



New South Wales

Legislative Council

PARLIAMENTARY DEBATES (HANSARD)

**Fifty-Sixth Parliament
First Session**

Wednesday, 18 October 2017

Authorised by the Parliament of New South Wales

TABLE OF CONTENTS

Rulings	1
Question Time Answers Relevance	1
Bills	1
Aboriginal Languages Bill 2017	1
Third Reading	1
Announcements	2
Message Stick	2
Motions	2
Rohingya People Genocide	2
Syrian National Football Team	2
Australian Universities Merit Teams	2
Hunter River High School Civcon Scholarship	3
Central Coast Mariners Club Captain Alan Baró	3
Surf Life Saving NSW Awards of Excellence	4
Notices	4
Presentation	4
Business of the House	4
Postponement of Business	4
Matter of Public Importance	5
National Energy Policy	5
Rulings	9
Notices of Motions Wording	9
Bills	9
Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017	9
Crimes (High Risk Offenders) Amendment Bill 2017	9
Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017	9
Second Reading	9
Documents	27
Ombudsman	27
Government Responses	27
Questions Without Notice	27
Clean Energy Target	27
Mine Safety	28
Clean Energy Target	29
Clean Energy	30
Beekeeping Industry Biosecurity	30
Ambulance and Paramedic Staffing Levels	31
Clean Energy Target	32
Macarthur Aboriginal Kids Day	32
Mining Industry	33

TABLE OF CONTENTS—*continuing*

Grahamstown Dam Water Quality	33
Regional Arts and Culture	34
Williamstown Land Contamination	35
Snowy Scientific Advisory Committee	36
Broken Hill Water Supply	37
Deferred Answers	37
Bomaderry to Kiama Bus Service.....	37
Menindee Water Cartage	38
Water Contamination	38
Water Management and Compliance Interim Report	39
Liddell Power Station	39
Indigenous Sites	39
Lismore Base Hospital Staffing	39
Police Station Services.....	40
Bills	40
Fair Trading Amendment (Ticket Scalping and Gift Cards) Bill 2017	40
Returned.....	40
Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017	40
Crimes (High Risk Offenders) Amendment Bill 2017	40
Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017	40
Second Reading	40
In Committee	47
Adoption of Report	49
Third Reading	50
Parole Legislation Amendment Bill 2017.....	50
Second Reading	50
In Committee	60
Adoption of Report	64
Third Reading	64
Education Amendment (School Safety) Bill 2017.....	64
First Reading.....	64
Second Reading	64
Electricity Supply Amendment (Emergency Management) Bill 2017	66
First Reading.....	66
Second Reading	66
Statute Law (Miscellaneous Provisions) Bill (No 2) 2017	68
First Reading.....	68
Second Reading	68
Environmental Planning and Assessment Amendment Bill 2017	70
First Reading.....	70
Second Reading	70
Health Practitioner Regulation Amendment Bill 2017	73

TABLE OF CONTENTS—*continuing*

Aboriginal Languages Bill 2017	73
Returned	73
Fisheries Management Amendment (Aboriginal Fishing) Bill 2017	74
Second Reading	74
Announcements	79
Message Stick	79
Bills	80
Fisheries Management Amendment (Aboriginal Fishing) Bill 2017	80
Second Reading	80
In Committee	87
Adoption of Report	90
Third Reading	91
Natural Resources Access Regulator Bill 2017	91
First Reading	91
Second Reading	91
Rural Crime Legislation Amendment Bill 2017	94
First Reading	94
Second Reading	94
Road Transport and Related Legislation Amendment Bill 2017	97
First Reading	97
Second Reading	98
Adjournment Debate	102
Adjournment	102
Manufacturing Industry	102
Nuclear Power	103
Mambo Wetlands Land Sale	104
Same-Sex Marriage	105
Diwali Festival	105
Same-Sex Marriage Postal Survey	105
Murray and Cootamundra By-Elections	106

LEGISLATIVE COUNCIL

Wednesday, 18 October 2017

The PRESIDENT (The Hon. John George Ajaka) took the chair at 11:00.

The PRESIDENT read the prayers.

Rulings

QUESTION TIME ANSWERS RELEVANCE

The PRESIDENT (11:01): Yesterday the Hon. David Clarke asked Minister Mitchell a question and the Minister commenced her answer. At one point the Hon. Walt Secord took the following point of order:

My point of order relates to relevance. The question specifically referred to Penrith. The Minister is referring to a number of different communities and has not mentioned Penrith once.

In response, the Minister stated:

The question clearly asked how the Government is providing working families in Penrith and other communities across New South Wales with flexible childcare options.

The Hon. Walt Secord responded to the point of order:

I would like to clarify my point. The question did not refer to other communities. There is a discrepancy between the question asked and the Minister's copy of the Dorothy Dixier.

I replied to the point of order by stating:

I will give the honourable member the benefit of the doubt because the Chair is required to accept what is being said by a member at the time. I will examine *Hansard* later this evening and provide a ruling tomorrow.

In regard to my indicating that I would give the honourable member the benefit of the doubt, I note the ruling of former President Johnson:

The House is obliged to accept the word of a member of this House.

Further, President Primrose ruled:

It is for members to vouch for their words and for the House to accept the members' assurances.

I have had the opportunity to examine *Hansard*, and I note the question asked by the Hon. David Clarke:

I address my question to the Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education. How is the Government providing working families in Penrith and other communities across New South Wales with more flexible childcare options?

[*Interruption*]

I do not have patience for interjections while I am giving a ruling. As I said yesterday, the Hon. Walt Secord is entitled to the benefit of the doubt. As I also said earlier, the House is obliged to accept the word of the Hon. Walt Secord. I note that yesterday there were numerous interjections by members from all sides of the Chamber as well as loud conversations between members when questions were being asked and answered. It becomes very difficult for not only the Chair and *Hansard* to hear the member speaking, but I accept that it is also difficult for all members to hear. Accordingly, I rule that the question asked by the Hon. David Clarke did include the words "and other communities", and I accept that the Hon. Walt Secord did not hear the words "and other communities" when he took the point of order.

Bills

ABORIGINAL LANGUAGES BILL 2017

Third Reading

The Hon. SARAH MITCHELL: I move:

That this bill be now read a third time.

Motion agreed to.

*Announcements***MESSAGE STICK**

The PRESIDENT (11:06): A number of members have expressed an interest in the ongoing location of the message stick—which I have in my hands—that was featured in the ceremony marking the introduction of the Aboriginal Languages Bill 2017 last week and later presented to Parliament. I inform honourable members that the message stick will now accompany the bill and the message that I have just signed when it is forwarded to the Legislative Assembly. This is on the understanding and assurance that the message stick will be returned to the Legislative Council with the bill when the Legislative Assembly has concluded its consideration of the bill. I look forward to discussing with interested members the placement and display of the message stick.

*Motions***ROHINGYA PEOPLE GENOCIDE**

The Hon. SHAOQUETT MOSELMANE (11:07): I move:

That this House notes that:

- (a) since 25 August 2017 the Myanmar military has reportedly killed many innocent people and driven hundreds of thousands of people out of Myanmar, burning their homes and their entire villages in the process;
- (b) the number of Rohingya refugees fleeing this brutal military crackdown in Myanmar is now over 400,000;
- (c) most of the people are fleeing to Bangladesh with opportunistic ferry operators charging large sums of money for a river crossing;
- (d) on Monday 10 October 2017 the United Nations High Commissioner for Human Rights described the Myanmar military's actions as a "textbook example of ethnic cleansing";
- (e) Amnesty International accused Aung San Suu Kyi's government of doing little other than "burying their heads in the sand"; and
- (f) urgent international help is needed to stop the killing and to assist hundreds of thousands of refugees now in Bangladesh.

Motion agreed to.

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

SYRIAN NATIONAL FOOTBALL TEAM

The Hon. SHAOQUETT MOSELMANE (11:08): I move:

- (1) That this House notes that:
 - (a) on Tuesday 10 October 2017 the Syrian national football team lost the opportunity to qualify for the 2018 World Cup after being defeated 2 to 1 by the Australian Socceroos;
 - (b) given the turmoil in Syria, the Syrian national football team has not played a match on home soil since 2010, holding all of its third-round Asian qualifiers in Malaysia;
 - (c) although Syria has never qualified for the World Cup finals, in 2017 the Syrians came close following their equaliser with Australia in their first game in Malaysia;
 - (d) Syria also beat Uzbekistan and Qatar as well as securing a draw against China; and
 - (e) there are currently more than 8,000 Syrian-born people that call Australia home, and over 13,000 Australians with Syrian ancestry.
- (2) That this House congratulates the Australian and Syrian national football teams on their professionalism and wonderful play during the World Cup match, and wishes the people of Syria peace and prosperity in the face of enduring hardship.

Motion agreed to.

AUSTRALIAN UNIVERSITIES MERIT TEAMS

Mr SCOT MacDONALD (11:09): I move:

- (1) That this House notes that at the recent Australian University Games, a number of students from the University of Newcastle were selected as members of the Australian Merit Teams:
 - (a) Josh Voigt [Baseball];
 - (b) Kim Williams [Netball];
 - (c) Ellie Brown [Rugby Sevens];
 - (d) Freya Roebuck and Cherub Lum [Basketball];
 - (e) Jake Robinson, Mitchell Marsden and Laura Robinson [Water Polo];

- (f) Matthew George [Tennis]; and
 - (g) Alex Langbridge and Sean Glachan [Touch].
- (2) That this House:
- (a) congratulates and commends all those honoured with selection to the Australian Universities Merit Teams;
 - (b) acknowledges Newcastle University and its 65 student-led sports clubs for their conscientious promotion of healthy lifestyles and facilities for students that have led to great success at the Australian University Games; and
 - (c) acknowledges and commends Dr Simon Clulow for his continued dedication to numerous sports clubs and support of so many athletes to achieve their goals.

Motion agreed to.

HUNTER RIVER HIGH SCHOOL CIVCON SCHOLARSHIP

Mr SCOT MacDONALD (11:09): I move:

- (1) That this House notes that:
- (a) Rachael Fisher and Sam Price from Hunter River High School were awarded the inaugural Civcon Scholarship, to attend the Beef Cattle Assessment course at Tocal Agricultural College, a course now in its thirty-eighth year;
 - (b) the course is widely recognised as the most practical and hands-on beef cattle selection course of its kind in Australia and internationally;
 - (c) Rachael Fisher and Sam Price, both 15, were awarded the prestigious scholarship based on their commitment to Hunter River High School's cattle team and enthusiasm for their studies;
 - (d) Hunter River High School's Science and Agricultural teacher, Mr Andrew Abercrombie, has stated that Rachael Fisher and Sam Price are "excellent ambassadors and worthy recipients of the scholarships";
 - (e) the Civcon Scholarship was established after staff of Hunter River High School approached the company to sponsor students committed to the agricultural industry after finishing high school; and
 - (f) Hunter River High School and Civcon Water Services Pty Ltd have worked on a number of projects together in the past to assist students and the community.
- (2) That this House:
- (a) congratulates and commends Rachael Fisher and Sam Price on being awarded the inaugural Civcon Scholarship;
 - (b) acknowledges and commends Mr Mick Adams, Director of Civcon Water Services Pty Ltd, and Mr Karl Atkin, of Civcon Water Services Pty Ltd for their support, generosity and commitment to Hunter River High School students and the community; and
 - (c) acknowledges the outstanding work of Mr Andrew Abercrombie and Hunter River High School in ensuring assistance to students and educational opportunities for students to pursue their desired careers.

Motion agreed to.

CENTRAL COAST MARINERS CLUB CAPTAIN ALAN BARÓ

Mr SCOT MacDONALD (11:10): I move:

- (1) That this House notes that:
- (a) the Central Coast Mariners Football Club has announced that Mr Alan Baró has been named Club Captain for the Hyundai A-League 2017/2018 competition;
 - (b) Mr Baró was presented with the Captain's Armband at the annual Mariners Family Day on Saturday, 23 September 2017 by last season's Captain, and the Mariners' Head of Football and Elite Performance, Nick Montgomery;
 - (c) Mr Baró is the Mariners' fourth full-time captain, with Noel Spencer, John Hutchinson and Nick Montgomery previously holding the position;
 - (d) Mr Baró is an experienced defender and played for more than a decade in Spain;
 - (e) the Central Coast Mariners Team consists of Tom Glover, Ben Kennedy, Harry Ascroft, Adam Berry, Josh Bingham, Kwabena Appiah-Kubi, Trent Buhagiar, Paul Okon [Coach] and Ivan Jolic [Assistant Coach]; and
 - (f) the club's Chairman Michael Charlesworth, Director Kathryn Duncan and Chief Executive Officer Shaun Mielekamp have shown continuing devotion to the club.
- (2) That this House congratulates Mr Alan Baró and all team members selected into the Central Coach Mariners Football Club and extends its best wishes for a successful 2017-2018 competition.

Motion agreed to.**SURF LIFE SAVING NSW AWARDS OF EXCELLENCE****Mr SCOT MacDONALD (11:10):** I move:

- (1) That this House notes that:
 - (a) on 5 August 2017, Surf Life Saving NSW held its annual Awards of Excellence event at the Hilton Hotel, Sydney; and
 - (b) award recipients included:
 - (i) Surf Sports:
Official of the Year—Wayne Scott [Red Rock-Corindi];
Youth Athlete of the Year—Jemma Smith [Umina];
Athlete of the Year—Jake Lynch [Newport];
Masters Athlete of the Year—Paul Lemmon [Terrigal];
Sport Team of the Year—Open First Aid Team [Freshwater]; and
Coach of the Year—Jock Campbell [Wanda].
 - (ii) Member Services:
Administrator of the Year—Trish Watts (Shelly Beach); and
Services Team of the Year—Member Services Team (Mid North Coast).
 - (iii) Education:
Trainer of the Year—Susan Croad [Hat Head];
Assessor of the Year—Ramzy Fawzy [Wamberal];
Facilitator of the Year—Janne Moran [Pacific Palms];
Initiative of the Year—Special Needs Branch Championships [Mona Vale]; and
Community Education Program of the Year—Central Coast Branch.
 - (iv) Lifesaving:
Junior Lifesaver of the Year—Elliott Prasad [Narrabeen Beach];
Junior Lifesaver of the Year—Matilda Shirley [Byron Bay];
Young Lifesaver of the Year—Ryan Chiswell [Ocean Beach];
Australian Lifeguard Service Lifeguard of the Year—Jai Sheridan [Byron Shire]; and
Rescue of the Year—Camden Haven Surf Life Saving Club.
 - (v) Overall:
Branch of the Year—Surf Life Saving Sydney;
Club of the Year—Bermagui Surf Life Saving Club;
Volunteer of the Year—Wayne Druery [Cronulla]; and
Surf Lifesaver of the Year—Lara Boyle [Whale Beach].
- (2) That this House congratulates and commends all award recipients, Surf Life Saving NSW and all volunteer Surf Life Savers for their selfless service to the community.

Motion agreed to.*Notices***PRESENTATION***[During the giving of notices of motions]*

The Hon. Dr Peter Phelps: Point of order: Mr President, will you review the wording of the motion given by Dr Mehreen Faruqi to see whether it is in line with the decorum of this Chamber?

The PRESIDENT: I will look at the motion and give a ruling later today.

[Later,]

The PRESIDENT: For the benefit of members, when I am seeking the call for notices of motions the procedure adopted by me and, as I understand it, previous Presidents, is that I call it in this order: Ministers, Leader of the Opposition, then Opposition, crossbench, Government. I continue to rotate in that order. When a number of members are seeking the call, please understand it is not on the basis of who jumps up first. I will continue on the basis of Opposition, crossbench and Government until only one person is seeking the call and that person can do the rest of his or her notices of motions.

*Business of the House***POSTPONEMENT OF BUSINESS****The Hon. DON HARWIN:** I move:

That Business of the House Notice of Motion No. 1 on the *Notice Paper* for today be postponed until Wednesday 22 November 2017.

Motion agreed to.

The Hon. ADAM SEARLE: I move:

That Government Business Notices of Motions Nos 1 to 7 on the *Notice Paper* be postponed until a later hour.

Motion agreed to.*Matter of Public Importance***NATIONAL ENERGY POLICY**

Mr JEREMY BUCKINGHAM (11:22): I move:

That the following matter of public importance be discussed forthwith:

National Energy Policy

Members could not argue that national energy policy is not the most important matter for this House to consider today, on a day when the Turnbull Government has continued its disastrous approach to energy policy with its National Energy Guarantee, the NEG—an acronym that certainly was not run through the Urban Dictionary. Clearly this matter of public importance should be debated in the Parliament today. We owe it to the people of New South Wales to have this debate because it impacts on our ability to mitigate climate change; it has massive repercussions for the energy mix in New South Wales; it will impact adversely on household power bills; and it relies on the States, including New South Wales, to sign up to this terrible policy at the Council of Australian Governments [COAG]. It is now up to the Hon. Don Harwin to lead Australia out of this mess—it is, truly. I know people are shocked. I note the laughter from those on the Government benches. I note the shock and awe. It is up to Don. Cometh the hour, cometh the man, we are all in the hands of the Don.

Mr Scot MacDonald: Point of order: Mr Jeremy Buckingham should be reminded that he has to refer to the Leader of the House by his proper title.

The PRESIDENT: There were probably a number of breaches of the standing orders in the last few moments, but I remind Mr Jeremy Buckingham that all members should be addressed by their proper title. I remind members that interjections are disorderly at all times. I also remind Mr Jeremy Buckingham that encouraging and responding to interjections also is disorderly.

Mr JEREMY BUCKINGHAM: We know the energy Minister had a phone hook-up with the Commonwealth and the States last night as part of COAG. I look forward to being enlightened by the Minister as to what he was told and the position New South Wales will take. We know that this policy will be discussed and decided by a COAG meeting in November, with a COAG meeting potentially to be called sooner to discuss and decide these matters. That is why this House should debate this matter today. As the elected representatives of New South Wales we should have an input into this major decision.

The public should hear the views of members in this Chamber. Do we sign up to a climate policy formulated to placate Tony Abbott, who thinks climate change is a good thing, or should New South Wales reject this policy and join the other States for a proper clean energy target which is backed by industry and the community? Is New South Wales happy to abandon the fight against climate change to cut 50¢ or maybe \$2 off energy bills by 2020—just maybe? This matter is important because we cannot let energy policy be dictated by Tony Abbott, Pauline Hanson and a bunch of lunatics who have vested interests in the coal and gas lobby.

We have one planet, one pale blue dot in the vastness of space, with a fragile climate within which human beings and other species have evolved to prosper. If that climate changes even by small amounts it will throw our ecology severely out of whack and put at risk the future of humanity. Responsible governments and scientists around the world have agreed that climate change puts at risk our very existence, and this policy is supposed to deal with that. Climate change impacts on water availability, on agriculture and on our ability to grow crops in the Murray-Darling Basin.

At the Paris climate summit, Australia signed up to a target of keeping global warming under 2 degrees Celsius with the ambition of keeping it under 1.5 degrees Celsius. We are at the precipice. Little time is left to make major adjustments in our economy and to dramatically lower greenhouse gas emissions. We are talking about months and years, not decades. We must act now. We cannot allow a bunch of mercenary retrograde politicians in the Liberal and Nationals parties to sabotage our only chance of avoiding catastrophic climate change and all that it will entail. Australia once led the world with its carbon price, the renewable energy target, the Clean Energy Finance Corporation and the Australian Renewable Energy Agency, but our current Federal energy and environment Minister, Josh Frydenberg, danced with his comrades as they rescinded the carbon price.

Tony Abbott tried to wreck everything as Prime Minister, and he continues to wreck everything now as Malcolm Turnbull's puppeteer. An emissions trading scheme was sensible policy, embraced by industry but ditched before it was really considered by a spineless Turnbull. A clean energy target was the last possible credible framework for sensibly reducing emissions. It was recommended by Australia's Chief Scientist, Alan Finkel, with the Federal Opposition willing to support it and everyone in industry—every economist—saying it should be adopted. Yet here we are with the clean energy target dumped for a coal and gas target. This week, Tony Abbott tweeted, in response to the National Energy Guarantee [NEG]:

Progress at today's party room. The clean Energy Target has been definitely dropped.

Pauline Hanson followed by tweeting

Good to see the Gov plans to scrap RET and CET like One Nation has been suggesting. About time they joined us in the 21st century.

This is not agile or innovative energy policy. This is policy being made to placate some of the most backward people in Australian politics. The national energy guarantee policy guarantees failure to mitigate climate change. It guarantees there will continue to be investment paralysis in renewable energy. It guarantees that we will still be talking about the details of this policy for at least the next three years. It guarantees that the Australian public will be let down by Malcolm Turnbull once again, and it guarantees that the Liberals and Nationals will be turfed out of office at the next election.

The only policy that the New South Wales Government seems to have is that there should be a national policy. It does not seem to matter at all to the Government what that national policy is. Should New South Wales automatically back a bad national policy? That is no way to govern. It is failing the people of New South Wales. The hope for a sensible energy policy now rests with the States and Territories. Victorian Labor Premier Daniel Andrews understands what is happening. Today he said:

Alan Finkel has been replaced. We've now got Tony Abbott as chief scientist.

South Australian Premier Jay Weatherill said:

The Prime Minister is powerless, the Prime Minister is impotent.

He said:

This is a complete victory for the coal industry.

The Greens agree. Bill Shorten said:

Today, the choice was made clear: Labor is for renewable energy, Turnbull is for more coal and higher power bills.

I hope Labor sticks to its guns to defeat this terrible policy. The Greens will help Labor do that in New South Wales and at a Federal level. The key issue is with the National Energy Guarantee. The key plank of climate and energy policy is no guarantee at all. There are no penalties for non-compliance. The only tool to enforce compliance is to threaten a retailer with deregistration. Does anyone seriously think that the Government will deregister Origin Energy or AGL Energy? Those companies have massive market share and market power. I can guarantee that if they fail to comply the Government will simply offer up excuses and impose a pathetic penalty, while the companies keep polluting. Is the Government really going to deregister those companies that are supplying 20 to 30 per cent of our energy mix? The reality is that the policy is basically an emissions intensity scheme, with no penalties for non-compliance.

If this is a serious policy then it needs serious penalties, just as there would be under a carbon price, an emissions intensity scheme or a clean energy target. There is absolutely no detail regarding the policy. The Energy Security Board [ESB]—the body that is putting this policy forward—was established only four weeks ago. The letter from the ESB to Minister Frydenberg proposing the policy makes it very clear that this is a policy which will have to be developed, as if the last decade of policy development never happened. It is a back-of-a-beer-coaster policy. What will the system-wide reliability standard be? How will this be translated into an operating requirement for different regions? What will the minimum level and type of dispatch-able capability be?

Where is the framework about what type of generation and load resources meet the dispatch-ability requirement? What will the emissions target for the electricity sector be? Will it be set at 26 to 28 per cent by 2030, or will it be set at 40 to 50 per cent below 2005 levels in 2030, as has been shown to be the most efficient way to meet our emissions reduction targets? This is not a policy; this is a joke. It is a recipe—a guarantee—for more debate, more confusion and a failure to deal with the critical issues of our time: energy security and action on climate change. This is a matter of public importance because it is a disaster of a policy. [*Time expired.*]

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (11:33): I thank the member for giving me the opportunity to update the House a little—to add to the limited information I was able to provide the House yesterday during question time. I flagged at that time that there would be a discussion of what was being proposed at the Council of Australian Governments [COAG] Energy Council teleconference that had been called for 5.30 p.m. There have been some media reports about that this morning. I can provide a little more information to the House so that the House can consider whether this is the most important matter to consider today or whether it should consider other items that are on the *Notice Paper*.

The Commonwealth commissioned the Energy Security Board to provide advice. I want to correct an impression that Mr Jeremy Buckingham may have just given when he said that the board was constituted only four weeks ago. While that may be correct, let us remember who the members of that board are. First of all there is Dr Kerry Schott, a person who has given outstanding service to this State and to Australia, and who has very extensive experience in this area. She is assisted by the deputy chair, Clare Savage, from the Business Council of Australia. I have met her; she has specialised in the area of energy policy. Apart from the top members of the board there are three people who have principal carriage of the National Electricity Market: John Pierce from the Australian Energy Market Commission; Paula Conboy, from the Australian Energy Regulator and Audrey Zibelman, from the Australian Energy Market Operator. All of them have a very detailed understanding of what is required, right now, in terms of national energy policy.

The reliability emissions guarantee, which the Energy Security Board proposed, and which the Federal Government has adopted as policy and as a suggestion to the COAG Energy Council, is a high-level framework which proposes to apply two obligations on retailers. The first is a reliability guarantee—that is, an obligation to purchase a certain amount of flexible and dispatchable resources, either by way of generation or demand response. The second is an emissions guarantee—that is, an obligation to meet an emissions reduction target. It is proposed these obligations could be met through any combination of technology-neutral options that best meet a retailer's need. This framework would mean also that existing and new generation are treated equally. Jurisdictions of the National Electricity Market were advised yesterday that the financial modelling suggests benefit to affordability: firstly, due to an integration within the existing national framework—that is, the national electricity laws. This is expected to reduce policy uncertainty and increase investment certainty, as it reduces the opportunity for changes and provides a clear direction.

Secondly, it is thought that it will increase affordability because it will use existing market contracts and that, therefore, there is no need for new and complex certificate schemes. This should make financing easier, and lower the cost of capital. Thirdly, it is expected to increase affordability because it reduces barriers to entry for generation and retail, as organisations will have flexibility in how to meet obligations and can part-contract with other parties. Those are the principal features of the reliability and emissions guarantees that have been suggested by the board and adopted by the Federal Government. The COAG Energy Council will discuss the framework that has been proposed at the November meeting of the COAG Energy Council. That, in part, overlaps with the second of our two November sitting weeks. It will continue into the following week as well.

The Hon. Walt Secord: We will give you a pair.

The Hon. DON HARWIN: I acknowledge that interjection and thank the Hon. Walt Secord in case that pair becomes necessary. States and Territories will closely examine the proposed framework ahead of the November meeting, including looking at the key parameters of that scheme. Obviously, the New South Wales Government will assemble the information that is being provided by the Federal Government and will analyse that in the light of our existing policy settings before this Government decides what its position will be on this particular framework. But, as I have said, I have generally welcomed it because some of its features are consistent with principles that this Government believes should underpin the National Electricity Market, such as that it should be based around a private sector-led National Electricity Market and that energy and climate policy should be integrated, which is another feature.

In respect of some of the other analysis that has been done and the modelling this Government will need to see to ensure that it is a solution that is worthy of adoption as national energy policy, that is before us. The onus will be on the Federal Government to provide that material for the States to consider between now and the November meeting of the COAG Energy Council. As the Government has stated in this Chamber and elsewhere, we strongly support the national process but I remind everyone that substantial work already has been done nationally to strengthen energy security, even before this framework was put on the table yesterday. Over the past 12 months the COAG Energy Council initiated the Finkel review and accepted 49 of the 50 recommendations. Work is well progressed and indeed completed in respect of a number of those recommendations. First and foremost among those was the establishment of the Energy Security Board.

Energy and climate policy remains a key matter to be resolved. The Government will decide, based on the material received over the next few weeks, how satisfactorily resolution of the issue has been achieved. This

critical policy area underpins investment certainty in the medium to long term and, as I have said repeatedly in the House, that is absolutely critical. While the policy work progresses, what is clear is that by the end of 2017 at least 10 of the Finkel review recommendations already will have been implemented in full. That is good news indeed. A number of alarmist types of claims were made by Mr Jeremy Buckingham.

Mr Jeremy Buckingham: Point of order—

The PRESIDENT: Order! Stop the clock.

Mr Jeremy Buckingham: I have been listening attentively to the contribution to the discussion made by the Minister. To this point, he has not addressed why this matter is not a matter of public importance. The Minister is nine minutes into a 10-minute speech and has not at any point said why this is or is not a matter of public importance that should be debated further by other members of the House, giving the Opposition and the crossbench an opportunity to consider what is clearly—in my opinion and in the opinion of others—a matter of public importance.

The PRESIDENT: Order! Standing Order 200 (1) states:

(1) A member may give notice of a motion – That the following matter of public importance should be discussed forthwith:

It then states "[specifying the matter]". Paragraph (3) states:

(3) When the motion has been made, the question is to be decided without amendment or debate, except a statement by the mover and a statement by a Minister not exceeding 10 minutes each.

I stopped the clock because the standing order indicates that each speaker, mover and Minister would be given 10 minutes and I did not want the point of order to erode the time. In *Selected President's Rulings* up until June 2012 at page 39 then President Willis stated in 1993:

When moving for the discussion of a matter of public interest, members are required to establish a degree of urgency sufficient for the House to agree to the motion. Often in matters of this nature it is necessary to give some indication of the substance of the debate to follow in order to establish the degree of urgency necessary.

I believe that the Minister has been relevant.

The Hon. DON HARWIN: Thank you, Mr President. As I was about to say, I have outlined basically the proposal that has been put to the Government. I have made clear the amount of detail and that there is more material that the Government is yet to receive on this issue. My view of whether this discussion should proceed is that there really is not enough information on the table yet for us to have a discussion that can run for as long as an hour and half today. If we are to have a long discussion on energy policy—and I know it is a matter of great interest to the House, which is why the House set up the Legislative Council Select Committee on Electricity Supply, Demand and Prices in New South Wales to examine many of the issues—it would be better to await the Government receiving more details about the proposal so that the discussion could be better informed. After all, at present only a limited amount of information is available. [*Time expired.*]

The PRESIDENT: The question is that the matter of public importance be discussed forthwith.

The House divided.

Ayes16
Noes21
Majority.....5

AYES

Buckingham, Mr J (teller)	Donnelly, Mr G	Faruqi, Dr M
Field, Mr J	Houssos, Ms C	Mookhey, Mr D
Moselmane, Mr S (teller)	Pearson, Mr M	Primrose, Mr P
Searle, Mr A	Secord, Mr W	Sharpe, Ms P
Shoebridge, Mr D	Veitch, Mr M	Walker, Ms D
Wong, Mr E		

NOES

Blair, Mr N	Borsak, Mr R	Brown, Mr R
Clarke, Mr D	Colless, Mr R	Cusack, Ms C
Fang, Mr W	Farlow, Mr S	Franklin, Mr B (teller)

NOES

Green, Mr P
MacDonald, Mr S

Harwin, Mr D
Maclaren-Jones, Ms N
(teller)

Khan, Mr T
Martin, Mr T

Mason-Cox, Mr M
Pearce, Mr G

Mitchell, Ms S
Phelps, Dr P

Nile, Reverend F
Taylor, Ms B

PAIRS

Graham, Mr J
Voltz, Ms L

Amato, Mr L
Mallard, Mr S

Motion negatived.

*Rulings***NOTICES OF MOTIONS WORDING**

The PRESIDENT (11:53): During the giving of notices of motions this morning Dr Faruqi gave notice of a motion concerning the banning of single use plastic bags. Paragraph 2 of the motion states, "That this House calls on Premier Berejiklian and the New South Wales Government to pull their heads out of the sand and announce a ban on single use plastic bags." Dr Phelps took a point of order, and I indicated to the House that I would consider the wording of the motion. Given the motion refers to the Premier and the New South Wales Government, and upon careful reflection on the words used, I do not believe the wording of the motion to be offensive. Dr Faruqi's motion can appear on the *Notice Paper* as it was given and was notated by Dr Faruqi this morning. I remind all members that the Clerks are available to examine motions of which members will give notice before they are given.

*Bills***CRIMES (SENTENCING PROCEDURE) AMENDMENT (SENTENCING OPTIONS) BILL 2017****CRIMES (HIGH RISK OFFENDERS) AMENDMENT BILL 2017****JUSTICE LEGISLATION AMENDMENT (COMMITTALS AND GUILTY PLEAS) BILL 2017****Second Reading**

The Hon. DAVID CLARKE (11:55): On behalf of the Hon. Don Harwin: I move:

That these bills be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017, the Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017 and the Crimes (High Risk Offenders) Amendment Bill 2017. The Government is committed to a tough and smart criminal justice system that puts community safety first. These bills are an important part of that work. They mark the most significant criminal justice reform agenda seen for many years. The reforms are underpinned by the commitment of \$200 million and will achieve a tough and smart justice system in four ways. First, the reforms will change how offenders are sentenced to ensure they are supervised where necessary. Too many offenders are leaving court without supervision, including domestic violence offenders. Too many offenders are not being made to attend the evidence-based programs we offer to reduce their risk of reoffending.

Secondly, a new regime will address indictable offences at the early stage of the justice process by the early appropriate guilty plea reforms. Thirdly, if offenders pose an unacceptable risk to the community upon completing their sentence of imprisonment, the reforms will ensure a more robust scheme enabling post-sentence supervision in the community or detention in a correctional centre of a small cohort of high-risk sex and violent offenders. Fourthly, my colleague the Minister for Corrections will introduce reforms which will implement stronger decision-making regarding parolees and smarter management of them. These reforms are underpinned by evidence about what works and an informed but extensive consultation process. The review of sentencing, parole and early appropriate guilty pleas undertaken by the Law Reform Commission is the foundation of these reforms. On my behalf, the Department of Justice also led a review of the framework governing the post-sentence supervision and detention of high-risk offenders. These reforms and the investment by the Government will change the way we deal with offenders throughout the justice process from the beginning until the end.

I turn first to the Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017, which will introduce new, tough and smart community sentencing options that will promote community safety by holding offenders accountable and tackling the causes of offending. These reforms build on the Law Reform Commission's comprehensive report into sentencing in 2013. We know from Australian and international research that community supervision, combined with programs that target the causes of crime reduce

offending. We know that community supervision is better at reducing reoffending than leaving an offender in the community with no supervision, support or programs. We also know that community supervision is better at reducing reoffending than a short prison sentence.

The Law Reform Commission's report on sentencing showed us that some of our existing community-based sentences are not achieving results. For example, there are significant problems with suspended prison sentences—44 per cent of them are unsupervised and only require offenders to be of good behaviour. In effect, this is a slap on the wrist. Many offenders are not receiving the supervision and programs under a suspended sentence that would compel them to address their offending behaviour in the community. A 2014 study of suspended sentences by the Bureau of Crime Statistics and Research concluded that the earlier reintroduction of suspended sentences in New South Wales had increased rather than reduced the prison population. Other sentences such as home detention orders and intensive correction orders give offenders intensive supervision that tackles their offending behaviour. However, at the moment these orders have structural issues that stop many offenders with complex needs from accessing these orders and, instead, they are given short prison terms or suspended sentences. These sentencing reforms will help offenders receive the supervision and programs that address their offending behaviour, resulting in less crime and fewer victims.

The bill will replace the current community-based sentences with a new range of community sentencing options. First, we are strengthening the intensive correction order. It will be available for offenders sentenced to up to two years imprisonment and will require all offenders to submit to supervision. As well as mandatory supervision, the intensive correctional order will have a range of additional conditions to help courts ensure that offenders address their offending behaviour and are held accountable. Courts will be required to impose at least one of these additional conditions and may impose further conditions where necessary to support the safe and effective management of the offender in the community. With the new intensive correction order, offenders who would otherwise be unsuitable or unable to work will be able to access intensive supervision as an alternative to a short prison sentence.

Suspended sentences will be abolished as a sentencing option. They do not hold offenders accountable, 44 per cent of them are not supervised and they have been found to increase the New South Wales prison population. Home detention will no longer be a separate sentence. It will be available as an additional condition of the intensive correction order. The same conditions that currently apply to home detention orders will apply to offenders who have a home detention condition on their intensive correction order.

Secondly, the bill will introduce a new community correction order to replace section 9 good behaviour bonds and community service orders. The community correction order will be a more flexible order so that offenders can receive supervision to tackle their offending behaviour and be held accountable. Courts will be able to tailor the sentence to impose a range of conditions. As with the new intensive correction order, where offenders cannot work or where there is limited available work, other conditions can be imposed as part of a community correction order to hold the offender accountable.

Thirdly, we are introducing the conditional release order as a community-based sentence for the lowest level of offending. Like the tougher and more onerous community correction order and intensive correction order, courts will be able to impose optional conditions like supervision and participation in programs, but more onerous conditions like curfews and community service work will not be permitted. Pre-sentence assessment report processes will be streamlined. Courts will be able to receive a single report from which to impose a sentence instead of having to obtain multiple reports. Reports will advise courts about offenders' risks, needs, suitability for work and other relevant details so that they can tailor the conditions of orders to offenders' individual circumstances. There will be a presumption that an offender convicted of a domestic violence offence will receive either a prison term or a supervised order. This reflects and supports the Premier's priority to tackle domestic violence reoffending in New South Wales.

I now turn to the detail of the bill. Schedules 1 and 2 to the bill amend the Crimes (Sentencing Procedure) Act 1999. Schedule 3 to the bill amends the Crimes (Administration of Sentences) Act 1999. These amendments provide for the imposition, administration and revocation of the intensive correction order, community correction order and conditional release order. Schedule 4 to the bill makes consequential amendments to other legislation. Items [6] to [10] in schedule 1 to the bill establish the three new orders and abolish the existing suite of community-based sentences. Item [29] in schedule 1 to the bill amends part 5 of the Crimes (Sentencing Procedure) Act to provide new sentencing procedures for the new intensive correction order.

These orders will be available for offenders sentenced to up to two years imprisonment, except for the following offences: murder, manslaughter, sexual assault, child sexual offences, offences involving the discharge of a firearm, terrorism offences and breaches of serious crime prevention orders and public safety orders. In addition, a court must not impose an intensive correction order for a domestic violence offence unless satisfied that it will adequately protect the victim or any likely co-resident of the offender.

Proposed section 66 of the Crimes (Sentencing Procedure) Act will make community safety the paramount consideration when imposing an intensive correction order on offenders whose conduct would otherwise require them to serve a term of imprisonment. Community safety is not just about incarceration. Imprisonment under two years is commonly not effective at bringing about medium- to long-term behaviour change that reduces reoffending. Evidence shows that community supervision and programs are far more effective at this. That is why proposed section 66 requires the sentencing court to assess whether imposing an intensive correction order or serving the sentence by way of full-time detention is more likely to address the offender's risk of reoffending.

Proposed section 73 of the Crimes (Sentencing Procedure) Act sets out the standard conditions of the intensive correction order—namely, not to commit an offence and to submit to supervision. All offenders will be required to submit to supervision. Community corrections uses a risk framework that assigns different levels of intensiveness to each offender's supervision. Offenders who are at high risk of reoffending and have complex issues are supervised intensively. Supervision for lower risk offenders is less intensive and may be suspended in appropriate circumstances. The discretion to suspend supervision will be subject to requirements specified in the regulations to ensure that the power is properly exercised and does not go unfettered. Proposed section 73A provides for the additional conditions of the intensive correction order, which will enable courts to tailor the order to hold offenders accountable and to tackle their offending behaviour.

Courts will be required to impose at least one of the conditions in proposed subsection (2) in addition to the standard conditions in section 73, but can set a time limit on how long the order is in force.

Proposed section 81A of the Crimes (Administration of Sentences) Act 1999, contained in item [5] of schedule 3 to the bill, empowers the State Parole Authority to vary the additional conditions of an intensive correction order at any time on the application of the offender or Community Corrections so it can be adjusted to reflect the offender's circumstances. In addition to the standard and additional conditions, proposed section 73B gives the sentencing court power to impose further conditions on the intensive

correction order, which will give courts more flexibility to tailor the order to an individual offender's circumstances. Schedule 3 to the bill contains legislative amendments providing for the day-to-day administration and management of the intensive correction order and breach and revocation procedures.

Proposed section 81A empowers the State Parole Authority to impose, vary or revoke the conditions of an intensive correction order, with the exception of the standard conditions not to commit an offence and to submit to supervision. Proposed section 82 provides for regulations under the Crimes (Administration of Sentences) Act 1999 to prescribe the obligations of an offender while subject to a condition of an intensive correction order. These are being developed by the Department of Justice, which will consult on them with key stakeholders before the regulations are made. This structure is consistent with the current sentencing legislative framework, where the obligations of offenders under a sentence are prescribed by the regulations.

Item [19] of schedule 3 provides for actions that either Community Corrections or the Parole Authority can take if an offender breaches an intensive correction order. These actions include a new framework of escalating sanctions that can be used for less serious breaches of intensive correction orders that do not warrant revocation. The purpose of the new sanctions framework is to provide clear legislative authority for Community Corrections and the State Parole Authority to respond quickly and effectively to lower level breaches of intensive correction orders so that they can be safely dealt with in the community. Currently, there are limited options available under legislation to deal with lower level breaches of intensive correction orders, such as warnings or more stringent application of conditions.

The new sanctions will provide a much wider range of tools to deal with problematic behaviour in the community before it escalates to the point where the order must be revoked. The sanctions will include issuing warnings, imposing curfews, imposing electronic monitoring and up to 30 days home detention. Sanctions will be used in conjunction with the behaviour change interventions and reinforcement of positive behaviours by Community Corrections so they have the greatest impact on the offender. Serious breaches will continue to be escalated to the Parole Authority, which will retain its powers to revoke intensive correction orders in the event of a breach.

Proposed section 8 of the Crimes (Sentencing Procedure) Act, set out in item [8] of schedule 1 to the bill, replaces community service orders and section 9 good behaviour bonds with the new community correction order. The sentencing procedures for the new order are outlined in item [31] which inserts a new part 7 into the Crimes (Sentencing Procedure) Act. The community correction order will be a non-custodial order available for up to three years. Proposed section 88 provides that the standard conditions will be not to commit an offence and to appear before the court when called on to do so.

Proposed section 89 lists the additional optional conditions available on a community correction order [CCO]. These include supervision, up to 500 hours of community service work, and abstention from alcohol and drugs. These additional conditions will be limited and enable courts to tailor the CCO to the individual circumstances of the offender. Proposed section 90 gives the sentencing court power to impose further conditions on the community correction order, providing more flexibility to tailor the order to the individual.

Proposed section 89 provides that courts will be able to vary the additional conditions of a community correction order at any time on the application of the offender or Community Corrections to enable the order to be adjusted to reflect the offender's circumstances. Item [13] of schedule 3 to the bill inserts a new part 4B into the Crimes (Administration of Sentences) Act to provide for the day-to-day administration and management of community correction orders by Corrective Services NSW and procedures for dealing with breaches. Proposed section 107B provides for regulations under the Crimes (Administration of Sentences) Act to prescribe the obligations of an offender whilst subject to a condition of a community correction order—for example, the regulations will provide that an offender subject to a community service work condition will be subject to obligations similar to those that currently apply to community service orders. The regulations are currently being developed by the Department of Justice, which will consult with key stakeholders before they are made. The breach and revocation procedures and powers are similar to those for good behaviour bonds currently in section 98 of the Crimes (Sentencing Procedure) Act. Proposed section 107C provides that the court may call on the offender to appear before it and may take no action, vary the conditions of the order or revoke the order.

I now turn to conditional release orders. Proposed section 9 of the Crimes Sentencing Procedure Act, in item [9] of schedule 1 to the bill, establishes the new conditional release order. The conditional release order replaces good behaviour bonds made under section 10 (1) (b) of the Crimes (Sentencing Procedure) Act for the lowest level of offending. A court may impose a conditional release order for up to two years. Courts will have the option to impose a conditional release order with or without a conviction. The sentencing procedures for the conditional release order are outlined in item 31 of schedule 1 to the bill, which inserts a new part 8 into the Crimes (Sentencing Procedure) Act. Proposed section 98 provides that the standard conditions of a conditional release order will be not to commit an offence and to appear before the court when called on to do so. Proposed section 99 lists the additional optional conditions for the conditional release order, including supervision, programs, abstention from alcohol and drugs, and non-association and place restrictions. These additional conditions will enable courts to tailor the conditional release order to the offender's individual circumstances.

Courts will be able to vary the additional conditions of a conditional release order at any time on the application of the offender or Community Corrections to enable the order to be adjusted to reflect the offender's circumstances. Many conditions associated with the more onerous intensive correction order and community correction order cannot be imposed. In addition to the standard and additional conditions, proposed section 99A will allow courts to impose further conditions on the conditional release order to help tailor the order to an offender's circumstances. Item [13] of schedule 3 to the bill inserts a new part 4C into the Crimes (Administration of Sentences) Act to provide for the day-to-day administration and management of conditional release orders by Corrective Services NSW and procedures for dealing with breaches. Proposed section 108B provides for regulations to prescribe the obligations of an offender whilst subject to a condition of a conditional release order. The breach and revocation procedures and powers for conditional release orders are the same as those I outlined earlier for community correction orders. Proposed section 108C provides that the court may call on the offender to appear before it if it suspects that a breach has occurred and may take no action, vary the conditions of the order or revoke the order.

The Government has made tackling domestic violence one of its top priorities. Some measures that demonstrate this include our commitment to holding domestic violence offenders to account and protecting victims and at-risk persons by investing in the 2017-18 budget more than \$350 million over four years to provide greater protection for women, children and men; committing \$53.25 million over four years to expand Safer Pathway statewide, to ensure a robust referral system is in place for people whose lives are at risk as a result of domestic and family violence; committing \$25 million in the 2017-18 budget for Start Safely, to help

people escaping violence move into stable housing in the private rental market; and investing \$840,000 in global positioning system [GPS] tracking to improve victim safety. The bill contains measures to support these efforts to tackle domestic violence.

Item [4] of schedule 1 to the bill provides for presumption of full-time detention or a supervised community-based sentence for domestic violence offences. The rationale for this is simple. Offenders who are sentenced for domestic violence will be required to address their offending behaviour if they are given a community-based sentence, or go to prison. The Government wants the courts to ensure that domestic violence offenders who receive community-based sentences receive whatever supervision or programs are needed to address their offending behaviour. For offenders who would otherwise receive a short prison sentence, the court should impose an intensive correction order only if satisfied the order will adequately protect the safety of the victim. This will hold offenders accountable and promote the safety of victims and the community.

The presumption will not mean that every domestic violence offender will be supervised or go to prison. What it means is that more domestic violence offenders will be referred to Community Corrections for risk assessment and then supervised for as long as it is appropriate to do so up to the maximum term of the order. This means that more medium- and high-risk domestic violence offenders who currently receive unsupervised orders will receive intervention to address their offending behaviour. Some offenders will, of course, go to prison because their offences are too serious to be dealt with by way of a community-based sentence.

Other offenders may be very low risk and unsuitable for supervision and programs, and the court may be satisfied that a different sentencing option is more appropriate in those circumstances. This may include, for example, situations where the domestic violence offence occurs between flatmates who no longer reside with each other. Item [17] of schedule 1 to the bill inserts division 4B into part 2 of the Crimes (Sentencing Procedure) Act to provide for pre-sentence assessment reports. This will make significant changes to the way courts receive pre-sentence reports from Community Corrections. Currently, courts must obtain different assessment reports for different sentences which state that the offender is suitable for the particular sentence. To consider an offender for multiple sentences the court must obtain multiple reports. This is overly complex and leads to adjournments and delays.

The new assessment process will enable courts to get pre-sentence reports early in the sentencing process so that they can receive the information they need in a short, comprehensive report. The report will give the court useful, quality information about the offender's risks, criminogenic needs, suitability to perform work, and any conditions that will assist to safely and effectively manage the offender in the community. The specific matters to be addressed in these reports will be prescribed in regulations. Courts can use the report to help select the appropriate community order and the appropriate conditions to tailor it to the specific needs and risks of the individual offender. Courts will have the power to order additional reports where necessary. Proposed section 17C provides that obtaining a report is at the court's discretion except where provided by section 17D, and can be obtained at any time during sentencing proceedings.

Proposed section 17D (1) provides that reports will be mandatory for intensive correction orders. This will ensure that, where the court gives an offender a short prison sentence and considers imposing an intensive correction order, it has all the information necessary to make an informed decision. Proposed section 17D (3) provides that if a court is considering imposing an intensive correction order with a home detention condition, it must obtain a report about the offender's suitability for home detention after a prison sentence has been imposed. This restriction is necessary because home detention assessments are resource intensive for Community Corrections. A home detention assessment should be ordered only when a court has already imposed a sentence of imprisonment. Reports will not be mandatory for community correction orders and conditional release orders unless the court is considering a work requirement on a community correction order. There will be extensive consultation and discussion between Community Corrections and the courts about the content and format of these reports before the reforms come into force.

As offenders are often dealt with by courts for multiple offences with different levels of seriousness, offenders can be made subject to multiple community-based sentences with different kinds of conditions, which may be inconsistent with each other. So item [17] of schedule 1 to the bill inserts division 4C into part 2 of the Crimes (Sentencing Procedure) Act. It establishes provisions as to how to administer various conditions of multiple orders to which an offender may be subject at any one time.

Proposed section 17G will ensure that where an offender is subject to multiple orders with multiple community service work conditions, the offender will be required to comply only with the work condition that requires the offender to work the most number of hours. For offenders subject to multiple hours where at least one of the orders is an intensive correction order, there will be a maximum cap of 750 hours on the number of hours of work that the offender can be required to do. Where an offender is not subject to an intensive correction order but is otherwise subject to multiple orders with work conditions, the maximum number of hours that the offender can be required to work is 500. The same principle will apply to curfew hours. Proposed section 17H will ensure that where an offender is subject to multiple orders with multiple curfew conditions, the offender will be required to comply only with the condition that imposes the most number of curfew hours. The regulations will give Community Corrections discretion to resolve start and finishing times when there are inconsistencies between different curfew conditions.

Schedule 2 to the bill inserts savings and transitional provisions into the Crimes (Sentencing Procedure) Act. They provide for the administration of community-based sentences imposed before the reforms come into force. Offenders subject to a current community-based sentence will be taken to be subject to the new sentence that replaces the old sentence. For example, offenders subject to home detention orders will be taken to be subject to the new intensive correction order with a home detention condition after the reforms take effect. An offender on a supervised section 9 good behaviour bond will be taken to be on a supervised community correction order. The exception to this will be suspended sentences. The legislation for this order will continue to run after commencement. Offenders on suspended sentences will continue to be subject to this legislation until their orders expire.

I now turn to the second bill, the Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017. There is a substantial backlog of trials in the District Court, which is leading to significant delays in finalising indictable criminal cases. The Government is committed to addressing this. The early appropriate guilty plea reforms will reduce these delays by improving productivity and ensuring that cases are effectively managed. The Law Reform Commission found that 73 per cent of indictable criminal cases end with the defendant pleading guilty. However, 23 per cent of guilty pleas are not entered until the day of trial. Late guilty pleas cause stress for victims as they await the trial and they contribute to the backlog of cases waiting to be heard in the District Court. They also mean that prosecution and defence lawyers spend time preparing for trials that never occur, and divert police resources away from frontline activities. The bill will ensure that cases are better managed to ensure early appropriate guilty pleas.

There are five elements to the legislative reforms. Firstly, the investigating agency that charged the accused person with the offence, usually the NSW Police Force or the Australian Federal Police, will provide a simplified brief of evidence to the Office of the Director of Public Prosecutions [ODPP] or its Commonwealth equivalent, the Commonwealth Director of Public Prosecutions

[CDPP]. Secondly, a senior prosecutor in the ODPP or CDPP will review the evidence and file a charge certificate with the Local Court that confirms the charges that will proceed to trial and identifies any charges that should be withdrawn. This will reduce the likelihood that the charges will change closer to the trial date and provides certainty to the defence. Thirdly, the prosecutor and the defence lawyer then will be required to have a case conference to discuss the case and to determine whether there are any offences to which the accused person is willing to plead guilty.

Fourthly, the bill abolishes the substantive committal decision and committal hearings so that magistrates will no longer be required to consider the evidence and determine if there is a reasonable prospect that a jury, properly instructed, would convict the accused person of the offence. Instead, magistrates will need to be satisfied that the new steps certifying the charges and holding a case conference have been completed before committing the matter to a higher court for trial or sentence. The NSW Law Reform Commission recommended that committal hearings be abolished because magistrates were exercising the discretion to discharge in only 1 per cent of cases. Under the reform, the prosecutor will perform a gatekeeping role earlier in the process by certifying which charges will proceed. Fifthly, the bill prescribes sentencing discounts given for the utilitarian value of guilty pleas by introducing a statutory sentence discount scheme. This will provide certainty and ensure that large discounts cannot be granted for guilty pleas that are made late in the process.

In addition to the five elements of legislative reform, additional funding is being provided to the Office of the Director of Public Prosecutions and Legal Aid to ensure the continuity of senior lawyers for both the prosecution and the defence from start to finish. Currently, due to the pressures being placed on the entire criminal justice system, senior prosecutors and defence lawyers often become involved in cases only very late. Having the same senior prosecutor and defence lawyer in the case throughout its life will increase certainty about the charges, avoid last-minute changes in charges and pleas at trial and improve communications with victims about the process. The Government also is investing in the systems and processes in agencies and the court providing ongoing monitoring so that issues can be managed as they arise during the implementation of the changes.

The five elements of legislative reform as well as the funding for administrative changes within agencies will provide an interdependent and mutually reinforcing package to improve the efficiency of the criminal justice system. These measures are designed to remove the perverse incentives that currently operate and cause parties to delay entering a guilty plea and to strengthen the incentives for defendants to enter appropriate guilty pleas earlier in the process. In addition, the improved case management under the reforms will ensure contested trials will be shorter and more efficient by narrowing the issues in dispute.

Since I became the Attorney General I have had the opportunity to meet with victims of crime and those who advocate on their behalf to hear their stories about how uncertainty in the criminal justice system can re-traumatise victims of crime and discourage them from coming forward. It can be particularly distressing for victims when charges are downgraded late in the process or there are long delays. By frontloading the work so that prosecutors are involved early to certify charges and by encouraging early resolution of cases, we are improving victims' experience in the process. Funding for the package also includes more witness assistance scheme officers in the ODPP to improve support for victims.

The early appropriate guilty plea reforms apply to indictable offences, which are the most serious criminal offences in our justice system and which are dealt with by the District Court or the Supreme Court. They are strictly indictable offences or table offences which are the indictable offences specified in the tables of schedule 1 to the Criminal Procedure Act 1986 that have been elected to be dealt with on indictment. The majority of indictable offences start in the Local Court as committal proceedings which are guided by the provisions in chapter 3 of the Criminal Procedure Act 1986. Schedule 1 to the bill outlines the amendments to the Criminal Procedure Act. Proposed division 2 of part 2 of chapter 3 contains general procedural provisions that apply to committal proceedings.

Importantly, proposed section 59 includes a requirement that a magistrate provide an oral and written explanation to the accused person about the committal process and the operation of the new statutory discount of sentence available for the utilitarian value of a guilty plea. Proposed section 60 reflects the intention that the reform is not intended to change any of the important work done by the Drug Court of New South Wales. The addition of proposed section 25F (6) to the Crimes (Sentencing Procedure) Act will make clear that the Drug Court may apply a 25 per cent discount to an offender who is referred to the program before committal and pleads guilty as part of the condition for entering the program.

Proposed division 3 of part 2 of chapter 3 contains provisions providing for service of a brief of evidence in a simplified form so that it can be provided to the accused person earlier. Proposed section 61 provides that the prosecutor must serve the brief of evidence on the accused within the time ordered by the magistrate. In this section the word "prosecutor" refers to the investigating authority who commenced the proceedings, which in most cases is the NSW Police Force or the Australian Federal Police. Proposed section 61 also recognises that the new division does not affect the operation of existing ongoing disclosure obligations of both the investigator and the prosecutor—for example, the ODPP or the Commonwealth Director of Public Prosecutions [CDPP]—in any other law or obligation, including laws concerning privilege and immunity.

Currently there is no definition of a brief of evidence in committal proceedings in the Criminal Procedure Act. The NSW Law Reform Commission recommended introducing a definition that included only the evidence for the prosecution case. In consultation with stakeholders, this definition was identified as being too narrow to properly support disclosure in the new committal process. Proposed section 62 (1) provides a wider definition that also includes evidence relevant to the defence case and evidence relevant to the strength of the prosecution case, consistent with the current duty of disclosure expressed in the Director of Public Prosecutions' guidelines. The intent of this expanded definition of a brief of evidence is to ensure sufficient disclosure for the prosecution to properly assess a case and to certify the charges, and for the defence to make informed decisions about the case and to determine whether to enter a guilty plea.

Proposed section 62 (2) provides that material in the brief need not be in an admissible form. There will not be a less robust investigation, nor will there be changes to best practice for the collection of evidence. The reforms are about ensuring that the brief can be served earlier by reducing some of the formal requirements around how evidence is to be presented that currently contribute to delay in criminal cases. Currently, all material in the brief of evidence must be provided in a form that makes it admissible as evidence in the Local Court. In practice this means that all prosecution evidence must be provided in written statement form. "Written statement form" means that a number of technical requirements, currently outlined in sections 74 to 90 of the Criminal Procedure Act and the associated Local Court rules, must be complied with. For example, written statements must be in the form of questions and answers, be endorsed by the maker of the statement as to the truth of the statement, be witnessed, and feature other

matters required by the rules. In addition, other material in the brief of evidence, for example, telephone intercepts, forensic analysis and closed-circuit television [CCTV] footage, must be accompanied by a written statement.

Given a magistrate will no longer be considering the evidence before committal, it is no longer necessary that the entire contents of the brief of evidence comply with these requirements to be admissible as evidence. However, the senior prosecutor in the ODPP or the CDPP may require evidence in an admissible form to properly assess the case and to certify the charges. A protocol between the NSW Police Force and the DPP will provide guidance on a case-by-case basis as to when the alternative, simpler form will be sufficient. Many of the current provisions about written statements will be retained in the bill. They may still be needed where a prosecution witness is directed to give evidence in committal proceedings. They also will be necessary to provide guidance on the admissible form of statements where that form of evidence is to be included in the brief of evidence. The provisions about written statements have been moved into a new part in chapter 6, where other provisions about evidentiary matters currently appear in the Criminal Procedure Act. Provisions about using transcripts of recorded statements, rather than written statements, for vulnerable persons or domestic violence complainants also will be retained. Proposed section 63 creates a statutory requirement for ongoing disclosure of any material that is received after the brief of evidence has been served.

Proposed new division 4 outlines the process for senior prosecutors to certify which charges will proceed to committal for trial. Proposed section 65 ensures that only the DPP, the CDPP, the New South Wales Attorney General or the Commonwealth Attorney-General and their legal representatives may perform the functions of certifying charges and participating in a case conference. Proposed section 67 requires the prosecutor to file the charge certificate by the date ordered by the magistrate. There is also a six-month statutory time limit on filing the charge certificate, which should be exceeded only in exceptional and complex cases where there are legitimate operational reasons for the brief of evidence taking a longer time to prepare. If the prosecutor fails to file and serve the charge certificate by the six-month time limit, or a later day set by a magistrate, a magistrate may discharge the accused person under proposed section 68. These provisions ensure that the prosecutor moves swiftly to certify the charges and they provide certainty so that case conferencing can commence.

Proposed section 67 also allows the prosecutor to file an amended charge certificate. While the charge certificate is intended to determine the charges to be proceeded with if the matter goes to trial, the prosecutor may determine to change the charges that will proceed—for example, as a result of discussions during a case conference, or after a prosecution witness has been called to give evidence under the new division 6. An amended charge certificate must be filed in these circumstances before a matter is committed for trial or sentence.

Proposed division 5 outlines the process for senior lawyers from the prosecution and defence to participate in a mandatory case conference. Proposed section 70 provides that the principal objective of a case conference is to determine whether there are any offences to which the accused person is willing to plead guilty. The other objectives are to facilitate the provision of additional material, evidence or other information to the accused person that may assist them to decide whether to enter a guilty plea; and to facilitate the resolution of other issues related to the case against the person, including identifying the key issues for trial and any agreed or disputed facts. The provisions in this division require that at least one formal case conference, either face to face or via audiovisual links [AVL], must be held between senior lawyers for the prosecution and the defence in every case. Defence and prosecution lawyers may hold as many case conferences as are necessary during the period ordered by the court. It is expected that more than one case conference may be required in circumstances where a witness is called to give evidence in court or where the prosecutor files an amended charge certificate.

Proposed section 71 provides that the lawyers for the prosecution and the defence must participate either in person or by AVL for the initial case conference. The case conference must have this level of formality because experience from previous case conferencing trials tells us that unless the case conference is a formal, structured, face-to-face event, it is less effective. For this reason, the court may order that the initial case conference be held by telephone only in limited circumstances. Subsequent case conferences may be held flexibly. The accused is expected to be available to give contemporaneous instructions and to participate in the case conference as required to ensure that the accused person understands the seriousness of the event. The Criminal Procedure Regulations will prescribe the details of how, and when, the accused will be required to attend the case conference.

Proposed section 72 requires an accused's legal representative to obtain their client's instructions before the case conference and to explain the effect of the sentence discount scheme. This is to ensure that, if the accused does or does not offer to plead to any charges during the case conference, they will do so fully informed of the consequences. This will help to mitigate the risk of late changes of plea after committal. Proposed section 74 provides that a case conference certificate must be filed after all case conferences have been held. The case conference certificate should represent the totality of the negotiations between the prosecution and the defence, whether in a case conference or informal discussions.

Proposed section 77 provides a mechanism for plea offers that are made after the case conference certificate has been filed to be treated as if they formed part of the case conference certificate. The case conference certificate provides a mechanism to record offers made by the prosecution or the defence for the purposes of the sentencing discount. Accordingly, proposed section 75 outlines all of the matters that must be recorded on the certificate, including any offers made by the defence or the prosecution in relation to offences or guilty pleas. Proposed section 76 provides powers for a magistrate to move forward with the case, if there is an unreasonable failure by the prosecutor or the accused's legal representative to participate or complete the requirements. Proposed sections 78 to 81 provide that the case conference certificate is to be treated confidentially and will be admissible as evidence only in proceedings relating to the sentence discount or in other limited circumstances. This is to encourage the accused person to make offers to plead.

In addition, the publication of any material related to the case conference will be prohibited. This should not prevent discussions between legal representatives, the accused person or, where appropriate, the victims about the matters discussed during a case conference. There are limited exceptions to the rule that a case conference must be held in all cases, as outlined in proposed section 69. These are where an accused is unrepresented, where a case is committed for trial on the question of the accused person's fitness to stand trial or where the accused person pleads guilty to all offences that are the subject of the charge certificate. The fact that an unrepresented accused will not have the opportunity to participate in a case conference may in practice limit the potential for early resolution of these cases. However, in such cases a magistrate may choose to adjourn the proceedings following the filing of the charge certificate to allow the accused to obtain legal advice or representation before committing the case.

The proposed division 6 restructures existing provisions about calling a prosecution witness to give evidence in committal proceedings. These hearings may assist the parties to assess better the case against the accused and to facilitate further negotiations

about the charges and possible offers to plead guilty. However, it is rare for a magistrate to grant these applications currently, and it is expected that this will continue under the reform. Parties that wish a witness to be called to give evidence will still have to apply to a magistrate for a direction, and the magistrate will still apply the same tests that currently apply to different kinds of witnesses in determining those applications.

The bill retains as much as possible of the current Criminal Procedure Act and procedure that applies to committal proceedings. The special protections afforded to witnesses who are the victims of an offence involving violence are retained so that a high test of special reasons rather than substantial reasons is applied when a magistrate is considering whether to direct that the witness be called to give evidence. Protections for victims of prescribed sexual offences, who cannot be directed to attend, remain in place. Provisions in part 4B of chapter 6 around the use of recorded statements for domestic violence evidence in chief will still apply to witnesses giving evidence in committal proceedings.

Currently the Local Court does not have jurisdiction if there are questions about the accused's fitness to be tried. Proposed division 7 provides a new power for magistrates to expedite the case to the higher court for a fitness inquiry. Proposed section 93 allows the issue of fitness to be raised by the defence or by the prosecution, or the court may consider it on its own motion. The issue of fitness may be raised at any time but proposed section 94 provides that the magistrate may not commit until after the trial certificate is filed and, if any case conference has been held, after the case conference certificate is filed. The test to be applied for committal under this division is the same good faith test as used under the Mental Health Forensic Provisions Act 1990. It is not intended that magistrates should have to bring their minds to substantively consider whether the accused is in fact unfit, as it would duplicate the process of fitness inquiries in the higher courts.

The legislation allows the magistrate to order a psychiatric or other report to be provided before committal. It is expected that this power may be used where obtaining a report earlier would assist in reducing the delay caused by waiting for reports to be prepared for the fitness inquiry in the higher court. A new section will be inserted into the Mental Health (Forensic Provisions) Act 1990 so that if the accused is found fit or the court is satisfied that the question of fitness is no longer raised, the court may either retain the case for trial or sentence or remit it for case conferencing in the Local Court. The sentencing discount scheme is modified in these cases so that if an accused is found fit and pleads guilty at the earliest opportunity, he or she may be eligible for a 25 per cent discount for the utilitarian value of the plea.

Proposed divisions 8, 9 and 10 provide for the magistrate to commit an accused person for trial or sentence after the case conference certificate and charge certificate have been filed. If the guilty plea is accepted, the case is committed for sentence. If the accused does not wish to plead guilty, the accused is committed for trial. If the magistrate rejects the guilty plea, the case may be adjourned for further negotiations or legal advice. Proposed section 98 provides that, if an accused person is unrepresented, the magistrate cannot commit unless satisfied that the accused person has had reasonable opportunity to obtain representation or legal advice. That is a safeguard for an unrepresented accused person because of the strict application of the sentence discount scheme. Making a false representation in committal proceedings will be an offence in proposed section 92 of the Criminal Procedure Act, and proposed section 31K of the Children (Criminal Proceedings) Act.

Schedule 2 to the bill outlines amendments to the Crimes (Sentencing Procedure) Act to introduce a strict fixed sentencing discount scheme. It replaces the existing common law sentence discount for the utilitarian value of a guilty plea. Currently large discounts of up to 25 per cent may be given for guilty pleas, which may be as late as on the first day of trial. Tightening the discount scheme as proposed will prevent those large discounts from being granted late in the process. Instead, fixed discounts will apply depending on the timing of the guilty plea: first, a 25 per cent discount if the guilty plea is entered while the case is in the Local Court, before the case is committed to the higher courts; secondly, a 10 per cent discount where the guilty plea is entered after the case has been committed to the higher court but at least 14 days before the first day of the trial, or the accused gives notice to the prosecutor of his or her intention to plead guilty at least 14 days before the first day of the trial and enters the plea at the first available opportunity; and thirdly, a 5 per cent discount if the guilty plea is entered in any other circumstances.

These discounts are fixed, meaning that where they apply, the full discount must be given. This certainty about the discount that will apply is fundamental to creating a strong incentive for early guilty pleas. This strong incentive is reinforced by a substantial discount for a guilty plea in the Local Court and significantly lower discounts for guilty pleas after committal. The offender is required to plead guilty, or give notice to the prosecutor offering to plead guilty, 14 days before the first day of trial to receive a 10 per cent discount. This is to give the prosecution sufficient time to call off its preparation for trial and advise victims and witnesses that they need not appear.

The first day of trial is defined in proposed section 25C as the first day that the trial is listed. This provides a clear deadline from which a defendant can count back the 14 days to the day by which a guilty plea must be entered in order to be eligible for a 10 per cent discount. This definition will apply even where the actual commencement of the trial is delayed for a short period—for example, where the trial is listed on a Monday but does not proceed until the Wednesday because a judge was not available on the Monday when the trial was listed to commence. However, if the listing date is vacated—for example, where one of the parties is not ready to proceed and makes an application for vacation—and the trial is subsequently re-listed at a later date, the new listing date will be the relevant date for the purpose of the definition of "first day of trial". Certainty about the discounts that apply is reinforced by allowing for only limited variations and exceptions to the sentencing discount scheme proposed.

The effect of proposed section 25E is that where the accused person made an offer to plead guilty to an offence, or a reasonably equivalent offence, which either the prosecution refused but then later accepted, or the accused is later found guilty of that offence, or a reasonably equivalent offence, the accused may be eligible for up to a 25 per cent discount. This is important because there are multiple offences that have similar elements and penalties. An accused person should not be required to offer to plead guilty to exactly the right charge, or to every possible variation of an offence, in order to obtain the discount.

There is also a variation to allow a person to receive a higher discount where the prosecutor lays a new charge by way of ex officio powers and there were no prior committal proceedings, or if the prosecutor adds a new offence to the indictment, where the facts and evidence that establish the new offence are substantially different from those contained in the brief of evidence for the committal proceedings. The higher discount is allowed because the accused person will not have had an earlier opportunity to consider a guilty plea to the new charges. The variations represent a careful balance between the need to provide a strict sentence discount scheme, and the practical realities of criminal offences and trials.

In addition, there are two exceptions to the sentence discount scheme where the court may determine that no discount or a reduced discount should be applied. These are where: the level of culpability of the offence is so extreme that the community interest in

retribution, punishment, community protection and deterrence would not be satisfied by the imposition of the discount, or the utilitarian value of the offender's guilty plea was eroded by a dispute as to the facts on sentence. Finally, no discount will apply where the court determines to impose a life sentence.

The sentencing discount scheme does not apply to Commonwealth offences because sentences for Commonwealth offences under the Commonwealth Crimes Act 1914 cannot be constrained by the New South Wales Parliament. The sentencing scheme also does not apply to offences involving a child or young person. This is because of the unique sentencing considerations that apply to children, including the emphasis on rehabilitation in sentencing, and young people's lower capacity to make informed decisions and to give instructions about matters affecting their case, including whether to plead guilty.

In the Children's Court, the new committal process outlined in the amendments to the Criminal Procedure Act will apply only to serious children's indictable offences. All other indictable offences will be dealt with in the same way as they are currently, which is as a summary trial with the potential that they are converted to committal proceedings and dealt with at law under section 31 of the Children (Criminal Proceedings) Act 1987. A number of provisions from chapter 3 of the Criminal Procedure Act that will be repealed by this bill need to be inserted into the Children (Criminal Proceedings) Act 1987 to ensure that there are no changes to the ability of the Children's Court to deal with indictable offences at law. The bill achieves this in a way that maintains the current law, but also simplifies the provisions. For example, the provisions to allow for the defence to give evidence and to call prosecution witnesses have been consolidated into a single section in proposed section 31B.

There are also slight variations to take account of current practice, rather than law, where this would have no substantive effect on the current practice or the rights of the accused and prosecution to present their cases. For example, a new gatekeeping provision has been included in proposed sections 31(2A) and (2B) to provide that: if the accused person requests to be dealt with at law during the summary trial, the prosecution evidence must first be completed, to avoid duplication of evidence, and if the Children's Court is of the view at the conclusion of summary proceedings that the accused person would be discharged, rather than committed, it may discharge at this stage rather than move into committal proceedings.

Item [3.2] of schedule 3 amends the rule-making power of the Children's Court so that it is clear that it may make rules and practice notes about committal proceedings. A number of consequential amendments to other Acts are contained in the bill to ensure that the new process for committal proceedings is supported. For example, the definition of "committal proceedings" will be amended where it appears in other Acts. All amendments commence on proclamation. The changes will apply only to changes commenced by a court attendance notice filed after this time.

I turn now to the Crimes (High Risk Offenders) Amendment Bill 2017. It introduces reforms to strengthen the management of high-risk and violent offenders to ensure the safety and protection of the community. The current framework enables post-sentence supervision in the community or detention in a correctional centre of high-risk, sex and violent offenders after they have completed a sentence of imprisonment. The scheme covers quite a small number of high-risk offenders who require incarceration or intensive supervision after their sentence has ended. This scheme has been in place in New South Wales since 2006 in respect of high-risk sex offenders and was extended to apply to high-risk violent offenders in 2013.

The bill introduces four key reforms to address issues with the current framework. First, it will change the eligibility requirements for the scheme to better cater to offenders who commit both serious violent and sex offences. The current eligibility requirements result in people who may pose a risk to the community not coming within the scope of the scheme. The reforms will address this by bringing these so-called generalist offenders within the scope of the scheme. Secondly, the reforms will reframe the test for making an extended supervision order or continuing detention order to ensure that where an offender cannot be safely managed in the community on an extended supervision order [ESO] they are instead subject to continued detention in a correctional centre. Thirdly, the reforms will ensure that the High Risk Offender Scheme comprehensively applies to offenders serving sentences for Commonwealth sex offences. Finally, they will ensure that victims have a greater flexibility in having their voices heard when the Supreme Court is considering an application for post-sentence supervision or detention.

The bill implements reforms arising from recommendations of a statutory review of the Crimes (High Risk Offenders) Act 2006 conducted by the Department of Justice in 2016-17. That review made 28 recommendations to improve the frameworks governing eligibility for the scheme, making an order under the scheme, management of an offender under the scheme, and administration of the scheme. The Government makes no apology for implementing amendments to strengthen the High Risk Offender Scheme. Under these reforms the community will be better protected from the most dangerous sex and violent offenders. These reforms improve the scheme so that community safety will be the paramount consideration of the court when considering whether to make a continuing detention order [CDO] or ESO; more offenders will be eligible for the scheme as the court will be required to consider an offender's criminal history and future risk of sex and violent offences, instead of just one or the other; and the test for deciding whether to impose a CDO will be strengthened so that an offender's risk to the community is considered instead of whether they can be adequately supervised.

The reforms are part of the package of criminal justice reforms. They complete that package by ensuring there are measures in place so that the most serious high-risk sex and violent offenders are subject to a robust framework for post-sentence supervision and detention. I now outline the details of the bill. Items [1], [3] to [8], [14], [15], [17], [21], [24], [25], [27], [30], [31], [35], [38], [41], [42], [50] and [58] to [60] of schedule 1 will remove the distinction between the two categories of high-risk offender so that orders for the continued supervision and detention of high-risk sex offenders and violent offenders may be made if an offender poses a risk of committing either a serious violent offence or a serious sex offence.

Currently the Act results in some people who may pose a risk to the community not coming within the scope of the scheme because the existing Act has separate provisions for sex and violent offenders based on the risk that sex offenders will commit further sex offences only and violent offenders will commit further violent offences only. The complexity of this cohort of high-risk offenders means that offenders who commit both sex and violent offences do not neatly fit within one of the two statutory categories. Many offenders are so-called generalist offenders who have a history of general offending rather than only committing one category of offence. For example, an offender's current sentence of imprisonment could be for a serious sex offence but this forms part of a pattern of violent offending with the future risk being that the offender will commit serious violent offences. To fix this issue eligibility requirements will be revised.

Alignment between an eligible high-risk offender's index offence and anticipated future offending risk—be it a serious sex offence or a violent offence—will no longer limit the court's ability to make an order. Items [14], [39] and [40] of schedule 1 will insert statutory amendments to change the test to be applied by the Supreme Court in deciding whether or not to make a CDO in respect

of a high-risk offender. Under the existing test for making a CDO, an offender is likely to be released to supervision in the community provided adequate supervision can be provided. There are a number of issues with the current process. Offenders who pose an unacceptable risk which cannot be managed in the community on an ESO are being granted these orders by the court under the current test. Offenders cycle between being on an ESO and being in custody—having breached that ESO—with no change to underlying behaviour, and Corrective Services NSW is required to provide detailed information on how an unmanageable offender might be supervised in the community, even when Corrective Services does not have confidence that the proposed supervision measures will be effective in keeping the community safe.

The bill will strengthen the test for deciding whether to impose a CDO. The test will be reframed so that an offender's risk to the community is the emphasis, instead of whether he or she can be adequately supervised. Under the reframed test the court must be satisfied that the risk of the offender committing another serious offence will be unacceptable unless a CDO is made. In determining whether and what type of order to impose, the court would be required to have regard to the existing considerations in sections 9 and 17 of the Act, including community safety, the offender's criminal history and the sentencing remarks of the original sentencing court. In addition to existing considerations, the reframed test will require the court to consider two additional factors; whether the offender is likely to comply with an ESO, and options in the community or in custody that would help reduce the offender's risk of reoffending over time.

This second point is framed to enable the court to consider a range of options, including proximity to family, ensuring the offender's links to the community are retained, rehabilitative programs or other options available in custody or in the community. Further, when considering whether to make a CDO the Act will state that the court must not consider a breach of an ESO condition as an effective form of intervention. These reforms strengthen the test for deciding whether to impose a CDO so that an offender's risk to the community is considered instead of whether he or she has been adequately supervised. Community safety will be the Supreme Court's paramount consideration when considering whether to make an order under the Act. This aspect of the reform is expected to mean that some offenders who had previously received an ESO will now receive a CDO. That is appropriate if the offender cannot be managed in the community on an ESO.

Items [11] to [13] will make certain offences against the laws of the Commonwealth serious sex offences and offences of a sexual nature under the framework. The current scheme does not extend to Commonwealth sex offences committed in New South Wales, or offences where there is no clear New South Wales equivalent. For example, the Commonwealth child sex tourism offences do not come within the New South Wales post-sentence framework. The New South Wales scheme applies to offenders serving sentences of imprisonment for serious sex offences or a range of offences of a sexual nature, if they have committed a serious sex offence in the past. This two-tiered approach means repeat sex offenders are covered by the scheme if they are serving a sentence of imprisonment for a less serious offence, if they have committed a serious sex offence in the past.

Items [11] to [13] bring a range of Commonwealth sex offences within the scope of the New South Wales scheme. They have been classified as serious sex offences or offences of a sexual nature based broadly on the similarity between Commonwealth offences and New South Wales offences, the classification of Commonwealth sex offences and serious sex offences or offences of a sexual nature, as compared with how similar New South Wales offences are classified, the maximum penalties for Commonwealth sex offences, and the position taken in other jurisdictions.

Items [15] and [29] will make it clear that the scheme applies to offenders serving a sentence of imprisonment for an offence against a law of the Commonwealth or another State or Territory being served concurrently or consecutively—wholly or partly—with an offence against the law of New South Wales. Bringing Commonwealth sex offences more comprehensively within the scope of the New South Wales scheme will ensure that the community will be better protected from the most dangerous Commonwealth sex offenders at the end of their sentence. This ensures that child sex tourism offences, certain sex trafficking offences, Commonwealth child pornography offences and Commonwealth grooming offences will come within the New South Wales scheme.

The reforms will provide victims with greater flexibility in having their voices heard in proceedings before the court. Item [57] will enable a broader range of victims to be able to provide victim impact statements. Items [52] to [56] will provide victims flexibility by enabling victim impact statements to be made directly to the Supreme Court, not in writing only. Item [57] of schedule 1 and item [4] of schedule 2 will ensure, to the extent possible, registered victims will be advised when a high-risk offender is the subject of an application for an order.

There is currently a narrower definition of victims in high-risk offender proceedings than in parole proceedings. The definition of victim under the Act is too narrow and has worked to exclude family representatives of victims if the victim has passed away or is under any incapacity, or others who suffer harm as a result of the offence. This is because the Act now has a two-step rather than a single definition for determining who constitutes a victim. Under the Act, a victim must be recorded on the Victims Register in respect of the offender and a victim of an offence committed by the offender for which the offender is currently serving, or most recently served, a sentence of imprisonment. Courts have interpreted this definition as confining the definition of "victim" to the person who is the primary victim of the offence.

To address this issue, these reforms amend the definition of "victim" to mean a victim who is recorded on the Victims Register in respect of the offender. Registered victims will be informed when their offender is to be considered for an order under the Act. They will have the right to provide information to the Supreme Court in writing or orally to ensure that they are heard. In cases where the victim is deceased, victims' families will have the right to make a statement. These reforms ensure that victims have more flexibility in having their voices heard in high-risk offender proceedings. The reforms place a stronger focus on reforming offenders.

Item [65] of schedule 1 extends the requirement to warn offenders about their eligibility for the scheme. The current legislative framework requires courts only to warn violent offenders about their potential eligibility for the scheme. Under the reforms, both violent and sex offenders will be warned at sentencing that they may be eligible for the scheme. Offenders will receive two additional warnings, the first six months after sentencing and then again three years before the offender's earliest release date. These warnings are important to provide offenders with an incentive to engage in intensive rehabilitation and treatment pathways and to make clear the consequences of refusing to engage. The intention is that fewer offenders will be eligible for an order when they finish their sentence of imprisonment.

The bill also introduces new and important safeguards. Item [49] requires the immediate notification to Legal Aid NSW when an emergency detention application is filed or is likely to be filed. The Supreme Court granted the first-ever emergency detention order earlier this year. The State can apply for emergency detention orders where the offender is subject to an extended supervision

order or interim supervision order and, because of altered circumstances, presents an unacceptable and imminent risk of committing a serious offence. The amendment to require immediate notification to Legal Aid NSW will ensure that there are additional safeguards in circumstances where an emergency detention order is sought.

Finally, the bill will make a range of further legislative changes. These include clarifying that imprisonment excludes suspended sentences and includes full-time custody, intensive corrections orders, and home detention; requiring the State Parole Authority to take into account that a current extended supervision order or continuing detention order application is on foot in determining whether to grant an offender parole; clarifying the scope and use of risk reports obtained for the purposes of a post-sentence application; providing greater flexibility in time frames for applying for an order and post-order arrangements; and clarifying that an alleged breach of an extended supervision order can constitute altered circumstances to enable a continuing detention order application to be made. This bill is the product of detailed consultation. The amendments it contains improve the High Risk Offender Scheme through strengthening the frameworks governing eligibility, making an order, management of an offender, and administration of the scheme. It will ensure stronger management of high-risk offenders to enhance community safety.

I thank the stakeholders consulted and involved in the drafting of these bills. In particular, I thank the late Bill Grant, the former chief executive officer of Legal Aid NSW and the initial champion of early appropriate guilty plea reforms. I thank the current Chief Executive Officer of Legal Aid NSW, Brendan Thomas. I also thank the Director of Public Prosecutions, Lloyd Babb, SC, and his office more generally, and the NSW Police Force, and in particular Deputy Police Commissioner Catherine Burn. I also thank the State Parole Authority; Juvenile Justice; the Public Defender's Office; the NSW Sentencing Council; Victims Services; the Serious Offenders Review Council; the Judicial Commission of NSW; the Advocate for Children and Young People; the Mental Health Commission; the Juvenile Justice Advisory Committee; the Heads of Jurisdiction, namely the Chief Justice of the Supreme Court, the Chief Judge of the District Court, the Chief Magistrate of the Local Court, the President of the Children's Court, and the Chief Judge of the Land and Environment Court; the Law Society of NSW; the NSW Bar Association; the Aboriginal Legal Service; the Rule of Law Institute; Just Reinvest; and the NSW Police Association.

I also thank advocacy groups such as the Homicide Victims Support Group; Enough is Enough; the Victims of Crime Assistance League; Victims' and Witnesses of Crime Court Support Services; the Thomas Kelly Youth Foundation; the Survivors and Mates Support Network; Bravehearts; Blue Knot; the Women's Legal Service; the Wirringa Baiya Aboriginal Women's Legal Centre; Domestic Violence NSW; the Women's Domestic Violence Court Advocacy Service; the Family Violence Prevention Legal Services; the Commissioner for Victims Rights Mahashini Krishna; Howard Brown and the Victims Advisory Board; and the Institute of Public Affairs.

I thank all contributors in government agencies, in particular those in the Department of Justice—the Secretary Andrew Cappie-Wood, Kate Connors, Paul McKnight, Michelle Vaughan and especially Pip Hetherton and her small but extremely hardworking team. I thank Simon Tutton, Jonathon Rose, Alexandra Young, Anna Read, Alex Sprouster, and Jackie Wenham. I thank my cluster colleagues Minister Grant and Minister Elliott and their respective teams for their collaboration and commitment to the reform. When I became Attorney General 8½ months ago, work on these reforms was of course well advanced, and I thank my predecessor the Hon. Gabrielle Upton for the legacy she left me. I thank Tom Payten in the Premier's office for his support and wise counsel. I also thank my wonderful staff: Bran Black, Clare Wesley, Mary Klein, Damien Smith, Tom Loomes, and earlier Mitch Hillier, who did a huge amount of hard work and who worked more late nights than I could poke a stick at. Inevitably I have forgotten to mention other contributors. To them I apologise for my omission, but I thank them for their help.

The Government will keep all aspects of these reforms under close review, with particular scrutiny of the quantum of the sentencing discounts and their applicable timing, including to ensure that they are having the desired effect of encouraging early appropriate guilty pleas. These reforms will ensure that sentencing options are supported by the evidence of what works for safer communities, that they reduce undue stress for victims and minimise court delays, and that a robust scheme is in place enabling post-sentence supervision in the community or detention in a correctional centre with high-risk sex and violent offenders. The reforms are supported by the evidence to provide tougher, smarter and certain justice for safer communities. I commend the bills to the House.

The Hon. ADAM SEARLE (11:56): I lead for the Opposition in debate on the three cognate bills, the Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017, the Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017 and the Crimes (High Risk Offenders) Amendment Bill 2017. The Opposition does not oppose the bills. I indicate at the outset that my instructions are that we will not support the 12 amendments proposed by The Greens to the Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017. All three bills are based upon reports, two being reports of the NSW Law Reform Commission and one being a statutory review performed by the Department of Justice. It is good to see reliance placed upon the work of the Law Reform Commission.

The Hon. Dr Peter Phelps: Hear, hear!

The Hon. ADAM SEARLE: I acknowledge that interjection. For a number of years, under previous Attorneys, there were no chairs, no commissioners, and no references to the commission. The Law Reform Commission is too important an institution and it has over time made too positive a contribution to the governance and law of this State to be neglected in this way. This cognate legislation is testament to the contribution the Law Reform Commission can make to law, public administration and public discourse in this jurisdiction.

The Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill largely stems from recommendations made in NSW Law Reform Commission Report No. 139, entitled "Sentencing", which is dated July 2013, more than four years ago. The reference to prepare the report was received by the commission in September 2011. The object of the bill now before the House is expressed to be to improve the availability and nature of community-based sentencing options that are among the options for courts when sentencing offenders. The bill's overview states that it abolishes suspended sentences, good behaviour bonds, community service orders and home detention orders. It also enhances intensive correction orders [ICOs], including permitting home

detention conditions to be imposed, and it creates community correction orders and conditional release orders to replace community service orders and good behaviour bonds. This is achieved primarily by amending the Crimes (Sentencing Procedure) Act and the Crimes (Administration of Sentences) Act.

One of the critical issues facing the justice system is the imposition of short prison sentences and the provision of alternatives. The bill's object, to improve the availability and nature of community-based sentencing, is a significant contribution to addressing that problem. The scale of the issue is impressive. In the 12 months to June 2016, 43.4 per cent of those sentenced to prison in New South Wales received a sentence of less than six months. Short sentences are often criticised—for example, it is almost impossible to run rehabilitation programs that can operate effectively for short sentences, as their impact is often argued to be enhancing criminal activity rather than addressing it. Certainly, compared with community-based sentences, there is a greater likelihood of recidivism with short sentences. In May this year the Bureau of Crime Statistics and Research [BOCSAR] released a report showing that offenders placed on intensive correction orders [ICOs] have lower rates of reoffending than offenders given a sentence of periodic detention. Earlier this month BOCSAR released *Crime and Justice Bulletin* No. 207 entitled "Intensive correction orders versus short prison sentence: A comparison of reoffending". The report concluded:

Offenders who received an ICO had significantly lower rates of reoffending than offenders who received a short prison sentence.

The pursuit of community-based sentencing is less expensive to the State than full-time imprisonment, with the taxpayer paying less. Moreover, the offender is less likely to reoffend and there are further benefits to the State further down the budgetary line. It is obviously better for the offenders, because they are less likely to be in further trouble. More important than any of those factors is the fact that the community as a whole benefits: less crime and fewer victims in the future. It is one of those rare occasions where the line said to be economically rational is in fact rational and aligns with what is ethically and otherwise desirable from a societal point of view.

Intensive correction orders were introduced in 2010 when periodic detention was abolished. They were seen as an alternative to full-time imprisonment. They were particularly an initiative of the former Attorney General, now District Court judge, John Hatzistergos. The stated intention of this legislation is to continue those initiatives and intentions with caveats. The first is that, for community-based sentences to be effective, there must be adequate resourcing of programs and supervision. This is hardly a remarkable insight. I note that in his speech in reply in the other place, the Attorney General did address that point. One of the reasons given to replace periodic detention with ICOs was that periodic detention was not available in rural and regional areas. If the resources are not there for diversion schemes to work, the courts are unlikely to use them, for entirely obvious reasons.

One earlier attempt to divert offenders from short sentences was effective in urban areas of the State where appropriate sentences were available, but not in rural and regional New South Wales, which meant that the perverse outcome was that the percentage of Aboriginal prisoners, for example, increased and was higher than it would otherwise have been. Again, I note the Attorney's comments in his second reading speech and in his reply concerning the resources being brought to bear by the current Government in this regard. Obviously whether those resources get onto the ground and make a difference will be an ongoing area of interest for all members of this House.

The second caveat relates to the sentences to which an ICO applies. A single offence cannot be the subject of an ICO if the imprisonment imposed exceeds two years, and multiple offences cannot be the subject of an ICO if the imprisonment imposed exceeds three years. The latter part is welcomed, but the two-year limit for a single offence still remains. One concern expressed about this is that the ICOs will be largely restricted to the Local Court and precluded from use in the District Court. If the enhanced ICOs contemplated by this legislation are successful, it would seem sensible to explore their take-up more widely. On this point, I quote part of a letter from the Law Society, dated 13 October 2017, received by the Opposition:

We support the increase from two to three years imprisonment for an ICO for two or more offences. However, we are disappointed that the opportunity has not been taken to increase ICOs to three years for a single offence, which would be an effective way to reduce prison numbers.

The legislation also abolishes suspended sentences. The shadow Attorney General has expressed his views about that in the other place, and I will not repeat those comments. The legislation will broaden ICOs and increase diversion. Similarly, community correction orders [CCOs] will have greater visibility and the aim is for pre-sentence assessment report processes to be improved and streamlined. There are exclusions for offenders facing particular charges. There is a higher bar for an ICO to be issued for a domestic violence offence, including that it will adequately protect the victim. There are more sophisticated and more sensible provisions to deal with lower level breaches of ICOs.

The second bill is the Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017. The provisions in this bill largely flow from another report of the New South Wales Law Reform Commission, report

No. 141 entitled "Encouraging appropriate early guilty pleas", dated December 2014. The reference to conduct the inquiry was received by the commission on 1 March 2013, and the Opposition publicly welcomed the report's recommendations more than two years ago. It is good to see the Government in a rapid-response mode. The commission described the District Court criminal trial system as being in or approaching a state of crisis, with unacceptable court delays.

Some of that undoubtedly has stemmed from a lack of adequate resourcing by this Government, but there are structural steps that can also be taken to improve the system and reduce the propensity for crisis. That is what the commission recommended, and these recommendations have found their way into the bill. In effect, the bill deals with defended indictable criminal cases—that is, it is not dealing with matters disposed of summarily before a magistrate or those matters where an offender has already pleaded guilty. Presently for such indictable defended matters, a magistrate conducts an inquiry to determine if a defendant should be committed for trial to a higher court, usually the District Court. The matters will then be listed for trial in the District Court, usually by jury. The problem is that a quite significant number of these cases are listed for a defended hearing, but at the last minute a plea of guilty is entered.

As we understand the figures, 23 per cent of guilty pleas are not entered until the day of trial. If the plea had been entered earlier, then considerable public expense could have been avoided—to say nothing of court backlogs being reduced or avoided altogether. Court time would have been saved, victims would have been spared more anguish, police would have devoted less time to preparation of the case and had more time on other productive pursuits—other cases—and less time would have been spent by publicly funded legal aid and prosecution services, which could have turned their minds to other matters. There would have been a benefit for the accused as well: Knowing their fate earlier makes it easier to see what the future holds for them and what can be done with the balance of their lives. Late pleas are not simply the result of a recalcitrant accused—a very important point to note. In many cases they result from the structure of the present system.

Police, when charging a defendant will, not surprisingly, have multiple charges preferred. Sometimes these charges are not sustained by the evidence and lesser charges are eventually pursued by the Crown prosecutor who has carriage of the matter. As I have said, defendant lawyers call that overcharging. The charges on which a defendant is tried are ultimately decided by the Crown prosecutor. As these may be lesser or fewer charges than those originally preferred, it is often completely irrational to expect someone to plead guilty before the prosecutor who is going to conduct the case has considered the matter and decided what charges will be pursued in the courtroom. That is very important. It is only when the scope of the contest has narrowed to that point, when an accused knows exactly what they have been charged with and what the prosecution will carry through, that an accused is told what kinds of penalties they are liable to if they are found guilty or plead guilty. Without that knowledge it is very hard for those advising defendants to provide sensible legal advice to an accused person.

The Hon. Dr Peter Phelps: Hear, hear!

The Hon. ADAM SEARLE: I acknowledge that interjection. It is not a criticism of any side of the equation; it is a frank acknowledgement of a structural weakness of the system that drives and causes delays in being able to deal with these matters. The problem with the structure is that the Crown's consideration of the charges happens only quite late in the piece after the case has been listed for hearing and often just before the trial commences. Late pleas of guilty in that sense are structural and the Law Reform Commission proposal was to move consideration of the final charges from the end of the process to the front. That recommendation is contained in the legislation.

The committal process before a magistrate has now changed completely. The role of the magistrate in determining whether to commit a defendant for trial is now abolished. While in the context of our legal history and tradition that is quite radical and has caused concern for some stakeholders, including the Law Society of New South Wales, the facts are that very few magistrates do not commit people for trial. The Opposition has come to be reconciled with the proposal as, according to the commission's figures, magistrates refuse to commit in only 1 per cent of cases, therefore the impact of the abolition of this function will be very small. That is consistent with anecdotal evidence and with the experience of those practitioners with whom the Opposition has spoken about this matter. As the commission argues, the measures it proposes should not be cherry-picked, they should stand or fall together. That argument also makes sense to the Opposition.

The magistrate's role under the legislation is to oversee a procedure where the prosecution is required to disclose a brief of evidence to the defendant, clarification is provided of the charges to be proceeded with by the Crown, there will be a formal process of conferencing and at least at the commencement that must be done in person or by audiovisual link. This allows early guilty pleas to be considered, the Crown case having been presented and a Crown prosecutor having considered what charges will be pursued. As part of this process, discounts on sentencing for the utilitarian value of early pleas are made clear. The maximum discount of

25 per cent for a plea of guilty is available only while the matter is still before a magistrate. I note that the changes do not apply to indictable offences committed by children.

The Opposition welcomes the Attorney General's comment that additional funding has been provided to the Director of Public Prosecutions and to Legal Aid to ensure continuity of legal representation. I do not think this change can work in practice without that additional support and funding. It is hoped there will be significant cost savings from early pleas, which can then be revisited in our administration of justice system. It is also hoped that this case management model will narrow the issues in dispute, which will achieve efficiencies and savings in trials, as well as having other benefits for witnesses and victims. I note that none of these changes will affect the Drug Court. Given the established success of the Drug Court, that is entirely sensible.

A six-month statutory time limit on filing the charge certificate, with limited exceptions, will apply. Proposed section 68 provides that if the prosecutor fails to file and serve the charge certificate by the six-month limit, or by some other period set by the magistrate, then the magistrate may discharge the defendant. There is still a restricted capacity to call a prosecution witness before the magistrate. The bill also provides a power to magistrates to expedite a case to a higher court for a fitness inquiry. The magistrate can commit the defendant for sentence or trial after a case conference certificate and a charge certificate or certificates are filed. The maximum utilitarian discount is 25 per cent while the matter is still in the Local Court. Discounts subsequent to this are substantially lower. For example, if the plea of guilty is made later, but 14 days before the first day of the trial as defined, the discount is 10 per cent. There are also specified exceptions to the discount scheme, where the court determines to impose a life sentence or where the level of culpability is particularly extreme. I refer the House to comments by the Law Society in the letter I mentioned earlier, dated 13 October:

The Law Society is supportive of criminal case conferencing where it is properly funded and senior prosecutors are involved at an early stage, with the delegation to accept pleas to lesser charges and negotiate in relation to "agreed facts." However, in our view, the effectiveness of case conferencing is dependent upon the retention of a committal framework, full disclosure of the prosecution case, and on Crown prosecutors or other senior lawyers being involved in the process at an early stage.

We are concerned that the Bill, particularly in relation to prosecution disclosure and the abolition of committals, has the potential to create significant delays in the system, increase the number of trials in the District Court and ultimately reduce the number of appropriate early guilty pleas. There is no safeguard in the Bill to require that what the police and prosecution provide an accused person in an initial brief of evidence is sufficient or of a high quality.

I note that in his speech in reply in the other place the Attorney General addressed much of what was contained in the Law Society's letter. I do not want to take the matter further, unless the honourable Parliamentary Secretary has something new or additional to say. These are important concerns coming from a significant stakeholder in our system of justice and, notwithstanding the passage of the legislation and its implementation, we would urge the Government to remain vigilant about those problems arising and the actions of actors in the system undermining the objectives of this legislation. I do not say that would be a deliberate strategy, it is simply something that could happen despite the best intentions.

The Opposition provides support for the concept put forward by the Law Reform Commission and contained in the second bill. We understand that there is a question about whether it will work and whether the lawyers involved in the system will be able to make it work. Many of those with expertise in running criminal trials, such as the member for Heffron in the other place and others with whom we have spoken about these measures, are sceptical about whether they will work in practice. We on this side of the House earnestly hope that they do because if it can be made to work it is a desirable path to proceed down. It is something we will be watching as these measures are implemented, as will everyone who has a genuine interest in improving our justice system.

The third of these cognate bills is the Crimes (High Risk Offenders) Amendment Bill 2017. The genesis of this bill is to be found in the statutory review of the Crimes (High Risk Offenders) Act, which was carried out by the Department of Justice and is dated 9 May 2017. The first call for submissions as part of the review occurred in January 2016. The scheme established by the principal Act commenced under a Labor government in 2006 when it was applied to high-risk sex offenders. Amendments proposed by the current government in 2013, and not opposed by the Labor Party, saw the scheme extended to high-risk violent offenders. We understand and accept that continuing supervision or detention of people whose sentences have been completed is a radical departure from the standard principles normally upheld in jurisdictions with traditions such as ours. The High Court has upheld their validity, but the scheme has always been expressed to be intended to apply to very few persons.

Page 13 of the statutory review report records that as at 16 January 2017 there were on foot 14 extended supervision orders [ESOs], and two continuing detention orders [CDOs] for high-risk violent offenders, and 58 ESOs and two CDOs for high-risk sex offenders. Page 7 of the report notes that at September 2016 there have been 107 offenders subject to an ESO or CDO since the institution of the scheme more than a decade ago. This legislation introduces a number of amendments to the principal Act. It removes the distinction between the two

categories of high-risk offender or high-risk sex offender and high-risk violent offender. It makes clear that the scheme applies to an offender who has been imprisoned for an offence under Commonwealth law or the law of another State or Territory being served concurrently or consecutively with an offence against New South Wales law. It also makes certain under the Act Commonwealth offences of serious sex offences and offences of a sexual nature. There is an obligation for the Legal Aid Commission to be notified if an application is to be made for an emergency detention order. A broader range of victims of serious offences and offences of a sexual nature are able to provide a victim impact statement

Victim impact statements can be made directly to the Supreme Court, not only in writing. There is also an attempt to allow registered victims to be advised when an offender is the subject of an application for an order. Applications for orders may be made up to nine months, rather than six months, before the end of the offender's period of custody or supervision. This bill also changes the test for making an EDO or CDO to provide that where an offender cannot be safely managed in the community or by an ESO they are instead subjected to a CDO. There is also a provision that emphasises that the test is the offender's risk to the community. The need for these changes is set out in the report of the statutory review. The problems are helpfully set out at page 27 and refer to the view of the Department of Justice:

The Department identified a number of issues with the current process for making an order:

- Offenders who pose an unacceptable risk which cannot be managed on an ESO are being granted an ESO by the court under the current test.
- Offenders cycle between ESOs and being in custody (having breached that ESO) with no change to underlying behaviour.
- CSNSW is required to provide detailed information on how an "unmanageable" offender might be supervised in the community, even when the CSNSW does not have confidence that the proposed supervision measures will be effective to keep the community safe.

Of course, that inability to keep the community safe is of grave concern. At page 28, the report also states:

The current test has resulted in offenders being given ESOs even where the risk they pose of committing a serious sex or violence offence cannot be managed in the community. Currently, the court is required to make a finding of unacceptable risk and then determine whether supervision will be adequate. As these two considerations are not "anchored together" in such a way that an ESO could only be viewed as providing "adequate supervision" where it eliminated or substantially reduced the risk of serious offending, the requirement for the court to consider whether the supervision will do anything to address and minimise offender risk or bring it within acceptable levels is limited. This leads to the situation where an offender posing an unacceptable risk of future serious offending will be released to supervision, because the court is satisfied that the supervision will be adequate. Adequacy is justified on its own terms.

Given the consequences for public safety, this seems to be a curious effect of the law and one that should be addressed. A little later, the report states:

This issue with the current test has led to offenders being placed on ESOs only to repeatedly breach their orders because they present too high a risk to be managed in the community. In most cases of breaches of an ESO, offenders will receive short sentences of imprisonment which precludes them from having any form of treatment while incarcerated. This leads to a cycle in which any gains made in the reintegration of the offender are undermined—for example accommodation or employment can be lost due to a return to custody. This also means that efforts to reduce the intensity of supervision are impacted. In short, this can result in longer periods of supervision and reimprisonment.

According to the review report, the end result of the current position is that ESO offenders go back to prison when they breach their ESO and, in the wording of the report, "cycle in and out of prison". There is no change in their underlying behaviour. This is adverse not only for the community but also for the offenders in question. It is clear from the report that there was some stakeholder disquiet about the proposals, but the department held the view that these changes needed to be made, and it had had that view for some time. Given that, the Opposition is surprised and not a little concerned about the time it has taken for the Government to raise this proposal for consideration by the Parliament.

If the Government accepts the accuracy of the report's analysis—and we must believe it does because it is legislating to deal with it—clearly there have been people at liberty who should not have been and who have been breaching ESOs and/or committing offences. I would like the Parliamentary Secretary in reply to address the question of the delay by the Government in bringing forward this package. I understand that this is a complex package; that is the nature of cognate bills dealing with issues such as this. The Opposition is not critical of the Government taking care to get the legislation correct. However, if there were real and immediate threats to the community, one would have thought they would have been dealt with earlier. Having said that and with those observations, I indicate again that the Opposition supports the vast majority of content of the three bills and that it will not support any proposed amendments.

Reverend the Hon. FRED NILE (12:24): I speak on behalf of the Christian Democratic Party on the Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017, the Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017, and the Crimes (High Risk Offenders) Amendment Bill 2017. I was

briefed on these bills directly by the Attorney General, the Hon. Mark Speakman, and I thank him for spending time discussing them and other matters. The Christian Democratic Party supports the bills. We believe they will provide greater efficiency and justice to all involved in these issues in our State.

The Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017 makes reforms to enhance community sentencing options and to promote community safety by targeting offenders with supervision and rehabilitation programs designed to reduce reoffending. Safeguards that will protect victims and the community are a critical component of the reforms, and the Christian Democratic Party fully supports that objective. The benefits of these reforms are obvious. The sentencing reforms promote community safety by improving community-based sentencing options to make effective supervised orders available to more offenders. These reforms will maximise the benefits of improved case management and programs delivered in the community. The legislation will also assist in other areas. The procedures that have been adopted in this bill are based on the outcomes of Australian and international research, which shows that targeted intervention and community suspensions are more effective in reducing reoffending than no supervision and short prison sentences.

This bill allows the courts to tailor a sentence to address the causes of an offender's criminal behaviour and to hold the offender accountable. In summary, these reforms will replace community sentences with a strengthened intensive correction order, a new community correction order, and a new conditional release order. It also ensures that community safety is the paramount consideration when deciding whether to impose these various intensive correction orders. In addition, it ensures that all offenders will serve a prison sentence in the community on an intense correction order and that they will be supervised. It will give courts a range of additional options so that they can tailor intensive correction orders to individual offenders to target their risk of reoffending and to hold them accountable.

The bill also introduces a presumption that offenders sentenced for domestic violence offences will receive a supervised community-based sentence or be subject to full-time imprisonment. In addition, the bill provides safeguards for domestic violence victims to ensure they are protected from offenders who are sentenced to an intensive correction order. This is important for the peace and safety of victims of domestic violence and it will provide them with greater protection. This bill will give Community Corrections and the State Parole Authority the power to impose a range of graduated sanctions to deal swiftly and effectively with lower-level breaches of intensive correction orders that do not warrant revocation. There are many practical benefits to this bill which is why we support it.

If passed, the Crimes (High Risk Offenders) Amendment Bill 2017 will introduce reforms to the high-risk offenders' framework which governs the post-sentence supervision and detention of high-risk sex and violent offenders. The reforms will ensure better protection for the community from the most dangerous sex and violent offenders after they finish their sentence of imprisonment. The benefits of this reform include: providing a reframed test for the making of an order, ensuring the court can consider imposing orders on generalist offenders and making community safety the court's paramount consideration in determining whether or not to make an order.

This bill is intended to reduce reoffending by offering earlier notification for offenders who might be eligible for the scheme, thereby providing the offender with greater opportunity to engage in rehabilitation programs. We believe anything that encourages offenders to engage enthusiastically and fully in rehabilitation programs is to be applauded. We look forward to achieving those outcomes as a result of this bill. Under the proposed amendments victims will have greater flexibility in how they provide either written or oral information to the Supreme Court. This will ensure their voices are heard. In cases where the victim is deceased, the victim's family will be able to provide a statement.

The bill proposes to change the eligibility requirements for the scheme to ensure that high-risk offenders who pose an unacceptable risk of committing a serious violent offence or serious sex offence will be captured, regardless of the nature of their index offence. It will ensure that the scheme comprehensively applies to Commonwealth sex offences and it will reframe the test for making an extended supervision order [ESO] or continuing detention order [CDO] to ensure that when an offender cannot be safely managed on an ESO he or she will instead be subject to continued detention. This bill proposes a range of further legislative changes to the scheme to improve the framework, including: making community safety the paramount consideration of the court; enabling victims to provide statements in writing or directly to the court; and extending the requirement to warn offenders so that it applies to all eligible offenders. We are pleased with this bill and believe it will provide many benefits for our community.

The third bill being considered is the Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017. If passed, this bill will encourage earlier appropriate guilty pleas in indictable prosecutions by replacing the current Local Court committal process with a case management committal procedure; by requiring early service of the brief of evidence—which is not required to be in an admissible form—by requiring prosecutors to certify

charges in the Local Court; by requiring defence legal representatives and prosecutors to attend case conferencing; and by prescribing strict sentencing discounts for the utilitarian value of guilty pleas.

I note that a brochure produced by the Attorney General's office includes a graph showing the discount that offenders can achieve based on the timing of their guilty plea. A guilty plea before committal in the Local Court would bring a discount of 25 per cent. A guilty plea or notice of a plea given up to 14 days before the first day of trial in the District Court or Supreme Court would bring a 10 per cent discount. In any other circumstance an early guilty plea would bring a 5 per cent discount. It is a problem that some people who plan on pleading guilty leave until the last possible moment so that a lot of money and effort is expended unnecessarily when the offender had already decided to plead guilty. Anything that can encourage those offenders to plead early, as this bill will do, will benefit society and the offender in the long run.

This bill will repeal the existing provisions of the Criminal Procedure Act relating to committal proceedings. It will require the NSW Police Force to provide a brief of evidence to the accused person containing material which either forms the basis of, is reasonably capable of being relevant to, or affects the strength of the prosecution case after the commencement of committal proceedings in the Local Court. The brief will not have to comply with the technical requirements for the presentation of evidence in admissible form. The bill will require a prosecutor in the Office of the Director of Public Prosecutions to review the brief of evidence and file a charge certificate confirming the charges that it would proceed to trial and certifying that the evidence is capable of establishing each element of the offence. All the information provided will be of great assistance to offenders in fully understanding the evidence that they face and how they will be found guilty. It will encourage them to plead guilty much earlier, which benefits everybody involved. The bill will also require the prosecutor and defence legal representatives to have a case conference to determine whether there are any offences to which the accused person is willing to plead guilty and to discuss the case.

Schedule 2 to the bill will abolish the existing common law discount for the utilitarian value of the guilty plea. With limited exceptions it would also prescribe the sentencing discount for the utilitarian value of the guilty plea by those percentages which I have already described. The court may determine not to apply a sentencing discount or to apply a reduced sentencing discount. Exceptions to the prescribed sentencing discounts include if the offender pleaded guilty to a new offence found by the Director of Public Prosecutions that is not substantially the same as the offence on the original indictment. The Christian Democratic Party supports all three bills. We congratulate the Attorney General, the Hon. Mark Speakman, for the amount of detail he has had to consider in preparing the bills before the House. We believe they will be of practical benefit to our State, to offenders and to victims by allowing court cases to continue to a guilty plea and to sentencing much sooner than would have occurred under existing legislation.

Mr DAVID SHOEBRIDGE (12:39): On behalf of The Greens I indicate that we have significant concerns about the Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017, the Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017 and the Crimes (High Risk Offenders) Amendment Bill 2017. On balance The Greens do not support the bills. The so-called "safety first" justice reforms that are being brought by the Attorney General are the latest suite of measures from the Liberal-Nationals Government that are said to be all about protecting public safety. A word count on "public safety" in the Attorney General's second reading speech and his contributions would show it was his most repeated phrase. These bills make significant changes to the criminal justice system. We acknowledge that some of those changes will be positive but many of them are retrograde to our criminal justice system and, on balance, we find ourselves unable to support them.

Over the past six years civil liberties have been under consistent attack from this Government. We cannot trust the Government when it is proposing significant reforms to the way in which our courts operate. We cannot trust the Government when it says it has not got the studies or done the modelling but we should not worry as these bills will make our criminal system fairer and more efficient. A few small positive steps have been taken with the introduction of this package of legislation. For example, the bills increase the availability of one class of non-custodial sentencing options that are called intensive correction orders. In doing that, the bills also abolish a series of other commonly used non-custodial sentencing options.

The bills also provide unwarranted limitations and exclusions on judicial power, including things such as when and in what circumstances non-custodial sentencing options can be provided. Largely though, the bills continue on the law and order agenda to which this Government seems addicted. They expand the circumstances in which people can be held because they are at risk of committing a future crime, and they limit judicial discretion in sentencing in ways that The Greens cannot and will not support.

These three bills are detailed pieces of legislation. I will deal first with the Crimes (High Risk Offenders) Amendment Bill which proposes to broaden the use of continuing detention powers for what are described as high-risk offenders—offenders who have committed a serious sex offence or a serious violent offence, as defined.

It allows them to be kept in jail or subject to home detention or other supervision after they have completed the entirety of their sentence if they are considered to have what is described as an unacceptable risk of reoffending.

The bill lowers the bar for making continued detention orders and also allows what is considered to be a cross-pollinating of orders. If a person has committed a serious violent offence and the State believes that person is at an unacceptable risk of committing a serious sex offence, he or she can be detained, and vice versa. Previously the continued detention order could be made only if the unacceptable risk related to the offence for which the person was in jail in the first place. These are future crime offences. They are offensive to the long-established principle that citizens are only sent to jail for crimes that they commit, not crimes that the State thinks they may commit in the future. The Law Society has consistently noted its concerns about such legal changes. In its submission on this bill it says, in part:

... detaining a person beyond the maximum sentence imposed by the sentencing court offends the fundamental principle of proportionality.

The Greens share the Law Society's concerns. We opposed similar legislation in 2013 when it was applied to sex offenders. In 2016 we opposed it again when it applied to high-risk offenders, and we continue to oppose its expansion. The Government's approach of continuing to impose punishment after any period of incarceration has been completed, after the judicial sentence has been fully served, is simply wrong in principle and we will not support it. The Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017 is another detailed and complex piece of legislation. The bill in short proposes to abolish suspended sentences, good behaviour bonds, community service orders and home detention orders and in their place there will be an expanded but far from universal regime of intensive correction orders and two new sentencing options called community corrections orders and conditional release orders.

Intensive correction orders will be available for sentences of two years or less and enable offenders to serve their sentences in the community under supervision. They can also be used when there is a proposed sentence for more than one offence of up to three years. The bill also proposes to limit judicial discretion when imposing an intensive correction order. Instead of considering the appropriate sentencing, taking into account a variety of factors, including things such as addressing reoffending, deterrence, the personal circumstances of the offender, the objective seriousness of the crime, and community safety—the basic balancing of concerns that trial judges currently look to when imposing a sentence—this bill says unashamedly that community safety, as defined, is the paramount consideration and trumps all.

The Greens do not support this package. We do, however, support the expansion of intensive correction orders. We acknowledge the research from the Bureau of Crime Statistics and Research [BOCSAR] that shows that intensive correction orders done well can reduce reoffending more so than simply an unsupervised suspended sentence or the like. But we do not support the expansion of intensive correction orders at the expense of the removal of periodic detention or suspended sentences as proposed by the Government. At a time when the New South Wales prison population is already at a record high—it is and projected to increase in the future—we cannot understand why the Government is removing non-custodial sentencing options.

Of real concern to The Greens is the fact that, especially in rural and regional New South Wales, currently there are no resources to support intensive correction orders in many parts of the State or there are inadequate resources to support a significant expansion of intensive correction orders. I know that the Government has said it is allocating more funding to address this issue and it hopes more services will be available, but the reality, especially in rural and regional areas, is that there will be an absence of services and courts will not be satisfied that intensive correction orders can be adequately supervised or monitored. In those circumstances, the courts will be required to give custodial sentences because this bill removes other options such as periodic detention and suspended sentences, which should remain in our law.

The data makes one realise that the people who will be affected most are Aboriginal citizens who are already overwhelmingly overrepresented in our prisons. We cannot support the abolition of these other non-custodial options merely because the Government is promising that it will provide the resources for intensive correction orders. These changes as we see them are likely to further increase the number of Aboriginal people in prisons in New South Wales.

The Greens remain fundamentally committed to the concept of detention as a last resort. This bill unfortunately does not live up to that principle. We do, however, recognise that elements of this reform package have been supported by the Law Reform Commission. However, there are so many exclusions, limitations and additional harsh elements in the final package that has been presented to this Parliament that it cannot be said to be properly implementing the commission's recommendations. The Greens believe reducing sentencing options for the courts and restricting judicial discretion is not in the public interest.

Sentencing is often a complex process. In order for the courts to ensure justice is done, a comprehensive range of sentencing options is needed, from fines, bonds, community corrections orders, suspended sentences, home detention and imprisonment, when warranted. Non-custodial sentences, particularly for those convicted of relatively minor, non-violent crimes, are likely to maximise successful rehabilitation and reduce recidivism. The bill includes the presumption that a court must impose a sentence of full-time detention or a supervised order if the person is found guilty of a domestic violence offence.

The Greens consider domestic violence to be a scourge. We acknowledge that there is at least an attempt by the Government to put domestic violence on the agenda in this way. We support legislative changes that are designed to protect victims and, in particular, to protect women and that have a good research base behind them. However, this bill does not have the benefit of that. A domestic violence offence, as defined in the bill, is one of a broad range of offences distinguished by the relationship between the offender and the victim rather than the nature of the offence itself. While it includes crimes of extreme violence and intimidation—matters that, unambiguously in most circumstances, call for a prison sentence—it also includes lesser offences such as a breach of an apprehended violence order. This is not to minimise concerns about domestic violence and the need for action, but The Greens note the Law Society's concerns and endorse them. The Law Society said:

This is an unnecessary fetter on judicial discretion and reverses the principle of detention as a last resort.

The Greens join the Law Society in its criticism of the bill. We also note concerns about the impact of this presumption on rates of incarceration and rates of pleas of guilty to domestic violence offences. One area of real concern is the offence of intimidation, which is often a domestic violence offence because of the nature of the parties involved. A recent Bureau of Crime Statistics and Research study found that a disproportionate number of Aboriginal people are already being charged with this offence, which explains a significant part of the recent increase in Aboriginal imprisonment. If the assumption on sentencing is jail—and that is what this bill proposes—this imprisonment rate will increase further.

The Justice Legislation Amendment (Committals and Guilty Pleas) Bill essentially requires the prosecution to provide a detailed brief of evidence to a defendant at an early stage in criminal proceedings, and for a defendant to make an early decision whether or not to plead guilty. If the defendant pleads guilty whilst the matter is in the Local Court he or she will get an automatic 25 per cent reduction in sentence. If defendants do not plead guilty but rather wait for the matter to go to the District Court before entering a plea of guilty the maximum discount they can get is 10 per cent. The discount reduces to just 5 per cent if the plea is within 14 days of trial. The Government is introducing this legislation, it says, to encourage early guilty pleas and to reduce the number of cases going to trial, with all the costs, delays and stresses to victims and witnesses that it entails. That is a worthy objective. Indeed it is a principle that The Greens fully support.

A pending criminal trial places great stress on a victim of violence and witnesses who have seen incidents of violence. A case may not be reached on a number of occasions—that happens because of the lack of juridical resources in the District Court—and that can lead to deeply stressful experiences. The fact that those stressful experiences can be repeated because of a lack of adequate juridical resources should distress all members in this place. As well, encouraging early guilty pleas saves the defence and prosecution substantial resources because it removes the amount of time required to prepare a matter for a full trial.

The Greens also support the early provision of a brief of evidence to the accused and, as I said, we support a system that encourages early guilty pleas. However, we share the Law Society's concerns that this non-discretionary system of discounts for guilty pleas will likely mean more cases going to trial, not fewer. We have this concern for a number of reasons. First, the early provision of the brief of evidence does not require a minimum standard for the brief to enable a fully informed decision on a plea by the defence. Both the Law Society of New South Wales and the NSW Bar Association have made repeated representations to the Government seeking a statutory quality test for the brief—that the brief be in admissible form, so that it can be properly considered and tested by the defence. Those representations have fallen on deaf ears—they have not been acceded to by the Government—because, for its own policy reasons, the Government does not want to provide that level of detail at an early stage.

Secondly, there is insufficient recognition of the complexity of preparation for a trial, including the provision of late evidence and the personal circumstances of a defendant, which can be crucial to forming a view about a plea of guilty. I believe this bill is largely ignorant of human nature, particularly in litigation. Litigants often do not understand the reality of their situations. They are often willing to have a hopeful rather than a practical view about the likely outcome of their legal proceedings until they are close to court. Indeed on some days they do not get that practical view until they step into a court and see a judge or a jury about to make a decision about them. It is human nature for hope to prevail over the best advice.

A lawyer or barrister may tell a defendant, "You should enter a plea of guilty now if you possibly can, because we have looked at the evidence and in our experience when it comes to trial in 12 months time you are likely to be found guilty." Many lawyers would tell us that advice like that is not real to many people until they are in the shadow of the court, or they have stepped into the court. Then they realise that something is about to happen and that they have minimal power over it. Under these laws, at that point—when they are in court—the lawyers will say, "I told you that you should have entered a guilty plea. We think you are going to be found guilty." The defendant will ask, "What is in it for me?" and the lawyer will say, "A 5 per cent discount." The defendant will say, "There is nothing in it for me if there is a 5 per cent discount. Run this case through, beat up the witnesses and do what you can. I will take my chance with the jury or the judge rather than taking the 5 per cent discount." I think the bill is ignorant of human nature in that regard. It is ignorant of the reality of what is likely to happen in court. I hope that that view of human nature is wrong. I hope the bill succeeds in getting early guilty pleas. I hope that that dynamic does not develop, but I am fearful that it will.

Thirdly, limiting judicial discretion on deciding guilty pleas is contrary to the principles of a justice system that delivers justice to an individual rather than taking a one-size-fits-all approach to law and order. In short, there are inadequate safeguards and there is insufficient regard for the personal circumstances faced by the accused. This will likely mean that more rather than fewer trials will occur. It is likely to mean that once a defendant gets to trial there is no viable incentive to enter a plea of guilty at that time. That will not help the courts. It will not help the victims. It will not help the State's finances, and it will not help vulnerable witnesses. If the Government is seriously concerned about reducing delays in the District Court there is a far simpler solution, which is to appoint more District Court judges. The profession has made that call for years and years. I will finish by addressing the concerns of the Law Society, which are relevant to the amendments that The Greens will be moving in Committee. The Law Society said in relation to the Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017:

We are concerned that the Bill, particularly in relation to prosecution disclosure and the abolition of committals, has the potential to create significant delays in the system, increase the number of trials in the District Court, and ultimately reduce the number of appropriate early guilty pleas. There is no safeguard in the Bill to require that what the police and prosecution provide an accused person in an initial brief of evidence is sufficient or of a high quality. The legislation does not require any of the brief to be in admissible form.

We are concerned about the lack of any discretion in the statutory sentencing discount provisions, and that injustice and unfairness will result where there is a substantial change in the Crown case or late service of key evidence. We consider that under the proposed sentencing discount model there is limited incentive to plead guilty to a charge once a matter has been committed for trial. If there is to be a statutory sentencing discount scheme, the discounts applied should be 33%/20%/10% to incentivise pleas after committal. If it is left as 25%/10%/5%, it is likely that the vast majority of matters committed for trial will run to trial, which is contrary to the aims of the reforms.

The Greens have a series of amendments which we will be seeking to move in globo which will address that final concern by the Law Society. The Greens hope to receive the support of the House in order to realise the proposed objects of the bill.

Debate adjourned.

Documents

OMBUDSMAN

Government Responses

The Hon. SCOTT FARLOW: I table the Government's response to a report of the Ombudsman entitled "Asbestos: How the NSW Government agencies deal with the problem".

The ASSISTANT PRESIDENT (Reverend the Hon. Fred Nile): I shall now leave the Chair. The House will resume at 2.30 p.m.

The PRESIDENT: Order! According to sessional order, proceedings are now interrupted for questions.

Questions Without Notice

CLEAN ENERGY TARGET

The Hon. ADAM SEARLE (14:31): My question without notice is directed to the Leader of the Government, Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts. Given the Federal Government has now abandoned the Clean Energy Target, which the Australian Chief Scientist, Alan Finkel, said was necessary to provide the long-term certainty for investors to put money into new electricity generation projects, how can the Minister assure the House that there will be enough new energy coming online to more than replace ageing coal-fired power stations as they close and to provide New South Wales with clean and affordable energy?

The Hon. Matthew Mason-Cox: A Dorothy Dixier.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:31): The Hon. Matthew Mason-Cox describes this question as a Dorothy Dixier. It virtually is a Dorothy Dixier, because a large part of the question outlined the views of the Federal Chief Scientist, Dr Alan Finkel. What has Dr Finkel said since the release of the proposal by the Federal Minister, which was based on advice from the Energy Security Board? It is very simple: He said it is a credible mechanism. Dr Finkel is hardly someone I would have thought the Labor Party would try to use today to somehow cast doubt over the proposals yesterday of the Federal Government. He is not alone; plenty of other credible commentators have also had interesting things to say. For example, one would hardly describe the Grattan Institute as—

The Hon. Greg Pearce: A bunch of lefties.

The Hon. DON HARWIN: —to use the words of the Hon. Greg Pearce, a bunch of lefties. It certainly is not rivalling the institute of Public Affairs on the conservative side of the spectrum. Tony Wood, who is a senior figure in the energy community and who is now a policy director at the Grattan Institute, has written extensively in the opinion pages of the *Australian Financial Review* in favour of what the Federal Government has come out with. To be perfectly frank, I had the opportunity to speak on this issue yesterday in question time, and I spent 10 minutes speaking on the matter of public importance this morning, outlining the position of the Government. Our position is very clear: We are interested in what the Federal Government put up yesterday.

The Hon. Niall Blair: Point of order: The Opposition has asked the Minister the first question of the day. It should allow him the courtesy to continue to towel up the Opposition with his answer and repeat what he said many times in question time yesterday without interrupting him.

The PRESIDENT: I remind members that by tradition the Chair tolerates interjections that are not disruptive, particularly if they facilitate the exchange of views and arguments in debate. However, the Chair will not tolerate disruptive interjections—a ruling of then President Primrose on 28 June 2007. I remind members that for a member to scream at a Minister to sit down is, as far as I am concerned, not only unparliamentary but also disorderly. I call the Hon. Greg Donnelly to order for the first time. I remind members of the ruling of President Primrose.

The Hon. DON HARWIN: As I was saying, I spoke on this matter this morning and made some remarks that we were open to considering what the Federal Government advanced yesterday. Why should we consider it? We should consider it because five eminent people on the Energy Security Board have given the Federal Government advice, and what they have put up is worthy of consideration. We need to see some more material and we have asked it to do some more work—more modelling, in particular—to justify some of the claims that are being made. We expect to receive that material and we look forward to discussing it at the Council of Australian Governments Energy Council in November.

MINE SAFETY

The Hon. MATTHEW MASON-COX (14:36): My question is addressed to the Minister for Resources. What is the Government doing to hold unsafe mine operators to account?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:36): I thank the member for his question. The New South Wales mining industry is statistically one of the safest in the world. However, every year mine workers still suffer terrible injuries while helping earn the billions of dollars the industry contributes to the economy. While the industry has shown general improvement in safety performance over the past 10 years, continuing incidents are a stark reminder that we must work together to achieve our common goal of a zero harm industry. The Resources Regulator's Major Investigation Unit is a key component of this Government's commitment to mine safety in New South Wales. The first of its kind in Australia, the unit was established by the New South Wales Government to conduct investigations into major accidents and incidents in the New South Wales mining industry.

During the 2016-17 financial year the unit undertook 30 major investigations under the Work Health and Safety Act 2011. Outcomes of these investigations are used to help the regulator and the industry learn about the causes of incidents so that mines can take steps to prevent them happening again. Where serious breaches of work health and safety laws are identified, the regulator will take strong action to ensure those responsible are held to account. Currently the regulator has eight separate matters before the courts in relation to alleged work health and safety breaches, and recently has finalised a number of other prosecutions. Notably, this includes commencing the first category 1 proceedings under New South Wales work health and safety laws since their introduction in 2012. Category 1 offences are the most serious under the Work Health and Safety Act and attract a maximum penalty of \$3 million for a corporation, and \$600,000 for an individual and/or up to five years imprisonment.

In addition to finalised prosecutions, in August 2016 the regulator successfully prosecuted Silver City Drilling (NSW) Pty Ltd for a breach of the Work Health and Safety Act with the company being ordered to pay \$112,000. In May 2017 the New South Wales Court of Criminal Appeal increased the fine to \$212,500 and ordered the defendant to pay the regulator's court costs. The charges related to a 2012 incident where a 26-year-old employee of Silver City Drilling was knocked from a platform and struck by a pipe while operating a drill rig at Ashton coalmine. The man is now a quadriplegic requiring full-time care.

Macmahon Mining Services Pty Limited was also successfully prosecuted by the regulator in August 2016 for a breach of the Work Health and Safety Act, with the company pleading guilty to the offence. The company was fined \$75,000 and ordered to pay the regulator's costs. The Attorney General has since appealed the matter on the basis that the fine imposed was manifestly inadequate and the matter is again before the court. The prosecution related to the 2013 death of a shift supervisor working at the CSA mine near Cobar. The employee died as a result of serious head injuries he suffered while working in a mine shaft. This Government makes no apology for prosecuting breaches of work health and safety laws where there is a fatality or serious injury. No worker should have to suffer the pain of being injured at work, and no family should ever have to suffer the anguish of knowing their loved one did not get home safely at the end of the shift.

CLEAN ENERGY TARGET

The Hon. WALT SECORD (14:41): My question without notice is directed to the Minister for Resources, Minister for Energy and Utilities, Minister for the Arts and Leader of the Government. Given that the Australian Bureau of Statistics [ABS] reported that New South Wales has lost 23 per cent of its jobs in the renewable energy sector since 2011-12, that is under this Government's watch, what is the Minister's response to the abolition of the clean energy target and the sector's concern that it will devastate the industry?

The Hon. Greg Donnelly: Take it on notice.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:41): That is entirely unnecessary, I can assure the honourable member. The New South Wales Government has a larger pipeline of projects in the area of renewable energy, in particular in large-scale solar, than any other State in Australia. I am proud to say that under this Government's watch, over the past five years the share of renewable energy generation in New South Wales supply mix has more than doubled. In fact, 2016 was a landmark year for renewable energy in New South Wales. Last year a record 19.6 per cent of New South Wales energy generation came from clean sources. Solar and wind technologies have been driving the forces behind renewable energy growth in New South Wales. Renewable energy is now the cheapest form of new build generation, and solar and wind have become heavy hitters in the power sector.

In answer to the honourable member's question, it is important to note that because it is the cheapest form of new build generation it is no longer reliant upon the sort of subsidies that are currently attracted under the Renewable Energy Target. In recent years some of the nation's largest solar plants have come online in regional New South Wales at Nyngan, Broken Hill and Moree, as well as wind farms at Taralga, Goulburn and Nimmitabel. The importance of renewable energy to our energy security was made clear earlier this year during the heatwave on 10 February. Our diverse energy mix and interconnections that underpin our resilience were of significant assistance that day. At the time of peak demand at 5.00 p.m. renewables provided 27 per cent of New South Wales total energy generation.

Energy security is a high priority for the Government and I believe we need to look beyond just attracting new generation. We need to look at how our power sources can be best used to meet consumers' energy needs. That is why Snowy Hydro played such an important role during our heatwave and why I am so keen to see continued innovations in battery storage, pumped hydro, concentrating solar thermal power and other dispatchable technologies. A balance of generation remains very important. We need to harness a diverse range of technologies for energy affordability, reliability and security. I am pleased to inform the House that the boon in renewables is set to continue. There are almost 190 megawatts of solar farms under construction across regional New South Wales.

The Hon. Penny Sharpe: Point of order: I have listened very closely to the Minister's answer and I believe that he may have the wrong note. If he does not have the wrong note then my point of order is relevance. The question is about jobs in the renewable energy sector, not the various different forms of renewable energy that we can read off the website.

The Hon. Ben Franklin: To the point of order: The Minister was talking directly about the boon in solar farms that is happening across New South Wales. If that does not directly lead to a boon in jobs I do not know how else it could be more relevant.

The PRESIDENT: I hate to interrupt members when they are speaking if I am about to give a ruling. I am always happy to wait. It is the time for questions that is lost. The Minister was being generally relevant. It was difficult at times to hear him because of the continual interjections by the Hon. Penny Sharpe. I will not uphold the point of order. The Minister has the call.

The Hon. DON HARWIN: I note the comments of the Hon. Ben Franklin to the point of order. He is exactly right, of course. Pointing to the huge pipeline of projects that we have in this State underlines the jobs that we have. In 2015-16 New South Wales recorded the highest level of annual direct employment in renewable energy of any State or Territory at approximately 3,000 employees. Most of these jobs were in the solar industry, including rooftop solar photovoltaic [PV], solar hot water systems and large-scale solar. In 2015-16 the renewable sector supported an estimated 9,000 jobs across New South Wales.

CLEAN ENERGY

Mr JUSTIN FIELD (14:47): My question without notice is directed to the Minister for Resources, and Minister for Energy and Utilities. Given yesterday's Federal announcement to walk away from a national clean energy target, when will the action plans, including the accelerated advanced energy plan under the New South Wales Climate Change Fund, be released? Given recent media on the subject, will the Minister guarantee the committed \$1.4 billion in funding for the Climate Change Fund out to 2022?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:47): I have been asked that question before by the House. My answer then and my answer now is that it will be seen shortly. The Government has a longstanding commitment to a clean, affordable, reliable and secure energy system. Our energy programs and regulatory framework will ensure we continue to deliver on the commitment, in conjunction with our work at the Council of Australian Governments [COAG] Energy Council. The NSW Climate Change Policy Framework outlines the Government's role in reducing emissions, and helping New South Wales adapt and become more resilient to the impacts of climate change. It commits New South Wales to an aspirational target of net zero emissions by 2050, meaning that any emissions are offset by sequestrations, such as in landscape or vegetation. This is a measured and responsible target. It aligns with many of our leading corporates and reflects our international commitments under the Paris agreement. Importantly, it will benefit the New South Wales economy by increasing certainty for investment. I am pleased to report that the Government has announced the Energy Affordability Package as a set of actions arising from the consultations we had on the Draft Climate Change Fund Strategic Plan. The New South Wales Government's \$112.5 million Energy Affordability Package will help households and small businesses to upgrade to more energy efficient equipment through partnering tradespeople and suppliers.

A household could upgrade to energy-efficient lighting and air conditioning, saving up to \$500 per year. It will help concession card holders by offering discounts on new energy-efficient fridges and televisions so that they can replace old, inefficient models. The Government is also providing grants to cover up to half the cost of upgrading community, public and Aboriginal housing to help tenants to save energy and money. Small businesses will also be able to access discounts on energy-efficient equipment as well as obtain energy management training.

Mr Justin Field: Point of order: My point of order relates to relevance. I asked the Minister about action plans, including the Accelerating Advanced Energy Plan. The Minister has not mentioned that plan, despite the fact that I specifically asked about it.

The Hon. Don Harwin: To the point of order: It is directly part of the Climate Change Policy Framework. The measures I am talking about are being funded by the Climate Change Fund.

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

The Hon. DON HARWIN: Energy-efficient measures could help a cafe owner, for example, to invest in more efficient appliances by replacing inefficient refrigeration systems. Combined with other measures, this could save up to \$1,900 on yearly energy bills. At the same time, the Government announced action to help ease the cost-of-living pressure on vulnerable households by increasing assistance measures by about 20 per cent. To complement delivery of the emissions target in the Climate Change Policy Framework, the Government is finalising other action plans to position New South Wales for a smooth transition to a secure energy future. Those plans are expected to be released progressively over the next few months.

BEEKEEPING INDUSTRY BIOSECURITY

The Hon. TREVOR KHAN (14:51): I address my question to the Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry. Will the Minister update the House on the importance of bees in primary industries and the Government's efforts in the bee biosecurity area?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (14:51): Interest in beekeeping across New South Wales has continued to grow over the past five years. The total number of beekeepers in this State is now in excess of 6,000, with many people—including me—taking up the hobby. Enrolments in beekeeping programs at the Department of Primary Industries [DPI] Tocal College have skyrocketed, with more than 10 times the number of students expected to graduate from the program this year compared with last year. I understand that the thirty-eighth Beekeepers' Field Day held on Saturday at Tocal attracted more than 700 bee enthusiasts. The wider apiculture industry in New South Wales contributes a significant \$36 million to the economy through the production of honey and associated products, and pollination services. These pollination services play a vital role in our cropping and horticulture industries because without them many of our important crops would be economically unviable.

It is logical that the rise in beekeeping has resulted in increased biosecurity risks for our State, prompting the DPI to increase its efforts to mitigate those risks. There is no doubt that beekeeping, both recreational and commercial, is an important industry for our State, and as a result we take seriously our biosecurity duties. That is why the DPI is working with industry in promoting October as American Foulbrood Awareness Month. This month-long campaign specifically targets beekeepers in New South Wales to educate and to increase awareness of the most serious brood disease affecting honeybees in the State. American Foulbrood [AFB] has the potential to decimate an apiary, resulting in severe impacts not only for the individual beekeeper but also across our primary industries.

The theme for this month is "Inspect, Test, Notify, Act", prompting keepers to get on the front foot and to monitor their bees regularly. If New South Wales beekeepers suspect one or more of their hives is infected, DPI offers a diagnostic service. They can also collect a field diagnostic AFB test kit from beekeeping clubs, or give the DPI Biosecurity Helpline a call to discuss symptoms. I am pleased to report that there has been significant industry and media interest in American Foulbrood Awareness Month, which has helped to spread important information among the beekeeping community.

While the focus during October has been on AFB, the DPI will continue its work promoting healthy beekeeping in New South Wales into 2018. Early next year, the DPI will again partner with industry to run a registration and education day at various locations across the State aimed at improving biosecurity awareness among beekeepers while also highlighting the importance and benefits of registration. The DPI will also be running an awareness campaign about Varroa mite in March and April next year. In addition to these education campaigns, the Government continues to undertake surveillance and compliance activities in the bee industry.

Just last week, biosecurity officers undertook a compliance operation on the North Coast targeting beekeepers supplying pollination services to blueberry producers. This was done to ensure that beekeepers comply with their biosecurity obligations, with officers looking for any breaches of hive management, unregistered operators or operators who have failed to report notifiable diseases such as AFB. The Government maintains a consistent focus on bee biosecurity, and in recent months has ramped up its efforts to educate and to inform both new and existing beekeepers of biosecurity best practice in their industry. Beekeepers should register their hives and check them at this time of the year to ensure that not too many queen cells are being formed. More importantly, if they see something suspicious in their hive, they should contact the DPI to get further advice.

AMBULANCE AND PARAMEDIC STAFFING LEVELS

The Hon. PAUL GREEN (14:55): My question without notice is directed to the Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry representing the Minister for Health. It has recently been brought to my attention through media commentary that New South Wales ambulance and paramedic services are understaffed by up to 800 staff across New South Wales. Will the Minister clarify the staffing situation in this State, and is he aware of any shortages? If so, what is the Government doing to bring on and to train more paramedic and ambulance staff?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (14:56): It does not surprise me that the honourable member has asked this question given his contribution to debate on a health bill yesterday. The member not only spoke about the media commentary but also provided a detailed account of his personal experience with paramedics on the South Coast. He is asking the question not only on behalf of his constituents but also because of his personal interest in the topic. Because he has asked for up-to-date statistics about our paramedics and for the Minister's views about this issue, I am more than happy to take the question on notice and to refer it to the Minister for a detailed response, which I will provide to the honourable member in a timely fashion.

CLEAN ENERGY TARGET

The Hon. PENNY SHARPE (14:57): I direct my question without notice to the Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts. Does the Minister stand by his comment that the Finkel review was "the last best chance to deliver good energy policy?" Given that the Federal Government has stepped away from the Finkel recommendation to establish a clean energy target? Will the Minister call on it to back down from its new proposal and to return to a clean energy target?

The Hon. Matthew Mason-Cox: How many recommendations were there?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:57): The Hon. Matthew Mason-Cox has hit the nail on the head again. Professor Finkel handed down 50 recommendations, and 49 have been adopted. As I said earlier today during discussion of a matter of public importance, 10 of the recommendations will be completely implemented by the end of the year. As I recall, one recommendation related to the establishment of an energy security board, which has been established and which is providing advice. Therefore, I absolutely stand by my remarks. In respect of Professor Finkel's fiftieth recommendation, I note that he has said in the past 24 hours that the suggestion about the energy security board taken up by the Federal Government and announced yesterday provides a "credible mechanism".

MACARTHUR ABORIGINAL KIDS DAY

The Hon. LOU AMATO (14:59): My question is addressed to the Minister for Early Childhood Education, Minister for Aboriginal Affairs and Assistant Minister for Education. Will the Minister update the House on how the New South Wales Government is supporting Aboriginal students in Sydney's south-west?

The PRESIDENT: Order! I will ask the Hon. Lou Amato to again ask the question. I hardly was able to hear 20 per cent of it. As the result of an earlier ruling I gave today, I ask honourable members not to interject when questions are being asked because if a point of order is called and I have no idea what the question was, it makes it very difficult. Restart the clock.

The Hon. LOU AMATO: My question is addressed to the Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education. Will the Minister update the House on how the New South Wales Government is supporting Aboriginal students in Sydney's Southwest?

The Hon. SARAH MITCHELL (Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education) (14:59): I thank the honourable member for his question. Early in 2016, principals and executive staff from the Macarthur principals network determined that Aboriginal students in the Macarthur area needed more opportunities to meet and develop a shared understanding of Aboriginal culture and histories. They collaborated with the Department of Education's Aboriginal education team and developed plans for a combined schools activity to be known as Macarthur Aboriginal Kids Day. Some 12 schools responded that they would be interested in participating in this inaugural event and that it would provide a valuable opportunity to engage in a day of cultural understanding and connection.

The inaugural Macarthur Aboriginal Kids Day was held on 30 June last year at the Camden Park Environmental Education Centre. A community elder provided guidance and information to the Macarthur Aboriginal Kids Day organising committee about the Camden Park site and led a workshop for students on the day to inform them about the history of the local area. The involvement of other local elders was of great value in the project. Students participated in a range of activities on the day including dance, storytelling by elders, boomerang science, researching a significant Aboriginal site and learning children's games. Many community representatives were present on the day along with students from Mount Annan High School who assisted the primary school students in various activities. Aboriginal students from Campbelltown Performing Arts High School led the welcoming ceremony which included singing the national anthem in first language and a flag raising ceremony.

Mr Chris Patterson also attended and added his handprint to a large mural which commemorates the first Macarthur Aboriginal Kids Day. The mural is currently displayed at the Camden Park Environmental Education Centre and features the Aboriginal kids logo, a lyrebird, which was designed by a staff member from Currans Hill Public School. Following the success of the day in 2016 the committee considered alternative settings and contacted the education and community engagement officer at the Australian Botanic Garden Mount Annan to determine the viability of hosting Macarthur Aboriginal Kids Day there. The initiative was held on 4 September 2017 and involved 15 schools.

On 15 August 2017 I visited Currans Hill Public School to present a grant to the school to assist with Macarthur Aboriginal Kids Day 2017. It was a great opportunity for the Government to contribute funding which will allow the schools to run buses to and from the event, and increase participation in the region. During my visit

I met with school staff and observed Kanga Kids, the school's Aboriginal cultural learning group. It meets fortnightly to participate in a wide range of activities related to developing a shared knowledge and understanding of Aboriginal culture.

During the 2017 Macarthur Aboriginal Kids Day elders taught the students Aboriginal names for common terms, which is particularly pertinent given the legislation we passed in this House yesterday. Students from Campbelltown Performing Arts High School sang the national anthem in first language during the welcome ceremony, which was held in the sorry garden at the Australian Botanic Garden Mount Annan. Around 160 students participated in five rotating activities, including a sensory walk led by botanic gardens staff through the bush tucker garden. Aboriginal education team members and elders demonstrated cooking. The department's Aboriginal services team led a weaponry and tool talk, and showed students how to play the didgeridoo and how dance can be used to tell a story.

Once again students, staff, elders and community members commemorated the day by placing their thumbprint on a large tree mural which will be displayed in the foyer of the Australian Botanic Garden Mount Annan's visitor centre. Feedback from this year's Macarthur Aboriginal Kids Day has been very positive. All schools involved have committed to the ongoing viability of the initiative in the future. I congratulate all involved and I am happy the Government was able to play a small part in the success of this initiative.

MINING INDUSTRY

Reverend the Hon. FRED NILE (15:04): My question without notice is directed to the Hon. Niall Blair representing the Minister for Regional New South Wales, the Hon. John Barilaro. Will the Minister confirm that exploration investment in the mining industry has increased in regional New South Wales? What will be the impact of the Commonwealth Government's recent decision on the increased use of coal as a source of energy, especially in regard to job growth? What will be the impact on mining growth if New South Wales were to replace coal only with renewable energy sources?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (15:04): I thank Reverend the Hon. Fred Nile for his question, which was directed to the Deputy Premier in his capacity as Minister for Regional New South Wales. The question is directed to the Deputy Premier because it asks about the type of growth or expansion that may occur in regional New South Wales. The question concerns not only resources but also the role of regional New South Wales as the hub of activity in this State. Whether on renewable energy, the traditional resources sector, primary industries, manufacturing or defence industries, regional New South Wales is where it is happening. I am sure that is why Reverend the Hon. Fred Nile is interested to see some of the latest forecasting on what could occur, will occur or has occurred in regional New South Wales.

As a child of regional New South Wales, I love the opportunities we have throughout this State. We have some of the most picturesque and productive parts of not just Australia but the world right here in New South Wales. Whether it is tourism, the resources sector, primary industries—particularly horticultural and agricultural sectors—or defence industries, New South Wales and in particular regional New South Wales does it bloody well. We are proud of that. I will take the question on notice and refer it to the Deputy Premier because he will have the latest information and forecasts at his fingertips and he is the best person to provide a detailed response.

GRAHAMSTOWN DAM WATER QUALITY

The Hon. LYNDIA VOLTZ (15:07): My question without notice is directed to the Minister for Resources, Minister for Energy and Utilities, Minister for the Arts and Minister responsible for Hunter Water. Given confirmed traces of per- and poly-fluoroalkyl substances [PFAS] were found in the Grahamstown Dam—the region's main drinking water supply—when was the Minister first made aware of the drinking water contamination and why was the community only informed this week despite Hunter Water discovering the contamination four months ago?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:07): I will have to take aspects of the honourable member's question on notice as I am not certain I can remember when I was first told about this issue. I will take that part of the question on notice. Hunter Water has a comprehensive water quality testing program covering per- and poly-fluorinated alkyl substances [PFAS], perfluorooctane sulfonate [PFOS], perfluorooctanoic acid [PFOA] and perfluorohexane sulfonate [PFHxS] at all six of its drinking water treatment plants at Campvale Canal and at 68 locations across its entire water reticulation network. PFAS have been detected a number of times in Hunter Water's drinking water network; however, these trace detections are well below guideline levels and do not pose a risk to public health.

PFAS are a group of chemicals used in a range of applications including firefighting foams, fabric treatments and food packages. They include the chemicals PFOS and PFOA which are at the centre of the

Royal Australian Air Force [RAAF] Base Williamstown contamination issue. Residents of the Lower Hunter should have absolute confidence in the controls Hunter Water has put in place to ensure that our drinking water meets best practice international guidelines and remains safe to drink.

In consultation with NSW Health, on 5 April 2017 Hunter Water adopted the Food Standards Australia New Zealand [FSANZ] drinking water guideline for per- and poly-fluoroalkyl substances [PFAS] of less than 0.07 micrograms per litre for PFOS and PFHxS and less than 0.56 micrograms per litre for PFOA. The adoption of the FSANZ guidelines replaces the United States Environmental Protection Agency guidelines which Hunter Water has adopted as an interim measure in the absence of an Australia-specific drinking water guideline. The Food Standards Australia New Zealand guidelines were released by the Commonwealth Government's Chief Medical Officer—

The Hon. Lynda Voltz: Point of order: It is relevance. The question was about when the Minister was first made aware of the drinking water contamination and why the community was only informed this week. At the moment he is talking about overseas standards. That has no relevance to the question.

The Hon. Niall Blair: To the point of order: Not only is the Minister being directly relevant, but the Minister has already agreed to take on notice the first part of the question. He is now talking about the standards that are associated with the drinking water, which is directly relevant to the part of the question about the drinking water supply out of the said dam.

The Hon. Lynda Voltz: Further to the point of order: That is a nice explanation from the Minister, but my question specifically asked, given that confirmed traces of PFAS chemicals were found in Grahamstown Dam, when were they made aware and when was he made aware. That has nothing to do with the answer the Minister is giving.

The PRESIDENT: On not one but two occasions the Minister, when he first commenced his answer, indicated he would take part of the question on notice. The Minister then went on to say more specifically that in relation to when he first became aware he would take that on notice because he wanted to ensure that the answer was correct. The Minister is being generally relevant. There is no point of order.

The Hon. DON HARWIN: The honourable member, however, reminds me in her point of order that she asked specifically about Grahamstown, and I will come to that. Hunter Water tests raw, untreated water from all its sources in addition to treated water in its network. Trace level detections of PFAS are from time to time detected in Grahamstown Dam. Hydrologically, water cannot travel from the RAAF base at Williamstown to Grahamstown Dam, even in wet conditions. PFAS chemicals have been used in a wide range of household products over decades. With Grahamstown Dam's catchment including part of the growing urban township of Medowie, it is expected that traces of PFAS may be detected in water from Grahamstown Dam. But in relation to those specific aspects of the question which I previously indicated I would take on notice, I will endeavour to get the member an answer as quickly as I can.

REGIONAL ARTS AND CULTURE

The Hon. CATHERINE CUSACK (15:13): My question is addressed to the Minister for the Arts.

The Hon. Walt Secord: Oh! He'll come to life!

The Hon. Niall Blair: Point of order—.

The PRESIDENT: I was about to make a ruling, but I would like to hear whether the Minister's point is the same as mine.

The Hon. Niall Blair: Mr President, not only will it be hard for members and for you to hear the question but Hansard will have no chance of hearing the question after the explosion that just came out of the Deputy Leader of the Opposition.

The PRESIDENT: It is good to know that I was not the only one thinking that. I thank the Deputy Leader of the Government and uphold the point of order. The clock will be restarted. The Hon. Catherine Cusack has the call.

The Hon. CATHERINE CUSACK: My question is addressed to the Minister for the Arts. Can the Minister please update the House on what is being done to support the artistic and cultural life of regional New South Wales?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (15:14): The Government is committed to supporting the arts and cultural life of regional New South Wales. I thank the member for her question as I know she is keenly interested in making these

communities rich in their cultural life. Through the new Regional Cultural Fund the New South Wales Government is investing \$100 million into regional towns and cities over the next four years to develop new and existing arts and cultural projects. Up to \$25 million will be made available in the first round of funding, and the four funding categories under the Regional Cultural Fund will ensure all projects, big and small, have an opportunity to secure funding.

The Regional Cultural Fund will invest in new arts and cultural facilities, and can be used to upgrade existing cultural spaces including galleries, theatres, libraries, museums and halls. As well as building and refurbishing facilities, the fund can be used to support projects to take exhibitions on tour and provide easy viewing access, no matter where people live. It will also help to fund operational funding for museums and galleries to support the delivery of services and attract major cultural productions to regional New South Wales by investing in projects that often miss out on funding to metropolitan areas.

The Regional Cultural Fund is an important initiative to make sure the State's towns, villages and cities remain exciting and vibrant places to live, work and visit by increasing the reach of arts, screen and culture. Applications for the first year of this fund have closed, and I look forward to announcing the recipients of that fund over the months ahead. I was reminded of all of the good work that is being done in the arts and culture in regional New South Wales when I visited Bathurst and Hill End on the weekend. In Hill End I visited the artist-in-residence ateliers that are managed by the Bathurst Regional Art Gallery and supported by the New South Wales Government through Create NSW. I also had the pleasure of meeting Adrienne Richards, a painter currently in residence in a cottage where Donald Friend, Margaret Olley, Brett Whiteley and Ben Quilty have all painted.

On Saturday night I launched the Unflinching Gaze exhibition. The exhibition included works by Andy Warhol, William Yang and Max Dupain. Curated by Bathurst Regional Art Gallery director Richard Perram, OAM, the exhibition shows how the male figure has been depicted by Australian and international artists in photo media over the last 140 years. It includes historic and contemporary fine art photography and film, addressing persecution, torture and genocide in concentration camps in World War II, Chechnya, Iran and the AIDS crisis. This is an exemplary exhibition and it did remind me that regional New South Wales has an equal voice in telling the story of this great State and addressing important contemporary social issues. Through what we are doing with the Regional Cultural Fund and the Arts and Cultural Development Program, regional New South Wales is beginning to get its fair share and is delivering exceptional art to everyone from Merimbula to Tweed and to Broken Hill.

WILLIAMTOWN LAND CONTAMINATION

The Hon. MARK PEARSON (15:18): My question is directed to the Minister for Primary Industries, the Hon. Niall Blair, whom I am not giving up on. In a recent *ABC News* article quoting a Williamtown farmer with polyfluoroalkyl substance [PFAS] contaminated soil, it was claimed that the Department of Defence officials advised the farmer not to eat his own cattle but that it was safe to send them on to market. What steps has your department taken to establish the health of farmed animals and the public safety of consuming animals that have grazed on farms contaminated by polyfluoroalkyls from adjacent Department of Defence properties?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (15:18): I thank the member for his question, which I assume he or staff from his office wrote. It certainly sounds like a question that he would write but some of the reactions to it by members of the Opposition indicate that it might be similar to a question which was going to be asked by one of them. Members would have to get up early to beat the Hon. Mark Pearson when it comes to these sorts of things! I am sure that if another question was going to be asked about this matter in question time, it will probably not now be asked. I can see across the Chamber that the pens are already out.

I am conscious of the stress that has been caused to families at Williamtown and other sites around the State as a result of PFAS contamination. I understand the concerns the community may have regarding contamination of their lands and animals, and that they are seeking certainty about the levels of contamination present on their farms. It is understandable that some are questioning the sale of produce from these sites. I would like to point out that the Australian Government Department of Health confirmed in April 2017 that there is no consistent evidence of any human health effects related to PFAS exposure.

I refute any suggestion that my Department of Industry, in not recommending cattle be tested for PFAS, is putting economics ahead of human health. If there was irrefutable evidence that exposure to PFAS impacted human health we would be taking a different position. The Government respects the advice provided by the Commonwealth that there is no consistent evidence. Because human health effects cannot be excluded, and these chemicals take a long time to break down in humans and the environment, the New South Wales Government is being very cautious. Any potential risk to the human health of affected communities has been addressed through provision of precautionary advice. This advice includes avoiding consumption of home-grown produce, including

large amounts of meat from a person's own farm which is based on contaminated water use, while further work and analysis is undertaken.

The wider public is not at risk from produce from these sites. The general population consumes food from a variety of sources, not a single source. In Australia, the general population's exposure to PFAS is low and declining. There is no evidence that this low-level exposure has been harmful to human health. There are no movement restrictions or quarantines imposed on livestock from sites being investigated for PFAS. The sale of food from affected properties is not considered to affect the health of the general population. My Department of Industry, including the NSW Food Authority, continues to provide advice and assistance to the NSW Environment Protection Authority and NSW Health as part of ongoing investigations. I understand the terrible toll the uncertainty over the contamination has caused affected residents at Williamtown and other sites. I can assure the member that the New South Wales Government is working with the community to continue to provide support and assistance.

As Minister for Primary Industries and as Minister for Trade and Industry I cannot reiterate enough that the food produced in New South Wales is safe. Once food from this part of the State is put into the broader food chain it is combined with food from a whole range of sources, and that is why there is no problem. The advice relates to those who may consume large amounts on their own properties. My answer needs to be read very carefully because the evidence needs to be consistent. New South Wales food—food that is grown in New South Wales and New South Wales livestock—is safe. We should never question that. If there was any suggestion that food was not safe my agencies would be the first to act. I hope that provides adequate information to the member and to the other member who was going to ask a question on this topic.

The Hon. MARK PEARSON (15:22): I have a supplementary question. Could the Minister elucidate his answer as to how the substance could not possibly cause harm to humans or animals, even though it has been mixed with numerous other animal products?

The Hon. NIAL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (15:23): This topic has been examined thoroughly by all of the experts within my agencies. I am not going to explain it here because I am not an expert in those areas. I rely upon the experts within our agencies to provide advice. There has been extensive testing in this area, and extensive reviews of the literature and other examples around the world has led to this advice. I reiterate that I feel for those who have been involved, and we have discussed this many times. We spoke, particularly, to the commercial fishers who were caught up in this. The number one fact that I have said consistently, over and over again, is that the polluter-pays principle definitely applies here.

This is the responsibility of the Commonwealth Department of Defence in the first instance. The lead agency with responsibility in New South Wales is the Environment Protection Authority [EPA]. We provide advice to residents from the experts within the relevant agencies. If the member likes, I can take this on notice and provide him with the exact advice from the experts. I can only break it down to put it as simply as I can. When I interpret that advice I am saying that we take food from a whole range of different parts of the State and put it into the supply chain—it is mixed with a whole range of foods. I will get the detailed advice—I am happy to take that part of the question on notice—and come back to the member so that he can examine it.

SNOWY SCIENTIFIC ADVISORY COMMITTEE

The Hon. COURTNEY HOUSSOS (15:25): My question without notice is directed to the Minister for Primary Industries, Minister for Regional Water and Minister for Trade and Industry. Given that the Snowy River's scientific monitoring body was abolished in 2013 and that the replacement body, which was promised back in 2014, has still not been constituted, when will the Department of Industry deliver on this broken promise?

The Hon. NIAL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (15:25): This is a question that relates to different parts of my portfolio. I am happy to take the question on notice and provide the most up-to-date response to the member. Obviously the history behind this goes back a little bit in time but the question also asks about where things may be at now. I do not have an up-to-date note with me at the moment.

The reconstitution of the advisory committee is something on which I can come back to the member at a later date. Things are under way but I would like to make sure that I provide the member with an up-to-date response. The advice may be that things are moving and that regulations may need to be made. I would like to make sure that if this matter has been outstanding for some time it does not continue to be outstanding. If there are legitimate reasons why it has taken so long then I would also like to know why. Rather than speculating or trying to fill in some of the information on my feet I am more than happy to take the question on notice, liaise with my agencies and my staff and come back to the member with a detailed response.

BROKEN HILL WATER SUPPLY

The Hon. BRONNIE TAYLOR (15:27): My question is addressed to the Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry. Can the Minister please update the House on what the New South Wales Government is doing to improve the long-term management of Menindee Lakes and the security of flows into the Darling River?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (15:28): I would like to thank the Parliamentary Secretary for her question. It is a timely question, after one of the toughest winters on record for our farmers across New South Wales left water storages that were spilling last winter now in decline. This is why the New South Wales Government's commitment to improve water security and management in the Far West is so important. Our commitment to address longstanding water security problems in Broken Hill goes back a long way, with \$42 million committed in 2015 to secure a short-term supply for Broken Hill, and up to \$500 million for a long-term solution with the Murray River to Broken Hill pipeline. WaterNSW is responsible for the construction of the pipeline, and is currently in the market selecting a preferred provider to ensure, for the first time, a long-term water supply for the township. The Government's water strategy for western New South Wales includes improving management of the Menindee Lakes for the benefit of the local community and New South Wales more broadly. Since the millennium drought it has become clear to the New South Wales Government that there must be a better way in which to manage the lakes system. The location and structure of the lakes pose significant management issues, such as shallow water across large areas and extremely high summer temperatures, which lead to extraordinary evaporation rates. Record low inflows over the past decade have only added to the challenges.

The Menindee Lakes are an icon of western New South Wales. Indigenous Australians have a long connection with the lakes system and the Lower Darling River. The Menindee Lakes are the gateway to the Kinchega National Park and a destination for tourists and birdwatchers from all over the world. With so much at stake, the New South Wales Government is working hard to preserve those important and unique values. The New South Wales Government has explored a number of works and operational changes that could allow the lakes to be operated more efficiently, save water that is now lost to evaporation, and help New South Wales meet its environmental targets under the basin plan without the need for untargeted and harmful water buybacks.

The Menindee Lakes proposal is being assessed by the Commonwealth Government. If the proposal is endorsed, comprehensive stakeholder and community engagement will be undertaken in 2018. This consultation will form the basis of a detailed project design that is based on local issues and feedback. A focus will be ensuring that more water remains in the upper storages for longer, thereby ensuring better access for recreational purposes and local drinking water needs. The Menindee Lakes proposal includes the use of engineered barriers to separate and improve operations and reduce water losses due to evaporation. It also includes the potential for revised sharing arrangements and operational rules to complement the structural works and to deliver better outcomes for those who depend on the lakes.

There has been significant public interest and debate about the need to improve the management of the Menindee Lakes. That outcome must recognise the enormous water supply benefits of the lakes to New South Wales, Victoria and South Australia while safeguarding the environmental values of the Menindee Lakes system. These competing challenges will guide the New South Wales Government as it moves to implement its proposal. I point out that the Government's proposal is to reconfigure the lakes, not to decommission the lakes. We understand how important the lakes system is. We also know that through engineering solutions we can try to ensure we balance the competing needs for this iconic area, such as the consequential environmental, social and economic issues. That is why the Government is confident. The Government has submitted a proposal to the Federal Government. Once the proposal is approved, we are ready to speak to the community about what it means to them and how it all works.

The Hon. DON HARWIN: If members, including the Hon. Walt Secord, have further questions, I suggest they place them on notice.

*Deferred Answers***BOMADERRY TO KIAMA BUS SERVICE**

In reply to **the Hon. PAUL GREEN** (13 September 2017).

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts)—The Minister provided the following response:

I am advised:

On 3 July 2017, a 12 month trial bus service was introduced between Bomaderry and Kiama stations, providing an additional weekday service option for the public. The service is operated by an accessible low floor, air-conditioned bus.

The bus service has been designed to complement, not replace, existing rail services by filling gaps in the train timetable to improve connecting services between these train stations. As such, it only operates to and from the same locations as the existing rail service in a similar way that coaches are used during track work possessions. For these reasons, there are no plans to deviate from this route and extend the service into Nowra.

Opal tap on and off functionality has been provided at the railway stations.

Continuation of the bus service beyond the trial period will be determined from a review of its performance and through stakeholder engagement.

MENINDEE WATER CARTAGE

In reply to **the Hon. WALT SECORD** (13 September 2017).

The Hon. NIAL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry)—The Minister provided the following response:

The New South Wales Government provides assistance to local government to meet the cost of water cartage in times of emergencies, including blue-green algae outbreaks.

In recent times this has included the provision of assistance to towns in the west of our State.

This assistance is available to local water utilities in regional New South Wales and is currently available upon request to the Minister.

If the need arises, Essential Water, the local water utility for the township of Menindee, is eligible for financial assistance to provide drinking water to residents connected to the reticulated water supply.

There are several properties, caravan parks and national park facilities in the Menindee area that are not connected to the town water supply. These properties and businesses are reliant on the Darling River or rainwater tanks for their water supply.

The Crown Lands and Water division of the Department of Industry does not provide financial assistance for the carting of water to residents not connected to a reticulated water supply. The division has, however, funded a high-flow stand pipe at Menindee, designed to enable neighbouring areas to be supplied with treated water.

Landholders outside of the Menindee reticulated water supply system are able to arrange water carting privately for stock and domestic use, and water carters can contact Essential Water and follow their procedures for the collection of water from the Menindee stand pipe.

WATER CONTAMINATION

In reply to **the Hon. MARK PEARSON** (13 September 2017).

The Hon. NIAL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry)—The Minister provided the following response:

There are 92 Local Water Utilities [LWUs] responsible for providing water supply and wastewater services to a community of approximately 1.83 million people in regional New South Wales.

The New South Wales Government, through the Crown Lands and Water division of the Department of Industry, promotes safe, secure and sustainable water and wastewater services by overseeing a regulatory framework that mandates sound strategic business planning for all LWUs.

This regulatory framework is known as the Best-Practice Management of Water Supply and Sewerage [BPM] Framework. Under the framework, LWUs are required to plan, price, manage, operate and maintain their water supply and wastewater systems to best meet the needs of the communities they serve.

The Crown Lands and Water division works closely with the lead government agency for public health, NSW Health, to ensure that LWUs have appropriate infrastructure and Drinking Water Management Plans that identify and respond to the variety of risks associated with the provision of safe drinking water.

The New South Wales Government recently announced a new water and sewerage infrastructure program, known as the Safe and Secure Water Program. This program is aimed at ensuring infrastructure in regional New South Wales meets contemporary standards for water security, the environment, safety and, importantly, public health.

Expressions of interest for this program are currently open. Eligible projects include drinking water quality improvement projects submitted by LWUs and other entities.

The New South Wales planning regime and environmental legislation ensures rigorous environmental assessment and licensing requirements to manage and mitigate potential adverse environmental impacts from intensive agriculture operations.

Agriculture requiring development consent is generally the developments classed as "intensive agriculture", which includes industries such as poultry, piggeries, cattle and sheep feedlots, restricted dairies, rabbits, horticulture, viticulture, hydroponics, greenhouses and glasshouses. Development of smaller-scale intensive agriculture is guided by State Environmental Planning Policy No.30—Intensive Agriculture.

Larger-scale intensive agriculture and agricultural product processing developments may be designated developments under Schedule 3 of the Environmental Planning and Assessment Regulation 2000, and require more rigorous development assessment.

Additionally, under the NSW Protection of the Environment Operations [POEO] Act 1997, abattoirs and scheduled intensive livestock activities (above prescribed thresholds) are required to have an environment protection licence. Licence conditions include the need to locate such operations sufficient distances away from waterways as well as to undertake regular soil and water testing to reduce the risk of soil and water pollution. Intensive livestock operations below prescribed thresholds must also abide by legislated POEO Act requirements. Administration of the POEO Act falls within the portfolio responsibility of the Minister for the Environment.

Agriculture as an ancillary activity may also be included in the development assessment for major projects, including wastewater treatment plants for urban water supply, industrial developments such as abattoirs and agricultural product processing plants, and coal seam gas projects.

As well as this strong regulatory framework, the Government, through agencies such as the NSW Department of Primary Industries [DPI] and Local Land Services, works closely with industry, in undertaking research and development [R and D] activities and developing best practice industry guidelines for the management of effluent disposal and nutrient runoff from agricultural operations.

This includes a number of R and D activities in the intensive animal industries sector, such as:

- Ensuring the nutrient load in the soil from the poultry industry poses no or limited risk to nearby surface and groundwater. As part of the ongoing R and D activities, NSW DPI is developing and delivering environmental management planning training to the New South Wales poultry industry.
- Developing and delivering best management practice guidance in terms of effluent disposal in the New South Wales pig industry. Additionally there are R and D activities to determine carbon accretion in soils following use of piggery effluent, or spent bedding and/or phosphorus cycling in similar soils.
- Developing and delivering best management practice guidance in terms of effluent management systems and minimising nutrient runoff in the New South Wales dairy industry.
- In regions east of the Great Dividing Range, DPI Agriculture is working closely with DPI Fisheries and the broader Marine Estate Management Authority [MEMA] agencies to develop management actions that will reduce threats from agricultural practices to the marine estate.
- The former DPI Organic Waste Recycling Unit undertook a significant amount of research that continues to inform land use guidelines and regulatory procedures. Research included application of wastewater treatment plant biosolids and organic by-products from intensive animal production, including poultry shed litter, as organic fertilisers on agricultural land.

WATER MANAGEMENT AND COMPLIANCE INTERIM REPORT

In reply to **the Hon. MICK VEITCH** (13 September 2017).

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry)—The Minister provided the following response:

The terms of reference for the Matthews inquiry cover all allegations raised in the *Four Corners* broadcast that involve the responsibilities of DPI Water and any of its employees, including allegations stemming from the meeting referred to.

Investigations are ongoing and I cannot comment on individual cases at this time.

LIDDELL POWER STATION

In reply to **the Hon. ROBERT BROWN** (13 September 2017).

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts)—The Minister provided the following response:

I am advised that there is nothing in the sale agreement with AGL that would prevent the State Government from facilitating, implementing or encouraging construction of a new high efficiency low emissions coal-fired power station in New South Wales in particular adjacent to the Liddell site or in the immediate vicinity.

INDIGENOUS SITES

In reply to **the Hon. DANIEL MOOKHEY** (13 September 2017).

The Hon. SARAH MITCHELL (Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education)—The Minister provided the following response:

As Minister for Aboriginal Affairs I have no role in compliance matters pertaining to any investigation of disturbance of Indigenous sites as a result of any land clearing.

Compliance issues in relation to land clearing remain the responsibility of the Office of Environment and Heritage [OEH], and the member's questions should be directed to the Minister responsible.

We expect OEH to prosecute anyone who has committed serious breaches of the law.

LISMORE BASE HOSPITAL STAFFING

In reply to **Ms DAWN WALKER** (13 September 2017).

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry)—The Minister provided the following response:

The former Labor Government supported by The Greens party did nothing for the Lismore community. The Liberal National Government has renewed much of Lismore Base Hospital and it continues to do so, including announcing \$52.5 million towards the Lismore Base Hospital Redevelopment Stage 3C project.

The staff do an amazing job and staffing levels are being managed by the Northern NSW Local Health District, which continues to deliver appropriate patient care at Lismore Base Hospital.

POLICE STATION SERVICES

In reply to **the Hon. ROBERT BORSAK** (14 September 2017).

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry)—The Minister provided the following response:

The re-engineering of the NSW Police Force [NSWPF] will bring a new focus to frontline policing and crime prevention across all New South Wales communities. This process will provide the NSWPF with more flexibility to adapt policing techniques and resources to each community in response to their own challenges. This includes a greater focus on rural, regional and remote communities.

The re-engineering task force, headed by the commissioner and the Police Association of NSW, has undertaken significant consultation with stakeholders including the Public Service Association.

Bills

FAIR TRADING AMENDMENT (TICKET SCALPING AND GIFT CARDS) BILL 2017

Returned

The PRESIDENT: I report receipt of a message from the Legislative Assembly returning the abovementioned bill without amendment.

CRIMES (SENTENCING PROCEDURE) AMENDMENT (SENTENCING OPTIONS) BILL 2017

CRIMES (HIGH RISK OFFENDERS) AMENDMENT BILL 2017

JUSTICE LEGISLATION AMENDMENT (COMMITTALS AND GUILTY PLEAS) BILL 2017

Second Reading

Debate resumed from an earlier hour.

The Hon. PENNY SHARPE (15:33): My contribution to debate on the Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017, the Crimes (High Risk Offenders) Amendment Bill 2017, and the Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017 will be brief. I will confine my remarks essentially to the first of the bills, the Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017, which has been introduced as a result of a New South Wales Law Reform Commission report entitled "Sentencing", dated July 2013. The bill has been a long time in the making. The legislation was first referred to the Law Reform Commission in 2011. The object of the bill is to improve the availability and nature of community-based sentencing options. The bill will abolish suspended sentences, good behaviour bonds, community service orders and home detention orders and enhance intensive correction orders, including home detention orders. The bill also creates community correction orders and conditional release orders, which will replace community service orders and good behaviour bonds.

Labor will not oppose the bills for a number of reasons. My colleague the Hon. Adam Searle dealt with those reasons at great length. I take the opportunity of this debate to reflect on the impact of alternatives to detention, particularly for women and children of imprisoned parents. This subject matter often has been debated in this House and members have loyally spoken about the way in which sentencing alternatives operate. There is an opportunity through this debate to discuss yet again the particular issues confronting women who are in prison and children whose parents are imprisoned. Over many years, this House has taken a great deal of interest in this subject matter and it is important for members to reflect upon that.

I wish to remind the House of the issues confronting women who are in jail. I draw from a submission produced by the then Women in Prison Advocacy Network, which is now known as the Women's Justice Network. This fantastic organisation is attempting to deal with recidivism rates of women and is working with women who have been involved with the justice system in the hope of assisting them to find their way back into employment, good health and, hopefully, a free life. The issues raised by the Women's Justice Network are worth restating for the record. Women are less likely than are men to be employed and the unemployment rate for women is approximately 69 per cent compared with 46 per cent prior to incarceration. Women also are less likely to have

employment organised prior to their release, with only 10 per cent of women going into jobs following release from incarceration and 31 per cent of men. Women who have been in custody face serious risk of homelessness, with 45 per cent of women in emergency or short-term accommodation prior to incarceration compared with 26 per cent of men. Fifty-six per cent of female dischargees have been diagnosed with a mental health disorder compared with 44 per cent of male dischargees. Women in jail are more likely than are males to report high levels of psychological distress—44 per cent compared with 29 per cent.

Recent data published in the past two years suggests that on any given day 44 per cent of women are taking prescription mental health medication compared with 23 per cent of men. Nearly twice as many women as men have a history of self-harm and recent thoughts of self-harm. Women have higher rates of testing positive for hepatitis C. Three per cent of women entering our prison system are pregnant. Women in prison use illicit drugs differently from men, but the impact on them is significant. Women of course have an alarmingly higher rate of being subjected to sexual violence since the age of 16. The statistics I have cited are shocking, but they are not unknown to members of this House and to anyone who has paid attention to the plight of women who are in jail. This bill is important because it finally indicates both a realisation that shorter sentences do not help with recidivism but rather disrupt the lives of women in prison even further than they already are disrupted and that there are options available, other than jail, including intensive orders that will give people the support they need to remove themselves from their cycle of offending.

Recidivism continues to be a problem. The bills are designed to try to fund diversionary programs in jail and to keep people out of the criminal justice system. Essentially, there are record numbers of people in jail and there has been record growth in the number of women in jail. The director of the Bureau of Crime Statistics and Research, Dr Don Weatherburn, noted that since 1982 the number of women in prison has more than quadrupled, whereas the number of men in prison has doubled. A lot of policy thought has gone into why greater numbers of women are in jail and why there should be diversionary programs for women, but the simple reality is that their numbers are growing massively.

In addition to the issues that women face when they go into jail is the fact that 69 per cent of women in jail are parents, and when they go to jail their children are left in the care of others. This is different for male prisoners, even if they are parents, because the majority of those children remain in the care of their biological mothers. The reality for many women in jail is that their children are left without care. I recently attended a breakfast hosted in Parliament House by the Hon. Catherine Cusack for the Women's Justice Network and SHINE for Kids, the excellent organisation that supports children whose parents are in prison. At the breakfast we heard horrifying and terribly sad stories, but they are not new stories—we have known about what happens to children whose parents are in prison for a long time.

In preparation for this contribution I came across some of the history of the work being done to help children whose parents are in prison. In 1981, a long time ago, there was research into the needs of children of imprisoned parents. In 1997, so 20 years ago, there was a groundbreaking report by the Standing Committee on Social Issues, which included members of this House—in fact, the Hon. Peter Primrose was a member of that committee, probably when he first started his political career. The committee was chaired by the Hon. Ann Symonds, and I recall that the committee was intended to set a blueprint for making real changes to the impact of imprisonment on children. These children have done nothing wrong, but their lives are fundamentally changed forever if one of their parents ends up in jail. The committee reached three key conclusions, the first of which was:

A sentence of imprisonment on a primary carer of children should only be imposed when all possible alternatives have been exhausted. The courts should always seek community-based alternatives, particularly in the case of offenders who have committed non-violent offences.

The second conclusion was:

Data on the number of parents in prison and on the number of children who have parents in prison should be maintained to ensure that effective policies and strategies are developed for these children.

The third conclusion was:

Effective pre- and post-release services that have as a focus, family support and re-unification, should be properly resourced and available throughout New South Wales.

The committee made 97 recommendations. While I acknowledge that the legislation before us today is a step in the right direction in dealing with these matters, the committee's report was published 20 years ago, since which time the number of women in prison has quadrupled and therefore more kids than ever are facing a life sentence as a result of their parent's sentence. We must investigate all available options, because all the evidence tells us that prison sentences do not work and that community-based sentences with properly resourced services, particularly for the disadvantaged, are what stops recidivism. More importantly, community-based sentences will

allow children to stay with their parents, especially their mothers. That would mean that children of prisoners would hopefully not be swept up in a cycle that would result in these kids falling into juvenile justice and other justice programs in the future. Twenty years ago report No. 12 of the Standing Committee on Social Issues was published. It would be worthwhile for us to look at the report in preparing sentencing legislation, because we know that shorter sentences do not work.

We need to properly resource programs aimed at reducing recidivism and keeping people out of prison, particularly in rural and regional areas. There is no point in saying to persons being sentenced for a crime that they can stay out of prison if they attend a program, when the town they live in has no services available. That is fundamentally unfair and impacts greatly on people in rural and regional areas. It also greatly impacts on our Indigenous communities, who are overrepresented in our corrective services system. Labor does not oppose these bills, because there are some good aspects to the sentencing options. However, we have been saying the same things for 20 years and still our corrective services system is under-resourced. All options must be explored before sentencing people to a jail term. If that happens, we may get somewhere.

The Hon. DAVID CLARKE (15:45): On behalf of the Hon. Don Harwin: In reply: I thank the Hon. Adam Searle, Reverend the Hon. Fred Nile, Mr David Shoebridge and the Hon. Penny Sharpe for their contributions to this debate. I wish to address the concerns raised in relation to the Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017. The Hon. Adam Searle raised concerns regarding the resourcing of community-based sentences and noted the Attorney General's speech in reply yesterday, which outlined the significant financial and operational resources being committed to implementing these reforms including in rural and regional areas. I refer the member to the Attorney General's speech in reply in the Legislative Assembly yesterday, but will address further concerns raised in this Chamber.

The Hon. Adam Searle stated that he hoped the resources referenced by the Attorney General yesterday would "hit the ground", as it were. I can assure the member that this Government is committed, prepared and, in some instances, already rolling out the resources to deliver on these reforms. For example, there are determined plans to recruit 200 extra Community Corrections staff, to buy further buses to transport increased numbers of offenders to and from their community service work and to invest in the supervision of offenders in the community.

I also reiterate the Attorney's General response yesterday in relation to concerns being raised that intensive correction orders [ICOs] can only be imposed for sentences of up to two years, rather than three years. I advise the Hon. Adam Searle that this Government wants these reforms to deliver on their potential. For this to happen, community confidence is a necessity, not just a luxury. The typical offender who has committed a crime that warrants a prison sentence of more than two years, rather than up to two years, is self-evidently guilty of more serious offending that is more reprehensible on average. These sentencing reforms are ambitious and are expected to increase the overall use of community-based sentences where appropriate, rather than short and ineffective prison sentences.

To ensure that these reforms are supported by the community, the Government is cautiously progressing with sentences of up to two years, rather than three years. The Department of Justice will also monitor these reforms to ensure that the reforms deliver on their promise. I also note that the new ICO will not be a sentencing option limited to the Local Court. While the Local Court will impose the majority of ICOs because it deals with the bulk of lower-level offending in the justice system, all courts which sentence an offender to up to two years imprisonment, including the District Court and the Supreme Court, will be able to impose an ICO, subject to the limited exclusions contained in the bill.

Mr Shoebridge suggested that the impact of these reforms on women has not been taken into account. I note that the Hon. Penny Sharpe also made comments in this regard. The sentencing reforms aim to introduce smart and tough community-based sentences, which will increase the numbers of offenders who receive supervision in programs and reduce reoffending. The benefits of the reforms will apply to all offenders including female offenders. Representation of women in custody is increasing. Women with caring obligations under the previous sentencing legislation would have been restricted from lesser penalties, such as a community service order, due to full-time caring responsibilities. Under the new legislation a new community correction order can impose alternative conditions, as opposed to a mandatory work requirement. It is expected that this change will assist women.

Many women provide care for other family members in the community. It is therefore important that community-based sentencing options are available for female offenders, so they can serve their sentences and address their offending behaviour in the community, where appropriate, and discharge their important carer responsibilities to their families. Women are also overrepresented as victims of domestic violence. In this proposed legislation there is a specific provision to protect victims of domestic violence. Between April 2016 and March 2017 nearly 70 per cent of domestic violence victims were women. The proposed legislation provides that

the court will be prevented from imposing the ICO unless satisfied that the order adequately protects the victim's safety. If the court is not satisfied the offender will go to prison.

Mr Shoebridge also advised that he does not support the removal of suspended sentences and periodic detention. With regard to periodic detention orders, I update Mr Shoebridge that periodic detention was abolished as a sentencing option in 2010 in accordance with a recommendation made by the NSW Sentencing Council. The transitional provision references to periodic detention in the bill provide for courts to re-sentence offenders on outstanding periodic detention revocation warrants upon being apprehended and returned to custody. This is a sensible measure, given there are no more periodic detention centres in New South Wales in which they can be held.

To address the abolition of suspended sentences, I advise Mr Shoebridge that the evidence is that suspended sentences have resulted in increased incarceration in New South Wales and do not address the underlying cause of reoffending. A 2014 Bureau of Crime Statistics and Research [BOCSAR] report showed suspended sentences increase the rate of imprisonment by driving more offenders into the prison system through their breach processes. For every 10 additional offenders given a suspended sentence, three to four were driven into the prison system. Suspended sentences are supposed to be a last resort to imprisonment, but BOCSAR showed they are imposed instead of other non-custodial options. In 2016, 44 per cent of offenders on suspended sentences were not supervised or required to do anything to address their offending behaviour. This is not acceptable when the offender committed an offence warranting prison for up to two years.

Given that reoffending literature shows that community supervision reduces reoffending, unsupervised suspended sentences are not helping to reduce reoffending. The new ICO provides offenders with custodial sentences to be served in the community with conditions which include mandatory supervision, which has been shown by research in Australia and overseas to reduce reoffending. Latest BOCSAR research shows the odds of offenders on ICOs reoffending are 11 per cent to 31 per cent less than those on short prison sentences.

Mr Shoebridge also suggested that the reduced number of community-based sentences will mean that fewer offenders will be sentenced to community-based sentences. This is a fundamental misconception. The fact that these reforms streamline community-based sentencing options does not mean fewer offenders will receive community-based sentences. The changes are expected to increase the number of offenders who receive supervised community-based sentences by about 5,000 offenders, based on 2015 BOCSAR sentencing data. These reforms will make sentences served in the community more accessible. For example, the current work requirement excludes many offenders from accessing the ICO because they are unfit or unsuitable for work or because there is insufficient work available in the local area. This technical legal barrier means that offenders end up on suspended sentences instead or that offenders are given short prison sentences where there are limited opportunities to address their offending behaviour—neither of which assist in the reduction of reoffending.

The new ICO will become a much more flexible and accessible sentence because the current 32 hours per month work requirement will be replaced with an optional work condition that allows the court to specify the number of hours. This means work hours ordered will range from a no work condition to a maximum of 750 hours, as appropriate to the individual case. Lack of work is a significant issue in parts of regional and rural New South Wales which currently impacts on Aboriginal offenders' capacity to access the ICO. Courts that sentence offenders to ICOs will have a range of alternative conditions to impose where work is unavailable or the offender is unsuitable to carry out work.

Mr Shoebridge suggested that there will be an absence of services in rural areas which will result in the courts being unable to impose ICOs in rural and remote New South Wales, with a disproportionate impact on Aboriginal offenders. I can wholeheartedly state that this is incorrect, and I refer Mr Shoebridge to the Attorney General's speech in reply in the other place. The benefits of the reforms will apply to all offenders, including Aboriginal offenders. In a 2010 report, BOCSAR suggested that Indigenous recidivism could be reduced through the use of effective rehabilitation programs. The largest reductions in reoffending were those associated with supervision coupled with treatment. The sentencing reforms will increase supervision in the community and assist offenders overall, but particularly those overrepresented in the system, such as Aboriginal offenders.

As at 27 August 2017, 53 per cent of Aboriginal prisoners are serving prison sentences of up to two years. These reforms represent a significant opportunity to provide supervision and programs to these offenders in the community instead of confining them in custody. These sentencing reforms will enable more offenders, including Aboriginal offenders, to access community-based sentences. They will increase access to the ICO, which will be available for offenders who are sentenced to up to two years imprisonment. Far more offenders in rural and regional areas will now be able to access ICOs where they could not before because of a lack of available work, which inhibited the courts being able to sentence offenders to an ICO.

Because these reforms are removing the mandatory work component of an ICO, it is anticipated that the flexibility built into these sentencing reforms will enable more offenders, including Aboriginal offenders, to be assessed as suitable for community-based sentences. While the reforms are designed to increase the numbers of Aboriginal offenders who are on supervised orders, this will be subject to judicial discretion and the nature of the offence committed. This greater flexibility to impose appropriate community-based sentences and tailored conditions will better address Aboriginal offenders' needs and the causes of offending. More offenders will be channelled into supervised sentences and programs that are proven to reduce reoffending while holding offenders to account.

Mr Shoebridge also suggested that making community safety the paramount consideration for the court is inappropriate and could mean more offenders being sentenced to prison. This is not the intent of the policy, nor what our modelling of the reforms suggests. Community safety is about protection of the community from immediate harm but also about reducing reoffending. Less reoffending means less crime and fewer victims. This view is reflected at new section 66 in schedule 1 to the bill, which states:

- (2) When considering community safety, the sentencing court is to assess whether making the order or serving the sentence by way of full-time detention is more likely to address the offender's risk of reoffending.

In addition, section 3A of the Crimes (Sentencing Procedure) Act will continue to set out the purposes of sentencing. Although community safety will be the paramount consideration for courts when imposing an ICO, they will still be required to refer to the principles and purposes of sentencing. Mr Shoebridge suggested that the presumption against domestic violence is an unnecessary fetter on judicial discretion. It is important to clarify that the presumption does not direct courts to send offenders to prison. It provides that, where an offender is being sentenced for a domestic violence offence, the main option that a court should consider is one of the three new community-based orders with supervision or, if none of them are appropriate, prison.

Too many offenders are getting unsupervised sentences that do not require them to address their behaviour and do not hold them accountable for their crimes. The Government is determined to tackle this. We know that community supervision combined with programs that target the causes of offending work to reduce reoffending. The Government aims to reduce domestic violence by getting more offenders into supervision and programs to create real change in their behaviour, which will mean less reoffending and fewer victims. This reform will make it clear that supervised sentences should be imposed for domestic violence offenders unless the court is satisfied that a different sentencing option is more appropriate in the circumstances.

Mr Shoebridge also raised concerns with the offence exclusions for ICOs. The offences excluded from eligibility for ICOs are serious. The Government generally agrees that courts should have a wide discretion to impose sentences that are appropriate to the circumstances of the case, but there are community expectations that offenders who receive prison sentences for very serious offences should be held accountable by serving them in full-time custody. Offence exclusions have applied to custodial community-based sentences like home detention, periodic detention and ICOs for a number of years.

In determining the extent of any offence exclusions for the new strengthened ICO, the Government considered differing views from various stakeholders about their scope. The Government believes it has reached an appropriate balance between the competing demands for reducing fetters on the sentencing discretion of courts and ensuring that offenders sentenced to imprisonment for serious crimes should go to prison. This is not mandatory sentencing. The discretion of courts to impose lower level community-based orders such as community corrections orders and conditional release orders in truly exceptional cases has been preserved. I respond to comments about the Justice Legislation Amendments (Committals and Guilty Pleas) Bill 2017. I note that the Hon. Adam Searle made reference to concerns of the Law Society of New South Wales expressed in a letter received by the Attorney General on 5 October 2017 and the need to be vigilant about the impact of those reforms on the ground. As the Attorney General said in the other place:

The Government is investing in the case management systems of the courts and other justice agencies to track the key performance indicators of the reform. The Government will continually review the effectiveness of all elements of the reform and respond to any substantiated evidence that any aspects are not working as intended.

I address the House on how the Government will be tracking the reform and the significant progress that has already been made in this area. Under the earlier appropriate guilty plea reform, funding is being invested into criminal information technology [IT] systems such as JusticeLink, the case management system used by New South Wales courts to improve data availability and quality. This new data will be used to monitor key performance indicators [KPIs] identified by the early appropriate guilty plea implementation working group.

A benefits realisation framework has been developed and will be closely monitored by the implementation working group. KPIs will be measured monthly via a dashboard to track the progress of the reform. Tracking metrics have been identified to allow deeper investigation of particular elements of the reform.

As recommended by the Law Reform Commission the Bureau of Crime Statistics and Research will evaluate the impact of the early appropriate guilty plea reform on a range of reform outcomes. The implementation working group has met and consulted with BOCSAR during the development of KPIs and IT design changes to ensure that any statistical and reporting needs are met.

I note the Hon. Adam Searle's comment about the time that the Government has taken to respond to the Law Reform Commission Report 141 encouraging appropriate early guilty pleas. The New South Wales Law Reform Commission spent almost two years analysing a system it described as being in a "state of crisis" before developing a blueprint for reform. The New South Wales Department of Justice has spent a further two years extensively consulting with legal stakeholders to develop a reform that will work. During that consultation time the Government has implemented numerous strategies to tackle the backlog. In December 2015 the Government approved \$20 million to fund a program of immediate measures to address the backlog. A further \$39 million was announced as part of the 2016 budget. Together this \$59 million in funding resourced five additional District Court judges, four additional public defenders, additional sitting weeks in regional areas and other case management measures. To utilise these resources an additional 147 District Court sitting weeks were scheduled in 2016.

The Government has also implemented process improvements, including special call-overs and the rolling list court in the Sydney District Court. Under the guidance of the implementation steering committee and the project management office significant progress has already been made in preparation for the commencement of the reforms by mid-2018. This bill is just the tip of the iceberg in what the Government is doing in response to the Law Reform Commission report. The Government has committed \$93 million over three years to ensure the successful implementation of this reform. Over the three-year period around \$30 million per annum until 2019-20 will be invested in key agencies in the criminal justice system to support the early appropriate guilty plea reforms. These agencies include the Office of the Director of Public Prosecutions [ODPP], Legal Aid NSW, the NSW Police Force and the courts. Most of this funding will be applied towards the Office of the Director of Public Prosecutions and Legal Aid NSW. Senior prosecutors and defence lawyers will be engaged earlier to participate in mandatory criminal case conferencing. The ODPP will also perform a new function in certifying the correct charge at an early stage. There will be up-front investment to implement the major transformation across agencies, including training for staff and the legal profession and changes to information technology systems and processes to bring the reforms into operation.

I note the scepticism expressed by Mr David Shoebridge about the effectiveness of the early appropriate guilty plea reform in reducing the District Court backlog. Mr David Shoebridge alleged that this Government has failed to provide adequate judicial resources and asked why the Government simply does not appoint more judges. The simple answer is, we already have. Throughout 2015 and 2016 the Government committed \$59 million to fund five additional District Court judges, four public defenders and additional prosecution and defence resources until June 2018. These additional resources have slowed the growth of the District Court backlog but not reduced it. It is clear that systemic reform is needed to remove entrenched delay and develop an efficient criminal justice system. That is why this Government has invested \$93 million over three years in this reform.

The framework set out in the bill is only part of the reform. The other part is the significant investment in the ODPP and Legal Aid NSW so that cases are better managed within the new legislative framework. These include funding for changes to operating models of the Office of the Director of Public Prosecutions to ensure that experienced prosecutors are engaged from the start and the same lawyers remain with the case until finalisation, including if it proceeds to trial, and funding to Legal Aid to ensure that the defence counsel match the seniority and experience of the prosecution to engage in effective discussions about the case. *[Extension of time]*

It also includes investment in support for case conferencing to ensure it maximises opportunities for early guilty pleas. This includes providing for additional facilities to make sure that the accused person is able to be involved and give instructions contemporaneously. The Government's modelling suggests that the reform will have a material impact on reducing the pending trial backlog in the District Court across New South Wales by accelerating the timing of early guilty pleas, reducing the average trial length and increasing the proportion of appropriate guilty pleas, with a consequent reduction in the number of contested trials. The Government will not pretend that these reforms represent a magic pill to entirely cure the State of the ails of the District Court backlog. However, the reforms will create a more efficient system.

Introducing these reforms will ensure that any further investment in expanding the capacity of the courts is invested in a system that is efficient and best practice. A more efficient court process, with more early guilty pleas and fewer delays, increased certainty about the charges that will proceed and continuity of Crown representation will significantly relieve the distress and anxiety experienced by victims and witnesses of crime under the current system. The reforms represent a further important step in the right direction that also affords

some of our most vulnerable a helping hand in a time of need, and that has to be a good outcome. Mr Shoebridge complained that the reform is ignorant of human nature, that accused people are hopeful rather than practicable. The New South Wales Law Reform Commission acknowledged this in report 141 at paragraphs 1.31 and 1.32, where the commission stated:

We accept that there will always be a level of late pleading as defendants are reluctant to face up to a plea that they eventually come to see as inevitable. However, we consider that many features of our current system positively encourage late pleas. These features are inefficient, unsustainable, and not in line with community expectations.

In saying this, we do not minimise the importance of the basic rights of a defendant to a fair trial and to a fair criminal process. The changes we propose are intended to reinforce those rights, and also meet the community's proper expectation of an efficient system that secures the overall objective of achieving justice for all participants.

The Government agrees with those comments.

I turn to the concerns raised in relation to the Crimes (High Risk Offenders) Amendment Bill 2017. The Hon. Adam Searle requested that I address the delays in bringing forward the criminal justice package in relation to the number of offenders on an extended supervision order who breach their order. I note that this Government made amendments to the High Risk Offenders Scheme in 2014 to enable emergency detention orders. Emergency detention orders are available for responding quickly where altered circumstances mean that an offender cannot be adequately supervised in the community, such as if a breach suggests an escalation in an offender's risk.

The Crimes (High Risk Offenders) Amendment Act 2014 introduced reforms to enable the Supreme Court to make an emergency detention order on an ex parte basis where a supervised high-risk offender cannot be adequately supervised in the community because of altered circumstances and consequently poses an imminent risk of committing a serious offence. Emergency detention orders are retained under these reforms, with a reframed test focusing on whether there is an imminent and unacceptable risk, rather than whether an offender can be provided adequate supervision in the community.

Emergency detention orders are an additional and necessary tool to help manage offenders being supervised in the community on an extended supervision order. These orders cover situations where a supervised offender's circumstances change suddenly. The 2014 reforms also increased the penalty for a breach of an extended supervision order from a maximum of two years imprisonment to five years imprisonment. Emergency detention orders enable an offender to be kept safely in custody while the problem created by the change of circumstances is addressed.

I note Mr Shoebridge's concerns in relation to the proportionality of the High Risk Offenders Scheme in New South Wales. There are some important points to note. First, the scheme is limited only to the most serious high-risk sex and violent offenders, and the validity of the legislation has been upheld before the court. Secondly, the focus of this legislation is not on punishing offenders, where issues of proportionality would be relevant, but on protecting the community. Under the reforms, community safety will be the paramount consideration in determining whether to make an order for an offender's extended supervision or their continued detention in a correctional centre. The Government makes no apology for implementing amendments to strengthen the High Risk Offenders Scheme. Under these reforms the community will be better protected from the most dangerous sex and violent offenders.

The offenders subject to such applications have demonstrated a capacity to commit serious sex and violent crimes. They have a history of serious sex and violent offending, and generally an unwillingness or inability to rehabilitate while in prison. The Attorney General is presented with experts' reports about the very high risk that these offenders will reoffend. The risk assessment is undertaken according to best practice standards. In some cases, the offender has even made it clear to authorities that they intend to reoffend when they are released. In this context, there is no doubt of the need for a strong and robust regime for the post-sentence supervision and detention of high-risk offenders in this State.

This package of reforms will deliver smarter, swifter and more certain justice for the people of New South Wales. Each of the bills reflects a balance between all stakeholder interests. This is a delicate balancing act, but the protection of the community remains the key rationale underpinning the reforms. The sentencing reforms will: strengthen the intensive correction order, which will be available as a community-based sentence where a prison sentence of up to two years is imposed; introduce the community correction order to replace section 9 good behaviour bonds and community service orders for offending that does not warrant a term of imprisonment; and introduce the conditional release order to replace section 10 bonds for lower-level offending. The early appropriate guilty plea reforms will: resolve criminal cases faster, leading to swifter justice for the community and reducing stress for victims; reduce wasted costs for the courts, the NSW Police Force, Legal Aid, and the Office of the Director of Public Prosecutions in preparing for trials that do not go ahead; and ensure that guilty pleas are entered by defendants only where appropriate.

The High Risk Offenders Scheme will be improved by: ensuring community safety is the paramount consideration of the court when considering whether to make a continuing detention order or extended supervision order; enabling more offenders to be eligible for the scheme because the court will be required to consider an offender's criminal history and future risk of serious sex and violent offences instead of just one or the other; and strengthening the test for deciding whether to impose a continuing detention order so that an offender's risk to the community is considered instead of whether they can be adequately supervised. Together, the reforms strengthen the New South Wales criminal justice system by ensuring it remains effective and is responsive to what works in delivering tougher and smarter justice for safer communities. I commend the bills to the House.

The PRESIDENT: The question is that these bills be now read a second time.

Motion agreed to.

In Committee

The CHAIR (The Hon. Trevor Khan): I will deal with each bill separately. There being no objection, I will deal with the Crimes (Sentencing Procedure) Amendment (Sentencing Options) Bill 2017 as a whole. I have no proposed amendments to the bill. The question is that the bill as read be agreed to.

Motion agreed to.

The CHAIR (The Hon. Trevor Khan): There being no objection, I will deal with the Crimes (High Risk Offenders) Amendment Bill 2017 as a whole. I have no proposed amendments to the bill. The question is that the bill as read be agreed to.

Motion agreed to.

The CHAIR (The Hon. Trevor Khan): There being no objection, I will deal with the Justice Legislation Amendment (Committals and Guilty Pleas) Bill 2017 as a whole. I have one set of amendments relating to this bill; that is, The Greens amendments on sheet C2017-092.

Mr DAVID SHOEBRIDGE (16:16): By leave: I move The Greens amendments Nos 1 to 12 on sheet C2017-092 in globo:

- No. 1 **Discounts for guilty pleas**
Page 26, Schedule 2 [4], proposed section 25D (2), line 33. Omit "25%". Insert instead "33%".
- No. 2 **Discounts for guilty pleas**
Page 26, Schedule 2 [4], proposed section 25D (2), line 36. Omit "10%". Insert instead "20%".
- No. 3 **Discounts for guilty pleas**
Page 26, Schedule 2 [4], proposed section 25D (2), line 43. Omit "5%". Insert instead "10%".
- No. 4 **Discounts for guilty pleas**
Page 27, Schedule 2 [4], proposed section 25D (3), line 1. Omit "25%". Insert instead "33%".
- No. 5 **Discounts for guilty pleas**
Page 27, Schedule 2 [4], proposed section 25D (3), line 6. Omit "10%". Insert instead "20%".
- No. 6 **Discounts for guilty pleas**
Page 27, Schedule 2 [4], proposed section 25D (3), line 13. Omit "5%". Insert instead "10%".
- No. 7 **Discounts for guilty pleas**
Page 27, Schedule 2 [4], proposed section 25D (5), line 30. Omit "25%". Insert instead "33%".
- No. 8 **Discounts for guilty pleas**
Page 27, Schedule 2 [4], proposed section 25D (5), line 33. Omit "10%". Insert instead "20%".
- No. 9 **Discounts for guilty pleas**
Page 27, Schedule 2 [4], proposed section 25D (5), line 40. Omit "5%". Insert instead "10%".
- No. 10 **Discounts for guilty pleas**
Page 28, Schedule 2 [4], proposed section 25E (3), line 34. Omit "25%". Insert instead "33%".
- No. 11 **Discounts for guilty pleas**
Page 28, Schedule 2 [4], proposed section 25E (3), line 37. Omit "10%". Insert instead "20%".
- No. 12 **Discounts for guilty pleas**
Page 28, Schedule 2 [4], proposed section 25E (3), line 40. Omit "5%". Insert instead "10%".a

I will not make a lengthy speech in support of these amendments because I dealt with them in my second reading contribution. The Greens found the Law Society's representations on this point compelling, and I will read onto the record the key paragraph of the society's submission. It states:

We are concerned about the lack of any discretion in the statutory sentencing discount provisions, and that injustice and unfairness will result where there is a substantial change in the Crown case or late service of key evidence. We consider that under the proposed sentencing discount model there is limited incentive to plead guilty to a charge once a matter has been committed for trial. If there is to be a statutory sentencing discount scheme, the discounts applied should be 33%/20%/10% to incentivise pleas after committal. If it is left as 25%/10%/5%, it is likely that the vast majority of matters committed for trial will run to trial, which is contrary to the aims of the reforms. Given that, The Greens are seeking to amend the bill so that the 20 per cent, 10 per cent, 5 per cent gradation in discount pleas is 33 per cent, 20 per cent, 10 per cent. The Greens join with the Government in wanting to reduce delays, to increase early pleas and to reduce stress for victims and witnesses, in particular where that can be avoided by an early and appropriate guilty plea. We believe these amendments would significantly further the Government's policy goal but we do not believe the 33 per cent discount is inappropriate if it causes the aforementioned further benefits. Nor do we believe that a 33 per cent discount is inappropriate in most circumstances where there has been an early guilty plea and an early acknowledgement of guilt with all of the consequential benefits that flow on to broader society—particularly victims and witnesses—not to mention the cost savings to the State in legal expenses for both the prosecution and defence.

The Greens join with the Law Society in expressing our concern that once a matter has moved from the Local Court to the District Court, a discount as low as 10 per cent from then on and reduced to just 5 per cent within 14 days of trial will have little or no likelihood of encouraging a guilty plea. Indeed, a discount of just 5 per cent unfortunately may lead to a defendant simply saying to their counsel, "Just beat up on the witnesses. Beat them up, test them all and do what you can because the best I will get from an early guilty plea and avoiding that kind of pain to the victims and witnesses is a 5 per cent discount." That would be a poor policy outcome and that is why we have put this package of amendments forward. Even if these amendments are not successful, we hope that the Government's policy objectives are achieved. I hope that the view of human nature I described does not play out. We want to see this reform package succeed and achieve the policy outcomes proposed by the Government but we are concerned that the percentages offered will not achieve that goal.

The Hon. ADAM SEARLE (16:20): For the reasons I outlined in my second reading contribution, the Opposition will not support The Greens amendments. We understand the motivations behind the amendments and that they are intended to address the concerns raised by the Law Society. I am not sure the structure of the amendments is appropriate. We have determined to support the legislation as a whole because it is based on the Law Reform Commission's recommendations rather than cherry-pick or adjust them. We also earnestly hope that the bill achieves the objectives for which it was designed and we will keep a close eye on how it is implemented.

The Hon. DAVID CLARKE (16:21): The Government opposes The Greens amendments Nos 1 to 12 on sheet C2017-092. The amendments would change the sentencing discounts prescribed under the proposed section 25D of the Crimes (Sentencing Procedure) Act 1999. Currently the proposed new section 25D provides for the following fixed discounts depending on the time of the plea. First, a 25 per cent discount if a guilty plea is entered while a case is in the Local Court, before the case is committed to the higher courts. Secondly, a 10 per cent discount where the guilty plea is entered after the case has been committed to the higher court but at least 14 days before the first day of the trial or if the accused gives notice to the prosecutor of his or her intention to plead guilty at least 14 days before the first day of the trial and enters the plea at the first available opportunity. Thirdly, a 5 per cent discount if the guilty plea is entered in any other circumstances.

The Greens proposed amendments would change the fixed discounts for the timing of a guilty plea to a 33 per cent discount if the guilty plea is entered while the case is in the Local Court but before it is committed to the higher courts, a 20 per cent discount where the guilty plea is entered after the case has been committed to the higher court but at least 14 days before the first day of the trial or if the accused gives notice to the prosecutor of his or her intention to plead guilty at least 14 days before the first day of the trial and enters the plea at the first available opportunity. The amendments would allow a 10 per cent discount if the guilty plea is entered in any other circumstances. The proposed amendments would also make equivalent amendments to proposed new section 25E, which makes provision for the sentencing discounts where the accused person has made an offer to plead guilty to an offence or a reasonably equivalent offence which either the prosecution refused but then accepted later or if the accused is later found guilty of that offence or a reasonably equivalent offence.

The Government opposes these amendments for three key reasons: the existing common law guilty plea discount, the recommendations of the New South Wales Law Reform Commission, and the risk of too high a discount leading to the entry of inappropriate guilty pleas. The discounts proposed by the Government reflect the existing Commonwealth sentencing discounts for guilty pleas. Section 22 of the Crimes (Sentencing Procedure) Act 1999 provides that in passing sentence for an offence on an offender who has pleaded guilty to an offence, a court must take into account the guilty plea, when the offender pleaded or indicated an attempt to plea and the circumstances, and may accordingly impose a lesser penalty than it would otherwise have imposed. Section 22 (2) provides that if a court does not impose a lesser penalty, the court must indicate that to the offender and make

a record of its reasons for not doing so. The guideline judgement for sentencing discounts on guilty pleas is *R v Thomson & Houlton*. At page 160, the Court of Criminal Appeal held:

The utilitarian value of a plea to the criminal justice system should generally be assessed in the range of 10-25 per cent discount on sentence. The primary consideration determining where in the range a particular case should fall, is the timing of the plea. What is to be regarded as an early plea will vary according to the circumstances of the case and is a matter for determination by the sentencing judge.

At page 155 of the judgement, the court determined that:

The top of the range would be expected to be restricted to pleas at the earliest possible opportunity and should not be given, save in an exceptional case, after a matter has been set down for trial. A discount towards the bottom of the range is appropriate for late pleas, for example, those entered on the date fixed for trial, unless there are particular benefits arising from the prospective length and complexity of the trial.

The discounts proposed by the Government in this bill are consistent with the current discount available under the common law. Introducing a discount higher than 25 per cent would also result in the discount available for a utilitarian value of a guilty plea being higher than the discount available in summary trials. This is an undesirable inconsistency. The timing and quantum of the discounts largely reflect the recommendations in the Law Reform Commission's report 141 entitled "Encouraging appropriate early guilty pleas". The New South Wales Law Reform Commission found:

We are of the view that where a guilty plea is entered in the Local Court the maximum available discount available should be 25%. This is for two reasons:

Continuity of discount with summary matters: We agree with stakeholders who expressed concern about the implementation of two separate discount systems. The Deputy Chief Magistrate of the Local Court of NSW has noted that implementation of a discount regime that exceeded the 25% maximum discount currently operating in the summary jurisdiction would essentially mean that the more serious the crime, the greater the available discount.

Public policy: We do not believe that the discount needs to be overly generous to be compelling. A maximum discount of up to 40% could have negative public policy outcomes. This was the experience in WA where the original maximum discount on sentencing for fast tracked matters was 35% under the common law. Public pressure and concern over the possibility that sentences could be imposed which did not accurately reflect the criminality of the act—and the desire for consistency in sentencing—resulted in the maximum available sentence discount being decreased to 25% by statute.

Although the Law Reform Commission recommended that the tiers of sentencing discounts be expressed as maximums to preserve judicial discretion in sentencing, during the Department of Justice's consultations with stakeholders it was agreed that each tiered sentencing discount should be expressed as fixed, subject to certain exemptions. This is even more recognition of the utilitarian value—

Mr David Shoebridge: Totalitarian or utilitarian?

The Hon. DAVID CLARKE: There is nothing totalitarian about this legislation. Regarding the appropriateness of guilty pleas, we are concerned that if the discount for a plea is set too high, defendants will be encouraged to plead guilty in inappropriate circumstances. Any change to the quantum of the discount must be given extensive consideration and consultation to ensure that public confidence in the administration of justice is maintained. However, as the Attorney General stated in his second reading speech in the other place, the Government will keep all aspects of these reforms under close review with particular scrutiny of the quantum of the sentencing discounts and their applicable timing, including to ensure that they have the desired effect of encouraging early, appropriate guilty pleas. The Government does not support The Greens amendments.

The CHAIR (The Hon. Trevor Khan): Mr David Shoebridge has moved The Greens amendments Nos 1 to 12 on sheet C2017-092. The question is that the amendments be agreed to.

Amendments negatived.

The CHAIR (The Hon. Trevor Khan): 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 bills to the House without amendment.

Motion agreed to.

Adoption of Report

The Hon. DAVID CLARKE: On behalf of the Hon. Don Harwin: I move:

That the report be adopted.

Motion agreed to.

Third Reading

The Hon. DAVID CLARKE: On behalf of the Hon. Don Harwin: I move:

That these bills be now read a third time.

Motion agreed to.

PAROLE LEGISLATION AMENDMENT BILL 2017

Second Reading

The Hon. DAVID CLARKE (16:31): On behalf of the Hon. Niall Blair: I move:

That this bill be now read a second time.

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

Leave granted.

The Government is pleased to introduce the Parole Legislation Amendment Bill 2017. The bill implements the Government's commitment to reforms to the criminal justice system that will improve community safety and reduce reoffending. The New South Wales parole system already works to reduce reoffending through Corrective Services' supervision of approximately 5,600 parolees at a time coupled with proven interventions targeting the causes of criminal behaviour. However, parole can be further strengthened to improve community safety and to maximise opportunities to return offenders to normal community life after release from custody.

A 2014 study undertaken by the NSW Bureau of Crime Statistics and Research [BOCSAR] showed that offenders who are supervised on parole reoffend at a lower rate than offenders released from custody unsupervised. By reducing reoffending, we reduce crime, which means fewer victims and a safer community. These reforms build on some of the recommendations in the Law Reform Commission's 2015 report on parole. The reforms are part of the New South Wales Government's package of criminal justice reforms, which contains the most significant criminal justice reform agenda in many years. The reforms complement the package of changes to community-based sentences introduced by the Attorney General to increase the number of offenders under supervision in the community. The evidence-based parole reforms proposed in this bill will contribute to the Premier and the State's priorities to reduce domestic violence and adult reoffending and to improve community safety.

The Government has already started work on increasing access to supervised parole. The Crimes (Administration of Sentences) Regulation 2014 was amended on 31 July 2017 to introduce more flexible manifest injustice exceptions to the 12-month rule, which requires offenders to wait 12 months to have parole reconsidered after revocation or refusal. These changes give the State Parole Authority more flexibility to consider appropriate offenders for release during this 12-month period. This will ensure that, where possible and safe, the community receives the benefit of suitable offenders being subject to a supervised period on parole to address their offending behaviour before their sentence ends, which leads to better outcomes than releasing them from prison unsupervised.

I turn to the Parole Legislation Amendment Bill 2017. The bill has eight purposes. First, the bill replaces the current public interest test for release on parole with a clearer, more specific community safety test. Second, the bill introduces a reintegration home detention scheme to provide a step down between custody and parole for eligible and suitable offenders to assist them with reintegration into the community. Third, it makes supervision a mandatory parole condition. Fourth, it replaces the current system of court-based parole with statutory parole. Fifth, the bill introduces a framework of sanctions for Community Corrections and the State Parole Authority to impose on offenders who have breached their parole orders. Sixth, the bill makes changes to the Victims Register to ensure that all victims registered can receive information about offenders being considered for parole and reintegration home detention, and to give all victims the right to make submissions to the State Parole Authority as part of the decision-making process. Seventh, the bill makes miscellaneous changes to improve the adult parole system. Eighth, the bill introduces a separate legislative framework for juvenile parole that provides an appropriate decision-making supervision and management framework for the release of young offenders on parole in a new part 4C of the Children (Detention Centres) Act 1987. I take this opportunity to thank the stakeholders consulted and involved in the drafting of this bill.

I now outline the details of the bill. Schedule 1 will introduce changes to improve the adult parole system. The focus on community safety is paramount. The New South Wales Government is committed to community safety and this bill ensures it is at the heart of parole legislation and decision-making. In June 2017 the Government strengthened the parole laws in New South Wales through the introduction of a presumption against parole for terrorism-related offenders in division 3A of the Crimes (Administration of Sentences) Act 1999. These changes build on the Government announcement in May 2017 that radicalisation will now be considered as part of parole decisions in New South Wales. The State Parole Authority must not release a terrorism-related offender on parole unless it is satisfied that the offender will not engage in, or incite, or assist others to engage in terrorist acts or violent extremism.

The community safety test introduced at schedule 1 [12] replaces the current public interest test for release on parole. Currently, community safety is one of a range of factors that the State Parole Authority must consider when deciding if release on parole is in the public interest. The test in the proposed new section 135 of the Crimes (Administration of Sentences) Act 1999 is based on a recommendation by the Law Reform Commission to introduce a community safety test for release on parole. The Government is committed to improving this area of the law and is implementing this recommendation to make it clear that the primary focus of the State Parole Authority's decision-making is always community safety. The new test will focus the legislation more clearly on the overriding goal of the parole system, which is to protect the safety of the community by reducing reoffending. Similar tests where community safety is of paramount consideration are already used in South Australia, Western Australia, Queensland and Victoria. An approach based on assessing and balancing risks to community safety better reflects the essential question that must be asked when deciding whether to release an offender on parole.

As a statutory body representing the community and its interests, the legislation of the State Parole Authority should focus on risk to community safety above all considerations. The proposed new test provides that the State Parole Authority must only release an offender on parole if it is satisfied that releasing the offender is in the interests of community safety. In making its decision, the

State Parole Authority will be required to consider the risk to community safety of releasing the offender on parole, whether release on parole is likely to address the offender's risk of reoffending, and the risk to community safety if the offender is released at the end of the sentence without a period of parole supervision or is released at a later date with a shorter period of parole supervision.

The risk to community safety is broader than an assessment of the risk of reoffending. Many different considerations such as offence seriousness, criminal history, behaviour and progress in custody, family support, availability of counselling—to name just a few—are likely to be relevant to a full and balanced assessment of a risk that an offender would pose to community safety if he or she is paroled. Similarly, many factors would need to inform an assessment of the risk that an offender is likely to pose to community safety if he or she is not paroled. To inform its decision under the community safety test, the State Parole Authority will still be required to consider additional factors such as the nature and circumstances of the offence, the offender's criminal history and the effect of parole on the victim as is currently the case.

For offenders serving sentences for murder or manslaughter, the State Parole Authority will also be required to take into account whether the offender has disclosed the location of the victim's remains, giving those offenders some incentive to disclose this information. Requiring the State Parole Authority to focus on whether an offender has failed to disclose the location of a victim will help to hold offenders accountable for their behaviour by focusing attention on what they have done to make amends for their crime. It is also relevant to whether an offender has made progress towards rehabilitation and still presents a risk to the community. Overall, the reform to the test for release on parole will send a strong message that community safety is the paramount consideration when deciding to release an offender on parole and reinforces the goal of parole in considering community safety and reducing reoffending.

Item [6] introduces a requirement for the State Parole Authority before making changes to parole conditions to consider risk to the safety of the community, the likely effect on the victim, or whether changing a condition will assist in the management of the risk of breaches of parole. Item [10] provides that the State Parole Authority may revoke a parole order prior to an offender's release when there is a serious identifiable risk to community safety, or the offender poses a serious and immediate risk to their own safety, or the offender requests the revocation. Proposed new section 130 also enables the Attorney General, the Minister, the commissioner or a Communities Corrections officer to request such a revocation. Item [20] introduces a new power to allow the State Parole Authority to revoke parole where there is an increased risk to community safety, even if the offender has not breached a condition. The State Parole Authority will be able to exercise this power when it considers that the offender poses a serious and immediate risk to the safety of the community or any individual, or there is a serious and immediate risk that the offender will leave New South Wales.

The New South Wales Law Reform Commission recommended that the new power be introduced to ensure the State Parole Authority can act to protect the community regardless of whether an offender has technically complied with conditions. Proposed new section 170B imposes this recommendation. Schedule 1 [3] implements the recommendation of the Law Reform Commission to introduce a reintegration home detention scheme for the release of eligible and suitable offenders under home detention conditions for a period of up to six months before an offender's parole orders take effect and for procedures for the revocation of these orders. The scheme will create a short period of structured transition between custody and parole for those offenders. A similar scheme is used in South Australia and the United Kingdom. The Law Reform Commission noted that a reintegration home detention scheme provides offenders with opportunities to link with employment, training and community-based services and to re-establish family and social support networks while under more intense supervision than they would experience on parole.

Proposed section 124B sets out that the scheme will not be available for serious offenders or any offenders serving sentences for a domestic violence offence, a child sexual offence, a serious sex or violence offence, or a terrorism offence. Offenders will not be able to apply for reintegration home detention; referral by Community Corrections is the only avenue to reintegration home detention. Community Corrections will select offenders who are suitable to be referred to the State Parole Authority for consideration for reintegration home detention. The State Parole Authority will only make a reintegration home detention order if it is in the interests of community safety.

Proposed section 124F provides that for offenders serving sentences of more than three years, the State Parole Authority will first need to determine whether the offender is suitable for parole. The offenders participating in the reintegration home detention scheme will be subject to home detention conditions. Offenders will be required to remain at home unless an absence has been pre-approved, submit to electronic monitoring, and participate in programs and treatment. All offenders serving a sentence of more than three years will be reviewed by the State Parole Authority before transitioning from reintegration home detention to parole. If the State Parole Authority has concerns about an offender at this point, it can recall the offender to custody or extend the period the offender must spend on home detention by adding the home detention conditions to the offender's parole order.

Item [19] of schedule 1 sets out the procedures for revoking reintegration home detention orders. The State Parole Authority can decide whether or not to revoke a reintegration home detention order in the event of a breach. The State Parole Authority will also be able to revoke the order regardless of whether a breach has occurred if the offender presents a serious and immediate risk of harm to himself or herself or others. If the State Parole Authority revokes the reintegration home detention order, the offender will be returned to custody. The State Parole Authority can also revoke the offender's parole order when it revokes the reintegration home detention order. If it chooses not to revoke the parole order, the offender will be released on parole at the end of the non-parole period. If the State Parole Authority does revoke parole, the offender will be eligible to be reconsidered for parole after 12 months unless the offender can be reconsidered earlier under the manifest injustice circumstances.

Item [24] makes it clear that review is not available for the revocation of a reintegration home detention decision. This is because of the short six-month time period available for reintegration home detention orders prior to an offender becoming eligible for release on parole. If both reintegration home detention and parole are revoked, the offender will be entitled to a review hearing of the decision to revoke parole. Item [33] requires the State Parole Authority to provide reasons relating to decisions about reintegration home detention. Reintegration home detention will have more structure and a higher level of supervision than parole. It is a way to prepare offenders for life in the community to help reduce their likelihood of reoffending by providing a transitional step down between custody and parole.

Item [9] of schedule 1 imposes supervision as a condition of all parole orders in proposed new section 128C. New South Wales is the only Australian jurisdiction where supervision is not a mandatory parole condition, although supervision is imposed in about 98 per cent of cases. As evidence from Australia and overseas shows, supervision reduces reoffending. All parolees will now be required to accept supervision from Community Corrections and the regulations will continue to set out the implications of

offenders subject to supervision. Item [9] also provides for a Community Corrections officer to suspend supervision positions. This retains Community Corrections' current discretion to focus resources on offenders with higher risks and more complex needs where supervision will have the largest impact.

Resources will be targeted to offenders where they will be the greatest benefit to community safety. Supervision is most effective when it is targeted at the right offenders at the right time. Community Corrections officers will also be empowered to temporarily suspend offenders from curfew and place restriction and non-association conditions to prevent breaches being needlessly reported to the State Parole Authority. For example, an offender may be exempted from compliance with a curfew condition for a certain period of time to attend work or may be temporarily exempted from a place restriction or a condition in order to attend a medical appointment.

Item [16] of schedule 1 requires health service providers to provide information about whether an offender on parole has attended treatment, a program or activity as required under the parole order. This will enable Community Corrections officers to verify that a parolee is complying with conditions of parole or directions by a Community Corrections officer. This new provision will clarify that privacy legislation does not prevent health service providers from providing this information to Community Corrections. However, this provision will not require the health service provider to disclose the content of any health service provided—for example, the notes of a session with a psychiatrist. It simply requires them to confirm that the offender is participating in the treatment program or other activity mandated by the parole order or a direction by a Community Corrections officer.

Item [13] of schedule 1 implements the Law Reform Commission's recommendations to replace court-based parole with statutory parole. Currently, the Crimes (Sentencing Procedure) Act 1999 requires courts to set the non-parole period with a parole order. The reforms will provide courts the function of setting a non-parole period but remove the requirement to carry out the administrative step of making a parole order. The legislation simply requires the offender to be released on parole when the non-parole period expires, subject to conditions prescribed by the Crimes (Administration of Sentences) Act 1999 and the related regulation. If Community Corrections considers additional conditions are necessary, it will apply to the State Parole Authority to have conditions added before the offender is released.

Statutory parole will be substantially the same as court-based parole but will simplify the framework, making sure additional conditions are more relevant and are set closer to the point of the offender's release. This will save courts the administrative task of making parole orders. Currently, the only legislative tools available to deal with breaches of parole are to do nothing, vary the conditions of a parole order, or just revoke parole. This all-or-nothing legislative approach does not reflect the reality that less serious breaches of parole need quick and effective responses that stop short of revoking parole. Community Corrections uses a range of case management strategies to deal with less serious breaches, such as warnings, tighter supervision requirements and referrals to relevant programs and services.

The bill will give Community Corrections and the State Parole Authority a clear range of sanctions to use in response to breaches. This will help them effectively manage risk and ensure compliance by authorising proportionate responses. This is in line with the Law Reform Commission's recommendations for a legislated system of graduated responses to breaches of parole. A similar framework exists in Queensland. Sanctions will be used together with interventions that help offenders take responsibility for their behaviour. This approach—in particular the use of intervention—has a strong evidence base from Australia and overseas, including in Canada and the United States of America. The approach being taken is about doing what has been shown to work to make the community safer and making the justice system work more efficiently.

Item [20] of schedule 1 gives Community Corrections a range of responses to manage less serious breaches of parole, including imposing reasonable directions and curfews. Responses will be applied immediately when the offender has committed a lower level breach. More serious breaches will be reported to the State Parole Authority. The graduated sanctions framework will mean there is a clear escalation for repeated noncompliance. Proposed new section 170A empowers the State Parole Authority to impose more onerous sanctions for the breach of a parole order, such as imposing electronic monitoring or up to 30 days home detention. It also provides for the State Parole Authority to revoke parole and to return an offender to custody. The State Parole Authority's discretion to revoke parole is not limited or otherwise affected by the new sanctions regime. Item [23] provides that when reviewing a revocation of a parole order, the State Parole Authority can now take into account any behaviour of an offender including whether an offender is alleged to have committed any offences while released on parole or after the revocation of a parole order.

The following amendments are proposed to clarify the kinds of information about offenders that can be disclosed to registered victims by the Corrective Services Victims Register. The amendments clarify that all registered victims may make submissions to the State Parole Authority. Sharing information about an offender in response to a registered victim's request shows respect for the victim's concerns and needs. It will help ensure that victims are treated with respect and dignity. Item [39] provides that the Serious Offenders Review Council or the State Parole Authority can delegate to the Victims Register any of their functions in relation to sharing information to registered victims about adult offenders. This will ensure one point of contact with the correctional system for victims, simplify the process for obtaining information about offenders, and reduce the potential for confusion.

Item [40] requires the State Parole Authority to give notice to all registered victims about decisions on reintegration home detention and parole so they can make submissions to the State Parole Authority about these matters. Currently, only victims of serious offenders have the right to make submissions to the State Parole Authority. This item expands that right to all registered victims of all offenders and requires the State Parole Authority to notify them of the outcome of parole and reintegration home detention considerations. These changes are consistent with the Government's response to the 2016 report of the Standing Committee on Law and Justice on the security classification and management of life prisoners, which aims to promote better engagement with victims. It is also consistent with the aim of the victims charter under the Victims Rights and Support Act 2013, which seeks to improve communication of information about offenders to victims.

The change to the information shared with victims also implements a proposal of the New South Wales Law Reform Commission's 2015 report on parole that registered victims should have equal procedural rights to participate in the parole decision-making process regardless of whether the offender is a serious or non-serious offender. Item [40] clarifies that the commissioner may provide information to registered victims of serious and non-serious offenders about any change to an offender's earliest possible release date, the death of an offender, an offender's escape from custody, the location of the correctional centre, and the security classification of the offender. Providing this information to victims helps them understand how inmates are managed and that changes may be made to an offender's security classification or prison location.

One of the themes that emerged from the Legislative Council's Standing Committee on Law and Justice 2016 inquiry was a lack of information or clarity for victims about how Corrective Services manages inmates and how this can negatively impact on victims. Legislating to share this information will support a more personal approach and will help ensure that victims are treated with respect and dignity. Item [16] provides for the Governor, in exercising the prerogative of mercy, to make a parole order in respect of an offender and to apply the legislative provisions for parole orders. This means that offenders released under the prerogative of mercy can be made subject to the same regime of supervision, monitoring and control as other offenders released from custody on parole, including revocation by the State Parole Authority in the event of a breach. This will streamline processes for managing offenders released to supervision in the community under the prerogative of mercy.

I will now turn to schedule 2 to the bill. Schedule 2 proposes amendments to the Children (Detention Centres) Act 1987. New South Wales has a separate juvenile parole system, where the Children's Court performs the State Parole Authority's role as parole decision-maker and Juvenile Justice New South Wales supervises parolees. However, the juvenile parole system is currently governed by the same Crimes (Administration of Sentences) Act 1999 provisions as apply to the adult system. This is not fit for purpose and creates procedural difficulties. Under the proposal, the parole legislative framework will be improved by introducing separate age-appropriate provisions to govern the juvenile parole system. This will make the legislation governing the juvenile parole system more transparent and enable some aspects of the system to be made more appropriate for juveniles.

Item [3] of schedule 2 introduces a separate legislative framework for juvenile parole that provides an appropriate decision-making, supervision and management framework for the release of young offenders on parole in a new part 4C of the Children (Detention Centres) Act 1987. The proposed new section 38 introduces a new principle into the juvenile parole provisions. This principle notes that the purpose of parole for juveniles is to promote community safety, recognising that the rehabilitation and reintegration of children into the community may be a highly relevant consideration in promoting community safety. Most statutes that apply to juveniles in the criminal justice system contain objects or principles that guide decision-making or frame the operation of the Act to take into account the specific needs of young people. Rehabilitation is a particular focus of policy and law in the context of young people, and, therefore, has been included alongside the concept of community safety.

Proposed new section 40 also provides that the juvenile parole framework applies to offenders under 18 years. The Law Reform Commission noted that the criminal justice system makes a distinction between adults and children and draws the dividing line at 18 and that a dividing line needs to be drawn in the parole system for the sake of certainty. There will be two exceptions to the age-based cut-off. First, if the offender reaches the age of 18 years while on parole and the birthday occurs during the last 12 weeks of the parole period, it is operationally more efficient for the offender to remain in the juvenile parole system to finish his or her sentence. Secondly, there may be offenders who are over 18 who are particularly vulnerable.

New section 40 (3) provides that the secretary can consider if it is appropriate that an offender continues to be dealt with under this framework. It has been made clear that the secretary can determine a class of offenders who can continue to be dealt with under this framework. It may be more appropriate for Juvenile Justice officers to complete the report to the Children's Court and for the Children's Court to make the decision about release on parole for certain offenders. These provisions seek to strike an appropriate balance between these competing considerations.

Proposed new section 41 retains the current jurisdiction of the Children's Court to determine matters relating to the parole of juvenile offenders. Children's magistrates have the necessary expertise to deal with children and can operate the parole system flexibly and with discretion. Proposed section 44 replaces court-based parole in the same way as for adults with statutory parole. Proposed section 46 introduces a community safety test to replace the current public interest test for release on parole. The test is the same as the test for adult parole, but the Children's Court will also be required to consider that the rehabilitation and reintegration of young offenders may be highly relevant to the safety of the community. The Law Reform Commission in particular noted that this is an important consideration for the Children's Court to apply in its parole decision-making.

Proposed division 3 of part 4C of the bill re-enacts machinery provisions from the Crimes (Administration of Sentences) Act 1999. These relate to the release of offenders on parole, including considerations for the release date, release near public holidays and weekends and the continuance of a detention order while an offender is released on parole. Proposed division 4 of part 4C of the bill provides for the conditions and obligations of parole orders. It re-enacts provisions currently set out in the Crimes (Administration of Sentences) Act 1999 permitting non-association and place restriction conditions to be imposed. When considering changing or imposing new conditions on the parole of a juvenile offender, the Children's Court is required to have regard to: whether the change in conditions will assist in the management of a risk to community safety; the likely effect on any victim of the offender; whether the change will assist in the management of the risk of breaches of parole; and whether the change in conditions will assist the offender's participation in rehabilitation programs and reintegration into the community, recognising the special needs of juveniles.

Proposed section 55 of schedule 2 provides that it will be a condition of parole that a juvenile offender is to be subject to supervision, consistent with the evidence that supervision reduces reoffending. Proposed section 56 provides that the Children's Court may grant exemptions from supervision conditions in exceptional circumstances. Proposed section 57 provides that a Juvenile Justice officer may suspend non-association conditions and place restriction conditions and supervision conditions.

Proposed new division 5 of part 4C carries over the presumption against parole for terrorism-related offenders as introduced to division 3A of part 6 of the Crimes (Administration of Sentences) Act 1999 in July 2017. Division 6 of part 4C of the bill provides for the Children's Court's powers to revoke parole before or after release into the community, consistent with the community safety theme in the adult parole bill. Proposed section 63 enables the Children's Court to revoke any parole order if satisfied that the offender would pose a serious identifiable risk to the community or a serious and immediate risk the offender's safety.

Proposed section 64 of the bill also provides for actions that can be taken in the event of a failure by an offender to comply with a parole order. The secretary may record the noncompliance without further action, give an informal warning to the offender, or in a more serious case refer the matter to the court with a recommendation as to the action that may be taken.

Proposed section 65 of the bill provides that the Children's Court may record the noncompliance without further action, give an informal warning to the offender, change the conditions of the parole order, or revoke the parole order. Proposed section 66 of the bill will also permit the court to revoke a parole order after the offender's release if it is satisfied that the offender poses a serious and immediate risk to the community or that there is a serious and immediate risk that the offender will leave New South Wales and that the risk cannot be mitigated sufficiently by directions by a Juvenile Justice officer or by changing the conditions of parole.

This section will also permit the Children's Court to revoke parole if the offender has failed to appear in accordance with a notice to attend.

Proposed section 67 of the bill provides that a hearing may be held by the court at any time into whether an offender has failed to comply with the offender's obligations under a parole order. Power is conferred on the Attorney General, the Minister, or the Director of Public Prosecutions through proposed section 69 to request the court to exercise the power to revoke a parole order for an offender serving a sentence for a serious children's indictable offence on the ground that the order was made on the basis of false, misleading or irrelevant information.

Division 6 of part 4C of the bill also re-enacts the adult parole provision that permits an offender to seek to have the Supreme Court give a direction that information on which a revocation of a parole order was based was false, misleading or irrelevant. Division 7 of part 4C of the bill contains provisions relating to the reconsideration of parole. If the Children's Court refuses to make a parole order, the court must specify a new eligibility date for parole, a new date for a parole hearing or a date after which the juvenile offender may apply for parole. The juvenile parole bill is not carrying forward the 12-month rule that applies to adult offenders. The Law Reform Commission recommended removing this rule for juvenile offenders as it is not appropriate with regard to juveniles' special circumstances. The Law Reform Commission also recommended that the Children's Court should have the discretion to set a new date for parole consideration.

Proposed section 73 of the bill carries this recommendation forward. If the court revokes a parole order, the court must specify a new eligibility date for parole, a new date for a parole hearing, a date after which the juvenile offender may apply for parole, or defer determining any of those matters for up to three months. A juvenile offender may apply to the court for reconsideration of a decision about parole or to revoke parole before the date specified for making an application where new information has become available or the situation of the offender in relation to granting parole has materially changed since the decision to be reconsidered.

Proposed division 8 of part 4C of the bill sets out procedural provisions for hearings conducted by the Children's Court in the exercise of its parole functions. These include provisions relating to production of documents, giving evidence and making submissions. Procedural provisions in relation to breach and revocation have been drafted so that procedures are flexible, involve limited technicality, are responsive and are clear. The court will have flexibility to tailor its procedures as it thinks appropriate to avoid unnecessary delay and formality while ensuring that young offenders can be heard.

The notice-to-attend procedure works well for the Children's Court, giving the court the option to deal with breaches of parole without first returning the young offender to custody—in appropriate circumstances. The court has power to require a juvenile offender on parole to attend the court at a specified time and place and to require other persons to attend as witnesses and to produce relevant documents. Additionally, the options to vary conditions, warn and note a breach without taking action, which are recommended for the adult system, have been added to the range of options available to the Children's Court. This will increase transparency and facilitate the graduated sanctions approach being applied to young offenders.

Division 9 provides for the Governor, in exercising the prerogative of mercy, to make a parole order in respect of an offender and to apply the legislative provisions for parole orders in the same way as for adult offenders, with the exception that parole will be supervised by Juvenile Justice officers. The Juvenile Justice officers will monitor and control in the same way as other offenders released from custody on parole, including revocation by the Children's Court in the event of a breach. Division 10 includes miscellaneous provisions, carried over from the adult framework, regarding the Children's Court exercise of functions, notice of parole decisions, submissions by the secretary, security of information, and records of decisions. Schedules 3 and 4 to the bill make transitional arrangements.

These bills are the product of detailed consultation with stakeholders on the parole reforms. Consultation included the release of a NSW Law Reform Commission report in 2015 and submissions from members of the community, government agencies and non-government and legal stakeholders. Consultation on the bill included roundtables with the judiciary, the legal profession, government, and victims and advocacy groups. Each stakeholder was given copies of the bills and invited to provide written submissions on the bills. The amendments set out in this bill will further improve the parole system in New South Wales. The changes are designed to focus parole decision-making on community safety and increase supervision.

Evidence shows that a parole system that reintegrates offenders back into the community with supervision aimed at addressing offending behaviour works to reduce reoffending. This makes the community safer. Reducing reoffending means fewer victims. The Government's criminal justice reform package is backed by a \$237 million investment in programs designed to reduce reoffending. Community safety is the bedrock of these reforms and this reform package will continue this Government's trend of reducing crime across New South Wales. Overall, this bill will improve parole to make communities safer. With these tougher and smarter reforms, we are ensuring New South Wales will be safer for years to come. I commend the bill to the House.

The Hon. LYNDIA VOLTZ (16:32): On behalf of the New South Wales Labor Opposition I speak on the Parole Legislation Amendment Bill 2017. The purpose of this bill is to amend the Crimes (Administration of Sentences) Act 1999 and the Children (Detention Centres) Act 1987 to implement a number of recommendations set out by the Law Reform Commission report 142, which I will refer to as "the report". The report set out a number of recommendations that stemmed from consultation and feedback received by the various stakeholders, industry representatives and respective experts in the field to resolve a number of existing issues within the system.

First of all, the inception of this legislation will see court-based parole replaced with statutory parole, with the aim of reducing delays when introducing parole conditions for offenders. The report indicated stakeholders had expressed concerns about instances where court-based parole conditions were often delayed and were not submitted by the courts before the offender was eligible for parole. Statutory parole will eliminate such delays through the automatic provision of parole orders for offenders who are subject to terms of imprisonment of three years or less where a non-parole period has been imposed on the sentence.

Statistically, more than 80 per cent of adult offenders released on parole have been subject to court-based parole orders, highlighting the deficiencies in the existing system and the need to implement changes to make the

system more efficient. Despite these changes, the courts will continue to be involved in parole decisions when it comes to sentences of three years or less. The courts will still make the decision whether to impose a fixed term or set a non-parole period and the length of that period, and to determine if and when an offender can be released on parole. Changing from court-based parole to statutory parole would simply remove the administrative requirement for courts to make parole orders. All offenders with a head sentence of more than three years would not receive a court-based parole order as the release of these offenders to parole rests at the discretion of the State Parole Authority.

As per recommendation 4.1 of the report, the public interest test will be replaced with more specific conditions to provide the State Parole Authority with a more comprehensive guideline to follow when weighing up conditions and circumstances relating to parole. This recommendation included weighing up the risk to community safety of releasing the offender on parole, whether parole supervision is likely to aid in reducing the possibility of the offender reoffending, the risk to community safety if the offender is released at the end of the sentence without a period of parole supervision or if the offender is released at a later date with a shorter period of parole supervision, and the extent to which parole conditions can mitigate any risk to community safety during the parole period.

The bill will also see the implementation of mandatory supervision orders imposed on all parole orders. It is worth noting that presently New South Wales is the only Australian jurisdiction in which supervision is not an automatic component of parole for all offenders, despite the fact an overwhelming majority end up with supervision as a condition of parole. The report contained detailed findings that indicated that the supervision of medium- and high-risk offenders according to best practice risk needs responsivity principles significantly reduced reoffending rates by approximately 20 per cent. The period after release from custody has been identified as a crucial period for offenders who need to reacquire the fundamental life skills that were unnecessary in custody.

It has been noted that the purpose of releasing offenders on parole is to reduce risk to community safety by managing and supervising an offenders' re-entry into the community and providing the necessary support to make this transition successful. The legislation has taken the recommended approach by establishing a step-down reintegration scheme that will enable eligible inmates to transition from custody into home detention while receiving a higher degree of supervision and parole conditions. This arrangement would become available only to eligible offenders within the final six months before their parole order would take effect.

The eligibility for this at-home reintegration would remain subject to approval from the commissioner, and would be determined largely by the offender's circumstances and available facilities upon being released from incarceration or detention. While subject to a reintegration order, the parolee will undergo more intensive supervision than when under a standard supervision order. Express authority is conferred to impose a condition of home detention, a requirement to submit to the use of an electronic monitoring device and other ancillary-related conditions. The State Parole Authority [SPA] and Community Corrections will be granted the power to impose additional conditions and sanctions as necessary, should an offender have breached their parole order.

Following a breach, an offender's parole can be revoked. The Attorney General, the Minister for Corrections, the Commissioner for Corrective Services or a Community Corrections officer may request such a revocation. Should a reintegration home detention parole order be revoked, an offender will have no entitlement to seek a review hearing before the SPA. I also emphasise that reintegration home detention orders cannot be made for serious offenders, including domestic violence offenders, child sexual offenders, serious sex or violence offenders, or a terrorism offender.

Amendments have been made to the Victims Register to provide both registered victims and offenders with an improved understanding of and engagement with the parole decision-making process. Within the existing system, victims of non-serious offenders have no statutory right to this information, which, over the years, has caused a degree of distress for affected individuals throughout New South Wales. Victims will also be granted the right to make submissions to the SPA as part of their decision-making process about parole for the offender.

Should a governor of a correctional facility or juvenile detention centre wish to exercise the prerogative of mercy, they may make a parole order regarding an offender, whether or not the offender is eligible for release on parole. This parole order would remain subject to any direction made by the governor as if the orders had been made by the State Parole Authority. Under the amendments before us today, health service providers will now be required to provide information about an offender's attendance and/or participation in a program, activity or appointment required under parole conditions if requested by a Community Corrections officer.

In New South Wales, we have a separate juvenile parole system, with the existing legislative frameworks governing the juvenile system being identical to those of the adult system. This has been identified as overly technical and inflexible. The report set out a recommendation—it was supported by a majority of stakeholders—

that separate legislative frameworks be established to govern the juvenile parole system. This has been established with this bill through separate parole provisions under the Children (Detention Centres) Act 1987. The Children's Court may subsequently impose any necessary changes to a juvenile offender's parole orders. Under changes within this legislation, the Children's Court will now have the power to re-enact a juvenile's parole order if the grounds for the revocation were made on the basis of false, misleading or irrelevant information.

This is a sensible approach to rectifying such a situation. In the event an offender fails to comply with a parole order, Community Corrections officers have been granted more flexibility in how they manage noncompliance. They may record noncompliance with no further action, give an informal warning, give or arrange for a formal warning, give a reasonable direction about the noncompliant behaviour, or impose a curfew. If the failure to comply is more serious, the commissioner or a Community Corrections officer may refer the matter to the Parole Authority for further action. I point out that throughout the drafting of the entire legislation and the countless discussions leading up to its inception, the overall goal of changes within this bill has been to reduce red tape, to make parole orders and conditions more efficient and to ensure the safety of the community is of paramount importance. I underline the importance of rehabilitating offenders. Ensuring their reintegration back into society should be as successful as it can possibly be. To some extent it would be bananas not to do so.

The Government has a track record of blindly throwing money at problems in the hope that the issue will resolve itself. This includes, but is not limited to, overcrowding in our State prisons, contraband running rampant, inmates escaping on a regular basis and the increasing incidence of assaults inside jails. A recent example includes the \$237 million the Government threw at a number of reoffending programs in Community Corrections. Despite this vast injection of funds, it has been confirmed by the Minister that in 2016-17, 65 per cent of the 4,970 inmates had not had any access to therapeutic programs prior to their earliest release date.

Therapeutic programs include sex offender programs, the violent offender therapeutic program, intensive drug and alcohol treatment programs, Ngara Nura, EQUIPS, the remand domestic violence intervention program and remand addiction support groups. This means that in 2016-17, 75 per cent of the inmates eligible to participate in therapeutic programs were automatically released from incarceration despite not having done so. This bill implements a number of sensible changes to parole in New South Wales, and has followed the guidance of the Law Reform Commission's report to reduce red tape and to streamline parole for offenders with a head sentence of three years or less where a non-parole period has been imposed on the sentence. The New South Wales Labor Opposition does not oppose this bill.

Reverend the Hon. FRED NILE (16:42): The Christian Democratic Party is pleased to support the Parole Legislation Amendment Bill 2017, which is very much in line with the philosophy and the policies of our party. We particularly appreciate the change of emphasis in this legislation. Previously, the emphasis was on what is in the public interest; now the emphasis will be on the interests of public safety. It will result in smarter decision-making for a safer community. The Christian Democratic Party appreciates that emphasis, because we know that in the past some criminals on parole have committed offences. People have asked how a person on parole can become involved in further crimes, so there was a need for a tightening of the laws. We congratulate the Minister for Corrections, the Hon. David Elliott, on moving to rectify that situation.

This bill implements the Government's commitment to reforms that strengthen the parole system and improve community safety. Wide-ranging reforms to the parole system were announced by the Government on 9 May 2017. The reforms will ensure stronger decision-making and smarter management of parolees to make communities safer and to reduce reoffending. That is the other major and important objective of the reforms—that it will reduce reoffending. At the moment, the New South Wales parole system works to reduce reoffending through Corrective Services supervision of approximately 5,600 parolees at a time, coupled with proven interventions targeting the causes of criminal behaviour. Parole can be further strengthened to improve community safety and to maximise opportunities to return offenders to normal lawful community life after their release.

I noted in some of the material provided by the Minister's office that there was a statement headed "Strengthening parole", which states that the State Parole Authority will now be able to "refuse parole if an offender convicted of murder or manslaughter has failed to tell investigators the location of their victim's remains"—no body, no parole. The Christian Democratic Party supports that. The distress caused to the family of the deceased is a disgrace. If a person who is coming up for parole wants to retain these secrets that are causing a lot of distress to the family, he or she will have to weigh it up, "Do I want parole? If so, I have to tell the truth."

The purpose of these reforms is to reduce reoffending and to ensure that the community parole system has community safety as its overriding goal. The bill also builds on legislation already providing for a presumption against parole for terrorist offenders. The reforms help improve victim engagement, and put the safety of victims and the community first. In essence, the bill introduces a focused test that requires the State Parole Authority to be satisfied that release on parole is "in the interests of community safety". I have already noted that emphasis. This is more specific than the current "public interest" test. The legislation provides for supervision as a standard

parole condition. A statutory parole system for offenders sentenced for to up to three years imprisonment will replace court-based parole.

The bill provides for an escalating sanctions framework for parole breaches to be used by Community Corrections and the State Parole Authority for offenders who commit less serious breaches of parole conditions. This raises a question about the membership of the State Parole Authority. Obviously there are individuals who are currently members of that authority, but new appointments to the authority must be selected on the basis that they agree with the philosophy of this legislation. It is no good having the authority going in one direction and the department going in another direction. It is important that they are both going in the same direction.

The bill introduces a reintegration home detention scheme as an option for transition between custody and parole for eligible and suitable offenders. The State Parole Authority will be able to decide to transition an eligible offender to home detention conditions during the last six months of their non-parole period. Obviously, serious offenders will not be eligible. The Christian Democratic Party supports that transition through home detention. The bill changes the Victims Register to ensure that all registered victims receive information about parole and reintegration home detention conditions to ensure that they have the right to make submissions to the State Parole Authority as part of the decision-making process. The bill will also create a separate legislative framework for juvenile parole with separate age-appropriate provisions to govern the juvenile parole system.

I received clarification from the Minister's office of matters I raised during earlier briefings. The proposed New South Wales sanctions regime is based on the Law Reform Commission's recommendations, and enables community corrections officers to deal with less serious breaches of parole and intensive correction orders without returning the offender to custody and disrupting the work being done to address offending behaviour. This enhanced supervision approach has a very strong evidence base from multiple jurisdictions and programs, such as those in Canada, the United States and others.

The sanctions framework does not align directly with other well-known sanctions regimes, such as Hawaii's Opportunity Probation with Enforcement [HOPE] program, so direct comparisons, which some have made, are not valid. To be effective, sanctions must be used in conjunction with behaviour change interventions. The sanctions alone appear to have no impact. Sanctions used in conjunction with case management strategies will enable offenders to address their behaviour and to take responsibility for their actions while continuing with community supervision. I thank the Minister's office for that further information. The Christian Democratic Party supports the bill.

Mr DAVID SHOEBRIDGE (16:50): On behalf of The Greens I speak on the Parole Legislation Amendment Bill 2017. The Greens have some significant concerns about elements of the bill, but broadly support the direction of the legislation before the House. In June 2015 the New South Wales Law Reform Commission recommended that parole be simplified so that when a court imposes a sentence of imprisonment with a non-parole period, first, if an offender's head sentence is three years or less, the offender is released at the end of any non-parole period unless the State Parole Authority expressly revokes the parole before release and, secondly, if an offender's head sentence is more than three years, the State Parole Authority must determine whether—and, if so, when—to release the offender to parole.

The Law Reform Commission also recommended that for sentences of more than three years the State Parole Authority should make a parole order if it is satisfied that the order is in the interests of community safety after taking into account a series of factors that include the risk to community safety of releasing the offender on parole, whether parole supervision is likely to aid in reducing the possibility of reoffending, the risk to community safety if the offender is released with little or no period of parole supervision, and the extent to which parole conditions can mitigate any risk to the community during the parole period. A further recommendation of the Law Reform Commission is that there be no distinction in the tests for parole between serious offences and other offences. Finally, for current purposes the Law Reform Commission recommended that there be a separate parole Act for juveniles that expressly recognises the benefit of parole in rehabilitating and reintegrating juvenile offenders back into the community. The bill now before the House delivers some of those recommendations, ignores others, and partially implements the remainder.

I turn now to schedule 1, which deals with the amendment of the Crimes (Administration of Sentences) Act 1999. The schedule amends the Act in relation to decisions on parole for adult detainees. It introduces statutory parole for offenders when the sentence is three years or less. This is a positive development. It will reduce complicity and give more certainty for detainees on shorter sentences. For sentences of greater than three years, parole will be subject to a favourable order from the State Parole Authority. However, the bill does not implement the further recommendation of the Law Reform Commission and it retains different parole decision-making processes for serious offences. Is that unnecessary complexity?

The Law Reform Commission said that an examination of the decisions in relation to parole suggests there can be no basis upon which to form the view that the State Parole Authority was making inappropriate decisions in relation to serious offences. Time after time the Law Reform Commission's report stated that one of the key goals should be to reduce complexity, to have a standardised test, and to rely upon the common sense and capacity of the State Parole Authority to make the appropriate decision. The Law Reform Commission came to that view because, on its review, the authority had been making decisions that accorded with community expectations. Nevertheless, that recommendation has not been adopted by the Government. The Government has retained the complexity and, The Greens say, the different and inappropriate set of procedures for serious offences.

Schedule 1 to the bill also introduces reintegration home detention as a bridge between custody and parole, but, contrary to the recommendations of the Law Reform Commission, provides a number of offence-based eligibility exemptions that include domestic violence offences, child sexual offences, serious violence offences and terrorism offences. The Greens do support back-end home detention in principle. As a report from the New South Wales Law Reform Commission on parole outlines, it has many benefits. I will cite a passage from the commission's report, which states:

On balance, we have reached the view that back end home detention offers a cost effective option for gradual transition into the offender's post-release community. A period of back end home detention provides offenders with opportunities to link with employment, training and community based services, and to re-establish family and social support networks, while under more intense supervision than they would experience on parole. The possibility of back end home detention may also provide an incentive for good behaviour and program participation in custody.

In other words, back-end home detention has multiple benefits, such as benefits for the management of our prisons, benefits for the rehabilitation of individuals, benefits for their families and, in the long run, substantial benefits for taxpayers and the broader community by reducing reoffending and reducing reimprisonment. The Greens concerns in relation to that relate to the eligibility exclusions that sit contrary to recommendations from the Law Reform Commission. Serious offenders are recognised by the Law Reform Commission as those who would most benefit from integrated home detention. I again cite an extract from the Law Reform Commission's report, which states:

Transitional programs are perhaps most important for offenders who have committed serious offences and have been institutionalised by a long period in custody.

It just makes sense. Back-end home detention reintegrates an offender into the community, helps them to re-establish family links, work links and social links and helps them to get used to being out of the penal institution. That is most valuable when the person has had a long stretch in jail because those links otherwise will be more frayed and connections will be harder to re-establish. But, unfortunately, this Government has decided to put a whole series of offence-based exclusions in the legislation, which means that the cohort of people who would be most likely to benefit are excluded from back-end home detention.

The Greens will move an amendment at the Committee stage to remove the exclusions for the reasons I have stated. Proposed section 124E also gives the State Parole Authority the power to refuse or to revoke a reintegration home detention order without providing a reason for doing so, even when the applicant has had a favourable assessment report recommending that parole be granted. As the Legislation Review Committee, that august committee, stated in its three-minute deliberation on this matter—

The Hon. Dr Peter Phelps: That is unfair.

Mr DAVID SHOEBRIDGE: The Legislation Review Committee's deliberation on this matter took less than three minutes. The committee stated:

Subsection 124E provides the State Parole Authority may refuse to make a re-integration home detention order, for a reason it thinks fit, despite a favourable assessment report. The Committee is concerned the subsection does not define the circumstances in which an application may be refused, thereby creating uncertainty which may infringe on an applicant's potential appeal. However, given that section 135 specifies a general duty for the Parole Authority in relation to the release of offenders with a focus on the public safety, the policy implications of the Bill and the safeguards provided within the Crimes (Administration of Sentences) Act 1999, the Committee makes no further comment.

Giving reasons that explain to people why an act has or has not been done ordinarily is a standard obligation of administrative decision-makers and is usually a part of the natural justice concerns of individuals. The Greens cannot understand why neither the Government nor, I understand, the Opposition supports the idea that if an offender has had a report provided to the State Parole Authority that recommends release on parole there should not be an obligation on the authority, if it determines otherwise, to give reasons. Of course, in those circumstances people should be given reasons. Reasons not only are a reasonable expectation on the part of the person who is the subject of the application but in those circumstances almost certainly will produce more effective, more rational and more considered decision-making by the State Parole Authority. The Greens will move an amendment at the Committee stage to address that.

The bill also expands the Request by State to revoke parole orders to include, for the first time, the Minister for Corrections. This gives the Minister additional powers that were previously reserved only for the Attorney General and the Director of Public Prosecutions. The Greens believe it is not sensible to have multiple persons, particularly politicians, having the power to make requests to revoke parole orders. We do not support that element of the bill. Turning to schedule 2—Amendment of Children (Detention Centres) Act 1987—the bill implements the clear recommendation from the Law Reform Commission that there be a standalone scheme for parole of juvenile offenders. This is an unambiguous step forward. However, in the name of alleged community safety the bill also requires parole to be revoked for juvenile offenders if there are what are described as "terrorism concerns". The application of "terrorism concerns" is extraordinarily broad and will see young people inappropriately kept in jail, regardless of whether they have a significant history in connection with terrorism or to terrorist organisations.

This division is said to apply to a juvenile offender who is the subject of a detention order for a terrorism offence—and we can see a connection there. It also applies to a juvenile offender who is the subject of a control order made under the relevant part of the Commonwealth Criminal Code, or who is said to have associations with a terrorist organisation, or who has made statements or carried out activities advocating support for terrorist acts or violent extremism. But it is the last provision that most troubles The Greens. This will prevent children in detention from getting parole when the State alleges they have any associations or affiliation with any persons or groups advocating support for terrorist acts or violent extremism. That would mean if their uncle, or their younger brother, or a person with whom they play cricket, or a classmate from their school, or a neighbour—any of those—is said to be advocating support for terrorist acts or violent extremism, they cannot get parole.

That is an offensive element in this parole legislation, which should primarily address the interests of affected children. Parole legislation should ensure that children are not inappropriately kept in detention. Of course, there needs to be deterrence because of community safety, but we are talking about parole for children. Children should not be prohibited from getting parole because their neighbour, or their cousin, or their uncle, or a member of their cricket team has advocated support for terrorist acts or violent extremism. The Greens believe that if that is the test then it is totally inappropriate. We will move an amendment to remove that division from the Act. This is an expansion of the Terrorism Legislation Amendment (Police Powers and Parole) Bill 2017, which amended adult parole laws so that terrorism-related offenders are not to be released on parole unless the parole authority is satisfied of a negative. This same mistake is being repeated for children in this legislation.

We opposed this provision for adults and for the same reasons we more strongly oppose the proposed regime to prevent children from getting parole. We will move amendments in Committee that seek to remove those provisions from the bill. I have put a series of criticisms of elements of this package on the record, but I acknowledge that it is a significant reform package. We see statutory parole as a substantial step forward. While there are limitations in it—and to be honest I was not expecting a rolled-gold implementation of the Law Reform Commission's recommendations—it substantially implements the Law Reform Commission's recommendations. This bill is a step in the right direction, and I hope it will lead to significant reforms to parole. The Greens do not oppose the bill.

The DEPUTY PRESIDENT (The Hon. Trevor Khan): Before I call on the Parliamentary Secretary, I refer all members to the ruling of former President Primrose given on 24 June 2009. I make it clear that I am not having a shot at anyone. Former President Primrose said:

Traditionally, wide-ranging debate is encouraged in this place thus enabling members to speak as broadly as possible. However, members speaking in reply should endeavour to speak only to matters that have been raised in the debate by other members. President Johnson ruled that when speaking in reply a member is entitled to reply to assertions that have been made by other members during debate. He ruled also that when speaking in reply, members should relate their remarks as far as possible to the debate that has already taken place. Members should not introduce new material when speaking in reply but may reply to assertions made by members in their contributions, whether implied or specific.

I realise this advice is directed towards Ministers and Parliamentary Secretaries, but all members should note that a speech in reply is not a second reading speech. The rules of this House provide that the Minister introducing a bill has 40 minutes to make his contribution, and has 20 minutes in reply, which is not on top of the 40 minutes. If there is no material in the reply, the speech should be very short. In the past when in Committee I have held a number of members to addressing the amendments specifically. That requirement to apply intellectual rigour in Committee should be applied also by Ministers to the rules of debate applying to speeches in reply. I invite members and staff to take what I have said to ministerial staff, so that in the future speeches in reply are not simply a rehash of the second reading speech. If a speech in reply is a rehash of a second reading speech, the Minister will be sat down.

The Hon. DAVID CLARKE (17:06): On behalf of the Hon. Don Harwin: In reply: I thank the Hon. Lynda Voltz, Reverend the Hon. Fred Nile and Mr David Shoebridge for their contributions to this debate. Before concluding, I wish to address some matters that were raised by the Hon. Lynda Voltz on behalf of the

Opposition. As the Minister highlighted yesterday in the other place, the Royal Prerogative of Mercy is a power exercised by His Excellency the Governor of New South Wales. This power is not vested in the governor of a correctional centre. The Opposition also referred to the Therapeutic Programs Audit conducted by the Auditor-General and the apparent lack of access to therapeutic programs. This is not accurate.

The statistics relied on and sourced from the Auditor-General's report on therapeutic programs does not give significant consideration to the range of other supports provided to inmates, including education, employment, reintegration, psychology services, family and community engagement, finance and debt management, and addiction services. It fails to acknowledge that the EQUIPS suite of programs was introduced only in 2015 and there has been insufficient time for it to be evaluated. In 2015-16, 1,194 inmates were released from custody on parole by the State Parole Authority, and of these nearly 70 per cent had an identified need, of whom 74 per cent had participated in a relevant program, and 68 per cent completed a relevant program.

The member also raised concerns about the necessary investment in Community Corrections to be able to appropriately manage parolees. This Government has already delivered an investment of \$237 million towards reducing reoffending. Corrective Services is hiring an additional 345 psychologists, Community Corrections officers and other skilled staff to support the reform. Ten high-intensity program units will deliver rehabilitation programs to about 1,200 prisoners serving short sentences of six months or less. These prisoners do not currently participate in programs to address their behaviour. There is also funding to improve exit planning and reintegration support such as housing and employment for offenders leaving prison on parole. A new custodial case management model will introduce specialist case managers who deal one-on-one with offenders to ensure the right programs and services are provided. The member stated that all Corrective Service NSW [CSNSW] programs require offenders to admit their guilt in order to participate. CSNSW is rolling out programs that do not require an admission of guilt—for example, the Sex Offenders Deniers Program is run for sex offenders who categorically deny their guilt.

I note the concern raised by Reverend the Hon. Fred Nile about members of the NSW State Parole Authority supporting the objectives of the bill. I confirm that the authority has been consulted on the bill and fully supports it. Mr Shoebridge stated that there will be separate tests for release on parole for serious offenders and non-serious offenders. This is incorrect. The community safety in the new section 135 of the Crimes (Administration of Sentences) Act 1999 will apply to all offenders considered for release on parole by the authority.

These amendments will introduce a test that requires the State Parole Authority to be satisfied that release on parole is "in the interests of community safety". This is more specific than the current public interest test. They will also establish a reintegration home detention scheme as an option for transition between custody and parole for eligible and suitable offenders; make supervision a standard parole condition; empower Community Corrections and the State Parole Authority to impose graduated sanctions proportionate to the breach on offenders who have breached their parole orders; and introduce a separate legislative framework for juvenile parole, with separate age-appropriate provisions to govern the juvenile parole system. I commend the bill to the House.

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

Motion agreed to.

In Committee

The CHAIR (The Hon. Trevor Khan): There being no objection, the Committee will deal with the bill as a whole. There is one set of Greens amendments on sheet C2017-091.

Mr DAVID SHOEBRIDGE (17:12): I move The Greens amendment No. 1 on sheet C2017-091:

No. 1 **Eligibility for re-integration home detention orders**

Page 3, Schedule 1 [3], proposed section 124B, lines 23-41. Omit all words on those lines.

I addressed the concerns behind this amendment in my speech in the second reading debate, so I will not dwell on them now. This amendment would remove the eligibility exclusions proposed in the bill for reintegration of home detention orders. New section 124B provides a list of offenders for whom reintegration of home detention cannot be made. This includes a person who is serving a sentence for:

- (a) a domestic violence offence within the meaning of the Crimes (Domestic and Personal Violence) Act 2007,
- (b) a child sexual offence within the meaning of section 21A of the Crimes (Sentencing Procedure) Act 1999,
- (c) a serious sex offence or a serious violence offence within the meaning of the Crimes (High Risk Offenders) Act 2006,
- (d) a terrorism offence within the meaning of Division 3A of Part 6.

As the Law Reform Commission of New South Wales [LRC] made clear in its report, there should not be exclusions for these transitional programs. Indeed, as the LRC said, transitional programs are perhaps most important for offenders who have committed serious offences and have been institutionalised by a long period in custody. I think everybody would agree that the offences in section 124B are appalling, terrible offences. But if the real purpose of this legislation is community safety and protecting people from future reoffending, we should recognise the good sense of the Law Reform Commission. The LRC has said that if we really want this to work, we should look at those offenders who have been institutionalised long-term, as this is most beneficial to them and will likely stop them reoffending. The Greens believe that stopping someone from reoffending and committing a further child sexual offence or serious sex offence is a good policy outcome. This is not motivated by a desire to provide a soft regime for people who have committed these kinds of offences; it is motivated by a desire to listen to the experts, to review what the Law Reform Commission says and to prevent reoffending of this nature. That is why The Greens are moving this amendment.

The Hon. DAVID CLARKE (17:14): The Government opposes the amendment moved by The Greens. The reintegration home detention scheme has been designed in line with the principle that community safety must be the paramount goal of the parole system. Offence inclusions ensure that the most serious offenders serve their full non-parole period in custody. Long-term offenders already benefit from staged reintegration into the community through day leave and weekend leave schemes. The United Kingdom and South Australian back-end home detention schemes both have offence exclusions in recognition of the need to focus on community safety. The Government is not willing to compromise community safety by extending the reintegration home detention scheme to accommodate murderers, sex offenders and domestic violence offenders.

The CHAIR (The Hon. Trevor Khan): The question is that The Greens amendment No. 1 on sheet C2017-091 be agreed to.

Amendment negatived.

Mr DAVID SHOEBRIDGE (17:15): I move The Greens amendment No. 2 on sheet C 2017-091:

No. 2 **Notice of refusal of re-integration home detention order**

Page 5, Schedule 1 [3], proposed section 124E. Insert after line 4:

- (2) The Parole Authority must notify the offender of a refusal to make a re-integration home detention order in the manner prescribed by the regulations. The notice is to set out the reasons for the decision recorded under section 193C.

I addressed this issue in my speech in the second reading debate. This amendment would insert a new requirement in new section 124E where the Parole Authority, having refused to make a reintegration home detention order despite the contents of an assessment report, would be required to notify the offender of a refusal to make the home detention order in a manner prescribed by the regulations and to set out the reasons for the decision. In other words, when a report has gone to the State Parole Authority recommending the reintegration home detention order but the authority decides not to grant it, it should put its reasons in writing and explain its decision.

Not only is that a fundamentally reasonable expectation of somebody who has had the benefit of a positive report but it will almost certainly make for more rigorous and considered decision-making by the State Parole Authority if it has to explain itself. Requiring authorities or decision-makers to explain themselves improves decision-making. It makes decision-making more transparent, more thorough and more rigorous. We do not see why that is an unreasonable expectation. The Government has the capacity to issue a regulation that sets out the nature and the extent of the reasons required. We are not talking about *War and Peace*; we are talking about natural justice and good decision-making, and that is why we have moved this amendment.

The Hon. DAVID CLARKE (17:17): The Government opposes this amendment. The proposed change to section 124E is unnecessary. Section 124J (f) provides a regulation-making power for the giving of notice of decisions about reintegration home detention to an offender. The State Parole Authority is required under section 193C to record reasons for its decision about the granting or refusal of parole and the revocation of an intensive correction order, home detention order or parole order. This bill extends that requirement to include decisions about reintegration home detention. Under sections 139 and 146 of the Crimes (Administration of Sentences) Act 1999, the State Parole Authority is currently required to provide notice about decisions for parole to offenders. In practice, the State Parole Authority provides reasons for decisions along with notice. The authority will continue this practice in relation to reintegration home detention decisions.

The CHAIR (The Hon. Trevor Khan): The question is that The Greens amendment No. 2 on sheet C2017-091 be agreed to.

Amendment negatived.

Mr DAVID SHOEBRIDGE (17:19): I move The Greens amendment No. 3 on sheet C2017-091:

No. 3 Matters for consideration in granting parole

Page 9, Schedule 1 [12], proposed section 135, line 20. Insert "relating to the promotion of community safety, while recognising that the rehabilitation and re-integration of the offender into the community may be highly relevant to the promotion of community safety" after "principal matters".

This amendment would make the principal consideration for the parole decision consistent between adult and juvenile offenders. The Greens believe consistency is a worthwhile objective when we are dealing with complex legislation such as this. If we are to get the test right for juveniles we do not see why that same sensible test should not also be applied to adults. This amendment will change section 135 (2) which currently states:

- (2) In considering whether it is in the interests of the safety of the community to release an offender, the Parole Authority must have regard to the following principal matters:
- (a) the risk to the safety of members of the community of releasing the offender on parole,
 - (b) whether the release of the offender on parole is likely to address the risk of the offender re-offending,
 - (c) the risk to community safety of releasing the offender at the end of the sentence without a period of supervised parole or at a later date with a shorter period of supervised parole.

This amendment would expand the introductory lines of subsection (2) as follows, "In considering whether it is in the interests of the safety of the community to release an offender, the Parole Authority must have regard to the following principal matters relating to the promotion of community safety while recognising"—and this is the important addition—"that the rehabilitation and reintegration of the offender into the community may be highly relevant to the promotion of community safety."

That is the additional point. It is saying to the Parole Authority that rehabilitating and reintegrating the offender is not just about protecting the offender; it also furthers the goal of community safety. Of course that should be the principal matter to which the Parole Authority has regard when it is making decisions on parole. The Government, sensibly, has adopted the Law Reform Commission's recommendations and included that provision in juvenile parole. For the reasons it is compelling in juvenile parole it is compelling also in adult parole. Rehabilitation and reintegration make us safer. Let us make sure the Parole Authority understands that and is directed to take that into account when it is making parole orders.

The Hon. DAVID CLARKE (17:21): The Government opposes this amendment. The juvenile parole legislative framework has been designed to be flexible and fit for purpose for juveniles. The new provisions align with the community's interest in ensuring that children in the criminal justice system are managed with age-appropriate frameworks. In the context of young people, rehabilitation is a particular focus of policy and law and therefore has been included alongside the concept of community safety. The Law Reform Commission recommended that the Children's Court be required to recognise that the rehabilitation and reintegration of a juvenile offender into the community may be highly relevant to the promotion of community safety.

The Government does not support the suggestion to change the adult community safety test. The community safety test is based largely on the Law Reform Commission's recommendation and has been refined through consultation. The Law Reform Commission did not recommend including rehabilitation and reintegration into the community for adult offenders. The proposed wording of the community safety test requires the Parole Authority to assess and balance risks to community safety. In doing this the Parole Authority must have regard to the safety of members of the community of releasing the offender on parole; whether the release of the offender on parole is likely to address the risk of the offender reoffending; and the risk to community safety of releasing the offender at the end of the sentence without a period of supervised parole or at a later date with a shorter period of supervised parole. The community safety test recognises that release on parole is justified and contributes to community safety where the benefits of releasing an offender outweigh the possible risk created by release. The test puts community safety at the heart of the State Parole Authority's principled parole decision-making.

Mr DAVID SHOEBRIDGE (17:23): I do not blame the Hon. Lynda Voltz for not contributing to debate on The Greens amendment. The failure of the shadow Minister for Police and Emergency Services in the other place to engage in public debate about fundamental changes to the law was highlighted by the failure of Labor members in this Chamber to contribute to debate on these amendments.

The Hon. LYNDIA VOLTZ (17:24): The Labor Party has already indicated that it supports the Parole Legislation Amendment Bill 2017. Mr David Shoebridge has already referred to the importance of dealing with children in the juvenile justice system which is why the Government included that provision. It is a bit rich for Mr David Shoebridge to try to attack members of the Labor Party when he is attempting to amend the Government's bill. Labor members made their position clear in debate on the second reading. If Mr David Shoebridge had been in the Chamber when I contributed to debate on the second reading he would have known that.

The CHAIR (The Hon. Trevor Khan): The contribution made by Mr Shoebridge did not address the amendments before the Committee. Mr David Shoebridge has moved The Greens amendment No. 3 on sheet C2017-091. The question is that the amendment be agreed to.

Amendment negatived.

Mr DAVID SHOEBRIDGE (17:25): By leave: I move The Greens amendments Nos 4 to 7 in globo:

No. 4 **Parole for juvenile terrorism offenders**

Page 25, Schedule 2 [3], proposed section 46, lines 16-18. Omit all words on those lines.

No. 5 **Parole for juvenile terrorism offenders**

Pages 29 and 30, Schedule 2 [3], proposed Division 5 of Part 4C, line 17 on page 29 to line 39 on page 30. Omit all words on those lines.

No. 6 **Parole for juvenile terrorism offenders**

Page 31, Schedule 2 [3], proposed section 63, lines 21-23. Omit all words on those lines.

No. 7 **Parole for juvenile terrorism offenders**

Page 41, Schedule 2 [5], proposed Part to Schedule 1, lines 23-26. Omit all words on those lines.

I dealt with the need for these amendments in my contribution to debate on the second reading so I will not deal with it at length in Committee. The Greens are concerned that because of the way in which this bill is drafted it will prohibit juvenile offenders from having access to parole if those juvenile offenders have any associations or affiliation with any persons or groups advocating support for terrorist acts or violent extremism. That test, which is broad and unfair, can be applied to young people in juvenile detention if a family member has terrorism-related affiliations or has advocated support for a terrorist act or violent extremism. That test can be applied if it involves a neighbour, a classmate or a member of a sporting club. It is inappropriate to cast the net so broad and to statutorily prohibit access to parole for juvenile offenders in those circumstances.

If there is evidence that the juvenile offender is advocating terrorism or has committed a terrorism act that is relevant and it should be put to the Parole Authority, I imagine that the Parole Authority would not grant parole. The Law Reform Commission makes it clear that the Parole Authority should make careful, considered and reasoned decisions that accord with community expectations. This kind of blanket prohibition is likely to result in young people being kept in jail in inappropriate circumstances. If the concern is about extremism and about young people who are aggrieved and offended and who are likely to become a problem in society, these kinds of provisions that will keep them in jail inappropriately are almost certain to produce that outcome. These provisions will not make communities safer; they will produce an outcome where people are reasonably embittered because the law works unfairly against them. The Greens have moved the amendments for that reason.

The Hon. DAVID CLARKE (17:27): The Government opposes The Greens amendments Nos 4, 5, 6 and 7. It is unfortunate that this division is required but we know that young people are engaged in violent extremism. This is clear. Currently juveniles are in detention on terrorism charges. The advice from our police and intelligence agencies is that people as young as 12 years old are engaging in violent extremism. Juvenile Justice received funding from the Australia-New Zealand Counter-Terrorism Committee and its Countering Violent Extremism subcommittee to implement a violent extremism risk assessment [VERA] tool for juveniles.

The VERA-2R is a structured risk assessment tool that will enable Juvenile Justice staff to assess an individual's risks and needs in relation to violent extremism and develop interventions or management strategies to address those risks and needs. Six Juvenile Justice staff have received training in the use of the VERA-2R assessment. The VERA-2R assessment will be used to inform case planning interventions as well as placement and operational management strategies for detainees. Juvenile Justice will continue to increase the number of staff trained in VERA-2R, utilising staff who have already undergone training to train others. This Government is not willing to risk community safety by releasing detainees who have not participated in rehabilitation programs or disengaged from violent extremism and who will continue to pose a risk if released. The entire criminal justice reform package is based on protecting community safety, and these amendments go against what this bill seeks to achieve:

The CHAIR (The Hon. Trevor Khan): Mr Shoebridge has moved The Greens amendments Nos 4 to 7. The question is that the amendments be agreed to.

The Committee divided.

Ayes	5
Noes	30
Majority.....	25

AYES

Buckingham, Mr J
(teller)
Shoebridge, Mr D
(teller)

Faruqi, Dr M
Walker, Ms D

Field, Mr J

NOES

Ajaka, Mr J
Colless, Mr R
Fang, Mr W
Green, Mr P
Maclaren-Jones, Ms N
(teller)
Mitchell, Ms S
Nile, Reverend F
Phelps, Dr P
Secord, Mr W
Veitch, Mr M

Amato, Mr L
Cusack, Ms C
Farlow, Mr S
Harwin, Mr D
Martin, Mr T

Mookhey, Mr D
Pearce, Mr G
Primrose, Mr P
Sharpe, Ms P
Voltz, Ms L

Clarke, Mr D
Donnelly, Mr G
Franklin, Mr B (teller)
MacDonald, Mr S
Mason-Cox, Mr M

Moselmane, Mr S
Pearson, Mr M
Searle, Mr A
Taylor, Ms B
Wong, Mr E

Amendments negatived.

The CHAIR (The Hon. Trevor Khan): 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. Niall Blair: I move:

That the report be adopted.

Motion agreed to.**Third Reading**

The Hon. DAVID CLARKE: On behalf of the Hon. Niall Blair: I move:

That this bill be now read a third time.

Motion agreed to.**EDUCATION AMENDMENT (SCHOOL SAFETY) BILL 2017****First Reading**

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

Second Reading

The Hon. SARAH MITCHELL (Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education) (17:40): I move:

That this bill be now read a second time.

Among the most important roles of government in a civilised society and among the most important obligations that this Parliament imposes on the parents of New South Wales is the duty to see that all our children receive an education. We impose that duty by requiring all school aged children to attend school, be homeschooled or receive distance education. It is well known that in requiring children to attend school, school authorities have a duty of reasonable care for all their students. Particularly for young children or students with disability, the duty is a high one.

Arising from a number of recent episodes, the Department of Education has received advice that it needs additional powers to ensure that government schools have the power to deal with students who pose a risk of serious violent conduct where the grounds for reasonable concern about such a risk arise in circumstances that do not relate to the school. I will give two quick examples of the kinds of rare but serious cases that would require the use of this power. A student has a serious psychiatric disorder in which the student is obsessed with the rape and murder of younger students at school and has a pattern of serious socially unacceptable behaviour which has not yet included violence at school but which has included acts of serious violence against persons or animals away from school. A student goes to the international airport with detailed and real instructions on how to join the Islamic State in Syria. The student has a one-way air ticket to the Middle East and is in possession of a communication device that has accessed information about the Islamic State. The student is stopped at the airport and the next day seeks to return to school.

These examples, although thankfully rare, are not far-fetched or fanciful. They are based on real situations which a school system that caters for nearly 800,000 students is occasionally called upon to confront. This bill will enable the Minister for Education to direct a student to not attend school for a specified period if the Minister believes on reasonable grounds that there is a significant risk that the student will engage in serious violent conduct or the student supports terrorism or violent extremism, and issuing a non-attendance direction is necessary to protect the health and safety of school students and staff.

This bill will also require the Minister to assess whether the attendance of the student at school constitutes a health and safety risk and, if appropriate, develop risk management strategies to enable the student to attend school. Lastly, the bill extends school disciplinary powers to student conduct that significantly affects or is likely to significantly affect the health or safety of students or staff regardless of whether that conduct occurs on or outside school premises or within or outside school hours. The bill's amendments are designed to ensure that risks to the health or safety of anyone attending a school in New South Wales—including students and staff—can be appropriately managed.

New South Wales schools are among the safest places in the community. Schools work in partnership with parents, carers and other agencies, organisations and individuals to provide an environment that encourages students to succeed and thrive. All students and staff in schools have the right to be treated fairly and with dignity in an environment free from disruption, intimidation, harassment and discrimination. There will be cases of unacceptable behaviour where it will be in the best interests of the school community and the student involved for the student to be removed from the school for a period or completely.

In accordance with the powers already provided in section 35 of the Education Act 1990, suspension and expulsion are the options available to a principal in these situations. Part 5A of the Education Act also provides some power to assess the risk to health and safety in a school, but only in relation to enrolment decisions. However, this bill seeks to deal with the risk posed by the potential for a student to engage in serious violent conduct before that risk eventuates. The bill will provide the education Minister with the power to issue a non-attendance direction which would require a student to be temporarily kept away from school until strategies are identified to manage the foreseeable risks posed by the student's potential for serious violent conduct.

The non-attendance direction is not designed or intended to be a disciplinary power. It will not be used to punish students or to achieve a correction in their behaviour. The non-attendance direction will be used as a risk assessment and management tool to enable schools to continue to provide a healthy and safe environment for all students and staff, whilst working with teachers, other government agencies, parents and community organisations to develop a plan for the education of a student who poses a risk of serious violent conduct. An express, unambiguous and transparent power to proactively protect a school community from the risk posed is required. The power sought is similar to the power under the Public Health Act to prevent unvaccinated students from attending school during the outbreak of a serious vaccine-preventable disease. Its purpose is to prevent further harm until effective counter-measures can be implemented.

A parent may volunteer or agree to keep a student away from school for a defined period while a risk assessment is undertaken. In that circumstance, a delegate of the Minister can exempt the student from attending school in accordance with the power already in section 25 of the Education Act. This would make it unnecessary to issue a non-attendance direction. The bill also facilitates the gathering of information about students by the Minister in relation to non-attendance directions by extending existing provisions that relate to enrolment directions. This amendment will ensure that relevant information from various bodies such as the Department of Family and Community Services and the NSW Police Force can be considered as part of the risk assessment process.

Importantly, the bill also provides protections for the non-disclosure of information obtained in certain circumstances, including where disclosure of information could endanger a person's life. The bill also creates a power for the education Minister to issue guidelines governing the use of the non-attendance direction. The

Department of Education will consult with a range of government agencies on the development of those guidelines, including the Department of Family and Community Services and the Advocate for Children and Young People, NSW Health and the Child and Adolescent Mental Health Service, the NSW Police Force and the departments of Justice and Premier and Cabinet before those guidelines will commence. Consultation on the guidelines will also occur with non-government schools and with educational stakeholders such as principals councils, the Federation of Parents and Citizens Associations, the Teachers Federation and disability advocacy groups.

The bill provides the student with a right of internal review of a decision to issue a non-attendance direction of greater than five school days duration. A student who is given a non-attendance direction will also have a right of external merits review by the NSW Civil and Administrative Tribunal [NCAT] if he or she was directed against attending school for more than 20 school days in a year. If necessary, the application to NCAT can be made on the student's behalf by a parent or carer. The bill will also amend section 35 of the Education Act to enable disciplinary sanctions to be imposed on students for significant non-school related conduct that has a significant impact on the school community. New South Wales government schools need a clear and unambiguous power in the Education Act to deal with misconduct when it affects their school, whether or not the behaviour occurs inside the school gate.

Members would recall reports in the media last year involving a website where people were encouraged to post explicit photographs of female school students for the purposes of the images being shared and rated by those visiting the site. Some of the people posting the photos were students at the same schools as the victims of this abuse. This incident caused a great deal of distress and harm to female school students at a number of schools. This amendment will ensure that in that example, a government school would be able to use its disciplinary powers to discipline the student and stop the misconduct even though the conduct may have occurred outside school hours and away from the school site. These important amendments are necessary to protect students and staff from the risk of serious violent behaviour affecting the health and safety of a school. I commend the bill to the House.

Debate adjourned.

ELECTRICITY SUPPLY AMENDMENT (EMERGENCY MANAGEMENT) BILL 2017

First Reading

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

Second Reading

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (17:49): I move:

That this bill be now read a second time.

I am pleased to introduce the Electricity Supply Amendment (Emergency Management) Bill 2017. Energy security is a high priority for the New South Wales Government. The New South Wales electricity supply in February 2017 demonstrated that we need simple and speedy options to manage electricity shortages. The people of New South Wales responded immediately and with great effect to my request to voluntarily restrict their electricity usage during the February heatwave. This cooperative approach from the community can often be the simplest way to address problems quickly. Again I thank everyone for their assistance. However, it is also clear that we need a more thorough review of our electricity supply emergency management, and that is what we have done.

I appointed the NSW Chief Scientist and Engineer, Professor Mary O'Kane, to examine the resilience of the New South Wales electricity system and to consider prevention, preparation, response and recovery arrangements to deal with energy security events such as extreme weather. The NSW Energy Security Taskforce made a number of recommendations. A key issue was the concern that the New South Wales energy Minister is unable to act with speed and efficiency under the current New South Wales electricity emergency legislation. This bill implements the recommendation of the NSW Energy Security Taskforce to simplify and update the existing New South Wales-specific electricity emergency powers in time for the 2018 summer period. It is only part of the regulatory picture, with the Australian Energy Market Operator [AEMO] the primary manager of the electricity system and emergencies. However, it is about ensuring that all the necessary New South Wales regulatory tools are available to support AEMO and New South Wales energy security.

The current New South Wales electricity emergency legislation in the Energy and Utilities Administration Act is out of date. It was designed in the 1980s before the start of the National Electricity Market and before the role of the Australian Energy Market Operator existed. At that time New South Wales had a standalone electricity grid and electricity supply emergencies had to be managed within State boundaries. The

Government had direct control in the 1980s over statutory electricity authorities. This is no longer the case. The Australian Energy Market Operator now does most of the heavy lifting in maintaining power system security and managing electricity supply emergencies across the interconnected grid that supplies the south-eastern States of Australia. Since the start of the National Electricity Market in 1998, the Australian Energy Market Operator and the New South Wales energy Minister have managed electricity supply emergencies cooperatively. Fortunately we have not had a major disruption in New South Wales.

The bill aims to provide the New South Wales Government with the streamlined and updated tools needed to take action in the management of an electricity supply emergency. As I have said before, in the majority of situations, the Australian Energy Market Operator can take the necessary action and does not require intervention from the New South Wales Minister. However, if the Australian Energy Market Operator is not able to do what is needed because of limits on its powers, AEMO may require assistance from within New South Wales. Some examples where a New South Wales energy Minister may be asked to assist include: where directions must be given to persons other than registered participants in the National Electricity Market and AEMO requests that New South Wales declare an electricity supply emergency and exercise its local emergency powers; or where a power supply disruption is likely to have an extended duration requiring mandatory restrictions for the broader community, including exemptions for vulnerable consumers. The powers needed by the New South Wales Minister for energy are not likely to be used frequently, but when they are needed, they must operate quickly and effectively.

The key feature of the bill is to have a simpler and faster process to respond effectively to electricity emergencies in New South Wales rather than expanding and extending the powers of the New South Wales Minister for energy. Under the bill, the Premier rather than the Governor must declare an electricity supply emergency in New South Wales by an order in writing. The Premier can specify a time for the order to remain in force. The Premier may do so if satisfied there is a disruption or a real risk of disruption to electricity supply to a significant degree to all or any part of the State.

In practice, the Premier would be advised by the New South Wales Minister for energy who is in continuous communication with the Australian Energy Market Operator if a significant electricity supply disruption is anticipated or identified. The bill provides the Premier with flexibility as to how to publicise the electricity supply emergency order to the community. This will depend on the circumstances, but the Government can choose the best media options available. The order must be published in the *Government Gazette* or on the NSW Legislation website to give it the necessary formality.

The bill replaces the current process of the Governor making emergency regulations with ministerial electricity supply emergency directions. This allows more effective responses during an electricity supply emergency. These direction powers are no broader than those available to make emergency regulations. As Minister, I would be able to give directions that are "reasonably necessary to respond to the electricity supply emergency". Electricity supply emergency directions can only be given while an order of the Premier is in force. The bill requires full transparency on any direction. A direction that applies to the general public or a section of the community is required to be published in the New South Wales *Government Gazette*. A direction that applies to a particular person can be given verbally if circumstances require this and must be confirmed in writing as soon as practicable, and a copy of the notice must be published in the New South Wales *Government Gazette*. The Minister would also have flexibility as to which media options he or she uses in communicating directions to the public.

The bill enables me as Minister to require production of information. Information may be required during or immediately prior to a supply disruption or to plan and prepare for possible future electricity emergencies. An information notice is not restricted to the electricity sector alone. The bill provides some examples of the types of information that may be required, including the location and availability of coal, gas and liquid fuel stocks and water storage reserves. Importantly, an information notice does not depend on a Premier's declaration being in place. This is to assist the energy Minister to obtain information for electricity emergency planning purposes.

The bill recognises that the types of information sought may need to be treated confidentially. The bill seeks to balance concerns about confidentiality with the need to have access to key information relevant to emergency management. The Minister can disclose information, including to persons engaged in the administration of the part 7A electricity supply emergency regime and to AEMO. If the person providing the information indicates that it is confidential, and the Minister agrees, he or she can direct those to whom it is given not to disclose the information. This attracts a penalty for non-compliance. The bill also provides safeguards for persons providing information, where information provided may contain incriminating material. Again, the bill strikes a balance between the need to have the information provided and a person's right to object if they consider information may incriminate or make the person liable to a penalty.

Other emergency regimes in New South Wales provide strong powers for on-ground enforcement in emergencies. This bill recognises that the main focus in an electricity supply emergency is to ensure that electricity supply emergency directions are implemented. The bill contains minimal but clear enforcement provisions that are proportionate for an electricity supply emergency. The bill does not seek to duplicate existing enforcement regimes or create additional heavy-handed enforcement powers. The bill enables me as Minister to appoint authorised officers to provide on-ground support in an electricity supply emergency. Authorised officers are subject to ministerial direction and control, and they must have approved identification. The on-ground powers given to authorised officers to enter premises do not include residential premises.

The bill includes key offences for failure to comply with an electricity supply direction; failure to provide information required by the Minister; and obstruction of an authorised officer. The penalty levels in the bill are set at an equivalent level to existing maximum limits in the Electricity Supply Act 1995. Proceedings can be taken in court for offences committed under the existing powers in the Electricity Supply Act 1995. The bill does not include a spot fine infringement notice regime. This is not effective for large businesses that are most likely to be given specific directions. We do not consider a spot fine regime appropriate for individuals and households in the context of managing electricity demand. The bill contains a number of other provisions that include exclusion of personal liability for the Minister, an authorised officer or a person acting under the direction of the Minister for action carried out in good faith.

The State is not liable to pay compensation for actions taken under the new part 7A electricity supply emergency regime, such as the giving of any direction under part 7A. The Minister's powers to issue directions cannot be delegated. These directions may have broad community-wide operation and the potential to curtail the rights of members of the public. I consider it appropriate that they be exercisable only by the Minister. The Minister's power to delegate to an "eligible person" is to be expanded to expressly enable delegation to public service employees. This allows agency officials in New South Wales to do administrative tasks to support the implementation of the Minister's directions. Lastly, the bill amends part 6 of the Energy and Utilities Administration Act to remove electricity from that emergency framework without disturbing the operation in relation to gas or fuel emergencies. I commend the bill to the House.

Debate adjourned.

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL (NO 2) 2017

First Reading

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

Second Reading

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (18:03): I move:

That this bill be now read a second time.

The Statute Law (Miscellaneous Provisions) Bill (No 2) 2017 continues the statute law revision program, which has been in place for more than 30 years. Bills of this kind have featured in most sessions of Parliament since 1984 and are an effective method for making minor policy changes and maintaining the quality of the New South Wales statute book. Schedule 1 to the bill contains policy changes of a minor and non-controversial nature that are too inconsequential to warrant the introduction of a separate amending bill. It contains amendments to 22 Acts and related amendments to one instrument.

I will give an outline of some of the amendments that are included in this schedule. Schedule 1 makes various amendments to the Ombudsman Act 1974. One of these amendments will facilitate the role of the Ombudsman in dealing with complaints received through the Government's centralised online complaints management system. The amendment will enable the Ombudsman to refer an online complaint made by a member of the public to the public authority responsible for dealing with the complaint. This referral support will assist agencies when they receive misdirected complaints relating to other agencies and it is not clear which agency has responsibility for dealing with the complaint.

Another amendment made to that Act provides that a Deputy Ombudsman or an Assistant Ombudsman may resign by instrument in writing to the Ombudsman. This will remove an inconsistency between provisions of the Act that require the instrument of resignation to be given to either the Governor or the Minister. The amendments also enable the Ombudsman to inform a complainant orally of a decision to refuse to conciliate or investigate a complaint, or to discontinue an investigation. Currently, written notification of the decision is required. The new arrangements will apply if the complaint was made in writing and the complainant consents to being informed orally.

Finally, the amendments to that Act will enable the head of a government or non-government agency to delegate to an employee of the agency the function of notifying the Ombudsman of child abuse allegations or convictions against employees of the agency. Schedule 1 also includes amendments to the Combat Sports Act 2013 to extend the term of registration of a combatant, industry participant or promoter who applies again for registration under that Act in the same class as the existing registration. The extension will apply only until the new application for registration is determined. At present, the term of registration of a combatant, industry participant or promoter expires three years after registration is granted.

In addition, a number of amendments are made to the National Parks and Wildlife Act 1974. These include amendments dissolving the Audit and Compliance Committee established under that Act. The functions of that committee have been substantially superseded by the functions of the Audit and Risk Committee established for the Office of Environment and Heritage in accordance with Treasury's internal audit and risk management policy for the New South Wales public sector. The amendments also enable any public service employee who is authorised by the chief executive of the Office of Environment and Heritage to institute proceedings for an offence under the Act in the Land and Environment Court in its summary jurisdiction. Currently, those proceedings may be instituted only by the chief executive or any other officer of the National Parks and Wildlife Service authorised by the chief executive.

Amendments are made by schedule 1 to a provision of the Residential Tenancies Act 2010 setting out certain matters to be considered by the NSW Civil and Administrative Tribunal in deciding whether to make a termination order for a social housing tenancy agreement. The matters currently required to be considered include whether the tenant has been in breach of an order of the tribunal under the Act. The amendments will ensure that the tribunal is required to consider those matters only when deciding whether to make a termination order on the ground of a breach by the tenant—and not on other grounds such as where the tenant is no longer eligible for social housing. The amendments also make it clear that those matters are not required to be considered by the tribunal if the termination order is made on the application of the landlord and the tribunal is required under the Act to make the order.

The last schedule 1 matter I will mention is the amendment to the University of Technology Sydney Act 1989. The amendment will enable the Vice-Chancellor of the University of Technology Sydney to subdelegate to certain persons and bodies functions delegated to the vice-chancellor by the Council of the University. Subdelegation will only be enabled if the delegation from the council includes a power to subdelegate. Subdelegation will only be enabled if the delegation from the council includes a power to subdelegate. The subdelegation is also subject to any condition to which the delegation is subject.

Schedule 2 makes amendments to various Acts to enable the online publication of government notices. Currently, these notices are required to be published in newspapers or other print media. Schedule 3 makes amendments to the provisions of various Acts providing for the issue of penalty notices consequent on the enactment of the Fines Amendment (Electronic Penalty Notices) Act 2016. That Act amended the Fines Act 1996 to consolidate and standardise provisions relating to penalty notices. In particular, the Act transferred to the Fines Act 1996 the substance of provisions found in specific sections of other Acts providing for the issue of penalty notices. The amendments made by schedule 3 will remove provisions that are now duplicated in the Fines Act 1996.

Schedule 4 deals with matters of pure statute law revision consisting of minor technical changes to legislation that the Parliamentary Counsel considers are appropriate for inclusion in the bill. Examples of amendments in schedule 4 are corrections of cross-references, typographical errors and terminology, and amendments arising out of the enactment of other legislation. Schedule 5 continues the program of repealing Acts and instruments that are redundant or of no practical utility. Schedule 6 contains general savings, transitional and other provisions. These include provisions dealing with the effect of amendments on amending provisions, and savings clauses for the substituted provisions.

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

Debate adjourned.

ENVIRONMENTAL PLANNING AND ASSESSMENT AMENDMENT BILL 2017**First Reading**

Bill introduced, and read a first time and ordered to be printed on motion by Mr Scot MacDonald, on behalf of the Hon. Don Harwin.

Second Reading

Mr SCOT MacDONALD (18:13): On behalf of the Hon. Don Harwin: I move:

That this bill be now read a second time.

I am pleased to introduce the Environmental Planning and Assessment Amendment Bill 2017. In the almost four decades since it was passed, the Environmental Planning and Assessment Act has been amended more than 150 times. From its initial 137 pages, the Act has now expanded to 300 pages. While it still provides a solid foundation for our planning system, it is starting to show some middle-age spread. I acknowledge the architect of the original Act, Mr John Whitehouse who, like the original architect of Sydney's iconic Opera House, we consulted with in the development of these amendments. I take the opportunity to thank Bob Meyer for his contributions.

This bill builds on the Government's agenda to cut red tape, and provide a faster and more flexible planning system for government and the communities we represent. The introduction of a new design policy, the rollout of regional plans and the development of the New South Wales Planning portal are just some examples of real changes we are making to the New South Wales planning system. Under the leadership of the Berejiklian-Barilaro Government, we have stripped out the redundant elements and are returning to a clear, useable framework that meets the needs of government, industry and the community.

The consultation process for this bill has spanned 2016 and 2017. Initially, the Department of Planning and Environment held targeted stakeholder consultations and discussions across the State with more than 370 representatives attending from councils, planning practitioners, industry, environment and community groups. This targeted consultation was followed by preparation of a draft bill, which we released for public exhibition from January to March this year. Consultation resulted in more than 470 submissions containing a mix of sensible suggestions on how we can improve on those proposals and focus on making them more workable or easier to implement. We heard strong support for the enhancements to community participation, increased strategic planning, improved design, and provided more efficient approvals from New South Wales agencies and an improved compliance framework to ensure the approved works are actually the works constructed. I thank those individuals, councils, organisations and community networks for their time and expertise in contributing to this bill.

This Government is enhancing liveability, public amenities, economic growth and major infrastructure investments to support the ongoing population growth being experienced across the State. With this success comes the challenge of balancing growth with the needs of our communities. Members on this side of the House are all too aware of the very real challenges facing communities, particularly those in metropolitan Sydney, in finding and affording suitable housing for themselves and their families. The Berejiklian-Barilaro Government put its money where its mouth is; this was clear in the most recent budget where we invested in more transport and infrastructure to enable easier access to homes, green spaces, schools and workplaces. This side of the House will continue to build a better planning system that facilitates the infrastructure, housing and places of work that we need, while maintaining the environment, accessibility, character and ease of use we value.

In considering this bill, I draw members' attention to the key amendments that aim to improve the planning system through faster, simpler processes, enhanced strategic planning, improved community confidence and participation, and more balanced and transparent decision-making. I now turn to the detail of the bill and the key updates to the existing Act. The reform package before us today is largely as originally proposed, refined with valuable improvements from the submissions of stakeholders and discussions with New South Wales agencies. This is testament to the extensive and constructive consultation the Department of Planning undertook during 2016-17.

The Act will be restructured into 10 parts. Part 1 updates the overarching objects of the Act, the fundamental principles guiding planning and development across the State. The bill modernises the language of the existing objects, without changing their policy intent. The bill adds three new objects. These are to promote good design and amenity of the built environment, promote the sustainable management of heritage, and promote the proper construction and maintenance of buildings. Both good design and cultural heritage were part of the exhibited draft bill and were well received by stakeholders. Building quality was also included to ensure building safety is at the forefront of all of our minds following the horrific Grenfell Tower fire. In response, we are introducing a new object to "promote the proper construction and maintenance of buildings, including the

protection of the health and safety of their occupants". A clear building object recognises the important role of building regulations in providing for public safety and the safety, health and wellbeing of a building's occupants and users.

The bill creates a new part 2 of the Act called "Planning administration", which brings together the provisions about the decision-makers under the Act and, importantly, the new requirements for community participation. Each planning authority will now prepare a community participation plan explaining how it will engage the community in plan-making and development decisions. All local councils and New South Wales development agencies that are planning authorities under the Act will have to prepare these plans. In doing so, they must have regard to new community participation principles set out in the bill in developing these plans to ensure the community has its say. A new requirement for decision-makers to provide reasons for their decisions has been incorporated in this legislation. This will enshrine transparency in decision-making, a cornerstone of this Government of which I am proud to be a part.

The Act also sets out the mandatory minimum community participation requirement for each type of planning decision in the Act. Councils and other authorities must observe these requirements and commit to going beyond these requirements in their participation plans. Part 2 also consolidates the provisions about planning authorities. This includes the provisions that relate to the different planning panels established by the Act—the Planning Assessment Commission, regional planning panels and local planning panels, also known as IHAPs. As members will be aware, in August this year the Government brought forward amendments to require councils in the Greater Sydney Region and Wollongong City Council to establish independent hearing and assessment panels [IHAPs] to determine development applications. We are now ensuring that the exclusions on memberships for IHAPs for property developers and real estate agents are appropriately extended to the Sydney and joint regional planning panels.

The Government is also proposing improvements to the Planning Assessment Commission, which will be relaunched as the Independent Planning Commission to reflect its determinative role. To reinforce the commission's key function of independently determining projects, we are removing the commission's review function, as it currently reviews State significant proposals and may then later determine the same proposals. Removing this duplication is central to our mandate. Other changes to the provisions of the commission will clarify administrative arrangements, including that, for the purposes of deciding an application, the commission can be constituted by one or more members as determined by the chair.

This will be subject to any direction of the Minister. I will be making a direction to ensure that significant projects, such as applications for new mines, will be determined by a three-member panel, as is current practice. To accompany these legislative changes, the Government remains committed to implementing a stronger public hearing process for the commission. This will include giving the community an early say in scoping the issues that need assessment and in participating in a more active interrogation of the proposal and the assessment report.

Part 3 relates to strategic planning and planning instruments. It consolidates and amends provisions currently found in parts 3 and 3B of the Environmental Planning and Assessment Act. A critical new measure is to enhance local strategic planning through new local strategic planning statements. For the first time, the councils' strategic plans for the local area will be recognised in legislation. This will complete the connection from regional and district plans to strategic planning at the local level and through to the legal development controls in the local environmental plan [LEP]. These plans will tell the story of the local government area and set out the strategic context within which the LEP has been developed, explain how strategic priorities and targets at the regional and district level will be given effect to at the local level, and incorporate land-use objectives and priorities identified through the council's community strategic plan.

The local strategic planning statement will be reflected in the local environmental plan by including a mandatory provision in the standard instrument LEP that references the local strategic planning statements. This means the LEP will be required to reflect the local strategic planning statements in its aims and objectives. Each new planning proposal, such as a rezoning, will have to explain how the change is consistent with the local strategic planning statement. Councils may also opt to have their statements endorsed by the Department of Planning and Environment. The statements will then become even more effective safeguards against inappropriate development proposals. Councils will be able to tailor the statements to outline land-use priorities and actions at the ward level or to achieve particular goals. Ward councillors will also be able to play a role in the development of the statements. The department of planning will assist councils to develop their strategies through templates and guidelines.

We are also making development control plans [DCPs] more consistent and simpler to use for community members and practitioners. There are more than 400 DCPs across New South Wales. In many of these the same issue is addressed in different ways. The variations in structure and format can make them difficult for users to understand and apply, inadvertently not meeting council's requirements. These variations also restrict the ability

to embed DCP controls in the planning portal. A standard format DCP is a step to reduce red tape for industry, increase transparency and simplify useability for the community. While the format will be consistent, the content of the DCPs remains open for councils to tailor.

I now move to part 4, which addresses development assessment and consent. The bill includes important measures to improve the responsiveness and efficiency of the conditions of consent for State significant projects, without compromising the protections the conditions afford. A strong New South Wales requires rigorous and timely assessments. Too often I hear about delays from lack of communication or coordination. These delays cost business, councils and, ultimately, the community. To address delays by government agencies, the bill introduces a step-in power to ensure that agency advice is provided and that any identified conflicts are resolved in a timely manner.

I will take the time to explain this measure, as many objections misinterpreted the step-in powers, wrongly thinking that the department is taking over the role of the agencies. This is not how the step-in power will work. The secretary's step-in power is reserved for situations where, for example, an agency has not responded to a request for advice or granted general terms of approval within statutory time frames, or when different agencies' advice conflicts. The department's role is to facilitate the removal of any roadblocks. The secretary would only exercise this power subject to the same assessment considerations as agencies themselves would need to take into account. These requirements will be reflected in State assessment requirements that are being developed with the advice of these agencies.

Another key theme in the changes to part 4 is enhancing confidence in the complying development pathway. Complying development is an important contributor to meet the State's housing needs and to achieve the Premier's target of 90 per cent of housing approvals determined within 40 days by 2019. This pathway helps to save time and money for many families wanting to achieve routine development. But the community should be confident in this process, and the investigation and enforcement measures to deal with certifiers who abuse this pathway. We saw considerable support for giving councils a new power to stop work on a complying development for up to seven days to investigate complaints. To support councils in their investigations and enforcement activities, the bill enables councils to introduce a compliance levy on development applications. This levy will be given effect through the regulation.

For the first time, the bill would also allow the court to strike down a complying development certificate that does not meet the development standards. To further reduce regulatory duplication without diminishing environmental protections, the amendments establish a mechanism of "transferable" conditions. These are conditions of consent that lapse if they are substantially consistent with the requirements in another regulatory instrument, such as environment protection licences. This mechanism will apply to State significant development.

The bill also clarifies the use of "financial assurance" conditions. These conditions can require the developer to put up a bond or other financial guarantee to cover rehabilitation or decommissioning works. Financial assurance conditions help ensure the long-term impacts to the landscape are minimised, particularly where the proponent is not the landholder. The types of developments subject to these provisions, such as wind farms, will be identified in the regulations to ensure there is no duplication with other regulatory regimes. In relation to modification applications, the exhibited bill included a provision to stop people from submitting modification applications for works that have commenced already. This was to address the business model some developers have of constructing first and seeking permission later. While the rationale for the original proposal was supported by many stakeholders, most councils did not support banning retrospective modifications. Instead, we will allow authorities to impose additional fees to deter retrospective modification applications. This will be achieved via regulation. The Government has made significant investments in infrastructure to support new homes and businesses, to keep New South Wales as an attractive and competitive place in which to live and work.

Part 5 contains provisions relating to infrastructure and environmental impact assessment. For development in infrastructure corridors that require consent under part 4 of the Environmental Planning and Assessment Act, proponents must obtain the advice or concurrence of agencies, such as Transport for NSW and Roads and Maritime Services. However, this is not currently required for development undertaken by public authorities under part 5 of the Environmental Planning and Assessment Act. These activities do not require development consent but are still subject to an environmental assessment. It is standard practice for public authorities to consult with other agencies and State-owned corporations about their proposed activity to ensure that it will not affect future plans for an infrastructure corridor. This practice will now be formalised in law, which will further strengthen this Government's unprecedented infrastructure investment.

Part 6 relates to the certification of building and subdivision works. It represents an important part of the Government's response to the independent review of the Building Professionals Act 2005—the Lambert report. The bill simplifies and consolidates provisions currently in parts 4, 4A and 8 of the Act that regulate building and subdivision certification into a single more logical structure. This will benefit the building industry, including

certifiers who can find the current arrangements challenging to navigate and understand. The measures will increase the efficiency and effectiveness of regulation and result in improved development outcomes.

The bill also makes some changes to enhance the effectiveness of the building provisions. In recent years, case law has developed that allows certificates to be used for developments that are out of step with the planning approval. To remedy this, the bill allows the court to declare a construction certificate invalid if it is not consistent with the development consent. This will help to ensure that what is built is consistent with the approved plans, reinforcing the integrity of the planning system and giving the community greater confidence in the approvals. Part 7 covers planning agreements and special infrastructure contributions. It amends provisions currently found in part 4 of the Environmental Planning and Assessment Act. The Government has been working to develop a clearer policy framework for the role and use of voluntary planning agreements in the planning system.

Part 8 contains provisions relating to reviews and appeals available to applicants for development consent and objectors. The review of determinations is extended to integrated development and for determinations by a local planning panel, the Sydney district planning panel, the regional planning panel, and some determinations by delegates of the Minister. This will reduce appeal numbers and alleviate pressure on the court. It will also give applicants an alternative option to the appeal process, potentially reducing costs and time spent.

Part 9 relates to implementation and enforcement measures, replacing provisions currently found in part 6 of the Environmental Planning and Assessment Act. Currently, regulators can issue fines for breaches to the Act, or pursue the matter through the courts. These options are not always the most appropriate means for addressing the breach. As such, the bill introduces a new tool for regulators to facilitate an appropriate response to breaches of the Environmental Planning and Assessment Act. This tool is enforceable undertakings, which allows regulators, including councils, to negotiate with a perpetrator of a breach to the Environmental Planning and Assessment Act an appropriate response to remedy the breach. Such responses can include recovery of profits gained from the breach, compensation to affected parties, and remedying or making good on damage to the natural or built environment. Additionally, if the consent holder breaches the terms of the enforceable undertaking the regulator can efficiently apply to the court to enforce the terms. The bill also provides a safeguard to ensure that enforceable undertakings are used appropriately. Council negotiated agreements will be subject to the secretary signing off on the final undertaking.

Finally, part 10 contains miscellaneous provisions amending those currently found in part 7A and part 8 of the Environmental Planning and Assessment Act and moves some provisions to the regulations. I reinforce that the Government, in a move welcomed by many, will finally draw to a close former part 3A. We repealed part 3A in 2011, yet despite this transitional arrangements continue, resulting in some developments still accessing the former part 3A modification pathway some six years after its repeal. This will occur through a regulation amending the transitional provisions of the Act once this package of amendments has been enacted. In future, former part 3A projects that need to be modified will be assessed as either State significant development or State significant infrastructure.

The measures presented in this bill today set out changes to make the planning system clearer and more convenient for users. They reflect how we operate now and in the future. These measures have been subject to extensive consultation, and have been welcomed and supported by councils, planning practitioners and other stakeholders. Once passed, those who are involved in the planning system will no longer be shackled by a mess of 40 years of amendments. They retain our robust processes and restructure the Act into a clear and useable document. This legislation provides measured reform. It promotes good outcomes and ensures that the community is involved in the strategic planning and assessment issues that affect us all. The amendments increase probity and accountability in decision-making, cut costs and red tape saving time and money not only for government but also for business, industry and homeowners. I believe that all these measures achieve the original aim of promoting confidence in our planning system, ensuring the policy settings to deliver the best for New South Wales. For these reasons I commend the bill to the House.

Debate adjourned.

The PRESIDENT: I will now leave the chair. The House will resume at 8.00 p.m.

HEALTH PRACTITIONER REGULATION AMENDMENT BILL 2017

ABORIGINAL LANGUAGES BILL 2017

Returned

The PRESIDENT: I report receipt of messages from the Legislative Assembly returning the abovementioned bills without amendment. I also report that the message stick has been returned to the House in accordance with the assurances that were given.

FISHERIES MANAGEMENT AMENDMENT (ABORIGINAL FISHING) BILL 2017**Second Reading**

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (20:02): I move:

That this bill be now read a second time.

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

Leave granted.

I introduce the Fisheries Management Amendment (Aboriginal Fishing) Bill 2017.

This bill will introduce significant improvements to the operation of the Aboriginal Fishing Trust Fund.

The role of the Aboriginal Fishing Trust Fund will be to provide monetary support for cultural fishing and fishing businesses.

Last year, during its inquiry into commercial fishing in New South Wales, the Legislative Council's General Purpose Standing Committee No 5 recommended the "Minister for Primary Industries ensure that the Aboriginal Commercial Fishing Trust is fully operational by July 2017."

The Committee recognised the importance of the Aboriginal Fishing Trust Fund to Aboriginal people and it is the intention of this bill to make the trust fund operational so that it will be of benefit to future generations.

Fishing has always been an important part of the cultural and economic life of Aboriginal communities.

For many Aboriginal people, fishing is an integral part of their connection to their traditional country.

In addition, fishing can provide critical economic opportunities for Aboriginal people and Aboriginal communities.

The Parliament of NSW has recognised the importance of fishing to Aboriginal people and enshrined it in our fisheries legislation.

The objects of the Fisheries Management Act go directly to the heart of this.

The objects recognise the spiritual, social and customary significance of fisheries resources to Aboriginal people.

The objects also seek to protect and promote the continuation of Aboriginal cultural fishing.

I note that section 21AA of the Act gives special provision for Aboriginal cultural fishing, which has not yet been "switched on".

The intention has long been that section 21AA would commence in conjunction with a cultural fishing regulation.

The New South Wales Government continues to investigate whether a statewide cultural fishing regulation is the best approach.

As I mentioned earlier, local management plans are being trialled as part of these investigations.

The aim of local management plans is to understand the cultural fishing practices of individual Aboriginal communities and create a plan, in consultation with the community, for how cultural fishing is carried out in that community.

These trials will guide how and when section 21AA should apply.

I acknowledge that some stakeholders, including the NSW Aboriginal Land Council would prefer a quicker timetable for the application of 21AA.

Given the shared nature of our precious fisheries resource, the Government believes a measured approach is the most prudent.

In 2015, the Fisheries Management Act was amended to introduce the Aboriginal Fishing Trust Fund.

The House recognised the trust fund was an important mechanism that could help Aboriginal communities continue to access and manage fisheries resources.

Since that time, we have been working closely with the Aboriginal Fishing Advisory Council—or AFAC—to make sure that the trust fund is implemented in a way that supports and promotes the cultural and economic fishing aspirations of Aboriginal communities.

During the development of the detailed operational arrangements for the Aboriginal Fishing Trust Fund, it became apparent that the scope of the legislative framework needs to be expanded.

Currently, the legislation only allows for the trust fund to provide grants.

However, grants alone are not sufficient to promote the broad spectrum of economic development opportunities for Aboriginal communities.

It also limits the fund's ability to target funding as effectively as possible.

To this end, this bill expands the scope and functions of the Aboriginal Fishing Trust Fund by:

- Allowing for loans to be issued from the trust fund, and
- Enabling assets purchased using trust moneys to be held on trust for the benefit of the Aboriginal community.

This bill provides a framework for how the Aboriginal Fishing Trust Fund will operate.

While the legislative framework is critical for the operation of the trust fund, what is even more important is the actual administrative detail of who will be eligible for funding, transparency and robust governance arrangements around decision-making.

The Government has been working hand in hand with key stakeholders to design the Aboriginal Fishing Trust Fund and ensure the money goes to the right projects and supports Aboriginal communities across the State.

An important part of the Aboriginal Fishing Trust Fund is that Aboriginal people will be genuinely involved in decisions about how the money is spent.

To this end, an expenditure committee will be set up to assess all applications for funding from the trust fund and assist the Aboriginal Fishing Advisory Council in making recommendations to the Minister about expenditure from the fund.

On 4 October 2017, the Department of Primary Industries called for nominations for the new expenditure committee.

The expenditure committee will consist of up to six individuals who are Aboriginal, and who have expertise in business and economic development.

I am confident we will receive a high calibre of applications.

A trust fund cannot operate without funding.

The whole purpose of the trust fund is to invest in projects that will protect and promote the fishing aspirations of Aboriginal communities.

To kick-start the trust fund, the NSW Government has committed \$1.5 million over three years.

This funding will support projects that seek to protect and promote Aboriginal cultural fishing, and commercial fishing and fishing-related activities.

A significant amount of work has been progressed in developing the administrative arrangements for the Aboriginal Fishing Trust Fund, and the Government intends to open the first round of funding in this financial year.

The Aboriginal Fishing Trust Fund will, for the first time in New South Wales, provide a dedicated fund to support the fishing aspirations of Aboriginal communities in New South Wales.

It is another step in a long journey to strengthen relationships between governments and Aboriginal communities across the State.

I now turn to the detail of the bill.

In developing the operational arrangements around the Aboriginal Fishing Trust Fund, it became clear that many fishing-related economic development opportunities lay in the ability for Aboriginal communities to participate in commercial fishing ventures.

Importantly, the investments made by the Aboriginal Fishing Trust Fund for Aboriginal communities need to remain available to those communities in the future.

To this end, AFAC recommended that a mechanism is needed to ensure that the assets purchased by the trust fund remain within the community, and are not sold for individual profit.

The bill acts on this by providing for assets to be purchased by the Minister for the benefit of Aboriginal communities, enabling Aboriginal people or entities to access or use those assets.

It also enables the Fisheries Administration Ministerial Corporation to hold these assets for the benefit and use of Aboriginal people and communities.

A ministerial corporation is a discrete legal entity that is under the direction of the Minister.

The Minister and the corporation are bound to act in accordance with the objects of the Act.

While it is possible that other entities or organisations could hold shares on behalf of communities, it is important that all Aboriginal people and communities have the opportunity to access these assets.

In addition, other organisations may not be bound to operate in accordance with the objects of the Act.

While there are a number of organisations that represent Aboriginal people's interests, each has its own membership base.

The ministerial corporation is the most appropriate vehicle to ensure that commercial fishing shares and other assets purchased by the trust fund will be available to Aboriginal communities across New South Wales.

The purpose of this amendment is to ensure that the assets can be centrally held, while the benefits from investment, including access to commercial markets, sit with Aboriginal people and communities.

However, it is not proposed that all assets paid for through the trust fund are held by the ministerial corporation—the corporation will only be used in certain circumstances.

For example, commercial fishery shares bought using monies from the Aboriginal Fishing Trust Fund could be held by the Fisheries Administration Ministerial Corporation for use by an Aboriginal-owned organisation.

As the shareholder, the ministerial corporation could then enter into a contractual arrangement with an Aboriginal organisation or business to grant access to, or use of, those shares.

Under that contractual arrangement and the Act, the ministerial corporation would formally nominate an Aboriginal commercial fisher to take fish in the fishery on its behalf.

These nominations would be at the request of the Aboriginal organisation or business with which the ministerial corporation has a contract.

The bill also provides certain exemptions for the ministerial corporation from offences or other obligations generally imposed on commercial fishing shareholders.

This recognises that while the ministerial corporation may hold the assets or investments and will enter into contracts for the appropriate use of those assets, it will not be involved in running the business, or the day-to-day activities of the Aboriginal owned business.

The bill also clarifies and expands the scope of payments that may be made into the Aboriginal Fishing Trust Fund.

This will help "future proof" the trust fund.

The legislation needs to be flexible enough to allow different types of funds and assets to be directed into the Aboriginal Fishing Trust Fund over time.

The bill allows the Minister for Primary Industries to approve an Aboriginal fishing assistance program for the purposes of:

- Aboriginal cultural fishing, or
- fishing or fishing-related activities for a commercial purpose.

Through an assistance program, the Minister will be able to approve the broad objective or policy of a funding round, or a series of funding rounds.

Before approving an assistance program, the Minister will be required to obtain and have regard to the advice or recommendations of any relevant advisory council on Aboriginal fishing—currently AFAC.

The existing legislation only allows the Aboriginal Fishing Trust Fund to provide grants.

While the ability to provide grants allows the intent of the trust fund to be progressed, it has limitations.

The bill expands the scope and flexibility of the trust fund by allowing loans also to be provided.

Those loans may be subject to interest, or interest free.

Any interest payable on loans will provide a revenue stream back into the trust fund and will be used to support future investments in cultural and economic fishing opportunities for Aboriginal people.

The interest rate on a loan will be determined on a case-by-case basis, on advice from AFAC.

Interest free loans are more likely to be applied to short-term and smaller loans.

A low interest rate is more likely to be applied to larger, longer-term loans.

To this end, the legislation provides that loans may be secured or unsecured.

In addition to loans, grants will also be available to provide support for cultural fishing and economic development opportunities.

Expenditure from the trust fund will be guided by advice from Aboriginal people who have a clear and distinct understanding of community needs in regard to cultural fishing and economic development for community.

This is reflected in the existing legislation.

The Minister must consult with AFAC over which funding applications should be supported and whether that support should be through grants or loans.

As I mentioned earlier, AFAC will be supported by an expenditure committee.

An example of when a loan may be more appropriate than a grant is where an existing commercial operation is looking to expand.

The commercial operation may have the capacity to repay the loan, allowing for a greater pool of money to be directed to community benefit projects, or to applicants who do not have the capacity to repay loans.

The New South Wales Rural Assistance Authority—the RAA—will administer these loans on behalf of the New South Wales Government.

The RAA has extensive experience and established systems in administering loans.

It will provide the necessary rigour to administer moneys invested from the trust fund in Aboriginal-related ventures.

The RAA will not be making decisions related to the allocation of loans.

That remains the decision of the Minister for Primary Industries, with regard to the advice provided by AFAC.

However, the RAA will be well placed to provide advice on an applicant's capacity to repay a loan, which will be considered as part of the review of applications process.

As an administrator of assistance programs, the RAA has a good understanding of common issues faced by borrowers and will be able to provide advice to the Minister for Primary Industries on assessing future loan applications.

As I mentioned earlier, the New South Wales Government has been working closely with the Aboriginal Fishing Advisory Council—or AFAC as I have referred to during the course of this speech—in order to design how the trust fund will operate.

The bill itself provides the high-level framework for the trust fund.

Operation of the trust fund will be supported by further detail around who will be eligible for funding, the types of projects that should be funded, and governance around decision-making.

We have discussed this detail with AFAC on multiple occasions, and the council's valuable insights and advice have helped shape the trust fund.

The New South Wales Aboriginal Land Council and the Native Title Service Corporation have also both been consulted about how the fund should operate.

While the New South Wales Aboriginal Land Council and the Native Title Services Corporation have been involved throughout the development of this bill and have expressed their general support for it, I would like to clarify some of the issues they have raised.

There are concerns about whether the bill will allow for Aboriginal people and entities to purchase fishing assets using grants and loans, or whether all assets will be held by the Fisheries Administration Ministerial Corporation.

I would like to reassure the House that the primary purpose of this bill is to expand the application of the trust fund so that it can be used for grants and loans that will support Aboriginal people and communities.

The bill does not place any restrictions on how loans or grants may be used, and we expect that grants and loans will be used to purchase assets such as vessels and fishing equipment.

I would also like to clarify that assets purchased using loans or grants will not be held by the Fisheries Administration Ministerial Corporation.

These assets are intended to sit with the individual or organisation that has purchased the asset.

Only assets purchased by the Minister in relation to an application will be held by the Fisheries Administration Ministerial Corporation.

Specifically, I am advised that section 237B (7) of the bill applies only to assets acquired by the Minister. In addition, the legislation does not authorise the Fisheries Administration Ministerial Corporation to transfer ownership of an asset from an individual to itself.

In addition, the Minister for Primary Industries will consult with AFAC before assets held by the corporation are sold and will notify AFAC if the Minister's decision is inconsistent with AFAC's advice.

Some concerns have also been raised about whether the bill unintentionally restricts Aboriginal businesses from accessing money from the fund because the overarching purpose is to support Aboriginal communities.

The bill is not intended to restrict Aboriginal businesses or individuals from pursuing economic development opportunities.

In fact, the bill makes it clear that the Aboriginal fishing assistance program can provide grants or loans to Aboriginal people or Aboriginal entities.

Commercial opportunities for Aboriginal fishers will provide direct and indirect benefits to Aboriginal communities and the economy generally.

Aboriginal fishing businesses can also contribute to cultural and community events.

On the topic of Aboriginal businesses, queries have been raised about the definition of an Aboriginal entity.

AFAC have made it clear that an Aboriginal entity should be at least 51 per cent owned.

We support this and have agreed with AFAC that we will implement this definition through operational arrangements.

The legislation also allows for funding to be granted to a person acting on behalf of an Aboriginal entity.

This provides flexibility for Aboriginal organisations that may wish to engage a consultant to assist with their application.

AFAC will oversee robust application and assessment processes to ensure that the funding is not provided to open-ended projects that do not benefit Aboriginal organisations.

In addition, funding will be linked to milestones and be released in instalments.

The Department of Primary Industries will also continue to work with its key stakeholders to ensure there are clear parameters on who may act on behalf of an Aboriginal entity. If required, the Government will consider introducing a regulation to clarify and strengthen this provision.

The bill provides that fees may be required to be paid in some circumstances.

This refers to the fees that are payable by all participants in the fishing sector.

Applicants will need to consider these costs as part of the business plan that they attach to their application.

Finally, other concerns have been raised about money from the trust fund paying for the administration costs of the program.

This is discretionary in the legislation and any administration costs incurred are likely to be small.

Following representations from NSWALC and NTSCorp, this Government has committed that the costs of administering the program will be funded from the internal resources of the Department of Primary Industries and not the funds allocated to the trust fund.

I thank the AFAC, NTSCorp and the NSW Aboriginal Land Council for working with us on developing the trust fund and look forward to continuing working with these organisations to achieve social, cultural and economic outcomes for Aboriginal communities.

The bill introduces important changes to provide much-needed flexibility for the Aboriginal Fishing Trust Fund.

These amendments go to the objectives of the Fisheries Management Act which recognise the significance of fishing to Aboriginal people.

The amendments will help support a broader range of projects and ensure the longevity of investments made by the trust fund.

This Government is committed to working hand in hand with Aboriginal communities to support them to achieve their fishing aspirations and economic prosperity.

I urge all members of the House to support this bill.

I commend the bill to the House.

The Hon. MICK VEITCH (20:02): The object of this bill is to amend the Fisheries Management Act 1994 to enable payments to be made out of the Aboriginal Fishing Trust Fund established under that Act, to provide assistance to Aboriginal communities in relation to cultural fishing and commercial fishing activities. The assistance is proposed to be provided through grants and loans, and the acquisition of fishing assets for the use and benefit of Aboriginal communities. This bill also makes ancillary and consequential amendments.

The Opposition is pleased to support this bill. I note that the bill follows on from the recommendations of the upper House inquiry into commercial fishing. I served as a member of that committee, Portfolio Committee No. 5—Industry and Transport, which was ably chaired by the Hon. Robert Brown. I think that inquiry took place in November and December last year.

While this Government has put a huge cloud over the future of many small fishing businesses up and down the coast, this bill may be a piece of good news in an otherwise bleak landscape for small commercial fishing businesses in this State. The Aboriginal Fishing Trust Fund [AFTF] provides grants and loans for the enhancement, maintenance and protection of Aboriginal cultural fishing as well as for Aboriginal communities to develop businesses associated with fisheries resources throughout New South Wales.

Under this bill the Aboriginal Fishing Trust will provide grants, and now loans, for cultural fishing and fishing businesses through an approved Aboriginal fishing assistance program for the acquisition of fishing assets—which may be shares in share management fisheries, operational items or operating equipment and other things prescribed by the regulations. Assistance may be subject to such terms and conditions as the Minister thinks fit. Loans will be administered by the Rural Assistance Authority on behalf of the Government.

Before approving an assistance program, the Minister will be required to obtain and have regard to the advice or recommendations of the Aboriginal Fishing Advisory Council. As I understand it, the process under the trust fund would work as follows: An application would be received by the Department of Primary Industries and Fisheries. An expenditure committee comprising six Aboriginal people with business expertise would initially assess the applications. Recommendations would then be made to the Aboriginal Fishing Advisory Council—a council made up of 13 Aboriginal people including a representative from each of the 10 regions in New South Wales, the New South Wales Aboriginal Land Council and the Native Title Service Corporation, who would review the recommendations. Then the Aboriginal Fishing Advisory Council would make subsequent recommendations to the Minister, who would approve—or, in some cases, not approve—the application.

Fishing assets acquired under a program by the Minister are to be held by the Fisheries Administration Ministerial Corporation [FAMC]. The Act provides for various exemptions to the corporation as a holder of shares in a share management fishery under a program. Assets purchased through loans and grants by an individual or organisation through a grant or loan not procured by the Minister will stay with that particular individual or organisation. In this respect the bill seeks to get the balance right.

A strong recommendation from the Aboriginal Fishing Advisory Council was for a mechanism that considered individual investment versus collective investment. The bill will allow the Minister to purchase assets for the benefit of the broader Aboriginal community and hold such assets within the Fisheries Administration Ministerial Corporation. The Act also requires payment to be made out of the Aboriginal Fishing Trust Fund for the costs of providing a program, and requires payment into the fund of certain money received or recovered under a program, including money advanced by the Treasurer, any grant or donation of money, or money appropriated by the Commonwealth Parliament. A number of consequential amendments are also made regarding definitions and recovery of money by the secretary.

The NSW Aboriginal Land Council sought a number of clarifications from the Government when this bill was introduced. Again, it is a concern when a key group is still trying to get an understanding of key aspects of a piece of legislation after notice of the Government's intention to introduce a bill. As I understand it, the New South Wales Aboriginal Land Council sought clarification on a number of matters: first, that Aboriginal people can utilise grants and loans to acquire fishing assets; secondly, that Aboriginal people or entities are able to hold assets; thirdly, that only assets acquired by the Minister under the program are to be held by the Fisheries Administration Ministerial Corporation; fourthly, that the Minister may only sell assets acquired by the Minister;

fifthly, that the definition of "Aboriginal entity" is consistent with the objectives of the bill to support Aboriginal cultural fishing and commercial fishing; sixthly, that in relation to section 237B, any Aboriginal assistance programs are specifically for genuinely Aboriginal people and Aboriginal organisations, and that only Aboriginal people and Aboriginal organisations can access those funds; and, seventhly, that the funds earmarked to provide direct benefits to Aboriginal people should not be utilised for the normal administrative costs of Government.

As members can appreciate, these are fundamental aspects of the bill, and it is astonishing but hardly surprising that the Government was still clarifying its intentions at the time of the second reading debate. When one page of a four-page second reading speech is devoted to clarifications one can tell that the process has not gone quite as smoothly as it could have. I understand that the Government has clarified these matters and given assurances in relation to them, but the Opposition will require the formal commitment of the Minister, in his reply speech, to put such matters beyond doubt.

I also seek clarification from the Minister on how this new system will be audited. Will the Minister commit to regular audits of the program? Besides the 51 per cent Aboriginal ownership requirement for any Aboriginal entity, is the Government looking at other proposals that may involve non-Aboriginal participants, such as in joint ventures? In relation to the approval process for grants and loans under the trust fund, can an individual sit on both the expenditure committee and the Aboriginal Fishing Advisory Council, and if so how will the Government deal with any governance issues that may arise? I seek clarification from the Minister on these matters in his reply, but it is important to point out that I received a briefing from the Minister's advisers. As a result of that meeting I have received an email seeking to resolve these issues, but I ask that the Minister put those matters on the public record.

The Hon. Niall Blair: Those people are smarter than me, so you should take their word.

The Hon. MICK VEITCH: I do take their word, but I want the Minister to put it on the public record. When talking about Aboriginal fishing, it would be remiss of me not to raise section 21AA. It is a sad indictment on this Government that we are considering this bill to amend the Fisheries Management Act before enacting the fundamental changes made in the amendments to the Fisheries Management Act 1994 by the former Labor Government in 2009, eight years ago, which recognised and provided for Aboriginal cultural fishers. The member for Port Macquarie, and former Minister for Aboriginal Affairs, gave only a cursory account of the Government's lack of action. I note that the Government's preferred approach, through a regulation, is now being drawn out, given that a draft regulation went out for community consultation more than two years ago.

This Government can flog off the Land Titles Office in a matter of months; it can establish a fire and emergency service levy and then abolish it within less than a year; it can rush through legislation to address homeless people sleeping in Martin Place within days; yet it cannot—or perhaps will not—do the right thing by the Aboriginal people and switch on a part of an Act that was passed eight years ago to recognise Aboriginal cultural fishing rights. Given the member for Port Macquarie's comments about section 21AA, I seek the following commitments and clarifications from the Minister: Does the Government still support switching on section 21AA of the Fisheries Management Act? If so, what is the time frame and what are the plans for switching on that section? Has the Government actually abandoned a statewide regulation? If so, when was that decided? Finally, can the Government give a date on which it expects this part of the Act, which is now eight years old, finally to become law?

The inaction and delays on this alone are a sorry and shameful reflection on the priorities of this Government. Labor takes this opportunity to call out the Government on its years of inaction on Aboriginal cultural fishing rights. We call on the Government to switch on section 21AA without any further delay. Labor supports this bill and supports Aboriginal cultural fishing rights. We look forward to a greater sense of purpose from this Government in this regard. I have sought a number of clarifications from the Minister in his reply. As I said, Labor will support this legislation, and I commend the bill to the House.

[Business interrupted]

Announcements

MESSAGE STICK

The PRESIDENT: I requested the Clerk to place the message stick on the table in front of the Clerks and that the message stick remain there until the conclusion of tonight's sitting after which the message stick will remain in the possession of the Clerk until I have had an opportunity to talk to members about moving forward.

*Bills***FISHERIES MANAGEMENT AMENDMENT (ABORIGINAL FISHING) BILL 2017****Second Reading**

[*Business resumed*]

The Hon. SARAH MITCHELL (Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education) (20:12): I contribute to debate on the Fisheries Management (Aboriginal Fishing) Bill 2017 in my capacity as Minister for Aboriginal Affairs, and I indicate that I support the bill of my colleague the Hon. Niall Blair. The Aboriginal economy is the first economy of New South Wales. For millennia Aboriginal people have managed natural resources sustainably, and lived off the land and waters. Fishing has been an important part of Aboriginal culture in this State for thousands of years, and fishing still provides an important connection to traditional cultural practices. Fishing also has the potential to provide economic development opportunities to many Aboriginal people, businesses, and communities, both inland and on the coast.

The Aboriginal Fishing Trust Fund was established by this Parliament to support greater access to fisheries resources and economic development opportunities for Aboriginal communities. The amendments in this bill will mean that the Government and Aboriginal communities will have a new opportunity to encourage, support and grow small businesses for the benefit of Aboriginal people. The Government is committed to making sure that fishing businesses run by Aboriginal people can leverage assistance from the Aboriginal Fishing Trust Fund. The Government recognises that the current legislation does not go far enough in supporting Aboriginal fishing. Further consultation with stakeholders has revealed that grants alone will not be sufficient to promote genuine economic development opportunities for Aboriginal people and communities.

The Hon. Niall Blair: Point of order: It is difficult for Hansard to record the debate and for members to participate in the debate when a loud conversation is being held in the President's gallery. Mr President, I ask you to bring members to order.

The Hon. Mick Veitch: To the point of order: It is not often that I concur with the Minister, but in this instance I do concur with him. I could not hear the Minister's contribution or the point of order because of the conversation.

The PRESIDENT: I uphold the point of order, although the members participating in the conversation have left the Chamber. I am well aware that members need to participate in conversations because of the business being transacted, but I remind them that those conversations should not be audible to all in the Chamber.

The Hon. SARAH MITCHELL: In relation to fishing, many economic opportunities lie in access to the commercial fishing sector and other commercial ventures such as aquaculture, charter fishing or export markets. This Government is committed to improving economic outcomes for the first peoples of New South Wales. This includes supporting and empowering Aboriginal people's contribution to our strong economy. To achieve this, the bill broadens the commercial utility of the Aboriginal Fishing Trust Fund through two key amendments. The first provides the means through which fishing assets—including fishing shares—can be held on behalf of Aboriginal communities for future generations. Secondly, the bill extends the way proposals can be funded by allowing for interest or interest-free loans to be issued drawing on monies from the trust fund. The proposed amendments will enable the Minister to use moneys from the trust fund to acquire fishing assets for the sole use of Aboriginal communities. For example, the Ministerial Corporation could use moneys from the trust fund to purchase and hold shares to be used by an Aboriginal-owned business to access a wild harvest commercial fishery.

This approach will ensure that shares and other assets can be held and administered centrally, while allowing for benefits, including access to commercial markets, to be realised by Aboriginal businesses and communities. In this scenario, the Ministerial Corporation, as shareholder, would enter into a contractual arrangement with an Aboriginal person or entity to grant access to or use of those shares. The share ownership would remain with the Ministerial Corporation to ensure the purchase made using trust fund money was available for the ongoing benefit of Aboriginal communities. Under such a contractual arrangement, the Ministerial Corporation would formally nominate an Aboriginal commercial fisher to take fish in the fishery on its behalf.

These nominations would, of course, be at the request of the Aboriginal community organisation or business in contract with the Ministerial Corporation. By supporting more Aboriginal businesses to access the commercial fishing sector, this Government is continuing its commitment to promoting economic prosperity for Aboriginal people and communities across New South Wales. It is a key priority for me, as Minister for Aboriginal Affairs, to ensure that we do what we can to ensure that our first nations people benefit from the prosperity of

New South Wales. This sound legislation will help to achieve this goal, and I commend the Minister for bringing it forward. I wholeheartedly support the bill.

Mr JUSTIN FIELD (20:17): On behalf of The Greens I speak to the Fisheries Management (Aboriginal Fishing) Bill 2017. The Greens welcome this bill as evidence of progress by the Government and the Minister on commencing the operation of the Aboriginal Fishing Trust Fund and ensuring that it has seed funding to support commercial fishing opportunities for Aboriginal people in New South Wales. This legislation is particularly important, given the high unemployment rate on the South Coast of the State. The unemployment rate is particularly high for Indigenous youth. I hope that this fund will unlock opportunities to employ Aboriginal youth in South Coast communities that still have a strong commercial fishing sector. The fishing sector supplies the State and further afield with fresh local seafood and it is an important industry for our region. I am sure many residents of the South Coast are interested in the passage of this bill through the Parliament.

I will turn to the specific provisions of the bill shortly, but it is important to take a small step back to consider some of the principles that underpin the intention of the bill, such as the creation of the trust, and the ongoing discussion we have had in this place about Aboriginal cultural fishing. I am a recent participant in these discussions, but I have been listening closely to the discussions over many years. There are slightly different views on what cultural fishing means and how far it extends, but The Greens recognise that Aboriginal cultural fishing is a right that extends far beyond fishing for personal consumption. It is a right that should not be constrained by a permit or licensing system that limits or commercialises a cultural activity and that fails to recognise the unique connection of Aboriginal communities to local fisheries. Aboriginal people have a right to use this resource for the benefit of their families and communities. We have to start from a position of trust that Aboriginal communities will manage that resource, as they have done for millennia within their communities.

To that extent, The Greens supported 2009 legislation to create section 21AA of the Fisheries Management Act, which would have allowed Aboriginal persons to engage in fishing for personal and communal use, but not for commercial purposes without having to comply with certain other elements of fisheries law at that time. This section enabled the Government to create regulations so long as there was adequate consultation with the Aboriginal community but, as highlighted by the Hon. Mick Veitch in his contribution, eight years on this section has still not been commenced. From what I have been told by Aboriginal fishers, discussions about those regulations essentially have stopped. I know there are ongoing discussions around management plans in the north of the State, but this is not happening generally.

The nub of this issue appears to be the concern of some in Government that open rights to the resource—that is, cultural fishing rights without those regulations—could impact on the rights of commercial fishers and recreational fishers. That concern reflects a historical and—without being unfair—patronising approach to native title rights generally. To put it another way, by not commencing this section we are in effect saying we recognise that the right to use the resource exists, but we do not really trust that it will be used responsibly. Interim regulations with different bag limits have been introduced, but a significant tension remains. Again, it is not unfair to say that, and we should recognise that and address that concern in continuing this conversation.

I raise this matter to provide some background to the bill. While the Aboriginal Fishing Trust Fund offers an important pathway to assist Aboriginal communities and fishing businesses in commercial fishing activities—something I have supported since coming to this place and something I have spoken directly to the Minister about—there remains ongoing tension about section 21AA, any regulations that might be made under it and what are considered unreasonable constraints on cultural fishing and native title rights within parts of the Aboriginal community.

The Government must recognise that a trust to support commercial fishing does not resolve those broader questions as they relate to cultural fishing which some may consider to be commercial in nature. For Aboriginal communities there are no lines between fishing for food for oneself, one's family or the community, for ceremony or for trading and commercial purposes. All of these things meld, and it is sometimes difficult for us to fully appreciate how some Aboriginal communities are connected to the resource and consider it a right, even for commercial purposes, to engage in cultural fishing. When The Greens MP Ian Cohen spoke on the bill in 2009, he said:

It must be remembered that Aboriginal fishing rights are protected by section 211 of the Native Title Act 1994 of the Commonwealth, which commenced prior to the New South Wales Fisheries Management Act 1994, and as such provides a defence to a prosecution for fishing in accordance with their custom ...

I note that Aboriginal people have been prosecuted and jailed for fisheries offences in New South Wales. These actions are considered offences under fisheries law, but for some in the Aboriginal community they are considered to be legitimate cultural practices, including where they might be seen by others to be a commercial enterprise. I recognise that in some instances there is a fine line—sometimes it is well past that line—but we are having this

discussion because the trust does not solve that in and of itself. It will require much deeper ongoing consultation and conversation with the Aboriginal community.

This is important background to the bill. The good work of investing in this trust is undermined because of the failure to commence section 21AA. Regardless of the status of the Aboriginal Cultural Fishing Regulation or local management plans, the section was passed by this Parliament. It was the intention of the Parliament to enshrine that section in law, not to have the Executive delay its implementation while it messed around with regulations. The longer the Government chooses to delay this provision, the more we will see Aboriginal people getting criminal records for undertaking what Parliament has already acknowledged is a cultural right.

The onus is on the Government to push forward with work to resolve these questions collaboratively with the Aboriginal community. The Aboriginal Fishing Advisory Committee and the trust will be part of helping to do that. It can be done by recognising native title rights and the broader meaning of cultural fishing in the minds of Aboriginal people while building understanding and support with other fishing and local stakeholders around the State. We do not need regulations in place to start that. For this reason, The Greens will move an amendment to allow section 21AA to commence on assent to this bill and finally make clear the rights to cultural fishing that were agreed upon in this House in 2009.

I now turn to the details of the bill. The central component of the bill is the power for the Minister to create Aboriginal fishing assistance programs that can be funded by the trust, including making grants and loans to Aboriginal persons or entities, acquiring fishing assets—equipment, boats, nets, or fishery shares—by the Minister for the benefit of Aboriginal communities, or entering into a contract or similar arrangement with Aboriginal persons or entities for them to participate in fishing activities, or start or expand fishing businesses.

In the Minister's second reading speech in the other place, the Government flagged that an initial \$1.5 million in seed funding will be supplied to support the trust and an expenditure committee will be established. I understand there are already expressions of interest for that committee, and it is good to see the Government getting on with it. The committee will assess applications for funding and assist the Aboriginal Fishing Advisory Council in making recommendations to the Minister. It is great to see the Government has engaged with the New South Wales Aboriginal Land Council, NTSCORP and the Aboriginal Fishing Advisory Committee in drawing up this legislation. According to the conversations I have had, this bill is supported; however, most people I have spoken to ask, "What about section 21AA?" I have outlined why that is still part of the conversation.

One of the most significant elements of the bill relates to the Fisheries Administration Ministerial Corporation. The bill provides for assets purchased through certain assistance programs to be held by that corporation. The intent is to ensure investments made by the Aboriginal Fishing Trust Fund remain available to those communities into the future. It might seem counterintuitive that the assets to be used by Aboriginal people for the purposes of accessing the resources for commercial reasons and for economic benefit will be held within a ministerial trust by the Government, but this is supported by the stakeholders, who recognise the importance of ensuring that resources are held in the long term for the benefit of Aboriginal people and communities.

While I understand this intention, I initially had concerns similar to those raised by the New South Wales Aboriginal Land Council and NTSCORP about the extent of the applicability of those provisions and the right of the Fisheries Administration Ministerial Corporation to hold assets. I seek further assurance from the Government through the Minister in reply that fishing assets such as equipment or shares in certain fisheries acquired under grant or loan schemes by Aboriginal persons or entities would not have to be held by the ministerial corporation and that those persons or entities would have autonomy over these assets, even including the right to sell them. I am sure that would be subject to terms and conditions in grants or loan arrangements entered into. The Minister has had a strong hand in this bill—an issue also raised in the commercial fishing inquiry—and will continue to have a strong hand in decisions regarding investments by the trust.

I recognise that this will be based on recommendations by the advisory committee. Through personal engagement with the Minister I know he understands these issues and strongly supports strengthening the capacity of Aboriginal communities to engage in commercial fishing. But the Minister has a range of fishing stakeholders to consider when making the sorts of decision that might be subject to this bill, including purchasing shares. The Minister may have the interests of other operators in mind and the operation of the commercial fishing industry generally. Recently he has played a very strong and important role in commercial fishing reforms. This fund controlled by the Minister creates a government player in the fisheries share market. I recognise there is the expenditure committee and the advisory committee and then the Minister can make decisions.

I ask the Minister to give some indication in his reply speech about how any conflicts might be addressed to ensure the fund is able to get the best value for money for Aboriginal people, recognising the breadth of responsibilities the Minister has for the commercial fishing industry generally. It is unfortunate that the trust was not established in time to participate in the Government's subsidised share trading market held earlier this year,

especially for some of the key species, in particular abalone. All members who have been close to this matter recognise that that fishery and resource has particular sensitivity when it comes to cultural fishing rights.

The Hon. Niall Blair: That was not part of the reform. Abalone has been done. It was done years ago.

Mr JUSTIN FIELD: I said especially for abalone, but there are other fisheries that are of interest. I particularly point out that reforms have been made, people have made decisions to trade and in some senses the market sector has been consolidated. Let us recognise that a large number of commercial decisions have been made by people who already exist in the market. I think it is fair to say—and I raised this directly with the Minister in the inquiry—that it is now likely to be more expensive for the trust to purchase shares, or they may not be available at all in some sectors that will be of particular interest to Aboriginal communities. Access to fisheries for commercial purposes is one of the key points of tension relating to Aboriginal cultural fishing and native title rights. Action taken sooner may have put the fund in a stronger position on those reforms more broadly.

I thank the Minister for bringing this bill to the House. It will be an important step to help strengthen economic opportunities for Aboriginal communities to engage in commercial fishing and build fishing businesses. It will be important to find additional and ongoing money to strengthen the fund and grow those opportunities. I have mentioned a broad range of issues relating to this bill and cultural fishing generally, but that should take nothing away from the wholehearted support of The Greens for this bill, and for the establishment of this fund and its operation. I think we could easily take that next step here tonight to clear up the question of cultural fishing rights more broadly by commencing section 21AA of the Act at the same time. The two issues cannot be separated fully, so let us deal with them together. I commend the bill to the House.

The Hon. PAUL GREEN (20:33): I speak on behalf of the Christian Democratic Party on the Fisheries Management Amendment (Aboriginal Fishing) Bill 2017. The object of this bill is to amend the Fisheries Management Act 1994 to enable payments to be made out of the Aboriginal Fishing Trust Fund established under the Act. The payments will provide assistance of fund grants and loans, as well as the acquisition of fishing assets for the use and benefit of Aboriginal communities in relation to cultural fishing and commercial fishing activities. The bill also makes ancillary and consequential amendments. Historically, Aboriginal people bartered and exchanged fishery resources within and between communities. This practice continues today in a contemporary cultural context, but it is subject to legislation associated with commercial fishing and aquaculture ventures.

Late last year the Christian Democratic Party was instrumental in supporting the inquiry into commercial fishing in New South Wales. In 2016 I participated in the Standing Committee on State Development inquiry into Economic Development in Aboriginal Communities. At one public hearing the committee heard advice from the New South Wales Aboriginal Fishing Rights Group. The witnesses spoke of how fishing in Aboriginal communities along the coastline is a part of their heritage, a part of the legacy of their families. This was particularly noted by Mr Robert Brierly, who stated:

We, as custodians of this country, looked after this resource for 50,000 years. The Aboriginal Fishing Rights Group believes we can manage our industry far better than anyone else can.

Mr Wally Stewart spoke of the impact that the fishing regulation is having on the culture of fishing. He spoke from his experience saying:

... every time Fisheries put a regulation on it ...

Meaning fishing—

... it is severing our cultural way.

Further to this he commented on the Aboriginal community:

They were culture fishermen and got dragged into the commercial industry by regulations. The fishing practices they still use today are one of the most environmentally friendly fishing practices left in the world. They target species and get very little by-catch.

It is clearly evident that fishing is a vital connection for the Aboriginal communities along our coastline. To the Aboriginal community, fishing gives them a link to the world in which they live and have lived for thousands of years. It provides them with work and an ability to be self-sufficient. Mr Chewyng highlighted the importance of the connection when he said:

They need to get back on country, they need to get back into the water, they need to participate in water and learn how to physically do it and then get that self-esteem back so they have this ability to produce an income but not just simply go out and earn money.

He was talking about the young people who are finding it hard to find employment on the South Coast. Cultural fishing played an important part in their lives, and kept them off the streets and from getting into trouble when they were bored. The request from New South Wales Aboriginal Fishing Rights Group is to support them and their long-term goal of self-sufficiency for their community. They want to be empowered to build a fishing model, possibly with the opportunity of processing catches, so that they can employ people. The Aboriginal Fishing

Rights Group stated that it is seeking to partner with Fisheries so that Aboriginal people can build an enterprise that employs Aboriginal people and changes lives. I hope this bill is the beginning of an empowering of our Aboriginal fishing communities.

This bill broadens the scope and flexibility of the Aboriginal Fishing Trust Fund. Under the fund the Minister for Primary Industries will now be able to establish assistance programs that may provide grants and loans for the enhancement, maintenance and protection of Aboriginal cultural fishing, as well as for Aboriginal communities to develop businesses associated with fisheries resources throughout New South Wales. Programs will also include the purchase of fishing assets for the benefit of Aboriginal communities. Fishing assets may include share management, operational items or operating equipment that is needed for fishing. Fishing assets will be held by the Fisheries Administration Ministerial Corporation and may be subject to a fee. Loans grants and any other equipment purchases are to be recommended by the relevant advisory council on Aboriginal fishing before a program is approved. The aim of such programs is to provide assistance to Aboriginal communities and support them in cultural fishing, commercial fishing and other fishing-related activities.

The bill also broadens the scope of payments that can be paid into the fund. Payments can be made by the Treasurer, a grant or donation of money, and any money given to the fund from the Australian Government. I conclude with a statement from Eden Local Aboriginal Land Council Acting Chief Executive Mr Les Kosez. While the comment is not directly related to fishing it was strong sentiment touched on throughout the hearings of the Standing Committee on State Development inquiry into Economic Development in Aboriginal Communities in New South Wales. Mr Kosez stated:

...we're not expecting the government to hold our hand forever. We believe that if we can get that assistance in those start up years—we want to get away from the grant merry-go-around, we want to be sustainable as an organisation and we want to be self-sustainable as a community.

I want this bill to empower Aboriginal communities up and down the coast to be able to develop viable fishing organisations that empower their people, culture and heritage. I hope this is one step closer to seeing our first peoples once again become self-sufficient, in this case through their fishing. I commend the bill to the House.

Reverend the Hon. FRED NILE (20:40): I will add to the comments made by my colleague the Hon. Paul Green in support of the Fisheries Management Amendment (Aboriginal Fishing) Bill 2017. The bill states:

The object of this Bill is to amend the *Fisheries Management Act 1994* to enable payments to be made out of the Aboriginal Fishing Trust Fund established under that Act, to provide assistance to Aboriginal communities in relation to cultural fishing and commercial fishing activities. The assistance is proposed to be provided through grants and loans, and the acquisition of fishing assets for the use and benefit of Aboriginal communities.

This bill is a big step forward in achieving that goal, but we probably still have further to go. I have had a great deal of contact with New Zealand because my parents lived there and I visited regularly. Unlike Australian Aboriginals, the Maoris signed a treaty with the British that gave them strong rights, including dominion over the bays and the waters around New Zealand. Of course, that has not happened in Australia, but I believe it should so that our Aboriginal people do not need to beg and borrow or be treated in the same way as the white community. I know that sounds like discrimination, but it must be done. In the same way that we granted Aboriginal land rights, we must consider granting sea rights to Aboriginal people. The Christian Democratic Party fully supports the bill and commends the Government for introducing it.

The Hon. NIAL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (20:42): In reply: I thank all honourable members for their contributions to debate on the Fisheries Management Amendment (Aboriginal Fishing) Bill 2017. I thank in particular the Minister for Aboriginal Affairs, the Hon. Sarah Mitchell; the Hon. Mick Veitch; Mr Justin Field; the Hon. Paul Green; and Reverend the Hon. Fred Nile. Members of this House know that the Aboriginal Fishing Trust Fund is necessary because it has the potential to increase economic opportunities for Aboriginal people.

Fishing is an extremely important part of Aboriginal culture, and supporting Aboriginal people to realise their fishing aspirations can be helped by the establishment of the Aboriginal Fishing Trust Fund. The bill amends the Fisheries Management Act 1994 by expanding the scope and functions of the trust fund. It does this by allowing for loans to be issued from the trust fund and enabling assets purchased using trust money to be held for the benefit of the Aboriginal community. By making these amendments, the bill will allow for a broader range of projects to be funded from the trust fund.

I remind members that the New South Wales commercial fishing industry is in the midst of a significant reform. From 1 May until 5 June 2017 the Department of Primary Industries ran a subsidised share trading market for fishers. To give members an idea of the number of shares traded so far, more than 70,000 shares were traded between the announcement of the reforms and the share trading market, approximately 35,000 shares were traded in the market, and since the market closed, more than 47,000 shares have now changed hands. The Government

recognises that the industry as a whole has done as it had expected and has bought and sold shares as needed. However, it also knows that Aboriginal fishers have been under-represented in these figures, and that is very concerning.

The Government wants the cultural knowledge and the family traditions of Aboriginal people to be preserved and passed on. It also wants future generations of Aboriginal people to take up fishing. That is where this trust fund has a role to play. I can foresee commercial fishing shares being bought and held by the Ministerial Corporation for a young Aboriginal fisher to lease. I can also see an Aboriginal aquaculture business applying for a low-interest loan to expand its operations, thereby providing further employment opportunities for its local community. This trust fund offers so many possibilities, and I look forward to hearing stories of Aboriginal people growing businesses, being innovative, and bringing up the next generation to love fishing.

During the second reading debate, the Hon. Mick Veitch raised the fact that the Government needed to clarify the bill in the second reading speech in the other place. I make no apologies for continuing to consult with the New South Wales Aboriginal Land Council and the Native Title Services Corporation, and I welcome their feedback on the development and the progress of this legislation through both Houses. I reiterate and put beyond any doubt that the Government has addressed concerns raised by the New South Wales Aboriginal Land Council and the Native Title Services Corporation on this bill.

Concerns were raised about whether the bill would allow Aboriginal people and entities to purchase fishing assets using grants and loans, or whether all assets would be held by the Fisheries Administration Ministerial Corporation. I make it clear that assets purchased by Aboriginal people or organisations using loans or grants will not be held by the corporation. These assets are intended to sit with the individual or organisation that purchased them. Only assets purchased by the Minister in relation to an application will be held by the corporation. In addition, the legislation does not authorise the corporation to transfer ownership of an asset from an individual to itself. The Government will also consult with the Aboriginal Fishing Advisory Council [AFAC] before assets held by the corporation are sold, and it will notify AFAC if any decision is inconsistent with the council's advice.

Some concerns also have been raised about whether the bill unintentionally restricts Aboriginal businesses from accessing money from the fund because the overarching purpose is to support Aboriginal communities. The bill is not intended to restrict Aboriginal businesses or individuals from taking up economic development opportunities. In fact, the bill makes it clear that the Aboriginal Fishing Assistance Program can provide grants or loans to Aboriginal people or to Aboriginal entities. On the topic of Aboriginal businesses, queries have been raised about the definition of an Aboriginal entity. AFAC has made it clear that an Aboriginal entity should be at least 51 per cent owned by Aboriginals. The Government supports this and has agreed with AFAC that it will implement that definition through the operational arrangements.

The legislation also allows for funding to be granted to a person acting on behalf of an Aboriginal entity. This provides flexibility for Aboriginal organisations that may wish to engage a consultant to assist with their application. AFAC will oversee robust application and assessment processes to ensure that the funding is not provided to open-ended projects that do not benefit Aboriginal organisations. The Department of Primary Industries will also continue to work with stakeholders to ensure there are clear parameters with regard to who may act on behalf of an Aboriginal entity. If required, the Government will consider introducing a regulation to clarify and to strengthen that provision.

The bill provides that fees may be required to be paid in some circumstances. This refers to the fees that are payable to all participants in the fishing sector. Applicants will need to consider these costs as part of the business plan they attach to their application. Other concerns have been raised about money from the trust fund paying for the administration costs of the program. This is discretionary in the legislation. Following representations from the NSW Aboriginal Land Council and NTS Corp, the costs of administering the program will be funded from the internal resources of the Department of Primary Industries and not from funds allocated to the trust fund.

I now turn to comments raised in the debate. The member for Wyong in the other place and the Hon. Mick Veitch both discussed the issue of audits. It is important that the Aboriginal Fishing Trust Fund is accountable to the community for how trust funds are spent. The Fisheries Administration Ministerial Corporation will be audited annually. The Public Finance and Audit Act 1983 requires entities such as the Ministerial Corporation to be audited. In addition, the department will publish annual reports on the trust fund as required under the Fisheries Management Act 1994 and audits of the trust fund will also be taken periodically. The first audit will likely be conducted towards the end of next year, in line with the audits for all other departmental trust funds.

The Hon. Mick Veitch questioned the separation between membership of the Aboriginal Fishing Trust Expenditure Committee and the Aboriginal Fishing Advisory Council. I am informed that under the department's

ministry arrangements, one person from AFAC will sit on and chair the expenditure committee. The AFAC member will not have a voting function on the expenditure committee. This is to strike a balance between ensuring continuity between the expenditure community and AFAC and providing the expenditure committee with the necessary independence to carry out its assessment and development of funding recommendations. To address any governance issues, a probity adviser will sit with both the Aboriginal Fishing Trust Expenditure Committee and the Aboriginal Fishery Advisory Council to ensure probity issues are addressed. The Hon. Mick Veitch also asked what processes will be in place to ensure the money reaches the people who are genuinely eligible for the trust fund. As I mentioned earlier, Aboriginal entities will need to be at least 51 per cent Aboriginal-owned.

In the other place, the member for Wyong asked whether a joint venture between two companies could access funding. This will depend on the circumstances of the case, including whether the two companies have more than 51 per cent Aboriginal ownership and whether the joint venture is applying on behalf of an Aboriginal entity. I assure the member for Wyong, the Hon. Mick Veitch and the House that the Aboriginal Fishing Trust Expenditure Committee and the AFAC will play an important role in vetting applications and ensuring that money is directed appropriately. The expenditure committee and AFAC will be able to use their knowledge and community contacts to make sure the money goes to people who are genuinely eligible for funding. We will also continue to work with stakeholders to make sure there are clear parameters on who may act on behalf of an Aboriginal entity. If required, the Government will consider introducing a regulation to clarify and strengthen this position.

The Hon. Mick Veitch and Mr Justin Field queried when section 21AA of the Fisheries Management Act will commence. As the member for Port Macquarie mentioned in his second reading speech last week in the other place, the intention has long been that section 21AA will commence in conjunction with the cultural fishing regulation. This Government is committed to progressing Aboriginal cultural fishing arrangements to meet the needs of Aboriginal people and communities. To achieve this, it is investigating whether or not a statewide cultural fishing regulation is the best approach.

As part of these investigations, the Government is trialling local management plans to address the cultural fishing aspirations of Aboriginal communities. The aim of this trial is, first, to understand the cultural fishing practices of individual Aboriginal communities and then create a plan in full consultation with the community for how cultural fishing will be carried out in that community. These trials will guide how and when section 21AA should apply. Some members asked about the time line. We intend to develop and finalise local management plans in 2018 and then consider the most appropriate way to implement or address this issue in the long term.

I acknowledge that some stakeholders, including the NSW Aboriginal Land Council, would prefer a quicker timetable for the application of 21AA. I am sure we will return to this in the Committee stage. Given the shared nature of our precious fisheries resources, the Government believes a measured approach is most prudent. In the meantime, there are measures that provide additional access to fisheries resources through the Aboriginal Fishing Interim Access Arrangement and permits issued under section 37 of the Act. We remain committed to working with Aboriginal communities so they can exercise their cultural fishing rights. The Aboriginal Fishing Trust is another mechanism to help address the fishing aspirations of Aboriginal communities.

Mr Field raised concerns about the sale of fishing assets acquired under the Aboriginal Fishing Assistance Program and held by the NTS Corporation. This issue also was raised by the NSW Aboriginal Land Council and NTS Corp. I mentioned it earlier but I am happy to reiterate that assets purchased by Aboriginal people using loans or grants will not be held by the Fisheries Administration Ministerial Corporation. The intention has always been for a fishing asset privately purchased by way of grants or loans to sit with the Aboriginal person or entity that purchased that asset. Only those fishing assets acquired by the Minister or the corporation will be held by the corporation. Specifically, proposed section 237B (7) will apply only to assets acquired by the Minister. The bill does not authorise the ministerial corporation to transfer ownership of an asset from an individual to itself. The Minister will consult with AFAC before selling any assets.

Mr Field also asked about the probity arrangements. Robust governance arrangements will be put in place for the trust fund. As I mentioned earlier, there will be a probity adviser. The expenditure committee will assess applications on their merits and make recommendations to the Aboriginal Fishing Advisory Council. The council will then make recommendations to the Minister. Mr Field also asked what will happen to shares that are left over and why the trust was not up and running before the share trading market was in place. He expressed concern that it was not up and running and participating in the share trading market. The share trading market was available to all commercial fishers in New South Wales. It was incorrect to use abalone as an example in this instance because that issue was addressed earlier. Abalone and lobster shares have already been addressed in earlier reforms.

Mr Justin Field: You acknowledged the under-representation of Aboriginal people in the process.

The Hon. NIALL BLAIR: We acknowledge that there was low participation in that process. We acknowledge that it was open to all fishers to participate and there was under-representation. After sitting through many hours of parliamentary inquiries and many meetings, I believe that in hindsight—even though the Government did not intend to make a decision on whether the trust should or should not participate in such a share trading market—if the trust had had the money then that the Government is putting into it now and if it had entered that market we would probably have seen an adverse reaction or attack from other sections of the commercial fishing sector towards that entity participating in the market. I dismiss that criticism on the grounds that every fishery in New South Wales was able to participate. There was low representation. We have another opportunity to address the issue of low representation as the Aboriginal Fishing Trust can now continue with its business.

The bill responds to the desire to ensure the Aboriginal Fishing Trust Fund is flexible and effectively meets the needs of Aboriginal communities. It will broaden the scope of existing legislation, introduce significant improvements to the operation of the Aboriginal Fishing Trust Fund and importantly help support cultural and economic fishing opportunities across the State. Again I thank the NSW Aboriginal Land Council, NTSCORP and AFAC for their advice and support. I have spent many hours discussing this issue directly with stakeholders. This is a complex and ongoing issue. I acknowledge it is a difficult issue and it has taken a long time to achieve some sort of conclusion. I commit the New South Wales Government to continuing to work with Aboriginal people in those organisations to find the best structure for the trust fund so it fulfils its role for Aboriginal people not just for this generation but also for generations to come.

I also thank all those who supported this legislation. It means we can get on with implementing the fishing trust fund and start delivering the benefits to the communities it is intended to serve. I also thank all those people in the Department of Primary Industries who have been working on these issues for many years and who continue to engage at a local level. They are starting to look through and to work on some of the local management plans and are providing ongoing advice and support to organisations such as AFAC. I have attended some of the difficult meetings. At times the communities associated with this issue have become quite emotional but it is a step forward. This is good reform which I believe will be supported by all members. I hope in generations to come we will be able to say that we played a small role in increasing the economic and cultural opportunities of Aboriginal people in New South Wales through this bill. I commend the bill to the House.

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

Motion agreed to.

In Committee

The CHAIR (The Hon. Trevor Khan): There being no objection, the Committee will deal with the bill as a whole. There is one amendment, which is The Greens amendment on sheet C2017-086.

Mr JUSTIN FIELD (21:02): I move The Greens amendment No. 1 on sheet C2017-086:

No. 1 **Aboriginal cultural fishing**

Page 6. Insert after line 32:

Schedule 2 Amendment of Fisheries Management Amendment Act 2009 No 114

[1] Section 2 Commencement

Insert ", except as provided by subsection (2)" after "proclamation".

[2] Section 2 (2)

Insert at the end of section 2:

(2) Schedule 1 [27] commences on the date of assent to the *Fisheries Management Amendment (Aboriginal Fishing) Act 2017*.

This amendment deals with the question I raised in my speech in the second reading debate about the commencement of section 21AA of the Fisheries Management Act that was passed by this Parliament in 2009. Upon assent this amendment would commence that section of the Act. I detailed the reasons in my contribution to debate on the second reading so I will now respond to the Minister's comments in his speech in reply.

The CHAIR (The Hon. Trevor Khan): This is not an opportunity for a speech in reply. The invitation is to speak on the amendment. I ask Mr Justin Field to speak to the amendment.

Mr JUSTIN FIELD: I certainly will. The Minister mentioned this issue in his speech in reply. The reasons were flagged as to why the Government would not support this amendment. The Government is working with Aboriginal communities to develop locally specific management plans as an alternative to the commencement of this section. This section will enable the Government to create regulations that deal with the

way in which cultural fishing will be managed. There are concerns that there has been an unreasonable delay in the development of regulations and that there is more of a focus on management plans.

This section will not stop those regulations being developed or those management plans continuing. In fact, it would place a greater onus on the Government and create a sense of urgency in the community to work together to find management plans if that is the direction the Government wants to take to implement cultural fishing in this State. If regulations are not developed and management plans are not finalised it will not be a barrier to the commencement of this section. Members should not let that stop them from supporting the amendment which will ensure that Aboriginal cultural fishing rights are recognised in this State.

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (21:05): The Government opposes The Greens amendment. It has always been the intention to commence section 21AA in conjunction with a cultural fishing regulation. The New South Wales Aboriginal Land Council and NTSCORP raised concerns about a statewide regulation. As such, the New South Wales Government is exploring alternative arrangements to support cultural fishing. As part of its investigations the Government is trialling local management plans which have as their aim to understand the cultural fishing practices of individual Aboriginal communities and to develop a plan to encapsulate those practices in consultation with Aboriginal communities.

Local management plans are about genuine engagement with local Aboriginal communities as they recognise that each region is different. Initial discussions with Aboriginal communities in the Tweed, Port Macquarie and Moama communities about the concept of local management plans have been positive. We understand that those communities welcome this approach. The next step is to engage with community members and to develop these plans in pilot locations in 2018. These plans will then be implemented under section 37 of the Fisheries Management Act 1994.

The Government is close to finalising a formal engagement protocol in consultation with stakeholders to ensure all parties are clear about how local management plans will be developed. However, it is important not to rush these pilot projects and to get the plans right. In addition, it is important that communities are given the time and support they need to properly engage in this process. The trials will in turn guide how and when section 21AA should apply. I acknowledge that some stakeholders, including the NSW Aboriginal Land Council, would prefer a quicker timetable for the application of section 21AA. Given the shared nature of our precious fisheries resources, the Government believes that a measured approach is most prudent at this time.

In the meantime there are measures that provide additional access to fisheries resources through the Aboriginal Cultural Fishing Interim Access Arrangement and permits issued under section 37 of the Act. The Aboriginal Fishing Trust Fund is another mechanism that can help to enhance, maintain and protect Aboriginal cultural fishing. The Greens know that this bill is about creating the fishing trust fund and creating economic opportunities for Aboriginal fishers. Let us not get distracted by this amendment which in a sense is taking us away from the good work we are doing tonight. I do not know how many meetings the member has had with stakeholders on this issue. This is a delicate matter but I believe we are progressing. In 2015 I met with other stakeholders—we needed to meet with everyone on this issue and not just those who want to see this legislation passed—

Mr Justin Field: Aboriginal stakeholders?

The Hon. NIALL BLAIR: Other stakeholders in the community including the fishing sector.

Mr Justin Field: Yes, that is right.

The Hon. NIALL BLAIR: I understand that the views of the Aboriginal community—

The CHAIR (The Hon. Trevor Khan): Order! I remind the Minister and, more importantly, Mr Justin Field that this is not the time to chat.

Mr Jeremy Buckingham: Point of order—

The CHAIR (The Hon. Trevor Khan): There is no point of order. The member will resume his seat. I have dealt with the matter. The Minister will not address Mr Justin Field, and Mr Justin Field will not address the Minister.

The Hon. NIALL BLAIR: I want to make sure that we get a positive outcome for our Aboriginal communities and that we do not start turning participants in the same sector against each other. This is a delicate issue and one that we are progressing. As Minister, I am committed to resolving this issue. I have personally invested much of my time meeting particularly with Aboriginal stakeholders on this matter to understand their views. I understand the challenges that their communities face and the views of other stakeholders in this area.

I have clearly articulated and outlined the path that the Government is taking to progress this issue. It is not the fact that this issue has stalled and we are walking away from it. As I have outlined, we are progressing this issue in a delicate way that will see a positive outcome for our Aboriginal communities on a very sensitive, delicate and important matter. I do not want this matter rushed and to have people from other parts of the community turn it into a problem for those who are associated with it. I oppose the amendment of The Greens because I believe the Government is progressing this issue in a positive manner. We are working with communities to devise localised management plans that may meet the needs of those specific communities. For those reasons, I oppose the amendment.

The Hon. MICK VEITCH (21:10): The Opposition acknowledges the difficulties and complexities around this very important issue. Section 21AA of the Act was about supporting the cultural fishing aspirations of our first peoples in New South Wales. In my contribution to the second reading debate I spoke about this matter. I will not go into much more detail other than to say that I note a degree of frustration in the way the Minister has articulated the position. Obviously concerns have been expressed by stakeholder groups. This is the forum where those stakeholder groups, via members of the Chamber, ventilate those concerns. It is good to have this opportunity to debate section 21AA and to shine a spotlight on it. The amendment moved by Mr Justin Field does that. It is also important to note that it has now been eight years and the frustrations conveyed by the Minister are replicated by those in the community around section 21AA. The Opposition will be supporting The Greens amendment.

Mr DAVID SHOEBRIDGE (21:12): I support the amendment moved by my colleague Mr Justin Field. The Minister said that things are on track, the Government is working on local management plans, the plans will come to fruition at some time, and people should just accept that that will happen. I do not doubt the genuineness of the Minister or that he hopes to, no pun intended, land this at some point. The fact is that this Chamber passed this law in 2009. I have met and spoken with Aboriginal fishers on the South Coast on more than one occasion about this matter and they feel disrespected because no government has enacted it. Labor did not pass it when it was in office—admittedly its last 18 months was chaotic—in 2009 and 2010 and the beginning of 2011. It has now been seven years of this Government and it still has not been gazetted.

The Minister says in this place, "Don't worry about it. We are doing local management plans. We are going to get to it. We have a plan. It is all going to happen." He can say that but he cannot negate the genuine frustration and the real sense of betrayal that coastal Aboriginal communities are feeling about the failure of any government in New South Wales to commence the laws that this Parliament has passed. My colleague Mr Justin Field is saying that this Chamber passed this law in 2009 and it should be commenced.

If the Minister says that the Government does not want to commence it immediately because there are things in train but that it will happen, I invite the Government to put a time frame on it. The amendment currently says that schedule 1, clause 27 commences at the date of assent of the Fisheries Management Amendment (Aboriginal Fishing) Act. The amendment my colleague proposes says that section 21AA will commence as soon as this bill commences. If the Minister thinks that that is too soon he should nominate a date. He should show respect to the Aboriginal community by putting a date in legislation, a date that the Government will be compelled to stick to. If that date is not now, but 12 months from now, the Minister should say so. He should be genuine and give a firm commitment.

The Hon. Niall Blair: Did you listen to my reply?

Mr DAVID SHOEBRIDGE: It is your turn to listen, Minister. I listened to you.

The Hon. Niall Blair: You were not here.

The CHAIR (The Hon. Trevor Khan): Order! I call the Minister to order for the first time.

Mr DAVID SHOEBRIDGE: The Minister should be genuine in his commitment. If he says that he is going to deliver it within a set time frame he should put it in the legislation. If it is not now, if it will happen in 12 months, the Minister should move an amendment that it will commence in 12 months. The Minister should not just say, "She'll be right. We will deliver it. It is all in hand." Aboriginal communities have been hearing that for the better part of a decade. They want a firm date. I commend the work of my colleague Mr Justin Field in moving this amendment, and I invite the Minister to put a firm date in the legislation.

Mr JUSTIN FIELD (21:16): I would like to respond to the Minister's contribution. I picked up on what was said by the Hon. Mick Veitch. There has been some emotion and sense of frustration expressed in this debate. I have spoken with the Minister and I know he is genuine about seeking to resolve this matter. I re-emphasise that there is no barrier to continuing the good work on management plans where communities want to do that. There is no barrier to continuing the discussions on regulations if that is what the department and the Government want

to pursue, even after this section is commenced. So I do not think that it is fair to let that process stand in the way of our doing this. As Mr David Shoebridge said, it has been a long time—since 2009.

In the Minister's speech there was a clear recognition that there are other stakeholders to consider. I do not doubt that, but that is part of the problem. Let us be honest, the recreational fishing sector is pretty well represented in this place. The commercial fishing sector is also very well represented in this place through the work of various members. This Parliament made a decision in 2009 to put section 21AA into the Act. It seems that many people have been banging their heads against the wall about how to see that section come to fruition. I do not reject the idea that those stakeholders should have a say but there are a lot of rules, a lot of rights and a lot of resources that are put into the recreation and commercial fishing sectors. It would be appropriate to show some recognition through this simple act of cultural fishing rights. No-one said that the work being done on the plans at the moment is not positive. I recognise that that is a fair comment but it does not take away from the value that supporting this amendment and enacting 21AA could give to Aboriginal people in this State.

The CHAIR (The Hon. Trevor Khan): The question is that The Greens amendment No. 1 on sheet C2017-086 be agreed to.

The Committee divided.

Ayes13
Noes17
Majority.....4

AYES

Buckingham, Mr J
Field, Mr J (teller)
Primrose, Mr P
Veitch, Mr M
Wong, Mr E

Donnelly, Mr G
Mookhey, Mr D
Sharpe, Ms P
Voltz, Ms L

Faruqi, Dr M (teller)
Moselmane, Mr S
Shoebridge, Mr D
Walker, Ms D

NOES

Ajaka, Mr J
Colless, Mr R
Farlow, Mr S
Harwin, Mr D

Amato, Mr L
Cusack, Ms C
Franklin, Mr B (teller)
MacDonald, Mr S

Blair, Mr N
Fang, Mr W
Green, Mr P
Maclaren-Jones, Ms N
(teller)
Nile, Reverend F

Martin, Mr T
Phelps, Dr P

Mason-Cox, Mr M
Taylor, Ms B

PAIRS

Graham, Mr J
Houssos, Ms C
Searle, Mr A
Secord, Mr W

Clarke, Mr D
Mallard, Mr S
Mitchell, Ms S
Pearce, Mr G

Amendment negatived.

The CHAIR (The Hon. Trevor Khan): The question is that the bill as read be agreed to.

Motion agreed to.

The Hon. NIALL BLAIR: 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. NIALL BLAIR: I move:

That the report be adopted.

Motion agreed to.

Third Reading

The Hon. NIALL BLAIR: I move:

That this bill be now read a third time.

Motion agreed to.

NATURAL RESOURCES ACCESS REGULATOR BILL 2017

First Reading

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

Second Reading

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (21:28): I move:

That this bill be now read a second time.

This bill sets us on a pathway to restoring the community's confidence in water resource regulation in New South Wales. It represents the beginning of a period of reform and improvement for compliance and enforcement in the Regional Water portfolio, and a continuation of improvements in water management generally across the State.

I am sure those in the House who have read the Matthews report will agree with my assessment at the time of its release that it is a sobering read. The report was highly critical of aspects of water administration, primarily of compliance and enforcement. The report highlighted the urgent need to address a number of issues to improve the accountability, transparency and performance of the compliance and enforcement framework and operations. The Matthews report presented the Government with a significant case for change in the water compliance and enforcement system in New South Wales. Mr Matthews rightly identified that the ABC *Four Corners* program had led to a sudden and sharp loss of public confidence in the way New South Wales was handling compliance activities in the Barwon-Darling region and more broadly across New South Wales. While there have been earlier reforms in this area, it is important that we continue to improve and address the problems within the New South Wales system.

The Matthews report has provided us with a guide as to how we can make that happen. As well as identifying problems that need to be addressed, Mr Matthews included a suite of recommendations which give us a pathway to improve accountability, transparency and effectiveness of water compliance and enforcement. In relation to the recommendations in the Matthews report, we have accepted the principles of those that are within our power to do so. For the recommendations that relate to broader basin-wide issues, we have already started discussions with the Murray-Darling Basin Authority and the basin States on how these can be progressed. The consolidation of water compliance into a single body and the establishment of an independent board are the first steps in a series of measures that this Government will undertake to bring about a step change in our compliance system and to rebuild public confidence in water management.

This bill will establish a new, independent Natural Resources Access Regulator. That new regulator will perform an important role in putting in place new standards to ensure effectiveness and transparency of compliance activities at an individual, water-sharing plan and State level. But the Government also accepts there is more to be done. In this regard, I advise the House that I will be bringing further legislation into the House in 2018 to make additional changes to water administration. To give effect to some of the recommendations Mr Matthews has made, I expect further amendments will be needed in areas such as water-sharing plans to provide for metering and to simplify water administration to make it easier for users to understand what is required to comply; and to improve the information available to the public through an accessible register to increase accountability.

These are significant changes that will impact on water users and stakeholders, so it is the Government's intention to release an exposure bill for public consultation prior to its introduction in the budget session of Parliament next year. We want to fix aspects of water administration including simplifying the rules and making information more transparent for the public. As far as is technically possible, we are also committed to a "no metering, no pumping" approach for large water take. We want to engage with industries and communities on the proposed changes in order to be as transparent as possible. We want to ensure that everyone understands the changes the Government wants to make and why they are so important.

The changes are not limited to those introduced through legislation. A number of operational level changes will be implemented through government policies and procedures. Primarily, these are focused on

building compliance capability so that the regulator will be a best-practice operator and leader in the field. This bill delivers on the key building block of the government response, that is, the establishment of an independent Natural Resources Access Regulator. The regulator will be led by an independent board, whose role is to determine whether the Government should institute proceedings for breaches of water legislation and to have oversight of all water compliance. In order to give the regulator oversight and to ensure independence from the customer service sensibility of a State-owned corporation, it is also proposed that compliance functions be moved from WaterNSW to the regulator.

This move is not a criticism of WaterNSW. WaterNSW is an efficient and well-operated organisation. The Government has made a decision that compliance should be moved to the regulator to enable WaterNSW to build on its excellent customer services, such as providing information and advice, licensing, billing and meter reading, and to create a separate independent regulator where its key driver is compliance. The day-to-day running of compliance operations will be the responsibility of a new chief regulatory officer who will be accountable to the board. The regulator will play a unique role as it will be overseeing access to and the use of water—one of the most precious economic resources of the State. Ensuring that water is used lawfully is critical, particularly given the private and public economic, social and environmental benefits water generates.

As the regulator matures, it may be that compliance and enforcement functions for other natural resource portfolios could be overseen by the board. This would deliver efficiencies to government and build critical mass and professional expertise among otherwise separate and relatively small natural resource compliance teams. The decision to establish the regulator with an independent board supported by the NSW Department of Industry was a strategic one. This integrated governance will enable strong feedback between the compliance, planning and policy functions so that the system as a whole is practical and coherent for customers. While this arrangement removes the direct link between the Department of Primary Industries and the new regulator, it maintains an important link to the section of the Department of Industry responsible for setting the plans and policies that govern the sharing and allocation of water resources on behalf of the State.

It is important to note that alternative models, such as placing the new regulator in another cluster, would inevitably lead to a regional water policy that is ineffective and unworkable. I assure the House that these measures are not about increasing red tape for water users but about developing rules that are easier for everyone to understand and comply with. The structure also avoids the high financial cost of duplicating the essential technical skills that the regulator will need or the cost of setting up an extra organisation. The board will have three members who will be appointed based on their skills and experience. As set out in the legislation, the board as a whole will have expertise in law, natural resources management, compliance and regulation. I am committed to ensuring that appointments occur as soon as possible following a call for expressions of interest.

Independent search consultants who have experience in government board recruitment are managing this process. Very shortly there will be advertisements placed in Sydney-based and regional papers including *The Land*, as well as on recruitment websites. Candidates will be assessed and selected based on their skills and experience. It is imperative that the public have confidence in these appointments. The board will be at arm's length from the Minister and from WaterNSW, which provides customer services to water users, and from farmers and environmental water holders and the sections of government that work with these water users. In addition to determining whether the Government should institute proceedings for breaches of water legislation, the board will have oversight of the regulator's functions, including preparing strategies, policies and procedures; providing advice on the administration of compliance and enforcement matters; and publishing convictions in prosecutions. To ensure full transparency, it will be required to publish an annual statement of its work and activities.

I anticipate some members will use their contribution to this debate to remind the House that only 18 months ago we were discussing a bill that transferred staff to WaterNSW. I acknowledge that during debate on that bill the Hon. Mick Veitch made reference to "the problem of embedding regulators with operators. While I did address this issue in good faith during my reply speech later that day, with the benefit of hindsight and in light of the ABC *Four Corners* program and other inquiries, more attention should have been given to this important aspect. It is important to note, however, the transfer of compliance resources is not a reversal of the previous move; we are consolidating all water compliance staff into the new regulator. The staff will not be returning to the Department of Primary Industries. The regulation of access to natural resources will be separated from the industry development role of the Department of Industries.

I assure the House that no staff will lose entitlements as a result of the transfer. This bill offers the same protections of entitlements for those staff transferred to the new regulator, including leave accrued up to the point of transfer, as with the previous legislation. The consolidation of all water compliance staff in the regulator will create a single point of contact for dealing with allegations of breaches of the Water Management Act and the Water Act. This will free up WaterNSW to continue its role in customer service, and its compliance and enforcement function in the Sydney drinking water catchment under the Water NSW Act. Generally, unless

customers are subject to compliance action they deal with WaterNSW. Compliance staff in the new regulator will report to the Chief Regulatory Officer who is accountable to the independent board.

Some may wonder whether this bill is premature and we should wait until the final Matthews report before taking any action. However, the Government has decided that it is critical for us to start the reform process now. This Government has a track record of tackling water resource management issues head on and our approach is no different in this situation. The community does not want us to sit on our hands when the first Matthews report has already given us a clear mandate for the next steps. To that end, the department already has appointed Ross Carter to act in the Chief Regulatory Officer role to get the process started. Mr Carter is an experienced regulator and an accomplished natural resources management professional with a strong track record of setting up compliance and regulation frameworks. His expertise and knowledge span 30 years in the design and implementation of policy, programs and regulation, traversing energy, environment, national resource management, conservation and Aboriginal cultural heritage.

I now outline the key provisions of the bill. Part 1 sets out the preliminary matters and definitions. Importantly, it enables natural resources management legislation—the legislation where the regulator will have a compliance role—to be expanded beyond water legislation to include any other Act administered by a "relevant Minister" that is prescribed by the regulations. Any such regulation could only be made with the concurrence of that Minister. This is the tool I referred to earlier to enable additional natural resource management portfolios to be added to the regulator's functions as it matures.

The phrase "relevant Minister" includes the Minister for Primary Industries, and Minister for Regional Water, and the Minister for Lands and Forestry. Parts of the Forestry Act 2012 administered by other Ministers could not be added. Part 2 division 1 establishes the Natural Resources Access Regulator as a New South Wales government agency and sets out its governance structure. There will be a three-member board of the regulator, which will oversee decisions relating to the functions of the regulator, as well as a Chief Regulatory Officer reporting to the board who will be responsible for the day-to-day management of the activities of the regulator. The regulator will not be subject to the control or direction of the Minister. However, the Minister will be able to give the regulator a written direction on general matters if the Minister is satisfied that it is necessary to do so in the public interest, and subject to specified exclusions that ensure that the directions do not interfere with the regulator's functions.

The bill makes it clear that directions cannot be given in relation to specific matters that are being considered or determined by the regulator; the content of any advice or report given by the regulator; or whether proceedings for offences should be instituted. An example of direction that could be given is to direct the regulator to work with the Natural Resources Commission to conduct an audit on the enforceability of the provisions in water sharing plans. Any direction must be published by the regulator as soon as practical after it is given, and particulars must be included in its annual report. Establishing the regulator in this way means that it is provided with the independence it needs to effectively and transparently manage compliance and enforcement. The Government is still able to direct it where it is absolutely necessary and in the public interest.

Part 2 division 2 establishes the functions of the regulator. As I mentioned earlier, the Government has agreed with Mr Matthews' report and accordingly has allocated the regulator a broad range of functions under natural resources management legislation, including preparing strategies, policies and procedures relating to enforcement powers; advising and reporting to the Minister or any relevant Minister on any matter relating to administration of natural resources management legislation, or any other advice or reports as the Minister may request; publishing details of convictions and prosecutions for offences; and any other functions imposed through the regulations or by other legislation.

Significantly, the regulator will be the body that decides whether proceedings for any offence under natural resources management legislation should be instituted by the Crown. To ensure the regulator has sufficient resources to perform these functions, part 3 enables the transfer of staff in WaterNSW who are performing compliance functions to the regulator. Importantly, these staff will retain rights to all entitlements and leave in this transfer. As I have discussed earlier, this step is intended to provide an additional layer of transparency and independence to compliance and is no reflection on the work of WaterNSW. Part 3 also provides for information sharing between agencies and from WaterNSW to the regulator where necessary. This will make sure that all information required to take compliance and enforcement action is shared appropriately between agencies. Part 3 also provides standard protections from personal liability for the board, the Chief Regulatory Officer and any person acting under the direction of the board so long as they act in good faith. The remainder of part 3 provides for an annual report and that regulations may be made to give effect to this Act.

Schedule 1 contains standard provisions with respect to the members and procedures of the board, including the requirement to disclose pecuniary interests. In short, the provisions of this bill deliver on the first stage of the Government's commitment to implementing the recommendations in the Matthews report. This bill

demonstrates our commitment to making changes that will significantly improve the transparency and independence of compliance and enforcement in New South Wales. While the bill today is focusing on the steps that the Government is taking to create an effective compliance framework, we recognise that it is equally, if not more important to create a culture of voluntary compliance in the community.

As I said earlier, to facilitate this, we will consult early next year on a number of the key recommendations in the Matthews report, including, as far as technically possible, a "no meter, no pump" policy for large water users and expanding on the functionality of the current water access licence register to create a public register that enables the community to readily access water entitlement and pump details from a single source. An accessible public register is critical to increasing public confidence in the framework and promoting voluntary compliance. As Mr Matthews noted in his report, there is currently less transparency in water holdings—even though water is a State resource—than in real estate, which is a private asset. We recognise that mandatory metering might be perceived in some circles as a step too far and as punishing the many for the sins of a few.

However, I reassure the House that we are committed to developing a fair and equitable policy so that the cost to water users is proportional to the capacity of their works. The Government recognises that the costs of implementation of a metering system may require significant investment for some users. We will work with water users and take a staged approach to implementation. Responsibility for metering costs, including purchase, installation and maintenance of meters, sits with irrigators while stream gauging and meter reading are costs to government. The New South Wales Government has committed to driving down water prices and we are not abandoning this commitment. Staged implementation, based on risk, will also be a key element of the policy, which will be developed in consultation with water users. I remind the House that this is a matter of equity.

There are many water users across the State who have invested in infrastructure to enable their take to be accounted for properly. Why should their neighbours not be subject to the same rules? The New South Wales Liberal-Nationals Government is committed to working with the community to develop and implement reforms that achieve the key goals of transparency, independence and effectiveness. The proposed changes to metering and public register of entitlements will facilitate a culture of voluntary compliance among water users. The regulator will be resourced with the staff and tools it needs to enforce the rules, where needed. Another of the key themes of the Matthews report is the management and protection of environmental water. This is an issue that the Government takes very seriously. The Premier has written to the Chair of the Murray-Darling Basin Authority to reconfirm its commitment to the implementation of the Basin plan and to working with the authority and Basin States to improve water management.

In particular, the Government is committed to prioritising examination of protection and management of environmental flows, noting that the position of the Government remains that licensed water recovered for the environment should retain the same characteristics of licences used for other purposes. I stress that the Government remains committed to strong community involvement and transparent water planning processes. I am always open to suggestions that improve on how we do this. I will work in collaboration with the authority and the community to find ways to deliver better outcomes for people in the Murray-Darling Basin.

We are at a turning point in the way we manage water compliance and enforcement in this State. This Government is ready to move forward on this challenge. Mr Matthews has given us an important guide for future directions. As members know, there are other inquiries occurring in this space. We will be working to identify what needs to change. I put this place on notice that I expect to bring more reforms through Parliament next year to advance the work that needs to be done. This is the beginning of a significant reform package that will benefit communities and the environment. This Government is committed to doing everything it can to ensure that community confidence in the compliance and enforcement of water resources in New South Wales is restored. I commend the bill to the House.

Debate adjourned.

RURAL CRIME LEGISLATION AMENDMENT BILL 2017

First Reading

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

Second Reading

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (21:52): I move:

That this bill be now read a second time.

The Rural Crime Legislation Amendment Bill 2017 follows a review into stock theft and trespass undertaken last year by former NSW Police Force Assistant Commissioner Steve Bradshaw, who has spent many decades policing

rural and regional communities. The bill proposes a range of amendments to existing legislation that are designed to provide a more comprehensive and effective response to rural crime. The bill responds to calls from rural landholders for greater legislative recognition of the impact of trespass onto rural properties, which is often accompanied by other crimes such as property theft and may trigger a biosecurity risk. The review was commissioned by the Government in 2016 in an effort to gain a clearer picture of the issues facing regional communities across New South Wales in relation to rural crime.

The review followed research published by the University of New England in 2015, which showed that, unlike other crimes, rural crime was not trending downward and was likely to be significantly under-reported. The Bradshaw report referred to advice from the NSW Police Force that the number of stock theft incidents have been increasing since 2013 and New South Wales primary producers experienced a combined \$2,572,462 loss during 2015. This does not include loss of any product—for example, wool or skin—from the stolen livestock or loss of breeding potential. The report states that New South Wales farmers have reported more than \$11 million worth of sheep and cattle stolen during the five years to 2015. This calculation is based on average market prices each year for cows and ewes and does not take into account the loss associated with stud stock, wool, breeding potential or investment to improve bloodlines of stock. Therefore, one or two instances of stock theft may represent a farmer's profit margin for the year. The latest data from the Bureau of Crime Statistics and Research indicates that in the 12 months to June 2017 there were 484 reported incidents of stock theft across New South Wales.

Mr Bradshaw clocked up thousands of kilometres driving across the State to hear firsthand from the victims of rural crime and from the police officers and regulatory compliance officers on the front lines who deal with this problem every day. A key message from rural landowners was about the deep fear caused by unwelcome intruders onto their land, whether this was people hunting illegally, opportunistic property thieves, or people trespassing for other reasons. Their fear was often followed by frustration and anger at the penalties imposed for these crimes. The provisions outlined in this bill seek to address this imbalance. I take this opportunity to thank Mr Bradshaw for his work in this important area. I also thank those who took the time to share their experiences of rural crime. Their stories are reflected in Mr Bradshaw's recommendations to Government, and have shaped the bill before the House.

The Government has already begun work to implement its response to some of the issues identified in Mr Bradshaw's report. One crucial development from the perspective of operational policing has been the inaugural appointment of a dedicated NSW Police Force Deputy Commissioner for Regional Field Operations, Mr Gary Worboys. It is well recognised that policing in the bush presents different challenges from those faced in the suburbs of Sydney. For example, the Barrier Local Area Command covers an area stretching from the Queensland border to the Murray River. However, residents still rightly have high expectations of the NSW Police Force. They want to know that police officers will be there when they are needed. They want to know that their issues will be well understood and, most importantly, they want an effective and proportionate response when those who break the law are caught. Along with future operational developments under the leadership of Deputy Commissioner Worboys, this bill will assist the NSW Police Force to reflect better the expectations of rural and regional residents.

I now turn to the provisions in the bill. The bill amends section 10A of the Animals Act 1977 to provide for the conditions of proving ownership for feral goats. The same provision already applies to deer. As members may be aware, New South Wales has a maturing feral—or rangeland—goat industry. Australia is the world's largest exporter of goat meat and supplies more than half of the world's total export volume. In 2015-16 the trade value of this State's goat exports was \$4.3 million. In 2016 the Department of Primary Industries' annual aerial survey of western and central New South Wales estimated there were 5.8 million head of goats—both managed and feral—in the monitoring zone. Clearly this is an important industry for our State and it is important that goat harvesters are able to protect their property rights.

Under existing legislation it has been very difficult for police to proceed with prosecutions for larceny where the property stolen was harvested feral goats. This is because of the difficulties in proving private ownership of the goats. The deeming provision in this bill will support the NSW Police Force and the courts in their investigations and prosecutions of stock theft. The bill also seeks to recognise the particular vulnerability of rural victims of crime by amending section 21A of the Crimes (Sentencing Procedure) Act 1999 to include geographical isolation as an aggravating factor to be taken into account on sentence. This change acknowledges the many submissions to the Bradshaw review made by families that had experienced a situation in which their remoteness made them particularly vulnerable. For example, there were stories of mothers and their children alone on rural properties having to endure nights when people came to hunt illegally on their land, cause damage, and refused to leave.

The Bradshaw review received many submissions from different parts of the State on this issue. The Government has listened to those concerns, and this bill gives recognition to the particular experience of victims of crime in rural and remote communities. The bill also amends the offence of aggravated unlawful entry on enclosed lands in section 4B of the Inclosed Lands Protection Act 1901 to better reflect the impact of trespass and illegal hunting on rural properties. Specifically, the provision will be expanded to include the following as factors of aggravation: introducing or increasing a risk of a biosecurity impact for those enclosed lands; intending to commit an offence relating to hunting or animal theft; being in possession of firearms, weapons or hunting equipment without reasonable excuse; or being accompanied by a breed of dog ordinarily used for hunting. The bill provides for the same definition of biosecurity impact as that which was in the Biosecurity Act 2015. In the Biosecurity Act 2015, biosecurity impact means:

An adverse effect on the economy, environment or the community that arises, or has the potential to arise, from biosecurity matter, a carrier or dealing with biosecurity matter or a carrier, being an adverse effect that is related to:

- (a) the introduction, presence, spread or increase of a disease or disease agent into or within the State or any part of the State, or
- (b) the introduction, presence, spread or increase of a pest into or within the State or any part of the State, or
- (c) stock food or fertilisers, or
- (d) animals, plants or animal products becoming chemically affected, or
- (e) public nuisance caused by bees, or
- (f) a risk to public safety caused by bees or non-indigenous animals, or
- (g) anything declared by the regulations to be a biosecurity impact.

The DEPUTY PRESIDENT (The Hon. Paul Green): It being 10.00 p.m., proceedings are interrupted to permit the Minister to move the adjournment motion if desired.

The House continued to sit.

The Hon. NIALL BLAIR: Individuals charged with an aggravated offence will have the opportunity to provide evidence to support a defence of reasonable excuse. These changes will ensure the aggravated offence appropriately captures a range of scenarios that we know are happening across rural and regional New South Wales and which cause a great deal of concern and frustration to landowners. The Bradshaw review highlighted that trespassers can cause serious and ongoing consequences for primary producers by spreading disease, and cause stress and other harm to valuable livestock. It is important that victims of stock theft are provided with all reasonable opportunities to locate their stolen animals and organise for their safe return. Many farms run on very slim margins and even one incident of stock theft can prove to be financially devastating. To better assist primary producers, the bill also amends the Law Enforcement (Powers and Responsibilities) Act 2002 to provide for the issuing of stock mustering orders by the Local Court. These will be issued on application from either the owner of stock or a police officer. This concept has been based on existing provisions in chapter 22A of Queensland's Police Powers and Responsibilities Act 2000.

The Local Court will only make a stock mustering order when satisfied, first, that there are reasonable grounds for believing that an individual's stock is on land managed or controlled by another person; and, secondly, that the person managing or controlling the land has refused to allow the stock owner, or police officer who applied for the order, to enter the land to locate and remove the stock, or it is impracticable to seek such permission from the landowner. An application for a stock mustering order is to be made by issuing and filing an application notice in accordance with part 4 of the Local Court Act 2007. An application for a stock mustering order must specify the grounds for the application, including any belief of the applicant, in the manner prescribed by the regulations. The application notice must be served, first, personally on the owner of, or person managing or controlling the land to which the application relates, or, secondly, if personal service cannot be effected promptly, by causing a copy of the application notice to be affixed to or near at least one of the entrances to the land. The application notice must also be served on the police officer in charge of the police station closest to the land to which the application relates, unless the application is made by a police officer.

If granted by the Local Court, a stock mustering order may authorise a person named in the order to do one or more of the following: first, enter the land specified in the order including the airspace above the land to conduct, under the direction and supervision of a police officer, a muster of the stock identified in the order so as to locate and remove the stock; secondly, search for and take possession of stock found at the land that matches the description of the stock identified in the order; thirdly, draft, cut out, and take any other action necessary to identify and separate the stock from other stock but only for the purposes of conducting the muster; and, fourthly, bring onto the land specified in the order any agent, assistant, horse, dog, vehicle or equipment reasonably necessary for the search or for the taking possession of the stock that is authorised by the order.

A stock mustering order is taken to also authorise any police officer to do either or both of the following: first, to enter the land specified in the order including the airspace above the land to direct and supervise the muster of the stock identified in the order so as to locate and remove the stock; and, secondly, to bring onto the land any horse, dog, vehicle or equipment that is reasonably necessary for directing and supervising the muster. Any action authorised by a stock muster order made by the Local Court will be supervised by police. The bill also provides for an offence prohibiting a person who has knowledge of a stock mustering order from acting or making an omission with an intent to frustrate action under the order or obstructing a person who is acting under the order. This offence has an associated maximum penalty of 50 penalty units, being \$5,500, or imprisonment for six months.

As noted in the Bradshaw report, recreational hunting is a popular pastime across many areas of New South Wales. Hunting makes an important contribution to regional economies. Recreational hunting by the 19,000 licensed game hunters in New South Wales is estimated to contribute \$119 million to the gross State product and to create 860 jobs. The contribution from non-game licence holders is estimated to be four times as much. While we know that most hunters do the right thing, there are unfortunately exceptions. Landowners have made it very clear that they would like to see more done to ensure their property rights are respected. To deter illegal hunting, and better meet community expectations, this bill doubles the maximum financial penalty for the offence of hunting on private land without consent from \$1,100 to \$2,200 under section 28J of the Summary Offences Act 1988. It will also ensure that NSW Department of Primary Industries [DPI] inspectors can issue penalty notices for this offence. Currently, only police office can issue penalty notices for this offence. The message we are sending to hunters is to make sure they do the right thing and respect the owner or occupier of the land by seeking their consent or there will be serious consequences.

To further enhance the ability of police officers and DPI inspectors to investigate and prosecute hunting offences, the bill also expands their current powers relating to the stopping, detaining and searching of vehicles and vessels connected with a game hunting offence. The bill broadens the definition of a game hunting offence in relation to particular parts of the Game and Feral Animal Control Act 2002 to include the offence of hunting on private land without consent under section 28J of the Summary Offences Act 1988. Section 44 of the Game and Feral Animal Control Act 2002 concerns the power of inspectors to stop, detain and search vehicles or vessels where the inspector has reason to believe that there is something connected with a game hunting offence in or on a vehicle or vessel. The bill expands the definition of a game hunting offence for this purpose to include the aforementioned offence of hunting on private land without consent.

Section 45 of the Game and Feral Animal Control Act 2002 concerns the power of inspectors to seize anything that is found by the inspector in any search under part 4 division 2 of the Act and that the inspector has reason to believe is connected with a game hunting offence. Again, the bill expands the definition of game hunting offence for this purpose to include the offence of hunting on private land without consent. These changes provide for a useful and logical extension to the current powers and will ensure greater consistency in the investigation and prosecution of illegal hunting offences. The bill provides also for the ability of an inspector to issue a notice to produce to the person in charge of the vehicle or vessel requiring that person to take the vehicle or vessel to a specified place for the purpose of carrying out a search. The notice to produce may only be issued if it is not reasonably practicable to carry out the search where the vehicle or vessel is stopped.

The bill before the House is only one part of the Government's response to the recommendations of the Bradshaw review. The consideration and implementation of the remaining Bradshaw recommendations are ongoing and are being overseen by the Rural Crime Advisory Group, which includes representatives from the NSW Farmers Association, the NSW Police Force, the Department of Primary Industries, Local Land Services and the Australian Livestock and Property Agents Association. This consultative approach will ensure that the action taken by the Government in response to the recommendations of the review will meet the expectations of rural and regional communities. I again thank Mr Steve Bradshaw for his long-time commitment to address rural crime in New South Wales and for his comprehensive and thoughtful review report. While the bill represents progress in our response to stock theft, trespass and illegal hunting, the Liberal-Nationals Government will continue to consult with stakeholders and will always strive to further improve the response to rural and regional crime. I commend the bill to the House.

Debate adjourned.

ROAD TRANSPORT AND RELATED LEGISLATION AMENDMENT BILL 2017

First Reading

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

Second Reading

The Hon. BEN FRANKLIN (22:11): On behalf of the Hon. Niall Blair: I move:

That this bill be now read a second time.

I am pleased to introduce the Road Transport and Related Legislation Amendment Bill 2017. The purpose of the bill is to amend the road transport and related legislation to provide for some important road safety initiatives, improvements on existing policies and administrative amendments. The outcomes of the legislative changes will deliver positive road safety outcomes and contribute to the effective and reliable delivery of transport and freight services for the people of New South Wales. The bill provides for amendments to the Road Transport Act 2013 to allow for the creation of the New South Wales written-off heavy vehicles register which will allow camera technology to be used for the enforcement of vehicle dimension offences and increase the maximum penalty that a court may impose for road transport offences under the statutory rules.

The bill seeks to modernise the Driving Instructors Act 1992 by mandating Working With Children Check clearances and introducing good repute requirements for driving instructors. The Roads and Maritime Services will be given broader powers to caution or to suspend or cancel a driving instructor's licence if the instructor no longer displays competence or suitability for the licence. The bill also amends the Point to Point Transport (Taxi and Hire Vehicles) Act 2016 to align certain provisions with those of work health and safety legislation, including enhancing the powers of the Point to Point Transport Commissioner, who will be able to, among other things, compel a person to provide information, produce documents, or appear to give evidence. Other amendments are related generally to removing the reporting and administrative burdens on taxi licence holders, providers of a taxi service and providers of a booking service.

Members may be aware that New South Wales has been active for some years in advocating for the establishment of a written-off heavy vehicles register. At the 2014 meeting of the Ministerial Transport and Infrastructure Council, New South Wales raised the issue of profit-motivated theft of heavy vehicles and the quality of heavy vehicle repairs. The proposal to establish a national register to address these problems was supported by the Commonwealth and most jurisdictions. In May this year, New South Wales again raised this issue at the Transport and Infrastructure Council meeting, where the council agreed to progress the development of the register and announced that New South Wales would lead the project.

All Australian States and Territories have registers for written-off light vehicles to ensure crashed vehicles that are structurally unsafe are not re-registered and driven on public roads. Originally introduced as a measure to remedy the rebirthing of stolen vehicles using the identifiers of written-off vehicles, the registers are now a nationally effective mechanism for ensuring the ongoing integrity of vehicles that have been damaged. The registers enhance consumer protection by informing prospective buyers about whether a vehicle has at some stage been written off. The purpose of the amendments in this bill is to extend these safeguards to the management of written-off heavy vehicles in New South Wales.

Heavy vehicle roadworthiness and integrity are critical for road safety but also are important for the protection of road infrastructure. Owing to a law of physics which explains that momentum is the product of mass and speed, heavy vehicles that collide with light vehicles and other objects bring considerable crash forces. As a result, these crashes are highly likely to result in driver and passenger fatalities and serious injuries. Statistics from Transport for NSW's Centre for Road Safety suggest that, although representing less than 3 per cent of all registered motor vehicles in New South Wales, heavy vehicles are involved in 16 per cent of fatalities. In 2016, the Roads and Maritime Services inspected more than half a million heavy vehicle units in New South Wales. Of the vehicles inspected, 17 per cent were identified with a defect, with 2 per cent identifying as a "major" or "major grounded". As a result of the amount of infrastructure build occurring in New South Wales, increasing numbers of heavy vehicles are often required at short notice to remove landfill and other material from these sites. It is essential that these and all heavy vehicles operating on our roads are roadworthy.

The incidence of heavy vehicle theft is also an issue for the development of a register. The National Motor Vehicle Theft Reduction Council reported that in the 12 months to March 2017 some 1,200 heavy vehicles were stolen across Australia, accounting for about 3 per cent of all vehicle thefts. The council commented that "costs to individuals and businesses impacted by this type of theft will generally be much higher than for other vehicles in terms of temporary replacement costs, lost productivity and increased insurance premiums". The customisation of prime movers and the interchangeability of components, for example, mean that stolen parts are currently hard to identify. I am sure that honourable members will agree that any reform that improves the safety, security and integrity of heavy vehicles on our roads is to be supported.

Accordingly, the proposed amendments to the Road Transport Act will create a New South Wales written-off heavy vehicles register which applies to vehicles over 4.5 tonnes. This will be separate from the existing register, which will be renamed the New South Wales written-off light vehicles register. Many of the

provisions of the written-off heavy vehicles register mirror those of the existing light vehicle register, such as the provisions relating to the requirement for written-off vehicles to be recorded in the register, for damage assessment to be undertaken, for the maintenance of records relating to assessments, and so on. The amendments will provide for "statutory written-off heavy vehicles" which cannot be safely re-registered as well as "repairable written-off heavy vehicles".

There is no upper age limit for a written-off heavy vehicle to be recorded on the register as there is for a written-off light vehicle. This reflects the fact that heavy vehicles tend to be older than light vehicles and are more valuable. Allowing a written-off heavy vehicle to be repaired, which is not possible for a light vehicle, acknowledges the high cost of these vehicles and the fact that there are interchangeable components that could comprise a heavy vehicle combination. The category of "repairable written-off heavy vehicle" will allow an eligible heavy vehicle to be re-registered following repair if the application for registration is accompanied by a certificate of compliance issued by a licensed motor vehicle repairer. Unlike the requirement for light vehicles, the certificate must confirm that the vehicle has been repaired by a licensed repairer.

The New South Wales Government is committed to working with the National Heavy Vehicle Regulator, other jurisdictions and the heavy vehicle industry to develop a secure system to register written-off heavy vehicles and to ensure common damage assessment criteria. To that end, New South Wales, on behalf of Austroads and the National Motor Vehicle Theft Reduction Council, is leading a project to develop a national framework for the assessment and classification of written-off heavy vehicles. An expert reference group has been established to develop this framework, harnessing the technical knowledge of the National Heavy Vehicle Repairers Association, the Insurance Council of Australia and other key stakeholders.

I am pleased to be able to report that a technical guide for national crash damage assessment criteria is expected from the expert reference group in November 2017. This will inform the development of regulations in New South Wales to support the written-off heavy vehicles register in the first instance. I believe that other jurisdictions will follow our lead and provide for the inclusion of heavy vehicles in their written-off vehicle legislation and ultimately for the formation of a national written-off heavy vehicles register. In future, written-off heavy vehicles will be reported to the National Exchange of Vehicle and Driver Information System database which will allow the information to be shared across jurisdictions.

I now turn to the amendment that allows for camera enforcement of dimension offences. Members will be aware of the chaos caused when an over-height vehicle ignores warning signs and crashes at the entrance to a tunnel: the M5 tunnel, the Sydney Harbour tunnel and a number of rail bridges and overpasses come to mind. Since 2014, Roads and Maritime inspectors have attended numerous over-height vehicle incidents in major Sydney tunnels. On 5 October 2017, a Queensland registered vehicle ignored a sign and got stuck in the Marrickville overpass. The northbound lane was blocked for approximately 90 minutes whilst damage to the bridge was assessed before the vehicle was removed. A fine of \$2,270 was issued by police for disobeying a low clearance sign. Repair costs associated with these incidents can range from around \$10,000 when an over-height vehicle hits a steel overhead beam, to more than \$1 million, which was the cost to repair the M5 East tunnel after an incident in May 2010.

The problem is not confined to vehicle height. In 2013, before penalties were increased significantly, 12 over-length vehicles were charged after failing to negotiate the tight bends of Galston Gorge in Sydney's north-west. Then traffic and highway patrol commander, Assistant Commissioner John Hartley, has been reported as saying that unauthorised vehicles entering a designated restricted route pose a significant risk to other road users. "Despite significant signage warnings, measuring bays at either side of the gorge, and camera systems, we are still seeing numerous truck drivers taking the risk on the gorge", Assistant Commissioner Hartley said in February 2016. Moreover, these events are occurring despite increased penalties. Assistant Police Commissioner Michael Corboy was also interviewed recently on radio regarding the continued use of the gorge by drivers of over-length vehicles. The Assistant Commissioner advised that police and RMS will ramp up their efforts to deter this unlawful practice.

In June 2015 maximum court-imposed fines for dimension offences were increased from \$2,200 to \$3,740. In addition, the RMS was given the ability to suspend or cancel a person's driver licence for up to three months. These significant penalties were in addition to suspension or cancellation of a vehicle's registration which had been introduced two years earlier for dimension offences. In early September 2017, a rigid vehicle carrying steel material ignored the sign and got stuck in Galston Gorge. As a result, the road had to be closed at Hornsby Heights for four hours. The camera systems Assistant Commissioner Hartley referred to have been deployed to alert police to contraventions of the law in Galston Gorge. The Roads and Maritime Services has developed a combination of devices to remedy this problem.

The technology uses multiple laser systems to determine the dimensions of a vehicle as it travels. In addition, a camera will take photographs of the vehicle. These will include the length of the vehicle and the

location of the incident. While vehicle dimension measurement systems are used internationally, the Roads and Maritime Services believes that this is the first time that evidence from devices of this type, in conjunction with cameras to record incident location, have been proposed for use in enforcement. Once again, New South Wales is at the forefront of the application of technology for road safety and the Roads and Maritime Services is to be commended for its initiative in this regard.

The current use of the technology requires police to intercept the vehicle, for the Roads and Maritime Services to inspect the vehicle and measure its length and for the driver to be charged. In order to recognise this technology, the bill amends the Road Transport Act to provide for camera enforcement of dimension offences by motor vehicles. A "dimension offence" is defined in the bill to mean an offence that involves "driving a vehicle in contravention of a maximum dimension requirement applicable to the driver on a length of road". For example, signs indicate that vehicles over 7.5 metres long are prohibited from using the road in Galston Gorge. Traffic enforcement devices approved for use currently include speed and red light cameras. Photographs from these cameras are used as *prima facie* evidence in proceedings. Accordingly, it is proposed to include new traffic enforcement devices which are designed to measure the dimensions and photograph a vehicle driven in contravention of a maximum dimension requirement. Camera measurements and photographs will be used to provide *prima facie* evidence in proceedings for a dimension offence, which will be a new "detectable traffic offence".

Operator onus liability will be extended for these offences—that is, the registered operator of the vehicle recorded by the devices will be considered liable unless he or she nominates the driver where the registered operator was not driving at the time of the offence. Penalties for dimension offences include substantial fines, including a maximum court fine of \$10,000 for a severe risk breach under the Heavy Vehicle National Law, and fines, licence or registration suspension or cancellation under the Road Transport Act. It is proposed to initially deploy the technology at Galston Gorge, where sanctions will apply to heavy vehicles with a combined length of more than 7.5 metres. In addition to placing no fewer than 13 signs in and around the gorge, the Roads and Maritime Services has been undertaking community consultation in anticipation of the commencement of the proposed legislation. No-one will be able to say that they were not warned.

The use of dimension technology should discourage drivers from ignoring diversionary signs and restricted routes designed to protect fragile and valuable infrastructure. It is intended to reduce, in particular, the numbers of over-dimension heavy vehicles causing damage and blockages which inflict delays, inconvenience and the cost of repairs on the public of New South Wales. In a further amendment to road transport legislation, the bill addresses an inconsistency involving the maximum penalty a court may impose for offences created under the statutory rules. Penalty notice fine amounts are subject to annual increases in line with movements in the consumer price index [CPI]. However, court penalties are not subject to such increases. This has created problems when penalty notice fine amounts for certain serious speeding offences, for example, could increase above the maximum court fine following CPI adjustment. The law provides that the penalty notice fine amount for an offence created under the statutory rules should not exceed the maximum fine a court may impose for the same offence.

Accordingly, a cap has been placed on certain serious penalty notice fine amounts. For example, the fine for a heavy vehicle detected travelling at 45 kilometres per hour above the speed limit in a school zone has been limited to \$3,740. This is less than it should be relative to other speeding offences. The proposed amendment will set a new cap at 50 penalty units—or \$5,500—so that penalty notice fine amounts under the regulations can increase and not exceed those which a court may impose under the Act. The next set of amendments involves the Driving Instructors Act 1992, a statute that is in need of modernisation and alignment with aspects of passenger transport legislation. The Roads and Maritime Services is the authority under the Act and has a range of regulatory functions with respect to all instructors and driving schools to ensure that driving instructors are appropriately licensed and are persons of good repute and good character. There is a need to modernise the Act to remove prescriptive and outdated provisions for driving instructor licence sanctions. The amendments to the bill will give the Roads and Maritime Services greater ability to deal with allegations of malpractice, bribery, fraud, and incompetence of driving instructors.

To support the Roads and Maritime Services to effectively regulate driving instructors, the definition of a "driving instructor" needs to be expanded to include instructors in testing and assessment roles. The proposed amendments will provide formal regulation of instructors, particularly those who provide assessment in the heavy vehicle competency-based assessment scheme or motorcycle rider training scheme. Despite the Act requiring that the holder of a driving instructor's licence must be of good character, courts from time to time have overturned the Roads and Maritime Services decisions to cancel or suspend a licence because they have had little guidance as to what does or does not constitute good character in the context of driving instruction.

In April 2016, the NSW Ombudsman reported to Transport for NSW on ways in which the Transport cluster could better respond to child protection issues following incidents with taxi and bus drivers and driving instructors. One of the recommendations was for the review of current policies and, in particular, the development and implementation of mechanisms for ensuring compliance by driving instructors with the Child Protection (Working with Children) Act 2012. The current Working With Children Check, which involves a national criminal history check and a review of findings of workplace misconduct, is an obligation on an employer. As most driving instructors are self-employed, this has been difficult to enforce. Following consultation between the NSW Ombudsman, the Roads and Maritime Services and the NSW Office of the Children's Guardian, the bill provides for a Working With Children Check clearance or a current application to be a prerequisite for a driving instructor's licence.

In addition, the authority may suspend or cancel a driving instructor's licence on the grounds that the holder has no clearance or current application. This will ensure that self-employed instructors in particular hold a clearance. While the Roads and Maritime Services imposes Working With Children Check clearances as policy, and most instructors have complied, the bill will give that policy the force of law. This requirement will not be imposed on heavy vehicle driving instructors who have a licence condition preventing them from instructing for class C or car licences, as they do not instruct persons under the age of 18. I am sure honourable members will agree that these precautions are crucial for this kind of occupational licensing, which often involves working one-on-one with juveniles.

The bill incorporates the Ombudsman's recommendation for an amendment that allows the authority to be assured that a person is considered to be of "good repute" in addition to good character as a prerequisite for issuing a licence. The requirement that the authority—the Roads and Maritime Services—attests that a person is considered to be of good repute is an existing condition for the issuing of a bus driver authority in the Passenger Transport Act 1990. Good repute concerns a person's good name in the community rather than the intrinsic nature of good character. Importantly, the driver authority or licence is meant to be a guarantee to the public that the holder is a person to be trusted. The aim is to protect the community—only persons of good reputation are considered suitable to be bus drivers. The inclusion of "good repute" for driver instructor licensing will allow established case law in the NSW Civil Administrative Tribunal to better inform court decisions in these cases, and the review of the decision-making grounds in the Act will better inform appeal courts about what is expected of participants in the scheme.

The addition of the "good repute" requirement and other amendments to powers to refuse or suspend a licence will allow the authority to take action on the grounds that charges have been laid against an applicant or licence holder. The bill extends the ability to suspend or cancel a licence on the grounds of having been found guilty of an offence against the Act or regulations where a finding of guilt is made for any offence within New South Wales or elsewhere and for offences involving motor vehicles, including penalty notice offences. Importantly, the bill provides that, having regard to the objects of the Act, the authority may suspend or cancel a licence because it is "of the opinion that the holder of the licence no longer displays the competencies, or is no longer suitable, to act as a driving instructor".

Turning to other matters, the bill strengthens the importance of an instructor's competence by amending the objects of the Act to emphasise performance. The bill will expand the definitions of a "driving instructor" and "driving school" to include testing and assessment roles. A regulation-making power will allow the statutory rules to create different driving instructor licence types. The bill will bring us a step closer to ensuring that only those of excellent personal qualities and skills will be considered appropriate for the issuing of a driving instructor's licence. I am pleased to say that the industry supports these amendments.

The final set of amendments in the bill concern the Point to Point Transport (Taxis and Hire Vehicles) Act, which was passed by both Houses in June 2016. Since then, the supporting regulation has been developed and the Point to Point Transport Commissioner, the new regulator, has been engaging with industry and working to educate existing service providers to ensure compliance with the rules, requirements and systems of the new regulatory regime. The new Act and regulation will commence on 1 November 2017, with the exception of the Passenger Service Levy, which will take effect on 1 February 2018. Certain changes are now considered necessary to fine-tune the regulatory regime. It is worth recalling that the new point-to-point transport legislation, in which New South Wales is a national leader, will create a risk-based regulatory scheme for the taxi, hire car and rideshare industries, with clear accountabilities based on work health and safety legislation.

Taxi and booking service providers will be responsible for ensuring that their services are safe. Safety duties and safety standards are clearly defined for industry participants and there is a graduated penalty regime for non-compliance. First, the bill provides authority for persons assisting authorised officers of the Point to Point Transport Commission to lawfully enter premises. This is similar to a power in the Work Health and Safety Act 2011. It will allow the commission to draw on the skills of interpreters, auditors, mechanical engineers, safety

experts and information technology specialists during inspections, audits and investigations. Secondly, similar again to the Work Health and Safety regulator, the commissioner will be given the authority to compel a person to provide information, produce documents or appear and give evidence. The commissioner must have reasonable grounds for believing that a person is capable of giving information, providing documents or giving evidence in relation to a possible contravention of the legislation.

Moreover, a person will not be required to appear and answer questions unless the commissioner has taken all reasonable steps to obtain the information or documents and they have not been provided. The person will be given written notice of the requirement and information about entitlement to legal privilege and other matters. The amendment will strengthen the commissioner's ability to enforce compliance with the legislation. The third amendment changes when proceedings for offences under the Act or regulation may be commenced from two years from the date on which the offence was committed to two years from the date when the offence first comes to the notice of the commissioner. The intention is to allow a matter to be thoroughly investigated so that a sound case can be brought against the offender. It is a standard provision in many compliance regimes.

Other amendments are designed to reduce the regulatory burden on industry participants. The requirement in the Act for the reporting of "notifiable occurrences" has been modified following feedback from industry participants. Accordingly, the provision has been changed to ensure that only serious incidents relevant to the safety of the industry are reported to the Point to Point Transport Commissioner. This amendment would mean the reportable occurrences align more closely with what bus operators must currently report. In addition, taxi licence holders will no longer be required to notify the commissioner of a change in lease arrangements. The taxi licence holder must notify the taxi service provider of any change and this will allow the provider to comply with safety standards under the legislation including consultation with the holder of a taxi licence. Taxi service providers and booking service providers will, following an amendment in the bill, no longer be required to return their authorisations to the commissioner in the event of a cancellation or suspension.

This amendment recognises that authorisations will be in an electronic format so physical return is unnecessary. Further, a minor amendment provides that taxi number plates must be returned to the Roads and Maritime Services rather than the Point to Point Transport Commissioner or the Commissioner of Police as originally proposed in the legislation. The amendments in this bill cover a wide range of road transport and related issues, from the management of written-off heavy vehicles and recognition of new technology for the enforcement of over-dimension vehicles to improvements in driving instructor regulation through to point to point transport reform. Each reform again demonstrates that New South Wales is at the forefront of road transport initiatives that will deliver positive road safety outcomes and facilitate better passenger transport services for the people of this State. I commend the bill to the House.

Debate adjourned.

Adjournment Debate

ADJOURNMENT

The Hon. BEN FRANKLIN: I move:

That this House do now adjourn.

MANUFACTURING INDUSTRY

The Hon. PETER PRIMROSE (22:37): The Australian economy is continuing to change. The mining investment boom has underpinned economic growth over the past decade, but the next decade will require targeted growth strategies by governments to maintain our living standards. That is why the recent announcement that a Shorten Federal Labor government will establish a new \$1 billion Australian manufacturing future fund to drive innovation and help Australian manufacturers grow their businesses and create new jobs is such great news. Jobs in manufacturing generally provide good pay and conditions of employment, thanks to the dedication of strong unions like the Australian Manufacturing Workers Union. Manufacturing jobs recognise the full range of skills, from TAFE to postgraduate training, that are needed to drive innovation and productivity.

The destruction of the TAFE system in New South Wales has gone hand in hand with the destruction of manufacturing jobs, thanks to the policies of Liberal-Nationals governments. We need to maintain and grow our skills, especially in high-tech manufacturing. Manufacturing employs nearly a million Australians. But jobs in Australian manufacturing have been under pressure due to a lack of investment, rising energy prices, policy uncertainty and the concerted efforts by Liberal-Nationals governments to push manufacturing investment and jobs offshore. In February 1988 there were around 405,000 full-time and part-time workers in the manufacturing industry in New South Wales, making up about 16 per cent of the total workforce. As at August this year this had dropped to 263,000 full- and part-time workers, making up only around 7 per cent of the total workforce.

One way governments can assist local small and medium manufacturers is by directly tackling what the sector has identified as a key impediment to their ability to grow and innovate—that is, access to finance. Innovation is strongly related to better firm performance across a range of indicators, including profits and employment growth. Access to finance, however, is one of the biggest barriers to innovation. The Australian Industry Group, for instance, has stated that "Banks impose especially stringent lending criteria on the manufacturing sector." The group argues that financial institutions, "responding to perceptions of higher risks facing the industrial sector, were downgrading manufacturing industries and making access to finance more difficult and expensive for businesses across the entire sector, regardless of individual circumstances or risk".

The last Federal Labor Government identified a similar financial gap in clean energy technologies and established the Clean Energy Finance Corporation [CEFC] to boost renewable energy in Australia. The CEFC facilitates investment in new clean energy businesses and projects in partnership with private finance, using its investment and oversight to attract other capital and reduce the risk profile of new investments. Each dollar of CEFC investment in 2016-17 was matched by more than \$2 from the private sector. But it is also important to recognise that the CEFC is not a grants program that impacts negatively on the budget. In fact, it directly generates a rate of return to the budget. The Australian Manufacturing Future Fund [AMFF] is modelled on the success of the CEFC.

The AMFF will not issue direct cash grants to manufacturers; rather it will offer financing arrangements including equity, concessional loans and loan guarantees. One of the experiences of the CEFC is that the expertise that it has developed in assessing and managing risk often leads applicants to being viewed more favourably by private investors. Like the CEFC, the investment decisions of the AMFF will be guided by public policy objectives and constrained by a clear investment mandate. It will be required to be financially self-sufficient and achieve a benchmark rate of return to the budget. Labor's AMFF will help our local manufacturers innovate, diversify and develop opportunities in new export markets. It will back our comparative advantages in design, engineering, research and development, and so help ensure the growth of high-tech manufacturing jobs in our State.

NUCLEAR POWER

Reverend the Hon. FRED NILE (22:42): I draw to the attention of the House the importance of nuclear energy power plants. There has been a great deal of comment about nuclear energy in the House during debate on the demands for power sources in New South Wales, and I put on the record some factual material about nuclear power. Sadly, there is a tendency to distort the facts and mislead otherwise well-intentioned people engaged in this debate. Looking at the global situation concerning nuclear power plants, Geoscience Australia provides the information that the 2013 figures state that there are 435 nuclear power reactors in the world, based in 31 countries. Nuclear power is responsible for 11 per cent of global energy supply. At the start of 2013 a further 65 nuclear reactors were under construction in 14 countries and another 167 planned. Apart from China, India, Russia and South Korea, other countries that are not traditionally considered nuclear powers are expanding or constructing nuclear capacities or are proposing to do so. These include the United Arab Emirates, Saudi Arabia, Vietnam, Bangladesh, Poland, Turkey and Belarus.

Some people have suggested that nuclear power is in recession and that nuclear power plants are fading away. That is not the truth. We should not ignore the lessons offered by the example of other countries. The situation in Poland is particularly interesting, especially to my colleagues who are concerned about our reliance on coal or about the prestige Australia enjoys as a First World nation. According to recently updated data provided by the World Nuclear Association, Poland has intentionally assumed an energy diversification policy that will free it from coal as its only source of energy generation. Nuclear energy production features as an important aspect of this diversification program. Poland has done this even though it owns the European Union's largest deposits of coal. As noted by strategic researchers, such as Marek Jan Chodakiewicz of the Washington-based Institute of World Politics, such moves have security implications as the country moves towards energy independence.

Energy independence, of course, amplifies a nation's sovereign status and enhances its political strength in the arena of foreign relations. Needless to say, it also enhances a country's scientific capabilities. Why we would deny this to ourselves and to Australia is a mystery to me. The Organisation for Economic Cooperation and Development Nuclear Energy Agency and the International Atomic Energy Agency have projected that global uranium demand associated with fuelling nuclear energy plants worldwide will continue to grow well into 2035. Australia has considerable deposits of uranium that could be used for fuelling nuclear reactors. This includes 1,174 kilotonnes of A grade of uranium ore that is known as "reasonably assured resource recoverable" ore. This represents 34 per cent of the world's global uranium supply, and it is right here in Australia. Most of this deposit is concentrated in the Olympic Dam in South Australia, which is the world's largest uranium deposit; Ranger and Jabiluka in the Northern Territory; and Yeelirrie in Western Australia. The export of uranium is heavily regulated by strict safeguards concerning end use, which I fully support. This means that Australian-exported uranium can

be used only for civilian purposes and not for military purposes. We also are subject to international standards on the physical security of the mining and use of uranium and nuclear fuel. [*Time expired.*]

MAMBO WETLANDS LAND SALE

The Hon. CATHERINE CUSACK (22:47): The Mambo Wetlands were utilised by the Maaialgal people, a clan of the Worimi nation. The wetlands are critical to endangered flora and fauna, flood mitigation and the health of Salamander Bay. I recently had the privilege of meeting Mambo Wanda Wetlands Reserves and Landcare volunteers at the request of Councillor Jaimie Abbott, who is making emphatic representations concerning the sale of a six-hectare lot of land by the New South Wales Department of Finance, Services and Innovation last year. I offer heartfelt thanks to the volunteers who have cared for this special area for decades, in particular Walter Lamond and Anna Cordwell, who met me at the entry to Wanda where the volunteers were working that day. There is excellent interpretative signage at the entry, which is funded by Port Stephens Council.

Wanda is just 13.7 hectares, but it is home to 130 species of birds and 180 plants. It is very special for Aboriginal women. Indigenous artist Carol Ridgeway has a beautiful painting mounted as signage of the birthing pool inside Wanda. It was a beautiful day, and as Walter took me through the bush the area was alive with the sound of insects and birds, attesting to a thriving ecosystem in Mambo. Returning to Wanda, I met Landcare volunteers hard at work clearing weeds. I had volunteered to work, but I confess that I am obsessed with asparagus weed and asked way too many questions, so it was more training than working, followed by morning tea. I met Walter's wife, Margaret, and Kathy Brown of Soldiers Point-Salamander Bay Landcare and a dozen more volunteers.

As we discussed Mambo, their anxiety was all too apparent. The 2006 Mambo Wetlands management plan reinforces their concerns. The critical issues are fragmentation and encroachment of development. Mambo was given to Port Stephens Council by the Department of Defence after World War II. It was a different era and council zoned all of it for development. Several residential subdivisions proceeded, separating Wanda from Mambo and shrinking its size to 175 hectares. Some species, including jabirus and emus, have been lost. In spite of the disturbances, the Mambo Wetlands continue to be a complex habitat system and are home to 27 endangered and vulnerable species, including much-loved koalas. In 1958 the Department of Education purchased DP27353 for £1,800 for the purpose of building a school. I quote the Port Stephens 2006 Mambo Wetlands management plan:

The future use of a parcel of land within the Mambo area but not within the Reserve, owned by the NSW Department of Education is not clear. Any development on the land may have a negative impact on the wetland.

It recommends:

Clarification of the intended use of the NSW Department of Education Land adjacent to the reserve should be sought. Ideally inclusion of this parcel for the purpose of environmental protection would be appropriate.

In view of this, how can it be that 10 years later the school site was sold to a developer? What is to be done with the site? It is understandable that the Department of Education declared the site surplus, but it clearly should not have been zoned for development. I want to understand why the management plan was not followed. The zoning put the Mambo land on a bureaucratic path to the Department of Finance, which is obliged to act in accordance with taxpayers' best interests. When the community learned what was happening there was, understandably, an uproar. The members of Parliament involved lobbied the wrong Minister. Instead of the community petition being tabled in Parliament, it was misdirected to the Minister for Education. I have been unable to learn what happened to it after that. I do not know why council was not offered the site or what was done about the interests of traditional owners. I thought all Crown land that changes purpose is subject to land rights claims. What has happened to the application to declare the area an Aboriginal special place? These are genuine questions; I am not questioning anyone's sincerity.

What can be done? The suggestion that the Department of Education buy back the land is unfortunately naïve. The department can only lawfully buy property for an education purpose, and the land is not for sale. Claims that the State Government has been approached to buy it back are simply incorrect. The ideal outcome has always been for council to obtain ownership of the land and consolidate it into the Mambo Wetlands Reserve. It is important to state that I am looking for an environmental solution. A political solution involving meetings and deals with developers would be completely inappropriate, and I have already made my position clear that that is not an option for me. The best way is to work with council on opportunities to bring the land back to the Mambo Wetlands Reserve via due process. Plan B is that, irrespective of ownership, the site must be protected in perpetuity, and I am exploring all of those options. These are the environmental imperatives. I thank the council and the State Government for listening.

SAME-SEX MARRIAGE

DIWALI FESTIVAL

The Hon. DANIEL MOOKHEY (22:52): Some say that if Australia says yes to marriage equality society will irrevocably change, and change for the worse. This argument, which we are told is made with neither malice nor prejudice, is that marriage is a unique institution that is the bedrock of our civilisation and the best arrangement in which to raise children. These arguments have echoes in history. In South Africa 100 years ago, they were used by British authorities when they passed laws that dissolved every Hindu and Muslim marriage because they said only Christian marriages deserved legal recognition. In the Deep South of the United States, as recently as the 1960s it was a criminal act for a white man to live in matrimony with a black woman. Miscegenation was said to weaken the purity of the white race. In New South Wales, for decades the might of the criminal justice system was used to check the corruption said to result from Indigenous women marrying non-Indigenous men.

In each of these instances, resistance movements formed and fought to replace exclusionary legal definitions of marriage with inclusive definitions based on the principle of equality. These movements counted in their number some of history's finest figures: Gandhi in South Africa and Dr King in America. In Australia, the movement established the right of people of different races who loved each other to marry each other. No-one else's marriage was harmed; nobody else's religious freedoms were curtailed—not even that of Australia's bakers. Instead, people of different races formed families, raised children and lived lives no more or less happier than anybody else.

It is no secret that I am one of those people. My skin colour is different from that of both my wife and my son. Once, my marriage would have been criminal, my wife shunned and my child called terrible names. In other words, I would be treated the way that too many lesbian, gay, bisexual, transgender, intersex, queer—LGBTIQ—people are treated today. Recently the Federal Government asked me whether this should change; whether gay and lesbian people should have the same rights that I have, the rights that so many of my ancestors fought for me to have. I do not believe in kicking the ladder down behind me, so I said yes. I hope shortly that all of Australia says yes.

It is Diwali. From tonight, Hindus, Jains and Sikhs worldwide will stop to mark the triumph of good over evil, light over darkness, knowledge over ignorance and hope over despair. In their homes and in their mandirs, wearing their most fetching finery, they will pray to the Goddess Lakshmi, asking for prosperity for the year ahead. They will light diyas, keeping them on all night, symbolically showing the way for Lord Rama to return from Lanka after his 14 years of exile. They will eat copious amounts of mithai—sweets—in honour of the vegetarian Lord Ganesha. They are, of course, his favourite foods. And they will unleash fireworks in such numbers that for the next two months there will be a worldwide shortage.

These are some of the common rituals, observed by millions, to make Diwali the joyous celebration of a joyous faith. In our State, each year Diwali is celebrated by more of our citizens. People who visit Harris Park in Sydney's west on Diwali night will see house after house adorned with lights and candles. Anyone who visits Bochasanwasi Akshar Purushottam Sanstha—BAPS—Swaminarayan Mandir in Rosehill this Friday for the Annakut Festival will see mountains of food made with pride by the congregation, to be shared with pride with the thousands of members of the congregation. In Auburn at Sri Mandir, Australia's first Hindu temple—which I am proud to say my family helped to establish—people will see thousands attending the Diwali pooja.

In Helensborough in the Illawarra, in Baulkham Hills at the Murugan temple in Wentworthville and at the Durga Temple in Auburn people will see many, many more services equally as moving. Indeed, they will not just see Hindus but their neighbours. Hindus, Muslims, Christians and Buddhists join in too because Diwali is a welcoming celebration. In my household my mum makes the best poori, the best channa and the best aloo. I am glad that Diwali is on Thursday so I will be home to eat too much of it. I would happily report to the House on how good it is but the problem is that all my colleagues here will be too jealous.

The PRESIDENT: You could invite the President.

SAME-SEX MARRIAGE POSTAL SURVEY

The Hon. PAUL GREEN (22:57): Tonight I place my views on the record given the current Australian postal plebiscite survey. Members know that on this issue we may not see eye to eye. As a pastor, I have performed marriage ceremonies uniting a man and a woman together with God, asking for His blessing and guidance through the Holy Spirit. I believe marriage and the family is the basic unit, the foundation, the bedrock, the load-bearing beam of society. I believe children are the most vulnerable members of our society. Marriage provides a stable environment for children to be nurtured, raised and educated by their mother and father.

I acknowledge the very real concerns expressed by former Prime Ministers John Howard and Tony Abbott, as well as by former Deputy Prime Minister John Anderson, heads of churches, imams and other concerned groups that if the definition of marriage were to be altered it would have severe ramifications for the make-up of our social fabric. I also believe people should be able to stay true to their convictions. In this debate I hold serious concerns that freedom of religion is not adequately protected in Australia and in this State. The Christian Democratic Party holds strong concerns for the ramifications of changing the definition of marriage. We know that the protections offered to ministers of religion do not go far enough, let alone the flow-on effects of such a change.

The change to this definition has had real effects around the world. In Australia there have been attacks on Margaret Court, the response to Coopers Brewery involvement in the debate, and charges brought against Archbishop Julian Porteous in 2016, which were later dropped. These attacks cannot be ignored; we cannot turn a blind eye to them. Every decision and action that a human being takes has consequences, whether good or bad. That is the reality of the situation. As experienced legislators in this House, we know that we make amendments to law that often involve amending a number of Acts so they can continue to work harmoniously. To us it is an expected, necessary and common process. What is not helpful is the denial of this fact by the yes campaign and its supporters. There is enough evidence to show that changes to the marriage Act will infringe on my belief that marriage is between a man and a woman and God. It will change what children are taught in schools about marriage and about gender.

I note the hard line that Reverend the Hon. Fred Nile had to draw in order to articulate our deep concerns about the Safe Schools program. It was supposedly an anti-bullying program but it did not address the concept of bullying. Concerned parents had to mount a phenomenal campaign for their voices to be heard. Through representations made by the Christian Democratic Party to the Government, a new broader anti-bullying program has been established and resourced for students, parents and teachers. If the definition of marriage is changed it will mean taking gender out of our laws. The flow-on effect will be that parents will not have a leg to stand on if they do not want their kids taught gender ideology. Some of those resources are available through the Safe Schools program.

Every human being is entitled to live according to his or her conscience, whether or not that be faith driven. Everyone has the right to a conscientious objection no matter their view of the world. We are increasingly being told that our belief is unacceptable and discriminative. Sadly, we are then labelled homophobes and bigots, which I find deeply hurtful. Tolerance does not equal endorsement. It must go both ways. This nation and the people I represent in this great State deserve the right to have their voices heard on the matter of marriage. We commend the postal survey and say, "It is okay to say no".

MURRAY AND COOTAMUNDRA BY-ELECTIONS

The Hon. WES FANG (23:01): Despite being a good Government, there is no doubt that The Nationals faced a tough test over the weekend. We went into the Murray and Cootamundra by-elections taking nothing for granted. We may previously have held both seats, but to us it was a clean slate. We needed to earn every vote. This was a hard-fought campaign. In the lead-up to the by-elections, The Nationals worked hard across the State to fix legacy issues and re-engage with our communities. We have been listening to locals and tackling the tough issues head on. The inherent nature of by-elections for a second term government is that they are always going to be a challenge, but the people of Murray and Cootamundra voted in favour of a safe and secure future by electing two outstanding Nationals candidates in Steph Cooke and Austin Evans.

When going to the ballot box, people want to vote for candidates who are prepared to fight for the region, to stand up and say what they think and always put their electorate first. The Nationals' Austin Evans is set to officially become the new member for Murray and, believe me, he will fight for them. Austin has a proven track record of serving his community on the Murrumbidgee Shire Council as both deputy mayor and mayor. As a local irrigation engineer, he understands the issues facing his region. I offer my heartfelt congratulations to Austin, his wife, Demelza, and his family. I know he will do The Nationals proud and work tirelessly for the people of Murray.

In Cootamundra we have seen a strong endorsement of local small business owner Steph Cooke to take over the reins from Katrina Hodgkinson. Steph grew up in Temora and attended St Anne's Central School. Following a successful career in Sydney, which included rising to the rank of executive director with the Baking Association of Australia, New South Wales, at just 21 years old, she returned home. Over the years Steph's floristry business has employed 30 locals from Young, Temora and Cootamundra. To say that she is an over-achiever is an understatement. Throughout the campaign, Steph worked incredibly hard to meet with as many people as possible, to listen to their concerns and to follow in the tradition of The Nationals as a local champion who will stand up for her region and never back down. I am immensely proud that Steph will be joining us in The Nationals Party room.

I take this opportunity to commend those candidates from the other political parties in Murray and Cootamundra, in particular, Helen Dalton and Matthew Stadtmiller of the Shooters, Fishers and Farmers Party and the Labor Party's Michael Kidd and Charlie Sheahan. It takes incredible courage to step forward for the rigours of a political campaign, and for this they should be congratulated. At the end of the day, most candidates, no matter from which side of politics they come, have the best interests of their community at heart. A strong, robust debate of ideas is the bedrock of our political system, and it is only through such challenges that we evolve as a party, a parliament and a government.

Though I have been in this place only a short time, I am lucky enough to have had The Nationals as my political home for many years. Our party's strength stems from our membership of incredible people who work and live in the regions and strive to secure a strong and prosperous future for their community. Our volunteers on the ground are the lifeblood of our party. Members from Cootamundra and Murray were only too happy once again to wear the canary yellow shirt and to help our candidates in whatever way possible. I was astounded to see so many of our members travel vast distances to hand out how-to-votes card for Austin and Steph on polling day. From Broken Hill, Tamworth, Orange and Dubbo to name a few, our volunteers jumped in their cars and offered their time to support their political party. Their dedication is invaluable and I cannot thank them enough for their tireless work.

It is not only members of The Nationals who display exceptional commitment to their community. Throughout the campaigns, I had the pleasure of meeting volunteers from political parties of all persuasions, including the Shooters, Fishers and Farmers Party, the Labor Party, The Greens, Independents and the Christian Democratic Party. Whether donning a t-shirt, handing out brochures or letterboxing, there was a real sense of personal pride on the part of many of the volunteers. I thank and congratulate them on the manner in which their campaign was conducted. Finally, to those whose support we did not win on the day, I promise that we will work every day to earn their trust, respect and support. Even if we never get their vote, The Nationals will keep fighting for them and their community. Austin and Steph will make incredible local members, and I know they will continue the work we have already accomplished in Government.

The PRESIDENT: The question is that the House do now adjourn.

Motion agreed to.

The House adjourned at 23:07 until Thursday 19 October 2017 at 10:00.