasise a Christian Democratic Party policy: the great importance of protecting children from all forms of sexual and physical abuse. I have been intensely concerned about this issue for many years. In fact, some years ago I invited senior detectives from Los Angeles who were in charge of the child sexual abuse and physical abuse units to visit Sydney during their holidays to address a conference at Macquarie University on how we could set up similar units in the NSW Police Force. I am pleased that, as a result of their visit, the NSW Police Force established such units. I was pleased to have had the opportunity to influence that development. The updated 2012 Bravehearts report notes that one in three girls and one in six boys will be sexually abused before the age of 18 years. There is widespread agreement that child sexual abuse spans all races, economic classes and ethnic groups.

DEPUTY-PRESIDENT (The Hon. Trevor Khan): Order! There is too much audible conversation in the Chamber.

Reverend the Hon. FRED NILE: One in three Australians would not believe children if they have disclosed abuse. That is a matter of great concern. Many mothers report such situations to me. Their children have reported abuse and they find it difficult to get anyone to believe the child or the mother. Of course, the mother believes her own child. A number of those cases are related to the Family Court. The court appears to have lost interest in reports of child sexual abuse; it is not part of its operation. That seems strange. One in five Australians lack the confidence to know what to do if they suspect abuse or negligence. Ninety per cent of surveyed adults believe the community needs to be better informed about the problem of child abuse in Australia. Eighty-six per cent of Australians believe the Commonwealth and State governments should invest more money in protecting children from abuse and neglect. That highlights the need for this legislation, which we are pleased to support to ensure that everything can be done to protect children in our society.

Recently a man was arrested for sexually abusing two girls under nine years of age in a shopping centre, which is obviously something to be condemned. I believe the contradiction is he was granted bail after having committed such serious offences, according to media reports which may not be accurate. I know there is a lot of debate about bail laws but when a child has been sexually abused, particularly if more than one child has been abused, I do not believe people should be granted bail. Their case should be brought immediately before the court so they can be sentenced if found guilty. The Christian Democratic Party is pleased to support this bill.

The Hon. ERNEST WONG [8.51 p.m.]: I join my colleagues in support of the Child Protection (Offenders Registration) Amendment (Statutory Review) Bill 2014. The Child Offenders Register, to which this bill now applies amendments, was an initiative of the Labor Government. New South Wales was the first State to introduce a child sex offender register in 2000. Since then it has been a highly valuable information tool for our police, in turn providing significant additional protection to our communities. I join my colleagues in this Chamber in noting the exceptional work that the NSW Police Force has done in its administration and execution of the Child Protection (Offenders Registration) Act.

When we are explaining this register to communities we need to be clear that it is a police register only. It is a tool for the police, managed by the police. It is not, nor was it ever intended to be, a public register. I am aware that some sections of the community would like to see public access to this register. I am aware of a prior private member's bill introduced in this place to achieve that aim. But neither the Opposition, nor the Government as I understand it, supports that step. I agree. It needs to be noted that registration under this Act is a policing measure that is in addition to whatever sentence or punishment our courts have metered out to eligible offenders. Considering that we are discussing offenders who have already "done their time", so to speak, it is a significant additional measure.

Persons who are on the register must register with the police and then provide certain information to the police. The information is comprehensive in respect of identity, interests, movement, biometrics, associations, friendships, work, travel, internet presence, communications and many other details. It provides a detailed and ongoing picture of the person that police can use to monitor both online and real world activity. In addition, the Local Court can make orders that allow restrictions on the conduct and movement of registrable persons. While this is valuable to our professional police it would be disastrous in the hands of the general media and public. I think we all know the circus, threats and vigilante behaviour that would emerge from such access and those who understand policing would know that such efforts would only serve to take police resources away from valuable efforts to protect children. The police are the experts on these types of offenders. This regime, with its in-built monitoring and review system, properly provides for their supervision.

The Government proposes several amendments to expand and improve the operation of the register. I will not detail these as they have been well canvassed here and in the other place. I will briefly note two changes. One is to expand the classes of registrable offences to include particular categories of manslaughter of a child, wounding or grievous bodily harm of a child, and the abduction of a child. The Minister has outlined the rationale for this expansion, including that it allows police to capture offenders who may plea to lesser offences during proceedings yet in whom the police rightly wish to maintain an interest. Labor supports this logical expansion of the register.

However, I equally note that the amendments now specify matters that a court must take into account before making an order under this register, such as the seriousness of each offence, the age of the perpetrator, the age of each victim, the seriousness of other offences committed and the impact upon the person compared with the likelihood that the person may commit a registrable offence. This provides both guidance and discretion to our courts, based on the circumstances of the crime, to make important decisions. That is an appropriate point of review and an important protection to the integrity of this register and the police who administer it. In short, the Child Protection Register is a Labor initiative. It is one that has rightly enjoyed bipartisan support. These amendments are a sensible and balanced enhancement of that register. Therefore, we continue to offer the Government our support.

The Hon. CHARLIE LYNN (Parliamentary Secretary) [8.55 p.m.]: I support the Child Protection (Offenders Registration) Amendment (Statutory Review) Bill 2014. The statutory review confirmed the Act provides an effective framework to monitor registrable offenders. It found the vast majority of registrable persons comply with reporting requirements. The review particularly focused on contact with children by both adult registrable offenders and young registrable persons. The review considered the impact of the register on young registrable persons.

Under section 9 of the Act a registrable person is required to report the name, date of birth and means of contacting each child with whom they had unsupervised contact on more than one occasion. The bill proposes contact with a child must be reported where the registrable person is supervising, caring for, visiting or befriending a child. The word "contact" will include physical, oral and written communication with a child, including contact via email. This contact must be reported to police to ensure at-risk children can be kept safe from harm. This will modernise the Act to capture the types of contact generally used in our society. It will also allow police to monitor and prevent potential grooming of children via the internet.

The bill includes a case-by-case modification for young registrable persons under 18 years of age who may be students from reporting contact with peers. Reporting obligations of young registrable persons may be modified by the sentencing court, a court making a registration order or a Local Court or Children's Court upon application by the NSW Police Force. These modifications can be made only where the court is satisfied that there is no risk to the safety of other children. This may mean that routine student behaviour such as attending classes with fellow students may not need to be reported by young registrable persons.

These modifications will occur only where the court is satisfied there is no risk to other children. The bill proposes registrable persons must now report the full details of any hire car used by the person for short periods and the details of any mobile phone or landline numbers used, or intended to be used, by the person. These changes will ensure that police have the information they need to effectively monitor offenders. Clearly spelling out what must be reported makes reporting obligations clear to registrable persons. This should not affect those on the register who do the right thing and have nothing to hide. For those who do not do the right thing, these changes will make it more difficult to evade detection.

This Government does not take the harm caused to children by physical and sexual assault lightly. We do not let those who offend against children off lightly. The Act targets the early detection of offences by recidivist child sex offenders. It provides the framework to monitor registrable persons and their compliance to reporting requirements. This Government listened to the views of stakeholders and its recommendations strike the right balance between encouraging compliance with reporting and effective monitoring. Given the Child Protection Register is an effective tool for police to monitor offenders in the community, it is important that we make it as simple as possible for police to do their job. Currently a registrable person must report different changes within varied time frames from seven days to 14 days, and in some cases 28 days. A number of proposed changes will streamline these time frames.

The bill increases the time frame for police to make applications for a child protection registration order from 21 days to within 60 days of the person being sentenced. This will improve the ability of an order being made should matters come to light that warrant an application. The bill provides that a registrable person must report to police within seven days of that change occurring to their personal information, with some exceptions. A registrable person will be required under section 11 to report to police within seven days changes to information, such as where they live, where they work and the car they drive.

Provisions are included in the bill for registrable persons to report changes to police within seven days if they are out of the State, their return to New South Wales if they have been interstate or overseas, and any changes to intention not to leave New South Wales. The exemption allowing notification within 24 hours for any urgent travel will continue if the required details are submitted. The proposed changes will allow police to track the interstate or overseas movements of child sex offenders in a timely way. In regards to forensic patients, a registrable person in detention or government custody for more than seven days will be required to report his or her personal information to the Commissioner of Police within the same time frame.

As mentioned earlier, some exceptions to the seven days will remain. One of these is for urgent travel. Another is that when a registrable person intends to change the place where he or she generally resides, the time frame for reporting this information will continue to be 14 days. The third exemption is that registrable persons will be required to report within 24 hours details of children who reside in the same household or children with whom they have regular, unsupervised contact. This provision has not changed to ensure that appropriate safeguards remain for children who may live with someone on the register. This bill is a result of thorough consultation and review. The amendments it contains will enhance the Act and will help ensure that New South Wales children are protected from harm. The bill is in the best interests of the community. I commend the bill to the House.

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [9.02 p.m.], in reply: I thank all members for their contributions to the debate. The amendments contained in the Child Protection (Offenders Registration) Amendment (Statutory Review) Bill 2014 will improve the operation of the Act and strengthen the monitoring of child sex offenders living in the community. The bill clarifies the reporting requirements for registrable persons and notification requirements for agencies so that registrable persons can be monitored more effectively while in the community. As we heard earlier, the bill will make three additional offences registrable so that serious offenders who continue to pose a risk to children can be monitored. It will increase some penalties for breaches under the Act.

The changes will modernise and streamline the operation of the Act. This Government takes harm caused to children by physical and sexual assault very seriously and we do not let off lightly those who offend

against children. We will continue to enhance and improve legislation that has been the product of consultative reviews. I thank all those agencies that contributed to the statutory review of the Act and worked with the Government so diligently to make the children in our community safer. Many people—including police officers, counsellors and caseworkers—go to work every day to face these offenders and help children who are the victims of these unacceptable and horrendous crimes. On behalf of the House I thank them all for their invaluable work.

Finally, I thank my colleague the Minister for Police and Emergency Services, the Hon. Stuart Ayres, who has worked on this bill. Families in New South Wales can feel confident that the Government is getting on with the job of protecting those most vulnerable in our communities—our children. A number of issues were raised by Mr David Shoebridge. I will be more than happy to speak to him later about those matters. 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

TEMPORARY CHAIR (The Hon. Sarah Mitchell): If there is no objection, the Committee will deal with the bill as a whole.

Mr DAVID SHOEBRIDGE [9.06 p.m.]: I move Greens amendment No. 1 on sheet C2014-104:

No. 1 **Registrable persons**

Page 5, schedule 1. Insert after line 13:

[16] Section 3A (2A)

Insert after section 3A (2):

(2A) A person is not a registrable person if the person was a child at the time at which the person committed the registrable offence and the sentence imposed on the person for the offence was an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

This amendment seeks to insert a new item [16] into the bill that proposes a new subsection (2A) to section 3A which reads:

A person is not a registrable person if the person was a child at the time at which the person committed the registrable offence and the sentence imposed on the person for the offence was an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

I note that the amendment has been circulated only recently. Indeed, crossbench members have not had the benefit of a briefing from the Government on this bill, which is unusual and probably is an oversight of the Government in the circumstances. In any event, we have sought to deal with what is a complex bill as best we could with the resources to hand. I thank Parliamentary Counsel for its cooperation. We were provided at short notice with this amendment by Parliamentary Counsel, which addresses the concern raised by Shopfront Youth Legal Centre. I shall read on to the record the submission to the review from Shopfront Youth Legal Centre.

I stated earlier that the review had been somewhat delayed. Indeed, the submission is dated 17 October 2003, which shows the delay involved in doing this review. There may well be circumstances that are not known to me. I simply note it; I am not critiquing the delay. As members would know, Shopfront Legal Youth Centre is a free legal service for homeless and disadvantaged people aged 25 and under. It provides extraordinary support to young people, particularly in the Kings Cross area and in Sydney. It is an extraordinary organisation that does brave and courageous work. It helps vulnerable people who so often are victims of crime and poverty in that area. The submission states:

The Shopfront acts for many young people who have been victims of child sexual abuse. We have seen the devastating effect this abuse can cause, often years later. The Shopfront also acts for many young people who have committed criminal offences; a very small number of these have committed sex offences.

In general, we support legislative and policy initiatives which protect children from abuse. However, we have some concerns about the reporting regime established by the Act.

The registration and reporting requirements are likely to have an unjust and disproportionate impact on some of the most disadvantaged people in our community, particularly young people, homeless people, and those with intellectual disabilities. These people are likely to have difficulty complying with the registration requirements, and to incur further penalties as a result.

I stop there and note that this bill proposes an increase in penalties. Further, Shopfront Youth Legal Centre states the substance of the amendment introduced by The Greens as follows:

We are also concerned about certain classes of offenders being placed on the register where the nature of the offence clearly does not warrant it. We take issue in particular with the application of the Act to children convicted of offences arising from consensual underage sex. Young people in this category are not the predatory sex offenders at whom the legislation was aimed.

In your Discussion Paper, it is asserted that people who are found guilty without a conviction being recorded are not required to register. This is misleading; in fact, some juvenile offenders are required to register even if no conviction has been recorded. The Children's Court has the power to impose any sentencing option without recording a conviction and, indeed, may not record a conviction against a child under 16 years of age. It is only those whose matters are dismissed under section 33 (1) (a) of the Children (Criminal Proceedings) Act who are exempt from the registration requirements (subject of course to the exemptions for Class 2 and child pornography offences).

We recommend that children's registration obligations apply only where a conviction is recorded. The non-recording of a conviction will usually reflect the court's view about the objective seriousness of the offence and the issue as to whether both underage parties participated in the conduct freely.

It is with the intent of addressing that concern from Shopfront Youth Legal Centre that we propose the following amendment:

A person is not a registrable person if the person was a child at the time at which the person committed the registrable offence and the sentence imposed on the person was an order under section 10 of the Crimes (Sentencing Procedure) Act 1989.

That would be conviction proved but no offence recorded.

The Hon. Trevor Khan: Offence proven.

Mr DAVID SHOEBRIDGE: Yes, offence proven but no conviction recorded. That may not be the best avenue for securing the outcome that Shopfront Youth Legal Centre has proposed. That is the avenue we thought, in the time available to us, would best address that concern from Shopfront Youth Legal Centre. No party wants to see the register cluttered with persons who I do not think are intended to be classed as sexual predators. If there is consensual peer to peer underage sex it would appear that an amendment that explicitly excludes that type of offence—I believe this amendment is the best we can draft to address that concern—would have the support in principle of those parties in the House. We have limited resources. We have a number of people who could be caught up in these onerous, and in most circumstances properly onerous, reporting obligations. I stated earlier that there must be balance in relation to juveniles. I hope the amendment, and the intent behind it, achieves that balance.

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [9.12 p.m.]: I note that The Greens amendment was circulated only some 30 minutes ago. I do not raise that as a criticism, but to explain that it has not allowed the Government much time to properly consider it. I understand what Mr David Shoebridge says about the crossbench briefing not having been circulated, but I note for the record that the second reading of this bill took place on 10 September 2014 and was adjourned until today to allow honourable members the opportunity to properly consider the bill and to respond today in their second reading contributions.

The review noted discretionary elements are contained in the Act to deal with young persons. Section 3A (2) (c) provides that a person is not a registrable person merely because as a child he or she committed a single act involving indecency, voyeurism, filming private parts, possession or publication of child pornography, or an intention to commit or attempting or conspiring to commit one of the above offences. If a young person is sentenced for other registrable offences they are placed on the register and subject to reporting requirements, as is the case with an adult, reflecting the seriousness of the offence. If the court makes the child protection registration order a number of factors may be considered during sentencing in order for the court to satisfy itself an order should be made. This applies in the case of a young person as well as an adult.

Part 2A of the Act will be amended to provide guidance to the Local Court by including criteria to be considered when making a child protection registration order. Criteria to be considered will include the

seriousness of the offence; the age of the person when the offence was committed; the age of each victim of the offences when they were committed; the seriousness of the person's total criminal record; the effect of the order sought on the person in comparison to the level of risk that they may commit a further registrable offence; and any other matters the court thinks relevant.

Given this position the Government does not support The Greens amendment No. 1. In summary, young people are placed on the register due to the seriousness of the offence and the overriding need to protect children. I note the comments made by Mr David Shoebridge in regard to this amendment. I indicate that the member's amendment will be considered when the Act is next reviewed.

The Hon. STEVE WHAN [9.14 p.m.]: The Opposition saw The Greens amendment only a short time ago. I listened to the contribution Mr David Shoebridge made in support of the amendment, read the amendment and consulted with others. The sentiment in the amendment is reasonable. We all hope that somebody found guilty of a crime such as this could be reformed, given such an opportunity. The Opposition has not had the chance to consult with any experts in this field as to whether this is a reasonable amendment and an effective way to deal with this, or whether we would be expunging an offence that reasonably should remain on a person's record and be declared as they get older. In the time frame we have available the Opposition cannot support the amendment. In principle I think it seems a reasonable philosophy. I appreciate the Minister's indication that the Government will consider this issue in a future review of the bill.

Mr DAVID SHOEBRIDGE [9.16 p.m.]: I appreciate that members are grappling with this amendment at short notice. I accept it is a somewhat difficult matter and on one view the amendment is not broad enough to cover the entire class of circumstances that we would hope would be protected. It should also include an equivalent reference to the sentencing procedures Act that relates to children's offences. It is not a particularly easy part of the law to come to terms with at short notice. I note the Minister indicated that the issue would be picked up in the next statutory review. I would hope a review would occur before that because it took 14 years for this statutory review to be considered. The submission I read from was dated 2003 and given to this current statutory review.

I urge the Government to consider the report from the Auditor-General, which considered this matter. It is wrong to talk about the seriousness of the offence as though classes of offence are how this matter should be categorised. When we are talking about peer to peer consensual sex the offence may be a serious sexual assault or a series of, as a matter of law, very significant and serious sexual assaults because of the age of the victim—although there may only be 12 months age difference between the victim and the offender—and because there was a statutory impossibility for consent to be given. The offence will be a serious offence and will not fall within the class 2 offences that provide for a more discretionary regime to apply.

It is in those circumstances that urgent attention must be given to this issue by the Government prior to the next statutory review. During my conversations with the Minister—I do not mean to verbal him—he has not said it will only be considered in the next statutory review. I commend the amendment to the Committee. I thank members for grappling with it at short notice.

The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for the Illawarra) [9.20 p.m.]: I confirm that I will bring this matter to the Minister's attention and will mention the matters raised by Mr Shoebridge. It will not be a matter of simply waiting for the review.

Question—That The Greens amendment No. 1 [C2014-104] be agreed to—put and resolved in the negative.

The Greens amendment No. 1 [C2194-104] negatived.

Title agreed to.

Question—That this bill as read be agreed to—put and resolved in the affirmative.

Bill as read agreed to.

Bill reported from Committee without amendment.

Adoption of Report

Motion by the Hon. John Ajaka agreed to:

That the report be now adopted.

Report adopted.

Third Reading

Motion by the Hon. John Ajaka agreed to:

That this bill be now read a third time.

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

STATE REVENUE LEGISLATION FURTHER AMENDMENT BILL 2014

Second Reading

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [9.21 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 State Revenue Legislation Further Amendment Bill 2014 is part of the Government's ongoing program of maintaining legislation governing taxes administered by the Office of State Revenue [OSR]. This is the second bill on State taxes to be dealt with in the current session of Parliament.

These taxes operate in the context of continually changing business practices and developments in the law arising from court and tribunal decisions. The Government has an obligation to respond promptly to protect the State's tax revenue, and to ensure that tax liabilities can be clearly identified and operate fairly.

Some of the provisions in this bill were removed from the State Revenue Legislation Amendment Bill 2014 to allow further consultation with industry and professional bodies. The Government is reintroducing some of these provisions where appropriate consultation has occurred.

These proposals have been the subject of consultation with the Law Society of New South Wales, the Property Council of Australia, the Taxation Institute of Australia and the professional accounting bodies.

The bill makes amendments relating to duties, land tax and payroll tax, and I will deal first with the amendments to the Duties Act 1997.

Duties

The first amendment relates to options to purchase land, being the right, but not an obligation, to acquire or sell something for a fixed price at some future date.

The acquisition of an option by a third party should be subject to transfer duty regardless of the form of the transaction. The bill therefore clarifies that the acquisition of an option by way of nomination or novation is taken to be a transfer of the option.

This is consistent with the policy of imposing duty on the change of ownership of options.

The bill further provides that, for the purpose of calculating duty, the consideration paid for the transfer of the land includes the value of any consideration paid for the option with a credit for any duty paid on the acquisition of the option.

To prevent the possibility that the same taxpayer is effectively required to pay duty twice when the value of the option is included in the value of the land purchased, the bill also provides the ultimate purchaser with a credit for any duty paid on the acquisition of the option.

The bill only applies to options granted and transferred on or after the commencement date of the provisions.

The bill includes an amendment to prevent avoidance of duty by ensuring that duty is payable where a lease is novated rather than transferred.

The bill provides for \$500 duty to be imposed on declarations of trust by custodians of self-managed superannuation funds holding property on trust for the trustee of a self-managed superannuation fund.

These deeds are executed to comply with requirements of the Australian Taxation Office. Many deeds do not meet the requirements for the duties concession for a resulting trust due to difficulties in establishing that the trustee of the fund provided the purchase monies when funds are provided by the vendor member of the fund as a contribution. This current requirement for the concession will be relaxed. Imposing a fixed charge will reduce administrative costs for OSR and is a red tape reduction for taxpayers.

The bill also clarifies the concession for transfers of property from a member of a self-managed superannuation fund to the fund in which they are the member. The amendment specifies that the duty concession will not apply where a transferor holds property in a trust, and will not apply to transfers from members of a super fund unless the fund is to hold the property for the benefit of those members in the same proportion as they held the property immediately prior to the transfer. Consistent with other superannuation concessions, \$500 duty will be imposed.

Another amendment to the Duties Act is an exemption from duty for the transfer of heavy vehicle trailers from other jurisdictions to New South Wales.

In the past, duty on new trailers had been a key factor in encouraging heavy vehicle operators to purchase and register their vehicles in other States. Since the abolition of duty on new trailers in October 2012, this trend has started to reverse.

However, for owners who transfer heavy vehicle trailers to New South Wales from other jurisdictions, they must show evidence that duty was paid in the other jurisdiction.

Heavy vehicle operators that registered trailers in Queensland, for example, where no duty was payable on purchase, have never paid duty on that trailer. The same applies for vehicles registered under the Federal Interstate Registration Scheme.

As a result, an owner who wishes to transfer a heavy vehicle trailer from Queensland to New South Wales would be liable for duty. The bill will exempt transfers of heavy vehicle trailers that have been previously registered in another jurisdiction from paying duty upon establishment in New South Wales if the trailer is registered in the same name.

Combined with the duty exemption for new heavy vehicle trailers, the "same owner" duty exemption continues to send the freight industry a strong message that the Government is determined to reduce red tape for New South Wales businesses.

Land Tax

The Land Tax Management Act 1956 contains land value thresholds below which tax is not payable. The general tax-free threshold is \$412,000, and tax is calculated at 1.6 per cent of the taxable land value above the threshold, plus \$100. The premium rate threshold above which the higher rate of 2 per cent applies is \$2.519 million.

The Act also contains provisions that groups companies that are owned or controlled by the same directors or shareholders, or the same beneficiaries in the case of a trustee company. The grouping provisions prevent tax minimisation by providing that a group of companies can only claim one general tax-free threshold, and one premium rate threshold.

This ensures that the splitting of ownership of multiple parcels of land among companies that are owned or controlled by the same person or persons cannot obtain the benefit of multiple tax-free thresholds.

The amendments in this bill make it clear that companies will not necessarily be grouped when the person who has a controlling interest in each company is acting in the capacity of trustee or nominee. In such cases the companies will be grouped only if the trusts concerned are fixed trusts and those trusts have the same beneficiaries.

This is consistent with the interpretation that has been applied to the current provisions by the chief commissioner, and the amendments therefore confirm existing assessing practice.

Payroll Tax

The bill makes amendments to the "relevant contracts" provisions of the Payroll Tax Act 2007, which tax remuneration paid to contractors who provide services on a similar basis to ordinary employees, but are regarded at law as independent contractors.

The practice of using contractors is often intended to avoid administrative and on-costs associated with long-term employment contracts, including charges and taxes such as payroll tax.

The relevant contracts provisions have applied to payroll tax since 1985, to combat arrangements that avoided payroll tax. There had been at that time a significant growth in three types of arrangements which resulted in avoidance of payroll tax:

- First, an employee became an "independent" contractor, but continued to work exclusively for the former employer. For all intents and purposes, the working relationship remained the same.
- Second, when additional staff were required, "independent" contractors were employed for extended periods to avoid the longer term commitment and cost of permanent employees. The "independent" contractors worked under similar conditions and often alongside permanent employees.
- Third, an existing employee formed a private company, sometimes at the insistence of the employer, and the employer contracted with the private company instead of the employee. The private company did not have a payroll tax liability because it only employed one person—the former employee—and therefore its annual wages were below the payroll tax threshold. The employer-employee relationship was effectively severed, and payroll tax liability on payments to the private company as well as to the former employee was avoided entirely.

There are a number of exclusions in the relevant contracts legislation which exempt payments to genuine independent contractors. These exemptions include:

- contractors who provide services which are ancillary to the supply of goods,
- contractors whose services are ordinarily required for less than 180 days in a financial year,
- contractors whose services are provided for no more than 90 days in a financial year,
- contractors who usually provide services to the public generally,
- contractors who employ two or more workers to perform the services.

In addition, there are general exemptions applying to contractors who are owner-drivers, insurance sellers and door-to-door sellers.

Contracts under which services are provided by a subcontractor who employs at least two workers to fulfil the contract are excluded from payroll tax liability because the subcontractor is an employer in its own right, not an individual employee disguised as an independent sole trader. This ensures that genuine small businesses do not lose their entitlement to the small business tax-free threshold.

However, an anti-avoidance provision authorises the chief commissioner to ignore an arrangement under which a subcontractor provides services using two or more workers if the arrangement was intended to avoid payroll tax.

The amendments in this bill extend this anti-avoidance provision so that it can be applied when an employer enters into arrangements to avoid tax using any of the other exemptions in the relevant contracts provisions. This is necessary because of the use of various contrived arrangements which avoid the contractor provisions.

The relevant contracts provisions currently provide an exemption from payroll tax for remuneration paid to an owner-driver for services which are ancillary to the conveyance of goods.

The exclusion applies to contracts under which the driver provides a vehicle to transport goods. The reason for the exemption is that a large proportion of the consideration paid to owner-drivers is for the provision of a vehicle and its running costs. The value of the personal services of the driver represents a relatively small proportion of the payments to owner-drivers.

The bill makes it clear that the exemption for owner-drivers is limited to a contract which provides solely for the conveyance of goods, and ancillary services such as loading and unloading the vehicle.

The legislation has been administered by the chief commissioner on this basis since 1986, but recent decisions of the New South Wales Supreme Court and Court of Appeal indicate the exemption can be claimed for contracts under which other types of services or other kinds of work are provided, and this has opened up significant tax avoidance opportunities.

In an overwhelming proportion of cases, owner-driver contracts relate solely to the provision of the vehicle and ancillary services, including the driver's services in driving the vehicle as well as loading and unloading. Therefore the amendments will not have a significant effect on current industry arrangements, but they will prevent the manipulation of contracts which are not specifically for the conveyance of goods but which may require the incidental use of a vehicle.

A further amendment in relation to relevant contracts will remove the general exemption applying to commissions paid to insurance agents, and instead apply the same exclusions that apply to other types of contracts.

This means remuneration paid to insurance agents will be exempt only if the selling agent is a genuine, independent contractor rather than a disguised employee.

The exclusion applying to insurance sellers has applied since 1986, and was largely directed at exempting commissions paid to insurance agents who traditionally operated as independent life insurance sellers.

The financial planning market has changed significantly since the exclusion was adopted, mainly due to Commonwealth reforms to the financial services industry. Life insurance policies are now sold by financial planners who also sell other investment products and services, and there are very few sellers of insurance who only sell insurance policies.

The current exemption therefore has limited application, and provides an unfair advantage for insurance brokers who use so-called independent sub-agents and compete with others in the financial services industry. Its removal will therefore restore a level playing field.

The bill also removes the contractor exemption for commissions paid to door-to-door sellers. Like the removal of the general exemption for insurance sellers, this means remuneration paid to door-to-door sellers will be exempt only if the selling agent is a genuine, independent contractor rather than a disguised employee.

In the past, door-to-door sellers predominantly sold goods, such as encyclopedias, and door-knocked residential premises without having made prior contact with the potential consumer.

There have been numerous changes to consumer protection legislation since the exemption was introduced, applying to unsolicited consumer agreements. This has had the effect of extending application of the payroll tax exemption for door-to-door sellers to a broader range of door-to-door sellers who do not make "cold calls" at the consumer's door.

As a result, businesses that use sales methods that are not "door-to-door" sales in the traditional sense may now qualify for the exemption. Such methods include retailers and wholesalers of goods using marketing techniques such as telephone call centres, emails or internet marketing techniques to attract customers. When a customer makes contact, the business sends a salesperson to the customer's premises to provide a quote and enter into a contract at the customer's residence.

Contracts with door-to-door sellers will remain exempt if the salesperson is employed as an "independent" contractor and not as an employee.

A 2012 report prepared for the Australian Competition and Consumer Commission which provided an analysis of the door-to-door sales industry, found that:

- There was an average of around 3,400 individuals engaged as door-to-door sellers at any one time throughout Australia in 2011,
- Most door-to-door salespeople sell services such as energy, 76 per cent, telecommunications, 10 per cent, and solar panels, 4 per cent,
- Most sellers use labour hire companies to obtain sales staff, who are employed as independent contractors rather than employees.

Recent audits conducted by the Office of State Revenue have disclosed that a number of payroll tax payers have failed to pay tax on contract sales staff, claiming they are exempt door-to-door sellers, even though in most cases the sales staff concerned do not engage in door-knocking, but instead arrange appointments with the initial contact arranged by telephone, email or internet marketing. In most cases the selling agents work wholly or mainly for one employer.

This demonstrates that the door-to-door sellers exemption is a potential payroll tax avoidance loophole, and, unless it is closed off, such practices may spread with a potential revenue loss of several million dollars per year.

Payroll tax legislation, including the contractor provisions, have been harmonised in all States and Territories except Western Australia. The payroll tax amendments contained in this bill have been developed in conjunction with revenue authorities in other harmonised States and Territories.

The Victorian Payroll Tax Act has already been amended with effect from 1 July 2013 to give effect to the changes to the anti-avoidance and owner-driver provisions proposed in this bill.

The provisions removing the door-to-door and insurance sellers exemptions will take effect on a date to be proclaimed, to enable time for employers to be advised and also to allow commencement of the amendments to be coordinated with other harmonised jurisdictions.

Payroll Tax Rebate Jobs Action Plan

The Jobs Action Plan was introduced by this Government in 2011.

The scheme currently provides rebates of up to \$5,000 over two years for employers who take on new employees and increase their total employment.

In order to prevent contrived arrangements where rebates could be obtained by transferring employees from one part of a corporate group to another, the Jobs Action Plan legislation prevents an employer from claiming a rebate if:

- the new employee was previously employed by a member of the same group of employers, or
- the new employee was employed as a result of a takeover of another business or undertaking, or a merger with another entity.

The bill relaxes these restrictions in cases where a new employee is appointed by one employer who is eligible to register for the rebate, but the employee is transferred to another employer as a result of a takeover or merger, or is transferred to another member of the same group.

The bill will enable the chief commissioner to approve payment of the rebate if the new employer satisfies the rebate criteria and the chief commissioner is satisfied that the former employer would have been eligible for the rebate if the employment had continued with that former employer.

I commend the bill to the House.

The Hon. PETER PRIMROSE [9.22 p.m.]: This bill contains several important measures that, like all such revenue bills that come before the Parliament from time to time, seek to ensure that State taxation and revenue provisions remain relevant to changing community and business practices. However, the Opposition is very concerned about one aspect of the bill and will be moving amendments in Committee to address that concern. The Opposition does not support this new business tax being imposed by the Baird Government and the likely lower commissions being paid to salespeople that will result.

During debate on the State Revenue Legislation Further Amendment Bill 2014 in the other place the shadow Treasurer pointed out that in removing the longstanding exemption for direct sellers in respect of paying payroll tax the bill will unreasonably increase red tape for small businesses and put many local jobs at risk. The shadow Treasurer urged the Government to consult with the Direct Selling Association of Australia and to resolve the issue before pursuing the bill in this House. The Government has failed to do that.

I will examine the argument that has been made by the Baird Government for attacking small businesses in New South Wales by imposing an additional tax on employment. The direct selling industry in this State operates with independent salespeople contracted primarily by small to medium businesses to market and sell their goods and services. These people are remunerated by reselling margins or commissions on their sales. These independent salespeople are primarily individuals—90 per cent of whom are women—and involve small and micro businesses. According to Deloitte Access Economics research, 62 per cent are in lower income groups and are seeking supplementary income for their families and flexibility in deriving that income. The Direct Selling Association wrote to the Minister stating:

The success of the direct sales channel depends on the true independence of all players in the supply chain. Contracts for services under which sales people are engaged have no employment characteristics, these people are only paid on the basis of sales made by themselves and others they recruit to the direct selling organisation. The direct selling companies have no control over if, when or how they engage in direct selling.

The policy rationale for inserting the original exemption for certain payments to contractors in the Payroll Tax Act 1986, which this bill seeks to overturn, remains valid. A perusal of the *Hansard* of the time makes it clear that only contracts involving services or contracts for services with obvious employment characteristics should be captured by the payroll tax regime. Whether the method is door-to-door selling, telephone sales, network marketing or party plan sales, they are all characterised by the same relationship between independent salespersons and direct selling companies where it is the contractor who bears the commercial risk. The direct selling activity then, as now, relates to the sale of products, not time spent working.

The payroll tax rate is 5.45 per cent and the threshold is \$750,000. A company of, say, five employees would have a wages bill of at least \$350,000, which is \$400,000 under the threshold. Given that commissions in direct selling average 30 per cent of sales, it would take sales of only \$1.2 million to expose a business to payroll tax. On current turnover figures, payroll tax would consequently have to be paid by more than three-quarters of all direct selling businesses. With payroll tax at 5.45 per cent of wages, including commissions, the new tax liability payable by such companies at the barest minimum would be \$40,875, and that would grow substantially over time because indexation no longer applies. Of course, the liability would be greater for companies with more employees and larger sales turnover.

It will be up to individual companies to determine how this extra cost burden will be passed on. However, the actual amount of this new business tax plus the additional costs of compliance in collecting information, extra accounting costs and the like will lead either to higher cost goods and/or less being paid in commissions to the independent salespeople. For those who are likely not to reach the threshold it does not mean that payroll tax will not be an issue. They may still be subject to any regulatory regime that should be implemented, and be required to administer systems to determine liability for monthly payments or otherwise, to make payments and then to go through an annual reconciliation process to determine whether a tax liability exists.

This is not a conventional retail distribution system; it is not employment dressed up as independent contracting. A person may join a company as an independent distributor for a number of reasons. It may be simply to purchase products for themselves or friends at what is essentially a wholesale price. A distributor may join only to sell products and others may join to sell and to develop downlines of distributors who also sell products. Still others may join only to build and manage networks of downlines to distribute products. The so-called wages are the commissions paid for these respective levels of engagement.

A Deloitte Access Economics study of the industry concluded that a significant percentage of distributors are simply consumers of the product. If the exemption is removed by this bill then product discounts will be classified as wages and potentially be subject to payroll tax. The current exemption also relates only to goods, not to services. The Minister's second reading speech suggests that too many companies are now using doorknockers to sell services such as phone contracts and are using the exemption as a loophole to avoid paying payroll tax. These are services, not goods, and the exemption should not apply. The proper policy response would be for the Office of State Revenue to clarify the existing exemption, not to abolish it.

While the term "door-to-door" was used in the respect of the exemption in the 1986 Act to align it with the terms in the Door to Door Sales Act, it was clear that it was to apply to all direct selling. The *Hansard* of the time uses the term "direct selling" throughout. There was even a statement made by the then member for Northcott, the Hon. Bruce Baird, on the introduction of the exemption in 1986:

I think the drafting of this particular piece of legislation is somewhat living in the past. Door to door salesmen are few and far between. We have Avon Ladies calling but apart from that, operations of the type such as Amway, Tupperware, and Nutrimetics promote their products by means of a party plan ...

I am advised that Revenue Ruling (PTA007) published by the Office of State Revenue provides that the exemption applied to all direct selling, as it states that in order for the exemption to apply—

... the sale is to have taken place either at a customer's residence, or at the customer's place of work, or elsewhere than at the vendor's trade premises or a place where goods of that sort are normally offered for sale.

Our amendment proposes using the term "direct selling agent" in its ordinary meaning, which will eliminate this now archaic terminology. It addresses also the Government's concern of non-direct sellers utilising the exemption by more tightly defining their contractual relationship rather than the transaction. The removal of the direct-selling exemption will have a profound effect on these businesses. Apart from the direct cost of the tax, it will be an administrative nightmare for direct-selling companies to collect information, trying to work out to which independent salespeople the tax should apply. For example, in his second reading speech the Minister suggested that other exemptions from payroll tax could be utilised by this industry, such as the 90-day exemption or the exemption that applies to people who work for more than one employer. Given the nature of the contractual relationship, direct-selling companies do not have any control over the number of hours independent salespeople spend on selling their goods let alone goods of other companies.

This information is not collected and in any case would fluctuate literally from month to month and could not be vouched for with any legal certainty. Therefore, the multiple-employer exemption cannot be ascertained. This also is the case for the 90-day exemption where the formula used to estimate the exemption requires either knowledge of the number of days worked or the number of hours worked each day. It is impossible for direct-selling businesses to get accurate and detailed information from their independent salespeople as to the time specifically spent on direct-selling activities. Even if it were possible to collect this data, the administrative cost would be daunting and would send most of these small businesses to the wall. Labor does not support this new tax. We do not support the increased red tape on small businesses. We do not support reducing the commissions for those direct selling products.

Dr JOHN KAYE [9.32 p.m.]: On behalf of The Greens I speak on the State Revenue Legislation Further Amendment Bill 2014 and express from the outset, with a sense of irony, what a pleasure it is to see another of these bills before the House!

The Hon. Duncan Gay: *Hansard* cannot show irony.

Dr JOHN KAYE: I acknowledge the interjection. *Hansard* will see that as a statement of my enthusiasm for this legislation. This legislation, as these kinds of bills tend to do, amends a number of different pieces of legislation: duties, land tax, payroll tax as we heard from the previous speaker and the Jobs Action Plan. In general, legislation is focused either on clarifying matters that have emerged from a court case or closing loopholes. Legislation generally is designed to make the State's tax system more efficient and fair, and remove loopholes. I say from the outset that removing the opportunity for tax avoidance generally is a good thing. Various people have varying opinions on payroll tax. Some say it is a tax on employment while others say that because small- and some medium-size enterprises are exempt it is a tax only on large corporations. The desirability of payroll tax invites a valid debate but, nonetheless, payroll tax provides a reasonable proportion of the State's revenue, and the burden tends to fall in large measure on larger corporations.

As long as a tax exists, it is important that there are no loopholes through which avoidance can be perpetrated. Tax avoidance not only is bad in reducing the State's revenue but also distorts business activity. Businesses will put energy and thought into how they can reduce their tax burden without creating any greater productivity, and without adding anything to the economy or to their own businesses. To that extent, closing opportunities for avoidance generally is a good thing and, generally, The Greens would support it. The Opposition shadow spokesperson contends that removing section 32 (2) (d) (iii) of the Payroll Tax Act, which provides exemptions for services in relation to door-to-door sale of goods solely for domestic purposes on behalf of the designated person, would create unnecessary hardship for a number of small corporations engaged in door-to-door sales or direct selling, as his amendment refers to, and also would create unemployment. The deletion would create an administrative complexity.

I look forward to more of a nuanced debate in Committee when we examine things in greater detail, but for the purposes of this debate I note that section 32 (b) (i), (ii) and (iii) of the Payroll Tax Act provides that exemptions from payroll tax and exemptions from aggregation for the purposes of payroll tax are available for performance of work where—

- (i) those services are of a kind not ordinarily required by the designated person and are performed by a person who ordinarily performs services of that kind to the public generally—

that is to say they are casual by their nature—

- (ii) those services are of a kind ordinarily required by the designated person for less than 180 days in a financial year—

that is to say services that are not ordinarily part of the business—

- (iii) those services are provided for a period that does not exceed 90 days or for periods that, in the aggregate, do not exceed 90 days in that financial year and are not services:
 - (A) provided by a person by whom similar services are provided to the designated person, or
 - (B) for or in relation to the performance of work where any of the persons who perform the work also perform similar work for the designated person ...

That is, there is exemption from payroll tax aggregation with respect to people employed for 90 days or less in a financial year. People who work part time in direct selling or are not engaged for more than an aggregate of 90 days a year—that is implemented by the amount of money earned—would not be caught in the payroll tax net. The individual who operates as a door-to-door salesperson casually will not be caught. The person who receives the goods from the designated person and sells those goods for their own benefit having paid for those goods is a contractor and is therefore not caught by sales tax. It is only specifically those people who are direct employees working more than 90 days a year who would be caught by this exemption.

As I understand it, the problem that arises from this exemption is that companies are configuring their sales regimes so that employees effectively become door-to-door salespeople. An example quoted to me was of a company selling blinds having the contract for the sale of blinds signed not in the salesroom where the blinds are on display but in the buyer's home and therefore it becomes a door-to-door sale. To me that seems to be a deliberate distortion of the business in order for the company to avail itself of the provisions of section 32 (2) (d) (iii) of the Act, which this bill seeks to remove. To that extent The Greens are concerned that this section creates an opportunity for avoidance and therefore could distort businesses and take revenue from the Government. In his speech in reply I would like the Minister to indicate to the House the quantum of money the State will lose per annum by virtue of this exemption.

The Hon. Matthew Mason-Cox: Approximately \$2 million.

Dr JOHN KAYE: The Minister says it is in the order of \$2 million, which is not a princely sum.

The Hon. Duncan Gay: There are The Greens, spendthrifts, saying \$2 million is not a princely sum!

Dr JOHN KAYE: That is just a handful of Priuses, depending on where they are bought.

The Hon. Duncan Gay: It is half of North Korea.

Dr JOHN KAYE: I think it is now twice North Korea's GDP, so it would be a substantial sum to North Korea—I retract that as we should not joke about the tragedy befalling North Korea. I would also like the Minister to indicate the category of people who would be commonly understood to be door-to-door salespeople but would be exempt even when this provision is removed. I would like the House to be provided with a clear understanding of what is being dealt with in this provision.

The rest of this legislation seems to be relatively straightforward and non-controversial. I note that the legislation includes yet again—and we seem to deal with this regularly—duties on transfers of trailers. When this legislation goes through, unless the trailer is registered in Queensland, New South Wales will allow same-owner transfers of interstate heavy vehicle trailers. This is intended to encourage freight operators to transfer registration of trailers to New South Wales.

The Hon. Duncan Gay: That's part of our business plan.

Dr JOHN KAYE: If that is part of the Government's business plan, good luck. I note that we still have a problem with Queensland. I wonder if The Nationals would be able to solve that problem and, while they are at it, fix the absurdity that Queensland is not on daylight saving while the rest of the country is.

The Hon. Trevor Khan: There are limits!

Dr JOHN KAYE: I acknowledge that there are limits.

The Hon. Duncan Gay: We could if there was still a National Party in Queensland.

Dr JOHN KAYE: The Minister says that if there were still a separate National Party in Queensland with a separate identity, this would be solved. Next time I have an opportunity to influence a merger between the Liberal and National parties I will take that into account, although I may be holding my breath for some time. Those matters apart, The Greens do not oppose the legislation. We look forward to the debate on the Labor Party's amendment to section 32 (2) (d).

The Hon. PAUL GREEN [9.44 p.m.]: On behalf of the Christian Democratic Party I make a brief contribution to the debate on the State Revenue Legislation Further Amendment Bill 2014. The Christian Democratic Party's position on payroll tax is that it is not very helpful to employment creation and we think it should be totally abolished. This bill makes changes to duties. It clarifies the liability to duty on the purchase of an option over land to confirm the past practice of imposing duty on the purchase of an option whether documented by way of transfer, nomination or otherwise, and provides a credit to prevent double duty upon exercise of the option. It also provides for concessional duty to be payable on a declaration of trust by a custodian for a trustee of a self-managed superannuation fund. This will relieve some taxpayers of an unintended liability. The bill clarifies the duty concession for transfers of property to the trustee of a self-managed superannuation fund and increases the duty to \$500, consistent with other superannuation transactions.

The bill imposes duty where an agreement for lease of land is novated in favour of a new lessee. This will prevent potential avoidance of duty on transactions where valuable property rights are effectively transferred, including the acquisition of infrastructure enterprises. The bill also provides an exemption for same-owner transfers of interstate heavy vehicle trailers. This is intended to encourage freight operators to transfer registration of trailers to New South Wales. There are also amendments to land taxes. The legislation confirms that the land tax grouping provisions do not apply to companies controlled by the same trustee on behalf of different trusts. For land tax purposes, companies controlled by the same shareholders are grouped, and each group is entitled to only one tax-free threshold.

There are additional changes to payroll tax: This bill extends the powers of the chief commissioner to issue tax assessments to employers who attempt to avoid payroll tax on relevant contracts. There has been a growth in avoidance activities by employers entering into contracts with subcontractors to attract one of the exclusion tests in payroll tax provisions that treat contractors as though they were employees and treats their payments as though they were wages subject to payroll tax. It limits the concession applying to contracts between employers and owner-drivers to contracts which provide only for the conveyance of goods, including the driver's services and ancillary services such as loading and unloading the vehicle. This addresses avoidance opportunities and administrative issues following recent Supreme Court and Court of Appeal decisions. The bill also removes the payroll tax exemptions for remuneration paid to insurance agents and door-to-door sellers under the relevant contracts provisions. This addresses changes in these industries and avoidance arrangements which have developed since the exemptions were introduced in 1986.

The payroll tax amendments are consistent with proposals to State and Territory governments in other jurisdictions with harmonised payroll tax contractor legislation—that is, all States and Territories except Western Australia. The removal of the concessions for insurance agents and door-to-door sellers means the general tests for exemption that apply to contractors in other industries, including the building industry, will also apply to insurance agents and door-to-door sellers. These amendments will commence on a date to be proclaimed to allow for employers to be informed of the changes and to coordinate the removal of the concessions with other States and Territories in accordance with payroll tax harmonisation arrangements. The bill also makes amendments to the Jobs Action Plan. It provides the Chief Commissioner with a discretion to approve payment of rebates under the Jobs Action Plan where eligible new employees are transferred between related companies or where the initial employer is taken over in the course of a merger or acquisition.

The Christian Democratic Party and others were concerned that this legislation would penalise door-to-door salespersons such as mums working for Nutrimetics or Avon who are trying to make an extra buck while balancing their family life. Following communication with the Minister's office, we note that a period of 18 weeks or 90 working days will lapse before such people will be penalised. That is a reasonable time frame for people in those circumstances. Once door-to-door salespersons pass the threshold of \$30,000 in earnings they enter another category which may attract further taxes imposed by their employer. As I said earlier, although the Christian Democratic Party has a general objection to payroll tax, this legislation ensures that everyone pays their fair share of tax.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [9.51 p.m.], in reply: I thank members for their contributions to debate on the State Revenue Legislation Further Amendment Bill 2014. I share the Hon. Paul Green's view that payroll tax is an anathema to the good conduct of business. It is a tax that I would love to repeal but the reality is that it is about revenue and protecting the tax base. It is an important part of the tax base in New South Wales and one that we cannot readily replace. Perhaps when we receive the Federation paper on tax reform we can have a sensible debate about the taxation regime. We are looking forward to the white paper which no doubt will cover a range of State and Federal government issues and the appropriate allocation of responsibilities. Until that time we have a payroll tax base that must be protected and the Government is committed to ensuring it is protected. The State Revenue Legislation Further Amendment Bill 2014 seeks to do that.

The issue of payroll tax has formed the basis for the Hon. Peter Primrose's proposed amendments and has instigated comments from other members. The Government's reasoning for removing the exemption for door-to-door sellers has been questioned by industry groups and it is important to address those concerns. First, the amendments to the Payroll Tax Act are anti-avoidance provisions and will ensure that there is a level playing field between retailers and wholesalers in relation to liability for tax. The removal of the exemption closes a loophole that allows wholesalers and retailers to avoid paying payroll tax using direct marketing. Retailers and wholesalers can and are taking advantage of the exemption by sending salesmen to prearranged appointments at a consumer's residence to complete a sale of goods and then claiming it as a door-to-door sale.

In addition, the amendments will prevent future losses of revenue as traditional wholesale and retail businesses continue the trend of expanding their use of direct marketing techniques and technologies. The payroll tax threshold of \$750,000 in annual wages means that less than 10 per cent of businesses pay payroll tax. Only 35,000 businesses pay payroll tax, out of an estimated 400,000 businesses operating in New South Wales. Because of the threshold, below which no tax is payable, the relevant contract amendments will have a negligible overall impact on the number of businesses that are liable to pay payroll tax. I reiterate the comment I made earlier about the likely protection of the revenue base of approximately \$2 million in relation to the proposed amendment.

The red tape associated with compliance with the relevant contract provisions that was mentioned by the Opposition relates mainly to maintaining evidence to substantiate a claim for one of the general exemptions. The additional burden on businesses that employ sales contractors is relatively small because business records that are required to be kept for other purposes, such as income tax records, will provide sufficient evidence to support a claim for exemption. Such records are only required to be provided to the Office of State Revenue when an audit is conducted.

In response to Dr John Kaye's comments, the main exemptions that employers of door-to-door sellers will qualify for are contracts that are mainly for the sale of goods, which can be evidenced by usual business records such as invoices showing that the value of goods is more than 50 per cent of the contract value. For contractors who work for less than 90 days in a financial year, which is equivalent to working five days per week for 18 weeks, if the number of days worked by a particular contractor is not available the determination of exempt contractors can be based on a calculation of the average remuneration for 90 days work that an employer normally pays for that type of work. For contractors who employ two or more employees or subcontractors, income tax records that are kept for PAYG purposes will suffice. Contractors who sell goods on behalf of more than one supplier, such as somebody selling on behalf of Avon or Amway, would not be caught and would have the benefit of this exemption.

Finally, I address the issue of consultation. The Hon. Peter Primrose and the shadow Treasurer in the other place made the point that the Direct Selling Association of Australia [DSAA] was not appropriately consulted on these amendments. It is important to note that the Government consulted with the DSAA and the DSAA received a copy of the draft bill in April when it was circulated to the Small Business Combined Association and a number of other businesses and industry bodies with whom the Office of State Revenue consults.

This level of consultation has been endorsed by successive governments and has been followed by the Office of State Revenue for many years. It provides the opportunity for industry representatives to comment confidentially in advance of the introduction of tax bills into Parliament. I understand the DSAA also met with representatives from the Office of State Revenue prior to the introduction of the bill in this House. In addition, the Minister personally met with the DSAA to address its concerns. As the regulator for the direct selling industry, I also consulted with the DSAA on this issue. Given all of those factors, 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

The CHAIR (The Hon. Jennifer Gardiner): If there is no objection, the Committee will deal with the bill as a whole.

The Hon. PETER PRIMROSE [9.59 p.m.], by leave: I move Opposition amendments Nos 1 and 2 on sheet C2014-093A in globo:

No. 1 Contractor provisions

Page 10, schedule 3. Insert after line 7:

[3] Section 32 (2) (c1)

Insert after section 32 (2) (c):

(c1) is supplied with services for or in relation to the sale of goods by a direct selling agent under a contract between the designated person and the direct selling agent, or

No. 2 Contractor provisions

Page 10, schedule 3 [6], line 26. Insert ", (c1)" after "(c)".

I have addressed my arguments in support of these amendments at length in my contribution to the second reading debate and I will not take the time of the House by covering that territory again. However, I point out a critical misunderstanding that seems to exist in relation to the reasons given for opposition to amendments such as these. During the second reading debate a number of members, including the Hon. Paul Green—and I do not in any way object to his contribution—used the term "through your employer". There is no direct employment relationship involved; hence, the very reason for the amendments we propose.

Contracts for services under which salespeople are engaged have no employment characteristics. Those people are only paid on the basis of sales made by them and by others they recruit to the direct selling organisation. The direct selling companies have no control over when or how they engage in direct selling and that, in turn, directly impacts on the issues that have been raised by the members who oppose these amendments in relation to the exemptions available. The Minister in his second reading speech referred to the two types of exemptions and other members also referred to the 90-day exemption or the exemption that applies for people who work for more than one employer.

As I outlined in my contribution to the second reading debate, as a consequence of the particular contractual relationship between those involved both of those exemptions do not apply. Even if it were possible, for example, in relation to the 90-day exemption, to collect data—which employers say is almost impossible—the administrative costs would be daunting and would send most of the small businesses to the wall. Our proposed amendments simply seek to maintain the status quo. Advice on these matters has come from those who are engaged directly in the industry; the Opposition is not making this up. Research has been made available to us from Deloitte and we have received advice from those who represent the industry. We also have had representations from many people, mainly women, who are engaged in these contractual relationships and who have urged us to move these amendments. I commend the amendments to the Committee.

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [10.02 p.m.]: The Government opposes the amendments. I note in particular the issue raised by the Hon. Peter Primrose in relation to the evidence required to be kept by small businesses or people who are independent contractors. As I said in my closing comments in my second reading speech, contractors who work for less than 90 days in a financial year can avail themselves of the exemption that currently applies under the Act. That is equivalent to working for 18 weeks at five days per week. If the number of days worked by a particular contractor is not available, the determination of exempt contractors can be based on a calculation of the average remuneration for 90 days work and the amount an employee is normally paid for that type of work.

For example, if the average wage is \$58,000 or \$1,118 per week, the payment for 18 weeks work is about \$20,000. Therefore, employers who normally pay that level of remuneration could claim exemption for annual remuneration paid to sale contractors of less than \$20,000. That simplifies the process and the process is not complicated by having to keep evidence of the payments that were made through the contracting chain. In that way we can do away with red tape and overcome the difficulties faced by people in keeping that type of evidence. It is clear that this is all about ensuring that the revenue base is protected. This is an appropriate way to ensure that outcome, particularly in a changing market that has seen some taking advantage of this exemption. Evidence shows that it is costing the revenue base about \$2 million a year and there is the risk that that amount may grow as other direct marketing employers or firms start to lose the benefit of this exemption.

Dr JOHN KAYE [10.05 p.m.]: I find these amendments and the arguments put forward by both sides quite challenging. Persuasive arguments have been put by both sides. In the end, the amount of money being avoided is only \$2 million. While that is a substantial amount of money to an individual, it is not a huge amount of money in relation to State revenue. My second consideration is that the Government says it can remove this exemption because there are other exemptions. I thank the Minister for outlining those exemptions in detail but my concern is that tax avoidance is largely like a balloon: If you squeeze it in one place it bulges somewhere else.

I can imagine a situation where companies that are direct marketing on the street, as it were, will employ a number of people for the equivalent of 89 days and there will be a large run on smaller jobs. In fact, the risk is that this will lead to increasing casualisation of the industry. On the other hand, I appreciate the Government's arguments about needing to close the loopholes. On balance, The Greens will support these amendments because we are concerned that there may be job losses and that the risk involved in these amendments going through is only \$2 million. I appreciate that it is a large amount of money but it is not large compared with the risk of potential confusion and employment issues.

Question—That Opposition amendments Nos 1 and 2 [C2014-093A] be agreed to—put.

The Committee divided.

Ayes, 17

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

Noes, 20

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

Pairs

Ms Fazio	Mr Clarke
Ms Westwood	Mrs Maclaren-Jones

Question resolved in the negative.

Opposition amendments Nos 1 and 2 [C2014-093A] negatived.

Title agreed to.

Question—That this bill as read be agreed to—put and resolved in the affirmative.

Bill as read 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.

ADJOURNMENT

The Hon. MATTHEW MASON-COX (Minister for Fair Trading) [10.17 p.m.]: I move:

That this House do now adjourn.

REVEREND THE HONOURABLE FREDERICK JOHN NILE, MLC

The Hon. MARIE FICARRA [10.17 p.m.]: Tonight it is with much pleasure that I speak in honour of Reverend the Hon. Frederick John Nile, MLC, who celebrated his eightieth birthday on 15 September with Premier Mike Baird, other members of Parliament and a wide cross-section of the community in attendance. He is a man of outstanding achievement, a political, religious and community leader and, importantly, a proud family man. Reverend the Hon. Fred Nile, the Assistant-President, is the longest-serving member of the New South Wales Parliament. As the leader of the Christian Democratic Party, he has represented the concerns of many people who support the need for Christian values in our legislative processes. Reverend the Hon. Fred Nile is a strong supporter of family life and a great defender of the Commonwealth. He has made remarkable legislative and social history throughout his 33 years in this Parliament.

Reverend the Hon. Fred Nile was ordained as an evangelical congregational minister. He has served as youth director of the Central Methodist Mission and national coordinator and New South Wales director of the Australian Federation of Festival of Light. He entered New South Wales politics on 19 September 1981, with a record 9.1 per cent of the vote, and served 11 years representing the Call to Australia Group, which he proudly founded in 1977. In 1991 he was re-elected to this House for another eight years. In 1997 the Christian Democratic Party—the only national Christian political party in Australia—superseded the Call to Australia Group, with Reverend the Hon. Fred Nile as its leader. He was re-elected in 1999 and 2007.

Reverend the Hon. Fred Nile has been responsible for the introduction of thousands of important motions, amendments and bills that have had a positive impact on the lives of millions of people throughout this State. Many of those bills have been subsequently adopted into law, including the Family Impact Commission Bill, Crimes Amendment (Provocation) Bill 2014, Constitution Amendment (Restoration of Oaths of Allegiance) Bill 2012, Crimes Legislation Amendment (Possession of Knives in Public) Bill 2009, Smoking Regulation Bill 1996 and Tobacco Advertising Prohibition Bill 1991 to name but a few, and the euthanasia and same-sex marriage bills were defeated.

Since the early 1970s, along with his devoted first wife, the Hon. Elaine Nile, who was also a respected member of this House, Reverend the Hon. Fred Nile has organised and addressed hundreds of rallies, meetings and seminars, as well as Federal, State and UNESCO conferences and inquiries. He has participated in numerous speaking and study tours relating to human rights and trafficking, religious and ethnic persecution,

social justice, freedom of speech and democratic rights. Regrettably, the Hon. Elaine Nile lost her battle with cancer in October 2011, marking almost 60 years of a loving and dedicated relationship between two dynamic social and political Australian icons.

Reverend the Hon. Fred Nile is much loved by our multicultural and Indigenous communities, and is a great supporter of interfaith harmony and respect for cultures, languages and traditions. He has chaired and/or served on most New South Wales parliamentary committees covering social issues, such as adoption laws, domestic violence, drug and alcohol testing and rehabilitation—especially naltrexone implants—rural and youth suicide, compensation for medically acquired AIDS-HIV victims, sentencing laws, gambling, motor accident insurance, occupational health and safety laws, and a range of educational and health issues.

Reverend the Hon. Fred Nile's dedication to the wider community is evidenced by his active participation in numerous organisations, including the Aboriginal One Nation under God Committee, his honorary position as patron and director of the Australian Christian Nation Association, as well as the honorary presidency of the Fellowship of Congregational Churches. Reverend the Hon. Fred Nile has been connected, and continues to connect, with all in his growing constituency using many media forms including Facebook, Twitter and YouTube, and making numerous appearances on radio and television. He is a regular contributor to many publications and newspapers, and proudly produces and edits the popular *Family World News*.

Indeed, with his dedicated wife, Silvana Nero, whom he married last December, Reverend the Hon. Fred Nile has been energised by the Lord as he travels the State and the globe doing his work. On behalf of your great support base of followers, I thank you for your outstanding contribution to public service and all communities during your 33 years in Parliament. I join with so many other members of this place and wish you a very happy eightieth birthday. May you serve our community in a valued manner for many more years. May Proverbs 3:5—which has always meant so much to you in your life—continue to guide you in the service of the people of New South Wales. In all your ways acknowledge the Lord and he will direct your paths.

AUSTRALIAN MUSLIM COMMUNITY

The Hon. SHAOQUETT MOSELMANE [10.22 p.m.]: I speak on an issue that has been giving me and many in the wider Australian community, as well as the entire Australian Islamic community, considerable distress—that is, the baseless and cowardly attacks on the Australian Muslim community, particularly Muslim women, in the past few weeks. These attacks show the ugly side of some in our wider community. In a few instances it also shows the beautiful side of the Australian community at its best. I am pleased that in a number of circumstances bystanders have come to the aid of victims and stood up for the values of decency that most Australians share.

At this juncture I express my gratitude to the many decent journalists in our national and regional news media outlets, including the *Newcastle Herald* and *The Young Witness*, for their objective, community-minded reporting. I take this opportunity to congratulate Young's general manager, Peter Vlatko, and Mayor Walker, who expressed solidarity with the Muslim community in Young, saying, "We are proud of our multicultural heritage." I am also thankful to our New South Wales Opposition leader, John Robertson, and our Federal Opposition leader, Bill Shorten, for their forthright condemnation of such un-Australian behaviour.

It has been reported that there have been at least 30 attacks on Muslims, mainly against women wearing the hijab, in the three weeks since the police anti-terror raids. There is no justification for these attacks. They are uncalled for, unacceptable and un-Australian. Some examples of these attacks in New South Wales as reported in the *Sydney Morning Herald* include: a woman was threatened with having her hijab torn from her head and set alight; a cup of coffee was thrown through the car window of a woman driving while wearing a hijab; a mother in Western Sydney was spat on and had the pram carrying her baby kicked; a woman in a hijab in Western Sydney was physically attacked and her car subsequently vandalised, with profanities spray painted on it; and a heavily pregnant woman was verbally abused and intimidated in Sydney.

Members may also recall an incident in the Hunter where a Muslim woman was verbally assaulted and another decent Australian who intervened was also assaulted. In addition, there have been threats and attacks on Muslim property and places of worship in New South Wales, including Lakemba Mosque and Auburn Gallipoli Mosque being directly threatened in letters sent by the Australian Defence League—an organisation known for its hateful attitude towards Muslim Australians. Two cars belonging to a Muslim family in Wentworthville had the words "Muslim dog" spray painted on them. Direct threats against the Grand Mufti of Australia were issued

by anonymous members of the Australian Defence League via a letter saying, "Muslims ... Australia will fight you 'terror for terror', 'blood for blood', 'bomb for bomb'." Minto Mosque was threatened via a letter from an anonymous source.

Communities are already worried that the political statements made by Federal parliamentarians fuel such attacks by sending the wrong message that it is okay to be a bigot. Furthermore, it is a shame that Australian citizens have to write to our Prime Minister to ask him to do his job and speak out against bigotry. Almir Colan, an executive member of the Islamic Council of Victoria, told the *Guardian Australia*:

We want the Prime Minister ... to concentrate on responsible, productive language. If Tony Abbott used strong words, if he said that an attack on Muslims is an attack on all of us that would isolate the bigot and reassure Muslims.

We now have a community of people who are fearful and scared to go about their normal business and be part of the wider community. I have heard that many Muslim women are scared to be out in public for fear of attack. My own sister, who wears a scarf, is an example in point. Yesterday she recalled an incident that happened some time ago where a truck driver told her to remove the towel from her head. She said the trauma of that incident has returned recently and she now fears walking alone at night. I call on the police, this Parliament, and the broader Australian community to unite and send a strong message that cowardly, racist attacks will not be tolerated and must always be condemned. This is not who we are. It is not what our country stands for.

COASTAL PROTECTION

Ms JAN BARHAM [10.26 p.m.]: We love the coast but the New South Wales coastline has experienced the impact of coastal storms and inundation since time began. These impacts have been ravaging and moulding the coast and its uses, affecting the scale, density and type of development that exists along our coastline. There has been a loss of villages, jetties and infrastructure, heritage and many shipwrecks, as well as loss of life. The New South Wales coast suffered severe cyclones and storms during the 1950s and the 1970s. The State Government introduced the Coastal Protection Act in 1979, adopted the Coastline Hazard policy in 1988 and the Coastline Management Manual in 1990, which identified climate change.

In 1997 the NSW Coastal Policy was released. All these documents provided guidance for local governments to determine plans for the coast based on extensive studies of hazards and adaptation principles and models, public safety and access, and included the vital role of public consultation. Internationally, the Intergovernmental Panel on Climate Change was established by the United Nations Environment Programme and the World Meteorological Organization in 1988 to provide a clear scientific view on the current state of knowledge about climate change and its potential environmental and socio-economic impacts. In 2007 it released its fourth assessment report, which identified that there was a likelihood of sea level rise increases above 1990 mean sea levels of 40 centimetres by 2050 and 90 centimetres by 2100.

The State Labor Government took action by introducing the Sea Level Rise Policy Statement in 2009 to prescribe to councils the basis for studies and assessments in future strategic planning and promote adaptive risk-based management. But when the current Government withdrew the Sea Level Rise guidelines in 2012 it called into question the future of development in the dynamic coastal zone. It did so without an inquiry, study or report. It did so without justification, but it perhaps also did so without consideration of the risks and the future costs—financial, social and public safety. Was this a cynical move to shift the legal liability for future risks to councils instead of ensuring that the State Government takes responsibility? Governments, State and local, have a duty of care and must be open and transparent about their decision-making and inform their communities of the basis for coastal decision-making.

John R. Corkill, a member of the New South Wales Coastal Council from 1999 to 2003, a long-term environmental advocate and now a legal academic, has produced a number of articles that question some of the long-held beliefs relating to property rights and the question of whether our beaches are public or private land. Mr Corkill's 2013 article entitled "Ambulatory boundaries in New South Wales: Real lines in the sand" explores the concept of moving shorelines on coastal land titles. He considers the doctrine of accretion and erosion, the movement of coastal boundaries, the relationship to mean high water mark and the impacts of climate change. He reviews historical legal cases and questions current legal thinking. He proposes that "where land is generally eroded by the sea or covered by rising sea levels a boundary originally defined by survey does not survive and any part that comes to lie below the mean high water mark ceases to be land that is real property".

This is a very significant issue in regard to the protection that is required for a most loved public asset—the beach. This issue has been directed to the registrar general of the New South Wales land titles office

for clarification. If not resolved, we may lose the commons as coastal property owners seek to protect their land from the rising sea levels and claim a right to land that is ours not theirs. If private property owners are allowed to claim the land that is the beach, to place rock walls or revetment works to protect their land, it would not only be a folly—as the sea is a force that knows no boundaries—but also come at great financial cost to society.

Currently there is contention about future risks of climate vulnerability and climate change and how to manage them in many coastal areas, including in my home area of Byron and the small village of Old Bar near Taree. The challenge is to plan and manage the coast in light of the past and the scientific projections. Adaption is required to avoid a future where developments and public infrastructure located in New South Wales coastal areas will be at risk. The Commonwealth Government's 2011 "Climate change risks to coastal buildings and infrastructure" report estimated that the replacement value of New South Wales residential, commercial and transport infrastructure affected by a one-metre sea level rise could be more than \$40 billion in the year 2100. If these contentious issues are not taken seriously and acted upon urgently we will lose much more than the beach; we risk a legal liability and a financial impact that is unprecedented.

THE HONOURABLE DONALD PAGE, THE MEMBER FOR BALLINA

THE HONOURABLE GEORGE SOURIS, THE MEMBER FOR UPPER HUNTER

The Hon. NIALL BLAIR [10.31 p.m.]: Tonight I pay tribute to two statesman of the New South Wales Parliament who have both announced their retirement at the next election: the Hon. George Souris and the Hon. Don Page. These two men have much in common—both were elected to Parliament in 1988, both have long histories of support for The Nationals and both have dedicated themselves to the service of their constituents and the residents of regional New South Wales.

George was born in 1949 in Gunnedah and was educated at The Armidale School and the University of New England. George is a qualified public accountant, company auditor and taxation consultant. George began his political career as a shire councillor on Singleton Council for seven years, serving as deputy shire president for four of those years. His other community commitments have included his membership of Rotary and his past presidency of various community organisations including the Singleton preschool committee and the Red Shield appeal. George has been on the front bench as a Minister or shadow Minister for 23 of his 26 years in Parliament, serving in the Greiner, Fahey and O'Farrell cabinets and including terms as the Minister for Sport, Recreation and Racing; Minister assisting the Premier; Minister for Tourism, Major Events, Hospitality and Racing; Minister for the Hunter, Minister for Land and Water Conservation; Minister for Ethnic Affairs; Assistant Treasurer and Minister for Finance; as well as the deputy leader and leader of The Nationals.

During George's last period as a Minister, he instituted a number of reforms to get New South Wales back on track. The establishment of Destination NSW and its major budgetary increase has been one of the success stories of this Government—not to mention George going down in history as the best arts Minister New South Wales has ever seen. George's contribution as a local representative is inestimable. Every day for the past 26 years he has been committed to advancing the cause of the residents of the Upper Hunter. Special mention should also go to George's electorate officer Pam de Boer, who has worked with George throughout his entire 26-year parliamentary career.

Don Page, with his election to Parliament, continued the Page family tradition of public service. Don's father was a shire president and councillor for 28 years. His grandfather Sir Earle Page was the eleventh Prime Minister of Australia, Deputy Prime Minister for 14 years and Federal Minister for Health for seven years. Don was educated at the University of New England, where he completed a bachelor of economics degree, a diploma in rural accounting and a master of economics. Prior to becoming the member for Ballina, Don was a financial analyst, economist, administration manager, part-time lecturer, and beef and macadamia producer. In the O'Farrell State Government Don was the Minister for Local Government and the first ever Minister for the North Coast. As Minister for Local Government he laid the foundations for wide-ranging reforms to strengthen local government across New South Wales so it can provide important services to its communities and address the infrastructure backlog. He also introduced the Local Infrastructure Renewal Scheme, which provided State interest subsidies for local government to assist in increasing its infrastructure investment.

Although Don's retirement will be a great loss to the Parliament, it has been terrific to see the way the Ballina community has embraced The Nationals candidate for Ballina, Kris Beavis. Kris is currently the chief executive officer of the Northern Region Surf Life Saving Association Helicopter Rescue Service and also serves as the president of the Ballina Lighthouse and Lismore Surf Life Saving Club. With his wife, Leah, he

has raised his family on the North Coast and harbours a strong desire to serve the communities of the electorate of Ballina beyond his surf lifesaving and helicopter rescue roles by being a strong representative for them in Parliament.

In closing I thank not only George and Don but also their wives, Vassy and Liz, who have given fantastic support to George and Don. I thank all of them for their terrific contribution to public life for more than a quarter of a century. Be assured that the future looks bright for the residents of rural and regional New South Wales—but that is only because of the foundations that have been laid by statesmen like George and Don. On a personal note I thank them for their support and the mentoring they have provided not only to me but also to other members of The Nationals. Throughout my contribution tonight I have used the word "statesman". I think statesmen are few and far between these days when we look across all the representatives in all our Parliaments. But I think we can probably all agree tonight that George Souris and Don Page truly were statesmen, and still are, and they will be remembered for their service to the State.

GLENBOG STATE FOREST LOGGING OPERATIONS

Mr DAVID SHOEBRIDGE [10.36 p.m.]: Yesterday morning I visited Glenbog State Forest in the south of New South Wales to join local wildlife carers and forestry protectors to examine the impact of recent logging operations on the forest and in particular on the wombats which make that forest their home. Glenbog State Forest is located between Nimmitabel and Bemboka just off the Snowy Mountains Highway. While there I met with Marie and Ray Wynan from Wildlife Rescue Far South Coast [WRSC]. Marie and Ray run their wildlife rescue operation from their property next to Glenbog State Forest. They were directly involved in recording the location of wombat burrows in the forest before logging operations commenced earlier this year.

Bare-nosed wombats live in temperate regions down the south-east coast of Australia and Tasmania with a preference for wetter, forested regions that are relatively cool. They are present in large numbers in the Glenbog State Forest where hundreds of burrows have been identified by Wildlife Rescue Far South Coast. The locations of the wombat burrows were clearly marked by Marie and Ray with high-visibility fluorescent markings and bright yellow tape. The GPS locations of the burrows were then recorded and all these details were provided to the Forestry Corporation and its logging contractors in order to ensure that logging activities could avoid damage to wombat burrows. Further agreement was reached with the Forestry Corporation that it would call WRSC if it saw injured wombats and that movement of large logging trucks would be seriously restricted at those times that wombats are most active, namely dawn and dusk.

The Forestry Corporation was under no obligation, other than a moral one, to take steps to protect these wombats. Because bare-nosed wombats are not an endangered species there are no licence conditions that oblige loggers to provide any protections for them. They are irrelevant in the eyes of the State's forestry legislation and the Forestry Corporation. Much to the frustration of the Wildlife Rescue Far South Coast and to people across the world, the logging contractors in Glenbog ignored the markings and GPS coordinates provided by Marie and Ray. They constructed logging roads directly over wombat burrows, filled other burrows with debris, collapsed the entrances of other burrows with heavy machinery and entirely covered some burrows with discarded logs and timber.

There can be no question that this has caused the completely unnecessary death of wombats by either slow suffocation or starvation. We have heard that this affected an estimated 11 burrows in the coups where logging had commenced. Marie and Ray tell me that when they raised this issue initially with contractors they received short shrift. They were asked why they were worried about these animals because they are not endangered; they are just wombats. When I asked the Minister in the estimates hearing whether future operations could avoid harvesting in the vicinity of wombat burrows she answered in the negative and then said:

The harvest plan instruction in Glenbog State Forest was to avoid damage to wombat burrows as far as practicable, not to avoid harvesting in the vicinity.

She even quibbled about the terminology used, saying the burrows had been "disturbed", admitting that this meant that "access has been impeded in one way or another", but refusing to admit that this meant the wombats had essentially been buried. Thankfully, her bureaucrats were more honest. It is extraordinary to think that this could happen in one of our State forests. It is even more extraordinary to learn that the actions of the contractors in this instance may not even have amounted to a breach of the conditions attached to their licence. We should be working towards best practice in our forestry activities, including a fundamental recognition of the need to mitigate the dangers from logging operations to native animals—all native animals. For too long we have

accepted the routine and wide-scale killing of non-endangered native animals such as sugar gliders, eastern grey kangaroos, swamp wallabies and bare-nosed wombats as a part of forestry operations. It is clear that this position is inhumane and unsustainable.

While we have a particular responsibility to protect endangered animals and endangered ecological communities, our obligations must go beyond this and extend to all native animals that live in our native forests. Our unique native animals should not be slaughtered for a couple of tonnes of loss-making timber. As it currently operates it is no exaggeration to say that logging activities can amount to the industrial killing of native animals with little risk of investigation and no sanction. It must be a condition of the Integrated Forestry Operation Approvals [IFOAs] that all native animals—endangered or not—are considered before any logging takes place and that all reasonable steps are taken to minimise the impact on these animals. This is a timely matter for consideration, given the fact that the Government is currently in the process of remaking the coastal IFOAs for the Eden, southern, upper and lower north-east coastal regions of New South Wales. At a minimum, ensuring that bare-nosed wombats are protected from having their burrows routinely bulldozed by forestry contractors would be an urgent and necessary part of this remake.

I conclude by thanking Marie and Ray for taking me around Glenbog and for introducing me to the rescued wombats and joeys currently in their care. Anyone who has seen Marie nursing Willow, a 10-kilogram injured wombat, on her knee while feeding him a bottle could not help but want to support this work. I also thank Harriet Swift, John Perkins and all the wonderful forest protectors who are part of the South East Region Conservation Alliance Inc. for their continued work in our forests. I have nothing but admiration for the selfless volunteers and activists who work to protect animals and the native forests in which they live. As a Parliament we should do everything we can to support them in this work.

LOCAL GOVERNMENT FINANCIAL ASSISTANCE GRANTS

The Hon. SOPHIE COTSIS [10.41 p.m.]: In May this year the Federal Liberal Government slashed \$1 billion worth of funding from Australian councils by freezing indexation to the financial assistance grants. Tonight I demand the reinstatement of the indexation to the local government financial assistance grants, which are vital in providing funding to build infrastructure for local communities. These cuts will affect the ability of councils to provide and protect essential services, including libraries, childcare, garbage collection, parks, roads, recreation services and youth services.

The Commonwealth financial assistance grants have provided more than \$41 billion to local councils since they were introduced by the Whitlam Government. The Federal Government's decision to cut \$1 billion from this important program will mean 152 councils across New South Wales will be forced to make cutbacks to much-needed road upgrades and infrastructure works. New South Wales councils will receive \$288 million less over the next three years. It means that local councils will not be able to repair and maintain local roads. In addition, this will result in job losses for council road maintenance staff and local engineers, amongst others.

It is time for the Minister for Local Government and the Premier to stand up to their Federal counterparts and demand proper support for the communities that they are meant to represent. The Minister for Local Government must protest at this reduction in financial assistance grants because these funding cuts hurt the councils that need support the most. The Mid-Western Regional Council is facing cuts of more than \$2 million over the next three years. Four million dollars will go from the budget of Gosford council. Lake Macquarie council will lose \$6 million, Bathurst will lose \$2.5 million and Western Sydney will lose \$37 million worth of support scrapped by the Federal Liberal Government.

Keith Rhoades, President of Local Government NSW, echoed the concerns of many of his constituent councils and the Opposition about these cuts which are hurting councils who need support most. In May this year Councillor Rhoades said that regional and rural areas are already bearing the brunt of millions of dollars in cuts to health and education. When the State Government cuts community programs, jobs and funding to those programs, who is left to pick up the pieces? Our local councils are left to bear the burden without any resources or funding. Collectively, local councils in New South Wales currently have an infrastructure backlog of more than \$7.2 billion that has accumulated over three years as a result of this Government's inaction. Local government in New South Wales already is under considerable financial pressure.

The Hon. Duncan Gay: It has received record funding. You should clean your ears out.

The Hon. SOPHIE COTSIS: No, have a look; this Government has done nothing.

The Hon. Duncan Gay: That's rubbish, you know it is. You are lying to the House. You are a liar.

The Hon. SOPHIE COTSIS: I am referring to the financial assistance grants and to the cut by the Federal Government of \$288 million. This Minister has done nothing about it.

The Hon. Duncan Gay: You have just accused the State. We have given record funding to councils for roads in New South Wales—40 per cent above what you did.

The Hon. SOPHIE COTSIS: This Government has not stood up for councils. Instead of working to reduce that pressure and to add funds to enable local government to improve services and infrastructure, this Government is adding to the problem. Just this month Cessnock's mayor said he was unsurprised that roads in his local area had been deemed unsafe by the NRMA. The mayor said his local community has a backlog of \$105 million, and while it was working towards reducing that backlog it desperately needed financial assistance from both State and Federal governments.

Local communities are speaking up as they need assistance. This Sunday marks the beginning of the 2014 Local Government New South Wales Conference and the freezing of the financial assistance grants has been condemned by both the board of Local Government NSW and multiple councils across New South Wales. A number of motions have been put to the conference by Randwick, Fairfield, Uralla, Marrickville, Leeton shire, Blue Mountains, Eurobodalla, Gosford, Great Lakes, Blacktown City and Wakool shire councils which highlight how these senseless cuts will affect all those councils. In light of the concern expressed by these councils I call on the Minister for Local Government, who has been silent on the cuts to the financial assistance grants, to condemn the Federal Government. The Minister has not released one statement about the status of the financial assistance grants in New South Wales and we need him to represent and advocate on behalf of New South Wales.

SYDNEY OPERA HOUSE SEAL

The Hon. Dr PETER PHELPS [10.46 p.m.]: On behalf of the New South Wales Parliament I welcome the Sydney Opera House seal to Sydney Harbour and look forward to its continued presence over many years to come. Should it ever need a criminal lawyer I strongly recommend Andrew Tiedt.

[Time for debate expired.]

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

Motion agreed to.

The House adjourned at 10.47 p.m. until 11.00 a.m. on Wednesday 15 October 2014
