LEGISLATIVE COUNCIL

Wednesday 16 September 2015

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

The President read the Prayers.

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

ANDY ROBERTS MEMORIAL AWARD

Motion by the Hon. BEN FRANKLIN agreed to:

That this House:

(a) notes that on Friday 31 July 2015 the Andy Roberts Memorial Award, an annual award to a cadet who has achieved the most personal growth through participation in the NSW State Emergency Service [SES] Secondary Schools Cadet Program, was awarded at Richmond River High School at Lismore;

(b) congratulates Abbey Harvey of Richmond River High School on winning the NSW State Emergency Service Andy Roberts Memorial Award;

(c) acknowledges the incredible work that SES volunteers do in times of need and expresses gratitude for the incredible efforts of all SES volunteers across the State; and

(d) congratulates the many other students from Richmond River High School who received academic awards on the day.

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business item No. 396 outside the Order of Precedence objected to as being taken as formal business.

TRIBUTE TO MS MARGARET HENRY

Motion by Mr DAVID SHOEBRIDGE agreed to:

(1) That this House notes that:

(a) on Wednesday 9 September 2015 Margaret Henry passed away;

(b) Margaret Henry served on Newcastle City Council for two terms and was deputy mayor in 1996 and 2000;

(c) Margaret Henry has been an indefatigable community activist for more than five

decades, advocating for Aboriginal rights, homeless and disability services, refugee and migrant support, heritage conservation, public libraries and community arts; and

(d) Margaret Henry was the founding president of Newcastle's Save Our Rail in 1993 and was an active proponent of retaining the rail line and improving public transport infrastructure throughout her public life.

(2) That this House notes with thanks and admiration the unflagging work Margaret Henry performed on behalf of the Newcastle community.

(3) That this House expresses its condolences to her partner, family and friends as well as the Newcastle community for whom she worked so tirelessly.

WHERE'S WILLIAM? WEEK

Motion by the Hon. SCOTT FARLOW agreed to:

(1) That this House notes that:

(a) 12 to 18 September 2015 is "Where's William? Week", with the aim of bringing William Tyrrell home;

(b) this is the 12-month anniversary of young William Tyrrell's disappearance, a sombre occasion on many accounts;

(c) thousands of members of the New South Wales community joined in a Walk for William across the State on Saturday 12 September 2015; and

(d) in 2010, 11,595 people were reported missing in New South Wales, 35,000 people were reported missing Australia wide, with 65 per cent of those missing are under the age of 18, and for the family and friends of those missing the wait for information is nothing short of agonising.

(2) That this House:

(a) joins together to send all of its support to the family and friends of William Tyrrell; and

(b) urges anyone with any information to come forward, anyone keeping any information secret needs to come forward, as the family of William Tyrrell deserve closure and the safe return of their son, and "Somebody saw something. Somebody knows something. Somebody can bring William home".

INDIA AUSTRALIA BUSINESS AND COMMUNITY AWARDS

Motion by the Hon. DANIEL MOOKHEY agreed to:

(1) That this House notes that:

(a) the India Australia Business and Community Awards [IABCA] are a wonderful initiative that celebrate the phenomenal depth of talent and dedication to the Australian community displayed by Australian Indians;

(b) these awards granted in varying categories showcase the everyday Australian

Indians who are making a significant contribution to their communities;

(c) this year's awards will be presented on 30 October 2015, along with the coveted award of Indian Australian Ambassador of the Year;

(d) these awards play a vital role in celebrating the significant contribution of Australian Indians;

(e) this year's finalists for the IABCA Young Professional of the Year are:

(i) Sonia Bahri, technical consultant, Asuind Solar International;

(ii) Gautam Divekar, principal designer, GD Design Consultants;

(iii) Navneesh Garg, chief executive officer, Adactin Group;

(iv) Dr Smariti Kapila, ear, nose and throat surgeon, Inner West ENT;

(v) Bali Padda, producer, actor and co-chair of Equity Diversity, Committee Media Entertainment and Arts Alliance; and

(vi) Chintan Shah, management consultant, PricewaterhouseCoopers.

(f) this year's finalists for the Young Community Achiever of the Year are:

(i) Abinesh Ilangovan;

(ii) Ganesh Loke;

(iii) Preetinder Pal Singh;

(iv) Navdeep Pasricha; and

(v) Deeju Sivadas.

(g) this year's finalists for the Business Leader or Professional of the Year are:

(i) Vivek Bhatia, chief executive officer and board member, Safety, Return to Work and Support [SRWS];

(ii) Dr Pradnya Dugal, founding partner, Synergy Radiology;

(iii) Dr Roy George, senior lecturer, Griffith University;

(iv) Amjad Khanche, founding director and chief executive officer, AIPE;

(v) Shalini Kumar, head of operations, Cubbyhouse Childcare Australia;

(vi) Natasha Malani, councillor, Adelaide City Council;

(vii) Rohit Mendiratta, head of strategy, AustralianSuper;

(viii) Nadish Naoroji, managing director, Pixel Perfect Pro Lab; and

(ix) DD Saxena, managing director, ROBE.

(h) this year's finalists for the Community Services Excellence Award are:

(i) Molina Asthana;

(ii) Dilip Chopra;

(iii) Konkani Association of Australia;

(iv) Deepak-Raj Gupta;

(v) Manpreet Kaur Singh;

(vi) Surendra Prasad, OAM; and

(vii) the Indian Dance Centre.

(i) this year's finalists for the Community Association of the Year are:

(i) Australian Indian Cultural Council;

(ii) CultureCare;

(iii) Indian Seniors Group—Hornsby;

(iv) Mitra Community Empowerment Inc. [Mitra];

(v) Sindhi Association of Victoria [SAV];

(vi) The Goan Overseas Association;

(vii) The Mukti-Gupteshwar Mandir Society; and

(viii) United Indian Associations Inc. [UIA].

(j) this year's finalists for Travel Agency/Tour Operator of the Year are:

(i) Aussizz Travels;

(ii) Beacon Holidays;

(iii) Taj Voyages Pty Limited;

(iv) Target Travel and Tours;

(v) The Trekking Company; and

(vi) Travel and Taste.

(k) this year's finalists for Indian Restaurant of the Year are:

(i) Billu's;

(ii) Delhi 'O' Delhi;

(iii) Indian Chimney;

(iv) Indian Tandoori Restaurant [Albury];

(v) Tadka Boom!;

(vi) The Spice Avenue; and

(vii) Urban Tadka.

(l) this year's finalists for Small Business of the Year are:

(i) Ausind Solar Inti;

(ii) Hallmark Computer Pty Limited;

(iii) Horizon Australasia Pty Limited;

(iv) Indian Brothers Franchising Pty Limited;

(v) Indus Valley Designs Pty Limited;

(vi) Onroad Driving School;

(vii) Pier Concierge Services Pty Limited;

(viii) The Chocolate Room; and

(ix) M and M Imports Pty Limited.

(m) this year's finalists for SME of the Year are:

(i) Adactin Group Pty;

(ii) Jewel Fine Foods [JFF];

(iii) Narula Group of Child Care Companies;

(iv) Riverina Oils and BioEnergy;

(v) Century 21 North Western; and

(vi) Synergy Radiology Pty Limited.

(2) That this House congratulates all the finalists in all categories of the 2015 India Australia Business and Community Awards.

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business item No. 413 outside the Order of Precedence objected to as

being taken as formal business.

SOUTH ASIAN MUSLIM ASSOCIATION OF AUSTRALIA

Motion by the Hon. SHAOQUETT MOSELMANE agreed to:

(1) That this House notes that:

(a) the South Asian Muslim Association of Australia [SAMAA] held its annual Eid Milan event on 9 August 2015 at Auburn Town Hall, bringing together community elders, their families, aged-care representatives, volunteers, and community members to celebrate the annual Eid ul Fitr festival;

(b) the South Asian Muslim Association promotes the Islamic spirit of love, compassion and charity in providing a range of services to the aged of South Asian Muslims in New South Wales that best meet the physical, spiritual, cultural, and emotional needs of individuals and their families; and

(c) the Eid Milan gathering was attended by the Hon. Shaoquett Moselmane, MLC; Mr Laurie Ferguson, MP; and Mrs Concetta Fierravanti Wells, MP; amongst other dignitaries.

(2) That this House congratulates the association on its commitment to serving the South Asian Muslim communities and notes its tireless work in their endeavour to establish a SAMAA retirement village.

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business item No. 415 outside the Order of Precedence objected to as being taken as formal business.

COPTIC NEW YEAR

The Hon. SHAOQUETT MOSELMANE [11.05 a.m.]: I seek leave to amend Private Members' Business item No. 461 outside the Order of Precedence by omitting paragraph (1) (c) and inserting instead:

(c) it condemns ISIS for the recent beheading of the 21 Egyptian Christians, and notes that the heritage of the martyrs is etched on the Coptic psyche and these deaths were deeply felt by the Coptic faith.

Leave granted.

Motion by the Hon. SHAOQUETT MOSELMANE agreed to:

(1) That this House notes that:

(a) on 10 September 2015, His Grace Bishop Daniel, Bishop of the Coptic Orthodox Diocese of Sydney and Affiliated regions, and the Public Affairs Council, hosted a Feast for the Coptic New Year [El Nayrouz] at the Strangers Dining Room, Parliament of New South Wales, with a large contingent of dignitaries, politicians and community members, as well as church representatives present;

(b) the Feast of Nayrouz marks the first day of the Coptic New Year and is the day when martyrs and confessors are commemorated; and

(c) it condemns ISIS for the recent beheading of the 21 Egyptian Christians and notes that the heritage of the martyrs is etched on the Coptic psyche and these deaths were deeply felt by the Coptic faith.

(2) That this House conveys its best wishes to the Coptic Orthodox Community in Australia and around the world on their celebration of the feats of Nayrouz.

EID AL-ADHA CELEBRATION

Motion by the Hon. SHAOQUETT MOSELMANE agreed to:

(1) That this House notes that:

(a) the Australian-Islamic community will celebrate the occasion of Eid al-Adha falling on the evening of 22 September 2015; and

(b) Eid al-Adha is a time of joy and reflection, and a time of solidarity with those less fortunate.

(2) That this House notes Eid al-Adha celebrations and convey its best wishes to the Australian Islamic community

BUSINESS OF THE HOUSE

Formal Business Notices of Motions

Private Members' Business item No. 419 outside the Order of Precedence objected to as being taken as formal business.

AUDITOR-GENERAL'S REPORT

The Clerk announced the receipt, pursuant to the Public Finance and Audit Act 1983, of a performance audit report of the Acting Auditor-General entitled "Community Housing: Department of Family and Community Services", dated September 2015, received out of session and authorised to be printed this day.

IMPOUNDING AMENDMENT (UNATTENDED BOAT TRAILERS) BILL 2015

In Committee

The CHAIR (The Hon. Trevor Khan): If there is no objection, the Committee will deal with the bill as a whole. There are three sets of amendments, but I understand that the Opposition amendments will not be moved, so I will put them to one side. That leaves Government amendments, appearing on sheet C2015-074, and The Greens amendments, appearing on C2015-75A. It has been pointed out that The Greens amendments will amend the Government's amendments, so the appropriate way to proceed is for the Minister to move his amendments.

The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council [11.11 a.m.], by leave: I move Government amendments Nos 1 to 3 on sheet C2015-074 in globo:

No. 1 **Impounding boat trailers**

Page 3, schedule 1 [1] and [2], lines 2–14. Omit all words on those lines. Insert instead:

[1] Section 15A

Insert after section 15:

15A Impounding boat trailers

(1) In this section:

declared area in relation to an impounding officer's area of operations, means the whole or any part of that area that is declared by the impounding authority that has appointed the officer, by order published in the Gazette, to be a declared area for the purposes of this section in relation to the officer.
road means a road within the meaning of the *Road Transport Act2013* and includes a road related area within the meaning of that Act.
Note. The definition of ***motor vehicle*** in the Dictionary includes a boat trailer.

(2) An impounding officer may impound a boat trailer in the officer's area of operations if the officer believes on reasonable grounds that the boat trailer is in a declared area and has not been moved for at least 28 days (or such other period as is specified by the regulations).

(3) A boat trailer that is on a road is not moved for the purposes of this section if it is only moved along the same road and without passing an intersection with another road. An intersection with a road related area is to be disregarded for the purposes of this subsection unless it is related to a different road.

(4) This section does not apply to a boat trailer that is parked on a road in accordance with an official resident's parking permit that applies to the boat trailer and is displayed on the boat trailer.

(5) The power of an impounding officer to impound a boat trailer under this section is in addition to any power to impound the boat trailer under section 15.

(6) Section 16 applies to the impounding of a boat trailer under this section and in such a case, the notice to the owner under section16 (4) is to specify a period of not less than 15 days in which the boat trailer may be moved to avoid the impounding.

(7) A boat trailer that may be impounded under this section is taken to have been left unattended for the purposes of this Act.

No. 2 **Impounding boat trailers**

Page 3, schedule 1 [4], proposed clause 8 of schedule 1, line 22. Omit "15 (2)". Insert instead"15A (2)".

No. 3 **Impounding boat trailers**

Page 3, schedule 1 [7], lines 34–37. Omit all words on those lines.

I thank the Opposition for setting its amendments aside. There was a similarity between its amendments and the Government's amendments. I thank Opposition members for some of their comments, particularly the nice ones, in the debate on the second reading last night. Government amendment No. 1 enables the new empowerment powers to be targeted at declared areas, rather than apply on a statewide basis. This important change gives impounding authorities, including councils, the flexibility to opt in by gazetting declared areas where long-term on-street boat trailer parking is a problem. A declared area could be the whole or parts of a local government area. It is open to councils to adjust areas over time as problems emerge or are addressed. This means that where there are no problems—for example, in many regional locations—areas will not be declared and the new boat trailer impoundment powers will not operate.

It is anticipated that gazettal of declared areas will be informed by local environmental plan zonings, population density data and other demographic information, stakeholder and ranger input, and trailer and vessel registration data from Roads and Maritime Services. Feedback from councils, rangers and some community members suggests a three-month period is too long and that the impoundment should be initiated after just seven days. As a reasonable compromise, new section 15A (2) provides that a boat trailer parked in a declared area may be impounded if it has not been moved for at least 28 days. However, there remains scope to apply an alternative period by regulation under new section 15A (2) if required. Importantly, new section 15A (6) continues to specify a minimum 15-day notification period in which the boat trailer may be moved to avoid being impounded. Adding the two together makes a period of about six weeks.

The Government has given councils the ability to issue residential parking permits for boat trailers through amendments made to the Roads and Maritime Services permit parking policy in March 2015. That addresses the concern that most of us missed: that in fixing one problem we might have created another. People living in a seaside community who wanted to keep their boats near their house would not have been able to do so. New section 15A (4) makes it clear that even in declared areas boat trailers displaying an official residential parking permit would not be subject to impoundment. Councils do not have to charge for that if they do not want to. The suggestion is that it probably would be good not to.

Australian Institute of Local Government rangers and some members of the community have expressed concern that simply moving a boat trailer a short distance would enable compliance. For example, people could move it a metre and think they had done what they needed to do. Under new section 15A (3), boat trailers parked on the street will not be regarded as having been moved unless they have been moved to a different block. This will make the task of local council rangers easier. It is a sensible change. Government amendment No. 2 is consequential to No. 1 and involves renumbering. Amendment No. 3 is also consequential and omits a redundant reference. I commend the amendments to the Committee.

The Hon. PETER PRIMROSE [11.16 a.m.]: I thank the Minister for these sensible amendments. The Opposition had proposed an amendment that recognised that one size does not fit all. It sought to recognise the diversity of interests in New South Wales local government areas. As I indicated previously, now that the Government has moved these amendments the Opposition will not proceed with its amendments. While I am pleased that the Minister at the table, the Hon. Duncan Gay, has moved these sensible amendments, I point out that he had to do so because the original bill presented in the lower House by the Minister for Local Government was a mess.

The Hon. Duncan Gay: Point of order: The House went through a long, and sometimes tortuous, second reading debate during which these issues were canvassed extensively. The member should address the amendments before the Committee rather than repeating points made in the second reading

debate. While I appreciate the gracious comments of the Hon. Peter Primrose, the Minister for Local Government, as much as anyone, had a hand in drafting these amendments.

The Hon. PETER PRIMROSE: To the point of order: My brief point was that the Committee has to deal with such extensive amendments as a consequence of an inadequate bill having been presented to this House from the other place.

The CHAIR (The Hon. Trevor Khan): Order! While I accept the observations made by the Minister, the Hon. Peter Primrose is in order at this stage, his comments being only brief.

The Hon. PETER PRIMROSE: Thank you, Chair. My comments were so brief I have now concluded them.

Mr DAVID SHOEBRIDGE [11.18 a.m.]: The need for these amendments and the utility of the amendments were examined in the second reading debate. For the reasons The Greens set out in that debate, we support the amendments. There are parts of coastal and inland New South Wales where there is a boating culture and people keep their small boats and boat trailers on the street. There is no competition for parking spaces and everybody is comfortable with that. Therefore, not applying the law in those areas makes sense. Allowing it to be applied in the areas where there is heavy competition for on-street parking is obviously an improvement. For those reasons, The Greens support the Government's amendments. I seek leave to move The Greens amendments Nos 1 to 3 on sheet C2015-075A in globo.

Leave granted.

I move The Greens amendments Nos 1 to 3 on sheet C2015-075A in globo:

No. 1 Heading to proposed section 15A. Insert "**and advertising trailers**" after "**boat trailers**".

No. 2 Note to proposed section 15A (1). Insert "and an advertising trailer" after "boat trailer".

No. 3 Proposed section 15A (2)–(7). Insert "or advertising trailer" after "boat trailer" wherever occurring.

These amendments will insert into the bill a parallel arrangement for advertising trailers so that the powers that are being proposed to be given to local councils primarily to deal with boat trailers that are an issue, because they are competing for on-street parking and cluttering the streetscape, would also be available to deal with advertising trailers. If The Greens amendments Nos 1, 2 and 3 were successful, then consequential amendments would be needed, and they are detailed in amendments Nos 4 to 9. To inform the Committee about the effect of The Greens amendments Nos 1, 2 and 3, the proposed definition of an "advertising trailer" is "a trailer constructed or used for the dominant purpose of advertising any goods or services by any means (including by electronic or printed means)". The purpose of the amendments would be to prohibit those trailers that are used for the dominant purpose of advertising.

Obviously, many people have some form of advertising on their trailers. Removalists have advertising such as "Grace Removals" and plumbers and tradespeople sometimes have details of their business on their trailers, but the purpose of the trailer is not to advertise the plumbing or the removals; if it is a removalist trailer the purpose of the trailer is to do removals and if it is a plumber's or a tradesman's trailer it is to carry their tools of trade around so they can do their job. The amendments are not intended to pick up those trailers that display incidental advertising because the trailer is being used for another purpose; they are designed to pick up those parked trailers with a sandwich board on them saying, for example, "Cheap regos turn second left", or those trailers that are simply an electronic signage board advertising a sale that might be happening or advertising some commercial goods that are for sale.

The Hon. Shayne Mallard: Or an election.

Mr DAVID SHOEBRIDGE: Or an election. I am sure as we get into election season we will see more and more trailers put on the street that have billboards saying, for example, "Vote 1 Jane Bloggs, National Party candidate for Maitland" or "Vote 1 Sue Smith, Greens candidate for Grayndler"—and if Sue is preselected I wish her well. I do not think anybody likes seeing our public streets littered with advertising trailers, particularly electronic ones that can be quite distracting to drivers. They not only visually clutter the streets but also take up precious public parking. When councils, informed by residents' concerns, form the view that trailers are causing a problem and would rather not have them parked on the street, The Greens believe those councils should have the power to designate declared areas and get rid of the advertising trailers. For those reasons I commend the amendments to the Committee.

The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council [11.23 a.m.]: While we are certainly sympathetic to the amendments, we will not be supporting them. Many of our members and numerous boating groups have said that a natural extension of what we are planning to do with boat trailers would be to include advertising signs, caravans, et cetera. One member said during the second reading debate that more consultation is needed with the community. We have had four years of consultation in relation to boat trailers.

Mr David Shoebridge: Four years?

The Hon. DUNCAN GAY: Sorry, three years. But we have not had any community consultation regarding advertising trailers. We oppose the amendments at this time but we are prepared to explore further the specific issues associated with advertising trailers to determine whether amendments to the impounding Act represent the best approach to managing this issue. We have not had the opportunity to fully investigate the implications and enforceability of The Greens' proposed definition of an "advertising trailer"—although I accept that a degree of care was taken in devising the definition put forward by Mr David Shoebridge.

For example, we are not certain—we are taking the member's word; he may be right—whether a tradie's trailer with their business name on the side that is otherwise used to store equipment and building material would be captured by the amendments. We have an assurance that it would not, but we are not certain. Alternatively, should other forms of road-based advertising—such as scooter trailers—also be regulated further, as in the case of advertising trailers? Those issues need and deserve to be explored properly and there should be policy work and consultation, as has occurred with boat trailers. While we believe it is a good idea, we do not believe that it is right to tack advertising trailers onto the bill at this time.

The Hon. PETER PRIMROSE [11.26 a.m.]: The Opposition believes, for similar reasons to those outlined by the Minister, that The Greens amendments should be opposed at this time. We also have a degree of sympathy on the basis of the limited consultations we have had in relation to this matter. Mr David Shoebridge raised this issue with us last night and indicated that he would be moving the amendments today. We recognise that the amendments have been moved in good faith. The issue has certainly been raised with us as a proposal in relation to consultation about boat trailers, as it has with the Government. But we also believe there needs to be more extensive consultation. We urge the Government to undertake that consultation and then to bring an amendment to the Committee for consideration, if that is the appropriate way to proceed. We will also undertake our own consultation with members of the community. The Opposition opposes the amendments.

Mr DAVID SHOEBRIDGE [11.27 a.m.]: I thank the Government and the Opposition for their contributions to consideration of the amendments. It is unfortunate that neither of them will support the amendments. If anything, this is probably too modest a step against advertising trailers because the proposed period after which they are considered to be abandoned is 28 days. I believe a better period would be seven days. If there is an argument for not supporting the amendments today it is to quickly draft a superior amendment that an advertising trailer be considered abandoned after seven days, as

opposed to 28 days.

That said, it took three years for the boat trailers proposal to find its way to Parliament. That is an unacceptably long time to do a pretty small thing. I note that the Hon. Daniel Mookhey made a mocking contribution during the second reading debate about the nature of this dispute. I do not in any way accept his mocking and belittling contribution on the issue. That some people have boat trailers littering their streets is a genuine, live issue and mocking it does not do it justice. Perhaps it is a lack of engagement with the issue that led to that contribution in the second reading debate. The issue of advertising trailers is not a pressing one; the government of the day will not stand or fall because of how it regulates advertising trailers. It will very likely drop off the agenda and take about three years to find its way back to this place. That is why we should seize the opportunity and make the amendments now.

Another reason these amendments are worthy of consideration is because I do not see good reason to single out boat owners and boat trailer owners in the legislation. There is enormous legitimacy in people owning a boat trailer and in their use of a public street to park their boat trailer so that they can engage in water sports and activities, that is, where it is not a highly contested public street. That is a legitimate and positive activity for people to engage in. The cluttering up of public streets by advertising does not have any positive outcome, except for the narrow commercial interests of those doing the advertising. The bill targets boat trailer owners when, in many instances, there is genuine legitimacy for them to use our public streets. It does not seem right to target boat trailer owners and not target an activity that, in the eyes of The Greens, has much less legitimacy, that is, the use of our public streets for private advertising. It is for those reasons that The Greens commend the amendments to the House.

Reverend the Hon. FRED NILE [11.30 a.m.]: The Christian Democratic Party supports the Government's amendments. As I stated last night, it is not unusual for the Government to amend its own bills. There is nothing strange about Government amendments to a bill; that is the purpose of the upper House. I agree that we should not deal with off-the-cuff issues, such as advertising trailers, as other questions could be raised in regard to those issues.

Question—That The Greens amendments Nos 1 to 3 [C2015-075A] be agreed to—put and resolved in the negative.

The Greens amendments Nos 1 to 3 [C2015-075A] negatived.

Question—That Government amendments Nos 1 to 3 [C2015-074] be agreed to—put and resolved in the affirmative.

Government amendments Nos 1 to 3 [C2015-074] agreed to.

The CHAIR (The Hon. Trevor Khan): As The Greens amendments Nos 4 to 9 were consequential, they will not be moved.

Title agreed to.

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

Bill as amended agreed to.

Bill reported from Committee with amendments.

Adoption of Report

Motion by the Hon. Duncan Gay agreed to:

That the report be adopted.

Report adopted.

Third Reading

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 with a message requesting its concurrence in the amendments.

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 2 postponed on motion by the Hon. Duncan Gay and set down as an order of the day for a later hour.

INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT BILL 2015

Second Reading

The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council [11.35 a.m.]: I move:

That this bill be now read a second time.

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

Leave not granted.

The Government is resolute in its commitment to restore integrity in public administration. The Government has zero tolerance for corruption in this State. Ensuring that the Independent Commission Against Corruption [ICAC] is fully equipped to fight corruption is a key priority for this Government. Earlier this year, in relation to an investigation of Ms Margaret Cunneen, SC, the High Court found that the definition of "corrupt conduct", and therefore the Independent Commission Against Corruption's jurisdiction, is narrower than the ICAC had previously assumed. The court held that the ICAC can investigate the conduct of public officials when they are exercising public official functions. The ICAC can also investigate the conduct of any other person but only if the conduct could adversely affect the probity of the exercise of a public official's functions.

This Government acted promptly in responding to the High Court's judgement. In May the Parliament passed the Independent Commission Against Corruption Validation Act 2015 to validate actions and findings of the ICAC before the date of the Cunneen judgement where they were based on the ICAC's previous understanding of its jurisdiction. The Government also commissioned an independent panel of distinguished legal minds to review the jurisdiction of the ICAC in light of the High Court's decision and to provide considered and expert guidance as to the best way forward. The panel was appointed by the Governor on 27 May 2015. I seek leave to have the remainder of my second reading speech incorporated in *Hansard*.

Leave granted.

It comprised former High Court Chief Justice, the Hon. Murray Gleeson, AC, and eminent barrister Mr Bruce McClintock, SC.

The panel made four formal recommendations for legislative reform. The Government accepts all of those recommendations to be implemented in the bill.

The panel did not support the broader definition of "corrupt conduct" proposed by the ICAC. Nor did it consider that the 1CAC's jurisdiction should be confined to the High Court's narrower definition.

Rather, the panel proposed a "fresh approach".

It recommended that the existing definition of "corrupt conduct" in the ICAC Act remain but that it be supplemented by a new limb to include certain conduct by any person that could impair public confidence in public administration.

This new limb will ensure that the ICAC can continue to investigate conduct such as:

· collusive tendering for government contracts,

· fraudulently obtaining government mining leases, and

· fraudulently obtaining or retaining employment or appointment as a public official.

The Government strongly supports this recommendation.

The bill implements it by inserting a new subsection (2A) in section 8 of the Act, which defines the "General nature of corrupt conduct".

The new subsection will enable the ICAC to investigate those specified matters even if they involve no wrongdoing or potential wrongdoing on the part of any public official, but could nevertheless seriously undermine confidence in public administration.

As the panel noted in its report, the nature of the matters listed "should be sufficient to indicate that the confidence referred to is not confined to faith in the probity of individual public officials".

The bill also makes minor amendments consequential on the proposed new section 8 (2A), and provides that the proposed subsection extend to conduct occurring before the commencement of these amendments.

In addition, an amendment is made to section 8 to clarify that people who seek public office—such as candidates for an election—may be engaged in corrupt conduct even if they do not succeed in being elected or appointed to public office.

A candidate who accepts an unlawful payment in return for promising to do something once elected will clearly have engaged in "corrupt conduct", and this should be so whether or not they happen to subsequently be elected as a public official. The proposed amendment will make this clear.

Reflecting the panel's second recommendation, the bill will also amend the ICAC Act to clarify the broad scope of the ICAC's advisory, educational and prevention functions.

The panel recommended that these functions be amended so that they may be used generally for "promoting the integrity and good repute of public administration".

Although there has been a great deal of attention placed on the ICAC's investigations and especially its public hearings, in many respects its functions of supporting government agencies to avoid corruption risks should be seen as equally, if not more, important.

Prevention of corruption before it occurs, including through appropriate advice, education and training, is clearly a better way of promoting public confidence in the integrity of our public institutions.

The panel's third recommendation was that, if Parliament sees fit to do so, the ICAC be given a new jurisdiction to investigate breaches of electoral and lobbying laws.

As the panel explained:

Many but not all breaches of [the electoral and lobbying laws] strike at the heart of the democratic process and for that reason have a connection with public administration that may be regarded as warranting special treatment.

This bill will implement that recommendation by inserting a new section 13A to give the ICAC the function of investigating conduct referred to it by the New South Wales Electoral Commission that may involve possible criminal offences under:

· the Parliamentary Electorates and Elections Act 1912,

· the Election, Funding, Expenditure and Disclosures Act 1981, and/or

· the Lobbying of Government Officials Act 2011.

These particular Acts were specified by the panel in its report.

The Electoral Commission will only be able to refer such conduct to the ICAC for investigation:

(1) if there are reasonable grounds to suspect that the conduct may involve a possible criminal offence from a specified list of offences against these Acts, or

(2) if the conduct is related to possible corrupt conduct that the ICAC is already investigating.

If either of those criteria is met, the Electoral Commission will have the discretion to refer the matter to the ICAC for investigation.

In deciding whether to exercise that discretion, the Electoral Commission will be required to have regard to certain factors including, importantly, the fact that we expect that primary responsibility for investigating, enforcing and prosecuting breaches of the electoral and lobbying laws rests and will continue to rest with the Electoral Commission.

I stress that it is not the Government's intention in any way to supersede or downgrade the Electoral Commission's own jurisdiction in respect of these laws.

Last year, we legislated to reform the structure of the Electoral Commission, a change which included the appointment of the Hon. Keith Mason, AO, QC, as its independent chair.

The Government also provided $1.37 million in additional funding for the reconstitution of the Electoral Commission, including funding to support the commission's enhanced enforcement function.

The Government will continue to work with the Electoral Commission to ensure that it continues to have the resources necessary to enforce and prosecute breaches of the relevant legislation.

However, there may be some circumstances where an investigation would particularly benefit from the resources, statutory powers and operational expertise of the ICAC.

To this end, the bill lists certain offences against the electoral and lobbying laws that are so serious or systemic in nature that they have the potential to undermine public confidence in public administration or the electoral process generally.

In such cases, the Electoral Commission will be able to refer the matter to the ICAC, initially for preliminary investigation. If the preliminary investigation confirms that there have been possible criminal offences from the list of designated offences, or that the conduct is related to possible corrupt conduct that the ICAC is already investigating, the ICAC will be authorised to undertake a full investigation. If not, it will refer the matter back to the Electoral Commission, unless it is otherwise authorised to investigate the conduct.

In deciding whether or not to continue an investigation, the ICAC will be required to have regard to the same list of factors that the Electoral Commission must consider before referring a matter, including the Electoral Commission's primary responsibility for investigating, enforcing and prosecuting breaches of the relevant criminal offences, and the serious or systemic nature of the matter being investigated.

So that the ICAC might complete and report on its investigations in Operations Spicer and Credo—which were current when the Cunneen decision was handed down—the bill ensures that conduct that may involve possible criminal offences against the electoral or lobbying laws that is already under investigation in these matters is taken to have been referred to the ICAC.

The panel's final recommendation was that the ICAC Act be amended so that the ICAC's power to make findings of corrupt conduct may be exercised only in the case of "serious corrupt conduct".

As the panel explained:

If the conduct investigated ultimately is found to be other than serious it should not be stigmatised as corrupt. A power which has such obvious capacity to harm individuals should be reserved only for cases where the misconduct in question is serious.

The Government has adopted this recommendation.

We are conscious that—as the High Court recognised in ICAC v Cunneen—the ICAC has "extraordinary" powers which may abrogate fundamental rights and privileges.

These powers, including the ability to publicly denounce corruption when it is uncovered, are central to the goal of ridding this State of corruption.

However, it is also crucial to ensure that these powers are exercised within appropriate boundaries.

A balance must be struck, and this is what this bill seeks to achieve.

Finally, I note that the panel also considered the ICAC's power to initiate criminal prosecutions, although it did not make any formal recommendation in this regard.

> The practice of the ICAC initiating criminal prosecutions on the recommendation of the Director of Public Prosecutions is longstanding and consistent with arrangements for other investigating authorities.
>
> However, as the panel indicated in its report, legislative amendments may be needed to confirm the continuation of this practice, particularly in respect of common law offences.
>
> This issue will likely have implications beyond the ICAC and will affect other investigating authorities and their relationship with the criminal justice process and the DPP.
>
> As such, it is intended that this matter will be dealt with separately and will address the issue not only for the ICAC but for all investigating authorities that may initiate criminal prosecutions in a similar way.
>
> I commend the bill to the House.

The Hon. ADAM SEARLE (Leader of the Opposition) [11.37 a.m.]: The Labor Opposition supports the Independent Commission Against Corruption Amendment Bill 2015. On the same day in April that the High Court of Australia delivered its judgement in the Cunneen matter, the Leader of the Opposition stated:

> I believe the Parliament needs to consider legislating to strengthen the ICAC's powers to fight corruption. Labor wants to see a powerful statutory corruption fighter.

Since that time, the Labor Opposition has worked with the Premier to ensure that the Independent Commission Against Corruption is given the legislative powers it needs to effectively combat corruption. To that end, Labor gave full support to the establishment of an independent panel to review the jurisdiction of the ICAC. That panel consisted of the former Chief Justice of the Supreme Court of this State and of the High Court of Australia, the Hon. Murray Gleeson, AC, and Mr Bruce McClintock, SC, an outstanding counsel who also conducted the statutory review of the ICAC legislation of this Parliament in 2005. The bill now before this Chamber draws on the recommendations of this panel, and the amendments to the substantive Act strengthen the powers of the Independent Commission Against Corruption [ICAC]. On 26 May 1988 in the Legislative Assembly, former Premier Nick Greiner spoke to the bill that established the institution. He said:

> Nothing is more destructive of democracy than a situation where the people lack confidence in those administrators and institutions that stand in a position of public trust. If a liberal and democratic society is to flourish we need to ensure that the credibility of public institutions is restored and safeguarded, and that community confidence in the integrity of public administration is preserved and justified.

He went on to say:

> … the definition in the legislation has been framed to include everyone who is conceivably in a position of public trust. There are no exceptions and there are no exemptions.

Under the leadership of Bob Carr, the establishment of this important institution was supported by the Labor Party in 1988. In our view, the ICAC has served the people of New South Wales well since that time. This bill will hopefully ensure that the ICAC continues to serve the people of this State well. The overview of the bill records the history that led to it. The legislation seeks to implement the recommendations of the panel, consisting of Murray Gleeson and Bruce McClintock. The panel resulted from a challenge to the jurisdiction of the ICAC in the now well-known case of *Independent Commission Against Corruption v Cunneen*.

The decision focused on the meaning of section 8 (2) of the Act and on the meaning of the expression "adversely affect the exercise of the official function of any public official". The question was: Did it mean adversely affect the probity of the exercise of the function or adversely affect the efficacy of the exercise of the function? A lot depends on the approach one takes to that question. The High Court took the narrower definition rather than the more expansive definition, despite the fact that the Independent Commission Against Corruption and those who had dealings with it and the 2005 statutory review conducted by Mr McClintock all assumed that it was the wider view of the jurisdiction of the ICAC that was the correct one. It informed the way in which the ICAC conducted its business and issued its reports which have been tabled in the Parliament.

In my view, there was a broad understanding of the jurisdiction of the ICAC. However, the High Court took a different view. As a matter of law, of course, the High Court is always correct. However, I prefer the view and the judgements of Chief Justice Bathurst of the Supreme Court of New South Wales in his Court of Appeal judgement and the judgement of Justice Gageler in the High Court to that of the majority of the High Court. As a matter of black letter statutory interpretation, I think the majority of the High Court engaged in what lawyers like to deride as judicial activism. They did the very thing in interpreting section 8 (2) of the Act that the balance of section 8 says you cannot do. There is a big red light saying it cannot be looked at in this way, but they did.

As I indicated, the High Court as a matter of law is always right. However, I think that the High Court, disturbed by the Cunneen inquiry, took a far too sweeping approach to pruning back what the ICAC could look into. This reflects the traditional lack of comfort, not to say hostility, of traditional courts and, of course, lawyers to standing royal commission-like bodies that are not strictly bound by the rules of evidence such as the ICAC. This view, and the history of it, was eloquently set out by the most recent former president of the NSW Bar Association, Phil Boulten, SC, in the Jeff Shaw Memorial Lecture given earlier this year at the Trades Hall entitled "A parallel architecture of justice". In his lecture, he charted the history of bodies, such as the ICAC, and the ambivalent, possibly hostile, approach taken by the mainstream courts.

In that very worthwhile lecture, while giving support to the notion of a body like the ICAC, Mr Boulten nevertheless argued for a sensible and balanced approach both as to the legal boundaries of its jurisdiction and to the good sense with which its extraordinary powers must be discharged if public confidence is to be maintained. I think that same flavour and approach can be seen in the recommendations of the Gleeson-McClintock panel recommendations. This divide as to the proper jurisdiction of the ICAC, or if one looked at whether there had to be a detraction from probity or merely efficacy, is not just some arcane debating point. It is a real issue, and not just because of the Cunneen case but, as the panel report indicates, because there have been at least four inquiries whose validity would have been challenged if the decision in Cunneen had been applied in those matters. They are Operations Columba, Bosco, Charity and Squirrel.

Of course, the court does not have the option of rewriting legislation, although that may be the effect of the judgements. It has to choose between the possible interpretations of the provisions that exist. The ICAC argued for the very wide jurisdiction in the litigation because the alternative was that a whole range of quite reasonable jurisdictions it had previously enjoyed and discharged would have been lost, and in fact were. The subject of the proposed inquiry, the respondent in the High Court appeal, argued for a jurisdiction that, in the view of many—including, I think, Mr Assistant-President—was certainly narrow because it was about her rights in a given facts situation. There is an old adage that hard cases make bad law. I think this is one such instance where, leaving aside the strict legality of the matter, the Cunneen matter raised in the minds of many a question mark over the good sense of conducting that inquiry. I think that question mark influenced the judicial interpretation of the provisions.

The majority decision of the High Court gave some examples of what would be in the jurisdiction of the ICAC if the broad view were accepted—no doubt to paint a picture that it cannot possibly be

intended that this was the jurisdiction of the body. It would include things like the theft of a garbage truck from a local council, an offence of lying to a police officer to avoid prosecution, any form of State tax or revenue evasion, offences of harbouring a criminal, and any violent attack on a public official unrelated to their public duty. According to the majority view, they would broadly be within the jurisdiction of the ICAC. Their view was that these matters could be comfortably dealt with by the existing law and should not be within its jurisdiction. I think their reasoning does smack a little of the straw man argument. Leaving that aside, I think there are even more undesirable results that flow from the narrow interpretation taken by the court.

Those matters excluded from the jurisdiction of the ICAC by the narrow view were eloquently set out in the minority judgement of Justice Gageler. The ICAC would have no power to investigate, expose, prevent or educate about statewide endemic collusion among tenderers and tendering for government contracts. The ICAC would have no power to investigate, expose, prevent or educate on serious and systemic fraud in the making of applications for licences, permits and clearances under New South Wales statutes designed to protect health and safety or under statutes designed to facilitate the management and commercial exploitation of valuable State-owned natural resources such as minerals, fisheries and forestry. As Justice Gageler said, "These are extreme consequences".

Parties in a court proceeding, by definition, cannot do what this Parliament is now doing and rewrite the law to ensure the extreme consequences of either view are noted and visited upon the public interest. The bill before the House flows from and seeks to implement the recommendations of the panel. The review recommended that the ICAC's jurisdiction be extended to the corrupt conduct of non-public officials that could impair confidence in public administration. Those recommendations are implemented by the provisions contained in schedule 1 [3] to the bill.

The panel also recommended that ICAC's education, advisory and prevention functions should be used to promote the integrity and reputation of public administration, which is implemented by provisions contained at schedule 1 [8] to the bill. The panel recommended that the powers of the ICAC be limited to making findings of corrupt conduct against an individual when that conduct is deemed serious. That is contained in schedule 1 [15] to the bill. Finally, the panel also recommended that the ICAC be given power to investigate breaches of electoral and lobbying laws. Elections are far too easily influenced by money, greed and corruption. The formalised cooperation between the New South Wales Electoral Commission and the ICAC is long overdue and is welcomed by the Opposition. Items [10] to [14] of schedule 1 to the bill give effect to that recommendation.

In the recent budget estimates committee hearings, questions were directed to the Premier about the resourcing of the Electoral Commission to investigate matters of that kind. I look forward to the answers he provides on notice. I think the questions may have caused some unease but there is an answer to them in the provision of the bill that enables the Electoral Commission to refer matters on receipt of a complaint about breaches of electoral laws to the ICAC to be investigated. If my reading of the bill is correct, even if those offences could no longer be prosecuted as offences under the legislation they nevertheless can and should be investigated by the ICAC.

The Hon. Ben Franklin: But it should not be the default setting to refer it to ICAC. They should do it themselves.

The Hon. ADAM SEARLE: I acknowledge that interjection. Of course it would be best if the Electoral Commission was adequately equipped and resourced to do those investigations itself, particularly when complaints are made during a campaign about the conduct of a campaign. Nevertheless, the provision is at least a partial answer. We will see what the Premier has to say in his answers to questions on notice. Schedule 1 [5] to the bill provides that the ICAC may investigate the corrupt conduct of those seeking public office even if they do not succeed in being elected or appointed. That loophole needs to be closed down if it exists. We need to ensure that all people engaged in the electoral process can be adequately and properly scrutinised if complaints are made. Taken together,

these are significant amendments to the Act to ensure that people who seek public office do so in the public interest rather than for private gain or advancement.

Turning in more detail to the provisions of the bill, a primary recommendation of the panel relates to the new section 8 issue and ICAC's jurisdiction over people who are not public officials. The panel posed a sensible solution that has been adopted in the bill. It starts by accepting that the current definition of "corrupt conduct" is now settled as a result of the High Court litigation. In addition to the ICAC having jurisdiction over corrupt conduct as set out by the High Court in the Cunneen matter, corrupt conduct will also be defined in new section 8 (2A) to include behaviour by a person who does not have to be a public official that impairs or could impair public confidence in public administration.

To be within the new additional definition of corrupt conduct, the conduct must be such that it could include collusive tendering; fraud concerning licences, permits and other authorities under legislation designed to protect health and safety, the environment or facilitate the management and commercial exploitation of resources; dishonestly obtaining or benefiting from the payment application or disposition of public funds or assets for private advantage; the forwarding of public revenue; or fraudulently obtaining or retaining employment or appointment as a public official. That gives significant scope to investigate persons who are not public officials without including, for example, someone who steals a council-owned garbage truck, which may be adequately dealt with under other laws.

The panel made other recommendations that are included in the bill relating to the education, advice and corruption prevention functions. They will be able to be used generally to promote the integrity and good reputation of public administration without restrictive definitions applying. The bill will limit the powers of the ICAC to make findings of corrupt conduct against an individual to cases where the corrupt conduct is "serious". New section 74BA (1) provides:

> The Commission is not authorised to include in a report under section 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

That is an effort to restrict ICAC's focus to serious corruption, which was the original intention in the establishment of the body. The issue has been the subject of significant public discussion. It gives a legally enforceable form to what is already embedded in section 12A of the Act, which the panel noted is not presently legally enforceable and which restricts the focus of ICAC when determining which matters to investigate as matters of serious and systemic corruption. It is meant to inform ICAC's deliberations and presumably does so, but there now is a new, stronger and enforceable form of that obligation.

The term "serious" is not defined and will no doubt offer a basis for court proceedings at some point. I do not say that as a criticism of the bill or the panel. It is difficult to reduce that term or to elaborate upon it beyond its usual usage. It is an ordinary English word that should be given its ordinary and unrestrained meaning. Inevitably, when designing a system operated by persons who are fallible and have reasonable minds legitimately differing in assessing factual situations, it will be a matter for judgement. It is hoped it will be a matter for sound and sensible judgement on the part of those persons given their serious responsibility of discharging the weighty obligations upon the ICAC, its officers and those connected with its investigations and hearings. The truth is that some people will wish to impugn the ICAC inquiries. The appellate courts will seek to do so in any event. It is unavoidable. But by acting on the recommendations of the panel, the Parliament is doing what it can in a statutory form to seriously focus the attention of the ICAC on the matters it ought to look at.

The provision of new section 74BA (1) relates only to findings of corrupt conduct. That is, there can be a range of other findings, as section 74BA (2) makes explicitly clear. It does not put any restriction on the behaviour and activities by the ICAC that are otherwise lawful, most obviously its investigations. The provision merely stops the use of the word "corrupt" unless it is serious corrupt conduct. The potential reputational damage that flows from such a finding is obviously important, but it is also important not to

argue that it is broader than it is. The provision of new section 82A will apply to people who seek to become public officials but do not achieve it.

Proposed new section 13 is another important element of the bill. It adds a significant additional jurisdiction to the ICAC, which I have mentioned. It is radically different to the current architecture, which is the function of investigating matters referred by the Electoral Commission. That is not based on corrupt conduct and therefore it is a considerable broadening of what the ICAC can investigate. It is balanced by it being applied only to matters specifically referred to the ICAC by the Electoral Commission and by imposing a number of additional safeguards that do not apply to other ICAC investigations. However, those other investigations must be into corrupt conduct while the new jurisdiction is based upon a different standard—that is, potential breach of the electoral lobbying laws.

The ICAC will continue to have its existing jurisdiction to investigate corrupt conduct into electoral matters and related issues unrestrained by the provisions of new section 13A. The Gleeson-McClintock report deals with those issues and makes suggestions for change without making recommendations. The panel's reluctance to do so was based upon the assumption that electoral or lobbying misconduct is uniquely an issue for the Parliament. Such misconduct involves the breach of one of three pieces of legislation: the Parliamentary Electorate and Elections Act 1912, the Election Funding, Expenditure and Disclosures Act 1981 and the Lobbying of Government Officials Act 2011.

The Independent Commission Against Corruption suggested that its investigation, Operation Spicer, into breaches of the Election Funding, Expenditure and Disclosures Act was prevented by the Cunneen decision. Some of what the ICAC was inquiring into may additionally not have fallen into the definition of "corrupt conduct", quite apart from the Cunneen-related issues. As the report states at paragraph 8.1.7:

> A question arises whether the Act should be amended so that the ICAC has jurisdiction to investigate and make findings about breaches of the electoral laws, whether or not they constitute corrupt conduct and, if so, how that change should be implemented.

The report concedes that much of the conduct reaching the electoral laws would not technically constitute corrupt conduct. The Electoral Commission has jurisdiction to investigate these issues, but its powers are nowhere near as extensive or as effective as those of the ICAC. I also assume, from the inability—and this is not a criticism—of the Premier during budget estimates to respond instantly as to the level of resourcing that the Electoral Commission has to do with these matters, it may well be that it is simply not presently equipped to discharge these obligations that it presently has. So this bill provides, if you like, a safety valve measure—although of course it should be adequately resourced to discharge the public duties that do rest upon that very important body at present.

The Hon. Keith Mason, Chair of the Electoral Commission—a former Solicitor General of this State and a former President of the New South Wales Court of Appeal—told the panel that the commission had not been given the resources to investigate matters touching on electoral probity. The panel made no final recommendation because these matters are uniquely ones for Parliament. At paragraph 8.5.5 the report states:

> … there is a case to be made that the ICAC should be given jurisdiction to investigate and make findings in such matters.

The ICAC has the resources and willingness to carry out such work and has operational experience. It has the powers and resources the Electoral Commission does not have. The panel rejected the idea of simply including this misconduct within the meaning of "corrupt conduct"—because, of course, while it may be corrupt conduct it is not necessarily so. The solution proposed by the panel is contained in paragraph 8.5.11, which states:

If Parliament wishes to give the ICAC jurisdiction, it could do so by inserting a subsection in section 13 (1) to the following effect:

> (ba) to investigate any allegation or complaint that, or in any circumstances which in the Commission's opinion imply that there has been a breach of the *Parliamentary Electorates and Elections Act 1912,* the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011*.

We think there is some elegance and simplicity in this legislative proposal. It is not, however, what the bill does. The bill maintains the existing conceptual approach of the panel—that is, it does not alter the definition of "corrupt conduct" or include electoral and lobbying misconduct within that term. Rather, it expands the jurisdiction of the ICAC in a completely new direction. The bill does a number of things differently to the panel's suggestion, which I think it is important to note.

Under this bill, the ICAC does not have a general capacity to investigate electoral lobbying misconduct; it can only investigate matters referred to it by the Electoral Commission. That is a significant restriction. I note that this constraint applies only to the new jurisdiction and does not apply to matters already within the ICAC's traditional corrupt conduct jurisdiction, which is confirmed in new section 13 A (4). The matters that the Electoral Commission may refer are not simply any breach of the three pieces of legislation that I mentioned but rather only breaches specified in new section 13 A (9), or if they are related to matters the ICAC is already investigating.

The list of offences in subsection (9) is extensive. In the case of the Lobbying of Government Officials Act, for example, there are only two criminal offences under that Act and both of those are included in new section 13A (9) in this bill. The list is extensive but not exhaustive. We understand that those offences not included in subsection (9) are minor offences. We also understand that the offences set out in subsection (9) are those endorsed to be included in it by the ICAC. While new subsection (9) does not have the elegance or simplicity of the panel's proposal, we do expect it to be effective. Of course, there are echoes in subsection (9) of the list in the already existing provisions of section 8.

On balance, however, we view this as a significant increase in the ICAC's jurisdiction and quite a dramatic change to the overall architecture of the legislation. As is very clear, the Opposition supports this direction. Other provisions of new section 13A are also quite different to the existing ICAC structure. Subsection (3) has a specific provision for the ICAC to discontinue its investigations. Subsection (5) provides an itemised list of considerations for a matter to be referred by the Electoral Commission and investigated by the ICAC. Subsection (6) requires the Electoral Commission to provide the ICAC with a statement of the reasons why it was referred for investigation. When it determines to investigate a referral, the ICAC must provide a statement of reasons to the Electoral Commission. I think this promotes and enhances transparency of public decision-making in this very important area. All honourable members, both in this place and the other place, would want to take this opportunity to not only repair the damage to the ICAC flowing from the High Court decision but to also do what we can at this juncture to enhance public confidence in this area of public administration.

Both sets of reasons must be included in a report by the ICAC under section 74. These are quite unlike other provisions of the existing ICAC legislation dealing with other parts of the ICAC's jurisdiction. The justification for that appears to be that the bar for this new part of the ICAC jurisdiction is much lower than for corrupt conduct. The bar is lowered, but the trade-off is that these small procedural steps must be undertaken. The overriding public policy surrounding this bill is to maintain an effective and robust anticorruption body in this State. It is not credible to argue that we do not need such a body in this State—that is not a tolerable argument for anyone to advance. This bill, by maintaining that objective, is very much to be supported.

Taken as a whole, this bill will help to ensure that the vital work of the ICAC continues in New South Wales. It is worth remembering that by international standards Australia is not a place where

corruption flourishes. Last year, the global organisation, NGO Monitor, ranked Australia eleventh out of 175 countries for levels of public sector corruption. Ahead of Australia is Canada, and just behind Canada are Germany, Denmark, New Zealand and Finland—ranked first, second and third. Unsurprisingly, North Korea ranked 175 out of the 175 countries surveyed. By international standards Australia is not a corrupt country, but relative success should not be confused with absolute success. Wherever corruption exists, it remains a corrosive influence on our public institutions. It eats away at the public's confidence in the instruments and actions of our democracy. Corruption need not involve each of us to impact on every one of us. As Labor leader Luke Foley said earlier this year during the election campaign:

> All of our politicians suffer when the integrity of any one of us is called into question.

The truth is that in recent years both sides of politics have disappointed the people of this State. If we are to restore faith in the processes and functions of our democracy, the people of this State must have confidence in their policymakers, their public servants and their parliamentarians—

[*Interruption*]

Let us not get into Wal Murray. The people of New South Wales must be confident that those in public office are making decisions in the public interest and not for private gain. The bill before the House amends the Independent Commission Against Corruption Act 1988 to implement the recommendations of the Gleeson-McClintock panel's review. This bill will ensure that the ICAC remains an effective and fierce advocate for the integrity of public administration in this State. For the reasons I have outlined, we fully and wholeheartedly support the legislation. Of course, apart from the Cunneen matter there are a number of other matters potentially impacted by the High Court decision, particularly given the way in which the ICAC chose to argue its case, whether wisely or not.

Obviously matters such as Operation Credo and Operation Spicer remain extant. Indeed, the validation Act has validated all actions taken by the ICAC and its investigators, as well as hearings, up to the point of the High Court decision. It is my understanding that this legislation will ensure, whatever views ICAC may form about them, that those matters can now be proceeded with to finality and—no matter how that turns out—that will be in the public interest. Simply having matters implode or hit a brick wall as a result of a High Court decision would not be a satisfactory outcome. The Government, by introducing this bill which flows from the panel's recommendations, will ensure that that happens. With those observations, the Labor Opposition wholeheartedly supports the bill.

Dr JOHN KAYE [12.11 p.m.]: I speak on behalf of The Greens in support of the Independent Commission Against Corruption Amendment 2015. Corruption is a cancer that eats away at the heart of democracy. It destroys public confidence in decisions that are made by parliaments and public officials. It destroys public confidence in the concept that doing the right thing will result in the right outcome. Indeed, it destroys public confidence in the essence of democracy. Rooting out corruption is an essential function of this Parliament and this Government. It is what the people of New South Wales expect of us; to do any less would be to betray our responsibilities to those people.

This bill addresses a problem created by the High Court decision in *Independent Commission Against Corruption v Cunneen* [2015] HCA 14. In that decision the court effectively found that there could not be a finding of corruption in a situation where a wrongdoing or potential wrongdoing did not involve a public official, even though adverse results from decisions made by public officials would have occurred because of the actions of individuals who were not public officials. This very narrow definition of "corruption" has resulted in at least Operation Credo and Operation Spicer being at risk. It has severely hamstrung the operations of the Independent Commission Against Corruption [ICAC] by creating a very narrow definition of "corrupt conduct"; a definition not in accord with what the people of New South Wales, ICAC and most, if not all, members of this Parliament would have expected to come from the High Court.

Earlier this year the Government correctly legislated to validate all that had been done in

Operation Credo and Operation Spicer up to that point, but it made the decision to wait until the report of the independent panel—namely, the Hon. Murray Gleeson, AC, and Mr Bruce McClintock, SC—had been received. This bill proposes to implement all the recommendations of that panel, and we support those recommendations bar one. I foreshadow that The Greens will be moving amendments in the Committee stage to facilitate a deeper conversation on the consequences of that particular recommendation.

One of the panel's key recommendations was to extend ICAC's jurisdiction to include specified acts of non-public officials that could impair public confidence in public administration—for example, where an individual provides information to the Department of Resources and Energy that is deliberately false, and designed to induce a decision by the department to the benefit of that or another individual but one not in the best interests of the people of New South Wales. Under the High Court's definition that would not be a corrupt activity; under this legislation it would be "corrupt conduct" and would allow ICAC to investigate and make findings of corruption.

Another recommendation was to provide that ICAC's education, advisory and prevention functions be used generally for the purpose of promoting the integrity and good repute of public administration. The function of corruption proofing is as important as the function of identifying and exposing corruption. Prevention is better than cure. In the case of corruption, prevention results in lower costs and lower impacts and, particularly where it is visible, it shows that public instrumentalities and agencies are taking steps to ensure that corruption does not occur. It is a positive thing, and should be encouraged.

The finding of the Gleeson-McClintock panel with which The Greens struggle is "to limit ICAC's power to make findings of 'corrupt conduct' against an individual to cases where the corrupt conduct is serious". The idea is sensible. The Greens support the idea that ICAC should not spend its time going after relatively minor matters; it should focus its investigative powers on major corruption activities. Indeed, it is both cost effective and worthwhile to do so, and The Greens have no difficulty with ICAC doing that. ICAC already has discretion to exercise its independent decision as to what matters it ought to investigate and those it should not. The problem with new section 74BA, which would limit the power of ICAC to make findings of corrupt conduct against individuals unless the conduct was serious, is that nowhere in the Act or the proposed amendments to it is there a definition of "serious".

It is clear that the intention is to allow individuals to go to the courts and for the courts to establish tests as to what is "serious" and what is not. We do not want ICAC to waste its time on relatively trivial matters, but under new section 74BA inevitably every miscreant who is hauled before ICAC on a charge of corrupt conduct will say, "My matter is not serious" and then rush off to the courts. It is my opinion that ICAC is already the subject of vexatious litigation—litigation designed to delay and frustrate its investigations; legislation designed simply to hide guilty parties. The Greens are concerned that new section 74BA will create a rich and fertile pathway for individuals under investigation for corrupt conduct to rush to the courts and say, "This does not fit the definition." Indeed, the first individual under investigation for corrupt conduct is bound to go to the courts, as well as many thereafter. We could be looking at five or 10 years of litigation, which will tie up both ICAC's capacity and public resources but, more importantly, frustrate ICAC's ability to investigate.

The Greens appreciate that it would be difficult to provide a definition of "serious" in this particular instance that would not also be vulnerable to legal action. I foreshadow that The Greens will be moving an amendment in the Committee stage to delete new section 74BA, which limits ICAC's capacity to investigate conduct involving serious corruption and the consequential amendments contained within the bill. That does not mean we would be saying to ICAC that it has to investigate every single allegation brought before it or when ICAC thinks some allegations might warrant an investigation but they would be relatively trivial matters. It would mean that ICAC uses its discretion, as it currently does, to determine that which is cost effective and that which is not; that which is likely to lead to a finding that is of sufficient import that it will have both an impact on the individual but also an exemplary impact on all individuals contemplating conduct that could be described as corrupt.

The Greens think this will save the State not only money and time but also the embarrassment of seeing its legislation being constantly drawn before the courts and questioned. It is an unnecessary step. We recognise that the Hon. Murray Gleeson, AC, and Mr Bruce McClintock, SC, saw this as an important matter. However, we think that they may have got it wrong. We think that in this particular matter they may have exposed ICAC to significant risk of an ongoing litigation burden. The panel also investigated possible criminal offences that arise under electoral and lobbying laws. A number of clauses in the bill would, for example, allow the Electoral Commission to refer matters to ICAC under the Parliamentary Electorates and Elections Act and the Election Funding, Expenditure and Disclosures Act where there are reasonable grounds to suspect that conduct may involve a criminal offence or where the matters relate to corrupt conduct that ICAC is already investigating.

The strengthening of the investigative powers of ICAC to cover these matters is most welcome. For too long the Electoral Commission has been overwhelmed by claims that people have treated the Election Funding, Expenditure and Disclosures Act and the Parliamentary Electorates and Elections Act as legislation that they can choose to obey or not. I cannot think of a single election that I have been involved in, going back to before most of the current provisions in the Election Funding, Expenditure and Disclosures Act were in place, where there has not been an egregious breach of the Act—and none more so than the last election, when there were not only breaches of black letter law but also breaches of the spirit of the Act.

Giving ICAC the power to investigate serious matters or to have serious matters referred to it will take the burden from the Electoral Commission and create a greater power to investigate those breaches of the Act that have in the past gone by without appropriate levels of investigation. Everybody in this Parliament would have evidence of somebody behaving badly in an election. Everyone would know, if not from evidence then from hearsay or reports from campaign workers, of appalling breaches of the Act. It is good that ICAC will now have the opportunity to investigate them. Operation Spicer and Operation Credo will now be able to go ahead. That is important. Those matters need to be wrapped up to finalise this dark chapter in the history of New South Wales. It will allow those who are innocent to escape the grips of Operation Spicer and Operation Credo and those who are guilty to be exposed and, hopefully, prosecuted.

The other important recommendation being legislated in this bill refers to people who are candidates for public office who engage in corrupt conduct. They will now fall under ICAC's jurisdiction even if they do not succeed in being elected. That is important. Individuals might undertake activities that are contrary to the Election Funding, Expenditure and Disclosures Act or the Parliamentary Electorates and Elections Act and that, in the ordinary sense of the word, are corrupt. People undertaking corrupt activities should not escape prosecution because they fail to get elected. Those people should also be captured by this legislation.

With the exception of the matter relating to new section 74BA, the seriousness test, The Greens wholeheartedly support this legislation. We recognise that, as we have said in the Chamber on a number of occasions, rooting out corruption will not happen overnight. This will always be a work in progress. There will always be new ways to change this legislation. My colleague Jamie Parker, the member for Balmain, has a number of amendments to the legislation that will increase the power of ICAC to identify and proceed against corruption and corrupt conduct. He will be bringing those forward in the near future. Others will also have views on the way forward.

The only hope for New South Wales as a modern democracy is to continue with the vigilance that exposed some of the activities to be investigated by Operation Spicer and Operation Credo. We must constantly look at ways to strengthen the powers of ICAC through the Act, consistent with the rights of people to claim innocence until proven guilty. The Greens support the legislation but will be moving an amendment.

The Hon. LYNDA VOLTZ [12.28 p.m.]: The Independent Commission Against Corruption Amendment Bill 2015 is important. ICAC plays an important role in New South Wales. There is a need for public confidence in Government, in the public sector and in the way the Parliament operates. I am therefore pleased to see the introduction of this bill. The review that was undertaken identified that ICAC should be given the jurisdiction to investigate possible criminal offences under the electoral and lobbying laws. As a result, a number of sections have been included in the bill. For example, schedule 1 [10] allows ICAC to investigate designated offences that may be referred to it. I am pleased to see that.

I wrote to ICAC during the State election campaign, as I also wrote to the Electoral Commission, about a number of breaches to the Parliamentary Electorates and Elections Act and the Election Funding, Expenditure and Disclosures Act. I outlined a number of offences and provided significant evidence to those organisations. ICAC wrote back to me and said that it "considers that the matter involves possible breaches of two pieces of legislation which are administered by the New South Wales Electoral Commission". The reality is that even at that point, 16 March 2015—before the election—ICAC had identified a number of breaches in the electorate of East Hills which became significantly worse nearer the election.

The Hon. Duncan Gay: Point of order: This is an important bill. Speakers in the debate have made constructive comments. The Hon. Lynda Voltz has a motion in the Order of Precedence on the *Notice Paper* dealing with her concerns about the seat of East Hills. She has put forward a motion on which she has a personal view. Nothing has been proven. There is a series of allegations—

The Hon. LYNDA VOLTZ: What is the Minister's point of order?

The Hon. Duncan Gay: It is about the appropriateness of following up unproven allegations in the context of this bill.

The Hon. LYNDA VOLTZ: You have to address the point of order. There is no point of order before the House; you are just rambling on.

The Hon. Duncan Gay: You cannot just talk over me.

The Hon. LYNDA VOLTZ: What is your point of order?

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! I will decide what I want to hear in regard to the point of order. It would be helpful if the Minister quickly produced some evidence to explain his point of order. I am aware that the debate is wide ranging.

Mr David Shoebridge: Can we stop the clock?

The Hon. Duncan Gay: I am happy for the clock to be stopped.

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! I order the clock to be stopped.

Dr John Kaye: Point of order: Mr Deputy-President, you have made a ruling.

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! Dr John Kaye will resume his seat. I remind members that there is only one Presiding Officer in this Chamber.

The Hon. Duncan Gay: It is inappropriate to make unfounded allegations. Matters that are before ICAC should not be discussed, and it is not appropriate to raise during debate on this bill matters that do not involve ICAC. In both instances matters should not be raised in order to slur a member in the other place. If the Hon. Lynda Voltz wishes to do that she should do so by way of substantive motion. There is a substantive motion inside the order of precedence relating to the issue that the member has raised.

Given that, it is inappropriate for her to continue to speak to that issue. She is at liberty to speak on the bill, but not about the issues she has raised concerning an individual. That is absolutely inappropriate and it is the very worst politicisation of a bill before the Parliament.

The Hon. Adam Searle: To the point of order: Whether a matter being canvassed in a member's second reading contribution is inappropriate in the view of another member is not a point of order. As you have recognised, Mr Deputy-President, wide latitude is given to members during their second reading contributions. As I outlined in my contribution, a core feature of this bill is the significant expansion of ICAC's jurisdiction to receive referrals from the Electoral Commission. In her contribution the Hon. Lynda Voltz is canvassing the difficulties and the problems with the existing state of law, which would be remedied by this bill.

The Hon. Duncan Gay: It's just her different view.

The Hon. Adam Searle: The fact that the Minister does not like what is being said is a different matter.

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! I will rule on the point of order. This is a wide-ranging debate and the matter of relevance stands. The Hon. Lynda Voltz should be mindful of the illustrations she is using and ensure that she does not anticipate debate on another motion on the *Notice Paper*. I draw the member back to the leave of the bill. I remind her not to make imputations against other members.

The Hon. LYNDA VOLTZ: As I was saying, the commission considered the matters as possible breaches of two pieces of legislation that were administered by the NSW Electoral Commission. Despite evidence that could have been provided by ICAC at the time of writing on 16 March 2015 and despite reams of evidence being provided to the Electoral Commission—including items that would be covered under schedule 1 [10] to the Act, such as offences relating to caps on donations and expenditure, electoral treating, bribery and intimidation—to the best of my knowledge, unlike ICAC, which at least wrote back during the election period and identified possible breaches of the Act, the Electoral Commission has done nothing. This may come down to the fact that the Electoral Commission does not have the resources to deal with any of the issues I raised with it. The Electoral Commission admitted that quite frankly during telephone calls I made to it during the election campaign. Despite the fact that local residents had given statements to the Electoral Commission—

The Hon. Dr Peter Phelps: Point of order: My point of order is taken under Standing Order 92 (1), which provides:

> A member may not digress from the subject matter of any question under discussion, or anticipate the discussion of any matter shown on the *Notice Paper*, except an item of private members' business outside the order of precedence …

This matter is on the *Notice Paper*. It is not outside the Order of Precedence; it is private members' business in the Order of Precedence. The Hon. Lynda Voltz should not be talking about this matter at this time as it breaches Standing Order 92 (1), especially considering that during private members' business she has precedence on her motion as the debate was interrupted last Thursday.

The Hon. LYNDA VOLTZ: To the point of order: As the Government Whip should know full well, a member is entitled to speak to the long title of the bill. I am directly addressing the long title of the bill, as is my right in this Chamber.

The Hon. Dr Peter Phelps: Further to the point of order—

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! I order the clock to be stopped. I will seek

advice from the Clerk. I order the clock to be restarted. In relation to the Hon. Dr Peter Phelps' point of order, I note that on 4 April 2001 President Burgmann stated:

> A motion is out of order if it anticipates debate on a matter contained in the more effective form of proceedings such as a bill.

Given that this is a bill and, in effect, supersedes a motion, I rule that the Hon. Lynda Voltz is not out of order. There is no point of order. The member may continue.

The Hon. LYNDA VOLTZ: Thank you, Mr Deputy-President. One would think members opposite do not like what I am saying and are trying to silence me by taking lengthy points of order. Returning to the bill before the House, how the Electoral Commission deals with complaints during and after an election period is significant because it goes to the very heart of our democracy. If the people have confidence in the electoral system it builds their confidence in the Parliament and in members of Parliament. A good example is the recent failure of the Electoral Commission to do more than send two fines to the Deputy Mayor of Auburn, Salim Mahajer. It issued him with two fines for failing to lodge his 2012, 2013 and 2014 returns. This Act, as amended, will deal specifically with issues such as that. New sections 96H (1), (2) and (3) address the failure to make disclosures and false statements relating to disclosures.

The Electoral Commission has not only failed to act in regard to disclosures. I note that in returns for the parliamentary period 1 July 2014 to 1 March 2015, a return was disclosed for the former member for Swansea, Garry Edwards, on 19 January 2015, signed by a Mr Simon McInnes. The section stating "No reportable political donations were received by the elected member during the period covered by this disclosure" was ticked. There was then a handwritten note from Mr Simon John McInnes saying, "To the best of my knowledge there were no reportable political donations." That was on 19 January 2015. When my office contacted the Electoral Commission to find out where the rest of Mr Garry Edwards' return was for the period to the end of March, those at the commission had no idea—they had not even noticed that there was no political return, that there had been no disclosure.

They had certainly not noticed the handwritten note—despite the fact that it is an offence to make a false statement relating to disclosures under this Act. I am not sure that one can just insert a handwritten note on a document that says, "To the best of my knowledge there were no reportable political donations." It does not instil much confidence in the electoral process when there is clear intent to get around what the Premier has said in the other place is the purpose of the ICAC legislation.

The Hon. Trevor Khan: Point of order: Mr Deputy-President, I draw your attention to Standing Order 91. I refer to page 127 of the *Selected Rulings of the President*, relating to reflections. I refer you particularly to the ruling of President Willis on 15 September 1993, at the bottom of the page, which states:

> Rulings of the President have extended the scope of Standing Order 81—

—now Standing Order 91—

> —to include reflections on members in the other place. Reflections against members of either this House or another place must be done by way of substantive motion.

On the next page you will see—

The Hon. LYNDA VOLTZ: But I am not talking about anyone in the other place.

The Hon. Trevor Khan: Please do not interrupt. You will see that there are further rulings by Deputy-President Gay, Assistant-President Reverend the Hon. Fred Nile and Deputy-President Green

where it is observed:

> Members who wish to make charges against any member of either House should do so by way of substantive motion.

This is perhaps related to the previous point, but there is a substantive motion in the order of precedence to which the member is speaking. The appropriate vehicle to pursue these matters, which clearly the member has a right to do, is by way of that substantive motion, not by way of the mechanism that is now being used.

The Hon. LYNDA VOLTZ: To the point of order—

The Hon. Trevor Khan: No, I have not finished. Sit down.

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! The Hon. Trevor Khan is taking a point of order under the standing orders. I order the clock to be stopped.

The Hon. Trevor Khan: I am not seeking to waste time. This is an important matter.

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! What is the member's point of order?

The Hon. Trevor Khan: The rulings make it plain that one cannot use the vehicle of this bill to pursue an attack on a member of the Legislative Assembly. With respect, the rulings are clear. I ask you to direct the member to return to the leave of the bill and not to pursue an attack on another member.

The Hon. LYNDA VOLTZ: To the point of order—

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! I order that the clock be restarted.

The Hon. LYNDA VOLTZ: I was referring to Mr Garry Edwards. I do not know whether the Hon. Trevor Khan has checked the other Chamber recently, but Mr Edwards is not a member of that place. The Hon. Trevor Khan has now wasted three minutes trying to silence me. Mr Deputy-President, I ask that you allow me to return to my speech.

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! The standing orders apply also to members in the other place. The person referred to is no longer a member of the other House. I uphold the right of the Hon. Lynda Voltz to be extended wide latitude when delivering her speech during the second reading debate. However, I direct that she be mindful of making imputations against another individual.

The Hon. LYNDA VOLTZ: The constant interjections from members opposite are obviously an attempt to silence me. At no point in the speech have I named a member of the other Chamber, yet members opposite are constantly interrupting my speech. So far my speaking time has been reduced by seven minutes. The reality is that there must be integrity in the electoral process in this State. The Electoral Commission obviously has no ability to investigate allegations that are brought before it. That is evidenced by its failure to act in relation to numerous returns of political disclosures from Garry Edwards and the returns in regard to the Deputy Mayor of Auburn, Salim Mehajer. Indeed, when I brought to the attention of the Electoral Commission a number of pieces of evidence proving that offences had been committed relating to caps on donations and expenditure, the Electoral Commission said, "We will see about that when we get their returns."

Six months have passed since the election, but it is not possible to find out about one cent of expenditure by the Liberal Party during the election campaign because nothing has been disclosed. No Liberal member of Parliament has provided a declaration for any donation. When we request a

declaration we receive a response such as that of Mr Simon John McInnes, in regard to Garry Edwards, that "No reportable political donations were received by the elected member during the period covered by this disclosure"—it was a handwritten note—"to the best of my knowledge." If all donations go through the central office of the Liberal Party, why would the response have to rely on the best knowledge of Mr McInnes? Either the donations are going through the central office of the Liberal Party or they are not.

The reality is that political parties know the Electoral Commission does not have the resources to investigate these matters and that they will not be picked up during the election campaign. I am pleased that the committee has recommended that ICAC investigate this issue. A number of my colleagues in this Chamber have asked: What constitutes a serious offence? What is a serious offence if it is not a matter concerning our democracy and confidence in the Parliament? The evidence before this Chamber is that again and again there are breaches of the Electoral Act; again and again evidence is brought forward; and again and again the Electoral Commission fails to investigate it. It fails to investigate because—as has been stated to me—it does not have the resources to do so.

I hope that the inclusion of these provisions in the Act will mean that ICAC can get to the bottom of electoral expenditure and campaign donations—where the money is coming from and how it is expended. At the moment there is no confidence in the electoral process. If what went on during the last election continues, democracy in this State is dead. I saw on the streets intimidation and fear and complete disregard for electoral laws. If that is allowed to continue, there will be no hope for proper process or policy debate based on the best interests of New South Wales. The electoral process will sink to the level of "the dirtiest candidate wins".

Mr DAVID SHOEBRIDGE [12.48 p.m.]: I contribute to the debate on the Independent Commission Against Corruption Amendment Bill 2015 with comments that I hope will be reasonably narrowly focused. I note and endorse the contributions of my colleague in the other place Mr Jamie Parker and my colleague in this place Dr John Kaye. I will touch upon two issues in this bill, which is supported by The Greens but could be improved upon. The bill is necessary to ensure that the Independent Commission Against Corruption [ICAC] can continue to do its important anticorruption work in this State. If any State in the Commonwealth needs a robust anticorruption commission, it is New South Wales. From the moment the Rum Corps started running this place—this building is built on the foundations of the Rum Hospital—the stories of the corruption that led to the creation of the Rum Hospital—

The Hon. Dr Peter Phelps: It was an open tender.

Mr DAVID SHOEBRIDGE: I note the interjection of the Government Whip—I do not normally do so. It was an open tender process. That kind of high-quality tender process has continued for the next 200-plus years in New South Wales. If ever a State needed an extremely robust, constitutionally well-founded anticorruption body, it is New South Wales.

The Hon. Dr Peter Phelps: We're worse than Queensland, are we?

Mr DAVID SHOEBRIDGE: I note that New South Wales is not the only State that requires a robust anticorruption body, and of course the Commonwealth should establish an anticorruption body. The myth that Commonwealth bureaucrats, Commonwealth tendering processes and the Commonwealth Government are somehow immune to corruption will one day be seriously blown out of the water. We will find that the model that was introduced first in New South Wales with ICAC should be adopted in every other jurisdiction in this Commonwealth—and that includes at a Federal level. However, this bill has one very significant limitation, which is a self-inflicted wound by the Government. It is the inclusion of new section 74BA, which states:

74BA Report may only include findings etc of serious corrupt conduct

(1) The Commission is not authorised to include in a report under section 74 a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

There is a further provision in new section 74BA (2), which states:

(2) The Commission is not precluded by this section from including in any such report a finding or opinion about any conduct of a specified person that may be corrupt conduct within the meaning of this Act if the statement as to the finding or opinion does not describe the conduct as corrupt conduct.

Effectively that means other words may be used to describe the conduct and a reader may think there is a suggestion of corrupt conduct as long as the words "corrupt conduct" are not used. New section 74BA (1) is the real problem. It says that the commission cannot include:

… a finding or opinion that any conduct of a specified person is corrupt conduct unless the conduct is serious corrupt conduct.

That would obviously lead a curious reader to ask what serious corrupt conduct means. The bill and the substantive Act do not contain a definition of "serious corrupt conduct", so we are left with just that phrase. As we have seen in the past five years, any ambiguity in the ICAC legislation is robustly tested by any individual with sufficient means in the Supreme Court, the Court of Appeal and ultimately the High Court.

One would think that the job of sensible legislators is to say precisely what they mean. If the Government has a view about what is or is not serious corrupt conduct, it should express it. If the Government is of the view that certain conduct does not raise that threshold, it should tell us what it is. The Government's answer is that there is a very wide spectrum of corrupt conduct—from tendering, treating, direct bribery, misuse of public office, to private arrangements that are entered into in order to take unwitting advantage of a public official. Undoubtedly there is a broad spectrum of what could be considered corrupt conduct. I do not doubt that it is extremely difficult to define "serious corrupt conduct". But that begs the question: Why is the Government putting a landmine such as this in the middle of the bill? The problem is that there is no watertight, all-purpose definition of "serious corrupt conduct".

What could or could not be considered corrupt conduct is such a broad array of activity that not only can the Legislature not come up with a rational definition but also it will be next to impossible for the courts to come up with a one-size-fits-all definition that will give anything like sufficient clarity in many instances so that ICAC will know whether the conduct is serious corrupt conduct. It will be a question of rolling the dice— maybe the courts will knock off this one, maybe they will not; maybe this will be tested, maybe it will not. That is a recipe for years and years of legal uncertainty. It is almost designed to cripple ICAC—

[*Interruption*]

Mr Deputy-President, it is difficult to continue my contribution with the constant interjections from the Government Whip. I ask that you call him to order.

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! I ask the Hon. Dr Peter Phelps to show some leadership and to cease interjecting. His conduct is disorderly. Mr David Shoebridge will be heard in silence.

Mr DAVID SHOEBRIDGE: It is a recipe for disaster. I do not know how the Commissioner of the Independent Commission Against Corruption will go about the job of trying to prejudge or guess what the courts will say is or is not serious corrupt conduct, given that broad spectrum of possible corrupt conduct.

I have not seen any guidance in either the Minister's second reaching speech in the other place or the contributions from the Minister in this Chamber. The obvious solution is not to include new section 74BA in the Act. I fully understand the public concern and debate over the past two years about whether a particular investigation should have been undertaken and whether the facts and circumstances in investigation A, B or C were of sufficient seriousness to warrant the full resources of the ICAC being applied.

The Hon. Trevor Khan: It is longer than that—Paluzzano and D'Amore.

Mr DAVID SHOEBRIDGE: I note the interjection from the Hon. Trevor Khan. He is quite right: It is not an extremely recent event. But there have been concerns over a number of years about whether one investigation or another was examining conduct of such a serious nature that our principal anticorruption body in the ICAC should devote its scarce resources to it. It is a live political debate—and it is right that that should occur. It is tossed around whether ICAC should be investigating some types of matters. I would expect commissioners of the ICAC to be cognisant of that fact and to be very well aware that they have limited, scarce public resources. There is an awful lot of corruption in New South Wales of all sorts of different colours and hues, often coming from very surprising areas of public administration and private enterprise.

I think there is a very clear obligation on any commissioner to ensure that the limited resources of the ICAC are directed to corruption that impacts most negatively on society. But the best way to do that is to rely upon the sensible discretion of future commissioners. People will say that commissioners have got it wrong in the past so a test should be put in legislation to make it right in the future. But this test will not do it; it will just tie up commissioners, the ICAC and its scarce resources in legal case after legal case after legal case. This test will not assist because nobody knows what it means. The Government says this is the right test and then says it does not know what serious corrupt conduct is but the test should be put in the legislation. That shows just how hollow its argument is. The argument that we leave it to judges to come up with some magical definition—

The Hon. Dr Peter Phelps: Yes, judges are good at doing that sort of thing: They interpret laws.

Mr DAVID SHOEBRIDGE: Mr Deputy-President, will you try to constrain the Hon. Dr Peter Phelps? He has been told he cannot contribute to the second reading debate, but perhaps he should renegotiate with the Leader of the Government in this place and make a speech rather than Angry Ant interjections.

DEPUTY-PRESIDENT (The Hon. Paul Green): Order! I remind Mr David Shoebridge that it is disorderly to respond to interjections.

Mr DAVID SHOEBRIDGE: The Government is simply saying that maybe judges will magically arrive at a definition that we all like and that gets the balance right. Maybe 20 years down the track there will be sufficient cases—after the fifty-second challenge to the definition of serious corruption—that people will be able to say, "Yeah, actually I now kind of understand what serious corruption is. It's kind of like this, maybe that, this one probably does not get there, that one probably does, and that is a fine line and should be tested in the courts."

[*Deputy-President (The Hon. Paul Green) left the chair at 1.01 p.m. The House resumed at 2.30 p.m.*]

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

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

QUESTIONS WITHOUT NOTICE

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WESTCONNEX AND ASBESTOS-CONTAMINATED SITE

The Hon. ADAM SEARLE: My question without notice is directed to the Minister for Roads, Maritime and Freight. Why did the WestConnex Delivery Authority and its associated contractors fail to inform residents of the discovery of asbestos near Onslow Street, Granville last week? Why were workers working with the discovered asbestos not provided with the appropriate protective gear, in accordance with health and safety requirements?

The Hon. DUNCAN GAY: I thank the Hon. Adam Searle for his question. By way of background, we are embarking on the largest transport infrastructure project in this State's history—33 kilometres of motorway, two-thirds of which will be underground in a tunnel. Like any construction project—be it for a house, a road or a high-rise—the discovery of material containing asbestos when excavating is not uncommon in the Sydney area. After all, this was the most commonly used building product of the previous century. There is a large amount of it around. Unfortunately, this is an unwanted legacy from times gone by—and we have to deal with it.

I can confirm that some remnant asbestos material has been unearthed during work on WestConnex projects. The community should be reassured that whenever asbestos is discovered during road construction, there are clear, established procedures that are followed to ensure it is managed and cleaned up correctly in accordance with all necessary licences and work, health and safety requirements. WestConnex is no different from any other road construction site—discoveries of asbestos are managed in a highly-regulated and controlled way. All WestConnex projects and contractors have approved and regulated procedures for what to do if asbestos is found. All statutory regulations are followed—including those of the Environment Protection Authority [EPA] and WorkCover.

The community can rest assured that any asbestos-contaminated material is being managed and removed safely. Some recent media reports claimed stockpiles with asbestos-containing material at Granville were covered only after residents complained. I am advised that this is incorrect. The vision shown was of workers covering stockpiles of clay—not material containing asbestos. The workers were not decked out in full protective clothing as they did not need to be. All the correct procedures were followed in accordance with the necessary requirements and safeguards put in place for the project.

Interestingly, recently the nasty little anarchists from the anti-WestConnex group were seen in faux hazmat, nuclear disaster suits outside the dial a dump site at St Peters, where we were removing asbestos in the proper manner under the auspices of the EPA. WestConnex did not put the asbestos in that community. The WestConnex Delivery Authority was removing it from that community. That did not stop that nasty little group of anarchists, which is paid for and sponsored by the City of Sydney Council, creating concern in the community. They should not be creating concern amongst residents in that community. We are improving the situation; we are removing what was on that site and had been sitting in the community for a long time. We pride ourselves on doing it properly, as we should. [*Time expired*.]

NATIONAL DISABILITY INSURANCE SCHEME

The Hon. MATTHEW MASON-COX: My question is addressed to the Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism. Will the Minister provide an update on the rollout of the National Disability Insurance Scheme [NDIS]?

The Hon. JOHN AJAKA: I thank the Hon. Matthew Mason-Cox for his question. As my colleagues will be aware, earlier today it was my great pleasure to join the Premier, Mike Baird, the Prime Minister, Malcolm Turnbull, Senator Mitch Fifield and the Premier of Victoria in Canberra to make this much-anticipated announcement. It will change the lives of thousands of people with disability and their families and carers. The bilateral agreement signed today explains how and when the National Disability Insurance Scheme will roll out across the rest of New South Wales. This is a wonderful day of celebration

for people with disability, their families and carers.

We continue to lead from the front in disability reform and to make a real difference to the lives of thousands of people with disability, their families and carers, and the communities they live in. Today it gives me great pride to announce that the NDIS will be rolled out across New South Wales between 1 July 2016 and 30 June 2018, as has always been committed to. From 1 July 2016, which is less than 12 months away, people living in south-western Sydney, the Hunter-New England, southern New South Wales, the Central Coast, northern Sydney, Western Sydney and the Nepean-Blue Mountains will be able to access the NDIS.

And from 1 July 2017 the NDIS will be in place across the rest of New South Wales—northern New South Wales, the mid North Coast, Sydney, south-eastern Sydney, the Illawarra-Shoalhaven, the Murrumbidgee, western New South Wales and far west New South Wales. These locations align with the current New South Wales disability and health service districts, reflecting the whole-of-government focus New South Wales is taking to this important announcement.

The New South Wales Government is committed to a sustainable and operationally viable NDIS. This is why it has decided to roll out the scheme in two stages, based on a number of factors, including population, proximity to existing trial sites and readiness of the local service system to operate under the NDIS. This is a great day for not only all those regions but also every community in New South Wales. This delivers certainty to everyone—people will now know when the NDIS is coming to their area. It delivers confidence to families and carers, and surety to new and existing service providers and State Government staff, who can now begin planning for the future and take advantage of the opportunities offered by the NDIS.

Regional and rural economies and communities will benefit from this rollout, with thousands of new jobs created across the sector. New service providers will be required. I am certain that all members of this House will join with me in congratulating all of those who have fought for the NDIS over a number of years; it is now being delivered. We are all well positioned for the future rollout of the NDIS. But we will continue to do valuable work in our first trial site in the Hunter, and individual packages are now becoming available in the Nepean-Blue Mountains area for the early rollout. I thank everyone who has worked so hard to get us to this point today. This NDIS reform grew out of the passionate work of thousands of people across New South Wales and nationally.

SYRIAN REFUGEE CRISIS

The Hon. WALT SECORD: My question without notice is directed to the Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism. Given our bipartisan support for the settlement of 12,000 Syrian refugees, what steps has the Baird Government taken to prepare for their arrival in New South Wales, especially in relation to non-profit organisations providing support and assistance to those new arrivals?

The Hon. JOHN AJAKA: I thank the honourable member for his question. It is a good question. I indicate from the outset that I congratulate the Federal Government on its wonderful announcement that Australia will accept 12,000 refugees. I am certain that the vast majority of Australians have welcomed this announcement. Clearly this is an unprecedented global crisis. I am advised that approximately four million Syrians have been forced to flee their country. We have all seen the images; I must say for me those images are incredibly disturbing. Syria's neighbours and now Europe have opened their borders and hearts to the Syrian people. Australia will play its part.

The Premier has said that New South Wales will contribute to that effort. He said further that we are willing to take more than our fair share. The Premier has announced that Professor Peter Shergold, AC, will take responsibility for ensuring that the New South Wales Government is prepared for the arrival of the additional refugee intake. Professor Shergold will ensure strong coordination between State,

Commonwealth and local governments. The Federal Government is discussing needs with the Office of the United Nations High Commissioner for Refugees [UNHCR], and we will take those determined by the UNHCR to be genuine refugees. Adequate protections and services should be provided, and the New South Wales Government will work with the Federal Government in that regard.

This Government provides many of the services essential for the resettlement and integration of refugees into the Australian community. On average 4,150 humanitarian entrants settle in New South Wales each year—4,207 settled in New South Wales in 2013-14. We take the matter of refugees and humanitarian entrants seriously and we have a number of initiatives in response to refugees and humanitarian entrants in New South Wales. As Minister for Multiculturalism I am proud that Multicultural NSW and the Department of Premier and Cabinet co-chair the Government Immigration and Settlement Planning Committee [GISPC], which is the central point for developing and implementing settlement policy and planning in New South Wales.

Refugees and humanitarian entrants are a key target group. The purpose of the GISPC is to monitor and respond strategically to migrant settlement issues in New South Wales. Multicultural NSW works closely with the Commonwealth, and will continue to be advised on this matter. Indeed, these matters will be raised with the GISPC as necessary. I have asked Multicultural NSW to keep me posted as this issue progresses and to do what we can to assist those in need. Once again, I am pleased that Australia will be doing its part. I am pleased that the Premier has announced that New South Wales is standing by with open arms to assist in whatever way we can.

The Hon. WALT SECORD: I ask a supplementary question. Will the Minister elucidate his answer in regard to providing a timetable on the rollout of any financial support or assistance to not-for-profit migrant settlement groups?

The Hon. JOHN AJAKA: As I have already indicated—it can be seen from my answer—this Government will do whatever it can to assist. We will plan for this. I will not pre-empt what should or should not occur without the appropriate planning having been undertaken. That is why we have asked Professor Shergold to take responsibility for advising the Government on not only what is required of this State but also what is required between the Commonwealth, State and local governments. That is what we will do.

NSW: MAKING IT HAPPEN

Dr JOHN KAYE: My question without notice is directed to the Minister for Roads, Maritime and Freight, representing the Premier. My question relates to NSW: Making it Happen. What happened to making New South Wales "Australia's renewable energy answer to California?" Why did an industry with a capacity to generate tens of thousands of new jobs and slash the State's carbon emissions not even rate a mention in the Premier's top 12 priorities?

The Hon. DUNCAN GAY: I thank the honourable for his question. I guess the short answer is that New South Wales is making it happen. However, there is a whole subset under those 12 priorities related to the real things this Government is doing. This Government is focused on the future. We are delivering on our vision for a stronger, healthier and safer New South Wales. We are delivering on this vision by making the most of our surging economy. We are improving public services, growing jobs, delivering infrastructure and protecting the vulnerable. Importantly, we are holding ourselves to account. These priorities now form the basis of 30 State priorities, including the 12 Premier's priorities, which define the State's strategic direction.

That means we will be reporting regularly and transparently on our progress against the targets. Each of the 30 State priorities will be measured against the best available indicators of economic growth, infrastructure delivery, service provision and other measures of community wellbeing and safety across New South Wales. What gets measured, gets managed and delivered—and that is exactly what we will

be doing. The Government will continue to do a number of things that are not listed as part of the 30 priorities; no more or less important than what we have identified.

Having 30 priorities rather than 321 targets is about increasing efficiency and recognising that to get results one needs to have a narrow focus. The scattergun effect might work for those opposite, but it does not work for us. We want to get real. We want to deliver things. We want to be a government that delivers. This was the experience of former Prime Minister Tony Blair in the United Kingdom. How many priorities do members think he had?

The Hon. Dr Peter Phelps: I do not know. Tell us.

The Hon. DUNCAN GAY: Ten. The icon of the Labor Party had 10 priorities. Our guy is so good he can handle 12.

Dr JOHN KAYE: I ask a supplementary question. Would the Minister elucidate his answer by telling the House where one would find the 30 priorities that he referred to? Would he tell the House what role renewable energy plays in those 30 priorities?

The Hon. DUNCAN GAY: I can do only a certain amount of the work. I have set Dr John Kaye a bit of homework. That will be his challenge.

SYDNEY TRAFFIC CONGESTION

The Hon. SCOTT FARLOW: My question is addressed to the Minister for Roads, Maritime and Freight. Would the Minister advise the House on how the Government is busting congestion in Sydney?

The Hon. DUNCAN GAY: I note the article in today's *Daily Telegraph* that reads:

> Frustrated motorists on many of Sydney's busiest roads are facing daily journeys where their average speeds drop below that of a weekend jogger.

[*Interruption*]

I am interrupted by the former shadow Minister for Transport, who really does not like any improvement to roads and never has. The congestion is no surprise to us or to the people of Sydney. It is an issue this Government is tackling head-on. I do not think anyone in the State has any doubt that this is one of my key priorities. Infrastructure Australia's recent audit found that, if left unchecked, the cost of congestion in Sydney will increase from $6 billion in 2011 to $28 billion in 2031. It astounds me, when we see figures like that, that people still argue against the need to improve roads. The Government has embarked on the biggest public transport and roads infrastructure program this State has ever seen. Much-needed projects like WestConnex, NorthConnex and growth roads in Western Sydney are becoming a reality. The Government is building the Sydney Metro—Northwest, and City and Southwest—which will add 60 per cent more capacity to the rail network. We are getting people, goods and freight to where they need to be, when they need to be there.

The PRESIDENT: Order! I am having difficulty hearing the Minister because of the audible conversation on the Government benches.

The Hon. DUNCAN GAY: I was heartened to see the response from the National Roads and Motorists' Association [NRMA] today—which can be a tough judge on occasions. It acknowledged that "it is no coincidence the data published by the Government on road speeds is linked to where the next big road infrastructure projects are going to be built". Perhaps higher praise comes from the Opposition roads spokesperson, Jodi McKay, who has previously expressed in the media for weeks on end her slightly jaundiced view of almost every project the Government is delivering. I thank her for her comments and

welcome the ecumenical approach. She said today, "We are obviously very supportive of many of the projects that the Government has underway." Well done, Jodi. She has experienced a road to Damascus moment.

The PRESIDENT: Order! I cannot hear the Minister because of the exchange across the Chamber.

The Hon. DUNCAN GAY: My staff pointed out something that I had missed in *Hansard* yesterday. The former shadow Minister for Roads, the one and only Hon. Walt Secord, said:

> Duncan, you are earning your stripes. You are fixing things up again. You work so hard, Duncan. I tip my hat to you. You work so hard cleaning up …

The Hon. Walt Secord: Point of order: My point of order is relevance. The comments the Minister is quoting refer to local government and the mishandling of the boat trailer legislation. They are nothing to do with his performance as Minister for Roads, Maritime and Freight.

The Hon. Catherine Cusack: Point of order—

The PRESIDENT: Order! I call the Hon. Catherine Cusack to order for the first time. When a member takes a point of order, I will hear that point of order. If the member has a contribution to make after that, she may seek the call. It is unacceptable for her to shout over another member. There is no point of order.

The Hon. DUNCAN GAY: Gary emailed my office today asking the following question:

> Will the Hon. Duncan Gay be remaining as our roads and maritime minister under Malcolm Turnbull? I sure hope you do.

Thank you, Gary. The answer is yes.

ONLINE SPORTS GAMBLING

Reverend the Hon. FRED NILE: My question is addressed to the Minister for Roads, Maritime and Freight, representing the Premier. Is the Government aware of the dramatic increase in young men accessing counselling services because of problem online sports gambling? Given the estimate that only one in 10 problem gamblers ever seek help, this points to a big problem. I apologise that my phone is ringing. Is the Government aware that the typical online problem gambler is aged from 18 to 24, when the brain is still developing the capacity to judge risk and consequences? Would the Minister inform the House of measures being taken to protect the State's young people from the increasing problem of online gambling?

The Hon. DUNCAN GAY: I congratulate the member on his choice of ringtone. It is outstanding. The question is important. All members of this House share a concern about online gambling. The facts that the member included as background to his question are a concern for the Government. I do not have an answer to the question, but I will take it on notice and obtain one as soon as possible.

NSW: MAKING IT HAPPEN

The Hon. MICK VEITCH: My question is directed to the Minister for Primary Industries, and Minister for Lands and Water. What is the Minister's response to regional and rural concerns that the Premier has omitted agriculture, primary industries and rural affairs from the New South Wales State priorities document released on Monday 14 September, which replaced the State Plan?

The Hon. NIALL BLAIR: Let us be clear: the priority document does not discuss everything that the Government is doing, but the priorities can be applied equally to regional New South Wales and primary industries. One of the targets is to create another 150,000 jobs. I hope that many of those jobs will be in the primary industries sector. It is not only those priorities that set out what the Government is doing for primary industries. The Hon. Mick Veitch may know that there is also an action plan for primary industries. For the first time in this State, the Government consulted industry to determine how to drive growth in primary industries. The Government has set a target of 3 per cent growth over the next three years in primary industries, and industry has come along with that.

The Hon. Mick Veitch is pointing to the other priorities in the document. If he does not know how they can be applied to regional communities then he is in the wrong portfolio. Improving government services has a role to play in regional communities. Organisations like Local Land Services will play a key role in those priorities. Building infrastructure—

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

The Hon. NIALL BLAIR: Earlier this week I had the pleasure of going to Manly to open—

The Hon. Penny Sharpe: What is the point of that?

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

The Hon. NIALL BLAIR: The Hon. Penny Sharpe wants to know about priorities for this State. Earlier this week I attended the biennial barley symposium, which has not been held in New South Wales since 1987. This is a great example of how this Government can set up opportunities for businesses in regional and rural communities. We know that barley production in the Northern Hemisphere is declining; many of the producers in the Northern Hemisphere are moving away from wheat and barley and are going into things like corn and bean production.

The PRESIDENT: Order! I call the Hon. Trevor Khan to order for the first time.

The Hon. NIALL BLAIR: We are a key player in the bolted barley area of the worldwide market and we need to set up New South Wales so that we can capitalise on opportunities on the world stage. The Government is providing infrastructure, water infrastructure, grain lines, roads and those sorts of things to allow our primary producers to tap into the global market of bolted barley production. If the member cannot understand how the things that have been clearly set out in these priorities relate to regional communities and primary industries then the member is shadow Minister for the wrong portfolio. He should put his hand up and say, "I do not know how it works. Can someone please tell me how it should work?" and he should put his bat under his arm and walk back to the pavilion.

The Hon. MICK VEITCH: I ask the Minister a supplementary question relating to his comments regarding the priorities that were left out. What other priorities were left out of this list?

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

The PRESIDENT: Order! It is a completely new question. The supplementary question is out of order.

INFECTIOUS DISEASES

The Hon. BRONNIE TAYLOR: My question without notice is directed to the Minister for Primary Industries, and Minister for Lands and Water. Will the Minister update the House on what the New South Wales Government is doing to manage diseases that are spread from animals to humans?

The Hon. NIALL BLAIR: The New South Wales Government is committed to working with industry, researchers and commercial partners to drive innovative research into infectious diseases, which can have a devastating impact on both human and animal health. It is becoming increasingly obvious that human health, animal and plant health and environmental health are linked. In fact, it is reported that more than 60 percent of emerging human infectious diseases have come from animals. These diseases can have a devastating impact; that is why the New South Wales Government is determined to protect human lives as well as our primary industries.

In New South Wales, for example, we have experienced the devastating effects of Hendra. This virus infects flying foxes and it can be passed on to horses and may be passed on to people, with possible deadly consequences for each. The New South Wales Government is committed to detecting, managing and eradicating animal and plant pests, weeds and diseases in our State. To do this the New South Wales Department of Primary Industries works closely with other government departments such as NSW Health and the Office of Environment and Heritage, as well as other government and non-government organisations. It is this work that allows our State to proudly maintain some of the strictest plant and animal biosecurity measures of anywhere in the world.

Last week I had the pleasure of addressing the National Foundation for Medical Research Innovation annual conference in Sydney. It gave me great pleasure to announce an additional $400,000 in crucial funding to support a One Health project targeting the animal-human disease interface. This significant funding by the New South Wales Government will strengthen our partnership and is the second grant provided to the organisation, on top of $320,000 joint funding that was made available in 2014.

This new funding has major benefits for both human health and our $12 billion primary industries sector. It will support ongoing research specifically targeting innovation in infectious diseases and animal interface and will include research into new vaccines, medicines and new and faster diagnostic tools to identify and control the spread of infectious diseases. The first of these is a new lab-on-a-chip device for faster disease diagnostics. The proposal is to design, manufacture and commercialise a cost-effective lab-on-a-chip device that can rapidly identify infections and the causative virus. The first disease diagnostic to be developed and trialled with the device will be for avian influenza detection, with virus samples, reagents and test development expertise provided by the Department of Primary Industries' Elizabeth Macarthur Agricultural Institute.

I strongly believe government should not just fund research; it should enable, encourage and lead by example to show what is possible. We need to deliver the momentum needed for the translation from ideas, science and technology to public impact. The New South Wales Government never shies away from innovation. In fact, we continually and proudly invest in research initiatives to deliver better outcomes for our State's primary industries. With more than $100 million in expenditure each year to support 1,000 active research projects, the NSW Department of Primary Industries is one of the largest research providers to Australian primary industries. This partnership with the National Foundation for Medical Research Innovation will bring together researchers focused on human and animal health to solve problems that are critical to protecting Australians and our enviable reputation and unparalleled access to global markets. This is the beginning of what I hope will be a significant and enduring partnership that will be instrumental in converting great research into working solutions that benefit the New South Wales economy and communities.

COFFS HARBOUR DOLPHIN MARINE MAGIC

The Hon. MARK PEARSON: My question without notice is directed to the Minister for Primary Industries, and Minister for Lands and Water. Is the Minister aware of any documentary evidence relied upon by his department to establish that the welfare of the dolphins at the Coffs Harbour-based Dolphin Marine Magic pool is compliant with the dolphin standards under the Exhibited Animals Protection Act 1986 in that there are no stereotypic aberrant behaviours associated with continual distress and stress,

nor are there genetic abnormalities associated with inbreeding?

The Hon. NIALL BLAIR: I am advised that the exhibition of animals at Dolphin Marine Magic is regulated by the Department of Primary Industries under the Exhibited Animals Protection Act 1986. An animal welfare organisation has made a formal complaint to the department alleging Dolphin Marine Magic is non-compliant with standards relating to dolphin management. The department has conducted compliance activities in response to the complaint. I am advised that the animal display establishment complies with all relevant dolphin requirements.

WESTERN SYDNEY AMBULANCE SERVICES

The Hon. ERNEST WONG: My question is directed to the Minister for Ageing, representing the Minister for Health. What is the Minister's response to community concerns in Western Sydney that there were no ambulances available in the Mount Druitt area yesterday, Tuesday 15 September, and that at midday an ambulance had to be dispatched from Campbelltown to attend to an emergency there?

The Hon. Dr Peter Phelps: Point of order: The question does not relate to any of the portfolio responsibilities of the Minister concerned.

The Hon. Walt Secord: He represents the Minister for Health.

The Hon. Dr Peter Phelps: That is not what the honourable member asked.

The PRESIDENT: Order! I clearly heard the member direct his question to the Minister, who represents the Minister for Health. The Minister may respond.

The Hon. JOHN AJAKA: I thank the honourable member for his question. I will refer the question to the Minister for Health and come back with an answer.

SYDNEY CLEARWAYS STRATEGY

The Hon. LOU AMATO: My question is directed to the Minister for Roads, Maritime and Freight. Will the Minister update the House on progress on the Government's clearways program?

The Hon. DUNCAN GAY: I thank the honourable member for his question.

The Hon. Walt Secord: Just like you're handling the boats.

The Hon. DUNCAN GAY: We handle everything well here. The praise of the Hon. Walt Secord has been helpful along the way and I thank him once again for that praise. It is a great question. You cannot deliver the billion dollar projects without spending the millions. There is no silver bullet solution to bust Sydney's congested roads but I reckon we have probably got the balance about right on a number of issues. On top of our major infrastructure projects we are investing historic amounts in upgrades that will deliver immediate benefits to motorists. One of our key programs is our clearways strategy. We also have our pinch-point projects and we are delivering local roads upgrades such as extending turning lanes. Since coming into government we have invested hundreds of millions into fixing pinch points and more than 200 local roads and communities are already reaping the benefits.

The Government has developed a $121 million clearways strategy for the State. No-one likes to drive along a free-flowing stretch of road only to come to an abrupt halt behind a stationary car in the lane in which one is traveling. It causes added traffic chaos. I am pleased to say that just this week we opened an eight-kilometre clearway for motorists travelling between Ryde Bridge and West Pymble in Sydney's north. The clearway extends across Church and Devlin streets and Lane Cove Road. This will be welcomed by passengers on the 26 bus routes using Church and Devlin streets and Lane Cove Road

and the 40,000 vehicles traveling from Macquarie Park to the M2. The clearway we have installed on Victoria Road has cut travel times on weekends by a whopping 40 per cent. That is not to be sneezed at. We know clearways work. As part of our clearways strategy we have also committed $21 million to provide alternative parking for businesses near proposed clearways. We want to make sure no-one is adversely affected, whether it be a restaurant owner who needs access for patrons and deliveries or motorists who want to park near the chemist in order to be able to grab their prescription quickly.

Clearways are smart. We are maximising the use of existing road spaces and delivering travel time savings for motorists by using existing roads in a better way. It is through short-term projects such as our clearways program that we are making an immediate difference to people's liveability. We will continue delivering on the biggest roads and freight-related infrastructure building program in the State's history, equating to an overall investment in the portfolio of $27.5 billion since 2011. We can talk about the millions being spent—and that is important—but also important are the small traffic issues where people get caught on congested roads. I will speak another day about what we have done on the Princes Highway—the worst traffic problem that we have come across. Those opposite published glossy brochures but did nothing to address the problem. But too much good news in one day—

The Hon. Rick Colless: We want to hear it now.

The Hon. DUNCAN GAY: No, it is like Christmas; it is better if one waits.

PILLIGA STATE FOREST LOGGING OPERATIONS

Mr DAVID SHOEBRIDGE: My question without notice is directed to the Minister for Primary Industries, and Minister for Lands and Water. Noting the very real concerns expressed by owners of the Baradine Sawmill and local forest workers about the future of the Pilliga State Forest and the environmentally destructive and uneconomic logging that the Forestry Corporation of NSW is compelling them to do in the Pilliga, has the Minister visited the mill and forest to see these concerns first hand, and if not, when will the Minister make the visit?

The PRESIDENT: Order! Government members are taking up the Minister's time for responding.

The Hon. NIALL BLAIR: I thank the honourable member for his question. For The Greens to be pretending to be the advocate for the forestry sector is truly unbelievable. Mr David Shoebridge does not want to ensure a sustainable forestry industry continues in regional New South Wales; he wants to shut it down. Just look at point one of The Greens 2015 forestry policy:

1. An end to all logging and mining in State Native Forests by 2016.

This Government supports sustainable harvesting of timber from our native forests. The public native forestry estate has been harvested for more than a century. The only reason these forests exist as they do today is as a result of timber harvesting. These forests do not just support sustainable timber harvesting—

The PRESIDENT: Order! While a number of members may feel that they could do a better job than the Minister in answering the question, the Minister has the call. If members want to make a contribution they can seek the call during the adjournment debate. The Minister has the call.

The Hon. NIALL BLAIR: These forests do not just support sustainable timber harvesting, they also support recreation, tourism and of course environmental outcomes. I will not be lectured by The Greens whose catchphrase for their so-called forestry policy is: "Let's explore it, not log it." For Mr Shoebridge to be pretending to advocate on behalf of the timber industry, under the guise of alleged environmental impact when he is on the record as saying he wants our timber industry shut down, is utterly disingenuous. The resource is renewable and sustainable and it supports thousands of jobs in

regional New South Wales.

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

Mr David Shoebridge: Point of order: The question was clear and specific: When will the Minister visit? The Minister is not addressing the question. He is not generally relevant.

The PRESIDENT: Order! The question went beyond those terms. The Minister is being relevant.

The Hon. NIALL BLAIR: The honourable member does not like the answer I am giving and is trying to buy out time. He wants to shy away from his own goal because he has led with his chin. This Government backs our sustainable timber industries. I am not going to stand here and be lectured by members of The Greens who have made it clear that they want an end to all forestry in State native forests by 2016.

Ms Jan Barham: None of it's sustainable.

The Hon. NIALL BLAIR: I hear the honourable member chiming in and saying none of it is sustainable. This industry has been in New South Wales for over a century. It is an industry that has built many communities and it is something that must be supported. The Government backs the native timber industry in New South Wales. It is something that we will continue to advocate for. Such a question from the honourable member is, as I said earlier, nothing short of disingenuous.

Mr DAVID SHOEBRIDGE: I ask a supplementary question. The Minister said in his answer that the logging is sustainable so when will he respond to the report of consultant forester Steve Dobbin on that very logging, which details the lack of a sustainable timber resource in the Pilliga?

The Hon. Ben Franklin: Point of order: The member did not ask for an elucidation on the answer; it is an entirely new question.

The Hon. Catherine Cusack: To the point of order: The member's earlier question asked: When will the Minister visit? The supplementary question bears no relation whatsoever to that question.

The PRESIDENT: Order! Indeed, the member did ask that question. However, the standing orders as they relate to supplementary questions are not as they relate to the original question but as they seek to elucidate an aspect of the answer. There was sufficient nexus for me to allow the question. The Minister may answer the question if he has any relevant information.

The Hon. NIALL BLAIR: In relation to Gunnedah Timbers, the New South Wales Government has approvals in place to ensure the environment is protected and the forest is harvested in a way that promotes regeneration. When I met with the owners of Gunnedah Timbers in June, I listened to the concerns of the company and offered an updated independent resource review to assist in resolving the dispute between the Forestry Corporation of NSW and Gunnedah Timbers. This offer was not taken up at that time. Nevertheless, the offer remains. Resource assessments were undertaken prior to the previous Government negotiating the wood supply agreements in 2006. The volume of timber made available under the wood supply agreements was based on the assessment of what could be sustainably supplied from these forests. This resource assessment was reviewed in 2010, and current advice to the New South Wales Government is that Forestry Corporation continues to sustainably meet its contractual obligations.

The PRESIDENT: Order! I call the Hon. Rick Colless to order for the first time.

The Hon. NIALL BLAIR: As Gunnedah Timbers and the Forestry Corporation of New South Wales are currently engaged in a contractual dispute it would be inappropriate to comment further on that

specific matter. As I said, if Mr David Shoebridge is so concerned about this industry he would not just cherrypick one area.

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

The Hon. NIALL BLAIR: Mr David Shoebridge is cherrypicking this one issue when in all the other parts of the State this industry continues to support regional jobs and I believe he is disingenuous.

MARINE RESCUE BALLINA

The Hon. GREG DONNELLY: My question is directed to the Minister for Roads, Maritime and Freight. In light of the decision to close the Ballina Marine Rescue tower by Marine Rescue NSW because it has been deemed to be dangerous for volunteers, when will the Government honour its commitment to provide funding for this vital piece of infrastructure, which assists with 40 rescues a year and is part of the community's shark detection system?

The Hon. DUNCAN GAY: I am advised that Marine Rescue NSW has decided to cease operations at the Ballina communication tower from Monday 21 September 2015. This decision follows two recent incidents involving injury to two of its members. Marine Rescue NSW will locate the unit's radio operations to the nearby unit base, and will be operational by early October. The neighbouring Marine Rescue Cape Byron and Evans Head units will provide marine radio communications coverage during any period in which the Ballina unit cannot function.

I am advised that the Commissioner of Marine Rescue NSW, Mr Stacey Tannos, ESM, has written to the mayor of Ballina Shire Council to say that Marine Rescue's recent commitment to contribute $200,000 from its 2016-17 budget should now remove any impediment from preventing the project to commence. The Government has already committed $300,000 to the project. The Government will consider any further representations that the council may wish to make regarding this overdue project. I am advised that Ballina Shire Council now has sufficient funding to commence the new communications tower. The Government will continue to support the efforts of Marine Rescue Ballina in its important work for the communities. I also commend the work of the Hon. Ben Franklin in that community who brought to our attention the politics that were being played in this matter.

YOUTH ADVISORY COUNCIL

The Hon. NATASHA MACLAREN-JONES: My question is addressed to the Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism. Will the Minister provide the House with an update on the NSW Youth Advisory Council?

The Hon. JOHN AJAKA: The NSW Youth Advisory Council comprises 12 young people between the ages of 12 and 24 years whose role is to advise me, as the Minister responsible for youth, and the Advocate for Children and Young People on government policies and programs concerning young people. The council also consults with young people, community groups, and government agencies on issues and policies affecting young people. The current members of the council were originally appointed in 2014 under the Youth Advisory Council Act 1989. This Act was repealed by the Advocate for Children and Young People Act 2014, which commenced on 9 January this year. I recently met with the council. I am very grateful for its advice and work during the past year.

The council has provided valuable advice on the State Debt Recovery Office Youth Engagement Strategy, the National Review of the Definition of Volunteering, consultations on the Government's strategic plan for children and young people, and privacy. The council also initiated a forum on young people's identity, assisted in facilitating the Youth Week forum at Parliament House, attended the New South Wales budget 2015-16 lockup, and ran consultations on the Government's strategic plan for children and young people. I was very interested to hear about the issues of interest to the council, in

particular the issues council conveyed to me during a recent briefing.

The first issue was identity. The council believes that young people can encounter barriers during the formation of their identity, especially those from Aboriginal and culturally and linguistically diverse backgrounds. The council was very positive about the language and culture nests in the OCHRE Plan for Aboriginal Affairs, which support Aboriginal students to learn traditional languages. The council believes it is important for all children and young people to learn more about Indigenous cultures and languages to promote identity and inclusion. It was supportive of the Government's Youth Frontiers mentoring program, which focuses on leadership and civic engagement. This program targets year 8 and year 9 students who work to develop innovative community projects. The council believes that youth mentoring can be an effective way for young people to explore their identity.

The second issue was the use of the drug ice. The council conveyed its belief that ice is a serious issue facing young people, particularly in rural and regional areas. It welcomed the Government's funding for specific treatment and rehabilitation services in the 2015-16 budget and an educational campaign, as well as the increased partnership with the non-government sector. The work with the Pharmacy Guild was also welcomed. The next issue related to young people who experience mental health issues and those who face significant stress during the Higher School Certificate. The council welcomed the Supported Students, Successful Students program for public schools. Funding of $167 million will be allocated over four years to provide additional school counsellors and student support officers.

Finally, the council believes that the recognition of a young person's volunteering efforts will encourage their sustained commitment and encourage other young people to volunteer. I was delighted that the council welcomed the Premier's Volunteer Recognition Program, which was introduced earlier this year and provides State-level recognition to volunteers of any age. Recruitment is currently underway for the 2015-16 Youth Advisory Council, and, I am pleased to say, more than 330 nominations have been received from a wide diversity of young people across the State. The number of nominations received this year far exceeds those of previous years. I look forward to updating the House in due course about the appointment of new council members, which is expected in November this year.

EMISSIONS REDUCTION TARGETS

Ms JAN BARHAM: My question is directed to the Minister for Roads, Maritime and Freight, representing the Premier. I note that Australia's post2020 target for greenhouse gas emissions reductions puts us behind most developed countries. I note further that South Australia and the Australian Capital Territory have joined the Compact of States and Regions—a group established at the United Nations Climate Summit in New York in September 2014 comprising 20 State, Territory and provincial governments that represent more than 220 million people and $US8.3 trillion in gross domestic product. Will the Government commit to ensuring that New South Wales makes a strong contribution to climate action by becoming a member of the Compact of States and Regions, making a public commitment on targets to reduce greenhouse gas emissions and publicly reporting a standard set of annual greenhouse gas inventory data to the international community?

The Hon. DUNCAN GAY: I thank the member for her detailed question, to which I have an answer. We are a shining light amongst Australian States for our response to climate change. That includes building a thorough understanding of climate change impacts, preparing for future extreme events and hazards, improving energy efficiency and supporting the development of renewable energy, and attracting jobs and investment to New South Wales. We are broadly considered to be the nation's leader on energy efficiency and climate change adaption. As a State Government we are focused on measures that complement the Australian Government's mitigation efforts, in particular on energy efficiency and renewable energy, and in adapting to current and future impacts of climate change. We also enjoy a strong relationship with our neighbouring States and are working with them to improve the way that we deal with climate change.

The member talked about the Compact of States and Regions. New South Wales recognises the key role of states and regions in addressing climate change. That is why New South Wales is already a member of the Climate Group, which we joined earlier this year together with South Australia and Tasmania. The Climate Group works with corporate and government partners to develop climate finance and innovative business models and to support the work of the United Nations in striving for a global agreement. We have an Energy Efficiency Action Plan, a Renewable Energy Action Plan and a Government Resource Efficiency Policy—all of which are driving investment in new jobs, reducing bills and making government a leader in sustainability.

The Baird Government supported the Federal Renewable Energy Target remaining at 41,000 gigawatt hours and has $13 billion worth of renewable energy projects in the pipeline. We also have an ambitious target of annual energy savings of 16,000 gigawatt hours by 2020 for businesses and households as part of our compact with the people of New South Wales to reduce pressures on their energy bills. The publication of emissions data is largely a matter for the Federal Government, but we constantly monitor it and develop policy responses. However, I assure the member that New South Wales has an eye on the important role we can play and we are committed to maintaining our leading role on climate change.

Ms JAN BARHAM: I ask a supplementary question. Was that a clarification that the Government will be joining the Compact of States and Regions?

The Hon. DUNCAN GAY: I answered that in my response. When the member reads my answer she will find that that matter has been clarified. Unfortunately, the time for questions has expired. If members have further questions I suggest they place them on notice.

LOCAL GOVERNMENT AMALGAMATIONS

The Hon. DUNCAN GAY: On 12 August 2015 the Hon. Robert Brown asked me a question about local government amalgamations. The Minister for Local Government has provided the following response:

> Councils proposing a voluntary merger were asked to explain the costs and benefits to the community, and at a minimum, place the proposal on public exhibition for 28 days.
>
> IPART will assess council consultation, including the nature and extent of consultation and how balanced the information provided to the community was.
>
> IPART will also consider social and community context, consistent with the Terms of Reference.

LOCKOUT LAWS

The Hon. DUNCAN GAY: On 12 August 2015 the Hon. Paul Green asked me a question about lockout laws. The Deputy Premier has provided the following response:

I am advised:

> The Bureau of Crime Statistics and Research published research in April 2015 showing a decrease in non-domestic assaults across the Sydney CBD and Kings Cross since the lockout and last drinks restrictions were introduced.

ALCOHOL ADVERTISING

The Hon. DUNCAN GAY: On 12 August 2015 Reverend the Hon. Fred Nile asked me a question about alcohol advertising. The Premier has provided the following response:

The New South Wales Government shares the concerns raised by the Reverend the Hon. Fred Nile, MLC, and remains happy to discuss any issues pertaining to alcohol advertising.

KANGAROO MANAGEMENT PLAN

The Hon. JOHN AJAKA: On 12 August 2015 the Hon. Mark Pearson asked me a question about a kangaroo management plan. The Minister for the Environment has provided the following response:

I am advised as follows:

> There have been no parliamentary inquiries on the sustainable and humane treatment of kangaroos in New South Wales in the past 20 years.
>
> Sustainability of the kangaroo population is the responsibility of both State and Federal governments. Sustainability is ensured through population monitoring and harvesting quotas.
>
> All kangaroos must be harvested in accordance with the National Code of Practice for the Humane Shooting of Kangaroos and Wallabies for Commercial Purposes. The code includes requirements for the humane treatment of joeys.
>
> Export of kangaroo products is a matter for the Australian government.

Questions without notice concluded.

INDEPENDENT COMMISSION AGAINST CORRUPTION AMENDMENT BILL 2015

Second Reading

Debate resumed from an earlier hour.

Reverend the Hon. FRED NILE [3.34 p.m.]: The Christian Democratic Party fully supports the Independent Commission Against Corruption Amendment Bill 2015. We are anxious that the Independent Commission Against Corruption [ICAC] is able to carry out its important duties to discover, expose and take action against corruption in this State. It has been doing that successfully since its inception; however, in the Cunneen investigation it appears that the ICAC did not follow its normal careful procedures. That is why the Inspector of the Independent Commission Against Corruption announced during Committee on the Independent Commission Against Corruption hearings held in Parliament House that, in accordance with his statutory functions, he would continue to consider the matters leading to ICAC's decision to initiate the Cunneen investigation, known as Operation Hale.

The inspector has been provided with additional resources. His reports will be provided to the Committee on the Independent Commission Against Corruption for further review and examination as part of his standing terms of reference. I am pleased that during the public hearing the inspector expressed his concerns about Operation Hale and undertook to investigate the matter. We are looking forward to receiving his report in due course. We hope it will clear up any misapprehensions concerning the Cunneen investigation. The ICAC organisation certainly conducted Operation Hale in an unusual way. I understand that ICAC officers knocked on the door of the Cunneen home and demanded the residents' phones and other items. The officers did not appear to have search warrants and as far as I know the mobile phones have not been returned to Ms Cunneen or her family members.

The Government established an independent panel consisting of the Hon. Murray Gleeson, AC, and Bruce McClintock, SC, to review the jurisdiction of the ICAC following the decision of the High Court

in *Independent Commission Against Corruption v Cunneen* [2015] HCA 14, which interpreted the scope of ICAC's jurisdiction over non-public officials more narrowly than had been understood previously. We supported the Government's decision. We have been provided with a copy of the two-person panel's detailed report entitled "Independent Panel—Review of the Jurisdiction of the Independent Commission Against Corruption". The most important part of the report is the recommendations section. Recommendation 1 provides:

> The Panel recommends that the Act be amended to include within the definition of corrupt conduct in section 8 conduct of any person (whether or not a public official) that impairs or could impair public confidence in public administration and which could involve any of the following matters:
>
> (a) collusive tendering;
>
> (b) fraud in or in relation to applications for licences, permits or clearances under statutes designed to protect health and safety or designed to facilitate the management and commercial exploitation of resources;
>
> (c) dishonestly obtaining or assisting or benefiting from the payment or application of public funds or the disposition of public assets for private advantage;
>
> (d) defrauding the revenue;
>
> (e) fraudulently obtaining or retaining employment as a public official.

The panel members believe that could be done by inserting a new subsection in section 8, necessitating a consequential amendment to section 7 (2). We are now dealing with those recommendations in this legislation. The second recommendation states:

> **Recommendation 2: Section 13**
>
> The Panel recommends that section 13(1) be amended to add to each of paragraphs (e) to (j) a reference to promoting the integrity and good repute of future administration.

The third recommendation says:

> **Recommendation 3: Section 13**
>
> If Parliament is of the view that breaches of the *Parliamentary Electorates and Elections Act 1912*, the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011* should be made the subject of the ICAC's jurisdiction, the Panel recommends that this be done by inserting a subsection in section 13(1) to the following effect:
>
> (ba) to investigate any allegation or complaint that, or any circumstances which in the Commission's opinion imply that, there has been a breach of the *Parliamentary Electorates and Elections Act 1912*, the *Election Funding, Expenditure and Disclosures Act 1981* or the *Lobbying of Government Officials Act 2011*.
>
> This would require a consequential amendment to section 12A.

Many of us have been very concerned about irregularities during elections. The Christian Democratic Party has made complaints to the Electoral Commission, but the Electoral Commission does not have any investigation section—there are no staff at the commission to deal with those complaints and investigate them. For many years we have called for extra funding for the Electoral Commission so that it can

investigate those complaints. They may perhaps be of a lower level of seriousness than the matters that ICAC deals with but they could be dealt with easily by the Electoral Commission if it had the additional funding and the staff.

The solution the panel has recommended is to pass it over to the ICAC to investigate anything to do with electoral fraud. It will be a matter for us to observe how that works out and whether it is the best solution. That is what will happen under this legislation. We do not oppose the bill but we will maintain a watching brief to see how it works in practice. The ICAC may not regard this as a high priority, so one problem could be whether it will allocate investigators to follow up complaints about electoral fraud. The final recommendation, Recommendation 4, states:

> **Recommendation 4: Section 74B**
>
> The Panel recommends that the Act be amended so that the Commission's power to make findings of corrupt conduct may be exercised only in the case of serious corrupt conduct.
>
> This could be achieved by the insertion of a new section 74B(1A) to that effect.

This bill basically puts into effect the panel's recommendations, and we have no problem supporting them. The bill will also ensure that, for the purposes of the Independent Commission Against Corruption Act, individuals seeking to become public officials, such as candidates in elections, may be engaged in corrupt conduct in respect of the proposed future exercise of their functions as a public official even if they do not succeed in being elected or appointed. As I said in my opening remarks, the Inspector of the Independent Commission Against Corruption is now conducting an investigation into Operation Hale—the Cunneen investigation. I, and I assume other members of the House, will be very keen to see his report as to how ICAC justified putting all its resources and staff on the Cunneen investigation in the first place. The Christian Democratic Party supports the bill.

Mr DAVID SHOEBRIDGE [3.43 p.m.], by leave: I have sought leave to make a brief second contribution to debate on the Independent Commission Against Corruption Amendment Bill 2015 to complete the discussion of a matter that will not be addressed in Committee, and I thank the House for granting me leave. The summary of The Greens' position on new section 74B (1A) is that we do not think it is sensible and will move an amendment in Committee to have it deleted. I will also address another matter. Some concern was expressed in the other place about the potential narrowness of the additional definition as to what is corrupt conduct that has been imported by new section 8 (2A) (b) of the Act. Section 8 is the core section that deals with the definition of corrupt conduct. I would appreciate it if the Minister in his reply in this place would confirm the definition that is in the bill or the additional element of the definition in the bill at new section 8 (2A) (b). It reads:

> (2A) Corrupt conduct is also any conduct of any person (whether or not a public official) that impairs, or that could impair, public confidence in public administration and which could involve any of the following matters:
>
> (b) fraud in relation to applications for licences, permits or other authorities under legislation designed to protect health and safety or the environment or designed to facilitate the management and commercial exploitation of resources …

While there was some debate about whether that would extend to planning matters and approvals under the Environmental Planning and Assessment Act and the like, on my reading of it—and The Greens' reading of it in this place—that inclusive definition, which is "fraud in relation to applications for licences, permits or other authorities" under legislation designed to protect the environment, amongst other things, and under legislation designed to "facilitate the management and commercial exploitation of resources", would apply to consents and applications for approvals or planning matters under the Environmental Planning and Assessment Act. Those matters relate to, amongst other things, the environment and the

regulation and management of the environment, and also to the management and commercial exploitation of a resource—in this case, the resource being a finite resource, which is land.

I was hoping that the Minister would clarify on the public record that the Government considers that the proposed expanded definition in new section 8 (2A) (b) will extend to planning approvals and other planning matters under the Environmental Planning and Assessment Act. As we all know, for at least two decades there have been rising concerns about corruption in the area of planning approvals in New South Wales. Obviously any sensible government and any sensible Parliament would want to ensure that the definition of "corruption" under the Independent Commission Against Corruption Act is extended to those matters. Again, I thank the House for allowing me to put that on record.

The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council [3.47 p.m.], in reply: I thank members for their contributions to the debate. In May this year the Government commissioned an independent panel to review the jurisdiction of the Independent Commission Against Corruption [ICAC] in light of the High Court's decision in *Independent Commission Against Corruption v Cunneen*. This bill will implement all the recommendations made by the panel. It will help to ensure that the ICAC is fully equipped to fight corruption and that its powers are targeted most effectively.

This Government is unwavering in its commitment to restoring integrity in public administration. We will not tolerate corruption in New South Wales. To address an issue raised by the Hon. Lynda Voltz during debate on this bill, I am advised that the New South Wales Electoral Commission is currently investigating allegations concerning electoral material distributed in the East Hills electorate. It is not appropriate for me to comment any further on the matter—and, frankly, it was inappropriate for the Hon. Lynda Voltz to comment on it also. I note that last year the Government provided additional funding for the reconstitution of the Electoral Commission, including to support the commission's enhanced enforcement function. The Government will continue to work with the Electoral Commission to ensure that it has the resources necessary to enforce and prosecute breaches of the electoral and lobbying laws.

Mr David Shoebridge asked about new section 8 (2A), which extends the definition of "corrupt conduct" to the conduct of any person, whether or not they are a public official, that could impair public confidence in public administration and which could involve a list of certain matters such as collusive tendering and defrauding the public revenue. New section 8 (2A) adopts the list proposed by the independent panel. As the panel noted in its report:

> Certain kinds of fraudulent conduct, not necessarily involving any actual or potential wrongdoing by a public official, should be treated as corrupt conduct where they impair or could impair confidence in public administration.

The list of matters in new section 8 (2A) reflects the panel's recommendation for the kind of conduct that should fall within the purview of ICAC, even if it does not involve wrongdoing by a public official. I also remind the House that new section 8 (2A) does not operate to exclusively define ICAC's jurisdiction in respect of "corrupt conduct". Sections 8 (1) and 8 (2) remain unchanged by this bill. Following the decision of the High Court in *Independent Commission Against Corruption v Cunneen*, these provisions will allow ICAC to investigate the conduct of public officials when they are exercising public official functions, and to investigate the conduct of any other person if that conduct could adversely affect the probity of the exercise of a public official's functions. New section 8 (2A) extends rather than limits the ICAC's jurisdiction in respect of corrupt conduct. The Government is pleased by and thanks members for their support of the proposals in the bill. 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. Trevor Khan): If there is no objection, the Committee will deal with the bill as a whole. I have one set of amendments before me—namely, The Greens amendments on sheet C2015-078A.

Dr JOHN KAYE [3.53 p.m.], by leave: I move The Greens amendments Nos 1 to 3 on sheet C2015-078A in globo:

No. 1 **Reports of corrupt conduct**

Page 4, schedule 1 [9], lines 24 to 27. Omit all words on those lines.

No. 2 **Reports of corrupt conduct**

Page 7, schedule 1 [15] (proposed section 74BA), lines 22 to 31. Omit all words on those lines.

No. 3 **Reports of corrupt conduct**

Page 8, schedule 1 [16] (proposed clause 39), lines 16 to 20. Omit all words on those lines.

These amendments seek to remove new section 74BA, which limits the capacity of the Independent Commission Against Corruption [ICAC] to make findings of corrupt conduct to cases where that conduct is "serious". As I said before, nothing in my contribution can be construed as being hostile to the idea that the ICAC should focus its resources on those matters that are serious; our concern is that the word "serious" is not defined anywhere in the bill or the Act. It is very clear that the definition of "serious" will be left to the courts. In effect, that will open up the ICAC to years, if not decades, of expensive litigation, which will both tie up its resources and frustrate its findings. It is totally inappropriate to leave a critical matter in important legislation such as this to the courts.

It will mean that every miscreant in New South Wales who is hauled before ICAC will say, "The matter you are accusing me of is not serious", and they will then rush off to the Supreme Court to seek to have the matter struck out. This will put the Supreme Court in the position of being a gatekeeper for the ICAC. That is a dangerous position; it will frustrate the capacity of ICAC to pursue matters of corruption whether or not they are serious. In what I consider to be a philosophically sensible attempt to focus ICAC's resources, it will in effect defocus them. The Greens amendment No. 2 will delete new section 74BA, and amendments Nos 1 and 3 are consequential to that.

This will not mean that ICAC will be required to pursue every single matter. There is still discretion for the ICAC to pursue matters and for it to focus its resources on matters that it considers to be serious. But it will take away the capacity for an individual who is accused of corrupt conduct before ICAC to rush off to court and frustrate the investigation. I have no doubt that the two eminent commissioners had good reasons for wanting ICAC to focus its resources; it should do that. Indeed, the message is very clear to ICAC that it should exercise its discretion so to do. But new section 74BA, as it is written, will not focus but rather squander ICAC's resources. It will not enable ICAC to find corrupt conduct against a greater number of people but rather reduce the number of people it can find against. It is a set of handcuffs that this Parliament would place around the Independent Commission Against Corruption; we should not do so. The Greens amendment No. 2 will delete new section 74BA and leave ICAC free to focus its resources in an appropriate fashion. I commend the amendments to the Committee.

The CHAIR (The Hon. Trevor Khan): Before I call on the next speaker I acknowledge the

presence in the gallery of representatives from the Western Region Academy of Sport. Welcome to the Parliament of New South Wales. I hope you enjoy your time here today.

The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council [3.57 p.m.]: The Government will not support The Greens amendments Nos 1 to 3. The amendments would remove from the bill new section 74BA that would limit the Independent Commission Against Corruption's power to make findings of "corrupt conduct" against an individual to those cases where that conduct is serious, as well as consequential and transitional amendments relating to new section 74BA. The Government does not support the amendments because new section 74BA directly reflects the fourth recommendation of the independent panel.

As the panel explained in its report, the purpose of that recommendation was to ensure "a power which has such obvious capacity to harm is reserved only for cases where the misconduct in question is serious." According to the panel any concern that "construction of the word 'serious' is so wide as to invite judicial review and so encourage challenges to its decisions" is unconvincing. So the panel had anticipated the sorts of amendments proposed by The Greens. The panel noted:

> First, there is nothing inherently objectionable if a citizen questions a questionable decision. Secondly, the problem will only arise if the ICAC makes a finding of corrupt conduct in a case of doubtful seriousness. If it does, the ICAC itself should not have exclusive capacity to resolve the doubt … Put another way, a person who has been the subject of such a finding should have the right to argue that it should not have been made, because there was not, viewed objectively, serious corrupt conduct.

In making its recommendation, the panel also considered whether "serious corrupt conduct" should be defined in relation to both the ICAC's power to make findings of corrupt conduct, which is proposed new section 74BA in the bill, and the existing requirement in section 12A of the Independent Commission Against Corruption Act that the ICAC direct its attention to serious corrupt conduct and systemic corrupt conduct. The panel's conclusion was that "serious corrupt conduct" should not be defined. It believed that such a definition was unnecessary. The Government has accepted the panel's recommendation that "serious corrupt conduct" be left undefined in the bill.

There is a risk that an attempt to define the term may result in inflexibility and create loopholes. For this reason, a prescriptive definition may in fact be more susceptible to legal challenge than the undefined term. If any further clarification is required of what "serious corrupt conduct" means, it is most appropriate that this be developed by the courts. I note that, of course, the restriction to matters of serious corrupt conduct applies only to the ICAC's power to make findings of corrupt conduct. This limitation does not, for example, limit the ICAC's power to investigate corrupt conduct or to make other findings.

The Hon. ADAM SEARLE (Leader of the Opposition) [4.02 p.m.]: The Opposition does not support The Greens amendments. The amendments seek to remove the provisions in the bill that limit the capacity of the ICAC to make corruption findings only in circumstances where there is serious corrupt conduct. The Greens have described that as a handcuff. The Opposition does not agree because although it is a limitation on the power of the ICAC as to how it can describe its findings, it is not such a big change as might first be imagined. Section 12A of the Independent Commission Against Corruption Act states:

> In exercising its functions, the Commission is, as far as practicable, to direct its attention to serious corrupt conduct and systemic corrupt conduct and is to take into account the responsibility and role other public authorities and public officials have in the prevention of corrupt conduct.

As can be seen, the institution is already charged with focusing on serious corrupt conduct. However, that provision is aspirational. It goes to its judgement. The provisions of this bill make it enforceable by limiting

the circumstances in which the ICAC can make findings of corruption against persons and describe it in that way. I refer to proposed new section 74BA (2) in schedule 1 [15] to the bill. As the Minister indicated, the commission is not precluded from investigating allegations. Even if the circumstances are not such that they can be described as "serious corrupt conduct", the ICAC can still make findings, for example, that the conduct fell short of the standards that would be expected of public officials or those charged with public responsibility. It just cannot call them corruption findings. It reserves corruption findings for cases that are serious.

What is the flip side? If this restriction were not in place, it would be acceptable for the ICAC to make findings of corruption in cases that were trivial and unimportant. That cannot be right. The Opposition does not have a problem with the restriction to corruption findings in cases said to be "serious". We do accept that there is imprecision in the term. It is an ordinary English word and its meaning is susceptible to interpretation. But at some point we have to trust the officials charged with conducting these important public duties. Where there is a real dispute it will end up in court. It is refreshing that the Government is willing to trust the courts with these things. It is an interesting experience.

As an example, I refer to the "Savings, transitional and other provisions". There is an explicit preservation and referral of Operation Spicer and Operation Credo. They are taken to have been referred by the Electoral Commission to the ICAC because the ICAC is already seized with those matters. If we are talking about a deliberate breaching or undermining of the integrity of our electoral laws, if in an inquiry such findings were made, that of course would be a serious matter going to the integrity of the electoral process. Such matters could not be trivial. If we are talking about an oversight, a receipt not properly accounted for or something incidental, that is one thing; but where there are systematic or organised breaches by people of the electoral laws, even if the money involved is relatively small, that would always be a serious matter because we are talking about the machinery by which our representative democracy chooses its representatives.

I do not think we need to be concerned that the insertion of the word "serious" is creating uncertainty to the point where the institution will not be able to discharge its duties properly and is restricting the operations of the ICAC to only the worst cases. "Serious" does not set the bar so high as to be unreasonable or, looking back across the history of the commission, lead the casual observer to say, "This new terminology will wipe out a significant proportion of past investigations," as the High Court's ruling in the Cunneen matter would have done. I do not believe that applies here. For those reasons, the Opposition does not cavil with this part of the bill and does not support The Greens amendments.

The Opposition notes that this is consistent with the recommendations of the panel constituted by the former Chief Justice of this State and former Chief Justice of this nation and a well-regarded senior counsel who conducted the statutory review of this legislation a decade ago. Parliaments can always agree to disagree and form their own judgement. But on this occasion, given the rationale as spelt out in the panel's recommendations, the Opposition does not seek to depart from those recommendations as embodied in this bill. We think the balance is right. Obviously, if there is a problem or difficulty the Parliament can attend to the matter. We think the bill is balanced and appropriate. We do not think it will lead to the mischief identified by the mover of the amendments and we will not be supporting the amendments. The Opposition will support the bill as it stands.

Reverend the Hon. FRED NILE [4.08 p.m.]: The Christian Democratic Party agrees with the Government's position on the legislation as it is and the Opposition's concurrence. New section 74BA (2), which The Greens want removed, states:

> (2) The Commission is not precluded by this section from including in any such report a finding or opinion about any conduct …

Subsection (2) does not stop the commission from making a finding or expressing an opinion. However,

with the emphasis on "serious corrupt conduct", the ICAC cannot describe that conduct as corrupt conduct. That is the only limitation. As the Hon. Adam Searle said, as a safeguard, if there is any need for further amendments after the legislation has been enacted, the parliamentary Committee on the Independent Commission Against Corruption could conduct a public hearing with the commissioner and staff and ask them about the impact of this legislation and its amendments on the commission. If there needs to be further refinement, it can be done at that stage. At this stage, I believe we should follow the very highly esteemed panel's recommendations. The Christian Democratic Party supports the bill in its current state.

Mr DAVID SHOEBRIDGE [4.10 p.m.]: I have noted the contributions from the Government, the Opposition and Reverend the Hon. Fred Nile on the proposed amendments. I very much endorse the contribution made by my colleague Dr John Kaye on this matter. In one of the contributions, a member of the Labor Opposition said that at some point we have to trust officials. That is the nub of the matter. The insertion of new section 74BA in the bill means that the Government and the Opposition do not trust this or future commissioners to make the right judgement call on what is or is not serious corruption. Because, as the Minister pointed out in his contribution, we already have section 12A, which was inserted into the Act at some point after its creation. Section 12A reads:

> In exercising its functions, the Commission is, as far as practicable, to direct its attention to serious corrupt conduct and systemic corrupt conduct and is to take into account the responsibility and role other public authorities and public officials have in the prevention of corrupt conduct.

So there is already a very clear direction from this Parliament, which was inserted after the Act was originally passed, for the commission to focus on serious corrupt conduct. There will be occasions when politicians disagree with the commissioner's call about what is or is not serious corrupt conduct, and there will be occasions when the courts and reasonable people disagree as to whether something is or is not serious corrupt conduct. For example, some reasonable people might say that serious corrupt conduct is the deliberate falsification of reports to enable a politician to have entitlements paid to a staff member who does not otherwise receive such entitlements. Other reasonable people may disagree.

That is a concrete case from the past that was before the ICAC. There was genuine political disagreement about whether that was or was not serious corruption which should be the subject of investigation by the ICAC. It is good to have public debate about such matters. It is not sensible to allow the courts to intervene and prevent the ICAC from making findings in such cases. This is not just an academic debate about whether a report says that a certain citizen engaged in corrupt conduct or that a certain citizen engaged in conduct that was of a standard lesser than the standard expected from a public official. There are very specific statutory consequences from a finding of corrupt conduct, particularly if the person is a public servant. The consequences are quite serious, including suspension, once a finding of corrupt conduct is made.

If we are going to protect the integrity of our public service and our public institutions, then we need to err on the side of caution in allowing commissioners the discretion to make the call on what is or is not serious corruption about which the ICAC should be investigating and making findings on. The selection of a commissioner is not just the gift of the Executive of the day; the selection of a commissioner is subject to the concurrence of the committee. There is parliamentary oversight as to who is appointed and whether or not a commissioner has the confidence of the Parliament. Once we appoint a commissioner who has the confidence of the Parliament, it is wrong to then allow the courts to repeatedly second-guess the judgement call of the commissioner about what is or is not serious corrupt conduct.

On many occasions it is absolutely appropriate to have clear review rights sent off to the courts for certain legal outcomes. But if we allow the courts to be second-guessing the commissioner about what is or is not serious corrupt conduct, we will be tying the ICAC up in knots. It will not just be at the end of an inquiry that we will see a challenge or after a report is tabled. Almost certainly during the process, if it

becomes apparent to an individual who is the subject of an investigation by the ICAC that they may be the subject of a finding of corruption—whether by way of procedural fairness the ICAC has given them notice that it is contemplating the making of a negative finding—straightaway they will go to the Supreme Court for a judgement on what is or is not serious corrupt conduct.

If one side or the other is dissatisfied with the judge's determination in the first instance, then the Court of Appeal will make a decision. If they are dissatisfied with the Court of Appeal's decision, they can bounce it up to the High Court. And an essential corruption investigation by the ICAC, with findings and recommendations that will stop and prevent corruption going forward, will be delayed for months or years while the legal process grinds its way through. Of course, that will mean a substantial cost to the ICAC from its limited budget in defending or appearing in those matters as the contradictor, and it will mean a substantial cost to government if it is the contradictor through the Crown. Fundamentally it will mean that the ICAC will take a very conservative approach to taking on an investigation. With the inclusion of new section 74BA, whether to proceed to investigation and to a finding will be a much more conservative decision by the ICAC, and that will not be for the good of corruption prevention in New South Wales.

I repeat, and as my colleague Dr John Kaye said in his contribution, The Greens fundamentally believe that the direction given to the ICAC in section 12A to focus on serious corruption is the right direction to be given. The Parliament has clearly expressed its intention, but we do not agree with this absolute legal constraint that has been proposed about findings that are to be made by the ICAC. The proposition that was put in opposition to this amendment that it is not right that there should be a finding about corruption unless the corruption is serious, because otherwise that would be unfair to the person who is the subject of a corruption finding, I believe is looking at the matter through the wrong end of the glass. The primary interest should be protecting the public interest. If it is a public official who has engaged in corruption and there is evidence to warrant a finding of corruption, we should not be crying crocodile tears about a finding of corruption being recorded simply because we do not think it is serious corruption.

I have one other substantial concern with the proposed limitation in section 74BA, that is, that the commission is not authorised to include in a report a finding or opinion that a specified person is guilty of corrupt conduct unless the conduct is serious corrupt conduct. What if there is a pattern of behaviour? What if there is a pattern of not just one instance but of conduct on five separate occasions? Individually the conduct may not amount to serious corrupt conduct. A finding would have to be made on those individual occasions but that finding would not, of itself, be a finding as to serious corrupt conduct. Would the Independent Commission Against Corruption be permitted to aggregate those matters and say that whilst the individual conduct complained of does not amount to serious corrupt conduct that as an aggregate it can be found to be serious corrupt conduct? Does the Government intend that to be open to the ICAC and, if so, will the Government say so on the record? Section 74BA is ambiguous. I would have thought that we would not want to be limiting the ICAC in those circumstances.

The Hon. Duncan Gay: We are not. That is why we are not answering that question.

Mr DAVID SHOEBRIDGE: I note the interjection from the Government, "That is why we are not answering that question". It is a strange combination of a non-answer and an actual answer to the question. It is almost as though the Government, in what is otherwise a good bill, is deliberately attaching a landmine to the ICAC, a landmine that future commissioners are going to have to tread carefully around. If they go anywhere near it, it will blow up the jurisdiction of the ICAC and seriously derail the capacity of the ICAC to engage in the robust corruption findings that I think every citizen of New South Wales appreciates. I commend the amendments to the Committee.

The Hon. ADAM SEARLE (Leader of the Opposition) [4.21 p.m.]: The Opposition does not resile from the proposition that we have to trust the officials who have conduct of these matters. We do now and we will continue to do so. The uncertainty complained of and said to give rise to these amendments already exists. There is already the potential for litigation, and it has happened. This will not increase that

risk. It will do what it can to reduce that risk. It is important for honourable members to bear in mind that this is not a matter that is susceptible to reduction to a mathematical or verbal formula. We are dealing with conduct, whether an instant case or a pattern of behaviour, that calls for judgement to be made in connection with given facts.

Dr JOHN KAYE [4.22 p.m.]: The Leader of the Opposition says, and I paraphrase, that we have to trust public officials, we have to trust the commissioner. I totally agree with him. That is precisely why the proposed section should not be in the Act because it takes away from the commissioner the capacity to determine what matters he or she will pursue and what matters he or she will hand over because they are judged to be serious. It handcuffs the commissioner directly to the court and leaves the commissioner tied to the whims of the court. It does not allow the commissioner the discretion that is already in section 12A, which makes clear what we want but does not tie the commissioner to a narrow definition.

The Leader of the Government said that we should not take away review rights. We are not taking away review rights by seeking to take away the offending section. Instead, we are taking away an escape hatch that will allow miscreants to delay and frustrate the ICAC's action. Section 114A of the Independent Commission Against Corruption Act and section 70 of the Government Sector Employment Act both prescribe actions that come out of findings of corrupt conduct against public officials. Section 114A relates to a dismissal whereas section 70 of the Government Sector Employment Act relates to suspension once a finding has been made, subject to an investigation by the head of a department. It is clear that taking away the capacity of the ICAC to find corrupt conduct against public sector officials will take away the capacity to discipline those officials. This is a narrowing of the ICAC's capacity and it is an over-reaction to the Cunneen case. It is entirely unnecessary. It will be expensive and I confidently predict that we will be back in this Chamber repealing section 74BA in the near future.

Question—That The Greens amendments Nos 1 to 3 [C2015-078A] be agreed to—put.

The Committee divided.

Ayes, 5

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

Noes, 32

Mr Ajaka
Mr Amato
Mr Blair
Mr Borsak
Mr Brown
Mr Colless
Ms Cotsis
Ms Cusack
Mr Donnelly
Mr Farlow
Mr Gay
Mr Green
Mrs Houssos
Mrs Maclaren-Jones
Mr Mallard
Mr Mason-Cox
Mrs Mitchell
Mr Mookhey
Mr Moselmane
Reverend Nile
Mr Pearce
Mr Pearson
Mr Primrose
Mr Searle
Mr Secord
Ms Sharpe
Mrs Taylor
Mr Veitch
Ms Voltz
Mr Wong
Tellers,
Mr Franklin
Dr Phelps

Question resolved in the negative.

The Greens amendments Nos 1 to 3 [C2015-078A] 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. Duncan Gay agreed to:

That the report be adopted.

Report adopted.

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.

CHILD PROTECTION LEGISLATION AMENDMENT BILL 2015

Second Reading

The Hon. SARAH MITCHELL (Parliamentary Secretary) [4.36 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

I am pleased to introduce the Child Protection Legislation Amendment Bill 2015. I indicate at the outset that the Government will be moving amendments to this bill. I congratulate the Minister for Family and Community Services, and Minister for Social Housing on these amendments, which are significant improvements to the working with children system in New South Wales. These amendments reflect this Government's strong approach to providing greater protection for children and responding to recommendations by the Royal Commission into Institutional Responses to Child Sexual Abuse. As members are aware, the royal commission conducted a comprehensive consultative process about the Working With Children Check around Australia and we now have the benefit of its report.

The commission recommended that more consistent standards in relation to the Working With Children Check be adopted by all States and Territories. This included a key recommendation about limiting review rights for certain people with serious convictions. This Government is pleased to be taking the lead in this regard. New South Wales is the first State to be implementing the royal commission's important recommendation. We are adopting this recommendation to exclude appeal rights for people who have adult convictions for indecent or sexual assault of a child, child pornography related offences

and incest where the victim is a child.

The period of time that such a person will not be able to have rights of review will depend on the sentence or order received. If the person has received a custodial sentence for any of those offences they will be permanently excluded from seeking review. If, on the other hand, they are subject to a control order—like a good behaviour bond or an intensive correction order—they will be excluded from seeking review for the duration of that order. It is widely accepted that people who commit serious sexual or violent offences against children should not be cleared to work with children. The seriousness of these offences and what they represent to children's ongoing safety and protection in the community provides strong justification for this approach. This recommendation is squarely in keeping with the royal commission's proposed standard for all of Australia.

Members would also be aware that the NSW Children's Guardian is responsible for conducting risk assessments for applicants who have concerning records. The risk assessment process is comprehensive and requires information from a range of agencies and the applicant themselves. In making determinations regarding potential risk to children, there are occasions where the Children's Guardian would be assisted by specialist guidance. To this end, an expert advisory panel will be appointed to support the Guardian in making these sometimes challenging decisions that could affect people's future employment prospects. Experts such as forensic psychologists, psychiatrists and mental health specialists will constitute the panel and, where required, will help provide a high level of informed, professional input into this process. Guidance will be sought as and when required and any reports or advice provided will also be shared with the New South Wales Civil and Administrative Tribunal [NCAT], should a barred person appeal.

Finally, to better reflect community expectations and to apply community standards to the issues at hand, we propose that both the Children's Guardian and NCAT apply an objective "reasonable person" and a "public interest" test when making their respective determinations. This is similar to the test under the Victorian Working with Children legislation. The test requires that the decision maker is satisfied that a reasonable person would allow his or her own child to have direct contact with the applicant without any supervision. Further, the decision maker must be satisfied that in all the circumstances, it is in the public interest to make the determination. This bill represents the Government's continued commitment to supporting vulnerable children by tightening and strengthening the legislative frameworks and systems that underpin their safety and wellbeing. I seek leave to incorporate the remainder of my second reading speech in *Hansard*.

Leave granted.

The bill responds to serious issues highlighted in the first hearing of the Royal Commission into Institutional Responses to Child Sexual Abuse and builds on the Government's Safe Home for Life reforms, which aim to keep every child in a permanent and stable home for life.

These important amendments will improve the way that carers of children living in out-of-home care are assessed, authorised and monitored. They will provide important checks and balances within the out-of-home care system to the non-government organisations that care for the most vulnerable children in New South Wales. The bill also amends the child protection legislation to enhance the efficiency and effectiveness of the new Working With Children Check online system, following its first 18 months of operation.

Of course government cannot do the important work of safeguarding the wellbeing of children without the collaboration and cooperation of partner agencies. In developing this bill, Government and non-government agencies were extensively consulted; and they support the amendments. It is anticipated that these amendments will also have bipartisan support. The reforms in the bill make various amendments to strengthen the out-of-home care system by amending the Adoption Act 2000 and the Children and Young Persons (Care and Protection) Act 1998.

Under the changes, the Secretary of the Department of Family and Community Services, or the principal officer of a non-government accredited adoption service provider, can help provide that certainty. They can invite an authorised carer of a child in out-of-home care to submit an application to adopt the child. Currently this may only be done by the secretary. The amendment should help to improve the processes and timeliness for adopting children to provide them with long-term stability of care. The Government also wants to ensure that children in out-of-home care are cared for by people who have gone through significant background scrutiny and background checking.

The bill allows for all carers, regardless of their type or status, to be subject to the same rigorous probity checks. All current and prospective adoptive parents, guardians and authorised carers will also be required to notify their authorising body if any adult household member over the age of 18 years is residing on their property for three weeks or more. The bill also permits any person to provide information about prospective adoptive parents, authorised carers, carer applicants, guardians or any person residing at the same property as these people.

The information can be provided to the principal officer of an accredited adoption provider, a designated agency or the Secretary of the Department of Family and Community Services, as the case may be. The information may be used to determine the suitability of a person for the relevant role, and the provider is protected from liability if the information was given in good faith. The amendments affect both adoption and out-of-home care services and aim to protect children and young people within the homes where they are placed.

Members on both sides of this House are aware of the tragic outcomes for children where adequate protections have not been put in place to safeguard their wellbeing. Provisions in this bill represent the Government's response to issues highlighted in the first hearing of the Royal Commission into Institutional Responses to Child Sexual Abuse. The hearing focused on the actions of Steven Larkins as principal officer of the Hunter Aboriginal Children's Services Corporation. At the time of Mr Larkins' arrest for child pornography charges in 2011, he was caring for a young person in out-of-home care within his own home residence. He also had parental responsibility for a number of other children and young people placed with the Hunter Aboriginal Children's Services Corporation. However, he had not been subject to any carer assessment.

The Children's Court had granted Mr Larkins parental responsibility for a number of children and young people. This was in keeping with past practice where the Children's Court directly allocated parental responsibility to specialist Aboriginal out-of-home care agencies or their principal officers. This bill seeks to redress the governance problems of principal officers providing out-of-home care that were identified in the Larkins matter. The definition of the principal officer role of a designated or registered agency has been made consistent with the Adoption Act 2000. Accordingly, the role of principal officer is clearly defined to mean the person who has the overall supervision of the agency's arrangements for providing out-of-home care.

This bill prohibits principal officers of non-government designated agencies from caring for children from their own agency in their own home—except where their home is also a residential service. The Children's Court is similarly prevented from granting parental responsibility to an organisation or to principal officers of non-government designated agencies. These changes establish transparency and accountability so those in powerful positions are not able to then abuse those positions of trust with the young people in their agency's care. Further, both the principal officer and the agency will now be held responsible for the protection of children and young people in their care.

The bill provides that anything done by or with the approval of a principal officer of an accredited

adoption service provider or designated or registered agency is taken to be done by the relevant agency. This is an important distinction between previous legislative arrangements and what we are proposing to the House today. This change addresses the governance concerns arising from principal officers providing care without being subject to standard agency assessment and supervision arrangements. It also strengthens the accountability of out-of-home care non-government providers and provides significant penalty provisions for contravention.

The first hearing of the royal commission highlighted the critical importance of good governance in agencies that provide out-of-home care services. It also highlighted the role of agencies in recruiting suitable carers to provide authorised care to some of the most vulnerable children in New South Wales. This is especially so where the designated agency with responsibility for children has concerns about a carer's suitability to care for those children.

The industrial relations system already recognises that failure to appoint a person to a position is not generally a matter capable of review. To bring the child protection system in line with the industrial relations system, changes will be made in relation to the NSW Civil and Administrative Tribunal review rights. Consequently, a refusal to authorise an applicant as an authorised carer would no longer be reviewable by the tribunal. Current review arrangements will still be maintained in relation to existing rights at law if there are grounds for discrimination.

Applicants will also be able to make a complaint about carer authorisation decisions to the New South Wales Ombudsman through its community services complaints jurisdiction. This is clarified through an amendment to the Community Services (Complaints, Reviews and Monitoring) Act 1993. Additionally, the bill provides for the cancellation of a carer's authority where they have not cared for children for a significant and reasonable period of time. This will ensure agencies maintain accurate records of carers who are actively providing care to children and young people.

Supporting out-of-home care agencies to recruit appropriate carers is a priority for the New South Wales Government. The NSW Children's Guardian is currently establishing a register of people who are authorised, or have applied to be authorised, as carers of children in out-of-home care. The purpose of the carers register is to be certain that people who want to care for our most vulnerable children—and their household members—are subject to rigorous screening and assessment checks on their suitability.

The register will enable the sharing of information between the different agencies to help prevent unsuitable carers moving from one agency to another agency in New South Wales. To help reduce the likelihood of unsuitable carers simply moving across State borders, the bill also strengthens information sharing arrangements between New South Wales and assessing bodies in other jurisdictions. The exchange may only be in accordance with protocols made by the Minister, in consultation with the New South Wales Privacy Commissioner.

The bill also expands the Children and Young Persons (Care and Protection) Act 1998 to the sharing of carer and household information between agencies. The amendment permits the Children's Guardian to disclose information to the Secretary of the Department of Family and Community Services for the purpose of the secretary's functions relating to children in need of care and protection. The information that may be disclosed is information about persons that the Children's Guardian reasonably believes is or was an authorised carer, carer applicant, prospective adoptive parent, a guardian or prospective guardian, or adult residing on the same property. With the transition of out-of-home care services to the non-government sector, these reforms offer an additional layer of protection for children while securing greater accountability from the service providers.

Another safeguard for strengthening the child protection framework for children in care concerns the NSW Ombudsman, which oversees agency investigations of reportable allegations involving

carers. An amendment to the Ombudsman Act clarifies the scope of the Ombudsman's oversight role in relation to these investigations and extends it to include adults who live with authorised carers for three weeks or more. The bill will allow agencies to provide information and advice to the child victims, parents or carers on the progress and outcome of these investigations. It will also be extended to alleged victims with disabilities and/or their relevant support persons. The proposed victims support amendments will override New South Wales and Commonwealth privacy issues so that persons providing advice are provided with civil protections for disclosure of information. That approach is also more consistent with the approach to informing complainants of police investigations. The Ombudsman will issue guidance as to appropriate disclosure arrangements.

I am pleased to highlight another key reform in the Government's child protection framework that focuses on the Working With Children Check. The new online system has now been in operation for 18 months and the community has embraced the Working With Children Check with great enthusiasm. Since the start of the new system in June 2013 there have been more than 720,000 applications processed for a Working With Children Check either as a paid or volunteer worker. Registering as a child-related employer and verifying that the Working With Children Check number of a paid or voluntary worker has been cleared is an important part of being a child-safe organisation.

So far nearly 600 applicants have been barred from working with children in New South Wales. Approximately 100 more have a current status of interim bar, pending further risk assessment investigations by the Office of the Children's Guardian. One of the strengths of the new online verification system is that it checks continuously for new relevant records that could change a person's status from a clearance to a bar on working with children. By registering as an employer and verifying an employee's status, the Office of the Children's Guardian can ensure relevant employers are notified of the bar and take action to remove the barred employee from child-related employment.

The bill amends the Child Protection (Working with Children) Act 2012 to tighten existing requirements for employers. They will be required to not only ensure employees have a current Working With Children Check application or clearance but also verify the employee's status via the Working With Children Check Register. The legislative requirements on employers are not onerous, and the Working With Children Check has been established to assist them to select appropriate people for child-related roles. However, the amendment will help employers to understand and comply with their obligation to verify the status of their paid and unpaid employees online. If they do not register and verify, employers will run the great risk of employing someone who cannot work in a child-related role. They will also run the risk of being audited by the Office of the Children's Guardian as part of their ongoing Working With Children Check compliance program.

The bill also extends the employer verification requirements for prospective adoptive parents, prospective guardians, and adult persons who reside with them by prescribing certain agencies as the responsible agency for verification purposes. Further, the bill clarifies the meaning of "residing" as it relates to adult household members for the purpose of the Child Protection (Working with Children) Act and applies it across the adoption, care and protection, and Ombudsman legislation. The bill changes the terminology from "reside at home" to "reside at a property" to provide greater protection for children without limiting the definition of what constitutes a home environment for them.

In response to issues highlighted by the royal commission, the bill also focuses on the roles and responsibilities of a governing body of an organisation and its principal officers. These amendments will ensure that a person appointed on a permanent basis to a key position that involves child-related work must have a Working With Children Check clearance or current

application for a clearance. Key positions are defined as: the chief executive officer; the principal officer of either a statutory or voluntary out-of-home care non-government agency or an accredited adoption provider; and any other position that may be prescribed by regulation. Failure to comply with that requirement is an offence. The amendment reflects community expectations that principal officers need to be held to the same child protection compliance standards as other employees. The reform will also help to strengthen public confidence in the governance of bodies that are exercising critical functions related to vulnerable children and young people.

Another improvement to the Working With Children Check is reducing the time frame for applicants to provide information to the Office of the Children's Guardian from six months to three months. That requirement will affect only those applicants who are being risk assessed. By reducing the time frame in which they are required to provide supporting information, the Office of the Children's Guardian will be able to resolve these applications in a timely and efficient manner.

There are some instances in which an applicant knows the risk assessment outcome is likely to result in a bar, so they withdraw their current application. The bill will restrict the capacity for an applicant to withdraw their application for a Working With Children Check clearance by requiring the consent of the Children's Guardian. The Children's Guardian will now have the option to withhold consent where there is information to suggest the applicant poses a risk to the safety of children. It provides the opportunity for the Children's Guardian to complete the Working With Children Check application and follow through with a thorough risk assessment and possibly a bar.

The bill also clarifies that interim bars are enforceable against adult household members of authorised carers or home-based education and care services or where a family day care service is provided. Again, that is an important clarification for protecting children from those who have access to them in a home environment. Families and agencies who use the services of people authorised to provide home-based care and education services will also be reassured with the additional safeguards in those situations.

We know that keeping children and young people safe is a shared responsibility that requires a multi-faceted and comprehensive approach by the whole community. A Working With Children Check can be an important tool in helping to protect children, but it cannot identify people who have not been caught previously or are yet to offend. Research and history demonstrates that managing potential risks in the environments where children spend their time is the most effective way to keep them safe.

Child-safe environments are those where paid staff, volunteers, parents and children themselves know what conduct is acceptable and what to do if conduct is not acceptable. This bill helps to improve the legislative frameworks that encourage organisations and individuals to be safer for the children in their care. It reflects the Government's ongoing commitment to protect our children and young people, particularly those most vulnerable in our society. I commend this bill to the House.

The Hon. SOPHIE COTSIS [4.39 p.m.]: I lead for the Opposition in debate on the Child Protection Legislation Amendment Bill 2015. I acknowledge the shadow Minister for Family and Community Services, Tania Mihailuk, for her work and thank Minister Hazzard for listening to her concerns about the bill in the other place. I acknowledge the people involved in the formation of the bill and in drafting the amendments to make it better and stronger. I also acknowledge the *Sunday Telegraph* for its story on 7 June regarding issues I will speak about shortly. I state at the outset that the Opposition will not oppose the bill and will not move its amendment. The Opposition will support the Government amendments in this place. The bill amends several pieces of legislation that relate to the State's child protection framework. Specifically, the bill will amend the Adoption Act 2000, the Child Protection (Working with Children) Act 2012, the Children and Young Persons (Care and Protection) Act 1998, the

Community Services (Complaints, Reviews and Monitoring) Act 1993 and the Ombudsman Act 1974.

I believe that governments have no higher duty than to protect children. Labor has a distinguished record of strengthening child protection legislation in New South Wales. In 1998 the Carr Labor Government introduced the Working With Children Check—the first such scheme introduced in Australia. Since then most Australian jurisdictions have introduced similar working with children checks. In 2009 the Rees Labor Government introduced the Keep Them Safe reforms in response to recommendations made by Justice Wood following the Special Commission of Inquiry into Child Protection Services in New South Wales. The reforms have placed a new emphasis on building a shared approach between families, non-government groups and government to focus on improving the safety and wellbeing of children and young people in New South Wales. The bill will amend the Child Protection (Working with Children) Act 2012, the Ombudsman Act 1974 and the Community Services (Complaints, Reviews and Monitoring) Act 1993 to better regulate the framework of the Working With Children Check.

I will now briefly address certain aspects of the bill in detail. Schedule 2 to the bill will insert new sections 9A and 9B into the Child Protection (Working with Children) Act 2012. The new sections will require the governing body of an organisation to ensure that a person is not appointed on a permanent basis to a key position in that organisation that is involved in child-related work unless the person is the holder of a clearance or has a current application for a clearance. The new sections will also require an employer to verify an employee's Working With Children Check status on the register, with the verification to occur before the worker commences child-related work and then again after five years. Schedule 2 to the bill will amend section 16 of the Child Protection (Working with Children) Act 2012 to reduce the time frame for Working With Children Check applicants to provide further information to the Children's Guardian from six months to three months. Schedule 2 to the bill will also amend section 13 of the Child Protection (Working with Children) Act 2012 so that the consent of the Children's Guardian is required for an applicant to withdraw their application for a Working With Children Check clearance.

Schedule 5 to the bill will amend the Ombudsman Act 1974 to ensure that an adult residing in the same home as an authorised carer is also subject to the Ombudsman's reportable conduct framework. The amendments will also permit information-sharing agreements between child protection agencies and victims of reportable allegations. The bill will make several amendments to the Adoption Act 2000 and Children and Young Persons (Care and Protection) Act 1998 with respect to the out-of-home care system in New South Wales. Schedule 3 to the bill will create a new definition of "principal officer" in the Children and Young Persons (Care and Protection) Act 1998 so that a designated person within an agency has the overall supervision of an agency's arrangements for providing voluntary out-of-home care. Schedule 3 to the bill will also amend section 79 of the Children and Young Persons (Care and Protection) Act 1998 to prevent the Children's Court from allocating any aspect of parental responsibility to an organisation or to the principal officer of a designated agency.

Schedule 1 to the bill proposes to amend the Adoption Act 2000 to enable the Secretary of the Department of Family and Community Services or the principal officer of an accredited adoption service to invite an authorised carer of a child who is in out-of-home care to submit an application to adopt a child. Schedule 1 to the bill will also allow any person to provide information to the principal officer of an accredited adoption service provider or the Secretary of the Department of Family and Community Services in order to better determine the suitability of a person to adopt a child. Labor supports these reforms because we believe in keeping children safe. It is also important to note that the Children's Guardian sought these amendments to the respective bills. Strengthening child protection measures is a priority for New South Wales Labor, especially in ensuring that the Working With Children Check continues to act as the important safeguard to prevent unsuitable individuals from obtaining paid or unpaid child-related work.

As stated in section 18 of the Child Protection (Working with Children) Act 2012, the Children's Guardian must not grant a clearance to certain disqualified persons who have committed offences that appear in schedule 2 to the Act. Under section 14 of that Act, a person who has previously committed an

offence under schedule 1 is subject to a risk assessment by the Children's Guardian prior to the determination of their application for a Working With Children Check clearance. However, under section 26 of the Child Protection (Working with Children) Act 2012, the only persons who are prevented from appealing to the NSW Civil and Administrative Tribunal [NCAT] against a decision to refuse a clearance for working with children are those persons who have previously been convicted of the murder of a child, or those persons whose application for a clearance has been wholly or partly refused on the grounds that the person has been charged with an offence and the proceedings related to that offence have not been fully determined.

According to the 2013-14 annual report of the Office of the Children's Guardian, more than 420,000 individuals had made an application for a Working With Children Check. Only 203 individuals were refused a clearance in that year. Of those 203 individuals who were refused a clearance, 143 were barred as they had committed an automatic disqualifying offence within schedule 2 to the Child Protection (Working with Children) Act, including for certain serious sexual offences. The annual report of the Office of the Children's Guardian stated that in total 83 barred applicants appealed to NCAT to obtain a clearance. Of the 44 matters that NCAT heard in 2013-14 a total of 16 clearances were subsequently granted. Those statistics were recently highlighted in the 7 June 2015 *Sunday Telegraph* article that I mentioned earlier. In the article Yoni Bashan reported several cases in which individuals were able to appeal to NCAT for an administrative review to overturn the Children's Guardian decision to bar their Working With Children Check application.

Shadow Minister Tania Mihailuk put three of those cases on record in the other place and I will do the same here. A 72-year-old swimming coach and Catholic priest's assistant, currently the vice-president of a swimming club, obtained a clearance on appeal after fondling two 13-year-old boys in a public toilet in 1963. In summary, NCAT said there had been no subsequent conviction so the risk was no higher than for other men his age and it overturned that decision. Another example is a truck driver with previous convictions of assaulting police and resisting arrest and for raping a 22-year-old woman in 1989. The NCAT decision, in summary, was that his conduct was reprehensible but that the victim was not a child and that the truck driver had expressed remorse and was unlikely to reoffend. NCAT therefore overturned the Children's Guardian decision.

Another example is the case of a 22-year-old man who sexually assaulted a 17-year-old girl in 1996 and who had also previously assaulted a 14-year-old girl. In its decision NCAT summarised that there had been no other serious offences. NCAT was unable to conclude that he had stopped drinking but he had not come to police attention since 1997 and so it overturned the decision. At the time the cases were brought to the attention of the media, the Leader of the Opposition and the shadow Minister for Family and Community Services, Tania Mihailuk, called on the Minister for Family and Community Services to broaden the list of offences that would preclude certain individuals from requesting a review of the Children's Guardian decision to bar a working with children clearance—especially with regard to individuals who have been convicted of sexual offences against children or convicted of murder or serious sexual offences, irrespective of the victim's age.

I note that when this bill came before the Legislative Assembly, the Government introduced amendments to its own bill to achieve exactly what Labor called for the Government to do. I commend the shadow Minister and the Leader of the Opposition, and I acknowledge Minister Hazzard for listening. I think it is commendable that he listened, took on board the views of Labor and the shadow Minister, and introduced the amendments to his bill. I note that the Government will move further amendments in this place, which the Opposition will support. I will not be moving my amendment, because the amendments the Government is introducing will cover that area. As I stated at the outset—I do not think anyone would disagree with me as this is something we all believe—nothing is more important than keeping children safe. We do not oppose this bill. We welcome the Government's further amendments.

The Hon. BEN FRANKLIN [4.51 p.m.]: I shall speak briefly to the Child Protection Legislation Amendment Bill 2015, a bill which I strongly support. I do so as a passionate advocate for children and

their right to grow and learn about our world with the wide-eyed optimism and excitement that should be the hallmark of all childhoods. I do so as the son of two parents who gave their working lives to public education, as someone who spent some years teaching in two schools, and as a proud supporter of the United Nations Children's Fund [UNICEF]. I served briefly as its national director of communication and advocacy. I do so a day after parliamentarians from across the political spectrum united in our shared determination to do all we possibly can to help bring William Tyrrell home.

This is an important bill that responds to issues raised in the Royal Commission into Institutional Responses to Child Sexual Abuse. It strengthens protections for children in out-of-home care in non-government providers and streamlines and improves aspects of the Working With Children Check. Like me, the people of New South Wales were shocked by the findings of this royal commission. Several regional communities were utterly devastated to hear that institutionalised child abuse could happen right under their noses for so long. It is clear that there needs to be oversight of out-of-home care to make supervisors accountable. The Working With Children Check, which was introduced by this Government in 2013, also needs to be strengthened and made more workable. It needs to be enforced by employers as a requirement.

This bill strengthens the out-of-home care system by amending the Adoption Act and the Children and Young Persons (Care and Protection) Act 1998. The bill will define "principal officer" in the care Act so that a designated person in each non-government agency has responsibility for the overall supervision of their agency's statutory or supported care arrangements. There clearly needs to be a duty of care that extends upwards from primary carers to the accountability of an overall supervisor. There not only needs to be oversight; those with oversight should always be accountable. The bill also prevents the Children's Court from granting parental responsibility to a principal officer and prohibits principal officers from caring for children from their own agency in their own home, except where that is a residential service. This will ensure that those with oversight do not have direct parental responsibility themselves.

The bill will streamline the out-of-home care adoption assessment and authorisation processes to allow statutory out-of-home care agencies to authorise a carer for both out-of-home care and adoption, which supports the Safe Home for Life reforms introduced by this Government in 2013. The bill improves the Working With Children Check, which was introduced by this Government in 2013 as a prerequisite for anyone in child-related work. The bill will amend the Child Protection (Working with Children) Act, the Ombudsman Act and the Community Services (Complaints, Reviews and Monitoring) Act. These amendments will strengthen probity checks for principal officers and other key positions of non-government designated agencies.

The bill will clarify existing requirements on employers to verify an employee's Working With Children Check status on the Children's Guardian online register. It will improve the timeliness of Working With Children Check risk assessments by reducing the time frame for applicants to provide information from six to three months, so that the information and clearance is forthcoming for employers. The amendments will further restrict the capacity of an applicant to withdraw their Working With Children Check application by requiring the consent of the Children's Guardian. Additionally, it will ensure adults living in the home of an authorised carer are subject to the Ombudsman's reportable conduct framework. Lastly, it will expressly permit information-sharing arrangements between child protection agencies and victims of alleged reportable allegations, and that includes victims with disabilities.

Children are the most vulnerable members of our society. We were all shocked by the revelations of the Royal Commission into Institutional Responses to Child Sexual Abuse. It was all for nothing if we do not address the gaps in our legislation. This bill is one of the steps we need to take to ensure we do everything we possibly can to address these most grave of issues. This Government's changes to the Crimes Act increased the maximum penalty for the offence of sexual intercourse with a child under 10 from 25 years to life imprisonment; and amended the Crimes (Sentencing Procedure) Act to include additional child sex offences in the Standard Non Parole Period Scheme [SNPP], something of which I personally am very proud. Following on from this, we are now looking at strengthening the protection of

and accountability for children in care. It will mean more oversight and more accountability for supervisors and employers alike. Ultimately, it will increase protections for children in New South Wales—and as parliamentarians there is nothing we do that is more important than that. I am very proud to support the bill.

Ms JAN BARHAM [4.56 p.m.]: On behalf of The Greens I speak in support of the Child Protection Legislation Amendment Bill 2015. Ensuring the safety of all children and young people, particularly vulnerable children who are placed in out-of-home care, is a paramount responsibility of us all. This bill includes some important improvements to legislation that we support. There is one aspect of the bill which we have some concerns about—in particular, the removal of review rights that may prevent reasonable checks and balances on unjust decisions if they occur. In the Committee stage The Greens will move an amendment to address these concerns.

I note that the bill has already been subject to one set of Government amendments in the other place, and that additional Government amendments will be moved when we proceed to the Committee stage. The bill as originally introduced dealt with amendments to several different Acts relating to child protection, but along the way it has picked up some extra issues and extended the existing provisions based on new information and input from a range of stakeholders and processes. Some of the amendments in this bill arise from the first round of hearings of the Royal Commission into Institutional Responses to Child Sexual Abuse that examined issues relating to out-of-home care. The royal commission heard evidence about extremely troubling failures of our child protection system that resulted in already vulnerable children suffering further abuse and harm. I welcome the Government's move to quickly address some of the lessons arising from the evidence heard, and to ensure some of those areas of risk are addressed.

Some of the main provisions of the bill serve to, first of all, extend probity and background checks for all prospective carers to include disclosure and consideration of any people who reside with the person. Secondly, the bill will extend the application of the Ombudsman's provisions for child protection scrutiny and the working with children clearance requirements to anyone who resides on the same property as authorised carers. Thirdly, the bill requires key officers, such as the chief executive officer or principal officer of agencies that carry out child-related work and those who reside on the same property as those agencies, to hold working with children clearances.

Fourthly, the bill places requirements on employers and agencies to verify workers and key officers hold working with children clearances, and provide for the notification of employers and agencies by the Children's Guardian when an employee or person no longer holds a clearance or their application for clearance is refused. The fifth provision is for the exchange of information that allows for background and probity checks and verification of working with children clearances to occur. The sixth and final provision allows information about investigations relating to children or people with disability to be provided to the alleged victim and certain other people.

As I have noted already, The Greens welcome the objective of improving probity and safety in all areas where children and young people may be at risk, including in the selection of foster carers and prospective adoptive parents, and in providing clearances for people to engage in child-related work. This bill provides additional protection for vulnerable children and young people. It strengthens the Working With Children Check scheme to address risks so that people who may be in a position that brings them into contact with children in care will be subject to background and probity checks, and it attempts to address the issues that may arise when clearances are refused, cancelled, withdrawn or expired.

The Greens and legal stakeholders are concerned about the removal of the right to administrative review in some circumstances relating to the authorisation of carers. Schedule 3[19] to the bill amends the section of the Children and Young Persons (Care and Protection) Act 1998 that provides for decisions to be administratively reviewable by the NSW Civil and Administrative Tribunal [NCAT]. In particular, it removes the possibility of review from people who are refused authorisation as a carer, and it also

removes the review rights for some authorised carers whose authorisation has been cancelled. I foreshadow that The Greens will move an amendment to address this issue in Committee, and I will speak more to it then.

I note that the safety and welfare of children is paramount and I state with absolute certainty that no- one in this place would want those who are unsuitable to be carers to receive or retain their authorisation. But the removal of the opportunity to seek a review of the basis upon which an agency has decided someone is an unsuitable person is a process that ensures the validity of decisions without undermining the goal of ensuring that carers are capable and suited to the role. I noted earlier that the Government has already amended the bill and it appears likely that it will be amended further. Both of those sets of amendments focus on changes to the Working With Children Check process.

The Child Protection (Working with Children) Act 2012 includes a schedule of disqualifying offences and provides that the Children's Guardian should not grant a clearance to any person who was convicted of a disqualifying offence as an adult, or for whom proceedings for any such offence have been commenced but not finally determined. However, at present any person refused a clearance for a disqualifying offence can apply for administrative review of that decision unless their disqualifying offence is the murder of a child. The Act provides that the tribunal is to presume that any such person seeking administrative review poses a risk to the safety of children, unless the applicant can satisfactorily prove the contrary. The Act also provides that the Children's Guardian is to be a party to any such proceedings. It also includes an extensive list of factors that the tribunal must consider in making a determination, which includes any other matters that the Children's Guardian considers necessary.

Media reports earlier this year highlighted a number of cases in which the tribunal had granted enabling orders for people who had disqualifying offences. The Government then amended the bill in the other place to expand the list of offences for which disqualification is non-reviewable. Since then the Royal Commission into Institutional Responses to Child Sexual Abuse has released its Working With Children Check Report. Each State and Territory in Australia has its own background check system for those who want to engage in child-related work, and the royal commission gave consideration to the effectiveness of the different options. Ultimately, the commission delivered 36 recommendations for reform by State and Territory governments and through Federal cooperation.

Recommendation29 related to ensuring that an independent appeal process is available to people who receive an adverse decision on their working with children clearance, except those who have been convicted of offences involving murder of a child; indecent or sexual assault of a child; child pornography related offences; or incest where the victim was a child; and where those people have received a full-time custodial sentence or are currently subject to a control or prohibition order. The removal of rights to appeal or review should generally be treated with caution. The report noted:

> An independent external appeals mechanism allows people affected by adverse decisions to have their case reviewed by a body independent of the original decision-maker. Appeals mechanisms enable errors to be corrected, improve the quality of decisions, ensure transparency and engender public confidence in the integrity of government administration.

But in the context of clearances for child-related work, the best interests of children are paramount. The need to avoid unreasonably preventing people from engaging in work and community activities has to be considered in light of the need to ensure that children and young people are kept safe, that workplaces are child friendly, and that there are proper protections against any person whose past behaviour would lead to the presumption that they pose a risk to the safety of children. The royal commission weighed these considerations, and concluded:

> Certain offenders, by virtue of the seriousness of their past conduct, should be denied any right of appeal.

The Government's latest amendments will be discussed during the Committee stage. However, I note that they add to the amendments already made in the other place and that they serve to implement the intent of the royal commission's recommendation on appeal rights. They will also introduce some additional guidance for the Children's Guardian in conducting risk assessments and the tribunal when carrying out reviews. These changes will include a "reasonable person" test along similar lines to the existing clearance scheme in Victoria, and a requirement to consider whether granting a clearance is in the public interest.

I understand that these most recent amendments have gone through a careful process of development—and involved input from a range of stakeholders and agencies—following the release of the royal commission's report. I thank NSW Children's Guardian Kerryn Boland, who is seated in the visitor's area, and the staff in the Minister's office, who gave Mr David Shoebridge and me a briefing yesterday, for following up with some additional information regarding these new aspects of the legislation. This bill will introduce some significant changes to the Working With Children Checks process, including the removal of discretion that currently rests with the tribunal in relation to people who have been convicted in the past of any one of a lengthy list of criminal offences relating to children. The royal commission was far from precise in its guidance and noted:

> While we are of the view that appeal rights should be restricted for people convicted of certain serious offences, it is difficult for us to identify all of the offences that should exclude a right of appeal. This is because each state and territory will describe the relevant offences, particularly sexual assault, in different ways.

The Working With Children Checks scheme is very new; consequently there will be an opportunity to review how the changes being made in this bill are functioning and whether any adjustments to the processes of risk assessment and review should be made when the Child Protection (Working with Children) Act undergoes the statutory review required to be undertaken between June 2017 and June 2018.

Overall, the provisions contained in the bill are appropriate and important in providing for the safety and welfare of children and young people. The bill will deliver some crucial reforms to address the tragic shortcomings highlighted by the royal commission's hearings into out-of-home care, as well as acting on the royal commission's Working With Children Check Report. All members take the wellbeing and protection of children extremely seriously and I welcome the opportunity to contribute to improving the legislation that protects children in this State. I commend the bill to the House.

The Hon. SHAOQUETT MOSELMANE [5.09 p.m.]: I contribute to debate on the Child Protection Legislation Amendment Bill 2015. This bill aims to amend the Adoption Act 2000, the Child Protection (Working with Children) Act 2012, the Children and Young Persons (Care and Protection) Act 1998, the Community Services (Complaints, Reviews and Monitoring) Act 1993 and the Ombudsman Act 1974. It seeks to implement various reforms relating to the protection of children and young people, including with respect to the suitability of persons to be carers, adoptive parents and guardians of children and young people. The protection of children and young people is the fundamental responsibility that we have as a community. Nothing can ever justify failure to provide a child with his or her basic needs. The health, safety and wellbeing of children and young people are paramount to their development and their opportunity to have the best start in life. Unfortunately, child abuse and neglect can happen at any time, to a child in any family, and can have severe, lasting effects.

There is nothing more heartbreaking than seeing a young child who has experienced child abuse and been affected by it emotionally or physically. Children can be victims of different forms of abuse: neglect, sexual abuse, physical abuse and emotional abuse. Child neglect is the continued failure by a parent or caregiver to provide a child with the basic needs for his or her proper growth and development. This can include food and water, clothing, shelter, medical and dental care, and adequate supervision. In the welfare of a child, duty of care is a fundamental principle. No-one should waver on that. It must

always be our core objective. Sexual abuse is when someone involves a child or young person in a sexual activity by using power over them or taking advantage of their trust and innocence. Often children or young people are misled into believing certain things or threatened physically and psychologically by predators to make or coerce them to participate in the activity. Sexual abuse is a crime that can have devastating and lasting effects on a child and those around them. We are all well aware of the many historic cases of sexual abuse and the pain and suffering that victims speak of.

Physical abuse is a non-accidental injury or pattern of injuries to a child or young person caused by a parent, caregiver or any other person. This includes, but is not limited to, injuries that are caused by excessive discipline, severe beatings or shakings, cigarette burns, attempted strangulation, female genital mutilation or any other abuse. Last, but certainly not least, serious psychological harm can occur when the behaviour of a parent or caregiver damages the confidence and self-esteem of a child or young person. Such behaviour can result in serious emotional disturbance or psychological trauma. Although it is possible for one-off incidents to cause serious harm, in general it is the frequency, persistence and duration of this abuse that has serious consequences for a child or young person. This can include a range of behaviours, such as excessive criticism, withholding affection, exposure to domestic violence, intimidation or threatening behaviour.

I am sure all members of this House agree that such acts have no place in our society. Unfortunately, we do not live in a perfect world, and very ugly acts against children do occur. We must always be alert and proactive in implementing whatever is needed to protect children from all such forms of abuse. Like many people, I was heartened by the global reaction and the Australian community's response to the image of Syrian toddler Aylan Kurdi that was beamed around the world as his body washed up on a Turkish shore. I raise that as an example of the ingrained reaction that people have when a child—any child, anywhere around the globe—suffers harm. I note that the Carr Labor Government established the Working With Children Check in 1998 and, in 2012, the Child Protection (Working with Children) Act. The Working With Children Check is a prerequisite for anyone in child-related work. The measure involves a national criminal history check and a review of findings of workplace misconduct.

The result of a Working With Children Check is either a clearance to work with children for five years or a bar against working with children. Cleared applicants are subject to ongoing monitoring, and relevant new records may lead to the clearance being revoked. The Government introduced this bill following concerns raised in the first hearing of the Royal Commission into Institutional Responses to Child Sexual Abuse with respect to out-of-home care. The bill amends the Adoption Act 2000 and the Children and Young Persons (Care and Protection) Act 1998 by defining "principal officer" so that a designated person within an agency has responsibility for the overall supervision of an agency's arrangements to provide voluntary out-of-home care; preventing the Children's Court from allocating any aspect of parental responsibility to an organisation or to the principal officer of a designated agency; and enabling out-of-home care agencies to authorise a carer for both out-of-home-care and adoption.

Furthermore, the amendments to the Child Protection (Working with Children) Act 2012, the Ombudsman Act 1974 and the Community Services (Complaints, Reviews and Monitoring) Act 1993 have the intended aim of better regulating the working with children framework by implementing the following measures. Only a person with a Working With Children Check clearance or current application for a clearance can be appointed by the governing body of an organisation on a permanent basis to a position involving child-related work. Employers are required to verify an employee's Working With Children Check status on the register. This must happen before the employee begins working with children and then again after five years. The amending legislation reduces the period for Working With Children Check applicants from six months to three months to provide further information to the Office of the Children's Guardian. It ensures that adults residing in the same home as an authorised carer are subject to the Ombudsman's reportable conduct framework. The legislation also permits information-sharing agreements between child protection agencies and victims of alleged reportable allegations. The Opposition will support the bill. We must do everything we can to ensure the continued safety and wellbeing of children and young people. That is key to this legislation. I commend the bill to the

House.

The Hon. MARK PEARSON [5.16 p.m.]: The Animal Justice Party supports the Child Protection Legislation Amendment Bill 2015, with one slight concern, which I will go to. The Royal Commission into Institutional Responses to Child Sexual Abuse found that vulnerable children are overrepresented in out-of-home care. Children from Aboriginal and Torres Strait Islander backgrounds, children in residential care, children with a disability and children with sexualised behaviour or a history of sexual abuse are at an increased risk of abuse. It is apparent that perpetrators are more likely to offend when an institution lacks the appropriate culture and is not managed with the protection of children as a high priority.

I have experience of working in the mental health sector. The percentage of people with a mental illness who are perpetrators of child abuse is the same as the percentage of people who do not have a mental illness, because it is a criminal activity. I worked with psychologists who were responsible for following up on offenders who had been released from prison. It became clear that only 15 per cent of people who had committed a serious sexual offence against a child gained the insight to see that they had committed a criminal offence. The number is alarmingly small. It influenced one of the main principles underpinning the recommendations in the report of the royal commission, which prompted this amendment bill. The Parliament and the Government are galvanised to protect vulnerable children.

There is evidence that it deters registered offenders from applying for positions that involve working with children if they know that they will be detected. When balancing the interests of adult carers and vulnerable children, the interests of children must be at the forefront when determining whether to authorise a person as a carer. When there are any doubts about the suitability of carers, authorities should rightly be charged with the duty to act in the best interests of ensuring the child's safety and err on the side of caution. This is done more easily when there is no pre-existing relationship with the child and the carer is merely seeking entry to or ongoing employment in the child protection sector.

What is important about this bill is that for a person who has already been convicted of a serious or very serious offence or aggravated offence against a child, there is a blaring and concerning question if that same person seeks employment working with children. It would seem logical and sensible that that person would avoid seeking work in any area that concerns the care of children. The Animal Justice Party has a concern in relation to new section 26C, where a person whose application for a Working With Children Check clearance has been refused wholly or partly on the grounds that proceedings have been commenced against the person for an offence specified in schedule 2 and the proceedings have not been finally determined. Even though that cannot be rectified, the concern of the Animal Justice Party is that if the person who has been charged or is facing proceedings is not convicted, it should then reflect on the selection committee that is considering the person for the position.

The Animal Justice Party overwhelmingly supports the bill; we think it is long overdue. It upholds the very principles we uphold every day when we sit in Parliament and say that we are responsible for the welfare of the people of New South Wales and Australia. The welfare of the most vulnerable—children—should be closest to our hearts.

The Hon. LOU AMATO [5.22 p.m.]: I support the Child Protection Legislation Amendment Bill 2015. It saddens me deeply that we need to draft legislation to protect children against evil. But unfortunately evil does exist and in our role as part of the legislative process the protection of children must be our most important task. All that we do here is of little significance if the promise of tomorrow, which rests in our children, is not protected and nurtured. In response to issues raised during the first hearing of the Royal Commission into Institutional Responses to Child Sexual Abuse, the Child Protection Legislation Amendment Bill 2015 introduces a range of measures to strengthen the following Acts: the Child Protection (Working with Children) Act 2012, the Adoption Act 2000, the Children and Young Persons (Care and Protection) Act 1998, the Ombudsman Act 1974, and the Community Services (Complaints, Reviews and Monitoring) Act 1993.

In discussing the merits of the Child Protection Legislation Amendment Bill 2015, I bring to the attention of the House the main amendments of the Child Protection (Working with Children) Amendment Bill 2015 and the administration of the Act by the NSW Office of the Children's Guardian. The NSW Office of the Children's Guardian is an independent statutory authority whose task is protecting children by promoting and regulating quality, child-safe organisations and services. The Children's Guardian administers the Child Protection (Working with Children) Act 2012 and the Child Protection (Working with Children) Regulation 2013. Under the Child Protection (Working with Children) Act, persons working with children in either paid or volunteer work must apply for a clearance via a Working With Children Check.

The Working With Children Check is assessed by the Children's Guardian within current child protection statutes where one of two determinations is made: a clearance is granted to the applicant to work in either paid or unpaid child-related work or the applicant receives a bar and is prohibited, whilst the bar is in place, from working in any paid or unpaid child-related work. Working With Children Check clearances are granted for a period of five years. Cleared applicants are subject to ongoing monitoring and relevant new records may lead to the clearance being revoked. However, applicants who have received a bar have the right, unless expressly denied in the current Child Protection (Working with Children) Act, to make an appeal to the NSW Civil and Administrative Tribunal to have the bar overturned.

The Child Protection Legislation Amendment Bill 2015 seeks to remove the right of review for a Working With Children Check application to the NSW Civil and Administrative Tribunal for adults convicted of murder, regardless of the age of the victim. Currently, under schedule 2 (1) (a) to the Child Protection (Working with Children) Act 2012 the prohibition on the right of review is restricted only to the murder of a child. A successful review would result in an enabling order being issued by the NSW Civil and Administrative Tribunal. The effect of an enabling order would allow the barred person to work with children. Section 26 of the Child Protection (Working with Children) Act 2012, entitled "No appeal in certain cases", provides:

> A person may not make an application under this Part:
>
> (a) if the person has been convicted of the murder of a child, or
>
> (b) if the person's application for a working with children check clearance has been refused wholly or partly on the grounds that the person has been charged with an offence and proceedings related to that offence have not been finally determined.

The amendment also seeks to remove the right of review for a range of serious sexual offences committed by an adult, such as those listed under schedule 2 to the Child Protection (Working with Children) Act. Schedule 2 to the Act lists serious sexual, violent and deviant criminal behaviour that will provide for an automatic bar on a person obtaining a Working With Children Check. These offences are further discussed in the NSW Crimes Act 1900, the Commonwealth Customs Act 1901 and the Commonwealth Criminal Code Act 1995.

The list of offences contained in schedule 2 is quite lengthy, exceeding 40 different criminal acts. Without subjecting the House to the entire list of these horrendous crimes, I will give a selection of the offences as listed in the schedule and contained in the NSW Crimes Act 1900: section 18, murder or manslaughter of a child; section 33, intentional wounding or causing grievous bodily harm to a person under 18 years by an adult more than three years older; section 42, injuries to a child at time of birth; section 43, abandoning or exposing a child under seven years; section 61I, sexual assault; section 61J, aggravated sexual assault; section 61L, indecent assault; and section 61M, aggravated indecent assault. The bill seeks to have the serious offences listed in schedule 2 to provide for automatic prohibition on obtaining a review of a working with children bar.

The bill also empowers the Children's Guardian to make guidelines regarding the matters that are

to be considered by employers when employing people, including people who have worked overseas; disqualifies offences listed in schedule 2 to the Child Protection (Working with Children) Act, including all offences under the Child Protection Offenders Registration Act 2000; ensures that matching offences under foreign laws are captured under schedule 2; strengthens probity checks for principal officers and other key positions of non-government designated agencies; clarifies requirements for employers to verify an employee's Working With Children Check status on the Children's Guardian online working with children register; and reduces the time frame for the provision of information by applicants applying for a Working With Children Check clearance from six to three months.

Applicants will be unable to withdraw their Working With Children Check application without the consent of the Children's Guardian. The protection of children is a matter of the highest priority of this House. The Child Protection Legislation Amendment Bill 2015 is a proactive step towards strengthening the safety and protection of our children. I commend the bill to the House.

The Hon. PAUL GREEN [5.29 p.m.]: I speak on the Child Protection Legislation Amendment Bill 2015. The Christian Democratic Party commends the Government's continued commitment to supporting vulnerable children by tightening and strengthening the legislative frameworks and systems that underpin their safety and wellbeing. We further commend the Government for responding to the serious issues highlighted in the first hearing of the Royal Commission into Institutional Responses to Child Sexual Abuse. The Christian Democratic Party shares the Government's aims to keep every child in a permanent and stable home for life.

The bill strengthens and clarifies the protections for children and young people in care by responding to issues highlighted in the first hearing of the Royal Commission into Institutional Responses to Child Sexual Abuse in relation to out-of-home care, supporting the Government's Safe Home For Life reforms, and streamlining and improving aspects of the new Working With Children Check introduced by this Government in June 2013. The bill also amends the Child Protection (Working with Children) Act 2012 to remove the right of review for a Working With Children Check application to the NSW Civil and Administrative Tribunal [NCAT] for adults convicted of murder, regardless of the age of the victim, and adults convicted of certain serious sexual offences against children, in keeping with the framework recommended by the royal commission's Working With Children Checks Report.

The bill responds to concerns raised regarding the review of the Working With Children Check clearances by NCAT. These concerns were based on the perception that NCAT had overturned decisions of the Children's Guardian that would have prevented people who have committed serious offences from working with children. A person convicted of murdering a child and a person with a pending charge for a schedule 2 disqualifying offence cannot apply to NCAT for an enabling order to allow them to work with children. This bill removes the right of review to NCAT for adults convicted of murder, regardless of the age of the victim, and for adults convicted of a range of serious sexual offences against children.

The amendments to the bill expand this range of sexual offences and link the limitation on NCAT review rights to sentences or court orders, in keeping with the recommendations of the royal commission's Working With Children Checks Report. The bill now provides that persons convicted as an adult of murder, indecent or sexual assault of a child, child pornography-related offences and incest where the victim is a child will never have appeal rights to NCAT if they receive a full-time custodial sentence. If a person is convicted of any of these offences and is subject to an order that imposes any control on the person's conduct or movement or excludes the person from working with children, they will not have appeal rights to NCAT for the duration of that order.

The bill now also provides that the Children's Guardian can appoint an expert advisory panel. The Children's Guardian and NCAT will apply reasonable person and public interest tests when making their respective determinations in order to enable them to better reflect community expectations and to apply community standards. The bill also provides the Children's Guardian with the power to make guidelines regarding the matters that are to be considered by employers when employing people, including people

who have worked overseas. The bill will ensure that offences listed in schedule 2 of the Child Protection (Working with Children) Act, which automatically disqualify a person from working with children, include all offences under the Child Protection (Offenders Registration) Act 2000. It will also ensure compatible offences under foreign laws are captured under schedule 2. The Minister in the other place, when speaking on the Working With Children Check, highlighted a new online system, which he said:

> … has now been in operation for 18 months and the community has embraced the Working With Children Check with great enthusiasm. Since the start of the new system in June 2013 there have been more than 720,000 applications processed for a Working With Children Check, either as a paid or volunteer worker. Registering as a child-related employer and verifying that the Working With Children Check number of a paid or voluntary worker has been cleared is an important part of being a child-safe organisation.

I recently had to go through that process when applying for out-of-home carers. I found the process to be efficient and one that is working. I believe the same type of check should be used for those convicted of elder abuse before they are permitted to work with the elderly. The Christian Democratic Party shares the sentiments of the Government regarding the vital importance that Working With Children Checks play in the protection of our vulnerable young people. The Minister in the other place also said:

> So far, nearly 600 applicants have been barred from working with children in New South Wales. Approximately 100 more have a current status of interim bar, pending further risk assessment investigations by the Office of the Children's Guardian. One of the strengths of the new online verification system is that it checks continuously for new relevant records that could change a person's status from a clearance to a bar on working with children. By registering as an employer and verifying an employee's status, the Office of Children's Guardian can ensure relevant employers are notified of a bar and take action to remove the barred employee from child-related employment.

We commend the Government for undertaking further reforms to protect our children. I refer to a comment by the Minister which resonated with me. He said:

> We know that keeping children and young people safe is a shared responsibility that requires a multi-faceted and comprehensive approach by the whole community. A Working With Children Check can be an important tool in helping to protect children, but it cannot identify people who have not been caught previously or are yet to offend. Research and history demonstrates that managing potential risks in the environments where children spend their time is the most effective way to keep them safe.

Legislation relating to the wellbeing of our children is something we cannot afford to get wrong. It always needs to focus on the best interests of our children. The Christian Democratic Party believes that this legislation is a step in the right direction. We commend the Minister for Family and Community Services, and Minister for Social Housing for his commitment to his portfolio. We also commend the Government. Before the March 2015 election Premier Baird committed to $4 million over four years for the continued education of our children to protect and empower them by being able to articulate their needs if someone is doing the wrong thing to them. In health care we learn that prevention is better than cure.

One in three girls and one in six boys suffer child sexual assault. When we educate and empower our children in relation to child sexual abuse, issues of domestic violence and the impact of drugs and alcohol, we will have fewer damaged individuals. Instead, those boys and girls will go on to live solid lives, to be strong citizens, to be able to fulfil their dreams, to obtain a career, to have steady relationships as they see fit, and to grow up fulfilled. The alternative is that they spend their lives trying to put the pieces together after someone has had the evil intent to mess up their lives. We must continue to build on this type of legislation to keep our children safe. There is no doubt that my first priority as a member of the Legislative Council is to make New South Wales a safe place for a child to be raised. I commend the

Child Protection Legislation Amendment Bill 2015 and its aim of protecting the children of New South Wales.

The Hon. SARAH MITCHELL (Parliamentary Secretary) [5.40 p.m.], on behalf of the Hon. John Ajaka, in reply: I thank the Hon. Sophie Cotsis, the Hon. Ben Franklin, Ms Jan Barham, the Hon. Shaoquett Moselmane, the Hon. Mark Pearson, the Hon. Lou Amato and the Hon. Paul Green for their contributions to this debate. I am pleased that all members are supporting this bill, and I commend it 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. Trevor Khan): Order! There being no objection, the Committee will deal with the bill as a whole.

The Hon. SARAH MITCHELL (Parliamentary Secretary) [5.43 p.m.], by leave: I move Government amendments Nos 1 to 17 on sheet C2015-073D in globo:

No. 1 **Risk assessments**

Page 13, schedule 2. Insert after line 26:

[16] Section 15 Assessment of applicants and holders

Insert after section 15 (4):

(4A) The Children's Guardian must not determine that an applicant does not pose a risk to the safety of children unless the Children's Guardian is satisfied that:

(a) a reasonable person would allow his or her child to have direct contact with the applicant that was not directly supervised by another person while the applicant was engaged in any child-related work; and

(b) it is in the public interest to make the determination.

No. 2 **No right to apply for review or enabling order**

Page 15, schedule 2 [29], line 31. Insert "and the person is a person who satisfies subsection (2)"after "adult".

No. 3 **No right to apply for review or enabling order**

Page 15, schedule 2 [29], line 33. Insert "61B, 61C, 61D, 61E, 61F," after "section".

No. 4 **No right to apply for review or enabling order**

Page 15, schedule 2 [29], line 33. Omit "or 80A". Insert instead ", 61K, 61L, 61M, 61N,

61O,61P, 63, 65A, 66, 66F, 76, 78A, 78B, 80A, 80D, 80E or 81".

No. 5 **No right to apply for review or enabling order**

Page 15, schedule 2 [29]. Insert after line 35:

(iii) the common law offence of rape, if the person against whom the offence was committed was a child;

No. 6 **No right to apply for review or enabling order**

Page 15, schedule 2 [29], line 36. Omit "or 66EA". Insert instead ", 66B, 66C, 66D, 66EA or 66EB".

No. 7 **No right to apply for review or enabling order**

Page 15, schedule 2 [29], line 37. Insert ", 68, 71, 72, 72A, 73, 74 or 76A" after "section 67".

No. 8 **No right to apply for review or enabling order**

Page 15, schedule 2 [29], line 38. Insert ", 78I, 78K, 78L, 78M, 78N, 78O or 78Q" after "section 78H".

No. 9 **No right to apply for review or enabling order**

Page 15, schedule 2 [29]. Insert after line 38:

(vi) an offence against section 91D, 91E or 91F of the *Crimes Act 1900*;

(vii) an offence against section 91G, 91H, 578B or 578C (2A) of the *Crimes Act 1900*;

No. 10 **No right to apply for review or enabling order**

Page 15, schedule 2 [29], line 39. Insert "272.8," before "272.10".

No. 11 **No right to apply for review or enabling order**

Page 15, schedule 2 [29]. Insert after line 41:

(vii) an offence against section 272.9, 272.10 (if it relates to an underlying offence against section 272.9), 272.11, 272.12, 272.13, 272.14 or 272.15 of the *Criminal Code* of the Commonwealth;

No. 12 **No right to apply for review or enabling order**

Page 15, schedule 2 [29]. Insert after line 45:

(viii) an offence against section 273.5, 273.6, 273.7, 471.16, 471.17, 471.19,471.20, 471.22, 471.24, 471.25, 474.19, 474.20, 474.22, 474.23,474.24A, 474.25A, 474.25B, 474.26 or 474.27 of the

Criminal Code of the Commonwealth;

(ix) an offence against section 233BAB of the *Customs Act 1901* of the Commonwealth involving items of child pornography or of child abuse material;

No. 13 **No right to apply for review or enabling order**

Page 16, schedule 2 [29], line 8. Insert "and the person is a person who satisfies subsection (2)" after "paragraph (a)".

No. 14 **No right to apply for review or enabling order**

Page 16, schedule 2 [29]. Insert after line 12:

(2) A person convicted of an offence specified in subsection (1) satisfies this subsection if:

(a) the person received a sentence of full time custody for the offence; or

(b) any of the following orders was imposed on the person in respect of the offence and the order is in force:

(i) a home detention order, intensive correction order or community service order under the *Crimes (Sentencing Procedure) Act 1999*, a good behaviour order under section 9 of that Act or an order under section 12 of that Act;

(ii) a conditional release order or recognizance release order under section 20 of the *Crimes Act 1914* of the Commonwealth; or

(c) a prohibition order under the *Child Protection (Offenders Prohibition Orders) Act 2004* is in force against the person.

No. 15 **Risk assessments**

Page 16, schedule 2. Insert after line 14:

[30] Section 30 Determination of applications and other matters

Insert after section 30 (1):

(1A) The Tribunal may not make an order under this Part which has the effect of enabling a person (the ***affected person***) to work with children in accordance with this Act unless the Tribunal is satisfied that:

(a) a reasonable person would allow his or her child to have direct contact with the affected person that was not directly supervised by another person while the affected person was engaged in any child-related work; and

(b) it is in the public interest to make the order.

No. 16 **Expert advisory group**

Page 16, schedule 2. Insert after line 41:

[35] Section 42A

Insert after section 42:

42A Expert advisory panel

(1) The Children's Guardian may appoint an expert advisory panel to provide advice to the Children's Guardian about matters relating to offenders for the purposes of assisting the Children's Guardian in carrying out risk assessments and exercising functions under this Act.

(2) The advice provided is not to relate to particular individuals.

(3) The Children's Guardian may make advice provided by the expert advisory panel available to the Tribunal, on the initiative of the Children's Guardian or at the request of the Tribunal.

(4) The Children's Guardian and the Tribunal may, when exercising functions under this Act, consider any advice provided by the expert advisory panel.

(5) The terms of the appointment and any remuneration of members of the expert advisory panel are to be determined by the Children's Guardian and must be approved by the Minister.

No. 17 **Savings and transitional provisions**

Page 19, schedule 2 [43]. Insert after line 3:

16 Matters for consideration

Sections 15 and 30, as amended by the amending Act, do not apply to an application that was made before the amendment of the section concerned.

I refer to Government amendments Nos 1, 15 and 17, which relate to the introduction of reasonable person and public interest tests for the Children's Guardian and the NSW Civil and Administrative Tribunal [NCAT]. The NCAT decisions should align with community values and standards. The Government is proposing that both the Children's Guardian and NCAT apply a reasonable person test to all their decisions. This means that a decision will not be made to grant a clearance by the Guardian or an enabling order by the tribunal unless satisfied that a reasonable person would allow his or her child to have direct contact with the affected person who was not directly supervised. Further, it must be in the public interest to make the relevant determination. This is consistent with the approach currently adopted in Victoria.

Misapplication of the tests by NCAT would result in an error of law which the parties could appeal

in the Supreme Court. The provision laid out in amendment No. 17 makes it clear that the reasonable person and public interest tests will not be applied retrospectively to an application that was made prior to these amendments. Government amendments Nos 2 through to 14 relate to tighter restrictions on NCAT review rights. We are all agreed that our paramount consideration should always be the safety of our children. The Working With Children Check is one of many tools that are used to protect our children from people who commit serious sexual and violent offences against children. This Government is committed to doing all it can to protect our children and to respond to any concerns raised in this regard.

The Working With Children Check legislation provides that every adult in child-related work who is required to apply for a Working With Children clearance will receive an outcome. They will either be cleared to work with children if they have no concerning records or barred from working with children if they do. A bar is imposed if the applicant has a conviction for serious sex or violent offences or has concerning records requiring a risk assessment to be conducted by the Children's Guardian. Most people who are barred from working with children have right of review to the NCAT. Should NCAT overturn the decision of the Children's Guardian to bar a person, the person will then be free to work with children.

Recent concerns that have been raised highlighted the perceived risks to the safety of our children by NCAT overturning decisions of the Children's Guardian to bar certain applicants for Working With Children Checks. The concerns were in relation to 15 cases where bars imposed by the Children's Guardian were overturned by NCAT so those people who were previously barred were later able to work with children. In response, the Government sought to expand the disqualifying offences that would remove a person's right to an NCAT review. These offences were convictions for murder, irrespective of the age of the victim, and certain serious sexual and violent offences against children. This amendment was passed with bipartisan support in the Legislative Assembly.

Since those amendments were passed, the Government established a working group to consider the amendments, particularly if there were any other areas that warranted further potential amendments. The working group's deliberations coincided with the release of the royal commission's report on the Working With Children Check. The royal commission consulted widely in making its final recommendations. The recommendations set out standards to be adopted consistently across all States and Territories. With regard to limiting appeal rights, the royal commission recommended further expanding the range of offences and linking the no appeal period to the offences and the sentence imposed. The Government agrees with the royal commission that certain offenders by virtue of the seriousness of their past conduct should be denied a right of appeal. The assumption is that a person convicted of a serious offence against children will always pose an unacceptable risk to children.

Given that our paramount concern is the safety of children, the Government has supported the recommendations of the royal commission and will be the first State to implement any of the royal commission recommendations. The list of offences which will now not be appealed to NCAT will be the following disqualifying offences: murder, irrespective of the victim's age; indecent or child sexual assault offences; child pornography-related offences; and incest where the victim is a child. Adult convictions for intention to commit any of these offences, attempts, incitement or conspiracy to commit any of these offences will also not be reviewable by NCAT. Similarly, interstate or overseas convictions for any of the above offences will not be appealable to NCAT.

An important aspect of limiting appeal rights is the royal commission's approach to linking the period of no appeal rights to not only the offence committed but also the sentence received. This means if a sentence of full-time custody has been imposed, then a person with convictions for any of the listed offences will be permanently excluded from seeking NCAT review. If the sentence is an order that imposes control on the person's conduct or movement or excludes them from working with children, then the period of no appeal rights will be the duration of the order. Linking the period of no appeal to the offence and the sentence allows the Working With Children Check regime the advantage of the court's objective assessment of the matter beyond reasonable doubt.

When making a determination on sentence, whether custodial or by way of a control order, the court will have considered the comprehensive material before it and made a determination of the appropriateness of the sentence imposed. If it appears the court has made an error in the sentence it imposes, the prosecution has a right of appeal to a court of higher jurisdiction to reconsider the sentence. It must also be noted that limiting appeal rights for such people will not mean that they are unable to work at all. It will only mean that such people cannot work with our children in child-related work either permanently or for the duration of the order they are subject to.

Government amendment No. 16 relates to the appointment of an expert advisory panel to provide guidance to the Children's Guardian when necessary. The current Working With Children Check legislation in New South Wales makes provision for a comprehensive risk assessment process. The legislation allows the Children's Guardian to have access to a range of information and sets out a number of factors that the Children's Guardian may consider when conducting a risk assessment of a Working With Children applicant. The factors include the seriousness of the matters that caused the risk assessment, the period of time since the matters occurred and the conduct of the person since they occurred and the likelihood of any repetition.

Though the list of factors is comprehensive and the risk assessments of the Office of the Children's Guardian are conducted with extreme rigour, there are occasions when expert guidance from forensic psychologists, psychiatrists, mental health experts and criminologists would be of assistance. It is not expected that the experts would be conducting risk assessments of specific applicants. Rather, the type of expertise sought from individual panel members or a group of panel members will be general in nature. This will enable the Children's Guardian to inform herself of recent trends and contemporary research on the forensic behaviour of particular types of offenders in order to make well-balanced and informed determinations. Should a person who has been barred appeal to NCAT, the Office of the Children's Guardian may make the expert panel information available to NCAT, ensuring all parties have the benefit of the expert guidance provided. I commend the amendments.

The Hon. PAUL GREEN [5.58 p.m.]: The Christian Democratic Party supports the Government's amendments Nos 1 to 17. In my contribution to the second reading debate, I neglected to applaud Ray Hadley for all his work on these matters. I applaud also the commitment of Hetty Johnston to Bravehearts and the initiative of Bravehearts this week in relation to the disappearance of William Tyrrell.

The CHAIR (The Hon. Trevor Khan): I will not take that as a precedent for allowing a wide interpretation of what can be said when speaking to amendments in Committee.

The Hon. Sophie Cotsis: A point of order was not taken.

The CHAIR (The Hon. Trevor Khan): I did not interrupt only because of the subject material.

The Hon. SOPHIE COTSIS [5.49 p.m.]: When the Child Protection Legislation Amendment Bill 2105 was introduced into the Legislative Assembly, shadow Minister Mihailuk said it did not go far enough and called on the Government to tighten it. The Government listened and moved amendments in the other place to do so. Labor welcomes those amendments. We also welcome the amendments that the Parliamentary Secretary has put forward tonight to strengthen the bill. We are pleased that the Government heeded our call. The safety of children must always be paramount. We believe the further amendments will strengthen the protections that must be in place to keep children safe.

Ms JAN BARHAM [5.50 p.m.]: I support the Government's amendments. I note that they have come about from an important process in which the Government worked properly with the Opposition. As I stated in the second reading debate, I appreciate the time that the Children's Guardian and the Minister's office have given to The Greens. It is important that we work together on these issues. The way in which the Government responds to the royal commission findings is also important. Whilst I do not look forward to learning more about the failings of current legislation and human nature in subsequent

findings, I do look forward to the continued possibility of this Parliament acting swiftly in a collegiate way when children are at risk. That is when Parliament works best.

I for one hope to see more of that type of action when we find out that children are not as protected as we would wish, particularly when it has to do with matters concerning the suitability of adoptive parents or guardians who take on the important roles of protector and carer. We need to know that children are safe. Each day we learn more about the importance of the early childhood years. A trauma experienced at a young age carries through a person's whole life. Protecting children from people who would harm them is vital. I commend the amendments to the Committee. As I said, I appreciate that we are able to act in this fashion. This is a necessary piece of legislation that I hope will make a big difference in protecting more children.

Mr DAVID SHOEBRIDGE [5.53 p.m.]: The Government amendments come primarily if not entirely out of the royal commission's recommendations. The Greens were long-time advocates for the establishment of the royal commission. Since the time I entered this place I advocated for the need for a royal commission to look into the grossly inadequate past responses of State, Territory and Federal governments to the damage that is caused by the appalling crime of child sexual abuse. The intellectual rigour with which the royal commission has undertaken its work is extremely welcome. I commend it for its depth of consultation with victims and survivors of abuse, the institutions that caused or allowed abuse and the individuals and groups that are advocating for a fresh approach to protecting children.

It is gratifying that the commission only delivered its recommendations in mid-August of this year and the Government has already produced a legislative response. I commend the Government for acting with alacrity. I am sure it was an enormous job on behalf of the Children's Guardian, her office, the department and the Minister's office to introduce the response to Parliament in such a brief time and I commend them for it. I hope that it sets a precedent to be followed every time the royal commission publishes a report because every aspect of the commission's work is essential in protecting children, survivors and victims.

I put on record that I commend the Government for taking on board the suite of royal commission recommendations and the speed with which it has responded to amend our child protection legislation. That being said, amendment No. 1 does not directly flow from a royal commission recommendation. It concerns the adoption in New South Wales of the test that the Children's Guardian must apply when determining the issue of risk. As I understand it, that amendment has come out of the approach taken in Victorian legislation. Proposed new subsection 4A reads:

> The Children's Guardian must not determine that an applicant does not pose a risk to the safety of children—

an uncomfortable double negative, but I think we know what we are getting at—

> unless the Children's Guardian is satisfied that:
>
> (a) a reasonable person would allow his or her child to have direct contact with the applicant that was not directly supervised by another person while the applicant was engaged in any child-related work; and
>
> (b) it is in the public interest to make the determination.

I was grateful to the Children's Guardian and Minister's office for the information they provided to me and my colleague Jan Barham about that amendment in the crossbench briefing and the additional information provided afterwards, part of which contained a direction to the Victorian case law that has developed on the topic. The Victorian tribunal has summarised the provision as the reasonable parent test, that is, it has endeavoured to determine what a reasonable parent would do in response to an

identified risk from a carer or putative carer. In the reasons it adopts, the tribunal sort of brushes over the inherent difficulty of working out what a reasonable parent would do in relation to his or her child by simply saying that the test of reasonableness means that you look at all of the evidence and take an objective view of it as though you were a reasonable parent.

I have an intellectual difficulty with the test which I have not seen grappled with in the Victorian case law, although I am sure it will be in due course. I also expect it to be grappled with in New South Wales once this bill becomes law. My difficulty is whether there is such a thing as a reasonable person when it comes to his or her children. I think most people would recognise that when dealing with the highly subjective issue of their children parents are inherently not reasonable. They are not the "reasonable person" because how they respond to their child is an inherently subjective issue that is coloured by emotional attachments and an extraordinary level of risk aversion. People do not have the same risk profiles when it comes to what they allow their children to do.

[*Interruption*]

Children's views about what is reasonable can be totally different to their parents, but that is not the test. I note the interjection from the Opposition benches. What a reasonable person would allow his or her child to do is a very troubling concept to put into law. That being said, when I looked at the Victorian case law I could not critique the outcomes—it seemed to be providing outcomes that were appropriate and were protecting the best interests of the child. However, I note for the record that what I think the Parliament is doing in adopting the Victorian test is creating a significant legal difficulty for tribunals—that is, trying to objectively work out what a reasonable parent would do in relation to his or her child. I wish the tribunals good luck in doing that, because this is an extremely important issue.

The other aspect to talk about is in relation to the test that is being proposed for the absolute bar—the unchallengeable refusal of the entitlement. I cannot critique the Government on its drafting because the drafting has adopted the very general terms that the royal commission adopted. The royal commission said that if a person has been convicted of one of those series of offences—the murder of a child, sexual assault, sexual abuse, statutory rape and others—and has been sentenced to any form of custodial period, or has any kind of control order, then they should be forever barred and they should not have any kind of review. The Government has adopted that absolutely in this legislation. I congratulate the Government on adopting the royal commission's recommendations. The Government has done it with alacrity, and I appreciate that. The Government has done exactly what the royal commission directed it to do. But when one reads the royal commission report one sees that it does not grapple with two elements, and I accept that these are at the edge of concerns.

One element they have not grappled with is that, in relation to historical child sex offences in particular, the courts tended to take an appallingly lenient approach to child sex offences in the 1960s, the 1970s and even the early 1980s. All child sex abuse is serious. There were instances—particularly in the 1960s, the 1970s and even the early 1980s—where perpetrators were given non-custodial sentences for offences for which courts would now provide a custodial sentence. Therefore, setting the threshold for exemption as whether or not someone has had a custodial sentence is not a particularly well nuanced threshold. Again, I am not criticising the Government—it has adopted what the royal commission proposed. But when one reads the report of the royal commission one sees that it does not address this issue. I assume that the royal commission considered this in its detailed case studies and research when it was coming up with its report, but it is not evident on the face of the report that it considered this issue.

The other extreme issue—and I accept that this is not a run-of-the-mill case that questions whether or not this is the right threshold—is the historical cases involving what could loosely be described, and I accept that it is a loose description, as peer-to-peer statutory rape. This is where an 18-year-old and a 16-year-old have had sexual relations, which is statutory rape. Even though they may have gone on to marry and to have 40 years of fruitful marriage together, the statutory rape resulted in a period of short imprisonment. They would be forever barred with no review rights under this model. In

those circumstances, and I accept that they are at the extreme end, I do not think the absolute removal of any review rights is a good public policy outcome.

I suppose I am just putting those reservations on the record. They do lie at either end of the spectrum. They predominately deal with two classes of historical offending which I do not think have been grappled with in this legislation. To pre-empt the response of the Parliament Secretary, I accept that in the case of an historical offender who got a non-custodial sentence it will still be subject to review by the Children's Guardian. I am sure the Children's Guardian will, if you like, give a twenty-first century perspective of the offending regardless of whether or not a judge in the 1960s or 1970s determined not to give a custodial sentence. I accept that, and I hope that those checks and balances are being put in place proactively, particularly in relation to historical offences. Of course there will be no discretion for the Children's Guardian to deal with historical peer-to-peer offences. I indicate that I am not opposing the amendments. With those observations, I commend the amendments and the thrust of the bill.

Question—That Government amendments Nos 1 to 17 [C2015-073D] be agreed to—put and resolved in the affirmative.

Government amendments Nos 1 to 17 [C2015-073D] agreed to.

Ms JAN BARHAM [6.04 p.m.]: I move The Greens amendment No. 1 on sheet C2015-034A:

No. 1 **Administrative review of decisions**

Pages 23 and 24, schedule 3 [19], line 36 on page 23 to line 8 on page 24. Omit all words on those lines.

This amendment addresses an issue I noted in my contribution to the second reading debate in relation to the removal of administrative review rights relating to the authorisation of carers. The effect of the amendment will be to ensure that decisions to refuse or cancel a person's authorisation as a carer remains open to administrative review. Schedule 3 [19] of the bill amends the section of the Children and Young Persons (Care and Protection) Act 1998 that provides for decisions to be administratively reviewable by the NSW Civil and Administrative Tribunal [NCAT]. The effect of this provision in the bill is that the decision to authorise or not authorise a person as a carer would no longer be open to tribunal review, and that the decision to cancel a person's authorisation would also be non-reviewable if the authorisation was provisional or if the cancellation occurred under section 137 (2) (e) of the care Act.

In his second reading speech, Minister Hazzard stated that removing the right to review of decisions to authorise or not authorise a carer brings "the child protection system in line with the industrial relations system". He stated that existing rights at law relating to discrimination would be retained. However, this argument does not address the removal of review rights for carers whose authorisation is cancelled. Section 137 (2) (e) of the care Act allows the regulation to make provisions relating to the suspension and cancellation of authorisations, and clause 42 of the regulation provides broad scope for a designated agency to cancel or suspend an authorisation if the agency is of the opinion that the carer is "no longer a suitable person" or has failed to comply with conditions, obligations or written directions or to uphold the charter of rights for children in out-of-home care.

This is a broad discretion that effectively allows the agency to cancel any carer's authorisation simply by asserting that they had formed the opinion that the person was not suitable. I would suggest that the effect of this provision in the bill will be to make all decisions to cancel someone's authorisation as a carer non-reviewable. The Greens maintain that these decisions should remain subject to administrative review, allowing the person to challenge whether there was a reasonable basis for the agency to form the opinion that they are unsuitable and cancel their authorisation.

The Greens have concerns about the removal of the capacity for tribunal review when a

prospective carer is refused authorisation by an agency. Legal stakeholders we have consulted on this bill share those concerns, in particular as the removal of review might affect out-of-home care arrangements for Aboriginal and Torres Strait Islander children and young people. We are all too aware of the tragic over-representation of Aboriginal and Torres Strait Islander children in the child protection system. In New South Wales, Indigenous children have a rate of substantiated notifications 7.9 times higher than that of non-Indigenous children, a rate of care and protection orders 9.3 times higher than that of non-Indigenous children, and a rate of placement in out-of-home care 9.7 times higher than that of non-Indigenous children.

The Aboriginal Child Placement Principle requires that Indigenous children and young people who cannot live safely at home should be placed in care with family or other community members whenever possible, and only placed with non-Aboriginal carers when other options are unavailable. Many constituents and stakeholders have raised concern about the application and effectiveness of the way the Aboriginal Placement Child Principle is being implemented in this State. I am concerned that the provision this amendment seeks to remove could make matters worse. I again emphasise that the safety and welfare of children is paramount and that in making care arrangements agencies must ensure that children are in an environment where they are safe and secure. Legal stakeholders have raised concerns with me that the Working With Children Check process may disproportionately exclude Indigenous prospective carers because the clearance process takes into consideration criminal convictions—spent or unspent, charges—whether heard, unheard or dismissed, and juvenile records.

I note that for a range of reasons, both historical and contemporary, Aboriginal and Torres Strait Islander people have a higher incidence of involvement in the juvenile and adult justice systems. Concern has been raised that an Indigenous relative such as a grandparent may be an appropriate carer for a child but he or she may not receive a clearance or authorisation because of a past—possibly spent—conviction, or because of past charges. In such cases, without the possibility of a tribunal review of the refusal of authorisation, the prospective carer's only recourse would be through the Children's Court under section 90 of the Care Act. This would require legal advice and resources that are unlikely to be available to them. Legal stakeholders have told me that the tribunal is extremely cautious in such reviews and would only do so if thoroughly satisfied that the applicant is clearly a suitable person to be a carer. Tribunal reviews provide an appropriate and more accessible check on decision-making and ensure that carers only become or remain authorised when that is the appropriate outcome. I commend The Greens amendment No. 1 to the House.

The Hon. SARAH MITCHELL (Parliamentary Secretary) [6.11 p.m.]: The Government will not be supporting The Greens amendment No. 1. It is incorrect to say that the bill removes all review rights in relation to carer authorisation decisions. The bill does not propose to remove all review rights in relation to carer authorisation decisions. There will still be a right to review carer authorisation decisions in relation to the suspension of an authorisation and the imposition of conditions, and the cancellation of an authorisation generally. Being an authorised carer is not a right, particularly being a carer of some of the most vulnerable children in New South Wales, where the designated agency responsible for them has concerns about their suitability. In such cases, where designated agencies are required to authorise persons as carers after the NSW Civil and Administrative Tribunal review, agencies generally do not place children with them. This means that review proceedings serve little practical purpose while diverting out-of-home-care resources.

The Hon. SOPHIE COTSIS [6.12 p.m.]: The Opposition will not be supporting The Greens amendment No. 1. Small organisations simply do not have the capacity or the resources to engage in long, protracted legal battles in relation to who will be allowed to work as carers. Providers need to be able to make decisions without being subjected to costly and time-consuming legal battles that drain the precious resources of these small organisations.

Mr DAVID SHOEBRIDGE [6.13 p.m.]: I speak in support of The Greens amendment No. 1. Indeed, I endorse every word that Ms Jan Barham has said in relation to this amendment. The removal of

these review rights to the NSW Civil and Administrative Tribunal [NCAT] is a matter that the Law Society of New South Wales specifically sought to be heard on. The Law Society sent some correspondence to my office, and I assume to other parliamentarians, about this issue. Those concerns are very real. They come from the experience of the Indigenous Issues Committee of the Law Society—that set of practitioners who deal daily with Aboriginal people in this State. It is an unfortunate fact of life for Aboriginal people that there is an extraordinary amount of involvement between their families and the Department of Family and Community Services. The letter said, in part:

> However, the Committee notes the relationship between Indigenous peoples and the Department of Family and Community Services, and the Children's Court can be fraught. For many Indigenous people there is a historical and ongoing distrust of FACS.
>
> The Committee also notes that in its experience, it can be difficult to make applications under section 90 of the Care Act. A significant barrier is the difficulty in accessing Legal Aid grants for an applicant (who may in fact be a suitable carer) who [has] not passed a Working with Children Check ("WWCC") because he or she may have a criminal record.

The Law Society then explained how this works in practice. The letter continued:

> In considering whether a WWCC clearance should be given, the Office of the Children's Guardian takes into consideration convictions (spent or unspent), charges (whether heard, unheard or dismissed) and juvenile records. In the Committee's experience, this process can disproportionately exclude Indigenous people from getting a WWCC clearance and therefore exclude people who may in fact be appropriate carers. In this regard, the Committee notes the relationship between Indigenous peoples and the NSW Police Force is one that is complicated by historical and contemporary experience.

Members would be aware that both historically and in the current day, Aboriginal people in this State are vastly more likely to have interactions with the NSW Police Force and are vastly more likely to have criminal records—either themselves or a family member. Because the Working With Children Check process has such a strong reliance upon past, current and pending criminal proceedings, and criminal records, this will undoubtedly have a disproportionate effect on Aboriginal Australia. The letter continued:

> The following example is not uncommon. An Indigenous grandparent may be in fact the best carer for an Indigenous child, but may not pass the WWCC because of a conviction (which may be a spent conviction). In the Committee's experience, an applicant in that position is unlikely to receive a Legal Aid grant to make an application under s 90 of the Care Act.

This parallel process would entitle them to a care order if they could persuade the Children's Court to exercise its discretion under section 90. The letter continued:

> Without recourse to the NCAT, and taking into account that it is very difficult to access pro bono legal representation in this jurisdiction, such an applicant is unlikely to be able to be authorised as a carer.
>
> The Committee notes that this scenario may lead to the child in question being place in the care of someone outside of that child's kin or family structure.

To say to Aboriginal people in this State that their review rights to NCAT are going to be taken away and that if they want to press for a carer they will need to make an application under section 90 to the Children's Court puts in place an impossible burden for those potential carers. Whilst the Children's Court is a well-established jurisdiction in dealing with this, the barriers for Aboriginal people to get to that court are often insurmountable. For example, they will not get a Legal Aid grant because they have been refused a Working With Children Check. If they do not get that grant they are never going to get to first

base on the section 90 application in the Children's Court. That is a simple matter of undeniable practice in New South Wales.

The opportunity to go to NCAT is an extremely valuable right for many people in Aboriginal Australia. Given that Aboriginal people statistically are more likely to be dealing with the Department of Family and Communities and to have these issues arise in their families, it should be recognised that if a law that looks good in one set of circumstances is applied in a culturally blind fashion to Aboriginal Australia it can have quite significant negative implications. Ms Jan Barham has moved this amendment to retain the NCAT review rights. From discussions with the Government, the Children's Guardian and others, and from my reading of the second reading speech, it is very clear that the policy position that has been adopted in relation to these carer applications—whether the department or a non-government organisation assesses them—is very similar to a job application and, just as with a job application, if you do not get the job there should be no review rights.

Industrially, there is no right of review if a person applies for a job and does not get it. There are limited rights to review in the public service, but, as a general rule, if a person submits a job application and does not get the job there is no right of review. The Greens in New South Wales do not believe that the analogy applies to family members seeking care of their kin or extended kin. That is not like a job application. It is distinct from a job application. The Greens think that retaining the right to a review by the NSW Civil and Administrative Tribunal is important. The likelihood that removing the right of review will have a disproportionately negative effect on Aboriginal Australians in this State is a compelling reason, The Greens say, for retaining it. For those reasons, I commend the amendment to the Committee.

Question—That The Greens amendment No. 1 [C2015-034A] be agreed to—put and resolved in the negative.

The Greens amendment No. 1 [C2015-034A] negatived.

Title agreed to.

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

Bill as amended agreed to.

Bill reported from Committee with amendments.

Adoption of Report

Motion by the Hon. Sarah Mitchell, on behalf of the Hon. John Ajaka, agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. Sarah Mitchell, on behalf of 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 with a message requesting its concurrence in the amendments.

PROPERTY, STOCK AND BUSINESS AGENTS AMENDMENT (UNDERQUOTING PROHIBITION)

BILL 2015

TRANSPORT ADMINISTRATION AMENDMENT (CLOSURE OF RAILWAY LINE AT NEWCASTLE) BILL 2015

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.

[*Deputy-President (The Hon. Paul Green) left the chair at 6.24 p.m. The House resumed at 8.00 p.m.*]

BUSINESS OF THE HOUSE

Postponement of Business

Government Business Order of the Day No. 4 postponed on motion by the Hon. Niall Blair and set down as an order of the day for a later hour.

DAMS SAFETY BILL 2015

Second Reading

The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) [8.00 p.m.]: I move:

That this bill be now read a second time.

Dams are the lifeline of rural and metropolitan New South Wales. They provide safe drinking water in our cities and towns, allow farmers to irrigate their paddocks and play a vital role in containing run-off from mining activities. The New South Wales Government is committed to the safety of dams and the safety of the people of New South Wales. The Dams Safety Bill 2015 replaces the Dams Safety Act 1978. This bill will modernise the regulatory framework for dam safety in New South Wales and ensure that the Act reflects the outcomes of the review of the dams safety regime conducted in 2013. The bill establishes new objects that seek to balance the risks arising from dams, encourage the proper and efficient management of dam safety together with promoting greater transparency, and encourage the application of risk management and cost-benefit analysis in regulating dams.

The Dams Safety Act 1978 constitutes the Dams Safety Committee and confers on the committee functions and powers to ensure the safety of prescribed dams in New South Wales. While the current Act constitutes and sets down the functions and procedures of the Dams Safety Committee, the current standards and prescriptions are in the form of guidelines that sit outside the regulation. This is inconsistent with current best practice regulation. Following a recommendation by the Commission of Audit, the New South Wales Government conducted an independent review of the Dams Safety Act and the Dams Safety Committee. The primary reason for this review was to address the Commission of

Audit's finding that there are relatively high levels of spending on dam safety in New South Wales that are not commensurate with risk reduction. KPMG was engaged to conduct the independent review.

In its report KPMG found evidence that the current approach may result in a disproportionate level of investment on infrastructure for limited safety gains. KPMG suggested that a regulatory approach where the regulator has appropriate independence and dam owners are more clearly responsible for ensuring and demonstrating compliance with safety standards could reduce compliance costs. It would also bring greater clarity to the respective roles and responsibilities of dam owners and government. KPMG identified a number of weaknesses in the current approach, including a lack of clear objectives in the Act, resulting in a primary focus on engineering solutions to achieve public safety. It noted a lack of transparency for dam owners in regard to what they are required to do in terms of upgrading dam infrastructure to reduce the risk of dam failure beyond the "limit of tolerability". There appeared to be a limited focus on applying cost-benefit analysis to identify the most efficient dam safety risk reduction options.

KPMG also noted that the dam safety regulator, being comprised, in part, of representatives of the same dam owners that it was regulating, was inconsistent with best practice and open to concerns regarding conflict of interest. The current approach to dam safety does not clearly establish the point at which compliance has been reached and has contributed to a strong focus on engineering measures over alternative approaches to risk reduction. The lack of a clear minimum standard and the focus on engineering solutions has, in some cases, resulted in large capital expenditures without appropriate consideration of whether alternative risk management methods may have achieved improved safety outcomes at a lower cost. The interagency Dams Safety Review Steering Committee observed that the Dams Safety Committee, despite being a regulatory authority, does not in practice establish clear standards against which dam owners can simply assess their compliance. They also observed that the Dams Safety Committee currently has only very limited enforcement powers.

Community and stakeholder input was sought throughout the review. Workshops were held with large dam owners, relevant agencies and representative organisations. A community consultation process was also undertaken on the findings of the review, during which 39 submissions were received. Overall, these submissions indicated broad support for the reform direction identified in the review. The review steering committee reviewed the results from the consultations and identified a number of reform proposals to give effect to many of the KPMG recommendations. I also acknowledge the important work of the Standing Committee on State Development and its report on the adequacy of water storages in New South Wales. In particular, I acknowledge the Hon. Rick Colless, the Hon. Mick Veitch, the Hon. Dr Peter Phelps and the Hon. Paul Green.

The Hon. Paul Green: A true brains trust for New South Wales.

The Hon. NIALL BLAIR: I acknowledge that interjection. The report on the adequacy of water storages in New South Wales also considered dam safety issues and raised a number of concerns in relation to the level of expenditure on dam safety upgrades. These findings were taken into account as part of the broader review. The bill seeks to retain important elements of the current dam safety regime, to modernise and address gaps in the current legislation and to provide a best practice framework for the ongoing regulation of dam safety in New South Wales. In doing so, the proposed reforms will achieve the desired public safety outcomes more efficiently.

I now outline the provisions of the bill. First, there are the proposed objects of the Act. The current Act has no objects, which the review found may have contributed to a lack of clear direction and a blurring of the functions of the Dams Safety Committee. Clause 3 sets out the proposed objects, which are centred on ensuring that the risks imposed by dams are appropriately and transparently managed by the regulator and by dam owners. They provide a definitive basis on which the proposed new regulator will operate. The bill introduces the process of declaring dams, which replaces the current process of prescribing dams. Under clause 5, Dams Safety NSW will declare a dam through a gazettal notice. The

list of declared dams will also be available on the department's website, making it more readily accessible to the public. The regulations will prescribe the type, class and categories of the declared dams.

The Dams Safety Committee previously developed the criteria for prescribed dams outside the legislation; however, the list of prescribed dams is contained in schedule 1 to the current Act, creating inefficiencies when changes were required. Gazetting the declared dams as outlined in the bill should reduce this inefficiency. Those dams on the current prescribed list will be recognised as declared dams once the Act comes into effect. The Interim Dams Safety Advisory Committee will be tasked with developing the criteria for declaring dams; however, it is not anticipated that the criteria or number of dams that are to be regulated will differ markedly from what is currently in place. The bill replaces the "Dams Safety Committee" with "Dams Safety NSW", updating the name of the regulator, and marking the beginning of the reformed regulation.

As mentioned previously, the review found that the inclusion of dam owner representatives on the Dams Safety Committee was not in keeping with regulatory best practice, creating the risk of concerns regarding conflict of interest. Consequently, the bill proposes that Dams Safety NSW will be comprised of at least five members who collectively have professional expertise in dam engineering; mine engineering; emergency management; dam operations and management; and best practice regulation, including cost-benefit analysis and business case development. It is intended that the new composition and the broad range of expertise of Dams Safety NSW will better equip the regulator to meet the objects of the Act and undertake all its required functions informed by a best practice and modern risk management approach. These functions are set out in clause 9 of the bill.

A key recommendation from the review was that the dam safety regulator should be responsible for monitoring compliance of dams with public safety standards and, while the regulator should have powers to compel owners to comply with the standards, there should be no blurring of the fundamental legal responsibility of dam owners in the provision of public safety. It was further proposed that the regulator should have powers to enforce compliance with standards, but should not take a prescriptive approach in determining particular dam safety investment strategies that dam owners may choose to achieve compliance. Rather, dam owners should have flexibility to explore a broad array of options to deliver the required level of public safety and should apply a risk management framework and cost-benefit analysis to identify the most efficient dam safety risk reduction strategy. This concept lies at the heart of best practice regulation and paves the way for effective and efficient risk reduction solutions for dams.

As a result, the functions of Dams Safety NSW include recommending to government the dams safety standard, or standards, that dam owners must meet. This differs from the current approach, which directly references Australian National Committee on Large Dams [ANCOLD] guidelines. Under these guidelines dam owners are required to meet a defined minimum standard in relation to public safety risk, known as the "limit of tolerability". They are also expected to strive to achieve the largely undefined target of public safety risk being "as low as reasonably practicable". The current situation creates a lack of clarity for dam owners as to whether they have met their statutory responsibilities, and it also means that changes to the ANCOLD guidelines, over which the New South Wales Government has no control, are translated into the New South Wales regulatory system without the filter of normal regulatory impact assessment processes.

In forming recommendations regarding minimum public safety risk standards, Dams Safety NSW will take into consideration the relevant Australian and international standards, and dam safety guidelines. Once established by regulation, the standards will be enforced by the regulator, which is consistent with the functions outlined in the bill. Dam owners will be required to demonstrate how they have complied with the standards on an annual basis. Another key finding of the review was that the functions of the regulator need to extend beyond the physical safety of the dam wall to the way the dam is operated and managed, including emergency plans. In this regard, the Dams Safety Committee's current role in approving the operational and emergency management plans for dams is considered to be open to

improvement. More rigour is required on the completion and review of these plans.

It is therefore proposed that the regulations will specify the requirements for the plans. Dam owners will be required to submit plans that must meet these requirements and be updated on an annual basis. It is proposed that Dams Safety NSW will be a compliance-driven regulator, with the onus on the dam owner to prove compliance, and the regulator will have the power to take action to ensure that compliance is achieved. Many council submissions indicated that they traditionally rely heavily on engineering expertise and information provided by the Dams Safety Committee, and argued for a future regulator to retain this role. While provision of general information on dam engineering and safety issues and information on what is required to meet regulatory requirements would be within scope for a regulatory authority, it is considered that a direct advisory role of the nature proposed would not be appropriate.

Therefore, a specific function is proposed that Dams Safety NSW is to provide guidance to dam owners in complying with the Act, including guidance on applying risk management and the principles of cost-benefit analysis. It is proposed that one of the first tasks of the new regulator will be the development of an appropriate cost-benefit analysis framework and process to be incorporated into dam safety regulator guidelines. The analysis will be standardised in line with New South Wales Treasury requirements and guidance will be provided for dam owners on this process. The proposed penalties in the bill have been increased significantly from those in the current Act, where the penalty for failure to comply is only 10 penalty units. This penalty is not considered commensurate with the potential consequences of dam failure—which, as members would be aware, can be catastrophic. The new penalties have been framed through consideration of the penalty regime for tier two offences under the Water Management Act, and are within the range of dam safety non-compliance penalties in the Australian Capital Territory and Queensland.

As I mentioned previously, a key function of Dams Safety NSW will be to prescribe dam safety standards. The provisions in the bill acknowledge that the introduction and subsequent amendment of dam safety standards will have a significant impact on declared dam owners, so there is a specific requirement that consultation occur with those affected by the proposals. Further, the bill requires that Dams Safety NSW conduct a cost-benefit analysis on the proposed standards before they are enshrined in legislation. These amendments recognise the recommendations from KPMG, that the regulator should achieve high levels of public transparency with respect to the basis of its regulator standards and the roles of the dam owner versus government to ensure that the legal liability is clear and rests firmly with dam owners. KPMG also found that the regulator should consider the views of industry and stakeholders when making decisions on changing regulation, and should advise industry and stakeholders once decisions have been made.

The bill provides that dam owners must submit operations and maintenance and emergency plans in accordance with a more compliance-based regulatory model. Dams Safety NSW will have the power to audit plans, and this power will be enhanced by the emergency management and dam operations and management expertise that will be available through the membership of Dams Safety NSW. The bill enables compliance notices to be issued where Dams Safety NSW is of the opinion that an owner of a declared dam has not met the requirements in relation to the dams safety standards or dams operations and management, and emergency management plans. These notices provide a useful mechanism by which Dams Safety NSW can require dam owners to address the failure to comply. In addition, Dams Safety NSW will also have the power to undertake an action specified in the compliance notice, if the owner has failed to take action, and to recover any costs from the owner.

The bill proposes that Dams Safety NSW will have the power to order a person to do such things that are necessary to ensure the safety of a dam, when the safety of the dam is in question. Importantly, Dams Safety NSW also has the power to issue stop-work directions where Dams Safety is of the opinion that anything being done or proposed to be done may endanger the safety of the dam. These two powers are significant and equip the regulator with the means to properly ensure the safety of declared dams.

The bill recognises that there is a continuing need for emergency powers in situations where there is an immediate threat to public health or public safety or in situations where a dam has collapsed or is liable to collapse.

Clause 48 of the bill requires consent authorities to consult with Dams Safety NSW in relation to applications for development consent for mining operations. The consent authority must refer the application to Dams Safety NSW and take into account any matters raised by it within 28 days. The expectation is that more time will be available for Dams Safety NSW if it is needed. The bill accommodates this by enabling the consent authority and Dams Safety NSW to negotiate additional time. This is an important provision that ensures that Dams Safety NSW remains an integral part of the planning approval process for mining operations and that dams safety considerations are taken into account.

The Government has undertaken an extensive process of consultation on the proposed reforms with dam owners and the community. The Government is committed to further consultation with affected owners during the implementation of the Act. In summary, this bill introduces important reforms to improve transparency in the regulation of dams safety in New South Wales and ensures that the regulator is properly equipped to enforce the new safety standards. Not only does the bill provide for clear safety standards for dams but also it will provide dam owners with better flexibility in how they achieve it. The New South Wales Liberal-Nationals Government's number one objective remains protecting the community from the risk of dam failure. I commend the Dams Safety Bill 2015 to the House.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Before I call the Hon. Mick Veitch, I welcome to the President's Gallery the member for Kogarah, Mr Chris Minns, his wife, Anna, and their sons, Joe and Nicholas, who is the godson of the Hon. Ben Franklin.

The Hon. MICK VEITCH [8.20 p.m.]: I lead for the Opposition in debate on the Dams Safety Bill 2015. I indicate from the outset that the Opposition does not oppose the bill. I draw my remarks from a damn fine speech delivered in the lower House by the member for Cessnock, Mr Clayton Barr. This bill introduces a new method of managing dams in New South Wales. It provides for a new regime for ensuring dam safety for the residents of this State. This is the start of the change. Clearly, a lot of work needs to be done to implement this new regime, particularly in the next 12 months. Dams provide safe drinking water in our cities and towns, and water to irrigate farm paddocks. They play a vital role in containing contaminated run-off from mining activities. They are also a significant contributor to recreational pursuits in regional New South Wales. I grew up in Tumut and spent a lot of time on Blowering Dam and Burrinjuck Dam fishing, boating, waterskiing and kayaking.

The Hon. Niall Blair: On the dam or on the lake?

The Hon. MICK VEITCH: I am not such a great waterskier. The Dam Safety Bill 2015 replaces the Dam Safety Act 1978. The Minister's second reading speech states that the Government aims to modernise the regulatory framework for dams safety in New South Wales and ensure that the Act reflects the outcomes of the review of the dams safety regime conducted in 2013. This bill establishes new objects that seek to balance the risks arising from dams, encourage the proper and efficient management of dams safety together with promoting greater transparency, and encourage the application of risk management and cost-benefit analysis in regulating dams. The Minister also spoke about the inquiry of the Standing Committee on State Development into the adequacy of water storages.

Chapter 6 of the report handed down by the committee looked at dams safety practices. It would be fair to say that inquiry participants raised concerns relating to the value of State Water's dams safety program at that time. The committee was advised that the Dams Safety Committee [DSC] considers whether a dam structure is safe, whether it complies with its requirements and conforms to accepted good practice. The Dams Safety Committee listed a number of criteria that dams would be assessed against: structural adequacy and stability; leakage control; adequate flood capacity; effective operation,

maintenance and emergency management practices; regular surveillance; and dam safety reviews. During the inquiry some concern was expressed that the safety requirements set by the Dams Safety Committee were unnecessarily high and, as a result, costly. Some argued that the significant financial costs of upgrades could be better spent in other areas. In a submission to the inquiry Mr Paul Heinrichs said:

> The economic expenditure on upgrading dams to very low risks, up to 1 in 1,000,000 risk, is a costly exercise and the money could possibly be better spent on provision of new dams, or on other areas of high risk such as traffic lights, hospitals and safer roads.

Mr Brian Cooper, chair of the Dams Safety Committee in 2013, acknowledged to the committee that many local councils find it financially difficult to undertake safety upgrades of dams, particularly older dams, and suggested that there should be a mechanism to provide councils with sufficient funding to undertake the required upgrades. The committee spent a lot of time visiting dams. We looked at the safety works at Copeton Dam, which was an eye-opener. At the public hearing at Moree concern was raised about the amount of expenditure that must be undertaken on the basis of the formula put in place by the Dams Safety Committee.

In our consultation on the bill, the New South Wales Opposition was advised by stakeholders that they were not opposed to regulation introduced by the bill, providing it ensures a high level of service delivery and safety to New South Wales communities. Some concern was expressed that we need to be very careful that the Government does not introduce an unwieldy compliance burden for dam owners with minimal impact on dam safety. But there was broad support for the bill. Currently, the Dams Safety Act 1978 constitutes the Dams Safety Committee and confers on the committee functions and powers to ensure the safety of prescribed dams in New South Wales. While the Act constitutes and sets out the functions and procedures of the Dams Safety Committee, the current standards and prescriptions are in the form of guidelines that sit outside the regulation, as the Minister said in his second reading speech. This is not ideal and I am surprised that it has taken us this long to consider why that is the case.

Following a recommendation by the Commission of Audit, we were advised that the Government had arranged for an independent review of the Dams Safety Act and the Dams Safety Committee. The primary reason for this review was to address the Commission of Audit's finding that there are relatively high levels of spending on dams safety in New South Wales that are not commensurate with risk reduction. The Government then engaged KPMG to conduct an independent review. In its report KPMG found evidence that the current approach may result in a disproportionate level of investment in infrastructure for limited safety gains. Some of the stakeholders we spoke to expressed concern that the excessive levels of engineering and structural works aimed at improving levels of dam safety have in fact increased costs to the community. Those increases are both in the running of the dams as well as in upgrades to dam safety, with one stakeholder indicating that some operators have worn a significant cost for safety construction works when the effectiveness of those works in significantly mitigating risks might be termed "questionable". Indeed, someone must bear the cost burden of the safety works.

I note the KPMG review observed that best practice was not achieved in relation to clarity and transparency of the measures required to improve public safety, while also observing a general lack of adequate cost-benefit analysis for decisions about the most appropriate options for risk management. The Minister adequately described in his second reading speech the process resulting in this bill. The Commission of Audit resulted in the KPMG review, which thankfully also included sufficient community and stakeholder consultation—something the Opposition always welcomes and which is often rare from this Government—and as a consequence the proposed reforms received broad support, resulting in the drafting of the Dams Safety Bill 2015. That process should be appropriately praised. The clauses of the bill were also well detailed in the Minister's second reading speech, so I will not use the time of the House to repeat them ad nauseam. The aims are best outlined by the following sentence from the Minister's second reading speech:

> The bill seeks to retain important elements of the current dam safety regime, to modernise and address gaps in the current legislation and provide a best practice framework for the ongoing regulation of dam safety in New South Wales.

Again, this general principle should be appropriately praised as the right approach to such an undertaking. To dig into a selection of the bill's functions, I note the bill replaces the Dams Safety Committee with Dams Safety NSW—I hope a committee was not formed to determine the change of name. To avoid the current risk of perceived conflict of interest by including dam owner representatives on the committee, the bill proposes that Dams Safety NSW will comprise at least five members with professional expertise in: dam engineering, mine engineering, emergency management, dam operations and management, and best practice regulation, including cost-benefit analysis and business case development.

This change is sensible and has the support of the Opposition—in fact, it leads to the question of how many other statutory committees in New South Wales could benefit from similar reform. But that is a question for another day. The Opposition is pleased to note a specific requirement that consultation occur with those affected by the proposals for the introduction and amendment of dams safety standards, as well as the undertaking of a cost-benefit analysis on the proposed standards before they are enshrined, as they may bring with them a significant impact and cost burden to declared dam owners. The bill also gives the regulator strong powers to audit and curtail dam works and operations to ensure that safety is the highest priority, which offers comfort that compliance will be consistent and of a high standard.

I note that there has also been a significant increase in penalties. The current Act provides for a penalty of 10 penalty units for failure to comply, whereas dam safety non-compliance penalties in the new Act range from 10,000 penalty units for corporations to 2,250 for individuals. I am glad that the bill includes penalty units and not dollar amounts because if ever the penalty unit value is changed it can be done via a single piece of legislation. That is much better and will change the whole process.

The Hon. Dr Peter Phelps: Why do you want to put legislative drafters out of business?

The Hon. MICK VEITCH: The Biosecurity Bill did not do that, let me tell you. I understand the penalty regime is in line with those in Queensland and the Australian Capital Territory for similar offences. Consistency of penalties across borders is a positive development. The increases also acknowledge the potentially devastating consequences of dam failure. Once the bill is passed, a significant degree of work will need to be undertaken to set up the new framework and to apply the new standards and operations that the bill enables. The Opposition will closely monitor the implementation of the bill and regulations and standards that will follow to ensure that promised consultation with affected stakeholders is both timely and appropriate. These are important public safety considerations and the framework must be set correctly from the beginning.

In closing, the Opposition has found nothing objectionable or intolerable in the bill. In addition, broad stakeholder consultation has not raised anything significantly untoward. In fact, I congratulate Minister Blair on delivering a second reading speech that actually did what it was supposed to do, that is, detail the process that brought the bill to where it is today, explain the bill clause by clause and describe the next steps of how the bill is to be implemented. That is how a second reading speech is meant to operate. The Minister is a rarity in this Government in that he did what he is meant to do in a second reading speech. I congratulate the Minister. As I stated at the outset, the Opposition will not be opposing the bill. The bill has been consulted on well and prepared well, and the second reading speech was delivered well. The Opposition will consider the amendments at the Committee stage in the context of the bill. As I said, we will not be opposing the bill.

Dr JOHN KAYE [8.32 p.m.]: I speak on behalf of The Greens in debate on the Dams Safety Bill 2015. The Greens will not be opposing the bill. However, I will raise a major concern about mining approvals in the vicinity of dams. I will also raise a larger philosophical issue with respect to the move to

self-regulation. There is always an air of suspicion about things that come out of the Commission of Audit. Given that this legislation came from the commission, it was worthwhile for me to spend some time analysing it fairly carefully. I will address that matter shortly.

The bill replaces the Dams Safety Committee with Dams Safety NSW and in doing so substantially changes the regulation of dam safety in New South Wales. It moves the State away from an engineering prescriptive approach to dam safety towards an economic self-regulatory approach, as I must say has happened successfully in Victoria. The bill aims to achieve a better trade-off between costs and risks—a statement which always inspires great fear in the heart of the average person, and with good reason. One sometimes has to explain to people that every time they step onto a commercial aeroplane they are walking into a trade-off between risk and cost. Aeroplanes are designed to crash with a certain frequency. A much safer commercial aircraft could be designed. In fact, a commercial aircraft could be designed that had one-thousandth the probability of crashing of existing commercial aircraft. However, those aircraft would be so expensive that nobody could afford to fly in them.

The point is that we can spend more money and get lower risk or spend less money and get higher risk. There is always a trade-off. The ultimately safe aircraft would be prohibitively expensive and nobody would ever fly in it. In all engineering undertakings there is a trade-off between risk and cost even if it is not explicitly identified. Lying behind the current regulatory process, which is based on the prescriptions of the Australian National Committee on Large Dams [ANCOLD], is a subjective analysis of risk. Even if it is never explicitly stated, that analysis lives within the process. The regulatory framework proposed by the Dams Safety Bill creates a more overt trade-off between risk and safety. It looks to minimise the risk of collapse or other failure but does so while bearing in mind the costs of measures to avoid it.

Importantly, moving to this regulatory structure will enable dam owners to broaden the pallet of options that they can bring to bear to reduce risk. When no longer restricted to engineering hard works, dam owners will be able to look at other matters. For example, if one were worried about overflow events at Warragamba Dam and the consequences for its structural integrity, an approach would be to raise the wall of the dam by 23 metres, as has been proposed. That would cost up to $1 billion. The alternative would be to create more air space in Warragamba Dam by taking the full level lower down.

The Hon. Dr Peter Phelps: The Stuart Khan method.

Dr JOHN KAYE: I acknowledge the interjection. I also acknowledge Associate Professor Stuart Khan's contribution to water policy. As it turns out, he is a relative of a member of The Nationals in this place. I will leave it to members to guess who that is. I acknowledge the role that Associate Professor Stuart Khan from the University of New South Wales has played in the public debate on water and his influence on my thinking about water over the past 25 years since I met him. To return to what I was saying, soft works are often cheaper, better for the environment and capable of achieving the same or similar risk outcomes as engineering hard works. The problem with the ANCOLD solution is that it always dives into the engineering hard works first. The studies on flood mitigation in the Nepean basin that the Government and its predecessor conducted over the past half a decade are good examples of that. Raising the Warragamba Dam wall would increase the capacity of Lake Burragorang and probably reduce the instance of flooding. But, as Stuart Khan has pointed out on a number of occasions, it would not entirely eliminate flooding and it would be incredibly expensive.

A one-in-100-year flood would damage 3,175 houses in the Nepean basin. Spending $1 billion to raise the dam wall would make the effective cost for each house $315,000, which is more than the average cost of rebuilding those houses. The following statement will sound harsh; it possibly is. As a society it would be cheaper for us to evacuate people, let their houses be destroyed and then build new houses for them. It is a harsh statement, but it is true. In land that is prone to flooding we must be realistic about how we deal with it. We must also take into account that even if we spent the $1 billion there could be a one-in-150-year event that might overtop the dam and cause similar or worse flooding.

I had many debates with the Government's predecessor over drought-proofing New South Wales. Unless we build a lot of factories to make water we can never drought-proof anywhere. The best we can do is to manage the risk in a cost-effective fashion. To that extent, the bill has a sensible objective in removing the engineering specifications and replacing them with a new regulatory regime based on standards to be established by Dams Safety NSW. I agree with the Opposition spokesperson, the Hon. Mick Veitch, in that there is a lot more work to be done on this bill. I have been asking what the standards will look like and nobody can tell me. That is not a fault of the bill; it is just that the standards are yet to be written.

The bill before us is establishing the framework and then the exact nature of that framework will be determined in the regulations which will be enabled, I presume, by an Act. We will need to look very carefully at those regulations because that is where the trade-off between risk and cost will occur. It is in those regulations that we will see how effective the legislation will be. So we will need to spend time looking very carefully at them. It probably would have been better to have the legislation and the regulations at the same time. We can adduce from the Minister's second reading speech—and I thank him for the comprehensive details he provided in his speech—that these new standards will be performance and outcome oriented rather than prescriptive. They will include operations and maintenance plans—

The Hon. Niall Blair: And emergency plans.

Dr JOHN KAYE: And emergency plans. The operation and maintenance plans and the emergency plans are critical to the safety of a dam just as much as the original design of the dam. Those three sets of plans—operations, maintenance and emergency—will be submitted to Dams Safety NSW and assessed by Dams Safety NSW. They will be at the core of the regulatory approach to dam safety. Presumably the design of new dams and the design of any modifications to dams will also be sent to Dams Safety NSW. I could not find that in the bill, although it may well be. It is implied by the bill, and it would be a function that Dams Safety NSW would be involved in. I certainly hope so.

The bill presents real opportunities for lower cost outcomes and lower environmental impact outcomes. I am deep in The Greens and the environment movement. Most people who have been watching this carefully are deeply and profoundly opposed to raising the level of Warragamba Dam, for the very reason that there are cheaper solutions that are better for the environment and probably better for downstream residents in the long run. As I have said, raising the dam wall will not create a flood-proof Nepean basin. That just will not happen.

The Hon. Rick Colless: There is no such thing as flood proof.

Dr JOHN KAYE: There is no such thing as flood proof. Spending $1 billion building a higher dam wall will reduce some risk of flooding. But also it will, firstly, create a false sense of security and, secondly, put a billion dollars into an outcome that might not be the most cost-effective way of achieving the desired outcome of keeping people safe, keeping people housed, and having a prosperous and safe economy. To that extent, I support this bill. But there is a question that will always hang over any change in regulatory structure: Does this bill effectively manage risk? It is a step away from the hands-on regulatory regime of the Dams Safety Committee.

The Dams Safety Committee, for those who have not dealt with it, is a frightening institution. It comes in and tells people what they can and cannot do. It is full of engineers—people whom I identify with, being an engineer myself—with very strong views on dam safety. I have to say that in the years that I have been involved with civil engineering works around dams in New South Wales, going back to the time I was first elected to this place, I have always had a lot of respect for the work of the Dams Safety Committee. We are losing that particular player in this game, and that is something we need to be very careful about.

I am not casting aspersions on the people who will be appointed to Dams Safety NSW. Many of them will be very skilled, I am sure, and all of them will be committed to a safe and low-risk outcome. But when we move away from as safe as possible to an economic construction of risk there will be more risk. Will that risk be socially acceptable? Are we getting the risk right? Will the regulatory structure produce the level of risk that it is designed to or will it fail to do so? It is an experiment.

The Minister has pointed to Victoria and said that a similar structure has worked well in Victoria, and indeed it has. But then the question is: Is the situation in New South Wales the same as that in Victoria? We have a different structure of dam ownership. We have different geology. We have dams of a different nature and we have different rainfall patterns. It is highly likely that this will work because it worked in Victoria and it has worked in other jurisdictions around the world. But there remains always an element of doubt; and getting something wrong in this area has huge consequences. I am stating the obvious when I say that this is one of those terrible engineering situations where you have a low-probability, high-consequence risk. It is like living next door to a nuclear reactor—there is a very low probability that anything will go wrong but if it does then you are truly stuffed.

The Hon. Niall Blair: Is that the technical term?

Dr JOHN KAYE: Yes, that is the technical term. I learned "truly stuffed" in second-year engineering.

The Hon. Mick Veitch: I thought that was in your thesis.

Dr JOHN KAYE: No, that was my thesis. The reality is that there are true risks associated with this. The other problem is that this is not like throwing dice. When you throw dice you can repeat the experiment many times and build up a statistical profile. In so doing, you can remove some of the subjectivity from probability. But we do not have, fortunately, a lot of experience with dam failure. Therefore we do not have a statistical record from which we can develop probabilities. We are doing this largely by subjective probability. It is all done by subjective assessment of what is likely to lead to a failure and what is not likely to lead to a failure.

Civil engineering has for 250 years—or probably more accurately for 2,000 years—dealt with that by building in factors of safety such as over engineering. So if your calculations say that the dam wall should be 50 metres thick at its base, then you make it 100 metres thick. But there are costs—more material costs, more engineering costs and more environmental costs—associated with that. This legislation will drive a different trade-off. Where that trade-off lands we will only really know in 1,000 years time. We can get some inkling from the sorts of engineering solutions that happen over the next five years. This is a very serious matter and it needs to be dealt with with great sobriety and caution. The Greens, therefore, are going to move at the Committee stage some amendments to the statutory review to ensure that the matters of risk and cost effectiveness are specific foci of the five-year statutory review.

I think it is extremely important that the five-year review is comprehensive and looks at what has happened to the risk profile in New South Wales. I now turn to the last issue in this legislation, and we will have a lot more to say about this when we get to the Committee stage—that is, the issue of the assessment of the impact of mining operations in the vicinity of a dam structure. This legislation is one step forward and two steps backward in this regard. The step forward is that the assessment will now happen at the development consent stage and not at the mining lease stage. In mining assessment there is the development approval and consent and the conditions of consent, and then the mining lease is approved or not approved.

The issue of whether a mine can go ahead when it is in the vicinity of or near a dam—and the definition has been broadened to include "in the vicinity of"—has now been moved from the mining lease stage to the development consent stage. That is a step forward. It is now up-front. Having a mine under

Warragamba Dam or a mine under Cordeaux Dam could compromise its structural integrity. So having that considered at the development consent stage is sensible. The way it will work under this legislation is that Dams Safety NSW will provide an assessment to the consent authority. Generally, for a large mine or one that is likely to be near a water supply or near a dam it will be the Planning Assessment Commission. The bill requires that the Planning Assessment Commission assess the development and that the matter ends there. But The Greens are seriously concerned that there is no responsibility and that the matter ends with the Planning Assessment Commission.

The Planning Assessment Commission is responsible for weighing up a range of issues, including those associated with traffic, air pollution, air quality, water quality and socio-economic analysis. The assessment of dam safety in New South Wales is to be added to that responsibility. The Greens contend that that is inadequate. Indeed, it will make it easier for mining to be conducted in the vicinity of a dam wall, which is dangerous. I foreshadow that The Greens will be moving an amendment at the Committee stage which will require that after the Planning Assessment Commission has made its decision the conditions of consent and the advice of Dams Safety NSW be submitted to the Minister for Lands and Water for concurrence that the consent authority has adequately taken all concerns into account.

This is an example of the Westminster system at its best. In the end, if something goes wrong it should reside with the Minister and not a bunch of faceless bureaucrats. The Minister needs to sign off on this. It is critical for this to be in the public domain. We are talking about the security of Sydney's water supply and that of the Central Coast with Wallarah 2. We are talking about what happens in Lake Macquarie. We are talking about mines across New South Wales which, if they get too close to dams, can compromise the structural integrity of the dams. This is a make or break issue for The Greens. It is essential that there be ministerial responsibility that it is safe for a mine to go ahead in the vicinity of a dam. The Greens will argue this matter further at the Committee stage.

The Hon. RICK COLLESS (Parliamentary Secretary) [8.52 p.m.]: I speak in support of the Dams Safety Bill 2015, which introduces important reforms in the regulation of dams in New South Wales. A lot of this work follows on from the Standing Committee on State Development inquiry into the adequacy of water storages in New South Wales. That inquiry was conducted in 2012-13. The standing committee spoke at length with people associated with dam safety, and risk management of the water storages in this State was identified as a key issue. Indeed, the key objective was to minimise the risks associated with dams by reducing the impact of significant floods on downstream communities.

The standing committee was told by some inquiry participants that some dams are incurring expenditure on upgrades for events that have a 1:200,000 probability of occurring in any year. For those who understand the concept of probability—and it is obvious from his contribution that Dr John Kaye does—that is a huge and unnecessary use of government resources. If we were to average that probability over time, it would mean that every 200,000 years there would be an event of that nature.

Dr John Kaye: There would likely be an event.

The Hon. RICK COLLESS: There would likely be an event. That does not mean it will happen; it is only a probability. In effect, in a period of very high rainfall two of those events could happen in a very short period of time, but then again it may not happen again for another 500,000 years. That is the very nature of probability. It should be remembered that human beings have only been around for 60,000 years. So we are talking about events in a longer time frame than human beings have walked upon the earth. I note that the Hon. Mick Veitch and the Hon. Paul Green are present in the Chamber. They were also members of the standing committee. The committee examined both the role of the Dams Safety Committee at the time and how it prescribed requirements for various dam types. The Hon. Mick Veitch has spoken about the evidence of Mr Brian Cooper, the chairman of that committee. Mr Cooper outlined the requirements for a large dam under the Act, namely, it has to have a wall height of greater than 15 metres.

Dr John Kaye: Fifteen? That is not very high.

The Hon. RICK COLLESS: It is fairly high. That is the water stored behind the fill of the dam. In former times, I was involved in building a lot of small farm dams.

The Hon. Niall Blair: How many?

The Hon. RICK COLLESS: I would estimate that I built more than 1,000 dams in my 27 years in Soil Conservation. Many of them stored less than two metres of water against the wall, but we did build quite a few dams that stored up to five metres. In fact, the department had a policy that we were not permitted to build dams that stored more than five metres of water against the wall because at that stage they had to be referred to the Dams Safety Committee. They were all small farm dams. Mr Cooper talked about large dams that stored more than 15 metres of water against the wall. Even to store five metres against the wall means that you are potentially building a dam that can hold from 40 to 200 megalitres of water, if it is built in the right position. If that dam were to fail, it would have a considerable impact downstream. If one has a sudden influx of 100 or 200 megalitres of water into a relatively small catchment there will be a huge amount of damage to local infrastructure, but, of course, that will change by the time it gets to the larger streams. Mr Cooper said in his evidence:

> Regardless of how good the dam is, if the dam were to fail and lives downstream were at risk then it would be prescribed.

The Hon. Mick Veitch has spoken about the assessment of individual dams in terms of structural adequacy, leakage control, et cetera, and I will not repeat those comments. Importantly, the concerns expressed by the standing committee were taken into account. The committee recommended that in undertaking a review of the Dams Safety Committee and its relevant legislation the Government take into consideration the concerns raised in the inquiry and make public the outcomes of the review. The Government's response, to its credit, was that it supported the recommendation and that the review of dam safety would include a public consultation period, in November 2013. A report and paper prepared by KPMG following the review were made publicly available. The bill is a result of that process. I acknowledge the work that was done in the lead-up to drafting this bill. The panel will significantly improve the management of dams and dam safety in New South Wales. I commend the bill to the House.

The Hon. PAUL GREEN [9.00 p.m.]: I speak on behalf of the Christian Democratic Party in the debate on the Dams Safety Bill 2015. I will hose down what this bill does and does not do. Dams are constructed for specific purposes, such as water supply, flood control, irrigation, navigation, sediment control and hydropower. Without proper maintenance of dams by certified managers, the benefits that they provide will not be available, which will be a loss to us all. This bill aims to modernise the regulatory framework for dam safety in New South Wales and ensure that the Act reflects the outcomes of the review of the dams safety regime conducted in 2013. The bill seeks to retain important elements of the current dams safety regime, as well as modernise and address gaps in the current legislation and provide a best practice framework for the ongoing regulation of dam safety.

Dams Safety NSW will replace the Dams Safety Committee. It will comprise at least five members who collectively have professional expertise in dam engineering, mine engineering, emergency management, dam operations and management, and best practice regulation, including cost-benefit analysis and business case development. The bill establishes new objects that seek to balance the risks arising from dams; encourage the proper and efficient management of dam safety; promote greater transparency; and encourage the application of risk management and cost-benefit analysis in regulating dams.

A review of the New South Wales dam safety regulatory framework was conducted by consultants KPMG Australia. In its report KPMG cited evidence that the current approach may result in a disproportionate level of investment in infrastructure for limited safety gains. It noted a lack of

transparency in the requirements for dam owners to upgrade dam infrastructure to reduce the risk of dam failure beyond the limit of tolerability. In the downpour that we had on the South Coast in August, the Jerrara Dam near Kiama overflowed and caused a great deal of damage. The council was decommissioning the dam when it happened. The storm destroyed the barriers to the dam. As a result, the State Emergency Service knocked urgently on doors to the south of the dam and asked residents to evacuate. Unfortunately, people were trapped by floodwaters, properties were ruined, and cars and personal items were wrecked.

I participated in the Standing Committee on State Development inquiry into the adequacy of water storages in New South Wales. In that inquiry concern was expressed that the safety requirements set by the Dam Safety Committee were unnecessarily high and, as a result, costly. For example, Mr Paul W. Heinrichs, a civil engineer with approximately 40 years experience in the dam and water supply industry, questioned the stringency of the guidelines set by the Dam Safety Committee. He argued that the significant financial cost of upgrades could be better spent in other areas. Mr Heinrichs noted that upgrading dams to a low-risk level—a risk of one in one million—is a costly exercise and that money could be better spent on the provision of new dams or on other high priorities, such as hospitals and roads. I note that the money could also be spent on other water efficiency measures, such as the laser levelling of croplands for a smarter use of water.

Dr John Kaye: If the member starts talking about Manildra, he will not stop. Then he will attack me and start talking about renewable energy.

The Hon. PAUL GREEN: I acknowledge that interjection. Now I will not have to say anything. Committee members learned that when dams were built 100 years ago people did not consider the environmental flow. The 10 per cent to 20 per cent of dam water that is currently used for environmental flow has to be deducted from the water used for agriculture and other needs downstream. Times have changed and the use of water has changed. The role that water plays in the environment has changed. Mr Heinrichs was also concerned that local councils were not represented on the Dam Safety Committee, even though almost one-third of all storages are owned by local councils. He said:

> … it is unfair that Councils in NSW who own 30% of the Committee's prescribed dams do not have an expert representative on the committee to ensure Councils' interests are addressed, particularly when small regional councils are required to "stump up" considerable amounts of money to upgrade the safety of their dams to protect very small populations at risk, and for little or no real return.

The new legislative framework will ensure that the risks arising from dams are managed more efficiently and effectively. I applaud the Government for its work on the bill. The inquiry into water storages was a good inquiry. This issue should be in the top three priorities for New South Wales. The Government is focusing on infrastructure. We have seen the leasing of poles and wires and ports. The revenue from that is being spent on addressing traffic congestion, building rail and road infrastructure, which is fantastic. But for the State to thrive, we need to get this water issue right. Crops and prime farmland need good access to water. Consider how much water is needed to produce a piece of fruit. It is unbelievable. If we want the State to be the food bowl for the region, water must be managed correctly so that affordable and accessible water is available to farmers. I commend the bill to the House.

The Hon. WALT SECORD (Deputy Leader of the Opposition) [9.07 p.m.]: As Deputy Leader of the Opposition and shadow Minister for the North Coast I speak in debate on the Dams Safety Bill 2015. I support the comments made by my colleague the shadow Minister for Lands and Water, the Hon. Mick Veitch. As he indicated, Labor will not oppose the bill. The Dams Safety Bill will replace the Dams Safety Act 1978. The Government claims that the aim of the bill is to modernise the regulatory framework for dam safety in New South Wales. The Opposition supports that.

The Dams Safety Act 1978 constitutes the Dams Safety Committee and confers on the committee

functions and powers to ensure the safety of prescribed dams. In New South Wales 378 dams are prescribed under that legislation, of which 30 per cent are owned by local government. That includes the 41-metre deep Clarrie Hall Dam in the Tweed. I have visited that dam on several occasions, including in 2013, when it had reached capacity at 16,000 megalitres and excess water had to be released.

The Hon. Rick Colless: Which dam?

The Hon. WALT SECORD: Clarrie Hall Dam. This bill introduces a number of improvements to current dam safety regulation. While the Act constitutes and sets out the functions and procedures of the Dams Safety Committee, the current standards and prescriptions are in the form of guidelines that sit outside the regulation. The Baird Government says the new bill was drafted taking into consideration the findings of a Commission of Audit and a lengthy independent review by KPMG. The Dams Safety Bill 2015 seeks to balance the safety risks generated from dams, promote the proper and efficient management of dam safety, promote greater regulatory transparency, and promote risk management and the use of cost-benefit analysis in regulating dams.

A comprehensive bill, it is more than 30 pages long and covers a range of areas, including safety—formal inquiries into the safety of declared dams—financial arrangements; Local Government Act requirements; and the nature of public inquiries. The Government has indicated that it has consulted on the bill and no major opposition has been raised against the bill from stakeholders. I have been advised that the consultation included local councils, irrigators and private dam owner operators.

I note that one of the key aspects of the bill will be to replace the Dams Safety Committee with a new body to be known as Dams Safety NSW. The purpose of this is to avoid the current risk of perceived conflict of interest by including dam owner operator representatives on the current Dams Safety Committee. This bill proposes that Dams Safety NSW will be comprised of at least five members with professional expertise in dam engineering, mine engineering, emergency management, dam operations and management, and best practice regulation, including cost-benefit analysis and business case development.

The bill has a significant penalty regime, which is in line with the Australian Capital Territory and Queensland for dam safety non-compliance. For example, the current maximum penalty is $1.1 million for a corporation and $247,500 for an individual. This is a significant increase from $1,100, which was woefully inadequate. Furthermore, the bill gives the regulator strong powers to audit and curtail works and operations on dams to ensure community safety. This is an important regulation. As one of the driest continents on earth, dams and dam safety is important to Australia.

Dams provide safe drinking water for our cities, towns and communities. They also allow for our farmers to irrigate their paddocks. Furthermore, they are useful in flood mitigation and they play a vital role in containing contaminated run-off from mining activities. Clearly, we need to ensure the regulatory framework exists and that the environment is protected. But we must also ensure that we do not have an overly cumbersome regulatory framework that leaves dam owners mired and wrapped in red tape with minimal safety gains.

Building a dam is a major decision and one that should not be taken lightly. Our farming, commercial and local communities need to have confidence that planning and approval decisions about dams are subject to a balanced and transparent process. Therefore, I take this opportunity as the shadow Minister for the North Coast to refer to a controversial dam project on the North Coast. I refer to the proposed Byrrill Creek dam in the Tweed, near the World Heritage listed extinct volcano at Mount Warning. This has been a scheme of the North Coast white shoe brigade local property developers and their mates who, for the past 20 years, have dreamed of Byrrill Creek dam so they can cram thousands more units and houses into the Far North Coast.

The Hon. Niall Blair: Point of order: The member is straying outside the leave of this bill and into

areas that I believe are unnecessary. There has been a good level of debate around the technical issues of this bill. I believe the member is politicising the debate, which is not helpful.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! There is no point of order. Wide latitude is extended during second reading debates. The Hon. Walt Secord may continue.

The Hon. WALT SECORD: The plan, estimated to cost about $70 million in current dollars, is for a dam that will hold 36 billion litres of water—that is the equivalent of 14,400 Olympic-size swimming pools. The conservatives pushing the plan say that the dam is needed due to population growth, but it is a case of lies, damned lies and statistics. While the Tweed shire population grew from 49,000 in 1992 to 80,000 in 2009, the overall water consumption has not increased. In fact, per capita consumption has dropped by 40 per cent in the past 20 years. If anything, the data supports the community's opposition to the dam, which is substantial.

The proposed Byrrill Creek dam certainly fits into the category of having a significant impact on the community. A recent council report identified 45 threatened fauna species, 26 flora species and two endangered ecological communities within a five-kilometre radius of Byrrill Creek. Under the former Labor Government, the then Minister for Water, Mr Phil Costa, ruled out a Byrrill Creek dam until at least 2020. However, in July 2011 the then Nationals Minister for Primary Industries, Katrina Hodgkinson, reopened the matter with the support of the local Nationals.

On 1 May 2013, I tabled an irregular petition from local residents opposing the Byrrill Creek dam— there has been consistent and simmering community opposition to the scheme. But in June 2015, a mere three months ago, the New South Wales National party conference in the Upper Hunter passed a resolution, with the support of Tweed Nationals member of Parliament, Geoff Provest, to support the construction of the Byrrill Creek dam. The North Coast Nationals are reviving the plan for a Byrrill Creek dam. The member for Tweed told the *Tweed Daily News* on 20 June 2015 that the region's growing population meant a dam was needed for adequate water supply—as we have already established, that is a false correlation. But his argument was even weaker than that. He told the *Tweed Daily News*:

> If you look at developments like Cobaki, Area E, there are another 20,000 households expected in the Tweed area.
>
> While we don't have them now, we might need them for the future.

The Hon. Rick Colless: What's this got to do with dam safety?

The Hon. WALT SECORD: This is all about dam safety.

The Hon. Rick Colless: No, it's not.

The Hon. WALT SECORD: Rick, I am talking about dam safety.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! The Hon. Walt Secord knows that he must direct his remarks through the Chair, not to members across the Chamber.

The Hon. WALT SECORD: Talk about a rigorous decision-making process: incorrect statistical conclusions and a "we might need it later" approach. No wonder the community is becoming increasingly outraged. The project is technically in the electorate of Lismore, but the dam will affect residents in the electorate of Tweed. Unfortunately, The Nationals have a tin ear in both electorates. The Nationals Tweed member of Parliament, Geoff Provest, and The Nationals Lismore member of Parliament, Thomas George, are 100 per cent for the construction of Byrrill Creek dam. I know that Tweed Shire Nationals Councillor Warren Polglase is also a long-time supporter of the dam.

I expect Tweed Shire Council to again push for Byrrill Creek dam, if former Mayor Barry Longland betrays the local residents and switches to The Nationals in the mayoral vote tomorrow night in the Tweed shire. Barry Longland has the future of the Tweed shire in his hands. I implore him not to betray those who voted for him and not to vote for The Nationals, because if he votes for The Nationals and gives them the mayoralty they will destroy the unique quality of life in the area and they will allow massive overdevelopment and projects like Byrrill Creek dam. Every project and overdevelopment approved by The Nationals will be the result of Barry Longland's vote. From tomorrow, Tweed residents will rightly hold Barry Longland responsible for every unsustainable and bad decision forced upon their shire if he installs a "develop everything in sight" Nationals mayor.

The Hon. Ben Franklin: Point of order: How is this possibly within the ambit of the long title of the bill? The Hon. Walt Secord has moved far away from the leave of the bill. He is now discussing local government internal party elections that have nothing to do with dam safety. I ask you to bring him back to the leave of the bill.

DEPUTY-PRESIDENT (The Hon. Natasha Maclaren-Jones): Order! The Hon. Walt Secord is not focusing his remarks on the bill. He will return to the long title of the bill.

The Hon. WALT SECORD: I repeat: Labor is not in support of Byrrill Creek dam. Labor believes that Byrrill Creek dam is unnecessary, environmentally damaging and too expensive. At the municipal, State and Federal levels, Labor is united in its opposition to the construction of Byrrill Creek dam. Under Labor, Byrrill Creek dam was prohibited, but it will be full steam ahead under The Nationals. On that note, I commend the bill to the House.

The Hon. BEN FRANKLIN [9.18 p.m.]: Dams are a vital part of the sustainability of our population centres in New South Wales, and ensuring their safe management is always a priority. Dam safety has always been a strong point for New South Wales and we have an impeccable record. Whilst we can be proud of our safety record, due to the magnitude of the potential disaster associated with dam failure or improper risk management we must never be complacent. The Dams Safety Bill 2015 builds on our record by introducing a new framework for dam safety that improves standards and enforcement that better reflects world's best practice.

The key break with the past on this reform is the new dam safety standards. These standards will, for the first time, be set out in regulation. This will give greater transparency to dam owners as to what their requirements are, as well as assurance to the community that dams are operating safely. The standards will underpin the new regulatory framework and will ensure that the public continues to be protected from the risks of dam failure. The dam safety standards will be constructed under a collaborative approach using the existing framework as well as best practice from global experience.

The standards will inform the work of the new dams safety regulator, to be known as Dams Safety NSW. This will be an independent body tasked with enforcing the standards as well as perpetually reviewing them. KPMG suggested that a system where the regulator has appropriate independence, and dam owners are more clearly responsible for ensuring and demonstrating compliance with safety standards, could reduce compliance costs. It would also bring greater clarity to the respective roles and responsibilities of dam owners and government.

The KPMG report found that the existing Act lacks clear objectives and focuses too much on engineering solutions, rather than a broad range of factors like dam operations, changes in downstream development and emergency management procedures. An example KPMG gives is that while extreme, high and significant consequence dams are required to have an operations and maintenance manual, the regulation really only requires confirmation of the existence of such a manual; it does not assess or enforce the strategies. This is why dam safety standards must, for the first time, be set out in regulation.

The standards will cover a wide range of management practices, not just structural integrity, and

will place the burden of compliance on dam operators. Furthermore, there will be clarity and transparency about what exactly is required from dam operators. An Interim Dams Safety Advisory Committee will initially be responsible for developing the dams safety standards so that Dams Safety NSW will have the regulatory framework before it comes into being.

The Hon. Mick Veitch: Did Niall write this speech?

The Hon. BEN FRANKLIN: No, he didn't. To that end, provisions of the bill that establish Dams Safety NSW will not commence until the interim committee has completed its work on the standards and criteria for declared dams. Dams Safety NSW will be appointed by the excellent Minister. In order to ensure that the body is independent, it cannot include current dam owners. Dams Safety NSW will be comprised of at least five members who collectively have the appropriate qualifications, experience and professional expertise in dam engineering, mine engineering, emergency management, dam operations and management, and best practice regulation, including cost-benefit analysis and business case development. This last component area fits with the requirement that the standards be subject to cost-benefit analysis. This reflects the KPMG report into dam safety, which recognised the need to identify the most efficient and effective risk reduction options in ensuring that dams continue to be safe.

Once Dams Safety NSW is in place, one of its key functions will be to provide advice and recommendations to the Minister—the excellent Minister—on the standards. Again, we cannot be complacent with safety, and the standards will continue to be reviewed by the expert members of Dams Safety NSW. Not only will Dams Safety NSW have better formalised safety standards, it will also have greater powers to ensure compliance. It will have increased investigative powers, as the bill will enable Dams Safety NSW to appoint authorised officers from within Dams Safety NSW or to appoint any other public servant. If necessary, it will be able to prescribe other authorised officers in any regulations made under the Act. These authorised officers will have the ability to properly and comprehensively investigate potential breaches of the Act.

Dams Safety NSW will have increased compliance powers, as this bill will better enable the body to proactively manage and respond to failures or possible failures in dam safety. Dams Safety NSW will have the ability to serve a compliance notice when an owner or operator of a declared dam has failed to comply with a requirement of the Act. This will enable Dams Safety NSW to proactively take steps to force owners to comply with the regulations within the Act. The Act also makes it an offence not to take action upon receipt of a compliance notice. Dams Safety NSW will be able to issue a direction to ensure the safety of a dam as well as a stop-work direction when the safety of a dam is threatened. A direction to ensure the safety of a dam can be used to direct an owner of a declared dam to do anything that may be reasonably necessary to ensure the safety and proper maintenance and operation of the dam. The circumstances in which it could be used will include when a dam is unsafe or in danger of becoming unsafe, or when an activity could endanger the safety of a dam.

Finally, the penalties for offences under the current Dams Safety Act 1978 of up to a maximum of $1,100 do not reflect the gravity or level of risk associated with proper dam safety management. Owners of declared dams can now face penalties of up to a maximum of $1.1 million for corporations or $247,500 for individuals for a breach of the standards. These penalties cannot be imposed arbitrarily, but are issued for the non-compliance of clearly set out dam safety standards as enforced by Dams Safety NSW.

As a whole, this package of reforms has been developed through wide research and consultation, and represents world's best practice for protecting communities from the risk of dam failure. Dam safety may not be an exciting issue to some, but as State legislators we need to tackle issues like these with an informed and measured determination. This is a common-sense bill that produces the outcomes that people expect from a State Government. I commend the Dams Safety Bill 2015 to the House.

The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) [9.24 p.m.], in reply: I thank members for their contributions to the debate, in particular the Hon. Mick Veitch, Dr

John Kaye, the Hon. Paul Green, the Hon. Walt Secord and the Hon. Ben Franklin. The Dams Safety Bill 2015 will modernise the regulatory framework for dam safety in New South Wales, strengthen the independence of the dam safety regulator and ensure that the Act reflects the outcomes of the review of the dam safety regime conducted in 2013. The bill establishes clear objects that seek to balance the risks arising from dams and encourages the proper and efficient management of dam safety. The objects also promote greater transparency and provide for the application of risk management and cost-benefit analysis in the development of the dam safety standards.

The bill establishes a process for developing clearer dam safety standards, better compliance powers and stronger penalties and enforcement. The bill also provides dam owners with better flexibility to determine how they achieve the dam safety standards. The purpose of this bill is to ensure that the people of New South Wales are protected from the risks of unsafe dams and that dam owners have a clear understanding of their obligations around the safety of their dams. The changes in the regulatory framework will not reduce or change this focus. The standards will set clear outcomes-based safety requirements that will ensure that dams continue to stay safe.

The intention of the bill is to confirm that the onus of ensuring the safety of dams is placed firmly with dam owners and that they are supported in achieving their safety requirements. The bill implements the principles of cost-benefit analysis and will require that the standards are subject to those principles. That will ensure that the standards established will drive the most efficient and effective solutions to achieving dam safety. Implementation of the bill will take time but the Government is committed to ensuring that these important reforms are completed as thoroughly and efficiently as possible. It reflects the highly technical nature of the work and the importance of the community consultation during the process.

I address some of the issues raised during the second reading debate by members. I start with the Hon. Mick Veitch, who led for the Opposition. I am sure that during those years he went skiing it was on the lake, not on the dam. The dam is the structure and the lake is the body of water that sits behind it. I am not being condescending—but it is important to understand that we are talking about the structure of the dams. I am pleased that the Opposition is supporting the bill. This is an important piece of legislation that will modernise the regulation of dam safety in New South Wales. It is true that there is a lot of work to be done in implementing these important reforms. However, the Government is committed to ensuring that the reforms will be implemented in a timely and appropriate way. This will include consultation with affected parties.

In relation to the points raised by the Hon. Mick Veitch, it is important to note that the findings of the Standing Committee on State Development were taken into account in developing these reforms. Those findings were consistent with the findings of the KPMG report in relation to the expenditure on dam safety. The Government is committed to ensuring that any regulatory burden arising from these reforms are measured against the importance of keeping dams safe in New South Wales. The intention of the bill is to ensure that dam owners have a clear understanding of their safety requirements and flexibility in how they achieve them.

I am pleased to have the support of The Greens on the bill. It is pleasing that they recognise that the bill is a sensible way forward. I address a number of points raised by Dr John Kaye during his contribution. The bill will set up the best practice regulatory framework that will ensure that dam safety outcomes are delivered in an efficient and effective way. There is a need to balance dam safety requirements against the cost of delivering those achievements. This bill does that by ensuring that the cost-benefit analysis and risk management form an integral part of the dam safety standards.

The dams safety standards underpin the new regulatory framework. Whilst these are yet to be written, the Government has put in place measures to ensure that this work can start straight away. The Interim Dams Safety Advisory Committee will be appointed for the purpose of establishing the standards. This will be an expert panel that will be best placed to ensure the new standards are fit for purpose. By

establishing outcomes-based standards, dam owners will have clear and identifiable standards that they must meet.

New or proposed dams can be declared under the bill. Clause 5 of the bill sets out the procedure for declaring dams and will ensure that these dams are brought within the regulatory framework. This is important because it means that new or proposed dams will need to meet the dam safety standards. Dr John Kaye raised concerns about the application of the bill in relation to mining operations. The bill will deliver better outcomes by enabling the advice of Dams Safety NSW to be taken into account during the planning approvals process. This is consistent with the current planning framework, and will ensure that dams safety issues are considered strategically as part of the planning process.

I also thank the Hon. Rick Colless for his contribution to the second reading debate. The research conducted by him and by the committee he chaired made a significant contribution to the review carried out by KPMG and the drafting of this bill, as recommended by the inquiry into the adequacy of water storages in New South Wales. I also thank the Hon. Paul Green, who served on that committee. As I said, I am pleased that the bill addresses the concerns raised by the committee. As the Hon. Paul Green noted, the new committee will comprise experts in dam engineering, mine engineering, emergency management, dam operations and management, public safety risk analysis and best practice regulation, including cost-benefit analysis and business case development.

It is also important that I address the comments made by the Hon. Paul Green about Jerrara Dam. To clarify, Jerrara Dam did not suffer any failure. Rising floodwater in a storage was discharged through an engineered wide slot in the dam wall that is part of the designed decommissioning works currently underway at the dam. The advice provided to me by the existing Dams Safety Committee confirmed that the dam and the staged works performed well during the discharge event.

The Hon. Mick Veitch: Is it a council-owned dam?

The Hon. NIALL BLAIR: It is council owned. The works performed in the way that they were designed to during the event. However, the precautionary actions taken to evacuate residents highlight the need for a strong regulating framework governing dam safety. The bill will enable Dams Safety NSW to audit operation and maintenance plans and emergency plans against requirements that will be prescribed by regulation. New South Wales has an impeccable record in regard to dam safety, and the new Act will ensure that the community continues to have the necessary precautions in relation to dam safety. The bill will ensure clarity of safety requirements for all owners and provide flexibility and accountability in achieving them.

The risk-based approach is intended to ensure that there is a scaled compliance burden consistent with the risk profile of individual dams. The bill will modernise the regulatory framework for Dams Safety NSW and ensure that the regulator has the necessary powers to continue to protect the people of New South Wales from the risks of unsafe dams. It will provide clarity to dam owners regarding their obligations for ensuring the safety of their dams and provide them with the flexibility to meet safety standards in the most effective way. The Liberal-Nationals Government remains committed to protecting the community, our environment and important infrastructure from the risk of dam failure.

I acknowledge all the staff of the Department of Primary Industries who have put a lot of hard work into the preparation of this bill. This bill has been a long time coming and it has entailed a lot of work. The best testament to that work has been the consensus in the Chamber that this is good legislation, which is the product of extensive consultation with stakeholders. The fact that members on all sides of the Chamber support the bill is testament to hard work of those who have been involved in drafting the legislation. I single out and thank Gavin Hanlon, Michael Scotland, Helen Day, Kirsty Cooper, Rachel Rogers and Teresa Hislop for their hard work and effort. 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. Trevor Khan): Order! If there is no objection, the Committee will deal with the bill as a whole. I have two Greens amendments. The first is on sheet 2015-075 and the second is on sheet C2015-081.

Dr JOHN KAYE [9.35 p.m.]: I move The Greens amendment No. 1 on sheet C2015-081:

No. 1 **Concurrence of Minister**

Page 22, proposed section 48, line 25. Omit all words on those lines. Insert instead:

referred to Dams Safety NSW; and

(c) obtain the concurrence of the Minister.

(5) The Minister must not grant concurrence under this section unless satisfied that any advice of Dams Safety New South Wales in relation to the proposed development has been taken into account by the consent authority.

This amendment seeks to change proposed section 48 of the Act. Proposed section 48 of the Act creates a requirement for a consent authority to take into consideration any matters that are raised by Dams Safety NSW in relation to the application for a mining operation in the surrounds or the vicinity of a declared dam. It is an obligation on the applicant to notify Dams Safety NSW, which is then required to provide an analysis or advice to the consent authority, which, in the case of a large mining operation, would normally be the Planning Assessment Commission [PAC]. The way the legislation works is that all it requires of the consent authority is to take the advice of Dams Safety NSW into account.

The Greens have grave concerns about the matter stopping at that point. The PAC will take into account a large range of matters relating to socioeconomic analysis, air quality, water quality, transport, greenhouse gas emissions and other issues into which enters one more consideration—that is, the advice of Dams Safety NSW. When a mine is being constructed in the vicinity or the surrounds of a declared dam we do not believe the advice of Dams Safety NSW should be treated as just another piece of advice. It is a very specific piece of advice that goes to the safety and security of the water supply, the safety of the dam wall, and the security of the water supply impounded by that dam wall. The Greens are concerned that, with the best will in the world on the part of the PAC, that advice will get buried amongst other advice and matters being considered by PAC and will be lost and we will end up with mines encroaching on dams.

This is a live matter. Cataract Dam is a critical dam in New South Wales and both the Appin and the Russell Vale collieries have live expansion applications before the PAC. In April 2013 the Dams Safety Committee of New South Wales, which this legislation will replace with Dams Safety NSW, wrote to the major projects assessment division of the Department of Planning and Infrastructure about what it referred to as "NRE No. 1 Colliery—Underground Expansion", which we refer to as Russell Vale. In that letter the Chief Executive Engineer, Mr Knight, says the following:

> The DSC [Dams Safety Committee] is aware of previous mining related movement of Cataract Dam wall and spillway and will be carefully assessing any application to mine within the NA [notification area] for likely impacts on the dam or spillway. This is the first time that three seams

will have been mined so close to a large dam reservoir. Cataract Dam has a consequence category of Extreme for both sunny days and flood failures.

To interpolate, the Russell Vale colliery is going to raise the level of alert on Cataract Dam to extreme, not just for flood failures but for sunny day events. I continue with the quote:

> Together with [these] concerns for the safety of the Dam itself, the DSC has concerns for the security of stored water. The proposed workings lie close to the Full Supply Level [FSL] of the Reservoir and in places below the FSL. The proximity of the proposed workings to the FSL and the possibility of geological structures intersecting the Reservoir and proposed workings is of concern. If a connection from the Reservoir to the underground workings in Wonga East was to form, there could be a significant loss of the available storage capacity of the Reservoir.
>
> Ensuring the integrity of the Reservoir is an important objective. If a flow path was to form in the Hawkesbury Sandstone (HSS) over Wonga West longwalls A4 LWs6&7 which conducted water away from the Reservoir, there is a potential to lose significant amounts of the available storage.
>
> These concerns are heightened by the lack of information generally and the absence of geological assessment in particular. The quality of the data and modelling is not of sufficient detail to allow risks to be quantified.
>
> At the current stage of the proposal with the information for it, the DSC cannot support the proposal.

I repeat those last words, "the DSC [Dams Safety Committee] cannot support the proposal". It is clear that the Dams Safety Committee has significant concerns about Russell Vale.

The CHAIR (The Hon. Trevor Khan): Order! I note, for the information of not only Dr John Kaye but also subsequent speakers on this amendment, that the bill is before the Committee of the Whole, not at the second reading stage. It has been ruled consistently that members speaking to an amendment must confine their remarks to the amendment. The amendment before the Committee seeks to omit all words on line 25 at page 22 of the bill, and to insert the following:

> referred to Dams Safety NSW; and
>
> (c) obtain the concurrence of the Minister.
>
> (5) The Minister must not grant concurrence under this section unless satisfied that any advice of Dams Safety NSW in relation to the proposed development has been taken into account by the consent authority.

The amendment is specific. The matters to which the member is now referring do not fall within that specific amendment.

Dr JOHN KAYE: Chair, I apologise for taking so long to get to my point. My point in reading from the letter—if I may, Chair, without wishing to challenge your ruling—is that—

The CHAIR (The Hon. Trevor Khan): Order! I am not suggesting that the member is cavilling with the ruling of the Chair. The House has resolved itself into the Committee of the Whole, and the Committee will keep to the script.

Dr JOHN KAYE: I will heed your advice, Chair. My point is that the Dams Safety Committee issues advice about significant concerns—in this case, the advice was, "Don't go ahead; it is too dangerous." The concern of The Greens, and the reason we are moving this amendment, is that such

advice would only need to be taken into consideration as a matter raised by Dams Safety NSW, pursuant to the existing words of the bill. We seek to remove those words from the bill and to require not just that the matter be taken into account but also that the concurrence of the Minister be obtained; and that the Minister's concurrence signifies the Minister is satisfied that any advice from Dams Safety NSW in relation to the proposed development has been taken into account by the consent authority.

As I have read onto the record, in situations where the Dams Safety Committee—soon to become Dams Safety NSW—raises a significant concern, and says in fact that the proposal should not go ahead, the amendment seeks to require the Minister for Water to certify that he or she is satisfied that the issues raised by Dams Safety NSW have been accurately and appropriately taken into account by the consent authority. The Greens seek to shift final, political responsibility from the Planning Assessment Commission to the Minister, as is appropriate under the Westminster system. The Minister must take final responsibility. There has to be accountability because, as the Dams Safety Committee pointed out in its letter, if the activity goes ahead there will be significant challenges to the security of the dam structure and of the water supply. If the consent authority does not amend the application to take that advice into account in a way that satisfies the Minister or, alternatively, if it does not reject the application because of the advice, it should be the Minister—that is, the Minister for Water—who takes final responsibility.

If something does go wrong—for example, in this case if the Cataract Dam spillway or dam wall shifts to a point where its integrity is compromised, or there is a substantial loss of stored water because a connection forms between the reservoir and the mine workings—there has to be accountability, and that accountability should rest with the Minister. The people of New South Wales elect a government to take responsibility for the security of their water supply. This is a basic Westminster principle. The Greens say it should be the responsibility of the Minister, who should in the instant case stand up and say, "No, I am not satisfied that the advice of our dam experts has been taken into account." Alternatively, if the Minister says that he or she is satisfied that Minister takes responsibility for what happens next. It might be nothing at all, or it might be a significant event. But passing responsibility for such a significant event to a planning assessment committee—a bunch of bureaucrats, or even perhaps a group of planning experts, who bear no political responsibility and who just walk away afterwards—fails to provide accountability in the current structure.

Through this amendment The Greens seek to make the Minister accountable and to make the process open and public, so that the community understands what is happening; so that people understand what occurs when their drinking water supply or agricultural water supply is compromised by a mining operation. This amendment is a test: It is a test to see whether, in the end, the Government is prepared to stand up and take responsibility for mining that occurs in the curtilage of a dam or in the vicinity of a reservoir. If the Government is prepared to take responsibility at least it is discharging its Westminster obligations. But if the Government is not prepared to take that responsibility, if it passes off that responsibility to the Planning Assessment Commission and walks away from it, and when something goes wrong points at the commission and says, "It was not us; it was a decision made at arm's length by the Planning Assessment Commission", that is not only cowardly but also deeply undemocratic. If we are to have mining in the curtilage of a dam—and I do not think we should; The Greens have said for a long time that there should be no mining in the catchment or in the curtilage of a dam—

The CHAIR (The Hon. Trevor Khan): Order! The member is straying from the leave of the amendment.

Dr JOHN KAYE: If there is to be such mining, the amendment places responsibility on the shoulders of the Minister, in the public domain, where it belongs. I commend the amendment to the Committee.

The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) [9.48 p.m.]: As has been said, the Dams Safety Bill 2015 is designed to achieve better outcomes by enabling the advice of Dams Safety NSW to be taken into account and acted on during the project approval

process. It does this by ensuring that dams safety issues are considered strategically as part of the planning process. The expert panel puts in the advice. I went through the make-up of the expert panel in my second reading speech. The bill requires that the consent authority must take into consideration any matters that are raised by Dams Safety NSW. The proposed concurrence role moved by The Greens adds an additional layer of regulatory burden that is not needed and will not result in improved dam safety outcomes.

In addition, the bill gives Dams Safety NSW improved directions power to ensure that it has all the necessary tools to respond to risks arising from mining operations where they threaten the safety of a dam. Those tools include stop-work notices, which can be applied to proposed works. The argument that a planning assessment panel would not take into consideration the advice of the expert Dams Safety NSW body while knowing full well that if it ignores the advice Dams Safety NSW could immediately issue a stop-work notice does not make sense.

If the assessment panel was to ignore the advice and the works were to proceed Dams Safety NSW could come in over the top and issue a stop-work notice anyway. The bill has the necessary provisions to enable protections. If the independent assessment committee, which is comprised of experts, believes that something should not proceed, it has the necessary tools to prohibit it from happening. If, as in the example Dr Kaye gave, the planning assessment panel did not take the advice on board Dams Safety NSW could take the action it deemed necessary. The Government believes that the necessary protections are in place and it does not support the amendment.

The Hon. MICK VEITCH [9.51 p.m.]: During the Committee stage it is important to measure an amendment against the section of the bill that we are amending and to read the amendment in context. Part of our process is to ensure that the amendment will not undermine the provisions of the bill. On face value, I cannot see how The Greens amendment would do that, but we have to satisfy ourselves that a proposed amendment strengthens the provisions of a bill before we can support it. I hear the comments of the Minister. In essence, he is saying that the amendment is not required because of the provisions that are already in the bill. But this amendment does not merely implement red tape. It provides surety for everyone that the Minister has considered the recommendations made by Dams Safety NSW. On that basis we will be supporting the amendment.

Mr JEREMY BUCKINGHAM [9.52 p.m.]: I speak to The Greens amendment because nothing could be more important than the safety of some of the largest, most important pieces of infrastructure in the State. Having had experience in the operations of planning assessment committees, I concur with my colleague Dr John Kaye that they must consider a raft of issues when granting a development consent. A number of pressures are brought to bear on a planning assessment committee. Putting in place a safeguard as set out in The Greens amendment No. 1 to obtain the concurrence of the Minister adds a necessary level of accountability.

As Dr Kaye said, this is a live issue right now in the Cataract reservoir that feeds southern Sydney. I do not believe that is being properly dealt with. The idea that Dams Safety NSW can respond by issuing a stop-work notice does not fill me with surety for two reasons. The first is that it is a clumsy way to deal with it. The second is the questions over what happens in that instance and who deals with the issue? I would like to hear from the Minister about what happens if Dams Safety NSW issues a stop-work order. Who deals with the concerns of dam safety if not the Minister?

Dr JOHN KAYE [9.54 p.m.]: The Minister wants us to rely on a stop-work direction under section 20. In the circumstances Mr Buckingham and I outlined previously where Dams Safety NSW raises concerns and hands them to the planning assessment committee [PAC] but the PAC does not act on those concerns adequately the Minister would require Dams Safety NSW to issue a section 20 stop-work direction. That might happen. But the Minister is effectively saying he wants to use Dams Safety NSW, first, as an advisory body to the PAC and, secondly, as an appeals court around the PAC.

It is an extremely clumsy and awkward bureaucratic structure that probably will not work. It creates a situation in which Dams Safety NSW is required to say that even though it is giving advice to the PAC it is not happy with the way the PAC has dealt with it. There may be cases in which that works and in which that does not work. The question is: Does the Minister want to gamble on that in order to avoid taking responsibility for these situations himself? Nothing in the amendment would take away the right of Dams Safety NSW to issue a section 20 stop-work direction. It provides a degree of ministerial accountability and allows the Minister to be in the loop. The Minister will be able to say that he thinks something is okay or not okay.

It worries me that to avoid coming out of the loop the Minister is relying on a kind of two-phase role for Dams Safety NSW. First, it has to provide advice and then it has to say it does not like what a PAC did with its advice so it will come in over the top of the PAC and stop the outcome. That may or may not work. In the cases where it does not work and there is not adequate protection we will end up with dams or water storages at risk because the Minister will not take responsibility for dam safety outcomes as he ought to.

Mr JEREMY BUCKINGHAM [9.57 p.m.]: You are in a hurry. Do you not want to earn your wage?

The CHAIR (The Hon. Trevor Khan): Order! I do not know who that comment was directed to. If it was directed to me, the member will be called to order if he tries it again.

Mr JEREMY BUCKINGHAM: Chair, it was directed to all those members who were groaning.

The CHAIR (The Hon. Trevor Khan): Order! The member may proceed with making his point. However, if he wants to make cracks at other members he will be called to order very quickly.

Mr JEREMY BUCKINGHAM: Thank you, Chair. The Minister's second reading speech does not placate my concerns about the stop-work directions. New section 20 provides:

> If Dams Safety NSW is of the opinion that anything being done or proposed to be done to or in relation to a declared dam or in the vicinity of a declared dam by any person may endanger the safety of the dam, Dams Safety NSW may, by order in writing given to the person, direct the person to cease or refrain from doing the thing.

Our concern is that it is very difficult to administer the consent conditions of a planning assessment committee in relation to longwall mining. It is very hard for Dams Safety NSW to administer the process of longwall coalmining underneath a reservoir. Many people in this State do not believe that our miners actually accord with consent conditions in a number of areas. We believe there needs to be more rigour in the approvals process and accountability to ensure that consent conditions are much stronger. We believe that ministerial oversight will add that too, as I challenge anyone in this Chamber to tell me exactly what is happening at the Russell Vale Colliery on any given day. Will Dams Safety NSW be inspecting that private enterprise every day?

The Hon. Duncan Gay: I challenge you to tell us what was happening in the second reading debate on this bill, because you were not here.

Mr JEREMY BUCKINGHAM: I will respond to that interjection.

The CHAIR (The Hon. Trevor Khan): Order! No, you will not respond to the interjection.

The Hon. Niall Blair: Point of order: We are now finally getting a speech from the member on the second reading of the bill. He had an opportunity to do so when we were debating the second reading. He is now straying well and truly away from the leave of the amendment that has been moved.

Mr JEREMY BUCKINGHAM: You had the brief, did you, to shut Buckingham down?

The CHAIR (The Hon. Trevor Khan): Order! I call Mr Jeremy Buckingham to order for the first time.

The Hon. Niall Blair: The member is now making a contribution to the second reading debate.

The CHAIR (The Hon. Trevor Khan): Order! I uphold the point of order.

Mr JEREMY BUCKINGHAM: It is certainly pertinent. I repeat my point that it is difficult for the Environment Protection Authority, other government agencies and those who regulate mining in this State to be fully aware of what is happening in any operation.

The Hon. Niall Blair: Point of order: The member is now giving examples of how other agencies regulate mining activities in other parts of the State and in so doing is straying outside of the leave of the amendment that is being debated. He had an opportunity to contribute to debate on the second reading of the bill but he chose not to participate at that stage and he is now straying outside the leave of the amendment.

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

The Committee continued to sit.

Mr JEREMY BUCKINGHAM: To the point of order: Clearly there is a parallel that is pertinent and relevant to the amendment in that the bill and the amendment deal with the regulation by a government agency of longwall coalmining in our State. The Government, through this legislation, is seeking to make Dams Safety NSW responsible for the conditions of consent of longwall coalmining in this State, including—

The CHAIR (The Hon. Trevor Khan): Order! I have heard enough to deal with the point of order. I uphold the point of order.

Mr JEREMY BUCKINGHAM: I conclude by saying that this is a matter of grave importance. I do not believe that Dams Safety NSW is in a position to do what has been outlined in the bill. The Greens amendment will add "obtaining the concurrence of the Minister". It will add that rigour to ensure there is more accountability—something that this Government does not appear to like.

Question—That The Greens amendment No. 1 [C2015-081] be agreed to—put.

The Committee divided.

Ayes, 15

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

Noes, 20

Mr Ajaka	Mr Gallacher	Mrs Mitchell
Mr Amato	Mr Gay	Reverend Nile
Mr Blair	Mr Green	Mr Pearce
Mr Borsak	Mr Harwin	Mrs Taylor
Mr Brown	Mrs Maclaren-Jones	*Tellers,*
Mr Colless	Mr Mallard	Mr Franklin
Mr Farlow	Mr Mason-Cox	Dr Phelps

Pairs

Mrs Houssos	Mr Clarke
Mr Mookhey	Ms Cusack
Mr Wong	Mr MacDonald

Question resolved in the negative.

The Greens amendment No. 1 [C2015-081] negatived.

Dr JOHN KAYE [10.12 p.m.]: I move The Greens amendment No. 1 on sheet C2015-076:

No. 1 **Statutory review of Act**

Page 24, clause 55. Insert after line 8:

(2) The review must include an assessment of the following:

(a) the impact on the levels of risk in relation to dams,

(b) any cost savings.

For the convenience of the House, I indicate that The Greens will not be calling a division on this amendment. This amendment addresses concerns The Greens raised during the second reading debate in respect of the scope and depth of the changes to the regulation of dams safety that this bill would bring about and the consequent uncertainty about the levels of risk that would result in relation to dams and the level of cost savings. Proposed section 55 is a stock standard statutory review clause. It requires there to be a statutory review after five years. We seek to ensure that the statutory review includes an assessment of the impacts of the changes this legislation brings about on the levels of risk in relation to dams and any cost savings that might occur. This is a belt-and-braces amendment. No doubt the Minister will tell us that this would happen anyway. In any event, for abundant clarity and to make sure this occurs, we believe the legislation should explicitly state that the review will focus on the impact on the level of risk in relation to dams and any cost savings. I commend the amendment to the Committee.

The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) [10.14 p.m.]: Dr John Kaye has foreshadowed my response to his amendment. The statutory review provision in the bill requires that the Minister consider the policy objectives of the Act and whether they remain valid. The objectives of this Act are to drive efficiencies in matters relating to dams whilst ensuring that dams remain safe. The additional requirements sought in the amendment are unnecessary as the areas proposed would be covered in any review because it has to look at the objects of the Act. For that reason, the Government opposes the amendment.

The Hon. MICK VEITCH [10.15 p.m.]: The Opposition will be supporting the amendment.

Question—That The Greens amendment No. 1 [C2015-076] be agreed to—put and resolved in the negative.

The Greens amendment No. 1 [C2015-076] 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. Niall Blair agreed to:

That the report be adopted.

Report adopted.

Third Reading

Motion by the Hon. Niall Blair 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. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism) [10.17 p.m.]: I move:

That this House do now adjourn.

HOMELESS WOMEN'S SERVICES

The Hon. COURTNEY HOUSSOS [10.17 p.m.]: Tonight I speak on an issue that is, by its very nature, one of the most important facing our State and indeed our country, that is, the scourge of violence against women and the support services we as a society offer to female victims of violence and those facing homelessness. We know that homelessness as a result of family violence is an increasing problem around Australia, with at least 3,000 women turned away from shelters each year because of a shortage of beds. But domestic violence is not the only cause of homelessness for women in this State. Indeed, according to the Women's Community Shelters annual report 2014, the face of homelessness in Sydney today is a 55- to 65-year-old woman who is not yet eligible for an aged pension, possessing little, if any, superannuation, and unable to engage with the workforce for any of a multitude of reasons. These women are just as vulnerable to abuse and harm, and the inadequate support of government is a major determinant in the continuing precariousness of their life and situation.

Sadly, in New South Wales, this is more pronounced because of the policies of the

Liberal-Nationals Government. The Going Home Staying Home changes have caused significant and unnecessary disruption among non-government organisations that provide specialist homelessness services. Shelters have been subjected to poorly designed and ill-conceived tender processes, which not only devalue their work but also significantly restrict their ability to receive proper funding. While the program's emphasis on early intervention has been welcomed, the reduction in crisis accommodation and the removal of specialist services has been a bewildering price to pay for many communities around the State.

Regrettably, my hometown of Forster has a rate of domestic violence that is well above the State average. Nevertheless, it was left out of the latest $8.6 million funding allocation for specialist homelessness services. The closest women's refuge is in Taree, which is a 30-minute drive away and it has limited transport options. If women in Forster can find a space at the refuge in Taree, their children may have to attend a different school and they have to move away from their existing support networks. Since the beginning of this year there has been a growing community campaign for a women's shelter in Forster. More women have been presenting at the Forster Neighbourhood Centre seeking help, sometimes several each week.

After hearing about the community campaign, the Women's Community Shelters [WCS], a not-for-profit organisation, approached the local community in Forster to work in partnership to set up a women's refuge. It has offered to match every dollar the local community raises with $2 for the first two years, after which it will match the community funding 50:50. Importantly, it has the practical corporate knowledge to set up a shelter. It knows what is physically required on the premises, how to set up the board, and the policies and procedures that are needed to operate the shelter day to day.

I make special mention of Annabelle Daniel, the dedicated and dynamic chief executive officer of WCS. I recently met with Annabelle and was inspired by her amazing work. The WCS operates primarily through philanthropic funding and is about to open its third refuge, which has been achieved in partnership with the local communities. Its collaborative approach with local communities and businesses is truly innovative. For example, to support its Hornsby-Ku-ring-gai shelter, it ran a Just One campaign in local supermarkets, asking locals to add just one thing to their weekly shop to help stock the pantry at the shelter with food and cleaning supplies. All of its shelters have a volunteer program. Volunteers work alongside the full-time caseworkers, helping with various tasks such as paperwork, cleaning and maintenance.

The Great Lakes Women's Shelter will be the first regional partnership for WCS, but it is not likely to be its last. In recognition of its innovative social franchise model, it has received a Federal Government grant and has received support from some large private companies. Equally, the response from the Great Lakes community has been overwhelming. It raised $75,000 in a mere six weeks and continues to receive additional offers of support. I make special mention of Trish Wallace, Julie Brady and Felicity Carter, who are all extraordinary local women who have driven this project. The Liberal-Nationals Government should be ashamed that local communities such as Great Lakes have been forced down this path and that they are left to rely on the generosity of others to fund vital community services.

TAFE NSW

Dr JOHN KAYE [10.22 p.m.]: TAFE NSW is officially in crisis. The Cabinet-in-confidence hit list shows that 27 campuses are to be downsized or sold off entirely and an enterprise agreement proposal will not only increase the face-to-face hours that teachers have to provide but also slash their preparation time. Critically, their professionalism is being trashed by the creation of an underqualified and lower paid class of so-called instructors. These are the latest initiatives of a dystopian plan that will inevitably confine TAFE to the margins of the vocational education and training sector. The vision of the Baird Government is for a post-secondary education system dominated by profit-driven corporations and fly-by-night operators in which students will be nothing but profit centres and business propositions to be processed at the least possible cost.

The consequences for students and the economy are diabolical. There will be a loss of job opportunities; a loss of opportunity to engage with the culture, social and political life of this country and its economy; a loss of social cohesion; and a loss of the sense of who we are as Australians. This crisis is the result of bad policy. It can be addressed by reversing those bad policies and placing at the forefront of those making the decisions that TAFE is recognised as the key to a fair society and that it cannot survive unfair competition from the corporate sector. Four critical actions have to be taken if there is to be a future for TAFE. First, the market has to be put back on a leash before it devours TAFE entirely. At the very least, there must be a legislated limit on the amount on the vocational education and training budget that is offered to the competitive market.

TAFE cannot survive when it has no security over its own budget. The Australian Council of Trade Unions and the NSW Labor Party propose a 30 per cent constraint on the budget, that is, only 30 per cent of the budget should be available for competition. The remaining 70 per cent should go to TAFE. In 2013-14, the Baird-O'Farrell Government allowed 23 per cent of the budget to go to the competitive market. In 2014-15, it has risen to 33 per cent. That is $750 million that has been taken out of TAFE's secure budget and put into the competitive market. The Greens say that 85 per cent of the available vocational education and training funds should be in TAFE's secure budget, rising to 100 per cent when TAFE can provide a particular course. Competition eats away at the heart of TAFE, not because TAFE is inadequate or inflexible but because competition is a race to the bottom of standards and TAFE is a high standard institution.

The second critical action is that the April 2012 Skills Reform National Partnership Agreement between the Commonwealth Government and State governments must be abandoned entirely. This was the source of training entitlements from which Smart and Skilled evolved. It has a source of reliance on student income and contingent loans—the vocational education and training [VET] fee help system that has students paying up to 100 per cent of the cost of their education. This expires on 30 June 2017 and will need to be renegotiated. The renegotiation should focus on a secure future for TAFE. Third, repair work needs to be done on TAFE. All of the 2,700 jobs that have been lost need to be replaced. Outreach coordinators, counsellors, teacher consultants, multicultural consultants, student support officers, administrative staff, general teachers and thousands of part-time casual teachers who have lost their jobs should be reinstated.

TAFE fees should be reduced or, better still, be zero. Every course that has been cut should be reintroduced and online learning should be restricted to students who already have the study, literacy and numeracy skills. If TAFE was freed from the market, if the next national partnership in 2017 focused on quality education and if the damage was reversed, TAFE would have a secure future. But this requires new thinking from governments that go beyond simply looking at markets for the sake of markets. It also requires the fourth step: everybody who cares about public education, social cohesion and students from working-class backgrounds having reasonable access to high-quality education should get active and tell their politicians that this is the time to reinstate TAFE. This is the time for education to no longer be treated as a commodity. Education is a right, TAFE is not a business, and students are not profit centres.

TRIBUTE TO JIM FRECKLINGTON

The Hon. NATASHA MACLAREN-JONES [10.27 p.m.]: I pay tribute to Mr Jim Frecklington, OAM, a Fellow of the Australian Institute of History and Arts, an outstanding Australian and a celebrated craftsman specialising in designing and building horse-drawn coaches. Jim is notably credited with the creation of the only two State coaches designed for Her Majesty Queen Elizabeth II in the last century: the Australian State Coach and the Diamond Jubilee State Coach. Jim was born in Parkes in western New South Wales. As a young man on his family's sheep and cattle property in Peak Hill, Jim began restoring carriages and buggies as a hobby. Little did he know that many years later the hobby of his younger self would become the passion and the craft for which he would be recognised and celebrated.

In his early career, Jim worked at Windsor Castle looking after the Duke of Edinburgh's horses and at the Royal Mews in London looking after Her Majesty's carriage horses. It was after managing the Queen's Silver Jubilee Exhibition during the tour of Australia in 1977 that Jim revived his interest in carriage building. The exhibition had included two exemplary royal carriages, the Glass Coach and the Edward VII 1902 State Landau. Throughout 1986 and 1987, Jim designed and oversaw the building of the Australian State Coach, the first State coach that Jim built for Her Majesty and the first such coach to be built for the British royal household since 1902. The Australian State Coach was built as a testament to Australian materials and craftsmanship, and was presented to Her Majesty as part of Australia's bicentennial celebrations in 1988. Its success and widespread recognition earned Jim the Medal of the Order of Australia in 1991.

More recently, Jim brought together a team of talented artists, artisans and master craftsmen from Australia and around the world to build the Diamond Jubilee State Coach. In designing this coach he relied solely on intuitive design skills and did not use any modern computer-aided design tools. The coach design brings together cutting-edge technology and a showcase of traditional skills and artistry and is based on the design of a traditional postilion vehicle. The perch of the coach is the main support beam and runs underneath the body from front to back. The perch consists of 22 layers of laminated spotted gum that was steamed and then hand bent into flowing gooseneck curves. The construction of any perch requires immense skill and experience, as the process of achieving the precise curvature of the beam is technical and requires finely tuned judgment.

Jim designed and constructed the perch in the Diamond Jubilee State Coach. The skills and experience that he brought to the creation of this coach are exceeded only by the thoughtfulness and sincere consideration for history and symbolism that he put into its design. This coach is renowned for being a unique and rich tapestry of British history, and the modern conveniences and fittings are concealed and integrated so as not to compromise the traditional setting and aesthetic of the coach. The concept of the design interior is that of a time capsule. More than 100 items of historical and symbolic significance, from various sources both nationally and internationally, were integrated into its design and construction. One of the most impressive elements of the design is the scope and diversity of the historic items that Jim was able to include in it—all of which have historical significance to Britain and personal significance to the Queen.

Within the body of the Diamond Jubilee Coach is said to be "thousands of years of British history". The artefacts range from fragments from the *Mary Rose* to the gun metal used for Victoria Crosses. There are also items from ships such as the former royal yacht *Brittania* and other British ships, including HMB *Endeavour*, Captain James Cook's ship. The design incorporates everything from British military history to parliamentary history, as well as sporting achievements and great institutions of learning. Items from abbeys, chapels and cathedrals are featured, as well as items from palaces, stately homes and castles. Great individuals and stalwarts of British history are also represented, including writers and poets such as William Shakespeare, explorers such as Sir John Franklin, inventors such as John Harrison, scientists such as Edward Jenner and Sir Isaac Newton, and Florence Nightingale. In the afterword of the 2013 book titled *The Diamond Jubilee State Coach*, author Rose Peterson says:

> Beginning with one man's dream of building a visual embodiment of history, heritage, pageantry and great artistic beauty the process of creating the Diamond Jubilee State Coach grew to embrace the widest variety of people from the most diverse backgrounds, nationalities and locations. They were all brought together by their belief in that dream and united in the one aim of contributing their exceptional skills to the pursuit of excellence and to making that dream a reality.

I commend Jim Frecklington for his accomplishments and his contribution to artistry and to history. He is an outstanding Australian craftsman, and a credit to the State of New South Wales.

FREEDOM OF SPEECH

The Hon. LYNDA VOLTZ [10.32 p.m.]: Earlier this year SBS commentator Scott McIntyre was sacked for tweets he posted on Anzac Day regarding the behaviour of soldiers in the First World War and the bombing of Nagasaki. I do not doubt that those comments were ill-timed. My neighbour, a veteran of the Second World War, views Anzac Day with particular sorrow because it is a yearly reminder of his mother's grief that she lost her beloved brother at Gallipoli—a grief reflected across the country with barely a street or town left untouched. It appears to me that a century later freedom of speech should be an integral part of an open-minded democratic society such as ours. Whether or not we agree with his views, Scott McIntyre's sacking was an over-reaction by SBS. More importantly, in an age when we should be discussing violence against women, including the treatment of women in war, his sacking only creates a barrier to open debate.

Scott McIntyre is also not the first to express a view regarding the treatment of women during war by Australian soldiers. Peter Stanley, former principal historian at the Australian War Memorial, notes the eyewitness accounts of Wilfred Gallway of the rape of women by Australian soldiers in his novel *Bad Characters*. Indeed, the assaults and thefts by Australian troops in Cairo in particular are not in dispute. Members will recall that in 1983 and 1984, Meredith Burgmann, Sabine Willis and Rosemary Pringle, alongside 300 other women, led protests against the rape of women in war. Those marches also took place on Anzac Day and 161 women were arrested. But rather than being sacked, Meredith Burgmann, who was an academic at Macquarie University, went on to become the President of this Chamber.

We should be moving forward, particularly on the issue of violence against women, but we appear to be moving back to an age when debate on any issue on which we may feel uncomfortable is stymied. The recent seventieth anniversary of the only use of nuclear weapons by American forces on the cities of Hiroshima and Nagasaki is a case in point. This should be a time when the claim by Scott McIntyre that the dropping of Fat Man on Nagasaki constituted an act of terrorism would bear some reflection. Timothy Shanahan noted that "terrorism" is defined as:

> Strategically indiscriminate harming or threat of harming of a target group in order to influence the beliefs and or emotions of an audience group in ways judged to be conducive to the advancement of some political, ideological, social, economic, religious or military agenda.

Members should note the absence in this definition of contestable ideas such as the morality of the act or the role of the State in terrorism. The detonation by the United States Army Air Forces of atomic bombs on 6 August and 9 August was strategically indiscriminate and claimed 214,000 civilian lives. The aim was not to hobble any military capability, particularly in Nagasaki, but to generate specific beliefs and emotions in an audience group. A leaflet dropped by the United States Army Air Forces following the bombing of Hiroshima and prior to the bombing of Nagasaki stated:

> To the Japanese People:
>
> America asks that you take immediate heed of what we say on this leaflet. We are in possession of the most destructive explosive ever devised by man. A single one of our newly developed atomic bombs is actually the equivalent in explosive power to what 2000 of our giant B-29s can carry on a single mission. This awful fact is one for you to ponder and we solemnly assure you it is grimly accurate. We have just begun to use this weapon against your homeland. If you still have any doubt, make inquiry as to what happened to Hiroshima when just one atomic bomb fell on that city. You should take steps now to cease military resistance. Otherwise, we shall resolutely employ this bomb and all our other superior weapons to promptly and forcefully end the war.

The dropping of Fat Man falls within the definition of terrorism. That is not to imply that the United States was morally wrong in its actions—the morality of the act is a contestable norm—nor does it detract from the brutality that the Japanese military wreaked throughout both North and South-East Asia. But to sack a person for expressing his views on these issues—views which have often been debated in the public

domain and which take a large amount of academic endeavour—seems excessive and reactionary. Whilst we romanticise about the past and wish to inherit some of the traits of the Australians who fought in the First World War such as larrikinism, we also need to retain that other great freedom, namely, a sense of libertarian subculture that allowed Australians to free themselves of closed colonial views. Just as I must accept that the commentariat have the right to express their views—however contestable or disturbing I find them—so does Scott McIntyre.

MARRIAGE EQUALITY

Reverend the Hon. FRED NILE [10.37 p.m.]: Tonight I speak on the cost to society when same-sex marriages are legalised. The introduction of legislation that is contrary to mainstream social values causes great debate and even conflict. The Christian Democratic Party supports equality. The value of human life is a Christian concept. We believe all humans are created in the image and likeness of God and deserve to be treated the same. Redefining marriage is not a question of equality; it is not righting a wrong. Same-sex couples currently enjoy equality before the law. But do supporters of traditional marriage enjoy equality before the law? Tonight I will focus on the fact that legislating same-sex marriage forces Christians into a situation where they must choose between upholding their religious beliefs or being forced to deny them. The Australian Attorney-General's Department website clearly states:

> All persons have a right to think freely and to entertain ideas and hold positions based on conscientious, religious or other beliefs. Legislation, policies and programs must respect the right to freedom of thought, conscience, religion or belief.

We are increasingly learning of the experience in Australia and overseas in places where same-sex marriage has been legalised of people being persecuted for wanting to uphold the traditional definition of marriage. To those who say "It won't affect me", I will highlight some of the recent scenarios where people have been persecuted and suffered because they hold to the belief that marriage should be between a male and a female—a tenet that has served civilisation for thousands of years. We have all heard about the florists, the bakers and the bed-and-breakfast owners who have been fined or even jailed for not wishing to provide services to same-sex couples. There are more stories. A city council in Idaho ordered Christian ministers to perform same-sex weddings under pain of 180 days imprisonment for each day the ceremony was not performed and fines of $1,000 per day.

In Colorado and Oregon, courts have fined bakers who refused on religious or conscientious grounds to bake wedding cakes for same-sex weddings. In New Mexico, a wedding photographer was fined for refusing to do photography for such a ceremony. In Illinois, accommodation providers have been sued for not providing honeymoon packages after same-sex weddings. Yeshiva University in New York City was prosecuted for not providing accommodation to same-sex married couples, and Catholic university colleges have been threatened with similar actions. Catholic adoption agencies in Britain and in some American States have been forced to close for not placing children with same-sex couples. For example, the Evangelical Child and Family Agency in Illinois, United States, was shut down for its refusal.

Businessmen, athletes, commentators, teachers, doctors and nurses, religious leaders and others in several countries who have spoken in support of traditional marriage have been vilified in the media, denied employment or business contracts, and threatened with prosecution. In New Jersey, an online dating service was sued for failing to provide services to same-sex couples. A doctor in San Diego County was prosecuted after refusing to participate in the reproduction of a fatherless child through artificial insemination. British members of Parliament have threatened to stop churches holding weddings if they do not agree to conduct same-sex weddings. The Deputy Chief Psychiatrist of the State of Victoria, Australia, was pressured to resign his position on the Victorian Human Rights and Equal Opportunity Commission after joining 150 doctors who told a Senate inquiry that children do better with a mum and a dad. In several US States and in England, psychologists have also lost positions for stating that they favour traditional marriage or families based on a mother and father. Even Tasmania's Catholic Bishop

Julian Porteous was forced to defend the Catholic Church's position on marriage and to answer charges of discrimination against same-sex couples.

Thus, a view of marriage as between a man and a woman, which was previously held by believers and non-believers alike across a variety of cultures and times, is increasingly becoming a truth that cannot be spoken. In conclusion, I remind members of the Federal Attorney-General's Department website, which states:

> The Government may also be obliged to take positive steps, where necessary and appropriate to protect this right, where failure to do so may result in offensive attacks on religious beliefs.

This is clearly happening in our society and around the world.

STATE EMERGENCY SERVICE ALPINE SEARCH AND RESCUE

The Hon. BRONNIE TAYLOR [10.42 p.m.]: On Saturday 29 August I had the pleasure of representing the Hon. David Elliott, Minister for Emergency Services, at a NSW State Emergency Service [SES] alpine search and rescue capability overview. The NSW State Emergency Service began in 1955 in response to a flood emergency in the Hunter. Since then it has become a vital emergency and rescue service comprising almost entirely volunteers. These volunteers work alongside our other emergency services, including the NSW Police Force, the NSW Rural Fire Service, Fire and Rescue NSW, and NSW Ambulance, which are there for us all in times of great need.

With 229 units located across New South Wales and with about 10,000 volunteers, the SES is a critical part of rescue efforts in emergencies, whether they be floods and storm emergencies, road accidents or search and rescue operations. The challenging conditions and landscapes of New South Wales's alpine region make the local SES teams invaluable but also require them to have unique training, experience and specialised equipment. I was delighted to join the team from the NSW SES Snowy River unit to see the alpine search and rescue capability they have developed. The Snowy River unit is based in South Jindabyne, but covers the alpine region, in particular the Kosciuszko National Park.

The NSW SES alpine search and rescue capability aims to provide one fully equipped search team in the initial phase of a land-search operation, two fully equipped search teams rostered for five days after the initial search phase, and internal support for search teams. To this end, the NSW SES is training 50 volunteers as alpine search and rescue operators and other members who will provide support for the operators in the field. The alpine search operators come from towns including Tumut, Tumbarumba, Jindabyne, as well as further afield in Wagga, Albury, Queanbeyan and Gundagai.

The Hon. Dr Peter Phelps: Queanbeyan?

The Hon. BRONNIE TAYLOR: Yes, Queanbeyan; it is in the Monaro. The training involves standard SES maps and navigation, land search operations and communications training, four days of alpine search and survival training, basic snowmobile training, and a currency event each season. Additionally, training is offered in alpine driving, advanced snowmobile training, search and survival, personal development activities, and multi-agency search exercises.

The Hon. Ben Franklin: It sounds like fun.

The Hon. BRONNIE TAYLOR: It is amazing. The honourable member will have to go up there. The teams are supported by 10 snowmobiles, four-wheel drive vehicles, and a portable forward command trailer, as well as the protective equipment required to endure the tough conditions. Tom Jory, the Alpine Capability Coordinator, does a fantastic job of coordinating this program and ensuring the wonderful SES volunteers are ready to help those who come a cropper in the beautiful but challenging alpine areas of our State, which just happen to be in the Monaro.

It was a magnificent Monaro day as we headed up to the mountains. I am in awe of the SES volunteers and their true commitment to helping others. They are volunteers who serve their communities with such dedication and deal with some horrific accidents, particularly in the winter months when the population in the Snowy Mountains increases greatly for the ski season. They are on call 24 hours a day seven days a week, serving their communities. It is truly admirable. There are many volunteers with differing skills who so generously give their time to the SES.

One of the many I met was Chris Gallagher from the Australian Antarctic Division, who has extensive experience working in hostile alpine environments. He assists the NSW SES by facilitating personal development opportunities that provide alpine search and rescue operators with the platform to apply world's best practice to Australian conditions. Chris has assisted the NSW SES for the past six years and his workshops form an integral part of the alpine search and rescue training program. I also met with members of the NSW SES Snowy River unit, who specialise in general land rescue and assist their community during storm and flood emergencies. These volunteers provide a professional standard of service to their community 365 days of the year. I enjoyed my short time with them and would encourage any member of the Legislative Council who is invited to attend their local NSW SES's functions to take the opportunity to spend some time with these important, community-minded volunteers. The men and women of the SES are truly great Australians.

NATIONAL DISABILITY INSURANCE SCHEME

The Hon. SOPHIE COTSIS [10.46 p.m.]: NSW Labor today welcomed the signing of a bilateral agreement between the Commonwealth and New South Wales governments for the full rollout of the National Disability Insurance Scheme [NDIS]. The NDIS was developed by the former Federal Labor Government to deliver people with disabilities greater choice and certainty by providing them with individualised support packages. When fully implemented, the NDIS promises to improve the support received by more than 140,000 people with disability in New South Wales. I acknowledge the State Government and the Federal Government for signing that agreement today. I acknowledge everybody who has worked on this for four decades.

[*Time for debate expired.*]

Question—That this House do not adjourn—put and resolved in the affirmative.

Motion agreed to.

The House adjourned at 10.47 p.m. until Thursday 17 September 2015 at 9.30 a.m.