

ADJOURNMENT	4749
AEROMEDICAL WINCHING SERVICES	4662
BALLINA MARINE RESCUE TOWER	4657
BOATING SAFETY	4666
BUSINESS OF THE HOUSE	4630,
4630	
COAL SEAM GAS	4660
COOLAH	4752
COURTS AND OTHER JUSTICE PORTFOLIO LEGISLATION AMENDMENT BILL 2015	4734
DUTCH MEMBER OF PARLIAMENT GEERT WILDERS	4656,
4658, 4661	
FISHERIES MANAGEMENT AMENDMENT BILL 2015	4633
FOOD LABELLING	4664
HEALTH LEGISLATION AMENDMENT BILL 2015	4668,
4735	
HOMESCHOOLING	4664
HOUSING FORUM	4749
HUNTER RESIDENTIAL CENTRES REDEVELOPMENT	4659
MINING AND PETROLEUM LEGISLATION AMENDMENT (GRANT OF COAL AND PETROLEUM PROSPECTING TITLES) BILL 2015	4668,
4669	
MINING AND PETROLEUM LEGISLATION AMENDMENT (HARMONISATION) BILL 2015	4668,
4669	
MINING AND PETROLEUM LEGISLATION AMENDMENT (LAND ACCESS ARBITRATION) BILL 2015	4668,
4669	
MULTICULTURAL NSW SETTLEMENT PORTAL	4665
MURRAY-DARLING BASIN PLAN	4661
NATIONAL WATER WEEK	4666
NEW SOUTH WALES PARLIAMENTARY LIBRARY DODRANSBICENTENNIAL	4629
ONLINE SPORTS GAMBLING	4667
PACIFIC HIGHWAY	4663
PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (ENFORCEMENT OF GAS AND OTHER PETROLEUM LEGISLATION) BILL 2015	4668,
4669	
QUESTIONS WITHOUT NOTICE	4656
RETAIL TRADING AMENDMENT BILL 2015	4630
RURAL AND REGIONAL DISABILITY SERVICES	4658
SPECIAL RELIGIOUS EDUCATION	4666
STATE INSURANCE AND CARE GOVERNANCE AMENDMENT (INVESTMENT MANAGEMENT) BILL 2015	4734
STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 2) 2015	4632
STRATA SCHEMES DEVELOPMENT BILL 2015	4639
STRATA SCHEMES MANAGEMENT BILL 2015	4639
SUICIDE PREVENTION	4750
SUPERANNUATION ADMINISTRATION AMENDMENT (INVESTMENT MANAGEMENT AND OTHER MATTERS) BILL 2015	4734
SYD EINFELD DRIVE, BONDI JUNCTION	4667
SYDNEY NEURO-ONCOLOGY GROUP	4751
TRANSPORT INFRASTRUCTURE PLANNING	4662
TREASURY CORPORATION AMENDMENT BILL 2015	4734
UNITED NATIONS INTERNATIONAL DAY OF RURAL WOMEN	4630
VISITORS	4639
WESTERN SYDNEY AMBULANCE SERVICES	4668

WIND ENERGY INDUSTRY	4629
WORK HEALTH AND SAFETY (MINES AND PETROLEUM) LEGISLATION AMENDMENT	
(HARMONISATION)	2015
BILL	46

68, 4669

## **LEGISLATIVE COUNCIL**

Wednesday 21 October 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.**

### **NEW SOUTH WALES PARLIAMENTARY LIBRARY DODRANSBICENTENNIAL**

**Motion by the Hon. MICK VEITCH agreed to:**

- (1) That this House notes that:
  - (a) the New South Wales Parliamentary Library is celebrating its dodransbicentennial in 2015;
  - (b) the New South Wales Parliamentary Library was established in 1840, which makes it the oldest special library with a continuous history in Australia;
  - (c) the New South Wales Parliamentary Library collection has a rich heritage, of which the members of Parliament are very proud; and
  - (d) the New South Wales Parliamentary Library continues to serve members of Parliament by providing services such as research papers, statistical information and bulletins and a vast online and hard copy catalogue of materials.
- (2) That this House congratulates the New South Wales Parliamentary Library on attaining its dodransbicentenary and thanks the library staff for their exceptional work.

### **WIND ENERGY INDUSTRY**

**Motion by Dr JOHN KAYE agreed to:**

- (1) That this House notes that:
  - (a) the Australian Government's National Health and Medical Research Council [NHMRC] is an expert body promoting the development and maintenance of public and individual health standards;
  - (b) in February 2015, the NHRMC released a statement entitled "Evidence on Wind Farms and Human Health" which concluded "that there is currently no consistent evidence that wind farms cause adverse health effects in humans";
  - (c) the 2015 statement was prepared after a comprehensive assessment of the evidence on wind farms and human health;
  - (d) the review of evidence was guided by the Wind Farms and Human Health Reference Group, which includes experts from fields including public and environmental health,

research methodology, acoustics, and psychology and sleep, as well as consumer advocates;

- (e) the 2015 statement updates the NHMRC's previous work on this issue and supports similar conclusions made in 2011 as part of its scientific forum on the possible health effects of wind turbines;
  - (f) according to NSW Trade and Investment, the wind industry currently supports 754 jobs in New South Wales;
  - (g) the department also notes that there is \$7.3 billion of clean energy projects seeking approval in New South Wales, with the potential to create over 91,000 direct and indirect jobs; and
  - (h) a significant proportion of the above investment and jobs will be in the wind industry.
- (2) That this House reiterates its support for the wind energy sector in New South Wales.

#### **UNITED NATIONS INTERNATIONAL DAY OF RURAL WOMEN**

**Motion by the Hon. MICK VEITCH agreed to:**

- (1) That this House notes that:
  - (a) Thursday 15 October 2015 was United Nations International Day of Rural Women; and
  - (b) this day, first celebrated in 2008, highlights the crucial role of women in rural, regional and remote economies and communities.
- (2) That this House acknowledges the diverse and invaluable contribution of rural women to agriculture and to regional and rural New South Wales.

#### **BUSINESS OF THE HOUSE**

##### **Formal Business Notices of Motions**

**Private Members' Business item No. 477 outside the Order of Precedence objected to as being taken as formal business.**

#### **BUSINESS OF THE HOUSE**

##### **Withdrawal of Business**

**Private Members' Business item No. 14 outside the Order of Precedence withdrawn by Reverend the Hon. Fred Nile.**

#### **RETAIL TRADING AMENDMENT BILL 2015**

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

#### **Second Reading**

**The Hon. DUNCAN GAY** (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) [11.11 a.m.]: I move:

That this bill be now read a second time.

The Government went to the electorate in March with a public commitment to modernise retail trading laws to provide more certainty and choice for consumers, retailers and employees. It is not unusual for the New South Wales retail economy to turn over around \$8 billion per month and it provides employment for 10 per cent of the New South Wales workforce, that is, more than 375,000 jobs. Our current retail laws are outdated and increasingly out of step with contemporary patterns of work, leisure and shopping.

**The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile)**: Order! The Minister is making a second reading speech and will be heard in silence.

**The Hon. DUNCAN GAY**: Restrictions have been relaxed over the decades; they have moved with the times. When the regulation of retail trading hours in New South Wales began over 100 years ago, it was all about making sure shop workers were able to go home every night to rest and to have a day off every week. Today, employee entitlements to time off work, including on public holidays, are the province of the Commonwealth's Fair Work laws and industrial awards. The State can regulate business trading hours only through the Retail Trading Act. The Act requires shops and banks to close on Good Friday, Easter Sunday, Anzac Day until 1.00 p.m., Christmas Day and Boxing Day. Banks also have to close on weekends and on all public holidays.

Since the last major reform of the New South Wales trading laws in 2008, disputed exemption determinations and amendments to the Retail Trading Act in subsequent years suggest that a consistent scheme that balances the needs of consumers, retailers and retail employees is yet to be achieved in this State. The current retail trading regime is complex, inconsistent, inefficient and administratively burdensome. Currently, retailers in the Sydney central business district, Bondi Junction, Moore Park and Broadway are exempt from the requirement to close their doors on Boxing Day, but retailers in suburban Sydney are not. On Boxing Day people can choose to shop or choose to work in a shop in the Sydney central business district or in the eastern suburbs but not in Parramatta, Campbelltown or Penrith.

Equally, shops in a number of holiday centres up and down the New South Wales coast are permitted to open for trade but not those in adjacent centres a short drive away. While stores in the Wollongong mall are closed on Boxing Day, 20 minutes away stores in Shellharbour are open. While the shops of Moama on the New South Wales side of the Murray are shut, five minutes over the bridge into Echuca, Victoria, the retail shops are permitted to open. This is stifling growth in the State and denying opportunities for consumers, retailers and staff. It means people from the western suburbs of Sydney have to converge on the central business district to do their shopping.

For small business owners and local communities, the reform means local dollars in local shops. The opportunity for local businesses to open their doors for such a major day of trading cannot be underestimated. Small businesses are the backbone of local communities and a major provider of local jobs across New South Wales. The existing laws discriminate against consumers, retailers and employees because of where they shop, where they choose to do business and where they live. People can shop online 24 hours a day, every day of the week, every week of the year. Yet a retail outlet in Western Sydney or some other part of the State is held back by not being able to open its doors on Boxing Day.

It makes sense for consumers who want to shop on Boxing Day to do so at their local shopping centre rather than being funnelled into the Sydney central business district. It makes just as much sense for workers, particularly casual employees, to have the opportunity to earn more money as it does for them to choose to spend the day with family and friends. It should be their choice. The provisions of this bill that would allow shops such as supermarkets, department stores, small retail businesses and banks

throughout New South Wales to open on Boxing Day will be conditional on staff freely electing to work without coercion or threats made by or on behalf of the retailer. Failure to comply with this condition means the retailer would be in breach of the law and therefore be subject to possible prosecution action and an \$11,000 fine.

Nothing in this bill changes the status of Boxing Day as a public holiday and, therefore, employees retain their rights under the Commonwealth Fair Work Act and relevant awards and agreements that apply to them. Boxing Day remains a restricted trading day. Shopkeepers cannot be compelled by their landlord to open. If they do not have staff members who freely elect to work or if they simply do not think it appropriate or even worthwhile to open on Boxing Day, any lease arrangement that compels them to do so is voided by the Retail Trading Act.

Following discussions with stakeholders, the Government has agreed to prioritise significant resources to boost business education activities ahead of Boxing Day and to boost compliance and investigation resources in regard to Boxing Day trading specifically. Should this bill pass, the Government is committed to ensuring that resources are available within the NSW Industrial Relations so that any complaint made in regard to an employee being forced to work or a shop being forced to open this Boxing Day is investigated. The NSW Industrial Relations will allocate five full-time resources to compliance activities around Boxing Day this year and it will be 100 per cent devoted to ensuring that any complaints are investigated. Additional resources will be identified over coming weeks so that they can be allocated if required, so that any complaints receive the attention they deserve.

Based on the current situation with Boxing Day trading, we do not expect to be overwhelmed by complaints but the NSW Industrial Relations will be equipped to undertake the work required to ensure all complaints are looked at. The Industrial Relations will significantly increase education activities in the lead-up to Boxing Day so that employers and employees know their rights and responsibilities. This will include webinars—online seminars—starting from mid-November, with businesses being invited to attend, which will set out clearly the new law.

I also make it clear that the Government will not remove restrictions on retail trading around other public holidays such as Christmas Day, Easter Sunday, Good Friday or Anzac Day morning. This is an ironclad guarantee. A series of reviews has consistently advocated the change we are proposing to retail trading laws. In 2007 the New South Wales Better Regulation Office conducted an examination of the regulation of trading hours and recommended that Boxing Day be an unrestricted trading day. Reports prepared in 2011 and 2014 into the Australian retail industry by the Productivity Commission have called for the further liberalisation of trading hours around the country. So has Professor Ian Harper in his 2015 competition policy review.

I now turn to the substantive provisions of the bill. Items [1,] [3], [4], [6], [7], [12] and [13] of schedule 1 all relate to the simplified specification of the "freely elect to work" requirement, which is a condition that applies to all exemptions in the bill. This consolidation is undertaken to reduce the complexity of the various exemption provisions of the Act. Item [2] provides for the removal of the Boxing Day trading exemption applying only to the Sydney trading precinct. That will become redundant with the introduction of a statewide conditional exemption for Boxing Day. This means that shops in the Sydney trading precinct will be subject to the same conditional exemption, such as their employees have freely elected to work, as all other shops opening on Boxing Day. This is not currently the case.

Item [5] provides for the proposed statewide Boxing Day conditional exemption to open for trade. It also provides for shops to be made ready for the immediate resumption of trade after a restricted day. Items [8] and [11] enable the conditional exemption for the August bank holiday and other public holiday trading by retail bank branches. The Government believes there are no compelling reasons for the retention of arrangements specifically for banks that do not apply to other businesses or industries, especially financial institutions that provide similar products and services. Good Friday, Easter Sunday, Anzac Day before 1.00 p.m., and Christmas Day will remain completely restricted for retail bank branches.

To ensure consistency as far as possible across the finance sector, items [9] and [10] provide for a conditional exemption for financial institutions other than banks—credit unions and the like—to open for retail business on the August bank holiday. This is their only restricted day. To be absolutely clear, this and all other exemptions provided by the bill are subject to the condition that staff on the day freely elect to work without having been coerced, harassed, threatened or intimidated by or on behalf of the occupier of the business concerned.

In summary, this bill amends the Retail Trading Act 2008 to provide for greater choice and convenience for consumers, increased competition between retailers, a levelling of the playing field between bricks and mortar retailers and online retailers, and less red tape and administrative costs for businesses while allowing workers to choose how they balance their family life with the opportunity to earn additional income. I commend the bill to the House.

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

### **STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO. 2) 2015**

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

#### **Second Reading**

**The Hon. DAVID CLARKE** (Parliamentary Secretary) [11.26 a.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

The Statute Law (Miscellaneous Provisions) Bill (No. 2) 2015 continues the statute law revision program that has been in place for more than 30 years. Bills of this kind have featured in most sessions of Parliament since 1984 and are an effective method for making minor policy changes and maintaining the quality of the New South Wales statute book. Schedule 1 to the bill contains policy changes of a minor and non-controversial nature that are too inconsequential to warrant the introduction of a separate amending bill. It contains amendments to 15 Acts. I will describe some of the amendments to give honourable members an indication of the kinds of amendments that are included in the schedule.

Amendments are made by schedule 1 to the Road Transport Act 2013 in relation to the mandatory alcohol interlock program established by that Act. The amendments will provide for the recognition of interlock driver licences issued in another State or a Territory. This will ensure that any period during which a person holds an interlock driver licence of another State or a Territory will be counted towards the interlock period applicable under the Act. The amendments will also ensure that the making of a second or subsequent mandatory interlock order in respect of a person will set aside any preceding order.

Schedule 1 also amends the Subordinate Legislation Act 1989 to provide that a regulatory impact statement is not required to be prepared in respect of regulations made under the Major Events Act 2009. The amendment will enable major events to be declared expeditiously under that Act. Amendments are made by schedule 1 to the Combat Sports Act 2013 to provide that a trainer of a combat sport combatant need not be registered as an industry participant unless the trainer accompanies the combatant to a combat sport contest. Currently, any person who trains a combatant is required to be registered as an industry participant whether or not the person actually attends a contest.

The Mental Health Act 2007 is amended to update references to the repealed Private Hospitals

and Day Procedure Centres Act 1988 and associated terminology. Before that Act was repealed, a licence was required to conduct a private hospital, within the meaning of the repealed Act, to provide treatment for mental illness. The amendments will provide for the continuation of that licensing requirement in relation to the conduct of a private health facility within the meaning of the Private Health Facilities Act 2007. The Sydney Cricket and Sports Ground Act 1978 is amended to enable the trust to grant a lease or licence for a total period not exceeding 75 years to the Australian Rugby Union for the Australian Rugby Development Centre at Moore Park and also to grant a similar lease or licence to the University of Technology Sydney [UTS] for the purposes of the UTS Sports Campus at Moore Park.

Schedule 1 also amends the Animal Diseases and Animal Pests (Emergency Outbreaks) Act 1991 to extend the period for which an importation order may be made or extended in the event of an emergency animal disease. Currently, an importation order cannot be made or extended for a period exceeding 30 days. However, certain emergency animal diseases warrant a longer period of protection. The amendment will extend this period to six months, which will significantly reduce the number of extension orders required to be made.

The last schedule 1 matter I will mention is the amendments made to the Independent Pricing and Regulatory Tribunal Act 1992. The amendments will provide that notices relating to investigations and hearings conducted by the Independent Pricing and Regulatory Tribunal may be published on the tribunal's website. Currently, such notices are required to be published in a newspaper. Schedule 2 deals with matters of pure statute law revision consisting of minor technical changes to legislation that the Parliamentary Counsel considers are appropriate for inclusion in the bill. Examples of amendments in schedule 2 are corrections of cross-references, typographical errors and terminology, and amendments arising out of the enactment of other legislation.

Schedule 3 contains amendments that update terminology and references relating to public service agencies, heads of agencies and public service employees as a consequence of the Government Sector Employment Act 2013. The schedule also includes other miscellaneous amendments that are consequential on the enactment of that Act. Schedule 4 contains general savings, transitional and other provisions. These include provisions dealing with the effect of amendments on amending provisions, and savings clauses for the substituted provisions. The various amendments are explained in detail in explanatory notes set out beneath the amendments to each of the Acts and statutory instruments concerned or at the beginning of the schedule concerned.

I am sure that honourable members will appreciate the straightforward and non-controversial nature of the provisions contained in the bill. However, if any amendment causes concern or requires clarification, it should be brought to my attention. If necessary, I will arrange for government staff to provide additional information on the matters raised. If any particular matter of concern cannot be resolved, and is likely to delay the passage of the bill, the Government is prepared to consider withdrawing the matter from the bill. Withdrawn proposals can also be dealt with in a second bill, using the procedure for splitting bills in the Legislative Council, which can be dealt with in each of the Houses in the same way as an ordinary bill. I commend the bill to the House.

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

## **FISHERIES MANAGEMENT AMENDMENT BILL 2015**

**Bill introduced, and read a first time and ordered to be printed on motion by the Hon. Niall Blair.**

### **Second Reading**

**The Hon. NIALL BLAIR** (Minister for Primary Industries, and Minister for Lands and Water)



[11.34 a.m.]: I move:

That this bill be now read a second time.

Our fisheries resources belong to all of us and are managed by the Government on behalf of the people of New South Wales. In managing our fisheries, Government must balance the many legitimate, but often competing, needs of a broad range of stakeholders. The objects of the Fisheries Management Act 1994 direct management to conserve, develop and share the fishery resources of our State for the benefit of present and future generations. This bill contains a range of amendments to the Act that will benefit the commercial, recreational, charter boat and Aboriginal fishing sectors, as well as improve aquatic habitat and threatened species protection and strengthen biosecurity measures.

This bill delivers on this Government's commitment to secure sustainable, viable and healthy fisheries. It will continue to build and support a strong and sustainable New South Wales commercial fishing industry, although it does not presuppose the outcome of the current reform process, which is yet to be considered by the Government. It will also ensure greater regulatory effectiveness and efficiency, align industry operations to more contemporary business practices and, importantly, reduce red tape. Prior to the 2011 election, the New South Wales Liberal-Nationals released their fisheries policy "Securing sustainable, viable and healthy fisheries", which committed to, amongst other things, an independent review of NSW Fisheries policy, management and administration. This bill seeks to put in place the legislative changes agreed to by the Government in its response to the review initiated in 2012, as well as other necessary changes to the Fisheries Management Act.

As the bill deals with a number of different matters I will start by detailing the provisions relating to FishOnline. The bill allows for more flexible and streamlined administrative processes through amendments that support the full operational implementation of FishOnline. FishOnline is an online self-service system that will allow fishers in the commercial and charter fishing sectors to undertake a range of business-related transactions and report their fishing activities over the internet using a computer, laptop, tablet or mobile phone. The system will be accessible 24 hours a day, seven days a week. This offers fishing industry participants greatly improved convenience in administration.

Functions available on FishOnline will include renewal of licences; transferring of entitlements and quota; authorising or revoking nominated fishers; updating contact details; and submitting catch and effort reports. FishOnline incorporates technologies to relay, in real time, particulars of when and where certain fishing activities are proposed, as well as estimates and confirmation of catches at the conclusion of fishing. FishOnline facilitates instant transactions allowing businesses to move quickly on operational decisions and keep up with modern business practices. The FishOnline system has been built and is now up and running in a limited capacity. There are currently more than 300 registered online users of the system.

The changes proposed in the bill will enable the system to become fully functional delivering all the benefits of the online system to users. The department has received positive feedback from current users on the system so far demonstrating the clear benefits to industry. In total there are currently approximately 1,500 commercial fishing and 200 recreational charter fishing operations who all stand to benefit from FishOnline. The bill also provides the option for industry participants to authorise agents to use online facilities on their behalf. It is appreciated that for various reasons not all participants will undertake electronic reporting and conduct online transactions. The option to carry out business using traditional paper-based methods will be maintained as needed.

I turn now to amendments relating to the commercial fishing sector. As noted earlier, in 2012 the Government initiated an independent review into commercial fisheries policy, management and administration. This review identified three key areas of reform: structural adjustment, governance processes and consultation mechanisms. A number of recommendations were made in relation to each of these areas. The Government announced its support for the majority of the recommendations arising

from that review, including a recommendation to make the necessary legislative changes to implement these significant reforms.

This bill puts in place a number of the legislative changes agreed to by Government in its response to the review. Importantly, the bill includes the framework that will allow for implementation of the structural adjustment reform program. I would like to be clear however, that this bill does not settle those matters that are currently being considered as part of the structural adjustment program, including, for example, the linkages between shares and fisheries access. The Government is committed to delivering reforms to the commercial fishing industry to address the problems identified in the independent review and overcome concerns around excessive and poorly defined fishing rights. These are important and significant reforms to revitalise the industry and provide a stronger footing for its long-term viability.

This month the Government received the Structural Adjustment Review Committee's final recommendations and is now considering its response. I will be discussing the outcomes with key stakeholder groups as I want to ensure that the future structure is fit for purpose and, importantly, delivers a sustainable and viable fishing industry in the long term. The amendments contained in this bill will provide the machinery to efficiently implement the reforms; however, they do not lock in the details. As the proposed reforms are of intense interest to our commercial fishing industry and to honourable members, it is appropriate that they be debated separately prior to their final implementation and I have no doubt they will return to this Chamber at a later time.

This bill replaces the highly prescriptive provisions placed in the Act in the past with provisions that are flexible and address contemporary management needs. The bill will provide flexibility for how maximum shareholding rules should apply in a fishery and provide that the relevant fishery management plan may fix the maximum shareholding. This will remove the default maximum shareholding of 5 per cent of all shares held in a fishery. In addition, maximum shareholdings may be applied at a share class level rather than, or as well as, the fishery level. This will make it possible to apply different maximums to each class of share within a fishery, making the provision more effective.

The bill will also remove the mandatory requirements for the share management plans to set a minimum shareholding for each share class when there may not be a need for this restriction. The current Act is unclear in relation to the requirement for public consultation when seeking to amend a share management plan, no matter how minor the proposed amendment. The bill clarifies that public consultation is not required in relation to amending an existing fishery management plan or supporting plan. Importantly, this does not prevent consultation from occurring for amendments likely to attract broad public interest. The Government's clear intention is for consultation to occur in such cases.

The bill will increase the flexibility of current provisions relating to the issue of any new share classes in a fishery. The amendments clarify that the detailed provisions associated with issuing shares in a new share management fishery do not apply to issuing further shares to current shareholders in an existing share management fishery. Clarifying this position, as well as removing the requirement for catch history to be recognised when allocating new classes of shares, will ensure significant reductions in red tape.

The bill also provides for the Minister to put forward a redefinition proposal in respect of commercial share management fisheries. A redefinition proposal may involve changing the description of a share management fishery, amalgamating two or more share classes, or replacing existing share classes with new share classes. Under existing arrangements, if a fishery description is omitted from the Act, including for the purpose of redefining a fishery, all shares in the fishery are cancelled and compensation is payable. Changes proposed in the bill provide for the implementation of a redefinition proposal without triggering compensation provisions, provided the redefinition proposal has majority support from affected shareholders. Majority support would be determined by the conduct of a poll as provided for in the bill. This change provides the fishing industry with potential opportunities that cannot

be progressed at the moment due to the way the current Act is structured.

Further to this, the Act currently provides for two classes of share management fishery: a category 1 share management fishery and a category 2 share management fishery. The category 2 share management provisions, which allow for shares to be issued with 15-year terms only, were never fully used. All share management fisheries moved to the more secure category 1 share management fisheries many years ago. Accordingly, the bill includes a simple amendment to remove references to these categories. Key features of category 1 share management fisheries, including the issue of shares in perpetuity and compensation provisions, are unchanged.

The bill affords the Minister greater flexibility to manage shares forfeited for failure to pay management charges or community contributions. Currently, forfeited shares can be cancelled or sold but the bill provides the Minister with the further options of being able to reissue or retain such shares. Furthermore, the Minister will no longer be required to sell surrendered shares at the request of the shareholder. Instead, the Minister will have the option to sell, cancel, reissue or retain surrendered shares in the same way that the Minister has discretion to manage forfeited shares. These amendments provide the Minister with options to best use surrendered or forfeited shares. One such option would be to reissue shares for the benefit of Aboriginal communities. Having Aboriginal communities collectively engaged in commercial fishing enterprises has the potential to improve the economic outlook and social wellbeing for those in the community.

The bill abolishes any commercial fishery management advisory committees established by the Minister under the Act and provides for the establishment of expertise-based advisory groups. This was one of the key recommendations of the 2012 independent review that documented the significant problems that were associated with the previous management advisory committee consultation structure. The new expert advisory groups will be appointed by the Secretary of the NSW Department of Industry, and will also provide advice directly to the secretary. There will be the ability to create groups on an "as needs" basis for a wide range of issues, not just commercial fishing. It is important that people with the most relevant expertise are selected for each group to ensure that the Government receives the best advice on the issue at hand on key management issues. The ability to create and disband advisory groups from time to time to tackle priority issues will be far more flexible, efficient and cost-effective.

During the consultation process on this bill and in informal discussions with members of this Chamber there was opposition to the removal of the election processes used to decide membership of these advisory groups and to the lack of a central advisory council in place for commercial fishing. The Government is also aware of concerns raised regarding transparency. In response to concerns, the Government will form a commercial fishing advisory council. This council will be the key advisory body to advise on matters referred to it and on other matters it considers relevant to its sector. It will be similar to the peak bodies already in place for the recreational fishing and Aboriginal fishing sectors. The council can be established under the existing provisions of the Act and would report to the Minister, not the secretary of the department. We will seek industry input with regards to the establishment, composition and procedure of the new advisory council. I am confident that this commitment will go to addressing the concerns raised and work with the new flexible issues-based advisory groups.

The existing management framework in the Act provides for the determination and allocation of total allowable catch and the determination of any other matter relating to fishing effort in commercial share management fisheries. To promote a more holistic approach to the management of fisheries resources, the bill enables total allowable catch and total allowable fishing effort determinations to be made for any fisheries sector, not just the commercial fisheries sector. In recognition of the increased focus on determining both total allowable catches and total allowable fishing effort, the bill introduces the term "fishing determinations" and renames the Total Allowable Catch Committee as the Total Allowable Fishing Committee.

The bill introduces more flexible and streamlined mechanisms for the making of fishing

determinations. The bill provides for the Total Allowable Fishing Committee or the Secretary of the NSW Department of Industry to make fishing determinations if required by the regulations, fishery management plan or the Minister. The method by which the committee would make a fishing determination will not change from the current process used. That is, the committee is required to call for public submissions on any determination it makes. The composition of the committee will remain as prescribed in the Act. This structure ensures determinations remain independent and are based on the best available information and assessment.

Under the bill, the Minister may direct the secretary of the department to make a fishing determination. When making a determination, the secretary must have regard to at least one relevant scientific assessment. This requirement ensures that the fishing determination is based on sound evidence and is transparent. The secretary may also seek advice from the Total Allowable Fishing Committee or conduct public consultation, or both, when making a fishing determination. An example of where the secretary may be directed to make a fishing determination is where a species spans multiple jurisdictions or a similar method is used in an adjacent jurisdiction and a joint stock assessment already exists. It will no longer be the case that the whole of a determined catch must be allocated.

The Act currently only permits the transfer of quota between commercial fishery shareholders in the same fishery. Changes proposed in the bill will enable quota to be traded between any fishery or class of persons entitled to receive quota. Any restrictions deemed necessary on the trading of quota can be imposed by the regulations. The bill also puts in place provisions to improve debt management by building on the existing policy of refusing the transfer of quota if there are outstanding fees or charges payable. Under proposed changes the Minister could order that quota or a portion of quota for the period is forfeited in circumstances where a fee, charge or contribution required under the Act has not been paid. Furthermore, new enforcement provisions in the bill create a general power to allow the recovery through the courts of unpaid fees or charges imposed under the Act.

The bill relaxes commercial fishing boat licensing requirements so only certain, rather than all, boats used for commercial fishing will be subject to licensing requirements under the Act. The regulations will detail fishing boat activities for which a fishing boat licence will be required. Licensing provisions will only be applied where they are needed for resource management. Where they are not needed, steps will be taken to reduce the licensing-related administrative burden on fishery participants. In response to concerns raised by stakeholders during consultation on the bill, commercial fishing boats that will no longer be subject to licensing requirements will still need to be marked to identify the boat as a commercial fishing boat.

Improvements have been made to the system of special endorsements and permits. At present the Act provides for the Minister to issue a special endorsement to take fish for sale in a commercial share management fishery, if, following consultation, the Minister is satisfied there are available resources that would not otherwise be used. However, this special endorsement can only be issued for a maximum period of six months. In future, there will not be a time limit for the validity of these endorsements. In addition, the bill provides for the relevant fishery management plans to detail criteria and circumstances under which a special endorsement may be issued.

To improve administrative efficiency, the bill expands the section 37 permit provisions to allow the Minister to make an order authorising a class of persons to take or possess fish or marine vegetation without requiring an individual to hold a permit on behalf of that class of persons. In addition, the proposed changes clarify that a permit holder may be required to contribute towards the costs of management, monitoring, compliance and research related to activities authorised by the permit to enable the proper recovery of costs of services.

I now turn to amendments relating to the charter fishing sector. The amendments to the Act will introduce a more flexible licensing framework for charter fishing operators to enable operators to more easily and efficiently adjust their businesses to meet the needs of clients. The new arrangements are

similar to those in commercial fisheries, with the concept of a "charter fishing business" replacing the charter fishing boat licence. Components of the charter fishing business will comprise new charter fishing licences and a certain number of charter boat seats. Entitlements remain transferrable; however, now it will be possible to transfer a licence without the need for the physical boat to be traded. The amendments also allow for a new concept of tradable "seats". Different classes of seats authorising different charter fishing activities will be tradable between industry participants.

The proposed amendments recognise "guided non-motorised activity" promoting opportunity to use manually-operated boats such as kayaks and canoes under the one business. As a result of consultation on the bill, the term "ecotourism activity" has been replaced with "guided non-motorised activity" to alleviate any concerns for existing ecotourism accreditation schemes. While the overall fishing capacity of the State's charter fishing industry remains capped at the existing total number of seats within the industry, these changes will allow redesign of operations to better suit business needs and bring much-needed flexibility for charter operators. The bill establishes a program to authorise scientific observers to collect information about commercial and charter fishing activities, which is consistent with the needs under the various Commercial Fishery Management Strategies and environmental approvals that have been granted.

I now turn to amendments relating to the recreational fishing sector. The bill looks to promote resource management related to recreational fishing, most notably through adding to the existing approach to possession limits for fish. The bill expands the possession limit provisions to enable individual possession limits to be imposed by the making of an order by the Minister. Such a provision will allow the Minister to respond quickly where necessary, by introducing a limit on the quantity of fish that a person may have in their possession. In response to concerns raised by stakeholders during consultation on the bill, the proposal to impose limits on the number of fish that can be held on a boat has been removed.

To provide more responsive resource management arrangements, the bill provides for changes to fishing closure arrangements and an enhanced compliance and enforcement scheme. Existing arrangements for fishing closures will now be complemented by the capacity to urgently amend or revoke closures. Fishing closures will take precedence over commercial fishery share management plans to ensure that they can be implemented as intended—as a short-term measure to swiftly address issues, which can be applied across all aspects of fishing activity.

I turn to amendments relating to the Aboriginal fishing sector. This bill enables more flexibility in how Aboriginal cultural fishing is provided for. It also establishes a specific trust fund that can be used to improve the management of Aboriginal fishing. This trust fund will provide a suitable and transparent accounting mechanism for incoming funds and expenditure associated with Aboriginal fishing. The trust fund will be a special deposits account and will be allocated any monies received from the Department of Primary Industries, or through grants or other external funding.

Monies expended would need to be approved by the Minister and be for the purposes of enhancing, maintaining or protecting Aboriginal cultural fishing. In response to comments made by Aboriginal stakeholders during consultation on the bill, the scope of the trust has been expanded to include the additional purpose of economic development opportunities for Aboriginal communities in relation to fishing or fishing-related activities. In addition, the Minister would need to consult with any relevant advisory councils about policies and priorities for expenditure.

This bill is not only about improving efficiencies and sustainability for our fishing stakeholders; it is also about ensuring that we protect our aquatic environment and threatened species, and I now turn to those amendments. In circumstances where dredging or reclamation works have been undertaken in contravention of the Act, currently the Minister or a court can make a remediation order in respect of those works. To encourage compliance with remediation orders, changes proposed in the bill create an offence provision for noncompliance with an order. Maximum penalties would be \$220,000 for

corporations and \$110,000 in any other case. To further strengthen these remediation provisions, the bill also provides for a court to make a remediation order in respect of dredging or reclamation works that have been undertaken in contravention of the Act, even if charges are dismissed, or a person is conditionally discharged, following conviction for these offences.

Changes will also be implemented to simplify provisions to protect aquatic habitats. Presently, protection for mangroves and other marine vegetation is split into two parts. The first is within the Act and the second part is provided by way of a ministerial order published in the New South Wales *Government Gazette* in 2011. The bill brings both parts together, removing the need for the order and simplifying the legislation. Greater cohesion between fisheries aquatic habitat protection provisions and planning processes will now be promoted by aligning consultation time frames for public authorities proposing dredging and reclamation works with those outlined in the State Environmental Planning Policy.

Various amendments will also be made to improve clarity around actions concerning threatened species. Changes in the bill will clarify that it is a defence to a prosecution for an offence relating to threatened species, populations or ecological communities or their habitats if the Secretary of the New South Wales Department of Industry issues a certificate to the effect that: the proposed action is not likely to significantly affect threatened species, populations or ecological communities or their habitats; and a licence under part 7A of the Act is not required for the action. New powers are also included that will enable the preparation of recovery plans for critically endangered ecological communities and align the Act with recovery planning provisions under the Threatened Species Conservation Act 1995.

I turn now to amendments relating to biosecurity measures. The bill will improve the management of biosecurity risks in New South Wales. Stronger biosecurity provisions are important for the sustainability of the fisheries resource and to ensure market access to premium quality seafood. The bill enables fisheries officers to euthanase live fish reasonably suspected of being noxious for the purpose of seeking expert identification. To encourage compliance with notices to destroy noxious fish or marine vegetation, the bill creates an offence provision for non-compliance with such a notice. The bill expands existing declared disease provisions by enabling the Minister to make an importation order that prohibits or imposes conditions on the entry or importation into the State of anything that is likely to introduce or spread a declared disease. Such an order could remain in force for up to five years.

The bill recognises that waste water and abalone waste from live abalone holding facilities pose a biosecurity risk. As such it enables the Minister to make an order requiring specific measures to be taken to minimise the risk of transmission of a declared disease in such holding facilities. The bill also includes a range of miscellaneous amendments which will improve the regulatory framework and reduce red tape for stakeholders. The bill incorporates the current shark finning prohibition on board boats, which has been in place as a fishing closure since 1999, into the Act. A general offence for providing false or misleading information in connection with a requirement under the Act or regulations is also now included in line with powers of other natural resource regulators.

Members will be aware that a similar bill passed the Legislative Assembly in November 2014 but it did not progress through the Legislative Council prior to Parliament being prorogued. The provisions of this bill were the subject of targeted consultation earlier this year with commercial fishing business owners, charter fishing operators, key recreational and Aboriginal organisations, New South Wales local councils and the Nature Conservation Council. A total of 146 submissions were received during the consultation period and were considered during the preparation of the bill. The Government has responded to concerns raised during consultation, where appropriate, and made a number of minor changes.

The many benefits this bill brings include the option for commercial and charter boat operators to undertake a wide variety of business transactions online; improved administration of the Act and the ability to efficiently implement commercial fishery reforms; improved charter fishing licensing arrangements; the creation of an Aboriginal Trust Fund and potential for promoting engagement of

Aboriginal communities in fishing-related activities promoting social and economic benefits for communities; and stronger biosecurity provisions. The bill aims to improve the sustainability and management of the State's fisheries resources and delivers more effective and efficient services to the users of the resource. This omnibus bill covers a wide range of complex fisheries management issues and I will be writing to the Opposition and crossbenchers offering full briefings on its provisions. I look forward to those discussions. I commend the Fisheries Management Amendment Bill 2015 to the House.

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

## **VISITORS**

**The ASSISTANT-PRESIDENT (Reverend the Hon. Fred Nile):** I draw the attention of members to the presence in the gallery of school leaders from Point Clare Public School on the Central Coast. Welcome to the Parliament of New South Wales.

## **STRATA SCHEMES MANAGEMENT BILL 2015**

## **STRATA SCHEMES DEVELOPMENT BILL 2015**

### **Second Reading**

**The Hon. NIALL BLAIR** (Minister for Primary Industries, and Minister for Lands and Water) [12.04 p.m.], on behalf of the Hon. John Ajaka: I move:

That these bills be now read a second time.

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

### **Leave granted.**

The Government is pleased to read for a second time:

o the Strata Schemes Development Bill 2015; and

o the Strata Schemes Management Bill 2015.

These bills are the culmination of the Government's landmark reform of New South Wales' strata title laws that started in 2011.

The importance of these reforms to the people of New South Wales should not be underestimated.

Twenty five per cent of the population of greater Sydney lives in strata title and it is estimated that by 2040, half of Sydney's residential accommodation will be strata titled.

There are currently around 75,000 strata title schemes registered in NSW with over 100 more schemes being registered every month. The vast majority of these are residential schemes, however there are 7,235 schemes zoned for business uses such as retail and commercial, with 3,257 zoned for other purposes, including industrial, non-urban environmental living and tourism.

The Strata Schemes Development Bill 2015 will replace both the strata schemes freehold and leasehold development Acts.

The Strata Schemes Management Bill 2015 will replace the Strata Schemes Management Act 1996.

NSW Fair Trading and Land and Property Information have worked in partnership with industry stakeholders to develop more than 90 reforms and have received well over 3,000 submissions during this four year consultation period. The consultation has involved online surveys, publicly released discussion and position papers, roundtables and focus meetings, as well as an opportunity to comment on the draft exposure bills.

Key stakeholders have been engaged and consulted throughout this process including, but not limited to: the Owners Corporation Network, Strata Community Australia, Real Estate Institute of NSW, Housing Industry Association, Master Builders Association, Combined Pensioners and Superannuants Association, the Urban Taskforce and many other key consumer and industry groups.

Each phase of the consultation process has led to important changes and refinements to the proposals as a direct result of the feedback from members of the public and stakeholder groups.

I would like to thank the previous Fair Trading Ministers, Anthony Roberts, Stuart Ayres and Matthew Mason-Cox for their commitment and dedication to the strata title law reform process, and in particular Minister Roberts who started the public discussion about the future for strata living in New South Wales back in 2012.

Fifty-four years ago, New South Wales was a forerunner in the development in the world's first strata laws, with many other strata title laws in places like Singapore, the United Kingdom and Dubai—using the New South Wales laws as a model.

While the original 1961 Act was reviewed and replaced in 1973 by more comprehensive laws, there has not been a major review since 1996.

The bills introduce new provisions that are intended to address regulatory gaps identified during the reform process.

In addition, the bills replace and modernise the provisions in the existing Acts that are working well and continue to meet the Act's objectives.

I would now like to deal with the objectives and provisions of each bill, first turning to the Strata Schemes Development Bill 2015.

#### STRATA SCHEMES DEVELOPMENT BILL 2015

The Strata Schemes Development Bill 2015 replaces the former strata schemes freehold and leasehold development acts.

The objects of the Strata Schemes Development Bill 2015 are to facilitate the subdivision of land into cubic spaces, the disposition of titles, and the registration and renewal of strata schemes. This single bill covers land subdivision under both freehold and leasehold title.

The most significant reform in this bill is a new process to facilitate the collective sale or renewal of strata schemes. This proposed reform deals proactively with the issue of ageing strata schemes and enables strata owners to make collaborative decisions about their strata building.

The majority of community feedback received on the strata reforms acknowledged that the decision to end a strata scheme should not require 100 per cent support of owners, provided the



process is flexible, transparent and fair. The alternative method proposed by this bill meets all of these requirements.

The renewal provisions are designed to empower strata owners to make a collective decision about the most important issue that will confront all strata buildings at some point; what to do with the building as it ages.

The proposed new renewal process will require the support of 75 per cent of lot owners. As a result, small schemes with two or three lots will continue to require unanimous agreement before they can be terminated.

Two or three lot strata schemes make up 37 per cent of all strata schemes in New South Wales. As the number of lots in a strata scheme increases, it becomes harder to achieve unanimous agreement on any issue and it is to these schemes that this reform is addressed.

When the Strata Titles Act was introduced in 1975, all decisions affecting common property required a unanimous resolution. This requirement was relaxed in 2001 because of the difficulty of obtaining a unanimous resolution.

Reducing the level of support needed to sell, add or change common property was viewed with caution at the time. Now, it is accepted as entirely appropriate that decisions about the shared property of a scheme should be made by special resolution, where no more than 25 per cent of the value of votes are cast against a motion.

Around the world most other jurisdictions with strata or condominium legislation make provision for a strata scheme to be terminated with less than unanimous agreement. Examples of countries include; the United States, Japan, the United Kingdom, Singapore and a majority of the Canadian provinces, including Alberta and Ontario.

Closer to home New Zealand recently introduced new strata legislation and relaxed the threshold, allowing the owners to approve termination with a special resolution, which is 75 per cent support.

Of the Australian jurisdictions, the Northern Territory has been the first to provide an alternative procedure, no longer requiring unanimous support for schemes with 10 lots or more.

I acknowledge concerns regarding the impact the new collective sale process may have on individual property rights. However, it must be remembered that while strata owners own their unit, they also own a share in the building, and decisions about the building must be made collectively.

Ultimately it comes down to how we define collective decision-making. Numerically we have set the threshold at 75 per cent. No matter what the threshold is, we must ensure that where the collective will of a significant majority of owners is to sell, there is an appropriate mechanism for that collective will to be realised.

As a building gets older, major structural components begin to fail and maintenance becomes more expensive. At some point, further maintenance may become unviable and alternative solutions will need to be explored.

The best option for the building may be to retrofit and renovate, or it may be to demolish and rebuild.

The strata renewal process provided by part 10 of the bill is designed to encourage owners to deal with these significant issues together through a collaborative and transparent decision

making process. Ultimately, the decision to sell or renew the scheme will only be made if a significant majority of the owners agree.

The interest of any dissenting owner or owners needs to be recognised and protected. With this in mind the process has been designed with numerous safeguards to prevent intimidation, encourage collaboration and ensure that owners receive appropriate compensation.

To assure the Parliament that the renewal process has been carefully thought through with the interest of owners at the forefront, I will briefly list each of the steps and the protections and safeguards for dissenting owners.

The first safeguard is an opt-in model: The renewal process will not automatically apply to existing schemes. Part 10 of the development bill will only apply if the owners corporation opts into the process, by passing an ordinary resolution (50 per cent).

The second major safeguard is a thorough and transparent renewal process.

A renewal proposal can be made by any person. It could be initiated by a purchaser interested in buying the whole building and its site, by a group of the current owners with a vision to revitalise the building or by a developer with a plan that could involve existing owners buying back into the scheme after a major renovation.

All proposals must be given to the strata committee, which will make an initial assessment as to whether the proposal has merit and deserves consideration.

If it does, or if owners with at least one quarter of the unit entitlement want the proposal considered, a general meeting of the owners corporation will be held so that all owners have a chance to review the proposal and give their opinion.

If the owners see merit in the proposal, the owners corporation can pass a resolution to establish a strata renewal committee.

Before the strata renewal committee is elected, potential members must disclose any financial or other interests in the renewal proposal that could potentially cause a conflict of interest. Also, under section 160 of the development bill, any owner who owns, or has an interest in, more than 25 per cent of the lots must declare that fact.

The purpose of the renewal committee is to develop a comprehensive plan for the strata building, the "renewal plan", that will be presented back to the owners for detailed consideration.

The renewal committee can engage specialist advisors to assist them in the task but only under the strict oversight of the owners corporation, who will set a budget and framework within which the renewal committee will be allowed to operate.

Minutes of the meetings of the strata renewal committee will be available for lot owners to review so they can stay informed of the progress.

The renewal committee can be dissolved at any time by ordinary resolution of the owners corporation, which ensures that the renewal committee operates at all times with the support of a majority of owners. The committee can function for a maximum of one year, unless this term is extended by special resolution of the owners corporation.

The legislation sets out the detail that must be included in the renewal plan and the regulations can prescribe additional matters. This will make sure that the renewal plan is comprehensive and

fully describes all aspects of the proposed arrangement, covering the price, planning approvals, construction details, relocation arrangements and any other aspects, depending on the nature of the proposal.

The third major safeguard is the compensation value of the renewal proposal, which must satisfy the requirements under the Land Acquisition (Just Terms Compensation) Act 1991 which I will discuss in more detail later on.

Once the renewal plan has been completed, a meeting of the owners corporation must be convened to consider it.

The owners corporation can then decide to return the renewal plan back to the committee for further amendment, they could decide to take no further action with the plan and dissolve the renewal committee or, if a sufficient number of owners like the plan, a special resolution can be passed directing that the plan be given to lot owners for their consideration.

It will then be up to the individual owners to review the plan and make their own inquiries as to the potential benefits of the plan.

Owners will then be given at least 60 days to review the plan. The purpose of this is to prevent pressure being put on owners in a meeting environment and to allow sufficient time for owners to seek any independent financial and legal advice, as well as to conduct property valuations.

After the 60-day investigation period, owners in favour of the plan can sign a support notice and present it to the returning officer. The returning officer will have been appointed by the owners and could be a mediator, independent managing agent or any other person the owners trust for this role. This will operate to prevent bullying by providing confidentiality—another safeguard.

If the required level of support is reached, the returning officer will notify the secretary of the owners corporation and a meeting will be called. The required level of support is a minimum of 75 per cent of lot owners, excluding any utility lots used for parking or storage.

The fourth safeguard of requiring 75 per cent of lot owners to agree acts as a balance against the 75 per cent of unit entitlements that was required to support the renewal plan being given to owners. This mechanism prevents the plan being pushed through solely by a small number of owners who have a large percentage of the unit entitlements.

Approval of the plan by 75 per cent of the owners is not the final step. The owners corporation must by general resolution—50 per cent—apply to the Land and Environment Court to give effect to the plan. The plan must then be reviewed and approved by the court.

Giving the court the ultimate power to approve or reject the renewal proposal if it is not just and equitable in all the circumstances is the fifth and very strong safeguard.

To allow the court to make a proper review, the renewal plan will be lodged with full details of the steps taken to prepare the plan and obtain the required level of support, a copy of all the supporting notices and the names of any dissenting owners, a declaration by the purchaser or developer, if known at the time, detailing their relationship with the lot owners and an independent valuation.

Before approving the plan, the court must be satisfied of a number of significant matters that protect the interests of all owners and act as further safeguards. First, the court must be satisfied that the plan was prepared in good faith without undue influence of the purchaser or developer and that the whole process was carried out according to the Act.

Second, the court must be satisfied with the distribution of any sale proceeds or the amount that will be paid to dissenting owners whose unit will be sold in a redevelopment. This is an important safeguard in the process and one that deserves some time to explain.

Where a whole strata scheme is to be sold to a purchaser, the sale proceeds must be divided between all of the owners according to their unit entitlement.

Unit entitlement is the method currently used to calculate how levies are paid, how votes are cast and also how insurance money would be divided up should the building be destroyed by fire or some other disaster. It is therefore appropriate that the collective sale price is divided by this means.

It will ensure that all owners are treated equally and prevent some owners' negotiating separate private deals to the detriment of other owners. To make sure that the unit entitlements themselves are fair, the Land and Environment Court will have the power to readjust them if they were not determined according to an appropriate valuation.

The court will be required to consider the actual value of each lot, to ensure the distribution is fair for all lot owners. Each lot owners' share must not be less than the compensation value of the lot.

Compensation value is worked out using principles of just terms compensation, as required by the Land Acquisition (Just Terms Compensation) Act 1991. Using these principles, a lot owner would be expected to receive at least the market value of their unit plus an amount for disturbance, solatium and any special value.

Market value will be assessed taking into account the actual condition of the unit, including any refurbishment or upgrades the owner may have made.

The compensation amount is a safety net ensuring that no owner can receive less than the market value of their unit. The collective sale will reap more than the sum of the market values of the individual lots because the value of the whole scheme as a package is much higher than the individual lots being on sold to individual buyers. An example of this was in 2014 when eight neighbours in Epping collectively sold their homes to a developer for approximately \$30 million. The residents received approximately \$3.75 million each. Advice from their real estate agent at that time was that the homes would have sold for about \$1.2 million.

Disturbance covers the costs associated with being required to move. The court will also consider the costs of stamp duty—up to the value of the owners unit—removalist fees as well as legal and valuation costs associated with the acquisition.

Section 188 of the bill provides that unless the court otherwise orders, the owners corporation is to pay the reasonable costs of any dissenting owner who opposes the order in the Land and Environment Court. In addition, the owners corporation cannot levy a dissenting owner for a contribution towards these costs. An owner's personal attachment to a property is not something that can be easily translated into monetary terms. Solatium, which is paid to owners who reside in the property, attempts to do this by allowing an amount in recognition of the loss of a property. The maximum amount payable as solatium is currently set at \$26,710.00.

Special value is a further category that can be used to cover any financial value, in addition to market value, that an owner may have had through their use of the property. For example, special value could be used to cover the cost of installation of a stair lift or other mobility device that an owner had installed that may not have increased the market value of their unit.

If the strata lot is within a commercial scheme, the compensation value would include different considerations depending on the nature of the business involved. Solatium would not be paid but relocation costs may be more or less depending on the shop fit-out or specialist machinery that might need to be moved. If the business cannot be relocated, the compensation value might have to include the goodwill of the business.

The compensation value assessed by the valuer will become the minimum benchmark. The Land and Environment Court will ensure the amount each person receives is no less than this sum. The actual amount the lot owners will receive would be expected to be much higher than the compensation benchmark.

If satisfied that the payment to the owners is fair, as a further safeguard the court will then have to be satisfied that the terms of settlement of the plan are just and equitable in all the circumstances. This provision will be left to the discretion of the court.

This discretion will allow the court to refuse an application even if all of the required steps of the renewal process have been met. For example, the court may consider the individual circumstances of each of the owners and if the amount an owner was to receive was not deemed to be fair, the court could refuse the application.

An additional safeguard the New South Wales Government has proposed will make practical assistance available for all owners, but especially to vulnerable owners. Funds have been set aside to allow Fair Trading to establish a Strata Renewal Advice and Advocacy Program, which will include a dedicated hotline for any affected owners and specialist advice and advocacy for older and more vulnerable owners.

Finally, the Minister for Innovation and Better Regulation has spoken to the Hon. Dr Nick Smith, Minister for Building and Housing in New Zealand, about their experience with the collective sale-renewal provision at 75 per cent who said:

This reform has worked well in New Zealand and is an example of sound public policy which has improved the quality of housing stock. It continues to enjoy broad support across the political spectrum including from the Labor Party and the Greens.

## STRATA SCHEMES MANAGEMENT BILL 2015

I will now turn to the measures that will be introduced by the Strata Schemes Management Bill 2015.

The objective of this bill is to provide for the management of strata schemes and for the resolution of disputes in such schemes; and it will replace the existing Strata Schemes Management Act 1996.

In relation to proxy voting and general voting, this Government recognises and understands the high level of governance undertaken by owners corporations, with democratic elections, powers to make by-laws, setting levies and taking enforcement action.

As such, the legislation needs to find a balance between providing freedom for schemes to make decisions while ensuring there are sufficient safeguards in place to protect minorities and guard against unfair practices.

Voting methods, increased participation and dealing with proxy voting are therefore critical issues to strata communities.

Schedule 1 of the bill includes provisions to assist owners corporations and individual owners to exercise their voting rights and to ensure that decisions truly reflect the wishes of the majority.

The scourge of 'proxy farming' is addressed through two important provisions; a limitation on the number of proxies that can be held by one person to one if the scheme has less than 20 lots, or not more than five per cent of the lots if the scheme has more than 20 lots.

In addition, the contract for sale cannot contain a requirement for the owner to provide a proxy to a particular person or be directed to vote in a particular way.

Restrictions on proxy farming are supported by reforms in clause 28 of schedule 1 to the bill, which will allow those who cannot be present at meetings to be able to vote by other means, therefore not having to use a proxy.

Engagement and participation of owners is a significant issue faced by owners corporations and strata managers; who attempt to facilitate the decisions and the management of the scheme.

I am pleased that the bill inserts a number of provisions which will allow strata communities and strata managing agents to make use of new technologies—for example, using Skype, teleconferencing or electronic voting as alternate forms of participation in meetings and voting.

In today's environment, electronic communication is integral to how businesses and individuals share information.

This was not the norm in 1996 when the laws were last reviewed. The bill attempts to look beyond the present day, providing for future technological developments.

The bill does this by not prescribing voting methods, but instead allows owners corporations to determine their own best methods.

Schedule 1 of the bill allows for a vote to be carried out by "secret ballot". This is to ensure that owners can vote in a way that accords with their wishes and not feel intimidated by others present at the meeting.

This will apply to any vote held under the Development or Management Bill for any purpose and a secret ballot can be called by the strata committee or if 25 per cent of eligible voters agree.

I will now outline the new measures that will apply to by-laws in part 7 of the bill.

The bill introduces new overarching principles that by-laws must not be harsh, unconscionable or oppressive.

There is a transitional provision that will require all existing owners corporations to review their by-laws within 12 months from the Act's commencement. A scheme's by-laws will not be affected by a failure to comply with these review requirements.

New model by-laws will be introduced when the regulations are made to deal with a number of issues that are of importance to strata residents.

These include amending the existing by-laws relating to pets to make it easier for schemes to become more pet friendly, and while a scheme can make their own by-laws they cannot unreasonably refuse the keeping of the animal nor can they prevent a resident from keeping an 'assistance' animal.

The tribunal still retains the power to make an order for the removal of an animal from a strata scheme if the animal is a nuisance or hazard.

The by-laws will also address the issue of smoke drift. To support this, the bill notes that smoke drift can be considered to be a nuisance or hazard if it interferes with the rights of a resident to use or enjoy their lot.

Part 7 also introduces a new streamlined and enhanced by-law enforcement process.

The maximum penalty for a by-law breach will increase from 5 to 10 penalty units to reflect current standards; this will currently provide for a maximum penalty of \$1,100.

A new enforcement process will allow owners corporations to by-pass the need to issue a notice to comply when the tribunal has imposed a penalty for the same breach in the last 12 months.

Any second and subsequent penalty in that 12-month period will attract a maximum penalty of 20 penalty units, currently \$2,200.

#### Owners Renovations

One of the substantial reforms in the bill is the introduction of a more flexible process for lot owners to undertake renovations.

Current laws require lot owners to seek approval of the owners corporation for even minor changes to their lot. This results in broad non-compliance, as many owners simply proceed with renovations without seeking consent because they consider the formal approval process to be too onerous.

The bill introduces a more sensible framework which consists of a three-tiered approach.

The main premise of this reform is that if the renovation or work is not going to affect other residents and does not interfere with the structural, waterproofing or external appearance of the building, then a full special resolution (75 per cent) is not required to undertake the work.

Approval will not be required for cosmetic work, which includes, installing picture hooks, carpet, painting and filling minor holes and cracks.

The next level is minor renovations, which will only require a general resolution at a meeting, a simple majority. This includes work such as kitchen renovations (as long as the waterproofing is not affected), replacing cupboards, installing cabling or wiring and, importantly, installing timber or other hard wood floors.

Lot owners will need to provide adequate information on minor renovations, such as work plans, timing, and contractors' details. The owners corporation will be able to place reasonable conditions on the work, such as ensuring the removal of waste or requiring the work be carried out by a licensed tradesperson. Once provided with information, the owners corporation will not be able to unreasonably refuse minor renovations. To enforce this, the tribunal is being given the power to make orders to that effect.

Importantly, owners corporations will be able to make by-laws which deem certain types of work to be cosmetic or minor renovations for the purposes of their scheme, as long as the by-law is consistent with the Act.

Major work, such as moving structural walls or enclosing a verandah, will require approval by

special resolution of the owners corporation as is currently required.

This three-tiered approach allows owners corporations to tailor a process to suit their circumstances and needs.

### Strata Managing Agents

Approximately 60 per cent of strata schemes in New South Wales are managed by licensed managing agents, rising to almost 100 per cent for larger and complex schemes. There are approximately 1,667 licensed strata managing agents in NSW.

To provide added protection for owners corporations and ensure agents continue to act in the best interests of the scheme, the bill introduces a range of measures to increase transparency and accountability.

A new restriction will prohibit an owner who wishes to become the strata managing agent for their scheme from voting on his or her own appointment, removing an opportunity for a party to affect the legitimacy of the appointment process.

In addition the developer, or a person connected with the developer, cannot be appointed as the strata managing agent within 10 years of the registration of the strata scheme.

At the first AGM a strata managing agent can only be appointed for a maximum period of 12 months.

After that initial contract, there will be a maximum limit of 3 years for all subsequent contracts. Rollovers will be limited to one month at a time and an agent must notify the owners corporation three months before the expiry of the contract, and seven days before every rollover.

This will assist owners corporations and agents to renegotiate existing arrangements, ensuring that both strata managing agents and owners corporations have an agreement in place that meets their current and ongoing needs.

Another measure in the bill that addresses potential conflicts of interest is a prohibition on strata managing agents requesting or accepting gifts or benefits, other than those with a nominal value, in the exercise of their functions.

This prohibition will not apply to payments, commissions or training courses that have been approved by the owners corporation.

Fair Trading also receives many complaints about the lack of transparency on the commissions received by their strata managing agents. To deter strata managing agents from falsifying or failing to report commissions, the tribunal is being given additional powers so that it can order an agent to pay the owners corporation any amount of commission not reported in good faith.

The tribunal can also consider these factors as grounds to terminate or vary a strata managing agent agreement.

These measures will give owners corporations more choice and will provide a higher level of transparency. Greater understanding may also help reduce disputes about agents' fees and commission arrangements.

To give strata schemes more effective means to deal with underperforming managing agents, owners corporations will be able to apply to the tribunal to terminate these contracts, or vary their



term. Owners corporations will also be able to apply for payment of compensation or seek tribunal orders requiring the agent to take certain action or to refrain from taking certain action.

These same provisions already apply to caretakers' contracts and have been expanded to apply to strata managing agent contracts.

Fair Trading has worked with industry representatives such as Strata Community Australia, the Association of Strata and Community Managers and the Real Estate Institute of NSW, the peak industry bodies for strata managers. These reforms have been amended and refined in consultation with stakeholders throughout the reform process.

The provisions contained in the bill continue to meet the objectives of transparency and accountability but take into consideration the practical operation of management contracts.

These measures are strongly supported by the Owners Corporation Network.

### Parking

A major concern for many strata schemes is unauthorised use of visitor parking, or parking on the common property where it is not allowed. The bill provides owners corporations with the ability to enter into a commercial agreement with local councils to police parking within a scheme.

The type of parking infringements include overstaying in a visitors spot, parking in a disabled space, parking where there are no parking signs and blocking another vehicle.

There is a maximum penalty of five penalty units or \$550 for non-compliance with the requirements; this is the same maximum penalty as other parking offences under the Local Government Act 1993.

The reforms were developed in consultation with the Office of Local Government. The Pedestrian Council of Australia also supports this proposal and has provided input into the practical application of this reform.

### Defect bond and inspection regime

Part 11 of the bill contains another significant reform—a defect bond and inspection regime which is carried out in the first two years and is designed to incentivise developers and builders to build well and to fix any problems early in the life of the building.

The new process aims to reduce costs for all parties involved, minimise time delays, and reduce the incidence of drawn-out and expensive legal action.

It is not, however, intended to displace an owners corporation's right to pursue legal action under any other law, including the Home Building Act. It is simply a structured process to promote issues being brought to the forefront early in a building's life, and get them resolved quickly and cost-effectively.

The defects model will apply to new residential and mixed use strata buildings and renovations that are not covered by the Home Building Compensation Fund and where there has been a registration of a new strata plan.

It is not intended to incorporate minor upgrades to existing strata schemes or cosmetic renovations.

Essentially the process involves the developer lodging a bond or financial security with Fair Trading equal to two per cent of the contract price of the building work, to cover any unresolved defects that have been identified by a qualified independent inspector.

Having a single process for independent defects reports will help avoid each party in the dispute spending thousands of dollars commissioning competing reports, which is a common occurrence.

A qualified independent inspector will inspect the work and provide a defect report not earlier than 15 months and not later than 18 months after completion of the work.

Strict conflict of interest provisions are provided to exclude anyone with personal or pecuniary interests in the building work from being appointed as the qualified building inspector for that work. These measures will guarantee the independence and credibility of the qualified building inspector, who has a crucial role to play in this process.

If the owners corporation and original owner cannot agree on an appointment, the original owner will have to notify the Commissioner for Fair Trading, who will arrange for the appointment of an inspector.

The interim report must be provided to the original owner, the builder, the owners corporation and the Commissioner for Fair Trading.

The bill provides a right of entry to rectify any defects outlined in the interim report and the builder will have at least three months to carry out the rectification work before a final inspection can be undertaken.

The builder must give at least 14 days' notice of an intention to enter individual lots to rectify.

Access cannot be unreasonably refused by an owner and is supported by financial penalties for a breach.

The final report must not identify new defects. It must only assess those defects identified in the interim report, and any work undertaken to rectify those defects. The content of the report itself cannot be contested in any forum.

The key to making the process work is to ensure that it is completely self-contained.

In order for the process to work, owners corporations must have faith in the process and commit to it. That is why the general two year statutory warranty period under the Home Building Act has been extended by three months, so that owners corporations do not feel they need to exercise those rights before the end of the two year period and the outcome of this new process.

The bond is released on the basis of the findings in the final report and there are very limited grounds on which an application can be made to the tribunal such as for orders to allow access to rectify defects and orders about the contract price on which the bond is calculated.

If no defects are identified in the final report then the bond is returned to the developer.

If there are defects identified, the portion of the bond necessary to cover the estimated cost of any defects identified in the final report will be released to the owners corporation. Any amount of the bond released to the owners corporation must be used for rectifying the defective building work for which it was received.

Any remaining portion of the bond will be returned to the developer.

The Commissioner for Fair Trading will be able to extend the timeframes provided by the bill in certain unforeseen circumstances—for example if, because of exceptional circumstances beyond the control of the inspector, the report cannot be completed in time.

While the defect bond and inspection regime will impose an additional cost to developments, the case for reform is clear. To do nothing leaves strata owners having to pick up the pieces for a problem caused by someone else.

The regulations will contain much of the detail about the experience, qualifications and other requisites of a qualified building inspector.

The regulations will also provide for the scope of the interim inspection report and any detail that may be required to be included in the final report.

Work has already commenced on this with the first of many expert working groups, consisting of industry stakeholders and relevant professionals held last month.

This Government is committed to ensuring that the detail of the process that is contained in the regulations is workable and will provide the best chance of ensuring that the objectives of the proposed legislation are met.

#### Other key reforms

As I said at the beginning of this speech, these bills contain over 90 proposed reforms.

The amendments which I have already dealt with in detail are among those which feature most prominently in the public discourse on strata reform.

The remaining reforms, however, are equally important to the improvement of the governance and management of strata schemes, and I will briefly outline the objectives of some of these other important reforms.

#### Overcrowding

Overcrowding of strata units has become a serious problem.

This is where unscrupulous operators pack a two-bedroom unit with 16 or 20 people, usually students or backpackers, creating highly unsafe living conditions as well as affecting the amenity and enjoyment of the building for the other residents.

The bill seeks to address this issue by empowering owners corporations to tackle this situation themselves.

A new provision specifically allows for the adoption of by-laws imposing occupancy limits on a strata lot. Importantly, any limit must not be less than two adults per bedroom and only applies to persons 'residing' at a lot—certainly not overnight stays or visits from friends and family.

The first offence for a breach of an overcrowding by-law is 50 penalty units, currently \$5,500. If there is a second or subsequent offence, like all by-law breaches, the owners corporation will not be required to first serve a notice to comply but will be able to go straight to the tribunal.

Second and subsequent offences will attract a maximum penalty of 100 penalty units, currently \$11,000.

In addition to this, Fair Trading has been leading an interagency working group to address this issue from a whole of government perspective and Minister Dominello expects to announce reform proposals by the end of the year.

#### Tenants

Another key reform addresses the lack of participation afforded to tenants (lessees) who represent over half of all strata residents in New South Wales. That figure is set to increase, with a growing number of investor owned apartments being purchased in strata schemes.

The reforms address this phenomenon by allowing tenants to participate in owners corporations meetings and where 50 per cent of the lots are tenanted, allowing a tenant representative on the strata committee.

#### Dispute Resolution

The reforms also include an overhaul of the dispute resolution processes, simplifying and improving the existing three-layer dispute resolution regime and providing owners corporations with the capacity to invoke an internal dispute resolution process.

An owner, the owners corporation or resident can apply to have a dispute mediated. Currently if this fails, an application can be made to have the matter adjudicated; however the outcome of adjudication can be appealed to the NCAT.

The bill removes the layer of adjudication and this jurisdiction is conferred on the tribunal. This change avoids the extra time and cost implications for participants, and also ensures strata disputes are dealt with consistently with other divisions of NCAT. NCAT will also be provided with a new power to make orders about strata managing agent agreements and disputes between adjoining schemes without the need for mutual consent. I note that in drafting these reforms the courts and tribunal were duly consulted and have been supportive of their introduction.

#### Disclosure, accountability and conflicts of interests

The transparency and accountability of officer bearers has been strengthened with more rigorous requirements for disclosing conflicts of interest.

Members of the strata committee will now have a statutory duty to act for the benefit of all owners and to exercise due care and diligence in their role. This approach provides clarity on the standard of behaviour expected of strata committee members, but does so in a way that does not place an unrealistic burden on committee members who, at the end of the day, are generally volunteers.

To further protect this special 'volunteer' status', the bill limits the personal liability of strata committee members who act in good faith for the purpose of executing their functions as conferred by the Act, the liability will instead attach to the owners corporation

Developers will no longer be able to control the future operation of the scheme or be involved in decisions about defects. They will also have to set realistic levies and the owners corporation can apply to the tribunal for an order that the original owner compensate the scheme if the original levies were inadequate.

#### Governance and administration

In relation to governance and administration, a building maintenance manual and all necessary information for the running of the scheme must be provided to the owners corporation at the first annual general meeting.

Owners corporations will be able to more easily pursue outstanding levies through an application to the tribunal for recovery of a debt, and the use of garnishees on real estate agents' trust accounts.

Finally, in addition to the capacity to prohibit proxy farming and allow electronic means of participation and voting, there is more flexibility regarding when annual general meetings can be held. The meeting provisions have been strengthened to provide owners with more information about the agenda and motions that will be moved.

## CLOSING

In closing, I would like to thank the many organisations and individuals who have joined the Government on this journey, generously giving their time and experience to help develop this important legislation at various stages of the strata law reform process.

I would also like to acknowledge the many Fair Trading and Land and Property Information officers who have developed these reforms over a long period: Leanne Hughes, Adam Heydon, Luke Walton, Matt Press, Warren McAllister, Tori Marshall, Gabbie Mangos, and John Vernon. I would also like to thank the Commissioner for Fair Trading Rod Stowe, Assistant Commissioner Rhys Bollen and, in Minister Dominello's office, Matt Dawson, Jane Standish, Tom Green and Stephanie Matti for their support and continued enthusiasm.

The bills that I commend to you today are an excellent example of the Government, community and industry stakeholders working together to bring enduring benefits to the State.

I am confident that the strata law reform package will deliver significant and positive changes for all strata sector participants, and that the reforms in these bills will serve the sector effectively for decades to come.

I commend these bills to the House.

**The Hon. PETER PRIMROSE** [12.05 p.m.]: The Strata Schemes Management Bill 2015 will enact laws relating to the management of strata schemes and the resolution of disputes. The most discussed proposals, relating to building defects, are in part 11. The Opposition accepts that despite ongoing and legitimate concerns being raised by organisations such as the Owners Corporation Network regarding the details of the management bill, it is generally agreed that it contains many sensible and updated amendments and we will not oppose it at the second reading stage.

The Strata Schemes Development Bill 2015 will enact new laws relating to how strata schemes are formed, the way in which lots and common property are dealt with, and the variation, termination and renewal of strata schemes. The most discussed proposals, relating to the termination and collective sale or redevelopment of freehold strata schemes—euphemistically termed the "strata renewal process"—are in part 10. The Opposition has major concerns with the development bill, in particular regarding the termination of schemes, and we will oppose it. I therefore request that the question on the bills be put separately. If we are unsuccessful and the development bill moves to the Committee stage, we will seek to amend it.

Strata laws first appeared in New South Wales in 1961 and the existing laws are largely based on legislation passed in 1973. Strata laws apply to people who own or live in a shared building or property such as high rise, townhouses, offices, retirement villages and some dual occupancy. They also cover

commercial, retail and industrial developments. Some are mixed-use strata schemes. In response to Opposition questions on notice, the Government has advised that New South Wales currently has around 74,668 strata schemes, with 851,426 lots worth more than \$350 billion in assets. Of those, 64,176 are residential schemes. In Greater Sydney there are 44,636 strata schemes, with 663,812 lots. Of those, 37,406 are residential schemes. In Greater Sydney around one-third of these schemes were registered before 1980, and around 60 per cent are between three and 10 lots. Around 31 per cent are owner occupied, 42 per cent are privately rented, 7 per cent are social or community housing, and 19 per cent are other tenures, visitor only or unoccupied.

As I have said, most proposals in the management bill are sensible and widely supported, although many questions remain regarding their implementation. Some of the proposals in that bill include updating scheme processes such as allowing voting by email and requiring strata committee members to declare any conflicts of interest. The strata committee is elected by the owners corporation to act on behalf of that larger body. It will now be able to include, in certain circumstances, a tenant representative, who will have limited voting rights. The bill will reform scheme management, such as requiring the strata managing agent to disclose any third party commissions they have been paid; limiting proxy farming; and allowing tenants to elect a representative to attend meetings where they occupy more than half the lots in a building. In addition, it will allow owner renovations such as deleting current restrictions requiring an owner to gain approval for minor, cosmetic changes such as inserting a picture hook.

Updated model by-laws will also be introduced by regulation to better manage issues such as short-term letting and overcrowding. Owner corporations will be able to enter into commercial arrangements with local councils to allow parking inspectors to fine people who park improperly on common property. Second-hand smoke will be classified as a nuisance, allowing strata committees to make their own rules about smoking. Pets will be allowed unless a strata committee has a good reason to say no. The legislation will expand the powers of the NSW Civil and Administrative Tribunal [NCAT] to deal with strata disputes.

The proposed changes include mandatory defect inspection reports and a bond for buildings more than three storeys in height. Developers will be required to lodge a 2 per cent bond for the contracted price as a security to fix any defective work. Developers will also be required to table a maintenance schedule at the first annual general meeting of the owners corporation. Developers will be required to engage an independent building inspector to carry out a defect inspection report, at their cost, between 12 and 18 months after the completion of the building. If the defects are not rectified, the bond will be used to carry out the repairs. If there are no defects or they are rectified, the bond will be returned to the developer. The bond will apply to residential building work not covered by home building compensation insurance—in other words, residences more than three storeys in height.

Many buildings are constructed by one-off developers who wind-up their company after the last lot is sold. This makes it almost impossible to chase them to repair defects, usually related to water damage in high-rise buildings. The bond may help to remedy this. It is likely that developers will add the cost of the bond to the sales price, as they have expressed little objection. A major concern of the Master Builders Association relates to the competence of inspectors and the quality of their reports, which are often so riddled with disclaimers as to make them valueless. I would be grateful if the Minister could address this issue in his reply.

The Owners Corporation Network [OCN] and others are concerned that the quantum of 2 per cent is inadequate. They argue that defect claims are typically in excess of 5 per cent of construction costs. In addition, there is anxiety that the defect inspection reports may be prepared too soon, especially as many defects become evident well after the first 12 months. Section 103B (2) of the Home Building Act 1989 requires insurance for major defects in residential building work for a period not less than six years after completion, as opposed to the much shorter period proposed for strata in this bill.

The OCN is also concerned that a new and inexperienced strata committee will have to negotiate

with the developer to appoint an inspector within the first 12 months of its existence. The bill allows for the Chief Executive of the Department of Finance, Services and Innovation to arrange for the appointment of an inspector if the developer and owners corporation fail to agree on an inspector. The OCN recommends that the Chief Executive appoint all inspectors. This proposal seems sensible. I seek a response from the Minister in his reply. The Opposition understands that the Department of Finance, Services and Innovation engaged Ernst and Young to "evaluate direct and indirect costs of the bond initiative and review how potential benefits may emerge from the bond's implementation". The Opposition asks the Minister to make this report public.

The Opposition is concerned that most of the detail of how these bills will operate is unknown and will be included in the subsequent regulations. This is not a good way of legislating, given the length of consultation that has already taken place. I request that the Minister, in reply, detail the process proposed to be undertaken when drafting the extensive regulations, including the timetable and the consultation proposed. I also request that the Minister indicate what statutory review process is proposed for the legislation.

The most troubling and unfair proposal in the Strata Schemes Development Bill 2015 is contained in part 10, clause 154. It prescribes that a vote of only 75 per cent of neighbours—which includes developers who have purchased lots—is needed to force a person to sell their home. For those who live in strata accommodation, life is about to become a lot more precarious under this bill. Many people have written to members to express their concern about this measure. I will quote from one letter. Instead of naming the company, I will say XXX. The letter said:

Today I received Notice of Annual Management Meeting and Agenda, from [XXX], the Operator of the Retirement Village I now live in. It is being held only because it is a requirement of the Retirement Villages Act. I don't know if the committee looking into the Strata concerns would be interested in hearing what [XXX] have to say, as I intend to bring up the question of them owning more than 75% of the Strata and what they intend to do if the legislation is passed. Maybe you could help me write the questions that I think need to be asked.

Things such as, what happens when a Strata owner dies? Will [XXX] as the 75% Strata owner, buy the Strata of the deceased home and only pay minimum price for it? Can a deceased estate leave their Villa to their family or must the Villa be sold? So many questions arise from just these two queries.

Many other people have expressed legitimate concerns about this. Those people, like the rest of us, will have to wait for the as yet unwritten regulations before they have an idea of how the measure will be implemented. One of the things that many people admired about Sir Robert Menzies was his commitment to the inviolability of properly made contracts. John Howard espoused the same belief, and for very good reasons: offer and acceptance, agreement to terms and to be bound by the terms, and consideration. The proposal by the Government in this bill overthrows that principle. It proposes to retrospectively rewrite hundreds of thousands of property contracts that were properly entered into and for which a full agreed price was paid for the security that the contract provided.

This is retrospective legislation. It changes the conditions of contracts that have been freely entered into by citizens of this State. It is the Government trashing the terms of contracts without compensation. For that reason, it is unjust. It is even more reprehensible that this trashing of contracts has been introduced by the Minister responsible for fair trading in this State. We keep hearing from that Minister and others, such as the Minister for Finance, Services and Property, about how important it is to reduce the regulatory burden on citizens and to allow them the freedom to enter into agreements. But these two Ministers have fallen at the first hurdle.

Developers are saying they are finding it too difficult to evict people from their homes. So what does the Baird Government do? Does it tell the developers to increase their offers? Does it suggest that

they allow the market to do its work and sort out the issues? No. The first thing the Government does is to introduce retrospective laws that tear up contracts and distort the work of the market. The market value of a property is what someone who wants it is prepared to pay for it. The Government is placing a regulatory burden on more than 850,000 lot owners that they did not agree to. The Government is making their contracts more precarious and less valuable. The Government is taking money out of their pockets.

The most obnoxious aspect of this proposal is that a State Government, in a democracy, is using legislation to allow the property of one citizen to be forcibly taken and given to another citizen for the sole purpose of that other citizen making a profit. The current law for termination of a strata scheme—so that the site can be sold or redeveloped—requires the unanimous support of all lot owners. The Government argues that there is a need for a "more democratic" and "collective" process for the termination "of ageing housing stock to deliver urban renewal and boost housing supply in the places that people want to live". Accordingly, the bill proposes that only 75 per cent of lot owners, other than utility lots, will need to agree for a strata scheme to be terminated. The euphemism used in the bill is the adoption of a "strata renewal plan".

The Minister states that he chose 75 per cent to avoid confusion, as this is the same level that applies to matters that require a special resolution. The Government says this change is prompted by cases of one individual holding out against other owners who want to sell to a developer. The concern is that apartment owners are legally obliged to maintain buildings that are well past their use-by dates, while allegedly being blocked from selling the whole block by "hold-outs" hoping to get an inflated price for their units.

The change could see some residents, most likely the elderly and families with children, forced out of a home that they do not want to leave. The supposed checks and balances in the bill include compensating lot owners with the market value of their lot plus moving costs, as per the Land Acquisition (Just Terms Compensation) Act 1991; referring all "renewal plans"—details of proposed sale proceeds, costs, liabilities and arrangements for moving out—to the Land and Environment Court to confirm that due process was followed; and establishing a free advice and advocacy service, which would involve a telephone hotline for owners seeking information and advice, and referral to an external agency such as the Law Society of NSW. Presumably the Law Society of NSW would then be expected to refer the client to a private solicitor for a paid consultation—something I am sure every 90-year-old widow would look forward to.

I have outlined these supposed checks to a number of people. Without exception, they advise that they provide no comfort to them. But, of course, these are, at best, only procedural checks to determine that the prescribed process was carried out correctly. They are about ticking boxes, not ensuring justice. The real problem is that the so-called "due process" is itself unfair and that the prescribed outcome is unfair. No amount of ticking boxes will make it any less unfair. The new laws will allow the redevelopment or sale of a building despite the objection of up to a quarter of lot owners who do not accept the proposal. The process of initiating the preparation of a "strata renewal plan" requires the support of only 50 per cent of lot owners; the subsequent adoption of any plan so developed under the bill requires 75 per cent approval. The 50 per cent is important because that allows the sinking fund of those lot owners to be used for the preparation of that plan; it involves the ability to use the collective money.

Research undertaken by the University of New South Wales City Futures Research Centre shows that the areas with the most favourable market conditions to make "strata renewal" possible are the eastern suburbs, the north shore and locations near the ocean or Sydney Harbour. However, less than 3 per cent of existing strata could be feasibly redeveloped at levels considered affordable to local households. Those who purchased their lot under strata title did so knowing that the law protected the indefeasibility of their title. Under this legislation, ownership under strata title will be less secure and far more precarious. The right to terminate an entire scheme on a majority vote—even if the Government is right and it is a necessary evil in many cases—will constitute a new exception to indefeasibility of title in New South Wales law.



People's private rights should not be taken from them lightly and without a very good public reason. The draft bills and the discussion paper suggest private interests should be given the power to extinguish title rights, with no need to demonstrate a public purpose or benefit. Nowhere in these bills is that designated. The safeguards proposed are purely to ensure financial fairness, with the issue of individual legal rights and the wider public interest totally disregarded. For instance, in some cases title extinguishment could result in the loss of affordable housing and possibly even a reduction in housing supply. If the decisions of others can so dramatically impact how one deals with one's property and even how long the strata unit itself will exist, then banks and other institutions may devalue how they view strata title.

The Minister argues that the legislation will encourage urban "renewal" of older, dilapidated buildings and increase the supply of housing. But this objective is not mentioned anywhere in the bill. I would have expected if people representing the party of Sir Robert Menzies and John Howard were so prepared to tear down the rights of individual contract holders and were so prepared to introduce retrospective legislation for a social purpose, presumably they would have been prepared to put those objectives into the bill, but they are not there. Many of those individuals labelled as "hold-outs" for dissenting against the forced sale of their homes, especially the elderly, will likely not be able to afford to buy into the same location and will therefore have to seek accommodation in less expensive areas. This is equally the case for families with young children.

The older stock being targeted for "renewal" also provides affordable accommodation for tenants, who will also need to find other accommodation. Diversity of housing stock is essential for cities. Under this legislation, more key workers will be forced to move to obtain affordable housing. By decreasing the levels of affordable housing, especially for tenants, more people could be obliged to apply for social housing, which already has a waiting list of more than 60,000. Requiring the elderly to move from their private property against their will is also contrary to the well-established policy of encouraging ageing in place. The locations identified by the University of New South Wales City Futures Research Centre as most feasible for so-called "strata renewal" are also identified as the areas with the highest concentration of persons in high-density dwellings aged 65 and over across the metropolitan area.

The Government argues, but provides no evidence, that these so-called "hold-outs" are often greedy individuals preventing other owners from gaining a good price for their assets. The bills will allow the majority to overrule one "hold-out" if there are only four lots in the scheme. But if there are eight lots, two "hold-outs" can be overruled. In 24 apartments, six "hold-outs" can be forced to sell against their will. Lots are often purchased by the proposed developer; this legislation will simply reduce the number of lots they will now have to buy to force unwilling owners to sell.

On what policy basis is it reasonable for any government to designate a class of property owner as "greedy" and a "hold-out" if they do not sell their lot to a private developer, when that owner believes they are not being offered an acceptable price? This should be a matter for the market, not government. If someone will not accept your offer to sell, you should increase your offer, not get the Government to pass laws to force them to sell so you can make a quick buck. There is no requirement in the legislation for "renewal" to occur only where buildings are run-down, nor that they have to be rebuilt at a higher density. If there has been no change in zonings there can be no increase in density, regardless of the termination procedure.

Concern has been expressed that in Sydney it is essentially buildings in the east and on the lower north shore that will be viable for "renewal" and that dissenting owners in good buildings in prime locations will be forced to move out by investors buying out lots to allow the development of prestige, luxury units. In Western Australia, the Government is proposing a sliding scale, starting at 95 per cent, where the older the building, the lower the vote required. Even then, the lowest for buildings more than 30 years old is 80 per cent. In Singapore, the sell vote is set at 80 per cent for buildings 10 years or older, but there is a tribunal which can award a premium to residents who do not want to sell, to ensure parity

with speculative investors.

When a government resumes land for public purposes it must pay just terms compensation—market value plus some extra compensation for inconvenience. This is the approach taken in the bill. However, when title is being extinguished for private purposes, market value should not be the only criteria for assessing compensation. That is because, once acquired, the land is proposed to then be put to a private and, by definition, more valuable purpose. Accordingly, the future or potential value of the property would, as a matter of equity, need to be considered in any assessment of compensation should the proposal to allow termination by less than 100 per cent proceed. This bill fails to do that. The 75 per cent proposal is simply unfair. It is bad policy, poorly thought out, and will cause great distress, especially to the elderly. We do not support it, and I am sure if he was here Sir Robert Menzies would be voting on our side of the Chamber on this.

**The Hon. SHAYNE MALLARD** [12.29 p.m.]: I speak in support of the Strata Schemes Development Bill 2015 and the Strata Schemes Management Bill 2015, which are being dealt with cognately. I do so as a member of the Liberal-Nationals Government which has been elected twice now on its promise and record of meaningful reform in this State: reforming our transport and planning systems and infrastructure, and recycling our assets and capital. These reforms, and many more, of which the Government is proud and is pursuing are designed to deliver a stronger and more sustainable economy to the people of New South Wales into the future.

The reforms are designed to unlock the potential of our State. Sydney is increasingly a city of medium- and high-density living. It has been the path of urban development largely since World War II, with the notable exceptions of Potts Point, Kings Cross and Elizabeth Bay where higher density urban living and apartments emerged after World War I. This is not new to Sydney. These two cognate bills deal with many matters designed to improve the lives of those who choose to live in strata schemes. I will return to those elements shortly.

Initially I will focus on the renewal of strata schemes, about which we have just heard, as I suspect that these are the more contested elements of the reforms before us and no doubt will be exploited in a fear campaign by those on the Opposition benches. Currently the old system of strata laws is holding back the city at a time when upward pressure on housing prices is making Sydney unaffordable for many people—something that the previous speaker, the Hon. Peter Primrose, failed to acknowledge. At present, 25 per cent of the population of greater Sydney live in strata title properties and by the year 2040 half of Sydney's residential accommodation will be strata title.

At present, approximately 75,000 strata title schemes are registered in New South Wales, with over 100 new schemes being registered every month. The majority of those are residential schemes. Approximately 7,200 schemes have been designed for business use such as retail and commercial and 3,200 zoned for other purposes, including industrial, non-urban environmental living and tourism. The most significant reform in these bills is a new process to facilitate the collective sale or renewal of strata schemes. The bills will enable strata owners to make collaborative decisions about their strata building and their future.

Members should cast their minds back to the great swathes of apartment buildings that were built not long after the war in the 1950s and 1960s—the red brick walk-ups in the not-too-distant suburbs of Ryde, Ashfield, North Sydney and Bondi. Indeed, one can find examples of these older strata buildings in nearly every suburb of Sydney and in many country and regional centres as well. I assume that many of us have lived in them—I certainly have. I lived in an older strata apartment in West Ryde whilst I attended Macquarie University.

**The Hon. Dr Peter Phelps:** I have.

**The Hon. SHAYNE MALLARD:** Indeed; they are familiar to all of us. I will remind the House what

they are like.

**The Hon. Dr Peter Phelps:** The sooner they are replaced with something much better, the better we will be.

**The Hon. SHAYNE MALLARD:** I acknowledge the interjection because it is in line with my next point. They have features like four flights of steep stairs that are noncompliant with today's Building Code of Australia, small bathrooms and smaller windows, no or very poor flow-through ventilation, and very poor social and mobility features. All these features are now common and mostly mandated in new era buildings. Of course, these older apartment blocks have poor common spaces, if any at all, and poor common facilities. They have above-ground car parks on grade, no water recycling and very little regard for architectural merit.

They are often three-bedroom apartments, which have become socially obsolete. Today families are smaller and traditional multi-room housing has given way to much more open plan living. I might add that these apartments are not tech savvy. They are difficult to retrofit with the latest technologies. Evidence has shown that the installation of computers and the internet into those older buildings is quite a problem for body corporates. These buildings are heading towards 70 years of age and are basically maintenance black holes. Their building materials and standards are not up to today's standards. Many owners find themselves trapped in a building crumbling around their ears—buildings with concrete cancer, poor foundations and footings. Some even have asbestos.

It is important to note that many of these older buildings are situated in ideal renewal corridors close to shops, amenities, railway stations and bus services. Their location is much more suitable than that of many of the new projects being built today in suburbs further out from the city. These sites are ideal for renewal to assist the State to meet its housing targets and to maintain downward pressure on housing prices for our younger generation. Lowering the threshold for strata sale and renewals has been on the agenda of this State for nearly 20 years. I recall attending consultations in the early 2000s with former shadow planning Ministers John Brogden and Peta Seaton, who both considered reforming the strata schemes. Indeed, the former Labor Government considered this issue but as a non-reformist government it just kicked the matter of reform around and never actually got on with it.

As the Minister stated in the other place, the majority of community feedback received on the strata reform discussion paper acknowledged that the decision to end a strata scheme should not require 100 per cent support of owners provided that the process is flexible, transparent and fair. To that end, the proposed new renewal process will require the support of 75 per cent of strata owners and 75 per cent of lot owners. It is a multi-stage process with built-in checks and balances. Frankly, it is not an easy process to get through. As the number of lots in a strata scheme increases in modern stratum, it will become much harder to achieve unanimous agreement on any one issue. In 40 years people will be looking to strata renewal of lots and buildings built today, sometimes comprising 1,000 apartments. I have been involved in large schemes in Greens Square in the City of Sydney. One can imagine the difficulty in getting 1,000 owners to agree to renewal at the end of this century.

The reforms bring New South Wales into line with most other international jurisdictions, including the United Kingdom, New Zealand and Canada and the Northern Territory, which is not an international jurisdiction but is far away. I acknowledge that they have variations on the model this Government is introducing but the principle of renewal is the same. This is not about making it easier to knock down existing strata apartments; it is about making available to owners collectively more options when it comes to improving or renewing their ageing apartment block. That is why there are important safeguards to protect the interests of individual owners. Firstly, the existing schemes need to opt in; this is not retrospective. They have to vote to opt into the proposal. The proceeds, if there is a collective sale of a block, will be divided between lot owners according to unit entitlement in a fully transparent way. The Hon. Peter Primrose failed to acknowledge that because—

**The Hon. Dr Peter Phelps:** It didn't suit his agenda.

**The Hon. SHAYNE MALLARD:** I do not think he wanted to acknowledge that there is an independent umpire. The Land and Environment Court is empowered to adjust unit entitlements if it has not been previously determined fairly. So unit entitlements will be updated by the Land and Environment Court. The Land and Environment Court will provide independent oversight of the sale of a strata scheme. It will have the ability to reject the sale of a strata scheme if it is not satisfied that just and equitable principles have been followed. The Hon. Peter Primrose made no acknowledgement of that independent umpire. The Land and Environment Court, which is an independent body, will have to approve the strata process and then the sale.

Indeed, the Government has agreed to make provision to cover the legal costs of the dissenters of the body corporate if they object to the strata scheme. This deals with the issue raised by the Hon. Peter Primrose about the so-called 90-year-old widow not wanting to go to the solicitor. With these various checks and balances, including oversight and approval by the powerful Land and Environment Court, this is a robust reform that will protect minor parties from being disadvantaged. Members in the other place and here have referred to people in this situation pejoratively as "the little old lady" or as we just heard "the little old widow". Whilst I do not subscribe to that term, I appreciate the sentiment.

A strong central feature of this legislation is the protection of the vulnerable. Many people, whether or not they are widows, are trapped in a crumbling, aged strata building that they are unable to sell in order to move to a property that better meets their needs. The greedy squatters hold out for a better deal before they will vote for a unanimous resolution to sell a strata building. An investor with a tenant in the building could hold out for a better deal at the expense of other strata holders. This legislation will go a long way to ending the behaviour of people holding out for a windfall extortionate profit. This type of conduct is non-transparent and probably involves a secret commission. The legislation will lower the threshold for a strata sale and includes provisions for an independent adjudication by the courts and a legal requirement of transparency.

I will turn to further characteristics of the bills, which I note the Opposition will be supporting. By preventing the improvement and renewal of a current scheme, apartment dwellers are forced to live in poor quality environments and often in deteriorating buildings that were built for a different era and to different standards. Under the current framework, those who are part of a strata scheme have little means to make improvements or to advocate for a collective solution in relation to maintenance and other issues of their strata. This reform will address both those issues by providing a more flexible process for lot owners to undertake renovations.

Current laws require lot owners to seek approval of the owners corporation for even minor changes to their lot. This requirement results in broad noncompliance. Many people in apartments make changes without seeking consent because they consider that the formal approval process is too onerous. The bills introduce a three-tiered approach. If the renovation or work will not affect other residents and does not interfere with the structural, waterproofing or external appearance of the building then a full special resolution—that is 75 per cent as is required at the moment—will not be required. Approval will not be required for cosmetic work, which includes installing picture hooks, laying carpet, painting and filling minor holes and cracks in an apartment. It is unbelievable that approval for such work has to be obtained now.

The next level is for minor renovations, which will require only a general resolution at a meeting—that is, a simple majority. This includes work such as kitchen renovations, so long as waterproofing is not affected, replacing cupboards, installing cabling or wiring and, importantly, installing timber or other hardwood floors. Lot owners will need to provide adequate information on minor renovations such as work plans, timing and contractors' details. Once provided with this information, the owners corporation will not be able to unreasonably refuse minor renovations. To enforce this, the tribunal is being given the power to make orders to that effect. Importantly, owners corporations will be able to

make by-laws that deem certain types of work to be cosmetic or minor renovations for the purposes of their scheme, so long as the by-law is consistent with the Act.

Major work, such as moving structural walls or enclosing a veranda, will require approval by special resolution of the owners corporation, as is currently required, and probably notification to council. The three-tiered approach allows owners corporations to tailor a process to suit their circumstances, their building and their needs. When I was a councillor on the City of Sydney the issues of pets and smoke drift were regularly raised with me. New model by-laws will be introduced when the regulations are made to deal with issues that are of importance to strata residents. The amendments to the existing by-laws will make it easier for schemes to become more pet friendly. The evidence is in that responsible pet ownership leads to more harmonious communities and neighbourhoods. It also leads to healthier and happier lives. In fact, pet ownership in apartments, particularly in inner-city areas, is known to improve the mental health of residents. That fact cannot be denied.

A scheme will be able to make its own by-laws but will not be able to unreasonably refuse the keeping of animals. Currently it can. Nor will a scheme be able to prevent a resident from keeping an assistance animal. The tribunal will still retain the power to make an order for the removal of an animal from a strata scheme that is a nuisance or hazard. The by-laws will address also the annoying and unhealthy issue of smoke drift. I would not mind having those by-laws in the Parliament. Under the Strata Schemes Management Bill, smoke drift can be considered to be a nuisance or a hazard if it interferes with the rights of a resident to use or enjoy their lot—which is something I have experienced. Enforcement will be made easier as part 7 introduces a new streamlined and enhanced by-law enforcement process. The maximum penalty for a by-law breach will increase from five to 10 penalty units to reflect current standards.

As I mentioned earlier, the bill includes a provision relating to the issue of defects. We all have heard about developers who build strata apartment blocks with little regard to the quality of the fittings, fixtures, walls, waterproofing and even fire standards. I experienced this during my time as councillor with the City of Sydney. It is vital that we address this issue so that people who move into new strata apartments are not engaged in prolonged legal and costly battles against shelf companies that have long since collapsed. The new process of a bond aims to reduce costs for all parties involved, to provide more certainty, to minimise time delays and to reduce the incidence of drawn-out and expensive legal action. It is a structured process that promotes any issues being brought to the forefront early in a building's life so that they can be resolved quickly and cost effectively.

I will return to my opening comments. This legislation is part of the broad-ranging reform agenda that has been introduced by this Government following 16 years of Labor inertia in this area. These two bills have had nearly 20 years of gestation. I have participated in many stakeholder forums in relation to the issues addressed in these bills. The reforms, from strata sale to smoke drift, are welcomed by the sector and are an important economic reform for our city to help improve the affordability of housing. I commend the bills to the House.

**The Hon. PAUL GREEN** [12.46 p.m.]: On behalf of the Christian Democratic Party I address the Strata Schemes Management Bill 2015 and the cognate Strata Schemes Development Bill 2015. Strata title is a form of ownership for units and townhouses in a lot that generally is combined with communal spaces. A strata owner buys into the lot and their property includes the main unit area and possibly a garage and a balcony and even a storage area. The main foyer area, stairways and driveways of the lot are usually common property. Strata title is the most common form of apartment ownership in Australia. It is estimated that approximately three million people live in strata title apartments in Australia. New South Wales has approximately 75,000 strata schemes worth about \$350 billion in assets. It is estimated that by 2040 half of all residential accommodation in Sydney will be strata title.

These reforms of strata law—the first major reform since the Strata Titles Act 1973—seek to bring strata law into the twenty-first century and will create a modern framework for residents living in strata

schemes. The reforms will affect some two million industry professionals and strata owners and residents of strata title townhouses and units. The more than 90 proposed reforms, which were based on consultation, will update the 50-year-old strata scheme laws and together they will help guide strata schemes in the provision of best practice management for their strata community.

The Strata Schemes Development Bill 2015 will replace both the Strata Schemes (Freehold Development) Act 1973 and the Strata Schemes (Leasehold Development) Act 1986. The Strata Schemes Management Bill 2015 will replace the Strata Schemes Management Act 1996. The proposed changes will make it easier for owner corporations to manage issues such as pets, parking and by-laws; they will help create a new democratic process for the collective sale and renewal of strata schemes; and they will help support the responsible management of schemes, with new accountabilities for strata management agencies. The proposed changes aim to establish a new process to help ensure that building defects are addressed early in the life of the building. They also will enable modern forms of communication, including new options for a strata scheme to keep and issue electronic records, to issue email updates and to allow people to attend meetings "virtually", thereby encouraging greater participation in schemes.

The most significant reform in the bill—and the one causing the most concern—is a new process to facilitate the collective sale or renewal of strata schemes. The proposed reform deals proactively with the issue of ageing strata schemes and enables strata owners to make collaborative decisions about their strata building. The Government has advised that a majority of community feedback received about strata reforms acknowledged that the decision to end a strata scheme should not require the support of 100 per cent of owners provided that the process is flexible, transparent and fair.

The proposed new renewal process will require the support of 75 per cent of lot owners. As a result, small schemes with two or three lots will continue to require unanimous agreement before they can be terminated. Two- or three-lot strata schemes make up 37 per cent of all strata schemes in New South Wales. A collective sale plan involves the sale of all lots within the scheme. A redevelopment plan means that dissenting owners' lots must be sold. Tailored arrangements potentially apply for supporting owners, for example, ownership of a lot in the new strata scheme to be created. University of New South Wales strata title expert Cathy Sherry expressed concerns that the change would inevitably result in people being forced to sell their homes. The Minister has acknowledged concerns regarding the impact that the new collective sale process may have on individual property rights. However, the Minister went on to say that it must be remembered that while strata owners own their unit, they also own a share in the building and decisions about the building must be made collectively.

Although there are concerns regarding the forcible sale of one's home, the Government has provided for a lengthy consultation process for the collective sale or redevelopment of a strata scheme. The process includes existing strata schemes being able to opt in to the collective sale or redevelopment process and the submission and consideration of a strata renewal proposal. The process also includes the consideration of the proposal by the owners corporation at a general meeting, the establishment of a strata renewal committee and the consideration of the plan by the owners corporation at a general meeting. It includes the consideration of a strata renewal plan by owners as well as the obtaining of the required level of support. Further, the process includes the ability for a decision to be made to apply to the Land and Environment Court for an order to give effect to the plan, a court hearing and the disposal of an application for an order, and the lodging of an order for registration and termination of the strata scheme.

In addition to that process, if the proposal lapses another proposal of similar request cannot be given within 12 months of the original proposal. As one can see, it is not a case of coming in and tearing someone's home away from them; it is a lengthy consultative process that is aimed at being fair and just for all owners. Strata law reforms have been discussed and legislated upon in other Australian States and Territories. Owners corporation legislation was examined in Victoria last year, while strata laws were examined in South Australia a year earlier in 2013. Other States and Territories are also making a move on strata law reform. In 2014 the Queensland Government released an options paper commenting on the threshold for scheme termination. Its proposals, like those in New South Wales, include changes to the

collective sale regulations and plans. However, the paper acknowledged the need for safeguards to protect vulnerable owners who do not wish to sell their property. There has been no update on that position since the change of government.

In October 2014 the Western Australian statutory authority Landgate released a Strata Titles Act reform consultation paper, which included new regulations for a stepped threshold depending on the age of the building. Current proposals under discussion will mean that Western Australian strata schemes will require agreement from 95 per cent of owners for a scheme older than 15 years but less than 20 years old, 90 per cent of owners for a scheme older than 20 but less than 30 years old, and 80 per cent of owners for a scheme more than 30 years old. Proposed strata reforms in the Northern Territory also favour a staggered threshold for collective sales. In 2014 the Northern Territory introduced the Termination of Units Plans and Unit Title Schemes Act 2014. Under the Act, the termination of a scheme depends again on the age of the building—namely, 80 per cent of owners for a property older than 30 years, 90 per cent of owners for a property between 20 and 30 years, and 95 per cent of owners for a property between 15 and 20 years.

I believe there is some merit in a staggered threshold depending on the age of the building. It can give protection to newer buildings when zoning changes and opportunities arise to create larger density units. It is important to note that the Director of Housing for the Master Builders Association of NSW, Peter Meredith, expressed concern regarding the 2 per cent defect bond held with the Fair Trading trust. The defect bond will be held for up to two years and owners will be able to access the funds to address defects instead of using their sinking fund. Mr Meredith advised that 2 per cent might not seem like a lot; however, a developer could end up paying up to \$1 million, which would be made up of the 2 per cent bond, the cost of inspections and interest on costs, et cetera. A significant proportion of that is unrecoverable and essentially for nothing if there are no defects. The proposed legislation, at part 7 of the bill, includes smoke drift in the by-laws and notes that smoke drift can be considered to be a nuisance or hazard if it interferes with the rights of a resident to use or enjoy their lot. Penalties include 10 penalty units or \$1,100 for a first offence and a second penalty of 20 penalty units or \$2,200 if a second offence occurs within a 12-month period.

While this is a sensitive topic and we have heard about how some of our most vulnerable will be affected by these changes, there are appeal rights and opportunities for those issues to be worked through. I note that strata management agencies in rural and regional areas have made representations to me about strata management fees. They are concerned about a one-size-fits-all approach to the way that strata fees are collected. They say that the legislation needs to take into consideration that strata management in regional and rural areas is not of the same bulk and scale as many Sydney schemes.

Mr Scott Baxter from the Shoalhaven, amongst others, has made representations to me about these reforms. Mr Baxter said that we need to keep in mind the impacts on the consumer and the industry of a poorly constructed process, which may have unintended consequences and may increase red tape for strata management and costs for lot owners. I note that submissions were received from the Real Estate Institute of New South Wales and Strata Community Australia, an association of strata and community managers. According to Mr Baxter, the Government has "completely ignored the feelings of the strata management sector". I am very mindful that this is not an area where a one-size-fits-all approach can be taken. I ask the Government to consider the needs of strata managers in regional New South Wales and to address this issue when we come back to this debate at a later hour today. The Christian Democratic Party will be moving some amendments at the Committee stage to improve transparency in this process and in relation to full disclosure from developers. We believe that any person entering into these discussions should know the full picture. They should have the truth, the whole truth and nothing but the truth.

I do not like the idea of moving someone from their home to increase the density of a building. But if we are going to absorb the projected increase in our population across New South Wales, particularly in Sydney, of 1.8 million people, we have a responsibility to look at these ageing buildings and reassess the

situation. My initial thought is that people have a right to remain in their home town and to age in place. They should be our first priority. If they choose not to sell, they should be able to claim a place in the new building so that they can continue to age in the area where they have lived for decades near their local shopping centre, their medical services, their friends and family and their church and community. It is very important to get the right balance. As I said, the Christian Democratic Party proposes to move amendments in Committee and we will consider the amendments proposed by other parties.

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

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

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

### **QUESTIONS WITHOUT NOTICE**

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#### **DUTCH MEMBER OF PARLIAMENT GEERT WILDERS**

**The Hon. ADAM SEARLE:** I direct my question to the Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism. In light of controversial Dutch member of Parliament Geert Wilders' current Australian visit to launch the anti-Islamic political party Australian Liberty Alliance, what steps is the New South Wales Government taking to ensure that his visit does not damage community relations?

**The Hon. Trevor Khan:** Ignore the rat. Who?

**The Hon. Duncan Gay:** Don't give him publicity. The member and his friends opposite who are in the left wing should resist making him a hero.

**The Hon. JOHN AJAKA:** I thank the honourable member for his question. I acknowledge the Hon. Trevor Khan's interjection.

**The Hon. Trevor Khan:** Thank you very much. He is a grub.

**The Hon. Duncan Gay:** And me

**The Hon. JOHN AJAKA:** I also acknowledge the interjection of the Leader of the Government. I will summarise them into my own words. First, I will ignore him. Secondly, he is a buffoon.

**The Hon. Trevor Khan:** And a grub.

**The Hon. JOHN AJAKA:** I agree with the Hon. Trevor Khan. Thirdly, I will not tolerate anyone who wishes to divide our multicultural, harmonious society. We are one community. We work extremely well together and have much to be proud about. The entire world looks to Australia and New South Wales and they see the wonderful work that we continue to do to ensure that we live harmoniously. For decades governments in this State have worked in a bipartisan way to maintain that harmony in New South Wales. They have always ensured that the building blocks are continually created and enhanced to show that we work as one community.

**The Hon. Duncan Gay:** Can the left wing media restrain themselves and not make this person an icon?

**The Hon. JOHN AJAKA:** I acknowledge the interjection of the Leader of the Government.



**The Hon. Adam Searle:** Point of order: The Minister is interjecting.

**The Hon. JOHN AJAKA:** I would like to see all areas of the media get on board and work with the vast majority of our community to ensure that we maintain our harmonious State. I say to everyone, "Ignore him." I have not heard or seen anything that has come from him that makes any sense whatsoever to the way in which we live in this State and country. Yesterday I indicated very clearly that the Attorney General and I will be consulting with the community. Indeed, we acknowledge that we need to work with the community. We will be asking all members of the community, including those opposite, to work with us on any amendments required to be made to the Anti-Discrimination Act to ensure that the peaceful harmony of this State is maintained.

**The Hon. Walt Secord:** The question was about what steps you have taken. What steps did you take?

**The Hon. JOHN AJAKA:** I suggest that those opposite should not go out and support him. They should not give him oxygen. They should not play media games. Those opposite should stand with the Government to ensure that we keep our community harmonious and working together. That is what we need to do, and that is what we will continue to do. Those opposite should stop the scaremongering. We saw that at the recent conference the Premier held— *[Time expired.]*

**The Hon. ADAM SEARLE:** I ask a supplementary question. Would the Minister elucidate his answer with regard to whether he or his office has made any representations to the Federal Government on the status of Geert Wilders' visit?

**The PRESIDENT:** Order! The question is entirely out of order. It is a new question.

#### **BALLINA MARINE RESCUE TOWER**

**The Hon. BEN FRANKLIN:** I address my question to the Minister for Roads, Maritime and Freight. Will the Minister update the House on the action the Government is taking to support the construction of the Ballina Marine Rescue tower?

**The Hon. DUNCAN GAY:** Today I am pleased to announce that the New South Wales Government is committing a further \$215,000 towards building a new Ballina Marine Rescue tower and redeveloping the site on which it sits.

*[Interruption]*

Mr President, it is impossible to answer this question over the noise of the rabble opposite.

**The PRESIDENT:** Order! Opposition members are being unruly. I am also having great difficulty hearing the Minister's answer. Members will restrain themselves.

**The Hon. DUNCAN GAY:** This extra funding now takes the total contribution from the State Government to \$565,000—\$350,000 was committed in the 2014-15 financial year towards this project. This is fantastic news for North Coast residents, Marine Rescue volunteers and boaties who have been calling for this replacement and redevelopment. This additional funding should help Ballina Shire Council to get on with the job of building the new tower. Marine Rescue volunteers will soon have a safe, modern operational facility. The far North Coast is known for its recreational boating and fishing. Local boaties and visitors know the importance of having a functional rescue tower right on the Richmond River. The new tower will operate as a key marine search and rescue response facility and public marine radio monitoring station in northern New South Wales. It is a vital community asset, as my colleagues the Hon. Ben Franklin and Mr Chris Gulaptis, the Parliamentary Secretary for the North Coast, know full well.

The Ballina Marine Rescue unit responds to around 14,000 radio calls annually and watches over thousands of vessels, including those crossing the treacherous sandbar at the mouth of the Richmond River. Sadly, we have recorded 14 boating incidents including a fatality on the Richmond River sandbar in recent years, which makes the building this new tower all the more important. The existing tower is old, dilapidated and unsafe for volunteers to use—many people from the region know it as the "Leaning Tower of Ballina". Ballina Shire Council is taking the lead on this project. The local member, Tamara Smith, has also committed to obtaining further funding to help meet the full replacement and redevelopment cost. We cannot wait to see this new tower built.

#### **DUTCH MEMBER OF PARLIAMENT GEERT WILDERS**

**The Hon. WALT SECORD:** My question without notice is directed to the Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism. Given that Western Australian Premier Colin Barnett has issued an edict saying that he will not allow any State government building or facility to be used by anti-Islam member of the Dutch Parliament Geert Wilders, will the Minister give a similar assurance for New South Wales government facilities? Does the Minister need to see the wording?

**The Hon. JOHN AJAKA:** No, thank you. It was nonsense when the Hon. Walt Secord read it. I do not need to look at it. I thank the honourable member for his question. Opposition members want to play games. They asked the same questions yesterday: Will I guarantee this? Will I guarantee that? Why do members of the Opposition not start to take their job seriously? Why does the Opposition not start to look at working with the Government and stop its continual scaremongering?

This Government undertakes extensive work, through Multicultural NSW, to ensure that the Harmony in Action strategy is maintained. That is what the Government will continue to do. The Government will continue to oppose anyone, including the Opposition, who plays games with community harmony. I guarantee that I will continue to stand up against the nonsense and scaremongering from the Opposition. I will continue to work with the community to maintain the harmony in this great State, which leads not only Australia but the rest of the world. That is what I do.

#### **RURAL AND REGIONAL DISABILITY SERVICES**

**The Hon. ROBERT BROWN:** My question is directed to the Minister for Disability Services, representing the Minister for Health. Is it true that people with a disability living in rural and remote communities in New South Wales are more vulnerable to the loss of access to allied health services due to a shortage of allied health professionals than those people with a disability who live in cities? What is the Government doing to increase the recruitment and retention rates of specialist allied health professionals so that people living with a disability in rural and remote communities are not disadvantaged?

**The Hon. JOHN AJAKA:** I thank the honourable member for his question. I will forward the relevant aspects of the question to the Minister for Health and come back with an answer. As Minister for Disability Services I assure the member that substantial work is continually being done not only by my agency, Ageing, Disability and Home Care, to ensure that appropriate facilities are available for people with disability but also by the Commonwealth, working with the States, under the National Disability Insurance Scheme [NDIS].

One of the great aspects of the NDIS is that the funding will be paid directly to individuals. People will be able to seek the services they want, when they want them, from whom they want them. They will have choice. They will have funding. In an economic sense, they will drive the demand and the services will be supplied to them. Another great aspect of the NDIS is that remote and rural areas will be able to attract the services they need because they will have the funding to pay for those services.

The New South Wales Government recognises the importance of specialist staff within the disability sector. The Department of Family and Community Services currently employs a range of allied health staff such as occupational therapists, psychologists, speech pathologists, physiotherapists and a small number of nurses and dieticians. The Government funds allied health in the non-government sector as part of the therapy and intervention funding program. The formal qualifications of staff employed by the department as therapists are transferrable to other settings such as private practice, NSW Health, the Commonwealth Rehabilitation Service and aged care facilities, including those run by non-government organisations.

It is a fact that the number of staff in government and non-government disability services needs to increase. By July 2018, when the transition to the NDIS is complete, the sector will require another 20,000 to 25,000 staff. The Government is undertaking an enormous amount of work, with the non-government sector and the Commonwealth, to ensure that the training of staff who will be employed in the sector is commencing. The Government will continue to do that.

### **HUNTER RESIDENTIAL CENTRES REDEVELOPMENT**

**Mr SCOT MacDONALD:** My question is addressed to the Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism. Will the Minister update House on the redevelopment of the Hunter large residential centres?

**The Hon. JOHN AJAKA:** I thank the honourable member for his question. I know that, as the Parliamentary Secretary for the Hunter and Central Coast, Mr Scot MacDonald has a great interest in this redevelopment and in ensuring that people with disability have the right to live within the community that they choose. In 1998 the Hon. Faye Lo Po', a former Labor member of this place, announced a 12-year plan to close all large residential centres in New South Wales by 2010. Several years later, in 2001, the Hon. Carmel Tebbutt announced that the then Labor Government was "committed to the phased closure of all large residential centres like the Stockton Centre which are old and unsuitable and cannot conform to the requirements of the Disability Services Act".

On Saturday I was delighted to announce a key milestone in a project that has taken a long time to come to fruition. The Government is seeking expressions of interest from non-government organisations to build and operate disability housing to replace the remaining large residential centres in the Hunter region. Premier Mike Baird said:

One of the hallmarks of this Government will be the manner in which it treats people in our society who are the most vulnerable.

The redevelopment of large institutionalised accommodation in the Hunter region fulfils the Government's promise to provide everyone in Hunter residential centres with new homes—their homes—in the location of their choice. This is a promise that has been made by many governments over many years. I am humbled that this is the Government that is delivering on the longstanding commitment to the most vulnerable. As part of the expression of interest process, the Government is leading the nation in the implementation of person-centred funding, establishing its own user cost of capital. The Government will provide a funding subsidy, the user cost of capital, to successful tenderers for up to three years as an interim measure to the proposed National Disability Insurance Scheme [NDIS] user cost of capital.

This subsidy will encourage the construction of new disability housing in the future by providing an income stream to finance the development of new accommodation by the non-government sector. The Government has no preconceived ideas about the responses to the expression of interest process. The Government wants the non-government sector to demonstrate its excellence in the provision of flexible, efficient, innovative and effective housing for people with disability. Through this redevelopment, people with disability will have the opportunity to choose their place of residence, choose the people they live with, be closer to their families and integrate more with the community.

**The Hon. Sophie Cotsis:** Did it go to Treasury?

**The Hon. JOHN AJAKA:** One would assume that the shadow Minister for Disability Services would be completely on board with what the previous Labor Government started in 1998. One would assume that the Hon. Sophie Cotsis would be on board with this, instead of continually whingeing and complaining.

**The DEPUTY-PRESIDENT (The Hon. Trevor Khan):** Order! I call the Hon. Sophie Cotsis to order for the first time.

**The Hon. JOHN AJAKA:** As was made public over the weekend, moving from institutional accommodation to a new group home is a challenging time for all involved. I thank the hardworking Ageing, Disability and Home Care staff who were tireless in their devotion to their clients throughout this process. Those of us who have been to large residential centres would know that the supports provided there no longer meet contemporary standards and they do not comply with the Disability Services Act 1993. [*Time expired.*]

**Mr SCOT MacDONALD:** I ask a supplementary question. Would the Minister elucidate his answer?

**The Hon. JOHN AJAKA:** As I was indicating, large residential centres do not comply with the Disability Services Act 1993, with the Disability Inclusion Act 2014 or the United Nations Convention on the Rights of Persons with Disabilities. The convention requires the Government to move residents from large institutional settings and to provide purpose-built accommodation in locations according to their needs and wishes. That is why this Government is 100 per cent committed to the closure of these institutions by 2018. The announcement I made builds on the foundation funding that was set in the 2014-15 and 2015-16 budgets to fund the land banking that this redevelopment requires.

This is a big day for the disability sector. The New South Wales Government is demonstrating its commitment to ensuring that people with disability live in homes in the community, which allows them to reach their full potential. The expression of interest submissions open on Tuesday 20 October and close at 2.00 p.m. on 17 November 2015. If any member of this House would like further information they should visit [tenders.nsw.gov.au](http://tenders.nsw.gov.au). Unfortunately, as we have come to expect, these announcements are not warmly welcomed by those opposite, who clearly do not want to work with people with disability to improve their future.

## **COAL SEAM GAS**

**Mr JEREMY BUCKINGHAM:** My question is directed to the Minister for Primary Industries, and Minister for Lands and Water. Last week the Commonwealth Office of the Chief Economist in its report entitled "Review of the socioeconomic impacts of coal seam gas in Queensland" found that agricultural jobs have been affected negatively by coal seam gas with "1.8 agricultural jobs lost correlating with every CSG job created". Is the Government concerned that short-term employment in the boom-bust resources sector will hurt the agricultural sector? What is the Government doing about it?

**The Hon. NIALL BLAIR:** At the outset I state clearly that one cannot compare the level of coal seam gas in New South Wales with the level in Queensland. Coal seam gas has a very different impact on regional communities in Queensland than in New South Wales. Any future for the coal seam gas industry in New South Wales is underpinned by this Government's NSW Gas Plan. When those opposite start to talk about the NSW Gas Plan and perhaps ask questions on how it is going I will refer them to the announcement yesterday about petroleum exploration licence [PEL] 455, which this Government said it would buy back and it has as a part of the NSW Gas Plan.

That is the difference between this Government and other governments, particularly Queensland. We have a plan for the coal seam gas industry in which we will try to maintain a level of balance in some of those communities where we have seen this industry—although it is early days in some of the areas—but also take into consideration the future of that industry in line with community expectations. What we saw in the Northern Rivers yesterday is a prime example of that. Mr Jeremy Buckingham asked what we are doing about the impacts of any industry on the agricultural sector in New South Wales and on jobs. I can point Mr Jeremy Buckingham to the Industry Action Plan that this Government has developed for the future of primary industries in this State.

We have a very clear target to increase the primary industries sector by 1.5 per cent, but we are aiming for a 30 per cent increase so that we can add to the \$12 billion that that sector provides to the New South Wales economy. We believe we are well placed to do that and I will explain why. First, we have some of the best people working in the primary industries sector right here in the New South Wales Department of Primary Industries and in Local Land Services. When I go from area to area across the State I am nothing but impressed by the research and development and the extension services and advice that are provided by our people in the Department of Primary Industries and in Local Land Services.

We understand the risks to our natural resources and we also understand how we can tap into the potential in those natural resources in New South Wales. That is why we have authorities such as the Food Authority. That is why we have been able to do things like pass the Biosecurity Bill through this House, to ensure that we manage those risks for the future of the primary industries sector and that we can unlock the \$12 billion that the sector contributes now and achieve the 1.5 per cent per annum growth that we are aiming for.

We have the best producers in this State and we know what they can do. We know that we have the most innovative farming sector and that in other primary industries sectors, whether in forestry or fisheries, we are leading the pack when it comes to developing that growth. We are doing a lot. Our Industry Action Plan, developed in consultation with stakeholders and with the private sector, means that no matter what challenges may be faced by our producers right across New South Wales, we will be at the forefront of being innovative and able to adapt so that we continue to drive this sector forward in New South Wales.

#### **DUTCH MEMBER OF PARLIAMENT GEERT WILDERS**

**The Hon. SHAOQUETT MOSELMANE:** My question without notice is directed to the Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism. Has the Minister or his office made any representations to the Federal Government on the status of Geert Wilders' visit? If yes, what were those representations?

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

**The Hon. JOHN AJAKA:** I have already made it very clear that from my perspective I do not intend to in any way acknowledge this person. I do not intend to give him any oxygen whatsoever. If those opposite want to continue to build him up, shame on them. I do not intend to do that. We will continue to work to ensure that—

**The Hon. Walt Secord:** Just condemn him.

**The Hon. JOHN AJAKA:** I acknowledge the interjection of the Hon. Walt Secord. I have already condemned him in the first comment I made. I will again state that as far as I am concerned he is a complete and utter moron. I do not in any way agree with him and I will in no way acknowledge him. I ask those opposite to stop asking questions that force me to acknowledge him, because he is not the worth the acknowledgement. I have far better things to do than to acknowledge a moron of this nature.

**The Hon. Shaoquett Moselmane:** Point of order: My point of order relates to relevance. My question was specific: What were those representations to the Federal Government?

**The PRESIDENT:** Order! The Minister is clearly being generally relevant. It would appear that the Minister has concluded his answer.

### **MURRAY-DARLING BASIN PLAN**

**The Hon. SARAH MITCHELL:** My question is directed to the Minister for Primary Industries, and Minister for Lands and Water. Will the Minister update the House on the New South Wales Government's submission to the Commonwealth's Senate inquiry into the Murray-Darling Basin Plan?

**The Hon. NIAL BLAIR:** I thank the member for her question. The New South Wales Government remains committed to managing the Murray-Darling Basin sustainably and balancing the water requirements of industry, communities and the environment. Recently I made a submission to the Commonwealth's Senate inquiry into the Murray-Darling Basin Plan outlining the New South Wales Government's views on delivering the intent of the basin plan while ensuring New South Wales basin farming communities remain viable and productive and achieving environmental outcomes.

New South Wales led the way in sustainable management of the basin long before the commencement of the Murray-Darling Basin Plan. In fact, over the 25 years prior to the commencement of the Murray-Darling Basin Plan New South Wales water users returned approximately 1,869 gigalitres of water to the environment, predominantly through the smarter use of water resources and improved efficiency. The New South Wales Government cannot and will not relax its position or drive to ensure that the basin plan achieves not only sufficient outcome-driven environmental water delivery but also productive and sustainable farming communities across the basin.

To this end we continue to urge the Commonwealth to be more innovative in the identification and use of environmental water. This includes increased efficiency in environmental watering through works and measures and the way in which the Commonwealth Environmental Water Office manages held environmental water. My submission to the Senate inquiry also highlights the need for improved and more focused monitoring and evaluation. There is a desperate need for a robust, fit-for-purpose monitoring and evaluation program. At present the monitoring effort is fragmented across the basin.

Every farmer in the basin is aware of the value of each megalitre of water in the production of food, feed and fibre as well as jobs and growth for regional communities. Environmental watering activities need to be equally as accountable and outcomes-based. My submission also highlights the inconsistent approach to basin plan implementation in the north by Commonwealth agencies. The northern basin review being carried out by the Murray-Darling Basin Authority [MDBA] aims to improve knowledge and understanding of the science and the social and economic impacts of the proposed sustainable diversion limits in the region. While this review is ongoing it makes no sense for the Commonwealth to be engaging in buybacks in the northern basin at the same time, which could have negative social and economic impacts and result in an over-recovery of water from these areas.

Another key concern for the New South Wales Government is the ongoing role of the Murray-Darling Basin Authority as the focus moves from policy development to implementation of project delivery. In line with this, the Commonwealth Government will need to develop a clear plan for the role, size and deliverables of the MDBA into the future. The New South Wales Government has consistently advocated for localism in all aspects of the Murray-Darling Basin Plan, including policy development, implementation and environmental management. An authority in charge of caring for the Murray-Darling Basin should be located along one of its major rivers, not in Canberra.

I will continue to advocate for the long-term viability of our basin farming communities in line with

the triple bottom line approach that should underpin all sustainable resource management. The New South Wales Government's submission to the Commonwealth outlines a number of issues that need to be addressed. I look forward to continuing to work closely with the Commonwealth and my colleagues in the other basin States to achieve positive outcomes for the people of regional New South Wales.

### **AEROMEDICAL WINCHING SERVICES**

**The Hon. PENNY SHARPE:** My question is directed to the Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism, representing the Minister for Health. Given an injured man needing to be rescued from the Warrumbungle National Park after a cliff fall had to wait an extra two hours while a helicopter with a winch was sourced from Newcastle, will the Minister reverse his July 2013 decision to slash aeromedical winching services in regional New South Wales?

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

### **TRANSPORT INFRASTRUCTURE PLANNING**

**Dr MEHREEN FARUQI:** My question without notice is directed to the Minister for Roads, Maritime and Freight. Given that transport infrastructure projects such as the Tibby Cotter Walkway, the Arncliffe pedestrian tunnel, WestConnex and the CBD and South East Light Rail have no publicly released business cases and massive cost blowouts, is there a link between the Government keeping business cases secret and the overruns of these projects? What is the Government doing to ensure transparency in transport planning?

**The Hon. DUNCAN GAY:** I thank the honourable member for her question. I look forward every day to a question from this member because it allows me to talk about the issues that she has got wrong once again. The whole premise of the question is based on a falsehood. She indicated cost overruns in WestConnex—wrong. She also indicated that the business case was not made public. Well, the business case has been made public. We have indicated that an update will be coming later in the year and my understanding is that will be in November. I am looking at my staff and they are nodding their heads. In November there will be update for the change of scope for the WestConnex. Once again this member has got it wrong. The trouble with trusting the North Korean Greens to be in charge of anything is they always start from a premise that is wrong. It is like her plan to replace WestConnex with a road that becomes a cut and cover along Parramatta Road.

**Dr Mehreen Faruqi:** That was not my plan.

**The Hon. DUNCAN GAY:** I am giving you praise because unlike the Labor Party you had an alternative plan. Her alternative plan was, "Don't build WestConnex in the tunnels that go underneath the city but build it on Parramatta Road. Excavate it and put WestConnex on Parramatta Road." The same member who protests every weekend against the small loss of housing would have taken thousands of houses across this city. The Greens green plan would have made Bradfield bridge pale into insignificance—600-odd houses out of the southern shore to establish the bridge but The Greens would have done that in a couple of blocks on their redevelopment of Parramatta Road.

Once again I welcome a question from this member because once again she has got it wrong and once again it gives me an opportunity to get the real facts out on how good WestConnex is going to be in making lives better for people who have rat runs going through their communities and their main street clogged with buses. I see the Hon. Penny Sharpe looking despondent. She is no longer shadow Minister for Transport and missed out on her opportunity to be the member for Newtown. She knows in her heart that Newtown is going to be better.

**The Hon. Penny Sharpe:** Point of order: I have two points of order. The first is relevance and the

second is that if the Minister wants to make comment about me he should move a motion to do so.

**The PRESIDENT:** Order! In dealing with the second matter first, if the Minister was making a reflection on the member that would indeed be true but he was not. In relation to the first matter there is no point of order. The Minister has the call.

**The Hon. DUNCAN GAY:** It is interesting that quietly into my office there is a succession of Labor members coming and saying, "It is really okay. It is really a good idea. Don't let them know that we have been in here but they have got it wrong." I was heartened when last weekend there was a balanced article in the *Sydney Morning Herald*—

**The Hon. Trevor Khan:** There have been lots of them recently.

**The Hon. DUNCAN GAY:** There have been a lot and I certainly appreciate the fact. It was factual. It was not all glory but it was appropriate. Where it was tough it probably deserved to be tough but in the online comments in the *Sydney Morning Herald* readers were overwhelmingly in favour of WestConnex, so despite what some others might say, the community is backing what we are doing; the community is with us. [*Time expired.*]

### **PACIFIC HIGHWAY**

**The Hon. TREVOR KHAN:** My question is addressed to the Minister for Roads, Maritime and Freight. Will the Minister update the House on the progress of the duplication on the Pacific Highway?

**The Hon. DUNCAN GAY:** The honourable member has asked an important question. Work on the Pacific Highway is progressing in leaps and bounds: we are more than 60 per cent of the way to completion. Just last week we announced the start of major work on the first of 40 new bridges to be built on the 155-kilometre Woolgoolga to Ballina stretch—the final stretch of the duplication. The first bridges to be built on this final stretch are at Halfway Creek and are expected to be fully open to traffic in 2017. These are twin bridges and will be approximately 55 meters long. Other bridges to be built include: overbridges at Kangaroo Trail Road at Corindi Beach, twin bridges over Corindi Creek, twin bridges over the Corindi Local Access Road, and an overbridge at Sherwood Creek Road near Upper Corindi.

**The Hon. Adam Searle:** Quirindi.

**The Hon. DUNCAN GAY:** No, Corindi is a different place. In fact, work on the overbridge at Sherwood Creek Road also recently started and will include building a 60-metre-long overbridge consisting of five girders. Bridges will be new and built from scratch, and will cross soft soil, creeks and floodplains, improving flood immunity on the highway. This will result in motorists and freight encountering fewer delays and spending less time on the road. Bridge and road work on this upgrade is creating more jobs than any other regional project we have seen in the past decade. At peak, there will 4,000 direct and 12,000 indirect jobs on upgrades spanning the entire length of the highway from Port Macquarie to Byron Bay. It is more than anything The Greens have ever done for this community with jobs. Everyone from local businesses, motorists to local residents will benefit from these major works—boosting local economies right up and down the North Coast.

Businesses across the State have also recently been invited to tender for further soft soil works on sections of highway spanning Shark Creek to Maclean in Clarence, and at Tuckombil Canal near Woodburn. Soft soil work can be extremely challenging. It requires engineers extracting water from the soil, so the soil can settle and form a strong foundation for the new road where it is needed. Businesses interested in applying to undertake and manage soft soil work are encouraged to visit the Government's e-tender website, and local contractors and residents looking to work on the upgrade should contact Roads and Maritime Services. The Pacific Highway is one of, if not the flagship road project of regional New South Wales. Sadly, on average 28 people die per year on the Pacific Highway in its current form.



One life is too many in my book, something that I am sure is shared by all members of this House, and by undertaking this work, most importantly we will be saving lives. It is important that this Government is cracking on with the job to complete it by 2020.

### **HOMESCHOOLING**

**The Hon. PAUL GREEN:** My question is addressed to the Minister for Primary Industries, representing the Minister for Education. Recommendation 12 of the Select Committee on Home Schooling inquiry was the establishment of a homeschooling consultative group, which was supported by the Government. What are the criteria to be used to select the four homeschooling representatives? What are the criteria to be used by the Board of Studies Teaching and Educational Standards [BOSTES] to select the four experts for the panel? Which person or persons will be responsible for the final decision on who sits on the selection panel?

**The Hon. NIALL BLAIR:** I thank the Hon. Paul Green for his particular interest in this matter. As the question is detailed, I will seek a response from the Minister for Education.

### **FOOD LABELLING**

**The Hon. MICK VEITCH:** My question is directed to the Minister for Primary Industries. Given that Narkena Pty Ltd has admitted that it allowed incorrect food labelling on a product, resulting in the death of a 10-year-old boy with a lactose allergy who consumed improperly labelled coconut milk, what steps is the Government taking to ensure that imported foods are being properly tested and labelled in New South Wales?

**The Hon. NIALL BLAIR:** The issue of food labelling does not fall within my portfolio; it is a matter for the Minister for Innovation and Better Regulation. However, I do have some details about this coconut milk case. In January 2014 the NSW Food Authority was notified of the death of a child in Melbourne after consuming a canned coconut milk drink imported from Taiwan. This product was imported by a New South Wales company, Narkena Pty Ltd, and an investigation by the Food Authority confirmed the presence of dairy, to which the child was allergic. The product did not have an allergen statement declaring the potential presence of dairy.

The Food Authority immediately investigated this incident, taking further samples for analysis and coordinating a product recall on 23 January 2014. Following further investigation, the Food Authority commenced prosecution of the importer for offences relating to the labelling of the product. The company pleaded guilty to the charges brought by the Food Authority on 15 September 2015. The sentence is expected to be handed down in November 2015. Although I do not have responsibility for the labelling of food, the Food Authority, which falls under the Department of Primary Industries, plays an important role and it has led to this result. Recent recalls of coconut drink product foods that are known to contain ingredients that may harm people with an allergy must be declared on product labels.

In instances where the NSW Food Authority becomes aware of a product that does not contain a warning statement or allergen declaration, prompt action is taken to ensure that the health of consumers is protected. Under these circumstances, the Food Authority ensures that companies meet their obligations and conduct a recall of products with an undeclared allergen. The recent spate of national recalls linked to undeclared dairy in coconut milk drinks is an example of this approach.

In August 2015 the Food Authority was alerted that a child had an allergic reaction linked to an imported coconut milk drink. This product was tested and found to contain undeclared dairy, resulting in a national consumer level recall. As a result of this and the earlier incident in 2014, the Food Authority inspected a number of retail businesses, and worked with the Commonwealth Department of Agriculture to identify potential importers of similar coconut milk drink and powdered products. This work has led to five recalls of coconut milk drinks and powders sold in New South Wales due to undeclared dairy, with

several other recalls also occurring in other States.

The Food Authority initiated this national action in partnership with the Commonwealth Department of Agriculture, and Food Standards Australia New Zealand through the National Food Safety Network. As a result of this action, the Department of Agriculture has put in place a holding order at the border. This means that no coconut milk drinks or powders can enter Australia without first being tested for undeclared allergens. The Food Authority will continue to work with all Commonwealth and State agencies through the National Food Safety Network to ensure that consumers are protected from undeclared allergens in food. The death of this child was tragic, and the people of New South Wales should be comforted by the role taken by the Food Authority. It has been a proactive role that has led to a national recall in this area. The Food Authority should be commended for its actions.

### **MULTICULTURAL NSW SETTLEMENT PORTAL**

**The Hon. GREG PEARCE:** My question is addressed to the Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism. Will the Minister update the House on the new settlement portal available on the Multicultural NSW website?

**The Hon. JOHN AJAKA:** Like all those from migrant families, I know well the challenges of resettlement in a new country.

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

**The Hon. JOHN AJAKA:** The process is particularly acute for those arriving from conflict zones and other trouble spots around the world. As the Minister for Multiculturalism, I am proud to be part of a government headed by Premier Mike Baird that is truly sensitive towards those who are most in need in the world today. More than that, however, I am pleased to be able to say that this Government matches its good words with actions. That includes its work on migration and resettlement.

As members are aware, the Premier has initiated a coordinated response to the Prime Minister's request for assistance from the States and Territories to help welcome into Australia 12,000 additional refugees dislocated by conflicts overseas, most of whom are from Syria and northern Iraq. New South Wales is also working closely with the Commonwealth and other Australian jurisdictions to achieve the best outcomes possible. The New South Wales Government is preparing to successfully resettle the additional intake of refugees in New South Wales while also ensuring the ongoing success of the broader humanitarian program.

I am pleased to report that the New South Wales Government has delivered a new settlement web portal to strengthen the State's response to humanitarian entrants and to provide a single contact point to help all migrants settling here. The web portal, which is available on the Multicultural NSW website, enables Multicultural NSW to be a central point of information about settlement in New South Wales. The portal connects people with the information they need to successfully settle in and contribute to our State. It links users directly with practical resources and aims to help all migrants living in New South Wales, including skilled and family stream migrants, refugees and humanitarian entrants.

The settlement portal provides seamless access to information about the services and support available from all tiers of government as well as funded service providers, community organisations and charities. It offers links to useful organisations, websites and resources to help with a range of issues including humanitarian services, housing, education, employment, transport, language, law and emergency services. It is an example of the way in which the Commonwealth, States, Territories and local government are working in collaboration with sector stakeholders to deliver coordinated, client-centred services.

It is exceptionally important that the three tiers of government work in partnership to effectively

plan and deliver services that support the settlement of migrants and new arrivals in New South Wales and Australia. At the same time, the portal delivers information to a wider audience including all migrants to New South Wales, government workers, services providers and researchers to help achieve the very best outcomes for migrants who are making New South Wales their home. Visual cues, simple descriptions and community language resources are used to make the portal more user-friendly. The portal will be continuously reviewed to ensure it best meets the needs of our diverse community. The New South Wales Government is committed to continuous improvement and is actively inviting and responding to feedback. I commend the Multicultural NSW Settlement Portal to all members and their communities and invite them to help to improve this valuable new resource.

### **SPECIAL RELIGIOUS EDUCATION**

**Dr JOHN KAYE:** My question without notice is directed to the Minister for Primary Industries, representing the Minister for Education. Is the Minister aware of an announcement from special religious education provider Youthworks that the book *You: An Introduction* will not be a recommended curriculum support resource from 2016 after an expert report provided to the Minister identified potentially damaging impacts of the book on vulnerable young people? What steps is the Government taking to ensure that this material is not used in New South Wales public schools either by this provider or other providers and to ensure that no New South Wales public school student is exposed to this type of material in the future?

**The Hon. NIALL BLAIR:** The Minister is aware of the announcement by special religious education provider Youthworks that the book *You: An Introduction* will not be a recommended curriculum support resource from 2016. A decision was made by the provider that it would no longer list *You: An Introduction* as a special religious education authorised resource from 2016. Section 32 of the Education Act 1990 states that approved providers of special religious education in New South Wales public schools authorise the curriculum to be delivered. Approved providers of special religious education make an annual assurance to the department that only authorised curriculum materials will be delivered.

The department is committed to working with all approved special religious education providers to ensure that materials used for the purposes of special religious education in our public schools are consistent with departmental policies and delivered in an age-appropriate and sensitive manner. The New South Wales Government is supportive of and committed to special religious education. We look forward to working closely with approved providers in delivering age-appropriate and sensitive materials as part of special religious education.

### **BOATING SAFETY**

**The Hon. LYNDA VOLTZ:** My question is directed to the Minister for Roads, Maritime and Freight. Given that the regional boating plan for Botany Bay, Georges River and Port Hacking released in February 2015 called for a review into strategies to improve user behaviour and safe boating practices across the region, particularly amongst jet skiers, what steps has the Minister taken to instigate the review?

**The Hon. DUNCAN GAY:** I thank the honourable member for her question and certainly understand the background to it. Every member of this House shares her concerns about inappropriate behaviour in this area. In regard to her question, we recently reviewed the matter and released a report between 12 and 18 months ago, from memory. I will find out when the review is due. Obviously, whether there is a review due now or in four years, we are pretty focused on this area. We are concerned that behaviour is not up to an acceptable standard. We are currently reviewing our options with the community, boating organisations, maritime services and the police. I suggest that the honourable member watch this space.

### **NATIONAL WATER WEEK**

**The Hon. RICK COLLESS:** My question is addressed to the Minister for Primary Industries, and Minister for Lands and Water. Will the Minister update the House about the importance of National Water Week?

**The Hon. NIAL BLAIR:** I am pleased to inform the House that this week is National Water Week, which is an annual event that is held every October in each State and Territory across Australia. National Water Week is designed to help the community understand the importance of water. It also encourages community involvement in the protection and conservation of our precious water resources and habitats. That includes marine, estuarine, fresh and ground water sources in both coast and inland areas. The Government and the community need to work hand in hand to find innovative solutions and better ways of managing our precious water resources.

I understand all too well the challenges faced across the State in regards to water security. It does not matter whether someone lives in Broken Hill or in Balmain, they need to have access to clean and secure drinking water. Water resources need to be managed in a way that also considers the needs of future generations and the environment. Increased urbanisation has called for innovative ways to protect and manage our water resources, both in terms of quality and quantity. I am pleased to inform the House that Sydney Water is being innovative and proactive by applying a world's best practice approach to drinking water management, which considers the urban water cycle as a whole from catchment to customer. Sydney Water and NSW Health are working in partnership to continuously monitor Sydney's water treatment processes and water quality to ensure that our drinking water is safe and of the highest quality.

In celebration of National Water Week, Sydney Water is undertaking a social media campaign that promotes the importance of water and challenges everyone to make the switch from bottled and sugary drinks to Sydney's tap water. Sydney's water is the world's finest, and Sydney Water is working alongside NSW Health to encourage everyone to make healthier choices every day, starting with drinking tap water. At the same time, Sydney Water is proactively protecting our precious water resources in a number of different ways and continuously improving its operations. I commend Sydney Water for its multifaceted approach to protecting our precious water resources and commend it for considering both the community and environment in its everyday practices.

The work of Sydney Water aligns with the holistic approach that the New South Wales Government is taking to manage water across the State. No community can grow and prosper without a secure, safe and affordable water supply for its people and businesses—and that is my number one priority. Alongside this, water is a critical input to our agriculture industry. Our rivers are home to some of the State's most valuable environmental assets and our lakes are tourist and recreation hubs for many communities. In anticipation of the impacts of the declared El Niño event, which will be felt by people all over the State, I have been holding briefings with all of our water management agencies to ensure that we are prepared to meet the challenges of a hot and dry summer.

In the middle of National Water Week, I am very pleased to say that the Department of Primary Industry Office of Water, WaterNSW, Sydney Water and Hunter Water are all taking a proactive approach to planning for the coming months and beyond. National Water Week concludes Sunday 24 October. I encourage everyone to consider what they can do protect our precious water and the environment. It could be something as small as making the switch from bottled water to tap water.

**The Hon. DUNCAN GAY:** If members have any further questions, I suggest they place them on notice.

#### **ONLINE SPORTS GAMBLING**

**The Hon. DUNCAN GAY:** On 16 September 2015 Reverend the Hon. Fred Nile asked me a question about online sports gambling. The Premier has provided the following response:

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

The Government, however, is currently addressing the issue of young people and gambling through the mandatory Crossroads curriculum in government schools, which will be ready for school-based implementation this year. The Crossroads program addresses issues of health, safety and wellbeing, including the risks, costs and misconceptions associated with gambling.

The Government also has invested \$17.2 million in education and awareness programs in 2014-15 through the Responsible Gambling Fund, including the Young People and Gambling Strategy, which educates 15- to 25-year olds about the realities of all forms of gambling.

### **SYD EINFELD DRIVE, BONDI JUNCTION**

**The Hon. DUNCAN GAY:** Yesterday in question time the Hon. Peter Primrose asked me a question about Syd Einfeld Drive. As most Sydneysiders would know, heavy rainfall can cause local flash flooding on the Sydney road network, including Syd Einfeld Drive. During these types of events, Syd Einfeld Drive may be closed to traffic. In the event of flooding, traffic crews are deployed to the site to help manage the incident by clearing drains or safely managing traffic. The Hon. Peter Primrose asserted yesterday that flooding is forcing motorists to travel on the wrong side of the road. The indication I have is that this is incorrect. In fact, I am advised that drivers cannot physically cross and drive on the wrong side of the road due to barriers between the eastbound and westbound lanes.

Last August the Roads and Maritime Services south zone maintenance team started work to clean the network of drains that help clear water from Syd Einfeld Drive at Bondi Junction. Damage to the main drainage run was identified during this maintenance work. Further work is required to identify the scope of repairs, which in turn will be prioritised against other work on the network. As part of the study, most of the pits in the area have been cleaned and a camera has been used to look for blockages. A small number of the drains are yet to be cleaned. This work will not be carried out until after the Higher School Certificate examination period finishes in November due to the noise of heavy machinery in the vicinity of students sitting for their examinations.

### **WESTERN SYDNEY AMBULANCE SERVICES**

**The Hon. JOHN AJAKA:** On 16 September 2015 the Hon. Ernest Wong asked me a question about Western Sydney ambulance services. The Minister for Health has provided the following response:

NSW Ambulance continually looks at ways to improve response time performance and has strategies in place to manage demand for services, including the deployment of resources from areas of lower demand to areas of higher demand and working with Healthdirect to provide alternative health care arrangements for patients experiencing non-life-threatening symptoms.

NSW Ambulance receives a wide range of triple zero [000] calls for help, from shortness of breath to abrasions, broken fingers, coughs, colds and major trauma.

**Questions without notice concluded.**

### **HEALTH LEGISLATION AMENDMENT BILL 2015**

### **MINING AND PETROLEUM LEGISLATION AMENDMENT (GRANT OF COAL AND PETROLEUM PROSPECTING TITLES) BILL 2015**

### **MINING AND PETROLEUM LEGISLATION AMENDMENT (HARMONISATION) BILL 2015**

**MINING AND PETROLEUM LEGISLATION AMENDMENT (LAND ACCESS ARBITRATION) BILL 2015**

**PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (ENFORCEMENT OF GAS AND  
OTHER PETROLEUM LEGISLATION) BILL 2015**

**WORK HEALTH AND SAFETY (MINES AND PETROLEUM) LEGISLATION AMENDMENT  
(HARMONISATION) 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. Duncan Gay 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.**

**MINING AND PETROLEUM LEGISLATION AMENDMENT (GRANT OF COAL AND PETROLEUM  
PROSPECTING TITLES) BILL 2015**

**MINING AND PETROLEUM LEGISLATION AMENDMENT (HARMONISATION) BILL 2015**

**MINING AND PETROLEUM LEGISLATION AMENDMENT (LAND ACCESS ARBITRATION) BILL 2015**

**PROTECTION OF THE ENVIRONMENT OPERATIONS AMENDMENT (ENFORCEMENT OF GAS AND  
OTHER PETROLEUM LEGISLATION) BILL 2015**

**WORK HEALTH AND SAFETY (MINES AND PETROLEUM) LEGISLATION AMENDMENT  
(HARMONISATION) BILL 2015**

**Second reading**

**Mr SCOT MacDONALD** (Parliamentary Secretary) [3.37 p.m.], on behalf of the Hon. Niall Blair: I move:

That these bills be now read a second time.

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

**Leave not granted.**

For too long, this State has allowed an outdated and inefficient approach to allocating our resources, to compliance and enforcement in the resources industry, and to the industry's interaction with the community. This has directly contributed to the loss of attractiveness of New South Wales as a preferred destination for resources investment, resulting in lost jobs and other associated benefits. It is clear that we need the development of resources to provide jobs in regional areas; royalties to help pay for schools and hospitals for everyone in New South Wales; and secure, affordable energy to grow New South Wales. Most importantly, this outdated regulatory framework has seen a loss of community confidence in

the industry. As opposition to the resources sector has grown, the regulatory regime has become overlapping and complex. These bills are about overhauling the regulatory framework. We are rewriting the regulatory framework for where and how areas for coal and petroleum will be explored safely and competitively and how land access agreements are negotiated.

**The Hon. Mick Veitch:** Point of order: My point of order relates to the noise in the Chamber. As interesting as the speech is, I am unable to hear it because of the noise emanating from the Government benches.

**The DEPUTY-PRESIDENT (The Hon. Trevor Khan):** Order! I remind members, particularly Government members, that they should conduct private conversations outside the Chamber.

**Mr SCOT MacDONALD:** These bills will ensure a fair, transparent and balanced approach to land use. I now seek leave to have the balance of my second reading speech incorporated in *Hansard*.

**Leave granted.**

It is vital that we strike a balance, to move New South Wales into the future and to support regional development, exports and royalties. These bills are built on over two years of evidence-based investigation and analysis and, most importantly, consultation.

In 2013 the Government commissioned the Chief Scientist and Engineer, Professor O'Kane, to undertake an independent review of coal seam gas. Professor O'Kane found that the technical challenges and risks posed by the coal seam gas industry can, in general, be managed. However, she noted that this management needs to occur within a clear, revised legislative framework. The framework needs to be supported by an effective and transparent reporting and compliance regime, and by drawing on appropriate expert advice. The NSW Gas Plan provided a comprehensive response in implementing these recommendations and setting out a path for the safe and sustainable development of an onshore gas industry.

The bills mark a major milestone in delivering the regulatory framework recommended by the Chief Scientist and Engineer. Within just 12 months the Government has implemented 15 of 17 actions committed under the NSW Gas Plan and is well progressed on delivering against the Chief Scientist's recommendations. The bills before the House deliver on core themes in the NSW Gas Plan, notably gas exploration on our terms, and strong and certain regulation. The bills are being introduced together because they deliver an interlinked framework, each element dependent on the others to be effective. The new regulatory framework will take our resources industries responsibly and sustainably into the future. The five bills will implement recommendations from government and independent reviews that involved substantial consultation and opportunities for stakeholder input.

I remind the House of the work that has been done to date. First, the Chief Scientist and Engineer's final report of the Independent Review of Coal Seam Gas Activities in New South Wales drew on information from a large number of experts from around the world and extensive consultation took place with independent academic experts, national and international government agencies, the natural gas industry and service companies, wider industry, landholder groups and the broader community. The independently chaired Coal Exploration Steering Group looked at how best to reduce opportunities and incentives for corruption in the State's management of coal resources in response to recommendations by the Independent Commission Against Corruption [ICAC]. The group undertook targeted workshops and public consultation on a new strategic release framework for coal exploration licences. In 2014 Mr Bret Walker, SC, undertook an examination of the land access arbitration framework. This review involved extensive consultation with landholders and industry.

The bills also support the Improved Management of Exploration Regulation [IMER]. IMER is a complete overhaul of New South Wales exploration regulation, with new streamlined rules across all types of exploration activities. IMER was developed through an extensive industry consultation process. It is now time to consider each of the bills in more detail. I turn, first, to the Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill. The bill resets coal and gas exploration in New South Wales on our terms, in line with the recommendations of the ICAC and the NSW Chief Scientist and Engineer, the Strategic Statement on New South Wales Coal, and the commitments made by the Coal Exploration Steering Group and in the NSW Gas Plan. It will offer greater transparency and restore confidence in the New South Wales coal and gas exploration sectors through the use of strategic release and competitive allocation of exploration licences.

Previously, gas exploration licences were awarded on a first in, first served basis. There was no transparency. Gas licences were handed out with no minimum standards required of applicants, resulting in 60 per cent of the State being covered by coal seam gas licences and applications. This Government has already taken action to reduce that 60 per cent to just 8.5 per cent of the State. This has been achieved through the highly successful petroleum exploration licence [PEL] buyback scheme, resulting in 16 PELs being bought back and cancelled. In addition, legislation made in 2014 saw existing licence applications expunged. This action has allowed us to reset the framework for future gas and coal exploration in New South Wales. We will decide where gas and coal exploration takes place and who may explore there.

We are ensuring that our resources will be managed with strict requirements to meet the highest levels of financial and technical standards, underpinned by highly transparent processes. The bill makes the entire State a controlled release area for coal and petroleum. This means that coal and petroleum companies will not be able to apply for a title without the Government having first decided where and when it wishes to release areas for exploration. The bill includes controls around this process. Ahead of releasing areas for exploration the Government will undertake assessments of environmental, social and economic issues.

The bill also sets out that coal and petroleum prospecting titles must be allocated competitively. For public transparency, the bill requires the gazettal of a notice inviting applications for a released exploration area. Applications following an invitation are subject to the same information requirements as other titles, but the invitation can stipulate additional information. The notice will also set out the competitive selection process to be followed. Price will only be one of the factors considered in this process. Commitment to exploration and work programs will also be a factor, giving the Government the tools to set a fit-for-purpose process for any strategic release.

Both financial and technical capability will be required to be considered, ensuring that only the best operators can obtain exploration licences. To inform any decision to release areas for exploration, an interagency advisory body will be established to provide advice to the Minister. The Advisory Body for Strategic Release will be independently chaired. The advisory body will consider an assessment of likely resources, a preliminary regional issues assessment and stakeholder input to the regional issues assessment. The issues assessment will ensure that social, environmental and economic issues are considered upfront before the Government releases an area for exploration. There will also be a streamlined competitive process for operational allocations. As ICAC recognised, there are limited circumstances where it makes sense for an existing coal operation to be able to acquire an exploration licence for adjacent land. This might be to support existing operations, for an addition to an existing mine, to extend the life of a mine or to develop a better mine design. However, these operational allocations will be capped.

The bill also provides that applications may be refused if there is enough interest from other parties to justify a competitive selection process. Draft operational allocation guidelines that set



out how this limited process will operate in practice have been released for public comment. The possibility for operational allocations only applies to coal. In 2014 the Petroleum (Onshore) Amendment (NSW Gas Plan) Act expunged petroleum exploration licences and special prospecting authority applications. At the time, the Government made a commitment to those applicants who had their applications expunged. This bill confirms that commitment. Those applicants will have the first right to apply where new titles are released in the relevant area.

The bill also makes provision for Crown pre-competitive licences. These licences allow the Government to undertake limited exploration activities to build the Government's geological data and support assessment of future areas for release. The new strategic release framework implements recommendations of the Independent Commission Against Corruption and the Coal Exploration Steering Group that allocation of titles should be transparent and competitive. The bill also implements the New South Wales Government's commitment under the NSW Gas Plan to develop a new strategic release framework for gas, ensuring stakeholder issues are identified upfront in the process. From now on, New South Wales will have strategic, controlled release of areas for coal and petroleum exploration. And we will have a transparent, competitive selection process for exploration titles over new areas for both of these resources. This Government is very clear that the development of the coal and gas industries in New South Wales will, from now on, be on its terms.

The Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015 is aimed at improving the balance between landholders and titleholders for access to land for exploration and production activities. The bill does three main things. It clarifies the rights of landholders, it provides a framework for the fair resolution of land access disputes, and it modernises provisions relating to title boundaries. The Petroleum (Onshore) Act 1991 already provides that exploration titleholders must have an access arrangement in place with landholders before commencing exploration activities. The bill provides that, for the first time, access arrangements must be in place between titleholders and landholders prior to commencement of petroleum production. As part of this, the bill makes it clear that landholders have a right to compensation for production activities, and it will be mandatory for compensation to be negotiated as part of the access arrangement.

The bill provides that separate land access codes may be developed for petroleum exploration and production and minerals exploration. These codes are to provide general guidance as to the process for land access negotiations and conduct while accessing land to undertake activities. These codes may also set out mandatory minimum requirements to be included in land access arrangements, whether privately reached between the parties or arbitrated. These amendments will provide greater clarity to landholders about their rights and responsibilities in relation to petroleum exploration and production. Most land access arrangements at exploration are successfully negotiated between the landholders and titleholders without third party intervention. However, sometimes disputes arise and parties may need assistance to reach an agreement.

The second group of amendments sets out a detailed framework for the fair resolution of land access disputes. In 2014 the Government commissioned Mr Brett Walker, SC, to undertake an independent examination of the land access arbitration framework under the Mining Act and the Petroleum (Onshore) Act. The Government sought recommendations from Mr Walker on the governance arrangements for appointments of arbitrators, best practice arbitration processes, and the roles and responsibilities of the parties to an arbitration. Mr Walker found that the fundamentals for arbitration are sound. However, he said that improvements were needed to address weaknesses relating to transparency, accountability and consistency. Mr Walker made 31 recommendations, which the Government substantially endorsed. Implementation of these recommendations, referred to as the Walker recommendations, is an action under the NSW Gas Plan.

Key amendments to the arbitration framework to implement the Walker recommendations include: an obligation on both parties to negotiate in good faith; establishing a requirement and process for mediation as a first step in resolving land access disputes; providing a framework for payment of costs of dispute resolution; clarifying the definition of significant improvements to assist parties negotiating arrangements; and establishing a more robust and transparent framework for appointing an arbitration panel. Addressing these amendments in more detail, parties are now required to enter into mediation if their own negotiations are unsuccessful. This provides parties with a further opportunity to reach their own settlement before a more determinative process is triggered. They proceed to arbitration only when neither negotiation nor mediation has been successful.

Parties to mediation and arbitration now have an express right to legal representation, and the arbitrator has an express right to undertake a site inspection, either as part of mediation or arbitration. Parties are obliged to act in good faith throughout this process. Landholders' reasonable costs incurred in the negotiation, mediation and arbitration of access arrangements will be met by titleholders. To avoid these costs becoming uncontrollable, they will be capped. Titleholders will also be required to meet the reasonable costs of landholder participation in Land and Environment Court proceedings. Particular attention is to be drawn to the amendments proposed in relation to "significant improvements". Disputes over significant improvements are recognised as one of the reasons that arbitrations over land access occur.

The bill amends the definition of "a significant improvement" in both Acts by replacing the existing, exhaustive list of features with non-prescriptive, non-exhaustive criteria. The legislation builds on the existing right of a party to take a significant improvement matter to the Land and Environment Court for determination. A party can consider whether or not to apply to the court to take the entire access arrangement to the court to be determined if an arrangement has not otherwise been reached. Amendments will be made to the Mining Act to establish a more robust and transparent framework that the Government must follow in its appointment of arbitrators to the arbitration panel. Measures introduced include: the establishment of rigorous selection criteria; the imposition of a limit on a single term of appointment, which will be set at three years; and the disclosure of potential conflicts of interest and bias by panel arbitrators.

The department can also impose requirements for ongoing training for and assessment of panel arbitrators. The Government will also be required to maintain a publicly available register of the details of each member of the arbitration panel. This will build public and stakeholder confidence that the appointment process is fair and at arms-length. It will also ensure that the arbitrators retained on this panel are of the highest calibre. All arbitrated arrangements, whether arbitrated privately or through the arbitration panel, will be published. This will greatly improve public transparency and will promote a greater understanding of, and confidence in the process of reaching an access arrangement and the matters that are negotiated. The improved dispute resolution framework will be supported by arbitration procedures, which will be publicly available.

These amendments are designed to help level the playing field between landholders and titleholders in reaching access arrangements and ensure that parties, particularly landholders, can more confidently participate and engage in the negotiation and arbitration of land access arrangements. The third and final group of reforms introduced by the land access bill includes amendments to bring the provisions relating to gas title boundaries in New South Wales in line with government policy. The bill seeks to rationalise the land under petroleum exploration licence by providing that petroleum exploration licence areas that currently overlap with national parks will be extinguished and decision-makers will have an express power to renew an exploration licence over an area of land that is smaller than the area applied for.

The amendments will clarify that boundaries of titles may be drawn in "free-form" and are not restricted to rectangular blocks. This will provide flexibility for boundaries to be drawn around

natural features in the land, to better reflect the actual area where activities are undertaken. In addition, this clarification ensures that titles that overlay national parks can be redrawn to excise national parks from the title areas. These measures will ensure both that the coverage of gas exploration licences across New South Wales is reduced while key environmental areas remain protected.

The bill also streamlines processes for undertaking seismic exploration activity on public roads. In addition, the bill extends landholder immunity to ensure landholders are not liable for injuries sustained by third parties entering onto land in relation to exploration or production activities under the authority of other legislation. The bill addresses actual and perceived imbalances in power, knowledge and experience between participants in the negotiation of access arrangements. It provides greater guidance around key areas of conflict, facilitating efficient resolution of disputes. It also provides additional protections to landholders in these processes.

In relation to the Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015, the Chief Scientist made an important recommendation in her review, that is, that onshore subsurface resources in New South Wales should be regulated under a single Act. As a first step towards this goal, the Government will today bring the Mining Act and the Petroleum (Onshore) Act into much closer alignment. While the proposed changes are extensive, they will not impose an additional administrative burden on industry. In many cases they will streamline existing administrative arrangements. Importantly, they will provide greater legal certainty around current industry practices. The amendments relate particularly to two important regulatory areas: the administration of titles; and compliance and enforcement. Let us consider first the administration of titles.

The bill sets out consistent requirements for the administration of exploration, assessment and production titles across all resources types. This includes guidance as to the grounds for determination of applications for grant, renewal or transfer of titles. This will ensure that industry and the community are aware of the standards that must be met for an application to be granted. The standards will include the new minimum technical, financial and work program standards and the applicant's compliance history. The bill consolidates powers to impose conditions on titles into one section. The legislation will now list seven categories of conditions. These categories align with the objects of the Act and include protection of the environment, rehabilitation of land and water, ensuring public safety, compliance, administration and community relations. Conditions may be imposed by regulation or on a title instrument.

The bill also provides for codes of practice to be prescribed by regulation and for compliance with such codes to become a condition of every title. There will be a transition period before codes of practice are prescribed in this way. Conditions may be varied during the life of a title, which will support implementation of the Improved Management of Exploration Regulation. To ensure the process is fair, the legislation requires consultation with titleholders before varying conditions. Conditions imposed by regulation can be changed only following a public exhibition and consultation process.

A key amendment is the introduction in the bill of a statutory requirement for a titleholder to obtain an "activity approval" to undertake exploration activities that are not exempt development under the planning framework. This has previously been a condition of exploration licences. However, the bill makes the process of applying for and determining activity approvals more transparent. An activity approval may be subject to its own terms. A breach of an activity approval will be subject to compliance action proportionate to the breach. These amendments will be introduced into both the Mining Act and the Petroleum (Onshore) Act and will establish consistent, clear and transparent requirements for titles applications and assessments.

Currently, the two Acts have considerably different compliance and enforcement powers. The bill

will harmonise these provisions and deliver on the Gas Plan commitment for best practice regulation of the industry. The amendments include penalty infringement notices for a wider range of offences, enhanced direction powers, a new prohibition notice for illegal exploration and mining activities, and the introduction of enforceable undertakings. These changes mean that compliance action can be proportional to the scale of the offence and the circumstances of each case. The new legislative framework will provide industry with incentives to adopt best practices in line with the principles of risk-based regulation.

The Petroleum (Onshore) Act currently has limited inspectors' powers. The inspectors' powers in the Mining Act are modelled on those of the Protection of the Environment Operations Act. The bill therefore provides for these more robust powers to be included in the Petroleum (Onshore) Act, so aligning the two Acts. With these new powers, inspectors working under either Act will be able to use the new information-sharing provisions to gather sufficient information from other agencies to support compliance action. A further amendment will enable this Government to support, through legislation, another commitment under the Gas Plan: provisions to facilitate the establishment of a Community Benefits Fund framework.

We recognise that communities can be impacted by gas development, often beyond the impact of the development site itself. Communities who host gas exploration and production should also enjoy benefits in line with the economic contribution the project will make to the State. Fund contributions will come from both gas companies and this Government. It will provide for local projects in communities where gas exploration and production occur. The legislation will facilitate establishment of the Community Benefits Fund framework, and the details will be spelled out in the Petroleum (Onshore) Regulation. The legislation will also include a regulation-making power to provide for beneficial use of gas extracted during exploration activities. This will be strictly limited and will ensure precious resources are not wasted through flaring.

Continuing with the theme of harmonisation, I turn now to the fourth bill: the Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill 2015. The petroleum sector is currently subject to the broad requirements of the Work Health and Safety Act 2011. Specific petroleum safety regulation relies on the 1992 schedule of Onshore Petroleum Exploration and Production Safety Requirements. The schedule is dated and does not include the framework of broader duties and proactive regulatory oversight of the Work Health and Safety (Mines) Act framework. Today we align regulation of safety for the petroleum industry in New South Wales with the work health and safety framework that already applies across the rest of the resources sector. Accordingly, the Work Health and Safety (Mines) Act 2013 will become the Work Health and Safety (Mines and Petroleum) Act.

The Work Health and Safety (Mines) Act 2013 provides a robust framework for mine safety. It is based on a modern risk-based and outcomes-focused regulatory system. This modern approach has reduced both red tape and the regulatory burden on the industry. The bill extends this framework to the onshore petroleum industry. In doing so, it raises the standards of work health and safety for onshore petroleum operations to be consistent with the minerals sector. Crucially, it makes provision for risk controls for the specific risks of the petroleum industry. As well, the bill makes other amendments to ensure that the Work Health and Safety (Mines) Act operates as intended.

Importantly, the bill completes the harmonisation of the work health and safety legislative framework for the resources sector. The bill clarifies the places and activities to which the Work Health and Safety (Mines) Act applies or does not apply for petroleum sites and operations. The bill also addresses activities carried out at a site adjoining a mine or petroleum site or at a site in the vicinity. It ensures that these activities will be covered by the legislation only when they are carried out in connection with mining or petroleum activities at the mine or petroleum site. Currently, regulation of petroleum work health and safety is targeted at the petroleum titleholder.

This ignores the fact that petroleum sites are typically managed and controlled by other entities. From now, the duties framework will also apply to the petroleum operator, workers, contractors and occupiers of work premises.

The Work Health and Safety (Mines) Act imposes a duty to give notice to the regulator of notifiable incidents. This duty is to be extended to petroleum operations. Further amendments will also make quite clear when a person is required to give written notice of a notifiable incident. Further amendments include petroleum in the boards of inquiry of all matters that may affect work health and safety. The provisions in the Work Health and Safety (Mines) Act on statutory bodies will be extended to ensure that relevant and appropriate statutory bodies apply to petroleum—for example, the Mining Competence Board.

I referred earlier to amendments to clarify provisions relating to the definition of "regulator". The first of these will ensure that the Department of Industry, SafeWork NSW and those appointed under the Work Health and Safety (Mines) Act and the Work Health and Safety Act 2011 all have jurisdiction in any workplace in New South Wales. This change will negate any potential challenges on technical grounds to the jurisdiction of the Department of Industry and SafeWork NSW in regulating work health and safety.

The second amendment in this group clarifies the activities and places to which the Work Health and Safety (Mines) Act applies. A definition of "local site" will identify those places that are applicable and within the jurisdiction of the Work Health and Safety (Mines) Act. As well, the definition of mining and petroleum operations and activities will include activities connected to mining, activities prescribed by regulation, or activities specified by the responsible Minister. All government officials appointed under the Work Health and Safety (Mines and Petroleum) Act will have the power to reopen or release a preserved incident site. Currently, only an inspector can do so. The amendment will enable other appropriate officials to release a preserved site and reduce any unnecessary regulatory burden.

"Incident site" has also been defined to remove any ambiguity as these provisions will apply to petroleum sites as well as mines. The bill also provides for the regulator to appoint a consultant employed by a public authority—not just an officer or an employee—as a government official. This appointment might be to the position of inspector, mine safety officer or investigator. The provision will allow for a person with particular expertise to be employed for a specific purpose, and potentially for a specified amount of time.

It is a proud moment to be able to complete the health and safety regulatory framework for all New South Wales onshore resources industries. The amendments in the Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill will harmonise the regulatory approach to safety across all our resources sectors. The bill will further ensure that the safety legislation operates as intended and will contribute greatly to the protection of the health and safety of people working in the industry.

Lastly, I turn to the Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015. This bill makes it clear that this Government will ensure that there is effective and transparent regulatory oversight of gas activities across New South Wales. The NSW Gas Plan accepted all 16 recommendations of the Chief Scientist and Engineer. A key feature of the NSW Gas Plan was to announce the NSW Environment Protection Authority [EPA] as the lead regulator for compliance and enforcement of all gas exploration and production activities in the State.

All gas activities are currently subject to environment protection licences issued by the EPA, which impose strict site-specific controls that are legally enforceable. This bill provides additional statutory powers for the EPA to undertake compliance with and enforcement of all conditions of

consent, except with respect to work health and safety. This includes all approvals issued by other agencies to the gas industry. The report of the Chief Scientist and Engineer is clear that the risks of gas development can be managed effectively with the right regulation and through the separation of the process for allocation of rights from the regulation of the activities undertaken, and that a single independent regulator should undertake that role.

On 1 July 2015 the EPA became responsible for compliance and enforcement of all conditions of approvals for gas activities in New South Wales, excluding work health and safety issues. These conditions form the strict controls with which industry must comply. Currently, to undertake its expanded role the EPA is operating under delegations and authorisations provided by the other relevant agencies. The EPA is also working closely with these consent authorities to regulate all gas activities. However, in order to fully empower the EPA in its new role, statutory provisions must be provided. Therefore, this bill is an important amendment to the Protection of the Environment Operations [POEO] Act that will provide the EPA as the lead regulator of gas activities with appropriate statutory powers to effectively regulate those activities.

The bill will provide a clear and transparent framework for all stakeholders. Having the EPA lead compliance with and enforcement of gas activities in New South Wales provides individuals and communities with one place to go to report potential pollution incidents and breaches of title, regulations or law. As lead regulator, the EPA will lead all communications on regulatory action in relation to a gas activity, including investigations, findings and regulatory outcomes. For any non-work health and safety issues, the EPA will make an independent determination of the appropriate regulatory response for any noncompliance, ensuring a streamlined and consistent approach to regulating gas activities. Having the EPA make an independent regulatory decision delivers another of the recommendations of the NSW Chief Scientist and Engineer by separating the approval authority from the regulatory authority. The bill will, however, allow the EPA to seamlessly undertake regulatory actions for enforcement and compliance under other gas-related legislation. This will provide greater regulatory clarity for industry and the community, consistent with the NSW Gas Plan.

The bill allows the EPA to exercise the powers outlined in chapter 7 of the Protection of the Environment Operations Act. These powers allow the EPA to conduct investigations and apply relevant provisions to the broader petroleum industry. The bill extends the EPA's existing powers to cover compliance and enforcement of petroleum activities that are broader than the EPA's traditional environmental focus. No new powers are proposed. Chapter 7 investigation powers are a well understood framework currently used by the EPA for investigating Protection of the Environment Operations Act related matters. Applying these powers to all gas activities is a sensible and practical approach for the effective regulation of the gas extraction industry.

Continuing with the seamless regulation of gas activities, the bill also includes a provision that applies part 8.2 of the Protection of the Environment Operations Act, which deals with proceedings for offences and penalty notices, to petroleum offences. The bill also applies part 8.3 of the Protection of the Environment Operations Act, which deals with court orders in connection with offences, to petroleum offences. Essentially, this regime allows the EPA to commence proceedings for petroleum offences under the Protection of the Environment Operations Act, as well as allowing the EPA to issue penalty notices. However, the amount of any penalty notice is set by the parent legislation and is not set by this bill. The bill does not change the existing penalty amounts in the Protection of the Environment Operations Act or other Acts. Applying a well-established legislative framework will allow the EPA to continue to undertake high-quality compliance and enforcement activities in a seamless and efficient manner.

The bill also extends the use of enforceable undertakings as a regulatory tool for the regulation of all gas activities. When a breach of the Act occurs, a number of options are available to the EPA, including prosecution, penalty notices and formal warnings. Another option is an enforceable

undertaking, which provides a flexible administrative action where there has been a serious breach of legislation. Under the Protection of the Environment Operations Act, the EPA is able to accept a written undertaking by a company or individual to take action to deal with an actual or potential breach. The EPA's ability to accept enforceable undertakings enhances its enforcement capability for achieving environmental improvements, which are enforceable through the NSW Land and Environment Court. The EPA may also accept an undertaking to carry out a restorative justice activity in a community. This amendment will therefore allow the EPA to have a civil action tool option available when regulating gas activities.

The bill also extends other provisions of the Protection of the Environment Operations Act to encompass the gas industry. The provisions include: the use of environment protection notices under chapter 4 of the Protection of the Environment Operations Act; the use of mandatory environmental audit powers under chapter 6 of the Protection of the Environment Operations Act where the EPA reasonably suspects a petroleum offence has been committed and that the offence has caused, is causing or is likely to cause harm to the environment—or where the EPA reasonably suspects a petroleum activity is not being carried out in accordance with good environmental and engineering practice and any applicable work program to which it is subject—appeal rights that will be available to proponents aggrieved by any decision consistent with current appeal processes; and the use of voluntary audit provisions under chapter 6 of the Protection of the Environment Operations Act for a company that wishes to undertake a voluntary audit in order to assess in detail a particular aspect of its operation.

This bill applies to pre-existing petroleum authorities—that is, those issued prior to 1 July 2015. This allows for any existing conditions in force prior to 1 July 2015 to be regulated effectively by the EPA and delivers the Government's commitment to establish a single lead regulator. This ensures that companies and the community have a one-stop shop in relation to compliance and enforcement matters for the gas industry. The EPA is leading the development of a compliance statement that will set out how the new regulatory framework is to be implemented. The compliance statement will sit with the memorandum of understanding that stipulates how government agencies will work together in this regard, and the EPA's Compliance Policy and Prosecution Guidelines.

The Government recognises that there are currently inconsistencies between conditions in existing petroleum authorities, and a review will be commenced to resolve this issue so that both the industry and the community can have clarity and confidence in the relationship between the activity approval and the regulatory controls that are in place. This bill also facilitates the exchange of information between the agencies for the administration of gas approvals. It reiterates the process and importance of government agencies working collaboratively, ensuring relevant information is shared amongst agencies and inter-government assistance is provided where appropriate.

By way of conclusion, this bill is an important amendment that confirms and enables the EPA's role as lead regulator for all gas activities across New South Wales. The EPA is already the primary environmental regulator for New South Wales, protecting the environment by regulating activities that could have an impact on the health of the New South Wales environment and its people. The EPA is an accountable, modern and credible regulator with powers under the POEO Act that are well established, clear and transparent. By applying the POEO Act powers to all relevant gas-related legislation, it will allow the EPA to continue to function as a credible regulator and ensure proper regulation of the gas industry.

In conclusion, the five bills introduced today mark a major shift in the regulation of the resources industry in New South Wales. It is a shift towards a consistent framework across resources. It is a shift towards certainty, clarity and transparency. And it is a shift towards balancing the rights and obligations of all partners in the development of New South Wales resources, including

landholders, the community, the industry and government. These five bills work together to set out a new framework for operating in New South Wales, from the strategic assessment and allocation of areas for exploration through to fair negotiations with landholders and ensuring compliance with higher operating standards.

These bills are the culmination of intense efforts by this Government to deliver on its commitments to the people of New South Wales. In less than a year since the NSW Gas Plan was released we have delivered on 15 of our 17 commitments. We have fully delivered on our commitments to implement the legislative reform aspects of the Walker report. We have made substantial progress in implementing our commitments on the report of the Chief Scientist and Engineer. We have delivered our commitments in relation to the Independent Commission Against Corruption report. These bills will place New South Wales at the forefront of the regulation of resources development, encouraging a sustainable industry that will deliver secure, affordable energy for households and industries across the State. I commend the bills to the House.

**The Hon. ADAM SEARLE** (Leader of the Opposition) [3.40 p.m.]: I lead for the Opposition on the Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015, the Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015, the Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015, the Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill 2015 and the Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015. I state at the outset that the Opposition will not be opposing the bills but we will be proposing constructive improvements.

This package of five bills contains what can fairly be described as significant changes to the law and the administration of the mining and petroleum industries of this State. This package will significantly overhaul the laws that regulate mining and exploration licences, the assessment of mining leases, workplace health and safety regulation, and the enforcement of land access arbitration in the mining of petroleum industries. It will legislate to make the environmental protection authority responsible for investigating and instituting proceedings for petroleum offences and other offences under other environmental legislation as a step towards making the NSW Environment Protection Authority [EPA] the single regulator for all environmental offences in this State.

The Government will no doubt claim that the bills taken together implement the recommendations made by the Chief Scientist and Engineer in her September 2014 report titled "Final Report of the Independent Review of Coal Seam Gas Activities in NSW". The legislation in relation to the granting of coal and prospecting titles and the harmonisation provisions modernises and updates many of the provisions that deal with the allocation and administration of various titles. Indeed, it ensures a consistent approach across the resources sector so that petroleum is essentially brought into the same regulatory regime. It also implements a range of other new measures and brings the petroleum sector under the same occupational health and safety regime as currently applies in the minerals and other resources sector. The enforcement bill provides for the EPA to take on more directly the regulatory functions it now performs under delegations.

The Chief Scientist and Engineer made 16 recommendations in her September 2014 report, and 12 or 13 of those recommendations were of such a nature as to be appropriate to be implemented through legislation. What is notable about the legislative package before the House is not only its content but also, more notably, what it lacks. No action has been taken on 10 of the 13 recommendations made by the Chief Scientist and Engineer which we think, for more abundant caution and safety, need legislative underpinning in order to make effective any administrative action that is taken. I will now briefly enumerate those recommendations where, as we see it, there has been no action. Recommendation 4 states:



That the full cost of Government of the regulation and support of the CSG industry be covered by the fees, levies, royalties and taxes paid by industry, and an annual statement be made by Government on this matter as part of the Budget process.

No doubt the Government will say that a lot of this can be done administratively, but it is quite complex and we contend it needs some legislative underpinning. Recommendation 5 states:

That Government use its planning powers and capability to designate those areas of the State in which CSG activity is permitted to occur ...

Turning that on its head, it also calls on the Government to work out where there should never be coal seam gas [CSG] activity. This goes beyond whether or not the Government should simply rely upon its planning powers. We contend that even with the use of planning powers there needs to be legislative underpinning. No such action has been taken in this legislation. Recommendation 8 states that the Government move towards a target and outcome-focused regulatory system together with a number of features, two of which I will mention:

- regularly reviewed environmental impact and safety targets optimised to encourage the uptake of new technologies and innovation
- ...
- automatic monitoring processes that can provide data (sent to and held in the openly accessible Whole-of-Environment Data Repository) which will help detect cumulative impacts at project, regional and sedimentary basin scales, which can be used to inform the targets and the planning process.

Recommendation 9 states:

That Government consider a robust and comprehensive policy of appropriate insurance and environmental risk coverage of the CSG industry to ensure financial protection short and long term.

That has not been provided for in this legislation. I would be interested to know if the Government is taking administrative action to implement this recommendation. Recommendation 10 states:

That Government commission the design and establishment of a Whole-of-Environment Data Repository for all State environment data including all data collected according to legislative and regulatory requirements associated with water management, gas extraction, mining, manufacturing, and chemical processing activities.

That has not been provided for in this legislation. Recommendation 11 states:

That Government develop a centralised Risk Management and Prediction Tool for extractive industries in NSW.

I will not enumerate the lengthy detail contained in that recommendation. Again, this has not been touched on. Recommendation 12 states:

That Government establish a standing expert advisory body on CSG (possibly extended to all the extractive industries). This body should comprise experts from relevant disciplines, particularly ICT and the earth and environmental sciences and engineering, but drawing as needed on expertise from the biological sciences, medicine and the social sciences.

That is not provided for in this legislation. No doubt the Government could establish this by administrative action. But considering that the Chief Scientist and Engineer said it should be the function of this body, we think it needs legislative underpinning. Recommendation 13 lists five parallel but interacting supplementary actions to support the others I have dealt with. That has not been dealt with in the legislation. Recommendation 14 states:

That Government ensure that all CSG industry personnel, including subcontractors working in operational roles, be subject to ongoing mandatory training and certification requirements. Similarly, public sector staff working in compliance, inspections and audits should be given suitable training and, where appropriate, accreditation.

That has not been touched on in the legislation. Importantly, recommendation 15 states:

That Government develop a plan to manage legacy matters associated with CSG. This would need to cover abandoned wells, past incomplete compliance checking, and the collection of data that was not yet supplied as required under licences and regulations.

The Chief Scientist made it very clear that there needed to be a formal mechanism to undertake this work. Again, that has not been touched on in the legislation. As I said, 10 of the 13 matters for which provision could reasonably be expected to be made under law are not addressed, touched on or even mentioned in passing in this package. The Opposition thinks that is a significant missed opportunity. The Opposition will be moving amendments to address those shortcomings in the legislation. The proposed amendments will cover at least eight of the matters that I have mentioned. There are some matters for which the Opposition has not had time to prepare amendments, but the proposed amendments will comprehensively provide a framework for and address those matters where the Government has been found to be asleep at the wheel in preparing this package for Parliament.

I turn now to each of the bills. The Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015 establishes and mandates, with some exceptions, a new competitive selection system for the granting of an exploration licence or an assessment licence in relation to controlled release areas under the Mining Act 1992 or an exploration licence, assessment lease, production lease or special prospecting authority under the Petroleum (Onshore) Act 1991. The bill provides that applications will only be able to be made by a competitive selection process provided for in schedule 1A, which is to be inserted in each of the Mining Act 1992 and the Petroleum (Onshore) Act 1991, or by the existing holder of a mining licence over land in the same area and in relation to the same mineral or by the existing holder of an exploration licence over the land concerned in relation to petroleum matters.

As the Minister noted in his second reading speech—and I am sure it was also noted in the Parliamentary Secretary's speech—the Independent Commission Against Corruption has recognised that there are limited circumstances where it makes sense for an existing coal operation to be able to acquire an exploration licence for adjacent land. For example, that could be to support existing operations, to add to an existing mine or to extend the life of the mine. The Minister gave other examples as well, so the legislation is not limited to those matters. The legislation will permit the Minister to constitute a controlled release area for specified minerals under the Mining Act 1992. It constitutes the entire State as a controlled release area for coal under proposed section 368A. The Minister, in his second reading speech, in one of those fits of enthusiasm which sometimes possess people in public life, said:

The bill makes the entire State a controlled release area for coal and petroleum.

Proposed section 368A, on page 6 of the bill, in fact makes the whole State a controlled release area for coal, but schedule 2, which provides for amendments to the Petroleum (Onshore) Act 1991, does not do any such thing for petroleum. I thank Minister Roberts and his staff for briefings extended to the Opposition. I thank also the staff of Minister Speakman, who provided briefings for the Opposition as

requested. As I understand it, the view taken is that there is no need, by this legislative package, to make the whole State a controlled release area for petroleum because that is already achieved by other means. The importance of this mechanism is as follows. The Minister said that using the device of controlled release areas "means that coal and petroleum companies will not be able to apply for a title without the Government having first decided where and when it wishes to release areas for exploration". I can see how that is achieved for coal, but this legislation does not do that for petroleum.

Those matters may be attended to by other legislative instruments, but that has not been spelt out by the Minister or the Parliamentary Secretary in any contribution to this package. I call upon the Parliamentary Secretary in his speech in reply to enumerate with great clarity how the controlled release area function for petroleum is already in place. If it is not, it is an omission in this package. In any case, the amendments that will be moved by the Opposition will deal in other ways with the issue of coal seam and other unconventional gas licences and operations. The Opposition will move a suite of amendments that will address not only the shortcomings of this package of bills in implementing the recommendations of the Chief Scientist and Engineer but also what the Opposition has been campaigning for on the issue of coal seam gas on a fairly comprehensive basis.

The legislation also removes the existing prohibition on the granting of an assessment lease over land that is the subject of a prior application for an exploration licence or assessment lease. In the context of a competitive selection application for the grant of an assessment lease, it removes the requirement for the Minister to notify affected government agencies of a proposal to grant an assessment lease and to resolve any objections to such an application. The policy rationale for removing from the Minister this obligation was also not addressed in the second reading speech. I look forward to the Parliamentary Secretary's comprehensive address on that subject. So that members of the Government are not unduly alarmed, I indicate that the Opposition will move an amendment to address that shortcoming in the bill. The Government need not worry. If the Government follows the Opposition's lead, all will be well.

**Mr Scot MacDonald:** Always happy to help.

**The Hon. ADAM SEARLE:** I acknowledge that interjection. The Opposition is engaging with the subject matter of this package in a constructive way, accepting what the Government has proposed and trying to improve on certain areas. Because the whole State will be a controlled release area for coal, the Government says it will have to decide what areas should and should not be the subject of exploration before coal companies are able to apply for a title through the controlled release area mechanism. The Government says this will also be the case for petroleum gas. No doubt the Government will say that this does in fact implement recommendation 5 of the report by the Chief Scientist and Engineer. The Opposition does not think there is anything in this package that prevents the Government from repeating the mistakes of the past regarding the issuing of exploration licences for coal seam gas.

The Government says it will have a strategic land use framework, but that does not guarantee that errors will not be made. The Opposition will propose as amendments to this legislation essentially what is included in the Coal Seam Gas and Other Unconventional Gas Moratorium Bill 2015, a private member's bill that has already had a second reading in this place. The bill, in proposed section 13D, allows the Government to undertake limited exploration activities. This is said to support the Government's strategic release framework as provided for in its NSW Gas Plan.

I move now to the Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015. No doubt the Government says that this is its first step towards implementing recommendation 6 of the report of the Chief Scientist and Engineer, which is to have a single Act for all onshore sub-surface resources, excluding water. The many changes contained in this bill are designed to bring the Mining Act 1992 and the Petroleum (Onshore) Act 1991 into greater consistency with each other, to modernise and update the provisions dealing with mining and resources and to extend those to the petroleum sector, to streamline existing arrangements, and to provide greater clarity on current industry practices.

The bill sets out consistent requirements for the administration of exploration assessment and production titles across all types of resources and provides for codes of practice to be set by regulation and for compliance with them to be conditions of each title. These are good steps. The bill will also make consistent the compliance and enforcement functions under the Mining Act 1992 and the Petroleum (Onshore) Act 1991, including around penalty infringement notices, increased direction powers for inspectors, a new prohibition notice for illegal exploration and mining activities, and the innovation of enforceable undertakings, which the Opposition thinks is a very good step.

The bill brings the power of departmental inspectors under the Mining Act 1992 into the petroleum legislation, where the current powers of inspectors are weaker or, to take another view, simply more limited. Inspectors working under either Act will now have consistent powers and will be able to share information and take whatever compliance action is necessary. The bill also makes provision for the community benefits framework recommended by the Chief Scientist and Engineer in the third dot point of recommendation three, which will be established by regulation to permit infrastructure and repairs to be funded by industry levies. I understand that consultation around the content of that regulation is currently underway and I am looking forward to seeing some more detail.

One potential area of concern in the limited feedback that the Opposition has received to date is that the level of penalties for breaching mining and petroleum legislation may not be consistent with the recently increased penalties enacted by Parliament in 2014 for the Contaminated Land Management Act and the Protection of the Environment Operations Act. In relation to the offences provided for in the harmonisation bill, I do not believe it is a correct analysis. For example, page 63, division 6, proposed section 104O, and later provisions such as the whole of part 13A, "Offences, enforcement and undertakings about contraventions" and an earlier provision found on page 22, part 17A, "Offences, enforcement and undertakings about contraventions". As I understand it, they seem to be consistent with that updated legislation.

I understand that the infringement notices under the petroleum legislation do have significantly lower penalties than for other environmental offences, but I also note that under the Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015, as part of making the Environment Protection Authority [EPA] the lead regulator and giving it greater enforcement functions directly conferred by legislation, EPA officials will be able to not only use in relation to the petroleum sector those infringement notices specifically related to the petroleum legislation but will be able to use the infringement notices under other environmental laws where appropriate; so they will not be bound simply to use the petroleum legislation mechanisms. Whether that proves to be the case legally and whether as a matter of practice that is what the officials of the Environment Protection Authority actually do, only time will tell. We will give the Government the benefit of the doubt and hope that things work out here as intended, but we serve notice that should it not be the case, we will return to this issue.

I turn now to the Mining and Petroleum Legislation (Land Access Arbitration) Bill 2015, which is no doubt designed to implement the first dot point in the chief scientist's recommendation three and a recommendation of Mr Bret Walker, SC, in 2014 to improve the balance of power between landowners and title holders in the industry. The legislation clarifies the rights of land holders, provides for a dispute resolution framework including further regulation of arbitration panel members and processes, and updates provisions regarding the boundaries of titles. The bill will make clear that land holders have a right to compensation for production activities that take place on their land and, as I understand the legislation, compensation will be mandatory as part of any land access arrangements. Separate land access codes may be developed for petroleum exploration and production separately.

Bret Walker, SC, made 31 recommendations about dispute resolution and, as I understand it, the bill implements in law those aspects of his recommendations that require legislative imprimatur. The bill places good faith negotiation obligations on all parties, provides a framework for the payment of the costs of disputes resolution and introduces new provisions around the appointment of an arbitration panel.

Parties have an express right to legal representation for mediation and arbitration. Reasonable costs incurred by landowners in disputes will be paid for by industry but will be capped by regulation. No doubt there will be some frenzied consultation by industry and other stakeholders around what those reasonable costs levels should be. Under this bill, the reasonable costs of land holders for Land and Environment Court proceedings will also be met by industry, but will be similarly capped.

The bill contains provisions relating to training assessment and the appointment and tenure of arbitrators, including a public register of the details of each member of the arbitration panel, and all arbitrated arrangements will be published. That is no doubt intended to give greater transparency and, therefore, greater public confidence in this process. These matters are consistent with Labor policy pronouncements made in this area by the Leader of the Opposition, Mr Luke Foley, MP, when he was the environment shadow Minister.

The Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill 2015 extends to the whole of the resources sector—now including the petroleum industry—the provisions of the Work Health and Safety (Mines) Act 2013. Currently, the provisions of the Work Health and Safety Act 2011 apply to the petroleum sector and, as the Minister noted, the 1992 Schedule of Onshore Petroleum Exploration and Production Safety Requirements specifically governs the sector, although the provisions now are somewhat dated and limited. The framework of broader duties and regulatory oversight for resources, provided for in the Work Health and Safety (Mines) Act, will be extended to the petroleum sector and the legislation will be renamed the Work Health and Safety (Mines and Petroleum) Act.

The intention is to raise the standard of safety for onshore petroleum operations and make them consistent with those in place for mining and to make particular provision for the risks attendant in the petroleum industry also. For example, currently, the safety duties rest on title holders, but, consistent with the rest of work safety law and practice, these obligations and duties will now be extended, as is common with the rest of occupational health and safety law, to site operators, contractors, occupiers and controllers of work premises, and employees. It certainly fills out significantly and extends the occupational health and safety duties more generally across the industry and we welcome these developments.

Finally, the Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015 is said to implement, in part, recommendation seven of the chief scientist that the allocation of rights to exploit subsurface resources should be separate from the regulation of the activities under those exploitation rights, and that a single independent regulator should be established. The Government has stated that the Environment Protection Authority will become the lead regulator in the area. From 1 July 2015 the EPA became responsible for compliance and enforcement of all conditions of approval for gas activities in New South Wales, excluding work health and safety. Currently, it operates under delegations made by other agencies under other laws. This bill directly gives those functions to the Environment Protection Authority. The EPA will be able to exercise the powers provided in the Protection of the Environment Operations Act to matters arising in the petroleum sector.

As I indicated, the Opposition does not oppose these measures—we welcome them. They are a significant improvement on the existing law. We welcome them to the extent that they are a step, albeit a small one, towards implementation of the report and recommendations of the chief scientist in her September 2014 report. But, as I have indicated, this package falls well short of what might have been expected in that space, considering the great deal of public attention and importance that have rested on that matter. More fundamentally, looking at the five bills together, they run to about 164 pages and their significance is probably greater than the number of pages. This is probably the most significant reform package that this Government will undertake in the resources sector in this term of office, but we believe it should be done more comprehensively.

I note that the Government has consulted with the relevant stakeholders, as has the Opposition, including the Construction, Forestry, Mining and Energy Union Mining Division, but I also note that, for example, the Minerals Council has significant concerns about aspects of the legislation, no doubt representing concerns expressed by its members. One area—and I think this matter was specifically adverted to by the Minister in his second reading speech in the other place and the Parliamentary Secretary in the speech incorporated in *Hansard* here—is that there is no increased regulatory burden for industry. I do not think industry would necessarily agree with that given some of the feedback received by the Opposition. It is a matter for the Government whether or not it wants to address any of the concerns raised with it but they will not be the subject of Opposition amendments. Our amendments relate to recommendations by the Chief Scientist and Engineer around coal seam and other unconventional gas.

The Opposition also proposes an amendment around the competitive selection process removing the obligation on the Minister to notify relevant government agencies and to resolve any objections. There is also some concern about the enforcement bill in that the power of the Environment Protection Authority to enforce matters rests on the definition of a petroleum authority, which is provided for on page 3. It sets out a number of things that make up a petroleum authority but does not include approvals under part 5 of the Environmental Planning and Assessment Act 1979. The Opposition's amendment seeks to address that aspect.

Finally, there are concerns around third party enforcement rights in environmental matters more generally to which this Government has shown itself to be antithetical. Our amendments seek to address some of those concerns, albeit in a way that focuses on the resources sector. With those closing comments I indicate that the Opposition cautiously welcomes the content of these bills. They are an improvement on the current legislation. It is appropriate for the whole of the resources sector to be regulated in a manner that is consistent and more desirably under the same framework. Although at the end of the process of this set of bills there will still be separate legislation, the Government has indicated that this is the first step towards a single legislative instrument to regulate extractive industries consistent with the recommendations of the chief scientist. A lot more work will need to be done to achieve that ultimate objective.

**Mr JEREMY BUCKINGHAM** [4.13 p.m.]: I contribute on behalf of The Greens to the debate on the Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015, the Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015, the Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015, the Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015 and the Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill 2015. I cannot concur with the Hon. Adam Searle in welcoming these bills.

The Greens and so many people in New South Wales would be appalled at the manner in which this legislation has been brought before this House of review. Just last Thursday the bills were introduced, incredibly significant bills to millions of people in New South Wales involving some of our biggest industries. The community is up in arms about the administration and operation of mining and gas in this State yet these bills are being rammed through both Houses of Parliament with no opportunity for consultation with the community, lawyers or industry—people who will be living under this new regime.

Some may say this is an improvement on the legislation in this State. That may well be the case in certain areas. It may be an improvement in a particular direction but if on that pathway we are pursuing more fossil fuels in an age of climate change, then this is just a slightly less rocky road on the way to climate oblivion. It is outrageous in 2015, just weeks away from a global conference on climate change, for the State Government to be mapping out a pathway to more fossil fuels—more coal and more gas—in an age when our climate is in crisis and the community is overwhelmingly saying no to fossil fuels. The Greens join with them. We do not believe this is the proper way to deal with the climate crisis. We do not have what the Government promised; complete reform of this space. Instead we have more bandages on a mummy, a legislation zombie staggering around the community.

**The Hon. Dr Peter Phelps:** You can't mix up zombies and mummies; they are two different horror genres.

**Mr JEREMY BUCKINGHAM:** It is rotten at its core; it is dead at its core and these bills just put more bandages on legislation that has been abysmally handled. In fact, the Government, the Opposition, The Greens and the community are fatigued. It is a death march on the road to reform. The Government is just tinkering at the edges. The legislation is still a smoking, decrepit jalopy that ultimately must be put out to pasture, and it will be. We will revisit all this because clearly one cannot have hundreds of pages of laws brought before this House with no proper opportunity for the community, the lawyers, EDO NSW, the Land and Environment Court, people living under the regimes and people facing arbitration to ask: Will this work? It is an absolute disgrace that the Government has rammed this through without giving those good people the opportunity to make a contribution.

These cognate bills are a step in a certain direction—towards more fossil fuels, more coal and more gas—but once again the Government has failed to put in place the reforms needed to end the conflict over land use in New South Wales. The Coalition came into government promising to restore balance and end the conflict between mining, coal seam gas and the agricultural sector, but at every point they have fallen short of delivering. The Strategic Regional Land Use Policy mapped prime agricultural land and identified two critical industry clusters but then created a gateway process with no gate. The gateway panel must provide either an approval or a conditional approval, so we see mines like the Shenhua Watermark mine, an absolute abomination in the heart of our best agricultural country, being approved.

The aquifer inference regulation was watered down to a mere policy that has little impact on the assessment process for mining and gas. Government members used to crow about those two reforms but we never hear a word about them anymore because they are in the failed basket. In the meantime the chief scientist investigated and reported on coal seam gas, including recommendation No. 5, which states:

That government uses its planning powers and capability to designate those areas of the State in which CSG activity is permitted to occur, drawing on appropriate external expertise as necessary.

In other words, it should give some certainty to the community by stating exactly where mining and gas can and cannot occur. Clearly under these bills the entire State is open for business to coal and gas. The Planning Assessment Commission recommended similarly in its report on the Shenhua Watermark coalmine and stated:

The Commission considers it will be important for the Government to undertake some more detailed work to identify and protect those highly valuable, fertile black soils where mining should be prohibited, as ongoing uncertainty for the surrounding community does impact on its ability to plan and invest for the future.

We have seen more jobs destroyed by gas in Queensland than have been created. The Planning and Assessment Commission has said there should be areas that are no-go zones yet the Government, in its ideological pursuit of fossil fuels, has failed to act. Once again we have legislation that tweets here and there but fails to put in place no-go areas for mining and gas. The Government has put out its Strategic Release Framework for Coal and Petroleum Exploration for consultation, but again the parameters are vague. Again, the whole of New South Wales is open for mining and gas.

The Government should introduce legislation that explicitly protects certain lands and water resources in New South Wales from mining and gas extraction. Publicly it seems all sides of politics say an area such as the Northern Rivers should be gas-field free. The Greens have introduced bills to protect this area by law as has the Labor Party but the Government has nothing in this legislation to do this,

despite spending millions in taxpayers' money to buy back inconvenient exploration licences from coal seam gas companies. The Government announced the buyback of petroleum exploration licence [PEL] 445, but what about Metgasco? The Minister will never live down the absolute debacle by the Government. He sold the community up the river in the way he mishandled the cancellation of the drilling authority and then the negotiations around compensation, which the courts have borne out.

Former Premier Barry O'Farrell promised to protect water catchments from mining and gas exploration—no ifs, no buts, a guarantee. Yet there is no legislation to make this happen. Just about everyone expressed concern about the impact of mining on the highly fertile Liverpool Plains region, but there is nothing in this legislation to protect our food bowl. The truth is we are at a point with climate change that we cannot continue to dig up fossil fuels and burn them. We certainly should not be issuing new exploration licences for fossil fuels. To do so would be negligent. A serious response to climate change requires 95 per cent of Australia's fossil fuels to remain in the ground.

To issue a strategic release framework and to introduce the Mining Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015 fools no one. We have known for the past 50 or 60 years where every single kilogram of coal is in this State. It is one of the most heavily explored States and regions in the world for coal and gas. There are no parts of this State where a huge el dorado of coal is waiting to be opened up because we know the coal is in the Illawarra, the Hunter, the Gunnedah Basin and the Clarence Moreton Basin, and the titles are tightly held. The Greens do not believe there is any more coal and gas to open up so this legislation has no relevance whatsoever.

So while The Greens welcome some of the anti-corruption measures being implemented in this legislation, and while we welcome some of the incremental reforms to land access arbitration, really there should be a moratorium on issuing any new coal exploration licences or coal seam gas licences. There are already more than enough exploration licences out there. There are more than enough coalmines to overheat the climate. As a society and as a responsible species, we must phase out fossil fuels and transition to clean renewable energy technologies. The big bet on exporting liquefied natural gas [LNG] from coal seam gas has turned sour with a global oversupply and a low oil price.

For the first six months of 2015 Japan's LNG imports were 43.29 million tonnes, down 2.2 per cent from the year earlier. From January to June this year, South Korea's state-owned Korea Gas Corporation reduced its LNG imports by 17.1 per cent. China is the major destination of most of the growth in Australian LNG exports. This market, though, now has a very large competitor—Russia. That bet by Origin and Santos has turned sour. Two enormous gas pipeline deals to sell Russian gas to China will see demand for LNG plummet. Meanwhile, coal is in structural decline.

The price of thermal coal at Newcastle has collapsed from \$142 per tonne in 2011 to just \$58 per tonne now. Ten thousand jobs have been lost in coalmining in the past year in New South Wales and it is a disgrace that we have not once heard members of the Government mention those jobs lost. More mines in New South Wales are currently in care and maintenance, 55, than are actually operating, 46. China is implementing strict policies to reduce its coal use. India is seeking to end its reliance on imported coal. President Obama has implemented strict new emission limits for coal-fired power stations, while United States of America coal company Alpha has gone bankrupt, and Peabody is losing over a billion dollars each quarter, with Peabody shareholders having lost \$US17 billion or 97 per cent of their equity value. Prominent banks and investment analysts are warning that coal resources may become stranded assets. Goldman Sachs recently concluded:

Peak coal is coming sooner than expected ... The industry does not require new investment given the ability of existing assets to satisfy flat demand, so prices will remain under pressure as the deflationary cycle continues.

The reality is the world is recognising that new coalmines and new coal-fired power stations are incompatible with a safe climate. We may well see this reflected at the coming Paris Climate Summit. The



President of Kiribati, Anote Tong, whose nation is particularly vulnerable to climate change, has called for a halt to all new coalmines. The economics editor of the *Sydney Morning Herald*, Ross Gittins, wrote last week:

When you think it through, the case for a moratorium on new coal mines has a lot going for it.

But while scientists, environmentalists, bankers, economists, and most of the public recognise that the coal era is coming to a close, the Liberal and Nationals parties either have not thought it through, or are deliberately ignoring all the evidence. The Coalition Government has approved 41 new coalmines or extensions since it came to office in 2011, and there are a further 13 in the planning pipeline. The Federal Coalition has approved the giant Shenhua and Adani coalmines. Instead of recognising the reality that the coal era is coming to an end, they instead regurgitate public relations lines spun up by Peabody that there is a moral case for coal. There is not an economic, social or environmental case.

While some of the changes contained in these bills are an improvement to the governance of resource exploration and exploitation in New South Wales, they do not deal comprehensively with land use conflict, nor the reality that fossil fuels should be phased out. The Greens will move amendments to prohibit any further coal or petroleum exploration licences being issued by the Minister. There are already too many coalmines in New South Wales. Most areas of New South Wales that are known to have coal already have exploration licences. Nor should any further exploration licences be granted for coal seam gas. The Government has just finished a large buy-back and is still negotiating to buy back Metgasco's controversial PEL 16.

In terms of land access, The Greens support the right for landholders to lock the gate, to say no. Coal and gas exploration and mining has significant impacts and risks to the local environment and we believe that landholders and the local community, through local environment plans, should have the right to reject coal and gas on their land or in their community. Many communities in New South Wales have conducted a survey of their members and declared themselves gas-field free. Seventy-eight councils across New South Wales have passed resolutions or made submissions expressing their concern about coal seam gas, and their support of moves to protect land and water.

In 2014 the Government commissioned the Walker review after a group of dedicated landholders including Peter and Kim Martin from the Southern Highlands and Craig Shaw were dragged through the compulsory arbitration process at their own expense and enormous personal cost and toil. In that awful process with mining companies they were able to blow the whistle on the injustice of the land access process. Who can forget blind farmer Ian Moore being dragged through arbitration by the Doyles Creek mine, whose grant was found to be corrupt by the Independent Commission Against Corruption. The Greens are pleased to see that some costs will be granted to landholders being dragged through this process. The Greens are also pleased that legal representation will now be allowed during arbitration. There are also some improvements in the process of choosing and governing arbiters.

The Greens are concerned that the definition of "improvements" and "impacts on improvements" is being watered down and the subjective test of "reasonableness" is being inserted. This will create uncertainty as to whether any improvements can actually be protected, which is a very significant issue especially in the Southern Highlands. The Greens are very concerned that the current arrangements in regards to arbitration are not clear when it comes to the issue of current and completed determinations in the Land and Environment Court. I request that in reply the Parliamentary Secretary clarify that the intent of the legislation is not to allow miners who currently have a dispute before the court, or have a dispute determined, to revisit those decisions now that the definition arrangements have changed.

I particularly refer to the issue of Hume Coal and the landowners in the Southern Highlands who are currently in court in a dispute over section 31, which relates to significant improvements. Given that the definition of "significant improvements" has changed under the new legislation, will the Parliamentary Secretary confirm that Hume Coal will not have a chance to try again under the new rules if the decision

of the Land and Environment Court does not go in its favour?

The Greens are pleased by the recommendations of the Independent Commission Against Corruption regarding the process of issuing new authorities, but we must not forget that the greatest corruption risks still come from political donations and the revolving door between those working in political office and those working in the resources industry. Competitive and transparent selection processes are a must in an area where huge profits can be made on government decisions. We hope that it will apply to all mining, including minerals. Take the purchase of PEL 285 over the Gloucester Valley as an example. Originally issued to the Electricity Commission of New South Wales, it was later sold to AJ Lucas and Molopo Energy for \$2.5 million in 2002. Seven years later AJ Lucas sold the PEL to AGL for a whopping \$370 million. That outrageous windfall gain must surely be investigated.

The Greens are pleased that the Environment Protection Authority [EPA] is now the lead agency monitoring compliance and enforcement of gas activities because it ends the clear conflict of interest that the Department of Resources has had as both the issuer of licences and the lead enforcement agency. However, concerns remain about the record of the EPA. It needs to lift its game. The public has lost confidence in its ability to pursue companies that pollute the environment and adequately punish them. The Environment Protection Authority stakeholder survey showed that the majority of people in New South Wales think that the EPA is far too close to business and industry.

They think it is working hand in glove with those entities and not putting the interests of the environment before the interests of business. I put on record my concern that it took me nearly two years to gain access to the EPA site inspection reports of AGL's Hunter Gas Project in Broke, which revealed pollution and systemic and entrenched failures by AGL. There is still uncertainty over what happened to the 200 tonnes of toxic waste that the EPA knew was being handed to an unlicensed facility. We still do not know where that waste ended up.

The Greens are also concerned that there is no legislative basis for the Government's strategic release framework for new exploration licences. The Greens will move amendments to ensure that before deciding to invite applications for the grant of a controlled released prospecting title or petroleum prospecting title over an area the Minister must make an assessment and take into account the environmental, social and economic factors relevant to the potential release area. That must include impacts on agricultural productivity, existing industries, water resources including groundwater, threatened species, human health and relevant local government plans and local environment plans.

We will also move amendments to ensure that there is public input before any areas are released for exploration. That is absolutely fundamental. The community has not consented to coal seam gas. In fact, the community has increasingly said no to coal. We only need look at the conflagration in the Liverpool Plains to realise that it has gone too far. People are turning their backs on fossil fuels. These bills are a step in the wrong direction. We need to move on from fossil fuels.

**Ms JAN BARHAM** [4.33 p.m.]: I support the comments of my colleague Mr Jeremy Buckingham in debate on the Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015, the Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015, the Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015, the Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015 and the Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill 2015.

I state at the outset that I understand this matter has been brought on with some haste. I acknowledge that The Greens and the community have some concerns about the Government's decision to bring these bills on so quickly. We have heard mixed reactions from the Opposition and The Greens to these bills. Some of the amendments are welcomed and some are clearly opposed and require further time for consideration. To many people in the community it is a surprise that we are still living in a time in

which governments seem committed to encouraging and supporting more mining without recognising that other opportunities exist not only in New South Wales but also in Australia and throughout the world to move to cleaner, renewable energy that does not present the same risks as mining.

Just this morning I gave evidence in the Land and Environment Court about a quarry that has been operating in my community for more than 30 years. I have been involved with the situation for 23 years. In reading back over the information in the case the concerns that were raised sounded very much like the recent concerns raised with me about coal seam gas and coalmining in New South Wales. There is such lack of respect and regard for our natural environment and the impacts of these wildly destructive processes. We carry on these operations as if we have no other option when in fact we know we do have other options. One of the greatest concerns about the mining operation in my community is its flow-on impacts to a sacred Aboriginal place. Unfortunately, there was little regard for that issue when approval was given some 17 years ago. I felt sad reflecting on that. Then I realised that some of the community's most important values are still not properly respected by legislation or by government or the applicants who choose to undertake risky mining operations.

I will draw the attention of the House to some of the circumstances that have caused thousands of Aboriginal cultural heritage sites to be damaged or destroyed in New South Wales in recent years. It is remarkable that so many unnecessary impacts have been allowed to occur in the name of development, progress, jobs creation and economics. It is shocking that in the twenty-first century we do not live in a society that assesses the true value of our environment. In my hometown area of Wollongong on the escarpment behind the city registered Aboriginal sites are being seriously damaged by cracking and subsidence caused by coalmining. Many of those sites are meant to be protected because they are acknowledged by the Office of Environment and Heritage as Aboriginal heritage areas and are listed on the Aboriginal Heritage Information Management System [AHIMS].

I could be wrong but my understanding is that the bills before us do not clearly identify the community's great concerns that our cultural and ecological heritage is too often destroyed by mining. We are aware that the New South Wales Government approved applications to destroy Aboriginal heritage and cultural sites 100 per cent of the time in the 2013-14 financial year. Each and every one of the 98 permits determined by the Office of Environment and Heritage was approved to allow for the destruction of this planet's oldest continuous cultural heritage, meaning that not one part of this State's Aboriginal heritage was thought important enough to stand in the way of development. It is a great sadness to many to be living in a time when the rest of the world is changing but we do not seem to be changing.

We know that across the world, governments at all levels are implementing policies to reduce carbon emissions, to address local air pollution, to improve energy productivity, to grow new industries and to address energy security concerns. These initiatives are not enough on their own to avoid dangerous climate change; there are other things that we can do. However, so long as we stay wedded to some of these old methods of energy production and extraction we will never have the opportunity to realise those new innovations and opportunities that await us.

As I said this morning, my presentation at the Land and Environment Court was about a beautiful coastal littoral rainforest which has been destroyed to extract sand and gravel for use in road building—as if there was no other option available. For more than 30 years we have been willing to destroy this beautiful natural environment—one of the highest biodiversity areas in this country has been put at risk when something else could have been used instead of that significant resource. This brings me to the whole issue of where we are at with mining and the continued exploration for and exploitation of fossil fuels.

As members know, on the North Coast there is a high level of concern about where things are going with coal seam gas. Some members, including the Minister, have said that the legislation before us today addresses the recommendations of the Chief Scientist and Engineer, Professor O'Kane, from her review of the coal seam gas industry. If, as we are told, in just 12 months the Government has

implemented 15 of the 16 recommendations under the NSW Gas Plan, why are people still not convinced that this is the right thing to do? I live in a community where many people are opposed to coal seam gas. In debates in this House we have heard over and over again about the opposition there is to coal seam gas.

We heard much from the Government about how the impacts can be ameliorated and how concessions are being made around strategic planning to protect farmland and to do various things. But the community is not convinced, and that is because we have not seen a process where the Government has had the courage to go out and speak to the communities who are concerned. These are small communities where it is not just about resources and it is not just about the dollars; it is about their livelihoods and the livelihoods of future generations. These people want to pass on their farms, and maintain the viability and sustainability of those properties, to their grandchildren and to their grandchildren's grandchildren. That is the way in which they see the stewardship they hold for that land.

So we seem to be at odds here—where the Government does not understand just how important the future of mining and the impact it has on our environment is for the community. Many people have spoken in particular about the precautionary principle approach. I always love going back home to the North Coast and seeing all the signs out there in the community. Those beautiful yellow and black signs tell us all, loud and clear, just how much those communities oppose any future coal seam gas industry in the area. The Hon. Ben Franklin must see those signs too, perhaps even more so than I do.

There has been an amazing coming together of disparate groups of people who in the past had never quite seen eye to eye. They have in recent times been brought together by this really important issue. They have found the issues that bind them and discovered common ground, and that is about protecting the future and calling on government to be ambitious and innovative. Government needs to take the opportunity to think differently about how we live in this world and can ensure the protection of it.

My colleague Mr Jeremy Buckingham has been an amazing advocate on these issues of mining and coal seam gas. He has given so many speeches in this House about this and asked so many questions. I was very pleased recently to be able to join him on a trip to Bentley and to share with the community the importance they placed on standing up to a government they felt had gone down the wrong path in allowing coal seam gas mining to continue in the Northern Rivers. They still feel that way.

I have also had the pleasure, along with my colleagues, of meeting people from the Hunter. We went on a trip to Gloucester for our State delegates meeting a couple of months ago. I had not been to Gloucester before. It is a beautiful environment. I met people who had come together and found this cohesion of community. They were united in their opposition to what they felt was being imposed upon them. I recalled how about a year ago I flew over the Hunter Valley for the first time in many years and was shocked to see the scars on the landscape. It was frightening to see how we can denude, erode and spoil such a beautiful natural environment. It is an area which I know only too well has relied heavily on tourism. It can see a future in tourism—as opposed to mining, where we have seen the plummeting price of coal.

Earlier someone made the comment—it might have been my colleague Mr Jeremy Buckingham—that the price of coal was "in the toilet" at \$58 per tonne. I do not know if that term has been used elsewhere, but it has been used by my colleagues. The reality is that 10,000 jobs have been lost in coalmining in the past year. The other day by chance I happened to see an advertisement for a program about how fabulous the mining industry is and how fast it is progressing with innovation and technology. It is getting rid of people. It does not need people any more.

The whole concept that this industry is about jobs is now redundant, because the industry is using technology more and more. Good on them for using technology, because it means that they are not putting people's lives at risk. It will mean they are not forcing people into the situation where they have to go to some remote area and work on those steep slopes, and batters are always a big issue. It is about what sort of cliff face is there. All it takes is for a driver to make one wrong move in one of those trucks

and it will go over the edge; and then there will be lives lost, which is terribly sad.

I have spoken before in this place about my experience of growing up in the Wollongong area. When I was growing up it was a fact of life that people died in the coalmines. Kids would go to school in the morning having waved goodbye to their dad and then he might not come home for dinner. That was the nature of coalmining back then—it was not safe. Things have improved, and I understand there are things in these mining and petroleum bills that look at improving occupational health and safety factors. It is good that those things are happening. But the whole issue requires a rethink. Why are we doing this? Why are we in there for short-term interests? Why is there a lack of regard for the natural environment? There seems to be a lack of understanding that there are other ways to achieve these outcomes and more.

I add to that a shocking figure, which I was extremely surprised to read about and had to check a couple of times before I could believe it—that is, \$600 million per annum, which is the cost of treating the damage to people's health caused by the five coal-fired power stations in the Hunter. Perhaps it would have been wise of me to follow up on that figure more quickly than I have. I am wondering if anyone knows how much benefit is derived for the State for that cost. It is costing the State, and everyone in this State, \$600 million per annum in public health costs. That is a lot of money in anyone's terms. I cannot imagine that that cost is returned to the public good.

It sits alongside another shocking statistic: 1,500 deaths result from fossil fuel source air pollution—more than the annual road toll. That is frightening when one considers the amount of emotional angst and media attention given to our road tolls, yet we have this silent thing going on in our own community. I am pleased that my colleague Dr Mehreen Faruqi is now in the Chamber. She too has spoken about the need to do more about air pollution laws. We are lagging behind the rest of the world. We are looking at allowing increased air pollution from mining but we have not looked at the other side of the ledger.

The NSW Environment Protection Authority [EPA] is to become the overseer of mining regulations. That might be a good thing for those who have absolute faith in the EPA; I do not. For way too long I dealt with it as the regulator of forestry practices and I was woefully disappointed. In the last term of Parliament two parliamentary inquiries were held into the performance of the EPA. It seems odd that we are not ensuring that the authority to be given this responsibility has the capacity to do the job well—perhaps it needs more staff or additional training and opportunities to be made available so staff can perform their jobs more effectively. As I have said, other than what I have heard from my colleagues, I am not familiar with the role the EPA is to play. I note that one of the terms of reference of the General Purpose Standing Committee No. 5 inquiry was that the EPA had failed to act on community concerns about AGL's coal seam gas operation. Those concerns had been dismissed in the media and everyone said it was scaremongering; it was not.

The Greens are concerned that this legislation has been introduced so quickly. I speak to this debate both as a resident of the North Coast and as The Greens member with responsibility for Aboriginal affairs. When I read the figures about the loss of cultural heritage I was brought to tears because a value has not been placed on this. However, a value has been placed on the destruction of our natural environment—namely, the risk posed to our water, our endangered and threatened species, and even the scenic landscape, which is an asset to our tourism industry. I acknowledge the concerns that have been raised about these bills.

**Dr MEHREEN FARUQI** [4.53 p.m.]: I add my voice to those of my colleagues Mr Jeremy Buckingham and Ms Jan Barham in making a contribution to debate on the Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015, the Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015, the Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015, the Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015 and the Work Health and

## Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill 2015.

These bills may be an improvement on the current situation but this Government is addicted to fossil fuels. It now wants to rush through legislation to keep us going down the path of devastating climate change with the destruction of agricultural land, cultural heritage and biodiversity. This will have negative impacts on human health due to air pollution and jeopardise the future of our people and our planet. The Greens position on coal seam gas is clear—no ifs, no buts: we oppose it. We oppose coal seam gas exploration and production, and associated pipelines, and seek an immediate moratorium on new exploration and production licences. Local farmers, environmentalists and the community are united in their concern about the impact of coal seam gas mining on agricultural land, biodiversity and our precious water resources. My colleagues and I are privileged to be part of this massive and courageous people's movement for a vision of a clean, green, renewable future which has no room for the existence and expansion of destructive coal seam gas mining industries.

This is Global Climate Change Week so it is even more important that we reflect on what needs to happen to prevent the worst of climate change. The reality is that 95 per cent of Australia's fossil fuels need to remain in the ground, yet New South Wales is open for coalmining. We know that coal prices are dropping like a lead balloon and it is fast becoming a stranded asset. We know that the future is going to be powered not by a dying coal industry but by clean renewable energy. But at a time when we most need to curb carbon emissions, this Government is keeping us on the exact opposite path.

The irrational exuberance in expanding coalmining while knowing full well the disastrous impacts on human health and climate change is completely irresponsible, unethical and indefensible. The findings of a Climate Institute survey, which were published earlier this year, clearly show that Australians overwhelmingly support wind and solar energy and a plan to replace coal with renewables. This legislation will further delay the move from fossil fuels to renewable energy. The renewable energy industry will create 91,000 jobs in New South Wales. The Government should pay heed to this evidence and to the voices of the people of New South Wales.

A principal part of the Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015 is to make permanent changes to make the NSW Environment Protection Authority [EPA] the lead agency to monitor compliance and enforcement of gas activities. This will end the clear conflict of interest of the Department of Resources as the issuer of licenses and the lead enforcement agency. That is a good thing. Since July 2015 the EPA has been responsible for this but was doing so on delegated authority. Last year I sat on the inquiry into the performance of the EPA. Whilst it is a positive step for the EPA to continue to regulate this industry, it is clear that the Government has failed to address some serious systemic issues. We need to ensure that the public has confidence in the independence and integrity of this State's regulator.

One of the key concerns in that parliamentary inquiry was the examination of the water contamination at Narrabri caused by the Santos coal seam gas project, as well as the fact that the EPA relies on data provided by a licence holder to determine whether it has met its licence conditions. Only in some cases does the EPA undertake independent data collection to check the validity of data provided by licence holders. Many community groups raised concerns about the lack of access to environmental protection data or the results of the EPA investigations. It is crucial that a regular and random independent sampling program be developed to ensure that the data provided by licence holders is both correct and has integrity. Another concern was the lack of independent scientific expertise. Evidence came to light that when the EPA was re-established in 2012 as an independent government agency, separate from the Office of Environment and Heritage, the scientific division remained with the Office of Environment and Heritage.

With coal seam gas now added to the long list of responsibilities for the Environment Protection Authority [EPA], it is essential that there is strong in-house scientific expertise. It is disappointing that these bills enshrine the EPA's role in regulating coal seam gas, yet no effort has been made to improve

the systemic issues that came to light during the inquiry last year. Only seven of the 17 recommendations were supported by the Government and, even then, mostly with noncommittal rhetoric. I urge the Government to ensure that some of the shortcomings of the EPA are addressed, including the provision of sufficient resources for the EPA to undertake its responsibilities.

The Greens will be moving a number of amendments, including some to ensure that before deciding to invite applications for the grant of a controlled release prospecting title or a petroleum prospecting title over an area the Minister must make an assessment and take into account the environmental, social and economic factors relevant to the potential release area, including impacts on agricultural productivity, water resources including groundwater, threatened species, human health and relevant local government plans and local environment plans. The Greens also will move amendments to ensure public input on any areas before they are released for exploration. These bills take us backwards in our quest to address climate change, to wean ourselves off fossil fuels, to keep the oil in the soil and to keep the coal in the hole.

**Mr SCOT MacDONALD** (Parliamentary Secretary) [5.01 p.m.], on behalf of the Hon. Niall Blair, in reply: I thank all members who contributed to the debate. In particular, I thank the Leader of the Opposition in the Legislative Council, the Hon. Adam Searle, Mr Jeremy Buckingham, Ms Jan Barham and Dr Mehreen Faruqi. I thank them for their passion on the issues, even if some of it was misguided. The Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Titles) Bill 2015 and cognate bills are a comprehensive package of reforms that together achieve an overhaul of regulation to revitalise the resources industry in New South Wales. They set out a strong vision for achieving the safe and sustainable development of our State's rich resources sector.

The legislative package demonstrates this Government's commitment to delivering on the recommendations of the Chief Scientist and Engineer and the NSW Gas Plan. The bills also address the recommendations of the Walker review on the land access arbitration framework and of the Independent Commission Against Corruption report on the management of coal resources. This package of bills is interrelated and inseparable. The bills deliver an outcomes-focused and risk-based framework for regulating the resources sector. I remind members what these bills will achieve. The Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015 sets up a transparent and competitive framework for releasing and allocating coal and petroleum prospecting titles. No longer will titles be granted on a first come, first served basis and with ministerial consent.

The Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015 establishes a clearer framework for landholders and titleholders making land access arrangements—a crucial platform to support exploration not just for coal and petroleum but for all our mineral resources. The bill establishes formalised and clear processes for the arbitration panel, including prescribing eligibility requirements for arbitrators and standardising procedures. I take this opportunity to clarify that these reforms will apply only to future land access arbitrations. No actions that have already commenced under the existing regulatory framework will be captured under these reforms.

Whilst the Walker reforms will cover the arbitration process for both petroleum and coal, it should be noted that in the petroleum sector no titleholder has ever resorted to the arbitration process to reach an access agreement. In New South Wales, both AGL and Santos have committed, through the Agreed Principles of Land Access, that they will not enter a property where they are not wanted. Conversely, both companies, as well as landholder groups, also strongly respect the right of a landholder to say yes to coal seam gas operations on their land. The Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015 establishes a fair, consistent and transparent framework for regulating the mineral and petroleum resources that are awarded through processes such as strategic release. It does this by establishing consistency in the administration and assessment of titles. Across both minerals and petroleum, only applicants who meet financial and technical standards will be granted the right to explore for and develop resources in New South Wales.

The reforms also enhance the Government's back-end powers so that the compliance and enforcement agencies, such as the Division of Resources and Energy for minerals or the Environment Protection Authority [EPA] for petroleum, will have the tools they need to hold industry to account and to build community confidence in the strong and certain regulation of resources in New South Wales. The EPA's compliance role in the petroleum sector is being further enhanced through the Protection of the Environment Operations Amendment (Enforcement of Gas and other Petroleum Legislation) Bill 2105. This bill establishes the EPA as the lead regulator for the compliance and enforcement of all gas exploration and production activity in the State. The community can now have confidence that there is one agency response for the effective, consistent and transparent regulation of gas exploration and production activities. The legislation also expands the Work Health and Safety (Mines) Act 2013 to include onshore petroleum activities. It thus establishes a single work health and safety regulatory framework for all onshore resources.

I will reply to comments made by the Hon. Adam Searle. In relation to the notification of agencies about the granting of an assessment lease, the current requirement that the Minister must ensure that local councils, relevant agencies and the secretary of Planning and Environment are informed will remain for minerals other than coal. An assessment lease for coal will no longer be released unless it has passed through the new framework, which will require that a competitive process take place. The framework's advisory body will consist of representatives from the Department of Planning and Environment, the Department of Premier and Cabinet, NSW Treasury, and NSW Resources and Energy. Relevant agencies will be made aware through this advisory body.

I also note the comments from the Hon. Adam Searle about coal but not petroleum being considered a "controlled release mineral". The process for coal and petroleum will be the same under these amendments. No-one can apply without the Government releasing an area for potential exploration. The term "controlled release area" is necessary to differentiate coal from the existing term of "mineral allocation areas" within the Act. The term "controlled release area" sets up a new class under the Mining Act 1992 that is subject to the improved release and grant process. On the petroleum side, the term "controlled release area" is not needed because there is no need to differentiate petroleum from other minerals under that legislative framework.

The purpose of the five bills is to establish a new, strategic regulatory framework for onshore resources in New South Wales. The five bills are built on more than two years of evidence-based investigation and analysis and, most importantly, consultation. By making these amendments the Government is ensuring a fair, transparent and balanced approach to land use in New South Wales. The Government is providing for the development and regulation of New South Wales resources into the future. At the same time the Government is supporting jobs, regional development, exports and royalties. The result of this legislative package of reforms is a more robust, more modern and more transparent regulatory framework that the industry and the community in New South Wales can rely on. It is necessary and it is timely.

I thank NSW Resources and Energy for its tireless work in putting this package together. These bills are the culmination of efforts across the whole division and legal branch to ensure the delivery of integrated policy and operational outcomes. Particular thanks go to Katharine Hole, Madeleine Mispel, Thomas Kwok, Jacyleen Ong, Tina Ming-Wong, Zahra Anver, Ben Cranny, Tony Linnane, Aaron Walker, Frances de Biasi, Carolyn Murphy, Ash El-Sherbini and Paul Bourke for their dedicated work. I commend the bills to the House.

**Question—That these bills be now read a second time—put.**

**The House divided.**

**Ayes, 29**



Mr Ajaka  
Mr Amato  
Mr Borsak  
Mr Brown  
Mr Clarke  
Mr Colless  
Ms Cotsis  
Ms Cusack  
Mr Farlow  
Mr Gallacher  
Mr Gay

Mrs Houssos  
Mr Khan  
Mr MacDonald  
Mrs Maclaren-Jones  
Mr Mallard  
Mr Mason-Cox  
Mrs Mitchell  
Mr Moselmane  
Mr Pearce  
Mr Primrose  
Mr Searle

Mr Secord  
Ms Sharpe  
Mr Veitch  
Ms Voltz  
Mr Wong

*Tellers,*  
Mr Franklin  
Dr Phelps

**Noes, 6**

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

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bills read a second time.**

**Mr SCOT MacDONALD** (Parliamentary Secretary) [5.17 p.m.]: I move:

That the Assistant President do now leave the chair and the House resolve itself into a Committee of the Whole for the consideration of the bills.

**Dr JOHN KAYE** [5.17 p.m.]: I move:

That the question be amended by omitting all words after "That" and inserting instead "consideration of the bills in Committee of the Whole stand an order of the day for Tuesday 27 October 2015".

**The Hon. DUNCAN GAY** (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) [5.17 p.m.]: The Government opposes the amendment.

**Question—That the amendment of Dr John Kay be agreed to—put.**

**The House divided.**

**Ayes, 15**

Ms Barham

Mr Primrose

Ms Voltz

Mr Buckingham  
Ms Cotsis  
Dr Faruqi  
Dr Kaye  
Mr Pearson

Mr Searle  
Mr Secord  
Ms Sharpe  
Mr Shoebridge  
Mr Veitch

*Tellers,*  
Mrs Houssos  
Mr Moselmane

**Noes, 19**

Mr Ajaka  
Mr Amato  
Mr Borsak  
Mr Brown  
Mr Clarke  
Mr Colless  
Ms Cusack

Mr Farlow  
Mr Gallacher  
Mr Gay  
Mr Khan  
Mr MacDonald  
Mrs Maclaren-Jones  
Mr Mallard

Mr Mason-Cox  
Mrs Mitchell  
Mr Pearce  
  
*Tellers,*  
Mr Franklin  
Dr Phelps

**Pairs**

Mr Donnelly  
Mr Mookhey  
Mr Wong

Mr Blair  
Mr Harwin  
Mrs Taylor

**Question resolved in the negative.**

**Amendment of Dr John Kaye negatived.**

**Question—That the motion be agreed to—put and resolved in the affirmative.**

**Motion agreed to.**

**In Committee**

**The CHAIR (The Hon. Trevor Khan):** Pursuant to standing orders, each bill will be dealt with separately, commencing with the Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015. There being no objection, the bill will be taken as a whole.

**The Hon. ADAM SEARLE** (Leader of the Opposition) [5.30 p.m.], by leave: I move Opposition amendments Nos 1 to 3 on sheet C2015-112 in globo:

**No. 1 Coal seam and other unconventional gas moratorium**

Page 2, clause 2, line 6. Omit all words on that line. Insert instead:

- (1) This Act (except schedule 3) commences on a day or days to be appointed by proclamation.
- (2) Schedule 3 commences on the date of assent to this Act.

**No. 2 Coal seam and other unconventional gas moratorium**

Page 12. Insert after line 21:

**Schedule 3 Amendment of Petroleum (Onshore) Act 1991No 84 relating to moratorium**

Insert at the end of the Act:

**Schedule 4 Coal seam and other unconventional gas moratorium**

**Part 1 Preliminary**

**1 Interpretation**

In this schedule:

***coal seam or other unconventional gas*** means any petroleum in a gaseous state that is extracted (whether by drilling, hydraulic fracturing or other means) from:

- (a) coal seams or beds; or
- (b) layers of shale rock; or
- (c) tight sands such as sandstone or limestone.

***existing production lease*** means a production lease that was in force immediately before the day on which this schedule commenced.

***greenhouse gas emissions*** means emissions of carbon dioxide, methane, nitrous oxide, a perfluorocarbon gas or any other gas prescribed by the regulations for the purposes of this definition.

***moratorium lifting order***—see clause 4.

***moratorium period*** for an onshore area of the State is the period:

- (a) commencing at the start of the day on which this Act commenced; and
- (b) ending at the start of the day (if any) specified in a moratorium lifting order as the day on which the moratorium period for the area ends.

**Note.** All onshore areas will have a moratorium period on the commencement of this schedule.

***no go zone for coal seam or other unconventional gas extraction***—see clause 3.

***petroleum title*** relating to coal seam or other unconventional gas means any of the following:

- (a) an exploration licence granting the holder the exclusive right to

prospect for coal seam or other unconventional gas on the land comprised in the licence;

- (b) an assessment lease granting the holder the exclusive right to prospect for coal seam or other unconventional gas and to assess any coal seam gas deposit on the land comprised in the lease;
- (c) a production lease granting the holder the exclusive right to conduct petroleum mining operations for coal seam or other unconventional gas in and on the land included in the lease;
- (d) a special prospecting authority granting the holder the exclusive right to conduct speculative geological, geophysical or geochemical surveys or scientific investigations in relation to coal seam or other unconventional gas on and in respect of the land comprised in the authority.

***Standing Expert Advisory Body***—see clause 5.

## **Part 2 Moratorium on coal seam or other unconventional gas prospecting or mining**

### **2 Moratorium on coal seam or other unconventional gas prospecting or mining**

- (1) The following provisions apply during the moratorium period for each onshore area:
  - (a) prospecting for or mining coal seam or other unconventional gas is prohibited in the area except in accordance with an existing production lease (as modified by subclause (2));
  - (b) any petroleum title (other than an existing production lease) relating to coal seam or other unconventional gas that is in force immediately before the commencement of this Act ceases to have effect to the extent to which it authorises prospecting for or mining coal seam or other unconventional gas in the area;
  - (c) the Minister must not (and cannot) grant or renew any petroleum title relating to coal seam or other unconventional gas for the area.
- (2) An existing production lease that is a petroleum title relating to coal seam or other unconventional gas is taken, during the moratorium period for an onshore area, not to authorise its holder to conduct petroleum mining operations involving drilling or hydraulic fracturing for the purpose of increasing or extending the holder's capacity to produce coal seam or other unconventional gas in the area.
- (3) To avoid doubt, section 7 (Offence of prospecting or mining without authority) of the Act extends to a person who prospects or mines coal seam or other unconventional gas in an onshore area during the moratorium period for the area except in accordance with an existing

production lease (as modified by subclause (2)).

### **3 No go zones for coal seam or other unconventional gas extraction**

- (1) Each of the areas listed in Appendix 1 is a ***no go zone for coal seam or other unconventional gas extraction***.
- (2) A reference in Appendix 1 to an area designated by the Standing Expert Advisory Body is a reference to an area that is identified by the Advisory Body (whether by means of a description or maps, or both) from time to time.

**Note.** The Minister must ensure that any descriptions or maps (or both) for areas designated by the Standing Expert Advisory Body from time to time for the purposes of Appendix 1 are published and publicly accessible on the website of the Department.

- (3) The Minister may, by order published on the New South Wales legislation website, amend Appendix 1 to add descriptions of additional areas, but only if the Standing Expert Advisory Body has recommended that the area be added to the Appendix.
- (4) An area may be added to Appendix 1 by an order under subclause (3) even if a part of the additional area already falls within a description of another area listed in the Appendix.
- (5) Sections 40 and 41 of the *Interpretation Act 1987* apply to an order under this clause in the same way as they apply to a statutory rule.

### **4 Moratorium lifting orders**

- (1) The Minister may, by order published in the Gazette (a ***moratorium lifting order***), specify a day (being a day that is no earlier than 21 days after the order is published) on which the moratorium period for a specified onshore area is to end.
- (2) The Minister may make a moratorium lifting order for a specified onshore area only if:
  - (a) the Minister is satisfied on reasonable grounds that no part of the area is within any of the no go zones for coal seam or other unconventional gas extraction; and
  - (b) the Standing Expert Advisory Body has provided the Minister with a certificate to the effect that, in its opinion, the moratorium regulatory framework referred to in clause 6 is in force and any applicable requirements of the framework are being (or are capable of being) complied with within the area by holders (or proposed holders) of petroleum titles, and
  - (c) the Minister has published in the Gazette a certificate prepared by both the New South Wales Chief Scientist and Engineer and the Standing Expert Advisory Body to the effect that the extraction of coal seam or other unconventional gas, if carried out

in accordance with the *Petroleum (Onshore) Act 1991* and this Act (and any licence conditions of a kind specified in the certificate):

- (i) would be safe and not cause permanent harm to water sources in the area or any other part of the area's environment; and
  - (ii) would not result in an increase of the net greenhouse gas emissions for the State during the life of the proposed petroleum title or titles for the area.
- (3) The end of the moratorium period for an onshore area does not operate to revive any petroleum title to the extent to which that title ceased to have effect because of the operation of clause 2.
  - (4) Sections 40 and 41 of the *Interpretation Act 1987* apply to a moratorium lifting order published in the Gazette in the same way as they apply to a statutory rule published on the New South Wales legislation website.

## **5 Standing Expert Advisory Body on Coal Seam or Other Unconventional Gas**

- (1) The Minister is to establish the Standing Expert Advisory Body on Coal Seam or Other Unconventional Gas (the ***Standing Expert Advisory Body***).
- (2) The Standing Expert Advisory Body:
  - (a) is to consist of at least the following 3 members:
    - (i) one member who, in the opinion of the Minister, has qualifications and expertise in an earth, environmental or biological science;
    - (ii) one member who, in the opinion of the Minister, has engineering qualifications and expertise concerning the conduct of petroleum mining operations;
    - (iii) one member who, in the opinion of the Minister, has qualifications and expertise in relation to water management, and
  - (b) may include no more than 2 additional members who, in the opinion of the Minister, have qualifications and expertise in medicine or the social sciences.
- (3) The regulations may make provision for or with respect to the following:
  - (a) terms of office of members of the Standing Expert Advisory Body;
  - (b) the appointment of a Chairperson of the Standing Expert Advisory Body and the appointment of deputies for members;

- (c) vacation of office of members (including by removal);
  - (d) remuneration of members;
  - (e) the procedure for meetings and decisions of the Standing Expert Advisory Body (including quorum requirements).
- (4) The Standing Expert Advisory Body has each of the following functions:
- (a) to advise, and provide recommendations to, the Minister in connection with the following:
    - (i) whether petroleum mining operations for coal seam or other unconventional gas should be permitted in any onshore area and, if so, the regulatory system that should apply to the area (including conditions that should be imposed on petroleum titles relating to coal seam or other unconventional gas granted for the area);
    - (ii) the establishment and contents of, and analysis of the data held in, the Whole of Environment Data Repository referred to in clause 6 (2) (d);
    - (iii) the development and updating of a risk management and prediction tool with respect to the effects of petroleum mining operations for coal seam or other unconventional gas and its use in connection with the lifting of the moratorium period for an onshore area and the granting of petroleum titles relating to such gas,
    - (iv) the processes for characterising and modelling the sedimentary basis of the State,;
    - (v) the planning implications for the State if petroleum mining operations for coal seam or other unconventional gas are permitted to be conducted in an onshore area;
    - (vi) any scientific and technological developments concerning the conduct of petroleum mining operations for coal seam or other unconventional gas (including whether such developments should be incorporated into the regulatory system for such operations);
    - (vii) research that should be undertaken with respect to the conduct of petroleum mining operations for coal seam or other unconventional gas in the State;
    - (viii) the development with the private sector and public sector bodies (both national and international) of joint or harmonised approaches to research, data collection, modelling and scale issues (such as subsidence) in connection with petroleum mining operations for coal seam or other unconventional gas;

- (b) to designate areas for the purposes of the provisions of Appendix 1 that provide for designation by the Standing Expert Advisory Body (including the preparation of descriptions or maps, or both, to assist in the identification of such areas);
  - (c) to provide an annual report to the Minister, based on data contained in the Whole of Environment Data Repository referred to in clause 6 (2) (d), on the environmental impacts on the State during the year concerned of coal seam or other unconventional gas;
  - (d) such other functions as may be imposed or conferred on it by or under this or any other Act.
- (5) The Minister must ensure that the following are published and publicly accessible on the website of the Department:
- (a) any descriptions or maps (or both) for areas designated by the Standing Expert Advisory Body from time to time for the purposes of Appendix1;
  - (b) any annual report referred to in subclause (4) (c) that is provided to the Minister by the Standing Expert Advisory Body.

## 6 **Moratorium regulatory framework**

- (1) The regulations may make provision for or with respect to the creation, administration and enforcement of the moratorium regulatory framework.

**Note.** The Minister cannot begin to make moratorium lifting orders until the Standing Expert Advisory Body has certified certain matters concerning the establishment and operation of the moratorium regulatory framework.

- (2) The ***moratorium regulatory framework*** is to provide for the following:
- (a) the establishment of an accreditation or certification system for workers conducting permissible petroleum mining operations for coal seam or other unconventional gas (including mandatory training requirements for such workers);
  - (b) the inspection and auditing of permissible petroleum mining operations for coal seam or other unconventional gas to determine compliance with requirements of this Act and the regulations and conditions of petroleum titles;
  - (c) the reporting, collection and publication of data concerning the conduct of permissible petroleum mining operations for coal seam or other unconventional gas;
  - (d) the establishment of a publicly accessible repository of data (to be called the "Whole of Environment Data Repository") containing data that has been collected under legislation of the



State concerning activities involving water management, gas extraction, mining, manufacturing and chemical processing in the State;

- (e) the manner in which permissible petroleum mining operations for coal seam or other unconventional gas are to be conducted;
  - (f) the provision to the Minister by a holder of a petroleum title relating to coal seam or other unconventional gas of information concerning potential impacts (and the likelihood of potential impacts) on water sources in the area as a precondition to commencing to conduct permissible petroleum mining operations under the authority of that title.
- (3) It is sufficient compliance with subclause (2) if a requirement referred to in that subclause that is or can be applicable to the holder of a petroleum title relating to coal seam or other unconventional gas is imposed by way of a condition of the title prescribed by the regulations.
- (4) In this clause:
- permissible petroleum mining operations*** for coal seam or other unconventional gas means petroleum mining operations that are conducted under the authority of:
- (a) an existing production lease; or
  - (b) a petroleum title granted over a part of an onshore area for which the moratorium period has ended.

### **Part 3 Miscellaneous**

#### **7 Restraint of contraventions of this Act and regulations**

- (1) In this clause, ***contravention*** includes threatened or apprehended contravention.
- (2) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of this schedule (or regulations made under this schedule), whether or not any right of that person has been or may be infringed by or as a consequence of that contravention.
- (3) Proceedings under this clause may be brought by a person on the person's own behalf or on behalf of that person and on behalf of other persons (with their consent), or a body corporate or unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (4) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (5) If the Court is satisfied that a contravention has occurred, or that a

contravention will, unless restrained by order of the Court, be committed, it may make such order as it thinks fit to remedy or restrain the contravention.

## **8 Compensation not payable**

- (1) Compensation is not payable by or on behalf of the State:
  - (a) because of the enactment or operation of this schedule or any Act that amends this schedule (or any regulations made under this schedule); or
  - (b) because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment); or
  - (c) because of any conduct relating to any such enactment or operation.
- (2) This clause extends to conduct and any other matter occurring before the commencement of this clause.
- (3) To avoid doubt, nothing in this clause prevents the State from voluntarily providing compensation, in such circumstances as it considers appropriate, for any conduct or other matter of a kind referred to in subclause (1) (a), (b) or (c).
- (4) In this clause:

**compensation** includes damages or any other form of compensation.

**conduct** includes any statement, or any act or omission:

- (a) whether unconscionable, negligent, false, misleading, deceptive or otherwise; and
- (b) whether constituting an offence, tort, breach of contract, breach of statute or otherwise.

**statement** includes a representation of any kind, whether made orally or in writing.

**the State** means the Crown within the meaning of the *Crown Proceedings Act 1988* or an officer, employee or agent of the Crown.

## **9 Relationship of schedule with other laws**

This schedule has effect despite this Act or any other law.

## **Appendix 1 No go zones for coal seam or other unconventional gas extraction**

### **1 Northern rivers of New South Wales**

Each of the following local Government areas:

- (a) Ballina;
- (b) Byron;
- (c) Clarence Valley;
- (d) Kyogle;
- (e) Lismore;
- (f) Richmond Valley;
- (g) Tweed.

## **2 Core drinking water catchment areas**

Each of the following areas:

- (a) a special area under the *Water New South Wales Act 2014*, but only to the extent that it is located in the Sydney catchment area within the meaning of that Act;
- (b) an area identified as a water catchment area (however described) under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*);
- (c) each catchment area referred to in clause 4 of the *Hunter Water Regulation 2015*;
- (d) without limiting paragraph (a), (b) or (c), the Mangrove Creek water catchment area or any other water catchment area (as designated by the Standing Expert Advisory Body), including for each of the following dams:
  - (i) Avon;
  - (ii) Cordeaux;
  - (iii) Warragamba;
  - (iv) Woronora.

## **3 Recharge zone of the Great Artesian Basin**

An area that is within the recharge zone of the Great Artesian Basin (as designated by the Standing Expert Advisory Body).

## **4 National parks and other environmentally significant areas**

Each of the following areas (or any area within 2 kilometres of each of the following areas):

- (a) land declared as a wilderness area under the *Wilderness Act*

1987 or the *National Parks and Wildlife Act 1974*;

- (b) land reserved under the *National Parks and Wildlife Act 1974*;
- (c) an area listed as a wetland under the *Convention on Wetlands of International Importance* done at Ramsar, Iran on 2 February 1971;
- (d) the Greater Blue Mountains World Heritage Area.

## **5 Residential areas**

Land that is zoned or otherwise designated for use under an environmental planning instrument (within the meaning of the *Environmental Planning and Assessment Act 1979*) for, or principally for, residential purposes (or land within 2 kilometres of such land).

## **6 Critical industry clusters**

An area designated by the Standing Expert Advisory Body to be a critical industry cluster (or an area within 2 kilometres of such an area).

## **7 Prime agricultural land**

An area designated by the Standing Expert Advisory Body to be prime agricultural land (or an area within 2 kilometres of such an area).

### **No. 3 Coal seam and other unconventional gas moratorium**

Page 1, long title. Insert ", and to place a moratorium on prospecting for, or the mining of, coal seam or other unconventional gas" after "for coal and petroleum".

This suite of amendments together would effect an immediate statewide moratorium on coal seam gas and other unconventional gas exploration, while the environmental, scientific and regulatory design work recommended by the New South Wales Chief Scientist and Engineer in her September 2014 report is undertaken and implemented in full. The amendments also provide for that moratorium to be underpinned by a range of immediate and permanent no-go zones. This fairly and squarely addresses the issue of granting petroleum prospecting titles, which is generally dealt with by the bill, and also addresses the glaring omissions in the Government's bill identified by me in my contribution to the second reading debate, in the failure to address 10 of the 13 recommendations made by the Chief Scientist and Engineer which lend themselves to legislative support or underpinning. On my count the amendments proposed by the Opposition address at least eight of those recommendations.

I draw the attention of members to my contribution to the second reading debate in support of the coal seam gas prohibition bill on 13 August 2015 and my second reading speech in support of the Coal Seam and Other Unconventional Gas Moratorium Bill 2015 on 10 September 2015. The policy set out in these amendments is not only the policy of the Labor Opposition but also the effect of the recommendation of the Legislative Council Select Committee on the Supply and Cost of Gas and Liquid Fuels in New South Wales provided on 25 February 2015.

**The Hon. Dr Peter Phelps:** The majority report.

**The Hon. ADAM SEARLE:** I note that interjection.

**The Hon. Dr Peter Phelps:** It was a very good dissenting report.

**The Hon. ADAM SEARLE:** I do not concede that point but nevertheless it is fairly and squarely consistent with recommendation 3, for which I note with interest this Government has given unqualified support in its response. Of course, the position of the Government is a little confused because in its Gas Plan the Government proposes to grow and develop the industry in circumstances where the recommendations of the chief scientist have not been implemented. In order to be as fair as possible, I outlined where I thought the chief scientist's recommendations were being addressed in these bills. However, I also identified quite clearly where the Government's bills fell far short of addressing the recommendations of the chief scientist, in particular working out, first and foremost, where coal seam gas extraction should potentially occur in this State.

I will not canvass in detail my earlier contributions on this subject but I will take members through these amendments. Amendment No. 2, part 2, sets out the moratorium and what is involved in the moratorium on coal seam gas and other unconventional gas prospecting or mining. Part 2, clause 4 deals with when and in what circumstances the said moratorium may be lifted in specified areas by the Minister: that is, only when the Minister is satisfied on reasonable grounds that no part of the area is within any of the no-go zones; the Standing Expert Advisory Body has provided the Minister with a certificate that the moratorium regulatory framework, which is set out elsewhere in the amendments, is in force, and any applicable requirements of the framework are being, or are capable of being, complied with by the titleholders; and the Minister has published in the *Government Gazette* a certificate prepared by both the chief scientist and the Standing Expert Advisory Body to the effect that the extraction of coal seam or other unconventional gas would be safe and not cause permanent harm to water sources in the area, or any other part of the area's environment, and would not result in an increase in the net greenhouse emissions for the life of the titles.

In this suite of amendments I tried to draw on the recommendations and report of the chief scientist to set out the qualifications and composition of the committee and its terms of office, but importantly, in proposed section 5 (4) the functions to be reposed in the Standing Expert Advisory Body, which is to:

- (a) provide recommendations to, the Minister in connection with the following:
  - (i) whether petroleum mining operations for coal seam or other unconventional gas should be permitted in any onshore area and, if so, the regulatory system that should apply ...
  - (ii) the establishment and contents of, and analysis of the data held in, the Whole of Environment Data Repository—

members will remember that was the centrepiece or one of the lodestones of the chief scientist's recommendations—

- (iii) the development and updating of a risk management and prediction tool with respect to the effects of petroleum mining operations for coal seam or other unconventional gas and its use in connection with the lifting of the moratorium period for an onshore area and the granting of petroleum titles relating to such gas,
- (iv) the processes for characterising and modelling the sedimentary basis of the State,
- (v) the planning implications ...
- (vi) any scientific and technological developments concerning the conduct of petroleum mining operations for coal seam or other unconventional gas (including whether such

developments should be incorporated into the regulatory system for such operations);

- (vii) research that should be undertaken with respect to the conduct of petroleum mining operations for coal seam or other unconventional gas in the State;
- (viii) the development with the private sector and public sector bodies(both national and international) of joint or harmonised approaches to research, data collection, modelling and scale issues (such as subsidence) in connection with petroleum mining operations for coal seam or other unconventional gas;

Importantly, the Standing Expert Advisory Body will also designate areas for the purposes of fleshing out appendix 1, which provides the no-go zones. Appendix 1 also calls on the Standing Expert Advisory Body to flesh out some of those areas. There will be an annual reporting requirement to the Minister based on data contained in the Whole of Environment Data Repository on the environmental impacts on the State during the year concerned with coal seam or other unconventional gas and other functions that may be imposed or conferred by this or other Acts. Clause 6 sets out the moratorium regulatory framework which will deal with the establishment of an accreditation or certification system for workers conducting permissible petroleum mining operations for coal seam or other unconventional gas, including mandatory training requirements for those workers.

It also deals with the inspection and auditing of permissible petroleum mining operations for coal seam or other unconventional gas to determine compliance with requirements of the Act and the regulations; the reporting, collection and publication of data; the establishment of the Whole of Environment Data Repository; and, of course, other matters also touched on by the chief scientist. There will be other provisions. I turn now to the no-go zones with which the members who follow in this debate will be familiar. There is the Northern Rivers of New South Wales, as described by the seven local government areas: Ballina, Byron, Clarence Valley, Kyogle, Lismore, Richmond Valley and Tweed.

The next clause of appendix 1 preserves as no-go zones core drinking water catchment areas in each of the following areas: a special area under the Water New South Wales Act 2014 in the Sydney catchment; those areas defined as water catchment areas in environmental planning instruments; each catchment area referred to in clause 4 of the Hunter Water Regulation; and the Mangrove Creek water catchment area or any other water catchment area as designated by the Standing Expert Advisory Body including the Avon, Cordeaux, Warragamba and Woronora dams.

No-go zones for coal seam or other unconventional gas extraction will also include the recharge zone of the Great Artesian Basin as designated by the Standing Expert Advisory Body, and national parks and other environmentally significant areas. That includes land declared as a wilderness area under the Wilderness Act 1987 or the National Parks and Wildlife Act 1974, land reserved under the National Parks and Wildlife Act, an area listed as a wetland under the Convention on Wetlands of International Importance done at Ramsar, Iran, on 2 February 1971 and, of course, the Greater Blue Mountains World Heritage Area. Land that is zoned or otherwise designated for use under an environmental planning instrument within the meaning of the Environmental Planning and Assessment Act 1979 for, or principally for, residential purposes or land within 2 kilometres of such land will also be no-go areas. Critical industry clusters and prime agricultural land as designated by the Standing Expert Advisory Body will be included in the range of no-go areas as well.

Taken together, the amendments clearly address concerns expressed by the community on the North Coast and in other places that despite the regulatory design work, the strategic land release or any other things government may do, it is beyond argument that government needs to work out the areas where activity like this should just not happen. It needs to identify areas that are so important to the community or so environmentally sensitive that they should be ruled out altogether. The list in the amendment is not a definitive list but includes the most obvious places. In enacting the changes in this

legislation the Parliament should draw a line to determine where there will never be the risk of coal seam gas activities occurring.

On behalf of the Opposition I clearly set out the reasons informing this policy in this place on both 14 August and 10 September this year. I can draw any interested person to the detailed address I made, which I will not repeat. If members are serious about addressing the concerns of the community regarding coal seam gas, having a carefully balanced and thoughtful policy solution to the difficulties posed by coal seam and other unconventional gas and if they want to take a scientifically based approach to the issue they will vote for this suite of amendments. The amendments place the report and recommendations of the Chief Scientist and Engineer at their heart. If members want to protect our core drinking water catchments and ensure integrity of the water on which we will all depend for life, they will vote for these amendments. If members want to make certain that vital areas such as the Northern Rivers regions of New South Wales, the Pilliga and the Blue Mountains are protected, they will vote for these balanced, reasonable and necessary amendments. We need to put public policy in this area on a sound, secure and stable footing. Whatever our other differences, we can do that by implementing these amendments.

Leaving aside the no-go areas, in its suite of amendments the Opposition has set the framework that will ensure all government agencies drive the implementation of the chief scientist's recommendations. The Government has not included those recommendations in its bill. The Opposition amendments propose a regulatory framework and interlocking requirements and outline the role of the Standing Expert Advisory Body and the need to continue to develop and implement all of the chief scientist's recommendations. Only the Opposition amendments will ensure that the chief scientist's recommendations are driven vigorously from good intentions to actuality. If members want to implement her recommendations, they will embrace these amendments. Only these amendments will ensure that those recommendations are delivered.

**Mr SCOT MacDONALD** (Parliamentary Secretary) [5.44 p.m.]: The Government opposes the Opposition amendments on sheet C2015-112 because they replicate those in the Coal Seam and Other Unconventional Gas Moratorium Bill 2015 introduced by the Hon. Adam Searle. The amendments seek to place a moratorium on all coal seam gas exploration in New South Wales. They will only allow for coal seam gas operations once the Standing Expert Advisory Body provides a recommendation to the Minister that the area can be released. They will also designate certain areas of the State as no-go zones for coal seam gas development and cancel all existing titles with the exception of production leases that will not be able to be renewed.

The effect of the amendments will be to effectively cancel the Narrabri and Gloucester projects and other titles around the State without compensation. The flow-on impacts of such an action would be to place at risk the more than 300,000 jobs in New South Wales that are reliant on gas. Industry and businesses that depend on gas may relocate out of New South Wales in the face of uncertain supply and increasing gas prices. The investment attractiveness of New South Wales for all industries would be severely impacted. In addition, we would fail to place downward pressure on domestic gas prices for the more than one million families who use gas in this State.

The Government has the NSW Gas Plan in place, which sets out the framework for the safe and sustainable development of a coal seam gas industry. At the head of that plan is a road map to implement all recommendations of the New South Wales Chief Scientist and Engineer. The chief scientist recommended that the Government designate those areas of the State in which coal seam gas activity can occur. The Government has already committed to removing production exploration licences from national parks consistent with the Gas Plan. The Government has established coal seam gas exclusion zones for residential areas and critical industry clusters. The exclusion zones apply to 2.7 million hectares of existing and future residential land across New South Wales and the equine and viticulture critical industry clusters located in the Upper Hunter.

The proposal to implement a no-go zone for gas extraction will only contribute to shutting down

the gas industry in New South Wales. The Government has already undertaken actions to improve the regulatory standards that apply to gas exploration and production and to provide support and advice for communities and landholders. The NSW Gas Plan resets the approach to the development of gas in this State. The plan will ensure that the industry is developed on our terms and in suitable areas. The Strategic Release Framework established under these bills will ensure that areas will only be released for potential exploration after a careful assessment of the economic, environmental and social factors and that titles will only be granted through a competitive selection process. The petroleum exploration licence [PEL] buyback scheme has also successfully reset the industry, with the footprint of coal seam gas in this State having been reduced from more than 60 per cent of the land mass under Labor to less than 6 per cent. Just two days ago the Government also separately announced the buyback and cancellation of PEL 445 in the Northern Rivers. The Government opposes the amendments.

**Mr JEREMY BUCKINGHAM** [5.47 p.m.]: I lend the support of The Greens to the Opposition amendments and note that they enact previous amendments that the Hon. Adam Searle put forward on behalf of Labor in relation to the Coal Seam Gas Prohibition Bill of The Greens. I also note that the amendments form the basis of a Labor private member's bill that The Greens wholeheartedly support. We initially came to this place supporting a moratorium on coal seam gas and brought a bill to that effect. We would be happy to support these amendments because they set out a reasonable framework for dealing with unconventional gas in the interim, initiate the moratorium, set out the provisions under which a moratorium could potentially be lifted and set out the areas where the Standing Expert Advisory Body could establish no-go zones.

As the Parliamentary Secretary said in his speech in reply to this amendment, there are no-go zones in this State within 2.5 kilometres of residential areas. The Government is yet to put forward a coherent case as to why that is appropriate for residential areas and for critical industry clusters but not for other industries such as dairy, sugar cane and tourism and areas such as water catchments and culturally significant areas. I think the framework that these amendments seek to establish is more coherent than the response we got from the former Premier in establishing those 2.5-kilometre no-go zones. So The Greens are quite happy to support these amendments, as we have in the past—noting of course that these amendments establish provisions whereby no compensation is payable.

The Greens do not believe that the people of New South Wales were asked whether or not they supported a coal seam gas and unconventional gas industry. The industry has no mandate. Those supporting a gas plan really are doing so in defiance of the community, who nearly threw out a local member on the North Coast who was supporting the industry. The community has resoundingly said no to coal seam gas, so no compensation should be payable. It is very sad to see millions of dollars being handed to coal seam gas companies for petroleum exploration licences that they should never have been granted in the first place.

**The Hon. Duncan Gay:** That's the way they do it in North Korea.

**Mr JEREMY BUCKINGHAM:** Well, certainly in a democracy we should have asked the people whether or not they wanted this industry in the first place. I would advise honourable members to avail themselves of Metgasco's annual report. It makes interesting reading because—

**The CHAIR (The Hon. Trevor Khan):** Order! I invite Mr Jeremy Buckingham to speak to the amendments and not to engage in a second reading speech.

**Mr JEREMY BUCKINGHAM:** The point I am referring to is the compensation payable. Metgasco, a coal seam gas company, is looking forward, according to its annual report, to a windfall gain in compensation from the Government, because of the mishandling by the Government and the Minister of the Rosella coal seam gas well suspension issue. The Greens support these amendments put forward by the Hon. Adam Searle and Labor.



**Question—That Opposition amendments Nos 1 to 3 [C2015-112] be agreed to—put**

**The Committee divided.**

**Ayes, 15**

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

Mr Primrose  
Mr Searle  
Mr Secord  
Mr Shoebridge  
Mr Veitch  
Ms Voltz

Mr Wong  
  
*Tellers,*  
Mrs Houssos  
Mr Moselmane

**Noes, 19**

Mr Ajaka  
Mr Amato  
Mr Borsak  
Mr Brown  
Mr Clarke  
Mr Colless  
Ms Cusack

Mr Farlow  
Mr Gallacher  
Mr Gay  
Mr MacDonald  
Mrs Maclaren-Jones  
Mr Mallard  
Mr Mason-Cox

Mrs Mitchell  
Reverend Nile  
Mr Pearce  
  
*Tellers,*  
Mr Franklin  
Dr Phelps

**Pairs**

Mr Donnelly  
Mr Mookhey  
Ms Sharpe

Mr Blair  
Mr Harwin  
Mrs Taylor

**Question resolved in the negative.**

**Opposition amendments Nos 1 to 3 [C2015-112] negatived.**

**The Hon. ADAM SEARLE** (Leader of the Opposition) [6.00 p.m.]: I move Opposition amendment No. 1 on sheet C2015-111:

**No. 1 Consultation on decision making**

Page 5, schedule 1 [8], lines 15–17. Omit "or" from line 15 and all words on lines 16 and 17.

This amendment addresses the concern I raised earlier in my second reading contribution—namely, in the context of a competitive selection application for the grant of an assessment lease the legislation currently before the Committee removes the requirement for the Minister to notify affected agencies, including local government, of a proposal to grant an assessment lease and to resolve any objections to such an application. This amendment would put that application back in place.

I understand from the Parliamentary Secretary's contribution that the Government will say this is

unnecessary because it will be addressed through administrative action. That is all well and good but administrative actions can be supplanted by new administrative arrangements or by discontinuing standing practice. We think it should remain a legal requirement. It is a good current obligation; it should continue even in the context of this new anti-corruption measure of having competitive applications. We have no problem with that aspect but we need this obligation from the Minister to notify affected agencies of a proposal to grant an assessment lease and to resolve objections to such an application to remain in place.

**Mr JEREMY BUCKINGHAM** [6.02 p.m.]: The Greens support this amendment. We agree in the context of the Independent Commission Against Corruption reforms that it is reasonable for the existing provision—that the Minister is required to contact those affected agencies—to remain. For those reasons The Greens will be supporting this amendment.

**Mr SCOT MacDONALD** (Parliamentary Secretary) [6.02 p.m.]: The Government opposes Opposition amendment No. 1 on sheet C2015-111. In relation to the notification of agencies about the granting of an assessment lease, the current requirement that the Minister must ensure that local councils, relevant agencies and the Secretary of the Department of Planning and Environment are informed, will remain for all minerals other than coal. An assessment lease for coal will no longer be released unless it has passed through our new framework, which will require that a competitive process take place. The framework's advisory body will consist of representatives from the Department of Planning and Environment, the Department of Premier and Cabinet, the Treasury and NSW Resources and Energy. Relevant agencies will be made aware through this advisory body. The Government opposes this amendment.

**Question—That Opposition amendment No. 1 [C2015-111] be agreed to—put and resolved in the negative.**

**Opposition amendment No. 1 [C2015-111] negated.**

**Mr JEREMY BUCKINGHAM** [6.04 p.m.], by leave: I move The Greens amendments Nos 1 and 2 on sheet C2015-106 in globo:

**No. 1 Process reforms for controlled release prospecting titles**

Page 6, schedule 1. Insert after line 28:

**3 Assessment of environmental and other impacts**

Before inviting competitive selection applications in respect of an area, the decision-maker must:

- (a) make an assessment of, and take into account, the environmental, social and economic factors relevant to the area, including but not limited to the following:
  - (i) impacts on agricultural productivity;
  - (ii) impacts on existing industries;
  - (iii) impacts on water resources, including groundwater;
  - (iv) impacts on threatened species within the meaning of the *Threatened Species Conservation Act 1995*;

- (v) impacts on human health;
- (vi) any relevant environmental planning instruments; and
- (b) give notice of the proposed invitation to any Minister responsible for the administration of a controlled release prospecting title and invite that Minister to make written comments on the proposed invitation within 28 days after the date of the notice; and
- (c) publish a notice on the internet containing details of the proposed invitation and inviting any person to make written comments on the proposed invitation within 28 days after the date of the notice; and
- (d) take into account any comments on the proposed invitation provided in accordance with paragraph (b) or (c).

## **No. 2 Process reforms for petroleum prospecting titles**

Page 10, schedule 2. Insert after line 22:

### **3 Assessment of environmental and other impacts**

Before inviting competitive selection applications in respect of an area, the Minister must:

- (a) make an assessment of, and take into account, the environmental, social and economic factors relevant to the area, including but not limited to the following:
  - (i) impacts on agricultural productivity;
  - (ii) impacts on existing industries;
  - (iii) impacts on water resources, including groundwater;
  - (iv) impacts on threatened species within the meaning of the *Threatened Species Conservation Act 1995*;
  - (v) impacts on human health;
  - (vi) any relevant environmental planning instruments, and
- (b) give notice of the proposed invitation to any other Minister responsible for the administration of a petroleum prospecting title and invite that other Minister to make written comments on the proposed invitation within 28 days after the date of the notice; and
- (c) publish a notice on the internet containing details of the proposed invitation and inviting any person to make written comments on the proposed invitation within 28 days after the date of the notice; and

- (d) take into account any comments on the proposed invitation provided in accordance with paragraph (b) or (c).

These amendments concern the Strategic Release Framework, which requires for both coal and petroleum prospecting titles an assessment of environmental and other impacts. As these amendments state, before inviting competitive selection applications in respect of an area, the decision-maker must make an assessment of, and take into account, the environmental, social and economic factors relevant to the area, including but not limited to the following: impacts on agricultural productivity; impacts on existing industries; impacts on water resources, including groundwater; impacts on threatened species; impacts on human health; any relevant environmental planning instruments; give notice of the proposed invitation to any Minister responsible for the administration of a controlled release prospecting title and invite that Minister to make written comments; publish a notice on the internet containing details of the proposed invitation and invite any person to make written comments; and take into account any comments on the proposed invitation.

These amendments are about ensuring that the Strategic Release Framework is as robust and comprehensive as possible and that the community goes in with eyes wide open. The community must have the opportunity for consultation. One of the key things I have laboured in my time in this place is the issue of consent. It is absolutely fundamental for any industry gaining a social licence and a mandate. These amendments will ensure that before deciding to invite applications for the grant of a controlled release prospecting title these factors are considered and the community is consulted. We think they are a reasonable addition. I note that the Hon. Dr Peter Phelps is rolling his eyes and shaking his head—I hope he is doing that because he is objecting and not because he is having a fit. The Greens think these are reasonable amendments and the Government should accept them.

**The Hon. ADAM SEARLE** (Leader of the Opposition) [6.07 p.m.]: The Opposition will be supporting these amendments. We think they provide additional safeguards for community consultation and reasonable protection of the environment to ensure that the matter addressed in these amendments, such as impacts on agricultural productivity, existing industries and water resources—including groundwater—threatened species, human health and any relevant environmental planning instruments are examined before there is an invitation to a competitive selection. We think this is a prudent, cautious and sensible proposal.

**Mr SCOT MacDONALD** (Parliamentary Secretary) [6.07 p.m.]: The Government opposes The Greens amendments Nos 1 and 2 on sheet C2015-106. They would duplicate processes that are built into the strategic release process. The proposal calls for the decision-maker to take into account the environmental, social and economic factors relevant to an area before invitations are called for a competitive selection process. This key role will be played by the strategic release advisory body. Even before invitations are called for in relation to participating in the competitive selection process, the strategic release advisory body will consider the geology of the area and make an assessment of the environmental, social and economic factors. We should keep in mind that we are talking about the release of prospecting titles for exploration.

The assessment that the strategic release advisory body will undertake is unprecedented in relation to upfront assessment and community engagement about areas that may be released for exploration. There is, and will remain, even more detailed assessment of these environmental, social and economic factors ahead of the issue of any production titles. It is appropriate that there is assessment of environmental, social and economic factors ahead of release of areas for exploration, but we should also keep in mind that exploration may not be successful and may not move to production. The Government opposes these amendments.

**Question—That The Greens amendments Nos 1 and 2 [C2015-106] be agreed to—put and resolved in the negative.**

**The Greens amendments Nos 1 and 2 [C2015-106] negatived.**

**Title agreed to.**

**Question—That the Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015 as read be agreed to—put and resolved in the affirmative.**

**Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015 as read agreed to.**

**The CHAIR (The Hon. Trevor Khan):** The Committee will now deal with the Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015. I have before me five sheets of amendments: The Greens amendments on sheet C2015-108A; The Greens amendments on sheet C2015-109; The Greens amendments on sheet C2015-119; the Opposition amendments on sheet C2015-114; and The Greens amendments on sheet C2015-107. The Committee will first deal with The Greens amendments on sheet C2015-108A.

**Mr JEREMY BUCKINGHAM** [6.11 p.m.], by leave: I move The Greens amendments Nos 1 to 5 on sheet 2015-108A in globo:

**No. 1 Ban on prospecting or mining**

Page 2, clause 2, lines 5 and 6. Omit all words on those lines. Insert instead:

**2 Commencement**

- (1) Except as provided by subsection (2), this Act commences on a day or days to be appointed by proclamation.
- (2) Schedules 1 [1] and 2 [5] commence on the date of assent.

**No. 2 Ban on prospecting or mining**

Page 3, schedule 1. Insert after line 1:**[1] Section 4C.** Insert after section 4B:

**4C Prohibition on granting of authorisations to prospect or mine for coal**

- (1) A decision-maker is not to grant an application or tender for an authorisation to prospect or mine for coal, or for any minerals that include coal.
- (2) Compensation is not payable by or on behalf of the State:
  - (a) because of the enactment or operation of this section; or
  - (b) because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment); or
  - (c) because of any conduct relating to any such enactment or operation.
- (3) This section extends to require the refusal of an application for an authorisation made but not decided before the commencement of this

section.

**No. 3 Ban on prospecting or mining**

Page 39, schedule 2 [4], line 16. Omit "grant,".

**No. 4 Ban on prospecting or mining**

Page 39, schedule 2 [5]–[11], line 22 on page 39 to line 25 on page 40. Omit all words on those lines. Insert instead:

**[5] Section 8**

Omit sections 8–18. Insert instead:

**8 Prohibition on granting of petroleum titles**

- (1) The Minister is not to grant an application for a petroleum title.
- (2) Compensation is not payable by or on behalf of the State:
  - (a) because of the enactment or operation of this section; or
  - (b) because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment); or
  - (c) because of any conduct relating to any such enactment or operation.
- (3) This section extends to require the refusal of an application for a petroleum title made but not decided before the commencement of this section.

**No. 5 Ban on prospecting or mining**

Page 92, schedule 2 [50], line 9. Omit "grant,".

The crux of the issue for The Greens is that we should not be developing any new fossil fuel projects in an age of climate change. The intent of the amendments is clear.

**The Hon. Dr Peter Phelps:** This is 100 per cent prohibitionist.

**The CHAIR (The Hon. Trevor Khan):** Order! I remind the Hon. Dr Peter Phelps that interjections are disorderly at all times.

**Mr JEREMY BUCKINGHAM:** It is prohibitionist. I am proud to be a prohibitionist when it comes to coal seam gas.

**The Hon. Dr Peter Phelps:** That is nuts.

**Mr JEREMY BUCKINGHAM:** The Hon. Dr Peter Phelps may well be an expert on nuts. Many people have said so. There is already prohibition on whaling and many activities that have occurred or may occur that are not in the public interest. In an age of climate change and record global

temperatures—

**The Hon. Dr Peter Phelps:** Record?

**Mr JEREMY BUCKINGHAM:** Yes, record. There is unprecedented heat, record temperatures across the globe. Scientists say that there is a carbon budget that we must remain within, that 90 per cent of the fossil fuel reserves in Australia must stay in the ground, that we have a collective responsibility not to develop more and that we should be moving to renewable energy. In fact, we are; the issue is how quickly. I note that the Chair is nodding. I hope we see more nodding from Government members as they recognise that moving to renewable energy will not hurt a bit. Coal is over. We do not need unconventional gas. There is plenty of oil and gas, but we need to adopt technologies like photovoltaics on a massive scale. Wind, solar and other renewable technologies are the future.

The Greens are proud to stand here as the early adopters of technology and call on the luddites in the Coalition to get out of the way of the new energy economy, the digital economy and our fantastic future. The first step is to draw a line in the sand and agree that there should be no new coal seam gas or coal projects. I commend the amendments and the clean energy revolution to the Committee.

**Mr SCOT MacDONALD** (Parliamentary Secretary) [6.14 p.m.]: The Government opposes The Greens amendments Nos 1 to 5 on sheet C2015-108A. The amendments seek to prohibit the granting of coal and petroleum titles. The amendments would place a prohibition on the granting of authorisations to prospect or mine for coal and prohibit the granting of applications for petroleum titles. This would jeopardise not only the coal and gas industries but also the other industries and jobs that those sectors support. Let us not rob this State of investment, new jobs and wealth creation in regional communities.

New South Wales is the only mainland Australian State that does not have its own natural gas industry. We import 95 per cent of our natural gas requirements from other States. Supply constraints and the resulting higher gas prices have impacts across the economy—on mining, agriculture, electricity and water, construction and trade, and transport and services. The cost of not developing our own natural gas resources will be high. Our State will be placed at a competitive disadvantage that will lead to customers paying comparatively high prices for the gas they consume. Prohibiting the grant of authorisations to prospect or mine for coal will have a significant impact. The Government opposes the amendments.

**Mr DAVID SHOEBRIDGE** [6.16 p.m.]: I note the joy that greets my rising to speak on The Greens amendments. The amendments could reshape the future of New South Wales to be a positive future of renewable energy and new jobs in a growing renewables sector that also respects our farmland, our natural resources and our limited water resources. The Parliamentary Secretary gave a Chicken Little response to The Greens amendments. There is a global glut of coal and gas. Producers are hunting for fresh markets in which to sell their coal and gas because the traditional markets no longer want it.

Countries like China and Japan and countries in Western Europe and North America are now saying that they want to get out of the coal and gas industries. They want to get away from the carbon-intensive forms of energy and move to renewables. Other economies are rejecting the dead end—for our economy—that is coal and gas based energy production. But the Parliamentary Secretary is trying to argue that, if we prevent new coal and coal seam gas projects in the tiny New South Wales market—a pimple on a pumpkin in the international production of and market for coal and gas—it will have a significant impact on the prices paid by consumers.

It is as though New South Wales exists in a bubble outside the global economy that sets the price of coal and gas. The price of coal and gas is not set in this Chamber. It is not set around the Premier's table. It is not set around the table of the Independent Pricing and Regulatory Tribunal. The price of coal and gas is set on international markets. The international market for coal and gas at the moment is going through the floor. We know what we will not lose. We know that the Chicken Little view held by the Parliamentary Secretary—that if the Committee agrees to these amendments suddenly energy prices in

New South Wales will skyrocket—is nonsense. It is an example of medieval economic thought that we are used to seeing from this Government.

We know that it will not cause gas prices to rise and we know that it will not cause coal prices to rise if we say no to new mining for coal or gas exploration in New South Wales. We know that it will not affect prices, but it will give us a wonderful opportunity to redirect our economy towards renewables. It will give the wind industry an enormous opportunity to meet future supply in New South Wales without having to be dragged down by the ever-subsidised fossil fuel industry.

**The CHAIR (The Hon. Trevor Khan):** Order! The level of conversation is increasing to too high a level, particularly in the President's gallery. I remind Mr David Shoebridge that he should be speaking to the amendments. He is now moving beyond the words of the amendments and is embarking upon what is approaching a second reading speech.

**Mr DAVID SHOEBRIDGE:** I note that amendment No. 2 provides for a prohibition on the granting of authorisations to prospect or mine for coal. This Greens amendment moved by my colleague Mr Jeremy Buckingham provides that a decision-maker is not to grant an application or tender for an authorisation to prospect or mine for coal or for any minerals that include coal. What a wonderful amendment that is. Of course we should agree to it. If New South Wales is going to have a sustainable future where food production is prioritised, where we protect the climate from runaway global warming and where we protect future generations from the kind of damage that the coal industry is doing, and if we are going to protect the people in the Hunter and Newcastle from the continuing air pollution and the disease and loss of life that is occasioned by the coal that this Government wants to continue pumping through the centre of this State's second-biggest city in uncovered coal wagons, and if we want to protect our future, this is the exact amendment this Committee should be passing.

This House should be making it clear that there should be no new coalmines approved and no new coal exploration approved, which would put a full stop on this industry. I note that my colleague Mr Jeremy Buckingham has also moved in amendment No. 4 that the Minister is not to grant an application for a petroleum title. If only we had had this on the statute books 15 years ago; New South Wales would have been saved an awful lot of pain and an awful lot of environmental damage from the coal seam gas industry. We should be saying loudly and clearly that any part of this State should be protected from the operation of the petroleum and coal seam gas industry and that any part of this State should also be protected from the expansion of the coal industry. That is what these amendments do.

By saying now loudly and clearly that there will be no new coal and no new gas exploration in this State, which is what these amendments do, taken together, we are providing the essential space for the expansion of the job-rich and non-damaging renewable energy sector. Whilst the Government may want to uncouple the two issues of future sustainable jobs—particularly in regional and rural New South Wales—in the solar industry and in the wind industry and the Government's continued ideological support for the fossil fuel industry, the two matters are fundamentally connected. While we have got people like Minister Goward continuing to peddle the anti-science—

**The CHAIR (The Hon. Trevor Khan):** Order! Mr David Shoebridge is moving beyond the terms of the amendments and is making reflections upon a Minister in the other place. I invite him to deal with the amendments and not go further than that.

**Mr DAVID SHOEBRIDGE:** Nobody—whether it is a Minister or anybody in a position of responsibility to make decisions in the best interests of New South Wales—should be peddling unscientific, unproved cockeyed theories about mythical damage that is being done by the wind industry. We should be governed by the best science.

**The CHAIR (The Hon. Trevor Khan):** Order! Mr David Shoebridge is not speaking to the amendments. I call Mr David Shoebridge to order for the first time. I encourage the member to speak to



the amendments and not just keep speaking for the sake of it.

**Mr DAVID SHOEBRIDGE:** These amendments, taken together, would protect New South Wales. They will, far more than another \$1 billion subsidy that this Government wants to give to the coal and gas industries, protect us for the future. They will guarantee sustainable, long-term jobs in renewable energies in the future; they will protect our finest and best agricultural land from the continuing ravages of the coal and coal seam gas industry; and they will protect communities from the airborne pollution and aquifer pollution that these industries inevitably cause.

These amendments and the work of The Greens—my colleague Mr Jeremy Buckingham and other Greens at a State and Federal level—trying to push this notion of a non-fossil-fuel-dependent future are a clear path to a sustainable, rich and vibrant future that this Government is opposed to. This Government is stuck in its grubby, dirty, twentieth-century attitude to energy production. It is a beggar-the-environment approach to environmental planning and mining regulation. I hope that this Chamber—if not today, in the very near future—adopts these into law and we protect our future from the ravages of these industries.

**Dr JOHN KAYE** [6.26 p.m.]: I support the five amendments that have been moved in globo by Mr Jeremy Buckingham. I shall put forward three key arguments as to why the Committee ought to support these amendments. The first one relates to jobs, the second one relates to greenhouse emissions and the third one relates to land use conflict and human health. Before I do that, it is necessary for me to say to the Committee that we have moved beyond the day when fossil fuels are necessary to keep the lights on, to keep industry operating, to keep commerce operating and to keep the economy turning over. In fact, the argument I put forward this evening in support of these amendments is that it is the exact opposite—that a future based on fossil fuels is a future in which keeping the lights on will become more expensive, in which maintaining employment will become almost impossible, in which human health will decline and in which we will be contributing to irreparable damage to the future of this planet.

In relation to jobs, the Parliamentary Secretary—who spoke so strongly against the amendments moved by Mr Jeremy Buckingham—is part of a government that published the Progressing the NSW Renewable Energy Action Plan Annual Report 2014. I draw the attention of the Committee to some highly germane figures. The number of jobs currently in renewable energy in New South Wales is estimated by the Government to be 4,409. But that pales into insignificance when compared with the 90,000 direct and indirect jobs that will be created if the 5,456 megawatts of renewable energy currently seeking approval were to be granted approval. That would be \$7.3 billion of new investment and 90,000 new jobs on top of the \$5.9 billion in the almost 3,000 megawatts of installed capacity that is already approved, which would create roughly 50,000 jobs and the 597 megawatts of installed capacity that is currently under construction for \$1.4 billion.

That indicates that there is a renewable energy jobs and investment boom around the corner for New South Wales. The amendments moved by Mr Jeremy Buckingham are critical to ensuring that that boom happens quickly and in a way that maximises jobs for New South Wales, because if this State continues down the path of more coalmines and more coal seam gas drilling, it is not only a distraction but it is a deterrent to investment in renewable energy in this State. It is important for this State to capitalise and to realise not just these jobs but also the billions of dollars—tens if not hundreds of billions of dollars—of investment that will come after this. Critical to these amendments is the opportunity to build up in Australia an export industry that will last us through the twenty-first century, an industry based on innovation and what nations across the world will be crying out for: clean energy generation technologies and applications. These amendments are the only way to guarantee that we build a rapidly growing renewable energy market in New South Wales and ensure the creation of those jobs.

I will talk now about greenhouse gas emissions. These amendments are critical to defending the planet against rising greenhouse gas emissions. The day when fossil fuels will be viewed as an historical error is around the corner. I think Mr Jeremy Buckingham would agree with me on that. The question is:

How rapidly do we get there and how much damage do we do on the rapid trajectory, the rapid phase-out? The absence of expansion of fossil fuel extraction in New South Wales will minimise the damage done to the planet and to the climate. Each and every person living on this continent has a moral obligation to recognise that we have a gift, which is the opportunity to shuck off the connections we have to fossil fuels, to move beyond fossil fuels—

**The CHAIR (The Hon. Trevor Khan):** Order! I remind members of the ruling of a former Chair, the Hon. Amanda Fazio, who said that members should:

... confine [their] remarks to the amendments before the Committee. It is not an opportunity to give a second reading speech.

Whilst I am sympathetic to allowing some expansion, the member is really making a speech on the second reading. I invite him to address the amendments before the Committee. He should not make a philosophical argument about coal versus renewables, which is essentially what he is now doing. He is moving well and truly beyond the leave of the amendments.

**Dr JOHN KAYE:** Thank you, Chair. I appreciate your ruling.

**The CHAIR (The Hon. Trevor Khan):** Order! I make the observation that it is an invitation; I am not ruling the member out of order. The member is sailing close to the wind at this stage. He should return to the leave of the amendments.

**Dr JOHN KAYE:** I appreciate the invitation and do not seek to reject it. However, my argument on these specific amendments goes to the reason why we should reject the expansion of coalmines and coal seam gas drilling. I turn now to the third part of my argument, which is land use conflict and human health. From this perspective these amendments would not be necessary if there had been developed a mechanism for dealing with land use conflict around coalmines, coal seam gas drilling and unconventional fossil fuel drilling in New South Wales that genuinely worked to respect the rights of farmers and communities and to protect health. There would still be the issue of jobs and greenhouse gas emissions but if such a mechanism had been in place maybe this part of the argument would not stand on such strong legs.

No government has been able to work out a way to deal with the extraordinary pressure that comes from mining companies and gas extraction companies. The exact dynamics of that pressure, even though I have watched it happening in the 8½ years I have been in this Chamber, is still a bit of a mystery. Nonetheless, it is a pressure that has resulted in a perverse set of land use management procedures that simply do not work. Therefore, it is reasonable to conclude that there is no way for us to have a fossil fuel extraction industry in New South Wales while at the same time protecting the environment and the rights of landowners and of local communities and Indigenous people to enjoy their natural environment. The only way to do it is via amendments that specifically say, "We are calling an end to an industry that has created havoc with human health, land use, the equine industry, the viticulture industry and sensible residential development across New South Wales and has divided communities."

I remind the Committee of the answer given by the Leader of the Government to a question I asked yesterday about wind energy. He gave an emotional response expressing his anger with wind energy because it divides communities. If that is a reason for being angry about wind energy—and I do not think it is—then surely there should be far greater anger and concern about the coal industry and the gas industry. There ought to be widespread understanding throughout the Chamber and the body politic in New South Wales that this industry—as stated by those who oppose it—has lost its social licence, if indeed it ever had one.

These amendments are also about protecting human health. About two years ago I stood with my good friend Jan Davis on a rail bridge over Maitland railway line as an empty coal train came rattling past.

I am sure Mr Jeremy Buckingham has had similar experiences. Within 10 minutes Jan Davis was reaching for Ventolin and I was almost unable to see and to breathe because the coal trains that go up and down the Hunter have savagely spread coal dust—

**The Hon. John Ajaka:** Point of order: Mr Chair—

**Dr JOHN KAYE:** I know what he is going to say. He is predictable.

**The Hon. John Ajaka:** The fact that Dr John Kaye knows what I am going to say means he knows he is straying outside the leave of the amendments. I ask that he return to the leave of the amendments.

**The CHAIR (The Hon. Trevor Khan):** Order! I refer to the ruling of the Hon. Amanda Fazio given on 8 June 2005. We did not always agree, but I agree with her on this. She stated:

I remind members that when they are given the call they should address only the amendments under consideration ...

Members should not engage in an amplified version of their speech to the second reading debate. Dr John Kaye is no longer addressing the amendments. I uphold the point of order.

**Dr JOHN KAYE:** Thank you for your ruling, Chair. I conclude my remarks by saying that these amendments are critical to defending and growing jobs in New South Wales and to creating a platform for future employment in New South Wales based on a robust export industry. They are also critical to protecting our democracy and relations within our community, to reuniting communities, to protecting human health and to addressing the most urgent challenge of the twenty-first century: reducing greenhouse gas emissions. I commend the amendments to the Committee.

**The Hon. ADAM SEARLE** (Leader of the Opposition) [6.38 p.m.]: The Opposition resolutely and completely opposes The Greens amendments on sheet 2015-108A to ban prospecting or mining and to prohibit the granting of petroleum titles flat out. We do not think that is a sensible or balanced approach and we will not support those amendments.

**Question—That The Greens amendments Nos 1 to 5 [C2015-108A] be agreed to—put and resolved in the negative.**

**The Greens amendments Nos 1 to 5 [C2015-108A] negatived.**

*[The Chair (The Hon. Trevor Khan) left the chair at 6.40 p.m. The Committee resumed at 8.00 p.m.]*

**Mr JEREMY BUCKINGHAM** [8.00 p.m.], by leave: I move The Greens amendments Nos 1 to 6 on sheet C2015-109 in globo:

**No. 1 Re-instatement of public interest test**

Page 27, schedule 1. Insert after line 6:

**[125] Section 380A**

Omit the section. Insert instead:

**380A Public interest relevant ground for making certain decisions about mining rights**

- (1) In this section, **mining right** means an exploration licence, an assessment lease, a mining lease, a mineral claim or an opal prospecting licence.
- (2) The public interest is a ground (in addition to any other available ground) on which any of the following decisions may be made under this Act:
  - (a) a decision to refuse to grant, renew or transfer a mining right;
  - (b) a decision to refuse a tender for a mining right;
  - (c) a decision to cancel a mining right or to suspend operations under a mining right (in whole or in part);
  - (d) a decision to restrict operations under a mining right by the imposition or variation of conditions of a mining right.
- (3) To avoid doubt, sections 127 (1) and 205 (1) extend to the cancellation of a mining right under this section.
- (4) This section has effect despite anything to the contrary in this Act.

## No. 2 **Re-instatement of public interest test**

Page 37, schedule 1 [131]. Insert after line 7:

### **Operation of public interest test**

Section 380A (as replaced by the 2015 amending Act) applies to any decision made after the replacement of that section, including:

- (a) a decision with respect to an application or other matter that was pending on that replacement;
- (b) a decision based on conduct that occurred, or on a matter that arose, before that replacement.

## No. 3 **Definition of "rehabilitation"**

Page 37, schedule 1 [133]. Insert after line 19:

**rehabilitation** means the treatment or management of land, or of water, such that it is returned to its original condition or to an improved condition and is a safe and stable environment, including (but not limited to) the following:

- (a) the levelling, regrassing, reforestation or contouring of any part of the land the subject of the title;
- (b) the filling in of any voids;
- (c) the filling in or sealing of excavation and drill holes.

**No. 4 Definition of "rehabilitation"**

Page 39, schedule 2 [2]. Insert after line 3:

**rehabilitation** means the treatment or management of land, or of water, such that it is returned to its original condition or to an improved condition and is a safe and stable environment, including (but not limited to) the following:

- (a) the levelling, re-grassing, reforestation or contouring of any part of the land the subject of the title;
- (b) the filling in of any voids;
- (c) the filling in or sealing of excavation and drill holes.

**No. 5 Re-instatement of public interest test**

Page 44, schedule 2 [21], lines 5–7. Omit all words on those lines. Insert instead:

**[21] Section 24A**

Omit the section. Insert instead:

**24A Public interest relevant ground for making certain decisions about petroleum titles**

- (1) The public interest is a ground (in addition to any other available ground) on which any of the following decisions may be made under this Act:
  - (a) a decision to refuse to grant, renew or transfer a petroleum title;
  - (b) a decision to cancel a petroleum title or to suspend operations under a petroleum title (in whole or in part);
  - (c) a decision to restrict operations under a petroleum title by the imposition or variation of conditions of a petroleum title.
- (3) To avoid doubt, section 22A (6) extends to the cancellation of a petroleum title under this section.
- (4) This section has effect despite anything to the contrary in this Act.

**No. 6 Re-instatement of public interest test**

Page 99, schedule 2 [51]. Insert after line 34:

**Operation of public interest test**

Section 24A (as replaced by the 2015 amending Act) applies to any decision made after the replacement of that section, including:

- (a) a decision with respect to an application or other matter that was

pending on that replacement;

- (b) a decision based on conduct that occurred, or on a matter that arose, before that replacement.

These amendments reinstate the public interest test as relevant grounds for making certain decisions about mining rights. Clearly, there was an excellent case for having a public interest test in the first place. The Government has never put a cogent and coherent argument why there should not be a public interest test as well as a fit and proper person test. For that reason The Greens seek to reinstate the public interest test in the various bills. The other element of these amendments relates to the definition of "rehabilitation". The Government said that "rehabilitation" means a safe and stable environment. The Greens believe that "rehabilitation" means:

... the treatment or management of land, or of water, such that it is returned to its original condition or to an improved condition and is a safe and stable environment, including (but not limited to) the following:

- (a) the levelling, regrassing, reforestation or contouring of any part of the land the subject of the title;
- (b) the filling in of any voids;
- (c) the filling in or sealing of excavation and drill holes.

The key point is subparagraph (c). An increasing practice in this State is to move from underground mining, board and pillar, longwall and now open-cut mining, leaving bigger and bigger voids. We routinely see conditions of consent attached to development applications to leave a final void.

**The Hon. Rick Colless:** There is nothing new in that. That has been there since the 1970s.

**Mr JEREMY BUCKINGHAM:** I note the interjection of the Hon. Rick Colless who says there is nothing new about that. The difference is the scale of the voids. If it were a small void, a quarry, et cetera, that may be the case, but the void from some of these mines is many kilometres long, many kilometres wide and hundreds of metres deep. The Greens believe a responsible government should ensure that such a void is not left. In Queensland final voids and pits have been left and are an ongoing liability. The Greens do not believe that we should leave a legacy of final voids to future generations.

Some of the biggest multinational coalmining corporations operating in this State are preparing to leave. Peabody Coal, basically an insolvent company, is leaving the State with a very small security of \$150 million to deal with three large coalmines. Rio Tinto has announced to the market its intention to leave. The Shenhua approval will leave a final void. The Greens do not believe that that is an acceptable standard of rehabilitation. We urge the House to support our amendments on rehabilitation and the re-establishment of the public interest test.

**The Hon. ADAM SEARLE** (Leader of the Opposition) [8.05 p.m.]: The Opposition will be supporting the reinstatement of the public interest test and the improvement of the definition of "rehabilitation".

**Mr SCOT MacDONALD** (Parliamentary Secretary) [8.05 p.m.]: On behalf of the Government I oppose The Greens amendments Nos 1 to 6. The amendments seek to reinsert the public interest test, which was replaced by the fit and proper person test in both bills. The Government considers that this amendment is unnecessary. Public interest is inherently part of the Government's obligations in administering the Acts. In the broadest sense, public interest is already considered in the administration of titles. This is not only at the initial grant of title but also in relation to the grant of approvals for specific

activities under a title. We require strict standards to be met. For example, we consider an applicant's financial and technical capability at grant, renewal and transfer and we hold title applicants to minimum standards.

Activity approvals are subject to part 5 planning requirements to assess, to the greatest possible extent, all matters affecting or likely to affect the environment by reason of that activity. The cancellation and compliance and enforcement powers in both Acts already reflect public interest matters. For example, cancellation and suspension grounds include breach of a condition, providing false and misleading information or contravening directions. In regard to rehabilitation, these amendments seek to introduce a new definition of "rehabilitation" into the Mining Act and the Petroleum (Onshore) Act. The proposed amendment would expand the definition of "rehabilitation" across both the Mining Act and the Petroleum (Onshore) Act.

The bill includes broad conditioning powers which cover environmental management, protection and rehabilitation. Titleholders can be required to carry out activities to prevent, control or mitigate harm to the environment and to rehabilitate land or water that is or may be affected by activities under the authorisation. This conditioning power will allow the imposition of conditions, or the variation of conditions, to address rehabilitation issues adequately. Securities can and are held against rehabilitation obligations and can be reassessed at any time if the existing funds are thought to be inadequate. The Government opposes the amendments.

**Question—That The Greens amendments Nos 1 to 6 [C2015-119] be agreed to—put and resolved in the negative.**

**The Greens amendments Nos 1 to 6 [C2015-119] negatived.**

**Mr JEREMY BUCKINGHAM** [8.09 p.m.], by leave: I move The Greens amendments Nos 1 and 2 on sheet C2015-119 in globo:

**No. 1 Environmental information**

Page 36, schedule 1 [131], lines 37–40. Omit all words on those lines.

**No. 2 Environmental information**

Page 99, schedule 2 [51], lines 20–23. Omit all words on those lines.

The Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015 contains a peculiar arrangement. As to amendment No. 1, the bill sets out what has been removed from section 365A, in that the Department of Resources and Energy or other relevant agencies do not have to provide other agencies with information that they have ascertained in relation to investigation, audits and reviews of environmental factors [REFs].

It is of significance in particular to the Environment Protection Authority [EPA]. It is not clear why the sections relating to the sharing of information by the Division of Resources and Energy with other relevant agencies will not apply to information about harm that was caused or is likely to be caused to the environment when that information was obtained by the secretary before the commencement of this section. The Greens welcome the EPA taking on the role as the lead agency, but these sections have been inserted to ensure that when it comes to compliance and enforcement the division can share its existing information with the EPA so that it can properly perform its role.

The division must have a plethora of information about compliance and performance as well as audits and information about the operation of mining, gas and other mineral mining in the State. With the EPA becoming the lead agency, surely it is in the State's interest that the information be handed on. The

staff of the EPA are newbies in all of this. They will need all the information they can get about how coal and especially gas mining has been operating. Why not provide them with all of the information, including the history of compliance, breaches—or not—of conditions of consent and all matters that the Division of Resources and Energy is privy to? The Greens smell a rat.

**The Hon. Dr Peter Phelps:** Is that a native rat or an imported rat?

**Mr JEREMY BUCKINGHAM:** It is a water rat, a dirty invasive species. It is a stinking rat.

**The Hon. Dr Peter Phelps:** There are lots of native Australian rats.

**Mr JEREMY BUCKINGHAM:** I love—

**The CHAIR (The Hon. Trevor Khan):** Order! Mr Jeremy Buckingham will not get distracted by interjections from the Government Whip.

**Mr JEREMY BUCKINGHAM:** I am sorry, Mr Chair. It is difficult. We believe that the Division of Resources and Energy is sitting on a pile of information that it does not want to share with the EPA. There is no credible reason for that. We would like to hear from the Parliamentary Secretary why the Government would not support amendments to ensure that responsible government, and the agencies therein, share as much information as possible in order to ensure that the EPA is well armed in its ongoing role of administering and regulating the gas industry. I commend the amendments to the Committee.

**The Hon. ADAM SEARLE** (Leader of the Opposition) [8.12 p.m.]: The Opposition will support The Greens amendments Nos 1 and 2. The two provisions the amendments are directed towards addressing appear to impede the sharing of information that other parts of the bill provide for. More fundamentally, it may be the situation that the regulator has dealt with potential or alleged breaches of conditions in the past but there have not been prosecutions. Maybe infringement notices have been issued or other compliance action undertakings have been made.

I pause to say that those undertakings are not enforceable at law because the enforceable undertaking provisions are not currently in the legislation. In that situation all history will be denied to the new lead regulator, the Environment Protection Authority. That means that when it gets a complaint or it deals with a titleholder on an issue it may not have all of the information about past actions or inactions, whether they be good or otherwise. It seems a silly provision. I am looking forward to hearing the justification for the provision, because it appears to undermine the information-sharing provisions in the legislation. That is regrettable.

**Mr SCOT MacDONALD** (Parliamentary Secretary) [8.13 p.m.]: The Government does not support The Greens amendments Nos 1 and 2 on sheet C2015-119. The amendments seek to delete the savings and transitional provisions stating the new exchange of information provision in the Mining Act and Petroleum (Onshore) Act and the disclosure of information provision in the Petroleum (Onshore) Act. The Government does not support this amendment on the basis that the Government will need to examine any unintended consequences of removing the savings and transitional provisions, including consultation with the Environment Protection Authority. This issue is best dealt with following such consideration and consultation and can be effected through savings and transitional regulations consequent upon the passing of these bills. We oppose the amendments.

**Mr JEREMY BUCKINGHAM** [8.14 p.m.]: I put on record that, to be honest, I have no idea what that meant.

**The Hon. Matthew Mason-Cox:** Well, listen.



**Mr JEREMY BUCKINGHAM:** I challenge honourable members opposite such as the Hon. Rick Colless and the Hon. Matthew Mason-Cox to tell me exactly what the contribution of Mr Scot MacDonald meant in plain English. It would assist Hansard and the historical record if they would tell me why decades of information about compliance held by the division will not be shared. Some of it may be incredibly significant to the environment and the health of the State and its people. Instead of an answer we heard what I believe was gobbledygook from the Parliamentary Secretary. I put on record that I do not know what his contribution meant.

**The Hon. Matthew Mason-Cox:** Sit down. Stop embarrassing yourself.

**Mr JEREMY BUCKINGHAM:** I note the interjection of the Hon. Matthew Mason-Cox. Please come to the table and make a contribution explaining to me what the Parliamentary Secretary just said.

**Mr Scot MacDonald:** Point of order: Is the honourable member addressing the Chair or debating a member in the Chamber?

**The CHAIR (The Hon. Trevor Khan):** Order! Interjections are inevitably disorderly, and to that extent Mr Scot MacDonald has dobbed in his own member. Mr Jeremy Buckingham should direct his remarks through the Chair and ignore disorderly interjections.

**Question—That The Greens amendments Nos 1 and 2 [C2015-119] be agreed to—put and resolved in the negative.**

**The Greens amendments Nos 1 and 2 [C2015-119] negatived.**

**The Hon. ADAM SEARLE** (Leader of the Opposition) [8.17 p.m.]: I move Opposition amendment No 1 on sheet C2015-114:

**No. 1 Restraint of contraventions of Act**

Page 66, schedule 2 [44]. Insert after line 35:

**112C Restraint of contraventions of this Act**

- (1) In this section, **contravention** includes threatened or apprehended contravention.
- (2) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a contravention of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that contravention.
- (3) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of that person and on behalf of other persons (with their consent), or a body corporate or unincorporate (with the consent of its committee or other controlling or governing body), having like or common interests in those proceedings.
- (4) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (5) If the Court is satisfied that a contravention has occurred, or that a contravention will, unless restrained by order of the Court, be

committed, it may make such order as it thinks fit to remedy or restrain the contravention.

The amendment inserts a new section 112C to enable community or third party enforcement of standards. This Government has largely attacked or removed third party rights. In the earlier Opposition amendments to the coal seam gas bill provisions such as this were proposed as part of that package. We propose them again here to enable proper community input into the upholding of proper standards of protection. We do not think it should only be the responsibility of the official regulator.

Under State and Federal laws in other jurisdictions the right of community members or third parties has been an integral part of the environmental standards apparatus. Unfortunately, governments of a conservative stripe seem to have a set against community participation in this regard. We do not feel any such inhibition. We think this is an important part of any proper set of protective standards. We urge all members to give proper consideration to the provision and embrace it as part of the suite of measures currently before the House.

**The CHAIR (The Hon. Trevor Khan):** Order! I call the Hon. Walt Secord to order. I encourage the member to consider the comments I made to other members.

**The Hon. WALT SECORD** (Deputy Leader of the Opposition) [8.19 p.m.]: I formally support my colleague the Hon. Adam Searle and formally put my support behind his amendments. I hope these amendments are supported by the Government, because it has failed to protect the North Coast community. Sadly, The Nationals have aligned themselves with big business and unconventional gas exploration. Labor has aligned itself willingly with the community. I support the amendments.

**Mr JEREMY BUCKINGHAM** [8.19 p.m.]: The Greens wholeheartedly support this excellent amendment from Labor and the Hon. Adam Searle. Clearly the right to remedy any contravention of the Act through the courts and third-party appeal rights is something that The Greens support. We join with Labor in voicing our concern and disquiet as to why conservative governments have sought to effectively attack the courts and the freedom of people in a democracy to seek redress through the judicial system.

We think that there are a plethora of examples where the public interest and the collective interest has been served by people and organisations who have sought to challenge contraventions of the Act through the courts and have achieved excellent outcomes. The Parliament is not perfect, our laws are not perfect, and the implementation and regulation of those laws is not perfect. Time and again we see people challenge decisions of departments and regulators and the actions of other parties in the courts, with good outcomes. We certainly join with Labor in supporting this amendment.

**Mr SCOT MacDONALD** (Parliamentary Secretary) [8.21 p.m.]: The Government does not support Opposition amendment No. 1 on sheet C2015-114. This amendment seeks to introduce an open standing provision into the Petroleum (Onshore) Act. This would allow any person to bring proceedings in the Land and Environment Court for breaches of the Act. The Government does not support this amendment. Judicial review proceedings are available for parties who have standing to bring such proceedings. This position at law has worked well in the past and ensures that parties with standing in the eyes of the courts can bring proceedings. The Government opposes this amendment.

**Question—That Opposition amendment No. 1 [C2015-114] be agreed to—put and resolved in the negative.**

**Opposition amendment No. 1 [C2015-114] negatived.**

**Mr JEREMY BUCKINGHAM** [8.22 p.m.]: I move The Greens amendment No. 1 on sheet C2015-107.

No. 1 **Responsible prospecting and mining**

Page 99. Insert after line 34:

**Schedule 3 Responsible prospecting and mining—protecting land, water and communities**

**Part 1 Preliminary**

**1 Definitions**

(1) In this schedule:

***authorised mining or petroleum activity*** means any of the following:

- (a) prospecting for minerals in accordance with a mining authorisation;
- (b) mining in accordance with a mining authorisation;
- (c) carrying out primary treatment operations necessary to separate minerals from the material from which they are recovered in accordance with a mining authorisation;
- (d) carrying out any other mining purpose in accordance with a mining authorisation;
- (e) prospecting for petroleum in accordance with a petroleum title;
- (f) assessing any petroleum deposit on land in accordance with a petroleum title;
- (g) conducting petroleum mining operations in accordance with a petroleum title;
- (h) conducting speculative geological, geophysical or geochemical surveys or scientific investigations in relation to petroleum in accordance with a petroleum title.

***critical industry cluster land*** means land that has been declared to be critical industry cluster land under clause 22.

***Department*** means the Department of Industry, Skills and Regional Development.

***development*** has the same meaning as in the *Environmental Planning and Assessment Act 1979*.

***gateway certificate*** means a certificate issued by the Gateway Panel under clause 14.

***Gateway Panel*** means the Mining and Petroleum Gateway Panel established under clause 19.

**mine** means to extract material from land for the purpose of recovering minerals or petroleum from the material so extracted or to rehabilitate land (other than a derelict mine site) from which material has been extracted.

**mineral** means any substance prescribed by the regulations under the *Mining Act 1992*, and includes coal and oil shale, but does not include uranium or petroleum.

**mining authorisation** means an authorisation within the meaning of the *Mining Act 1992*.

**petroleum** has the same meaning as in the *Petroleum (Onshore) Act 1991*.

**petroleum mining operations** means operations carried out in the course of mining for petroleum.

**petroleum prospecting operations** means operations carried out in the course of prospecting for petroleum.

**petroleum title** has the same meaning as in the *Petroleum (Onshore) Act 1991*.

**planning approval** means any of the following:

- (a) development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (including consent for State significant development) or the modification of any such development consent,
- (b) the modification of an approval given (before the commencement of this schedule) under Part 3A of that Act to carry out a project,
- (c) an approval within the meaning of Part 5 of that Act or the modification of such an approval,
- (d) an approval of State significant infrastructure under Part 5.1 of that Act or the modification of such an approval.

**prospecting for minerals** means carrying out works on, or removing samples from, land for the purpose of testing the mineral bearing qualities of the land.

**prospecting for petroleum** means carrying out works on, or removing samples from, land for the purpose of testing the quality and quantity of petroleum in the land and the potential to recover petroleum from the land.

**protected land** has the meaning given by clause 2.

**relevant criteria**—see clause 13.

**Secretary** means the Secretary of the Department.

- (2) Notes included in this schedule do not form part of this schedule.

## **Part 2 Protected land**

### **2 Meaning of "protected land"**

In this schedule:

***protected land*** means any of the following:

- (a) land reserved as a national park or state conservation area under the *National Parks and Wildlife Act 1974* and land within 2 kilometres of such land,
- (b) land dedicated as a State forest under the *Forestry Act 2012* and land within 2 kilometres of such land,
- (c) land within the Sydney catchment area (within the meaning of the *Water New South Wales Act 2014*) and land within 2 kilometres of such land,
- (d) land within any of the following zones under a local environmental plan that adopts the standard instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* and land within 5 kilometres of such land:
  - (i) Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone R5 Large Lot Residential or another residential zone (however described),
  - (ii) Zone B1 Neighbourhood Centre, Zone B2 Local Centre, Zone B3 Commercial Core, Zone B4 Mixed Use, Zone B5 Business Development, Zone B6 Enterprise Corridor, Zone B7 Business Park, Zone B8 Metropolitan Centre or another business zone (however described),
  - (iii) Zone IN1 General Industrial, Zone IN2 Light Industrial, Zone IN3 Heavy Industrial, Zone IN4 Working Waterfront or another industrial zone (however described),
- (e) land within any of the following zones under a local environmental plan that does not adopt that standard instrument and land within 5 kilometres of such land:
  - (i) a residential zone (however described),
  - (ii) a business zone (however described),
  - (iii) an industrial zone (however described),
- (f) strategic agricultural land, being land that has high quality soil

and water resources capable of sustaining high levels of agricultural productivity identified as such under a scientifically-based land classification system declared by the Minister for Primary Industries by notice published in the Gazette, but not including any land of a kind excluded by the regulations, and land within 2 kilometres of such land,

- (g) land within a protected catchment area declared under clause 3,
- (h) land that has been declared to be Tier 1 Biodiversity land under clause 4 and land within 2 kilometres of such land,
- (i) land described as one of the following on the Strategic Agricultural Land Map within the meaning of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* and land within 2 kilometres of such land:
  - (i) biophysical strategic agricultural land,
  - (ii) critical industry cluster land (equine),
  - (iii) critical industry cluster land (viticulture),
- (j) land within the Liverpool Plains (being the low-lying depositional areas of soil accumulation such as alluvial plains, foot slopes and fans that are contained within the Liverpool Plains water catchment, as shown on the Soil and Land Resources of the Liverpool Plains Catchment Map deposited in the office of the Department) and land within 2 kilometres of such land.

### **3 Declaration of protected catchment areas**

- (1) The Minister administering the *Water Management Act 2000* must, within 3 months after the commencement of this schedule, recommend to the Governor the making of regulations declaring areas to be protected catchment areas.
- (2) A protected catchment area declared under this clause must not be reduced in size, and a regulation declaring an area of land to be a protected catchment area must not be repealed, unless authorised by an Act of Parliament.
- (3) A regulation made under this clause is not subject to staged repeal by section 10 of the *Subordinate Legislation Act 1989*.

### **4 Declaration of Tier 1 Biodiversity land**

The Minister administering the *Threatened Species Conservation Act 1995* may, by notice published in the Gazette, declare land to be Tier 1 Biodiversity after taking into account the following:

- (a) the need for the protection of vegetation in threatened and over-cleared landscapes,

- (b) the need for the protection of poorly reserved and severely depleted landscapes,
- (c) the need for the protection of source habitats for native fauna,
- (d) the need for the protection of critical landscape corridors and landscape connectivity.

## **5 Inventory of protected land**

- (1) The Secretary is to maintain an inventory of protected land.
- (2) The inventory is to contain maps that enable protected land to be identified and must be made available for public inspection on the Department's website.

## **6 Disputes in relation to protected land**

If any dispute arises as to whether or not any particular land is protected land, any party to the dispute may apply to the Land and Environment Court for a determination of the matter (in which case the Court has jurisdiction to hear and determine the matter).

## **Part 3 Prohibition on new prospecting or mining on protected land**

### **7 Prohibition on granting of mining authorisations relating to protected land**

The Minister administering the *Mining Act 1992*, and the Secretary, must not invite applications for, or grant, any mining authorisation in relation to protected land.

### **8 Prohibition on granting of petroleum titles relating to protected land**

The Minister administering the *Petroleum (Onshore) Act 1991* must not invite applications for, or grant, any petroleum title in relation to protected land.

### **9 No compensation**

Compensation is not payable by or on behalf of the State:

- (a) because of the enactment or operation of this Part, or
- (b) because of any direct or indirect consequence of any such enactment or operation (including any conduct under the authority of any such enactment), or
- (c) because of any conduct relating to any such enactment or operation.

## **10 Part extends to pending applications**

This Part extends to require the refusal of an application or tender for a mining authorisation or petroleum title made but not decided before the commencement of this Part.

#### **Part 4 Restrictions on mining and prospecting operations on protected land**

##### **11 Regard must be had to gateway certificate before giving planning approval in relation to protected land**

- (1) Planning approval cannot be given or granted under the *Environmental Planning and Assessment Act 1979* for development for any of the following purposes unless a gateway certificate has been issued in relation to the development and the person or authority responsible for giving or granting the approval has had regard to the gateway certificate:
  - (a) prospecting for any mineral on, over or beneath the surface of protected land,
  - (b) mining for any mineral on, over or beneath the surface of protected land,
  - (c) petroleum prospecting operations on, over or beneath the surface of protected land,
  - (d) petroleum mining operations on, over or beneath the surface of protected land.
- (2) Any planning approval that is given or granted in contravention of this clause after the commencement of this schedule has no effect.

##### **12 Applications for gateway certificates**

- (1) An application for a gateway certificate in respect of proposed development for any of the following purposes must be made to the Gateway Panel:
  - (a) prospecting for any mineral on, over or beneath the surface of protected land,
  - (b) mining for any mineral on, over or beneath the surface of protected land,
  - (c) petroleum prospecting operations on, over or beneath the surface of protected land,
  - (d) petroleum mining operations on, over or beneath the surface of protected land.
- (2) An application may be made only by the person who proposes to carry out the proposed development.
- (3) The application may be made only if notice of the application is given:



- (a) by advertisement published in a newspaper circulating in the area in which the development is to be carried out no later than 60 days before the application is made, and
  - (b) by written notice to the owners and occupants of land within 5 kilometres of the proposed development no later than 60 days before the application is made, and
  - (c) if the applicant is not the owner of the land concerned—by written notice to the owner of the land no later than 60 days before the application is made.
- (4) An application must be in writing in the form (if any) approved by the Gateway Panel from time to time and must include the following information:
- (a) the name and address of the applicant,
  - (b) the address, and particulars of title, of the subject land,
  - (c) a description of the proposed development that involves an authorised mining or petroleum activity,
  - (d) whether the land is critical industry cluster land.

### 13 Relevant criteria for determining applications

- (1) The Gateway Panel must determine whether development that is the subject of an application for a gateway certificate meets the following criteria (the **relevant criteria**):
- (a) in relation to agricultural land—that the proposed development will not significantly reduce the agricultural productivity of any agricultural land, based on a consideration of the following:
    - (i) any impact on the land through surface area disturbance and subsidence,
    - (ii) any reduced access to, or any impact on, water resources,
    - (iii) any impact on soil fertility, effective rooting depth or soil drainage,
    - (iv) any increase in land surface micro-relief, soil salinity, rock outcrop, slope and surface rockiness or any significant changes to soil acidity or alkalinity,
    - (v) any fragmentation of agricultural land uses,
    - (vi) any reduction in the area of biophysical strategic agricultural land,
  - (b) in relation to critical industry cluster land—that the proposed

development will not have a significant impact on critical industry cluster land based on a consideration of the following:

- (i) any impact on the land through surface area disturbance and subsidence,
  - (ii) any reduced access to, or any impact on, water resources and agricultural resources,
  - (iii) any reduced access to, or any impact on, support services and infrastructure,
  - (iv) any reduced access to transport routes,
  - (v) any loss of scenic, cultural and landscape values,
  - (vi) any significant fragmentation of the critical industry cluster land,
- (c) in relation to water resources—that the proposed development will not have a significant impact on a water resource based on a consideration of the following:
- (i) any impact on the hydrology of a water resource,
  - (ii) any impact on the water quality of a water resource,
  - (iii) any reduction, or material risk of a reduction, in the current or future utility of the water resource for third-party users, including environmental and other public benefit outcomes,
  - (iv) any significant impact on an aquifer through the penetration of an aquifer, the interference with water in an aquifer or the obstruction of the flow of water in an aquifer,
- (d) in relation to ecological communities—that the proposed development will not have a significant impact on a species, population or ecological community listed under the *Threatened Species Conservation Act 1995* as critically endangered, endangered or vulnerable based on a consideration of the following:
- (i) any reduced access to, or impact on, water resources,
  - (ii) any significant change in community structure,
  - (iii) any significant change in species composition,
  - (iv) any significant disruption of ecological processes,
  - (v) any significant invasion and establishment of exotic species,
  - (vi) any significant habitat degradation or fragmentation,

- (e) that the proposed development will not make a significant contribution to climate change based on consideration of the following:
  - (i) the total greenhouse gas emissions directly attributable to the development,
  - (ii) the life cycle greenhouse gas emissions associated with the processing, transport and primary use, including combustion, of any mined mineral or petroleum,
  - (iii) any reduction in greenhouse gas emissions made elsewhere to offset the emissions attributable to matters in subparagraphs (i) and (ii),
- (f) that the proposed development will not have a significant impact on Aboriginal cultural heritage based on a consideration of the following:
  - (i) any impact on places, objects and features (including biological diversity) of significance to Aboriginal people,
  - (ii) any impact on the remains of the bodies of deceased Aboriginal persons (other than those remains buried in a cemetery in which non-Aboriginal persons are also buried),
  - (iii) any impact on any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction,
  - (iv) any impact on any area associated with a person, event or historical theme, or containing a building, place, object, feature or landscape of natural or cultural significance to Aboriginal people or of importance in improving public understanding of Aboriginal culture and its development and transitions.

(2) In this clause:

***agricultural land*** means any of the following:

- (a) land that has been sown with not less than 2 crops of an annual species during the period of 10 years immediately preceding the date on which the application for a gateway certificate was made,
- (b) land that has been sown with 1 crop of an annual species during the period of 10 years immediately preceding the date on which the application for a gateway certificate was made if the Secretary is satisfied that:

- (i) having regard to the date on which the land was brought under cultivation, it would not be reasonable to expect more than one such crop to have been sown, and
  - (ii) there was a sufficient reason for not having brought the land under cultivation at an earlier date,
- (c) land on which:
  - (i) at the date on which the application for a gateway certificate is made, shade, shelter or windbreak trees are growing, or
  - (ii) at any time during the period of 10 years immediately preceding that date, edible fruit or nut bearing trees, vines or any other perennial crop approved by the Secretary have or has been growing,
- (d) pastures:
  - (i) that are sown with seed of a species and at a rate of application, or treated with fertiliser of a composition and at a rate of application, satisfactory to the Secretary, and
  - (ii) that have, as a result of that sowing or treatment, maintained a level of pasture production that is substantially above that which might be expected of natural pastures,
- (e) land that is used, to an extent acceptable to the Secretary, for the production of grass seed, pasture legume seed, hay or silage,
- (f) land that has a preponderance of improved species of pasture grasses.

#### **14 Determination of applications**

- (1) The Gateway Panel must determine whether development that is the subject of an application for a gateway certificate meets the relevant criteria.
- (2) In forming an opinion as to whether proposed development meets the relevant criteria, the Gateway Panel is to have regard to:
  - (a) whether or not there is a real or not remote chance or possibility that an impact referred to in clause 13 will directly or indirectly occur as a result, and
  - (b) the duration, extent and intensity of any impact referred to in clause 13, and
  - (c) any proposed avoidance, mitigation, offset or rehabilitation measures in respect of any such impact, and

- (d) the cumulative impact of the proposed development in addition to existing development.
- (3) If the Gateway Panel determines that development that is the subject of an application for a gateway certificate does meet the relevant criteria the Panel must issue a gateway certificate in accordance with this Part.
- (4) A gateway certificate must state that the Gateway Panel is of the opinion that the proposed development meets the relevant criteria.
- (5) If the Gateway Panel determines that development that is the subject of an application does not meet the relevant criteria then the Panel must refuse to issue a gateway certificate.
- (6) The Gateway Panel may, in refusing an application:
  - (a) include recommendations to address the failure of the proposed development to meet the relevant criteria, and
  - (b) include recommendations that specified studies or further studies be undertaken by the applicant regarding the proposed development.
- (7) If the Gateway Panel determines that development that is the subject of an application does not meet the relevant criteria:
  - (a) the applicant may resubmit a modified application within 6 months of that determination, and
  - (b) if the modified application is refused, a new application must be made if a gateway certificate is still required.

## **15 Time for determination of applications**

- (1) The Gateway Panel must determine an application for a gateway certificate within 180 days of the application being made.
- (2) If the Gateway Panel does not determine an application before the expiry of that period, the Secretary is, by order in writing, to direct the Panel to make a determination in respect of the proposed development within 30 days of the direction or within such longer period as is specified in the direction.
- (3) If the Gateway Panel does not issue a gateway certificate within the period required by such a direction, the Panel must, immediately after the expiry of that period, issue a gateway certificate in respect of the proposed development.

## **16 Gateway Panel may request further information before determining application**

- (1) The Gateway Panel may request that the applicant for a gateway certificate provide the Panel with further information. No more than one such request may be made in respect of an application.

- (2) The applicant must provide that information within 30 days of the request being notified to the applicant.
- (3) During the period beginning on the notification of the request and ending on the provision of the relevant information or the expiry of the 30-day period (whichever occurs first), time ceases to run for the purpose of calculating the time periods referred to in clause 15.
- (4) If an applicant fails to provide the Gateway Panel with the requested information within the 30-day period, the Panel must refuse the application for a gateway certificate.
- (5) For the avoidance of doubt, the Gateway Panel:
  - (a) may not make a request under this clause after the expiry of the 180-day period referred to in clause 15, and
  - (b) may, in determining an application, have regard to any requested information provided after the expiry of the 30-day period referred to in subclause (2).

#### **17 Duration of gateway certificates**

A gateway certificate remains current for a period of 5 years (or such shorter period as is specified in the certificate) after the date on which it is issued by the Gateway Panel.

#### **18 Notification of gateway certificates**

- (1) The Gateway Panel must:
  - (a) notify the applicant in writing of its determination of the application, and
  - (b) if it issues a gateway certificate, give a copy of the gateway certificate to the applicant.
- (2) The Gateway Panel must give a copy of the following documents to the Secretary and must cause any such copy to be published on the Gateway Panel's website (or, if there is no such website, the Department's website):
  - (a) each application for a gateway certificate,
  - (b) the determination made in relation to each application,
  - (c) any written advice received by the Gateway Panel,
  - (d) each gateway certificate issued by the Gateway Panel.

### **Part 5 Gateway Panel**

#### **19 Constitution of Mining and Petroleum Gateway Panel**

- (1) The Minister is to establish a Mining and Petroleum Gateway Panel.
- (2) The Gateway Panel is to consist of the following persons appointed by the Governor:
  - (a) a person nominated by the Minister, being a person who the Minister is satisfied has appropriate expertise in geology and geotechnical engineering;
  - (b) a person nominated by the Minister for the Environment, being a person who that Minister is satisfied has appropriate expertise in ecology and natural resource management;
  - (c) a person nominated by the Minister for the Environment, being a person who that Minister is satisfied has appropriate expertise in the impact of climate change;
  - (d) a person nominated by the Minister for Lands and Water, being a person who that Minister is satisfied has appropriate expertise in hydrology and water management;
  - (e) a person nominated by the Minister for Primary Industries, being a person who that Minister is satisfied has appropriate expertise in agriculture;
  - (f) a person nominated by the Minister for Aboriginal Affairs, being a person who that Minister is satisfied has appropriate expertise in the identification and preservation of Aboriginal cultural heritage;
  - (g) a person nominated by the Minister for Industry, Resources and Energy, being a person who that Minister is satisfied has appropriate expertise in mining and petroleum activities.
- (3) A person is ineligible to be appointed to, or hold office as a member of, the Gateway Panel if the person has entered into any contract or arrangement with a person who holds a mining authorisation or petroleum title, or with a person who is responsible for the carrying out of an authorised mining or petroleum activity.
- (4) A member of the Gateway Panel vacates office if the member enters into any contract or arrangement with a person who holds a mining authorisation or petroleum title or with a person who is responsible for the carrying out of an authorised mining or petroleum activity.
- (5) A member of the Gateway Panel:
  - (a) holds office for 3 years, and
  - (b) is entitled to such remuneration, if any, and to the payment of such expenses, if any, as are determined by the Minister.
- (6) The procedure at meetings of the Gateway Panel is to be determined by the Panel.

- (7) The quorum at a meeting of the Gateway Panel is a majority of the members.

**20 Function of Gateway Panel**

The function of the Gateway Panel is to consider applications for gateway certificates.

**21 Gateway Panel not subject to Ministerial direction**

The Panel is not subject to the direction or control of the Minister, except to the extent specifically provided for in this schedule.

**22 Declaration of critical industry cluster land**

- (1) The Minister administering the *Agricultural Industry Services Act 1998* and the Minister administering the *Destination New South Wales Act 2011* are to develop and implement a process for accepting applications from persons for land to be declared to be critical industry cluster land.
- (2) The Minister administering the *Agricultural Industry Services Act 1998* or the Minister administering the *Destination New South Wales Act 2011* may, by notice published in the Gazette, declare land to be critical industry cluster land, after taking into account the following:
- (a) whether there is a concentration of enterprises on the land that provides development and marketing advantages,
  - (b) whether the productive industries located on the land are interrelated,
  - (c) whether the land consists of a unique combination of factors such as location, infrastructure, heritage and natural resources,
  - (d) whether the land is of national or international importance (or both),
  - (e) whether the land use involves an iconic industry that contributes to the region's identity,
  - (f) whether the land is potentially substantially impacted by coal seam gas or other mining or prospecting proposals.

**Part 6 Miscellaneous**

**23 Regulations**

The Governor may make regulations, not inconsistent with this schedule, for or with respect to any matter that by this schedule is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this schedule.



## 24 Savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the *Mining and Petroleum Legislation Amendment (Harmonisation) Act 2015* or any Act that amends this schedule.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the New South Wales legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## 25 Delegation

The Secretary may delegate the exercise of any function of the Secretary under this schedule (other than this power of delegation) to:

- (a) any member of staff of the Department, or
- (b) any person, or any class of persons, authorised for the purposes of this clause by the regulations.

This amendment parallels the amendment moved by the Hon. Adam Searle as part of a previous amendment on the coal seam gas moratorium. The Greens are concerned that nowhere is off limits. We want to make certain that there are places which are off limits. So this amendment seeks to ban any new mines within two kilometres of productive agricultural land, national parks, biodiversity hotspots and the Liverpool Plains; and within five kilometres of zoned urban areas and drinking water catchments. We believe there are places where mining should occur, and The Greens certainly do support responsible mining. I have previously brought a bill into this House in support of responsible mining. We recognise that we need to pursue minerals for our wealth—

**The Hon. Dr Peter Phelps:** You've never nominated a single mine that you support.

**Mr JEREMY BUCKINGHAM:** I certainly support Cadia at Cobar and Parkes. They are mining gold and copper. We certainly support the extraction—

**The Hon. Dr Peter Phelps:** So you support Cadia, including the cyanide processing?

**The CHAIR (The Hon. Trevor Khan):** Order! I call the Hon. Dr Peter Phelps to order for the first time.

**Mr JEREMY BUCKINGHAM:** I note the interjection by the Government Whip, who said that he supports the cyanide processing.

**The Hon. Dr Peter Phelps:** No, I asked if you did.

**Mr JEREMY BUCKINGHAM:** Well, they do not have any cyanide processing; and that is why I support them, because they do the cyanide processing in Japan. If the Government Whip knew anything at all then he would know that—

**The Hon. Dr Peter Phelps:** That is not true.

**Mr JEREMY BUCKINGHAM:** It is absolutely true. I have toured that mine many times and it is absolutely true. The Greens recognise that there are places where mining can and should occur, but there are other places where it should not occur—such as productive agricultural land, national parks, biodiversity hotspots and, in particular, the Liverpool Plains. The Government should not think it is off the hook in terms of Shenhua and Caroon. It is going to face massive voter backlash and concern over the approval. Ultimately this Government will have the final say. It will have to potentially provide a mining licence to Shenhua. It will have to say yes or no in terms of the fit and proper person test for the application of that licence. The Government will have the final say on this.

I think it is fitting that that is the first place, pretty much anywhere in the world, where people have said no to coalmining. This conservative community has actually said, "There is an area here which is too precious to mine." This will go down in global history as the place where the movement against coal really started. In Australia I think it should be the place where it finishes—it should be the last mine ever approved in New South Wales. There are clearly areas that should be off limits. We believe the Liverpool Plains is one such area, and our drinking water catchments are another, as the amendment sets out.

The amendment also seeks to amend the existing gateway panel process by establishing a mining and petroleum gateway panel. This will consider applications for all mining and prospecting for minerals or petroleum. The panel is similar to the current panel established by the Government but differs in two important aspects: firstly, it has the ability to reject inappropriate project applications if they do not meet the relevant criteria; and, secondly, it expands the relevant criteria beyond simply looking at the impacts on biophysical strategic agricultural land and critical industry clusters so that the panel also must consider impacts on water resources, ecological communities, climate change and Aboriginal cultural heritage.

In making its determination, the panel must consider whether there is a real or remote possibility that there will be a significant impact; the duration, extent and intensity of any impact; any proposed avoidance, mitigation, offset or rehabilitation measures in respect of any such impact; and the cumulative impact of the proposed development in addition to existing development. Therein lies the key point—cumulative impacts. We cannot consider these mining developments for coal seam gas et cetera in isolation, as we routinely and systemically do in this country through our development assessment processes. It is the key failing; we consider things in a reduced way rather than in a holistic way.

Let us look at the Hunter Valley as an example. The entire Upper Hunter is now in effect one large coalmine. If applications are made for further mines, a gateway panel such as this should consider the cumulative impacts. The gateway process was meant to streamline the planning process by identifying and rejecting inappropriate proposals from the outset, but what has been delivered is a hole in the fence rather than a gateway. Some would argue that there is no gate in the gateway. The gateway process would have a lot of value if only it were working properly.

The gateway assessments have provided a lot of useful information and made that information available to the public in an accessible form. The problem with the gateway process is that it has no power. It has no teeth. It is unable to say, "This project has major issues that should be addressed before it can progress to the planning assessment stage." Honourable members should have a look at the existing gateway panel process and what it has had to say about some of the developments such as Shenhua and the like. The panel says it meets none of the criteria, but that means nothing—it is

something the Government says will be addressed in the conditions of the consent, but that is just not the case.

The Mining and Petroleum Gateway Panel must issue either a gateway certificate or a conditional gateway certificate. The Greens want to fix the gateway panel, and give it some real powers. This bill will put a gate in the gateway, which will stop some extremely problematic mining projects in their tracks. The mines which have so far been assessed by this panel have progressed through the gateway despite failing the majority of assessment criteria. Another important mine is the Bylong coal project. It was assessed as having "direct and significant impacts on the agricultural productivity of verified Biophysical Strategic Agricultural Land [BSAL]" and to be "noncompliant with respect to its assessment of the equine Critical Industry Cluster [CIC]".

So it was going to have a direct and significant impact on BSAL and be noncompliant with the CIC. It was assessed as lacking "proper assessment of potential impacts" and to have "misconstrued the gateway process and failed to put forward a compliant or considered assessment". Yet the project was given the tick of approval and allowed to move on through the planning process, which is clearly broken. In relation to Bylong, the proponents are proposing to move the biophysical strategic agricultural land—the top soil—to somewhere else and say, "Hey-presto, that fixes the problem." That is a joke.

**The CHAIR (The Hon. Trevor Khan):** Order! I remind Mr Jeremy Buckingham of my earlier observation to Dr John Kaye: When speaking to amendments a member should avoid moving to a speech on the second reading, particularly by the use of excessive examples. I think the member is starting to move into that area. I encourage him to be mindful that we are in Committee.

**Mr JEREMY BUCKINGHAM:** Fortuitously that was my final example.

**The Hon. Duncan Gay:** You are gibbering.

**Mr JEREMY BUCKINGHAM:** I note the interjection of the Hon. Duncan Gay that I am gibbering. He may think that this matter is gibberish and inconsequential, but it is of grave concern to the people of New South Wales who entrusted this Government to put some teeth into the planning system. They entrusted this Government to put in place a gateway that would say no to some of these developments. That has not happened—Shenhua and Bylong are going ahead—and with no redress to the courts people are being forced into civil disobedience. This amendment would deal with that.

**The Hon. ADAM SEARLE** (Leader of the Opposition) [8.32 p.m.]: The Opposition will not be supporting The Greens amendment No. 1 on sheet C2015-107. This amendment would insert a new schedule 3 into the harmonisation bill. But the Opposition has some attraction to proposed part 4, which deals with improvements to the gateway process. The amendments were distributed close to the end of question time and thereafter we moved into this debate. There has not been a great deal of time in which to consider the amendments nor have we had a chance to discuss them with at least some of the stakeholders or parties. We know that at least some of the stakeholders directly concerned with this legislation have been concerned about the duration and quality of consultation on this legislation. The Opposition supported a motion to amend the second reading question so that members could have some additional time. That was not carried, so we must deal with these amendments as we find them.

The amendments appear to follow a similar approach to Labor's coal seam gas moratorium amendments, which were voted on earlier, and our bill. However, they provide that there shall be no prospecting or new extractions on protected land—in this case rather than having permanent no-go areas we have the invocation of protected land, which is defined. The amendments go beyond coal seam gas or other unconventional gas and extend that same approach to mining. This is a novel and fundamentally different approach to the mining sector. If the Parliament were to take an approach of this kind there would need to be significant engagement with industry, other stakeholders and the regions where these activities take place. None of that has been possible. The Opposition will not be supporting this new

approach, although in relation to coal seam and other unconventional gas we have articulated for a long time a similar approach.

Through the device of protected lands there is a prohibition on the granting of mining authorisations on protected land. There is also a prohibition on the granting of petroleum titles on protected land, and that prohibition extends to any pending applications. It is not clear to me—again, this is a reflection on the level of time we have had to consider it—how part 4, the gateway process which provides for restrictions on mining and prospecting operations on protected land, works. Does that deal only with matters where some approval has already been given? If there is already a prohibition, and if the earlier parts of the amendments were carried, how then would there be any scope for any activities to be approved? I am not clear on that. No doubt there is a discrete, narrow area of operation for part 4 in the mining sector, but I am not presently aware of it. Because of the change of direction and the fact that there has been no opportunity to speak with any outside persons or interests, the Opposition is unpersuaded as to the desirability of this approach to mining and minerals and will not be supporting the amendment.

**Mr SCOT MacDONALD** (Parliamentary Secretary) [8.36 p.m.]: The Government does not support The Greens amendment No. 1 on sheet C2015-107. The Strategic Release Framework will deliver unprecedented levels of assessment and consideration of areas being considered for strategic release. The framework will look at the geology of the area, upfront community consultation will be undertaken and there will be an assessment of economic, environmental and social factors. In contrast, this amendment would lock up certain areas forever from being examined on an objective evidence base. It would lock up and sterilise potentially valuable resources based on arbitrary designations made by the individual agencies set out in the amendments. It would also create significant difficulties reconciling how these amendments would interact with the existing gateway process that already applies to State-significant mining and petroleum development under the planning regime. The Government does not support the amendment.

**Question—That The Greens amendment No. 1 [C2015-107] be agreed to—put and resolved in the negative.**

**The Greens amendment No. 1 [C2015-107] negatived.**

**Question—That the Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015 as read be agreed to—put and resolved in the affirmative.**

**The Mining and Petroleum Legislation Amendment (Harmonisation) Bill 2015 as read agreed to.**

**The CHAIR (The Hon. Trevor Khan):** We will now move to the Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015. I have two sets of amendments from The Greens on sheets C2015-116 and C2015-117A. I will call on Mr Jeremy Buckingham to address the amendments on sheet C2015-116 first, but I note that there is a typographical error in amendment No. 1 on that sheet. It reads:

**No. 1 Abolition of arbitration**

Page 3, schedule 1. Insert after before line 13:

I understand that the word "after" should not be there. If there is no objection, the Committee will deal with the bill as a whole.

**Mr JEREMY BUCKINGHAM** [8.39 p.m.], by leave: I move The Greens amendments Nos 1 to 14 on sheet C2015-116 in globo:

**No. 1 Abolition of arbitration**

Page 3, schedule 1. Insert after before line 13:

**[2] Section 32F Access arrangement required for prospecting operations under low-impact licences**

Omit ", or that is determined for them by an arbitrator in accordance with that Division" from section 32F (2) (a).

**No. 2 Abolition of arbitration**

Pages 3 and 4, schedule 1 [4], line 29 on page 3 to line 21 on page 4. Omit all words on those lines. Insert instead:

**[4] Section 139 Arbitration Panel**

Omit the section.

**[5] Section 140 Prospecting to be carried out with consent and in accordance with access arrangement**

Omit section 140 (1). Insert instead:

(1) The holder of a prospecting title must not carry out prospecting operations on any particular area of land without the consent of each landholder of that area of land.

(1A) The holder of a prospecting title must not carry out prospecting operations on any particular area of land except in accordance with an access arrangement or arrangements applying to that area of land agreed (in writing) between the holder of the prospecting title and each landholder of that area of land.

**[6] Section 140 (2)**

Omit "or determined".

**No. 3 Abolition of arbitration**

Page 4, schedule 1 [5] and [6], lines 22–25. Omit all words on those lines. Insert instead:

**[5] Section 141 Matters for which access arrangement to provide**

Omit section 141 (2) and (2A).

**[6] Section 141 (4)**

Omit the subsection. Insert instead:

(4) If the holder of a prospecting title contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land until the holder ceases the

contravention or the contravention is remedied to the reasonable satisfaction of the landholder.

**No. 4 Abolition of arbitration**

Page 5, schedule 1. Insert after line 28:

**[9] Section 142 (4)** Omit the subsection.

**[10] Section 143 Appointment of arbitrator by agreement**

Omit the section.

**No. 5 Abolition of arbitration**

Pages 5–12, schedule 1 [9]–[22], line 29 on page 5 to line 16 on page 12. Omit all words on those lines. Insert instead:

**[9] Sections 144–156**

Omit the sections.

**[10] Section 157 Variation of access arrangements**

Omit section 157 (2). Insert instead:

(2) An access arrangement may also be varied by the agreement of the parties to the arrangement.

**[11] Section 158 Change in landholders**

Omit "or determined" wherever occurring in section 158 (2), (3), (4) and (6).

**[12] Section 158 (5)**

Omit the subsection. Insert instead:

(5) If the new landholder objects to the access arrangement within 28 days after being given a copy of the arrangement, the access arrangement ceases to apply to the new landholder unless the new landholder agrees to an access arrangement with the holder of the prospecting title concerned in accordance with this Division.

**No. 6 Abolition of arbitration**

Page 12, schedule 1. Insert before line 28:

**[25] Schedule 4 Regulation making powers**

Omit clause 10 from schedule 4.

**No. 7 Abolition of arbitration**

Page 13, schedule 1 [26], lines 1–21. Omit all words on those lines. Insert instead:

**Application of amendments to existing access arrangements determined by arbitrator**

The amendments made by the 2015 amending Act to the provisions of this Act relating to access arrangements do not apply to prospecting operations in relation to which:

- (a) an access arrangement determined by an arbitrator was in force immediately before the commencement of the 2015 amending Act, or
- (b) an arbitrator had been appointed (by agreement or in default of an agreement) and had begun to conduct a hearing but in relation to which no final determination had been made by the arbitrator before the commencement of the 2015 amending Act.

**No. 8 Abolition of arbitration**

Page 15, schedule 2. Insert before line 38:

**[4] Section 45F Access arrangement required for prospecting operations under low-impact prospecting titles**

Omit ", or that is determined for them by an arbitrator in accordance with that Part" from section 45F (2) (a).

**No. 9 Abolition of arbitration**

Page 15, schedule 2. Insert before line 38:

**[4] Section 69B Arbitration Panel**

Omit the section.

**[5] Section 69C Prospecting to be carried out with consent and in accordance with access arrangement**

Omit section 69C (1). Insert instead:

- (1) The holder of a prospecting title must not carry out prospecting operations on any particular area of land without the consent of each landholder of that area of land.
- (1A) The holder of a prospecting title must not carry out prospecting operations on any particular area of land except in accordance with an access arrangement or arrangements applying to that area of land agreed (in writing) between the holder of the prospecting title and each landholder of that area of land.

**[6] Section 69C (2)**

Omit "or determined".

No. 10 **Abolition of arbitration**

Page 16, schedule 2 [7], lines 8 and 9. Omit all words on those lines. Insert instead:

**[7] Section 69D (4)**

Omit the subsection. Insert instead:

- (4) If the holder of a prospecting title contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land until the holder ceases the contravention or the contravention is remedied to the reasonable satisfaction of the landholder.

No. 11 **Abolition of arbitration**

Page 17, schedule 2. Insert after line 14:

**[10] Section 69E (4)**

Omit the subsection.

**[11] Section 69F Appointment of arbitrator by agreement**

Omit the section.

No. 12 **Abolition of arbitration**

Pages 17–24, schedule 2 [10]–[23], line 15 on page 17 to line 1 on page 24. Omit all words on those lines. Insert instead:

**[10] Sections 69G–69S**

Omit the sections.

**[11] Section 69T Variation of access arrangements**

Omit section 69T (2). Insert instead:

- (2) An access arrangement may also be varied by the agreement of the parties to the arrangement.

**[12] Section 69U Change in landholders**

Omit "or determined" wherever occurring in section 69U (2), (3), (4) and (6).

**[13] Section 69U (5)**

Omit the subsection. Insert instead:

- (5) If the new landholder objects to the access arrangement within 28 days after being given a copy of the arrangement, the access arrangement ceases to apply to the new landholder unless the



new landholder agrees to an access arrangement with the holder of the prospecting title concerned in accordance with this Part.

**No. 13 Abolition of arbitration**

Page 26, schedule 2. Insert before line 11:

**[37] Section 138 Regulations**

Omit section 138 (1) (q).

**No. 14 Abolition of arbitration**

Pages 26 and 27, schedule 2 [40], line 35 on page 26 to line 20 on page 27. Omit all words on those lines. Insert instead:

**Application of amendments to existing access arrangements determined by arbitrator**

The amendments made by the 2015 amending Act to the provisions of this Act relating to access arrangements do not apply to prospecting operations in relation to which:

- (a) an access arrangement determined by an arbitrator was in force immediately before the commencement of the 2015 amending Act, or
- (b) an arbitrator had been appointed (by agreement or in default of an agreement) and had begun to conduct a hearing but in relation to which no final determination had been made by the arbitrator before the commencement of the 2015 amending Act.

**The CHAIR (The Hon. Trevor Khan):** Do The Greens note the typographical error of the word "after" on the first line of amendment No. 1?

**Mr JEREMY BUCKINGHAM:** Yes. These are the Lock the Gate amendments. I know that Government members will love hearing me say that from the outset. These amendments go to the nub of the issue—that is, that people in this State should have the right to say no to mining and gas development on their land. I know that members have a philosophical difference on this issue, but there are individuals, families, farms and communities that want to say no to coal and gas development. They should have the right to do so. They should not be dragged into—

**The Hon. Dr Peter Phelps:** The Greens have found property rights, have they?

**The CHAIR (The Hon. Trevor Khan):** Order!

**Mr JEREMY BUCKINGHAM:** It will be interesting to hear the contribution of the Hon. Dr Peter Phelps on this, as he is a libertarian when it suits him. The nub of the issue is that people have been put through hell. I put on record the experience of the communities in the Southern Highlands who are fighting Hume Coal. People have been dragged through arbitration by Hume Coal, at incredible personal cost. It has been an awful process. Those people should never have been forced into arbitration.

The Government's amending legislation, the Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015, makes some improvements to the situation. However, the principle

enshrined in the 14 amendments I have moved on behalf of The Greens is that people should have the right to say no. They should be able to say to mining companies, "Thank you very much, but we do not believe it is in our interest or in the collective interest for you to come onto our property and look for coal and gas." That is why The Greens have moved the amendments.

The Greens amendments remove any sections in the Petroleum (Onshore) Act 1991 or the Mining Act 1992 relating to arbitration. That means that a titleholder or landholder will have to agree to a voluntary access agreement for petroleum companies to lawfully access private land. I note that some members have said that that is achievable. We have seen a memorandum of understanding signed by AGL, Santos, NSW Farmers and the Country Women's Association to that effect. Why not allow that to be the guiding principle? If the Government is prepared to support that, people will not be frogmarched into arbitration and mediation within 28 days, with no legal representation. Until now the ball has been firmly in the court of the mining and petroleum companies. The arbitration process is abysmal. It causes people mental distress and financial loss.

The Greens are pleased that the Government is addressing the situation, following the recommendations of the Walker review. The Greens are pleased to see most of the recommendations of the Walker review enshrined in legislation. We thank the Government for moving in that direction. But, as a first principle, The Greens believe people should have the right to say no. The granting of access should be voluntary, not compulsory. I commend The Greens amendments to the Committee.

**The Hon. ADAM SEARLE** (Leader of the Opposition) [8.44 p.m.]: The Opposition does not support The Greens amendments Nos 1 to 14. Mineral rights have never been private property rights in New South Wales.

**The Hon. Dr Peter Phelps:** Never is a long time.

**The Hon. ADAM SEARLE:** Not for a very long time, if ever. I understand that when landholders confront a situation where a titleholder wishes to explore on their property it can be extremely difficult. I understand that communities have resisted unconventional gas mining as well as mining prospecting, but The Greens amendments go beyond the issue of arbitration and would result in a fundamental change in the law. There has not been the opportunity for proper engagement with industry and communities to consider all the ramifications of these amendments. I note from the time stamp that the amendments emerged from the printer in the Parliamentary Counsel's Office at 5.15 p.m., while members were in the middle of the debate. That is not to be critical of the mover of the amendments—

**Mr Jeremy Buckingham:** It sort of was.

**The Hon. ADAM SEARLE:** It is simply to reflect that we are dealing with complex issues in a substantial package of legal and administrative reforms. The proposed amendments are far reaching and must be dealt with properly. We do not have the opportunity to do that in the circumstances in which we find ourselves. The Opposition does not support the direction of the change outlined in The Greens amendments and will not be supporting them.

**Mr SCOT MacDONALD** (Parliamentary Secretary) [8.47 p.m.]: The Government does not support The Greens amendments Nos 1 to 14 on sheet C2015-116. These amendments take control of the State's resources out of the hands of the State and its experts and put it into the hands of landholders. The Government's bill restores the balance of power between titleholders and landholders to its rightful position. The Greens amendments shift the balance of power too far. It is worth reminding members that, as I said in my speech in reply to the second reading debate, no petroleum access or exploration matter has proceeded to arbitration. The Greens amendments would enable landholders to lock up the State's resources. This would be directly inconsistent with the object of the legislation, which is designed to encourage and facilitate the discovery and development of resources, for the benefit of all citizens of New South Wales. The Government opposes the amendments.

**Mr DAVID SHOEBRIDGE** [8.48 p.m.]: I commend The Greens amendments Nos 1 to 14, moved by my colleague Mr Jeremy Buckingham. I will address a number of observations in the Opposition's reasons for not supporting these amendments. The Opposition opposes the amendments because the people of New South Wales, in the form of the Crown, should retain title to the State's minerals. All parties in the Chamber agree on this—except the Government Whip. The Greens fundamentally believe the mineral wealth of the State should belong to the people. These amendments do not change that arrangement.

These arrangements give those who hold title to land the right to protect that land from the potential ravages of prospecting and mining for coal, coal seam gas and other minerals. These amendments do not change the title to the minerals under the land. With these amendments, those minerals will always remain with the people of New South Wales. In fact, if there is an agreement to extract the resources, the people of New South Wales will be entitled—as they should be—to a royalty for the removal of those minerals and the mineral wealth that is owned by the people of New South Wales. Therefore, the first reason put forward by the Opposition for opposing these amendments does not bear scrutiny. The second reason the Opposition says it cannot support these amendments is that they are too complex—the amendments came in at 5.15 p.m., it is a complex area of the law and the Opposition says it is pretty hard to get your head around something that came in at 5.15 p.m. Let us work out what the amendments say.

**The CHAIR (The Hon. Trevor Khan):** Order! I make the observation that the member should speak to the amendments. This is not about attacking the Opposition; this is about speaking to the amendments. I invite the member to speak to the amendments that are before the Committee and not to engage in what is a debating competition about who is more hairy chested. The member should keep to the nitty-gritty.

**Mr DAVID SHOEBRIDGE:** I am not sure about the hairy-chested, nitty-gritty analogy.

**The CHAIR (The Hon. Trevor Khan):** Order! If the member wants to cavil with my ruling he can see where it goes.

**Mr DAVID SHOEBRIDGE:** Amendment No. 2, which omits the ability to take a prospecting dispute to an arbitration panel—and good riddance to arbitration—and proposes a new item [5], states:

- (1) The holder of a prospecting title must not carry out prospecting operations on any particular area of land without the consent of each landholder of that area of land.
- (1A) The holder of a prospecting title must not carry out prospecting operations on any particular area of land except in accordance with an access arrangement or arrangements applying to that area of land agreed (in writing) between the holder of the prospecting title and each landholder of that area of the land.

That is a clear, straightforward, principled position that The Greens believe is the best way of protecting particularly our precious farmland but also the environmental values and our water table. We believe fundamentally that the consent of the landholder should be required, because in our view—and I know that Mr Jeremy Buckingham has travelled around the State and spoken with landholders—those landholders are far more likely than history would prove certain government departments, and particularly New South Wales Ministers, have been to be protecting their land and their property, the environmental assets and the long-term sustainability of regional and rural New South Wales.

On any view of it, I would have thought the history of the pretend protections contained in legislative provisions that are administered by Ministers of the Crown, who are constantly looking to maximise royalties regardless of the social and environmental cost and, indeed, the economic cost to

communities, would prove the merit of The Greens amendments. We believe this is the best way at the moment to protect our precious non-renewable land in this State.

Amendment No. 3 deals with matters that access arrangements can provide. The amendment also proposes omitting reference to arbitration because we know that under the current scheme, and even under this proposed amended scheme, arbitration is stacked in favour of the large, resourced companies that have the money to grind down the landholders in arbitration processes. In its opposition to these amendments the Government said, "Why are you so worried about arbitration? Nothing goes to arbitration". Nothing goes to arbitration because there are multinationals enormously cashed up, with huge sticks, who just beat landholders into subservience before the matter gets to arbitration. The landholders know that taking a matter to arbitration will almost certainly be a failure because they will be ground down in economic warfare by multinational corporations that can just do them over, one after the other. The Greens propose to insert a new subsection into section 141, which will read as follows:

If the holder of a prospecting title contravenes an access arrangement, a landholder of the land concerned may deny the holder access to the land until the holder ceases the contravention or the contravention is remedied to the reasonable satisfaction of the landholder.

It has been proven that leaving the State of New South Wales—the Ministers and the bureaucracies under these pro-mining, mining-at-all-costs Ministers—in a position to protect landholders from breaches has proven to be a failed arrangement. We believe landholders are far more likely to be protecting their land from damage than the State of New South Wales has proven to be over the past 50-odd years. I draw attention to amendment No. 5, which abolishes arbitration and speaks about variations of access arrangements. New subsection (5) in section 158 provides:

If the new landholder objects to the access arrangement within 28 days after being given a copy of the arrangement, the access arrangement ceases to apply to the new landholder unless the new landholder agrees to an access arrangement with the holder of the prospecting title concerned in accordance with this Division.

In other words, we are again putting the landholder in a position where they can act with statutory authority to protect their land from the ravages of resource companies. These amendments are clear and they are principled. They may have only come hot off the printer at 5.15 p.m., but I commend my colleague for getting them and putting them before this Committee. I hope that a principled Opposition and a principled Government will adopt them.

**Question—That The Greens amendments Nos 1 to 14 [C2015-116] be agreed to—put.**

**The Committee divided.**

**Ayes, 5**

Ms Barham  
Mr Buckingham  
Dr Kaye

*Tellers,*  
Dr Faruqi  
Mr Shoebridge

**Noes, 31**

Mr Ajaka  
Mr Amato  
Mr Borsak  
Mr Brown  
Mr Clarke  
Mr Colless  
Ms Cotsis  
Ms Cusack  
Mr Donnelly  
Mr Farlow  
Mr Gallacher

Mr Gay  
Mr Green  
Mrs Houssos  
Mr MacDonald  
Mrs Maclaren-Jones  
Mr Mallard  
Mr Mason-Cox  
Mrs Mitchell  
Reverend Nile  
Mr Pearce  
Mr Pearson

Mr Primrose  
Mr Searle  
Mr Secord  
Mrs Taylor  
Mr Veitch  
Ms Voltz  
Mr Wong  
  
*Tellers,*  
Mr Franklin  
Dr Phelps

**Question resolved in the negative.**

**The Greens amendments Nos 1 to 14 [C2015-116] negatived.**

**Mr JEREMY BUCKINGHAM** [9.05 p.m.], by leave: I move The Greens amendments Nos 1 and 2 on sheet C2015-117A in globo:

**No. 1 Transitional provision relating to the definition of "significant improvement"**

Page 13, schedule 1 [26], lines 27–38. Omit all words on those lines. Insert instead:

**Application of amendment relating to the definition of "significant improvement"**

- (1) The substitution of the definition of ***significant improvement*** in the Dictionary to the Act by the 2015 amending Act does not apply in relation to proceedings in the Land and Environment Court (whether commenced before or after the commencement of this clause) relating to:
  - (a) a dispute regarding the operation of section 31, 49, 62 or 188 of the Act that arose before the commencement of this clause; or
  - (b) a dispute concerning an access arrangement for which notice had been given under section 143 before the commencement of this clause.
- (2) Without limiting subclause (1), the substitution of the definition of ***significant improvement*** in the Dictionary to the Act by the 2015 amending Act does not apply in relation to:
  - (a) anything determined by the Land and Environment Court to be a significant improvement in proceedings that were commenced, but not finally determined, before the commencement of this clause; or
  - (b) any determination of the Land and Environment Court in relation to the operation of section 31, 49, 62 or 188 of the Act in proceedings that were commenced, but not finally determined, before the commencement of this clause.

**No. 2 Transitional provision relating to the definition of "significant improvement"**

Page 27, schedule 2 [40], lines 32–43. Omit all words on those lines. Insert instead:

**Application of amendments relating to the definition of "significant improvement"**

- (1) The insertion of the definition of ***significant improvement*** into section 72, and the other amendments to that section, by the 2015 amending Act do not apply in relation to proceedings in the Land and Environment Court (whether commenced before or after the commencement of this clause) relating to:
  - (a) a dispute regarding the operation of that section that arose before the commencement of this clause; or
  - (b) a dispute concerning an access arrangement for which notice had been given under section 69F before the commencement of this clause.
- (2) Without limiting subclause (1), the insertion of the definition of ***significant improvement*** into section 72, and the other amendments to that section, by the 2015 amending Act does not apply in relation to:
  - (a) anything determined by the Land and Environment Court to be a significant improvement in proceedings that were commenced, but not finally determined, before the commencement of this clause; or
  - (b) any determination of the Land and Environment Court in relation to the operation of section 72 in proceedings that were commenced, but not finally determined, before the commencement of this clause.

I move these amendments as a matter of course because I was heartened by the Parliamentary Secretary's contribution in reply when he said that these provisions would not be retrospective and would not affect matters that have already been determined by the courts or any proceedings presently before the courts. Therefore, it would be remiss of me not to move the amendments. This afternoon I was in consultation with community members, and especially members from the Southern Highlands Coal Action Group, who are very concerned about any changes around significant improvements. They are very nervous about this. This is a long-established and important part of the mining and petroleum laws of the State. They are very concerned not to see those undermined, quite literally. I move these amendments and if the Government has no problem with retrospectivity, then I would expect it to support the amendments wholeheartedly. I commend the amendments to the Committee.

**Mr SCOT MacDONALD** (Parliamentary Secretary) [9.07 p.m.]: The Government does not support The Greens amendments Nos 1 and 2 on sheet C2015-117A. I take this opportunity to clarify once again that these reforms will apply only to future land access arbitrations. Actions that have already commenced under the existing regulatory framework will not be captured under these reforms. As with most legislative changes, this change is prospective only so that those in this process can continue under the rules in which they entered the process. The Government opposes the amendments.

**The Hon. ADAM SEARLE** (Leader of the Opposition) [9.08 p.m.]: The Opposition will support

these amendments. It sounds from the debate as though the amendments are designed to avoid a mischief—that is, a change in the definition of "significant improvement" not applying to matters that are already pending and before the courts. The Government says the amendments are unnecessary. That may well be true, but why take the risk? Matters that have currently been instigated and matters that are currently before the court should be finalised under the existing law.

**Question—That The Greens amendments Nos 1 and 2 [C2015-117A] be agreed to—put and resolved in the negative.**

**The Greens amendments Nos 1 and 2 [C2015-117A] negatived.**

**Question—That the Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015 as read be agreed to—put and resolved in the affirmative.**

**Mining and Petroleum Legislation Amendment (Land Access Arbitration) Bill 2015 as read agreed to.**

**The CHAIR (The Hon. Trevor Khan):** We will now deal with the Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015. If there is no objection, the Committee will deal with the bill as a whole.

**The Hon. ADAM SEARLE** (Leader of the Opposition) [9.09 p.m.]: I move Opposition amendment No. 1 on sheet C2015-115:

**No. 1 Petroleum authority—addition**

Page 3, schedule 1. Insert after line 30:

- (d) an approval (within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*) in relation to petroleum activities that is granted by a determining authority that is subject to Part 5 of that Act in granting that approval, or

The Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015 amends the Protection of the Environment Operations Act to confer on the Environment Protection Authority [EPA] responsibility for investigating and instituting proceedings for offences against relevant Acts in relation to the carrying out of petroleum activities that are authorised or required to be authorised by exploration licences, assessment leases, production leases, development consents under part 4 of the Environmental Planning and Assessment Act, approvals under part 3A of the Environmental Planning and Assessment Act, and water access licences, water use approvals and water supply work approvals and other matters provided for.

The linchpin appears to be found in the definition of "petroleum authority", which is found on page 3 of the bill, as a petroleum title under the Petroleum (Onshore) Act; a development consent under part 4 of the Environmental Planning and Assessment Act; approval under part 3A of the Environmental Planning and Assessment Act; and a water access licence, water use approval or water supply work approval under the Water Management Act 2000 or a licence in respect of a bore under the Water Act 1912. It does not appear to capture approvals within the meaning of part 5 of the Environmental Planning and Assessment Act in relation to petroleum activities granted by a determining authority, which is subject to part 5 of that Act in granting that approval. At first blush that appears to be an oversight. Following my briefing from the officials from Minister Speakman's office, I think the rationale is that these are matters that are dealt with in the conditions of the title and so are dealt with by way of the administrative action.

Without cavilling with current administrative practice, given we are endeavouring to confer by law the necessary jurisdiction on the EPA to be the lead regulator for petroleum activity matters, it would seem to be remiss if we did not include matters under part 5 of the Environmental Planning and Assessment Act within the definition of "petroleum authority" in this bill. To remedy that, the Opposition moves this amendment. It is technical in nature and puts the matter beyond any doubt. It prevents any future government—and I am not imputing any bad motives to this Government—from changing an existing administrative practice. We believe it should have greater clarity in the legislation. Therefore, we propose inserting the definition of "petroleum authority" in the definitions section on page 3 of the bill.

**Mr SCOT MacDONALD** (Parliamentary Secretary) [9.12 p.m.]: The Government does not support Opposition amendment No. 1 on sheet C2015-115. Part 5 of the Environmental Planning and Assessment Act 1979 is not an approval. It is in fact a determination made by the Minister for Industry, Resources and Energy. The Minister determines whether a proposed activity will have a significant environmental impact. If the determination is that significant environmental impact will occur—

**The CHAIR (The Hon. Trevor Khan):** Order! I note that the volume of conversation in the Chamber is increasing. The Parliamentary Secretary is making a very important contribution.

**Mr SCOT MacDONALD:** The volume is going up but the quality is going down. The activity must be assessed by a full environmental impact statement. If the Minister determines that a significant environmental impact will not occur, the Minister may allow the activity to commence. The conditions to control that proposed activity are included on the petroleum title that covers the area on which the activity occurs. All conditions included on all petroleum titles are to be regulated by the Environment Protection Authority [EPA]. Therefore this amendment is not necessary as it does not deliver the protection the Opposition is seeking. The Government agrees that the Environment Protection Authority needs to be responsible for compliance with and enforcement of all conditions excluding work health and safety, and this package delivers that. We oppose the amendment.

**Question—That Opposition amendment No. 1 [C2015-115] be agreed to—put and resolved in the negative.**

**Opposition amendment No. 1 [C2015-115] negatived.**

**Question—That the Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015 as read be agreed to—put and resolved in the affirmative.**

**Protection of the Environment Operations Amendment (Enforcement of Gas and Other Petroleum Legislation) Bill 2015 as read agreed to.**

**The CHAIR (The Hon. Trevor Khan):** We will now deal with the Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill 2015. As there are no amendments I will put the question.

**Question—That the Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill 2015 as read be agreed to—put and resolved in the affirmative.**

**Work Health and Safety (Mines and Petroleum) Legislation Amendment (Harmonisation) Bill 2015 as read agreed to.**

**Mining and Petroleum Legislation Amendment (Grant of Coal and Petroleum Prospecting Titles) Bill 2015 reported from Committee without amendment, and cognate bills reported without amendment.**



### **Adoption of Report**

**Motion by Mr Scot MacDonald, on behalf of the Hon. Niall Blair, agreed to:**

That the report be adopted.

**Report adopted.**

### **Third Reading**

**Motion by Mr Scot MacDonald, on behalf of the Hon. Niall Blair, agreed to:**

That these bills be now read a third time.

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

**COURTS AND OTHER JUSTICE PORTFOLIO LEGISLATION AMENDMENT BILL 2015**

**TREASURY CORPORATION AMENDMENT BILL 2015**

**SUPERANNUATION ADMINISTRATION AMENDMENT (INVESTMENT MANAGEMENT AND OTHER MATTERS) BILL 2015**

**STATE INSURANCE AND CARE GOVERNANCE AMENDMENT (INVESTMENT MANAGEMENT) 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.**

**HEALTH LEGISLATION AMENDMENT BILL 2015**

### **Second Reading**

**The Hon. SARAH MITCHELL** (Parliamentary Secretary) [9.21 p.m.], on behalf of the Hon. John Ajaka: I move:

That this bill be now read a second time.

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

**Leave granted.**

I am pleased to introduce before the House the Health Legislation Amendment Bill 2015. This bill

is part of the Government's regular review and monitoring of legislation to ensure that it remains up to date and relevant. To that end, the bill seeks to make a number of miscellaneous amendments to various Health Acts, being:

- the Public Health Act 2010,
- the Health Care Complaints Act 1993,
- the Mental Health Act 2007,
- the Public Health (Tobacco) Act 2008, and
- the Private Health Facilities Act 2007.

I turn firstly to the amendments to the Health Care Complaints Act and the Public Health Act. The Public Health Act and the Health Care Complaints Act together provide for a regulatory regime for non-registered health practitioners.

The Public Health Act and Regulation set out a code of conduct for non-registered health practitioners. The Health Care Complaints Act allows the Health Care Complaints Commission to investigate complaints against a non-registered health practitioner who breaches the code of conduct. Under the Health Care Complaints Act, the commission can issue a prohibition order for breaches of the code where the practitioner poses a risk to the health or safety of the public. A prohibition order can either prevent a practitioner from practising or place conditions on their practice. Practising in breach of a prohibition order is an offence under the Public Health Act.

New South Wales was the first jurisdiction in Australia to establish a code of conduct for non-registered health practitioners in 2008. However, New South Wales has since been joined by South Australia and Queensland, which have both introduced similar legislative provisions. Further, there are moves to establish a code of conduct across all jurisdictions and to allow for prohibition orders to be issued for serious breaches of the code. These moves are welcomed and, in light of this, it is important that New South Wales recognises and applies an interstate prohibition order as if it were made here.

Accordingly, the bill proposes to amend the Public Health Act to recognise and apply in New South Wales a prohibition order made under a prescribed law of another jurisdiction. Once these changes commence, the relevant South Australian and Queensland legislation will be prescribed, as will any other similar legislation passed by another jurisdiction. This will mean, for example, that if a counsellor was issued with a prohibition order in South Australia, the prohibition order would be recognised in New South Wales and it would be an offence for the counsellor to provide services in New South Wales in breach of the order.

The bill also includes a new section 41E in the Health Care Complaints Act which will require the commission to keep a public register of prohibition orders. These are sensible changes that will assist in protecting the public from practitioners who have been found unsafe to practice in other jurisdictions and ensure that the public can find out which non-registered health practitioners are subject to a prohibition order.

The bill also proposes to amend section 94A of the Health Care Complaints Act to allow the commission to issue an interim public warning during an investigation. Currently, while the commission can issue a public warning if it is of the view that a treatment or health service poses a risk to public health or safety, this power can only be exercised after an investigation. There is no power to issue such a warning during an investigation.

The bill will rectify this situation and allow the commission to issue an interim public warning during an investigation if the commission considers it necessary to protect public health or safety and that any further delays will pose a risk to an individual or the public. This amendment follows on from a recommendation of the 2014 Parliamentary Committee on the Health Care Complaints Commission's report on the Promotion of False and Misleading Health Related Information and Practices and will ensure that the public can be put on notice of serious risks at any earlier stage.

The bill also includes changes to the Public Health Act relating to the installation, operation and maintenance of regulated systems, such as water cooling systems or hot water systems, which can spread legionella organisms. Legionella organisms are capable of transmitting legionnaire's disease, which is a serious form of pneumonia.

The Public Health Act contains offences if the occupier, or a duly qualified person engaged by the occupier, fails to comply with the standards in the Public Health Regulation relating to the installation, operation and maintenance of a regulated system. However, these offences do not extend to subcontractors engaged by a duly qualified person.

The bill therefore amends sections 28, 29 and 30 of the Public Health Act to provide for specific offences for subcontractors who fail to comply with the standards required by the Public Health Act and Regulation when installing, operating or maintaining regulated systems.

I turn to schedule 2 of the bill which makes amendments to section 191 of the Mental Health Act. Section 191 of the Mental Health Act provides a protection from personal liability for any police officer, health care professional or ambulance officer who, in good faith, exercises a function under the Mental Health Act or the Mental Health (Forensic Provisions) Act 1990. A health care professional is defined to mean a registered health practitioner.

Staff of the NSW Health Service other than registered health practitioners and ambulance officers may from time to time be called on to assist registered health practitioners in the exercise of their functions. For example, if a patient becomes agitated and violent, security staff or assistants in nursing may be required to assist a registered health practitioner in restraining the patient in order to protect the patient, other patients and staff of the facility.

As other staff of the NSW Health Service may be involved in the care, treatment and detention of patients, the bill amends section 191 to extend the protection from personal liability to all staff who exercise functions under the Mental Health Act or the Mental Health (Forensic Provisions) Act or who assist registered health practitioners and ambulance officers in the exercise of their functions.

I turn now to the changes to the Public Health (Tobacco) Act, which are set out in schedule 6 of the bill. Sections 6 and 7 of the Act make it illegal to sell tobacco in a product that is not in the original packaging or that does not have appropriate health warnings. Such tobacco is often known as "illegal tobacco". The availability of "illegal tobacco" in New South Wales is a community concern. Illegal tobacco is harmful to the health of the user as it may contain other impurities not normally found in legal tobacco products. The lower cost of illegal tobacco makes it more appealing and affordable to young people and lower income groups and encourages the uptake of smoking by these groups. Further, tobacco products without a health warning mean that people are not warned of the dangers of smoking.

In 2014 the Ministry conducted a statutory review into the Act. A report on the review noted anecdotal evidence and concerns about increases in the sale of illegal tobacco. Further, the report identified difficulties associated with prosecuting breaches as retailers who were found with illegal tobacco would claim it was for personal use and not intended for sale.

This is so even when tobacco is found in quantities in which it is difficult to believe that it was not intended for sale. The report also noted that there are limited powers to seize illegal tobacco.

In order to address these issues, the bill amends sections 6 and 7 to create a rebuttable presumption that prescribed quantities of tobacco are for sale. Further, a new section 8A will be included in the Act to give inspectors a power to seize illegal tobacco found in retail tobacco shops over the prescribed quantities. Any such tobacco seized will only be returned if the retailer can demonstrate the tobacco was for not for sale.

The bill also includes a new section 39A in the Act to require a tobacco retailer notification number to be provided before tobacco products are sold wholesale. Currently, before a person can engage in tobacco retailing, they must notify the Ministry of Health which then provides a tobacco retailer notification [TRN] number. This allows the Ministry to know where tobacco retailers are located and ensure inspections can take place.

There is no current requirement in the Act to require a wholesaler to be provided with a TRN before supplying tobacco. This creates a potential loophole that allows a person who does not have a TRN number to be supplied with tobacco products by a wholesaler.

The bill will rectify this issue by including the new section 39A which will make it an offence for a person to obtain tobacco products from a wholesaler without providing a tobacco retailer notification number and for a wholesaler to supply tobacco products without first obtaining a tobacco retailer notification number.

I turn finally to the amendments to the Private Health Facilities Act which are set out in schedule 4 of the bill. A private health facility is required to be operated by a person with a licence granted under the Private Health Facilities Act. The Private Health Facilities Act provides a number of grounds for refusing an application for a licence, including section 7 (4) (c) (i). This section allows the secretary to refuse an application for a license if, after considering any approved developmental guidelines, the secretary considers that the approval will result in more than an adequate number of health services becoming available in a particular clinical or geographical area and will undermine the provision of viable, comprehensive and coordinated health services.

Section 7 (4) (c) (i) has not been used as a basis to refuse an application for a licence. A report on the statutory review of the Private Health Facilities Act, tabled in this House on 18 June 2013, found that the provision has the potential to be anti-competitive and that there were other mechanisms to ensure the provision of viable, comprehensive and coordinated health services. Accordingly, the report recommended that section 7 (4) (c) (i) be removed from the Act. The bill will implement this recommendation and remove section 7 (4) (c) (i) from the Private Health Facilities Act.

The amendments contained in the bill are all sensible amendments that will ensure the continued smooth operation of the various Health Acts. I commend the bill to the House.

**The Hon. WALT SECORD** (Deputy Leader of the Opposition) [9.22 p.m.]: As the shadow Minister for Health, on behalf of Labor I speak on the Health Legislation Amendment Bill 2015. Yesterday, 20 October, the bill was second read by the Minister for Health, Mrs Jillian Skinner, with little warning and virtually no notice. Immediately afterwards, I sought an urgent briefing from her ministerial office as it appeared the bill was being rushed through the Legislative Assembly. Subsequently, I received a one-page briefing note on the bill from her ministerial office and I did not see the actual bill until last night. That said, I genuinely appreciate the short briefing note.

Members will agree that the sudden appearance of a bill does not allow for the usual close examination of the contents, so I have to accept many of the Government's assurances at face value.

Last night I sought comment from a range of third parties, including the Health Services Union NSW/ACT, the Heart Foundation and, it may surprise members, Imperial Tobacco Australia. I spoke to "big tobacco" because they have been approaching State and Territory governments and oppositions on the need to respond to the growing appearance of illicit tobacco in Australia. I note that certain sections of the bill relate to their individual areas of concern. I will make some observations on that later.

The Health Legislation Amendment Bill 2015 contains amendments to the Health Care Complaints Commission Act, the Public Health Act, the Private Health Facilities Act, the Mental Health Act and the Public Health (Tobacco) Act. It is clear that this health bill is similar to legislation that comes from the Attorney General once or twice a year in the form of various statute law and miscellaneous provision bills. In future, I suggest that the Minister for Health take a similar approach to that of the Attorney General and consult with the Opposition and the crossbenches to ensure speedy passage of the bill, if its contents are non-controversial.

This bill covers a range of loopholes and anomalies that have appeared over time. Many of the amendments are sensible. Over the past 12 months, as the shadow health Minister, I have drawn many of them to the Government's attention, such as bans on certain practitioners, public warnings by the Health Care Complaints Commission, orders against health practitioners in other jurisdictions, the scourge of illicit tobacco and legionnaire's disease. I acknowledge that this bill is and should be part of any government's regular review and monitoring of legislation to ensure that it remains up to date and relevant. For those reasons, Labor will not be opposing the bill.

In summary, the bill requires the Health Care Complaints Commission to keep a public register of prohibition orders against health practitioners. It allows the Health Care Complaints Commission to issue an interim public warning about a particular treatment or health service during an investigation. The bill recognises and applies a prohibition order against a health practitioner made in another State or Territory. Further, it creates new offences for a subcontractor who fails to install, operate and maintain a regulated system in accordance with regulatory requirements for legionella control in a bid to reduce the chance of spreading legionnaires disease.

The bill extends the protection of personal liability to all staff of the NSW Health Service when they are acting in good faith. This protection currently applies to registered health practitioners, ambulance officers and police officers. The bill introduces new laws requiring all tobacco retailers to have a retailer number to curb the sale of illegal or illicit tobacco. It gives authorities the power to seize tobacco in tobacco retailers that does not carry health warnings and deems that particular quantities of illegal tobacco—which includes tobacco not in its original packaging or without a health warning—found on retail premises are for retail sale and are to be seized and destroyed.

I will speak first to the amendments relating to the Health Care Complaints Act and the Public Health Act. These Acts together provide for a regulatory regime for non-registered health practitioners. This issue has attracted considerable media attention in recent months. The Public Health Act and Regulation set out a code of conduct for non-registered health practitioners. The Health Care Complaints Act allows the Health Care Complaints Commission to investigate complaints against a non-registered health practitioner who breaches the code of conduct. Under the Health Care Complaints Act, the commission can issue a prohibition order for breaches of the code where the practitioner poses a risk to the health or safety of the public. A prohibition order can either prevent a practitioner from practising or place conditions on their practice. Practising in breach of a prohibition order is an offence under the Public Health Act.

New South Wales was the first jurisdiction in Australia to establish a code of conduct for non-registered health practitioners in 2008. However, it has since been joined by South Australia and Queensland, which have both introduced similar legislative provisions. Further, there are moves to establish a code of conduct across all jurisdictions and to allow for prohibition orders to be issued for serious breaches of the code. These moves have bipartisan support. It is important that New South

Wales is able to recognise and apply an interstate prohibition order as if it were made here. In that regard, this bill proposes to amend the Public Health Act to recognise and apply in New South Wales a prohibition order made under a prescribed law of another jurisdiction.

Once these changes commence, the relevant South Australian and Queensland legislation will be prescribed, as will any other similar legislation passed by any other jurisdiction, State or Territory. This will mean, for example, that if a practitioner was issued with a prohibition order in South Australia or Queensland that prohibition order will be recognised in New South Wales. Therefore, it will be an offence for that individual to provide services in New South Wales in breach of the order. In addition, the Health Legislation Amendment Bill includes new section 41E in the Health Care Complaints Act which will require the commission to keep a public register of prohibition orders. I agree with the Minister for Health that these are sensible changes that will assist in protecting the public from practitioners who have been found unsafe to practise in other jurisdictions. They also will ensure that the public can find out which non-registered health practitioners are subject to a prohibition order. This will provide assurances to the community, especially in light of a number of recent high-profile matters in the health practitioner's sector.

Further, the bill proposes to amend section 94A of the Health Care Complaints Act to allow the Health Care Complaints Commission to issue an interim public warning during an investigation. Again, this measure has bipartisan support. At the moment, the Health Care Complaints Commission can issue a public warning if it is of the view that a treatment or health service poses a risk to public health or safety. This power can be exercised only after an investigation. There is no power to issue such a warning during an investigation. The bill will address this situation and allow the commission to issue an interim public warning during an investigation if it considers it necessary for the protection of public health or safety and if any further delays will pose a risk to an individual or the public.

This amendment was the result of a recommendation of the 2014 parliamentary Committee on the Health Care Complaints Commission "Report on the Promotion of False and Misleading Health Related Information and Practices". It aims to ensure that the public can be put on notice of serious risks at an earlier stage. These amendments are important because the number of complaints to the NSW Health Care Complaints Commission have continued to grow, particularly over the past five years. In 2013-14, the most recent reporting period, the Health Care Complaints Commission received 8,061 complaints.

This is a significant increase from 2009-10 when the commission received 5,841 complaints. In 2013-14, the three most common issues categories were treatment, 40.2 per cent; communication, 16.5 per cent; and the professional conduct of the health service provider, 14.3 per cent. Overall there were 1,150 complaints about professional conduct of health practitioners in New South Wales. In 2013-14, 110 complaints about health practitioners in New South Wales were referred to the Director of Public Prosecutions to determine whether or not to prosecute them before a disciplinary body. This compares with 85 complaints in 2012-13. I am looking forward to seeing the 2014-15 Health Care Complaints Commission annual report, which is expected to be tabled later next month.

The bill also makes changes to try to reduce the number of people getting legionnaire's disease. The Health Amendment Bill also includes changes to the Public Health Act relating to the installation, operation and maintenance of regulated systems, which are systems such as water cooling systems or hot water systems that can spread legionella organisms. Legionella organisms are capable of transmitting legionnaire's disease, which is a serious form of pneumonia. Legionnaire's disease is a form of bacterial pneumonia first identified after an outbreak at an American Legion meeting in 1976. Legionnaire's disease is an infection of the lungs, which is pneumonia, caused by bacteria of the Legionella family. It is spread chiefly by water droplets through air-conditioning and similar systems. In the past five years there have been almost 500 reported cases in New South Wales. That is why we have to be diligent in this regard. So far this year, unfortunately, we already have had 77 cases. That is greater than last year's total figure of 70 but it is nowhere near the record set in 2013 when New South Wales had 108 cases.

The Public Health Act contains offences if the occupier or a duly qualified person engaged by the occupier fails to comply with the standards in the Public Health Act and regulation relating to the installation, operation and maintenance of a regulated system. However, those offences do not extend to subcontractors engaged by a duly qualified person. Therefore, the bill amends sections 28, 29 and 30 of the Public Health Act to provide for specific offences for subcontractors who fail to comply with the standards required by the Public Health Act and regulation when installing, operating or maintaining regulated systems. The penalties will be up to 1,000 penalty units for a corporation or \$110,000 for a second or subsequent offence. For an individual it will be up to \$1,100 in fines for a first offence or \$2,200 for a second or subsequent offence.

I now turn to schedule 2 to the bill, which makes amendments to section 191 of the Mental Health Act. Section 191 provides a protection from personal liability for any police officer, healthcare professional or ambulance officer who, in good faith, exercises a function under the Mental Health Act or the Mental Health (Forensic Provisions) Act 1990. A healthcare professional is defined to mean a registered health practitioner. NSW Health staff other than registered health practitioners and ambulance officers may from time to time be called on to assist registered health practitioners in the exercise of their functions.

For example, if a patient becomes agitated and violent, security staff or assistants in nursing may be required to assist a registered health practitioner in restraining the patient in order to protect the patient, other patients and staff of the facility. Because other staff of NSW Health may be involved in the care, treatment and detention of patients, the bill amends section 191 to extend the protection from personal liability to all staff who exercise functions under the Mental Health Act or the Mental Health (Forensic Provisions) Act or who assist registered health practitioners and ambulance officers in the exercise of their functions. I have consulted with the New South Wales and Australian Capital Territory branch of the Health Services Union [HSU] and it has welcomed the measure. Its chief of staff, Mr Ben Chapman, said:

The issue of adequate provision of security in our health system has been high on the agenda of the HSU for many years.

Security Guards in our hospitals are highly trained professionals who manage many distressing and unfortunately sometimes violent situations.

These high pressure situations sometimes call for the use of force and restraint and there is a gap in terms of what happens on the ground as opposed to what is defined in health legislation, regulation and policy.

This gap means that when security officers act or are directed to act they can sometimes find themselves in a precarious situation because the high pressure and volatility of the situation creates an uncertainty as to the exact limit of their power.

In other situations when security officers refuse instruction because they know it is outside of what they are allowed to do they also find themselves in a precarious situation, under fire for not doing more.

This amendment takes a small step in better protecting health security staff from personal liability but far more work is needed.

We are hopeful this is not the end but the beginning of the Government taking steps to rectify this situation, to ensure that our hospitals are safe for all, including the staff asked to make them safe.

I now turn to the aspects of the bill relating to tobacco. Heart Foundation Chief Executive and Company Secretary Kerry Doyle advised yesterday that they had no issues with the amendments as they were largely administrative and in line with the recent Federal police raids against illegal tobacco. However,

they advised that they would have preferred a proper review of our State's tobacco legislation and further amendments to regulate e-cigarettes in the same way that so-called normal cigarettes are regulated. Members would be aware that I have a private member's bill on the *Notice Paper* that responds to the Heart Foundation's concerns about the need for further legislation to bring e-cigarettes totally into line with New South Wales laws on cigarettes. For the information of members, it is item No. 247, the Smoke Free Environment Amendment (E-cigarettes) Bill 2015 about which I gave notice on 11 August.

I now turn to the specific changes to the Public Health (Tobacco) Act, which are set out in schedule 6 to the bill. Sections 6 and 7 of the Act make it illegal to sell tobacco in a product which is not in its original packaging or which does not have appropriate health warnings. This is known as "illegal tobacco". The availability of illegal tobacco in New South Wales is a community concern. Illegal tobacco is more harmful than regulated tobacco to the health of the user because it may contain impurities not normally found in legal tobacco products. The lower cost of illegal tobacco makes it more appealing and affordable to young people and low-income groups, thereby encouraging the uptake of smoking by those groups.

As well as the standard dangers associated with smoking such as mouth, throat and lung cancers, chop-chop, counterfeit and contraband cigarettes often contain dangerous and noxious chemicals and mould because they are produced cheaply in backyards or in Asia without proper controls and monitoring. For example, tobacco production in Indonesia is completely unregulated. Fungal contamination is usually found because of the way illegal tobacco is cured. That can cause toxic responses in the lungs, liver, kidneys and skin ranging from allergies to bronchitis and asthma. Immediate action is needed as the World Health Organization has projected that illegal tobacco consumption will outstrip worldwide legal tobacco consumption by 2020.

A 2014 NSW Health report noted anecdotal evidence and concerns about increases in the sale of illegal tobacco in New South Wales. Further, the report identified difficulties associated with prosecuting breaches because retailers that were found with illegal tobacco would claim it was for personal use and not intended for sale. That is true even when tobacco is found in quantities in which it is difficult to believe it was not intended for sale. The report also noted that there are limited powers to seize illegal tobacco. In order to address these issues the bill amends sections 6 and 7 to create a rebuttable presumption that prescribed quantities of tobacco are for sale. Further, a new section 8A will be included in the Act to give inspectors the power to seize illegal tobacco found in retail tobacco shops over the prescribed quantities. Any such tobacco seized will be returned only if the retailer can demonstrate that the tobacco was not for sale.

The bill also includes a new section 39A in the Act that will require a tobacco retailer notification [TRN] number to be provided before tobacco products are sold wholesale. Currently, before persons can engage in tobacco retailing they must notify the Ministry of Health, which can then provide a tobacco retailer notification number. This allows the ministry to know where tobacco retailers are located and ensure that inspections can take place. There is no current requirement in the Act to require a wholesaler to be provided with a TRN before supplying tobacco. That creates a potential loophole that allows a person who does not have a TRN number to be supplied with tobacco products by a wholesaler. The bill will make it an offence for a person to obtain tobacco products from a wholesaler without providing a tobacco retailer notification number and for a wholesaler to supply tobacco products without first obtaining a tobacco retailer notification number.

As for illegal tobacco, in May I raised concerns about the rise of illegal tobacco in Australia. International research shows that illicit tobacco consumption is expected to surpass legal tobacco consumption within five years. It has been estimated that \$1.35 billion a year is lost in government revenue through illegal tobacco. In some circles it is claimed that one in every seven cigarettes sold in Australia is illegal. At the time, I offered my bipartisan support for any "sensible and tough proposals" to tackle illegal tobacco. The amendments will go some way towards doing that and will bring New South Wales closer to Victoria, which leads the nation in responding at a State level to illegal tobacco. I note



also that in late August there were coordinated raids on nine illicit tobacco retailers in Sydney's southern regions, particularly Campsie and Hurstville. In that bust the NSW Police Force seized 14,700 packets of cigarettes with an estimated value of \$190,000.

I turn now to the amendments in the Private Health Facilities Act, which are set out in schedule 4 to the bill. A private health facility is required to be operated by a person with a licence granted under the Private Health Facilities Act. The Private Health Facilities Act provides a number of grounds for refusing an application for a licence. This section enables the Secretary of the Ministry of Health to refuse an application for a licence if, after considering any approved departmental guidelines, the secretary considers that the approval will result in more than an adequate number of health services becoming available in a particular clinical or geographical area and will undermine the provision of viable, comprehensive coordinated health services.

**The Hon. Duncan Gay:** Walt, hurry up.

**The Hon. WALT SECORD:** Do not tell me to wind up. I will wind up when I want.

**The Hon. Duncan Gay:** You said you had cut a lot out.

**The Hon. WALT SECORD:** I have. I might return to my original speech.

**The Hon. Duncan Gay:** I have three speakers I can call.

**The Hon. WALT SECORD:** I do not mind, Duncan. Go ahead and issue your threats. The Minister advises that section 7 (4) (c) (i) has not been used as a basis to refuse an application for a licence. The bill will implement this recommendation and remove that section from the Private Health Facilities Act. It is important that we ensure that a tough and robust process is in place when granting private health facility licences. That is why the current protections such as allowing a licence application to be refused if an applicant is not a fit and proper person or if the applicant is bankrupt are so important. Requiring private health facilities to comply with the standards in the private health facilities regulation, including that all facilities have a sufficient number of qualified and experienced staff on duty and have procedures in place to transfer patients if the facility cannot provide care, are important in maintaining confidence in our health system. For all of the aforementioned reasons, Labor does not oppose the Health Legislation Amendment Bill. I thank the House for its consideration.

**Mr JEREMY BUCKINGHAM** [9.42 p.m.]: This evening I make a brief but pithy contribution to debate on the Health Legislation Amendment Bill 2015. I will commence by listing the elements of the bill that The Greens support. First, the changes to the Health Care Complaints Commission Act require the Health Care Complaints Commission [HCCC] to keep a public register of prohibition orders—that is, orders prohibiting a non-registered health practitioner from practising—and amend 94A to allow the HCCC to issue an interim public warning about a particular treatment or health service during an investigation. I thank the Minister's staff for their briefing today, which clarified some of the operational elements of the provision. Minister Skinner and her staff are probably the most helpful of all ministerial staff.

**The Hon. Walt Secord:** She takes you to dinner.

**Mr JEREMY BUCKINGHAM:** She will not be taking me to dinner and the Hon. Walt Secord will not be taking me to dinner at the conclusion of my speech because he drunk the Kool-Aid. The Greens welcome the clarification and also support the changes to the Public Health Act, which recognise and apply a prohibition order made under prescribed interstate law as if it was made in New South Wales. It is eminently sensible that laws apply across States when prohibition orders are made. The changes also include new offences for a subcontractor who fails to install, operate and maintain a regulated system in accordance with regulatory requirements for legionella control. As the Hon. Walt Secord outlined, it is

important that we remain vigilant about legionella. The Greens support those changes.

The changes to the Mental Health Act extend the protection of personal liability to all staff, not only practitioners. The bill will amend section 191 of the Mental Health Act to apply a protection of personal liability to all staff of NSW Health, when acting in good faith. Currently, section 191 applies only to registered health practitioners, ambulance officers and police officers. Labor and the Health Services Union also support those provisions. The Greens support those changes and appreciate the clarification made by the Minister in her reply speech in the other House that the protection of liability extends to all staff regardless of whether they have been requested directly to assist a registered practitioner, as long as they are acting in good faith. The Greens sought clarity on that key element that as long as they were acting in good faith they did not have to be requested directly. I wish to read the answer provided to me by the Minister on this issue. She stated:

The protection from personal liability extends to when staff of the NSW Health Service either exercise functions or assist a registered health practitioner or ambulance officer in exercising functions. When assisting registered health practitioners and/or ambulance officers, the protection from personal liability will extend to both situations where there is a direct request and emergency situations where other staff assist the registered health practitioners without a direct request. In all other cases, staff will have to act in good faith.

The Greens believe this is pertinent in the modern health system. We welcome that clarification from the Minister. The Greens support the changes to the Public Health (Tobacco) Act 2008 which deal with the issue of illegal tobacco. The Greens believe that, ultimately, all tobacco should be illegal. The impact of tobacco on the lives of people and subsequently on our health system is an abomination. We must move to a smoke-free New South Wales. We hope that the Hon. Walt Secord introduces his bill sooner rather than later. If he dillydallies, The Greens will introduce their own bill.

We welcome the move by the Government that requires tobacco retailers to supply tobacco wholesalers with a tobacco retailer notification number before obtaining products for retail sale. It creates the power to seize tobacco from tobacco retailers if the product does not carry health warnings. The Greens support those amendments and any move that will minimise the impact that legal and illegal tobacco has on the New South Wales health system. I turn now to the changes to the Private Health Facility Act. The Greens oppose the Health Legislation Amendment Bill 2015.

**Reverend the Hon. Fred Nile:** Shame!

**Mr JEREMY BUCKINGHAM:** Reverend the Hon. Fred Nile should take note of what is included in these changes. Some members have been beguiled by the silvery baubles in the bill. The Greens oppose it because it undermines the integrity of the public health service. The Nationals should take note. The Greens are about to be given the biggest gift in the area of health that they have ever been given. The Labor Party is about to drive the Nurses and Midwives' Association into our arms—the biggest mistake that the Hon. Walt Secord will ever make in his short health career. I concur with Dr John Kaye and his assessment of the bill.

**The Hon. Walt Secord:** He is not a medical doctor; he fixes air-conditioners.

**Mr JEREMY BUCKINGHAM:** Dr John Kaye could be a medical doctor; he could do whatever he wanted to do. If he turned his attention to medicine I know that he would succeed. Last year his assessment of the bill when it was introduced in the other place was spot-on—it was a forensic assessment. He pulled the bill apart like a brain surgeon and his assessment stands. And he put it back together like a brain surgeon as well, and that is the trick. The key provision is this: The amendment removes the power of the Government to deny a licence to a private health facility if it would result in an oversupply of health services in that clinical or geographic area and would undermine the provision of viable, comprehensive and coordinated health services.

**The Hon. Walt Secord:** Are you against health services?

**Mr JEREMY BUCKINGHAM:** I am for the public health service. I note the interjection of the Hon. Walt Secord, the right winger who has led the Labor Party to abandon the public health service and to go towards taking a free market approach when it comes to health services.

**DEPUTY-PRESIDENT (The Hon. Paul Green):** Order! Mr Jeremy Buckingham will address his remarks through the Chair. I ask members to conduct private conversations in the members lounge.

**Mr JEREMY BUCKINGHAM:** This is a pivotal moment in the history of the Labor Party, where it departs from its commitment to a healthy public health system and adopts a whole-hearted free market approach to the provision of health services.

**The Hon. Walt Secord:** The Government is sitting opposite.

**Mr JEREMY BUCKINGHAM:** The Government are at least open about their love of the free market. They are on the record.

**The Hon. Walt Secord:** Point of order: My point of order goes to relevance. I remind Mr Jeremy Buckingham that Ms Jan Barham supports Byron Bay Central Hospital, a private hospital.

**DEPUTY-PRESIDENT (The Hon. Paul Green):** Order! Mr Jeremy Buckingham should be heard in silence. Mr Jeremy Buckingham will refrain from responding to interjections. Members will be called to order if they continue to interject.

**Mr JEREMY BUCKINGHAM:** This excellent clause was brought in to ensure there would not be an oversupply of health services in any clinical or geographic area that would undermine the provision of viable, comprehensive and coordinated public health services. This move is a major retreat from the planned provision of public health services. This clause was introduced in the Private Health Facilities Act 2007 as a safeguard mechanism for the removal of the bed cap on private hospitals, and I have not heard a good reason for it to be removed, despite having a briefing from the Minister and despite listening intently to the contribution made by the Hon. Walt Secord.

The clause exists to ensure that the Government can step in if there is clear predatory behaviour by a private operator or a number of operators who may attempt to deliberately undermine the public hospital system in an area, and therefore give the Minister the excuse to shut down clinical services and achieve cuts to the health budget, which is something they clearly want to do, and we saw that in Murwillumbah recently. Now the reasons the Minister has provided for the removal of this clause are that it has not been used since it was included in the Act, that the clause is "potentially anticompetitive" and that "general market principles could ensure appropriate oversight of the health system". The Greens believe that that system, which ensures the Minister can deny a licence to those private health operators, must be retained.

**The Hon. Dr Peter Phelps:** Has it ever been used?

**Mr JEREMY BUCKINGHAM:** Just because it has not been used does not mean that the private health sector is not completely aware of it. They know it is there. They know that if they operate in a predatory way and undermine the public health system they can be reined in—they can have their licence removed or denied. Now that is a massive brake on those behaviours, and just because it has not been used is not a good reason to remove it. As Mr Brett Holmes from the NSW Nurses and Midwives Association has said, this will absolutely smash regional public health services. In particular they have already seen that happen in Bathurst and Lithgow. They have said that they believe this will create a massive black hole for the provision of public health in the regions—

**The Hon. Duncan Gay:** He would be an honest broker, wouldn't he?

**Mr JEREMY BUCKINGHAM:** I note the interjection from the Hon. Duncan Gay, who says that Mr Brett Holmes is an honest broker—I believe he is.

**The Hon. Duncan Gay:** No, he is not an honest broker.

**Mr JEREMY BUCKINGHAM:** I note the interjection from the Hon. Duncan Gay, who says that Mr Brett Holmes is not an honest broker. I would take the word of Mr Brett Holmes over that of the Hon. Duncan Gay any day. The Hon. Duncan Gay purports to be an agrarian socialist but lines up here to bring in general market principles in the area of public health. It is a ridiculous notion that a safeguard should be removed simply because it has not been used. The safeguard has a high threshold with a private operator needing to be seen to "undermine the provision of viable, comprehensive and coordinated health services" before the Minister could decide to deny a licence. This is clearly appropriate. There is no argument for why it should be removed.

Instead, the Baird Government is telling the private sector that it is open season on public hospitals. The message to staff in the public sector is even more appalling: Public hospitals are only there to pick up the crumbs left over by the corporate giants. The bill also removes any chance for planned provision of health services, and this is the key element, allowing the private sector to cherry-pick patients out of the public sector in higher socio-economic status areas while the public sector is left to do the heavy lifting in disadvantaged communities. That is something we are already seeing on the North Shore.

Abandoning planned provision is not only a step towards a free-for-all grab for patients; it is a massive gift to a number of large campaign donors to the Coalition. This is an invitation to the corporate sector to white-ant the public hospital system, giving the Minister the excuse to shut down clinical services and achieve cuts to the health budget. The Greens will be seeking to amend the bill to strip out this amendment, as the others are supported and indeed, should be passed. For those reasons, The Greens will be seeking to amend the bill. If the bill is not amended, I will oppose it.

**Reverend the Hon. FRED NILE** [9.57 p.m.]: On behalf of the Christian Democratic Party I speak briefly tonight on the Health Legislation Amendment Bill 2015. This contains amendments to the following Acts: the Health Care Complaints Act, the Public Health Act, the Private Health Facilities Act, the Mental Health Act and the Public Health (Tobacco) Act. Regarding the Health Care Complaints Act, the bill will keep a register of banned practitioners. It will require the Health Care Complaints Commission to keep a public register of prohibition orders—that is, orders prohibiting a non-registered health practitioner from practising. This is a very important amendment and I am very pleased to have served on the upper House Health Care Complaints Committee, which supervises and assists the Health Care Complaints Commission in its very important role in our State.

The bill also allows the Health Care Complaints Commission to issue public warnings. The bill amends section 94A to allow the Health Care Complaints Commission to issue interim public warnings about a particular treatment or health service during an investigation. We know that there have been many cases where patients have been injured by the activities of poorly trained or careless people in the medical profession. For example, four years ago an investigation by Choice found clients were suffering painful injuries because of a lack of training amongst hair removal salon staff who operated laser and other equipment.

At the time, Choice argued that national standards were needed to guide the use of laser and intense pulsed light [IPL] machines to ensure operators were adequately trained. The investigation found that people had experienced severe burns, blistering and scarring after undergoing laser or IPL treatment. This is an obvious example of why the Health Care Complaints Commission needs the

flexibility, adaptability and capacity to issue interim public warnings when issues like this come to light.

I have also been concerned by reports of harm that has occurred to some women who have been to clinics seeking breast enlargement operations, where anaesthetics may be used by doctors who are not qualified. Patients have sometimes had to be rushed from these clinics to public hospitals for treatment, in some cases to save their lives. I urge the Health Care Complaints Commission to be very aggressive in carrying out this role of issuing public warnings so that men and women have the protections they need. The next part of the bill I wish to discuss deals with the Public Health Act. The bill recognises other jurisdictions' prohibitions on practitioners.

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

**The House continued to sit.**

**Reverend the Hon. FRED NILE:** The bill recognises and applies a prohibition order made under a prescribed interstate law as if it was made in New South Wales. This sort of homogenisation of State laws simplifies things from a national perspective. It is important to have this harmonisation. The bill also extends offences to cover subcontractors who fail to operate systems. The bill includes new offences for subcontractors who fail to install, operate and maintain a regulated system in accordance with regulatory requirements for legionella control—for example in air-conditioning systems.

As I understand it, the Public Health Act 2010 and the Public Health regulation 2012 control various man-made environments and systems which are conducive to the growth of *Legionella pneumophila*, and which are capable, under the right conditions, of transmitting legionnaire's disease. It is a serious disease. There have been outbreaks of that disease over the years. Those outbreaks have caused great concern. Regulated systems include water cooling systems, hot water systems, warm water systems and air-handling systems. This provision of the bill is another important step in ensuring that the risks of legionella outbreaks are reduced in New South Wales.

The bill amends the Private Health Facility Act by removing the Health Secretary's ability to refuse a licence on the grounds of adequacy of health services. The bill will remove section 7 (4) (c) (i) from the Act, which provides that the secretary may refuse an application for a private health facility licence where it is considered that there are more than adequate numbers of health services in an area. I understand that the section has not been used since the Act was commenced. I think that provision is very important.

Like some other members of this House, I am very concerned about the operation of clinics which carry out terminations, or abortions. Sometimes the staff of the clinic lack adequate training and there is an absence of counselling for women considering that operation. I call for strong supervision of all private clinics to ensure that they operate fully within the law. The bill also amends the Mental Health Act by extending protection of personal liability to all staff, not just practitioners. The bill will amend section 191 of the Mental Health Act to apply a protection of personal liability to all staff of the NSW Health Service when acting in good faith. Currently section 191 only applies to registered health practitioners, ambulance officers and police officers.

I also note that the bill provides for amendments to the Public Health (Tobacco) Act 2008. As members know, I have been a crusader on the harmfulness of tobacco products since I came into the Parliament. I am very pleased with the success that I have had in introducing bills prohibiting tobacco advertising, smoking in public places, smoking in cars with children and so on. But more needs to be done. The bill requires tobacco retailers to supply tobacco wholesalers with a tobacco retailer notification number before obtaining tobacco products for retail sale. The bill also provides inspectors with the power to seize and dispose of any "illegal tobacco"—tobacco that is not in its original packaging or is in packaging without a health warning—found on retail premises if it exceeds a prescribed quantity.

As members know, very large quantities of illegal tobacco products have been seized by the Australian Customs and Border Protection Service, when people have tried to smuggle tobacco products, sometimes in order to avoid having to pay tax on the product. As other speakers have said, more can be done. I do not know whether we will ever get to the stage of totally banning tobacco but there is not one positive thing I can say about that product. The Christian Democratic Party will support any action that will prevent tobacco causing harm in our society.

Because the incidence of alcohol-fuelled violence is becoming more prevalent, the Christian Democratic Party also looks to further action on laws relating to alcohol. I was at the emergency department of St Vincent's Hospital this week. I learnt of the amount of pressure put on emergency departments on weekends by violent people under the influence of alcohol. There have been many cases of cowards bashing people on the head from behind—in some cases, even leading to death. Some would say that the problem is violence but the problem is more properly characterised as alcohol-fuelled violence. We will support the Government in any future endeavours to restrict the harmful impacts of alcohol and tobacco on our society. The Christian Democratic Party fully supports this bill.

**Dr JOHN KAYE** [10.07 p.m.]: I will speak very briefly on the Health Legislation Amendment Bill 2015. I firmly endorse the comments of Mr Jeremy Buckingham so I will not reiterate them. I would like to focus on one particular section of the bill—schedule 3, the amendments to the Private Health Facilities Act 2007. The explanatory note to the bill points out that this schedule:

... removes a current ground for the refusal of a licence for a private health facility where the approval of the application will result in more than an adequate number of health services becoming available in a particular clinical or geographic area and will undermine the provision of viable, comprehensive and coordinated health services.

Let us turn that around and ask what it will mean if this bill goes through. It will no longer be possible to refuse a licence for a health facility which is setting up where there is already an adequate number of health facilities in a particular clinical or geographic area. It will not be possible to refuse an application where that facility would undermine the provision of a viable, comprehensive and coordinated health service. How absurd is that? This Parliament is removing the capacity to stop the oversupply of health services. It is removing the capacity to stop the undermining of existing health services by another private health facility coming into a region.

It is the most disgraceful retreat from planned provision. It is not just an ideological handover to the markets; it is a guaranteed recipe for chaos in health provision. It will inevitably result in oversupply where the precious health dollar will be squandered by having two identical facilities competing with each other, while other clinical regions will not have sufficient health services. It is an invitation to the private health sector to set up right next door to a public hospital and cherry-pick the most profitable forms of service and the public hospital system once again is left to pick up the pieces.

Those opposite always laugh about this, but the Government says, "It has never been used therefore it is not needed". Let us pick apart that particular piece of spectacular illogic. There is a ban on smoking in aeroplanes. Nobody smokes in aeroplanes anymore. Would the removal of that ban be considered? No, because it is the existence of the ban that stops it being needed. In this instance the existence of the power will stop people putting in applications that will undermine the public health sector. Removing this ban will guarantee that the private health sector, which is well cashed up and looking not for health opportunities but for economic opportunities, will move in on the public sector and existing private sector provision and undermine it. That is what passing this provision today will mean. Why is this happening? We are told in the Minister's second reading speech that the Private Health Facilities Advisory Committee said it was a good idea.

**Mr Jeremy Buckingham:** Who is on it?

**Dr JOHN KAYE:** That is a good question. If we turn to section 54 of the Private Health Facilities Act 2007 we see that every single member of that committee, bar one consumer representative and one departmental representative, is either from the private health sector or from private medicine. It is a committee dominated by private interests. What a surprise it is to learn that a committee dominated by people who come from the profit-focused health provision sector would say, "We should be given an opportunity to undermine the public health sector." That is an authoritative committee, is it not? No, it is not a committee we should be listening to. But what really sits behind this proposal is the infiltration of the private health sector into public medicine in New South Wales through this Government and its predecessors.

The InfraShore proposal at Royal North Shore Hospital was catastrophic; it led to outrageous outcomes. The then Labor health Minister signed the contract and her chief of staff left and became the chief executive officer of the private health sector provider at Royal North Shore Hospital. This led to catastrophic failures of the ancillary and ward services. This State is about to hand those critical functions on the northern beaches to Healthscope, also a private health provider. What is going on in this State is not only ideological; it is about the flow of money. It is about donations from the very profitable, well cashed up private health sector into the coffers of political parties. It is corrupted political decision-making. Schedule 3 to the bill is a fine example of policies for cash. It is a fine example of what happens when this State is handed to privateers. The consequence will be an undermining of the public health system. I understand that Mr Jeremy Buckingham intends to urge a vote against schedule 3 to the bill. I strongly urge members to support that call.

**The Hon. SARAH MITCHELL** (Parliamentary Secretary) [10.13 p.m.], in reply: I thank honourable members for their contributions to the debate. I commend the Health Legislation Amendment Bill 2015 to the House.

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

**The House divided.**

#### **Ayes, 32**

Mr Ajaka	Mr Gallacher	Mr Pearce
Mr Amato	Mr Gay	Mr Primrose
Mr Blair	Mrs Houssos	Mr Searle
Mr Borsak	Mr Khan	Mr Secord
Mr Brown	Mr MacDonald	Mrs Taylor
Mr Clarke	Mrs Maclaren-Jones	Mr Veitch
Mr Colless	Mr Mallard	Ms Voltz
Ms Cotsis	Mr Mason-Cox	Mr Wong
Ms Cusack	Mrs Mitchell	<i>Tellers,</i>
Mr Donnelly	Mr Moselmane	Mr Franklin
Mr Farlow	Reverend Nile	Dr Phelps

#### **Noes, 5**

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

Dr Kaye

**Question resolved in the affirmative.**

**Motion agreed to.**

**Bill read a second time.**

**In Committee**

**TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones):** If there is no objection, the Committee will deal with the bill as a whole, with the exception of schedule 3.

**Mr JEREMY BUCKINGHAM** [10.23 p.m.]: I refer to The Greens statement on sheet C2015-124, which relates to the licensing of private health facilities. The Greens will vote against schedule 3 to the bill, which will amend the Private Health Facilities Act 2007 by deleting section 7 (4) (c), which states:

- (4) The Director-General may refuse an application for a licence only if the Director-General is satisfied that:
  - (c) having regard to any development guidelines approved by the Director-General and published in the Gazette:
    - (i) approval of the application will result in more than an adequate number of health services becoming available in a particular clinical or geographic area and will undermine the provision of viable, comprehensive and coordinated health services ...

As stated by my colleague Dr John Kaye, it is clearly in the public interest to retain section 7 (4) (c) of the Private Health Facilities Act 2007. It is clearly in the public interest to prevent predatory behaviour by the private sector, which has so much influence over political parties in this State. It is absolutely essential to resist the move to a market approach when it comes to the provision of adequate health care, especially adequate public health care. Such a move invariably will lead to predatory behaviour. The provision not having been used does not mean that it is an unimportant safeguard.

Private health providers are probably taking a very keen interest in this debate and are making plans for the provision of services. They will cry, "Hallelujah! We can undermine the public sector." Schedule 3 to the bill before the Committee will give the Government an excuse to hand over an increasing number of services and public health sector dollars to the private health sector. Ultimately that will put the people of this State in a poor position. Moreover, failure to vote against schedule 3 will amount to members of this Parliament moving away from a commitment to the provision of accessible high-quality public health care.

The New South Wales Nurses and Midwives' Association is very concerned about the amendment of section 7 (4) (c) of the Private Health Facilities Act 2007 by schedule 3 to the bill. Clearly it sees it as a move towards privatisation of the public health system. Invariably regional areas, which are already poor cousins when it comes to health care, will suffer most. The Government is champing at the bit to cut public health services. One has only to recall the Murwillumbah birthing centre and the fantastic campaign that stopped the closure of that service. The Government will witness that type of resistance over and over again.

I call on the Labor Party to reconsider its position. I do not believe the Labor Party has properly considered the ramifications of retaining schedule 3 to the bill. I urge Labor members to reconsider



abandonment of the principle and Labor's philosophical view that government should provide excellent public health services. Currently section 7 (4) (c) of the Private Health Facilities Act 2007 prevents the provision of excellent public health services from being undermined. Members of Parliament must ensure that public health services remain viable and comprehensive and are rolled out in a planned way. I urge members of the Labor Party to reconsider their position and recommit to supporting the public sector over the private sector.

**The Hon. SARAH MITCHELL** (Parliamentary Secretary) [10.28 p.m.]: The Government opposes the call by The Greens to reinstate the power of the Health secretary to refuse a licence based on the adequacy of health services in a geographic area. The June 2013 statutory review of the Private Health Facilities Act 2007 noted:

s7 (4) (c) (i) has the potential to be anti-competitive which may stifle new private health service initiatives and reduce innovation and efficiency in the health system. As such, the provision should not remain in the Act unless there are no other ways to ensure an appropriate oversight of the health system.

The report found that there are already a number of different ways to ensure appropriate oversight of the health system. Those measures include the overall provisions of the Private Health Facilities Act. The Act allows an application for a licence to be refused, or an existing licence to be suspended or cancelled, on the basis that the applicant has been bankrupt or has made an application for the relief of bankruptcy. It allows an application for a licence to be refused if an applicant is not a fit and proper person and for the Health secretary to cancel a licence on a number of grounds. It sets out the requirement on private health facility licensees to comply with the licensing standard set out in the Private Health Facilities Regulation.

These standards include that all facilities have a sufficient number of qualified and experienced staff on duty and have procedures in place to transfer patients if the facility cannot provide care. It is also worth noting that general market conditions mean that a private operator is highly unlikely to seek or to succeed in attracting investment in the establishment of a financially unfeasible health service. As there are other mechanisms to ensure appropriate oversight of the health system, it is not appropriate for the potentially anti-competitive section to remain in the Private Health Facilities Act 2007. Ultimately a licence can be cancelled if the Health secretary is of the opinion that the facility is conducted in such a manner that the cancellation of the licence is otherwise in the public interest. Given the protections already in place, the Government will not support The Greens proposal.

**The Hon. WALT SECORD** (Deputy Leader of the Opposition) [10.30 p.m.]: Labor does not support The Greens proposal to vote against schedule 3 of the bill. I have not been persuaded by Mr Jeremy Buckingham's arguments. Unfortunately, the concerns raised by Mr Jeremy Buckingham are overstated. In his own words, the provision has never been used. The bill is about providing more health services, not fewer. I remind The Greens that Ms Jan Barham is on the record as supporting the private provision of surgical services at Byron Central Hospital. This flies in the face of—

**Mr David Shoebridge:** Point of order: Earlier the Chair ruled this kind of contribution out of order and irrelevant to the specific amendment before the Committee. The rule cannot apply to one party and not to other parties.

**The Hon. WALT SECORD:** To the point of order: The contribution is completely in order. It relates to the part of the bill that The Greens want to omit. It is an example.

**TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones):** Order! I uphold the point of order.

**The Hon. WALT SECORD:** Labor will not support The Greens proposal to vote against schedule 3 of the bill.

**Dr JOHN KAYE** [10.32 p.m.]: I will comment on the issues raised by the Parliamentary Secretary. She said that this provision in the bill is not needed because there are a number of other provisions under which a licence can be refused or revoked. Each condition that she listed was not relevant to the issue of planned provision. Schedule 3 of this bill addresses the issue of planned provision. The Parliamentary Secretary spoke about whether the provider was a fit and proper organisation and economically sound. That had nothing to do with planned provision.

The legislation, if it is passed containing this provision, will push up health costs in Australia through unnecessary and expensive duplication. Nothing that has been said by Labor or the Government addresses the fundamental issue that is the substance of The Greens concern, which is the duplication of health services, the increased cost that that will bring, the devastation to the public sector system—and the importance of it being a system—and the inevitable consequences of deregulation. To say that this is anti-competitive is nonsense. It is not about competition. It is about what best serves the people of New South Wales, and that is a public health provision system.

**Mr DAVID SHOEBRIDGE** [10.33 p.m.]: I support The Greens proposal to vote against schedule 3. The Government opposes the proposal because, in the words of the Parliamentary Secretary, it is anti-competitive. The Greens fundamentally reject the idea that a free market will serve the public interest in the provision of an essential good such as medical services and health care. If members want proof of why the provision is necessary in the bill to allow for the Minister to intervene and redirect resources that would otherwise be wasted in a neoliberal free market health system, they need look no further than the United States. In the United States there are no provisions to allow any of the States or the Federal Government to restrain the excessive use of private health resources.

The proportion of the economy of the United States that is spent on health care is 17.1 per cent. The proportion of the Australian economy that is spent on health care is 9.4 per cent. The health outcomes from our regulated, primarily public, health system vastly outstrip those of the United States system. The United States system is based on the kind of argument against government intervention that we heard from the Parliamentary Secretary. United States legislators who oppose any kind of public health system use the exact rhetoric that we heard from the Parliamentary Secretary: socialised medicine and anti-competitive provisions. I am proud that we have socialised medicine in Australia. We have direct interference with the market to provide for an efficient, effective and publicly directed health system through the provisions in the existing Act that the Government wants to remove. Sadly, the Opposition supports the Government.

**The Hon. Walt Secord:** Point of order: Mr David Shoebridge is not speaking to the proposal before the Committee. He is giving a speech on the second reading.

**TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones):** Order! I uphold the point of order. I ask Mr David Shoebridge to speak to the proposal of The Greens to vote against schedule 3 of the bill.

**Mr DAVID SHOEBRIDGE:** The Greens fundamentally reject the free market ideology that the Government is promoting with this legislation. Today's debate, in which only The Greens have stood up against that kind of rhetoric—the argument that any government and social intervention in the health system should be struck down as being anti-competitive—

**The Hon. Walt Secord:** Point of order: I remind the Chair of the previous ruling. Mr David Shoebridge is giving a speech on the second reading. He should return to the proposal to vote against schedule 3 of the bill.

**Dr John Kaye:** To the point of order: Mr David Shoebridge was talking directly to the proposal. He was talking about the consequences if schedule 3 becomes part of the Act. There could be nothing more relevant than that.

**TEMPORARY CHAIR (The Hon. Natasha Maclaren-Jones):** Order! Mr David Shoebridge was being generally relevant, but I remind him to speak to the proposal.

**Mr DAVID SHOEBRIDGE:** It is because The Greens do not want to see more of our wealth channelled into private health facilities and private medical services that are wasteful and produce poor health outcomes for the general population. We are proposing that schedule 3 be voted against. The Greens urge members of all other parties with a social conscience to support The Greens proposal to vote against the schedule.

**Question—That schedule 3 stand as part of the bill—put.**

**The Committee divided.**

**Ayes, 32**

Mr Ajaka	Mr Gallacher	Mr Pearce
Mr Amato	Mr Gay	Mr Primrose
Mr Blair	Mr Green	Mr Searle
Mr Borsak	Mrs Houssos	Mr Secord
Mr Brown	Mr Khan	Mrs Taylor
Mr Clarke	Mr MacDonald	Mr Veitch
Mr Colless	Mr Mallard	Ms Voltz
Ms Cotsis	Mr Mason-Cox	Mr Wong
Ms Cusack	Mrs Mitchell	<i>Tellers,</i>
Mr Donnelly	Mr Moselmane	Mr Franklin
Mr Farlow	Reverend Nile	Dr Phelps

**Noes, 5**

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

**Question resolved in the affirmative.**

**Schedule 3 agreed to.**

**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. 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 without amendment.**

### **ADJOURNMENT**

**The Hon. DUNCAN GAY** (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) [10.47 p.m.]: I move:

That this House do now adjourn.

### **HOUSING FORUM**

**The Hon. ERNEST WONG** [10.47 p.m.]: On Friday 7 August 2015, I hosted a housing forum in the New South Wales Parliament Theatre which attracted in excess of 150 attendees from all over Sydney. This forum was organised in response to a huge demand from local residents who were reaching out to me for assistance, almost on a daily basis. Dozens and dozens of ordinary consumers who purchased off-the-plan apartments have lobbied me relentlessly to help them recover from the financial whitewash they have found themselves in as a result of the sunset clause. Every single person who attended this forum had been adversely affected by this clause and each one highlighted the struggles that real, ordinary people are facing as a consequence.

As members would be aware, sunset clauses are usually contained in contracts for buying land or strata units off the plan. They allow either the buyer or the developer to rescind a contract after a certain date, usually in the event that construction is not finished on schedule. From the interactions I have experienced, it appears there are many developers out there who purposely delay works to invoke the sunset clause, cancel the contract and then resell apartments at higher prices. Some New South Wales consumers have reportedly had their contracts rescinded by a developer using the sunset clause, only for the land or apartment to be resold the same day for a higher price.

At the moment, developers can, quite legally, enact sunset clawbacks when the building works run more than a year behind schedule. The legislation was originally introduced to safeguard purchasers against having to wait an indeterminate time before completion. I have heard numerous stories of people being left emotionally and financially crippled as a result of this clause. I have listened to stories of young couples who have worked hard, sacrificed and saved every spare penny they could muster in order to purchase their first home together, only to be duped by greedy and unscrupulous developers and without means for recourse.

Just last week I met with a group of victimised young couples who shared their experiences with me. In late 2009, 34 purchasers bought off-the-plan apartments in Wolli Creek, New South Wales. After significant delays, instead of receiving settlement notices, without justification they received rescission notices from the vendor in March 2013 and April 2014, respectively. The purchasers started a class action, but after 2½ years, exhausting money, time and energy, an adverse verdict was handed down on 6 October 2015. On top of the hundreds of thousands of dollars they have spent on lawyers and experts, they now need to cover the significant legal costs of the defendant and claims for tens of thousands of

dollars in compensation. I was speechless when they asked me: Who is going to protect the interest of purchasers? Who is going to be willing and able to help us? Who can we rely on to prevent similar things from happening again?

I have extreme sympathy for them as they are young, working-class people doing the best they can day in, day out, who had high hopes that they could save to buy their first home. Now, after five years, they have lost their apartments, they have lost money and, worst of all, their dream of saving for a home was crushed harshly by the greed of developers. They have even lost hope to save up adequate money for another property. One only needs to read the papers or listen to the radio to see that this is not an isolated incident; on the contrary, it is quite a common occurrence and has very little consumer protection. In early September 2015 when the Minister for Innovation and Better Regulation, the Hon. Victor Dominello, MP, announced that he will be introducing new legislation to ensure cases like this are never allowed to happen again, I welcomed this decision with cautious optimism.

The Minister has stated publicly that the New South Wales Government was considering reforms to the Conveyancing Act 1919, including allowing only the purchaser to rescind off-the-plan contracts and requiring a vendor who terminates a contract under a sunset clause and resells the same unit to pay damages to the purchaser equal to the difference of the sale price in the two contracts. Whilst I welcome the move to amend the Act, the reforms that have been mentioned—should the Government come good on its word—aim to prevent future dodgy practices and to protect future consumers, but does very little to assist the hundreds of consumers who have already been exploited by this practice winding up without a property as well as being emotionally and financially exhausted.

## **SUICIDE PREVENTION**

**The Hon. NATASHA MACLAREN-JONES** [10.52 p.m.]: This evening I speak about the launch of the Online Suicide Prevention Toolkit called "Communities Matter: suicide prevention for small towns and local communities". The launch was held this morning in Parliament House and was attended by the New South Wales Mental Health Commissioner, John Feneley; the Chief Executive Officer of Suicide Prevention Australia, Sue Murray; the Minister for Mental Health, the Hon. Pru Goward, MP; and a number of parliamentarians, including the chair of the newly formed Parliamentary Friends for Mental Health, the Hon. Scott Farlow.

Sadly, most people's lives will be touched at some stage by suicide. We may know of someone who has attempted suicide or who has died by suicide. It is a devastating event for family, friends and the broader community. Suicide remains the leading cause of death of Australians aged between 15 and 44. It is estimated there are 200 suicide attempts per day, which is approximately one new attempt in Australia every 10 minutes. Suicide is much more common among males—approximately 75 per cent more than females in every State and Territory of Australia. These figures are consistent with trends observed in other western countries.

The Communities Matter online toolkit is designed to support small towns and local communities to turn conversations and interest in suicide prevention into activities that reflect local need. The toolkit was developed in partnership between the Mental Health Commission of NSW and Suicide Prevention Australia and with input from a number of organisations, including beyondblue, the StandBy Response Service, United Synergies Australia, the Uniting Church in Australia, the University of Newcastle's Centre for Rural and Remote Mental Health Research, the Hunter Institute of Mental Health, and the Lifeline Foundation.

The toolkit outlines prevention strategies to support communities to undertake suicide prevention activities and to combat stigma associated with suicide and mental health. This reflects the principle that suicide prevention is everyone's business and that preventing suicide requires coordinated action across all levels of government, business, non-government organisations and the community, working in partnership to create healthy and socially inclusive communities. The first version of the document was

piloted within two towns at the start of 2014. During the pilot process, feedback was gathered from stakeholders involved in the pilots to ensure that it was a useful resource for communities. Following feedback and resounding agreement it was decided to make the toolkit more accessible as an online resource. The website provides practical information to assist individuals to learn more about the options available for community-driven suicide prevention activity before making a decision about their next step.

The toolkit provides background information about suicide, practical advice on what the community can do, how to mobilise the community, templates on community suicide prevention action plans and information on how to promote positive mental health. One example given on the website is from the Community Action for Suicide Elimination [CASE] group, which was formed in 2011 because of the large number of suicides in Hay. Hay is a town of about 3,000 people in the western Riverina region of New South Wales and is more than 100 kilometres from the nearest large town centre. The group has focused on educating members of the Hay community to be aware of signs that a person may be contemplating suicide, such as isolation, sudden changes in mood or behaviour, abusing drugs or alcohol and self-harming or high-risk behaviours. Other physical signs can include a person neglecting their appearance, personal hygiene and clothing.

Using the Community Response to Eliminating Suicide [CORES] suicide awareness training, the Hay group has trained more than 140 volunteers in Hay and the surrounding communities. Furthermore, they now have their own local dedicated trainer. In 2012 it was decided that local contacts were needed for people seeking help, so a local helpline was set up. The CASE 24/7 emergency mobile phone number is well advertised in the Hay area and is manned on a rotation basis by members of CASE. As well as by phone, people in need have approached CASE members directly for help. The CASE team does not offer counselling; they are there to provide support and to refer people on.

In Wagga Wagga, the Blue Day has been an annual fundraising initiative between the Suicide Prevention Network and local businesses. Each year approximately 50 businesses participate and, on average, they raise around \$3,000. Preventing suicide and suicidal behaviour in the New South Wales community is a high priority for the New South Wales Government, along with improving the mental wellbeing of all Australians. We have committed to a once-in-a-generation overhaul of the mental health care system and we have committed \$115 million to boost mental health funding over the next three years. Last year, the New South Wales Government adopted Living Well: A Strategic Plan for Mental Health in NSW 2014-2024.

## **SYDNEY NEURO-ONCOLOGY GROUP**

**The Hon. WALT SECORD** (Deputy Leader of the Opposition) [10.57 p.m.]: As the shadow health Minister, I inform the House of the Sydney Neuro-Oncology Group [SNOG] and its important work in promoting, researching and educating our community about brain cancer. This was the disease that claimed the life of ABC broadcaster Andrew Olle in December 1995. It is a disease that almost no one survives. Because it does not leave survivors, there are fewer witnesses to tell the story of their disease and, sadly, fewer ambassadors to promote the cause compared with other cancers such as breast cancer or prostate cancer. Nonetheless, there are those, increasing in number, who are taking up this challenge and they deserve noting in this House.

On Saturday 17 October, I had the honour and privilege of attending and speaking at the Sydney Neuro-Oncology Group's inaugural White Pearl fundraising ball. It was held at the Sofitel Sydney Wentworth and was attended by more than 430 guests. I have been advised that so far the group has raised \$91,000 and is hopeful of more donations. Sydney City councillor Angela Vithoulkas served as the evening's emcee and did a wonderful job. I was proud to be joined by my parliamentary colleague the Hon. Sophie Cotsis, the shadow Minister for Disabilities, Ageing and Multiculturalism, who introduced me to the organisation through her strong links with Sydney's Greek community. But this was not my first event with this important group.

Earlier this year, I was fortunate enough to see firsthand how the Sydney Neuro-Oncology Group research is changing lives. I was also fortunate to participate in a North Sydney roundtable on 12 June, which gave me a valuable insight into a field of medicine that I was totally unfamiliar with. At that meeting we discussed medical advances, the terrible brain cancer survival rates, and the important work of cancer care coordinators and the need to increase their number. We also discussed education, the challenges with the Pharmaceutical Benefits Scheme, clinical trials, the problems securing long-term stable funding, the massive medical expenses associated with brain cancer, and the challenges of families and patients in navigating the medical system. It was noted that only a tiny fraction of overall cancer funding goes to brain cancer research.

At that meeting, I was shocked to discover that 500 new cases are diagnosed each year in New South Wales and that nationally there are almost 1,600. I also discovered that brain cancer was the leading cause of cancer death in people under the age of 39. It also accounts for more than a third of cancer deaths in children under the age of 10. I am sure members will agree that that is a particularly haunting figure.

At the roundtable I met brave individuals like Evan Shonk, who had a cancer the size of a lemon removed from his brain. He explained that the most common malignant brain cancer, high grade glioma [HGG] is almost 100 per cent fatal. He spoke candidly, and what he told me was confronting and emotional. His desire to share his experience and to build knowledge was so remarkable and inspiring. He was truly a brave man. He accurately described brain cancer as the "forgotten cancer" and "a disease that takes people in the prime of their lives", often without any warning or telltale signs. Mr Shonk said it was a situation in which doctors tell patients that "we will do our best, but it is going to be a difficult struggle". These are hard words, the hardest.

However, as well as supporting brain cancer researchers, fundraisers, carers and supporters, the Hon. Sophie Cotsis and I celebrated the tenacity of supporters and their passion to help create a better path for others. I met Mr Manuel Mirzoian, who lost his wife to brain cancer. He started Helen's Hope—Cure Brain Cancer Foundation, a charity that honours the memory of his wife, who died in April 2014. Helen's Hope raises awareness of brain cancer and raises funds to help find a cure. Another great path builder was Ms Suzane Peponis-Brisimis, who organised the evening. She lost her mother, Christina, to brain cancer in November 2013. Ms Peponis-Brisimis was the driving force behind Saturday's event and her commitment to increasing awareness and raising funds is extraordinary.

I also pay tribute to the group's co-founders, Dr Raymond Cook and Dr Michael Biggs. It is their work in identifying areas of need and support that forms the basis for the organisation's work. Dr Cook has said that he has the unenviable task of telling people on a daily basis that they have brain tumours. I also acknowledge Associate Professor Helen Wheeler, Associate Professor Michael Back, Dr Gordon Dandie, Greg Brown and John Ballard, who add a huge amount of expertise and passion to the group's board. I know that they, in turn, are supported by a hardworking team of researchers and medical professionals as well as volunteers. It is important to note that the good work of the group is supported by the North Shore Private Hospital Chief Executive Officer Greg Brown and Ramsay Australia Chief Executive Officer Daniel Sims.

It is with the support of Mr Sims, the entire hospital and Ramsay Australia that Sydney Neuro-Oncology Group has been able to thrive and grow, as they cover the administrative costs for the organisation. Finally, on Saturday night, I thanked the group for bringing its work to my attention and for educating and involving me. Again, it was an honour and a privilege to support brain cancer research. I hope that I will work with this organisation for many years to come and will enjoy members' support of this most important medical cause. I thank the House for its consideration.

**COOLAH**

**The Hon. RICK COLLESS** (Parliamentary Secretary) [11.02 p.m.]: Coolah has a small

community of 900 people and is nestled in the western part of the Liverpool Ranges, approximately half way between Mudgee and Gunnedah in the Central West of New South Wales. Coolah is in the Warrumbungle Shire and boasts some spectacular landforms and scenery of the Liverpool Ranges to the north-east and the Warrumbungle Ranges to the north-west. The Coolaburragundy River runs through Coolah, draining off the south-western side of the Liverpool Ranges from an area well known as the Coolah Tops, which rise to 1,200 metres above sea level. The northern side of Coolah Tops drains into the fertile Liverpool Plains—volcanic black soil plains supporting a whole range of agricultural activities.

Coolah is in the transitional area between the northern black soil summer rainfall cropping areas and the winter rainfall southern agricultural areas, with a slightly summer-dominant rainfall pattern. In addition, 57 per cent of its long term average of 660 millimetres falls during October to April, while 43 per cent falls during the winter months. This relatively even distribution of rainfall, coupled with good basaltic soils and varying elevation, results in the Coolah district being a favoured area for the production of both summer and winter crops as well as highly profitable livestock enterprises. The area is well known for its horse sports and is the home of the second oldest pony club in New South Wales, behind another town only 90 kilometres away, Merriwa. This interest, history and competence with horse sports attracts many volunteers to help with gymkhanas, campdrafting, polocrosse and a variety of other events throughout the year. Volunteers have also contributed much of their time and cash to maintaining and improving their local facilities so that they can host these events.

On Saturday 10 October 2015 the Coolah Showground and Recreation Reserve Trust held an official opening to celebrate the completion of a new multipurpose building and amenities block at the Coolah Showground, also known as the Three Rivers Recreation Ground. Funding for the upgrade project was provided by a grant from Infrastructure NSW through the Restart NSW Cobbora Transition Fund, Crown Lands Public Reserves Management Fund Program, and funds raised by the volunteers within community user groups and the trust. Several high profile events have already been held at the ground since the completion of the facilities, including the New South Wales Zone Championships Polocrosse Carnival, which attracted 65 five-member teams from across New South Wales and South East Queensland. For a community of just 900 people to come together and host such an impressive carnival is a credit to the Coolah community, when one considers the logistics of catering, facilities and event management for some 400 extra people during the carnival.

It is possible to host such events only because of the construction of the new amenities block and the multipurpose hall, which is suitable for a wide variety of functions. It has been many years since Coolah staged an agricultural show, and the organisers are now talking about re-establishing a show committee with a view to holding a reborn Coolah Show within the next couple of years. In addition to holding a show, the community is also now looking forward to holding more events at the ground with a commercial focus so that additional future development will be partly funded by user fees for the major events they are anticipating will come their way. That is what rebuilding country communities is all about.

Various events were staged at the official opening on 10 October, including campdrafting, team penning, working dog trials and pony club events. During the opening ceremony in the new multipurpose hall, members of the Coolah Pony Club stood a guard of honour in front of the building, mounted on their ponies and resplendent in their riding breeches and spurs. I am sure that all members of this House congratulate the Coolah Showground and Recreation Reserve Trust and its hardworking committee. In particular I congratulate Mr Murray Henderson, Trust Chairman; Mr John Gill, Chairman; Three Rivers Ground User Group; Mr Greg Piper, Coolah District Development Group; and Mr Murray Coe, Deputy Mayor, Warrumbungle Shire Council; and all the hardworking committee members and volunteers who have contributed so much of their time to ensure the Three Rivers Recreation Grounds Upgrade Project was a success.

#### **LOCAL GOVERNMENT AMALGAMATIONS**

**Mr DAVID SHOEBRIDGE** [11.06 p.m.]: The Baird Government is running an ugly, bullyboy



campaign against local government that communities across the State are now becoming aware of and vocally resisting. In October 2013, the Independent Local Government Review Panel [ILGRP] handed down its final report on local government reform. Contrary to what the Baird Government would like people to believe, the report did not recommend any specific amalgamations of local councils. Instead, it put forward some tentative proposals that the panel never pretended had been adequately tested or subjected to consultation. Indeed, the report stated:

As far as its own task is concerned, the Panel wishes to emphasise that setting out desirable options for boundary changes is NOT the same as recommending forced amalgamations. Moreover, under the current provisions of the Local Government Act, amalgamations and boundary changes cannot occur without a *further process* after the Panel completes its work, and would involve the Boundaries Commission... Thus whether and when the Panel's options are pursued is entirely a matter for the State government and the councils and communities involved.

The panel said that the Boundaries Commission process should be further strengthened before any of its tentative proposals are considered. It suggested, among other things, that these additional matters be included in the Boundaries Commission process. It also suggested that if the amalgamation proposal proceeded to the commission, the commission should be required to prepare a public information report setting out the arguments for and against amalgamations. It also proposed retaining the current provisions for inquiries, surveys and polls, but removing the Minister's power to decide whether an inquiry is warranted. In addition, in every case of amalgamation the commission should be required to conduct a survey or polls of all residents and ratepayers in the areas affected unless two or more councils have proposed a voluntary merger and the commission is satisfied that those councils have already undertaken adequate community consultation.

Instead of that much more thorough community-based consultation to test the ILGRP tentative proposals, the Government decided to have a quick and dirty inquiry undertaken by the Independent Pricing and Regulatory Tribunal [IPART]. IPART does not have the skills required to assess the democratic values of local government. Having the tribunal assess local government is like getting an accountant to judge a horse. Those tentative proposals have now been set in stone and are immovable benchmarks against which councils have been tested by IPART. Those tentative proposals were the basis of the scale and capacity criteria which have been much maligned and criticised by anyone who has considered them and which IPART required every council to meet.

Having accepted those tentative proposals as gospel truth, the Baird Government sells this untrue argument that somehow the Independent Local Government Review Panel proposals had been evidence based or evidence tested. Is it any wonder that when IPART tested council against those recommendations its final report and recommendations almost exactly mirrored the Sansom report? The tentative proposal of the Independent Local Government Review Panel, led by Professor Sansom, was to have 33 out of Sydney's 41 metropolitan councils merge. What did IPART recommend? IPART recommended that 34 merge.

The Independent Local Government Review Panel recommended that of the 152 statewide councils 104 councils merge. What was IPART's recommendation? It was almost the exact mirror—that 103 councils merge. It is almost a direct translation. In short, IPART conducted a sham review. It simply rubberstamped the untested, evidence-free proposals that had been put forward by the Independent Local Government Review Panel. This week, after two pretend days of consideration by the Baird Government, the Baird Government released the IPART's Fit for the Future report into local councils and basically is bullying local government to accept it and shut up or the Government will force the amalgamations.

The Government has not explained how it will force the amalgamations but the Baird Government is peddling the line that the outcomes from the IPART review are evidence based. They are not. They are simply rubberstamping the untested proposals from the Independent Local Government Review Panel.

And now the Baird Government is selling the argument that IPART is somehow supporting its argument that there is a financial crisis across local government. What did IPART find in that regard? Of Sydney's 41 metropolitan councils 93 per cent were found by IPART to meet all the financial criteria—a great big tick for local government's finances in metropolitan Sydney. This Government has an evidence-free campaign built on sand. Its only argument is a political one to remove local democracy.

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

**Motion agreed to.**

**The House adjourned at 11.11 p.m. until Thursday 22 October 2015 at 10.00 a.m.**

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