New South Wales

Legislative Council

PARLIAMENTARY DEBATES
(HANSARD)

Fifty-Sixth Parliament
First Session

Tuesday, 5 June 2018

Authorised by the Parliament of New South Wales

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LEGISLATIVE COUNCIL

Tuesday, 5 June 2018

The PRESIDENT (The Hon. John George Ajaka) took the chair at 14:30.

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

Bills

NATIONAL REDRESS SCHEME FOR INSTITUTIONAL CHILD SEXUAL ABUSE (COMMONWEALTH POWERS) BILL 2018

TRANSPORT ADMINISTRATION AMENDMENT (SYDNEY METRO) BILL 2018

COAL INDUSTRY AMENDMENT BILL 2018

ELECTORAL FUNDING BILL 2018

ROAD TRANSPORT AND OTHER LEGISLATION AMENDMENT (DIGITAL DRIVER LICENCES AND PHOTO CARDS) BILL 2018

HEALTH LEGISLATION AMENDMENT BILL (NO 2) 2018

ROAD TRANSPORT LEGISLATION MISCELLANEOUS AMENDMENTS BILL 2018

Assent

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

Commemorations

CENTENARY OF FIRST WORLD WAR

The PRESIDENT (14:32): On 1 June 1918 Lieutenant-General John Monash assumed command of the Australian Corps, at the time the largest individual army corps on the Western Front. In so doing, he became the first Australian officer to fully command the Australian forces in the First World War. In many ways, the rise of Monash defied convention. He was a reservist rather than a professionally trained career soldier, and many in the British military hierarchy held reservations about his Jewish-Prussian heritage and status as a colonial. Monash impressed, however, with his meticulous planning and grasp of strategy. The official Australian war historian, Charles Bean, called him an "organiser of first rate ability" and said that "from the time of Monash's advent the corps had at its head a very great mind".

Trained as a civil engineer and a veteran of the Gallipoli campaign, Monash was the first military commander on the Western Front to fully coordinate the use of all the military resources as his disposal: infantry, engineering, artillery, aircraft and tanks. It was his planning and leadership that resulted in the breach of the Hindenburg Line on 5 October 1918 that forced Germany to seek an armistice. One leading British historian said Monash was "the only general of creative originality produced by the First World War". A century on, he remains a titan in our national history. He was a leader of renowned intellect, ingenuity and compassion, who was fiercely determined that the men under his command always had the best possible chance of achieving their objective when he called upon them to risk their lives. Lest we forget.

Motions

DEAFNESS SUPPORT GROUPS

The Hon. NATALIE WARD (14:34): I move:

(1) That this House notes that:

(a) on 12 April 2018 Parliament hosted a presentation by deaf and hard of hearing New South Wales school students which was organised by Mr David Brady, Chief Executive Officer of Hear For You and Chairperson of the Deafness Forum of Australia;

(b) at this important session, six school students—Stephen Tang, Grace Troughton, Jye Davies, Layla Yateem, Noah Kanj and Eoin McAweaney—shared their personal experience as deaf and hard of hearing students including their successes and their setbacks;

(c) the event was followed by the NSW Deafness and Hearing Health Expo that provided the opportunity to try out the latest hearing screening programs and showcase the services available to support those with hearing loss or ear disorders;

(d) Mr Alastair McEwin, Australian Disability Discrimination Commissioner, and prominent members of the Australian deaf and hard of hearing community attended the presentation; and

(e) I was honoured to attend the presentation, which was sponsored by Ms Felicity Wilson, MP, member for North Shore; together with the Hon. Brad Hazzard, Minister for Health and Minister for Medical Research; the Hon. Ray Williams, Minister for Multiculturalism and Minister for Disability Services; Ms Kate Washington, shadow Minister for Early Childhood Education and shadow Minister for the Hunter; Mr Alister Henskens, SC, member for Ku-ring-gai; Mr James Griffin, member for Manly; Ms Leisl Tesch, member for Gosford; and Ms Jenny Leong, member for Newtown.

(2) That this House notes that:

(a) there are almost 1.2 million New South Wales residents who are deaf, hard of hearing or have a balance or chronic disorder of the ear;

(b) there are close to 4,000 school-age children who have a hearing loss ranging from mild to profound, and that 9.4 per cent, or 376, of these young people identify as Aboriginal or Torres Strait Islander people;

(c) the majority of children are diagnosed in infancy and benefit from the support of early intervention language providers, and today they are attending mainstream schools where they often find themselves the only deaf person in their school;

(d) the important work that is performed by the coalition of New South Wales-based deafness and hearing health organisations including Break the Sound Barrier, Hear for You, the Shepherd Centre, Royal Institute for Deaf and Blind Children, the Deaf Society, Cochlear, CICADA, Deafness Forum of Australia and Deafness Support Groups and providers; and

(e) the particular support that is provided to the students that spoke at the session by Hear for You, the Shepherd Centre and the Royal Institute of Deaf and Blind Children.

(3) That this House notes the importance of promoting hearing health and wellbeing with a view to making it a national health priority throughout Australia, and the role that all New South Wales parliamentarians can play in this respect.

Motion agreed to.

BEYONDBLUE FOUNDATION

The Hon. LOU AMATO (14:35): I move:

(1) That this House notes that:

(a) almost half of Australians will experience some form of mental illness during their lifetime;

(b) in any one year, around one million Australian adults have depression, and over two million have anxiety; and

(c) the leading cause of death of Australians aged between 15 and 44 is suicide, with the current death rate to suicide being approximately 3,000 per year.

(2) That this House acknowledges:

(a) the great work of the beyondblue foundation in providing support for people suffering from depression, anxiety and mental illness; the foundation provides a 24-hour, seven days a week telephone and online counselling service; during 2016 more than 150,000 Australians contacted beyondblue for emergency counselling services; the foundation's mission is to provide information and support to help everyone in Australia achieve their best possible mental health, whatever their age and wherever they live; and

(b) the many community organisations that support the beyondblue foundation such as Tahmoor Garden Centre which on 14 April 2018 conducted a beyondblue fund raising and community awareness event: Tahmoor Garden Centre decorated with blue balloons whilst staff wore blue wigs, blue plants and wrist bands were donated for sale by the Garden Centre which also provided blue lolly bags and free sample bags with information inside to help people learn more about the effects of anxiety and depression.

Motion agreed to.

Documents

SYDNEY STADIUMS

Tabling of Documents Reported to be Not Privileged

The Hon. ADAM SEARLE (14:35): I seek leave to amend Private Members' Business item No. 2267 outside the Order of Precedence for today of which I have given notice by:

(1) Inserting at the end of paragraph (1) (a) "subject to paragraphs (1) (c) and (1) (d),"

(2) Inserting after paragraph (1) (d) (i):

"(ii) Schedule 2 in document 0087, and a table referring to information in Schedule 2 in documents 0076, 0077, 0078, 0079 and 0080, returned on 5 April 2018 from Venues NSW,"

Leave granted.

Accordingly, I move:

(1) That, in view of the report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, dated 22 May 2018, on the disputed claim of privilege on documents relating to Sydney Stadiums, this House:

(a) orders that the documents considered by the Independent Legal Arbiter not to be privileged be laid upon the table by the Clerk subject to paragraphs (1) (c) and (1) (d);

(b) orders that the documents in relation to which Sydney Cricket and Sports Ground Trust, Venues NSW, Infrastructure NSW, and the Office of Sport advised in submissions dated 4 May 2018 and 18 May 2018 that claims of privilege were no longer being pressed, be laid upon the table by the Clerk;

(c) orders that two folders appended to the submission lodged by the Department of Premier and Cabinet, dated 4 May 2018, containing redacted documents provided by the Office of Sport and Infrastructure NSW, received by Mr Mason during his evaluation of the disputed claim of privilege, be laid upon the tabled by the Clerk; and

(d) orders that Venues NSW and Sydney Cricket and Sports Ground Trust produce, within 14 days of the date of passing of this resolution, redacted versions of documents considered by the Independent Legal Arbiter not to be privileged with the following information omitted:

(i) Table 1 in documents 570-575 of documents returned on 19 April 2018 from Venues NSW;

(ii) Schedule 2 in document 0087, and a table referring to information in Schedule 2 in documents 0076, 0077, 0078, 0079 and 0080, returned on 5 April 2018 from Venues NSW;

(iii) hourly rates of consultants;

(iv) personal and private information such as email, postal and residential addresses, telephone numbers, membership numbers, credit card details, banking details, and other personal identifiers relating to members of the public;

(v) URLs and related Dropbox folders of government departments; and

(vi) banking and credit card details of businesses or companies.

(2) That, on tabling, the documents are authorised to be published.

Motion agreed to.

TABLED PAPERS NOT ORDERED TO BE PRINTED

The Hon. SCOTT FARLOW: According to Standing Order 59, I table a list of all papers tabled in the previous month and not ordered to be printed.

Committees

LEGISLATION REVIEW COMMITTEE

Report: Legislation Review Digest No. 56/56

The Hon. NATASHA MACLAREN-JONES: I table the report entitled "Legislation Review Digest No. 56/56", dated 5 June 2018. I move:

That the report be printed.

Motion agreed to.

STANDING COMMITTEE ON STATE DEVELOPMENT

Reports

The Hon. TAYLOR MARTIN: I table report No. 44 of the committee entitled "Provisions of the Forestry Legislation Amendment Bill 2018", dated 5 June 2018, together with transcripts of evidence, submissions, tabled documents, minutes of proceedings and correspondence. I move:

That the report be printed.

Motion agreed to.

SELECTION OF BILLS COMMITTEE

Reports

The Hon. NATASHA MACLAREN-JONES: I table report No. 8 of the Selection of Bills Committee, dated 5 June 2018. I move:

That the report be printed.

Motion agreed to.

I move:

That the following bills not be referred to a standing committee for inquiry and report:

(a) Companion Animals and Other Legislation Amendment Bill 2018;

(b) Justice Legislation Amendment Bill (No 2) 2018;

(c) Kosciuszko Wild Horse Heritage Bill 2018;

(d) Miscellaneous Acts Amendment (Marriages) Bill 2018;

(e) Statute Law (Miscellaneous Provisions) Bill 2018;

(f) Anti-Discrimination Amendment (Religious Freedoms) Bill 2018;

(g) Government Sector Finance Bill 2018;

(h) Government Sector Finance Legislation (Repeal and Amendment) Bill 2018; and

(i) Public Accountability Legislation Amendment (Sydney Motorway Corporation) Bill 2018.

The Hon. PENNY SHARPE (14:40): I move:

That the question be amended by:

(1) Omitting "Kosciuszko Wild Horse Heritage Bill 2018" from paragraph (1).

(2) Inserting after paragraph (1):

(2) That:

(a) the provisions of the Kosciuszko Wild Horse Heritage Bill 2018 be referred to the Standing Committee on State Development for inquiry and report;

(b) the bill be referred to the committee on receipt of the message on the bill from the Legislative Assembly; and

(c) the committee report by 10 August 2018.

I know that all members are learning the new process of the Selection of Bills Committee and which bills are sent off to a committee for inquiry. I thank the committee for considering this, but the House should further consider the bill that I am seeking to send to a committee for inquiry. It will be of no surprise to most members in the House that the bill I want to send to a committee is the Kosciuszko Wild Horse Heritage Bill. This significant bill relates to the management of our national parks and land management generally in New South Wales.

This bill should be sent to a committee for further inquiry for four key reasons. The first is that the bill overturns independent scientific and community input and consultation that occurred throughout the development of the 2016 draft wild horse management plan. Secondly, the bill sets a precedent in the way that all national parks are managed and has implications for all national park plans and management across New South Wales. Thirdly, the bill is not consistent with the approaches in Victoria and the Australian Capital Territory. Fourthly, there will be damage to water, soil and tourism if the wild horse population is unmanaged.

Some other serious matters have arisen in the way that this bill was brought forward and some of those have been ventilated publicly. There are real concerns about the Deputy Premier and his following of the ministerial code of conduct. Significant concerns have also been raised about the way in which donors have influenced this bill. We must understand how important this bill is to the management of New South Wales. Kosciuszko National Park is a unique national park not only for New South Wales but also for Australia. It is a fragile ecosystem that is being massively damaged.

The Hon. Bronnie Taylor: You should have been there—

The Hon. PENNY SHARPE: I have been there plenty of times. It is being damaged by the unmanaged horse population. The bill is not a fig leaf to open discussion about the heritage value of these horses; the bill puts the horses above all other animals and the management of the national park. It fundamentally undermines 75 years of conservation consensus across all parties that have tried to protect this important park. The park is visited by more than two million people a year, which is more than any other park outside the Sydney Basin. It sustains thousands and thousands of jobs, which is of real concern. I have not moved my amendment referring the bill to an inquiry lightly. I appreciate that we are going through new processes, but there is no rush to have a proper look at the bill. There is no rush in respect of hearing from the large number of stakeholders who have significant concerns with the bill, which includes people who are closely involved with the brumbies such as tour operators,

environmentalists, scientists and the Government's technical committee that spent years trying to find a solution and a way forward to managing the wild horse population in Kosciuszko National Park.

Many people are concerned about this bill and it is worthy of a proper investigation. We will see how the House votes on my amendment. This is a new process. Some members will desire that certain bills be sent to a committee for inquiry. We must think about this carefully; I am asking the House to do so. I have set the date of 10 August for the committee to report. If members wish to make that reporting date earlier, I am happy to do that. We must seriously consider the way we manage bills in the Selection of Bills Committee. Today I am seeking, with good reason, to refer this bill to a committee for further consideration. I am not seeking to kick it into the never-never. I am seeking a short, sharp inquiry so some of the serious issues that have been raised can be put on the table.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (14:45): The Kosciuszko Wild Horse Heritage Bill is about recognising and protecting the heritage values of sustainable wild horse populations in parts of the Kosciuszko National Park while enabling active management of brumbies to reduce their impact on the national park's alpine environment. It must be recognised that brumbies have been present in the Monaro and Snowy Mountains areas since the 1830s.

The PRESIDENT: Order!

The Hon. Penny Sharpe: Point of order: I understand that this is a new process for us, but the Leader of the Government is making a second reading speech to the bill which is yet to come before the House. That is not the point of this motion or my amendment. This amendment is about whether the bill should be sent to a committee for inquiry.

The PRESIDENT: I do not uphold the point of order. The Minister was clearly laying down the foundation and was responding to some of the matters that the Hon. Penny Sharpe raised. The Minister has the call.

The Hon. DON HARWIN: The brumby population is an important part of the cultural heritage. The bill deals with a large number of the matters that were raised by the Hon. Penny Sharpe, which is why the Government does not support the reference of this bill to the Standing Committee on State Development. It should be noted that some of those matters in the bill that deal with the issues raised by the Hon. Penny Sharpe, which justify, in her view, the reference of the bill to the committee include the preparation of a wild horse heritage plan of management for the national park, to identify the heritage value of sustainable brumby populations with identified parts of the national park, and setting out how those values will be protected while maintaining other environmental values. The bill also involves public consultation on the draft plan of management and it clarifies that the adopted plan of management will have a particular status. It also provides for a committee advisory panel to be appointed to formalise the ongoing community engagement with the implementation of the adopted brumby plan of management.

Finally, the bill provides that an independent technical advisory group will also be established to provide ongoing expert advice, monitoring and research. For all of those reasons, the Government does not believe that the concerns of the Hon. Penny Sharpe are well founded. I note that I did not take a point of order, although I could have. Some of the concerns that were made were outlined to members of the Government, which I thought were quite disorderly and outside the standing orders. I will not be dignifying them any further. The Government opposes the amendment.

The PRESIDENT: Order! Members have a right to be heard in silence. The rule applies to both Government members and Opposition members. In particular, it is incredibly difficult for me and for Hansard if interjections are being made by members at the table.

Dr MEHREEN FARUQI (14:48): On behalf of The Greens, I support the Hon. Penny Sharpe's amendment to refer the Kosciuszko Wild Horse Heritage Bill to a committee to look into it, not only for the reasons she mentioned, but also because the bill makes a fundamental change. The bill gives precedence to the plan of management it is proposing over the Kosciuszko National Park plan of management. That is fundamental change and sets a precedent which cannot be reversed if the bill is passed. Members have received thousands of emails from people raising issues with this plan. The bill should not be rushed through Parliament within a couple of weeks.

The committee examining the bill needs to have time to look into it and to hear from all concerned. All members acknowledge that there is no argument about the damage that wild horses are doing to the pristine wilderness in Kosciuszko National Park. Legislation cannot be allowed that infringes that damage to pass swiftly through Parliament without detailed consideration. Kosciuszko National Park plans of management are being drawn up by the National Parks & Wildlife Service and other stakeholders who have the expertise and scientific

capability to know what is best to preserve the environment, as well as look at animal welfare issues. The bill is not about that. The bill is about entrenching the damage to the Kosciuszko National Park. The Greens wholeheartedly support the amendment moved by the Hon. Penny Sharpe.

The Hon. MARK PEARSON (14:50): The Animal Justice Party supports the amendment moved by the Hon. Penny Sharpe to send the Kosciuszko Wild Horse Heritage Bill to the committee.

The Hon. Catherine Cusack: Animal killer.

The PRESIDENT: Order! I call the Hon. Catherine Cusack to order for the first time.

The Hon. Greg Donnelly: Point of order: I ask that you request the Hon. Catherine Cusack to withdraw the remarks directed at the Hon. Mark Pearson. She called him an animal killer. That comment is completely unacceptable and over the top.

The PRESIDENT: I note that I have already called the Hon. Catherine Cusack to order for the first time. I request that the Hon. Catherine Cusack withdraw her comment.

The Hon. Catherine Cusack: I withdraw.

The Hon. MARK PEARSON: I accept the withdrawal. The fact that this bill will lift the standing of an introduced animal to the standing of heritage is an extremely important change. An introduced animal will now be looked at in a different way for the first time in Australia, as will its interaction with the environment—its possible, perceived, true or otherwise impact upon the environment. For these reasons, the relevant committee should look at the bill in detail and report back to the House so members can consider the impact on the environment from these animals. The committee may even support and justify the standing of the animals being part of our heritage. A committee should look at this issue in more detail for the reasons the Hon. Penny Sharpe and I have outlined.

The Hon. ROBERT BROWN (14:52): I oppose the amendment moved by the Hon. Penny Sharpe. As members know, I am a member of the Selection of Bills Committee. It was a very close vote. There are three opportunities for a member to refer a bill to a committee. The process seems to be working well. The briefing paper that has been supplied to my office regarding the Kosciuszko Wild Horse Heritage Bill and shown to me again by Reverend the Hon. Fred Nile appears to be such that it almost negates some of the reasons behind the Hon. Penny Sharpe's amendment.

I understand that there are deep ideological differences regarding what should or should not be in national parks, the creation of national parks, the management of national parks and the list goes on. However, when the unamended true bill to the briefing note is looked at, there will be ample opportunity for people to have their say to develop a system whereby the brumbies can be afforded heritage status and at the same time proper methods put in place to limit the numbers and the locations of those horses to minimise impacts. It is not the fact that they are horses or non-indigenous. It is the fact of the impact. The same goes with sheep, cattle or other animals.

Mr David Shoebridge: Cattle?

The Hon. ROBERT BROWN: All of them. On those grounds, I oppose the member's amendment.

The PRESIDENT: Before I call the Hon. Walt Secord, I clarify for all members that the Government Whip has moved a motion, to which the Hon. Penny Sharpe has moved an amendment. I ask members to refer to the motion and amendment in that way to eliminate any confusion.

The Hon. WALT SECORD (14:54): As Deputy Leader of the Opposition, I support the amendment moved by my colleague the Hon. Penny Sharpe. The Kosciuszko Wild Horse Heritage Bill should be referred to the committee for closer examination. I approach this from a different perspective than the Hon. Penny Sharpe, who approaches it on environmental grounds. I believe the bill needs complete ventilation because there are serious allegations of bribery involving the former member for Monaro claiming that he drafted the bill before it was presented. There is also the issue of a $10,000 donation from him involving a company that was involved in Kosciuszko National Park. On social media—a public record—the former member for Monaro claimed he wrote the bill. Community groups in the region have a right to address the committee and poke and prod the bill to ensure it is not simply the product of National party mates.

The Hon. Dr PETER PHELPS (14:56): I oppose the amendment moved by the Hon. Penny Sharpe. I express concern with the original motion. The Selection of Bills Committee was originally established to provide a medium whereby bills of a particularly controversial nature would be subject to a short, sharp investigation and inquiry, and also to allow members of the public to have their say on bills that came before this Parliament. This had not previously happened in this place. The only question which should have gone before the Selection of Bills Committee is: Has this bill generated a substantial amount of public comment and disagreement? On that basis,

the committee should have recommended to this House that the matter go forward. I note the final report of the euphemistically entitled "Committee on Committees" indicated the preference was to work on the basis of consensus from that Selection of Bills Committee.

My concern is if the Government members are simply going to be a cat's paw for the executive and say no to anything, then the Selection of Bills Committee might as well be abandoned. That is not the way it was intended to function. It is certainly within the right of this House to reject a recommendation or substitute an alternate recommendation from the Selection of Bills Committee. But the preference for the Selection of Bills Committee should be that a matter which is a matter of significant public concern should come before this House as a recommendation for a referral. At that time the Government and the crossbenches may well use their numbers to confirm the recommendation or the Opposition may use its numbers to negate it. No member in this House disagrees that there has been significant concern in relation to the bill. The standing preference should be for a reference of a bill which has already exercised some degree of concern in the minds of the general public. Otherwise, there is no point in having a Selection of Bills Committee.

The Hon. TREVOR KHAN (14:58): I make a brief contribution responding to the contribution made by the Hon. Dr Peter Phelps. The mechanism that was used here today was discussed at length before the committee meeting that we had today and that we saw as the way of ventilating the matter. Contrary to what the Hon. Dr Peter Phelps says, this was the mechanism that was considered the most appropriate to allow the House to consider the matter. If there is any suggestion that the Government members are in some way lackeys for the executive, what occurred at the meeting, which again the Hon. Walt Secord was not at—

The Hon. Walt Secord: Neither was the Hon. Dr Peter Phelps.

The Hon. TREVOR KHAN: Please, I have already made that point, so just be quiet.

The Hon. Walt Secord: Point of order: Mr President, you have given repeated warnings in this Chamber that the only person who can offer instructions and directions to members is you. I suggest that you bring the Deputy President to order.

The Hon. Niall Blair: To the point of order: The Hon. Walt Secord has already spoken in this debate. The Hon. Trevor Khan is raising important matters about a new procedure that will affect every member in this Chamber. He is not going to the substance of the debate and the objection raised by the Opposition. I urge the Deputy Leader of the Opposition to respect all members of this House by hearing this point and stopping interjecting.

The Hon. Walt Secord: Further to the point of order—

The PRESIDENT: Sit down. I am the Chair and I can give that instruction. I will not allow members to jump up and take a point of order when another member is in the middle of taking a point of order. It creates difficulty not only for me but also for Hansard.

The Hon. Niall Blair: The Hon. Trevor Khan should be allowed to deliver his contribution without interjections from the Deputy Leader of the Opposition, who has already given his contribution. The Hon. Trevor Khan is making a point that is relevant to the procedure and the operation of this House. He is not addressing the substance of the debate and he should be allowed to deliver his comments on the procedure in silence.

The PRESIDENT: Yes, I agree. I agree that a member cannot tell another member to be quiet. I will tell the Hon. Walt Secord when he will be quiet, because that is my role, and he will stop continually interjecting, otherwise I will call him to order.

The Hon. TREVOR KHAN: I emphasise that this was a collaborative process. The actual mechanism of bringing the motion forward and it being amended was agreed to collaboratively by all members of the committee present so that this House could decide the matter. It is not correct to suggest that this committee is breaking down or not fulfilling the function it was set up to achieve. The committee is feeling its way and is an evolving species. No member of the committee suggests it is dysfunctional in any way at the present time.

Mr DAVID SHOEBRIDGE (15:01): I agree with the substance of the debate referred to by Dr Mehreen Faruqi and the Hon. Penny Sharpe. The committee is finding its way. Because the number of members of the committee does not reflect the numbers in the House we discussed whether to have a vote on the numbers in the committee and then see how it plays out in the House. My preference, and I believe it is the preference of The Greens, accords with what the Hon. Dr Peter Phelps suggested—that is, the direction of the committee should be to look at the extent of community concern about a bill. If there is substantial community concern then we tell the House we see an argument and then we do the politics in the House. I think that is preferable. The committee is finding its way and perhaps there should be more informal discussions before the next meeting. I commend the amendment to the House.

The Hon. MATTHEW MASON-COX (15:02): I will refer to some of the contributions. As a member of the Government I will not support the amendment for the bill to be referred to a committee. However, in relation to the procedure it is worth reflecting that we are in the early stages of working through some of these issues and it will become, over time, easier to deal with them. It is open for members at the end of the second reading debate to amend the question to refer the bill to a committee at that time, notwithstanding what is decided in relation to a reference to the House by the Selection of Bills Committee. This is not the end of the issue; it is only the first phase of how this bill may or may not be treated by the committee.

The Hon. LYNDA VOLTZ (15:03): I too participated in the discussion today. If a committee votes on whether to have committee hearings it will almost replicate the process that occurs on the floor. I understand the point of the committee is that controversial bills come before the House which often get tied up in long public debate. I am a member of a huge number of public inquiries and this mechanism will deal with bills to ensure that there has been consultation in a much more streamlined process in the first instance. I am concerned that if we just take it to the House and vote it will replicate an existing procedure. I would like to see a more flexible approach where the Selection of Bills Committee can deal with these issues quickly before they come to the House. I thought that was the whole point of the committee.

Reverend the Hon. FRED NILE (15:04): I have been waiting a long time for the Kosciuszko Wild Horse Heritage Bill to come before the House since I saw staff of the National Parks and Wildlife Service in helicopters shoot wild horses and leave them to die on the ground. I believe there should be some protective mechanism for the horses. As the Leader of the House said, the bill has a provision for an inquiry. It provides for the preparation of a draft wild horse heritage management plan, public consultation on the draft plan of management, consultation with National Parks and Wildlife Service, a community advisory panel and an independent technical advisory group. The bill provides for consultation mechanisms far more than in other legislation and I believe that is sufficient and it will not need to be referred to a committee of the upper House.

The Hon. CATHERINE CUSACK (15:06): I will respond to some of the rather ill-informed remarks made in this debate, in particular, by Dr Mehreen Faruqi who said The Greens will vote against this bill because it is unprecedented. I inform the member that this happens all the time. Every road reservation in a national park comes through legislation. The Thredbo ski fields and the hydro power station are in the Kosciuszko National Park. This is not unprecedented by any means. If that is why The Greens will vote against this bill it is because they do not understand the role of a management plan and the role of the Parliament to consider legislative amendments to ensure certain things are done within those parks. Parliament is the appropriate way to do that.

I am not a member of the new committees that have been established but I am a member of this House. I do not consider that those committees should be vetting legislation or somehow having a superior role to this House. I do not believe a case has been made for this amendment. As the Hon. Matthew Mason-Cox said, the Parliament has a time-honoured process for properly ventilating information. All members have an opportunity to speak and to consult widely. It is very apparent to me that the Hon. Walt Secord will bring forward, quite frankly, a whole lot of smear in this debate, but we deal with that from that member regularly. The usual way we do it is he has the opportunity in the second reading debate to present all of his evidence to make his case. During the Committee of the Whole he can move amendments which always result in nothing and then the House moves on and the bill passes.

However, on this occasion—it would be unprecedented but he might be successful—we have the opportunity to move an amendment to start an inquiry. The idea that somehow allowing a bill to come forward into the Chamber is not an appropriate and democratic process is a notion I feared might creep in with the establishment of these two committees. As a member of this Chamber I want to assert that this Chamber functions in a very robust way when considering legislation. There are many stages to a bill and none of that should be overtaken by any committee of the House.

The Hon. NATASHA MACLAREN-JONES (15:08): In reply: I remind members that we are actually debating an amendment to a motion to refer this bill to a committee. We are not debating or discussing the merits of the Selection of Bills Committee or the process. It has been placed on the record on a number of occasions that it is in a pilot program. Again, I reiterate that the decision made by the committee today was unanimous that this would be the process. If members choose to turn up to the next meeting to put a different opinion, we can further debate it.

The PRESIDENT: Order! The Government Whip has moved a motion that, according to paragraph 4 (1) establishing the Selection of Bills Committee, certain bills—I will not repeat them all—not be referred to a standing committee for inquiry and report. The Hon. Penny Sharpe has moved an amendment to that question seeking to refer the Kosciuszko Wild Horse Heritage Bill 2018 to the Standing Committee on State Development for inquiry and report. The question is that the amendment of the Hon. Penny Sharpe be agreed to.

The House divided.

Ayes 18
Noes 23
Majority.....5

AYES

Buckingham, Mr J	Donnelly, Mr G (teller)	Faruqi, Dr M
Field, Mr J	Graham, 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
Voltz, Ms L	Walker, Ms D	Wong, Mr E

NOES

Amato, Mr L	Blair, Mr	Borsak, Mr R
Brown, Mr R	Clarke, Mr D	Colless, Mr R
Cusack, Ms C	Fang, Mr W (teller)	Farlow, Mr S
Franklin, Mr B	Green, Mr P	Harwin, Mr D
Khan, Mr T	MacDonald, Mr S	Maclaren-Jones, Mrs (teller)
Mallard, Mr S	Martin, Mr T	Mason-Cox, Mr M
Mitchell, Mrs	Nile, Revd Mr	Phelps, Dr P
Taylor, Mrs	Ward, Ms P	

Amendment negatived.

The PRESIDENT: The question is that the motion of the Government Whip be agreed to.

Motion agreed to.

Documents

SYDNEY STADIUMS

Correspondence

The CLERK: According to the resolution of the House of 15 March 2018, I table correspondence regarding the implementation of the report of the Independent Legal Arbiter on the disputed claim of privilege relating to Sydney stadiums received from:

(a) the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, dated 30 May 2018 and 31 May 2018; and

(b) the Department of Premier and Cabinet, dated 31 May 2018, 1 June 2018 and 5 June 2018.

Tabling of Privileged Documents

The CLERK: According to resolution of the House of 15 March 2018, I table certain documents relating to an order for papers referred to in the report of the Independent Legal Arbiter, the Hon. Keith Mason, AC, QC, dated 22 May 2018, on the disputed claim of privilege on documents relating to the order for papers regarding Sydney stadiums.

Business of the House

WITHDRAWAL OF BUSINESS

The Hon. WALT SECORD: I withdraw Private Member's Business item No. 247 outside the Order of Precedence relating to the Smoke-free Environment Amendment (E-cigarettes) Bill 2017 and Private Member's Business item No. 668 outside the Order of Precedence relating to the Public Health Amendment (Eyeball Tattooing Prohibition) Bill 2016. [*During the giving of notices of motions*]

Notices

PRESENTATION

The Hon. Don Harwin: Point of order: I ask that the Chair consider whether the terms of the notice of motion given by Mr Jeremy Buckingham breach the standing orders.

The PRESIDENT: As I have indicated to the Clerk, a number of notices of motion will be looked at carefully at the conclusion of question time today.

Business of the House

POSTPONEMENT OF BUSINESS

The Hon. DON HARWIN: I move:

That Government Business Orders of the Day Nos 1 and 2 be postponed to a later hour.

Motion agreed to.

Members

PARLIAMENTARY SECRETARIES

The Hon. DON HARWIN: I inform the House that on 24 May 2018 the Premier made the following change to the persons holding office as Parliamentary Secretary: Mr Chris Patterson, MP, was appointed as Parliamentary Secretary for Youth Employment in Western Sydney.

Committees

SELECT COMMITTEE ON HUMAN TRAFFICKING IN NEW SOUTH WALES

Government Response: Human Trafficking in New South Wales

The CLERK: I table correspondence from the Hon. Pru Goward, MP, advising that the Government's response to the report of the Select Committee on Human Trafficking in New South Wales, tabled in this House on 19 October 2017, which was due on 19 April 2018, will be provided in the coming months and noting that a private member's bill relating to modern slavery and human trafficking is currently before the Parliament.

STANDING COMMITTEE ON LAW AND JUSTICE

Government Response: Racial vilification law in New South Wales

The CLERK: According to standing order, I announce receipt of a further Government response to report No. 50 of the Standing Committee on Law and Justice entitled "Racial vilification law in New South Wales", tabled on 3 December 2013. Under the standing order, the response has been authorised to be printed.

PORTFOLIO COMMITTEE NO. 4 - LEGAL AFFAIRS

Extension of Reporting Date

The Hon. ROBERT BORSAK: I inform the House that on 28 May 2018 Portfolio Committee No. 4 - Legal Affairs resolved to extend the reporting date for its inquiry into museums and galleries to 17 October 2018.

Business of the House

STANDING AND SESSIONAL ORDERS: ORDER OF BUSINESS

The Hon. ADAM SEARLE: I move:

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

Motion agreed to.

ORDER OF BUSINESS

The Hon. ADAM SEARLE: I move:

That debate on Private Members' Business item No. 2254 outside the Order of Precedence, standing in my name, take precedence of all other business until Questions and after Questions until adjourned or concluded.

Motion agreed to.

Documents

SYDNEY STADIUMS

POWERHOUSE MUSEUM RELOCATION

INDEPENDENT REVIEW OF OUT OF HOME CARE IN NEW SOUTH WALES

Production of Documents: Further Order

The Hon. ADAM SEARLE (15:53): I move:

(1) That this House notes the failure of the Government to comply with the following orders of the House:

(a) the resolution of the House of 15 March 2018 relating to Sydney stadiums in respect of certain documents, including business cases;

(b) the resolution of the House of 12 April 2018 relating to the preliminary and final business cases for the relocation of the Powerhouse Museum from Ultimo to Parramatta; and

(c) the resolution of the House of 17 May 2018 relating to the final report and final draft report of the independent review of the out-of-home care system in New South Wales.

(2) That this House censures the Leader of the Government as the representative of the Government in this House for the Government's failure to comply with the orders of the House of 15 March 2018, 12 April 2018 and 17 May 2018.

(3) That, under Standing Order 52, there be laid upon the table of the House by 9.30 a.m. on the day following the passing of this resolution:

(a) the following documents in the possession, custody or control of the Department of Premier and Cabinet, Infrastructure New South Wales, the Office of Sport, Sydney Olympic Park Authority, Sydney Cricket and Sports Ground Trust, Venues New South Wales, the Minister for Sport, and the Minister for Transport and Infrastructure:

(i) the Final Business Case for the proposed redevelopment of the Sydney Football Stadium at Moore Park referred to on page 2 of the "Final Business Case Summary: Sydney Football Stadium Redevelopment" published by Infrastructure New South Wales, dated March 2018; and

(ii) the Strategic Business Case for the redevelopment of Stadium Australia referred to on page 2 of the "Strategic Business Case Summary: Stadium Australia Redevelopment" published by Infrastructure New South Wales, dated March 2018.

(b) the following documents in the possession, custody or control of the Premier, the Department of Premier and Cabinet, the Treasurer, NSW Treasury, the Minister for the Arts, Create NSW, the Minister for Planning, the Minister for the Environment, the Department of Planning and Environment or Infrastructure NSW:

(i) the draft Business Case reviewed by Infrastructure New South Wales in February 2017 referred to on page 3 of the "Final Business Case Summary: Powerhouse Museum in Western Sydney" published by Infrastructure New South Wales, dated April 2018;

(ii) the Final Business Case for the Powerhouse Museum in Western Sydney Project referred to on page 2 of the "Final Business Case Summary: Powerhouse Museum in Western Sydney" published by Infrastructure New South Wales, dated April 2018;

(c) the following documents in the possession, custody or control of the Premier, the Department of Premier and Cabinet, the Minister for Family and Community Services, or the Department of Family and Community Services: the final report and final draft report of the independent review of the out of home care system in New South Wales conducted by Mr David Tune, AO, PSM; and

(d) any legal or other advice regarding the scope or validity of this order of the House created as a result of this order of the House.

(4) That, should the Leader of the Government fail to table the documents in compliance with this resolution, this House orders the Leader of the Government to attend in his place at the table at the conclusion of prayers on the next sitting day following the passing of this resolution to explain his reasons for continued non-compliance.

The Opposition does not take this step lightly or unadvisedly; we have given it careful thought and consideration. Sadly, the intransigence of the Executive Government of the day leaves us and this House little choice. Should we as a House of Parliament not take this step, we diminish a key tool that provides effective scrutiny of the Executive by the Parliament to guard the public interest on behalf of the wider community we all serve. Private Members' Business item No. 2254 seeks to censure the Leader of the Government as the representative of the Government in this place, not for its failure to comply with one call for papers, nor for two calls for papers, but for three calls for papers. Quite an accumulation of important public policy matters are encapsulated in those three matters.

First is the resolution of the House of 15 March relating to Sydney stadiums in respect of certain documents, including business cases. The second is the resolution of the House of 12 April 2018 relating to the preliminary and final business cases for the relocation of the Powerhouse Museum from Ultimo to Parramatta. Those two matters are not only matters of public controversy but also matters involving very considerable amounts

of proposed public expenditure. The bases of those decisions are contested not only in this place and in Parliament more generally but also throughout the wider community.

The third call for papers is the resolution of the House of 17 May 2018 relating to the final report and final draft report of the independent review of the out-of-home care system in New South Wales, the Tune report. The Tune report relates to the care and protection of some of this State's most vulnerable citizens. It is a very important matter. The Government used public money to commission a report from Mr David Tune, an esteemed former senior public servant at the Commonwealth level, but that document has not been seen. It is called for by this House so that we can see what was recommended to the Government so we can adjudge the performance of the Government in this important area of public policy by the yardstick of that report.

The Hon. Lynda Voltz and I identified documents in the call for papers relating to the Sydney stadiums that we thought were missing, including business cases. On 15 May I wrote to the Clerk and the Clerk communicated with the Department of Premier and Cabinet, which made inquiries. It was reported back to this House that there were no documents caught by the order of the House that were legally required to be produced. It is that second part that this resolution and, I think, this House ought to take issue with. We have three important matters where this Government has, with reckless indifference, thumbed its nose at the resolutions of this House in a way not seen since the mid- to late-1990s.

The Hon. Don Harwin: What have you against Michael Egan?

The Hon. ADAM SEARLE: I have nothing against the Hon. Michael Egan. As members are aware, this House has undoubted power to compel the production of State documents held by the Executive and State agencies. The Leader of the Government acknowledged as much in this place during question time on 1 May. However, on that occasion, he also stated:

> However, the New South Wales of Appeal in *Egan v Chadwick* concluded that the power of the House to compel the production of documents does not extend to Cabinet information ... Cabinet documents are neither identified nor produced in response to an order.

The Leader of the Government then proceeded to read extracts from the Premier's Memorandum M2006-08, maintaining confidentiality of Cabinet documents and other Cabinet conventions as a justification for this position by the Executive on the basis that former governments had done it too. Mr President, that does not make it correct. The position taken by the Government in this place is based on a very careful misreading of the judgements of the New South Wales Court of Appeal in *Egan v Chadwick*. The headnote to *Egan v Chadwick* in 46 NSWLR 563 confirmed the power of this Chamber to require from the Executive State papers pursuant to its common law powers regarding its function in holding government to account. However, in respect of Cabinet documents, the head note states:

> ... their immunity from production is complete. However, as has been noted by many eminent legal scholars and commentators since, including Mr Bret Walker, SC, in his paper "Justified Immunity or Unfinished Business? The Appropriateness of Parliamentary and Executive Immunities in the 21st Century" given last year, this is not in fact what the Court of Appeal decided in that matter. What did the court in that matter decide? Starting with Justice Meagher, His Honour found:
>
> 153 As far as documents which are covered by the doctrine of public interest immunity are concerned … I cannot see how the Legislative Council is in any different position. The Court cannot possibly prohibit the Council from examining such documents.
>
> 154 However, there is a third category of document in question, and that is Cabinet documents. With regard to these, I am in agreement with the Chief Justice. The Cabinet is the cornerstone of responsible government in New South Wales, and its documents are essential for its operation. That means their immunity from production is complete. The Legislative Council could not compel their production without subverting the doctrine of responsible government, a doctrine on which the Legislative Council also relies to justify its rights to call for documents. It follows that Cabinet documents can never be produced until released by Cabinet. No process can arise for the Courts—or anyone else—balancing interests against each other. Nor, in my view, is the analogy drawn by Priestley JA with confidential—

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

Questions Without Notice

SHENHUA WATERMARK EXPLORATION LICENCE

The Hon. ADAM SEARLE (16:00): My question without notice is directed to the Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts. In light of the Government's agreement to provide $262 million to Shenhua on the expiration of its mining exploration licence on the Liverpool Plains and for the permanent surrender of half that exploration licence, has the Government yet paid the funds to Shenhua and, if so, when did that payment occur?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (16:01): I will come back to the date on which payment was made to Shenhua. In 2008 Shenhua

won a competitive tender for the area now covered by exploration licence 7223 that included paying the New South Wales Government around $300 million. On 12 July 2017 the New South Wales Government reached agreement with Shenhua to excise 51.4 per cent of its exploration licence 7223 that encroached on the flat fertile Liverpool Plains. The agreement included a refund, as the Hon. Adam Searle noted in his question, of $262 million. The refund of $262 million represents 51.4 per cent of the original $300 million received, adjusted for today's value commensurate with the 51.4 per cent of the title area recovered by the Government. I apologise for the pause; I do not have the date. I will give the member an answer at the end of question time.

WATER CONSERVATION

The Hon. TAYLOR MARTIN (16:02): My question is addressed to the Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts. Will the Minister update the House on how Hunter Water is working to support the lower Hunter region?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (16:03): Last week it was my pleasure to see firsthand how Hunter Water is delivering support for the rapidly transforming lower Hunter region. I heard from Hunter Water's board about the work it is doing on water conservation and efficiency. This work includes the Love Water conservation campaign, which is about increasing the public's awareness of water use and Hunter Water learning with households and businesses to help save water and money. At the same time, Hunter Water has significantly increased its efforts to reduce water loss from its network. Over the 2017-18 financial year, this has resulted in almost 800 million litres of water being saved. These water conservation and efficiency measures will improve the future sustainability and resilience of the lower Hunter's water supply. They also have the potential to defer or avoid the need for significant future spending on infrastructure. This is good for lower water bills now and it is also good for future affordability.

While still focused on providing a safe, secure and affordable water and wastewater service, Hunter Water also plays a role in supporting the sustainable growth of the region and its communities. While I was in the Hunter last week I was delighted to be able to visit Newcastle's now retired, first drinking water reservoir known as The Res, where Hunter Water and the Department of Education and Communities are working collaboratively to utilise the space on the roof for a playground. Newcastle East Public School—which happens to be Australia's oldest school—and Hunter Water have fenced and turfed the currently unused space and are working to provide additional open space for the inner city school. Talking to Ela Gurner, Darcy O'Rourke and the other students present on the day it was clear to see their excitement and enthusiasm for a new space for sport and outdoor play. When Newcastle Council gives final approval, the school's playing space will have almost doubled.

While in the region, I was also able to announce the expansion of Hunter Water's program to connect the township of Wyee to its sewer network. Announced in 2015, the scheme originally included sewer connections for 400 homes and businesses, with the capacity to cater for up to 1,000 properties. However, following community feedback and updated growth forecasts, the scheme has now been expanded to accommodate an additional 2,750 residential homes. With the member for Lake Macquarie I was delighted to make that announcement in Wyee, which was enthusiastically received. Local supermarket owner Richard Owen subsequently announced a $5 million expansion of the shopping centre at Wyee on the back of this announcement.

Hunter Water's investments in Wyee's water infrastructure, along with the Government's recent announcement to upgrade Wyee train station, demonstrates commitment to delivering the infrastructure to support growing towns throughout New South Wales. The Government is future-proofing Wyee to ensure it is prepared for its growth. The Government is committed to ensuring the right water infrastructure is in the right place at the right time to support growth from Greater Sydney's growth precincts through to the lower Hunter, the Central Coast and the township of Wyee.

WESTERN SYDNEY ARTS AND CULTURE FUNDING

The Hon. WALT SECORD (16:07): My question without notice is directed to the Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts. Given that the Deloitte Access Economics 2015 report on Western Sydney's cultural arts economy found that while one in three New South Wales residents lived there Western Sydney received only 5.5 per cent of the State's cultural, heritage and arts funding, what is the Government's response to a funding request from leading independent Western Sydney based Urban Theatre Projects to curate and produce "Right Here. Right Now"—a new arts festival for Western Sydney launching this November.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (16:08): I am impressed with the work of Rosie Dennis and Urban Theatre Projects; many of their projects are worthwhile. The documentary about Minto was screened overseas and was greatly admired. I am familiar with the proposal to which the Hon. Walt Secord referred and I met with Rosie Dennis to discuss this

project. There has been an equity issue on arts and cultural funding in Sydney for a long time. There has been an imbalance. Historically much more was spent in the eastern half of the city than was spent in Western Sydney. As Minister for the Arts I am proud that this Government, unlike previous governments, is finally doing something about it. Since 2015 alone, funding for Western Sydney has increased by 40 per cent. This Government believes that every community in New South Wales deserves its fair share of arts and cultural funding, including Western Sydney.

I will refer to some of the projects in Western Sydney that this Government has funded. It has given $250,000 to WestWords, a great organisation that creates opportunities for Western Sydney artists and engages children and young people with literature. WestWords provides pathways for an artist's career development through the provision of residencies, fellowships and skills, and audience development. This Government has allocated $460,000 to the Information and Cultural Exchange [ICE], one of the most admired arts organisations in the State, which has relevance in the screen area. Recently I visited an ICE project at Granville Boys High School, an extraordinary project, but that is a story for another time.

The Hon. Walt Secord, who asked the question, is well aware of the excellent work of the National Theatre at Parramatta because we have both attended performances there. That theatre exists because this Government gave it $200,000—something that did not happen before this Government increased funding for Western Sydney by 40 per cent. This Government has allocated $150,000 for the Live and Local Program, a partnership with Western Sydney councils to support the live music sector through the delivery of micro music festivals. This Government has already allocated $315,000 worth of grants to the Urban Theatre Project, the very organisation to which the Hon. Walt Secord referred. It is not as though these bodies are being neglected; they are being funded because they do good work. [*Time expired.*]

The Hon. WALT SECORD (16:12): I ask a supplementary question. Will the Minister elucidate his answer regarding the increased funding of 40 per cent? Does that figure include the cost of moving the Powerhouse Museum to Western Sydney?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (16:12): No, it does not. If the Hon. Walt Secord had been listening and he understood the arts portfolio he would not have asked such a stupid question. I made it very clear that there was a 40 per cent increase in the Arts and Culture Development Program [ACDP]. The Hon. Walt Secord would know that the $52.7 million Arts and Culture Development Program is recurrent expenditure each year. He not only does not understand what the ACDP is; he does not understand that matters to do with the relocation of the Powerhouse Museum would be in the capital budget.

The Hon. Walt Secord: Are top secret.

The Hon. DON HARWIN: They are not top secret at all. We made it quite clear that the Government's contribution is $642 million to the Powerhouse project. As the Hon. Walt Secord raised the issue of the Powerhouse Museum I make this point: No government has ever moved a State cultural institution and created a major presence in Western Sydney. This Government has done that and it will be a huge success. This Government is doing more than that—

The Hon. Trevor Khan: Point of order—

The PRESIDENT: The Minister will resume his seat. The Clerk will stop the clock.

The Hon. Trevor Khan: A degree of banter is normally anticipated but we have reached the stage where we are simply hearing abuse from Opposition members who should all be called to order.

The PRESIDENT: The Hon. Walt Secord asked a question and it was answered. I then permitted him to ask a supplementary question. I remind him that he is permitted to ask a supplementary question at my discretion. The least that the member and many of his colleagues can do is to allow the Minister to provide an answer without continual interjections. The Minister has the call.

The Hon. DON HARWIN: While we are debating urban theatre projects I make it quite clear that $100 million of the $140 million that this Government is giving to Parramatta council for the site of the new museum will be spent on the redevelopment of the Riverside Theatre to make it a huge theatre complex in Parramatta which will support arts and culture. [*Time expired.*]

RELIGIOUS EDUCATION

The Hon. MARK PEARSON (16:15): My question is directed to the Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education, representing the Minister for

Education. How many non-government religious schools in New South Wales offer secular ethics classes to their students?

The Hon. SARAH MITCHELL (Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education) (16:15): I thank the Hon. Mark Pearson for his question to me in my capacity and in my capacity as representing the Minister for Education, the Hon. Rob Stokes. I will take the question on notice, refer it to the Minister and provide the member with an answer.

GAS INDUSTRY COMPETITIVENESS

The Hon. TREVOR KHAN (16:16): My question is addressed to the Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry. Will the Minister update the House on how the New South Wales Government is improving access to gas supplies to boost industry competitiveness?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (16:16): The Government is aware of the impact that higher gas prices are having on New South Wales families and businesses. The Government is in discussion with a private sector consortium regarding a specialised import terminal to deliver liquefied natural gas [LNG] to the New South Wales gas market. The consortium, made up of both Australian and international companies, has proposed the construction of an import terminal at Port Kembla.

Operating under the banner of Australian Industrial Energy [AIE], the consortium comprises Australian company Squadron Energy which has partnered with Japanese energy specialists JERA and Marubeni. Their proposal involves the construction of a berthing facility for two vessels within Port Kembla, a floating storage regasification unit [FSRU] and a berth for LNG tankers, bringing gas from low-cost producers in Australia or overseas. Gas will be transferred from the tanker to the FSRU before being pumped through onshore gas metering facilities and via dedicated pipelines into the existing high pressure gas pipeline network. The consortium is confident of a rapid completion of the project once all necessary approvals are granted. The consortium hopes to have the plant operational by 2020.

This would see gas from Port Kembla entering the New South Wales gas supply network and supporting the State's prosperity in less than 2½ years. The proposed facility would be capable of supplying up to 70 per cent of our State's current LNG needs. The nature of the facility means that supply can easily be ramped up to meet demand through increased shipments. This proposal has the potential to provide an injection of much-needed competitive tension in the New South Wales gas supply market, without requiring additional mining or significant gas pipeline infrastructure.

It will potentially put a ceiling on what existing gas companies can reasonably charge our manufacturers and other industrial users—helping them to plan, invest and operate with greater certainty in the long term and to continue to support families and communities across the State. Obviously there are regulatory and planning processes to be dealt with; however, the potential for this development to meet the needs of job-creating businesses in energy intensive industries is immense. The possible benefits go beyond New South Wales and will flow across the east coast gas market, resulting in improved pricing, better service and a superior deal for the people of New South Wales.

I am advised that the proposed facility will involve $200 million in commercial investment by the project backers. This investment will create 150 construction jobs during the project delivery phase and up to 40 full-time jobs once the plant is operational. The New South Wales Government supports the potential for increased competition and increased gas supply that this project offers. This proposed LNG import terminal would be a win for the economy, a win for the New South Wales community, and a win for the people of Illawarra. I look forward to updating the House on its progress. It was a good event yesterday. I note that a number of people have been watching this proposal with great interest. The fact that the consortium decided yesterday on Port Kembla is positive not only for that region but also for the whole of New South Wales. I acknowledge that a couple of Labor members from the other place also attended the event. This project will benefit many industries and many people across the State.

DEATH OF LEWIS "BUDDY" KELLY

Mr DAVID SHOEBRIDGE (16:20): My question is directed to the Leader of the Government, representing the Attorney General. On 7 December 2017 on behalf of the family of Lewis "Buddy" Kelly, a first nations teenager who tragically was found dead on the railway lines at South Kempsey in the early hours on New Year's Eve 1983, I wrote to the Minister for Police requesting a fresh investigation into Buddy's death. I received a formal holding response on 31 January 2018. I followed up on 20 March 2018 and again on 4 May 2018 and the police Minister referred my office and the matter to the Coroner on 10 May 2018. On 20 May 2018 I was advised by the Coroner to formally contact the Attorney General for a response. In exasperation, and with the family

increasingly distressed, on 22 May I formally requested a response to the matter from the Attorney General. I am yet to receive a response from the Attorney General or any substantive response from the Government. Will the Minister ensure that a prompt answer is given to this matter? [*Time expired.*]

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (16:21): I understand how distressed the family must be. I note that in the past two weeks Mr David Shoebridge raised this issue with the Attorney General. I will ensure that his concerns are conveyed to the Attorney General and that he receives an answer at the first available opportunity.

MYALL CREEK EDUCATION AND CULTURAL CENTRE

The Hon. WALT SECORD (16:21): My question is directed to the Minister for the Arts and Leader of the Government. Is the Minister aware that yesterday Adam Marshall, the Minister for Tourism and Nationals member for the Northern Tablelands, publicly endorsed and wholeheartedly supported Labor's $3 million commitment towards the Myall Creek Education and Cultural Centre? Will the Minister now reconsider the application under the Regional Cultural Fund that he previously rejected?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (16:22): A lot of the assumptions underlying this question are simply wrong. I am happy to address this question. In September 2017, an application was submitted by the Friends of Myall Creek Memorial Incorporated for the Myall Creek Education and Cultural Centre as part of the stage one round one expressions of interest process for the Regional Cultural Fund. More than 237 applications were received as part of the expressions of interest process. Of those 237 applications, 91 were selected to move to stage two, where each applicant was asked to submit a fully costed business case or project plan, depending on the estimated total cost of their project.

The Myall Creek Education and Cultural Centre application did not progress beyond the expressions of interest stage one round two. In December 2017, Graeme Cordiner, the applicant for the Friends of Myall Creek Memorial Incorporated, was notified by letter from the Cultural Infrastructure Project Management Office of the Department of Planning and Environment of the outcome of his application. The department also provided one-on-one feedback by telephone on 30 January 2018. General feedback and specific assessment panel comments were provided in this session. The applicant advised that the feedback was helpful and welcomed.

In summary, the feedback included the following: Whilst the project had strategic merit, the application was deemed not as competitive as others that were submitted in round one. Further, the applicant was encouraged to work on his submission and to submit a new application in the next round. The next round of regional cultural funding will open in the new financial year. All applicants who were unsuccessful in round one are encouraged to get their applications ready and to submit a new application in round two for consideration. I would put the Myall Creek Education and Cultural Centre in that category. It is a good project. As was advised by the department in its feedback, the centre is considered to have strategic merit and the department is happy to look at the application again in round two.

I welcome the fact that the member for Northern Tablelands is advocating for a facility in his community. It is an excellent proposal, but it seems the department and the peer assessment panel did not think it was ready to be funded and they want the proponents to do a bit more work. The Friends of Myall Creek would not be the only group in that category; there are dozens of others. It is just as well that this $100 million fund will be spent by the Government over the next four years. I am delighted to say that already 68 applicants have been successful and funding of almost $50 million has been allocated in this first round. There are some excellent projects and it is possible that one or two of them may feature later in question time, possibly tomorrow and maybe even the day after that as well. [*Time expired.*]

The Hon. WALT SECORD (16:26): I ask a supplementary question. Will the Minister elucidate his answer in regard to the Myall Creek Education and Cultural Centre? What does he mean by "strategic merit" when he refers to the project?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (16:26): It is a good project; it is pretty simple. That seems pretty obvious. It would be a great facility, and when it is ready to go forward and has all of the information required to assist it, it will be considered. That is why the department gave the Friends of Myall Creek Memorial Incorporated feedback and encouraged it to do more work and get ready for round two. There is nothing more to say. It is a great project.

ABORIGINAL CULTURAL HISTORY

Mr SCOT MacDONALD (16:27): 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 connecting with the Aboriginal community in the electorate of Myall Lakes?

The Hon. SARAH MITCHELL (Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education) (16:27): Bulahdelah Mountain is an Aboriginal place in recognition of the cultural, spiritual and historical significance of the area to the Worimi people. The country contains a rich history of Worimi culture and heritage following thousands of years of connection to its traditional owners. Last week I had the privilege of attending the unveiling ceremony for the Bulahdelah Mountain tree carvings. I thank my colleague in the other place the member for Myall Lakes Stephen Bromhead for welcoming me to the electorate last week to be a part of that ceremony. The contemporary tree carvings undertaken by members of the Karuah Local Aboriginal Land Council are truly magnificent.

For thousands of years the Aboriginal people of New South Wales have ceremoniously carved trees as a form of artistic and cultural expression. In New South Wales, both carved and scarred trees are still present today. Carved trees are a unique and expressive form of communication and were used as markers for burials, safe travelling paths and boundaries, and they played an important role in ceremonies. In 2018, carved trees once again mark this Worimi place as a reminder to all people that this is a special area and a significant place. They will allow the public to recognise the cultural history of this land, to value the rich legacy of this Aboriginal place, and the importance of Aboriginal people staying connected to their culture through traditional practices and customs.

Bulahdelah Mountain continues to welcome visitors to experience its lookouts, walking tracks and beautiful forest. But now, those who visit the mountain will be able to look upon the carvings and acknowledge the demonstration of such a valued cultural practice. The Forestry Corporation of NSW and the Karuah Local Aboriginal Land Council held a series of sculpture workshops to learn the traditional skills of tree carving, to create sculptures for the mountain and to provide economic opportunities for the community through cultural tourism. The sculpture workshops were about taking a traditional practice and bringing that into today through contemporary tree carvings and creating the unique visitor experience on the mountain. Young people and elders have together developed the designs which tell cultural stories and ensure that future generations of young Aboriginal people have the skills to continue tree carving and reconnect with traditional skills.

I had the opportunity to have a turn of carving. I was invited to do so by Aunty Fiona Manton, the chair of the Karuah Local Aboriginal Land Council. I can tell members that it is harder than it looks. But I had a go and was successful in carving one of the carvings on the mountain, which was a pretty special moment for me as the Minister. Early in 2017, the Forestry Corporation of NSW and the Karuah Local Aboriginal Land Council started working together to revitalise and modernise the facilities on the mountain while highlighting the importance of the Aboriginal place and Worimi culture.

Since then, in addition to the workshops and tree carvings that I have mentioned, they have removed old visitor infrastructure, installed interpretive and wayfinding signage, upgraded visitor facilities and developed a cultural space, including seating and a fire pit that I was honoured to visit. I acknowledge the work and success of the Forestry Corporation of NSW and its Aboriginal Partnerships team in creating sustainable pathways built on trust and transparency to return the bush to the traditional owners.

It was a wonderful morning at the ceremony. I acknowledge Aunty Bev Manton, who performed the Welcome to Country. I also acknowledge Aunty Fiona Manton and Len Roberts, Chief Executive Officer of Karuah Local Aboriginal Land Council, for allowing me to be part of something special and significant not only to the local Aboriginal community and the Worimi people but also to the whole community. A lot of members of the Bulahdelah community, including schoolchildren and other interested parties, were also present. It was a great opportunity, particularly during National Reconciliation Week. The campaign theme for this year, "Don't Keep History a Mystery", tied in well to the events of the day. [*Time expired.*]

KOALA HABITAT

Ms DAWN WALKER (16:31:5): My question is directed to the Hon. Don Harwin, representing the Minister for the Environment. Recent reports revealed that only 2 per cent of new reserves to be created under the New South Wales Government's koala plan are high-quality koala habitats based on the latest Government modelling. Does the Government agree with the figure? Can any evidence be provided to confirm otherwise?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (16:32:2): I thank the Hon. Dawn Walker for her question, which contains some detail. I will convey the question to the Minister for the Environment and obtain an answer as soon as it is practicable.

The Hon. Niall Blair: Point of order: Could you check the clock? Surely we have been here for longer than half an hour. Is the clock right? It has been a long day. I apologise.

NAMBUCCA HEADS PUBLIC LIBRARY

The Hon. PETER PRIMROSE (16:33:2): My question is directed to the Minister for the Arts. Recently I had the welcome opportunity to visit the Nambucca Heads public library. Given that the State Library of New South Wales has deemed that library to be dramatically undersized for the volume of clients using the facility, why did the Minister reject Nambucca Shire Council's bid for funding under the Regional Cultural Fund to upgrade its library?

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (16:33:5): I would have to check the details in the honourable member's question. There were about 200 applicants. If the Nambucca Heads public library is one of the applicants that was not funded, I would want to check at what stage it reached and get that information. Obviously, with 200 applications for the funding, I do not readily have at hand the details of all of them. I will take the question on notice and obtain an answer. The reality is that 68 projects across the State have been funded.

The Hon. Rick Colless: Orange art gallery.

The Hon. DON HARWIN: The Hon. Rick Colless interjects with Orange art gallery. Clarence Valley art gallery is now brand new, with just over $7.5 million in funding. There are a lot of projects, but we will hear all about them in due course, so I will not take up more time right now.

The Hon. PETER PRIMROSE (16:35:1): I ask a supplementary question. Will the Minister elucidate his answer? As I indicated in my question, I have had the opportunity to visit the Nambucca Heads library. The Minister has indicated that he is not familiar with it. Will the Minister indicate whether or not he would be prepared to visit the Nambucca Heads library?

The Hon. Scott Farlow: Point of order: That is a new question and should be ruled out of order.

The PRESIDENT: Order! While that was not a supplementary question, I will allow it. It is up to the Minister how he wishes to answer that question.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (16:36:1): I am familiar with Nambucca Heads. As a matter of fact, I have visited Nambucca many times. It is a great and beautiful place. I would be more than happy to visit it at some stage as my schedule permits. I know that several applications have been funded from the Oxley electorate, including one from Nambucca Heads.

The Hon. Walt Secord: Not that one, though.

The Hon. DON HARWIN: I would like to visit the one that has been funded. Perhaps I will take the opportunity to see the library as well.

REGIONAL CULTURAL FUND

The Hon. DAVID CLARKE (16:37:0): My question is addressed to the Minister for the Arts. Will the Minister update the House on how the New South Wales Government is supporting arts, screen and culture in regional New South Wales?

The Hon. Walt Secord: Lots of unhappy people!

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (16:37:1): There are lots of happy people. The Regional Cultural Fund is the single biggest investment in the regional arts and cultural sector in the history of the State. It took this Government to do it; it was never done under the previous Government. As a result of the 68 announcements that we made, we are investing some $50 million just in this round. As I told the House earlier, there were 200 expressions of interest from every eligible region across New South Wales—from Bermagui to Byron Bay and from Albury to Armidale, and everywhere in between.

The diversity of the projects reflects the vibrant cultural life of regional New South Wales. There was an incredibly high number of quality applications and we are committed to supporting as many of those as possible. The Government appointed an independent panel to assess the applications and make sure that the funded projects represent value for money and meet the needs of local communities across regional New South Wales. The investment of almost $50 million for significant cultural projects—including for galleries, libraries, theatres, museums and cultural precincts—will deliver long-term social and economic benefits to the regions. Last Tuesday, I was delighted to visit the Wagga Wagga electorate with my great friend the member for Wagga Wagga, who was elected to Parliament on the same day as me. We were the class of 1999—it was a very small class for the Liberal Party in 1999.

On that day we announced that Wagga Wagga City Council had been granted more than $3.18 million to redevelop the Museum of the Riverina—a superb facility. The current botanic gardens site will be reconfigured to increase collection storage space, to build a multifunction space, to remove inaccessible and unsafe buildings from the site, and to provide better access though modifications to the building and landscaping. The redevelopment will also provide exciting new outdoor exhibition spaces for its very considerable machinery collection, which was quite interesting.

That day we also went to Lockhart to announce funding of $70,000 for the Green Gunyah Museum. This funding will make an incredible difference to that special small town museum, which is being kept alive by the passionate support of the people of Lockhart. The old Ford dealership in Lockhart, which was located right next door to the museum, has shut down. The museum will now be able to dramatically increase in size and, for the first time, a number of unique machinery and vehicles will be included in its collection. That great facility will be well worth a visit. Finally, the member for Wagga Wagga and I visited Batlow—the apple capital of Australia—where we announced $44,000 in funding for the Literary Institute of Batlow. That funding will be used to fix the lighting and sound systems and to put in a retractable exhibition wall. It is a fantastic result. [*Time expired*.]

NSW FIREARMS REGISTRY

The Hon. ROBERT BORSAK (16:41): My question without notice is directed to the Hon. Niall Blair, representing the Minister for Police. Last Thursday it was revealed that up to 30 positions at the NSW Firearms Registry were to be abolished by the end of this month. Yesterday the member for Lismore was quoted in the *Tweed Daily News* as saying, "… no jobs would be cut from the registry". Will the Minister clarify the conflicting stories as to what is happening at the registry so that the voting firearms owners in this State, who are customers of the registry, can be assured that permits and other applications will not be delayed any further?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (16:41): I thank the honourable member for his question directed to the Minister for Police, whom I represent in this Chamber. His detailed question relates not only to issues concerning the NSW Firearms Registry but also to comments reported to have been made by the member for Lismore. I am not aware of those comments. The member for Lismore, Thomas George, has been a very strong advocate for his community for some time now.

I have been advised that the NSW Police Force has confirmed that the claim of 30 jobs losses is completely incorrect and it has reassured the community that there will be no adverse impact on their safety. I have also been advised that the NSW Firearms Registry has been progressing a program of work to make services better for the public and an analysis is now underway by the NSW Police Force to consider the best model for the registry in the long term. This will include a greater focus within the registry on intelligence and senior adjudication roles so matters can be dealt with consistently and quickly. However, no decisions have yet been made. That is the latest information at hand in this matter. I am confident that it will answer the member's question but if it is not sufficient then no doubt the member will address the subject again in a subsequent question.

FARM INCOME INSURANCE

The Hon. MICK VEITCH (16:44): My question without notice is directed to the Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry. Given that it is almost one year since the Independent Pricing and Regulatory Tribunal delivered its final report into multi-peril crop insurance incentive measures, and media reports of the Minister's support for such insurance, what incentive measures have been created to progress the uptake of farm income insurance?

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (16:44): I thank the member for his question. I am more than happy to talk about this matter because the Government has been proactive in this area. Members will recall that in last year's budget we removed the stamp duty associated with these products. We did that to try to encourage the market into that sector. The member is correct in saying that I have stated that I am a supporter of multi-peril crop insurance. A couple of years ago I hosted a roundtable discussion in Sydney about this very issue.

At that time reinsurers from North America, all the insurance players in Australia and other public servants came together to talk about the matter. We know from speaking to all of those insurers and to everyone involved in this market that we need scale to make a program like this successful. We also need to be able to spread the risk appropriately for the insurers and the reinsurers to look at this. Some pilots are being conducted and some products are on the market, but I want this to be a national program. We should be looking at this right across the country; all of the jurisdictions need to play a role.

In a recent article the grains industry congratulated the New South Wales Liberal-Nationals Government on its initiative to remove stamp duty from multi-peril crop insurance. The grains industry is calling for all the

States and, in particular, Western Australia where they also have a large grains industry, to follow the lead of New South Wales and to remove stamp duty on multi-peril crop insurance. That will spread the risk not only on the east coast but also across to the west coast of Australia. The $300 million NSW Drought Strategy included $250 million for the Farm Innovation Fund as well as other money to ensure that businesses could put together the business planning model required by the insurers for them to be able to provide a policy. That is something we have also done.

The Commonwealth Government has provided some money for that planning to qualify those landholders for that insurance. We have responded to the recommendations of the Independent Pricing and Regulatory Tribunal and we remain open to opportunities to increase the take-up of multi-peril insurance to underpin increasing farmer resilience. I reiterate: We need the other States on board. We also need to ensure that when the premiums are offered they are at a level that the farmers can engage with. We know what the Independent Pricing and Regulatory Tribunal has said about subsidising those premiums but scale and making sure that we spread the risk will also make a big difference. It would be a good start for those opposite to discuss this with their colleagues in Western Australia. We need this to be a national scheme. The New South Wales Government will continue to do its bit. [*Time expired.*]

RIVERINA WATER MANAGEMENT

The Hon. RICK COLLESS (16:48): My question is addressed to the Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry. Will the Minister update the House on how the New South Wales Government is delivering long-term solutions for water users in the Riverina.

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (16:49): I thank the honourable member for his question. Last week I travelled to Maude in the State's Riverina to participate in the historic signing of an agreement to manage the waters of the Nimmie-Caira region. This project was originally announced in 2015, with Commonwealth agreement to purchase a significant landholding in the area. Some 84,000 hectares, incorporating 19 properties owned by 11 farming businesses in the lower reaches of the Murrumbidgee River flood plain in south-western New South Wales, were acquired. This includes some 32,000 hectares of water-dependent vegetation in the Nimmie-Caira region—a precious environmental asset.

Last week I was in Maude to announce that the land and its water entitlements will be managed by a non-government organisation tasked to oversee that landholding and to implement the land and water management plan. To get this result took time and required our agencies to think outside the box. The agreement will see the Nature Conservancy Australia take over management of the water within the region. The Nature Conservancy is the world's largest land and water non-government organisation and it has the runs on the board both here in Australia and around the globe to take on a role as big and as important as this one.

The Nimmie-Caira project aims to balance environmental and Aboriginal cultural protection with commercial use to create a long-term asset for the region. This delicate balancing act delivers on our commitment to solutions that consider social, economic and environmental imperatives. When land and water use change we recognise that there are effects on local productivity and that local communities often bear the cost. Nimmie-Caira is a perfect example of government coming together with the community to support sustainable land use. Nimmie-Caira will combine low-impact grazing, ecotourism and carbon farming to continue to provide important employment opportunities while also delivering for the environment.

The role that the Indigenous community will play in the ongoing management of Nimmie-Caira is worth a special mention. They were the custodians of this land for thousands of years and it was always our intention that they should play a significant role in the future management of this project. The Nature Conservancy Australia will ensure long-term Aboriginal involvement in the management of the region and its water resources. The Nimmie-Caira project is a win for local industry, it is a win for the environment and it is a win for local Indigenous communities. It also offers a practical alternative to the view held by some that the only way to conserve a natural asset is to turn it into a national park.

Our national parks play an important role in protecting our heritage, but they are not the only answer. This is a more sophisticated approach that has required everyone to think a little differently, which is what governments should do more of. We want to be working with our communities, not just locking up parcels of land and taking away the water. We have done it for the first time in this country, and I hope it sets the gold standard for what is to come. I cannot thank everyone enough who has been involved with this project. This has been a longstanding issue. I was not prepared for us to do what we have just done over and over again and to lock this area up, remove jobs, stop rates being paid and end up with a worse-off environmental outcome.

We now have Aboriginal children and youth in that area who will learn to be rangers or who can go into farming. We have ecotourism opportunities, and every dollar that is raised from being able to farm where we should farm and preserve what we should preserve will go back into the conservation of this piece of land. This is what governments should do: work with local communities, work with the Aboriginal community, work with the industry of the area and work out the best solution that suits that community. I was proud to be involved in the signing and the smoking ceremony—it was an important event and it is something we are going to replicate. [*Time expired*.]

RURAL TRANSPORT INFRASTRUCTURE

The Hon. ROBERT BROWN (16:53): 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 Roads, Maritime and Freight. On 28 May this year, at an announcement at Leeton railway station, the Minister for Roads, Maritime and Freight said that there is much criticism from "the big end of town" within the Government on projects such as the $60 million Griffith to Junee railway line. When pressed further on the identity of "the big end of town" by Ms Debbie Buller, a local farmer, the Minister did not respond. Who is "the big end of town" that the Minister referred to, and how significant is its influence when it comes to opposing spending on rural projects?

The PRESIDENT: Order! The Minister was asked the question, not Government members or Opposition members. The Minister has the call.

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (16:54): I thank the honourable member for the question he has asked me in my capacity representing the Minister for Roads, Maritime and Freight. The announcement that was made in Leeton probably involves the Freight part of the portfolio. It was fantastic that farmers such as Debbie Buller were that supportive of the project that they came along to the announcement with their other farming friends. I have known Debbie Buller for more than 20 years; her family is a good farming family in that area. It was a good announcement about making sure that we utilise those regional freight hubs, and I know it generated a lot of interest—a whole range of people popped up to hear that announcement. In relation to the question and what the Minister said on the day and who she was referring to, I was not there—I wish I had been there. Everyone in this House knows my association with the fantastic town of Leeton and that wonderful community.

The Hon. Ben Franklin: Tell us more.

The Hon. NIALL BLAIR: Don't tempt me. An announcement about that sort of money going into an important railway line like the one that passes through Leeton is certainly significant, not just for that community and for all of the communities along that railway line but also for the industries that rely upon it. As members know, the areas of Griffith and Leeton are very big producers when it comes to a lot of our food and food processing and wine—all important things that are going to benefit from this type of investment. In relation to the announcement, as I said, I was not there—although I wish I had been. In relation to the comments made by the Minister, I am more than happy to take that part of the question on notice and refer it to the Minister so she can provide some clarification. I will come back to the member within the required period with a response to the question.

ILLAWARRA CHILDCARE CENTRE

The Hon. COURTNEY HOUSSOS (16:57): My question without notice is directed to the Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education. In light of the Government's notice of intention to sanction Illawarra-based childcare provider Early Years Care, what steps has the Minister taken to ensure that all families who are currently reliant on its services will be able to access Government-supported child care in their communities over coming weeks and months?

The Hon. SARAH MITCHELL (Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education) (16:57): I thank the honourable member for her question in relation to the childcare centre in the Illawarra. I do not have the specifics of that particular centre with me. Given the member has asked for quite a bit of detail, I will take the question on notice and come back to her with a detailed response tomorrow.

EARLY CHILDHOOD EDUCATION

The Hon. SCOTT FARLOW (16:58): 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 enabling professional development of early childhood educators?

The Hon. SARAH MITCHELL (Minister for Early Childhood Education, Minister for Aboriginal Affairs, and Assistant Minister for Education) (16:58): I thank the member for his question. As we know, early childhood services across New South Wales are filled with talented, reliable and hardworking educators who are working with our children on a daily basis, challenging their minds and answering their tough questions. The Liberal-Nationals Government understands that the skills learnt throughout an early childhood education set up our youngest learners for the remainder of their schooling. Therefore, it is imperative that early childhood educators are given the opportunity to be equipped with a range of specialist skills and the opportunity to enhance their knowledge.

As members would no doubt be aware, late last year early childhood educators had the opportunity to apply for professional development opportunities through the New South Wales Government's Early Childhood Professional Development Grants program. I am pleased to say there were 143 successful applicants, from services in remote and very remote New South Wales to services located in metro New South Wales. This is an investment in our dependable early childhood educators that will provide them with an opportunity to challenge their minds and grow and upskill their abilities. Preschools across New South Wales were invited to apply for the program by identifying opportunities important to the development of children in their community. As part of our continued commitment to rural and remote communities priority was given to services in these regions.

I recently had the opportunity to visit a successful applicant for the professional development grant in Armidale with my colleague the member for Northern Tablelands, Adam Marshall. Adventureland Preschool received a $2,000 grant to upskill their educators to identify at-risk children and support nature play. Through increased professional development, the committed staff at Adventureland Preschool will be able to pass on those educational benefits to the children, setting them up with the skills to succeed throughout the rest of their life. Adventureland director Alesha Thomas is extremely grateful for the grant and it was great for me to see firsthand the direct improvement it has had upon the quality of early childhood education in communities such as Armidale.

Another service benefitting from this grant is Lambie Street Preschool in Cooma, which is a preschool close to the heart of the Hon. Bronnie Taylor. I had the pleasure of visiting this service with the Deputy Premier and member for Monaro John Barilaro. We spent time with director Cathy Toohey and learnt that the funding helped them send staff to the 2018 NSW Preschool Conference and Early Years Expo and Early Childhood Expo. I received great on-the-ground feedback from the sector about how services are utilising this important funding. Professional development grants have been awarded for a wide range of activities including development in cultural safety that allows educators to better engage with Aboriginal children and families, and families from culturally and linguistically diverse backgrounds.

Grants for development in business and governance have been awarded, allowing services to upskill in areas such as human resources, payroll activities and governance management structures. I was pleased to hear that the quality of the grant applications was extremely high, which demonstrates the commitment of our educators to ensuring all children are meeting those critical milestones. There was wideranging interest shown in professional development through the application process. It has highlighted areas of interest within the sector and as a result the Government has identified priority themes for professional development.

The Government is committed to providing ongoing support to services around the State. Qualified training providers will be invited to develop a range of professional development activities around priority learning areas to allow early childhood staff to extend their skills to meet every child's needs. This is a good program that helps with the professional development of early childhood staff and I am pleased to speak about it in the House today.

The Hon. DON HARWIN: The time for questions has expired. If members have further questions, I suggest they place them on notice.

SHENHUA WATERMARK EXPLORATION LICENCE

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (17:03): Earlier in question time, in the first question from the Leader of the Opposition, I was asked about Shenhua. I am advised that a deed of settlement was signed with Shenhua on 29 June 2017. I am advised that under the terms of the deed payment was required to be made within 14 days.

Deferred Answers

HUNTER WATER QUALITY

In reply to **the Hon. ROBERT BORSAK** (1 May 2018).

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

Since July 2000 a discount has been applied for Hunter Water customers who purchase water from the Chichester Trunk Gravity Main [CTGM] north of the Dungog Water Treatment Plant, which reflects that the water is unfiltered.

Since July 2009 this discount has been calculated as being equal to the average avoided cost of treatment per kilolitre and is applied to the water usage charge.

The current discount is calculated as being 28¢ per kilolitre, representing an annual saving of approximately $50 per year for each property connected directly to the CTGM main.

The Government is aware of the approach being taken by Hunter Water to expedite the delivery of alternative drinking water solutions, such as onsite rainwater tanks with filtration for customers who presently purchase water from the CTGM main. These new solutions are currently being funded and delivered by Hunter Water, with all impacted customers provided the opportunity to transition to a new drinking water supply before the end of the year.

Any further questions relating to the operations of Hunter Water should be directed to the Hon. Don Harwin, Minister for Energy and Utilities.

Visitors

VISITORS

The PRESIDENT: I take this opportunity to welcome to the President's Gallery Mr Yujin Nakamoto from the University of Rochester, New York. Mr Nakamoto is an intern at the offices of the Hon. Shaoquett Moselmane for a three-week period. I am sure that the member will learn much from Mr Nakamoto during that time.

Petitions

RESPONSES TO PETITIONS

Human Trafficking

The Hon. DON HARWIN: I lodge a response to the following petition signed by more than 500 persons:

Human Trafficking—lodged 2 and 3 May 2018—(The Hon. Paul Green)

I move:

That the petition be printed.

Motion agreed to.

Documents

SYDNEY STADIUMS

POWERHOUSE MUSEUM RELOCATION

INDEPENDENT REVIEW OF OUT OF HOME CARE IN NEW SOUTH WALES

Production of Documents: Further Order

Debate resumed from an earlier hour.

The Hon. ADAM SEARLE (17:04): As I was saying earlier, Justice Meagher took the view that immunity from production of Cabinet documents was complete. He said:

> It follows that Cabinet documents can never be produced until released by Cabinet. No process can arise from the courts, or anyone else, balancing interests against each other.

It is clear from His Honour's reasoning that this is where the headnote author found his somewhat misleading law report text. It is worth remembering that His Honour commenced his judgement, regarding Cabinet documents, with "I am in agreement with the Chief Justice". What did Chief Justice Spigelman have to say on that matter? At paragraph 54 he said:

> 54. The high constitutional functions of the Legislative Council encompass both legislating and the enforcement of the accountability of the Executive. Performance of these functions may require access to information the disclosure of which may harm the public interest. Access to such information may, accordingly, be "reasonably necessary for the performance of the functions of the Legislative Council".

At paragraph 69 the Chief Justice continued:

> 69. This evidence indicates that the documents which the Legislative Council sought included documents which revealed the internal deliberations of the Cabinet. In my opinion, the Legislative Council does not have power to require the production of such documents.

Chief Justice Spigelman does not support complete immunity from production of Cabinet documents but a limitation on which Cabinet documents may have their contents compelled to be produced by this Chamber. The final opinion is that of Justice Priestley. At paragraph 140 he states:

> ... but it undoubtedly has the power to compel production to itself even of cabinet documents, even though the power will in regard to certain cabinet documents be used with the highest degree of circumspection: see *Commonwealth v Northern Land Council* (1993) 176 CLR 604 at 617-619.

At paragraph 142 His Honour continued:

> 142. The function and status of the Council in the system of government in New South Wales require and justify the same degree of trust being reposed in the Council as in the courts when dealing with documents in respect of which the Executive claims public interest immunity.
>
> ...
>
> 143. One result of this view is that, notwithstanding the great respect that must be paid to such incidents of responsible government as cabinet confidentiality and collective responsibility, no *legal right* to *absolute* secrecy is given to any group of men and women in government, the possibility of accountability can never be kept out of mind, and this can only be to the benefit of the people of a truly representative democracy.
>
> ... therefore that the Council's power does extend to compel the Executive to produce documents to the Council which, in other circumstances and outside the House the Executive might, after decision by a court, be entitled to withhold on the ground of legal professional privilege or public interest immunity.

Simply put, His Honour states there is no complete immunity from production at common law even for Cabinet documents. If the courts believe it necessary and not injurious to the public interest they will compel their production. If the courts have this power how can another equal branch of government, the Legislature, have less power or less trust reposed within it, particularly given the high constitutional functions of accountability that this Chamber undoubtedly has?

The Hon. Dr Peter Phelps: Priestley is an outlier.

The Hon. ADAM SEARLE: As I indicated earlier, Mr Bret Walker, SC, made a contribution to this debate in the annual Harry Evans lecture in 2017, "Justified immunity or unfinished business? The appropriateness of parliamentary and executive immunities in the 21st century". Mr Walker said at page 9 of the paper: In the courts of law, it is clear that there is no absolute bar against the compulsory disclosure or tender into evidence of even the most core Cabinet documents, such as those recording the secret deliberations of its members.

He goes on to cite the four sets of reasons in the Northern Land Council case, which I mentioned earlier. He goes on to say at page 10:

> ... the High Court agreed with the conclusion below that there was no absolute bar against the production and use of Cabinet documents in litigation, that is for the administration of justice.

He made the point that the High Court would decide for itself whether a document or set of documents was required to be produced. That is an important step. Even if we are talking about regular litigation in the mainstream courts, there is no protection given to core Cabinet documents. I note in the *Egan v Chadwick* case, although that was the decision of Justice Priestly, the Chief Justice drew a different line, and that line was a clear distinction between so-called true Cabinet documents, those which revealed the internal deliberations, which this House did not have the power to compel the production of, and documents that were produced and used to inform Cabinet about matters. Those documents were not immune from production.

Briefly, I will touch on two further documents in this debate. They are two reports of the Privileges Committee, Mr Deputy President, with which you will be not entirely unfamiliar. I refer to the possible non-compliance with the 2009 Mount Penny order for papers of April 2013, in particular, pages 9 and 10 at paragraph 2.14 and following. It is worth taking a little bit of time to read some of these passages. The report states:

> Following the decision in *Egan v Chadwick*, the Legislative Council agreed to a new resolution requiring the production of the documents previously ordered. The Government complied with that order, and has continued to comply with subsequent orders requiring the production of documents. However, the issue of documents that are the subject of Cabinet confidentiality has not been resolved.
>
> In most returns to orders since 1999, where Cabinet documents have seemingly not been included in a return, the omission has not been specified in correspondence from the relevant departments. However, on several occasions, the Government's position regarding Cabinet documents has been clearly articulated, with the Government stating that documents had not been produced as they had been "classified as Cabinet documents". In one case, the Government also disputed the Council's power to order the preparation of a return with the date, description and author of each document not produced on the grounds that it had been classified as a Cabinet document, and reasons why the document would disclose the deliberations of Cabinet. As Cabinet documents have been referred to in only a small number of returns, it is possible that there have been other occasions on which documents have been withheld on the basis of Cabinet confidentiality and the Council not advised.

The report goes on:

> As noted earlier, *Egan v Chadwick* confirmed that a distinction can be drawn between those documents which disclose the actual deliberations of Cabinet (presumably, for example, Cabinet minutes) and a broader category of Cabinet documents comprised of, for example, reports, submissions and other documents prepared for the assistance of Cabinet. However, the majority did not come to a final decision as to which Cabinet documents should be excluded from scrutiny, or how broadly or narrowly the courts would interpret the restriction on Cabinet documents.

While I do not necessarily agree with that, that gives a flavour of the outstanding issues flowing from *Egan v Chadwick*. As I have tried to articulate, I do not think there is that lack of resolution, but, nevertheless, this Chamber has not had such clear examples previously as are contained in this motion relating to the three non-returns to order. I now refer to the October 2013 report of the Privileges Committee, entitled "The 2009 Mt Penny return to order", from pages 78 and following, at paragraphs 5.31 and following.

> In its supplementary written submission, DPC observed that a majority of the Court of Appeal in *Egan v Chadwick* held that the Legislative Council does not have the power to require the production of "cabinet documents". The confidentiality of cabinet information is a necessary component of responsible government and, in particular, the convention of collective ministerial responsibility.
>
> However, DPC also noted that the precise scope of the protection for cabinet documents is not entirely clear.273 The Parliament has, however, adopted a definition of "cabinet documents" in clause 2 of Schedule 1 of the GIPA Act

I will not read word for word what is on pages 79 and 80, but the report there canvasses the evidence given by the Department of Premier and Cabinet, essentially urging the Parliament that it should, although not caught by the terms of the Government Information (Public Access) Act nevertheless adopt for itself the same restriction as is included in that legislation, which provides a complete immunity for Cabinet documents; that is, that they shall not be produced. We have a different terminology here because the Government Information (Public Access) Act refers to Cabinet information and we are dealing with the common law and Cabinet documentation. They are two similar but different categories. In the report, a response of the Clerk was sought and provided to the Committee. It is worth outlining what the Clerk had to say on that occasion relating to the power of the House to order the production of Cabinet documents being a matter of ongoing controversy. I quote from the Clerk of this House:

> In his judgement, Spigelman CJ held that it is not reasonably necessary for the proper exercise of the functions of the Council to call for documents the production of which would conflict with a key element in our system of responsible government: The doctrine of collective ministerial responsibility. However, while he concluded that the production of documents which recorded the "actual deliberations of Cabinet" was inconsistent with collective ministerial responsibility, he specified that the production of documents "prepared outside Cabinet for submission to Cabinet may, or may not, depending on their content, manifest a similar inconsistency".
>
> ...
>
> Meagher JA took a broader view that the immunity of Cabinet documents was "complete" ...

Returning to 5.35, the report further states:

> In dissent, Priestley JA observed that a court has "the power to compel production to itself even of Cabinet documents, even though the power will in regard to certain Cabinet documents be used with the highest degree of circumspection". From this, his Honour went on to say that "The function and status of the Council in the system of government in New South Wales require and justify the same degree of trust being reposed in the Council as in the courts when dealing with documents in respect of which the Executive claims public interest immunity."

The Clerk urged the Parliament to reject the Government Information (Public Access) Act definition of Cabinet information, and that the Government Information (Public Access) Act is much broader in scope than the position articulated by Chief Justice Spigelman in *Egan v Chadwick* and would have a very significant and negative impact on the capacity of this House to hold Executive Government to account through the orders for papers. The Clerk went on to advocate for a different approach, which I do not need to canvass here. We can see that there is a live controversy about the reach of the powers of this House relating to Cabinet documents— [*Time expired*.]

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (17:17): On behalf of the Government I lead in debate to oppose the Hon. Adam Searle's motion. As we have heard from the Hon. Adam Searle in some detail, I am sure we will also examine the motion in detail. First, it is appropriate to acknowledge that a response to each of the resolutions identified by the Leader of the Opposition was provided by the Department of Premier and Cabinet acting on behalf of the Government. One thing we all agree on is that the Government does not dispute the authority of this House to make orders compelling Government Ministers and agencies to produce documents. Compliance with such orders often imposes a significant resource and cost burden. In fact, that argument has been used many times since I have been in this place to reduce the scope of calls to order because of the enormous resource and cost burden that it would place on agencies. Because of that issue, it has been accepted by the movers of the motions to narrow their motions.

Nonetheless, the Government implements the necessary measures to comply with these orders when made. However, it is well established that the House's authority to compel documents does not extend to Cabinet documents. The Legislative Council has acknowledged this limitation of its powers. I quote from the same 2013 Privileges Committee report that the Hon. Adam Searle quoted from about the 2009 Mount Penny return to order. The committee conceded that Cabinet documents are not required to be produced in response to a resolution made under Standing Order No. 52. In that report it was stated:

> The Committee notes that as a result of the decision in Egan v Chadwick, the Legislative Council does not currently have the power to order the production of 'cabinet documents'.

That was acknowledged by the Leader of the Opposition. However, in his contribution he was talking to some of the opinion and commentary around the decisions, but also that there may be some other areas that he believes should and could be tested. In circumstances where this House acknowledges that it cannot compel Cabinet documents, it is not tenable that a member could be censured as a result of the Government acting in accordance with that principle. The member cannot be censured as a result of the Leader of the Government acting in accordance with the very principle that has been agreed to in *Egan v Chadwick*. As has been said previously, the Government respects the House's power to order the production of documents and the Government complies with such orders. However, in doing so, the Government also adheres to the longstanding practice established by the Court of Appeal's decision in *Egan v Chadwick* that Cabinet documents are protected from disclosure.

Cabinet confidentiality is crucial to the system of responsible government. The powers of the House should not undermine the principle of collective ministerial responsibility. I sit on Expenditure Review Committee [ERC], I sit as a member of Cabinet and I understand the importance of ensuring that certain information that is used as part of those Cabinet minutes is not to be included in some of these calls for papers because of the nature of that information. It is also fair to say that in my time in this place the Leader of the Government has not only demonstrated his respect for this House but also advocated for the role of this House as the house of review. He has acted in every sense, either in the President's chair or at the table, with the utmost respect for this House and the role this House plays in our system in New South Wales.

To have before us a motion censuring the Leader of the Government for apparently not doing something which the House cannot ask to be done is ludicrous. It is not appropriate for the House to censure a member of this House for not providing to the House documents that the House is unable to compel. That is what is being discussed this afternoon. Asking a member to provide a document that the House cannot compel him to provide on behalf of the Government and, when that was not done, then trying to censure the member is a desperate play by those opposite.

I understand because many of those opposite have not served in Cabinet or, if they have been in Cabinet, have not been through a lot of the decisions this side of the Chamber have been involved in since coming into Government in 2011, particularly in regard to some of the large infrastructure projects. Those opposite have not been through that process, but this is a desperate attempt, clutching at straws to try to censure the Leader of the Government, someone who not only respects this House but has complied with the rules of this House. Those rules have been tested particularly in *Egan v Chadwick*. For those reasons I, and hopefully most in this House, oppose the motion.

Mr DAVID SHOEBRIDGE (17:25): On behalf of The Greens I indicate we support the motion moved by the Leader of the Opposition. This motion is, amongst other things, seeking to censure the Leader of the Government, not as a person but as an office. This is not directed to the Hon. Don Harwin in his personal capacity. The censure motion, quite rightly, is directed to the Leader of the Government, whoever that may be. The motion is about the Government's failure to comply with the following orders: the resolution of the House of 15 March 2018 relating to the production of, amongst other things, the business case for the Sydney stadiums; the resolution of the House of 12 April 2018 relating to the production of the business case for the move of the Powerhouse Museum from Ultimo to Parramatta; and the resolution of the House of 17 May 2018 requiring the production of the Tune report into the child protection system in New South Wales. The child protection system is something that this House previously found through its committee work to be in crisis.

We are talking about three key documents: the business case for the stadiums, potentially a $2 billion-plus decision, which is highly controversial; the business case for the Powerhouse Museum, potentially a $1.5 billion decision, which is highly controversial; and the Tune report into the failings of the child protection system in New South Wales, which is a matter of real public controversy. In each case the Government has said in answer to the calls for papers that these key documents are Cabinet-in-confidence and will not be produced. A shroud of secrecy has passed across each of those three requests. For the past three decades power has shifted in the Australian political system from parliaments to the Ministers and unelected bureaucrats who together form the Executive.

Most parliaments, State and Federal, operate as little more than a rubber stamp to the decisions of the Executive—so much so, that most members of the public do not understand the distinction between being in government and being in Parliament, and often have to have it explained to them. However, our entire system of responsible government is founded on the idea that parliaments are separate sources of power and authority to the government of the day. It is the job of parliaments to hold governments to account, to demand information, to question government decisions and, if necessary, to censure and remove Ministers from office. Accountability, however, starts with getting access to information. Since the mid-1990s the New South Wales upper House has quietly developed a new set of constitutional norms that have confirmed that it has the power to demand information and documents from the Executive Government. This is often referred to as the "call for papers" power.

In the mid to late 1990s the upper House's call for papers power was challenged by the then Labor Government. In two separate cases, *Egan v Willis*, which was the 1996 case, and *Egan v Chadwick*, the 1999 case, the courts have held that the upper House had the power to compel the Government of the day to produce documents to it. What was not finally decided in the Willis and Chadwick cases was the extent to which the Upper House may demand documents that were protected by claims of Cabinet in confidence. Time after time journalists, members of the community and members of both Houses of Parliament have been prevented from gaining access to crucial government documents, whether under the Government Information (Public Access) Act [GIPA], which has a totally different set of statutory provisions to the common law powers we are talking about with the House, or through calls for papers. All have been prevented from gaining access to crucial government documents because the government of the day has simply asserted they are Cabinet in confidence.

Traditionally, a document was only Cabinet-in-confidence if it would reveal the actual deliberations of a Cabinet meeting. If you look at the Cabinet minutes that have been released from 20 years ago, the only documents at that time that were being withheld from scrutiny were the actual reports, deliberations and minutes of the Cabinet. An entire year's Cabinet-in-confidence documents released from 20 or 30 years ago can fit in a relatively slim A4 folder. Yet, now we have truckloads of documents allegedly covered by the Cabinet-in-confidence exception.

Traditionally Cabinet-in-confidence documents were a narrow set of documents that included the minutes of a Cabinet meeting and specific briefings created for a Cabinet meeting. The rationale for protecting those documents from public scrutiny is that it allows Ministers sitting around a Cabinet table to have a frank and robust discussion and assessment of the issues presented without having to fear their deliberations will be exposed soon after on the front page of a daily newspaper or in a 6.00 p.m. news bulletin. However, over time the range of documents that governments declare Cabinet-in-confidence has grown and grown and grown.

They are now regularly claiming that any document, created at any level of government that may at some point inform a Cabinet deliberation is Cabinet-in-confidence and they do not have to produce to the upper House or under a separate statutory scheme, which is much narrower under the Government Information (Public Access) Act, in answer to any freedom of information request. There has, in short, been a shroud of secrecy settle over many and almost all controversial actions of this Government. What is the answer? Part of the answer lies in the decisions of the three-member bench in *Egan v Chadwick*. I note the detailed observations of the Leader of the Opposition in that regard. Chief Justice Spigelman, as he then was, at paragraph 54 stated:

> The high constitutional functions of the Legislative Council encompass both legislating, and the enforcement of the accountability of the Executive. Performance of these functions may require access to information the disclosure of which may harm the public interest. Access to such information may accordingly be "reasonably necessary for the performance of the functions of the Legislative Council".

That is ultimately the test. We have the power to require such documents as are reasonably necessary for the performance of the functions of the Legislative Council, subject to the overarching structure of responsible government. Chief Justice Spigelman continued at paragraph 55:

> However, in my opinion, it is not reasonably necessary for the proper exercise of the functions of the Legislative Council to call for documents the production of which would conflict with the doctrine of ministerial responsibility, either in its individual or collective dimension. The power is itself, in significant degree, derived from that doctrine. The existence of an inconsistency or conflict constitutes a qualification on the power itself.

He continued at paragraph 56:

> When the issue of access to Cabinet documents has arisen in the context of claims for public interest immunity in the course of litigation, the Courts have recognised the significance of Cabinet confidentiality as an application of the principal of collective responsibility. However, a distinction has been made between documents which disclose the actual deliberations within Cabinet and those which are described as "Cabinet documents", but which are in the nature of reports or submissions prepared for the assistance of Cabinet.

His Honour the Chief Justice then went on and drew that very clear distinction. His Honour thought those that disclose the actual deliberations of Cabinet were immune from production but those that were simply prepared to

assist with the deliberations or to provide information to Cabinet are not so protected. That is one of the issues that is required to be considered in this matter. I also note that His Honour Justice Priestley who, I accept in this case, was in the minority but a well-argued minority, referenced the Chief Justice of the High Court, Justice Mason, in the *Australian Capital Television v Commonwealth* decision of 1992 in the High Court. His Honour explained why the system of government established by the Australian Constitution had become recognised as one of representative government and representative democracy. Chief Justice Mason said:

> The very concept of representative government and representative democracy signifies government by the people through their representatives. Translated into constitutional terms, it denotes that the sovereign power which resides in the people is exercised on their behalf by their representatives.

He continued at paragraph 132:

> … the representatives who are Members of Parliament and Ministers of State are not only chosen by the people but exercise their legislative and executive powers as representatives of the people. And in the exercise of those powers the representatives of necessity are accountable to the people for what they do and have a responsibility to take account of the views of the people on whose behalf they act.

Justice Priestley then stated at paragraph 33:

> In my opinion what was said by Mason CJ about the Commonwealth applies equally to the State of New South Wales. In regard to New South Wales, the Commonwealth Parliament and the New South Wales Parliament between them have the entirety of sovereign legislative power. The Commonwealth Parliament has part of that power in regard to specific heads of power. The New South Wales Parliament has the other part of that power in regard to all matters not specified as powers of the Commonwealth Parliament. This is not a full statement of the position, but sufficient for present purposes, where the point is that the two legislatures together have the whole legislative power that exists in regard to New South Wales.

In relation to public interest immunity, one part of which is the Cabinet-in-confidence claim, his Honour, having already determined that legal professional privilege did not prevent production, said:

> What I have said in regard to legal professional privilege applies with more obvious force to public interest immunity. This is because, in the adversary situations where public interest immunity may attach to documents to prevent their production, there is no doubt that the decision whether the doctrine attaches or not is, finally, not for the Executive to make, but for a court after the court has had the documents produced to it. The court may not require to see the documents itself. It may be satisfied by evidence about the nature of the documents or other circumstances in the particular case that it should refuse production to the parties because of public interest immunity: but it undoubtedly has the power to compel production to itself even of cabinet documents, even though the power will in regard to certain cabinet documents be used with the highest degree of circumspection: see *The Commonwealth v Northern Land Council* [1993] HCA …

His Honour continued in paragraph 141:

> So, if in the adversary situations in which the case law has established public interest immunity may attach, a branch of government other than the Executive is trusted with the power to compel the production of documents for which the Executive claims such immunity, equally there should be no objection in the different situation that arises between the Executive and a House of Parliament, to the possession by another branch of government other than the Executive, of the same power; the more so when the power is necessary for the proper carrying out of the function of that branch of government.

At paragraph 142 he continued:

> The function and status of the Council in the system of government in New South Wales require and justify the same degree of trust being reposed in the council as in the courts when dealing with documents in respect of which the Executive claims public interest immunity.

Justice Priestley then went on to give a note of caution to how this House should exercise such power. He referenced the restraint that the courts use. Courts have the power but exercise restraint. I adopt what His Honour Justice Priestley then states:

> In exercising its powers in respect of such documents the council has the same duty to prevent publication beyond itself of documents the disclosure of which will, to adapt the words of Mason J in *Fairfa*x already cited … be inimical to the public interest because of the security of the State, relations with other governments or the ordinary business of government will be prejudiced. When the Executive claims immunity on such grounds, the Council will have the duty, analogous to the duty of the court mentioned by Mason J in the same passage in *Fairfax*, of balancing the conflicting public interest considerations. The carrying out of the duty will, in regard to certain cabinet documents, require the same very high degree of circumspection mandated for the courts by the High Court in the *Northern Land Council* case.

The issue comes down to a number of matters; first of all, the extent of the claim for Cabinet-in-confidence. The Government simply says whatever it believes is Cabinet-in-confidence is Cabinet-in-confidence and we cannot test it, but that cannot be the case. We cannot have the Executive become judge, jury and arbiter on its own claims for Cabinet-in-confidence. The second issue is the extent to which Cabinet-in-confidence is claimed. Is Cabinet-in-confidence only genuinely claimable in relation to the specific deliberations of the Cabinet or is it any document that may at some time be used to inform the Cabinet process? If it is the latter, it kills the genuine power of this House to review and hold to account the government of the day.

Lastly, is the power of this Chamber as was asserted by Justice Priestley when he said that the power of the House to compel the production of documents extends to all Cabinet-in-confidence documents? Must this

House use the same kind of restraint and circumspection about publication as a court would? Or is it the slightly more constrained view of Chief Justice Spigelman which says just the actual deliberations are protected by Cabinet-in-confidence but all other documents are open to the House? These are matters of genuine public interest. This is about breaking the shroud of secrecy that for so long has settled not only on the people of New South Wales but also on people across this Commonwealth. I commend the motion to the House.

The Hon. WALT SECORD (17:38): As Deputy Leader of the Opposition and as the shadow Minister for the Arts, I speak on the motion and support the Leader of the Opposition. This motion, Private Members' Business item No. 2254, relates to the censure of the Leader of the Government for his and his Government's failure to comply with the general will of this Chamber to secure documents sought under standing orders. This motion is a step that is taken with considerable reluctance and after long consideration and reflection, but we have been brought to this place because of the cloak of secrecy surrounding the decisions and expenditure of this Government. The Government refuses to reveal to the community the true costs of its decisions. It refuses to release business cases for expenditures relating to the stadiums and the Powerhouse Museum or very important documentation relating to the David Tune report into out-of-home care services and the most vulnerable in our society.

This is a major development in the role of the Legislative Council but it is one that goes to the heart of democracy, accountability and responsible government. Sadly, the intransigence of the Government and the Premier has led the Leader of the Government to this position. It is not an area that we rush into lightly, or indeed rush into at all. I vividly recall the events surrounding *Egan v Chadwick* when I was a member of staff for former Premier Bob Carr and the Hon. Adam Searle worked on the staff of then Attorney General Jeff Shaw. At the time, John Hannaford, an Opposition member of the Legislative Council, without warning moved to suspend the New South Wales Treasurer, Michael Egan, from the Parliament.

Today's motion is completely different. The Leader of the Government knew this was coming and has known about it for weeks. The Government has had ample opportunity to comply with the spirit of the standing orders of the Parliament to provide the business case for the stadiums, which involves a $2.2 billion expenditure, the Powerhouse Museum business case, which will see expenditure north of $1.1 billion, and the David Tune report. But we have a government that refuses to reveal its decisions and how its decisions are made. We are not asking for the deliberations of Cabinet; we are asking for documentation that involves expenditure by the taxpayers of New South Wales. The State Government simply wants a blank cheque and no scrutiny whatsoever. I defer to my colleague the Hon. Adam Searle, a barrister, in this regard.

The Opposition has found itself in this position because the Government has refused to reveal or release documents and is claiming Cabinet-in-confidence for documents that simply are not Cabinet-in-confidence. The motion we are debating today is different from the Egan matter. I am not as kind as my colleague the Hon. Adam Searle, who said that the actions of the Government are a misreading of the law. I disagree with him on that and I think that he was being overly kind and generous. This is an exercise undertaken by a government in a cloak of secrecy, refusing to reveal financial applications because if the community had the full details it would object and revolt. The community would not allow the Government to make decisions relating to the stadium and a $2.2 billion expenditure or the Powerhouse Museum. The Leader of the Government is in an unfortunate position. He is the right-hand man, the factional ally, the hatchet man for the Premier, carrying out the Premier's work. I feel sorry for him. He is the Leader of the Government and has been put into this position.

Make no mistake, the motion before us is because the Government disputes the authority of this Chamber to examine Executive government. It does not want Executive government examined. For the record, this motion does not come as a surprise to the Government. It has been on the *Notice Paper* since 23 May. I also know that the Leader of the Government has discussed this motion in the caucus. Liberal Party members have approached me and said that the Hon. Don Harwin has said, "Don't worry about this. The Opposition would never do this." He finds himself here today being held to account for the decisions of his Government. He told his colleagues that he dared the Opposition to bring this motion before the House today. We do so because this is about responsible and accountable government and public expenditure.

I note that some crossbenchers have indicated they will support this motion. Even members of the Government have expressed concern and are looking closely at this motion because they share our concerns about the lack of transparency. I send a message to them that we share their genuine concerns about out-of-home care and the most vulnerable in our society. We are not acting because of one refusal to comply. We are acting because this has occurred on three occasions: the stadiums, the Powerhouse Museum and out-of-home care. We are talking about key documents: the business cases on which these decisions were made. We are talking about the business case for the Powerhouse Museum, the business case for the stadiums involving $2.2 billion. With that much money, we could build four teaching hospitals. The $1.1 billion to move the Powerhouse Museum could be used

to build one and a half teaching hospitals in Sydney. These are key expenditures and the community has a right to know why the Government has made these decisions.

This Chamber exists as a House of review. This House is one of the few bodies that can seek materials. But, unfortunately, the Government is going against the spirit of this Chamber. I conclude my remarks on that note. Last week the former Premier and his chief of staff repeatedly refused to answer the most basic questions to a parliamentary inquiry, citing Cabinet-in-confidence. For everything that came before them, for every question that could possibly cause them the smallest shred of embarrassment they claimed commercial-in-confidence or Cabinet-in-confidence. Sadly, the volume of documents that the Leader of the Government, the Hon. Don Harwin, is sitting on top of and hoarding has grown under this Government. Sadly, the Government is deciding which documents the community should see. The will of the party is clear. We are not seeking internal deliberation. We are seeking the business cases for the stadium, the business cases for the Powerhouse, and the Tune report. I thank the House for its attention and I urge honourable members to support the Hon. Adam Searle's motion.

The Hon. Dr PETER PHELPS (17:45): As someone who is no great friend of the Executive, I say that the censure motion before us today is completely unfair. Two key interlinked features of Cabinet are collective responsibility and confidentiality. Members of Cabinet are collectively responsible for the decisions made by Cabinet. While disagreement may be aired within the confines of a Cabinet meeting, it is a convention that Cabinet decisions will be fully and publicly supported by all Ministers despite any personal views held by individual Ministers. Ministers and any officials are expected to refrain from public comment on matters that are to be considered by Cabinet.

The confidentiality of Cabinet proceedings supports the principle of collective responsibility by promoting open and free discussion, including the airing of dissenting views and compromise. Ministries, the Cabinet and Cabinet committees are forums in which Ministers, while working towards a collective position, are able to discuss proposals—often competing proposals—and a variety of options and views with complete freedom. The openness and frankness of discussions in the Cabinet room are protected by the strict observance of this confidentiality. This is not a new concept. Fidelity to Cabinet is seen as critical to maintaining the position of Ministers of the Crown even as early as 1901, where Quick and Garran remarked:

> If any member of the Cabinet seriously dissents from the opinion on policy approved by the majority of his colleagues it is his duty as a man of honour to resign.

Secrecy was a defining feature in the early development of Cabinet. Indeed, the word "cabinet" originally referred to a small room where a group of people met. Normally it was the King and the King's advisers. The emergence of stable, mass two-party systems in the mid-1800s has been described as an essential feature shaping the environment in which Cabinet evolved. Adversarial party politics necessitated an intolerance of Ministers who spoke out against Cabinet decisions. As PG Walker noted in his book *The Cabinet*:

> With the full establishment of the mass two-party system the doctrine of collective responsibility passed into the unwritten conventions of the Constitution—something that everyone took for granted. The doctrine was indeed necessary to the Cabinet from the mid-nineteenth century onwards. Cabinet Ministers were party leaders: both their leadership and the party itself would be weakened if the leaders openly attacked one another or publicly attributed views to one another.

Walter Bagehot, in his classic study of British politics in 1867, found Cabinet confidentiality quite remarkable. This confidentiality to some extent explains why much detail on the operations of early Cabinet remains unknown. The first steps towards Cabinet Government in Australia came in the form of official instructions to New South Wales Governor Darling in 1825 for the establishment of an Executive council of senior advisors, something which of course evolved into this Chamber.

Colonial cabinets were more foreshadowed rather than established in the constitutions of the colonies, with the introduction of responsible government in the 1850s. These colonial cabinets operated in much the same way as in Westminster. That is why, even today, we look to Westminster for the provision of our traditions. The Federation conventions of the 1890s largely accepted the principles of cabinet government without debate. It was recognised that Cabinet would form a central part of government, but it was a deliberate decision to omit the institution from the formal constitution in order to maintain the flexibility of its operation. Nevertheless, the first Commonwealth Cabinet, led by Edmund Barton, included four former colonial State premiers, who were well versed in the norms of cabinet government. Why is this important?

Perhaps the most significant issue concerning Cabinet confidentiality is its relationship with the push for greater transparency in government activities. The movement towards more open and accountable government has gained momentum over the past 35 years or so with the establishment of bodies such as the NSW Civil and Administrative Tribunal, the introduction of the Government Information (Public Access) Act and whistleblower provisions, the creation of oversight mechanisms such as the Ombudsman and the Independent Commission Against Corruption, and various codes of conduct for the public service, lobbyists, Ministers and their staff, and even for members of Parliament. In general terms, these reforms, now known as "new administrative law", were

developed to increase the level of openness and transparency in government while supporting public administration and the rights of individual citizens.

While most Cabinet decisions are eventually announced, the content of Cabinet discussions has largely avoided greater public exposure. The resistance to transparency in Cabinet suggests that there is a practical and political limit to openness in government. If the proceedings of Cabinet were to be made fully transparent, it is likely the crucial ministerial discussions would be undertaken elsewhere, perhaps in the office of the Premier. Indeed, that is the great problem we face if this motion is successful—not that we are broadening the powers for information for this place but that we are increasing the centrality of the Premier as the key determinant of Executive policy. This would result in a greater concentration of power within the Premier's office and could possibly lead to less informed and less considered decisions.

Further, the wider and more open the Cabinet consults on its deliberations, the broader the policy agenda and the less control the Government has over that agenda. It is in the political interests of the Government to maintain control over its agenda, support an efficient decision-making process and maintain a system that provides a strong and decisive government. This political imperative to maintain the confidentiality of Cabinet underpins the argument for protecting Cabinet material as a general class, rather than on the basis of the actual harm individual documents might cause. Prior speakers in this debate have referred to Mr Justice Spigelman and Mr Justice Priestly. On page 479 of the, commonly known as Lovelock and Evans, it states:

> … the majority opinion (Spigelman CJ and Meagher JA) did hold that public interest may be harmed if access were given to documents which would conflict with individual or collective ministerial responsibility such as records of Cabinet deliberations.

However, unlike Mr Justice Priestly, Mr Justice Meagher was absolute:

> For Meagher JA the restriction was absolute applying to Cabinet documents as a class.

That included documents which were not necessarily the recording of decisions or even Cabinet submissions but also material that was needed to make an informed decision by the Cabinet. The *New South Wales Legislative Council Practice* continues:

> In his judgment, Meagher JA observed:
>
> > The Cabinet is the cornerstone of responsible government in New South Wales, and its documents are essential for its operation. That means their immunity from production is complete. The Legislative Council could not compel their production without subverting the doctrine of responsible government, the doctrine on which the Legislative Council also relies to justify its rights to call for documents.

The basis on which the Opposition and certain members of the crossbench are calling for the production of these documents subverts the doctrine of responsible government. The Cabinet cannot make an informed decision unless it has all the material in its possession. If the Opposition wanted to make a Fitzgerald inquiry-style argument that documents have been deliberately brought into Cabinet simply to keep them away from somewhere else and they did not have any relevance to the actual decision of the Cabinet, it would have a case. No-one has made that case here. Everyone agrees that the material requested has had some relevance to the decisions of the Cabinet on these particular matters. On that basis, those documents should not be produced because they had a material impact on the reaching of a decision.

If this motion were to be successful, we could arguably have a situation in the future where Ministers could come forward with competing documents, for example, on different policy proposals for the same basket of money and those documents could be accessed by a Standing Order 52 request. That would go exactly to the mischief I have outlined, namely, there could no longer be any confidentiality, there could be no collective decision-making, and there could be no ability from a political or an administrative point of view of maintaining a solid unified Cabinet. Mr Justice Meagher is absolutely correct in his decision. Moreover, Mr Justice Meagher's reasoning is also the reasoning used by the Federal government. The Federal government of all political persuasions has refused a request for documentation where the material—even though it is not either a Cabinet submission or a Cabinet decision—which has come before Cabinet has had a material impact upon the thought processes of the Cabinet. It is considered to be Cabinet documentation and thus falls within Mr Justice Meagher's description. It also falls within Mr Justice Spigelman's decision, if one interprets his decision to include those documents that have had a material effect on the collective decision-making of the Cabinet.

I repeat, this is an unfair censure of the Leader of the Government in this place. This motion seeks to not merely overturn a precedent of this Parliament. It seeks to overturn literally hundreds of years of tradition where documents that go to the Cabinet for discussion before a decision is made have been considered to be confidential. This is a very unfortunate censure motion. As I said, I am no great fan of the Executive but I absolutely cannot support this motion. I am utterly astounded that a political party such as the Labor Party, which may one day find itself in government again, could suggest something like this. They never accepted anything like this when they were in office. Indeed, if this motion were to be successful, then I am sure those opposite would find the

consequences of it very far reaching if they returned to government. I do not support the motion and I urge all members to vote it down.

The Hon. ROBERT BROWN (17:58): I state at the outset that I support the motion of the Leader of the Opposition. I want everyone to understand what is going on here. I am not a follower in this debate, I am a leader. I took the prospect to those who I thought would support it in this House. I had a short conversation with the Leader of the Government and I told him that it is not personal; the Hon. Don Harwin just happens to sit in the chair of the Leader of the Government.

Mr David Shoebridge: It's about the office of the person.

The Hon. ROBERT BROWN: It is about the office and also a point raised by the Hon. Dr Peter Phelps about why an Opposition would agree to push a case like this when it could very well end up with that same albatross around its neck in the future. I have the luxury of not having to worry about that sort of question because I am a humble, reasonable person sitting on the crossbench. I am not a lawyer, I am not a barrister and I am certainly not an intellectual. My observation, and I made this plain to the Leader of the Government, is that since I have been in this place—since 2006—I have noted through two governments a gradual expansion of the use of the expressions "Cabinet in confidence", "commercial in confidence" and "legal—

Mr David Shoebridge: Professional privilege.

The Hon. ROBERT BROWN: —professional privilege". In a couple of instances where I examined some documents produced under Standing Order 52, I have seen the use of legal privilege that had obviously influenced a Cabinet decision because the Standing Order 52 call for papers run at that time under the previous Parliament was so great that the functionaries in the bureaucracy were making mistakes and, lo and behold, a Cabinet minute turned up in the non-privileged documentation. So I have seen firsthand how manipulation of legal privilege can work—and I dare say it probably does work—in relation to governments wishing to, for any number of reasons but let us be base and say for political reasons, avoid embarrassment by not allowing documents to surface.

I acknowledge that there are commercial-in-confidence circumstances when one must be mindful of the impact of making certain things known about future investment when asking people to tender for major capital projects. A major civil company that tenders on a project that is worth a couple of hundred million dollars is punting hundreds of thousands of dollars; so I take that on board. It came home to me recently when I was obliged to convince members of Portfolio Committee No. 5—not unanimous but a majority—that we should summons a witness in order to get our hands on a document. There was some question as to whether the witness would be presenting the document under summons or voluntarily, but the hold-up there was the premise that the project was just about to be let to tender and obviously disclosure of that sort of information outside the committee, or outside the Government and the very many departments that probably had that information, could be deleterious to the process.

How then do those arguments apply to the Tune report? Dead silence. They do not apply. Yet the same tactic is used to prevent the production of the Tune report. You cannot have your cake and eat it too. I believe, as a member of this Parliament, who swore an oath to look after the interests of the people of New South Wales and the people of Australia, that I should be trusted enough to know when to and when not to talk to the public about things that the Government believes should not be. As to the number of speakers in this debate who have spoken about the institution of Cabinet and how vital it is—Cabinet solidarity and Cabinet security—to be perfectly frank, that is a joke. Every day in the newspapers we see evidence of Cabinet leaks—so much for solidarity and so much for secrecy.

I take seriously the decision to support the motion moved by the Hon. Adam Searle. The Shooters, Fishers and Farmers Party has had a tradition of not supporting censure motions, but this censure motion tonight is just one part of a plan of action that hopefully will lead to the questions that are being argued between our learned people at the table being decided as to who is correct and who is not. The only place to do that is in the courts. If the Leader of the Government is censured and the documents are not produced, sooner or later I believe the Government should try to have the question tested in a bit more detail than what has been presented as evidence from the Hon. Adam Searle and by others as to who was right, who was wrong, which particular lawyer said what and which has precedence. There is only one way to test that and that is to get it to court. That is the reason I support the motion moved by the Hon. Adam Searle.

The Hon. JOHN GRAHAM (18:05): I start where the Deputy Leader of the Opposition started and say that Labor has not moved this motion lightly. As a party of government we aspire to occupy the government benches and we know that in raising this issue today we will be bound by the arguments we put today, but there is a principle at stake. What the Hon. Robert Brown said in his contribution is important: there is a line somewhere.

The way these principles are applied has moved over time, and the belief of the Opposition—a party that aspires to government—is that in the gradual encroachment upon these principles this Government has stepped over the line.

We accept that in putting this argument today we will be bound by that argument down the track, but I say to the Chamber, and to the crossbench members particularly, that the Leader of the Opposition should be congratulated on putting the argument he has put today. I believe this is an argument that, if accepted, does credit to the Chamber and will have long-term implications. I address the arguments of both the Deputy Leader of the Government and the Hon. Dr Peter Phelps—I think the latter did a better job, in many ways, of putting the Government's case. The first point made by the Deputy Leader of the Government was that a response had already been provided by the Department of Premier and Cabinet on behalf of the Government. What he ignored in putting that case was that the response was deficient. That is the reason for this motion. It is not aimed at the Leader of the Government in any personal capacity; it is aimed at him in his role of representing the Government responsible for those agencies that have put a response to this House, admittedly, but a deficient response in the Opposition's view.

Secondly, I particularly object to the characterisation of the Deputy Leader of the Government in that part of his argument where he said that it was well established as a principle that the powers of the House do not extend to Cabinet documents. It is clearly not well established, and anyone who listened closely to the arguments of the Leader of the Opposition would not have made that argument. Having stepped through the legal precedence that applied, in no way could this be argued as well established. That was further pressed by Mr David Shoebridge who, it became clear, had some attraction to the arguments of Justice Priestley, but it was clearly not well established.

That argument was undermined further by the arguments of the Hon. Dr Peter Phelps, who made a powerful contribution, but one which went to the multitude of views on this issue, a range of clashing perspectives, which might be balanced but were certainly not well established—and certainly not pointing in one direction—and I think the Deputy Leader of the Government diminished the Government's case by making that argument. What he failed to address was the distinction that the Leader of the Opposition pointed out between Cabinet documents and information that was supplied to Cabinet. I will refer to and quote from that judgement because he sidestepped this case entirely. The key paragraph in the judgement of Chief Justice Spigelman states:

> 70. In order to avoid inconsistency between the power to call for documents and one of the bases on which it has been determined that the power is reasonably necessary (namely executive accountability derived from responsible government), the power should, at least, be restricted to documents which do not, directly or indirectly, reveal the deliberations of Cabinet.

The distinction is "deliberations of Cabinet", as opposed to Cabinet minutes—documents that reveal those deliberations or other information that might be provided.

The PRESIDENT: Order! The Hon. Dr Peter Phelps has had an opportunity to contribute to the debate and will cease interjecting.

The Hon. JOHN GRAHAM: I will address one of the points made by the Hon. Dr Peter Phelps during his contribution. He repeatedly asserted that the test is whether it is relevant to the Cabinet decision. That is not the test referred to in that paragraph; it is about the deliberations of Cabinet. Let us apply that test to some of the documents being spoken about. What will be revealed about the deliberations of Cabinet if the House asks for the final business case summary for the Sydney football stadium redevelopment? What will be revealed about the different positions Cabinet Ministers took in this debate when those documents are produced to the House? There will be none. What deliberations will be revealed in the strategic business case summary for the Stadium Australia redevelopment or the final business case summary for the Powerhouse Museum in Western Sydney?

Cabinet deliberations will not be revealed by the production of those documents and the House therefore has a right to ask for them. What deliberations will be revealed by producing the Tune report? What consideration has the Government given to the fact that newspaper reports indicate it was offered for viewing outside Cabinet? What implications does that have for Cabinet confidentiality? How does the Government explain the argument it has put today about the secrecy of Cabinet considerations if those reports are right—that the document is being offered around town and to some members of Parliament? It would be a good thing if members were able to view that document—I do not object to that—but it should be done on an equal basis. It should be done to inform the processes of this House.

I will refer briefly to two legislative functions of this House. Members have referred to the essential scrutiny functions of the House and the fact that we need to have the information available to us in order to properly scrutinise the actions of the Executive Government. I agree with that. I also argue that this has implications for the legislative functions of this House because of the scale of money being put into projects that

cannot be scrutinised. It relates to the priorities of the Government and of the Parliament. We cannot properly determine those priorities or argue the case for other projects in New South Wales if we cannot scrutinise the business cases for these projects. The amount of money in dispute has reached that level.

This motion is not just about scrutiny; it is to allow a considered argument about legislation that will come before this Chamber. The priorities of this Parliament or of the Government are also being endangered. The Deputy Leader of the Government used strong language in describing the position of the Opposition. He described it as "ludicrous" and "desperate". He said that members would not understand because they had not served on Cabinet's Expenditure Review Committee. That is not the language that the Leader of the Opposition used when moving his motion.

The Hon. Don Harwin: He called me recklessly indifferent.

The Hon. JOHN GRAHAM: Government members should feel free to put forward another case. That is not the way in which the Leader of the Opposition approached this debate. The Opposition referred to the principles that are at stake.

The PRESIDENT: Order! The Leader of the Government will cease interjecting. The Hon. John Graham has the call.

The Hon. JOHN GRAHAM: As a member of a party that put 35 members into this Parliament in 1891, I object to being told that not having served on this Government's Expenditure Review Committee means I might not have view on this issue or on a matter of principle relating to Executive Government or to the Parliament. Opposition members represent the views of their party on these important principles. We are saying that the line has been crossed and we hold to that view. We have not taken that view lightly. If I were a crossbench member I would have taken offence at that suggestion. These are important principles and all members are entitled to their views. I commend the motion to the House.

Reverend the Hon. FRED NILE (18:16): To assist the House in this debate I sought information about Cabinet confidentiality produced by Anne Twomey and Robert Wilkins who dealt with the issue of producing government documents and about the confidentiality of Cabinet documents. I support the proposition that Cabinet confidentiality should be maintained so we can continue orderly government in this State. Cabinet confidentiality has been recognised by the courts as an application of the principle of collective responsibility. It has been held to be in the public interest that the deliberations of Cabinet should remain confidential in order that members of Cabinet may exchange differing views and at the same time maintain the principle of collective responsibility for any decision that may be made.

The collective responsibility of Ministers would be undermined if Cabinet deliberations were made public. By convention Ministers may not publicly reveal the position they put to Cabinet or the response of other Ministers. Former Ministers remain bound by Cabinet confidentiality. The Christian Democratic Party will not support this censure motion. The Opposition will not agree but having been a member of this House for 35 years I know that leading up to an election the Opposition—whether Coalition or Labor—ramps up the pressure, which is what we are seeing today.

The Hon. MATTHEW MASON-COX (18:18): I have heavily invested in the subject matter of this motion in that it relates to the production of documents under Standing Order 52 which I have supported in the past. As a former Cabinet Minister I am conscious of the role that Cabinet plays, the collective responsibility that entails and the importance of that to responsible government in this State. I have reflected deeply on these issues and how they should be balanced in a situation such as this.

I state at the outset that the way the motion is drafted troubles me. It troubles me because whilst it refers to legitimate motions relating to the standing orders of the House that have been passed to compel documents to be presented, it lays the blame at the door of the Leader of the Government by way of censure. Members have mentioned in this place that that is a construct required in the context of this motion that attaches to the office of the Leader of the Government. I understand their reasoning. However, it is important to put that in context. Today I met with a number of members about this issue to discuss it and to consider where we go from here. The reality is that some serious legal issues underpin the debate relating to this motion. It is not as simple a matter, as some members have suggested, that *Egan v Chadwick* has resolved this issue for time immemorial. It is too simplistic a view not only on this matter but also on the important constitutional issues that lie at the heart of this matter.

I wish to go through a couple of the legal issues, dare I say it, as a former counsel in some of those matters and I then wish to go to the heart of the matter as I see it. In particular, I refer members to *Egan v Chadwick* and note the three contested judgements of the justices in that court. We have heard a number of different views on those judgements tonight. Chief Justice Spigelman held that it is not reasonably necessary for the proper exercise of the functions of the Legislative Council to call for documents, the production of which would conflict with the

doctrine of collective ministerial responsibility by revealing the "actual deliberations of Cabinet". Chief Justice Spigelman makes a distinction, as members have alluded to, between Cabinet documents that evidence the decision of Cabinet and Cabinet documents that might be brought to Cabinet in support of a decision. For example, a report in the form of the Tune report, or a report in the form of the Greiner report into deregulation, or it could be a business case, which we have relating to the stadia or the relocation of the Powerhouse Museum.

Justice Meagher took the view that the immunity of Cabinet documents from production was complete, arguing that the Legislative Council could not compel their production without subverting the doctrine of responsible government, but without exploring the distinction between different types of Cabinet documents drawn by Chief Justice Spigelman. However, Justice Priestly took a different view, noting that a court has "the power to compel production to itself even of Cabinet documents" and that "the function and status of the Council in the system of government in New South Wales require and justify the same degree of trust being reposed in the Council", and that "notwithstanding the great respect that must be paid to such incidents of responsible government as cabinet confidentiality and collective responsibility, no legal right as to absolute secrecy is given to any group of men and women in government". I also draw the attention of members to the Privileges Committee, which I once chaired, and its report No. 69, entitled "The 2009 Mt Penny return to order", dated October 2013. Referring to the issue of Cabinet documents, the report stated:

> … the Committee does not necessarily accept that *Egan v Chadwick* is the final word on this matter ... The three Justices in *Egan v Chadwick*, Spigelman, Meagher and Priestly, took significantly different approaches to this issue. The Committee believes that the dissenting judgment of Justice Priestly is instructive ...

It specifically rejected the definition of "cabinet information" in the Government Information (Public Access) Act 2009 as an appropriate definition of Cabinet documents for the purposes of responding to orders for papers made by the Legislative Council under Standing Order 52. Similar views have been asserted in this House on a number of occasions, generally by way of motion, but this has not been tested as the mover at the time was presumably satisfied with the documents that had been produced, or was perhaps unaware that documents had not been produced, or presumably did not wish to escalate the matter, or test the resolve of the Government of the day. Some 20 years after the decision in *Egan v Chadwick*, this House must now decide whether it wishes to accept the Government's non-disclosure and reserve its rights in respect of Cabinet confidentiality or whether it wishes to hold the Executive to account for non-disclosure of those documents. In my view, much turns on how one views the legislative role of the Legislative Council in our bicameral parliamentary system. In the New South Wales Court of Appeal decision in *Egan v Chadwick* 1999 Chief Justice Spigelman stated:

> In the Constitution of New South Wales, each House of the Parliament is entwined in a symbiotic relationship with the Executive arm of government. Ministerial responsibility is one of the incidents of responsible government. It is by means of this relationship that the Executive is responsible, through parliament, to the electorate.

Similarly, in the High Court decision in *Horne v Barber* 1920, Justice Isaacs described responsible government in the following way:

> When one becomes a Member of Parliament, one undertakes high public duties. Those duties are inseparable from the position: one cannot retain the honour and divest oneself of the duty. One of the duties is that of watching on behalf of the general community the conduct of the executive, of criticising it, and, if necessary, of calling it to account in the constitutional way by censure from one's place in Parliament—censure which, if sufficiently supported, means removal from Office. That is the whole essence of responsible government which is the keystone of our political system and is the main constitutional safeguard the community possesses.

The Legislative Council is unequivocally a keystone of our political system in New South Wales and its constitutional role as a House of review includes the duty to hold the government of the day to account by properly scrutinising its workings and decisions. The Government's failure to fully comply with an order of the House for the production of documents in respect of its stadia decision, its decision to relocate the Powerhouse Museum and the Tune report into out-of-home care respectively interferes with the capacity of this House and its committees to fulfil their constitutional roles. The fact that the Government has been willing to make some of those documents available to some members of this House but not the House itself compounds this failure. Similarly, the Government's initial response to Standing Order 52 in respect of the Powerhouse business case, namely, that the business case did not even exist, is alarming. It is exactly those types of arbitrary decisions that undermine the blanket protection asserted by the Government in respect of Cabinet confidentiality.

Another recent example was the initial refusal of the Secretary of Transport for NSW to appear before Portfolio Committee No. 5 and table the full business case in respect of the Windsor Bridge project, which the Hon. Robert Brown referred to earlier. The committee had to issue a summons to force the secretary to attend and produce the business case. In respect of the Tune report, it is also worth noting that the report was commissioned by the Government and paid for with public funds. Members will be aware that governments routinely commission reports. Many reports are presented to Cabinet and many of those reports are publicly released. A recent example I referred to earlier is the Greiner report, an independent review of the New South Wales regulatory system. It

was released publicly because the Government agreed with its recommendations and no doubt wished to support its evidence-based response as a means to engage stakeholders and the wider community. In my view, that is a basic tenet of good government.

This is precisely what this Government resolved to do in the lead-up to and upon winning government in 2011. We made it our mission to ensure that the Government was more accountable than transparent. The benchmark at that time was to publish government reports on the Government's agency websites so that the reports were publicly available and the Government's decisions could be seen to be transparent and based on evidence-based research. This is what stakeholders and the general public expect and deserve from their government. This Government has strayed from its position in a way that sadly brings us to this point in time where the Tune report, which is so important to the future of the most vulnerable children and families in this State, is denied to this House on the most arbitrary grounds of Cabinet confidentiality. Similar arguments can be promulgated for the release of the full stadia and Powerhouse Museum business cases, which collectively represent an investment of billions of dollars of public funds. In my view, the Government has been acting inconsistently and arbitrarily by releasing some "Cabinet-in-Confidence" reports but not others and in releasing some "Cabinet-in-Confidence" business cases but not others. It would appear that the Government is acting in its self-interest rather than the public interest.

I contend that this House should hold the executive to account for non-production of these important documents on the basis of judicial precedence such as *Egan v Chadwick* and on advice provided to me by the Clerks, including the former Clerk, Mr John Evans. The proper way for this House to exercise its power is to hold the executive to account for this failure by way of the motion. If this motion were to pass today, the Leader of the Government would be afforded another opportunity to provide these documents to the House by 9.30 a.m. tomorrow morning or, in the event that they are not produced, an opportunity to explain to the House the reasons for their non-production. In my view, this is a fair and balanced approach. Accordingly, I would again urge the Leader of the Government to comply with the order of the House and to produce the documents on behalf of the Government in his capacity as Leader of the Government.

As I said at the outset, I have reached a decision after much reflection. It is a decision that has moved from one polar opposite to the other. Under my oath of office I have always pledged to act in the interests of the people of New South Wales. I am fortunate to belong to a party that allows its members to vote according to their conscience. However, it has been made clear to me today by the Leader of the Government and the Premier that no conscience vote is permissible in respect of this issue. I note that on the previous occasions where I voted according to my conscience to support the House's call for papers for the Powerhouse Museum business case and the Tune report, I was disciplined without consultation or explanation. I accepted that. I continue to accept that.

I also note that recently the Premier denied Coalition members a conscience vote on the Modern Slavery Bill 2018, but allowed a conscience vote on exclusion zones outside abortion clinics. I accept the Premier's judgement in this regard also. However, apparently conscience votes are only allowed where the Premier permits them. To me that is untenable and completely repugnant to the whole nature of a conscience vote which, by its very essence, is personal to the member. It appears to me that I have come to a fork in the road. As I said at the outset, I remain conflicted and I continue to reflect on my position. I remain very uncomfortable with the inclusion of a censure of the Leader of the Government in this motion. I have relied on the advice of the Clerks, in particular Mr John Evans, who presided over these matters some 20 years ago, and also on reflecting the views of the judicial precedents such as *Egan v Chadwick*.

The bottom line is, in all of this, the proper authority for these issues to be determined is not this House; it is a court of judicial record—the Supreme Court of New South Wales in the first instance. This is where this matter should be resolved and I trust that properly framing this question in this way will in the near future lead to that decision being made by a court of record.

The PRESIDENT: I will now leave the chair and cause the bells to be rung at 8.00 p.m.

The Hon. PENNY SHARPE (20:00): I make a brief contribution to debate on the motion moved by the Leader of the Opposition. Censure motions of the Leader of the Government are rarely seen in this place and the Opposition is well across the precedents when it has occurred on previous occasions. We see this as a principle issue that goes both to the heart of the functions of this House and to our roles as members of Parliament, whether in government or opposition or on the cross bench. The role of the Legislative Council is to critique, to oversee and to put a handbrake on the Executive government. The role of the Legislative Council is also to scrutinise whether the decisions on behalf of the people of this State are being made in the public interest. We cannot do that without information and there are very strict rules around the way in which that information is provided.

Indeed, there have been many instances of sensitive information that no government ever wants to release. When I sat on the other side of the House, we argued against orders for the production of papers under

Standing Order 52. I understand what compels members to seek documents and I also understand the motivations of governments in this regard. Standing Order 52 is very powerful and it is used very judiciously by members of this Chamber. The Opposition does not have the numbers in this Chamber and it is only with a majority of members that motions such as the one before the House are passed. The motion before us seeks reasonable information about the very important decisions being made by this Government—for example, the business cases for the Sydney stadiums and the relocation of the Power House Museum and the Tune report.

This House has compelled the Government, through the Leader of the Government, to provide documents on all those important matters but none has been provided. I have listened carefully to this debate. As the Hon. Robert Brown commented, there are a lot of lawyers in this place. I am not a lawyer, so I will not go through the legal argument that has been referred to by previous speakers. I note that some very good points have been made. I listened in particular to the contribution of the Hon. Dr Peter Phelps who usually has something interesting and well considered to say. However, today I disagree with him. The Hon. Dr Peter Phelps is no friend of the Executive and he has been willing to stand up for the rights of this Chamber.

The Hon. Dr Peter Phelps: And it hasn't cost me anything, has it?

The Hon. PENNY SHARPE: I acknowledge the interjection that standing up for his principles has cost him a lot. Those on this side of the House respect him for that. The issue of Cabinet-in-confidence, what constitutes a Cabinet document and whether a document is attached to Cabinet deliberations is absolutely important. Confidentiality is also very important, particularly in deliberations. Governments are in the business of serious decision-making that impacts on every single person in New South Wales. They need to make decisions fully and frankly with the necessary information in front of them. Labor and the crossbench members who support this censure motion are not seeking to uncover the deliberations of Cabinet—we hope to be governing in about nine months time. Labor understands the importance of the conventions around Cabinet confidentiality and collective responsibility. However, the issue of what constitutes a Cabinet-in-confidence document is not settled.

I am familiar with this issue because I was a staffer during the time of *Egan v Willis*. I repeat, motions such as this are not moved lightly but Labor wants this important issue sorted. Is the Government going to provide the New South Wales Legislative Council with the documents it needs to properly do its job to scrutinise responsible government and the Executive? In this debate there has been a lot of toing and froing about the lack of transparency. As a shadow Minister, I spend a lot of time wrestling with the Government Information (Public Access) Act and with various portfolios, agencies and Ministers about the release of information. The Government Information (Public Access) Act was introduced with the presumption that documents would be provided unless there was a very good reason not to do so. To date, that has not been my experience nor I suspect the experience of any member trying to scrutinise the Government's actions.

I have many current examples in relation to the Government Information (Public Access) Act where agencies wait until the death knell before rejecting an application. It is either too much work or they want to charge ridiculous amounts of money. For example, on one application I made under the Act, the New South Wales Environment Protection Authority wanted to charge me $100,000 for the information. That is just ridiculous. Government agencies have learnt every loophole and delaying tactic they can use to try to prevent the Opposition from doing its job. Unfortunately, that culture of limiting information has leaked into the way in which this Government responds to calls for papers, which is why we have moved this motion. We understand that the implications of this motion would apply to us if we were in office. We are comfortable with what we are doing because we believe that good government relies on us getting this right. This Government is not getting it right. I urge all members to support this censure motion.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (20:08): A censure motion of a Minister is rarely moved in this House. In fact, only one such censure motion has been moved since this Liberal-Nationals Government came to office in 2011. As previous speakers have said, this motion is qualitatively different to that particular occasion because this motion is being moved against me as the representative of the Government. I will return to this issue later in my remarks.

Rather than going through the advice which, it has been suggested, I should give the House, at length—frankly, I have done that previously on several occasions—I will respond to matters that have been raised in the debate. At the outset, I thank the Deputy Leader of the Government and the Hon. Dr Peter Phelps for their remarks. They have outlined the Government's position and I seek to rely on their remarks. Essentially, three arguments have been made in support of this motion. The first argument is, as the Hon. John Graham put it, that the response of the Department of Premier and Cabinet was deficient. From other members there was a suggestion—based, I suggest, on erroneous media reports rather than on what actually happened—that the Government had asserted that the documents did not exist.

I note that the Opposition, other than in initial media comments at the end of April and early in May, is not saying that and has not at any stage today said that. It is simply not the case that the Government has ever said that the documents do not exist. Agencies and Ministers' offices named in a resolution under Standing Order 52 are required to certify to the Department of Premier and Cabinet, which collates all responses, that all relevant documents have been provided or that no such documents are held. These certifications are then provided by the Department of Premier and Cabinet to the Clerk of the Parliaments. Over many years certifications have taken the following general form: "I certify to the best of my knowledge all documents held by" and then the agency or the Minister's office would be named, "and covered by the terms of the resolution have been provided", or "I certify to the best of my knowledge that no documents covered by the terms of the resolution are held by" and then the agency or the Minister's office would be nominated.

Such certifications were given in response to, for example, the grey nurse shark resolution, which was passed on 1 December 2005. They were given also in relation to the Mount Penny return to order in 2009. A slight variation to the standard certification wording has now been adopted by the Department of Premier and Cabinet and was used in relation to the Tune report return to order. The wording now adopted is: "I certify to the best of my knowledge that all documents held by", and then the agency or the Minister's office would be named, "that are covered by the terms of the resolution and are lawfully required to be provided have been provided. That has been the standard response and that has been based on the very clear position at law that the Legislative Council cannot compel the House to hand over Cabinet documents.

Consistent with the practice of the confidentiality of Cabinet processes and documents to maintain the system of responsible government and the doctrine of Cabinet collective responsibility, it is not appropriate to even refer to what documents fall into that category. The Hon. John Graham says the Government's response is deficient. I make it very clear that it is not deficient. The response from the Department of Premier and Cabinet on behalf of the Government has been entirely consistent with the approach that has been taken, as I have demonstrated, for at least 13 years and, I suspect, before that as well.

The second broad area of debate has been over whether this matter is settled, as the Hon. Penny Sharpe put it, whether it is well established or not, as the Hon. John Graham put it, or, as, Mr David Shoebridge suggested, that it was not finally decided. Respectfully, all three members are wrong. The majority judgement in *Egan v Chadwick* did decide the matter: the law is settled and it is well established. It is the law and this Government and the previous Government have relied on it in the approach that they have taken to Cabinet documents.

[*Business interrupted*.]

Business of the House

PRECEDENCE OF BUSINESS

The Hon. NATASHA MACLAREN-JONES: I move:

That:

(a) the time for debate on this motion be extended for 10 minutes;

(b) the member speaking prior to the interruption of the debate be permitted to complete his contribution; and

(c) the mover may speak for five minutes in reply.

Motion agreed to.

Documents

SYDNEY STADIUMS

POWERHOUSE MUSEUM RELOCATION

INDEPENDENT REVIEW OF OUT OF HOME CARE IN NEW SOUTH WALES

Production of Documents: Further Order

[*Business resumed*.]

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (20:16): It is clear that a majority judgement did settle this issue. Every suggestion to this House that it did not is wrong. There is an arguable proposition based on the minority judgement of one judge, but that is not the law. Arguments have been made citing an eminent senior counsel and the Clerk, but they are all opinion; they are not law. Their opinion has no great weight when compared with a majority judgement of a court. I accept that the consistent position of the officers of this House has been to suggest that that opinion is correct and they

have advocated to honourable members that that should be the position of this House. As Clerks, as guardians of this Parliament, it is their right to advance that proposition, but it is still, nevertheless, their opinion.

To that extent, what the Hon. Robert Brown said is correct: until it becomes a matter upon which a court makes a decision it is just opinion; it is not the law. The Government is relying on the law, not the opinion of a couple of senior counsel, one judge in a dissenting report or, with the greatest respect to someone whom I have worked with productively and harmoniously for a long time, the Clerk of the Parliaments. That is the basis upon which I represent the Government's view: the Government's view is based on the law, just as the previous Government's view was based on the law.

The third area is a somewhat more contested view. The Hon. Penny Sharpe spoke about lack of transparency. In an earlier part of the debate it was described, I think by Mr David Shoebridge, as a shroud of secrecy. They are entitled to make that case but, with respect, it has nothing to do with that. The Executive Government's position is based on the law. It would be very easy for us to duck and weave on this issue and give a bit here and give a bit there to make this go away, but we are not going to do that. We are taking a position—and I am thinking in particular of two orders for the production of documents related to my own portfolio—that if a final business case was put into the public arena, frankly, members would not know very much more than they already know. But what would be out there would be material that would constrain and harm the Government in a commercial context when dealing with contractors for a very significant construction program.

The Hon. Robert Brown was kind enough to concede in the remarks he made that there are legitimate concerns in that respect. He respectfully said that that was not enough for him to change his view. There is material in a final business case that would be problematic. Given I am not at liberty to say what is or is not in a Cabinet minute, I cannot confirm or deny. Members can draw their own conclusions. Final business cases do contain material that is absolutely critical to an Expenditure Review Committee [ERC] or Cabinet before making a decision. That is the fact.

If I may, I will speak about that order that relates to my portfolio with respect to the shroud of secrecy. There has now been an inquiry conducted by a committee of this House for almost 2½ years at which I have appeared twice. I can be asked a question about these matters every day that Parliament sits. I have been through one estimates hearing and I am about to go through another. The idea that there is anything other than great transparency regarding this project is absolutely ridiculous.

I will make my concluding remarks, as time is short. I do appreciate that Mr David Shoebridge, the Hon. Robert Brown and the Hon. Penny Sharpe emphasised that this censure was not aimed at me personally or the performance of my ministerial duties, although that was implied in some remarks. In my role as Leader of the Government, I represent the Government's view as it relates to the order for production of Cabinet documents. The Leader of the Opposition should reconsider his reference to my approach of "reckless indifference" to this House. That was over-reach. I will not make any remarks about what the Hon. Walt Secord had to say as his words came as no surprise to anyone. The comments made by the Hon. Matthew Mason-Cox are best left for another forum. I recognise that he has given the issue a lot of thought prior to his speaking in the Chamber.

The remarks of the Hon. Robert Brown and the Leader of the Opposition confirm that for them it is about a test case. We will see about that. The vote of the House will be the first indication of whether or not that will happen. If it does become a matter for the courts, I would have to say in all sincerity that government is a difficult business. Yes, there needs to be transparency but there needs to be a capacity to get on and do things and that is what this Government has done. [*Time expired*.]

The Hon. ADAM SEARLE (20:24): In reply: I thank all honourable members for their contributions and I acknowledge the dignified contribution of the Leader of the Government. In relation to my comment of "reckless indifference", I should have attributed that to the Government as a whole rather than to any individual. The censure motion is directed at the Leader of the Government in his representative capacity rather than for any personal failings in this respect. In relation to contributions made by the Hon. Dr Peter Phelps and Reverend the Hon. Fred Nile and their concerns about the confidentiality and integrity of the Cabinet processes, they were directed to the proceedings and deliberations of Cabinet. The Opposition does not seek to obtain documents that go to those matters.

The Opposition respects those matters absolutely and does not seek to traverse or undermine the integrity of that part of our system of government. No document is sought on that basis. The documents the Opposition seek were to inform Cabinet. They may well have gone to Cabinet but they will not reveal the thoughts or processes of the Cabinet or any individual member of the Cabinet or any group of the Cabinet. The concerns outlined by the Hon. Dr Phelps are misplaced. Contrary to the contribution made by the Deputy Leader of the Government, I do not believe this House has ever acknowledged that it does not have the power to compel these documents.

In the Mount Penny return to order privileges committee report the House stood its ground, although it may not have had the opportunity, as it does today, of asserting itself in this particular respect. There may have been other occasions when it could have but chose not to. Members have noted that the law in this area is as much about evolving parliamentary practice as it is about the black letter law or rulings by the courts. I refer to the Hon. Niall Blair's proposition that it would be untenable for documents going to the Expenditure Review Committee [ERC] to be produced. Guess what? Today everyone in this House voted to publish an ERC document. It was produced to this House and Cabinet confidentiality was not claimed, except it was in the disputed privilege process. What did the arbiter say?

In correspondence tabled in the House today the arbiter said, "This document was not claimed to reveal internal deliberations of Cabinet as per Spigelman DJ's analysis in Chadwick, nor did it disclose the same, in my evaluation. I intended and intend that it be covered by my general reasons rejecting public interest immunity privileges claimed in this return." This House today has voted to accept that recommendation from the arbiter, which in turn is the same line of argument which I have sought to advocate in my contribution. I accept what the Leader of the Government said, that this is a contested area. The Opposition advocates that although Justice Priestley was in the minority in the Court of Appeal decision in *Egan v Chadwick*, it is along the same line as Chief Justice Spigelman's observations. I understand that is not the view of everyone voting in favour of the motion.

Reverend the Hon. Fred Nile: He was in the minority.

The Hon. ADAM SEARLE: Chief Justice Spigelman was not in the minority. The Opposition maintains that Chief Justice Spigelman's comments were directed to what could not be produced and that is documents revealing the internal deliberations of Cabinet. The Opposition agrees with that. We do not see these documents as in that category. If the courts can compel the production of even core Cabinet documents, this House should have no less power to compel at least those documents which are not true Cabinet documents. To take the point raised by the Leader of the Government, documents produced can be produced under a claim of privilege for evaluation.

Only members of this House would be able to see them while any privilege claim was evaluated if any challenge to privilege was lodged. It would have to rest on the good sense of members of this House if there was truly confidential information in that material. Nevertheless, it would be a big step forward for members of this House to see that material. The Opposition maintains that the documents need to be produced to properly scrutinise the actions of government. It is important to recognise that in all three cases of these documents the Government has already made a decision. We are not seeking to interfere in that decision-making process. We are seeking to hold this Government to account. I urge all honourable members to join with us and support the motion.

The PRESIDENT: The question is that the motion be agreed to.

The House divided.

Ayes 21
Noes 20
Majority.....1

AYES

Borsak, Mr R	Brown, Mr R	Buckingham, Mr J
Donnelly, Mr G (teller)	Faruqi, Dr M	Field, Mr J
Graham, Mr J	Houssos, Ms C	Mason-Cox, Mr M
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
Voltz, Ms L	Walker, Ms D	Wong, Mr E

NOES

Amato, Mr L	Blair, Mr	Clarke, Mr D
Colless, Mr R	Cusack, Ms C	Fang, Mr W (teller)
Farlow, Mr S	Franklin, Mr B	Green, Mr P
Harwin, Mr D	Khan, Mr T	MacDonald, Mr S
Maclaren-Jones, Mrs (teller)	Mallard, Mr S	Martin, Mr T

NOES

Mitchell, Mrs	Nile, Revd Mr	Phelps, Dr P
Taylor, Mrs	Ward, Ms P	

Motion agreed to.

Rulings

NOTICES OF MOTIONS WORDING

The PRESIDENT (20:37): Order! Earlier today Mr Jeremy Buckingham moved a motion in respect of section 201 of the Crimes Act. The Leader of the Government took a point of order that the motion contravened the standing orders. I have looked carefully at the motion, particularly paragraph (1) (c) and paragraph (3). It is my view that those paragraphs contravene Standing Order 91 (1), which states:

> A member may not reflect on any resolution or vote of the House unless moving for its recision.

I refer to two previous rulings of President Burgmann. In 2006 President Burgmann stated:

> No member shall reflect upon any vote of the House except for the purpose of moving that such vote be rescinded.

In 2003 President Burgmann stated:

> The word "reflect" in standing order 91 (1) means reflect in a poor way rather than simply making a reference. To simply make a reference to a resolution or a vote of the House is in order. Any adverse or critical reference to a vote of the House would contravene standing order 91 (1).

I note that in paragraph (1) (c), Mr Jeremy Buckingham used the words "draconian anti-protest laws". In paragraph (3) Mr Jeremy Buckingham referred to section 201 "as currently written is clearly overreach, trespasses on the implied right to freedom". Accordingly, the motion contravenes Standing Order 91 (1) and I have directed the Clerk not to place the motion on the *Notice Paper*. Mr Jeremy Buckingham should confer with the Clerk as to the wording of any subsequent motion that does not contravene Standing Order 91 (1). I call Mr Jeremy Buckingham to order for the first time.

Bills

STATUTE LAW (MISCELLANEOUS PROVISIONS) BILL 2018

Second Reading Debate

Debate resumed from 23 May 2018.

The Hon. ADAM SEARLE (20:39): I lead for the Opposition in debate on the Statute Law (Miscellaneous Provisions) Bill 2018. The Opposition does not oppose this bill which makes a multiplicity of amendments, alterations and revisions to a wide range of Acts and statutory instruments. It is a type of bill that has been used for several decades by all governments for such purposes. It sensibly avoids the need for a range of different amending bills. Schedule 1 provides minor amendments to a number of Acts and statutory instruments from the Aboriginal Land Rights Act to the Subordinate Legislation Act. That latter Act is amended so that 11 regulations and by-laws are left in force for a further period of one year after the date on which they would have been repealed. They have all had their repeals postponed on at least five previous occasions. Schedule 2 relates to the publication of various notices. The provisions currently require the publication of notices in newspapers.

These amendments, generally speaking, now require publication in a manner that is likely to bring them to the attention of the persons to whom they are directed. That decision as to the manner of publication rests with the person responsible for publication. Schedule 3 has statute law revision provisions resulting from the Biodiversity Conservation Act and the Local Land Services Amendment Act. Schedule 4 has statute law revisions resulting from the Environmental Planning and Assessment Amendment Act 2017. Schedule 5 has statute law revisions concerning a miscellaneous number of Acts. Schedule 6 repeals various Acts and statutory instruments, and schedule 7 has general savings, transitional and other provisions. The Opposition does not oppose the bill. I understand that Mr David Shoebridge may have an amendment relating to local government. If that understanding is correct, it is likely that the Opposition will support the amendment. With that observation I commend the bill to the House.

The Hon. PAUL GREEN (20:41): On behalf of the Christian Democratic Party I speak briefly in debate on the Statute Law (Miscellaneous Provisions) Bill 2018. As the title describes, the bill represents miscellaneous amendments to a number of statute laws. The Christian Democratic Party appreciates the non-controversial nature

of the bill and the movement of many minor amendments to the bill. However, the Government needs to appreciate when giving a crossbench briefing that a briefing note would have been helpful.

Mr David Shoebridge: More than just a list of the Acts.

The Hon. PAUL GREEN: More than a list of the Acts. Judging from the explanatory notes in the bill, the amendments do not pose too many questions. For instance, changing "water-cooling" to "cooling water", and omitting "newspaper circulation" and replacing it with "a manner approved in writing by the Minister to bring notice to the public as they see fit", are non-issues. I briefly touch on the proposed changes to the Aboriginal Land Rights Act 1983 No. 42. Section 36AA (11) states:

> If an Aboriginal Land Agreement provides for termination or transfer of an interest in land, other than an interest of the Crown, the transfer or termination may only be effected with the approval of the holder of the interest.

This bill aims to add to section 36AA (11) by removing the impediment that agreement is not required by the holder of the interest in the land if the holder's interest remains in force, or can be lawfully terminated or transferred by the Crown Lands Minister without the holder's approval. The Government did advise us that this has the support of the Aboriginal Land Council. In light of that, the Christian Democratic Party commends the bill to the House.

The Hon. WALT SECORD (20:43): As the shadow Minister for Health I make a brief contribution to debate on the Statute Law (Miscellaneous Provisions) Bill 2018. On rare occasions I have made contributions to debate on similar bills as they are seen as "tidy up" bills. Usually they are non-controversial and often they are used to fix up drafting errors, oversights by various government departments or agencies, or mistakes by Ministers and their staff. As a shadow Minister it is customary to receive a briefing on these amendments. Usually after receiving a briefing, the relevant shadow Minister will almost always wave through these kinds of bills. However, on this occasion I am compelled to point out that I was not given the usual customary briefing.

My office had repeatedly sought clarification about three amendments to health legislation. I refer to paragraphs (n), (t) and (u) in schedule 1, which attracted my interest for a number of reasons. For several years my staff and I have been following problems involving air cooling systems and the spread of legionella that had resulted in deaths in New South Wales. We also had concerns about private health facilities and the national accreditation of health professionals. Accreditation was in the public spotlight again with a death resulting from cosmetic surgery. For the past two years these three pieces of legislation have been prominent in the public arena.

The second reading speech by the Hon. Don Harwin on 23 May—which was adjourned by the Hon. Wes Fang, the Government Deputy Whip—was short and referred vaguely to motor dealers, road transport, Aboriginal land rights, war memorials and local land services. But at no point in that speech did Minister Harwin mention health aspects. In a spirit of bipartisanship with these miscellaneous bills it was logical to approach the Leader of the Government and the health Minister's office to seek clarification. Furthermore, in his second reading speech the Leader of the Government concluded his remarks with the claim:

> I am sure that honourable members will appreciate the straightforward and non-controversial nature of the provisions contained in the bill.

Unfortunately, with the Leader of the Government this is not what it seems. There is always a hidden agenda or a sneaky undercurrent.

The Hon. Don Harwin: Point of order—

The PRESIDENT: The Hon. Walt Secord will resume his seat when a point of order is being taken.

The Hon. Don Harwin: The Hon. Walt Secord was disorderly, made a personal reflection about me, made imputations about my motives and should be called to order.

The PRESIDENT: The Hon. Walt Secord is well aware that latitude is given in the second reading debate and that he must come within the long title of the bill. The long title of this Statute Law (Miscellaneous Provisions) Bill gives him wide latitude but it does not give him latitude to make imputations against the Leader of the Government. I ask the Hon. Walt Secord to withdraw those imputations.

The Hon. WALT SECORD: I withdraw the words "hidden agenda" and "sneaky undercurrent".

The Hon. Don Harwin: Point of order: I do not recall the Hon. Walt Secord saying either of those things. I believe he has just made an additional imputation about me that again is disorderly.

The PRESIDENT: I will reserve my ruling. I will have a close look at the words that were used before and the words that were used now and I will rule on that matter tomorrow. I ask the Hon. Walt Secord to adhere to the rules and conventions relating to the second reading debate.

The Hon. WALT SECORD: To suit the House and to avoid unnecessary delay I withdraw the words "hidden agenda" and "sneaky undercurrent". In a spirit of good faith in bills such as this Opposition and crossbench members are given briefings; they are not just given a list of Acts. They are given the courtesy of an explanation, and we accept that explanation in good faith. This is the longest time we have spent debating a miscellaneous bill because the Government refused to give Opposition and crossbench members information about what they are debating. The Minister's second reading speech on 23 May did not refer to many of the bills that are being amended. Opposition and crossbench members have a right to be told what is in the bill. The Minister went on to say:

> 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 material from the bill. My office sought clarification and no information on this bill was forthcoming until 1.03 p.m. today, a mere 90 minutes before the Parliament sat. That was after we repeatedly called the Minister's office. We did so in good faith as we wanted to ensure that the community has proper protection in the provision of health care, especially with the spread of legionnaires' disease. I accept the explanations provided by the staff of the Minister for Health on today's changes to air cooling systems and the spread of legionella under the Public Health Act and regulation. The new terminology is now consistent with industry standards in other States and Territories. The changes to the Health Practitioner Regulation (Adoption of National Law) Act clear up confusion relating to adjourning proceedings at the Professional Standards Committee or the NSW Civil and Administrative Tribunal.

I accept the advice provided by the office of the Minister for Health but it would have been much easier, as the bill is non-controversial, if his office and the office of the Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts had simply told us what was in it. If the Berejiklian Government commits to providing a briefing it should do so. It is only reasonable for a government to honour big and little promises. If in the future the Berejiklian Government continues to act in such an arrogant manner when dealing with miscellaneous bills, the Opposition will be forced to take a less cooperative approach. I thank the House for its consideration.

Mr DAVID SHOEBRIDGE (20:50): On behalf of The Greens I contribute to debate on the Statute Law (Miscellaneous Provisions) Bill 2018. Like the Hon. Paul Green and the Hon. Walt Secord, The Greens did not receive an adequate briefing from the Government. What it declared to be a briefing was simply a list of the Acts that are covered by this amending bill. We were then able to ask questions if anything arose from the 20 or 30 Acts that were being amended, which is not an adequate briefing. It did not draw the attention of members of Parliament to what this amending bill will do. Like the Hon. Walt Secord, I indicate on behalf of The Greens that a less cooperative approach will be taken if we do not know what is in the bill.

In this amending bill a number of concerns jump out; for example, almost all the statutory notification provisions have been changed. Previously there was an obligation to publish in a newspaper or a gazette but in almost every case that has been replaced by a provision that states notification is to be done "in a manner approved by the Minister". We do not know the form of that notification in the multiplicity of provisions. We have not had an adequate briefing in that respect and it raises real concerns. Are various government departments in a position to issue those directions from the Minister?

The drafting of notifications for interim heritage orders in the Heritage Act seem to be somewhat confused. The bill states that the notification can be made in "a manner that the Minister or the council is satisfied is likely to bring the notice to the attention of members of the public". In which case will it be the Minister and in which case will it be local council's provisions that will be required? With no adequate briefing these matters are not adequately explained and sometimes it will mean that genuine issues in the bill are not able to be picked up by this Chamber exercising its power of review.

The Government wants to change the notification provisions for the 1989 Very Fast Train Route Investigation Act. Is that back on the agenda? If I recall Mr Greiner announced that instead of building a very fast train he passed a bill that said there would be a route investigation for the very fast train so maybe we will get that back again in the lead-up to the election. The convention that sees crossbench and he Opposition members properly briefed is useful to the Parliament. If the Government complied with that convention it would also be useful to it. I foreshadow that The Greens will move an amendment in Committee that will seek to add provisions to the Statute Law (Miscellaneous Provisions) Bill 2018. We did not choose to change the title of the bill. I will move that amendment in Committee.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (20:53): In reply: I noted the comments of the Hon. Adam Searle, the Hon. Walt Secord and Mr David Shoebridge and regret that they believe the usual courtesies have not been paid. Those people who might be at fault will note the comments on the record and I hope those matters are rectified in future if they have substance. Despite the lengthy remarks of the Hon. Walt Secord, he nevertheless supports all the changes in the bill so I will not go through them in detail. Mr David Shoebridge foreshadowed an amendment and I will comment on that matter when it is dealt with in Committee. 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 TEMPORARY CHAIR (The Hon. Shayne Mallard): There being no objection, the Committee will deal with the bill as a whole. I have one Greens amendment on sheet C2018-063A.

Mr DAVID SHOEBRIDGE (20:56): I move The Greens amendment No. 1 on sheet 2018-063A:

No. 1 **Local Government Act 1993**

Page 12, Schedule 1. Insert after line 40:

1.17 Local Government Act 1993 No 30

Section 291A

Omit "at its first meeting following that ordinary election of councillors" from section 291A (1) (b).

Insert instead "at any meeting of the council within 18 months after that ordinary election of councillors but before the casual vacancy occurs".

This amendment is designed to ensure that the Government lives up to a promise made by the Minister for Local Government in a ministerial media release on 23 May 2018. The Minister for Local Government said in that release:

> The outcome of council elections will be fairer and the need to hold costly by-elections removed under new regulations to be introduced by the New South Wales Government.

That sounds nice but allegedly the Government said that this legislation came about as a result of it adopting the recommendations of the Joint Standing Committee on Electoral Matters. I support the recommendations of that committee which included the counting of votes in local council elections. From memory, the Joint Standing Committee on Electoral Matters—the former Government Whip will remind me if I am wrong—did not delve into the issue of by-elections because that had been covered by an earlier piece of legislation in this Chamber in 2016. It had been done and dusted.

The Minister for Local Government issued a media release that states she is responding to the recommendations of the Joint Standing Committee on Electoral Matters and, as a result, will pass some regulations relating to by-elections, which shows that the Minister does not understand her portfolio and has not read the 10 recommendations from that committee, which is troubling. Worse still, the Minister then said she was passing these regulations for which we have been waiting two years since this House passed the Local Government Amendment Act in 2016 which allowed a countback on by-elections. She seems to be under the misapprehension that councils will now be able to implement the countback if there is a by-election.

If in the first 18 months of a council term a council position becomes vacant because a councillor has resigned, has been terminated from office or has passed away—and this happens as there are lots of councillors—as the law currently stands there has to be a by-election, which can be expensive. In some of the bigger councils it can cost close to $1 million to have a by-election. A by-election is a vote for just one seat which often produces a result that is contrary to the overall democratic outcome at a general election, particularly if it is an Independent or a candidate from a minor party. If it is a large council area that is not divided into wards a by-election to replace an Independent councillor or a minor party councillor will almost certainly result in a major party candidate replacing them.

The Hon. Catherine Cusack: That would be a democracy.

Mr DAVID SHOEBRIDGE: I note the interjection from the Hon. Catherine Cusack, but that is not democracy because it does not reflect the overall democratic position that was adopted in the general election. The Government, the Opposition, and all parties in this House have been convinced by the argument that in those cases, particularly within the first 18 months of a council election, rather than having a by-election, to save the costs of a by-election—which, as I say, could reach $1 million in some cases—and also to reflect the democratic will of the whole of the council area in a general election, the better solution is to have a countback. In a countback, we exclude the councillor who resigned or vacated their office and then allocate votes accordingly. That is a good outcome and we allowed it to happen in 2016 via amendment Acts, but it required regulations to be passed.

Since then, we have had two rounds of council elections—in 2016 and 2017. The law as passed requires that if a council is to be able to exercise this option of having a countback rather than a by-election, it is required to pass a resolution in its very first council meeting. That is before most councillors even know what is up and what is down in their council, unless they have been on council many times. Most councillors have no idea what is happening at their first council meeting and none of them are turning their attention to the question of what

would happen in the case of a by-election. So almost no council across New South Wales has passed a resolution in its first council meeting to say, "Do you know what? If we have a vacancy, we would like to exercise a countback rather than have an expensive by-election."

So the law was passed with fanfare in 2016. Only a few weeks ago, the Minister for Local Government issued a deeply erroneous but cheering media release. The net effect of it is that even if the regulations are passed, there will not be a single council across the State—as I understand it, but maybe there are one or two that I have not heard of—able to access the democratic and cost-effective countback procedure because none of them has passed a resolution in their first council meeting. If a council does not pass that resolution in its first council meeting—goneski! It does not get a chance to come back and cannot have another go at it later.

Our amendment that we are putting to the Government will save a significant amount of cost in local councils across the State, reflect the views of this House, and reflect the democratic outcome of council elections. Instead of requiring a council to pass a resolution in its first meeting, our amendment would simply require the council to pass a resolution opting into the countback rather than the by-election at any time in its first 18 months of meetings. That is provided that it passes that resolution before a casual vacancy opens, because we do not want councils retrospectively gaming the system. We think this is an eminently sensible amendment. We think this is the kind of amendment that should find its way into a miscellaneous provisions bill. This amendment will give effect to the promises made by the Minister for Local Government only a few weeks ago in her erroneous, cheering media release, and we are certain it will be welcomed by local councils and communities across the State.

If the Government opposes this amendment and we then see, as may well happen in the next few weeks, a by-election in Wollongong and ratepayers in Wollongong have to spend half a million dollars on a by-election because this Government could not get its act together and make the law work, or if other councils face this, every dollar wasted by ratepayers and every dollar that is spent not on adequate services but instead on wasteful by-elections should be paid back by this Government because it is going into this with its eyes open.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (21:03): The Government opposes Greens Amendment No. 1 on sheet C2018-063A. The usual approach to a Statute Law (Miscellaneous Provisions) Bill is to remove provisions when an amendment is sought or to split the bill so that amendments can be dealt with separately. This approach was noted in the second reading speech. Generally, the bill is not been amended to introduce new matters and in particular not to introduce an amendment to an Act that is not otherwise amended by the bill as introduced—which is the case in this bill with the Local Government Act. This bill is a vehicle for multiple minor amendments and is and always has been a useful way of enabling Parliament to deal with numerous uncontroversial amendments as well as to fix up errors so as to maintain the quality of State legislation.

Many proposed amendments are rejected for inclusion in the bill because they may be subject to some controversy in Parliament and may delay the passage of the bill. The proposed amendment breaks with a long-held convention in relation to statute law bills. In addition, the amendment has not been subject to the scrutiny that underpins bills of this nature to ensure that they are of a minor and noncontroversial nature. The amendments which are progressed in a statute law bill are of a minor and noncontroversial nature that are too inconsequential to warrant the introduction of a separate amending bill. The Government engages in consultation to ensure that all amendments in a statute law bill fall within the above description. That is, that they are of a minor and noncontroversial nature.

The Greens amendment on sheet C2018-063A is dated with today's date and has been handed to the Government today, the very day that the bill is being debated in the House. Therefore, the proposed amendment has not been subject to the important consultation necessary to ensure that it is appropriate for a statute law bill. Whatever the merit of this proposal, the amendment could not be characterised as noncontroversial or inconsequential, as is absolutely clear from the remarks that the honourable member just made when moving the amendment.

I am advised by the office of the Minister for Local Government that the requirement in section 291A subsection (1) (b), that the decision to fill casual vacancies arising in the first 18 months of the council's term be made at the first council meeting, has the policy intent of preventing councils from making the decision to fill a vacancy when the outcome of the countback will be known and, importantly, when the way the countback will affect the numbers on the council can be anticipated. There is a risk that allowing councils to make this decision when the vacancy occurs, as proposed by the Greens amendment, will allow majority blocs on council to abuse the countback provisions to deliver a particular desired political outcome. Clearly, this amendment requires consultation and appropriate consideration. It is not appropriate for the amendments to progress in the Statute Law (Miscellaneous Provisions) Bill. Therefore, for all the reasons I have given, the Government opposes the amendment.

The Hon. PETER PRIMROSE (21:06): I state briefly that, as the Leader of the Opposition indicated, the Opposition supports this amendment. It is interesting that we have been told a couple of things in the debate this evening. It has been made clear by many members that they have not been adequately consulted. We have already found that—

The Hon. Don Harwin: Point of order: We are in Committee and debating an amendment. The honourable member should well know that he is now making remarks that are well outside the ambit of the amendment.

The Hon. PETER PRIMROSE: To the point of order: The Leader of the Government introduced the idea and concept that we need full consultation. I am seeking to adduce my argument in relation to his comments.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): I am sure that the Hon. Peter Primrose is arriving at his point. I do not uphold the point of order.

The Hon. PETER PRIMROSE: I will not take much of the House's time because this a simple, reasonable amendment. Indeed, it is one I sincerely wish I had come up with first. I hope to be in a position one day, should it not be carried this evening, to introduce it. But that is for another occasion.

This amendment is simple, minor and noncontroversial. The Minister has indicated that there has been consultation with the Minister for Local Government about this matter. I will address a specific concern rather than the procedural curmudgeon that has been raised by the Leader of the Government. Imagine it is day one of a new council, the election is over and someone comes in as a bright new shiny councillor. They find a place, look for their nametag, sit down and there is some person there, the general manager—who they have met once—and then a resolution is put to them about whether or not the council should have countbacks or by-elections and they have to make a decision immediately. It is nonsensical to think that that should happen in the very first meeting. We have been going through this since 2016 when it was unanimously resolved in this House and in the other House that we should have countbacks. Since then we have had two rounds of council elections. This provision is already in the Local Government Act and it says to refer to the regulations. I have consistently asked the Minister for the regulations and as late as two months ago he said, "We are just starting work on those regulations."

Mr David Shoebridge: They are underneath the Productivity Commission's report.

The Hon. PETER PRIMROSE: Presumably they are somewhere. It strikes me as eminently reasonable that before a causal vacancy occurs, provided it is within that 18-month period, to allow a council—after the councillors have at least found where their seats are—the opportunity to make this decision. I agree with the Leader of the Government that there would be concern about gaming the system if it said, "When a casual vacancy occurs" but what it says is, "Before a casual vacancy occurs". If the Government knocks this back I suspect we will continue having by-elections at the cost of hundreds of thousands of dollars of ratepayers' money. In addition to that, everyone who fails to vote is fined $55. Those fines are issued by the council but the money goes back to the Office of State Revenue. The money goes back into the coffers of the State Government, rather than assisting the councils with the cost of the by-elections. So that all of those reasons can be adequately weighed up, and so that local councils can make local decisions in a reasonable time frame, this eminently sensible, minor and non-controversial amendment should be supported by this House.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (21:11): With the greatest of respect to the Hon. Peter Primrose who, other than Reverend the Hon. Fred Nile, has seen more Statue Law (Miscellaneous Provisions) Bills than any other member of the House, the matters I raised were not procedural curmudgeon. The matters I raised were fully in line with all the conventions related to statute law revision. The bill to which he refers is not dealt with by way of statute law revision in this bill. That is why the Government will not agree to the amendment, whatever merit the member suggests it may have.

Mr DAVID SHOEBRIDGE (21:12): It is a statute law bill and it is not in the Statue Law (Miscellaneous Provisions) Bill therefore the computer says "no". That is not an intelligent response to the substance of the amendment. The bill fits within the long title of the bill:

> An Act to repeal certain Acts and to amend certain other Acts and instruments in various respects and for the purpose of effecting statute law revision; and to make certain savings.

Indeed, the Clerk has advised that not only does it fit within the long title of the bill but this has happened on two prior occasions. The first occasion was in 2005 when an amendment to insert a significant series of amendments in relation to a bill that was not part of the Statute Law (Miscellaneous Provisions) Bill was successful. On the second occasion the Hon. Adam Searle moved an amendment that was considered by the Committee but was defeated on its merits, not on a procedural point. There is no procedural point to oppose this amendment.

This amendment is about a procedural change to how local councils go about determining whether or not they are going to have countbacks. I agree it is a great amendment but it does not deserve us going through the rigmarole of a separate private member's bill. Indeed, to attach these to a State Law (Miscellaneous Provisions) Bill is a sensible way of getting these kinds of issues before the House. I repeat, the procedural arguments not only have no merit on the basis of precedence but they also have no merit on the basis of how to effectively despatch business in this House and the Parliament. Lastly, the Government has said that this would allow majorities to game the system. For the reasons that the Hon. Peter Primrose made very clear, this will not allow majorities to game the system because a resolution has to be passed before the vacancy occurs. One cannot have a vacancy and then decide to then go by way of a countback; the resolution has to be passed before.

If there is some minor capacity to game the system—if the majority thinks that there may be a casual vacancy and they will pass it in light of that—there are two answers to that. First, it is a far more democratic outcome. If the majority is gaming the system to get a more democratic outcome then it is probably a good thing to have them turn their minds to deliver a more democratic outcome. Second, it saves ratepayers a very significant amount of money. As the Hon. Peter Primrose made it clear, it is not only costing hundreds of thousands of dollars to hold an unnecessary by-election but the thousands and thousands of dollars councils spend to chase those who did not vote is delivered to this Government when the fines are paid. I commend the amendment to the House.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): Mr David Shoebridge has moved The Greens amendment No. 1 on sheet C2018-063A. The question is that the amendment be agreed to.

The Committee divided.

Ayes 18
Noes 21
Majority.....3

AYES

Buckingham, Mr J	Donnelly, Mr G (teller)	Faruqi, Dr M
Field, Mr J	Graham, 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
Voltz, Ms L	Walker, Ms D	Wong, Mr E

NOES

Ajaka, Mr	Amato, Mr L	Blair, Mr
Clarke, Mr D	Colless, Mr R	Cusack, Ms C
Fang, Mr W (teller)	Farlow, Mr S	Franklin, Mr B
Green, Mr P	Harwin, Mr D	Khan, Mr T
MacDonald, Mr S	Maclaren-Jones, Mrs (teller)	Martin, Mr T
Mason-Cox, Mr M	Mitchell, Mrs	Nile, Revd Mr
Phelps, Dr P	Taylor, Mrs	Ward, Ms P

Amendment negatived.

The TEMPORARY CHAIR (The Hon. Shayne Mallard): The question is that the bill as read be agreed to.

Motion agreed to.

The Hon. DON HARWIN: 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. DON HARWIN: I move:

That the report be adopted.

Motion agreed to.

Third Reading

The Hon. DON HARWIN: I move:

That this bill be now read a third time.

Motion agreed to.

GOVERNMENT SECTOR FINANCE BILL 2018

GOVERNMENT SECTOR FINANCE LEGISLATION (REPEAL AND AMENDMENT) BILL 2018

First Reading

Bills received from the Legislative Assembly, and read a first time and ordered to be printed on motion by the Hon. Don Harwin.

The Hon. DON HARWIN: According to sessional order, I declare the bills to be urgent bills.

The PRESIDENT: The question is that the bills be considered urgent bills.

Declaration of urgency agreed to.

The Hon. DON HARWIN: I move:

That the second readings of the bills be set down as orders of the day for a future day.

Motion agreed to.

MISCELLANEOUS ACTS AMENDMENT (MARRIAGES) BILL 2018

Second Reading Debate

Debate resumed from 23 May 2018.

The Hon. ADAM SEARLE (21:26): I lead for the Opposition in debate on the Miscellaneous Acts Amendment (Marriages) Bill 2018. The Opposition does not oppose the legislation. The object of the bill is to provide for various legislative amendments that are consequent on the commencement of the Commonwealth legislation called the Marriage Amendment (Definition and Religious Freedoms) Act 2017, better known as the marriage equality legislation, which commenced on 17 December last year. The amendments to be achieved by the legislation are to update terminology relating to marriage and parentage in various Acts and statutory instruments, as provided in schedules 1, 2 and 6; to extend the existing exceptions to the hearsay rule to any married persons, as provided in schedule 4, and to provide the entitlement to register a change of sex to any married person, as provided in schedule 3; and to set out in schedules 5 and 7 the effect to certain enduring guardianship appointments and registered relationships.

The primary legislation is the 2017 Commonwealth legislation. While the Commonwealth has the obvious constitutional power for that legislation, there is a range of legislative provisions that the Commonwealth does not have jurisdiction over, being State laws, that must change as a result of the marriage equality legislation. Those changes are dealt with in this bill. As a result, most of the bill consists of a range of quite technical changes. The Government said in its second reading speech that this was the first bill in any State or Territory legislature to introduce comprehensive consequential amendments flowing from the 2017 marriage equality legislation. I also note the statement in the second reading speech that the Government's policy intent is not to go beyond the changes covered in the Commonwealth legislation.

Schedule 1 updates the terminology of the definitions of spouse, relatives, dependants and similar terms, and removes some redundant provisions in 46 separate Acts or regulations from the Aboriginal Land Rights Regulation to the Workplace Injury Management and Workers Compensation Act—for example, section 4 (2) (d) (i) of the Anatomy Act, which says that the person's "husband or wife" is replaced by the words "a person to whom the person is legally married (including husband or wife of the person)". As noted in the second reading speech, gender-inclusive or gender-neutral language is used while reference to wife, husband and de facto are often retained. Schedule 2 amends legislation dealing with terms relating to parentage in the Adoption Act, the Adoption Regulation, the Guardianship of Infants Act and the Status of Children Act. Schedule 3 importantly removes restrictions from the Births, Deaths and Marriages Registration Act so that a person who changes their sex and is married may have that change of sex recorded on the register.

Currently, a person who undergoes a sex affirmation procedure can have their registered sex altered on the register. At present, that is restricted to people who are not married. That flows from the pre-December 2017 Commonwealth definition of a marriage being between a man and a woman. Amending the sex of a married

person would then have resulted in the marriage becoming a same-sex marriage which would be inconsistent with the then Commonwealth provisions. That would sometimes perversely lead to divorce to allow the registration desired. Of course, that is not a desired outcome.

The Evidence Act amended by schedule 4, section 73 provides an exception to the hearsay rule so that it does not apply to evidence of reputation concerning whether a man and a woman cohabiting at a particular time were married to each other at that time. That provision in section 73 (1) (b) is altered by replacing "a man and a woman" with "two people". There is also a transitional provision. Schedule 5 amends the Guardianship Act to deal with certain enduring guardian appointments that would otherwise be revoked because of the impact of the Commonwealth legislation. The Married Persons (Equality of Status) Act is amended by schedule 6 which updates references and provides for the making of various regulations. Schedule 7 provides for the revocation of a relationship registered under the Relationship Register Act. With those comments, the Opposition does not oppose the bill.

Reverend the Hon. FRED NILE (21:30): On behalf of the Christian Democratic Party, I oppose the Miscellaneous Acts Amendment (Marriages) Bill 2018. The bill seeks to harmonise the laws of New South Wales with the laws of the Commonwealth in the area of marriage law. As members know, this is a consequence of the Commonwealth's legislation which created same-sex marriage. It comes as no surprise that the Christian Democratic Party will be voting against the bill. The reasons for that are very simple.

The Christian Democratic Party has no issue with the concept of harmonising the laws of the State so that they operate more efficiently along with their Federal counterparts. However, this legislation is an exception. We cannot, in good conscience, vote for any law that contributes to the redefinition of fundamental concepts such as marriage and family. Essentially, we cannot be part of a process that enhances the efficiency of what we believe to be fundamentally wrong.

It is auspicious that only yesterday the Supreme Court of the United States vindicated the persecuted owner of a bakery, Mr Jack Phillips, who was targeted by activists after he refused to participate in an activity that went against his conscience—to make a wedding cake for a same-sex male couple. That decision of the Supreme Court was 7-2. There have not been many decisions in which the Supreme Court has divided with a majority of 7-2. It was quite a decisive outcome. The court upheld the rights of an individual not to have to participate in any activity that offends his or her conscience.

However, the baker, Mr Phillips, was needlessly put through a gruelling legal process to protect his rights. I understand that it cost him thousands of dollars in legal fees. I mention that in the context of this bill because it is abundantly clear that the redefinition of marriage and family, whether by Federal or State legislation, has put the civil rights of many others under threat. That is the reason why I have introduced the private member's bill to provide protection for religious freedom. This occurs because social engineering can have a significant cultural impact that affects those rights. Sometimes those rights come under fire even before legislation is passed when a climate of fear is created by radical campaigners who attempt to harass and intimidate people with dissenting views.

We saw that happen to supporters of the "No" campaign during Australia's voluntary postal survey in 2017. We also recently saw how the valid and legal opinions of people like footballer Israel Folau and the famous tennis player Margaret Court put them in the crosshair of malicious people and groups. As members know, there has been a campaign to have Margaret Court's name removed from the Margaret Court Arena in Victoria. While I acknowledge that legitimate advances in human rights have indeed been made in the past through policy and legislative reform. What we are considering under this bill is the institutionalisation of something that, in my opinion and our party's opinion, goes against not only centuries of religious tradition but natural law as well.

As I said before, the 7-2 decision of the Supreme Court of the United States was quite decisive. However, the broader question of whether a court can compel an individual to participate in a ceremony that offends his or her religious sensibilities was left open. Today I read a report in the United Kingdom-based newspaper *Daily Mail* by Eleanor Harding which states that a secondary school in Oxfordshire has banned male students from wearing shorts in summer. Under the new school directions, if the boys do not wish to wear long trousers, they can opt to wear skirts. The new rules have been put in place by head teacher Moira Green, who I assume is akin to the Principal of Chiltern Edge School. There is of course absolutely no conceivable reason why boys should be prohibited from wearing shorts to school in summer unless the new directive is just an underhanded way to change social norms.

That is the kind of coercive new order that comes on the tail end of legislative and policy action such as the present bill, which certainly seeks to change social norms as well. Many have mocked that these things are unrelated, but anyone with eyes can see a clear causal connection between these trends. Once something is normalised, a host of other related issues arise, whether directly or indirectly. For this reason, I put it to the House

that the impact of the bill cannot be understood properly without looking at the cultural and political context under which it has arisen. Its effect also cannot be appreciated without looking at the consequences that have come about in other jurisdictions. In my submission to the Ruddock inquiry, I wrote:

> Australia is therefore fortunate to be in the position to learn from the mistakes of other jurisdictions where inadequate protections have exposed individuals to persecution for their dissenting beliefs.

These are beliefs based on freedom of conscience. Sadly, Australia did not learn from the mistakes that it could readily witness overseas. The Federal Government passed legislation that has turned on its head the very concept of what a family or marriage is. Now we are being asked as a State parliament to dutifully follow this mistake. We refuse to do so. The mischief caused in the United States and the United Kingdom is completely predictable. If we are to be as foolish as the minority of other parliaments in the world that have legislated so-called same-sex marriage and to do so without adequate protections for those who dissent, then we can expect similar issues arising here. That is why I introduced a bill to protect the religious freedoms of New South Wales citizens so that they might avoid some of the problems faced by people like Mr Phillips. I also wrote in my Ruddock inquiry submission:

> The campaign to legalise same-sex marriage is therefore not a private matter, but a public controversy that will almost certainly impact the lives of a cross-section of our citizens, irrespective of individuals' sexual orientation or religious affiliation.

Reforms such as those under this bill are characterised as "a campaign ostensibly motivated by egalitarian concerns that rapidly morphs into a tyranny under its own momentum." There is no reason to believe that the bill will not contribute to similar trends in New South Wales. For that reason, we will oppose the bill. I encourage my colleagues, who presumably read the foreign press as well as the local papers in other countries, to do likewise. The Christian Democratic Party opposes the Miscellaneous Acts Amendment (Marriages) Bill 2018.

Dr MEHREEN FARUQI (21:38): On behalf of The Greens, I speak strongly in support of the Miscellaneous Acts Amendment (Marriages) Bill 2018. The Greens enthusiastically support the bill and any measures that legislate for equality and about discrimination against lesbian, gay, bisexual, transgender, intersex and queer [LGBTIQ] people. This bill brings New South Wales in line with the Commonwealth Marriage Amendment (Definition and Religious Freedoms) Act 2017, passed by the Commonwealth Parliament in December 2017. The Greens are the only party that has always supported marriage equality—every vote, every member of Parliament, every time. The Greens have had a long history of policies and actions advocating full legal equality regardless of sex, sexuality or gender identity. I am proud to be part of this history of activism for equal rights and I was privileged to be part of the parliamentary cross-party working group on marriage equality which brought the same-sex marriage bill to this House in 2013.

In my speech on the bill I said, "It is a question of when, not if". And four years later the "when" did come in the form of a Federal law. The Greens are just one part of what has been a broad and longstanding community movement for marriage equality. Today I would like to pay tribute to the passion and courage of those who have stood up in a myriad of ways to remove discrimination against LGBTIQ people from our law books. I would like to acknowledge all those who for decades have worked to move towards a more respectful and fairer Australia—an Australia where same-sex marriage is recognised as no different to any other marriage; an Australia where we are moving to remove discrimination for LGBTIQ people. My hope is that this change in the law opens up people's hearts and minds and also leads to removing discrimination at a social level.

To the opponents of marriage equality who want to force everyone into their narrow definition of what marriage should be or could be I say this: since December 2017 Australia has had legal same-sex marriage and the sky has not fallen in. In fact, we have made thousands of people, their families, friends and loved ones happier. Marriages come in all sorts of weird and wonderful ways and forms. Everyone, no matter their gender or their partner's gender, will give a different view of what they believe marriage is or ought to be. Since December, New South Wales has led the country in the number of same-sex marriages. According to a count published by Junkee just four days ago, 853 same-sex couples have registered their marriages in the six months since equal marriage was legislated federally. Across the country, close to 2,500 gay marriages have taken place.

Of course, we have known for a long time that Australians support marriage equality. Poll after poll has indicated strong support for legalising same-sex marriage. We know that governments have been incredibly slow to catch up to public opinion, with successive governments refusing to make this change. In the referendum leading up to this change, the public gave a clear mandate with an overwhelming "yes" vote for change. This has been a phenomenal victory for equal rights for LGBTIQ Australians, but only after a public and many times a very nasty, debate on such a basic right, a right that is inarguably afforded to every other Australian.

As the postal survey was conducted, I remember reading with dismay of the alarm raised by mental health organisations as they struggled to cope with a dramatic spike in clients accessing support services. When the private matter of one's sex, sexuality, gender and gender identity become matters for public debate, the distress is

natural. LGBTIQ people are already at a far greater risk of a range of mental health problems and at high risk of self-harm due to the daily discrimination, stigma and prejudice they face. Young LGBTIQ people are three times more likely to have attempted suicide as their heterosexual peers.

A major mental health service under pressure from the increased demand told the *Sydney Morning Herald* that young gay people were reporting feeling "hated by Australians". At the time of the postal vote, mental health experts said they had no doubt that the demand for support services had risen due to the divisive debate triggered by this unnecessary survey. We still have to stop these disproportionate rates of mental health issues and suicides in young LGBTIQ people and fix the legal and societal discrimination faced by trans and intersex people. These are all stepping stones that we must cross together to make our society better and fairer.

I now turn to the issue of rights for transgender and gender diverse people. Currently, New South Wales law requires that married transgender people divorce their partners before changing the sex on their birth certificate. As many members know, it is The Greens position that this requirement is quite unacceptable. In 2014, I, together with my colleague in the lower House, Independent member of Parliament Alex Greenwich, introduced a bill to allow married persons who have undergone sex affirmation to update their records on the Births, Deaths and Marriages register to correctly reflect their gender without having to get a divorce. I am so glad to see that the bill before the House today makes this change and removes the requirement for transgender people to divorce before they can update their records.

This reform is supported by stakeholder groups such as the Transhealth Australian, NSW Gay and Lesbian Rights Lobby and the Human Rights Law Centre. New South Wales law currently requires that a trans person undergo surgical intervention before they are eligible to register a change in gender on their birth certificate. This places an unnecessary and severe burden on trans and gender diverse people in our State, which is absolutely unacceptable. I note that this bill does not remove this requirement. My colleague in the lower House, The Greens member of Parliament Jenny Leong, and The Greens Senator Janet Rice have written to the Premier requesting that this requirement be removed. I urge the Government to consider making this change.

The bill does, however, bring the very welcome change of justice and equality to the law books in our State and aligns with Commonwealth laws on marriage equality. It ends an era of discrimination and will enable same-sex loving couples to do what other heterosexual couples can and have been able to do without debate. This is about all families sharing the joy and happiness that many of us take for granted. I wholeheartedly commend the bill to the House.

The Hon. PENNY SHARPE (21:45): I support the Miscellaneous Acts Amendment (Marriages) Bill 2018 and place on record what a welcome step this is after a very long, slow journey for many people in this Parliament who have been involved in the fight for marriage equality in Australia. I am disappointed that the Christian Democratic Party cannot bring themselves to support this bill, although I do understand their reasons. I remind the House of the long journey to remove discrimination against same-sex couples in all areas of law. It started a couple of decades ago under the previous Labor Government where we systematically worked through the laws in New South Wales to allow same-sex couples equal treatment before the law as enjoyed by other de facto couples.

Members are aware that it has been a long journey towards marriage equality, including attempts in this Parliament to legislate for marriage equality when it appeared the Federal Government would not do so. It has been two steps forward and one step back along this path. It is disappointing that even after all this time the Christian Democratic Party cannot see itself support a straightforward change that has been overwhelmingly endorsed by the Australian people and makes a very important difference to many people in the community. It is about being able to marry the person you love. We cannot under estimate the power of love when it comes to these issues and I think it is sad that there are still people trying to fight against that.

I will make one more brief contribution to the debate. I welcome the change to the current law which forces couples, one of whom is trans, to divorce if they want to change their sex on their birth certificate. The conservative case for marriage talks about the stability of marriage and the ability of people to be together. The absurdity of a law that forces someone who is happily married and wants to stay married to choose divorce in order to alter their sex on their birth certificate is an unusual and cruel form of discrimination that I am pleased to see the back of with the passage of this bill. There is more work to do when it comes to the LGBTIQ community. Laws have not kept up with community expectations and every single citizen deserves and has the right to be treated equally before the law. I look forward to working in this place and with those in the trans community to sort out the other pieces of law that require reform. May it not take as long as marriage equality has taken.

The Hon. Dr PETER PHELPS (21:49): I could not let Reverend the Hon. Fred Nile's comments pass without seeking to correct the record. He is correct that certain male students at Chiltern Edge School in Oxfordshire wore dresses. They were not directed to do so by the administration because of some nefarious gender

plot. They did so in the time-honoured method of male students complaining about the fact that they could not wear shorts because the uniform policy did not allow them to wear shorts, so they wore dresses. A few months earlier, the boys at the Isca Academy in Exeter were told they had to wear long pants in the middle of the "sweltering" English summer of presumably 24 or 25 degrees Celsius. They were told they could not wear shorts but they gamed the uniform rules of the Isca Academy and wore dresses.

This followed on from another incident a year ago. The Longhill High School in Sussex also had a uniform policy that did not allow boys to wear shorts in summer and in fact required them to wear long pants. The boys at the Longhill High School in Sussex also gamed the system and wore dresses. This is hardly unusual because 20 years ago the boys at my alma mater, Fort Sreet High School, did exactly the same thing when they were told they could not wear shorts in summer. The new headmistress had brought in a uniform policy that required them to wear long pants and so they decided to game the system. Three cheers for Fort Street High School leading the world once again, not because of some nefarious gender reassignment strategy on the part of the high school's academics but because it was a smart, convenient and useful way of drawing attention to uniform policies that did not take into account the need for shorts in summer.

Mr DAVID SHOEBRIDGE (21:51): After that welcome celebration of protest, which The Greens fully endorse, I will bring the debate back to the issue at hand, which is that the Miscellaneous Acts Amendment (Marriages) Bill 2018 is well overdue. I fully endorse the comments of my colleague Dr Mehreen Faruqi as well as those of the Hon. Penny Sharpe. Reverend the Hon. Fred Nile says this is an academic issue, as though we can discuss debates such as this one in the abstract and the laws will not hurt people. In 2007 when I was at the bar, I had the good fortune to act for a woman called Grace Abrams. Grace was a client to remember. She was born in 1974 and her birth certificate recorded her gender as male. Between 2001 and 2005, Grace went to Thailand and had gender reassignment surgery. Before that was completed, she returned to Australia in September 2005 and married her partner.

Having married her partner, she completed the gender reassignment process and provided medical evidence that clearly identified her as having female gender. There was no ambiguity about it. On 20 April 2006 she returned to Australia and sought a passport as a woman because she was now a woman. She instructed me clearly that when she travelled the world on a male passport and she was a woman, she found herself the subject of intrusive and appalling searches and inappropriate conduct at airports. Because her passport declared her to be a male and she was clearly a woman, she was regularly searched, padded down and interrogated. As a citizen of Australia she had a right to have a passport that reflected her identity. When she applied for the passport, the Federal Government refused to issue one because it had a policy at the time that stated that it would not issue a passport in a different gender unless the applicant could provide an amended Births, Deaths and Marriages certificate.

The policy and the law in New South Wales stated that if a person was married, it refused to issue an amended Births, Deaths and Marriages certificate. She was caught in a circle of injustice that was partly created by a dumb policy at the Federal level but at its core was a discriminatory and nasty law in New South Wales that would not allow an amended birth certificate to be issued. We eventually persuaded the Administrative Appeals Tribunal on an application for an administrative review to direct that the passport be issued. The tribunal formed the proper view that the Federal government policy—it was only a policy; it was not a legal requirement—that required the amended birth certificate could not defeat Grace's entitlement to a passport under her Federal law rights and also under international conventions to have a valid passport that allowed her to travel.

It is one example of the countless little, medium, large and major instances of discrimination that transgender people suffer because of the current law. I welcome the change in law. It means that people like Grace will not have to go through that indignity again. They will be treated as members of our community with the rights that they should have had. Grace should never have been required to bring her case and, thankfully, in the future people like Grace will not have to.

The Hon. DON HARWIN (Minister for Resources, Minister for Energy and Utilities, and Minister for the Arts) (21:56): In reply: I understand the remarks that Reverend the Hon. Fred Nile has made. They have come as no surprise to any member of the House. We take those as read. As to all of the other comments that have been made by members, I thank the members for their remarks and with great cheer that this is finally done, I commend the bill to the House.

The DEPUTY PRESIDENT (The Hon. Trevor Khan): The question is that this bill be now read a second time.

The House divided.

Ayes 34

Noes 2
Majority.....32

AYES

Amato, Mr L	Blair, Mr	Buckingham, Mr J
Colless, Mr R	Cusack, Ms C	Fang, Mr W (teller)
Farlow, Mr S	Faruqi, Dr M	Field, Mr J
Franklin, Mr B	Graham, Mr J	Harwin, Mr D
Houssos, Ms C	Khan, Mr T	MacDonald, Mr S
Maclaren-Jones, Mrs (teller)	Mallard, Mr S	Martin, Mr T
Mitchell, Mrs	Mookhey, Mr D	Moselmane, Mr S
Pearson, Mr M	Phelps, Dr P	Primrose, Mr P
Searle, Mr A	Secord, Mr W	Sharpe, Ms P
Shoebridge, Mr D	Taylor, Mrs	Veitch, Mr M
Voltz, Ms L	Walker, Ms D	Ward, Ms P
Wong, Mr E		

NOES

Green, Mr P (teller)	Nile, Revd Mr (teller)

Motion agreed to.

Third Reading

The Hon. DON HARWIN: I move:

That this bill be now read a third time.

The House divided.

Ayes 34
Noes 2
Majority.....32

AYES

Amato, Mr L	Blair, Mr	Buckingham, Mr J
Colless, Mr R	Cusack, Ms C	Fang, Mr W (teller)
Farlow, Mr S	Faruqi, Dr M	Field, Mr J
Franklin, Mr B	Graham, Mr J	Harwin, Mr D
Houssos, Ms C	Khan, Mr T	MacDonald, Mr S
Maclaren-Jones, Mrs (teller)	Mallard, Mr S	Martin, Mr T
Mitchell, Mrs	Mookhey, Mr D	Moselmane, Mr S
Pearson, Mr M	Phelps, Dr P	Primrose, Mr P
Searle, Mr A	Secord, Mr W	Sharpe, Ms P
Shoebridge, Mr D	Taylor, Mrs	Veitch, Mr M
Voltz, Ms L	Walker, Ms D	Ward, Ms P
Wong, Mr E		

NOES

Green, Mr P (teller)	Nile, Revd Mr (teller)

Motion agreed to.

The PRESIDENT: According to sessional orders, proceedings are interrupted to permit the Minister to move the adjournment motion if desired.

The House continued to sit.

COMPANION ANIMALS AND OTHER LEGISLATION AMENDMENT BILL 2018

Second Reading Debate

Debate resumed from 23 May 2018.

The Hon. MICK VEITCH (22:14): I lead for the Opposition in debate on the Companion Animals and Other Legislation Amendment Bill 2018. The overview of the bill states:

> The object of this Bill is to implement the Government's response to the Final Report of the Joint Select Committee Inquiry into Companion Animal Breeding Practices in New South Wales, and make other amendments about the welfare of animals and the duties and responsibilities of their owners, as follows:
>
> (a) by requiring permits to be obtained annually for dogs that have been declared to be restricted dogs or dangerous dogs and for cats that are not desexed by the time they are 4 months old,
>
> (b) by adding to the information about companion animals and their current and former registered owners that is required to be recorded on the Register of Companion Animals,
>
> (c) by extending the range of persons who can obtain access to that Register, including by providing for members of the public to find registration information and verify microchip numbers and other identifying details,

I will refer to microchipping later in my contribution.

The PRESIDENT: If members wish to have detailed discussions they will do so in the members' lounge. I do not think the Hon. Mick Veitch can hear himself talking at the moment with the conversations taking place. The Hon. Mick Veitch has the call.

The Hon. MICK VEITCH: The overview also states:

> (d) by increasing by 10 penalty units (currently $1,100) the maximum penalty for a second or subsequent offence of failing to register a companion animal,
>
> (e) by increasing the maximum penalty for the offences of denying entry to an assistance animal, or unlawfully imposing a charge for entry of an assistance animal (from 8 penalty units to 15 penalty units, that is, from $880 to $1,650),
>
> (f) by regulating advertisements about dogs or cats (including an unborn dog or cat, and an animal that is to be given away) to ensure that they include identifying information about the animal,
>
> (g) by giving inspectors the power to require a person to produce documents, in limited circumstances,
>
> (h) by extending the power of courts hearing criminal proceedings for animal cruelty offences and certain other offences to make orders requiring the accused person to reimburse a person or organisation that incurred costs for the care of animals incurred as a result of the offence or those proceedings,
>
> (i) by authorising courts to disqualify persons convicted of animal cruelty offences from keeping, or participating in keeping, animals in the future.

The Opposition supports this bill. However I want to make some comments about how this bill arrived in the Chamber today. I was a member of the Joint Select Committee on Companion Animal Breeding Practices in New South Wales, the recommendations of which this bill is drawing upon. The Government states that through this legislation it is implementing some of the committee's recommendations in 2015-16. The joint select committee inquiry, which was extensive, was chaired by the member for Northern Tablelands. The committee examined the treatment of companion animals at puppy farms—puppy factories would be better terminology—and the breeding facilities at those farms, which led to this inquiry. This legislation relates to some but not all of the recommendations from that inquiry. I will refer to some of the recommendations that are partially or completely implemented in this legislation. Recommendation 9 states:

> The Committee recommends that the NSW Government completes and implements the digitisation and reform of the Register of Companion Animals by end July 2016.

As it is now 2018 obviously it has taken longer than expected. Recommendation 10 states:

> The Committee recommends that the NSW Government introduces a breeders' licensing scheme with the following elements:
>
> a) A comprehensive database of breeders
>
> b) A system of periodic audits and spot inspections
>
> c) Sets the number of animals that each breeding establishment may keep
>
> d) A breeders' licensing identification must be included in any advertisement in any medium where animals are advertised for sale
>
> e) Licenses every breeder and provides an auditable licence trail for every sale
>
> f) Records a breeder's licence number when an animal is microchipped. Recommendation 11 of the committee's report states:

> The Committee recommends that the breeders' licensing scheme should meet the following objectives:
>
> a) Breeder performance meets both Breeding Code baselines and continuous improvement goals
>
> b) Breeder-sourced dogs appear in pounds in declining rates
>
> c) Compliance levels meet improvement goals
>
> d) Non-compliant breeders are identified and made compliant or closed down
>
> e) Microchipping rates increase
>
> f) Lifetime registration is meeting objectives.

Recommendation 12 states:

> The Committee recommends that the NSW Government reviews the current microchipping system to determine if the system is reliable or open to abuse, and if the system can be improved to better support digitised registration, and report by 1 September 2016.

I urge members to read the Government's response to the recommendations of the joint select committee. The response was generally supportive. Recommendation 10 which refers to the comprehensive database for breeders and the subsequent subsets was supported in part by the Government. The Government's response to recommendation 10 states:

> A stand-alone breeders' licensing scheme is not supported. The redesign of the register and registration system in consultation with key stakeholders will ensure that breeder details are captured and linked to animals they breed at point of microchipping, while minimising regulatory burden on breeders and improving the ability to better target problem breeders.

In response to recommendation 12, the committee's recommendation relating to current microchipping systems, the Government states:

> Supported.
>
> The Government is committed to introducing a 'one step' online registration system. This recommendation will be considered as part of the Companion Animals register rebuild.

I know the Minister thinks he can read me like a microchip, but I have a number of questions about microchipping. In light of where we have moved from 2016 to now those questions need addressing as part of this debate. This is critical because microchipping will underpin the registration process we are planning. Have we improved the fail rates on scanner reads for microchips, because the committee heard evidence that there is a significant fail rate on microchip-reading scanners and we are putting a system in place that is based on microchips. What is the current fail rate? What provisions are in place to accommodate this and what processes will be put in place over time to improve the fail rate of scanner reads on microchips?

What about changing technologies? How will we accommodate changing technologies in the future? We are building a system now, but everyone in this Chamber knows that technology moves at a rapid rate. How will we accommodate that into this database that we are building? I do not think we will be microchipping this way in the future; I think this process will change over time and I want to know how we can accommodate the evolution of technology. Have we looked at other technologies as a part of this process of creating a reliability factor around microchipping? Are we looking to the future? What other technologies were considered as part of this legislation?

The other thing I would like to talk about is something that has been raised with me a lot. It was raised during committee deliberations in 2015 and 2016. We have since moved on but there was committee debate that was not included as part of the recommendations. At the time there was general support from members of the committee for creating a position described as the chief animal welfare officer, the independent officer of animal welfare, or similar terminology. The general concept concerned some sort of animal regulatory office in New South Wales. Could the Minister advise the House where that is up to and whether there is a time frame for implementing that process? It is critical to what we are about to do.

One of the most critical aspects of the testimony, both in submissions and what we heard at the public inquiry about the sale of companion animals, was that no adequate process is currently in place to track breeders. There is no common identifier that enables people to look at a publicly accessible database to see who the breeder is and to obtain some history about the breeder or that breeder's reputation—particularly when it comes to the dog or cat that a person is purchasing. This scheme is important to the Opposition. There are serious jurisdictional issues surrounding the online purchasing of companion animals. Nonetheless, we want to ensure that if somebody wants to sell a companion animal in the newspaper or online in New South Wales, he or she will have a common number to put on the advertisement so that people have an opportunity to check it. This legislation will enhance that process so that consumers can do a bit of tracking.

We are putting a lot of faith in the database. What resources are we putting on the table to assist the organisation or agency responsible for the database, that repository of information, and the continued upgrades

that will be needed to ensure that this works efficiently? We all have faith in the process; we all want to make changes; and we all want to ensure there is an enhanced process. The committee report was unanimous, something about which the Hon. Mark Pearson will comment later. He was a member of that committee. We worked hard to achieve common ground and to deliver a report that would make some change. We appreciate that there were some differences in opinion on how to get there. The journey that we want to take to make these changes is different but our end objectives are pretty much the same.

This legislation is the first step in that process. It has taken a couple of years to get where we are but this is the first small step in a long journey towards achieving change for companion animals. I will dwell on a couple of other issues that have been raised with me. Some veterinarians have suggested that there may be some issues about data entry requirements and other obligations. There may be some confusion in the veterinary fraternity about how this impacts on their sector. The Minister should clarify this so that veterinarians have a clear understanding of their obligations and how this will apply to them. Clarity is important and that sector is an important part of this reform package.

Another issue is the annual permit process for dangerous and restricted dogs. I have been critical of some Minister's second reading speeches. The Minister's second reading speech on this bill is an example that some Ministers in the lower House should read and follow. In this place we expect more from Ministers when they are making second reading speeches. Some of the speeches in the lower House are not acceptable but the Minister's reading speech on this bill was quite good. Some parts of the bill need clarifying. I ask the Minister to clarify how annual permits for dangerous and restricted dogs will work—an important part of his second reading speech. Once again I extend my appreciation to all the members of the joint select committee. It is important that the report was not put on a shelf to collect dust and be forgotten. Some of those recommendations are now being implemented in legislation. I continue to have concerns about microchipping and I ask the Minister to provide some clarification about the matters I have raised. The Opposition supports the bill.

Reverend the Hon. FRED NILE (22:29): On behalf of the Christian Democratic Party I speak to the Companion Animals and Other Legislation Amendment Bill 2018. This bill is in response to the final report of the Joint Select Committee on Companion Animal Breeding Practices in New South Wales inquiry into companion animal breeding practices in New South Wales. It aims to protect the welfare of animals and it places appropriate responsibility onto their owners. A report in 2016 by Animal Medicines Australia states that 40 per cent of Australian households own a dog and 30 per cent own a cat, which equates to a population of 4.8 million dogs and 3.9 million cats nationwide. In my current home we have three cats and for more than 15 years I had a lovely Labrador dog. It is important that the welfare and safety of these pets is addressed, which this bill seeks to achieve.

The bill amends the Companion Animals Act 1998 to place increased responsibility on the owners of dogs that fall in the category of restricted and dangerous breeds, as well as the owners of cats that are not desexed by four months of age. Last year in New South Wales there were more than 4,500 dog attacks. Steps should be taken to deter people from owning a dangerous breed of dog and to deter them from not taking due care to protect the public and other pets. Currently there are 24 breeds in the restricted and dangerous breeds of dog categories. It is estimated that in New South Wales we have a population of 1,500 restricted dogs and 1,390 dangerous dogs. The changes in this bill will be applied retrospectively. The Christian Democratic Party agrees that it should be applied retrospectively for those who choose to own a dog from that list. Hopefully, it will act as a deterrent when people are choosing what breed of dog to purchase.

The added permit for non-desexed cats is required to ensure that kittens are not unnecessarily euthanised—another term for killed. It is estimated that in just two years one female cat and her offspring can produce up to 20,000 cats. Given that cats can start having litters at four months, and they can continue reproducing for their whole lives, it is important that owners are encouraged to desex cats early in their lives. More needs to be done to enforce the desexing of cats but this is a good step towards ensuring that kittens and cats are not unnecessarily euthanised. The changes proposed in the bill to allow vets to humanely tattoo the ears of desexed cats and dogs will also ensure that unnecessary anaesthetic is not given to companion animals to check whether they have been desexed. These changes are more than appropriate because those who choose to have pets need to take necessary steps to manage their pets and to ensure their wellbeing.

The bill also makes the NSW Companion Animals Register more expansive. More information will be able to be collected about the animals, breeders and owners and companion animals will be able to be tracked through their lifetime. This will allow agencies to create a more detailed picture on the experience of puppies and kittens from breeder to owner and it will make prosecutions easier when patterns of mistreatment occur. We support these changes, which will enhance the quality of life of animals and reduce suffering by stopping mistreatment at its source. Expanding access to this register will also help to reconnect pets with their owners

sooner. Vets will be allowed to directly access the register, rather than going through the local council. At the same time the personal information and privacy of those on the register will be protected.

The bill also amends the Companion Animals Act to increase penalties for not registering a companion animal on a second or subsequent offence. Hopefully this will ensure greater compliance in the registering of pets. When pets are registered it makes it easier to return them to their owners when they are lost and it also helps to track the history of the pet. This is the first step in responsible pet ownership. The increased penalty for denying entrance to an assistance animal or imposing a charge for the entry of an assistance animal will help to protect the vital role that assistance animals play. These animals help people with disability to participate in public life by helping them to remove barriers and to safely engage in a wider variety of activities. Assistance animals, which undergo significant training, are used not only by those who are vision impaired but also by those with medical conditions such as epilepsy and psychiatric disorders. It is important that those who use assistance animals are not discriminated against or prevented from being able to participate more freely in public life.

The new advertising requirements for animals to be rehomed or purchased provided in the amendment to the Prevention of Cruelty to Animals Act 1979 will require the inclusion of an identifying number—whether a microchip number, a breeder identification or a rehome organisation number. This will not create extra cost for those advertising the pet and it will make it easier for enforcement agencies to track and prosecute those found guilty of animal cruelty such as overbreeding. It will also ensure the welfare of animals. This is a necessary amendment to improve regulations to protect and respect companion animals. It is hoped that this amendment will also help to identify puppy farms that make a profit from the mistreatment of animals. Most breeders love and care for their animals and they try to ensure that the animals they sell go to appropriate homes. Sadly, some breeders do not so we need regulations to restrict animal abusers.

Another important amendment is the change to the costs incurred in the care of animals when an individual or organisation is charged with offences related to animal cruelty. Currently it is the responsibility of the organisation that is looking after the animals to cover the court costs incurred. This puts unfair financial strain on these organisations—for example, the accumulated cost of $1.7 million over a five-year period mentioned by Minister Blair. These organisations play a vital role in the welfare of animals and they should not have their limited resources consumed in looking after animals because of long court proceedings. It should be the responsibility of the individual or organisation to incur the cost of caring for the animals seized. The Christian Democratic Party supports this amendment; it will give our animal welfare agencies the ability to use their finances and resources more appropriately.

Finally, the bill makes changes to the Prevention of Cruelty to Animals Act, which had previously just prevented those convicted of cruelty to animals from owning and possessing animals. But this bill goes one step further. Those convicted of cruelty to animals will now be prevented from having any influence or control over animals. Unfortunately, in the past our parliamentary system has let animals, which have no voice, down. More still needs to be done to protect companion animals but this is a step in the right direction to protect animals that are dependent on their human guardians. It will also protect them from neglect or ill treatment. Hopefully, the proposed amendments will result in thousands of complaints of cruelty to animals successfully prosecuted and will ensure that our much-loved companion animals are no longer mistreated by others through neglect or inattention. In Genesis 1:24-28 says:

> And God said, "Let the land produce living creatures according to their kinds: the livestock, the creatures that move along the ground, and the wild animals, each according to its kind." And it was so.
>
> God made the wild animals according to their kinds, the livestock according to their kinds, and all the creatures that move along the ground according to their kinds. And God saw that it was good.
>
> The God said, "Let us make mankind in our image, in our likeness, so that they may rule over the fish in the sea and the birds in the sky, over the livestock and all the wild animals, and over all the creatures that move along the ground.
>
> So God created mankind in his own image, in the image of God he created them; male and female he created them.
>
> God blessed them and said to them, "Be fruitful and increase in number; fill the earth and subdue it. Rule over the fish in the sea and the birds in the sky and over every living creature that moves on the ground." It is our responsibility to look after and be good stewards of the animals of the earth. They are vulnerable and voiceless and it is our responsibility to ensure that they are protected from those who neglect and mistreat animals. The components of the Companion Animals and Other Legislation Amendment Bill 2018 are a big step towards protecting animals that are, in most cases, well-loved members of our families, while also ensuring that those who are doing the right thing are not unfairly disadvantaged. The Christian Democratic Party is pleased to commend the bill to the House.

Dr MEHREEN FARUQI (22:40): On behalf of The Greens I speak in debate on the Companion Animals and Other Legislation Amendment Bill 2018. The Greens will be supporting this bill. We do so because while we are disappointed at the limitations of this bill and we are not convinced that it will eradicate puppy factories in this State and in many ways it represents a missed opportunity, it is at least a step forward. This bill can be described at best as lukewarm. The long title of this bill is to enact some recommendations of the companion

animals inquiry, which is all good. But this bill entirely misses the mark by not introducing a breeder licensing scheme, as recommended by the inquiry and the preceding Companion Animals Taskforce.

Puppy farms are a scourge. They are an ongoing blight on this State. Dogs are suffering and continue to suffer. They are locked away in cages, used as breeding machines and denied medical treatment. They are denied socialisation and are denied the chance to live natural lives. Their litters are taken away from them time and time again and too early, in most cases sold for thousands of dollars each to unwitting, or perhaps wilfully ignorant, purchasers. At the other end, thousands of dogs are euthanased in pounds across the State because they have been abandoned or their owners have been forced to surrender them through circumstances, such as the inability of many tenants to secure pet-friendly accommodation.

Three years ago, this House and the Legislative Assembly established the Joint Select Committee on Companion Animal Breeding Practices in New South Wales to inquire into and report on companion animal breeding practices. When this inquiry was announced, I and many others called it a tactic to delay meaningful action on these serious issues, and sadly we appear to have been somewhat vindicated. Three years on we get this bill that is fundamentally weak and does not meet community expectations that we will shut down puppy farms. That inquiry was prompted by investigations carried out by animal welfare group Oscar's Law and reporting by Eamonn Duff of Fairfax, which showed the horrible and cruel conditions of many puppy farms, especially in northern New South Wales. Those photos were haunting—puppies wedged in wall cavities, dogs living inside old portable water containers, floors littered with faeces and urine, and water that was filthy and green.

Just in case anyone should think that these factories have somehow stopped since then, consider that just a month or so ago, four rescue groups came together to rescue 19 dogs from a puppy factory in the Hunter region. Paterson Valley Dog Rescue, Nova Pound Pooch Inc., Pollanda Farm Rescue and Rehabilitation, and All Breeds Dogs Rescue were able to rescue these mostly senior dogs that had ceased to be useful for breeding. These dogs included King Charles Cavaliers, poodles, Cavoodles, spitzs, beagles and Tibetan spaniels. These breeding dogs were in incredibly bad condition. One of the dogs had a broken jaw that was never treated, one needed an eye removed, while another had a broken penis sheath. These dogs were abused because we in this Parliament refused to act and, with this bill, continue not to act decisively.

It would be remiss of me to not mention what Oscar's Law calls the biggest puppy farm in Australia—the greyhound racing industry in New South Wales. Thousands of dogs are bred each year and will continue to be bred because the Liberal-Nationals Government backflipped on its decision to shut down this industry and then did not even have the courage to enact a legislated breeding cap. One only need look at the RSPCA website to see that greyhounds are fast becoming one of the breeds that are most up for adoption and are filling up their shelters. Other rescue groups spend their hard-earned money, volunteer time, blood, sweat and tears trying to save greyhounds from death row, while their owners continue to abandon greyhounds with little consequence and then have the gall to complain about having to pay a puppy bond.

This bill enacts a number of changes to the way the Companion Animals Act 1998 and other legislation operates. These changes are principally to upgrade the Companion Animals Register, including a requirement to include breeder information, and to create a new requirement for all advertisers of companion animals to provide an identity number to improve traceability. It also makes changes to the registration of certain animals, including increasing the fee for un-desexed cats and for restricted dog breeds and dogs that have been declared dangerous. The Minister for Primary Industries has said that the amendments in this bill "allow prospective buyers to work out who the legitimate operators are", and that is the extent of it. We are not shutting down puppy factories, we are not investigating puppy farms, but, bizarrely, we are going to allow the market to decide who the good operators are, as if that would drive cruelty out of business.

The reality is that one of the only ways the public could get information about the activities of the breeder is by information provided by animal welfare activists like Oscar's Law, who take photos and gain evidence from these puppy farms. These are exactly the kinds of activities that this Government and their allies in the Shooters, Fishers and Farmers Party seek to target and further criminalise. Instead of relying on animal welfare advocates to expose animal cruelty, and then vilifying them for it, why is the New South Wales Government not doing the job of monitoring companion animal breeding? That could easily be done by enacting the recommendations of both the parliamentary inquiry and the Companion Animals Taskforce inquiry by establishing a breeder licensing scheme. Currently, there is no systemic way from either local councils or animal welfare enforcement bodies to monitor breeders' premises.

The registration of breeders, their animals, the location of the facility and its specifications would allow for easier, more transparent tracking of animals and a more operative and integrated system of enforcement. Swift and effective action is now required to implement the recommendation to create an offence for breeding without a licence or breaching the terms of the licence. The licence must be reviewed annually by the Department of Primary Industries and be consistent with new, strict, and perhaps even legislated minimum standards that will be

enacted and enforced. The standards must cover a wide range of areas, including minimum ages of breeding, the maximum number of times an animal may be bred, its physical environment and what happens to animals once they are no longer able to breed.

Breaching standards as well as animal welfare offences must carry appropriate penalties. Too often the punishment for the serious abuse of animals is nothing more than a slap on the wrist or a small fine. That is not congruent with community sentiments and the inherent value of an animal's life. That, along with a ban on the sale of companion animals in pet stores, would see some real change. I also note annual permits are being introduced for cats that have not been desexed. The failure to desex cats means more and more litters of kittens that, unfortunately in many cases, end up being euthanased. I support the sentiment to boost desexing rates; however, I believe that these increased penalties should be matched with free or subsidised desexing.

There are some small changes in the bill that I am enthusiastically in favour of: increased penalties for refusing to allow an assistance animal in a public place, granting courts the power to order an offender to pay the costs for caring for a seized animal, and extended powers to prevent someone who is disqualified from owning an animal due to an animal cruelty offence from exercising control over any animal—for example, to prevent them from transferring ownership of an animal to a partner. I have an interest in the case of the 19 horses referred to by the Minister in his second reading speech and I have asked questions about it several times in this place. I am pleased that the RSPCA will now be able to recover the costs of keeping those horses from the person charged. I wish this provision could be extended to the owners of greyhounds who dump their animals in pounds, and to volunteer rescue groups.

When this bill was introduced, I honestly thought that the Government would finally be delivering on its promise to remove the mandatory muzzling requirement for pet greyhounds. I and many others were bitterly disappointed, particularly since it has been more than a year since that recommendation was given by the Greyhound Industry Reform Panel. I foreshadow that I will be moving an amendment to delete section 15 of the Companion Animals Act, which will remove the requirement for mandatory muzzling of pet greyhounds.

The Hon. PETER PRIMROSE (22:48): Given the lateness of the hour I will not read out the objects of the bill. The details of the bill have been covered in great detail by my colleague the Hon. Mick Veitch. As the Hon. Mick Veitch indicated the Opposition will not be opposing the legislation. It is a small first step in a long journey to addressing issues affecting companion animals and the regulatory framework in New South Wales. The bill implements some changes arising from the Companion Animals Regulation 2008 which was subject to public consultation in 2017. I will put to the Minister a number of issues raised with me by local government. I sought their advice specifically as the shadow Minister. We could boil most of the concerns down to those raised through Local Government NSW President Linda Scott. I will read the four-paragraph email that she provided to me and ask that the Minister respond to it in his reply. Ms Scott writes:

> The bill makes amendment to the Companion Animals Act and Prevention of Cruelty to Animals Act to improve animal welfare outcomes and is supported. It increases penalties for failing to register a companion animal and for denying entry to an assistance animal. Under the new bill vets will be able to access owner details through the register rather than through council. This will return lost companion animals to their owners more quickly and reduce the administrative burden on councils. However, there needs to be sufficient controls around privacy of the owners' details. We understand this will be ensured through appropriate controls in the register itself and articulated in the related guidelines.
>
> The amendments will place additional administrative burdens on the Office of Local Government in relation to the introduction of annual registration of restricted and dangerous dogs plus non-desexed cats, upgrading of the register to make it more accessible to breeders, owners and vets, monitoring the register for breeding practices of puppy factories et cetera. The Office of Local Government will need to be adequately resourced.
>
> There will also be some additional administration required of councils in issuing annual permits, especially if this process is not automated via the pet register. We understand the intent is to automate the process as soon and as much as possible, but there will undoubtedly be a transition period where councils will be issuing notices and permits. Councils will receive 80 per cent of the permit fees collected via the Companion Animals Fund which will provide some reimbursement and incentive to councils but the preference is for the register upgrade process to be adequately funded to enable permit notices and fee collection to occur via the register from the outset.
>
> Section 80 of the bill lists the information to be included on the register in relation to each registered companion animal. Missing from this list is whether the animal is desexed. We understand this field exists in the current register and the intent is to keep it in the new register. Nonetheless, this field should be included in the bill for completeness.

With those few comments from local government, I commend the bill to the House.

The Hon. MARK PEARSON (22:52): The Animal Justice Party will support this bill, although it does not go far enough. I will point out the issues of concern to the Animal Justice Party. As the Hon. Mick Veitch pointed out, I was a member of the joint committee that inquired into companion animal breeding practices. The difficulty is that as soon as a facility starts to breed animals the bitches and dogs become part of a production system and their purpose is to produce puppies. Often the owners of the animals fall into the trap of overworking the bitches. It is inevitable because of that very process. Breeds are bred for particular traits that are aesthetically

pleasing but often those traits become anatomical and physiological problems for the animal. For example, pug dogs develop respiratory problems.

Even with the best regulations in the world these breeding operations ultimately create animals which are Frankensteins that develop serious welfare problems. At the same time that these animals are being bred, every Friday afternoon in pounds and shelters around New South Wales many healthy animals capable of full healthy lives are killed. They are not euthanased due to illness or suffering; healthy animals are put to death. With the proper programs these animals could be found a home—homes to which animals from breeding facilities go to instead.

The other issue that the Animal Justice Party will raise was first mentioned by Dr Mehreen Faruqi. We would not be talking about this bill without the work of the animal activists who documented the conditions that these animals were living in. Without their activism, those many operations would not have been discovered. It was not one bad apple; there were a lot of bad apples. It was not the RSPCA, the police or the Animal Welfare League who exposed these puppy farms, but activists who took pictures. One of the recommendations that the committee looked at was that the number of breeding bitches or cats should dictate the number of surprise inspections upon those properties, and the regularity of the inspections should be increased according to the number of animals held in a facility. These animals are out of sight and out of mind and the community wants to be assured that an officer with authority will be able come to the door to inspect the practices without the facility being able to prepare for that inspection.

The Animal Justice Party was hoping that the breeder licence number would be placed on the microchip for all puppies and kittens. That has not happened. The Animal Justice Party supports all of the recommendations and requirements in this bill that improve traceability of puppies or kittens, but we believe the licence number of the microchip would have assisted that even further. Due to the lack of inspectors and officers with prescribed authority under the legislation, I thought it would be good if at least one ranger per council could have prescribed powers under the Prevention of Cruelty to Animals Act. Often a reported operation is in a remote area and officers from the RSPCA or the Animal Welfare League cannot reach the location easily.

The Animal Justice Party will support the bill. It is clearly a very positive step in the right direction and we will now turn our minds to addressing other legislation that will address animal protection. We support the improved traceability of pups and kittens and the publication of a breeder's licence number when advertising on any medium to sell animals. It is particularly welcome that a person who has been given an order not to own animals cannot be put in the position of care, control or supervision of any animal whether it be theirs or somebody else's. The Animal Justice Party supports the bill because it sees that it is steering the situation of companion animal protection in the right direction and away from some serious flaws that existed in the past. I thank all the members who were on the committee: the Hon. Scot MacDonald, the Hon. Mick Veitch and others. It was my first committee and it was a pleasure to work with them.

The Hon. Mick Veitch: We looked after you, Mark.

The Hon. MARK PEARSON: You did, and I will look after you now. I welcome the Government's reflection of putting that hard work into a bill that will bring major changes for animal protection. I commend the bill to the House.

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (23:00): In reply: I thank all members for their contributions to debate on the Companion Animals and Other Legislation Amendment Bill 2018. I reiterate the comments made by the Hon. Mark Pearson and thank all members who participated in the inquiry, which has led to a number of changes in the bill before the House. I thank the Hon. Mick Veitch, who led on behalf of the Opposition, Reverend the Hon. Fred Nile, Dr Mehreen Faruqi, the Hon. Peter Primrose and the Hon. Mark Pearson for their contributions. The bill makes important changes to companion animal laws in New South Wales. For the first time, dogs and cats in this State will be able to be tracked back to their breeder. This will improve the ability of our enforcement agencies to monitor sales patterns so they can identify and target problem breeders and crack down on unscrupulous operators in this State.

Importantly, this change gives effect to a key recommendation of the 2015 Joint Select Committee on Companion Animal Breeding Practices in New South Wales and forms a key part of the Government's commitment to improve the New South Wales companion animals regulatory framework. These changes are the first part of this Government's plan to reform and modernise animal welfare legislation in New South Wales. This Government takes animal welfare seriously and we are committed to providing the strongest possible framework to promote good animal welfare outcomes in this State. We understand the depth of passion of people in New South Wales and how they care for animals.

During the debate Reverend the Hon. Fred Nile spoke about his association with his companion animals, underpinning the passion that not only members in this place but also the broader community have for companion animals. We recognise and understand that community attitudes and expectations are changing. That is why the Government recently released the first ever NSW Animal Welfare Action Plan. The six goals under the action plan will deliver an animal welfare system that is focused on outcomes and recognises the need to stay at the forefront of understanding, evolving animal welfare science and community values. The action plan outlines our key priorities over the next 12 months and beyond to improve animal welfare in this State.

I will turn to issues raised by members during the second reading debate. The Hon. Mick Veitch raised the failure rates of microchips. The Companion Animals Task Force found that microchipping has resulted in significant decreases in the number of animals being impounded by councils and an increase in the number of animals being returned to their owners from council pounds. While the Government is aware that microchips are not always effective, the most commonly cited reasons for microchip failure are incorrect installation and the importation of cheap microchips from overseas that are not approved for use for companion animals in New South Wales. However, there is little factual evidence available on the failure rates of microchips.

Microchip failure is the subject of a number of online blogs and discussion forums. These forums suggest a number of non-chip related reasons for not being able to read microchip data, including non-universal scanners being used, metal near the scanner interfering with the reading, scanning too quickly and holding the scanner the wrong way. As part of the rebuild of the companion animals register, the register will create profiles for people as well as pets so it will be easier to identify if there are repeated concerns with an individual authorised identifier either using faulty microchips or more serious welfare concerns.

This increased data capture will allow the Office of Local Government to take action to remove authorisation and access to the register from these people. This will ensure an even greater success rate for readability of microchips and the return of lost pets to their owners. In response to questions about whether the Office of Local Government has sufficient budget to deliver the register—I might direct this to some of the issues raised by the Hon. Peter Primrose, MLC, on behalf of the president of Local Government NSW—the register is being partly funded through the Companion Animals Fund, into which registration and annual permit fees are paid. The remainder of the cost is being funded by the New South Wales Government and the new register is on track to be delivered later this year.

In response to the Hon. Mick Veitch's question about the annual permits for dangerous and restricted dogs, all restricted and dangerous dogs will require an annual permit, including those already on the register when the requirement comes into effect. Restricted dogs are all dogs of a breed, kind or description that is prohibited to be imported into Australia. These are the pit bull terrier, American pit bull terrier, Japanese tosa, Argentinian fighting dog, Brazilian fighting dog and canary mastiff. Dangerous dogs can be any breed and those declared dangerous by a council or court because the dog, without provocation, has repeatedly threatened to attack or repeatedly chased, attacked or killed a person or animal, or has displayed unreasonable aggression, or is kept for hunting.

The Hon. Mick Veitch asked also about the communication and education for vets and their role. The Government will continue to work with the Australian Veterinary Association over the following months to educate and inform them that there are new requirements. The appointment of the New South Wales Chief Animal Welfare Officer is a new role. The member spoke also about a similar type of role during the committee process. The New South Wales Chief Animal Welfare Officer will be part of the process, liaising with the veterinary associations to make sure we can get the information out to them about what their requirements are and assist with the education.

Once more going back to the issue of the microchips and the technology question asked by the Hon. Mick Veitch, authorised identifiers must ensure that microchips they implant in pet cats and dogs for the purposes of identification under the Companion Animals Act 1998 is an approved chip. Microchips which comply with ISO11784 and ISO11785 and include a manufacturer code granted by the International Committee for Animal Recording are approved for use in New South Wales. However, New South Wales will continue to look at emerging technologies to ensure that we have a modern system for the tracking of pets and ensuring their welfare on the way through. We will monitor that space to see if we need to look at other types of technology.

In relation to the question raised by Dr Faruqi about a breeders' licensing scheme, the bill achieves the intent of the joint select committee's recommendation without creating unnecessary regulatory burden. The Government did not support a standalone breeders' licensing scheme because it would place an unnecessary administrative and regulatory burden on the industry without improving compliance or animal welfare outcomes. Instead, the bill's amendments improve the ability to target problem breeders by rebuilding the companion animals register so that it captures key details about breeders and the dogs and the cats that they breed. This is a significant change to the way the NSW Companion Animals Register captures information.

Previously only information about animals was collected in the register. Now breeders and pet owners will have a profile in the register. Therefore, we will be able to link pets to their breeders and their owners throughout a pet's lifetime. The requirement to display a breeder identification or microchip number when advertising dogs and cats for sale will allow for greater transparency and tracking back to the breeder and their breeding facilities. This information will be used by enforcement officers to quickly identify and respond to problem breeders across the State. The enforcement agencies will be able to monitor dog and cat breeding trends and patterns, carry out investigations into alleged dog and cat advertising offences and identify suspicious breeders. In addition, the Animal Welfare Code of Practice—Breeding Dogs and Cats already applies to breeders and includes requirements for breeding and rearing, animal housing, food and water, cleaning, animal health and veterinary care. It requires that breeding females have no more than two litters in any two-year period, unless with written approval of a veterinary practitioner. It also requires that pups and kittens not be separated from their litter or lactating mother until they are seven weeks old and that they are not rehomed before they are eight weeks old.

The maximum penalty for non-compliance with the breeding code is 200 penalty units—$22,000 currently—for a corporation, and 50 penalty units or $5,500 currently for an individual. Dr Faruqi also raised the issue of removing the muzzling requirement for greyhounds. The New South Wales Government is committed to transitioning away from muzzling requirements for pet greyhounds. A process is already underway to implement this commitment, separate to the animal welfare reforms before the House. The Government has developed a framework to guide the transition from the existing muzzling requirements for pet greyhounds that balances the welfare of greyhounds with the safety of other animals and the community.

This involves two key pieces of work. The first is the development of seamless integration between the greyhound racing register and the NSW Companion Animals Register to ensure whole-of-life tracking of greyhounds. It is imperative that the registers enable this and greyhounds are not lost in transfers. The second is developing assessment and training processes for greyhounds to be eligible for registration as a companion animal. The Government has consulted with the Responsible Pet Ownership Reference group and the RSPCA NSW in developing a framework that balances the goals of increasing rehoming rates and protecting community safety. It is anticipated that the new muzzling framework will be implemented in mid-2019, when the new greyhound racing register is expected to be launched.

In relation to some other outstanding issues raised by the Hon. Peter Primrose around privacy controls, we agree that there need to be privacy controls. Different levels of access for public, the vets and enforcement agencies will be within the register to ensure that private information is protected. On the burden issue on Office of Local Government for the permits for dangerous dogs, the annual permit fees will be paid into the Companion Animals Fund, which I spoke about earlier. That will support the ongoing work of the Office of Local Government. We hope it addresses that and note that we are working to get the register up and running as quickly as possible to enable that to commence.

In relation to the issue raised by the Hon. Mark Pearson about why councils do not have responsibility for enforcing animal welfare and cruelty standards of the New South Wales, the Government does provide funding to RSPCA NSW, Animal Welfare League NSW and NSW Police Force to enforce the Prevention of Cruelty to Animals Act 1979. Enforcement of the Act requires different capabilities to rangers and implementation of the recommendation would greatly increase demand on council resourcing. However, as I have outlined earlier, we will be talking about animal welfare quite a bit over the next 12 months as we continue to roll out our action plan. Finally, I draw to the attention of the House to the statement made on 23 May by the Chief Executive Officer of RSPCA NSW, Steve Coleman, who said:

> Any changes to registration and identification regulations that increases transparency for the consumer about where their animals are coming from, is a good thing. It's all about greater transparency which in turn increases our ability to regulate large scale puppy breeders that deliberately operate under the radar and mislead the public about where their animals are coming from and how they are being bred. Notably we are pleased to see that advertisements for animals will have to include identification information so that the traceability and transparency of all animals being bought and sold can be transparent. Like Mr Coleman and his organisation, RSPCA NSW, I too believe that increasing transparency and enhancing traceability will lead to greater animal welfare outcomes for companion animals across New South Wales. I conclude by thanking everyone who was involved in the development of the bill, those who were involved in the committee, the agencies through the Department of Primary Industries and the Office of Local Government, and all members for their contributions. 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: There being no objection, the Committee will deal with the bill as a whole.

Dr MEHREEN FARUQI (23:15): By leave: I move The Greens amendments Nos 1 to 3 on sheet C2018-057B in globo:

No. 1 **Removal of requirement to muzzle greyhounds**

Page 2, clause 3, line 7. Omit "Schedule 7.3 [5]". Insert instead "Schedule 7.3 [2]–[5] and 7.4 [6] and [7]".

No. 2 **Removal of requirement to muzzle greyhounds**

Page 2. Insert after line 7:

4 Amendment of Companion Animals Regulation 2008

The *Companion Animals Regulation 2008* is amended by omitting clause 33B (Exemption from muzzling for certain greyhounds).

No. 3 **Removal of requirement to muzzle greyhounds**

Page 8, Schedule 1. Insert after line 15:

[8] Section 15 Certain breeds of dogs to be muzzled

Omit "greyhound and any other" from section 15 (1).

[9] Section 15 (2)

Omit "greyhound or other" wherever occurring.

[10] Section 15 (3)

Insert "(other than a greyhound)" after "description of dog".

[11] Section 23 Disqualification from owning or being in charge of dog

Omit "Greyhounds and other breeds" from section 23 (2) (a).

Insert instead "Certain breeds of dogs".

There is not much at all that the greyhound racing industry and I agree on, but the need to remove the mandatory muzzling of pet greyhounds is one thing. The amendments before the Committee will do exactly that. Amendments Nos 2 and 3 establish a new scheme for muzzling so that greyhounds are not required to be muzzled, and amendment No. 1 amends the Greyhound Racing Act 2017 to prevent not-yet commenced provisions that would still require greyhound muzzling from taking effect and, if effected, cancels the new scheme. Section 15 of the Companion Animals Act 1998 requires greyhounds to be muzzled in public unless they have gone through the industry-managed Greenhounds program. I should at the outset declare a bit of a conflict of interest. I have a beautiful rescue greyhound named Cosmo, who has, however, passed the Greenhounds test already.

The Hon. Mick Veitch: What is his name?

Dr MEHREEN FARUQI: Cosmo. He is not required to be muzzled anymore. But many greyhound owners, both those within the greyhound racing industry and those who rescue the dogs, have told me that the cost of the program is prohibitive. Many others do not want any money going into the industry program. No-one is really sure why this law exists, but it certainly predates the reality that many greyhounds rescued from racing are living and thriving in the community. Mandatory muzzling of greyhounds in public perpetuates the myth that greyhounds are inherently dangerous, which, in turn, drives down adoption rates. With the Government choosing to reinstate greyhound racing and failing to introduce a breeding cap, more greyhounds than ever before are going to need to be rehomed. This change is required urgently. The archaic, blanket rule for all greyhounds is unnecessary and any muzzling requirement should be based on the behaviour of individual dogs.

The Australian Capital Territory [ACT] found that the mandatory muzzling of greyhounds in public was completely unnecessary and removed the requirement from the law last year. RSPCA Australia is also supportive of removing this section of the law, stating that there is no evidence to show that greyhounds as a breed pose a greater risk to the public than any other dog breed or mix of breeds and the compulsory muzzling of pet greyhounds in public occurs only in Australia and Northern Ireland. RSPCA Australia has not identified any evidence of increased safety risks or incidence issues arising from the absence of compulsory muzzling of pet greyhounds in public places in other countries. Victoria has followed suit, with the muzzle requirement to be removed from January next year. The RSPCA has said that currently a non-muzzled greyhound will find a home in under a fortnight, while those forced to wear the device may not be adopted for more than 40 days.

Neither Victoria nor the ACT needed any muzzling frameworks, as the Minister alluded to earlier. Meanwhile, here in New South Wales it has been more than a year since the Government accepted the Greyhound Industry Reform Panel recommendation to remove muzzling requirements for greyhounds that are pets. I contacted the Minister for Local Government's office about this amendment. I thank her and a senior advisor for their response. They indicated that processes were underway behind the scenes, including integrating the greyhound racing register and the NSW Companion Animals Register, and developing assessment and training processes for greyhounds to be eligible for registration as a companion animal. I understand that they are looking at this process to be completed by 2019, which would be 2½ years after the recommendations.

I do not believe the integration of registers needs to be undertaken before removal of muzzling requirements. It has no significance for muzzling requirements to be removed. The reality is that greyhounds are already companion animals, so whether they are muzzled or not is inconsequential to this project. The second point about developing assessment and training processes for greyhounds to be eligible for registration as a companion animal is deeply concerning for me, and indicates that the Government intends to put up another barrier to the adoption of greyhounds. We already have a process called "Greenhounds", which is exactly the process we are trying to remove. The last thing people want is to have to replicate this collar program yet again. Of course we need an assessment of dogs because we know that some greyhounds are so traumatised by the racing industry that, unfortunately, they cannot be rehomed.

We should apply the same standards of community safety that we apply to other dogs in the community. We should not presume that all greyhounds are dangerous and need to be muzzled. The rehoming groups and owners can make that decision themselves, as they would with any other dog. The change in legislation would not compel greyhound owners to not muzzle their dogs, it just gives them the choice to decide. Victoria has taken this approach and simply said that all greyhounds will be muzzle free from 1 January next year. The Australian Capital Territory has taken the same approach, with no parallel program in place. While I appreciate the response of the Minister, I do not think it is reason enough to continue to delay this matter. I commend the amendments to the Committee.

The Hon. NIALL BLAIR (Minister for Primary Industries, Minister for Regional Water, and Minister for Trade and Industry) (23:21): I thank Dr Mehreen Faruqi for moving the amendments. She has covered much of my response in her contribution because she has had good access to the Minister's office and the Minister has responded to her concerns. The Government will not support the amendments. I covered this in my speech in reply, but I will reiterate some points. The muzzling of greyhounds is not covered in the bill. The Government does support the removing of muzzling requirements to improve the rehoming rates of greyhounds, but it is critical that any potential risk to other animals and the community is managed.

The Government is taking a transitioned approach to the removal of the muzzling requirement for greyhounds to balance the welfare of the greyhounds and other animals, as well as community safety. This is consistent with the Government's response to the Greyhound Industry Reform Panel recommendations and consultations with the Minister for Local Government's Responsible Pet Ownership Reference Group. We must have frameworks in place to ensure that appropriate assessment and training occurs for ex-racing greyhounds to ensure the continued safety of the community.

Section 33B provides for an exemption from muzzling for greyhounds that have completed an approved training program. I am heartened to hear that Cosmo, Dr Mehreen Faruqi's dog, has completed the training and is now muzzle free. This means that greyhounds that have been shown to not present a threat to humans and other animals through the completion of appropriate training are not required to be muzzled when in public. It is appropriate that this provision remains in place while the transition to not requiring the muzzling of greyhounds occurs. The Government does not support the amendments. We are working on this issue, but not in this bill tonight.

The Hon. MICK VEITCH (23:23): The Opposition supports The Greens amendments—the Cosmo amendments. Theirs is a compelling argument. The Minister's speech pretty much endorsed what Dr Mehreen Faruqi said. The Opposition will support The Greens.

Mr DAVID SHOEBRIDGE (23:24): I listened carefully to the Minister's contribution but I am yet to know what this framework involves. All we are talking about is taking the compulsory muzzles off greyhounds and treating them like all other animal groups. That is what the Royal Society for the Prevention of Cruelty to Animals [RSPCA] has asked for repeatedly. That is what other States have done. We do not need a framework. The Greenhounds program is not a solution. Dr Mehreen Faruqi tells me that it is a $200 program where they ask a few questions about the participant's dog, the participant says that the dog is pretty safe and the people in the program say that it does not need a muzzle. It is a ridiculous waste of money and a barrier to people rehousing greyhounds. Other States have repealed the requirement for dogs to be muzzled. The idea of spending the scarce time of bureaucrats on building a framework to take the muzzles off greyhounds is nuts. I support the amendment.

The CHAIR (The Hon. Trevor Khan): The question is that The Greens amendments Nos 1, 2 and 3 on sheet C2018-057B be agreed to.

The Committee divided.

Ayes 18
Noes 21
Majority.....3

AYES

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

NOES

Ajaka, Mr	Amato, Mr L	Blair, Mr
Clarke, Mr D	Colless, Mr R	Cusack, Ms C
Fang, Mr W (teller)	Farlow, Mr S	Franklin, Mr B
Green, Mr P	Harwin, Mr D	MacDonald, Mr S
Maclaren-Jones, Mrs (teller)	Mallard, Mr S	Martin, Mr T
Mason-Cox, Mr M	Mitchell, Mrs	Nile, Revd Mr
Phelps, Dr P	Taylor, Mrs	Ward, Ms P

Amendments 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.

KOSCIUSZKO WILD HORSE HERITAGE BILL 2018

First Reading

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

The Hon. DON HARWIN: According to sessional order, I declare the bill to be an urgent bill.

The PRESIDENT: The question is that the bill be considered an urgent bill.

The House divided.

Ayes 21
Noes 18
Majority.....3

AYES

Amato, Mr L	Blair, Mr	Clarke, Mr D
Colless, Mr R	Cusack, Ms C	Fang, Mr W (teller)

AYES

Farlow, Mr S	Franklin, Mr B	Green, Mr P
Harwin, Mr D	Khan, Mr T	MacDonald, Mr S
Maclaren-Jones, Mrs (teller)	Mallard, Mr S	Martin, Mr T
Mason-Cox, Mr M	Mitchell, Mrs	Nile, Revd Mr
Phelps, Dr P	Taylor, Mrs	Ward, Ms P

NOES

Buckingham, Mr J	Donnelly, Mr G (teller)	Faruqi, Dr M
Field, Mr J	Graham, 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
Voltz, Ms L	Walker, Ms D	Wong, Mr E

Motion agreed to.

Declaration of urgency agreed to.

The Hon. DON HARWIN: I move:

That the second reading stand as an order of the day for a future day.

Motion agreed to.

Adjournment Debate

ADJOURNMENT

The Hon. DON HARWIN: I move:

That this House do now adjourn.

RYDE COUNCIL DEVELOPMENT

The Hon. SCOTT FARLOW (23:45): I speak about an issue facing more than 124,000 residents in Sydney, on behalf of a community under siege from poor local leadership headed up by a mayor more focused on using ratepayers' money for his State election campaign than on standing up for his local community. Of course, I am speaking about Jerome Laxale, Mayor of the City of Ryde and Labor's candidate for Ryde in the next State election. This is an individual who is one minute supportive of the development of four high rise towers, including a 60-storey tower, as many storeys as the MLC Centre, that would see more than 1,256 new homes built by Meriton Group in the already densely populated area of Macquarie Park and who the next minute tries to mislead the community into believing he is against this development.

This mayor one second votes in favour of the proposals, at a council meeting on Tuesday 27 November 2017, and then misleads the community by distributing material, at ratepayers' expense, to say that "he is and always has been against the overdevelopment of Ryde and neighbouring suburbs" and attempts to attack another councillor, Jordan Lane, who has alerted the community to the mayor's actions. This mayor writes to the community stating that, "Council has not approved a proposal for 112 Talavera Road, Macquarie Park", when he voted to enter into a voluntary planning agreement with Meriton, which can clearly be seen on page 31 of the minutes of council meeting No. 10/17 dated 28 November 2017.

I, along with the rest of the community of Ryde, share my shock and disbelief that a mayor charged with working in the best interests of his community can enter into a joint planning agreement with Meriton to build a 60-storey tower, the largest building between here and the Blue Mountains, in Macquarie Park. This development would include four towers of 27, 30, 45 and 60 storeys, when only 30 storeys are allowed on the site under the council's current planning limits. This would add further strain to already clogged roads and public transport. Let us see what the *Northern District Times* had to say about this. A 4 April article read:

> Ryde Mayor Jerome Laxale—one of those who voted in favour—said the council got the best deal for ratepayers it could manage.
>
> "The choice we had was between a rock and a hard place," Cr Laxale said.

"But we do the best we can to get the most for residents out of these developers."

He said the 45 storey proposal would have delivered little public benefit, as opposed to the 60 storey one.

I remind members that the 60-storey proposal was the one he entered into voluntary planning agreement to support. Councillor Laxale has spent tens of thousands of ratepayers' dollars sending out direct mail to residents attacking the New South Wales Government and running a scare campaign on development, when he is the one voting for a 60-storey development—the hypocrisy. It is no secret that Macquarie Park, where this significant proposal is based, is a key growth area. Development in the area is causing infrastructure strains, which is why the Government has directed that any new planning proposals for residential development in Ryde not be assessed or progressed until a review of local infrastructure and planning laws. The Government has also deferred the new Low Rise Medium Density Housing Code in the both the city of Ryde and Canterbury-Bankstown.

This mayor is a hypocrite and is trying to deceive and mislead all 124,798 residents of the city of Ryde. The mayor is abusing his position by wasting ratepayers' money on what is sheer politicking and scare campaigns, paid for by local residents, as part of his campaign for election to State Parliament. The people of Ryde can see through this smear campaign and will take a stand against the mayor's 60-storey tower and massive plans to overdevelop Ryde. Residents of Ryde have a tremendous champion against overdevelopment in the member for Ryde, Victor Dominello, MP, who has stood up against overdevelopment and fought hard for the interests of the Ryde community.

AUSTRALIA-GREECE MILITARY COLLABORATION

FOODBANK AUSTRALIA

The Hon. COURTNEY HOUSSOS (23:49): Tonight I inform the House about the long history of military collaboration between Australia and Greece. Indeed, that collaboration has spanned most of our nation's history since Federation. Our two countries have always fought together—never on opposing sides. This long history of collaboration was highlighted by the recent visit of the Greek Presidential Guard on their third annual visit to Sydney. A visit such as this is a huge undertaking. This deeply significant diplomatic event shows the lasting respect held by the people of Greece for our nation. The Evzones, the Greek Presidential Guard, are the elite unit of the Greek Army. Their appearance at the dawn service on Anzac Day at Bondi Beach and their march along the esplanade on 29 April were broadcast live on television in Greece. The memory of having seen these iconic symbols of Greece at one of our most famous landmarks and the incredible community support for them will stay with me forever.

The history of Greece is woven into the intricate uniform of the Evzones: the foustanella, the ceremonial skirt that is worn, has 400 folds to signify the 400 years of Ottoman occupation. Different versions of the uniform pay tribute to the different regions of Greece, and the Cretan and Pontian versions were worn during their recent visit. I pay tribute to Consul General of Greece Mr Christos Karras for his role in facilitating the Evzones visit. I note it was one of the very first issues he dealt with after his arrival late last year. I also acknowledge the crucial role that the Hellenic Club, President Nick Hatzistergos, Chief Executive Officer Arthur Balayannis and Sophie Balayannis played in supporting the visit—financially and logistically. Their tireless work and support made the visit such a success.

It is often forgotten that in 1914 the Greek island of Lemnos was the final departure point for the Anzacs leaving for Gallipoli, and it offered essential support during the campaign, providing both medical care and respite from the front line. It is also the final resting place for 148 Australians and 76 New Zealanders. The Greek people have never forgotten this, especially the Lemnian community. In recent weeks the Battles of Greece and Crete during the Second World War, after the Greek people heroically said "Oxi" to the Axis forces, was commemorated in recent weeks; it is known as the second Anzac campaign. Australians fought valiantly alongside the Greeks on the mainland and then in Crete.

Despite being outnumbered and clearly outgunned, there are stories of locals who, armed with little more than farm implements, and sometimes even just saucepans, fought courageously alongside the Australian soldiers. Although they did not stop the German occupation, the fight they put up, and the toll they took on the enemy, meant that the Germans never again attempted an invasion from the air alone. I pay tribute to the Joint Committee for the Commemoration of the Battles of Greece and Crete, President James Jordan and Secretary Nick Andriotakis for the invaluable role they continue to play in raising awareness of the Forgotten Anzacs.

Last week I had the opportunity to tour the headquarters of Foodbank at Glendenning in Sydney's west. The scale of the operation highlights the scale of the problem of food insecurity being faced in New South Wales—namely, during a busy week they can provide 600,000 meals across New South Wales and the Australian Capital Territory. In addition to being amazed by the scale and size of their warehouse and logistics, there were several things from my visit that I found deeply concerning. My first concern was the increasing support that is being

provided for people who are working. In this country we expect that a job will provide us with a wage that will allow us to support ourselves and our families. Last year 48 per cent of the people who were assisted by Foodbank were employed. I heard stories about a family who were donors to Foodbank but through a twist of fate, including an injury at work, they were instead left seeking food relief.

My second concern was the secondary and social effects of having no food in one's house. Many families feel shamed because they are not able to buy food. This results in a lack of social interaction, even within the family, and there is often no opportunity for them to come together for an evening meal to enjoy the benefits that provides. I thank John Robertson and the team at Foodbank for the incredible and valuable work they do. They also undertake wonderful research.

CLIMATE CHANGE

Mr JEREMY BUCKINGHAM (23:54): Tonight I will give the House the bad news: Humanity is heading towards oblivion. While we mostly faff around in this place, talking and making laws about anything but the most pressing issue of our time, the world is getting hotter and we are locking in our demise. As many scientists have said, we are buggered, we are rooted, we are stuffed. It is time to explode the great lie that everything is okay; the great lie that we can address climate change without radical and rapid action to decarbonise our economy; the great lie that we have any chance of keeping global warming to 1.5 or two or even three degrees if we keep up this passive, incremental and sober approach to climate change. The time of baffling expedience and half measures is over; we are in the time of consequences. While we argue about whether we can afford to buy tiny reductions in our emissions in Australia, we are busy exporting hundreds of millions of tonnes of coal and completely blowing our carbon budget out of the water.

We are completely ignoring mentioning climate change in the intergenerational report, and fossil fuel exports are skyrocketing. As we head into what is called the "Anthropocene epoch", scientists have now determined that we are in a new epoch of humanity—one that is characterised by mass extinctions. Species on earth are expected to decline by 75 per cent. The Anthropocene—the human age—which affects the entire biosphere, will be categorised and recorded in the future by a thin geographical layer of radiation, plastic and chicken bones. That is what we will be remembered for. Scientists now estimate that our chance of meeting the target of two degrees has disappeared. The CSIRO—

The Hon. Dr Peter Phelps: Name them.

Mr JEREMY BUCKINGHAM: I name them—the CSIRO. The scientists who guide our thinking and who should guide the policymaking of this Government now say that our children—I notice that members opposite are smiling—

The Hon. Dr Peter Phelps: I'm laughing.

Mr JEREMY BUCKINGHAM: The Hon. Dr Peter Phelps is laughing. I am talking about the mass extinction of life; the end of civilisation. Why does the member think there was a global accord in Paris to try to keep warming to 1.5 degrees or two degrees? The scientists now say that, with China's emissions rising, we are heading to at least 3.1 degrees. There will be mass extinction. It will be a complete catastrophe for agriculture, the systems that sustain us, and the capacity of our oceans to absorb that carbon dioxide. We are now heading to beyond what was agreed in Paris. Professor Andy Pitman, Director of the ARC Centre of Excellence for Climate Extremes, said, "Most climate scientists think 2 degrees [compared with pre-industrial levels] to be aspirational."

Bill Hare, director of the non-profit science think tank Climate Analytics, said the planet is currently on course for 3.4 degrees warming, although planned but as-yet unimplemented climate action could trim that to 3.1 degrees. But we are seeing a ramp up of China's economy and heavy industry starting up. It is absolutely blowing the world's carbon budget out of the water. It is all based on continuing to burn fossil fuels, and Australia is part of that. Nobel prize winning scientist Paul Crutzen, who coined the term "Anthropocene", identified a great acceleration in the impacts of humanity on the planet. There is no greater impact than if we cook the planet.

Australia and New South Wales are exporting hundreds of millions of tonnes of coal. Burning that coal is creating massive climate extremes around the world and causing huge impacts. The consensus today among Australian farmers is that we are facing climate extremes. Gone are the days when Tony Abbott could stand at Shetland with farmers and say that climate change is crap. Those farmers feel it. They see it in the changes to plant growth and weather patterns. They see it in the changes that mean they will not be able to feed us. Without our farmers, we have nothing. We will have to fend for ourselves. Without a stable climate, we have nothing. It is time to act or die.

PROCAN CANCER TREATMENT PROJECT

The Hon. BRONNIE TAYLOR (23:59): Last April I had the great pleasure of visiting the Children's Medical Research Institute at Westmead. I was very impressed on that visit by the vision of professors Roger Reddel and Phil Robinson for a project named ProCan. As a cancer and palliative care nurse, I know that this project is a complete game changer for cancer diagnosis and treatment. ProCan was established in 2016 thanks to a $10 million grant from the Australian Cancer Research Foundation to build and equip a new facility. On 30 April, I was very proud to hear the announcement of $41 million in funding from the New South Wales and Federal governments, including $21 million from the Liberal-Nationals Government. This amazing funding will support phase two, which will see the team create a database that will use proteomics to advance cancer treatment and be accessible to doctors from around the globe.

Over time, scientists will analyse tens of thousands of cancer biopsies and, thanks to new technology, rapidly and simultaneously measure the precise levels of proteins in them. The protein data will then be compared with information that is already available for each cancer, including pathology test results, genetic analyses, genome sequencing and any previous responses to cancer treatment. With this information, doctors around the world will be able to diagnose cancer precisely and then select a personalised treatment that is the best treatment currently available for that specific diagnosis. Patients will no longer have to endure treatments that cannot effectively target and treat their disease. Individualised treatment plans for cancer patients will be able to be developed within 72 hours—and this is all within reach in the next six or so years. It is just incredible.

Researchers will also be aided by this work. With this better understanding of the proteins in all different types of cancers, new treatments can be developed. This exciting prospect has seen the ProCan team become a part of the Cancer Moonshot initiative, led by former United States Vice President Joe Biden. The Cancer Moonshot is designed to accelerate cancer research. A memorandum of understanding [MOU] was signed by former Premier Mike Baird and Mr Biden on his visit in 2016. At the time, Mr Biden reflected on the passing of his son from brain cancer and how it became clear to him that sharing as much information as possible, as quickly as possible, was critical. The MOU encourages collaboration on priority areas of cancer research such as proteogenomics between Australian research institutes and the United States National Cancer Institute.

The $21 million investment by this Government is a real boost to New South Wales' international competitiveness and reputation for being at the forefront of research and innovation. Not only that, but by investing in medical research this Government is investing in the people of this State, and in patient care. We are investing in the future health of so many people. I congratulate the Premier, and the Minister for Health and Medical Research on this. I acknowledge the extraordinary men and women working on ProCan at the Children's Medical Research Institute. Their vision and hard work are beyond amazing. I cannot wait to see how the project progresses. I also acknowledge the tireless Nalini Swaminathan, head of the director's office, for all her hard work and advocacy in seeking funding from so many people.

When I went to see ProCan all I could think of was that this was the absolute Holy Grail of what we have all been searching for in cancer services for so very long. We know that many treatments we have to give people are very debilitating and hard to get through, and we know that the treatment will be effective for only some of the very many people. To be able to target that treatment for the person and to the specific cancer will make the most enormous difference to so many people. It gives me goosebumps; it is just so exciting. I did not think that we would see it in the next decade, but now we will.

I also make mention of all those around Australia who fundraise for cancer research, and for the Children's Medical Research Institute more specifically. The Great Cycle Challenge, Jeans for Genes Day and the amazing Snowy Ride for the Steven Walter Foundation are wonderful community events that raise funds and awareness. There are also amazing committees around Sydney and New South Wales, including in Wagga Wagga and Gerringong, and at the Earle Page College at the University of New England, that dedicate their time and energy to organising local events, from fairs to trivia nights to fun runs. We owe these people so very much.

LOCAL GOVERNMENT FUNDING

The Hon. PETER PRIMROSE (00:04:1): With the passing last month of Ernie Page, a former Labor Minister for Local Government, I had cause to re-read a number of his speeches in Parliament regarding the sector. I was struck in particular by one paragraph in a second reading debate in April 1993. Commenting on the severe funding constraints that had been placed on local government, Ernie said:

> I do not know of any major service of a council that has been cut back because of such financial restrictions. No other body in Australia, public or private, has had to endure such severe restrictions. I cannot think of one that could have survived for that time with such a constraint on its revenue-raising capabilities. People say there has been no microeconomic reform and no increase in efficiency in local councils, but the position is the reverse. It should be realised that local government has had to improve its efficiency to maintain its services to the community while suffering a severe restriction on its fund-raising activities.

Today, a quarter of a century later, local government is still under siege. The New South Wales Liberals and Nationals are effectively at war with local councils, accusing them of not being efficient or "Fit for the Future", and of needing to be forcibly merged, as though the State Government was somehow showering them with money which councils were recklessly wasting. Most pathetic are the attacks on local councils by the current New South Wales Treasurer, Dominic Perrottet, who is responsible for cost shifting almost a billion dollars worth of unfunded liabilities on to local government. But because he has not been able to bully Hawkesbury City Council and get his own way, he has decided to repeatedly and unjustly accuse the whole sector of being lazy and greedy. Of course, we have heard nothing, as usual, from the Minister for Local Government in response to this glib bullying.

Compare this pettiness with the work of organisations such as the NSW Roads and Transport Directorate, a partnership between the Institute of Public Works Engineering Australasia and Local Government NSW. Yesterday, along with my colleagues Mick Veitch and Jodi McKay, I had the privilege of attending the 2018 Local Roads Congress conducted by the directorate. One of the key areas of concern at the congress was road safety. The road toll has increased from 307 in 2014 to 392 in 2017. Almost 70 per cent of these fatalities occurred on roads under the control and management of local councils. Current statistics point to this figure rising to about 420 this year.

The congress made a number of major recommendations which would provide a sustainable funding model for local government to address such issues, including redistributing Federal assistance grants to regional New South Wales to address social equity and reduce the infrastructure funding gap. On behalf of the New South Wales Labor Opposition, Jodi McKay, the shadow Minister for Roads, was able to confirm to the congress that a New South Wales Labor government would meet this recommendation by reviewing the distribution of both the general purpose component and the local roads component of the financial assistance grants to achieve the goals proposed by the directorate.

Many rural and regional councils have repeatedly raised concerns about the equity of the formula used by the New South Wales Local Government Grants Commission to distribute the Federal funding that is available to councils. For instance, when looking at the total roads component for the 2017-18 financial year, Dungog with 602 kilometres of road received only $880,701. Brewarrina with 1,272 kilometres of roads received $1,257,000. Queanbeyan-Palerang, with 1,348 kilometres of roads received $2,307,642. Compare that with the City of Sydney, which has only 301 kilometres of roads but received $1,258,328 and the northern beaches, which has 814 kilometres of roads but received $2,187,341.

WORLD ENVIRONMENT DAY

Dr MEHREEN FARUQI (00:09): Today is World Environment Day and I wish I had better news. Our environment is in crisis and the New South Wales Government does not care, and nor does the Turnbull Government. In their scamper towards the next election, the Liberal-Nationals have no regard for the destructive long-term impacts that their decisions have on our environment. At best it is wilful ignorance; at worst it is deliberate ecocide. Even if they do not respect the intrinsic value of nature and our ecosystems what will it take for them to understand that without a healthy environment we are all screwed.

Without clean air to breathe, clean water to drink, and the rich biodiversity of our planet we cannot live healthy lives and the wellbeing of society is severely compromised. Climate change is biting and without a serious move to reduce emissions as well as supporting climate resilience in our environment it will be a disaster. The most recent emissions report from 1 June 2017 from the Federal Government shows an increase in emissions of 1.5 per cent last year, the third straight year it has risen. I remind members that we are meant to be reducing our greenhouse gas emissions by 26 per cent to 28 per cent on 2005 levels by 2030—a target we are hopelessly off track to meet.

A closer look at the data shows that the main reasons are a 10.5 per cent increase in fugitive emissions from fossil fuels, including coal, crude oil and natural gas. We know who the culprits are, but the Government is doing nothing about it. The carbon price, a policy that saw emissions fall between 2012 and 2014, was abolished by the Liberal-Nationals Coalition and it put in its place the direct action program—a thought bubble that was expensive and that was destined for failure. The Greens Adam Bandt rightly said the direct action plan was "an empty vessel built to appease the Trumps in the Coalition". More than $1 billion is being spent on planting trees, yet mature trees are being cut down left, right and centre and governments are planning to completely wipe out native vegetation through open slather land clearing laws and forest clearing, particularly in New South Wales, Queensland and Western Australia.

Recent Federal budgets have seen the axe swing on specialist threatened species positions in the Department of Environment, with at least 60 officers removed, even as more than 2,000 species have joined the threatened species list. In New South Wales, the Berejiklian Government is decimating our National Parks and Wildlife Service by stripping it of much needed expertise. Not even our oceans are safe although they are quite

far from Canberra. Earlier this year the Turnbull Government stripped protections from large swathes of marine parks, including halving the area under the highest level of protection in the Coral Sea. Overall, 80 per cent of Australia's marine park waters would be opened to commercial fishing and mining—up from 63 per cent.

This World Environment Day things sure look bleak. But I believe we are approaching a tipping point where environmentalism has moved to the forefront of our discourse, and community activism is only getting stronger. It does not matter what regressive Neanderthal government is in power; we will turn this tide of ecocide. I hope it is not too late. AGL is shutting the Liddell power station despite the attempted bullying by the Federal Government. Renewables will continue to see the closure of dirty coal power stations across the country. I urge the Government to pull its head out of the sand and commit to transition packages for affected communities and workers.

Given the intransigence of the Federal Government to effectively deal with plastic pollution, retailers are removing plastic bags from their stores. Woolworths is committing to stop selling plastic straws and to remove plastic packaging from 80 fruit and vegetable lines. Coles set a deadline of 2020 to halve food waste from its supermarkets and to make all packaging of its branded products recyclable. It says a lot about our governments when corporations start making better environmental decisions than them. This, of course, is not enough. But it shows that this World Environment Day we will take matters into our own hands and force a change through communities, through business and through governments. The power of the people is always much greater than those who are supposedly in power.

The DEPUTY PRESIDENT (The Hon. Shayne Mallard): The question is that this House do now adjourn.

Motion agreed to.

The House adjourned at 00:14 until Wednesday 6 June 2018 at 11:00.