



**New South Wales**

# **Legislative Council**

## **PARLIAMENTARY DEBATES (HANSARD)**

**Fifty-Sixth Parliament  
First Session**

**Tuesday, 11 October 2016**

Authorised by the Parliament of New South Wales



## TABLE OF CONTENTS

Governor .....	57
Administration of the Government .....	57
Bills .....	57
Criminal Procedure Amendment (Summary Proceedings for Indictable Offences) Bill 2016 .....	57
Health Legislation Amendment Bill 2016 .....	57
Land and Property Information NSW (Authorised Transaction) Bill 2016 .....	57
Assent.....	57
Governor .....	57
Administration of the Government .....	57
Joint Sitting .....	57
Legislative Council Vacancy .....	57
Governor .....	58
Administration of the Government .....	58
Administration of the Government .....	58
Documents .....	58
Register of Disclosures by Members .....	58
Commemorations .....	58
Centenary of First World War .....	58
Presiding Officers .....	59
Temporary Chair of Committees .....	59
Motions .....	59
Tenterfield Memorial for Clinton Speedy-Duroux .....	59
Documents .....	59
Tabled Papers not Ordered to be Printed .....	59
Committees .....	59
Standing Committee on State Development .....	59
Report: Economic Development in Aboriginal Communities.....	59
Documents .....	59
Tabling of Papers .....	59
Committees .....	60
Legislation Review Committee.....	60
Reports .....	60
Documents .....	60
Auditor-General's Report.....	60
Business of the House .....	60
Routine of Business .....	60
Documents .....	60
Sitting Calendar 2017 .....	60
Business of the House.....	60
Postponement of Business .....	60

## TABLE OF CONTENTS—*continuing*

Committees .....	60
General Purpose Standing Committee No. 1 .....	60
Membership .....	60
General Purpose Standing Committee No. 2 .....	61
Membership .....	61
Petitions .....	61
Responses to Petitions .....	61
Bills .....	61
Fair Trading Amendment (Commercial Agents) Bill 2016 .....	61
Second Reading .....	61
In Committee .....	61
Adoption of Report .....	69
Third Reading .....	70
Crimes (Administration of Sentences) Amendment Bill 2016 .....	70
Second Reading .....	70
Questions Without Notice .....	73
Greyhound Racing Industry Ban .....	73
Regional Road Flooding .....	74
Greyhound Racing Industry Ban .....	75
Gold Coast Airport .....	75
Youth Opportunities Program .....	76
Greyhound Racing Industry Ban .....	76
Greyhound Racing Industry Ban .....	77
Shark Management Strategy .....	77
Translucent Water Flows .....	78
Greyhound Racing Industry Ban .....	78
Westconnex and Sydney Park .....	79
Wilcannia Weir .....	80
Greyhound Racing Industry Ban .....	80
Autism .....	81
Greyhound Racing Industry Ban .....	81
Greyhound Racing Industry Ban .....	82
Monaro Water Supply .....	82
Health Care Professionals Suicide Rates .....	83
Greyhound Racing Industry Ban .....	84
Deferred Answers .....	84
Safe Schools Program .....	84
Ausgrid Tree Cutting and Removal .....	84
Red Light Speed Cameras .....	85
Coal Seam Gas .....	85
NSW Police Firearms Registry .....	85
NRMA and Emergency Services Levy .....	85

## TABLE OF CONTENTS—*continuing*

Wallerah 2 Coalmine .....	85
Same-Sex Marriage.....	86
Westconnex Property Acquisition .....	86
Crown Land Sport and Recreation Facilities .....	86
Public Transport Noise Management.....	86
Wentworth Park Administration .....	86
Personal Explanation .....	86
Unparliamentary Language.....	86
Committees .....	87
Joint Committee on the Office of the Valuer General .....	87
Report: Tenth General Meeting with the Valuer General.....	87
Committee on Children and Young People .....	87
Report: Review of the 2015 Annual Report of the Advocate for Children and Young People.....	87
Staysafe (Joint Standing Committee on Road Safety) .....	88
Report: Driverless Vehicles and Road Safety in New South Wales.....	88
Budget .....	90
Budget Estimates and Related Papers 2016-17 .....	90
Bills .....	94
Crimes (Administration of Sentences) Amendment Bill 2016 .....	94
Second Reading .....	94
Third Reading .....	95
Industrial Relations Amendment (Industrial Court) Bill 2016 .....	95
Second Reading .....	95
In Committee .....	109
Adoption of Report .....	117
Third Reading .....	117
Social and Affordable Housing NSW Fund Bill 2016.....	117
First Reading.....	117
Committees .....	118
Staysafe (Joint Standing Committee on Road Safety) .....	118
Membership .....	118
Adjournment Debate.....	118
Adjournment .....	118
Pensioners Council Rebate Scheme.....	118
Greyhound Racing Industry Ban .....	119
Ms Jan Barham Resignation .....	120
Women in Prison Advocacy Network .....	120
Renewable Energy .....	121
Tribute to Pastor Ian John Woods.....	122

# LEGISLATIVE COUNCIL

**Tuesday, 11 October 2016**

**The PRESIDENT (The Hon. Donald Thomas Harwin)** took the chair at 14:30.

**The PRESIDENT** read the prayers and acknowledged the Gadigal clan of the Eora nation and its elders and thanked them for their custodianship of this land.

*Governor*

## ADMINISTRATION OF THE GOVERNMENT

**The PRESIDENT:** I report the receipt of the following message from Justice Margaret Beazley, Administrator of the State of New South Wales:

GOVERNMENT HOUSE  
SYDNEY

M. J. Beazley  
ADMINISTRATOR

The Honourable Justice Margaret Joan Beazley, AO, Administrator of the State of New South Wales, has the honour to inform the Legislative Council that, consequent on the Governor and the Lieutenant-Governor being absent from New South Wales, she has assumed the administration of the Government of the State.  
Monday, 26 September 2016

*Bills*

## CRIMINAL PROCEDURE AMENDMENT (SUMMARY PROCEEDINGS FOR INDICTABLE OFFENCES) BILL 2016

## HEALTH LEGISLATION AMENDMENT BILL 2016

## LAND AND PROPERTY INFORMATION NSW (AUTHORISED TRANSACTION) BILL 2016

**Assent**

**The PRESIDENT:** I report the receipt of messages from the Governor notifying His Excellency's assent to the abovementioned bills.

*Governor*

## ADMINISTRATION OF THE GOVERNMENT

**The PRESIDENT:** I report the receipt of the following message from his Excellency the Governor:

GOVERNMENT HOUSE  
SYDNEY

David Hurley  
GOVERNOR

General David Hurley, AC, DSC (Ret'd), Governor of New South Wales, has the honour to inform the Legislative Council that he has re-assumed the administration of the Government of the State.

Saturday, 1 October 2016

*Joint Sitting*

## LEGISLATIVE COUNCIL VACANCY

**The PRESIDENT:** I report the receipt of the following message from his Excellency the Governor:

GOVERNMENT HOUSE  
SYDNEY

David Hurley  
GOVERNOR

I, General the Honourable David Hurley, AC, DSC (Ret'd), in pursuance of the power and authority vested in me as Governor of the State of New South Wales, do hereby convene a joint sitting of the members of the Legislative Council and the Legislative Assembly for the purpose of the election of a person to fill the seat in the Legislative Council vacated by Ms Sophie Cotsis, and I do hereby announce and declare that such members shall assemble for such purpose on Wednesday the 12th day of October 2016 at 12:30 p.m. in the building known as the Legislative Council Chamber situated in Macquarie Street in the City of Sydney; and the members of the Legislative Council and the members of the Legislative Assembly are hereby required to give their attendance at the said time and place accordingly.

In order that the members of both Houses of Parliament may be duly informed of the convening of the joint sitting, I have this day addressed a like message to the Speaker of the Legislative Assembly.  
Sydney, 5 October 2016.

*Governor*

### ADMINISTRATION OF THE GOVERNMENT

**The PRESIDENT:** I report the receipt of the following message from Justice Margaret Beazley, Administrator of the State of New South Wales:

GOVERNMENT HOUSE  
SYDNEY

M. J. Beazley

ADMINISTRATOR

The Honourable Justice Margaret Joan Beazley, AO, Administrator of the State of New South Wales, has the honour to inform the Legislative Council that, consequent on the Governor of New South Wales, His Excellency General the Honourable David Hurley, AC, DSC (Ret'd), being absent from the State, she has assumed the administration of the Government of the State.

Saturday, 8 October 2016

### ADMINISTRATION OF THE GOVERNMENT

**The PRESIDENT:** I report the receipt of the following message from his Excellency the Governor:

GOVERNMENT HOUSE  
SYDNEY

David Hurley

GOVERNOR

General David Hurley, AC, DSC (Ret'd), Governor of New South Wales, has the honour to inform the Legislative Council that he has re-assumed the administration of the Government of the State.

Sunday, 9 October 2016

*Documents*

### REGISTER OF DISCLOSURES BY MEMBERS

**The PRESIDENT:** According to the Constitution (Disclosures by Members) Regulation 1983 I table a copy of the register of disclosures by members of the Legislative Council for the period 1 July 2015 to 30 June 2016, furnished to me by the Clerk.

**The Hon. DUNCAN GAY:** I move:

That the document be printed.

**Motion agreed to.**

*Commemorations*

### CENTENARY OF FIRST WORLD WAR

**The PRESIDENT (14:36):** The ink was barely dry on the Treaty of Bucharest, which ended the Second Balkan War, when the First World War was declared in 1914. Exhausted by two Balkan wars in the preceding two years, the combatants faced difficult choices. For Serbia, whose nationalist agitators were the immediate catalyst for the new hostilities, there was no ambiguity. But for Romania, Bulgaria and Greece, the position was much less clear. Having secured their independence from Ottoman Turkey within the preceding century the Bulgarian, Greek and Romanian peoples each had their own nationalist ambitions that could be advanced from alliance with the competing powers. And, each was ruled by royal families of German, Danish or British birth with conflicting loyalties between their relatives and those they ruled.

The national boundaries of the Balkans were to be totally remade by the events of the First World War and for each of them the outcome depended upon which choice they made. Greece exemplified this dilemma, with events coming to a head in October 1916. On one side, a King of Danish and Russian parents married to a Queen with English and German parents insisted on a policy of neutrality as the safest way of protecting Greece's substantial gains in the Balkan War. On the other, Prime Minister Venizelos was keen to join the Allies following offers of territorial gains in Anatolia from a defeated Ottoman Turkey. Venizelos was determined to force a change to the Greek policy of neutrality.

In defiance of his country's official stance, Venizelos permitted the Allied forces at Gallipoli to use the Greek island of Lemnos as their base. He was forced from office by the King. This month, 100 years ago, Venizelos established a separate provisional government in the city of Salonika. This feud between supporters of the King and the supporters of Venizelos is referred to in Greek history as the National Schism. In the short term, Venizelos triumphed, with the King forced to abdicate and Greece declaring war on the central powers. In 1920, however, King Constantine was restored to the throne. The plight of these small nations, bullied between

competing blocs of great powers, provided impetus for a new approach to the resolution of conflict as part of the post-war settlement with the establishment of the League of Nations. Lest we forget.

*Presiding Officers*

**TEMPORARY CHAIR OF COMMITTEES**

**The PRESIDENT:** I inform the House that, due to her appointment as Government Whip in the Legislative Council on 21 April 2016, the Hon. Natasha Maclaren-Jones no longer holds the position of Temporary Chair of Committees. I thank her for her service.

According to sessional order, I shall now call over formal business.

*Motions*

**TENTERFIELD MEMORIAL FOR CLINTON SPEEDY-DUROUX**

**Mr DAVID SHOEBRIDGE (14:40):** I move:

That this House recognises that:

- (a) on 9 September 2016, a memorial was unveiled in Tenterfield for Clinton Speedy-Duroux, who was murdered in Bowraville 25 years ago;
- (b) in attendance at the unveiling were Clinton's extended family and friends, including his Mum, June, and Dad, Thomas; as well as the New South Wales Attorney General, the Hon. Gabrielle Upton, MP; the Minister for Aboriginal Affairs, the Hon. Leslie Williams, MP; senior police, including Detective Inspector Gary Jubelin; Mayor Peter Petty; and The Greens member of Parliament, Mr David Shoebridge, MLC;
- (c) a memorial has also been placed in Bowraville for all three murdered children in recognition of the lives and tragic deaths of these children, as well as on the banks of the Bonville River at Sawtell for Colleen Walker-Craig, and there is further work planned for a memorial on North Congarinni Road, Bowraville, for Evelyn Greenup;
- (d) it was essential that the memorial be placed in Tenterfield, because Tenterfield was where Clinton, better known to his family and friends as Bubby, came from. It was in Tenterfield that Bubby's family waited for him to come home and his bedroom stayed cold and empty, where the footy team had an irreplaceable gap, where the young kids would never again have the love from Bubby and where the locals would never again see his deadly dancing; and
- (e) these memorials are places for families and communities to remember the children they have lost and to come together in the ongoing struggle for justice.

**Motion agreed to.**

*Documents*

**TABLED PAPERS NOT ORDERED TO BE PRINTED**

**The Hon. NIALL BLAIR:** Pursuant to Standing Order 59, I present a list of papers tabled since 13 September 2016 and not ordered to be printed.

*Committees*

**STANDING COMMITTEE ON STATE DEVELOPMENT**

**Report: Economic Development in Aboriginal Communities**

**The CLERK:** According to standing order, I announce the receipt of Report No. 40 of the Standing Committee on State Development, entitled "Economic Development in Aboriginal Communities", dated September 2016, received out of session and authorised to be printed on 30 September 2016.

**The Hon. GREG PEARCE (14:42:3):** I move:

That the House take note of the report.

**Debate adjourned.**

*Documents*

**TABLING OF PAPERS**

**The Hon. NIALL BLAIR:** I table the "Report on State Finances 2015-16", incorporating the Consolidated Financial Statements of the New South Wales General Government and Total State Sectors, and the Outcomes Report. I move:

That the report be printed.



**Motion agreed to.**

*Committees*

**LEGISLATION REVIEW COMMITTEE**

**Reports**

**The Hon. GREG PEARCE:** I table "Legislation Review Digest No. 26/56", dated 11 October 2016.  
I move:

That the report be printed.

**Motion agreed to.**

*Documents*

**AUDITOR-GENERAL'S REPORT**

**The CLERK:** Pursuant to the Public Finance and Audit Act 1983, I announce the receipt of a financial audit report of the Auditor-General entitled "Volume Four 2016: Report on State Finances", dated October 2016, received out of session and authorised to be printed on 6 October 2016. [*During the giving of notices of motions*]

*Business of the House*

**ROUTINE OF BUSINESS**

**The PRESIDENT:** Order! In accordance with established precedent, I will consider the terms of the notice of motion and report back to the House at a later time.

*Documents*

**SITTING CALENDAR 2017**

**The Hon. DUNCAN GAY:** I table an indicative sitting calendar for 2017 for the information of members.

**Document tabled.**

*Business of the House*

**POSTPONEMENT OF BUSINESS**

**Ms JAN BARHAM:** I move:

That Business of the House Notice of Motion No. 1 be postponed until Tuesday 8 November 2016.

**Motion agreed to.**

**The Hon. ADAM SEARLE:** I move:

That Business of the House Notice of Motion No. 2 be postponed until Tuesday 18 October 2016.

**Motion agreed to.**

**The Hon. DUNCAN GAY:** I move:

That Government Business Orders of the Day Nos 1 to 3 be postponed until a later hour.

**Motion agreed to.**

**Ms JAN BARHAM:** I move:

That Committee Reports Order of the Day No. 1 be postponed until the next sitting day.

**Motion agreed to.**

*Committees*

**GENERAL PURPOSE STANDING COMMITTEE NO. 1**

**Membership**

**The PRESIDENT:** I inform the House that, on 22 September 2016, the Clerk received advice that Mr Justin Field would replace Mr Jeremy Buckingham as a crossbench member of General Purpose Standing Committee No. 1.

**GENERAL PURPOSE STANDING COMMITTEE NO. 2****Membership**

**The PRESIDENT:** I inform the House that, on 23 September 2016, the Clerk received advice from the Leader of the Opposition nominating the Hon. Daniel Mookhey as a member of General Purpose Standing Committee No. 2 in place of the Hon. Sophie Cotsis.

*Petitions***RESPONSES TO PETITIONS**

**The CLERK:** I announce the receipt, pursuant to sessional order, of the following response to a petition signed by more than 500 persons:

Response from the Hon. Andrew Constance, MP, Minister for Transport and Infrastructure, to a petition presented by Mrs Houssos relating to job cuts at Wauchope Station, presented on 24 August 2016, received out of session and authorised to be printed on 28 September 2016.

*Bills***FAIR TRADING AMENDMENT (COMMERCIAL AGENTS) BILL 2016****Second Reading**

**Debate resumed from 20 September 2016.**

**The Hon. CATHERINE CUSACK (15:16):** On behalf of the Hon. John Ajaka: In reply: I have concluded my speech in reply.

**The PRESIDENT:** The question is that this bill be now read a second time.

**Motion agreed to.**

**In Committee**

**The CHAIR:** There being no objection, the Committee will deal with the bill as a whole. I have two sets of amendments, being Opposition amendments on sheet C2016-078 and Christian Democratic Party amendments on sheet C2016-093.

**The Hon. PETER PRIMROSE (15:18):** The Government has indicated that it got this matter wrong. It has misjudged the issues and has now taken a new path; some would even say a backflip—this seems to be the day for backflips. Accordingly, the Opposition will not proceed with its amendments.

**The Hon. PAUL GREEN (15:19):** By leave: I move Christian Democratic Party amendments Nos 1 to 6 on sheet C2016-093 in globo:

No. 1 **Retention of positive licensing scheme**

Pages 3–6, Schedule 1, lines 2 on page 3 to 24 on page 6. Omit all words on those lines. Insert instead:

[1]

**Part 5**

Insert after Part 4:

**Part 5 Regulation of commercial agents**

**Division 1 Preliminary**

**59**

**Definitions**

In this Part:

*commercial agent activity*—see section 60.

*commercial agent licence* or *licence* means a commercial agent licence issued by the Secretary under section 60E.

*commercial agent rules* means the rules prescribed by the regulations under section 60K.

*disqualified person*—see section 60A.

*exclusion order*—see section 60G.

*officer* of a corporation has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

*relevant offence*—see section 60A.

*restriction order*—see section 60G.

*show cause notice*—see section 60F.

**60 Commercial agent activity**

- (1) In this Part, **commercial agent activity** means any of the following activities:
- (a) **debt collection**, which is:
    - (i) any activity carried out by a person on behalf of a second person (not being his or her employer) in the exercise of the second person's rights under a debt owed by a third person; or
    - (ii) any activity carried out by a person on his or her own behalf in the exercise of rights acquired from a second person (otherwise than in the course of an acquisition or merger of business interests) under a debt owed by a third person;
 

being an activity that involves finding the third person or requesting, demanding or collecting from the third person money due under the debt;
  - (b) **process serving**, which is any activity carried out by a person on behalf of a second person (not being his or her employer), being an activity that involves serving legal process on a third person in relation to legal proceedings to which the second and third persons are, or are intended to be, parties, regardless of which jurisdiction the legal proceedings are, or are intended to be, held in;
  - (c) **repossession of goods**, which is any activity carried out by a person on behalf of a second person (not being his or her employer), being an activity that involves finding goods held by a third person or requesting, demanding or seizing such goods.
- (2) For the purposes of this Part:
- (a) if a commercial agent activity is carried out by an employee of a person, the activity is taken to have been carried out by the person; and
  - (b) if a corporation carries out a commercial agent activity, each officer of the corporation is taken to have carried out the commercial agent activity.

**60A Disqualified persons**

- (1) A person is a **disqualified person** for the purposes of this Part if:
- (a) the person is a natural person who is under 18 years of age; or
  - (b) the person is an undischarged bankrupt or is taking advantage of the laws in force for the time being relating to bankruptcy; or
  - (c) the person is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed; or
  - (d) the person has been convicted, within the last 5 years, of a relevant offence and a sentence of imprisonment or a fine of \$500 or more has been imposed on the person following that conviction; or
  - (e) the person is subject to an exclusion order that is in force against the person; or
  - (f) the person is a controlled member of a declared organisation within the meaning of the *Crimes (Criminal Organisations Control) Act 2012*.
- (2) In this Part:
- relevant offence** means any of the following offences whether occurring in New South Wales or elsewhere:
- (a) an offence involving violence, firearms, weapons, fraud, drugs or dishonesty;
  - (b) an offence against section 12DJ (Harassment and coercion) of the Australian Securities and Investments Commission Act 2001 of the Commonwealth;
  - (c) an offence against section 50 (Harassment and coercion) or 168 (Harassment and coercion) of the ACL;
  - (d) any other offence declared by the regulations to be a relevant offence for the purposes of this section;

but does not include an offence that the regulations declare not to be a relevant offence.

**Division 2 Carrying out commercial agent activities****60B Disqualified person must not carry out commercial agent activity**

- (1) A person must not carry out a commercial agent activity if the person is a disqualified person.
- (2) A person that is a corporation must not carry out a commercial agent activity if an officer of the corporation is a disqualified person.

Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units or imprisonment for 12 months, or both (in the case of an individual).

**60C Field agents and employers of field agents require licence**

- (1) A person must not do any of the following for the purposes of carrying out a commercial agent activity unless the person holds a commercial agent licence:

- (a) approach or attempt to approach the person who is the subject of the commercial agent activity;
- (b) enter or attempt to enter any premises at which the subject of the commercial agent activity resides, works or otherwise regularly frequents;
- (c) approach or attempt to approach any property owned by or in the possession of the subject of the commercial agent activity.

Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units or imprisonment for 12 months, or both (in the case of an individual).

- (2) A person (the *employer*) must not employ a person (the *employee*) to carry out a commercial agent activity that requires the employee to hold a commercial agent licence unless the employer holds a commercial agent licence.

Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units or imprisonment for 12 months, or both (in the case of an individual).

- (3) A person who is carrying out a commercial agent activity under a commercial agent licence must produce the licence for inspection if requested to do so by an investigator or by a person who is the subject of the commercial agent activity.

Maximum penalty: 50 penalty units.

- (4) An officer of a corporation is not required to hold a commercial agent licence merely because the corporation is required to hold a commercial agent licence.
- (5) No more than 1 partner in a firm that carries out commercial agent activities is required to hold a commercial agent licence.
- (6) In this section, the person who is the *subject* of a commercial agent activity means the person from whom a debt is to be recovered or goods are to be repossessed or on whom process is to be served.

**60D Fit and proper person**

- (1) A person may hold a commercial agent licence only if the person is a fit and proper person to hold the licence.
- (2) A person is not a fit and proper person to hold a commercial agent licence if:

- (a) the person is a disqualified person; or
- (b) the Secretary makes a finding that the person is not a fit and proper person to hold a licence.

- (3) The Secretary may determine that a person is not a fit and proper person to hold a commercial agent licence on such grounds as the Secretary sees fit, including, but not limited to, the following grounds:

- (a) the person has been authorised to carry out a commercial agent activity under a licence (however described) of another State or Territory and that licence:
  - (i) is suspended; or
  - (ii) has, within the previous 5 years, been cancelled and the person has not held a licence since the cancellation;
- (b) the person has been authorised to carry out an activity under another Act administered by the Minister and that authorisation:
  - (i) is suspended; or
  - (ii) has, within the previous 5 years, been cancelled and the person has not held an authorisation since the suspension;
- (c) the person has, within the previous 10 years, been convicted of a relevant offence;

- (d) any ground prescribed by the regulations.
- (4) A corporation is not a fit and proper person to hold a commercial agent licence unless the corporation and each officer of the corporation is a fit and proper person to hold the licence.
- (5) A partner in a firm is not a fit and proper person to hold a commercial agent licence unless the partner and each other partner in the firm is a fit and proper person to hold a licence.

**60E Issue of commercial agent licence**

- (1) A person may apply to the Secretary for a commercial agent licence.
- (2) The Secretary may issue a commercial agent licence to a person for a fixed term of 1 or 3 years.
- (3) Part 2 of the *Licensing and Registration (Uniform Procedures) Act 2002* (the **Licensing Act**) applies to and in respect of a commercial agent licence, subject to the modifications and limitations prescribed by this Act or the regulations.
- (4) For the purpose of applying Part 2 of the Licensing Act to a commercial agent licence:
  - (a) the licence may be amended but not transferred under that Act; and
  - (b) the references to 2 weeks, 4 weeks and 8 weeks in section 9 (1) (a), (b) and (c) of that Act are each to be read as references to 6 weeks; and
  - (c) an application for restoration of a licence under section 10 of that Act may not be made more than 3 months after the date on which the licence expires; and
  - (d) an application is not required to be advertised; and
  - (e) the reference to 14 days in section 24 (1) of that Act (as to the period within which changed particulars must be notified) is to be read as a reference to 7 days; and
  - (f) the licence may be granted subject to such conditions as the Secretary thinks fit and the Secretary may subsequently impose, vary or revoke conditions at any time; and
  - (g) the licence is subject to any restriction order made under this Part against the holder the licence.
- (5) The regulations may make provision for or with respect to such matters concerning a licence as are relevant to Part 2 of the Licensing Act including prescribing fees for applications.

**Division 3 Enforcement**

**60F Secretary may require person to show cause**

- (1) The Secretary may, by the giving of a notice (a show cause notice) to a person, require the person to show cause why the Secretary should not, for the reason specified in the notice:
  - (a) make an exclusion order or restriction order against the person; or
  - (b) cancel a licence held by the person.
- (2) The show cause notice must be in writing and must specify the period (being at least 14 days after the notice is given) in which the person may show cause.
- (3) The person to whom a show cause notice has been given may, within the period specified in the notice, make a written submission to the Secretary in relation to the matters to which the notice relates.
- (4) The Secretary:
  - (a) is to consider any submission made within the period specified in the show cause notice; and
  - (b) may conduct such inquiries, or make such investigations, in relation to the matters to which the notice relates as the Secretary thinks appropriate.

**60G Exclusion orders and restriction orders**

- (1) The Secretary may, after giving a show cause notice to a person and taking into consideration any submissions made in relation to the matter, make an order:
  - (a) that prohibits the person from carrying out commercial agent activities (an **exclusion order**); or

- (b) that imposes conditions, restrictions or limitations on the person in relation to the carrying out of commercial agent activities (a **restriction order**).
- (2) An order made under this section comes into force when a copy of the order is given to the person subject to the order.
- (3) An order made under this section remains in force for an indefinite period or for the period specified in the order.
- (4) A person who contravenes a restriction order is guilty of an offence.

Maximum penalty: 1,000 penalty units (in the case of a corporation) or 200 penalty units or imprisonment for 12 months, or both (in the case of an individual).

**Note.** Contravention of an exclusion order is an offence under section 60B.

- (5) More than one order may be given to a person under this section.
- (6) Section 88 applies to the giving of an order under this section.

#### **60H Cancelling commercial agent licence**

- (1) The Secretary must, after giving a show cause notice to a person and taking into consideration any submissions made in relation to the matter, cancel a commercial agent licence held by the person if satisfied that the person is not a fit and proper person to hold the licence.
- (2) The Secretary must cancel a licence if the holder of the licence is a disqualified person and is not required to give the person a show cause notice before doing so.

**Note.** The making of an exclusion order against a person would require any licence held by the person to be cancelled.

### **Division 4 Miscellaneous**

#### **60I Administrative review by Tribunal**

- (1) A person may apply to the Tribunal for an administrative review under the *Administrative Decisions Review Act 1997* of a decision by the Secretary:
  - (a) to refuse to grant a commercial agent licence to the person; or
  - (b) to impose, vary or revoke a condition on a licence granted to the person; or
  - (c) to cancel a licence held by the person; or
  - (d) to make an exclusion order or restriction order against the person.
- (2) Section 53 (Internal reviews) of the *Administrative Decisions Review Act 1997* does not apply in relation to a decision referred to in subsection (1).

#### **60J Register**

- (1) The Secretary is to maintain a Register for the purposes of this Part and is to enter and keep in the Register particulars of such of the following as the regulations may require:
  - (a) commercial agent licences;
  - (b) licence applications refused;
  - (c) prosecutions taken for offences under this Part and the result of those prosecutions;
  - (d) exclusion orders and restriction orders made;
  - (e) commercial agent licences cancelled;
  - (f) any other matter prescribed by the regulations.
- (2) The regulations may require all or part of the Register to be published on the internet for public access.
- (3) Any part of the Register not published on the internet may be inspected by a person on payment of such reasonable fee (if any) as the Secretary may determine.

#### **60K Commercial agent rules**

- (1) The regulations may prescribe rules of conduct for the carrying out of commercial agent activities including by prohibiting certain practices.
- (2) Without limiting subsection (1), the rules may deal with the following matters:
  - (a) prohibited practices (including, but not limited to, the use of physical force, harassment, coercion, misrepresentation, making unreasonable threats, entering premises illegally, impersonating a Government employee, exposing a person to ridicule or employing or otherwise using disqualified persons);

- (b) money held on trust including the keeping of trust accounts and the audit of those accounts;
  - (c) the keeping of records;
  - (d) the provision of information to the Secretary;
  - (e) the handling of complaints;
  - (f) advertising;
  - (g) the employment or use of persons.
- (3) A person must not carry out a commercial agent activity unless the person does so in compliance with the commercial agent rules.
- (4) An employer must take all reasonable steps to ensure that an employee does not carry out a commercial agent activity in the course of their employment unless the employee does so in compliance with the commercial agent rules.
- (5) Each officer of a corporation must take all reasonable steps to ensure that the corporation does not carry out a commercial agent activity unless it does so in compliance with the commercial agent rules.
- Maximum penalty: 100 penalty units (in the case of a corporation) or 50 penalty units (in the case of an individual).

**60L Exchange of information**

- (1) The Secretary may request and receive information from a law enforcement officer or regulatory officer for the purpose of assisting the Secretary in the exercise of functions under this Part.
- (2) The Secretary may enter into agreements and other arrangements for the sharing or exchange of information as authorised by this section.
- (3) In this section, *law enforcement officer* and *regulatory officer* have the same meanings as they have in section 219 of the *Property, Stock and Business Agents Act 2002*.

**60M Part does not apply to certain persons**

This Part does not apply to or in respect of the following:

- (a) a police officer of New South Wales, the Commonwealth or any other State or Territory;
- (b) a member of the Australian Defence Force;
- (c) an officer or employee of the Public Service, or a public authority, of New South Wales, the Commonwealth or any other State or Territory;
- (d) a law practice or an Australian legal practitioner or a person undertaking practical legal training under the supervision of an Australian legal practitioner;
- (e) a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth;
- (f) a general insurer within the meaning of the *Insurance Act 1973* of the Commonwealth, a *loss adjuster* (being a person carrying on the business of an insurance loss adjuster on behalf of a general insurer) or an employee of a general insurer or loss adjuster;
- (g) an officer or employee of an authorised deposit-taking institution;
- (h) a person of a class prescribed by the regulations.

**60N Review of Part**

- (1) The Minister is to review this Part to determine whether the policy objectives of the Part remain valid and whether the terms of the Part remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the commencement of this Part.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**No. 2 No compensation for deregulation**

Page 7, Schedule 1 [2], line 7. Omit "commercial agents". Insert instead "certain commercial agents".

**No. 3 Retention of positive licensing scheme**

Page 8, Schedule 1 [2], line 4. Insert "or not to be a fit and proper person" after "disqualified person".

No. 4 **Retention of positive licensing scheme**

Page 8, Schedule 1 [2]. Insert after line 4:

**Applications for licences under Part 5 by former licence holders**

- (1) The regulations may modify (or remove the need for) the application process for a licence under Part 5 of this Act in the case of a person whose commercial agent licence ceases to have effect because of the repeal of the CAPI Act.
- (2) In such a case, the regulations may deem the person to be the holder of a licence under Part 5, or may require the Secretary to issue a licence to the person under that Part, unconditionally or subject to conditions and for such period (being no more than 3 years) as may be prescribed.

No. 5 **Prescribed activities**

Page 9, Schedule 2.2, lines 9–12. Omit all words on those lines. Insert instead:

- (d) carrying out commercial agent activities within the meaning of Part 5 (Regulation of commercial agents) of the *Fair Trading Act 1987*;

No. 6 **Retention of positive licensing scheme**

Page 9, Schedule 2.5. Insert after line 21:

Insert in alphabetical order of Act name:

**Fair Trading Act 1987**

section 60E (2), commercial agent licence

While some would say this is a backflip or the correction of a mistake made by the Government, I would say it is the result of great consultation with stakeholders. Many in this Chamber would have a spouse and would have experienced being what is called humble and changing the direction in which something is going. There is no harder a moment in one's life than having to humble oneself and say that maybe there is a better way or a different way of doing something, and that is how we have ended up here. After hearing our contributions during the second reading debate, the Minister was very much aware of the sentiments of members in this Chamber. I was very happy that when I spoke with him face to face the Minister acknowledged that he would consider some changes.

**The Hon. Peter Primrose:** A good precedent.

**The Hon. PAUL GREEN:** That is right, it is.

**The Hon. Peter Primrose:** An excellent precedent.

**The Hon. PAUL GREEN:** The Opposition may not have that sort of relationship with the Government but the Christian Democratic Party has, and we have got the Government to turn around on a range of things to make good legislation better. That is the role we play in this House, and that is the role we play today. The Government has listened to the concerns raised about commercial agents who had face-to-face contact with consumers whether in the course of collecting debts, serving process or undertaking repossession. Those agents are often called "field agents". The amendments to the Fair Trading Amendment (Commercial Agents) Bill 2016 retain a positive licensing system for field agents while introducing a negative licensing system for telephone agents.

Administration of this licensing system will be transferred from the NSW Police Force to NSW Fair Trading, in line with the recommendations of the report of the Legislative Assembly Legal Affairs Committee. The licensing system proposed in the bill has been streamlined and simplified following the committee's findings that the requirements under the existing licensing system are unduly onerous and cause unnecessary cost and delays. However, the amendments retain the consumer protections of the existing regime. The amendments also provide that anyone who, for the purposes of carrying out a commercial agent activity, approaches or attempts to approach the person who is the subject of that activity, or their property, or enters or attempts to enter premises at which the subject lives, works or frequents, must hold a commercial agents licence. A licence will be necessary for both the employer of the field agent and the field agent themselves.

A person will be able to obtain a commercial agent licence if they are 18 years of age or over and are not a disqualified person and if the Commissioner of Fair Trading—or, if there is not a commissioner, the Secretary of the Department of Finance, Services and Innovation—determines that they are a fit and proper person to hold such a licence. A person or a corporation will be disqualified from holding a licence if they, for instance, are under the age of 18; are an undischarged bankrupt or taking advantage of the laws in force relating to bankruptcy; are a corporation that is the subject of a winding-up order for which a controller or administrator has been appointed; have been convicted within the previous five years of an offence involving violence, firearms, weapons, fraud,



drugs, dishonesty, harassment or coercion, and a fine of \$500 or more or a sentence of imprisonment has been imposed; are subject to an exclusion order; or they are a controlled member of declared organisations within the meaning of the Crimes (Criminal Organisations Control) Act 2012.

The commissioner may make a determination about whether a person is a fit and proper person to hold a licence on such grounds as the commissioner sees fit, including the following grounds: The person has had a licence to carry out commercial agent activity in another jurisdiction and that licence has been suspended or within the previous five years has been cancelled and not reinstated; the person has a licence or similar authorisation under another Act administered by the Minister for Innovation and Better Regulation suspended or within the previous five years cancelled and not reinstated; or the person has been convicted of a relevant offence within the previous five years. A corporation will not be a fit and proper person to hold a licence unless each officer of the corporation is a fit and proper person, and a partner in a firm will not be a fit and proper person unless each partner is a fit and proper person.

The amendments provide that a licence may be issued for a one- or three-year term and that the procedures of the Licensing and Registration (Uniform Procedures) Act 2002 apply to the issuing of the licence, subject to some minor amendments. The regulations will still be able to be prescribed rules of conduct for the carrying out of a commercial agent activity, including by prohibiting certain practices. These rules of conduct may deal with any relevant issues, including prohibited practices such as the use of physical force, harassment, coercion, misrepresentation, making unreasonable threats, entering premises illegally, impersonating a government employee, exposing a person to ridicule or employing a disqualified person; and money held on trust, including the keeping of trust accounts and the audit of those accounts as well as the keeping of records, the provision of information to the commissioner, the handling of complaints, advertising and the employment of persons. It will be an offence not to comply with the rules of conduct in undertaking a commercial agent activity. The maximum penalty for this offence carries a 12-month jail term.

If a person breaches the provisions or the commissioner considers that there may be grounds on which the person should have their licence cancelled or be excluded from the industry, the commissioner will be able to issue a show-cause notice requesting the person to show cause why they should not, for the reason specified, have their licence cancelled or be so excluded. The commissioner is also to consider any submission and may make inquiries and investigations. If the commissioner considers it appropriate, the commissioner may make an order that prohibits a person from carrying out commercial agent activities, that imposes conditions or limitations on the person in relation to carrying out commercial agent activities, or that cancels a person's commercial agent licence.

A person who contravenes an exclusion or restriction order or carries out a commercial agent activity without a licence is guilty of an offence. A decision of the commissioner to refuse to grant a licence, impose a condition on a licence, cancel a licence or make an exclusion or restriction order will be subject to administrative review. The amendments also provide for the establishment of a register that will contain details of commercial agents' licences; licence applications refused; prosecutions taken for offences and their result; exclusion orders and restriction orders made; licences cancelled; and any other matter prescribed by the regulations.

I am confident that these amendments will enhance the bill and provide appropriate protections for consumers who have face-to-face contact with commercial agents. As I said, we had conversations with colleagues around this Chamber, some concerns were expressed, and we appreciate the Minister's addressing those concerns.

**The Hon. CATHERINE CUSACK (15:28):** The Government supports these sensible amendments. The amendments have been moved following discussions between the Government and the Christian Democratic Party and in response to the concerns raised by members about commercial agents who have face-to-face contact with consumers or debtors in the course of undertaking debt collection or repossession or serving process. The amendments therefore retain a positive licensing system for these field agents while maintaining a negative licensing system for agents who have only telephone contact with debtors.

The amendments are in line with the recommendations of the Legislative Assembly Legal Affairs Committee report on debt recovery in New South Wales, which recommended a negative licensing system for telephone agents and a positive licensing system for field agents. The committee recommended that the responsibility for the regulation of commercial agents be transferred to NSW Fair Trading. In line with this recommendation, the amendments will introduce a positive licensing system for field agents administered by NSW Fair Trading, which will continue to provide important protections for consumers and debtors who deal with field-based agents.

Licence applicants will be disqualified for a range of offences involving firearms, dishonesty and violence. Licence applicants will need to satisfy the Commissioner for Fair Trading that they are a fit and proper person to hold a licence. Commercial agents will also need to comply with a range of conduct requirements that

will be set out in the regulations. These amendments will ensure the retention of the consumer protections in the existing licensing system for consumers who have face-to-face contact with commercial agents while updating and modernising the licensing system. I again thank the Hon. Paul Green for his contribution and assistance. I also thank the Hon. Peter Primrose for lavishing such praise on the Government, proving to us that the age of chivalry is still with us. I commend the amendments to the House.

**The Hon. PETER PRIMROSE (15:30):** I commend both the Government and the Christian Democratic Party for listening to reason. These amendments are the same as those that the Opposition sought to introduce in the other place, where the Government chose to vote against them. The Government then brought in a bill. I am pleased that following extensive community outrage and the views expressed by members in this House the Government has finally listened to reason and done a backflip. I commend the Hon. Paul Green for toiling over the break to bring these amendments before the House.

The Opposition will support the amendments. They are largely those for which we argued in the other place and which the Government voted against. The amendments are directly adverse in terms of the original bill. The Government has learnt its lesson and done a backflip. The Opposition congratulates the Government and looks forward to the Government making many more backflips in the future.

**Mr JUSTIN FIELD (15:31):** The Greens also support the amendments. I can give a slightly different account of how we got from where we were a few weeks ago to today. I would not call it a backflip but I am not sure that it was as a result of consultation either. As was pointed out by the Government member, it was a recommendation of the Legal Affairs Committee to have a positive licensing scheme for face-to-face contact and a negative licensing scheme for over-the-phone contact. It is not clear why that was not the approach taken by the Government. It was the recommendation of the Financial Legal Rights Centre and of Legal Aid NSW in their submissions to the inquiry. It raises questions in my mind about who the Government listens to when preparing its reforms. Why is it that with disagreement from a crossbench member it is accomplished at the eleventh hour? The numbers in this place matter, but the Government had received strong advice as to how to proceed in this area.

I remind members of comments I made in my speech during the second reading debate. Debt collection often focuses on some of the most vulnerable in our community. People who have insecure housing or insecure work may find it difficult to pay even small bills or fines and can be caught up in a cycle of debt. Negative interactions with debt collectors may serve to entrench financial problems or emotional distress rather than facilitating a pathway out. Field agents especially have the potential for emotional or high-risk confrontation. The Greens support these amendments because it is reasonable that those who have face-to-face interactions require a licence. The recommendations of the Financial Legal Rights Centre and of Legal Aid NSW during the inquiry's considerations were reasonable. The Government did not take into account that strong advice but The Greens are pleased that it has finally got there.

I also refer to concerns raised by The Greens in discussions with the Government around the register that businesses that employ face-to-face and over-the-phone agents should be able to easily access information from the register in relation to the employment of agents. We think that is important and support those elements of the amendments. The Greens have decided to withdraw our amendments which related to those small groups of people who might not be caught by the Ombudsman's office or other complaints handling scheme. We take it on advice from the Minister's office that Fair Trading will act as a one-stop shop for complaints. We expect that when people do fall through the gap that Fair Trading will attend to their concerns where agents have not handled a matter appropriately and with due consideration of the very difficult circumstances faced by many people who are in debt. The Greens support the amendments.

**The CHAIR:** The Hon. Paul Green has moved Christian Democratic Party amendments Nos 1 to 6 on sheet C2016-093. The question is that the amendments be agreed to.

**Amendments agreed to.**

**The CHAIR:** The question is that the bill as amended be agreed to.

**Motion agreed to.**

**The Hon. CATHERINE CUSACK:** I move:

That the Chair do now leave the chair and report the bill to the House with amendments.

**Motion agreed to.**

### **Adoption of Report**

**The Hon. CATHERINE CUSACK:** On behalf of the Hon. John Ajaka: I move:

That the report be adopted.

**Motion agreed to.**

### **Third Reading**

**The Hon. CATHERINE CUSACK:** On behalf of the Hon. John Ajaka: I move:

That this bill be now read a third time.

**Motion agreed to.**

## **CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT BILL 2016**

### **Second Reading**

**Debate resumed from 21 September 2016.**

**The Hon. LYNDIA VOLTZ (15:38):** The object of the Crimes (Administration of Sentences) Amendment Bill 2016 is to amend the Crimes (Administration of Sentences) Act 1999 in order to make consequential amendments relating to the stop, search and detain powers and procedures for corrections officers and the streamlining of provisions that are in place for the operational capacity of magistrates in correctional centres, as well as miscellaneous amendments which will provide greater transparency to the system. The New South Wales Labor Opposition does not oppose the bill. For the most part, this legislation covers a range of routine operations which take place in our correctional centres. A number of the proposed amendments have come about as a result of a review by the Ombudsman in 2005, and miscellaneous amendments including updated and modernised definitions have been added.

Magistrates perform a vital role within correctional centres as they are required to hear charges relating to offences committed by inmates while they are incarcerated. Should the magistrate be of the opinion that the alleged offence could and should be so prosecuted, the visiting magistrate may terminate the hearing and order the inmate be conveyed to a Local Court to be dealt with according to law. However, under the current legislation magistrates are only able to exercise these functions once they have been appointed as a visiting magistrate by the Local Court Chief Magistrate. Proposed new section 227 of the bill bestows all of the powers of a visiting magistrate upon the office of a magistrate, which will eliminate unnecessary red tape with regard to the work of magistrates.

Part 13A of this legislation sets out the list of offences relating to the place of detention and updates and modernises the definitions for each offence. Further, proposed new section 253B places the onus to prove lawful authority or reasonable excuse with regard to an offence on the defendant. Should any person who has allegedly committed an offence wish to contest a ruling, he or she must now prove they had permission or a justifiable reason to commit the offence. The offences covered under this legislation include trafficking, introduction or supply of syringes, unlawful possession of offensive weapons or instruments, inmate use or possession of a mobile phone and a number of other miscellaneous offences including loitering, unlawful entry and unlawful contact with an inmate.

Proposed new section 253H provides that any person that visits a place of detention must place all their items in a storage facility provided except when permitted to do otherwise. Visitors who fail to comply may face a maximum penalty of five units and a correctional officer may subsequently confiscate any item that was not left in storage for the duration of the visit. Proposed new section 253I confers powers upon correctional officers to stop, detain and search a person or vehicle in a place of detention. Officers may also exercise the stop, detain and search powers to persons and vehicles in the immediate vicinity of a place of detention if the officer suspects on reasonable grounds that the person has in his or her possession or under their control anything that has or is intended to be used in connection with an offence under this Act.

Proposed new section 253I (3) and (4) states the correctional officer may also request a police officer to conduct a search or further search of the person or vehicle. Under this section the suspect may be detained for the purpose of the search. However, any request to the police must be made as soon as practicable. As a part of this search, correctional officers are granted the power to seize items for the purpose of providing the items as evidence of an offence. With respect to any offence committed under this part, correctional officers also have the same powers to arrest as a police officer. Any person arrested by a correctional officer must as soon as practicable be taken, together with any property found on the person, to a police officer or before an authorised officer as defined in the Law Enforcement (Powers and Responsibilities) Act 2002.

Any correctional officer who is to conduct a search must follow the guidelines set out under proposed new section 253J, which remains consistent with the guidelines presently in place. This section sets out the conduct of searches performed in correctional centres, with proposed new 253J (4) stipulating that if practicable the search

must be conducted by a correctional officer of the same sex as the person being searched. Should this not be possible, a non-correctional member of staff may carry out the search under the direction of the correctional officer concerned. While conducting a search a correctional officer may direct a person to: submit to electronic scanning; empty the pockets of the person's clothing; remove any hat, gloves, jacket, coat jacket or shoes worn by the person; and empty the contents of any bag or any other such object that was on the person or in their vehicle. In the event that the person being searched is a child or a person who has impaired intellectual functioning, the search must be conducted in the presence of an adult that accompanies the person or child. If there is no such adult then the search must be completed in the presence of a search observation staff member.

Proposed new section 253M installs new safeguards concerning the detainment of a person. Proposed new section 253M (1) sets a maximum duration of detainment to four hours. Proposed new section 253M (2) to (5) sets out measures a correctional officer must take prior to exercising his or her power to stop, detain and search any person or vehicle. This includes providing evidence that they are a correctional officer—unless they are in uniform—their name, the reason for exercising the power, and warning that failing to comply with a request or direction is an offence. The only time a correctional officer does not need to follow this procedure is when the circumstances are of such urgency that complying with the requirements would make it ineffective.

A new addition to the bill is proposed new section 257A, which provides the commissioner with the capacity to liaise with other heads of department and organise information sharing arrangements. This will enable the commissioner to disclose and exchange information in connection with his/her official functions under this or any other Act with the head of the relevant agency. This bill will make a number of amendments to other legislation that will enhance oversight and elaborate on a correctional officer's functions and duties within a correctional centre. The proposed amendments aim to enhance transparency and implement a number of changes that seem logical. As such, the Opposition does not oppose the bill.

**Mr DAVID SHOEBRIDGE (15:45):** On behalf of The Greens I speak to the Crimes (Administration of Sentences) Amendment Bill 2016. The Greens do not oppose this bill. It makes a number of minor amendments to update terminology, to consolidate powers of correctional officers to stop, detain and search people, and to create a new disclosure framework to allow Corrective Services to share information. The proposed terminology change includes a change from the term "general manager" of a corrective centre to "governor". The Greens see that as a race back to the nineteenth century; apparently the Minister likes the term "governor". The bill changes "Probation and Parole Service" to "Community Corrections" and "mentally incapacitated person" to "a person with impaired intellectual function". The last of those is a change in terminology that The Greens unambiguously support.

Schedule 1, clauses 12 to 14, consolidate the existing stop, search and detain powers and subsequent offences, primarily from the Summary Offences Act and the Crimes (Administration of Sentences) Regulation 2014 into the main Act. It is a consolidation of existing legislative provisions. The Government states, and The Greens review shows, that it does not make substantial changes to the current search, stop and detain regime that operates in and about correctional facilities. There is one substantive change to the lawful authority defence as it relates to places of detention. There is an offence of someone carrying without lawful authority an implement, alcohol or knife into or with intent to carry into a correctional facility. It is a defence if the person so found can assert that they had lawful authority. Currently the prosecution must prove the absence of lawful authority in order for the prosecution to succeed.

In December 2005 the Ombudsman recommended that the then Department of Corrective Services seek a legislative amendment placing the onus to prove lawful authority on the accused for offences contained within sections 27B and 27E of the Summary Offences Act. Those two offences have been consolidated in this bill. I credit the Minister with the historical research that found the 2005 Ombudsman report and recommendation that supported the legislative change. It was, no doubt, sitting gathering dust in the department's archives and when this consolidation bill was presented the Government took the opportunity to implement it. A person accused of bringing an illegal, illicit or forbidden item into a correctional facility now has to prove lawful authority rather than the prosecution having to prove the absence of lawful authority.

That is consistent with a number of similar provisions in the Crimes Act. While we always have concerns about requiring a defendant in a criminal matter to bear the onus of proof of any element of the defence, given that it is in the defendant's capacity only to prove lawful authority we understand the rationale and we do not oppose that part of the bill. Schedule 1, items [15] to [17], change the disclosure regime. That is the secrecy regime that relates to information about detainees and correctional facilities. A general statutory secrecy provision applies to correctional facilities and their operations in New South Wales, for the obvious reason that we do not want people in correctional facilities disclosing blueprints of jails, for example, or disclosing security operations or details about a prison.

That secrecy provision is separate from and in addition to the privacy arrangements under the Privacy and Personal Information Protection Act. The current system prohibits the disclosure of information unless an exemption applies. The change in this bill means that information can be disclosed if it is authorised by or in accordance with an official policy made by the commissioner. In that regard, The Greens have some concerns about the drafting of the proposed new section 257 (3) which provides for the additional exemption in the following terms:

- (3) Without limiting the disclosures that may fall within subsection (1) (e)—
- they are disclosures that are made with a lawful excuse—
- a person makes a disclosure with lawful excuse for the purposes of that paragraph if the disclosure is:
- (a) authorised by the Commissioner, or
  - (b) in accordance with an official policy made by the Commissioner for the purposes of this section.

There is enormous uncertainty about what an official policy is. No other part of the bill makes it clear. What is "a policy made by the Commissioner"? Does that include a policy made by somebody under delegated authority? When a policy is made by the commissioner, does it have to be signed off in a formal capacity by the commissioner? Is tacit approval by the commissioner sufficient? When drafting an exemption from a quite serious criminal penalty, where the maximum penalty is 100 penalty units or two years imprisonment or both, there should be far greater certainty than is put forward here. I invite the Parliamentary Secretary, in reply, to make it clear what that means. If, as I understand it, the term will be simply "an official policy", that does not take matters any further than the current wording of the bill. With those observations, I indicate that The Greens will not oppose the bill.

**The Hon. PAUL GREEN (15:52):** I speak on behalf of the Christian Democratic Party in debate on the Crimes (Administration of Sentences) Amendment Bill 2016. The object of this bill is to amend the Crimes (Administration of Sentences) Act 1999 as follows:

- (a) to enable Magistrates to perform the functions of a Visiting Magistrate under the principal Act without having to be specifically appointed as a Visiting Magistrate,
- (b) to transfer to the principal Act certain powers and associated offences relating to places of detention that are currently contained in Part 4A of the Summary Offences Act 1988 and various provisions of the Crimes (Administration of Sentences) Regulation 2014,
- (c) to ensure that the prohibition on disclosure of information in the principal Act does not criminalise disclosures that are a routine part of the core business of Corrective Services NSW and to increase the penalty for breach of the prohibition,
- (d) to enable the Commissioner of Corrective Services (the Commissioner) to disclose for prescribed purposes, information obtained in connection with the exercise of the Commissioner's official functions,
- (e) to streamline the information sharing provisions in the principal Act,
- (f) to provide for other minor, consequential and ancillary matters (including changing or updating references to certain entities),
- (g) to enact provisions of a savings or transitional nature consequent on the enactment of the proposed Act.

The bill will also make consequential amendments to the Crimes (Administration of Sentences) Regulation 2014, the Summary Offences Act 1988 and the Summary Offences Regulation 2015. The bill seeks to introduce a number of amendments for clarification purposes that have been designed to improve the operation and efficiency of the correctional system in New South Wales. In particular, this bill will consolidate powers in the Summary Offences Act 1988 with those in the Crimes (Administration of Sentences) Regulation 2014 and create a new provision. The consolidation of these powers was recommended by the NSW Ombudsman in 2005.

This bill will enable any magistrate to perform the functions of a visiting magistrate. Currently, a visiting magistrate must be appointed by the Chief Magistrate. The change will remove the administrative process of appointment, easing the administrative burden of the Local Court, and increase the pool of magistrates that can perform the function of visiting magistrate. Visiting magistrates hear charges relating to offences committed by inmates within correctional centres and residential facilities. The changes in schedule 1 will not result in any changes to the existing powers and functions of visiting magistrates. Rather, they will increase the ability of magistrates to hear and process necessary cases.

Following the recommendation of the NSW Ombudsman in 2005, this bill will move to incorporate stop, search and detain provisions into a single piece of legislation, making the responsibilities and powers of corrections officers clearer. Currently, part 4A of the Summary Offences Act 1988 provides correctional officers with the power to search staff and visitors as well as to detain a person for up to four hours for the purposes of facilitating a search of the person by a police officer. The power to search and detain can be used when an officer believes on reasonable grounds that a person is attempting to introduce contraband or commit another offence

relating to a place of detention. These powers are generally used to conduct searches of individuals within the immediate vicinity of the correctional facility or other place of detention.

Clauses 95 and 247 of the Crimes (Administration of Sentences) Amendment Bill provide for the searching of visitors and staff members in a correctional centre or complex. The searches are similar to those that individuals encounter at an airport and are exercised routinely inside all correctional centres and complexes. They do not carry with them any inherent suspicion that a person may be carrying contraband. The bill will introduce a new section 253I, which effectively combines the two powers previously mentioned. Correctional officers will be able to routinely stop and search individuals in a correctional centre or complex, as well as individuals within the immediate vicinity of the correctional centre or complex. That is normally the car park.

Further, if an officer believes on reasonable grounds that a person is committing or attempting to commit an offence relating to the place of detention or its immediate vicinity, the officer can detain the person in question. The bill preserves section 27J of the Summary Offences Act, which contains safeguards for individuals when being searched or detained. It will remain the case that a correctional officer can detain a person only for as long as is reasonably necessary to exercise his or her powers, and for no longer than four hours. It is commonly known by visitors to correctional facilities that particular items such as alcohol, drugs, weapons and mobile phones are prohibited.

The bill will also establish that if individuals visiting correctional facilities and complexes are caught traversing these laws, the onus of proof to establish a defence of lawful authority will rest with the defendant. Therefore, the defendant must prove that they have lawful authority to bring such items into the correctional facility. Again this follows a recommendation from the NSW Ombudsman. The bill will also modify and replace the term "mentally incapacitated person" with the term "impaired intellectually functioning" as this is more appropriate and encompasses a range of people with varying degrees of mental illness, intellectual disabilities and other cognitive impairments.

Thirdly, this bill will introduce a new framework to allow for Corrective Services NSW to share information with other agencies in appropriate circumstances, including government agencies. The change will ensure that under the new Act routine disclosures are not criminalised, especially disclosures which are part of the core business of Corrective Services. In the past under section 257 Corrective Services was prohibited from disclosing information obtained through the administration of the Act unless the information and its disclosure fell within a small number of exceptions. Fourthly, this bill will add a new part to section 257 in which the Commissioner of Corrective Services—

**The PRESIDENT:** Order! According to sessional order business is now interrupted for questions.

*Questions Without Notice*

**GREYHOUND RACING INDUSTRY BAN**

**The Hon. ADAM SEARLE (16:00):** My question is directed to the Minister for Roads, Maritime and Freight. Given that this morning the Government overturned the greyhound racing industry ban, does the Minister stand by his 10 August parliamentary statement when he said:

... to continue the industry would still see an unacceptable level of deaths from healthy greyhounds, which could not be tolerated. From either an economic or welfare perspective, it just does not add up.

**The Hon. Courtney Houssos:** Hear, hear! Good question.

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) (16:00):** It is a good question and I am pleased to answer it. Unlike some of his colleagues, the Hon. Adam Searle is a sensible and decent bloke. The speech, indication and the comments I made then hold up today because whilst we have gone in a different direction—the Hon. Walt Secord should stop laughing at his colleagues.

**The Hon. Walt Secord:** I'm laughing at you, Duncan.

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

**The Hon. DUNCAN GAY:** Whilst we are going in a different direction we are achieving the same result on animal welfare. The key to what we announced then and what we are doing now is getting the very best animal welfare result. Do I stand by my comments as far as animal welfare is concerned? Absolutely. There would be no reason to go down either of these tracks, take one fork in the road or the other fork in the road, unless we were getting a better animal welfare outcome. In answer to the question about whether I stand by my comments on animal welfare: you bet I do.

**REGIONAL ROAD FLOODING**

**The Hon. RICK COLLESS (16:02):** My question is addressed to the Minister for Roads, Maritime and Freight. Will the Minister update the House on how the Government is assisting councils in the Central West—

[Interruption]

—to kickstart repairs on their road network following the recent flooding? And you think it's funny?

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) (16:03):** I acknowledge the laughter from the Deputy Leader of the Opposition. The Hon. Walt Secord thinks that the floods in the Central West New South Wales are a joke. He is disgraceful.

**The PRESIDENT:** Order! The Minister will resume his seat.

**The Hon. Lynda Voltz:** Point of order: I have raised this point of order before. It is unparliamentary for the Minister to accuse members on this side of the Chamber of undertaking actions or saying things that they have not done to score cheap political points.

**The PRESIDENT:** Order! I have the sense of the point of order taken by the Hon. Lynda Voltz.

**The Hon. DUNCAN GAY:** To the point of order: This point of order is trying to rewrite history. The fact is that there was a question asked about the floods in the Central West of New South Wales and the Deputy Leader of the Opposition broke down in paroxysms of laughter.

**The Hon. Walt Secord:** Not true, absolute liar. You are a liar.

**The PRESIDENT:** Order! I call the Hon. Walt Secord to order for the second time. Since I cut off the Hon. Lynda Voltz, thinking I was about to rule, does she wish to add to her earlier point of order?

**The Hon. Lynda Voltz:** Further to the point of order: It is highly inappropriate for the Minister to then use a point of order to make a similar allegation which is completely untrue. I ask that you call the Minister to order.

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

**The Hon. Walt Secord:** To assist the House I was talking to my colleague and I was completely oblivious to it. The honourable member is making up the fact that I was laughing. I was conversing with a member behind me and *Hansard* and the video tape will show that it is a complete lie.

**The PRESIDENT:** Order! The remarks made by the Minister initially reflected what simply happened but subsequently he went on to make an imputation about the motives of the laughter and in that sense was being disorderly. I call the Minister for Roads, Maritime and Freight to order for the first time.

**The Hon. Dr Peter Phelps:** Point of order: The allegation that another member is lying in this Chamber is most unparliamentary. Even given the provocations it has happened far too much of late. I ask you to remind members that it is inappropriate, and ask the Hon. Walt Secord withdraw.

**The PRESIDENT:** Indeed it has consistently been ruled unparliamentary. Has the Minister for Roads, Maritime and Freight taken offence at the use of the term?

**The Hon. DUNCAN GAY:** It is up to him whether he withdraws.

**The PRESIDENT:** I rule that it is unparliamentary. I direct the Hon. Walt Secord to withdraw.

**The Hon. Walt Secord:** Mr President, I would like to put it in context—

**The PRESIDENT:** No, the Hon. Walt Secord can either withdraw or he will be removed from the Chamber now. He is already on two calls to order. Accusing another member of lying has always been unparliamentary. He either withdraws without qualification now or he will be leaving the Chamber.

**The Hon. Walt Secord:** I withdraw.

**The Hon. DUNCAN GAY:** As the House is aware, the State's Central West has seen some of the wettest conditions in decades with major flooding affecting key freight routes and the local road network. Last week I inspected roads across the region with The Nationals candidate for the electorate of Orange, Scott Barrett. We also met with local councils impacted by the severe weather and it was clear the repair of the council road network was a priority. Having inspected the roads, the task ahead to repair the network is going to be a big one, with the base under many of the roads across the region completely saturated from one side to the other.

Flood-ravaged communities in the State's Central West have been thrown a lifeline with \$13 million being provided by the New South Wales Government in immediate funding relief for councils to fix local roads destroyed by floodwater. I joined the Deputy Premier, Troy Grant, in Molong to make the announcement of this funding, which is on top of the natural disaster declaration made earlier this month. It will allow councils to immediately get on with the job of rebuilding their communities. In addition, \$1 million will be invested to investigate options to improve flood resistance of the Newell Highway at Tichborne to assist in keeping the highway open between Forbes and Parkes during heavy flood events.

I have heard loud and clear how important it is to repair these local and regional roads and now councils can get on with repairs sooner rather than later. Sixteen of the 21 councils which have been declared eligible for Natural Disaster Relief and Recovery Arrangements from this flood event will receive \$500,000 while Forbes, Lachlan, Parkes, Bland and Hilltops council—the five most affected local government areas—will receive \$1 million. Other councils to receive funding are Bathurst, Blayney, Cabonne, Coonamble, Cootamundra-Gundagai Regional, Cowra, Dubbo Regional, Gilgandra, Mid-Western Regional, Narromine, Orange, Temora, Walgett, Warren, Warrumbungle and Yass Valley.

Since 2011 the New South Wales Government has provided a 32 per cent increase in funding to those 21 councils compared with the former Labor Government. That is yet another reminder of how Labor abandoned country New South Wales and left councils across the region high and dry and on the road to ruin. This money is important because it allows councils to move quickly and with a degree of agility they have never had before to make decisions about what they do. The rules of natural disaster funding are very strident and sometimes councils cannot do exactly what they want. To have an amount of money to be able to act swiftly is very important. It is also important to note that this natural disaster declaration was made quicker than ever before. I congratulate the Deputy Premier and his Federal colleague on moving so quickly on this important issue.

#### **GREYHOUND RACING INDUSTRY BAN**

**The Hon. WALT SECORD (16:10):** My question without notice is directed to the Minister for Primary Industries, who is responsible for animal welfare. Given that the Premier said on 7 July, "As a humane and responsible Government, we are left with no acceptable course of action except to close this industry down", what is the Minister's response to community concerns that his Government put its own welfare ahead of animal welfare?

**The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) (16:11):** As the Premier clearly outlined today, the Government's decision is based entirely on animal welfare. The Government has chosen to go down this alternative path to ensure that identified animal welfare issues are addressed. The establishment of a panel to come up with the most stringent system for the greyhound industry in this country is based on animal welfare. The Government has taken its decision after listening to community feedback to make sure that the animal welfare issues that have been identified are addressed. It is just that we are addressing it in a different way than we originally intended after listening to the community.

#### **GOLD COAST AIRPORT**

**Ms JAN BARHAM (16:12):** My question without notice is directed to the Minister for Primary Industries, and Minister for Lands and Water. I refer to my question of 12 May 2016 asking whether the Minister would review the Government's actions between 2009 and 2013 relating to the granting of a lease over a New South Wales Crown reserve to Gold Coast Airport for works, including the waiver of the need for a land assessment before granting approval in principle in 2010, and note on 21 June the Minister advised that he had "asked the Department of Primary Industries to review this decision". Will the Minister update the House on the progress and outcome of the review?

**The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) (16:13):** On behalf of myself and other members I say sincerely that it is great to see Ms Jan Barham back in the Chamber. There is a genuineness about the member that has been missed. We are all very happy to see her back here with us. I know that if her colleagues took the time to share in question time with her they would also be happy. Those who have bothered to turn up are happy to see her back in the Chamber.

In response to the questions raised by the member, I instigated an independent review on the decision to waive the requirement for a land assessment in relation to Gold Coast Airport. The review concluded that in this instance the waiver was justified and appropriate. I can confirm that the lease to Gold Coast Airport Pty Limited was issued lawfully by the Department of Industry—Lands. The review has taken the form of legal advice. It is a standard practice that legal advice itself is not publicly disclosed; however, given the member's longstanding interest in this matter, I will ask that representatives from my office and the department meet with the member to discuss the findings of the review.



### YOUTH OPPORTUNITIES PROGRAM

**The Hon. SHAYNE MALLARD (16:15):** My question is addressed to the Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism. Will the Minister outline what the New South Wales Government is doing to help young people engage with their communities?

**The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism) (16:15:10):** The New South Wales Government's Youth Opportunities program provides funding for one-off, time-limited new projects that support young people to lead and participate in community development activities. Last week I had the pleasure to announce \$1 million in funding for 28 Youth Opportunities projects to be conducted between January and December 2017. These one-off grants are available to youth and community organisations and to local government to support local youth-led and youth-driven projects with a focus on positive youth development.

The Baird-Grant Government recognises the importance of supporting our children and young people. They are our future leaders. That is why the Government launched this initiative in 2012 and has provided more than \$7.9 million to support 148 local projects right across New South Wales. We have provided funding for projects that enable young people to better engage with their local communities and develop leadership, communication, teamwork and other life skills. Projects also provide volunteering opportunities that link participants to further education and training.

I recently met with the Women in Prison Advocacy Network to announce its Youth Opportunities grant of \$49,000 to deliver a youth-led, youth-driven mentoring program to prevent vulnerable and disadvantaged young women from entering the criminal justice system. The My Way mentoring project supports 15 young women aged 14 to 18 years to acquire life skills and make choices that positively contribute to the community. The Women in Prison Advocacy Network is a grassroots community organisation that is committed to advancing the prospects of female youth who present at-risk indicators of entering the correctional system. They do this while also addressing the many issues facing marginalised women, including young women affected by the criminal justice system. The organisation delivers an evidence-based practical mentoring program that fosters a positive self-identity, enabling every woman to live the life she deserves.

I commend the organisation's many volunteers and support staff who work to nurture and empower young women to be the best they can be. This is why the Youth Opportunities program is such a valuable part of the range of services and initiatives that the New South Wales Government offers for young people. There is no doubt that young people are society's greatest asset and the foundation for the future. It is everyone's responsibility to ensure that all our young people, no matter their background or circumstances, have the opportunity to reach their full potential. As I travel around the State talking to our young people and during my regular briefings from the Advocate for Children and Young People, Mr Andrew Johnson, I am told that by supporting the participation of young people in the community—particularly those on the margins of society—we can help them to overcome a range of obstacles and achieve great things for themselves and their communities.

As the Minister responsible for youth I see the value in a program such as this that fosters genuine youth participation and engagement. It supports our young people to create meaningful connections with their community, which will have a positive, lasting effect on the rest of their lives. I wish all Youth Opportunities project participants well in the coming year and look forward to hearing about the innovative outcomes for young people. More information on the Youth Opportunities program and the 28 projects to run in 2017 is available on the Government's youth website. I encourage all members to review some of the fabulous work being made possible by this round of grant funding.

### GREYHOUND RACING INDUSTRY BAN

**The Hon. ROBERT BORSAK (16:19):** I direct my question without notice to the Minister for Roads, Maritime and Freight, representing the Deputy Premier, Minister for Justice and Police, Minister for the Arts, and Minister for Racing, and Leader of The Nationals. Following the Government's admission today that it "got it wrong" in shutting down the greyhound racing industry in New South Wales, will the Deputy Premier immediately rule out the closure of the Bathurst, Coonamble, Lithgow and Mudgee greyhound racing tracks?

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) (16:19):** Today's announcement was about a way forward. A group is being put together to look at those decisions and at a way forward into the future, which is based on the submission from the greyhound racing association, and the minutiae of that will come from the deliberations of that group.

### GREYHOUND RACING INDUSTRY BAN

**The Hon. GREG DONNELLY (16:20):** I direct my question without notice to the Minister for Roads, Maritime and Freight. Given previous answers given by the Minister and the statement he made in this House on 10 August on the greyhound racing industry ban, "the incentives and motivators in greyhound racing will always lead to unacceptable animal welfare outcomes", does the Minister stand by those comments?

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) (16:20):** Yes, I stand by the comments I have made. However, as the Premier and the Deputy Premier said earlier today, there was no confidence as to a way forward but, following further consultation with Dr John Keniry, there is now greater confidence in a way forward. This has allowed the Government to accept the feeling of the community and we will now move forward in a better way.

**The Hon. GREG DONNELLY (16:21):** I ask a supplementary question. Can the Minister elucidate his answer in reconciling the statement he made in this House on 10 August, to which I referred in my previous question, and the announcement the Government made today?

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) (16:21):** This is probably in order because it is not a new question—it is the same question asked earlier; I give the same answer I gave earlier.

### SHARK MANAGEMENT STRATEGY

**The Hon. CATHERINE CUSACK (16:21):** My question is addressed to the Minister for Primary Industries, and Minister for Lands and Water. Can the Minister update the House on the actions the New South Wales Government is taking to reduce the risk of shark attacks on beaches in New South Wales?

**The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) (16:22):** I thank the Parliamentary Secretary for her question and for her interest in this topic, which is at the forefront of the Government's mind. The Ballina community is reeling following another shark attack on that stretch of beach. The New South Wales Government has been working to implement a range of initiatives designed to mitigate the risk of shark attack.

In October 2015 we announced the NSW Shark Management Strategy, in addition to the existing Shark Meshing (Bather Protection) Program. The key objective of the Shark Management Strategy is to increase protection for bathers from shark interactions while minimising harm to sharks or other animals. This is a scientifically driven, integrated strategy involving several innovative approaches to provide the most effective shark attack mitigation measures at beaches in New South Wales. Our investment of more than \$16 million will see innovative trials introduced and continual projects will be funded over five years. The key to this strategy will be constantly listening to the community and making adjustments based on community feedback.

Following the 26 September attack, I travelled to the North Coast to meet with key stakeholders and to discuss this issue. It was clear just how divided the community is on this issue. The ocean is the shark's domain. There will never be a time when a government anywhere in the world will be able to assure beachgoers that they will not be attacked by a shark. However, we will continue to find, test and implement new and scientifically proven measures that reduce the risk. That is why the Government has committed to rolling out an additional 85 smart drum lines. There will now be, including the current 15 drum lines, 100 smart drum lines capable of being deployed along the New South Wales coast. This state-of-the-art technology differs greatly from traditional drum lines as they are not designed to kill sharks. Smart drum lines alert Department of Primary Industry scientists via phone, email and message that an animal is hooked onto the drum line and the scientists then respond to tag and release the shark.

Last December smart drum lines were trialled for the first time in Australia on the North Coast and early trials showed that they could reliably catch sharks of concern and immediately alert scientists. Since May 2016 some 37 white sharks and five bull sharks have been tagged and relocated unharmed after being caught using smart drum lines. We are also having great success with our new drone trials, which began late last month. The three-month trial at Lighthouse Beach, Lennox Head, Evans head, Redhead and Kiama will see Civil Aviation Safety Authority [CASA] certified pilots fly the drones from vantage points for one hour in the morning every Thursday, Friday and Sunday until mid-December. The drones will fly a 3.5 kilometre to four kilometre circuit over the ocean, with an on-board camera providing real-time vision of coastal waters.

During the school holidays, the Department of Primary Industries also worked in collaboration with Little Ripper over Lighthouse Beach at Ballina to provide additional drone surveillance. In the wake of the attack, we also tripled aerial surveillance over the school holidays and sightings were instantly uploaded on our SharkSmart app. This week we began rolling out the first of the additional 10 VR4G shark listening stations, starting on the

North Coast. The New South Wales Government is looking at the most effective, environmentally friendly and cutting-edge shark mitigation technology there is on the planet. Importantly, we need to balance all of this with community input and we will work with the community in going forward.

### TRANSLUCENT WATER FLOWS

**The Hon. ROBERT BROWN (16:25):** My question without notice is directed to the Minister for Primary Industries, and Minister for Lands and Water. Are translucent flows quarantined for environmental purposes only or are they available to irrigators as supplementary water access? If so, how many times is the New South Wales Government being paid for the same bucket of water, including the fixed fees and charges?

**The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) (16:26):** I thank the member for his question. I am aware of community concerns around the translucent environmental flow rules in the water sharing plans. Over recent months there were calls for these releases to be suspended in the Murrumbidgee River. In July I announced that a review of these rules would be undertaken to determine whether the intended environmental outcomes can be achieved with a more flexible approach. Department of Primary Industries—Water has undertaken a preliminary appraisal and is currently finalising the report. The findings of the review will guide the development of suitable rules for the coming water resource plans.

Translucent flows apply in the Murrumbidgee, Lachlan, Macquarie and the Border Rivers systems. These provisions were first introduced in the 1990s and included in the water sharing plans in 2004. The translucent flow provisions, which require a variable portion of dam inflows to be released, are designed to mimic natural river flow patterns. However, given the significant recovery of water for the environment by the Commonwealth in recent years, it is timely to investigate the efficacy of translucent flows and whether there are other ways of meeting the environmental water share.

Suspending the translucent flow rules that were made recently would have been premature, as this would have had impacts on water users—for example, the water released in the Murrumbidgee under the translucent flow rules was not quarantined for environmental purposes. In fact, it was accessible to irrigators downstream, providing them with supplementary water that could be stored on farm to boost their water availability. In addition, releases that passed Balranald contributed to the water available for New South Wales Murray irrigators.

Further, the suspension of translucent releases would have reduced the flood mitigation capacity in dams and increased downstream flood risk, exacerbating the current flooding. Any changes to the rules will be discussed with stakeholders and must also be consistent with the requirements of the Commonwealth's Murray-Darling Basin Plan. This means that whilst it is feasible to make improvements to the form and/or timing of environmental flow releases, the overall volume of environmental water provided in the water sharing plans cannot be reduced. I will take the second part of the question as to fixed fees and charges for translucent flows on notice but the answer I have given has addressed the first part of the question.

### GREYHOUND RACING INDUSTRY BAN

**The Hon. SHAOQUETT MOSELMANE (16:29):** My question without notice is directed to the Leader of the Government. Given \$1.6 million was budgeted for advertising promoting the Government's greyhound racing ban, how much has been spent so far promoting the now overturned ban, and what is the total budget for the next stage of advertising?

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) (16:29):** I do not know the answer to that, but I will find out the answer to both parts of that question. But I can tell the House that it is a lot less than the \$500 million that Labor wasted on the Rozelle Metro—\$500 million the Labor Party and their mates in The Greens wasted in this city, and not one metre of track was ever laid.

**The Hon. Shaoquett Moselmane:** Point of order: I could not hear the Minister, there was too much noise behind him.

**The PRESIDENT:** Order! There was a great deal of noise from the Government backbench. I uphold the point of order. I am sure the Minister would want to be heard in silence.

**The Hon. DUNCAN GAY:** I appreciate the Opposition Whip saying that he did not hear what I was talking about because I am more than happy to tell him again. When I was asked about \$1.6 million my answer was that it is a lot less than the \$500 million that Labor spent on the Rozelle Metro with not one metre of track being laid.

**The Hon. Lynda Voltz:** Point of order: My point of order relates to relevance. The Minister was asked how much of the \$1.6 million has so far been expended. I ask you to bring him back to the question he was originally asked about greyhound advertising.

**The Hon. John Ajaka:** To the point of order: The Leader of the Government was responding to the earlier point of order taken by the Hon. Shaoquett Moselmane, who said he could not hear him. The Minister was repeating what he said earlier.

**The Hon. Catherine Cusack:** To the point of order: The question concerned the wastage of public funds and the Minister's answer is a complete bullseye on that topic.

**The PRESIDENT:** Order! The Deputy Leader of the Government has hit the nail on the head. The Leader of the Government was responding to the terms of the Hon. Shaoquett Moselmane's point of order. Now that he has done that, if he has anything further to add he has some time remaining.

**The Hon. Greg Donnelly:** More, Duncan—more.

**The Hon. DUNCAN GAY:** I appreciate the encouragement to say more. During the taking of the point of order I was pleased to hear the Deputy Leader of the Opposition say it was waste. He would know about waste.

**The Hon. Lynda Voltz:** Point of order: I again raise the issue of relevance. The Minister was asked a specific question regarding how much of the \$1.6 million advertising budget has been expended. The Minister is not within cooee of answering the question he was asked.

**The PRESIDENT:** Order! The Minister may have been starting to respond to an interjection, which would not have been orderly. The Minister has a few minutes remaining to give a generally relevant answer to the question he was asked.

**The Hon. DUNCAN GAY:** I thank members for their encouragement to say more; I was enjoying it. I did answer that I was not aware of how much had been spent and what was to be spent, but I was aware of how much Labor spent on the Rozelle Metro—half a billion dollars.

**The PRESIDENT:** Order! I caution the Hon. Walt Secord.

**The Hon. DUNCAN GAY:** There was no apology, no change of direction. They stormed off, completely oblivious to the community.

**The Hon. Lynda Voltz:** Point of order: Again I raise the issue of relevance. The question is specifically about an advertising budget and how much of that budget would be spent.

**The PRESIDENT:** I apologise to the House. I was quite preoccupied with ensuring that the Hon. Walt Secord was not given an early mark from question time because of his interjections. I cannot rule on that point of order. The Minister has 1¾ minutes left to answer.

**The Hon. DUNCAN GAY:** The Opposition talks about an advertising budget. If you put the glossy brochures out, you spend half a billion dollars and you do not build a metre of track, it is no more than an advertising budget. That was the most expensive advertising budget ever. It advertised the fact that Labor was not fit to govern and it is still not fit to govern.

#### WESTCONNEX AND SYDNEY PARK

**The Hon. GREG PEARCE (16:35):** My question is addressed to the Minister for Roads, Maritime and Freight. Could the Minister update the House on Sydney Park as part of the WestConnex project?

**The Hon. John Ajaka:** A great question.

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) (16:35):** It is a great question. I was hoping that someone would ask me this question. I thank the member for his question. It gives me great pleasure to reaffirm that not only will we be delivering a world-class motorway for the people of St Peters and well beyond, but also a large amount of extra green space for Sydney Park—in fact, so much extra green space that it will be the equivalent of about six Sydney Cricket Grounds. That is a hell of a lot of space. I thought the House would be impressed; it is just outstanding. That is why I was quite disappointed to see the Lord Mayor deliver yet another rollcall of untruths about WestConnex as she continues her personal ratepayer-funded crusade. Quite frankly, the Lord Mayor should consider writing the next Harry Potter series because her recent pen-to-paper claims in the *Daily Telegraph* are pure fantasy.

Proving that she will never let the facts get in the way of a good story, the Lord Mayor firstly claims that open space will be reduced at Sydney Park as a result of WestConnex. In addition—The Greens should listen to this because this is important—she says the Government wants to take an additional 7,000 square metres from the

park for the project. Let me enlighten the House with some facts. First, a slice of land representing less than half a per cent of the park will be used along the boundary to widen and upgrade Euston Road. Another small parcel will be used temporarily to construct vital infrastructure, including a land bridge. This parcel will be used only during construction and will be returned for use as open space.

Is the Lord Mayor saying she does not want a land bridge? Is she going against the wishes of the environmental agencies who said we had to put in that bridge? Has the Lord Mayor forgotten that when the swimming pool was constructed in Prince Alfred Park—which, as many people remember, took longer than the Sydney Harbour Bridge and the Opera House to build—nearly a third of the park was alienated during its construction? Did we say that the Lord Mayor took that land away from the park never to return it? We could be critical of how long she took to have the pool constructed but I am not going to be critical of the fact that there is a terrific new pool there—damned expensive, I have to say—and it is part of the park. The same is going to happen in Sydney. That area of land we are using to build the land bridge will be alienated for a short amount of time and then we will have extra green space.

The Lord Mayor also bizarrely claims that we are building WestConnex while other global cities tear down freeways and replace them with public transport networks. Again, let us help out with the facts. The truth is that there are more than 100 large-scale road projects currently underway in Europe alone. The Stockholm bypass in Sweden and London's Road Modernisation Plan are examples. Each city has differing needs requiring differing solutions and that is why the Government is spending record amounts, not just on motorways but on public transport such as light rail and metro. When Clover Moore speaks, it is for herself; when I act, it is for the people of New South Wales. *[Time expired.]*

### WILCANNIA WEIR

**Mr JEREMY BUCKINGHAM (16:39):** My question without notice is directed to the Minister for Primary Industries, and Minister for Lands and Water. Two years ago, on 30 October 2014, the New South Wales Government committed \$189,000 to a feasibility study into an upgrade of the Wilcannia Weir and associated works. When will the Government release this feasibility report? When will the Minister build a new downstream weir for the people of Wilcannia?

**The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) (16:40):** I thank the member for his question. It is an important issue for the people of Wilcannia. I note that the member opposite has jumped straight to the conclusion that he wants the downstream weir completed. However, there are alternatives. Some say that we should be looking at upgrading the existing weir; some are talking about a downstream component; others are saying that we could do both.

**Mr Jeremy Buckingham:** Two weirs?

**The Hon. NIALL BLAIR:** There are some who have said that we could build two weirs. One could be addressing the water quality issue and the other could be used for amenity purposes. But the member is not aware of that, he is not aware that there are many variances associated with such projects. The New South Wales Government has engaged consultants to complete a feasibility investigation for a new weir at Wilcannia. The investigation includes a business case and associated scoping study. Department of Primary Industries—Water has received the feasibility investigation reports, including a scoping study and a business case for the Wilcannia Weir.

While there has been criticism of the time taken in completing the study, it must be understood that there are a number of considerations and detailed analyses required. Once the final reports have been reviewed, they will be considered by the Government and future stages of the project can then be discussed. We need to assess the feasibility study and give due consideration to the findings before we know what the next steps are. These reports are important steps to inform the Government about the feasibility and anticipated costs of a possible replacement weir so that the matter can be considered.

**Mr JEREMY BUCKINGHAM (16:42):** I ask a supplementary question. Will the Minister elucidate his answer in relation to the feasibility study? Was a cost benefit analysis conducted within that feasibility study? Can he tell the House what that cost benefit analysis may or may not have said?

**The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) (16:42):** In answer to the first question I spoke about scoping studies and business cases; that has already been covered.

### GREYHOUND RACING INDUSTRY BAN

**The Hon. MICK VEITCH (16:43):** My question without notice is directed to the Leader of the Government. Given that, on 23 August, the Premier said:

The people of New South Wales want leaders who do the right thing, not the easy or convenient thing.

Is today's decision on greyhound racing about saving the Leader of The Nationals?

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) (16:43):** All year I have been waiting for a question from the member opposite and that is it? It was not a very good question. I do not think that any of the decisions that the Premier, the Deputy Premier or Cabinet made today were easy decisions. The member opposite says that we made easy decisions, but these were not easy decisions—they were hard, tough, well thought through and appropriate. There was nothing easy about them whatsoever. If it had been an easy decision it would more likely have been a decision made by the member opposite.

### AUTISM

**The Hon. SARAH MITCHELL (16:44):** My question is addressed to the Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism. Will the Minister outline how the New South Wales Government is helping to make a positive difference in the lives of children with autism?

**The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism) (16:44):** I thank the honourable member for her question. The New South Wales Government is determined to ensure that people with disability are empowered to realise their full potential and participate in all aspects of our community. To do that we need to ensure that they can access the supports that are right for them and their needs.

Recently I had the pleasure of visiting an incredible organisation that is doing great work to help young children with autism to realise their potential. The Sydney Story Factory in Redfern, which has been operating since 2012, aims to change the lives of young people, especially those from marginalised backgrounds, through creative writing and story-telling. Under the guidance of an expert story-telling team, trained volunteer tutors work with students one-on-one or in a small group, to create stories of all kinds. Programs designed by creative writing and literacy experts are run as workshops for children of primary and high school age to improve their written and oral communication skills, to enhance their self-confidence and self-sufficiency, to nurture their creativity and empathy, and to deepen their engagement with learning. In every workshop young writers prepare an original piece of creative writing in a format of their choice, including stories, poems, scripts, non-fiction narratives or whatever springs from their imagination.

Importantly, the Sydney Story Factory has developed a new program specifically to support young children with autism—the Support Needs Program. The innovative Support Needs Program provides a safe place for young people to unlock their imaginations and to express their creativity. This program was inspired by the amazing Bella, a young girl who first attended the Sydney Story Factory in October 2014. Bella has autism and does not speak. She writes by pointing to letters on a letter board and spelling each word out. Working one-on-one with the volunteer manager, Bella was given an avenue to explore her creativity and to express herself. Slowly at first Bella began spelling out her stories, one word at a time. With each story her skills and self-confidence grew and improved dramatically. This accomplishment led to the development of the Support Needs Program.

While the program has been running only this year, it has been highly successful in helping young people like Bella to explore their creative side. During my visit I was pleased to announce a \$10,000 grant for the Sydney Story Factory to continue to deliver and grow this incredible and life-changing program. This funding will help to provide more tailored workshops and more exceptional outcomes for young children with autism.

**The PRESIDENT:** Order! There is too much audible conversation in the Chamber.

**The Hon. JOHN AJAKA:** In closing, I congratulate the Sydney Story Factory and its dedicated team of volunteers on everything they are doing, particularly for young children with autism. I look forward to reading the creative stories and works of more young people such as the amazing Bella over the coming months.

### GREYHOUND RACING INDUSTRY BAN

**Dr MEHREEN FARUQI (16:48):** My question without notice is directed to the Minister for Primary Industries. On 10 August this year and in support of the Greyhound Racing Prohibition Bill 2016, the Minister told this House:

The New South Wales greyhound racing industry has been exposed for widespread illegal and unconscionable activity including systemic mistreatment of animals, unnecessary slaughtering, deliberate misreporting and a culture that has lost the trust of the community.

Given the Premier's backflip on the ban, as the Minister responsible for animal welfare, how can the community trust anything he says about animal welfare ever again?

**The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) (16:48):** I thank the member for her question. What I said during that debate was absolutely correct: Greyhound racing had been exposed and that is something that we have not shied away from. That is why today the Government has announced that it will establish a panel to set up the necessary regulations, animal welfare standards, oversight and compliance measures to address the issues that were exposed.

**The Hon. Shaoquett Moselmane:** That is what you should have done in the beginning.

**The Hon. NIALL BLAIR:** That is exactly what this Government announced today. It is based on animal welfare. That is why the Government can make comments in this House about the findings of the McHugh report and the publicly identified issues. It can confidently state that the catalyst behind the decisions is animal welfare. The Government has listened to feedback from the public. It will set up the toughest regime in the country to address the issues identified.

### GREYHOUND RACING INDUSTRY BAN

**The Hon. LYNDIA VOLTZ (16:50):** My question is directed to the Leader of the Government. Will the Minister inform the House whether the greyhound racing ban advertising complied with section 7 (2) of the Government Advertising Act 2011, which requires all New South Wales Government campaigns with a total cost likely to exceed \$50,000 to be subject to a peer review before the campaign commences? If so, will he inform the House who undertook that review?

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) (16:50):** I thank the honourable member for her question. It is similar to a question I was asked earlier about advertising.

**The Hon. Greg Donnelly:** It is nothing like it.

**The Hon. DUNCAN GAY:** The resident expert, captain grumpy.

**The Hon. Lynda Voltz:** Point of order: I would that ask the Minister be directed not to debate the question.

**The PRESIDENT:** Order! There is no point of order. The Minister has the call.

**The Hon. DUNCAN GAY:** I accept I was out of order in sledging my colleague, but I was not debating the question.

**The Hon. Walt Secord:** You are on two calls.

**The Hon. DUNCAN GAY:** I am not on two calls.

**The Hon. Walt Secord:** You should be on two calls.

**The Hon. DUNCAN GAY:** I remind the Hon. Walt Secord that he is on two calls to order.

**The PRESIDENT:** Order! The Minister is well advised to ignore interjections from the Opposition.

**The Hon. DUNCAN GAY:** I was about to say that I am happy to treat this question as I did the earlier one. I will take it on notice. This Government adheres to the proper protocols and procedures. I remind the Opposition of the \$500 million advertising campaign that it did not apologise for, the Rozelle Metro. I wonder what peer review was done on that? The Opposition spent \$500 million without laying a metre of track. It was the epitome of bad government. There was no apology or turn around—the Opposition went ahead and spent the money.

**The Hon. Lynda Voltz:** Point of order: Mr President, I understand the Minister does not want to talk about the decisions of his Government, but I ask that he be returned to the leave of the question. The question was whether the advertising complied with section 7 (2) of the Government Advertising Act, which requires that it be subject to a peer review prior to the campaign.

**The PRESIDENT:** Despite the best efforts of some to distract the Minister he has been generally relevant to the question. Does the Minister wish to continue?

**The Hon. DUNCAN GAY:** No, I have concluded my answer.

### MONARO WATER SUPPLY

**The Hon. BRONNIE TAYLOR (16:53):** I direct my question to the Minister for Primary Industries, and Minister for Lands and Water. Will the Minister update the House on improvements to regional water supply in the Monaro region?

**The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water) (16:53):** I thank the Parliamentary Secretary for her question. This Government is committed to the important issue of delivering secure and reliable water supplies to regional towns in New South Wales. This is being done through the Government's Restart NSW Fund. It supports the delivery of key infrastructure projects that improve economic growth and productivity across the State. The Water Security for Regions program is part of the Restart NSW Fund and has been set up to improve water security. Under this program \$366 million has been allocated to assist communities prepare for future drought conditions. The program will also assist the Government to meet its 2021 target for secure potable water supplies.

Last week I visited the Monaro region with the Parliamentary Secretary for Southern NSW, the Hon. Bronnie Taylor, to inspect two water-related projects that have been boosted by funding from the Government and will improve water security in local communities. The projects at Bombala and Nimmitabel support the delivery of safe, reliable and secure drinking water to both towns and cater for their community needs now and into the future. The Government is providing full funding to Snowy Monaro Regional Council for the upgrade of the Bombala water treatment plant. This will enable an upgrade to the plant's ageing infrastructure, thereby reducing the risk of system failures and ensuring the security of drinking water for the local community. It will include an upgrade of the plant's process control system to improve operations and increase the system's reliability. The result of improving system control and automating processes will be a reduction of maintenance costs for an older system.

Modernising the system will also include the installation of an alarm monitoring system that will enable notifications for instant reporting and response. This project will improve the performance of the plant, improve water quality for the Bombala community, and ensure confidence and productivity in the local area. Construction of the \$6 million storage dam on Pigring Creek has been completed. It will secure the water supply for Nimmitabel. Funding for this vital infrastructure project was supplied by the Government through the Water Security for Regions program. As part of the Nimmitabel Lake Wallace Project, the construction of the 320 megalitre dam on Pigring Creek will significantly improve the security of the local water supply in times of drought. Prior to the construction of the dam Nimmitabel was serviced by a small weir pond and two bores.

The Lake Wallace Dam was a construction project originally proposed by the Nimmitabel Advancement Group as a solution to the chronic water shortages experienced by the village over the last 30 years during drought periods. It will also contribute to community confidence and productivity. The new dam will provide environmental releases to the MacLaughlin River to support aquatic flora and fauna. The funding of these important projects demonstrates the Government's commitment to secure a water supply that will safeguard regional communities against future drought occurrences. Through quality infrastructure that supports growth and development it is investing in the regions and ensuring local communities have access to clean, reliable water. I congratulate all those involved in both projects: the member for Monaro; the Hon. Bronnie Taylor; and local council member Dean Lynch. Public Works played a key role. I congratulate everyone involved in these projects.

#### HEALTH CARE PROFESSIONALS SUICIDE RATES

**The Hon. PAUL GREEN (16:58):** I direct my question to the Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism, representing the Minister for Health. The *Medical Journal of Australia* recently reported upon research that revealed female doctors take their own lives at nearly three times the rate of the general population, female nurses have a suicide risk of almost four times greater than that of women in other jobs, and male nurses and midwives have close to double the rate of suicide compared to men in other professions. Will the Minister inform the House whether the Government is aware of the report? If so, what is it doing to address the statistics of increased suicide rates amongst health care professionals?

**The Hon. JOHN AJAKA (Minister for Ageing, Minister for Disability Services, and Minister for Multiculturalism) (16:58:5):** I thank the honourable member for his question. I speak on behalf of every member of this House when I say that suicide affects not only the families of the person who takes his or her life but also the whole community. I am pleased to see that the Government and many non-government organisations, such as beyondblue, are doing so much work to prevent suicide in our State. Nurses and midwives do wonderful work for our community. They are frontline workers who do so much to help the aged, those with disability and the vulnerable. I am well aware that Minister Skinner undertakes a huge amount of work through not only the Department of Health but also all the other agencies. She works with my agencies and my department to assist nurses, not just through their training, to overcome any problems that they face at work. I will take the specifics of the question to the Minister for Health and come back with an answer.

**The Hon. DUNCAN GAY:** I regret to say that the time for questions has concluded. If members have further questions I suggest they put them on notice.



## GREYHOUND RACING INDUSTRY BAN

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council) (17:00):** I have a supplementary answer. Earlier the Hon. Robert Borsak asked me whether uneconomical regional tracks will be closed under the plan for the greyhound racing industry. In addition to the answer I gave, I indicate that it will be up to the greyhound racing industry to determine the future of its tracks. In previous plans released by the industry, it proposed to invest in regional centres of excellence and to reduce the number of tracks across the State. Ultimately, that will be a matter for the industry, not the Government.

**The Hon. Robert Brown:** Point of order: The Hon. Robert Borsak's question was reported in *Hansard*. At no stage during his question did he use the word "uneconomical" in relation to the tracks that he named.

**The Hon. DUNCAN GAY:** I am happy to accept that. I was reading from a note that I was given.

### *Deferred Answers*

## SAFE SCHOOLS PROGRAM

In reply to **the Hon. MARK PEARSON** (23 August 2016).

**The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water)—**  
The Minister has provided the following response:

The wellbeing of all children and young people is a priority for this Government. Wellbeing contributes significantly to the learning and life outcomes of children and young people and schools play a very important role in supporting and building the personal, social and emotional independence of every student.

The NSW Department of Education has a responsibility under the Education Act to provide a safe and supportive learning environment for all New South Wales public school students.

Bullying behaviour of any kind is not acceptable in New South Wales public schools. The department is committed to working together with parents, principals, schools, students and other agencies to prevent and respond to all forms of bullying.

The New South Wales Liberal and National Government has allocated an increased investment of \$167.2 million over the four years 2015-2018 for a comprehensive package to support the wellbeing of students in public schools across New South Wales. This package, Supported Students, Successful Students demonstrates the New South Wales Government's commitment to supporting the wellbeing of all students in New South Wales public schools, including those who are same sex attracted or gender diverse.

Supported Students, Successful Students is complemented by the Wellbeing Framework for Schools, released by the Department of Education for implementation in all public schools across New South Wales from 2015. The framework is prosocial, strengths based and assists schools in supporting all students, including same sex attracted students, to be strong, confident, achieving contributors to their community.

## AUSGRID TREE CUTTING AND REMOVAL

In reply to **Dr MEHREEN FARUQI** (23 August 2016).

**The Hon. NIALL BLAIR (Minister for Primary Industries, and Minister for Lands and Water)—**  
The Minister has provided the following response:

All network operators have a legal obligation to keep the network safe for the community and its staff. This requires trees to be kept a safe distance from live powerlines, including street trees planted directly underneath the electricity network that are not suited to this location, due to their height and rate of growth.

Live wires which are broken or damaged by vegetation can cause sustained outages and pose a threat to community safety by increasing the risk of fires or the public coming into contact with powerlines.

At Ausgrid, trees planted too close to the network are trimmed in accordance with statewide industry requirements and the Australian standard for pruning amenity trees. This requires a minimum safety clearance around the network at all times.

Vegetation is trimmed on an annual cycle to achieve these safe distances and prevent trees from growing back within the clearance zone before the next trim. Branches must also be cut to their nearest growth point or collar to prevent infection and protect the health of the tree.

The majority of trees respond favourably to this pruning. In some cases it may be preferable to remove or relocate a tree, in consultation with its owner, and replace it with a more appropriate species.

Ausgrid understands the community is concerned about the visual impact of trimming to maintain minimum safety clearances, particularly when inappropriate species have been planted near the network.

It has initiated a review of its tree trimming guidelines, including the development of a service charter, in partnership with a community stakeholder working group. The working group includes representatives from industry, community groups and more than 20 local councils from Sydney, the Central Coast and the Hunter.

The working group is part of a dedicated community engagement program for tree trimming to help Ausgrid improve outcomes for the community and meet its safety and reliability obligations without significantly increasing costs for its customers.

As part of this work, Ausgrid is also developing and delivering joint programs with councils to remove inappropriate species which have been planted underneath the network and replace or replant them in more suitable locations.

### RED LIGHT SPEED CAMERAS

In reply to **the Hon. LYNDIA VOLTZ** (23 August 2016).

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council)**—The Minister has provided the following response:

A crash on General Holmes Drive on Friday 19 August 2016 at around 8.30 a.m. involved two vehicles travelling in a northbound direction and resulted in heavy traffic.

The crash occurred near a former fixed speed camera location on General Holmes Drive, Mascot. The camera enforced southbound vehicles only, not northbound vehicles, as the vehicles involved were.

This fixed speed camera was decommissioned in 2011 because the Auditor General's review of speed cameras found that it was not having the intended road safety effects.

The fixed speed camera was removed following the completion of alternative safety works at the site.

In 2015, there were seven crashes over a 1 kilometre southbound length of General Holmes Drive where the fixed speed camera previously enforced.

Crash data indicates that none of the reported crashes involved speeding and there are no plans to reinstall this camera.

A red-light speed camera is not appropriate for the location where this two vehicle crash occurred because it is not an intersection.

### COAL SEAM GAS

In reply to **Mr JEREMY BUCKINGHAM** (23 August 2016).

**The Hon. NIAL BLAIR (Minister for Primary Industries, and Minister for Lands and Water)**—The Minister has provided the following response:

The Strategic Release Framework resets gas exploration in New South Wales on our terms, in line with the recommendations of the Independent Commission Against Corruption, the New South Wales Chief Scientist and Engineer and the commitments made in the NSW Gas Plan.

The Strategic Release Framework legislation was passed in October 2015.

The information regarding the Strategic Release Framework has been publically available on the Division of Resources and Energy website and the Department of Planning and Environment website since November 2015.

The Government has not changed from this policy framework.

### NSW POLICE FIREARMS REGISTRY

In reply to **the Hon. ROBERT BORSACK** (23 August 2016).

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council)**—The Minister has provided the following response:

The NSW Police Force has advised me that that total costs paid to the law firm briefed in the case of *Commissioner of Police v Allen* were \$41,467.45. Internal costs to the Firearms Registry totalled \$541.28.

### NRMA AND EMERGENCY SERVICES LEVY

In reply to **the Hon. ROBERT BROWN** (23 August 2016).

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council)**—The Minister has provided the following response:

The total amount of funding provided to the fire and emergency services will not be changed as a result of the emergency services levy reform. The sponsorship provided by the NRMA to the New South Wales State Emergency Service is not related to, and will not be affected by the introduction of, the Emergency Services Property Levy.

### WALLARAH 2 COALMINE

In reply to **Mr JEREMY BUCKINGHAM** (23 August 2016).

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council)**—The Minister has provided the following response:

I am advised:

This Government is committed to assessing proposals on their merits, in light of the best scientific evidence, in an open and transparent manner.

The Department of Planning and Environment is legally bound to assess applications it receives on their merits, taking into account consultation with the community.

The revised application for the Wallarah 2 Coal Project was publicly exhibited between 22 July and 5 September, and the applicant is now reviewing public and agency submissions. Once the applicant has prepared its response, the Department will complete its assessment, and refer the application to the independent Planning Assessment Commission for determination.

### **SAME-SEX MARRIAGE**

In reply to **Reverend the Hon. FRED NILE** (24 August 2016).

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council)**—The Minister has provided the following response:

The management and timing of any proposed plebiscite is a matter for the Commonwealth Government and the Federal Parliament.

### **WESTCONNEX PROPERTY ACQUISITION**

In reply to **the Hon. DANIEL MOOKHEY** (24 August 2016).

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council)**—The Minister has provided the following response:

I refer to my previous answer given in the House on 24 August 2016.

### **CROWN LAND SPORT AND RECREATION FACILITIES**

In reply to **the Hon. LYNDIA VOLTZ** (25 August 2016).

**The Hon. NIAL BLAIR (Minister for Primary Industries, and Minister for Lands and Water)**—The Minister has provided the following response:

There are four sport and recreation centres located wholly on Crown reserves.

There are three sport and recreation centres located partly on Crown reserves.

### **PUBLIC TRANSPORT NOISE MANAGEMENT**

In reply to **the Hon. ROBERT BORSACK** (25 August 2016).

**The Hon. DUNCAN GAY (Minister for Roads, Maritime and Freight, and Vice-President of the Executive Council)**—The Minister has provided the following response:

Whistles are an important component of the Sydney Trains' safety system, designed to protect customers and staff. They are particularly effective in noisy environments like train stations when a situation may be safety critical.

Sydney Trains has carried out measurements of instantaneous noise levels emitted from its standard issue whistles and have satisfied the New South Wales Work Health and Safety Regulation 2011 under the Work Health and Safety Act 2011 exposure standards of 140 dBC for both station staff and customers on the platforms.

### **WENTWORTH PARK ADMINISTRATION**

In reply to **the Hon. GREG DONNELLY** (25 August 2016).

**The Hon. NIAL BLAIR (Minister for Primary Industries, and Minister for Lands and Water)**—The Minister has provided the following response:

Mr Rodney Gilmour has been appointed as the administrator for the Wentworth Park Sporting Complex for up to two years and commenced on 27 August 2016.

### *Personal Explanation*

### **UNPARLIAMENTARY LANGUAGE**

**The Hon. WALT SECORD (17:04):** By leave: During question time I was misrepresented. *Hansard* and the videotape recording will show that I was discussing questions without notice with my colleague—

**Leave withdrawn.**

**The Hon. Walt Secord:** Point of order: Mr President, you made a ruling during question time about the use of the words "liar" and "lying". The Hon. Duncan Gay called me a liar. I ask that you ask him to withdraw that remark.

**The Hon. Nial Blair:** To the point of order: I was standing right next to the Leader of the Government and he said, "You call me a liar." He was referring to what the Hon. Walt Secord had said to him during question time. At no point did the Leader of the Government call the Hon. Walt Secord a liar.

**The PRESIDENT:** Order! That is what I heard as well. I cannot concur with the request by the Hon. Walt Secord that the Minister withdraw his remark.

*Committees***JOINT COMMITTEE ON THE OFFICE OF THE VALUER GENERAL****Report: Tenth General Meeting with the Valuer General****Debate resumed from 13 September 2016.**

**The Hon. ERNEST WONG (17:05):** I thank all members of the Joint Committee on the Office of the Valuer General for their hard work, dedication and invaluable contributions during the current review. The committee's function was to monitor and review the exercise of the Valuer General's functions with respect to land valuations under the Valuation of Land Act 1916 and the Land Tax Management Act 1956. I believe it did that to the best of its ability. I make particular mention of the chair of the committee and member for Holsworthy, Ms Melanie Gibbons, MP; the deputy chair and member for Tweed Heads, Mr Geoff Provest, MP; and fellow members the member for Rockdale, Mr Stephen Kamper, MP, and the Hon. Greg Pearce, MLC. I thank them for their participation in the inquiry. I thank the Valuer General, Simon Gilkes, and the Director of Valuation Services, Land and Property Information, Angela Shaw, for providing evidence at the tenth general meeting. I also thank the committee secretariat—committee manager Mr Bjarne Nordin, research officer Ms Jacqueline Isles and committee officer Ze Nan Ma—for their hard work, support and contributions to the inquiry.

The committee is pleased to report that accountability measures governing the land valuations process have been improved significantly. That has been achieved through the publication of policies documenting the valuation methodologies that apply to various types of land. The report makes nine recommendations, including that accountability measures be strengthened in the valuation process applied to various types of land. It recommends that further independent market research be undertaken to ascertain the experiences of landholders who have received compulsory acquisition notices, with a view to improving the current process. Continued analysis of customer feedback to monitor the needs of rural landowners is recommended to ensure that the information available to them is current and updated. The committee recommends that steps be taken to improve the quality and consistency of complex land valuations. It further recommends that the Valuer General review the website to display more prominently links to Multicultural NSW as well as to key information.

The report also makes a number of recommendations relating to transparency, fairness and consistency in land valuations and the need for increased consultation with landowners in order to improve the current process. While I commend all the recommendations to the House, I would like to see the Valuer General's office look seriously at recommendation 4, which can be found on page 32 of the report. It says:

The Committee recommends that the Valuer General undertakes further independent market research to ascertain the experiences of landholders who have received compulsory acquisition notices, with a view to improving the current process, if required. This should go further to ensure that landowners of compulsory acquired properties are adequately compensated, meaning they are able to repurchase a similar, suitable property that meets their needs and they are not financially disadvantaged in the transition process. Far too many people have raised with me the issue of financial inadequacy during the acquisition process, and it is apparent that they are not being sufficiently compensated to find a comparable property in another location. The price of acquiring a similar property in an alternative location must be factored into the process. The Valuer General's responses to the nine recommendations set out in the report will be examined as part of the committee's next general meeting. Again, I thank the Valuer General and his office for their cooperation during the inquiry, my committee colleagues and the committee staff for their support and hard work. I commend the report to the House.

**The DEPUTY PRESIDENT (The Hon. Shayne Mallard):** The question is that the House take note of the report.

**Motion agreed to.**

**COMMITTEE ON CHILDREN AND YOUNG PEOPLE****Report: Review of the 2015 Annual Report of the Advocate for Children and Young People****Debate resumed from 13 September 2016.**

**The Hon. PAUL GREEN (17:11):** I am pleased to speak about the recent work of the joint Committee on Children and Young People. The work program for this committee has most recently involved acquitting the committee's statutory role of reviewing the annual report of the Advocate for Children and Young People and providing a report to Parliament. This is that report. The 2015 annual report of the Advocate for Children and Young People was a short report as the office was only established in January of that year, with the report capturing the period from January to June 2015. However, given that the Office of the Advocate for Children and Young

People was newly established, the annual report provided the advocate with an opportunity to apprise the Parliament of news of its establishment and its early work on a three-year strategic plan.

An important aspect of the work of the advocate, Mr Andrew Johnson—in general and specifically in his preparation of the three-year strategic plan—is consultation with children and young people. As a member of this place, I well understand the importance of consulting a broad and diverse range of people when forming approaches to policy. This is particularly important for the Advocate for Children and Young People, who plays an important role in giving a voice to the children of this State who do not have a vote but who are affected by the work of the Parliament while they are children and as they become young adults. I was pleased to hear that the advocate held focus groups with children and young people across many regions, including the Central Coast, the mid North Coast, south-west Sydney, Hunter New England, the Far West, Illawarra Shoalhaven, western New South Wales and Western Sydney. An impressive 2,000 children and young people participated in the focus groups and 4,200 children and young people provided feedback and their views on the themes and direction for the three-year strategic plan.

Members will not be surprised to hear that children and young people reported concerns in relation to education, transport and the current regulation of drugs and alcohol. The advocate reported that the top three priorities identified by children and young people are education, transport and employment. The advocate takes those issues very seriously, as does as the committee overseeing the advocate. Very importantly, the advocate engages with children and young people who are at risk. The advocate conducted in-depth interviews with young people who have experience of homelessness, juvenile justice centres, and drug and alcohol treatment. I commend the advocate for this very important work and look forward to hearing about his ongoing work with children and young people at risk. The committee is concerned about children and young people at risk, and in this context is in the final stages of reporting on its work inquiring into the sexualisation of children. I look forward to reporting to the House following the tabling of that report.

It is important to protect our young children, including their minds and the influences on them that at the end of the day form the narrative of their lives. It is our job to look after children and protect them from situations and experiences that could curtail their best endeavours in life. However, today it is my pleasure to commend this report, the "Review of the 2015 Annual Report of the Advocate for Children and Young People", to the House. I note that Mr Andrew Johnson, the advocate, has a real interest in this area. He is not just doing a job; he shows a great depth of knowledge about children and young people. I note also that he has some good things in store to ensure that we do our very best to give children and young people across New South Wales a real voice and the ability to influence policy in this place. I commend the report to the House.

**The DEPUTY PRESIDENT (The Hon. Ernest Wong):** The question is that the House take note of the report.

**Motion agreed to.**

#### **STAYSAFE (JOINT STANDING COMMITTEE ON ROAD SAFETY)**

##### **Report: Driverless Vehicles and Road Safety in New South Wales**

**Debate resumed from 22 September 2016.**

**The Hon. SCOTT FARLOW (17:16):** I have recently become a member of the Joint Standing Committee on Road Safety and unfortunately did not serve during the whole inquiry. I pay tribute to the former deputy chair, Mr Scot MacDonald, MLC, whom I have replaced and thank him for his tireless work on the committee. I also pay tribute to the wonderful chair of the committee, the member for Albury, Mr Greg Aplin, who has been in that role for some years and takes a great interest in this area. The committee's report examined many issues in terms of emerging new technologies with driverless vehicles—technologies that are picking up pace, pardon the pun.

We can no longer ignore driverless vehicles. More and more cars for sale in the marketplace today—whether it is the Tesla or Volvo XC90—have certain elements of driverless technology in them, and other cars have automatic parking and the like. The technology is increasing. The committee found that the New South Wales Government is very well placed—to the surprise of many—in terms of working within this framework, and particularly in working with the National Transport Commission and other States and Territories. The committee found that it was particularly important to have a national framework. We do not want a repeat of the situation with different State rail gauges, for example. Whatever we do with autonomous vehicles, it is important that it is consistent across the country.

New South Wales is already well advanced in working with other States in this area and is at the forefront of testing and development, particularly through the Smart Innovation Centre in the Illawarra, which promotes

research and tests heavy vehicles and connected roadside infrastructure. They are leading the way down in the Illawarra. New South Wales is very much at the forefront of those initiatives and, with the leadership of the Hon. Duncan Gay, the Minister for Roads, Maritime and Freight, no doubt that will continue to be the case.

The committee looked at national frameworks across the world, including in Europe. Importantly, we also looked at information coming out of the United States, where different trials are taking place in different jurisdictions such as California, Arizona and elsewhere. We found that a piecemeal situation has been created there that New South Wales is well advised to avoid. That is why a hallmark of this inquiry is that the New South Wales Government needs to pursue a national approach.

The need for a national framework was one of the key recommendations in our report. The committee also found that autonomous vehicles have the potential to revolutionise transport. They may also improve road safety because the cars can test their surroundings and may make better decisions than humans in certain circumstances. Of course, issues come with that. People who use autonomous vehicles may lose their driving skills. It is important to think about how we will deal with that in the future as well as situations when a person might be drunk behind the wheel of an autonomous vehicle, for instance.

The committee also examined the great benefits that come with autonomous vehicles. Those benefits include better utilisation of vehicles, improved accessibility for people who cannot drive because they are disabled or they face other impediments to driving, and the potential to reduce the cost of road transportation through vehicle sharing. Uber is already conducting vehicle-sharing trials to try to better utilise vehicles on the road. One day people may not need to own a car but will be able to call up an autonomous vehicle, which will lead to better utilisation of vehicles at all times. The committee also examined the impact on public transport when regular autonomous motor cars can be used effectively as another tool in the public transport system.

During the inquiry one issue raised was what, if any, protocols need to be in place for non-autonomous and autonomous vehicles during the transition period. The committee has recommended that when we have a mixed fleet—because this will not happen overnight—there must be some indication that a vehicle is autonomous. That is one very sensible recommendation from the committee. The committee also recommended that the New South Wales Government take measures to identify the economic and social impacts of the deployment of autonomous vehicles. As I described earlier, better utilising vehicles is great but it comes with a social cost. My father is a truck driver. The introduction of autonomous vehicles will mean that the days of being a truck driver or a cab driver will probably be over. We must be cognisant of the impact that that will have on a very important workforce.

We must also be cognisant of the changes that autonomous vehicles will make to how we conduct ourselves and do business generally. This is an interesting area, and the technology is coming on very quickly. Advancements and improvements are being made all the time. In fact, it seems as though that with every new car released, greater advancements in autonomy have been made. To be frank, the automotive companies are more advanced than society is ready for at the moment. The Volvo XC90 and the Tesla vehicles are equipped with significant automatic driving features that cannot be switched on because we are not ready for them. It is obvious that this technology is coming quickly. The committee's report is key in ensuring that in New South Wales and across the country we are able to embrace this technology and use it properly. We must also ensure that the community is on board and sees the benefits of this advanced technology, including its inherent safety implications. The community should not be scared of this technology but should embrace it.

I commend Greg Aplin, as chair of the committee, and all committee members. The member for Terrigal, Adam Crouch, does a great job and has a keen interest in this area. As I mentioned, the Parliamentary Secretary for the Hunter and Central Coast, Mr Scot MacDonald, was my predecessor on the committee. I commend the member for Northern Tablelands, Adam Marshall; the member for Miranda, Eleni Petinos; and the member for Cabramatta, Nick Lalich. I also commend the Hon. Daniel Mookhey and Dr Mehreen Faruqi from this House, who were very much engaged with the inquiry. I commend the report to the House.

**The Hon. Dr PETER PHELPS (17:25):** I make a brief contribution to the take-note debate on the report entitled "Driverless Vehicles and Road Safety in NSW" and commend Staysafe (Joint Standing Committee on Road Safety) for its investigation. However, what sort of assurances do we have about driverless cars? Those of us who attempted to complete the census online with our natural deference towards the joys of technology and its ability to perform miraculous feats far beyond the work of ordinary humans with a pen and paper may have been left somewhat cold in the harsh light of lived experience. The fact is that the human brain is a remarkable device that manages to process things far beyond the capabilities of our current computing technology. The brain certainly provides us with common sense and rationality and the ability through our lived experience to make assessments of situations and respond to them.

It is for those reasons that, while they fly themselves in straight and level flight, aeroplanes do not land or take off themselves. For those tasks we rely upon the instantaneous and critical analysis that can come only from a well-trained human mind. There is no way we can teach a computer to be correct in every circumstance, just as there is no way that a human will be correct in every circumstance. But, through his or her lived experience, a human has the ability to perform a range of actions that deviate from a pre-programmed set of instructions when an unexpected incident occurs.

Furthermore, I wonder whether the Staysafe committee needs to exist at the current time. It has had some degree of longevity but one wonders whether it needs to exist any more. Indeed, the very name "Staysafe" implies a sort of cloying, nanny state-ish paternalism that may well be unnecessary in this day and age. If a person wants to stay safe they do not ever have to leave their house, get into a car or drive on the roads and freeways. Over the years the Staysafe committee has unfortunately been a bit of a cat's paw for the public health industry as it has attempted to dumb down the road rules in this State. Nevertheless, it exists and it will continue to exist in the future. It could probably be lost to the sands of time without anyone really mourning its passing. I commend the report.

**The DEPUTY PRESIDENT (The Hon. Ernest Wong):** The question is that the House take note of the report.

**Motion agreed to.**

### *Budget*

## **BUDGET ESTIMATES AND RELATED PAPERS 2016-17**

### **Debate resumed from 20 September 2016.**

**The Hon. PETER PRIMROSE (17:30):** Today I make a brief contribution about my duty electorate of Orange. Orange has been without a member of Parliament since Andrew Gee formally stepped down to contest the Federal election more than four months ago. By the time the by-election result is known, the people in the electorate of Orange will have had no direct representative to take their issues to, to listen to them and to respond to decisions made in this Parliament for nearly six months. The biggest decision that has been made for the people of Orange, who are without a local member of Parliament, has been the State budget, which was handed down in June. What do we find when we look at what was on the table for country seats generally? Orange was lucky to receive the scraps off the budget table. The local media was scathing about the Baird-Grant Government's budget. Under the headline "Orange squeezed" the local newspaper reported:

The Orange electorate has been left the poor cousin of the Central West ... Orange—the electorate without an MP present—received just crumbs.

The people of Cabonne, Orange and Blayney are still facing the threat of forced council mergers. We still do not know what that will mean for those local communities, for local representation, and for the ability to undertake services and provide important infrastructure. What we do know is that there is a great deal of uncertainty. The people of those local council areas do not want to be forcibly merged—they have made that very clear—yet the Government is proceeding down that track. Premier Baird and Deputy Premier Grant let down the people of the Orange electorate in funding for local roads, schools, TAFE, palliative care and hospitals in the budget. Who knows? Maybe the Premier will backflip and give something back to the people of the Orange electorate in next year's budget. The people in the Orange electorate can certainly send him a very clear message about what they want on 12 November 2016.

**The Hon. LYNDIA VOLTZ (17:33):** I speak in the debate on the budget estimates for 2016-17.

**The Hon. Dr Peter Phelps:** Talk about the netball.

**The Hon. LYNDIA VOLTZ:** I acknowledge the interjection of the Hon. Dr Peter Phelps. I am not sure that the netball game that the New South Wales members of Parliament played with the Kiwi members of Parliament should be included in this debate.

**The Hon. Dr Peter Phelps:** What about against the Federal members of Parliament?

**The Hon. LYNDIA VOLTZ:** I am willing to acknowledge that yet again we were beaten by our Kiwi cousins and by the Federal members of Parliament. This time we were very close and I have no doubt that next year we will do even better. I note that the New Zealand members of Parliament are always impressed by Netball Central, the standalone netball stadium at Sydney Olympic Park. I also note that some of the New Zealand members of Parliament are members of the Silver Ferns. Louisa Wall is a dual internationalist for rugby union as well, so it was probably a good thing that I was the one marking her in goals.

**The Hon. Dr Peter Phelps:** It is allegedly a non-contact sport.

**The Hon. LYNDIA VOLTZ:** Not the way we play it. They were also impressed by the idea of being able to live at Sydney Olympic Park, one of the great sporting precincts of Sydney. Indeed, at the end of the day, the right decision was made to invest in sporting infrastructure at Sydney Olympic Park rather than to build a new stadium at Moore Park. New South Wales needs to define itself against international markets. For example, Singapore, where I visited earlier this year, has only three events for the entire year. So the idea that we would be competing with Singapore is a nonsense. The Sydney Olympic Park stadium, which is rectangular in shape, has a cover and seating capacity for 75,000, which places us miles ahead of Brisbane and Melbourne for hosting major sports that play on large rectangular fields. Both those cities have round fields and Melbourne has a smaller rectangular field.

I suggest that no-one would argue against an upgrade of Parramatta Stadium. Indeed, as Sydney's second central business district, that investment makes sense. But it must be remembered that Parramatta Park is one of the oldest public parks in the world and has some of the most significant heritage buildings in Australia. Those factors should be taken into consideration in any stadium design. Frankly, I was astounded that rumours were being circulated that Parramatta pool was going to be demolished as part of the upgrade. Parramatta pool is not located on Venues NSW land; it is located on the land of the Parramatta Park Trust. For decades the late Tom Uren as a member and chair of that trust oversaw the preservation of this site of heritage and environmental significance. This is an important precinct. Old Government House and a number of historic buildings are located in the park and the Experiment Farm Cottage and the Parramatta Female Factory are located nearby.

A Critical State Significant Infrastructure Standard Secretary's Environmental Assessment Requirements [SEARs] issued by the Government showed that the stadium was to be built over the pool site. It is surprising that a stadium would be built in that way but to demolish a pool that is owned by the people and to take parklands without any consultation with the people of Parramatta is concerning. For a long time the Government denied that it was going to do that and then it finally said it was going to build on the Parramatta golf course site, which is another important part of Parramatta Park. It is located in the Mays Hills precinct and anyone who knows anything about recreational and open space understands the importance of these open parklands. It has always been a grasslands area and it has extensive views through to Old Government House and the city.

The Government not only decided to pull down the only pool in the central business district in Parramatta, it decided to do so at a time when an administrator of its own choosing had been appointed to Parramatta council—there was no local representation—and with no funding for a replacement pool. A new swimming pool complex costs around \$26 million to \$30 million. Indeed, Parramatta council had just invested in upgrading that facility, which means that no-one at Parramatta council knew that the pool was going to be demolished. During the budget estimates hearing the Minister for Sport said, "I think Parramatta is getting enough with the stadium. The council pays for the upkeep of the pool; it can pay for the upgrade of the pool".

**The Hon. Shayne Mallard:** And the Powerhouse. They are getting a lot.

**The Hon. LYNDIA VOLTZ:** Don't worry, I will get to the Powerhouse. So the people of Parramatta now have a government-appointed administrator spending their money on a new pool to replace the pool they have just paid for because the Government has decided to build over Parramatta parklands. How Parramatta Park Trust agreed to a stadium being built on its parklands is a mystery to me. I applied for the Parramatta Park Trust minutes under the Government Information (Public Access) Act [GIPAA]. It took a while for the minutes to be supplied to me. They are not very illuminating but there is nothing in the minutes about any agreement by Parramatta Park Trust to the Government taking its lands or about its lands being taken for Parramatta pool. The Government takes a carte blanche attitude where it decides, with its own appointed administrator and board, that it will build a stadium on Parramatta Park land and that it will disenfranchise the golf course land at Mays Hill in order to build a new pool.

The Mays Hill precinct comprises 20 hectares of open space and is very important heritage space in Parramatta. Not only is the Government building a new pool in that precinct, the Parramatta Park Trust and the administrator at Parramatta council have signed a memorandum of understanding to repurpose those 20 hectares of open space. I do not know what the repurpose will be, but I would like to see elected representatives making that decision rather than a Liberal Government appointee signing an agreement with a Liberal Government-appointed board about lands that are significant to the heritage of New South Wales and Australia. That is what we see under this Government; there is no consultation with the local community.

If Government members think the local community believes the member for Parramatta, Geoff Lee, has done a good job about Parramatta pool they are wrong. Not only has this happened with Parramatta pool but at Cumberland Council the Government-appointed administrator is now talking about closing down Wentworthville pool. So the local community will be losing the only pool in the central business district of Parramatta and surrounds as well as the nearest located pool. That is the state of play under this Government. While the Government talks about childhood obesity and schoolkids getting fit for sport, its administrators and Ministers



are closing our local pools. They also are taking away our most valuable space, our heritage space, in one of the oldest public parks in the world and repurposing it to build the Western Sydney Stadium.

No-one disagrees with a stadium in Western Sydney but there is absolutely no reason for the Government to take Parramatta Park Trust land. The SEARs report states that an indoor sports stadium is going to be built. Why could the Western Sydney Stadium not be built on that land? Where did the indoor sports stadium idea come from? The Government has put 20,000 square metres of commercial use in the stadium. I repeat, commercial use, not public use. When we look at the frequency and type of events to be held at the Western Sydney Stadium in the response to submissions and the preferred project report, which was released only two days ago, it is stated:

It is anticipated that the Western Sydney Stadium will accommodate music festivals, community events and other entertainment. The number of major events anticipated at Western Sydney stadium is provided at Table 3.

Table 3 states:

Events calendar: Parramatta Eels 10.

No-one is going to argue about the Eels playing at Western Sydney Stadium; of course, they will. It then states:

NRL team 2—10 and NRL team 3—10.

In my discussions with the National Rugby League teams I asked, "What are the NRL team 2 and NRL team 3 that are going to play at Parramatta stadium?" I was told that the Penrith Panthers will not play there because they have their own stadium, so we can count them out. I was told that Wests Tigers have an agreement with Sydney Olympic Park, so we can count them out. I was told that the Bulldogs also have an agreement with Sydney Olympic Park. Perhaps the Minister for Sport in the other House could inform us: Under his stadia strategy, which includes this \$340 million for Parramatta stadium, what NRL team 2 and NRL team 3 have committed to playing at Western Sydney stadium? Of the 43 to 44 events, nearly half are NRL games by teams that are not going to play there.

Parramatta is losing its pool facilities, our land is being taken away from one of the oldest parks in the world and Mays Hill is being disenfranchised. Mays Hill has been protected as grasslands for significant heritage reasons and also has significant value as open space for the local community. In what is expected to be an area of high density, we want to retain every single inch of open space. Why is the Government repurposing the land without local representatives having their say? When we look into the Government's stadia strategy, the same thing is happening in the city. Where is the indoor sports stadium to be located in the central business district and who is going to use it? We know that the Kings have signed with Qudos Bank Arena at Sydney Olympic Park—that fabulous sports precinct that our New Zealand cousins love so much—and that the two netball teams will be playing at Sydney Olympic Park.

**The Hon. Paul Green:** Go the Diamonds.

**The Hon. LYNDIA VOLTZ:** Go the Diamonds, go the Swifts and go the Giants netball. Might I just say that it was a very clever move by the AFL to get in on the netball. I think rugby league has missed a real opportunity there.

**The Hon. Paul Green:** Go the Swans.

**The Hon. LYNDIA VOLTZ:** The Swans do not have a women's team.

**The Hon. Paul Green:** Not yet.

**The Hon. LYNDIA VOLTZ:** Not yet; we are still working on them. At the moment the FAST4 tennis and the Sydney International tennis are playing at Sydney Olympic Park. As we know, the Sydney International needs 10 to 12 courts. Tell me where an indoor sports facility—a stadium for 15,000 people and 12 courts—can be built in the central business district. The Government is currently doing a feasibility study, at a cost of \$150 million, but so far the only event it has is the tennis FAST4. There is no basketball and no capacity for the Sydney International. It would be interesting to see how the Government will come up with events. Why would the Government not invest in Sydney Olympic Park? Where is the business case for the investment?

All we got from the Government was a six-page Brogden report banging on about building a 55,000-seat stadium at Moore Park. That recommendation was quickly turned over because anyone who knew anything about the events market would understand that that was never going to happen. Then we had the investment going to where it should have gone from the start, that is, Sydney Olympic Park. Now we have investment in Parramatta stadium, which people do not argue with but where is the business case about the events to be held there. All we get from the Minister is that two other NRL teams are going to play there. Which two other NRL teams? Then there is \$150 million supposedly going to an indoor sports stadium in the city.

The only hope of an event is the one at Sydney Olympic Park which requires 12 courts, but there is no indication of where the courts would be located and no consultation with the community. From where else can the Government take open space in the central business district [CBD]? From Moore Park, as it originally attempted to do with the stadium, or Wentworth Park? I cannot think of any other sites in the CBD, but I am happy for the Government to give me some indication. Has there been consultation with the community about the location of the indoor sports stadium?

**The Hon. Paul Green:** Up at Barangaroo.

**The Hon. LYNDIA VOLTZ:** I acknowledge the interjection of the Hon. Paul Green. Somehow I do not think Barangaroo is on the list. Where are those 12 courts going to go? Will the Government accept that it cannot do that in the CBD and take the other option, that is, invest in covering the tennis centre at Sydney Olympic Park and upgrading the associated facilities? The stadium strategy is a mess; it is all over the shop. The Government has said it will pay for Sydney Olympic Park but I would like to see the costings. I would also like to see how much it has cost the Government to buy out the lease on Sydney Olympic Park. The figure I have been given is \$220 million: \$120 million to buy out the lease and \$100 million to pick up the debt that was being carried by Telstra Stadium. Perhaps members on the other side can tell me whether there were better areas where the money could have been spent because the same management is running the stadium at Sydney Olympic Park.

The Government is investing in it in order to bring events to Sydney but there is nothing to say that the Government needed to buy out the lease. We would still get the events and the economic value. The investment in the stadium provides greater capacity to compete against other States, so that is a sensible decision. But to then go and spend another \$220 million on top of that does not make sense. The other \$220 million could have been invested in the Sydney Football Stadium or the Sydney Cricket Ground. The opportunity costs are not clear because the figures that sit behind the Government's strategy are not available. The other area I raise is one which sat in the Sports portfolio until last Friday, that is, Penrith Lakes. Penrith Lakes is a bit like Sydney Olympic Park where there is a mix of beautiful recreational open spaces and parklands.

**The Hon. Shayne Mallard:** The old quarry.

**The Hon. LYNDIA VOLTZ:** The old quarry. The Penrith Lakes system runs through it and as the quarries come into disuse that land is being returned to public use. The Government has earmarked 2,000 hectares of land for urban development. We do not know what the urban development will be, but last Friday the Government transferred it from the Office of Sport into NSW Planning. Why the Government is handing over significant sport and recreational facilities and parklands, which are similar to that of Sydney Olympic Park, to NSW Planning is an unanswered question. The Government at least should explain the logic behind that decision. We will never get those facilities back.

We must protect our open space and recreational facilities. The more medium- and high-density development in the city, the more we must look at health outcomes. People in medium- and high-density developments go outside their front door, unlike people who live in houses. Every bit of open and recreational space we have must be maintained in order to get the balance right between medium- and high-density living and the need for recreational space and other facilities so that people are not commuting two hours or more to jobs in the city. It is a matter of fundamental importance.

Hopefully we can get some answers from the Government. There does not appear to be much transparency. Lately I have been knocked back on every Government Information (Public Access) Act request I have made. I have also found that the cost of obtaining an answer to a request has risen. Recently I was charged \$400 for a photocopy of one report and \$800 for photocopies of six or seven grant applications. That is a large amount of money to pay for obtaining information. More often than not, it takes four or five months to get a response from many government departments. That is an extraordinary situation for a government that came to power on the promise that it would be open and transparent. An answer to a GIPAA request takes months to obtain and the costs are excessive.

**The Hon. Dr Peter Phelps:** If I were Minister, you would have all the information for free.

**The Hon. LYNDIA VOLTZ:** I acknowledge the comment by the Hon. Dr Peter Phelps. I will pass it on to the Hon. Mike Baird that the Hon. Dr Peter Phelps has offered to do that if the Premier would make him a Minister.

**The Hon. Dr Peter Phelps:** You would be waiting a long time, unfortunately.

**The Hon. LYNDIA VOLTZ:** You never know; there is always hope. They are the unanswered questions from the budget estimates hearing. I am not sure we will ever get the answers; as always, the devil is in the detail.

**Debate adjourned.**

*Bills***CRIMES (ADMINISTRATION OF SENTENCES) AMENDMENT BILL 2016****Second Reading****Debate resumed from an earlier hour.**

**The Hon. PAUL GREEN (17:49):** Following on from my earlier comments, fourthly, this bill will add a new part to section 257 in which the Commissioner of Corrective Services, or a permitted Corrective Services official, can approve the disclosure of information without fear of criminal liability. That gives broader scope for the provision of information from New South Wales Corrective Services approved by the Commissioner, providing it remains within the bounds of current privacy laws. This allows Corrective Services to respond to the request to facilitate the functions of other agencies, including the NSW Police Force, the Commonwealth Government and other government departments. Inappropriate disclosures of information will remain prohibited and any person who has obtained a disclosure of prohibited information will have committed an offence. This bill also increases the penalties for such a disclosure. The maximum penalty will now be 100 penalty units or two years imprisonment.

Fifthly, the bill will allow the Commissioner of Corrective Services to enter into information-sharing arrangements. Currently, only the Commissioner of Corrective Services and the Commissioner of Fines Administration are able to exchange information. This bill will replace the existing provisions with similar but more general provisions that facilitate two-way information sharing. It is important to note that agencies with which the commissioner can enter into information-sharing arrangements and the information that can be exchanged will be prescribed by regulation. The commissioner will also be able to disclose information on a case-by-case basis where the disclosure is reasonably necessary for certain specific purposes, providing the commissioner with the ability to respond to ad hoc requests from public sector agencies, other governments, the media and private individuals. To ensure that such disclosures are appropriate and transparent, these will also be prescribed by regulation after consultation with the relevant stakeholders.

Sixthly, the bill will provide for minor consequential ancillary matters, including a change to the title from "General Manager" of a correctional centre to "Governor" and updating terminology to reflect the name change from "Probation and Parole Services" to "Community Corrections". Finally, the bill allows for the enactment of provisions of a savings or transitional nature consequent on the enactment of the propose ct. To conclude, these amendments will allow magistrates to get on with the job of hearing and processing crimes committed by inmates at correctional facilities. It acknowledges and consolidates the powers of correctional officers to stop, search and detain visitors or individuals in and within the immediate surrounds of a place of detention. It does not increase the powers of correctional officers; it only streamlines the law. The Christian Democratic Party welcomes the ability of the Commissioner of Corrective Services NSW to enter into increased information sharing arrangements that will be prescribed by regulation.

It would be remiss of me not to offer a word of caution. The men and women within these correctional facilities are also there for rehabilitation. I acknowledge that this may not be achievable in all cases. However, in cases where it is highly probable it is important that the prisoner is given an opportunity to rebuild his or her life with a clean slate. I question the provision of inmate information to public sector companies, the media and private individuals where the provision of the information may inhibit the ability of a rehabilitated person to move forward with their lives long after their release.

The Government has advised that changes to section 257 will not affect privacy rights and privacy laws will still apply to limit disclosures, including those the commissioner permits under section 257. The primary goal of Corrective Services is community safety and privacy rights must be weighed against this goal. For some, what was a poor decision should not haunt the opportunity for a bright new future. I call on the Government to consider carefully the regulation concerning provision of information. While it may be convenient in the short term it could carry a lasting impact for those who have paid their debt to society for the illegal acts committed. The Christian Democratic Party supports the bill. I commend the bill to the House.

**Mr SCOT MacDONALD (18:01):** On behalf of the Hon. Duncan Gay: In reply: I thank the Hon. Lynda Voltz, Mr David Shoebridge and the Hon. Paul Green for their contributions to this debate. I will answer the queries raised by Mr David Shoebridge. First, privacy law will still apply to render particular disclosures unlawful even if making the disclosure is not an offence under section 257. Secondly, Corrective Services has a set process for the formulation and approval of official policies. All proposed policies are submitted to the Corrective Services Policy Subcommittee for endorsement. If endorsed by the subcommittee the proposed policy is submitted to the commissioner for approval. Once approved by the commissioner the policy is published on the Public Service intranet and available to all staff.

Most policies are published on the Department of Justice website in accordance with the Government Information (Public Access) Act 2009. The policy guidelines for development documentation, approval of policy documents, is available on the website. The Government Information (Public Access) Act sets out the process by which the commissioner makes official policies. Staff will be able to see on the intranet what official policies have been made by the commissioner and are in force. The intention of the amendment is that any staff acting in accordance with these policies will not be committing an offence under section 257. I commend the bill to the House.

**The DEPUTY PRESIDENT (The Hon. Shayne Mallard):** The question is that this bill be now read a second time.

**Motion agreed to.**

### **Third Reading**

**Mr SCOT MacDONALD:** On behalf of the Hon. Duncan Gay: I move:

That this bill be read a third time.

**Motion agreed to.**

## **INDUSTRIAL RELATIONS AMENDMENT (INDUSTRIAL COURT) BILL 2016**

### **Second Reading**

**Debate resumed from 21 September 2016.**

**The Hon. ADAM SEARLE (18:04):** I lead for the Labor Opposition on the Industrial Relations Amendment (Industrial Court) Bill 2016. The Labor Opposition will be opposing the bill. The Opposition does not think it is a reasonable or necessary measure.

**The Hon. Dr Peter Phelps:** Knock me over.

**The Hon. ADAM SEARLE:** I know the member is shocked by this revelation. The bill before the House seeks to abolish the Industrial Court, also referred to in the bill as the Industrial Relations Commission in Court Session. Ancillary to the abolition of the court it will transfer the remaining judicial member, the current President of the Industrial Relations Commission and of the court, Justice Michael Walton, to the Supreme Court. That is a necessary outcome because the Industrial Court is a superior court of record and holding a judicial office of that kind the Government is required by the Constitution to appoint Justice Walton to an equivalent court. The Industrial Court is equivalent in status to the Supreme Court of New South Wales.

The bill makes a number of ancillary changes to the operation of the Industrial Relations Commission [IRC] as a tribunal. The lesser position of chief commissioner is modelled on the West Australian approach and will replace the office of president. The holder of that office will be required to be an Australian legal practitioner but they will not be a judicial officer. The office of Vice President of the Industrial Relations Commission has been vacant since Justice Walton became President of the Industrial Relations Commission on 3 February 2014 and will be abolished.

The functions of the Industrial Court will principally be transferred to the Supreme Court and in some limited cases to the District Court. Some minor functions will be retained by the Industrial Relations Commission. Members of the House may not appreciate that although the Industrial Court is equivalent in status to the Supreme Court it has tended to operate in a less formal and legalistic way when compared to a mainstream court. The parties that approach the Industrial Court are registered industrial organisations and individual applicants that are sometimes represented and sometimes not.

The prospect of approaching the Supreme Court is much more daunting and will act as a disincentive to many people seeking redress. A substantial part of the remaining jurisdiction of the Industrial Court is breaches of industrial instruments and recovery of outstanding wages. In various iterations over the last 100-plus years the industrial commission and court has played a significant role protecting and supporting working people in a less formal and legalistic way. These changes will end that. It will expose litigants to the higher costs of the Supreme Court. The Industrial Court has the same costs jurisdiction as the Supreme Court but it has tended not to work in the same manner.

For this reason, judges of the Industrial Court are also deputy presidents of the Industrial Relations Commission. They are able to switch between exercising judicial functions and non-judicial functions as needed, often in the same proceeding and in the same court room. For example, if a protracted matter has not been resolved before litigation commences, as the evidence is being taken by the court the attitude of the parties changes. There is nothing to stop parties from reaching an out-of-court settlement even in the middle of a trial, but sometimes

parties cannot do that. They do not have the skills; they need a third party, an independent umpire. Sometimes, because of their nature, litigants need a circuit breaker to provide them with the opportunity to reassess their position. In an Industrial Court proceeding the judge can become an arbitrator or a conciliator at will, as the parties need. There is no need to delay or waste court time. The matter can occur straightaway.

Under the model being proposed in this bill, if the parties wish to go to conciliation mid-trial they will need to ask the judge to stop. They will need to ask the judge to exercise, potentially, the functions in the bill under proposed section 109, which may not work. As I read that provision currently, it seems to provide for the Supreme Court to refer a matter to conciliation pre-litigation. It is unclear to me whether that provision would operate to enable a non-litigious outcome once litigation has been commenced. The current arrangement, which I am sure was not intended, will lock parties into high-cost litigation once the court processes have been invoked, unless they can resolve matters themselves.

On one view this bill is a small step, but on another it is a significant change. It is the latest attack in this Government's war on working people and the institutions created to support and protect them. Since this Government took office a range of measures have attacked the independent umpire, the Industrial Relations Commission, narrowing its jurisdiction or limiting the space within which the tribunal can operate independently of government. The Government often invokes the reduction in the Industrial Relations Commission's workload as a reason for the diminution of the tribunal.

One can see from successive annual reports that, although the jurisdiction has contracted—first, as a result of the Howard Government's WorkChoices laws and then because of the way in which the Fair Work Act was constructed and the migration of private sector employment matters to the Federal system—and there has been a contraction in the State commission, nevertheless there has been a sustained high level of work. The retirement of commissioners, who were until recent years not replaced, led the tribunal to drown in work. I commend the efforts of the current president, Michael Walton, and the commissioners who have worked with him to do their level best to stay on top of the work of the tribunal.

Despite the change in the jurisdiction, a significant workload has still been imposed on the commission. That needs to be recognised; it is not addressed in this bill. The workload of the court has also diminished, not as a result of WorkChoices or the Fair Work Act but largely because of the actions taken by this Parliament to strip the Industrial Court of its jurisdiction to deal with work safety matters. In 2011 this Parliament, at the urging of the Government, made significant changes to work health and safety legislation that created three categories of offence. The most serious offences, category one, were to have jurisdiction conferred in the Supreme Court. The next most serious, category two, were to be given not to the Industrial Court, the traditional repository of this jurisdiction, but to the District Court, without specialist expertise or training in this field. When the workload was given to the District Court there was no additional training provided and no judicial appointments to enable it to stay on top of the work. That has added to the stress and workload of that important court in our legal system. Category three offences, the least serious, were left in the Industrial Court.

That created the anomaly of a superior court of record equivalent to the Supreme Court being left with a residual jurisdiction in this field. When one looks at the annual reports one can see that in 2011, of the 219 matters filed in the Industrial Court, 144 were work safety prosecutions. Of the 244 matters completed by that court, 160 were work health and safety matters. In 2012, after the work safety laws were passed, only six new prosecutions were commenced in the Industrial Court, and 107 of the 180 matters disposed of by the Industrial Court were work safety prosecutions. In 2013 there were no work safety prosecutions filed in the Industrial Court and 70 of the 148 court matters were work safety matters. In the most recent annual report, 2014, one can see that no new prosecutions were filed in the Industrial Court and 16 of the 91 matters disposed of that year by the court were work safety matters. One can see that the diminishing workload of the court is attributable almost directly to the stripping of that court of its jurisdiction.

To place all this in some context, for more than 100 years there has been a commission, a tribunal and a court that has served working people, industrial parties and the wider community well on a more or less bipartisan basis until fairly recent times. In the 1990s we saw the creeping in of the ideological war in industrial relations. There was the Nile and Green paper, which proposed what were then fairly radical changes to the New South Wales industrial relations system. John Fahey, the then Minister, implemented in piecemeal fashion significant changes to the industrial relations system. One of the most fundamental changes was the extraction from the Industrial Relations Commission [IRC] of judicial functions. The Liberal-Nationals Government of 1988 to 1995 created a standalone Industrial Court as a superior court of record.

**The Hon. Trevor Khan:** That was a long time ago.

**The Hon. ADAM SEARLE:** It was, and it was done at the urging of the Liberal-Nationals Coalition. The Government kept a separate industrial tribunal, largely populated by the same people. The judges of the court

were the judicial members of the tribunal. The Labor Government of 1995, in which I worked as a staffer for the Hon. Jeff Shaw, who was the Attorney General and the Minister responsible for the 1996 legislation—

**The Hon. Trevor Khan:** It was a long time ago.

**The Hon. ADAM SEARLE:** It was a long time ago. I disclose the interest. The fact is that the two functions were combined, so there was an integrated court and commission where a flexible approach was able to meet the needs of participants in a way that was not as formal or legalistic as traditional black letter law litigation. That is a model that we think has worked well and should continue to work well, notwithstanding the diminution or contraction. It must be recognised that the justification for the latest change is, "There is only one judge. There is not really enough work for a separate court."

The fact is that the people who work in the commission and the registry will continue to do so, even after the judicial functions have been taken to the Supreme Court. The one judge will be a judge of the Supreme Court. In fact, this move will cost the taxpayers money because the Government will be appointing a new chief commissioner, presumably remunerated at a level higher than a traditional commissioner. That will be a net additional cost. It is not a big one, but there is no cost saving. There is no significant rationale for the move, other than a continued diminution of the specialist jurisdiction dedicated to working life and working people.

For those of us on this side of the House, that is contrary to the view we have historically taken, including since being in Opposition over the past five years. We have consistently opposed the many changes that have seen the role and scope of the industrial jurisdiction reduced in this State. At each opportunity, whether it is in debate on the work safety legislation or on the construction and jurisdiction of the NSW Civil and Administrative Tribunal [NCAT], we have continuously argued that there should be a single court and tribunal that deals with the world of work. We know that there is more than enough work under State laws, given to different courts and tribunals, that would keep a fully functioning court and commission completely engaged.

It is simply where governments and parliaments choose to allocate that work. We say—for reasons of specialism, expertise and providing a proper level of public service to the wider community—that all of this should be reposed in an enhanced Industrial Relations Commission and court. The Labor Party has argued for that not only in this place in adjournment speeches and debates on various bills and in other forums, but it also took a platform of this nature to the election in 2015.

For Labor the world of work and its impact on individuals, the family and the wider community is essential to the way we see the world and it informs our actions in the Parliament. We believe we live in a society, not merely an economy. There are workplaces, but there is not a labour market. People are not merely units of production, but individuals with families and lives outside the workplace. That is why we continue to support fair shop trading laws, including existing protections for Good Friday, Easter Sunday, Christmas Day, Boxing Day and Anzac Day morning. That is why we resisted the changes made by this Parliament last year.

The evidence shows that removing these protections will not increase employment or economic wellbeing but will only reduce the quality of life for affected workers and small business operators who are forced or pressured to work on those days. We not only want a healthy economy to grow jobs but we also want those jobs to be of good quality and to provide meaningful work for those who need it. This is a key measure, we think, of social as well as economic inclusion in society. An integral part of this is ensuring that all people are treated with dignity at work. Properly functioning institutions such as the Industrial Relations Commission and the Industrial Court support this and we think they are vital to the public good.

While the new industrial relations landscape has seen the private sector workforce move to the Federal system there remains important protections that the New South Wales system can and should provide for the whole community, particularly where Federal law is inadequate or absent. Labor's industrial relations laws that we have argued for would focus on ensuring that all working people in New South Wales should enjoy rights to a safe workplace free of bullying and all forms of discrimination. We think that there should be a single, properly resourced independent umpire to properly deal with all matters involving the world of work that currently arise under State law. This is not a new proposition; it is something we have consistently argued for. We think the Industrial Relations Commission and court should be given the widest possible scope for protecting working conditions that are possible under State law.

The New South Wales Industrial Relations Commission has been at the centre of ongoing innovation for not only the public sector but also the private sector workforce. For the most part, what people now enjoy—for example, the national employment standards in respect of rights to redundancy—started as test cases in the New South Wales Industrial Relations Commission in the early 1980s. During the recession people were thrown out of work with no financial cushion to soften the impact. It was the New South Wales Industrial Relations Commission that embraced the notion of redundancy pay, initially in awards but then more generally. That idea migrated to

the Federal system by the mid 1980s. The approach being taken by the current government would seek to prevent that kind of innovation occurring in the future.

Under the Coalition Government the enforcement and prosecution of work safety laws has been significantly scaled back. Trade unions have largely lost the ability to enforce those laws, except in extreme circumstances. We think the rates of accidents, including fatalities, remain unacceptably high. The 2012 workers compensation changes reduced benefits to injured workers to the lowest level in living memory. Of course, amongst the harshest changes were the time limits of medical treatment, the removal of coverage when travelling to and from work, and the retrospective removal of rights from workers injured many years before the changes were implemented. While there have been some more recent winding back of those laws, it is very little.

We think that there need to be mechanisms so that workers and unions can more effectively enforce work safety laws outside criminal prosecutions, including obligations on employers regarding rehabilitation and return to work, ensuring that any disputes about treatment or compensation are resolved by an independent tribunal, and returning all work safety prosecutions to the Industrial Court but, if it is not to be, to a superior court of record. That is the context in which we approach this bill. We think it is just a continued attack on the jurisdiction that has protected working people.

If the court is to be abolished it is sensible to transfer all of those functions to the next most like court, the Supreme Court. I can see at one level the superficial appeal of that, but again when we look at the nature of the litigants—individual workers, often not well-remunerated; industrial organisations, both unions and employer associations—we see that the sort of strict black-letter approach of the Supreme Court is probably not the most appropriate forum. For example, breaches of industrial instruments and the recovery of wages we think should be left in the Industrial Relations Commission, although dealt with by tribunal members who are legally qualified. It does not need to be in a court.

Similarly laws to do with the regulation, registration and de-registration of industrial organisations should be left to the tribunal. For example, at the moment the commission can make dispute orders and the settling of industrial disputes. When those dispute orders are breached traditionally those matters have been heard in the Industrial Court because they are serious matters. Again the judges are not just black-letter-law judges, they are judges drawn from a background and a specialty where they understand the industrial landscape and the nature of workplaces. That background and experience can inform their decision-making. By simply passing on that function or enforcing dispute orders to the Supreme Court, there is no guarantee that any of the judges who do have an industrial relations or workplace background, of whom there are a number on the Supreme Court, would necessarily be the ones who would deal with these matters. So again there is a risk of judges taking a different legal perspective and tradition to these matters—and I do not mean that unkindly—which could lead to harsh outcomes that are not warranted in the circumstances.

We think there are functions of a court that should be left in the Industrial Relations Commission. Similarly there are approaches taken in the industrial jurisdiction which we think should follow any work that goes to the Supreme Court. This is embraced in part by the bill but not fully. For example, section 166 of the Industrial Relations Act provides that non-lawyers can represent parties to proceedings and, in the case of unions, there are officers, and parties can appoint agents. The bill before the House enables the Supreme Court to allow that to happen, but there is no right for it to happen. We think that process should follow the work, as it were.

Equally, while the Industrial Court as a superior court of record has the same costs' powers as the Supreme Court those functions are very differently applied, particularly when the parties are industrial parties. We think that the current costs approach that constrains the Industrial Relations Commission and is embodied in section 181 should again follow any work transferred from the Industrial Court to the Supreme Court. The Opposition foreshadows a series of amendments that seek to achieve that outcome. As we say, we think the abolishment of the office of President is an effort to further downgrade the seriousness and importance of the tribunal. We seek to resist that.

I refer to the workload of the tribunal and the resources that it has been given. It is simply the case when we read the annual reports that despite the contraction of the jurisdiction, retirements and non-replacement of members has led to the tribunal struggling for a number of years to stay on top of its work, which it has done in a very cost effective way and in a way that has met the needs of parties. However, it is becoming increasingly harder to do so. The Government, despite repeated promises, was very slow to make new appointments. I recognise in the past couple of years the appointment of Peter Newall and John Murphy as commissioners, both former barristers. I acknowledge that Commissioner Murphy was my former tutor when I came to the bar. They are both well respected members of the industrial community and they are doing a very good job. Again, those two appointments have not proven to be sufficient to keep on the top of the work of the commission.

The Government, in its targeted consultation about this bill, has said that there are currently five members of the tribunal and that it intended to keep five members of the tribunal in place. That is fine but, apart from needing to appoint a Chief Commissioner, at least one commissioner of the tribunal will be retiring in the near future ask the Government to give a commitment that it will honour what it said in the brief to stakeholders that it will keep at least five full-time equivalent members of the commission in place. The Government should go beyond the commitment it gave orally or in writing. There is no diminution of the workload of the commission in sight, so there should be a legislative guarantee that there will be at least five full-time equivalent tribunal members. However, that will probably not be enough to ensure the commission keeps on top of its work, as the Government has acknowledged in relation to appeals involving proceedings under the Police Act.

Clause 2.30 of schedule 2 to the bill deals with proceedings and appeals under the Police Act. With only five tribunal members there is a problem in constituting a full bench of three members to hear appeals from any one member. It is an obvious mathematical question: If all five have appeals against their decisions where will the full bench come from? This problem has become acute in police matters in recent years. In its exposure draft the Government provided an inelegant proposal whereby the Chief Commissioner could, as it were, appoint temporary commissioners to make up a full bench. The problems with that are manifest. The head of the jurisdiction would be handpicking his or her co-workers. Although I am sure they would take their oath of office very seriously, there would be a perceived lack of independence in those decisions.

The Government has replaced that with an equally inelegant mechanism in clause 2.30, whereby if the Chief Commissioner feels there is a need to do so, and the Chief Magistrate agrees, a magistrate can be co opted to act as a member of the Industrial Relations Commission. That is inelegant and not very good, but at least it provides the resources for the tribunal in section 181D matters in which a police officer is removed from the police force or disciplinary matters under section 173 and the like. What about non-police matters such as unfair dismissals, industrial disputes and award matters in the rare cases where they are appealed to a full bench? There will be a significant and acute problem with resourcing full benches under the model the Government is proposing. That is a shame and the Government needs to address it.

As I acknowledged at the outset, the Labor Opposition has consistently taken the view that we should be rebuilding and enlarging the jurisdiction of the IRC and the Industrial Court. That is the sound and appropriate course of action for public policy reasons. For those reasons, we will oppose the second reading of this bill. However, should the legislation survive the second reading vote and we move to the Committee stage, we have addressed our concerns and the shortcomings in the legislation in 50 amendments that have been lodged with the Clerks. Although that is a reasonably high number of amendments, they essentially fall into two categories.

One category of amendments relates to the jurisdiction and membership of the Industrial Relations Commission, the chief amendments of which are Nos 6 and 7. A series of supplementing and ancillary amendments largely reflects those. Another series of amendments deals with industrial proceedings in the Supreme Court and the processes that should govern them, which I have outlined in my contribution. They also touch on work health and safety matters. If the Industrial Court is to be abolished rather than—as we would prefer—rebuilt, all work safety matters should be in the superior court. Our reason for that view is not punitive, it is important. Judgements of District Court judges dealing with work safety matters show a clear trend towards significantly lower penalties in matters involving workplace injuries and fatalities. The Industrial Court set high and stringent standards for work safety in this State and there was a high level of prosecutions in years gone by.

This Government has run down the number of prosecutions. Even those that have been brought in the District Court have led to significantly lower penalties. As I said, we do not take this view for punitive reasons: We think it is bad public policy. It suggests, perhaps unwittingly, to unscrupulous employers who are feeling financial pressure to get quicker, cheaper outcomes that they can cut corners and get away it. First, they are relatively unlikely to be prosecuted because this Government has wound back significantly the number of occupational health and safety prosecutions brought by the prosecutor, and unions are no longer really able to do it. Secondly, because a court is likely to impose much lower penalties, when prosecutions are brought the consequences of breaking the law are diminished significantly.

When this Parliament debated the work health and safety laws in 2011, 2012 and even in 2013 to patch up the legislation due to poor drafting in 2011, I was not the only person in this place to say that the risks of transferring these functions to the District Court without giving it adequate resources and ensuring it was properly trained in this jurisdiction would be lower penalties, lower outcomes and lower work health and safety standards. We said that those laws would lead to less safe workplaces, which would mean more injuries and more fatalities. Sadly, we think that has proven to be the case. Our series of amendments say if the Government is not going to have an Industrial Court that deals with these prosecutions then all these matters, excepting the least serious ones, should be dealt with in the Supreme Court. We have left open the possibility that less serious matters can be brought in the Local Court. That facility will still be available for a prosecutor.



In conclusion, I acknowledge the significant contribution made to the Industrial Relations Commission, the Industrial Court, industrial law and practice, and indeed social outcomes in this State by Justice Michael Walton. Justice Walton was a leading industrial barrister before being appointed Vice-President of the Industrial Relations Commission on 18 December 1998. He led many full benches setting important industrial standards and hearing test cases. As a judge, he made many leading and important decisions, including as the judge at first instance in the Kirk matter. That went to the High Court and effected a significant change to law and practice in the industrial jurisdiction—wrongly, the Labor Opposition thinks.

On 3 February 2014 Justice Walton was appointed President of the Industrial Court and the Industrial Relations Commission. With diminishing resources, he has ensured that the court and the commission have acquitted themselves properly and effectively in their roles and jurisdictions. As the head of jurisdiction of a superior court of record, Justice Walton has also been a member of the Judicial Commission of New South Wales and acted with some distinction in the Australasian Institute of Judicial Administration. Our opposition to this legislation is in no way a reflection on Justice Walton or his record. Indeed, if the court is to be abolished it is appropriate that he be transferred to the Supreme Court.

We take the view that the court ought not be abolished. It ought to be rebuilt using the laws and processes that are already reposed in different courts and tribunals in this State. All workplace matters should be focused in a single court and tribunal. We ask members not to participate in the continued dismantling of this specialist jurisdiction but to call a halt to the process. The Government can then rethink its approach, hear the needs of working people and perhaps take the view that there are plenty of processes under State laws that should be made more accessible to those who need them in a single tribunal focused on the workplace.

**Mr DAVID SHOEBRIDGE (18:39):** On behalf of The Greens I state at the outset that we oppose the Industrial Relations Amendment (Industrial Court) Bill 2016. The objects of the bill are to amend the Industrial Relations Act 1996 to abolish the Industrial Court, which is often referred to in the legislation as the Industrial Relations Commission in Court Session; to appoint the current President of the Industrial Relations Commission, the only remaining judicial member of that court, as a judge of the Supreme Court; to transfer certain functions of the Industrial Court primarily to the Supreme Court but in relation to work, health and safety matters to the District Court and, in a small minority of cases, to the Industrial Relations Commission; and to reconstitute the Industrial Relations Commission so that instead of having a president it has a chief commissioner and commissioners. The bill also contains a large number of consequential amendments to other Acts, many of which contain appeals to the Industrial Court for review under the existing law.

The Industrial Relations Commission has an extremely proud history. Indeed, the process of having an Industrial Court commenced in 1901 with the Court of Arbitration. At the turn of the last century Australia, and to some extent New Zealand, was seen as an extraordinary experiment in social cohesion and industrial regulation. The concept of conciliation and arbitration of industrial disputes, not allowing it to be a dog-eat-dog process of union muscle against employer strength but trying to civilise the industrial relations landscape was, if you like, a South Pacific invention. It was a key part of our industrial and social history that we had courts and tribunals at a State and a Federal level that sought to resolve industrial disputes in what was considered—and for many still is considered—a fair, even-handed and positive way. That experimentation came after decades of industrial strife, particularly in the 1890s, which caused a large amount of social disunion in Australia.

The New South Wales Government at the time responded by creating the Court of Arbitration under the Industrial Arbitration Act 1901. The Court of Arbitration was, as is the Industrial Court today, a court of record. The president was a Supreme Court judge and there were two additional members of the court—one representing employers and the other representing employees. It was required that the court be legislated because a voluntary process of industrial arbitration had been available under previous legislative regime. But that voluntary process was effectively not used because when one side or the other, the unions or the employers, thought they had the relevant industrial muscle they would refuse to agree to voluntary arbitration—given their relative powers, we can understand why that happened.

So the failure of voluntary arbitration led to the establishment of the Court of Arbitration in 1901 and that was a matter of quite substantial political debate. Should there be an Industrial Court? Should there be an arbitral body? The industrial court was established by amending legislation in 1908 and under the Industrial Disputes Act 1908 we had the first formally named Industrial Court in New South Wales. Again, it was constituted by a Supreme Court or District Court judge, who had a seven-year appointment, and it had jurisdiction to arbitrate even where a formal dispute had not been brought before the tribunal. It also established a system of industrial boards that continued through the twentieth century.

I could enumerate the 50 different processes that have happened since then, but I have done that before in a fairly lengthy contribution to this House: In 1912, the Court of Industrial Arbitration; in 1918, the Board of Trade; in 1926, the Industrial Commission, constituted by a commissioner and deputy commissioner; and the 1932

amendments created the offices of deputy industrial commissioner and the chairmen of conciliation committees. There were a number of additional amendments throughout the 1930s but it was the Industrial Arbitration Act 1940 that ultimately became the bedrock of the commission structure throughout the balance of the twentieth century.

The current structure was established in 1996. It drew a distinction between what is described in shorthand as the Industrial Court, but it is actually the Industrial Relations Commission in Court Session, and the Industrial Relations Commission proper. The idea was that one would determine judicial rights—that is, rights that currently exist in law—and one would create rights through the arbitral process as well as deal with many of the regulation matters for the registration of unions, employer groups and industrial disputes. We then had Work Choices, which in large part has been rebadged as the Fair Work Act. That greatly reduced the jurisdiction of the Industrial Court, in particular the unfair contracts jurisdiction, and a raft of other statutory jurisdictions of the court were gutted by Work Choices and the legislative prohibitions on the State having separate employment-related jurisdiction have been repeated in the Fair Work Act.

In large part I adopt the submissions of the Leader of the Opposition, but if the Labor Party is serious about reinvigorating the jurisdiction of the Industrial Court then it should agree to amend the Fair Work Act to remove the odious provisions that prohibit State jurisdictions from granting adequate industrial remedies under State law. Indeed, that should be a matter of national debate because the Fair Work Act effectively sets low national legal minimums for industrial matters and then works to prohibit the States from effectively legislating for improved standards and remedies at a State level. It is because of that proud history and the unalloyed good of having a separate industrial jurisdiction that The Greens oppose this bill. We accept the Government's argument that there has been a radical reduction to only a tiny fraction of the jurisdiction it had in 2005, but a large part of that came about because of the Work Choices and now the Fair Work Act amendments at the Federal level prohibiting and excluding a series of State remedies under the Industrial Relations Act.

Another reason the workload in the commission has reduced greatly is as a result of the cap that was put on public sector wages, which effectively has greatly reduced the real jurisdiction of the Industrial Relations Commission and greatly reduced the number of applications that are brought. So there is undoubtedly a reduction in the number of matters that are before the jurisdiction. But the answer to that problem is not to abolish the jurisdiction. The answer to that problem is to seek to remove the restrictions that apply at a Federal level and to direct more work to a properly constituted State tribunal—and there is a large number of employment-related matters that could be directed there.

It may be that the answer does not lie entirely in giving additional jurisdiction to the existing Industrial Court. I believe we all have a collective obligation to look at the existing legal framework for employment disputes and employment-related disputes—whether it is workers compensation disputes, employment discrimination disputes, award disputes, disputes about police superannuation, section 181D applications under the Police Act or discrimination in employment. There is clearly a need in this State for a comprehensive State employment tribunal, and I believe the appropriate response to the reduction in filings before the Industrial Court is not simply to abolish the court and transfer all that jurisdiction to the Supreme Court—which, of course, would be cost-prohibitive and would deter many employees and employers from accessing the jurisdiction, and the Supreme Court would not have the kind of collective industrial or employment wisdom the current Industrial Court has—but for us to consider a newly constituted and far more comprehensive employment tribunal.

There are a number of options for how we could do this. One would be to create a new division in the NSW Civil and Administrative Tribunal, to head that tribunal with a judicial member and then to provide the relevant employment jurisdiction to that tribunal. We should be exploring these matters so that we retain a tribunal that has critical mass, critical industrial expertise and critical employment expertise, and is also a relatively low-cost tribunal that does not have the prohibitive cost regimes that apply in the Supreme Court. I note that the Opposition's amendments highlight some elements of the jurisdiction that it really is not appropriate to refer to the Supreme Court. The Opposition's amendment No. 7 on sheet C2016-92D seeks to retain in the Industrial Commission a fair amount of the jurisdiction that has been proposed to be transferred to the Supreme Court, and that includes proceedings under section 139 for contravention of a dispute order.

A contravention of a dispute order may arise from an order of the commission saying that 10,000 workers are to attend work on a particular day. It may be that 10 of them reject that and say to the commission, "Sod you; we're not turning up". Do we really want to have that application determined in the Supreme Court—whether or not 10 workers turned up on a particular day? Do we really want proceedings under parts 3, 4 and 5 of chapter 5 of the Industrial Relations (General) Regulation going to the Supreme Court? Do we really want demarcation disputes and cancellation of registrations—those sorts of matters—to be dealt with in the Supreme Court? It is not a rational use of scarce resources to suggest that those kinds of disputes should be determined in the high-cost

jurisdiction of the Supreme Court, adding to delays in the Supreme Court. It would be far better to keep those kinds of disputes in a specialised industrial tribunal where they can be dealt with.

The same would apply to proceedings under part 1 of chapter 7 for breach of industrial instruments and for the recovery of money under part 2 of chapter 7. Dealing with proceedings for the recovery of money, there is an exclusion for small claims under part 2 of chapter 7. If the claim is \$5,000 it will not go to the Supreme Court, it will go to the Local Court. But if the claim is \$12,000 we could be seeing \$12,000 claims instituted in the Supreme Court or we could be seeing even \$200,000 claims instituted in the Supreme Court. Claims of that nature should not be instituted in the Supreme Court; the costs of those applications would overwhelm the actual money sought to be recovered. It seems the Government has not properly thought through that part of the bill. The same would apply for proceedings for an appeal under section 88 of the Superannuation Administration Act 1996 as well as a raft of other proceedings that are currently reviewable or appellable to the Industrial Court.

We should spend a little time sitting down and reflecting maturely upon this. It would be useful to know whether the Government believes there is any merit to some or all of the Opposition's amendments. There does not seem to be any particular reason to leap to the Committee process tonight. Nothing would be lost in going to the Committee stage tomorrow so the Minister, the Opposition and other parties in this House can sit down and have a bit of mature reflection on whether the Government intends to provide that sort of work to the Supreme Court.

The other amendment I highlight that is relevant to our in-principle opposition to this bill, is that there is currently no legislative minimum to the number of commissioners who need to be appointed under the Government's bill. The Government has given some promises and undertakings that it intends there to be a minimum of five commissioners, but there is no legislative minimum for commissioners. When one realises that there is an internal appeal process in the commission where the Chief Commissioner and at least two other commissioners are brought together to hear an appeal, if we lose just one commissioner it will be next to impossible for an appeal division to be cobbled together in most cases. If we lose two commissioners there cannot be an appeal division. I accept that there is a cumbersome process that may allow a magistrate to be co-opted in certain circumstances—

**The Hon. Adam Searle:** Only for police matters.

**Mr DAVID SHOEBRIDGE:** Only for police matters. But for the balance of other matters, if it is down to just three commissioners there cannot be an appeal division. There should be a legislative minimum for the number of commissioners. I hope, with those observations, that The Greens' position on this bill is clear. We oppose the bill but we urge the Government to sit down in good faith, have a look through some of the amendments and see whether we can do what this House is meant to do: improve the bill rather than just reject it outright.

**The Hon. PAUL GREEN (18:57):** I make a contribution to debate on the Industrial Relations Amendment (Industrial Court) Bill 2016. The objects of the bill are: to amend the Industrial Relations Act 1996 to abolish the Industrial Court—also referred to in the Act as the Industrial Relations Commission in Court Session—and to appoint the current President of the Industrial Relations Commission, in his capacity as the only remaining judicial member of the commission, as a judge of the Supreme Court; and to reconstitute the Industrial Relations Commission [IRC] so that it consists of a Chief Commissioner and commissioners. Secondly, the bill seeks to amend certain legislation to transfer the functions of the Industrial Court principally to the Supreme Court and, in some cases, to the District Court and the Industrial Relations Commissions; to update references consequent on the reconstitution of the Industrial Relations Commission; and to repeal certain other Acts.

Historically, the Industrial Relations Commission has been responsible for dealing with industrial matters relating to State and local government employers and employees. The Industrial Relations Commission was comprised of two parts: the Industrial Court and the Industrial Relations Commission. The Industrial Court has one appointed judge who has also fulfilled the role of president of the IRC and the judge was responsible for exercising judicial functions such as hearing unfair contract disputes and breaches of industrial instruments. The commission was also made up of five commissioners who exercised non-judicial functions such as the arbitration of industrial disputes as well as the setting of wages and conditions of employment.

**The DEPUTY PRESIDENT (The Hon. Trevor Khan):** I will now leave the chair and the House will resume at 8.00 p.m.

**The Hon. PAUL GREEN:** The Industrial Relations Amendment (Industrial Court) Bill 2016 seeks to align the New South Wales industrial relations court processes with the Commonwealth industrial relations framework whereby judicial matters are heard in the Federal Court or the Federal Circuit Court and non-judicial matters are dealt with by the Fair Work Commission. Similarly, the New South Wales Industrial Court will be

abolished and judges will be appointed to the Supreme Court, where industrial matters will now be heard. The Industrial Relations Commission [IRC] will deal with non-judicial matters.

The IRC will maintain the current commissioners, amongst whom a Chief Commissioner will now be appointed and lead the IRC. It is anticipated that the Industrial Court being abolished will have a minimal impact on the commission, which it is anticipated will run as usual. The commission will still be able to refer questions of law to the Supreme Court as required, as it has done in the past to the Industrial Court. The cases heard currently by the New South Wales Industrial Court will now be transitioned into the Supreme Court in the Common Law Division and the District Court. Industrial relations cases will continue to be heard.

Aside from bringing New South Wales industrial relations processes in line with the Commonwealth framework, another reason for this change is due to a shift in case numbers. In recent years much of the workload of the Industrial Court has decreased considerably from 76 matters in 2005 to just 37 matters commenced in 2015. Currently when the sole judge of the Industrial Court is on leave, arrangements already exist that enables the Supreme Court to hear industrial cases. With the decrease in the number of cases in the Industrial Court, and the rise in the backlog of cases waiting to be heard in the Supreme Court, the addition of another judge able to take on a higher caseload will go a small way to relieve pressure on the New South Wales Supreme Court.

This transition also creates efficiencies of scale in that now a variety of judges in the Supreme Court can hear industrial matters, while the sole judge of the Industrial Court can hear more general Supreme Court cases. In August 2016, 34 stakeholders were contacted and provided with a draft exposure of this bill, including the heads of jurisdiction, Law Society of NSW, NSW Bar Association, various government agencies, Unions NSW and affiliates, and NSW Business Chamber. In relation to the cost of cases that will now be heard in the Supreme Court, I have been advised that all the existing Industrial Court fee exemptions will be maintained after the integration of the Industrial Court with the Supreme Court. This means that unions and other employer groups will be exempt from all fees.

There will be a fee increase to match all other existing Supreme Court fees for Industrial Court matters which are not currently fee exempt—for example, filing an application will cost an individual \$178 more than it would be before the Industrial Court. However, importantly, any applicant will be able to apply for Supreme Court fees to be waived, reduced or postponed. In making a decision, the Supreme Court Registrar will consider whether the payment of fees would cause undue hardship. They will consider factors such as the need for procedural fairness, whether the applicant is dependent on social security or lacks sufficient income and capital to pay a fee, and whether the applicant is otherwise indebted. Applicants represented by pro bono legal representatives will have fees automatically postponed until after judgement.

The bill ensures that existing conciliation arrangements will be maintained after the integration so that parties to judicial matters are required to engage in mandatory conciliation before proceeding in the Supreme Court. The majority of matters are likely to be resolved by conciliation, meaning that no court fees would apply. In 2015, 68 per cent of judicial matters were finalised by conciliation in the Industrial Court. That percentage has increased even further to 71 per cent in the year to date. There will be no changes to fees in the commission as it is. The Government provided the Christian Democratic Party with the breakdown of the 37 cases that went before the Industrial Court in 2015. I note that of the 37 cases, 15 were filed by unions and employee organisations, 20 were filed by individuals, one matter was filed by a council or local government and one matter was filed by a corporation.

We want to ensure that if a single public servant wishes to represent themselves—for example, a teacher, police officer, nurse or paramedic—they have the ability to seek justice within their means irrespective of the costs of the Supreme Court. The Christian Democratic Party is committed to ensuring the best outcome for the needs of families, mums and dads to put food onto the table, pay the mortgage or rent, or to put petrol in the car. The transition of the Industrial Court to the Supreme Court reflects recent changes at the Federal level regarding how industrial relation cases are dealt with. In New South Wales the transition of the Industrial Court to the Supreme Court will also provide the Supreme Court with an additional judge to help ease some of the current case burden.

My colleagues the Hon. Adam Searle and Mr David Shoebridge are far more learned than I am in this regard. I have taken on board some of their concerns and have asked the Government to clarify some of them. In relation to there being five commissioners, one of whom will retire shortly, I have received an undertaking from the Government that there will always be five. The Christian Democratic Party believes that that number of five commissioners should not be reduced.

The Hon. Adam Searle was also concerned about the transfer of the Workplace Injury Management and Workers Compensation Act 1998 to the District Court. Those functions include proceedings for a category offence and for contravention of a civil penalty provision. Approximately two workplace health and

safety matters are filed in the Industrial Court each year. A number of stakeholders, including some Unions NSW affiliates and SafeWork NSW, supported the transfer of work health and safety matters to the District Court rather than the Supreme Court. The District Court already has expertise in these areas because it exercises summary jurisdiction to deal with offences under the Work Health and Safety Act 2011 as a result of the transfer of the functions from the IRC by the previous Government in 2010.

We note another comment related to an assurance that litigants retain the ability to be self-represented in the Supreme Court. I am sure the other concerns that the Hon. Adam Searle has dealt with in his amendments will be considered. In light of the undertakings by the Government the Christian Democratic Party commends the bill to the House. We will work to support the Government in this reform.

**The Hon. COURTNEY HOUSSOS (20:10):** I speak against the Industrial Relations Amendment (Industrial Court) Bill 2016. I pay tribute to the Hon. Adam Searle, who led for the Opposition in this debate as shadow Minister. Through his thoughtful and insightful contribution he displayed his extensive knowledge of this topic, which he has gained from his experience as a legal practitioner as well as a lawmaker. As he outlined, the Opposition strongly opposes this bill because it abolishes the Industrial Court of New South Wales, seeks to transfer its functions to the Supreme Court and makes consequential changes to the Industrial Relations Commission of New South Wales.

One has to wonder whether the Government is out of touch or on a blind ideological pursuit. I would argue that it is the latter. There is recognition that certain parts of the legal system need to be more accessible for the average person, including consumer law and some other areas. It is certainly the case in industrial law, which deals with the rights of sometimes some of the most poorly paid working people and their access to justice. Tonight, instead of making justice more accessible for working people the Government is seeking to push it further out of reach.

The bill seeks to abolish a key institution that has historically protected working people in this State. Members on this side of the House are incredibly proud of that long history dating back to the 1900s. It is a core premise of the Australian fair go that if something happens to the average person who turns up for work they should have access to legal redress. That legal redress should not be difficult or expensive to access. It should not require barristers or solicitors. Instead, workers should be allowed to participate in a court of law and advocate on their own behalf if required.

With the latest round of Federal industrial relations laws—the modern awards, as they are known—there has been a centralisation into the Federal system. The sole justification for abolishing the Industrial Court and stripping the provisions for the Industrial Relations Commission is that they do not have enough work to do. That has happened because of the ideological drive of members opposite to strip away the important work of the Industrial Court. If this bill is passed working people will no longer have access to a specialised court that allows them to pursue redress on a range of matters such as breaches of industrial instruments, recovery of wages, unfair contracts, regulations of unions and employer organisations, superannuation appeals and violations of dispute orders.

For wealthy companies and well-resourced employer organisations that are well attuned to the law and appear regularly in the courts, it will not make a great amount of difference whether they file in the Supreme Court or the Industrial Court. But individual workers, small trade unions and small businesses will be pushed into a court of law that is not designed to be accessible to them. This tactic has been pursued by the Government's side of politics at a Federal level for a long time. Through the Workplace Relations Act 1996 they sought to push industrial relations into the Federal Court and out of the Industrial Relations Commission at a Federal level. We are now seeing the same thing happening at a State level. It is absolutely appalling.

This bill makes no improvements for individual participants and does not give them increased access to justice. As I said, it creates no better outcomes or easier access to redress for individual workers, small businesses or small trade unions. It is an extremely significant change that we are debating tonight. Let me illuminate my point with an example. It will cost almost \$200 more to make exactly the same application in the Supreme Court than in the Industrial Court under the existing rules. Again, that might not be much to a large, well-resourced company. But how is an individual worker seeking recovery of wages with their trade union acting on their behalf or perhaps representing themselves supposed to stump up more than \$1,000? This bill is making the process more formal and more legalistic. It is causing us to lose the specialised functions that have been developed over the past almost 120 years through our industrial relations court.

As outlined earlier, participants in the Industrial Court can move in and out of arbitration and conciliation. The parties are allowed to come together to negotiate, enter back into the courtroom and then negotiate further if required. This legislation instead says, "No, we want to fight it out in the Supreme Court with barristers and solicitors at 100 paces." This bill provides no improvements for individual participants. On top of that, it provides

no improvement in the bottom line for the Government. It simply transfers judges from the Industrial Court to the Supreme Court. This begs the question of why we are debating this tonight. I refer back to my earlier comments that this is a blind, ideological pursuit, not one that is aimed at seeking better outcomes for workers or small businesses or increasing accessibility to justice.

As members have reflected, the Government attempted some level of consultation on this and provided draft legislation to stakeholders in August. However, at the close of submissions the Government failed to make the submissions public. The Opposition understands the submissions overwhelmingly opposed the changes in this bill. Alex Grayson of Morris Blackburn Lawyers said publicly that she was concerned that access to justice would diminish under the new arrangement. She said, "It is more intimidating and costly for employers and employees to access litigation in the NSW Supreme Court."

That point about intimidation is not one that we should gloss over. The average person does not have frequent interactions with the legal system; they only go to court as a last resort. It is our duty as policymakers to allow the process to be as easy as possible. As we have reflected, that sometimes means establishing less formal tribunal settings such as those provided for in consumer law and anti-discrimination law matters as well as other areas. As I said, we pioneered that system in this State and country over the past almost 120 years. Tonight we seek to walk away from it entirely. That is a real shame for the legacy of working people in New South Wales.

As I have outlined, we will be opposing the bill. It is important to reflect upon our policy at the last election, which the Parliamentary Budget Office determined to be revenue neutral. It is not a question of a more efficient allocation of government saving; it is a question of how we prioritise the state of the average working person in New South Wales, and those on this side of the House are proud to stand up for them. Labor would seek to rebuild the court and to reinstate the work that has been taken away from it by this Government. Labor would invest it with relevant legislation. It is so important that individual workers, small business and trade unions be able to advocate in an efficient and specialised setting. I take this opportunity to pay tribute to Unions NSW for its unending advocacy on behalf of the working people of New South Wales. I reiterate that I will be opposing the bill and I call on other members of this place to join me.

**The Hon. DANIEL MOOKHEY (20:20):** The Leader of the Opposition described how over the past five years this Government has conspired to strip the Industrial Court of the work it previously performed. He explained the irony of the Government now saying that the court has to go because it no longer has any work to do. He described the rupture from the 100-year bipartisan tradition in this Parliament that all matters to do with the world of work should be heard in one jurisdiction, that the people who hear those cases should have specialist and advanced knowledge, and that equally the manner in which that work is performed should be different to the work of other courts because those affected are people, not commodities. Indeed, they are not the other things that tend to find themselves as the subject of disputation.

Tonight we have also heard that for more than 120 years the Industrial Court has pioneered its own and unique form of jurisprudence that no other tribunal can undertake in this State or nation. This is simply because our State Constitution does not have the same fetter on non-jurisdictional tribunals exercising judicial powers as that of the Federal Constitution. In New South Wales it is possible to intermingle what is described as administrative powers with judicial functions. When they are combined we can create a very unique system of dispute resolution, which can set proactive and positive standards that can alter the way in which things such as labour disputes are dealt with.

That is reason enough for this House to refuse to pass the Industrial Relations Amendment (Industrial Court) Bill 2016, but there is more and it has nothing to do with jurisprudence or tradition; it is to do with the future of work. The Leader of the Opposition talked about the need to remain consistent with the democratic tradition of more than 120 years, and as a nation we are very proud of that, but I want to talk about how this approach is relevant to the changing nature of work. I start by going back to the foundation of the concept of the Industrial Court. It emerged in an agricultural economy when predominantly people worked outside of cities in primary production.

However, that concept morphed and reached its peak into a manufacturing economy where up to one in three Australians worked in a factory in a city. Indeed, the very nature of the interaction gave rise to the clamber for an Industrial Court. It was because the previous system of a free-for-all was not capable of resolving those disputes that both sides of politics came to understand that this approach was the way forward. They came to understand that it would make this country different to others that endorse the principle that when it comes to industrial disputation right is right and whoever has the most power invariably gets their way. But both sides of politics acknowledged that was not the way to manage this symbiosis of capital and labour and that we ought to have a different approach.

When the nature of power fundamentally changed to a serviced-based economy the court modernised and adapted as well, but we are now in an information economy. We still have to answer the question as to what the overriding public interest is when it comes to how people work. How can that be included and achieved through our laws? How should the symbiosis of capital and labour be managed? What type of conflict resolution is it wise for this State to adopt? Those questions are as relevant today as they were when this Parliament in its wisdom first established the Industrial Court. Indeed, it has a real impact on everyone who works in this State.

In the era in which we live so many people work outside the traditional definition of an employment contract. Nationwide 1.8 million people work as independent contractors—they are neither described as employees or employers. We have the rise of an on-demand economy and the nature of what it means to work is fundamentally changing. The reality is that we need more savvy industrial tribunals than we had in the last century. We need a commingled approach of a body that is capable of exercising administrative and judicial power concurrently. This will mean that we can undertake and manage in a manner befitting social cohesion and transition from a service-based economy to an information-based economy.

I turn now to some practical examples. The Industrial Court is a specialist jurisdiction able to bring to bear a complete and total understanding of the nature of industrial regulation—whether in respect to work, health and safety or superannuation. Having them all sit in one place will mean that a company like Deliveroo, which has a labour model outside of all forms of description in any of the Federal or State laws, will require all Parliaments, politicians, public servants and judges to rethink so many of the court concepts. And being able to do that in one place will mean that we will be able to adapt the emergence of companies such as Deliveroo far more quickly.

Deliveroo delivers food on demand. It does not employ people as employees nor does it acknowledge that there is an employment relationship. It is not necessary for there to be an employment relationship for people who perform their work to ask for rights. These people ride bikes on our roads and are coping with traffic. This creates enormous issues as to whether or not they are covered by workplace health and safety laws. What are their insurance rights? In what way are those conditions to be adapted? If a State regulator or another party wished to launch a prosecution against a company like Deliveroo, then one of the very few places they could go to would be the Industrial Court. It is one of the places that is able to concurrently exercise judicial and administrative power. It is able to set an award for that industry.

If this bill is passed and should any of the people at Deliveroo find themselves concurrently having to plead for an injury, and it emerges that they have also been subject to an unfair contract, then that person will be required to file two claims in two different courts. What a disaster. Generally the one set of facts are treated by the one tribunal or court and that is a very practical reason for placing these laws together. Should that same person at Deliveroo find themselves having been underpaid then the ability to have each of these claims heard together, with the court being able to use an intermingling of its powers, will mean that some will be resolved by conciliation and arbitration.

Most claims for underpayment are resolved by conciliation and arbitration but workplace health and safety prosecutions are not. The ability for one tribunal to handle both is far more sensible for all parties to the dispute that is the reason why for a very long time many small businesses have preferred it. Small businesses that find themselves subject to unpaid wage claims do not want to go to the expense of having to hire lawyers and go to the Supreme Court. Small businesses that find themselves subject to unauthorised industrial action do not want to have to go to the Supreme Court in order to get that action stopped. That is the reason we have this court. The question is whether the Supreme Court is as capable of performing these functions.

From the matter of law, other members have set out the differences. But from the matter of jurisprudence, anyone who has had any acquaintance with the common law in this State will have seen the interplay between the Supreme Court and the Industrial Court and will understand the extent to which the Supreme Court jurisprudence does not lend itself to the same level of understanding on these matters as the Industrial Court—nor would one expect it to. That is not a criticism of the court; it has not been its function. The court has not had to have this expertise. In the transition, having the same judge moving between the courts will alleviate that problem in the short term, but it is there in the long term and the Government has said nothing about it.

The reality is that we have a unique institution in this State. Many of the concepts it has pioneered and argued for have been picked up by other courts in other jurisdictions—in the Federal Court and in other forms of the Supreme Court such as the Court of Appeal. A lot of those concepts have made their way into our Federal laws and into our State laws. But this system is unique because it is a system that can only run in a State that does not have a constitutional prohibition on the intermingling of judicial and administrative power. That is not a dated concept; it is a concept that is as relevant now to the world of work as it was when it was first started when we had an agricultural economy. In an era where we are hearing so much conversation and debate about the nature of inequality and how it is that some people use power, the fact that ordinary people have always had access to

this tribunal as a means to achieve balance is not a source of shame for this Parliament. It ought to be a source of pride, and we ought to preserve it.

**The Hon. ERNEST WONG (20:31):** I join my Labor colleagues to oppose this terrible bill. I congratulate the Hon. Adam Searle on his leadership on this important issue. I oppose the Industrial Relations Amendment (Industrial Court) Bill 2016 in its entirety. It is a poorly thought-out bill that seeks to effect a truly bad and inefficient idea. It is a bill that would not only deny access to justice for New South Wales workers and their families but also impede justice for every other New South Wales citizen by jamming our Supreme Court lists with unnecessary cases. It is ethically poor and it is logistically stupid.

The bill has only one real aim: to disband the Industrial Court of New South Wales and divert all traffic to the Supreme Court. This move is not only contrary to the longstanding purpose and intentions of the Industrial Court; it is contrary to longstanding trends in judicial practice and procedure. Members will know that there has been decades-long evolution in our justice system to avoid, wherever possible, the unnecessary escalation of matters to our supreme courts. It is for these reasons that alternative dispute resolution systems, including specialised courts such as the Industrial Court, have expanded in their reach and influence in the past 30 years. It is also why our Civil Procedure Act provides numerous provisions to discourage the unnecessary escalation of matters to the Supreme Court. These include substantial financial cost risks to plaintiffs who needlessly escalate matters that could have been dealt with in lower courts or at alternative tribunals.

The message from our higher courts in all these measures is clear: Justice must not only be done; it must be timely. In order to protect that timeliness we must preserve our Supreme Court for only those matters that cannot find resolution anywhere else. Industrial dispute matters can find resolution elsewhere. That is why there is an Industrial Court; it is the appropriate place to hear specialised issues such as recovery of wages, unfair contracts, superannuation appeals, et cetera. Are we seriously debating that our Supreme Court justices—with packed caseloads of major civil and criminal matters—should now turn their minds to superannuation appeals? This is not the perspective of Labor or the union movement; it is the perspective of our chief justices. It is reflected in our Civil Procedure Act and in numerous practice notes of the Supreme Court. So this bill cannot be about efficiency of justice. Instead, it has a much more obvious and sinister intention.

The transfer of these proceedings to the Supreme Court can only have one purpose and one ambition: to make the cost of proceedings prohibitive to New South Wales workers and those who would stand up for them. This is an outright attempt to deny justice and to destroy any equity in the enforcement of workers' rights. And what of the businesses that are also the subject of these disputes, many of them small or medium businesses—the businesses that the Coalition says are its heartland? They too should start saving their dollars, because any industrial dispute they become involved in could see them facing the extraordinary costs of a Supreme Court appearance, with all the legal procedure and representation that brings. That is a ridiculous outcome for workers, for businesses, for unions and for our courts. It would be laughable except that the Government has apparently presented this bill with a straight face.

Perhaps it is a diversionary tactic—after all, the Premier is having a very bad day today—but it is not a diversion that this House should support. New South Wales workers deserve reasonable access to enforce their rights. The correct model for this is the Industrial Court, and Labor opposes this bizarre ideological attack on a sensible and logical dispute resolution system. I oppose the bill and thank members for their attention.

**The Hon. DAVID CLARKE (20:36):** On behalf of the Hon. John Ajaka: In reply: I thank members for their contributions to debate on the Industrial Relations Amendment (Industrial Court) Bill 2016. This Government is committed to delivering fast, fair and accessible justice for the people of New South Wales. The bill is not aimed at making changes to the way that industrial relations matters are handled. It is about ensuring industrial relations matters that require judicial consideration will continue to be heard in a superior court and in the most efficient way possible.

Before concluding, I will address some particular matters that members have raised in debate. The Hon. Adam Searle described his amendments as falling into two categories: the jurisdiction and membership of the commission, and the work health and safety jurisdiction under other legislation exercised by the courts. I will address the Hon. Adam Searle's specific concerns in the context of debate on those amendments. However, I emphasise that a decrease in the Industrial Court's workload in recent years—from 766 cases in 2006 to only 37 in 2015—has brought many challenges in maintaining an effective and efficient court. There is now insufficient work in the Industrial Court to occupy the single remaining judicial member, Justice Walton.

The bill recognises that the judicial functions performed by the Industrial Court are important and must continue to be performed, but that the resources devoted to those functions need to be managed differently so as to be more effective. The Supreme Court is a court of superior record, as is the Industrial Court. Integrating the Industrial Court with the Supreme Court will allow existing Supreme Court judges to hear matters as demand



requires. There will be efficiencies of scale associated with handling matters under the larger jurisdiction of the Supreme Court. This will benefit parties through increasing the capacity of the court to attend to urgent industrial matters. The approach taken by this bill is to ensure that the commission's conciliation and arbitration functions can and will continue to be performed as usual. The bill makes no changes to these functions.

Mr David Shoebridge for The Greens expressed concern about the transfer of certain functions to the Supreme Court, which, in Mr Shoebridge's view, would be more appropriate for the commission to retain, being certain of those matters set out in clause 86 of the bill, new section 355 the intent of the bill is to make a clean break between the judicial and non-judicial functions of the commission, rather than create a quasi-judicial function in the commission. Identifying the matters to be transferred to the Supreme Court has been the subject of careful consideration by the Government, as well as the subject of consultation with stakeholders. It is appropriate for the matters listed in clause 86 of the bill to be heard by the Supreme Court as all of those matters are currently heard by the sole judge of the Industrial Court, who is of the same judicial standing as a Supreme Court judge. It is appropriate that that judicial function should remain in a jurisdiction of superior court status to be exercised by judicial officers.

I also note that all existing fee exemptions will be maintained. This means that registered organisations, being unions and employee and employer associations, will continue to be exempt from fees for proceedings before the Supreme Court. Supreme Court fees may also be waived, reduced or postponed at the discretion of the Registrar. Relevant considerations include whether the payment of fees would cause undue hardship. Applicants represented by Legal Aid or pro bono representation automatically have fees postponed until after judgement. Further, the functions of the online Registry of the Supreme Court will become available for matters currently heard in the Industrial Court, allowing applicants to file applications, lodge documents and receive updates about their matters online. This will particularly assist regional and remote communities.

The Hon. Paul Green for the Christian Democratic Party raised a few points about the way the legislation would operate, and I want to reassure him in that regard. First, the Hon. Paul Green was concerned to ensure that Supreme Court judges will be appropriately experienced to hear industrial relations matters. Matters will be heard by Supreme Court judges in the Common Law Division of the Supreme Court. While allocation of matters will be a matter for the Chief Justice, Justice Walton's experience in industrial relations law will be taken into account.

Any industrial court matters part heard by Justice Walton will be transferred and continue to be heard by him in the Supreme Court. Supreme Court judges already hear judicial industrial relations matters as required, for example, when Justice Walton is unavailable. Existing Supreme Court justices Beech-Jones, Harrison, Rothman and Schmidt, all have prior industrial relations experience. Secondly, I assure the Hon. Paul Green and the Hon. Adam Searle that the number of commissioners in the Industrial Relations Commission [IRC] will remain unchanged at five. This means that if any existing commissioner retires, he or she will be replaced.

Thirdly, the Hon. Paul Green was concerned to ensure that workplace health and safety matters will continue to be heard by an appropriate court. The bill transfers to the District Court functions that are currently exercised by the Industrial Court under the Work Health and Safety Act 2011 and the Workplace Injury Management and Workers Compensation Act 1998. These functions include proceedings for a category 3 offence and for contravention of a civil penalty provision. Approximately two workplace health and safety matters are filed in the Industrial Court each year.

A number of stakeholders, including the Law Society, some unions, New South Wales affiliates and Safe Work NSW, supported the transfer of work health and safety matters to the District Court. The District Court already has expertise in this area because it exercises summary jurisdiction to deal with offences under the Work Health and Safety Act 2011 as a result of a transfer of functions from the Industrial Relations Commission by the previous Government in 2010. Fourthly and finally, I assure the Hon. Paul Green and the Hon. Adam Searle that litigants retain the ability to be represented in the Supreme Court. The Supreme Court supports self-represented litigants with materials, information and access to registry advice.

I thank all stakeholders for their input in developing this bill. I recognise, in particular, the support of the Chief Justice and Justice Walton for this reform. The reform is also supported by other key stakeholders, including the Law Society of New South Wales and New South Wales Bar Association. The reconstituted commission and the Supreme Court, as the new custodian of the Industrial Court's judicial functions, will continue to deliver industrial relations services no less excellent than the IRC has done in its combined role. The Industrial Relations Amendment (Industrial Court) Bill 2016 is a good bill, and I commend it to the House.

**The DEPUTY PRESIDENT (The Hon. Shayne Mallard):** The question is that the bill be now read a second time.

**The House divided.**

Ayes ..... 17  
 Noes ..... 16  
 Majority..... 1

#### AYES

Amato, Mr L  
 Colless, Mr R (teller)  
 Gallacher, Mr M  
 Khan, Mr T

Blair, Mr N  
 Cusack, Ms C  
 Gay, Mr D  
 MacDonald, Mr S

Clarke, Mr D  
 Farlow, Mr S  
 Green, Mr P  
 Maclaren-Jones, Ms N  
 (teller)  
 Pearce, Mr G

Mallard, Mr S  
 Phelps, Dr P

Mitchell, Ms S  
 Taylor, Ms B

#### NOES

Barham, Ms J  
 Buckingham, Mr J  
 Field, Mr J  
 Moselmane, Mr S  
 (teller)  
 Secord, Mr W  
 Wong, Mr E

Borsak, Mr R  
 Donnelly, Mr G (teller)  
 Houssos, Ms C  
 Pearson, Mr M

Brown, Mr R  
 Faruqi, Dr M  
 Mookhey, Mr D  
 Searle, Mr A

Shoebridge, Mr D

Veitch, Mr M

#### PAIRS

Ajaka, Mr J  
 Franklin, Mr B  
 Mason-Cox, Mr M

Primrose, Mr P  
 Sharpe, Ms P  
 Voltz, Ms L

#### Motion agreed to.

#### In Committee

**The CHAIR:** There being no objection, the Committee will deal with the bill as a whole.

**The Hon. ADAM SEARLE (20:53):** By leave: I move Opposition amendments Nos 1 to 50 on sheet 2016-092D in globo:

No. 1 **Jurisdiction and membership of Commission**

Page 2, clause 2 (2), line 7. Omit "[117]". Insert instead "[118]".

No. 2 **Jurisdiction and membership of Commission**

Page 3, schedule 1, lines 3–13. Omit all words on those lines.

No. 3 **Conciliation by Commission of unfair contracts matters**

Page 3, schedule 1 [5], lines 14–28. Omit all words on those lines.

No. 4 **Jurisdiction and membership of Commission**

Page 3, schedule 1, lines 29–33. Omit all words on those lines.

No. 5 **Jurisdiction and membership of Commission**

Page 3, schedule 1 [7] and [8], lines 34–37. Omit all words on those lines.

No. 6 **Jurisdiction and membership of Commission**

Page 4, schedule 1 [12] and [13], lines 9–21. Omit all words on those lines. Insert instead:

**[12] Section 147 membership of Commission**

Insert after section 147 (2):

- (3) There are to be at least 5 full-time equivalent members of the Commission.
- (4) There are to be at least 3 full-time equivalent members of the Commission who are Australian lawyers.

No. 7 **Jurisdiction and membership of Commission**

Page 4, schedule 1 [16], lines 26 and 27. Omit all words on those lines. Insert instead:

**Part 3 Additional function of Commission**

**151 Commission may hear and determine certain industrial proceedings**

- (1) The Commission has the function of hearing and determining the following proceedings:
- (a) proceedings under section 139 (contravention of dispute order);
  - (b) proceedings under parts 3, 4 and 5 of Chapter 5 (registration and regulation of industrial organisations), other than division 2 of part 3 (cancellation of registration) and division 3 of part 4 (election of officers);
  - (c) proceedings under part 1 of Chapter 7 (breach of industrial instruments);
  - (d) proceedings for the recovery of money under part 2 of Chapter 7 (other than small claims under section 380),
  - (e) proceedings on a superannuation appeal under section 88 of the Superannuation Administration Act 1996;
  - (f) any other proceedings that are, by this Act or any other Act, required to be taken before the Commission.
- (2) The Commission may exercise a function conferred on it by this section only if it is constituted by one or more members who are Australian lawyers.

No. 8 **Jurisdiction and membership of Commission**

Page 5, schedule 1 [21]–[29], lines 1–26. Omit all words on those lines.

No. 9 **Jurisdiction and membership of Commission**

Page 6, schedule 1 [32], lines 5–7. Omit all words on those lines.

No. 10 **Jurisdiction and membership of Commission**

Page 6, schedule 1 [40], lines 25–27. Omit all words on those lines.

No. 11 **Jurisdiction and membership of Commission**

Pages 6 and 7, schedule 1 [43], line 32 on page 6 to line 2 on page 7. Omit all words on those lines.

No. 12 **Jurisdiction and membership of Commission**

Page 8, schedule 1 [51], lines 7 and 8. Omit all words on those lines.

No. 13 **Jurisdiction and membership of Commission**

Page 8, schedule 1 [53]–[55], lines 11–18. Omit all words on those lines.

No. 14 **Jurisdiction and membership of Commission**

Page 8, schedule 1 [57]–[60], lines 21–34. Omit all words on those lines.

No. 15 **Jurisdiction and membership of Commission**

Page 9, schedule 1 [62], lines 3 and 4. Omit all words on those lines.

No. 16 **Jurisdiction and membership of Commission**

Page 9, schedule 1 [66] and [67], lines 16–21. Omit all words on those lines.

No. 17 **Jurisdiction and membership of Commission**

Page 9, schedule 1 [69] and [70], lines 24–29. Omit all words on those lines.

No. 18 **Jurisdiction and membership of Commission**

Page 10, schedule 1 [73] and [74], lines 1–13. Omit all words on those lines.

No. 19 **Jurisdiction and membership of Commission**

Page 10, schedule 1 [76], lines 16–19. Omit all words on those lines.

No. 20 **Jurisdiction and membership of Commission**

Pages 10 and 11, schedule 1 [79]–[82], line 26 on page 10 to line 2 on page 11. Omit all words on those lines.

No. 21 **Jurisdiction and membership of Commission**

Page 11, schedule 1 [84] and [85], lines 5–10. Omit all words on those lines.

No. 22 **Work health and safety matters - Supreme Court to have jurisdiction**

Page 11, schedule 1 [86], proposed section 355A, definition of *industrial legislation*. Insert after line 29:

- (l) *the Dangerous Goods (Road and Rail Transport) Act 2008*;
  - (m) *the Explosives Act 2003*;
  - (n) *the Work Health and Safety Act 2011*;
  - (o) *the Workplace Injury Management and Workers Compensation Act 1998*;
- No. 23 **Jurisdiction and membership of Commission**  
Page 11, schedule 1 [86], proposed section 355B (c), line 38. Omit all words on that line.
- No. 24 **Jurisdiction and membership of Commission**  
Page 12, schedule 1 [86], proposed section 355B (e), lines 3–5. Omit all words on those lines.
- No. 25 **Jurisdiction and membership of Commission**  
Page 12, schedule 1 [86], proposed section 355B (g)–(i), lines 8–13. Omit all words on those lines.
- No. 26 **Industrial proceedings in Supreme Court**  
Page 12, schedule 1 [86], proposed section 355E (1). Insert after line 43:  
(a) section 166 (representation of parties);
- No. 27 **Industrial proceedings in Supreme Court**  
Page 12, schedule 1 [86], proposed section 355E (1). Insert after line 45:  
(c) section 181 (costs);
- No. 28 **Industrial proceedings in Supreme Court**  
Page 13, schedule 1 [86], proposed section 355E (3) and (4), lines 8–13. Omit all words on those lines.
- No. 29 **Jurisdiction and membership of Commission**  
Page 13, schedule 1 [87], lines 26–28. Omit all words on those lines. Insert instead:  
Omit paragraph (a) from the definition of *industrial court*. Insert instead:  
(a) the Supreme Court; or  
(a1) the Commission where exercising jurisdiction under section 151.
- No. 30 **Jurisdiction and membership of Commission**  
Page 13, schedule 1 [89] and [90], lines 33–38. Omit all words on those lines. Insert instead:  
**[89] Section 364 Definitions**  
Omit paragraph (a) of the definition of *industrial court*. Insert instead:  
(a) the Supreme Court; or  
(a1) in the case of proceedings referred to in section 151—the Commission; or
- No. 31 **Jurisdiction and membership of Commission**  
Page 14, schedule 1 [96], lines 32 and 33. Omit all words on that line. Insert instead:  
**[96] Section 403A Appeals from decisions of Commission exercising judicial functions**  
Omit "in Court Session" from section 403A (1).  
Insert instead "exercising a function under section 151".  
**[97] Section 403A (2) (and note) and 403E (1) and (2)**  
Omit "in Court Session" wherever occurring.
- No. 32 **Jurisdiction and membership of Commission**  
Pages 14 and 15, schedule 1 [97] and [98], line 34 on page 14 to line 30 on page 15. Omit all words on those lines.
- No. 33 **Jurisdiction and membership of Commission**  
Page 16, schedule 1 [111] and [112], lines 18–22. Omit all words on those lines.
- No. 34 **Jurisdiction and membership of Commission**  
Page 16, schedule 1. Insert after line 31:  
**[117] schedule 4, clause 2 (4) and (5)**  
Insert after clause 2 (3):  
(4) Any such provision has effect despite anything to the contrary in this schedule.

- (5) The regulations may make separate savings and transitional provisions or amend this schedule to consolidate the savings and transitional provisions.

No. 35 **Jurisdiction and membership of Commission**

Page 18, schedule 1 [117], proposed clause 63 (1)–(3), lines 26–37. Omit all words on those lines.

Insert instead:

- (1) On the abolition day, the office of judicial member is abolished.

No. 36 **Jurisdiction and membership of Commission**

Page 23, schedule 1 [118], lines 1–6. Omit all words on those lines.

No. 37 **Jurisdiction and membership of Commission**

Page 24, schedule 2.2, lines 13–15. Omit all words on those lines.

No. 38 **Work health and safety matters - Supreme Court to have jurisdiction**

Page 27, schedule 2.14 [1], line 25. Omit "District Court". Insert instead "Supreme Court".

No. 39 **Jurisdiction and membership of Commission**

Page 28, schedule 2.16 [1]–[3], lines 2–11. Omit all words on those lines.

No. 40 **Jurisdiction and membership of Commission**

Page 28, schedule 2.17 [1], lines 18 and 19. Omit all words on those lines.

No. 41 **Work health and safety matters - Supreme Court to have jurisdiction**

Page 29, schedule 2.19, line 15. Omit "District Court". Insert instead "Supreme Court".

No. 42 **Jurisdiction and membership of Commission**

Page 31, schedule 2.23 [2], line 4. Insert "the Industrial Court," after "the abolition of".

No. 43 **Jurisdiction and membership of Commission**

Page 31, schedule 2.24 [3] and [4], lines 44–47. Omit all words on those lines.

No. 44 **Jurisdiction and membership of Commission**

Page 32, schedule 2.28 [1] and [2], lines 26–31. Omit all words on those lines.

No. 45 **Work health and safety matters - Supreme Court to have jurisdiction**

Page 34, schedule 2.31, line 19. Omit "District Court". Insert instead "Supreme Court".

No. 46 **Jurisdiction and membership of Commission**

Page 34, schedule 2.32, lines 20–30. Omit all words on those lines.

No. 47 **Work health and safety matters - Supreme Court to have jurisdiction**

Page 36, schedule 2.37 [2], lines 17 and 18. Omit all words on those lines. Insert instead:

[2] **Section 229B Procedure for offences**

Omit section 229B (1) and (2). Insert instead:

- (1) Except as provided by this section, proceedings for an offence against this Act or the regulations are to be dealt with summarily:
- (a) before the Local Court; or
- (b) before the Supreme Court in its summary jurisdiction.

[3] **Section 229B (6)**

Omit the subsection (including the note).

No. 48 **Work health and safety matters - Supreme Court to have jurisdiction**

Page 36, schedule 2.37 [3], line 20. Omit "District Court". Insert instead "Supreme Court".

No. 49 **Work health and safety matters - Supreme Court to have jurisdiction**

Page 36, schedule 2.38 [1], line 26. Omit "District Court". Insert instead "Supreme Court".

No. 50 **Work health and safety matters - Supreme Court to have jurisdiction**

Page 36, schedule 2.38 [3], lines 29 and 30. Omit all words on those lines.

Essentially, the amendments fall into the three categories that I outlined in my second reading contribution. The Industrial Relations Amendment (Industrial Court) Bill 2016 seeks to abolish the Industrial Relations Commission and transfer the court functions to the Supreme Court. The Opposition contends that a number of the court

functions should be kept in the Industrial Relations Commission and exercised by members of the commission who are Australian lawyers. This is indicated in amendment No. 7.

Proceedings that should remain with the commission and tribunal include: proceedings for contravention of dispute orders; proceedings under parts 3, 4 and 5 of chapter 5 dealing with the registration and regulation of industrial organisations, other than division 2 of part 3 and division 3 of part 4; those provisions dealing with breaches of industrial instruments; proceedings for the recovery of money; superannuation appeals; and any other proceedings that are under the Act required to be taken before the commission.

The commission presently acts as a gatekeeper in relation to the conciliation of unfair contract proceedings. One cannot bring a section 106 proceeding in the court unless there has been compulsory conciliation and conciliation has failed. This bill provides the capacity for the Supreme Court to form the view that conciliation should take place and to refer the matter to conciliation. It is not clear whether it would then transfer to a court-appointed mediator, a registrar or go elsewhere. At the moment in the Industrial Relations Commission there are people skilled and experienced in conciliation of workplace disputes. They should continue to perform that gatekeeper role. If the matter fails it will proceed to litigation if it is the wish of the parties.

Amendments 26, 27 and 28 deal with processes currently in place in the Industrial Relations Commission. For example, the Government has understood that some proceedings in the Industrial Relations Commission such as page 13 of the legislation and new section 355E (3) and (4) should be transferred to the Supreme Court. The legislation states that the Supreme Court may not award costs in proceedings for contravention of a dispute order, with which the Opposition agrees. The Supreme Court may grant leave for a party to be represented by an agent who is not an Australian legal practitioner if it considers it appropriate to do so. Those two provisions do not go far enough. The current operation of section 166, dealing with the representation of parties, and section 181, dealing with the award of legal costs, should also be transferred with the work to be transferred to the Supreme Court. Those important procedural changes are necessary.

Although the Industrial Court is a superior court of record and has the same costs powers as the Supreme Court, it is the case that because judges of the court are members of the tribunal and can move between judicial and arbitral functions as needed, they can move from the litigation phase into the conciliation phase and most matters are resolved successfully before or during litigation without the need for a full trial and judgement. That is an important facility in the industrial jurisdiction that, with the greatest will in the world, will be lost through this bill. Supreme Court judges will not have the ability to move legally between those functions, even were they to be empowered to do so. Those are important changes that should be made to the bill. The office of President of the Industrial Relations Commission should be retained, and there is a series of consequential amendments that deal with that.

With the exception of minor matters that should be dealt with before the Local Court, work health and safety matters should be dealt with only by the Supreme Court. Our preferred arrangement would be to have all those matters dealt with by an Industrial Court, but that is not likely to happen at the present time. Amendment No. 22 deals with proceedings that are currently in the Industrial Court that the legislation will seek to repose on the District Court. For example, the existing Industrial Court jurisdiction under the Dangerous Goods (Road and Rail Transport) Act 2008, the Explosives Act 2003, the Work Health and Safety Act 2011 and the Workplace Injury Management and Workers Compensation Act 1998 is to be transferred to the District Court. We think it should go to the Supreme Court.

Amendments Nos 38, 41, 45 and 47 to 50 deal with the proposition that all work health and safety matters should be taken from the District Court and put into the Supreme Court. All the other amendments are of an ancillary or consequential nature, to give effect to those primary changes. Although not our preferred option, we think they make the architecture of the changes proposed by the bill fairer, more reasonable and more workable. It must be remembered that, in undertaking this significant change, the Government did not consult with the community at large. There was targeted consultation with stakeholders. The results of that consultation have not been made public. It is not as though submissions were invited and published on the website of the Department of Justice or NSW Industrial Relations.

In fact, when I could not find them on any website I rang NSW Industrial Relations, spoke to a very helpful person and left my contact details. I asked whether I could have access to the submissions, and I was assured that somebody would ring me back. Four or five weeks later no-one has done so. I acknowledge that at my request the Government has, somewhat belatedly, this afternoon offered me a briefing on the rationale for the bill. I thank the Government and departmental officers doing that. But doing so on the day that the bill is debated in this Chamber, when it was introduced to the Parliament many weeks ago, shows a government that is, in my view, tardy, arrogant and out of touch. Given the changes introduced by this bill, the submissions by stakeholders, who are the participants in the industrial jurisdiction, should be made public. Of the submissions that I have seen,

most do not favour the changes contained in the legislation. Most of them would favour, if the legislation were to go through, the kinds of adjustments that the Opposition proposes in these amendments.

It should be a matter of record what the stakeholders think of these changes, in order to inform the public debate. I understand that when consultation was undertaken it was not flagged with stakeholders that their views could be made public. The Government or the officers of the department could seek their consent to make their submissions public but they have chosen not to do that. It is very poor practice by any government to engage in important legal changes without proper public consultation. Except where discretion is necessary, the results of that consultation should be in the public domain so that there can be a more informed public debate. With those observations, we ask the Parliament to embrace the sensible and balanced amendments that we have proposed because they engage with the philosophy of the bill but try to make the impacts fairer, more reasonable and more workable.

**Mr DAVID SHOEBRIDGE (21:03):** I begin with Opposition amendment No. 1. I indicate that The Greens support the amendment. I move to Opposition amendment No. 2. I indicate that The Greens also support that amendment. I can probably say that The Greens support the Opposition's amendments in globo.

**The Hon. Shayne Mallard:** You may as well merge your parties.

**Mr DAVID SHOEBRIDGE:** Today's politics would suggest that we are unlikely to merge. There are a large number of dogs between us. I return to the amendments. The Opposition's amendments were traversed in part in the debate on the second reading. Amendment No. 7 and the amendments consequential to it seek a much more rational allocation of jurisdiction between the Supreme Court and the newly headed Industrial Relations Commission. The Government's failure to treat on that will come back to haunt it when a series of matters are commenced in the Supreme Court that will be seen to be far more naturally contained in the Industrial Relations Commission.

One of the key points that was raised by the Leader of the Opposition was that under this bill the Supreme Court does not have the ability when it is in court session to move between judicial and conciliation proceedings. I am sure that the Leader of the Opposition would have experienced on a number of occasions in his own practice the situation where matters get to a certain point, certain evidence is given, there are developments—cases have their own life—and the judicial member will say, "We might now proceed to conciliation." They will then move off the bench, come down and sit at the associate's table and move into conciliation. What might otherwise have had a good six days of hearing suddenly is wrapped up on agreed terms after sensible conciliation. None of that will be able to happen in the Supreme Court under this legislation. I do not think the drafters of this bill have understood the limitations it imposes on the Supreme Court.

Amendment No. 6 proposes that there be at least five full-time equivalent members of the commission. That is essential if there is to be a three-member appeal division in the commission. It will be interesting to hear the Parliamentary Secretary say why that very sensible amendment should not be adopted. Amendment No. 27 proposes to bring in the specific and well-crafted section 181, on costs. As I understand it, the Opposition's proposal is that any residual matters that remain in the Supreme Court as a result of the transfer under this bill should have their costs determined in accordance with the existing section 181 of the Industrial Relations Act. Section 181 is crafted with a number of checks and balances to protect workers. None of those checks and balances will be in the at-large discretion that the Supreme Court has on costs. Why the Government thinks that section 181, on which there has been a consensus position on both sides of politics for more than a century, should not apply to industrial matters in the Supreme Court I do not know.

The critique of the District Court's exercise of the work health and safety jurisdiction is well made. Anyone who has observed the quantum of judgements and the relatively paltry penalties for quite serious work health and safety breaches that have come out of the District Court and compared them with the much more rigorous and steep penalties that were given by the Industrial Court would realise why it is important to retain as far as possible a high level of scrutiny on work health and safety matters. The Opposition's amendments will do that. That is why The Greens support them. I have not dealt with amendments No. 43 to 46. If the debate continues, I will do that.

**The Hon. ROBERT BROWN (21:08):** Arguments on legislation such as this are the preserve of the learned few in this House. I am standing at a table that is replete with lawyers. This legislation is probably the ultimate set piece that was introduced by the O'Farrell Government under the responsibility of former Minister Pearce. The Shooters and Fishers Party, as it was known then, played a major part in halting what appeared to me then to be the Government's determination to get rid of the Industrial Relations Commission. We were partly successful, but time goes by and at the end of the day 17 beats 16, 21 beats 20. The Shooters, Fishers and Farmers Party supports the Opposition's 50 amendments. The Opposition has put forward some very good arguments. I am grateful that the Hon. David Clarke made clear that the Government has no intention to reduce the number of

commissioners any further, and I would imagine most of the workers in New South Wales would be grateful for it.

**Mr David Shoebridge:** A rock solid promise from the Premier.

**The Hon. ROBERT BROWN:** Absolutely.

**Mr David Shoebridge:** He would never go back on his word!

**The Hon. ROBERT BROWN:** I acknowledge the interjection from Mr David Shoebridge. It looks like that attempt might fail as well—17 beats 16—but that does not mean that it is not a valiant effort on behalf of the Opposition to try to bring some balance back into the very tail end of this long process, which began in 2011. The Shooters, Fishers and Farmers Party supports the Opposition's 50 amendments.

**The Hon. PAUL GREEN (21:10):** The Christian Democratic Party supports the Government's position in relation to these amendments. I have taken on board the concerns of the Hon. Adam Searle and his amendments and I am satisfied with the Government's undertaking in relation to them. The Christian Democratic Party will not support the Opposition's 50 amendments. I acknowledge the history of this matter provided by the Hon. Robert Brown. I also acknowledge the stakeholders with whom the Government has met and consulted. I am convinced that those stakeholders are overwhelmingly of the view that this legislation is the right way to go. We support the Government's position.

**The Hon. DAVID CLARKE (21:12:0):** The Government opposes these amendments. In relation to the amendments concerning the jurisdiction and membership of the commission, the original intent of the bill was to make a clean break between the judicial and non-judicial functions of the commission. The amendments blur the line between the commission and the court and dilute the original intention of the reform. To accept the amendments would mean that some judicial functions would be exercised by non-judicially qualified commissioners in the commission, after the abolition of the Industrial Court. While the amendments also propose the creation of legally qualified commissioners, this would not be commensurate with the current judicial status of these functions.

The Industrial Court currently has the status of a superior court, as does the Supreme Court. It is appropriate that the judicial functions should remain in a jurisdiction of superior court status to be exercised by judicial officers. The Supreme Court is already hearing a number of industrial relations matters that commenced in the Industrial Court. For example, when Justice Walton is unavailable, there are a number of judges with industrial relations experience. In relation to concerns raised about conciliation, the commission will continue to be required to endeavour, by all means it considers proper and necessary, to settle the matters that are commenced before it. The Supreme Court will be able to refer to the commission matters that are commenced before it for conciliation, if it considers that it is appropriate to do so. This will extend to unfair contract matters. The Supreme Court will refer all such matters for mandatory conciliation at first instance.

The bill proposes that all presidential offices in the commission—President, Vice President and Deputy President—be abolished and replaced by Chief Commissioner and commissioners. The amendments seek to retain the status quo and propose to delete all references to "Chief Commissioner" from the bill and retain the position of President. As I have already stated, the bill was intended to make the commission into a non-judicial tribunal and the establishment of the office of Chief Commissioner is intended to strongly signal this change.

In New South Wales, the position of president is usually associated with a head of jurisdiction who is a judicial officer—for example, the President of the NSW Civil and Administrative Tribunal who is a Supreme Court judge and the President of the Children's Court who is a District Court judge. The Chief Commissioner will no longer have judicial qualifications but will be required to have legal qualifications. The title of "Chief Commissioner" appropriately reflects the role of the new head of the commission after the abolition of the Industrial Court.

In relation to the amendments concerning work health and safety and the related jurisdiction to be exercised by the Supreme Court, the Government decided in 2012 that the exercise of the majority of judicial work health and safety functions would be performed by the District Court. The bill reflects this policy position, while the amendments are contrary. The bill transfers functions that are currently exercised by the Industrial Court under the Work Health and Safety Act 2011 and Workplace Injury Management and Workers Compensation Act 1998 to the District Court. These functions include proceedings for a category 3 offence and for contravention of a civil penalty provision.

The District Court already has expertise in this area because it exercises summary jurisdiction to deal with offences under the Work Health and Safety Act 2011, as a result of a transfer of functions from the Industrial Relations Commission by the previous Government in 2010. Functions for prosecutions of offences under the



Dangerous Goods (Road and Rail Transport) Act 2008 and the Explosives Act 2003 will also be transferred to the District Court for consistency. Chief Judge Price and Justice Walton support the transfer of this new jurisdiction to the District Court. There are only approximately two work, health and safety-related matters filed in the Industrial Court each year. It is appropriate that the District Court receive the proposed work health and safety-related jurisdiction to draw upon the expertise that has developed there since 2012. These amendments are opposed by the Government.

**The Hon. ADAM SEARLE (21:16):** I thank all members for their contributions on the amendments moved by the Opposition, which I will deal with very briefly. There is no reason why the matters the Opposition has proposed in Opposition amendment No. 7 could not be undertaken by legally qualified members of the Industrial Relations Commission [IRC]. They are presently reposed in superior court judges but they are no more sophisticated or complex than matters arising under the Police Act, which are currently dealt with by legally qualified members of the IRC. They also used to be dealt with only by judges, judicial members of the IRC, but due to the paucity of judicial members this Government proposed that they be dealt by legally qualified members, a matter reluctantly accepted by the Police Association. Why the matter enumerated by the Opposition in amendment No. 7 could not be dealt with in the same way has not been the subject of any kind of rational or real engagement by Government members in this place sadly.

In relation to the conciliation of court matters, I indicated that the Supreme Court will have the ability to refer matters to conciliation, but by whom? It does not refer it back to the IRC but also, at best, it works pre-litigation. What about matters that are on foot before the judge and the parties need a circuit breaker to save them all from cost and ruin. They could reach a decision that is fair to all parties through conciliation without having to go through the process and rack up everyone's costs, possibly to the ruin of lives.

**Mr David Shoebridge:** Conciliated by a judicial member who decides the case.

**The Hon. ADAM SEARLE:** I acknowledge that interjection. The Government simply has no answer to these positions advanced reasonably by the Opposition. The Government also has no answer to the charge laid by the Opposition about the running down of work safety standards and the lowering of the level of penalties being meted out by the District Court that it has created by changes to the work, health and safety regime in 2011 and subsequently, and that is because the Opposition thinks the charge is unanswerable. The Opposition makes no apologies for trying to lift the standards of workplace safety in this State to the levels they were a few years ago. The final point I will leave Government members pondering is, we on this side have said repeatedly that we favour a specialised independent court and tribunal but we recognise that once an institution like the IRC is abolished it may be hard in the future to bring it back.

By securing the agreement of the Supreme Court to take on this jurisdiction the Government has created the likelihood that an industrial court in New South Wales, if it is re-created under a change of government, may well be re-created as simply a division of the Supreme Court. I wonder whether the Government has spoken to the Supreme Court about that. It may be a division of the Supreme Court in the same way the Court of Appeal is merely a division of the Supreme Court. That is the likely outcome of these changes. If the Government does not engage reasonably with the Opposition to try to build some cross-party consensus for at least some of the propositions it is trying to put into law, it will create a situation where future innovations will have to be looked at very carefully. Re-establishing a standalone court, even as part of a tribunal, may not be feasible in the short term. I leave Government members with that matter to ponder. I ask them to reconsider their unreasonable opposition to our sensible amendments and ask all members to try to at least make this legislation a bit more balanced and workable.

**Mr DAVID SHOEBRIDGE (21:20):** I listened with care to the Government's reasons for rejecting Labor's amendments. Without exception, the reasons given rang hollow. I tried to write down as it happened what was perhaps the most extraordinarily hollow position put by the Government. It was words to the effect of, "Mr Deputy President, we do not support the amendment naming the Chief Commissioner 'President' because the term 'President' is reserved for judges in this State." He made that representation to you, Mr Deputy President.

**The CHAIR:** The Hon. Adam Searle has moved Opposition amendments Nos 1 to 50 on sheet C2016-092D. The question is that the amendments be agreed to.

**The Committee divided.**

Ayes .....16  
Noes .....17  
Majority.....1

## AYES

Barham, Ms J  
Buckingham, Mr J  
Field, Mr J

Pearson, Mr M  
Secord, Mr W  
Wong, Mr E

Borsak, Mr R  
Donnelly, Mr G (teller)  
Mookhey, Mr D

Primrose, Mr P  
Sharpe, Ms P

Brown, Mr R  
Faruqi, Dr M  
Moselmane, Mr S  
(teller)  
Searle, Mr A  
Shoebridge, Mr D

## NOES

Amato, Mr L  
Colless, Mr R  
Gallacher, Mr M  
Harwin, Mr D

Mallard, Mr S  
Phelps, Dr P

Blair, Mr N  
Cusack, Ms C  
Gay, Mr D  
MacDonald, Mr S

Mitchell, Ms S  
Taylor, Ms B

Clarke, Mr D  
Farlow, Mr S (teller)  
Green, Mr P  
Maclaren-Jones, Ms N  
(teller)  
Pearce, Mr G

## PAIRS

Houssos, Ms C  
Veitch, Mr M  
Voltz, Ms L

Ajaka, Mr J  
Franklin, Mr B  
Mason-Cox, Mr M

**Amendments negatived.**

**The CHAIR:** The question is that the bill as read be agreed to.

**Motion agreed to.**

**The Hon. DAVID CLARKE:** I move:

That the Chair do now leave the chair and report the bill to the House without amendment.

**Motion agreed to.****Adoption of Report**

**The Hon. DAVID CLARKE:** On behalf of the Hon. John Ajaka: I move:

That the report be adopted.

**Motion agreed to.****Third Reading**

**The Hon. DAVID CLARKE:** On behalf of the Hon. John Ajaka: I move:

That this bill be now read a third time.

**Motion agreed to.****SOCIAL AND AFFORDABLE HOUSING NSW FUND BILL 2016****First Reading**

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

**The Hon. DUNCAN GAY:** I move:

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

**Motion agreed to.**

**The Hon. DUNCAN GAY:** I move:

That the second reading of the bill stand an order of the day for a later hour.

**Motion agreed to.**

*Committees*

**STAYSAFE (JOINT STANDING COMMITTEE ON ROAD SAFETY)**

**Membership**

**The PRESIDENT:** I report the receipt of the following message from the Speaker of the Legislative Assembly:

MR PRESIDENT

The Legislative Assembly informs the Legislative Council that it has this day agreed to the following resolution:

That:

- (1) Christopher Gulaptis be appointed to serve on the Joint Standing Committee on Road Safety in place of Adam John Marshall, discharged; and
- (2) A message be sent informing the Legislative Council.

SHELLEY HANCOCK  
Speaker

Legislative Assembly  
11 October 2016

*Adjournment Debate*

**ADJOURNMENT**

**The Hon. DUNCAN GAY:** I move:

That this House do now adjourn.

**PENSIONERS COUNCIL REBATE SCHEME**

**The Hon. PETER PRIMROSE (21:33):** Should anyone in the future write the story of Premier Mike Baird and local government in New South Wales, four words will dominate the narrative: confusion, unfairness, instability and chaos. Everyone knows about the forced mergers, the massive pay-outs to consultants, and the dog's breakfast processes still being made up as the circus continues to roll on, but even the most vulnerable in our community are not being spared from this assault. In its interim report on council rates, the Independent Pricing and Regulatory Tribunal [IPART] has proposed that the Baird Government scrap the pensioner rate rebate scheme and shift the entire cost on to pensioners. It wants a "rate deferral scheme" to be the only option available. This will mean that no concession or subsidy will be available in future. Pensioners will have to pay their full rates. If they cannot pay them, the only option available will be to defer them until they sell their home. They will then have to pay all outstanding rates, plus interest and a service fee.

These deferral schemes already exist. They are very unpopular and accordingly the take-up rate is very low. At the recent IPART consultations, one council reported that in the last 10 years only 14 households had taken up a rate deferral option. The Baird Government will save money if it abandons pensioners and shifts the entire cost burden onto them. Currently the State Government pays \$78.5 million annually to help local councils subsidise the rates of around 480,000 eligible pensioners in New South Wales. As the Combined Pensioners and Superannuants Association note:

A rates payment deferral scheme does not compensate pensioners for the loss of the rebate. Deferral schemes come with compound interest rates and are really a reverse mortgage by stealth ...

Deferral schemes can threaten future housing security.

In reality rate deferral schemes also act as a disincentive for pensioners to sell their homes and downsize. The Combined Pensioners and Superannuants Association warns that to avoid a future burden, pensioners will stay in their homes for as long as possible, turning off lights and heating, and cutting down on food so they can pay their rates when it would often be better for them to move to smaller premises. I quote:

Many pensioners have learnt the hard way that encumbering the family home means it could make it more difficult to downsize or pay for a nursing home.

Both the Council on the Ageing and the Combined Pensioners and Superannuants Association have called on Premier Baird to rule out this harsh proposal, which is causing so much worry and concern amongst older residents in our community. The Council on the Ageing said:

For some people it could be tens of thousands of dollars that comes off the final price that they get for their house. And it's not necessarily that the people will sell their house when they die. They could very well be selling their house to move into a retirement village.

Premier Mike Baird has continued to refuse to rule out this harsh proposal. In the budget estimates I asked Minister for Local Government, Mr Paul Toole:

Would you agree that only a heartless, penny pinching government would try to abolish this scheme and cost shift the whole rates burden onto pensioners?

The response the Minister gave was the usual slippery spin:

The NSW Government has made it clear that it will not make any changes to the Pensioners Council Rate Rebate Scheme which adversely affects pensioners.

The Government has not made it clear that there will not be changes to the current Pensioners Council Rebate Scheme. It will not indicate whether or not the IPART option will be ruled out. Why will the Minister not just rule out the IPART option instead of using weasel words? Given the concern amongst pensioners, why has the Premier not come out and said something? Or why has the Treasurer or even the Minister for Ageing not said something? Or is Minister Toole's statement that he will not "adversely affect pensioners" as meaningless as the letter he signed before the election promising that there would be no forced council mergers?

### GREYHOUND RACING INDUSTRY BAN

**The Hon. Dr PETER PHELPS (21:38):** Earlier today the Premier said:

We got it wrong. I got it wrong. Cabinet got it wrong. The Government got it wrong.

Mr President, I did not get it wrong; I got it right. I got the policy and the politics right. I am not going to hide my light under a bushel. I am going to indulge in a gratuitous post-try celebration. I am going to be doing the Adam Goodes victory dance. I got it right. The Newspoll showed that I got it right—51 per cent said that there should be a second chance for the industry and 61 per cent of non-Sydney people thought that there should be a second chance for this industry. I will not be diverted by calls for a fake unity, which merely seeks to paper over the disastrous decision-making behind this entire process.

The report was received. Media reports indicate that the press-savvy people in the Premier's office wanted to release it publicly to test the waters. But that was not done. Cabinet was presented with it, but Cabinet was down on numbers because it was the start of July. I congratulate Ministers Ayres, Blair and Goward, who all strongly spoke against it. Indeed, Minister Blair continues to amaze me with his ability to show prescience in both policy and politics when it comes to this State. It was then announced publicly via social media before it went to the party room about six weeks later. This was a disaster, and it was always going to be—just like with legislation on ethanol, which was shoved through Parliament in almost identical circumstances. There was poor review, poor communication, poor consultation and, inevitably, poor results. How can Cabinet have such a tin ear? Do they read their CabSubs? Do they have somebody in their office to do so? Do they understand the political ramifications of the policy decisions?

But my real criticism is not with Cabinet, which is obliged to conform to the provisions of the Westminster system, but with the Liberal backbench. Apart from a select few, everybody toed the line—this "disunity is death" bulldust that masquerades as a virtue. Disunity is not death. Bad policy is death. The idea that it is somehow virtuous to remain silent in the face of terrible decision-making is obnoxious. If you were on a bus, filled with passengers and you saw that the driver was speeding towards a precipice, would you stay silent or would you raise a hue and cry? Would you demand to be let off the bus or would you say nothing and have the bus and all its passengers go right off the cliff?

But, no, the Liberal backbench still remained silent. I can forgive those who genuinely supported the ban because they thought that the industry was entirely impossible and irreconcilable to meet the demands placed upon it. I think they are wrong, but they were at least sincerely wrong. I can also forgive the parvenus who, with no real grounding in the history, traditions or philosophy of the Liberal Party, said nothing. No, the real problems in this case are the careerist weasels—the spineless blancmanges who, knowing this was a bad decision, comforted the Premier that this was the right choice, and sought to defend it publicly, because they believe that the fast-track to ministerial preferment is to be a bobble-headed appeaser of Executive diktat.

For them, Eurasia is at war—we have always been at war with Eurasia—and tomorrow when the Premier says we are at war with East Asia, then we have always been at war with East Asia. If we had sold the dogs to China they would have said that was a great decision. Will they now be resigning or contorting themselves into further pretzels? I say to the Premier: You cannot only rely on people who will only tell you that you are right, unless, of course, you are always only right. Instead, they sat there like Easter Island statues, knowing this was

political poison, but not daring for one second to say boo to the Premier lest they lose their Parliamentary Secretary jobs, lest they lose their finger-holds on the greasy pole to the white limo and the Martin Palace office.

Well, sucked in! You made your bed, now lie in it. Good luck going back to your electorates and explaining the 180-degree backflip without looking like the utter gooses that you are. Contrariwise, The Nationals have shown great mettle and good old-fashioned gumption. The only Liberals who have come out of this entire mess with any dignity are those of us who had the political brain to see that this was wrong and had the courage of our convictions to say so. And the Premier. The Premier's decision to reverse the policy took great personal sacrifice and political courage. The media, typically, has demonstrated its loathsomeness by mocking the decision. Yet if this is not the sign of a government which ultimately listens, then what is? The Premier has changed his mind, and he has done it to effect an outcome which is the correct one. Well done, Premier, you are too good, too noble, too decent for the vast bulk of the backbench of your own parliamentary party. You need people who are willing to speak truth to the Executive, not lickspittle yes-men.

### **MS JAN BARHAM RESIGNATION**

**Ms JAN BARHAM (21:43):** As members know, I have had a leave of absence from the Parliament since the winter recess. I want to thank the Government for providing a pair during that period, which made it possible for me to take the time I needed to look after my health. I had been living with depression and migraines for a while but, being an optimist, I thought I could manage. I also thought that the external circumstances that were troubling me would improve. They have not. The time provided me with the opportunity to get the help and treatment I needed and time to rest and think.

I have been in an elected role for 17 years and the pressures and responsibilities have taken their toll on me and on others, I think. Life has been exhausting; depression is debilitating. I have been living with anxieties that make it difficult to perform my role as an elected representative. I have been anxious about travelling, particularly flying, and about social and public interactions. I have experienced difficulties with concentration, a lack of confidence, little joy, and I have been homesick.

The last 5½ years have been tough. I came into this place while still serving as mayor of Byron Shire Council. I did the two jobs simultaneously, and that was a little silly and extremely exhausting. With the council elections in September 2012, I thought my life would become easier and that I would cope better, but within six months my brother was diagnosed with terminal cancer, aged 59. I turned 58 last week. In the last five years, 11 friends aged between 53 and 60 have died. I include both my brother and the late Dr John Kaye in that list.

It has been difficult to have ongoing death, loss and grief in my life, and I have realised that I have not been very effective at self-care. The break allowed me to have quiet time, to avoid politics and interactions, and to get some clarity and make decisions about what is best for my wellbeing. I now give notice of my intention not to return to Parliament next year. After a quarter of a century in politics—that is the longest I have ever done anything—I have decided it is time to step aside and make way for someone who has the energy, enthusiasm and capacity to do the job. I am proud of the work I have done and the things I have achieved working within this Parliament and in my North Coast community, but it is time to make some changes.

I also have another very important reason for doing what I am doing: my mother. She is 87, living at home alone and does not want to go to a nursing home, and I do not blame her. I have been a member of two inquiries that looked into the issue of aged care—the registered nurses in nursing homes and elder abuse—and I know how important it is that the people we love are cared for in their later years. I feel now is the time for me to take on more of that responsibility and also to spend some quality time with her. She has certainly supported me.

I appreciate the warm wishes and kind words I received while I was on leave. I thank the Parliament for the opportunity to access the Employee Assistance Program; that was an important first step for me to start addressing my situation. Now I am going to continue with the self-care I should have been doing and do what is best for me and my family, which I have begun by making this decision.

### **WOMEN IN PRISON ADVOCACY NETWORK**

**The Hon. CATHERINE CUSACK (21:48):** I pay tribute to Ms Jan Barham. All members have been moved by her speech. We all recognise the challenges that she has faced. She has had a number of things accumulate in a short amount of time. She has the admiration and love of all members of this House at this time.

I have spoken before about the Women in Prison Advocacy Network [WIPAN]. It is an organisation about which I feel passionately. On its website WIPAN's motto is shown as, "Every woman deserves the opportunity to build herself a brighter future." It is something I strongly believe in. The women who are trying to make a difference in this space are the best people in our community, women who have the best aspirations for

our community and who we ought to be backing, because they are the way forward for us on so many complex and difficult issues.

I pay tribute to Kat Armstrong who co-founded WIPAN in 2007. She stepped down as the chair in January this year. If one looks at her curriculum vitae one will see that she has a law degree, a diploma in accounting and other qualifications but the critical one is that she has lived experience. Kat did 10 years. She was a mother. Forty-seven per cent of the women in prison are mothers with children and arrangements need to be made for those children. Kat went through a revolving cycle and I have been privileged to hear her story. She climbed out of her situation with the motivation of winning back the love and respect of her daughter. The journey Kat undertook is a moving and extraordinary story. Kat should be made Australian of the Year. She is a most remarkable woman and an inspiration to me and to every woman who encounters her. She is moved to compensate for her own losses by reaching out to help other women so that they will not suffer similar loss. It is a display of extraordinary humanity from somebody who had nothing. I am constantly amazed by how often I encounter the generosity and extraordinary humanity of people who have nothing compared to people who have a lot. Kat is a case in point and I thank her.

I refer also to Lana Sandas, the Chief Executive Officer [CEO] of WIPAN. She has been mentored by Kat, as have many women—and I count myself as someone Kat mentors. Lana has a Bachelor of Social Science and a Certificate IV in Alcohol and Drugs. She is a gorgeous, extraordinary young woman with so much to contribute but on her curriculum vitae—as on Kat's—Lana has "lived experience". She has accomplished so much. Having had an encounter with the drug ice in prison, she turned her own life around. Lana is an amazing inspiration to all women but she was unable to obtain employment until she encountered WIPAN.

Women in prison who have been assisted by WIPAN have a recidivism rate of 7 per cent compared to a recidivism rate of 38.6 for women who are not able to come into WIPAN's program. Between 2004 and 2014 female incarceration rates increased by 54.87 per cent. Women now make up more than 7 per cent of our prison population, including 37.8 per cent who are Indigenous. The cost of a prisoner per day is \$237.34, amounting to \$86,630 per year. Government support of the WIPAN program is a no-brainer, financially, socially, morally and ethically. The people at WIPAN afford a gem of an opportunity in terms of turning lives around for women and their children who are in need of their assistance. I call on my Government to give WIPAN every support it can. I call on every employer in New South Wales to assist the wonderful work of WIPAN.

### RENEWABLE ENERGY

**The Hon. ADAM SEARLE (21:54):** I speak tonight on the subject of renewable energy and about some of the ill-informed comments that have been occurring in the wake of the recent electricity black-out in South Australia. There have been attempts to link those terrible extreme weather events in South Australia to the State's significant use of renewable energy. However, the Australian Energy Market Operator's preliminary report found that extreme weather was the primary cause of multiple transmission system faults.

**The Hon. Duncan Gay:** No, no interconnector.

**The Hon. ADAM SEARLE:** The lack of an interconnector was not caused by the use of renewable energy. There has been criticism of the fact that renewable energy was used to a significant degree. Journalist Chris Uhlmann has also pointed to some technical issues created by the intermittent nature of wind energy in particular, which comprises some 40 per cent of the energy mix in South Australia, as a possible contributor. He has been heavily criticised for doing so.

It should be understood that, for renewable energy, there are issues to do with storage. We do not yet have widely available battery storage for households and businesses in the same way as we do for traditional fossil fuel electricity. However, battery technology is on the way and the energy Ministers of this country would serve the public interest well if they made the development and adoption of battery technology for renewables a prime concern. It is a necessity if they are concerned for the security and stability of supply in the national electricity market. The fact is that coal-fired power stations, which provide something like 79 per cent of electricity for New South Wales, will finish their life spans by 2035. I have not heard anybody suggest that new coal-fired power stations will be built. Increasing the supply of renewable energy is the only real and viable source of more energy in the wake of the closure of those power stations.

There have also been ill-informed calls for a common national renewable energy target set at the Commonwealth level and for the different States and jurisdictions to abandon their own individual targets. The Federal target, set for 2020, is around 23.5 per cent; Victoria has a 45 per cent renewable energy target by 2025; Queensland has a 50 per cent target by 2030; and the Australian Capital Territory has a 100 per cent target. In fact, these different jurisdictions were encouraged to develop their own targets by the former Federal environment Minister, Mr Greg Hunt, MP, in the wake of last year's Paris climate talks. That former environment Minister

understood that Australia had no chance of meeting the targets it had agreed to in Paris if the different States did not put their shoulders to the wheel and set their own individual targets.

This idea that the State targets are somehow in conflict with the Commonwealth is a complete falsehood because the Commonwealth target is set for 2020. The Commonwealth has not yet said what it thinks should be the target post-2020. The different jurisdictions that have their own targets are set for 2025 and for 2030. If the Commonwealth wants State or different jurisdictional targets to be subsumed into an overall national target, the Turnbull Government needs to stop its indifference and properly engage with a national dialogue about what should be the appropriate national target.

If we look at Canada, a country with many parallels with Australia, we see that the action on climate change was driven by the different Provinces because the Harper Conservative Government did not believe in climate change and refused to act on it. The new Liberal Government in Canada, led by Justin Trudeau, has taken a different approach. It does not propose itself taking national action but instead has set targets that the different Provinces must achieve. The Provinces will have the freedom to decide whether to do that through emissions trading schemes or through carbon taxes, but they are required by the national Government to put their shoulders to the wheel and develop a price on carbon, and to drive policy on climate change. If the Commonwealth Government in this country wants to lead the way on climate change, it should do so. It cannot say it is not going to take any action post 2020 and expect other States and jurisdictions to sit on their hands. The need for energy security post the life of coal-fired power stations in New South Wales and across Australia means that renewable energy has to be ramped up and fast.

### TRIBUTE TO PASTOR IAN JOHN WOODS

**The Hon. PAUL GREEN (21:59):** Tonight I honour and remember the life of Pastor Ian John Woods. Ian John Woods was born on 31 May 1947 and went to be with Jesus on 8 September 2016. He was a loving husband to Joan, father to Michael, Matthew and Ben, father-in-law to Melanie, Sally and Bec, and grandfather to Elora, Anais, Abigail, Elisha, Libby, Allegra, Laura, Matilda and Isabella. Ian was the eldest son of Russell and Vera Woods. He was born in Pitt Town, New South Wales. Ian grew up in this country town attending the local public school and later Richmond High School, where he became school captain in his final year. One of the defining moments of Ian's life occurred at Richmond High School, where he met his sweetheart and loving wife, Joan.

Ian had a strong Christian heritage. He was a direct descendant of Andrew and Mary Johnston, first settlers who participated in one of the first communion services in the Hawkesbury and were credited with contributing to building Australia's first church. Ian was seventh generation Australian. Early in his life, Ian was an educator—he was a teacher and a principal. Ian and Joan began to lead a small group in their home. As these meetings grew, Ian and Joan were confident that God would soon bring along a pastor. As Ian continued teaching, he witnessed the difficulties that many families and children encountered. Ian felt compelled to help change the culture of families so that children would have a better chance of being brought up in God's ways.

Being obedient to the call of God, Ian left teaching to pastor the growing church. In the early 1980s the Hawkesbury Christian Centre in Windsor was planted. The church continued to grow and developed significant influence throughout New South Wales. Ian pastored this church for more than 25 years. Ian was appointed as State Ministry Director for the Assemblies of God in 1987. For 10 years he held the role of State President of the Australian Christian Churches. He then served on the National Board of the Australian Christian Churches. Ian connected and related well to city churches and, as a country boy at heart, had a unique ability to understand the challenges faced by regional pastors and their congregations.

Ian was passionate about marriage and family. He and Joan travelled widely speaking on marriage and family in order to enlighten and support men and women embarking on the challenging but rewarding journey of marriage. I stand here today having had the input of their advice to build a strong and healthy marriage with my wife, Michelle. Ian Woods was a man of great vision and energy. He lived his life for God and to see God's kingdom expand. He genuinely loved God and wanted everyone to know the salvation of God and God's goodness and love. He was generous with his time and wisdom, and gave freely of whatever he had. He shared his life. He made himself available and was willing to share a story and let others learn from his mistakes. It was reflected upon at his memorial service that to know Ian was to love Ian. This is true. There was an outpouring of grief and reflections about the impact of his life on the thousands of people who had known him.

As each of us reflect on the life of Ian John Woods, we know the invaluable influence and impact he has had on our lives personally. His legacy will endure. It lives on in every person who knew Ian, who met Ian, who heard Ian, who sat under his leadership and who listened to him. I know that while living out the remainder of my years I will, in many ways, be living out Ian's legacy. I do not doubt that many thousands of people will do the same. We thank God for Ian John Woods and for his obedience to the call of God throughout his life. We honour

him here in the Parliament of New South Wales. I thank him for his service to this great State and this nation. The world certainly needs, now more than ever, people such as Pastor Ian John Woods. May he rest in peace.

**The PRESIDENT:** The question is that this House do now adjourn.

**Motion agreed to.**

**The House adjourned at 22:04 until Wednesday 12 October 2016 at 11:00.**